

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

J. Mark Hayes, II, Circuit Court Judge

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S.C. Supreme Court

MABLE IRENE LEEBEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213132

APPENDIX

CARMEN V. GANJEHSANI
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

SUZANNE H. WHITE
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 COUNTY OF SPARTANBURG) 98-GS-42-03897
 STATE,)
)
 PLAINTIFF,)
)
 VS.) TRANSCRIPT OF RECORD
)
 MABLE IRENE LEEBAY,)
)
 DEFENDANT.)

OCTOBER 28 AND 29, 1999
 SPARTANBURG, SOUTH CAROLINA

B E F O R E:

HONORABLE J. DERHAM COLE

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

ANTHONY MABRY, ASSISTANT SOLICITOR
 SPARTANBURG, SOUTH CAROLINA

ATTORNEYS FOR THE STATE

STEPHEN WELCH, ESQUIRE
 GREENWOOD, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY G. BROOM
 CIRCUIT COURT REPORTER
 SIXTEENTH JUDICIAL CIRCUIT

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1 MR. MABRY - YOUR HONOR, THE STATE IS GOING TO
2 CALL FOR TRIAL MABLE IRENE LEEBAY, TRAFFICKING IN COCAINE
3 GREATER THAN TEN GRAMS.

4 THE COURT - MR. WELCH, YOU REPRESENT THE
5 DEFENDANT, MS. LEEBAY?

6 MR. WELCH - YES, I DO, YOUR HONOR. SHE PLEADS
7 NOT GUILTY. SHE'S AWARE OF THE FACT THE TRIAL IS TODAY.
8 SHE'S SUPPOSED TO BE ON HER WAY, BUT WE'RE AWARE OF THE
9 FACT THAT THE COURT HAS TO PROCEED, JUDGE.

10 THE COURT - MR. MABRY, WHAT NOTIFICATION WAS
11 PROVIDED THE DEFENDANT THAT HER CASE WOULD BE DISPOSED OF
12 THIS WEEK AND/OR TODAY?

13 MR. MABRY - MR. WELCH WAS NOTIFIED I BELIEVE TWO
14 WEEKS AGO. I TALKED TO HIM ON THE PHONE THAT THE CASE WAS
15 UP FOR TRIAL ON THE TRIAL DOCKET THIS WEEK. THE BONDSMAN
16 WAS SENT A LETTER TO HAVE HER HERE ON TUESDAY, BECAUSE
17 THAT'S WHEN I INTENDED TO CALL THE CASE. SOME THINGS DID
18 NOT WORK OUT, BUT I CALLED MR. WELCH'S OFFICE THIS MORNING
19 AND INFORMED HIM TO BE HERE. AND ALSO YOUR SECRETARY
20 CALLED AND INFORMED HIM TO BE HERE AT 2:30. I ALSO CALLED
21 HER BONDSMAN ON ANOTHER CASE. SHE'S ALSO CHARGED WITH
22 DWID MARIJUANA 3RD ON A MORE RECENT CASE, AND I CALLED
23 THAT BONDSMAN, AND I'VE GOT HIM LOOKING FOR HER AT THE
24 SAME TIME.

25 THE COURT - LET ME HAVE A COPY OF THE BOND OR

1 THE ORIGINAL AND THE LETTERS NOTIFYING ---

2 MR. WELCH - JUDGE, JUST FOR PURPOSES OF THE
3 RECORD, I DON'T DISPUTE ANYTHING HE SAID. WE WERE
4 ORIGINALLY SCHEDULED FOR A MURDER CASE IN LEXINGTON COUNTY
5 THIS WEEK, AND WE'VE CORRESPONDED BACK AND FORTH. DUE TO
6 SOME RULE 5 PROBLEMS IN THAT CASE, THAT DID NOT GO. WE
7 DID TELL HER LAST WEEK THAT IT LOOKED LIKE THE MURDER CASE
8 WOULD OBVIOUSLY TAKE PRECEDENT OVER THIS CASE THIS WEEK,
9 AND WE'D PROVIDED THE CASE NUMBER AND EVERYTHING IN
10 LEXINGTON, BUT WE HAVE HAD CONTACT WITH HER AND MADE HER
11 AWARE OF THE 2:30 PROCEEDING TODAY.

12 THE COURT - AND WHEN DID YOU NOTIFY HER TO BE
13 HERE AT 2:30 TODAY?

14 MR. WELCH - JUDGE, RONNIE PERRY OF MY OFFICE
15 LEFT A MESSAGE YESTERDAY ON HER ANSWERING MACHINE THAT THE
16 COURT WAS LOOKING FOR US TODAY, RECOMMENDED THAT SHE
17 CONTACT US THIS MORNING AND TOLD HER THAT THERE WAS A
18 DISTINCT POSSIBILITY WE'D HAVE TO BE HERE THIS AFTERNOON
19 IN THE COURTROOMS. WE HAVE NOTIFIED THE BONDSMAN AS WELL.
20 SHE HAS A SISTER THAT WORKS AT THE SPARTANBURG COUNTY
21 DETENTION CENTER, AND THAT SISTER WAS ALSO NOTIFIED. THAT
22 SISTER IS GETTING IN CONTACT WITH HER TODAY.

23 THE COURT - THE SISTER WAS NOTIFIED YESTERDAY TO
24 ---

25 MR. WELCH - I DID NOT NOTIFY HER YESTERDAY. THE

1 BONDSMAN SAID THAT --- THE BONDSMAN TALKED WITH HER
2 YESTERDAY. THE BONDSMAN TALKED WITH HER AGAIN TODAY. THE
3 BONDSMAN HAS KNOWN SINCE TUESDAY.

4 THE COURT - ALL RIGHT, SIR.

5 MR. MABRY - JUDGE, I'LL HAVE TO GET YOU THAT.
6 I DON'T HAVE THAT RIGHT HERE IN FRONT OF ME, THE BOND, THE
7 LETTER. I HAVE TO GET THAT FROM MY SECRETARY. SHE SENT
8 THOSE OUT, BUT I DID TALK TO THE BONDSMAN AND LEFT A
9 MESSAGE ON THEIR ANSWERING MACHINE THAT SHE HAD TO BE
10 HERE.

11 THE COURT - OKAY, BUT I STILL NEED THE LETTER
12 AND THE BOND.

13 MR. MABRY - OKAY. I'LL GET THAT.

14 THE COURT - ALL RIGHT. IN THE MATTER OF THE
15 STATE VS. MABLE IRENE LEEBAY, I HAVE BEFORE ME THE
16 ORIGINAL BOND IN CUSTODY OF THE CLERK OF COURT. IT
17 INDICATES THAT WITH REFERENCE TO WARRANT F672490 WHICH IS
18 THE CHARGE OF TRAFFICKING IN COCAINE, THAT IS THE CHARGE
19 FOR WHICH SHE HAS BEEN INDICTED AND THE CHARGE FOR WHICH
20 THE STATE HAS CALLED THE CASE TO TRIAL ON DECEMBER THE
21 18TH OF 1997. IT DOES APPEAR THAT MS. LEEBAY WAS RELEASED
22 FROM INCARCERATION PURSUANT TO A SURETY BOND BEING SET IN
23 THE AMOUNT OF TEN THOUSAND DOLLARS; IT APPEARS THAT A
24 SURETY DID, IN FACT, SIGN THE BOND OBLIGATING THEM TO HAVE
25 MS. LEEBAY PRESENT AT THE TIME THE CASE WAS CALLED FOR

1 TRIAL. IT FURTHER APPEARS THAT THE DEFENDANT WAS NOTIFIED
2 OF HER RIGHT TO BE PRESENT AND HER OBLIGATION TO BE
3 PRESENT AT THE TRIAL OF THE CASE AND THAT SHOULD SHE FAIL
4 TO ATTEND THE COURT THE TRIAL WOULD PROCEED IN HER
5 ABSENCE. SHE SIGNIFIED ACKNOWLEDGEMENT OF THAT
6 NOTIFICATION BY HER SIGNATURE AT THE TIME OF HER RELEASE
7 FROM DECEMBER THE 18TH OF 1997. IT FURTHER APPEARS THAT
8 THE SOLICITOR HAS NOTIFIED BOTH THE BONDSMAN AND THE
9 DEFENDANT'S COUNSEL OF THE PROPOSED DISPOSITION OF THIS
10 CASE THIS WEEK, AND, SPECIFICALLY, THE BONDSMAN AND
11 DEFENDANT'S COUNSEL WERE NOTIFIED THAT THE CASE WAS TO BE
12 CALLED FOR DISPOSITION THIS AFTERNOON AT 2:30. IT IS
13 PRESENTLY 3:13, AND DEFENDANT HAS FAILED TO APPEAR, AND,
14 THEREFORE, WE SHALL PROCEED WITH THE JURY SELECTION IN HER
15 ABSENCE. ANY REQUEST FOR VOIR DIRE? AND I ALSO NEED ANY
16 WITNESS LIST.

17 MR. WELCH - JUDGE, THE DEFENSE DOES NOT HAVE A
18 WITNESS LIST AT THIS TIME?

19 MR. MABRY - THIS IS OUR WITNESS LIST, YOUR
20 HONOR. WE'D REQUEST ANY WITNESSES THAT THEY HAD BE
21 PROVIDED NOW. IT'LL BE TOO LATE ONCE WE PICK THE JURY.

22 THE COURT - WHAT POTENTIAL WITNESSES WOULD YOU
23 HAVE, MR. WELCH?

24 MR. WELCH - JUDGE, IN TERMS OF THE FACTS OF THIS
25 CASE, THERE ACTUALLY ARE NONE. THERE IS THE POSSIBILITY

1 OF A WYNONA MASSEY, BUT HAVE NO PLANS AT THIS TIME TO CALL
2 THAT PERSON, BUT THAT IS POSSIBLE.

3 THE COURT - SHE'S A SPARTANBURG COUNTY RESIDENT?

4 MR. WELCH - YES, SIR.

5 THE COURT - ALL RIGHT. RHONDA WILLIAMS IS WHO,
6 MR. MABRY?

7 MR. MABRY - SHE WORKS FOR THE PEACH BLOSSOM
8 MOTEL.

9 THE COURT - PEACH BLOSSOM?

10 MR. MABRY - YES, SIR. SO DOES MR. PETRIS.

11 MR. PETRIS - PETRIS.

12 MR. MABRY - I'M SORRY. MR. PETRIS WHO'S SEATED
13 BEHIND ME.

14 THE COURT - ALL RIGHT. DAVID TAYLOR WITH THE
15 SHERIFF'S DEPARTMENT?

16 MR. MABRY - YES, SIR.

17 THE COURT - KEN HANCOCK?

18 MR. MABRY - YES, SIR.

19 THE COURT - SHERIFF'S DEPARTMENT?

20 MR. MABRY - YES, SIR.

21 THE COURT - ROCKY CORRELL, SHERIFF'S DEPARTMENT?

22 MR. MABRY - YES, SIR.

23 THE COURT - ASHLEY HARRIS?

24 MR. MABRY - SHERIFF'S OFFICE.

25 THE COURT - SHERIFF'S DEPARTMENT. JOE

1 THORNBURG, SHERIFF'S DEPARTMENT.

2 MR. MABRY - YES, SIR.

3 THE COURT - ALL RIGHT. ANY MATTERS WE NEED TO
4 ADDRESS BEFORE WE HAVE THE JURY PANEL BROUGHT AROUND FOR
5 SELECTION?

6 MR. WELCH - NOTHING FROM DEFENSE AT THIS TIME,
7 JUDGE.

8 THE COURT - OKAY. BRING THE PANEL AROUND,
9 PLEASE, SIR. WHAT IS MS. LEEBAY'S ADDRESS? DO YOU KNOW?

10 MR. WELCH - JUDGE, THE ADDRESS WE HAVE IS [REDACTED]
11 [REDACTED] OLD GREENVILLE HIGHWAY, UNA, SOUTH
12 CAROLINA.

13 MR. MABRY - THAT'S HER MOST RECENT ADDRESS, TOO.
14 SHE WAS ARRESTED AGAIN ON 4/15 OF '99 ON ANOTHER CHARGE,
15 AND THAT'S THE ADDRESS AS LISTED AS HER --- ON ---

16 THE COURT - ALL RIGHT. THE TRAFFICKING STATUTE
17 IS ACTUAL AND/OR CONSTRUCTIVE POSSESSION?

18 MR. MABRY - YES, SIR.

19 (JURY PANEL IS BROUGHT IN.)

20 MR. MABRY - YOUR HONOR, STATE CALLS INDICTMENT
21 98-GS-42-3897, MABLE IRENE LEEBAY, ALSO KNOWN AS JETER, IS
22 INDICTED FOR TRAFFICKING IN COCAINE.

23 THE COURT - MR. WELCH, YOU REPRESENT THE
24 DEFENDANT?

25 MR. WELCH - YES, I DO, JUDGE.

1 THE COURT - ARE YOU READY TO PROCEED WITH JURY
2 SELECTION?

3 MR. WELCH - YES, SIR, JUDGE.

4 THE COURT - GOOD AFTERNOON, LADIES AND GENTLEMEN
5 OF THE JURY PANEL. WE ARE READY TO BEGIN WITH JURY
6 SELECTION, AND THE NEXT CASE THAT WILL REQUIRE SOME OF
7 YOUR PARTICIPATION, AND AS THE SOLICITOR INDICATED, THE
8 TITLE OF THE CASE IS THE STATE VS. MABLE IRENE LEEBAY.
9 MS. LEEBAY HAS BEEN CHARGED IN AN INDICTMENT WITH THE
10 OFFENSE OF TRAFFICKING IN TEN GRAMS OR MORE OF COCAINE.
11 THEY ALLEGE BY WAY OF THE INDICTMENT THAT SHE DID ON OR
12 ABOUT OCTOBER THE 29TH OF 1997 TRAFFIC IN TEN GRAMS OR
13 MORE OF COCAINE IN THAT SHE DID KNOWINGLY HAVE IN HER
14 ACTUAL OR CONSTRUCTIVE POSSESSION A QUANTITY OF COCAINE
15 THAT WAS TEN GRAMS OR GREATER. NOW, AS TO THE CHARGE
16 THAT'S SET FORTH IN THAT INDICTMENT, THE DEFENDANT HAS
17 ENTERED A PLEA OF NOT GUILTY. THAT PLEA OF NOT GUILTY
18 PLACES UPON THE STATE THROUGH THE PROSECUTOR THE BURDEN OF
19 PROVING ALL OF THE ALLEGATIONS SET FORTH IN THE
20 INDICTMENT, THE BURDEN OF PROVING EACH OF THE ESSENTIAL
21 ELEMENTS THAT MAKE UP THE OFFENSE OF TRAFFICKING IN
22 COCAINE, AND, THEREFORE, THE BURDEN IS UPON THE STATE TO
23 ESTABLISH THE GUILT OF THE DEFENDANT TO THE SATISFACTION
24 OF THE JURY BEYOND A REASONABLE DOUBT. IN THIS CASE THE
25 STATE IS REPRESENTED BY ANTHONY MABRY WHO IS SEATED AT THE

11

1 PROSECUTION TABLE. THE DEFENDANT, MS. LEEBAY, IS
2 REPRESENTED BY STEVE WELCH WHO IS SEATED AT THE DEFENSE
3 TABLE. MS. LEEBAY, AS YOU CAN SEE IS NOT AT THE MOMENT
4 PRESENT, BUT WE ARE EXPECTING HER SHORTLY, BUT WE ARE
5 GOING FORWARD WITH JURY SELECTION IN THE CASE. POTENTIAL
6 WITNESSES WHICH MAY BE CALLED DURING THE TRIAL OF THE CASE
7 ARE RHONDA WILLIAMS FROM THE PEACH BLOSSOM MOTEL, JOHN
8 PETRIS ALSO WITH THE PEACH BLOSSOM MOTEL, DAVID TAYLOR
9 WITH THE SPARTANBURG COUNTY SHERIFF'S DEPARTMENT, KEN
10 HANCOCK WITH THE SPARTANBURG COUNTY SHERIFF'S DEPARTMENT,
11 ROCKY CORRELL WITH THE SPARTANBURG COUNTY SHERIFF'S
12 DEPARTMENT, ASHLEY HARRIS WITH THE SPARTANBURG COUNTY
13 SHERIFF'S DEPARTMENT AND JOE THORNBURG WITH THE
14 SPARTANBURG COUNTY SHERIFF'S DEPARTMENT. IN ADDITION, A
15 POTENTIAL WITNESS MAY BE WYNONA MASSEY, A RESIDENT OF
16 SPARTANBURG AND THE DEFENDANT, MABLE IRENE LEEBAY IS A
17 RESIDENT OF THE UNA COMMUNITY, SPECIFICALLY AT SUNSET
18 TRAILER PARK HERE IN SPARTANBURG COUNTY. IS THERE ANY
19 MEMBER OF THE JURY PANEL WHO IS RELATED BY BLOOD OR WHO IS
20 CONNECTED BY MARRIAGE OR WHO HAS ANY CLOSE, PERSONAL,
21 SOCIAL, PROFESSIONAL OR OTHER RELATIONSHIP WITH ANY OF THE
22 POTENTIAL WITNESSES THAT HAVE BEEN IDENTIFIED AND THAT
23 WOULD INCLUDE THE DEFENDANT, MS. LEEBAY.

24 MR. MABRY - AND SHE IS ALSO --- SHE MAY BE BY
25 THE NAME JETER NOW. SHE MAY BE MARRIED --- A MARRIED

1 NAME.

2 THE COURT - OKAY, WITH A J OR WITH A G?

3 MR. MABRY - WITH A J, YOUR HONOR.

4 THE COURT - AND SHE MAY HAVE SINCE MARRIED, AND

5 IT MAY BE MABLE IRENE LEEBAY JETER.

6 (JURORS STAND.)

7 THE COURT - ALL RIGHT, WE HAVE TWO JURORS

8 STANDING. YES, MA'AM, YOUR NAME, PLEASE.

9 (JUROR) - RUTH STRIPLING.

10 THE COURT - I'M SORRY.

11 (JUROR) - RUTH STRIPLING.

12 THE COURT - STRICKLAND? (SIC) AND YOUR NUMBER?

13 MS. STRIPLING - 156.

14 THE COURT - 156. HOW DOES THE QUESTION RELATE

15 TO YOU?

16 MS. STRIPLING - SHE USED TO GO WITH MY BROTHER.

17 THE COURT - SHE USED TO GO WITH YOUR BROTHER BUT

18 NO LONGER?

19 MR. STRIPLING (INDICATING NO)

20 THE COURT - SO YOU KNOW THE DEFENDANT?

21 MS. STRIPLING - (INDICATING YES)

22 THE COURT - WOULD THE FACT THAT YOU KNOW THE

23 DEFENDANT INTERFERE IN ANY WAY WITH YOUR ABILITY TO BE

24 FAIR AND IMPARTIAL IF YOU WERE SELECTED TO PARTICIPATE IN

25 THE TRIAL OF THIS CASE?

1 MS. STRIPLING - NO, SIR.

2 THE COURT - YOU COULD PUT THAT KNOWLEDGE ASIDE
3 AND BASE THE VERDICT SOLELY UPON THE EVIDENCE RECEIVED
4 DURING THE TRIAL OF THE CASE?

5 MS. STRIPLING - YES, SIR.

6 THE COURT - OKAY, THANK YOU, MA'AM. YOU MAY BE
7 SEATED. YES, MA'AM.

8 (JUROR) - 134. I KNOW TWO OF THE WITNESSES, MR.
9 PETRIS AND RHONDA ---

10 THE COURT - WILLIAMS OF THE PEACH BLOSSOM MOTEL?

11 (JUROR) - (INDICATING YES)

12 THE COURT - AND HOW DO YOU KNOW THEM?

13 (JUROR) - WELL, I JUST GO THERE QUITE FREQUENTLY
14 AND THEN MY NEXT-DOOR NEIGHBOR WORKS THERE, AND SO I SEE
15 THEM IN AND OUT THERE, ALSO.

16 THE COURT - OKAY. WOULD THAT FACT INTERFERE IN
17 ANY WAY WITH YOUR ABILITY TO BE FAIR AND IMPARTIAL IF YOU
18 WERE SELECTED AS A JUROR IN THIS CASE?

19 (JUROR) - OH, NO, YOUR HONOR.

20 THE COURT - I UNDERSTAND THAT THE FACTS SET
21 FORTH IN THE INDICTMENT ALLEGING THE COMMISSION OF THIS
22 OFFENSE AGAINST MS. LEEBAY OR MS. JETER, WHICHEVER IT MAY
23 BE, ARE ALLEGED TO HAVE OCCURRED AT THE PEACH BLOSSOM
24 MOTEL. IS THERE ANY MEMBER OF THE JURY PANEL THAT KNOWS
25 ANYTHING ABOUT THE FACTS OR CIRCUMSTANCES THAT RELATE TO

1 THIS PARTICULAR CASE?

2 (NO RESPONSE)

3 THE COURT - HAVE YOU HEARD ANYTHING ABOUT IT
4 FROM ANY PERSON OR ANY OTHER SOURCE? IF SO, PLEASE STAND.

5 (JUROR STANDS.)

6 THE COURT - MS. STRICKLAND? (SIC)

7 MS. STRIPLING - I JUST HEARD JUST WHAT SHE'S
8 TOLD ME.

9 THE COURT - SO YOU'VE TALKED TO THE DEFENDANT
10 ABOUT THE CASE?

11 MS. STRIPLING - (INDICATING YES)

12 THE COURT - ALL RIGHT, MS. STRICKLAND, (SIC) I'M
13 GOING TO EXCUSE YOU FROM SERVICE IN THE TRIAL OF THE CASE.
14 BUT WE NEED FOR YOU TO REMAIN. ANYONE ELSE KNOW ANYTHING
15 ABOUT THE CASE OR HEARD ANYTHING ABOUT IT FROM ANY PERSON
16 OR ANY OTHER SOURCE? IF SO, PLEASE STAND.

17 (NO RESPONSE.)

18 THE COURT - IS THERE ANYTHING ABOUT THE NATURE
19 OF THE CHARGE THAT WOULD PREVENT ANY JUROR FROM BEING ABLE
20 TO BE FAIR AND IMPARTIAL, ANYTHING ABOUT THE NATURE OF THE
21 CHARGE THAT WOULD PREVENT YOU FROM BEING ABLE TO BE FAIR
22 AND IMPARTIAL? IF SO, PLEASE STAND.

23 (NO RESPONSE.)

24 THE COURT - DOES ANY JUROR KNOW EITHER OF THE
25 LAWYERS INVOLVED IN THE CASE? IF SO, PLEASE STAND.

15

1 (NO RESPONSE.)

2 THE COURT - HAS ANY JUROR ALREADY FORMED ANY
3 OPINION AS TO WHAT YOU THINK THE ULTIMATE DECISION SHOULD
4 BE BASED UPON WHAT YOU KNOW UP TO THIS POINT OR FOR ANY
5 OTHER REASON? IF SO, PLEASE STAND.

6 (NO RESPONSE.)

7 THE COURT - ANY JUROR KNOW OF ANY REASON WHY YOU
8 COULD NOT BE FAIR AND IMPARTIAL IF YOU WERE SELECTED TO
9 PARTICIPATE IN THE TRIAL OF THIS CASE? IF SO, PLEASE
10 STAND.

11 (NO RESPONSE.)

12 THE COURT - ANY OTHER QUESTIONS REQUESTED BY THE
13 STATE?

14 MR. MABRY - NO, SIR.

15 THE COURT - BY THE DEFENDANT?

16 MR. WELCH - NO, SIR, JUDGE.

17 THE COURT - ALL RIGHT, DRAW US A JURY, PLEASE
18 MA'AM.

19 CLERK - WHEN I CALL YOUR NAME, PLEASE COME
20 FORWARD AND STAND IN FRONT OF THE DESK UP FRONT AND FACE
21 THAT WAY. (INDICATING) NUMBER 188, CYNTHIA MOORE. WHAT
22 SAYS THE STATE?

23 MR. MABRY - EXCUSE THE JUROR IN THIS CASE.

24 (JUROR EXCUSED)

25 CLERK - NUMBER 124, SHERRIE PAGE. WHAT SAYS THE

1 STATE?

2 MR. MABRY - PRESENT THE JUROR.

3 CLERK - WHAT SAYS THE DEFENSE?

4 MR. WELCH - PLEASE SEAT THE JUROR.

5 (JUROR SEATED)

6 CLERK - NUMBER 131, CLAUDE PITTMAN, JR. WHAT
7 SAYS THE STATE?

8 MR. MABRY - PRESENT THE JUROR.

9 CLERK - WHAT SAYS THE DEFENSE?

10 MR. WELCH - PLEASE SEAT THE JUROR.

11 (JUROR SEATED)

12 CLERK - NUMBER 109, DORIS MAUNEY. WHAT SAYS THE

13 STATE?

14 MR. MABRY - PRESENT THE JUROR.

15 CLERK - WHAT SAYS DEFENSE?

16 MR. WELCH - PLEASE EXCUSE THE JUROR.

17 (JUROR EXCUSED)

18 CLERK - NUMBER 17, ROBERT BRADLEY. WHAT SAYS

19 THE STATE?

20 MR. MABRY - PRESENT THE JUROR.

21 CLERK - WHAT SAYS DEFENSE?

22 MR. WELCH - PLEASE PRESENT THE JUROR.

23 (JUROR SEATED)

24 CLERK - NUMBER 41, LARRY DENT. WHAT SAYS THE

25 STATE?

1 MR. WELCH - WHAT WAS THAT NUMBER AGAIN?

2 CLERK - I'M SORRY. 41. WHAT SAYS THE STATE?

3 MR. MABRY - PRESENT THE JUROR.

4 CLERK - WHAT SAYS DEFENSE?

5 MR. WELCH - PLEASE SEAT THE JUROR.

6 (JUROR SEATED)

7 CLERK - NUMBER 93, ALLEN KIMBRELL. WHAT SAYS
8 THE STATE?

9 MR. MABRY - EXCUSE THE JUROR IN THIS CASE.

10 (JUROR EXCUSED)

11 CLERK - NUMBER 177, WILLIAM HONEYCUTT. (SIC)
12 WHAT SAYS THE STATE?

13 MR. MABRY - PRESENT THE JUROR.

14 CLERK - WHAT SAYS DEFENSE.

15 MR. WELCH - PLEASE EXCUSE THE JUROR.

16 (JUROR EXCUSED)

17 CLERK - NUMBER 127, MILTON PARTRIDGE. WHAT SAYS
18 THE STATE?

19 MR. WELCH - I'M SORRY. WHAT WAS THAT NUMBER
20 AGAIN?

21 CLERK - 127.

22 MR. MABRY - EXCUSE THE JUROR IN THIS CASE.

23 (JUROR EXCUSED)

24 CLERK - NUMBER 53, VERNON FORTNER. WHAT SAYS
25 THE STATE?

1 MR. MABRY - PRESENT THE JUROR.

2 CLERK - WHAT SAYS DEFENSE?

3 MR. WELCH - PLEASE SEAT THE JUROR.

4 (JUROR SEATED)

5 CLERK - NUMBER 148, WILLIE SINCLAIR. WHAT SAYS
6 THE STATE?

7 MR. MABRY - PRESENT THE JUROR.

8 CLERK - WHAT SAYS DEFENSE?

9 MR. WELCH - PLEASE EXCUSE THE JUROR.

10 (JUROR EXCUSED)

11 CLERK - NUMBER 164, DONNA TOWNSEND. WHAT SAYS
12 THE STATE?

13 MR. MABRY - PRESENT THE JUROR.

14 CLERK - WHAT SAYS DEFENSE?

15 MR. WELCH - PLEASE EXCUSE THE JUROR.

16 (JUROR EXCUSED)

17 CLERK - NUMBER 31, DIANNE CROOK. WHAT SAYS THE
18 STATE?

19 MR. MABRY - PRESENT THE JUROR.

20 CLERK - WHAT SAYS DEFENSE?

21 MR. WELCH - PLEASE SEAT THE JUROR.

22 (JUROR SEATED)

23 CLERK - NUMBER 12, BRENT BISHOP. WHAT SAYS THE
24 STATE?

25 MR. MABRY - PRESENT THE JUROR.

1 CLERK - WHAT SAYS THE DEFENSE?
2 MR. WELCH - PLEASE SEAT THE JUROR.
3 (JUROR SEATED)
4 CLERK - NUMBER 29, LARRY COLEMAN. WHAT SAYS THE
5 STATE?
6 MR. MABRY - PRESENT THE JUROR.
7 CLERK - WHAT SAYS DEFENSE?
8 MR. WELCH - PLEASE SEAT THE JUROR.
9 (JUROR SEATED)
10 CLERK - NUMBER 113, CLARENCE MCDOWELL. WHAT
11 SAYS THE STATE?
12 MR. MABRY - PRESENT THE JUROR.
13 CLERK - WHAT SAYS DEFENSE?
14 MR. WELCH - PLEASE EXCUSE THE JUROR.
15 (JUROR EXCUSED)
16 CLERK - NUMBER 25, BRENT (SIC) CAMPBELL. WHAT
17 SAYS THE STATE?
18 MR. MABRY - EXCUSE THE JUROR IN THIS CASE.
19 (JUROR EXCUSED)
20 CLERK - NUMBER 160, KEITH TESSNEAR. WHAT SAYS
21 THE STATE?
22 MR. MABRY - EXCUSE THE JUROR IN THIS CASE.
23 (JUROR EXCUSED)
24 CLERK - NUMBER 178, TEDDY MORROW. WHAT SAYS THE
25 STATE?

1 MR. MABRY - PRESENT THE JUROR.
2 CLERK - WHAT SAYS DEFENSE?
3 MR. WELCH - PLEASE SEAT THE JUROR.
4 (JUROR SEATED)
5 CLERK - NUMBER 180, BOBBY LAWTER. WHAT SAYS THE
6 STATE?
7 MR. MABRY - PRESENT THE JUROR.
8 CLERK - WHAT SAYS DEFENSE?
9 MR. WELCH - PLEASE SEAT THE JUROR.
10 (JUROR SEATED)
11 CLERK - NUMBER 98, ELIZABETH LEE. WHAT SAYS THE
12 STATE?
13 MR. MABRY - PRESENT THE JUROR.
14 CLERK - WHAT SAYS DEFENSE?
15 MR. WELCH - PLEASE SEAT THE JUROR.
16 (JUROR SEATED)
17 CLERK - NUMBER 136, ROBERT ROBERTSON, JR. WHAT
18 SAYS THE STATE?
19 MR. MABRY - PRESENT THE JUROR.
20 CLERK - WHAT SAYS DEFENSE?
21 MR. WELCH - PLEASE SEAT THE JUROR.
22 (JUROR SEATED)
23 THE COURT - THIS WILL BE FOR THE ALTERNATE.
24 CLERK - NUMBER 176, NANCY CORBIN. WHAT SAYS THE
25 STATE?

1 MR. MABRY - PRESENT THE JUROR.

2 CLERK - WHAT SAYS DEFENSE?

3 MR. WELCH - PLEASE EXCUSE THE JUROR.

4 (JUROR EXCUSED)

5 CLERK - NUMBER 59, RONALD GLISSON. WHAT SAYS
6 THE STATE?

7 MR. MABRY - EXCUSE THE JUROR IN THIS CASE.

8 (JUROR EXCUSED)

9 CLERK - NUMBER 137, GARY MITCHELL RUPPE.

10 THE COURT - 137?

11 CLERK - 137. WHAT SAYS THE STATE?

12 MR. MABRY - PRESENT THE JUROR.

13 CLERK - WHAT SAYS DEFENSE?

14 MR. WELCH - PLEASE SEAT THE JUROR.

15 (JUROR SEATED)

16 THE COURT - ALL RIGHT, THOSE OF YOU HAVE BEEN
17 SELECTED, I'M GOING TO ASK YOU TO PLEASE GO WITH THE
18 BAILIFF TO A JURY ROOM, AND WE'LL BRING YOU BACK IN JUST
19 A FEW MINUTES TO BEGIN THE TRIAL.

20 (JURY EXITS THE COURTROOM.)

21 THE COURT - ARE THERE ANY MATTERS THAT NEED TO
22 BE ADDRESSED REGARDING JURY SELECTION BY THE STATE?

23 MR. MABRY - NO, SIR.

24 THE COURT - BY THE DEFENDANT?

25 MR. WELCH - NO, SIR, JUDGE.

1 THE COURT - ALL RIGHT, THOSE JURORS WHO HAVE NOT
2 BEEN SELECTED, I WOULD ASK THAT YOU PLEASE GO BACK DOWN TO
3 THE JURY ASSEMBLY ROOM, AND WE'LL LET YOU KNOW IN A FEW
4 MINUTES WHEN YOU MAY BE EXCUSED. THANK YOU FOR YOUR
5 PARTICIPATION.

6 (REMAINING JURY PANEL EXITS THE COURTROOM.)

7 THE COURT - ARE THERE ANY MATTERS THAT NEED TO
8 BE ADDRESSED PRIOR TO THE JURY BEING SWORN?

9 MR. MABRY - NOT FROM THE STATE, YOUR HONOR.

10 MR. WELCH - NOT FROM THE DEFENSE, JUDGE. JUST
11 FOR THE COURT'S NOTIFICATION, MY STAFF HAS TALKED TO MS.
12 LEEBAW BY TELEPHONE. ONE OF MY STAFF MEMBERS IS IN THE
13 PROCESS OF PICKING HER UP NOW, AND SHE'LL BE HERE SHORTLY.

14 THE COURT - I THOUGHT HER SISTER WENT TO GET
15 HER.

16 MR. WELCH - WELL, SHE DID, AND THEN THE SISTER
17 WAS GOING OVER TO GET HER AND MY STAFF KEPT CALLING, AND
18 THE SISTER SAID SHE THOUGHT SHE MAY BE FARTHER AWAY THAN
19 WE WERE, AND SO MY --- I JUST TOLD MY GUY TO GO GET HER,
20 AND HE TOLD HER HE'D BE RIGHT THERE. SO SHE WILL BE HERE
21 SHORTLY, JUDGE.

22 THE COURT - WELL, WHERE DID HE SAY HE WAS GOING
23 TO GET HER?

24 MR. WELCH - HE JUST CAME IN WHILE WE WERE
25 PICKING THE JURY, AND HE SAID SHE JUST CALLED ME ON THE

1 PHONE; I TOLD HER I WAS PROBABLY CLOSER THAN HER SISTER
2 WAS, SO I'M GOING TO GET HER.

3 THE COURT - BUT YOU DON'T KNOW WHERE HE'S GOING?

4 MR. WELCH - NO SIR. I MEAN IT'S IN SPARTANBURG
5 HERE, BUT WE'RE READY TO PROCEED. I JUST WANTED THE COURT
6 TO KNOW THAT'S WHERE SHE IS.

7 THE COURT - ALL RIGHT, SIR. THANK YOU. ALL
8 RIGHT, WE'LL TAKE ABOUT TEN MINUTES BEFORE WE BEGIN.

9 (RECESS IS TAKEN.)

10 (DOCUMENT WAS MARKED AS STATE'S EXHIBIT 1 FOR
11 IDENTIFICATION.)

12 MR. MABRY - DO YOU HAVE ANY OBJECTIONS TO THESE,
13 MR. WELCH?

14 MR. WELCH - JUDGE, SHE GAVE CONSENT TO SEARCH,
15 AND I DON'T HAVE ANY OBJECTION. THEY'RE GOING TO LAY A
16 FOUNDATION IN TERMS OF THE CRACK COCAINE. BASED UPON THE
17 FOUNDATION THAT I KNOW THEY'RE GOING TO LAY WITH THE
18 WITNESSES, I DON'T HAVE ANY OBJECTION TO THE ADMISSIBILITY
19 AS LONG AS THERE IS AN INSTRUCTION FROM THE COURT, THAT
20 BASICALLY BECAUSE IT'S BEEN ADMITTED DOESN'T REALLY CARRY
21 ANY WEIGHT WITH THE JURY. THEY'VE GOT TO MAKE THEIR OWN
22 DECISIONS. I'LL STIPULATE TO THE ADMISSIBILITY. I'LL PUT
23 IT TO YOU THAT WAY FOR NOW.

24 MR. MABRY - THAT'S ALL WE'RE ASKING.

25 THE COURT - OKAY.

1 (DOCUMENT WAS MARKED AS STATE'S EXHIBIT NUMBER
2 1 WITHOUT OBJECTION.

3 MR. MABRY - THAT'S 1 AND THAT'LL BE 2.

4 (DOCUMENT WAS MARKED AS STATE'S EXHIBIT 2 FOR
5 IDENTIFICATION.)

6 MR. MABRY - 3.

7 MR. WELCH - WE'LL STIPULATE TO THE FINGER SCALES
8 AND THE MARIJUANA.

9 (DOCUMENTS MARKED AS STATE'S EXHIBITS 3 AND 4
10 WITHOUT OBJECTION.)

11 THE COURT - ALL RIGHT, ANY OTHER MATTERS THAT
12 NEED TO BE ADDRESSED BEFORE THE JURY IS SWORN?

13 MR. WELCH - NO, SIR, JUDGE.

14 MR. MABRY - NO, SIR.

15 THE COURT - BRING THEM IN, PLEASE, AND ASK MS.
16 LEE TO TAKE THE FORE-PERSON'S SEAT. MS. LEE.

17 (JURY RETURNS TO THE COURTROOM.)

18 THE COURT - ALL RIGHT, LADIES AND GENTLEMEN, WE
19 ARE READY TO BEGIN WITH THE TRIAL OF THE CASE FOR WHICH
20 YOU HAVE BEEN SELECTED, AND, MS. LEE, YOU'VE BEEN SELECTED
21 AS THE FORE-PERSON OF THIS JURY. YOU'LL NOT BE PAID
22 ANYMORE, BUT YOU DO HAVE SOME ADDITIONAL DUTIES THAT THE
23 OTHER JURORS WILL NOT HAVE. THOSE DUTIES WOULD INCLUDE
24 SERVING AS THE SPOKES-PERSON FOR THE JURY. THAT IS IF A
25 JUROR HAS A DIFFICULTY, PROBLEM OR QUESTION, IF YOU'LL LET

1 THE BAILIFF KNOW, THEN HE'LL DIRECT THOSE COMMENTS TO ME
2 AND I'LL TRY TO ASSIST YOU IN WHATEVER WAY THAT I CAN TO
3 ALLEVIATE THE PROBLEM OR TO ANSWER ANY QUESTION. IT WILL
4 ALSO BE YOU WHO WILL BE CALLED UPON TO PRESIDE OVER THE
5 DELIBERATIONS IN THE JURY ROOM WHEN THE TIME COMES FOR
6 DELIBERATIONS, AND THAT, OF COURSE, WILL NOT BE UNTIL THE
7 END OF THE TRIAL AFTER ALL OF THE EVIDENCE HAS BEEN
8 RECEIVED AND I HAVE GIVEN YOU THE INSTRUCTION AS TO THE
9 LAW. BUT WHEN THAT TIME COMES AND YOU ARE ASKED TO GO
10 BACK AND BEGIN DELIBERATIONS, IT WILL BE YOU WHO WILL
11 PRESIDE OVER THAT PROCESS SIMPLY TO INSURE THAT IT'S
12 CARRIED OUT IN SOME ORDERLY FASHION. IT WILL ALSO BE YOU
13 WHO WILL ACTUALLY WRITE THE DECISION OF THE JURY. YOU'LL
14 DO THAT ON A VERDICT FORM THAT I WILL PROVIDE FOR YOU AT
15 THE CONCLUSION OF THIS TRIAL TO SERVE FOR THAT PURPOSE.
16 NOW, OTHER THAN THOSE SPECIFIC DUTIES, ALL OF YOU ORIGINAL
17 12 OR PRIMARY JURORS ARE EQUALLY IMPORTANT. THAT IS, ALL
18 OF YOU WILL HAVE AN EQUAL SAY AND AN EQUAL VOICE AND AN
19 EQUAL VOTE IN WHAT THE ULTIMATE DECISION WILL BE IN THIS
20 CASE. SOMEONE SIMPLY HAS TO BE DELEGATED THOSE
21 RESPONSIBILITIES THAT I HAVE OUTLINED, AND I HAVE
22 DELEGATED THOSE TO MS. LEE IN MAKING HER THE FORE-PERSON,
23 BUT THAT DOES NOT MEAN THAT SHE IS ANYMORE IMPORTANT THAN
24 ANY OF YOU OTHER JURORS, BECAUSE AS I'VE STATED, THE
25 VERDICT OF THE JURY IS THE UNANIMOUS CONSENSUS OPINION OF

1 ALL 12 OF YOU JURORS, AND, THEREFORE, ALL 12 OF YOU WILL
2 HAVE AN EQUAL SAY IN WHAT THAT ULTIMATE VERDICT IS TO BE.
3 NOW, MR. RUPPE, YOU'VE BEEN SELECTED AS AN ALTERNATE
4 JUROR. THE PURPOSE OF YOUR SELECTION IS FOR YOU TO TAKE
5 THE PLACE OF ONE OF THE ORIGINAL 12 JURORS IN THE EVENT
6 ONE OF THESE ORIGINAL 12 CANNOT CONTINUE TO SERVE FOR SOME
7 REASON. THAT IS, IF ONE IS CALLED AWAY BECAUSE OF SOME
8 EMERGENCY OR OTHER PROBLEM THAT PREVENTS THEM FROM BEING
9 ABLE TO CONTINUE AS A JUROR, THEN IT WOULD BE YOU WHO
10 WOULD BE CALLED UPON TO TAKE THAT PERSON'S PLACE. IN THAT
11 EVENT, YOU BECOME THE 12TH JUROR, AND IN THAT EVENT, YOU
12 PARTICIPATE IN THE DELIBERATIONS OF THE JURY WHEN THAT
13 TIME COMES. NOW, IF AT THE END OF THE TRIAL AFTER ALL OF
14 THE EVIDENCE HAS BEEN RECEIVED AND THE JURY'S BEEN
15 INSTRUCTED ON THE LAW, IF THE ORIGINAL 12 JURORS ARE ABLE
16 TO PARTICIPATE IN DELIBERATIONS, THEN YOUR SERVICE WOULD
17 END, AND YOU WOULD NOT BE PERMITTED TO PARTICIPATE ANY
18 FURTHER IN THOSE DELIBERATIONS. AS I'VE SAID, THE VERDICT
19 OF THE JURY IS THE UNANIMOUS OPINION OF 12, BUT NO MORE
20 THAN 12 ARE PERMITTED TO ENGAGE IN THAT PROCESS. IT IS,
21 HOWEVER, IMPORTANT THAT YOU PAY JUST AS CAREFUL ATTENTION
22 AS WE ASK OF THE ORIGINAL 12 BECAUSE IT DOES QUITE OFTEN
23 OCCUR FROM TIME TO TIME FOR ONE REASON OR ANOTHER ONE OF
24 THESE ORIGINAL JURORS MAY BE CALLED AWAY, AND IF THAT WERE
25 TO BE THE CASE, YOU WOULD BE CALLED UPON TO TAKE THEIR

27

1 PLACE AND BECOME THE 12TH. SO WE DO SINCERELY APPRECIATE
2 YOUR PARTICIPATION AS AN ALTERNATE JUROR JUST AS WE DO
3 SINCERELY APPRECIATE THE PARTICIPATION OF ALL OF YOU WHO
4 HAVE BEEN SELECTED AS JURORS IN THE CASE.

5 YOU MAY SWEAR THE PANEL.

6 (JURY PANEL IS DULY SWORN BY THE CLERK.)

7 THE COURT - ALL RIGHT, LADIES AND GENTLEMEN, AS
8 YOU ARE AWARE, YOU HAVE BEEN SELECTED TO PARTICIPATE IN
9 THE TRIAL OF THE CASE OF THE STATE VS. MABLE IRENE LEEBAY
10 JETER, AND BY YOUR PARTICIPATION, YOU'RE GOING TO BE
11 CALLED UPON TO LISTEN CAREFULLY TO WITNESSES AS THEY
12 TESTIFY FROM THAT WITNESS STAND BEFORE YOU AND TO CONSIDER
13 ANY OTHER EVIDENCE THAT MIGHT BE ADMITTED OR OFFERED
14 DURING THE TRIAL OF THIS CASE. AND AT THIS TRIAL'S
15 CONCLUSION YOU'RE GOING TO BE CALLED UPON TO CAREFULLY
16 EXAMINE ALL OF THAT EVIDENCE, TO CAREFULLY EVALUATE THE
17 TESTIMONY OF EACH WITNESS THAT HAS TESTIFIED IN ORDER TO
18 DETERMINE ITS CREDIBILITY OR BELIEVABILITY, AND BY DOING
19 SO, YOU'RE SIMPLY CALLED UPON TO DECIDE WHAT YOU BELIEVE
20 THE TRUE FACTS TO BE AS THEY RELATE TO THIS PARTICULAR
21 CONTROVERSY AND THEN ONCE YOU DECIDE THOSE FACTS, YOU WILL
22 THEN APPLY THE LAW, AND YOU WILL ARRIVE AT YOUR VERDICT,
23 WHATEVER THAT DECISION MAY BE.

24 (MS. LEEBAY ENTERS THE COURTROOM.)

25 THE COURT - THE DEFENDANT, MS. LEEBAY, HAS JUST

1 ARRIVED AND SO THAT IS THE DEFENDANT SEATED NEXT TO MR.
2 WELCH AT THE DEFENDANT'S TABLE.

3 NOW, AS I TOLD YOU, MS. LEEBAY IS CHARGED IN THE
4 INDICTMENT WITH THE OFFENSE OF TRAFFICKING IN COCAINE TEN
5 GRAMS OR GREATER IN AMOUNT. AS TO THE CHARGE SET FORTH IN
6 THE INDICTMENT, SHE'S ENTERED A PLEA OF NOT GUILTY. NOW
7 A CHARGE THAT IS BROUGHT INTO THIS COURT, THAT IS THE
8 GENERAL SESSIONS COURT, THE CRIMINAL SIDE OF THE CIRCUIT
9 COURT, IS BROUGHT TO THIS COURT BY WAY OF A DOCUMENT
10 CALLED AN INDICTMENT, AND THE INDICTMENT IS THAT DOCUMENT
11 THAT I HAVE READ TO YOU EARLIER THAT SETS FORTH THE CHARGE
12 THAT IS BROUGHT AGAINST MS. LEEBAY. THE INDICTMENT
13 ITSELF, HOWEVER, IS NOT EVIDENCE IN THE CASE. IT WILL BE
14 IN THE JURY ROOM WITH YOU WHEN THE JURY GOES BACK TO BEGIN
15 WITH DELIBERATIONS, BECAUSE IT IS ON THE BACK OF THE
16 INDICTMENT, MADAM FORE-LADY, THAT YOU WILL INDICATE THE
17 JURY'S VERDICT OR DECISION, BUT IT WILL SERVE NO OTHER
18 PURPOSE SO FAR AS YOU JURORS ARE CONCERNED. IT BRINGS A
19 PERSON INTO THIS COURTROOM FOR THE PURPOSE OF ANSWERING TO
20 THE CHARGE OR STANDING TRIAL ON THE CHARGE. AND, OF
21 COURSE, IT ALSO SERVES TO PUT THEM ON NOTICE AS TO WHAT
22 THE STATE IS ALLEGING THAT THEY HAVE DONE, SO FAR AS ANY
23 CRIMINAL OFFENSES CONCERNED. NOW, AS TO THE CHARGE AS SET
24 FORTH IN THE INDICTMENT, THE DEFENDANT HAS ENTERED A PLEA
25 OF NOT GUILTY, AND AS I TOLD YOU PRIOR TO YOUR SELECTION,

1 THAT PLEA OF NOT GUILTY PLACES UPON THE STATE THE BURDEN
2 OF PROVING ALL OF THE ALLEGATIONS IN THE INDICTMENT, THE
3 BURDEN OF PROVING EACH OF THE ESSENTIAL ELEMENTS OF THE
4 CRIME OF TRAFFICKING IN COCAINE, AND, THEREFORE, THE
5 BURDEN IS UPON THE STATE TO ESTABLISH THE GUILT OF THE
6 DEFENDANT TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT
7 BEFORE ANY VERDICT OF GUILTY COULD BE RETURNED. UNDER THE
8 CONSTITUTION OF THE LAWS OF THIS STATE, EVERY DEFENDANT IN
9 A CRIMINAL CASE NO MATTER HOW SERIOUS OR HOW GREAT THE
10 OFFENSE MIGHT BE, THAT PERSON IS PRESUMED INNOCENT OF THE
11 CHARGE AND THAT PRESUMPTION OF INNOCENCE REMAINS WITH
12 EVERY DEFENDANT AS IT DOES WITH THIS DEFENDANT FROM THE
13 MOMENT OF HER ARREST THROUGHOUT THE COURSE OF THE CRIMINAL
14 PROCESS AND EVEN THROUGHOUT THE COURSE OF THIS TRIAL.
15 THAT PRESUMPTION OF INNOCENCE WILL REMAIN WITH MS. LEEBAY
16 EVEN WHEN YOU GO BACK INTO THE JURY ROOM AT THE END OF THE
17 TRIAL TO BEGIN WITH YOUR DELIBERATIONS. AND IT WILL STILL
18 REMAIN WITH HER THERE, AND IT WILL ALWAYS UNLESS YOU 12
19 JURORS DETERMINE THAT SHE'S NO LONGER ENTITLED TO THAT
20 PRESUMPTION OF INNOCENCE, THAT IS BASED UPON YOUR CAREFUL
21 EXAMINATION OF THE EVIDENCE AND YOUR APPLICATION OF THE
22 LAW AND YOUR APPLICATION OF THE LAW TO YOUR DETERMINATION
23 OF FACT. IF YOU DETERMINE HER GUILT HAS BEEN PROVEN
24 BEYOND A REASONABLE DOUBT, THEN THAT WOULD BE YOUR
25 DECISION AND THE PRESUMPTION OF INNOCENCE WOULD BE TORN

1 AWAY. IF YOU HAVE A REASONABLE DOUBT AS TO WHETHER OR NOT
2 SHE'S BEEN PROVEN GUILTY, THEN YOU MUST RESOLVE THAT DOUBT
3 IN HER FAVOR AND TO RETURN A VERDICT OF NOT GUILTY.

4 NOW, THE WAY THE TRIAL WILL PROCEED IS THAT IN
5 A FEW MINUTES THE LAWYERS ARE GOING TO STAND BEFORE YOU
6 AND MAKE WHAT ARE CALLED OPENING STATEMENTS. THERE ARE
7 TWO OCCASIONS IN THE TRIAL OF A CASE, WHETHER IT BE A
8 CIVIL CASE OR A CRIMINAL CASE, WHERE LAWYERS ARE PERMITTED
9 TO ADDRESS THE JURY. THAT IS AT THE BEGINNING OF THE
10 TRIAL BEFORE THE EVIDENCE HAS BEEN INTRODUCED AND THAT IS
11 AT THE CONCLUSION OF THE TRIAL AFTER ALL OF THE EVIDENCE
12 HAS BEEN RECEIVED. YOU MUST KEEP IN MIND, HOWEVER, THAT
13 THE LAWYERS' STATEMENTS EITHER OPENING OR CLOSING
14 STATEMENTS ARE NOT TO BE CONSIDERED BY YOU AS EVIDENCE IN
15 THE CASE. NOW, THEY MAY BE COMMENTING UPON THE EVIDENCE.
16 THEY MAY BE TRYING TO CONVINCE YOU THAT THE EVIDENCE
17 SUPPORTS A PARTICULAR VERDICT, BUT NEVERTHELESS, WHAT THEY
18 TELL YOU IN THEIR STATEMENTS IS NOT EVIDENCE IN THE CASE
19 AND YOU ARE NOT TO CONSIDER THOSE STATEMENTS AS BEING ANY
20 EVIDENCE IN THE CASE SO FAR AS IT RELATES TO YOUR
21 DETERMINATION AS TO WHAT THE FACTS ARE BASED UPON THAT
22 EVIDENCE. THE ONLY EVIDENCE THAT YOU WILL CONSIDER IN
23 ARRIVING AT YOUR DETERMINATION OF FACT IS THE EVIDENCE
24 WHICH IS ACTUALLY RECEIVED DURING THE TRIAL OF THE CASE.
25 THAT IS TESTIMONY FROM WITNESSES THAT WILL TESTIFY FROM

31

1 THAT WITNESS STAND BEFORE YOU OR BY THE INTRODUCTION OF
2 SOME OTHER TYPE OF EXHIBIT, WHETHER IT BE A PHOTOGRAPH,
3 DOCUMENT, CHART OR OTHER TYPES OF PHYSICAL EXHIBITS.
4 THAT'S THE EVIDENCE THAT YOU WILL CONSIDER IN ARRIVING AT
5 YOUR DETERMINATION OF FACT, BUT YOU SHOULD LISTEN TO WHAT
6 THE LAWYERS TELL YOU IN THEIR STATEMENTS EVEN THOUGH
7 THEY'RE NOT EVIDENCE, BECAUSE THEY DO SERVE A PURPOSE.
8 THE OPENING STATEMENTS SERVE TO PROVIDE YOU WITH A BASIC
9 UNDERSTANDING AS TO WHAT THIS CASE IS ALL ABOUT SO THAT
10 YOU'LL HAVE SOME CONTEXT IN WHICH TO PLACE THE EVIDENCE
11 THAT WE WILL BE RECEIVING SHORTLY THEREAFTER. AS I HAVE
12 TOLD YOU, THE STATE HAS THE BURDEN OF PROVING A
13 DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT, AND,
14 THEREFORE, THE STATE WILL GO FORWARD FIRST IN ITS
15 PRESENTATION OF EVIDENCE. ONCE THE STATE HAS CONCLUDED IN
16 ITS PRESENTATION, THE DEFENDANT WILL HAVE THE SAME
17 OPPORTUNITY TO TESTIFY OR PRESENT EVIDENCE IF SHE SO
18 CHOOSES. KEEP IN MIND, HOWEVER, AS I HAVE STATED, THE
19 BURDEN IS NOT UPON THE DEFENDANT TO ESTABLISH HER
20 INNOCENCE. THE BURDEN IS UPON THE STATE TO ESTABLISH HER
21 GUILT, AND, THEREFORE, SHE MAY NOT TESTIFY OR OFFER ANY
22 EVIDENCE. BUT SHE IS AFFORDED THAT OPPORTUNITY SHOULD SHE
23 WISH TO DO SO. ONCE ALL OF THE EVIDENCE HAS BEEN
24 RECEIVED, THE LAWYERS WILL CONCLUDE WITH FINAL ARGUMENTS
25 OR SUMMATIONS AND, AGAIN, THOSE ARE NOT EVIDENCE, BUT IT

1 DOES PROVIDE THE LAWYERS AN OPPORTUNITY TO DISCUSS WITH
2 YOU THE EVIDENCE YOU'VE SEEN OR HEARD THROUGHOUT THE TRIAL
3 OF THE CASE AND THROUGH THAT DISCUSSION IT PERMITS THEM AN
4 OPPORTUNITY TO TRY TO PERSUADE YOU OR TO CONVINCE YOU THAT
5 THE EVIDENCE IN THE CASE SUPPORTS A PARTICULAR VERDICT.
6 AFTER THEY CONCLUDE, I WILL THEN GIVE YOU THE LEGAL
7 INSTRUCTION. THAT IS, I'LL EXPLAIN TO YOU THE LAW THAT IS
8 APPLICABLE IN A CASE WHERE A PERSON IS CHARGED WITH
9 TRAFFICKING IN COCAINE, AND THEN YOU'LL BE ASKED TO GO
10 BACK INTO THE JURY ROOM AND BEGIN YOUR DELIBERATIONS AND
11 THROUGH THAT PROCESS YOU 12 JURORS ARE CALLED UPON TO
12 EXERCISE GOOD JUDGMENT AND COMMON SENSE, CONSCIENTIOUSLY
13 APPLY TO THE EVIDENCE RECEIVED DURING THE TRIAL OF THE
14 CASE. YOU WILL DECIDE WHAT EVIDENCE IS CREDIBLE AND,
15 THEREFORE, WHAT EVIDENCE TO ACCEPT, WHAT EVIDENCE IS NOT
16 CREDIBLE, IF ANY, AND, THEREFORE, WHAT EVIDENCE, IF ANY,
17 TO REJECT. IN SO DOING, YOU'RE SIMPLY CALLED UPON TO
18 REACH THE TRUTH IN THE MATTER, TO GIVE EACH SIDE A FAIR
19 AND IMPARTIAL TRIAL BASED SOLELY UPON THE EVIDENCE AND THE
20 LAW THAT'S APPLICABLE. ONCE YOU'VE DECIDED THOSE FACTS,
21 YOU THEN APPLY THE LAW, AND THEN YOU ARRIVE AT A FAIR AND
22 JUST VERDICT OF WHATEVER THAT DECISION MIGHT BE. ALL WE
23 ASK FOR YOU TO DO IS TO PAY CAREFUL ATTENTION THROUGHOUT
24 THE COURSE OF THE TRIAL; GIVE EACH WITNESS THE SAME FAIR
25 CAREFUL ATTENTION AND CONSIDERATION; YOU'RE CALLED UPON TO

33

1 DETERMINE THEIR CREDIBILITY, AND SO IT'S IMPORTANT THAT
2 YOU LISTEN TO EACH WITNESS AND OBSERVE EACH WITNESS AS
3 THEY TESTIFY SO THAT YOU CAN PROPERLY MAKE THAT
4 DETERMINATION WHEN THE TIME COMES. IT'S ALSO IMPORTANT
5 THAT YOU KEEP AN OPEN MIND AND YOU NOT BEGIN MAKING UP
6 YOUR MINDS OR FORMULATING YOUR OPINIONS AS TO WHAT YOU
7 THINK THE ULTIMATE DECISION OUGHT TO BE UNTIL THE TIME
8 COMES FOR YOUR DELIBERATIONS, AND THAT IS WHEN YOU WILL
9 HAVE ALL OF THE EVIDENCE; YOU WILL HAVE ALL OF THE
10 INFORMATION; YOU WILL HAVE THE LAW THAT YOU NEED IN ORDER
11 TO ARRIVE AT A FAIR AND JUST VERDICT. SO LET ME THANK YOU
12 IN ADVANCE FOR YOUR PARTICIPATION, ALSO IN ADVANCE FOR
13 YOUR CAREFUL ATTENTION. PLEASE GIVE THE LAWYERS YOUR
14 ATTENTION NOW AS THEY GIVE YOU THEIR OPENING STATEMENTS.

15 MR. WELCH - JUDGE, IF I COULD, BASED UPON SOME
16 OF THE COMMENTS THAT WE'VE GONE THROUGH SO FAR, I'M GOING
17 TO NEED TO PUT A MATTER ON THE RECORD OUTSIDE THE PRESENCE
18 OF THE JURY JUST VERY BRIEFLY. I APOLOGIZE.

19 THE COURT - WELL, LET ME SEE Y'ALL JUST A
20 MINUTE.

21 (BENCH CONFERENCE WAS HELD IN THE PRESENCE OF
22 THE JURY BUT OUT OF THE HEARING OF THE JURY WHICH WAS NOT
23 REPORTED.)

24 THE COURT - ALL RIGHT, MR. MABRY.

25 OPENING STATEMENTS

1 MR. MABRY - MADAM FORE-LADY, LADIES AND
2 GENTLEMEN OF THE JURY GOOD AFTERNOON TO YOU. MY IS
3 ANTHONY MABRY. FIRST OF ALL, ON BEHALF OF THE STATE OF
4 SOUTH CAROLINA I WANT TO THANK EACH ONE OF YOU FOR YOUR
5 SERVICE HERE THIS WEEK ON THE JURY. THERE'S NO GREATER
6 SERVICE YOU CAN DO IN THESE TIMES THAN TO SIT ON A JURY
7 AND DECIDE CASES LIKE THIS FOR PEOPLE IN SOUTH CAROLINA --
8 - IN THE STATE OF SOUTH CAROLINA. WITH THAT I'D LIKE TO
9 GET ON TO THE MATTER AT HAND BEFORE YOU. THE DEFENDANT IN
10 THIS CASE, MS. MABLE LEEBAY JETER WHO'S CHARGED WITH
11 TRAFFICKING IN COCAINE. THE GRAND JURY, AS YOU'VE ALREADY
12 HEARD, HAS INDICTED HER FOR THAT CRIME, TRAFFICKING MORE
13 THAN TEN GRAMS OF COCAINE. THIS OCCURRED BACK ON OCTOBER
14 29TH, 1997 AT THE PEACH BLOSSOM MOTEL HERE IN SPARTANBURG
15 COUNTY. THE ALLEGATION OF THE INDICTMENT, WHAT WE WILL
16 PROVE IN THIS CASE IS THAT SHE POSSESSED MORE THAN TEN
17 GRAMS OF COCAINE, AND THAT UNDER THE LAW OF SOUTH CAROLINA
18 IS TRAFFICKING IN COCAINE. MANY TIMES YOU HEAR THE WORD
19 TRAFFICKING, YOU THINK SOMEBODY'S COMING ACROSS THE STATE
20 LINE WITH DRUGS, BUT UNDER OUR LAW, TRAFFICKING IS DEFINED
21 AS MANY DIFFERENT THINGS. IT CAN BE SELLING DRUGS. IT
22 CAN BE MOVING DRUGS OR IT CAN JUST BE POSSESSING MORE THAN
23 A CERTAIN AMOUNT, WHAT SHE IS CHARGED WITH IN THIS CASE
24 IS POSSESSING MORE THAN TEN GRAMS OF COCAINE AND YOU WILL
25 SEE THOSE DRUGS IN THIS CASE. THE EVIDENCE IN THIS CASE

35

1 WILL SHOW THAT ON THAT DATE SHE WAS AT A BOOTH IN THE
2 RESTAURANT THERE AT THE PEACH BLOSSOM MOTEL, AND SHE LEFT
3 BEHIND A SMALL BAG IN THE BOOTH. THIS BAG EVENTUALLY CAME
4 INTO THE HANDS OF MS. RHONDA WILLIAMS WHO WILL TESTIFY,
5 AND SHE OPENED IT BECAUSE SHE WANTED TO DETERMINE WHO THEY
6 NEEDED TO CONTACT TO COME BACK AND GET THE BAG. WHEN SHE
7 OPENED THIS BAG, TESTIMONY WILL BE SHE FOUND A WHITE
8 SUBSTANCE IN THERE. AND AFTER FINDING THIS WHITE
9 SUBSTANCE, SHE TURNED IT OVER TO ANOTHER GENTLEMAN THAT
10 WORKED THERE AT THE PEACH BLOSSOM MOTEL. THEY KNEW MS.
11 LEEBAY JETER AND WHAT ROOM SHE WAS STAYING IN THERE AT THE
12 HOTEL, CONTACTED THE POLICE. THE POLICE THEN CAME AND THE
13 GENTLEMAN WHO WORKED THERE AT THE PEACH BLOSSOM, MR.
14 PETRIS, CONTACTED MS. LEEBAY IN HER ROOM, TOLD HER THAT
15 SHE HAD LEFT THIS ITEM AND SHE CAME DOWN THERE TO PICK IT
16 UP. OF COURSE, THE POLICE ALREADY HAD THE COCAINE IN
17 THEIR CUSTODY, BUT THEY WAITED UNTIL SHE CAME AND CLAIMED
18 THIS BAG AND WALKED OUT THE DOOR, THEN SHE WAS PLACED
19 UNDER ARREST. YOU WILL ALSO HEAR OTHER EVIDENCE IN THIS
20 CASE THAT WILL BECOME RELEVANT AT THAT TIME, BUT AT THE
21 CLOSE OF THE CASE, LADIES AND GENTLEMEN, THE EVIDENCE WILL
22 SHOW BEYOND A REASONABLE DOUBT, WHICH IS OUR BURDEN OF
23 PROOF, ONLY OUR BURDEN PROOF, BEYOND A REASONABLE DOUBT,
24 THAT SHE IS GUILTY OF THE CRIME THAT SHE'S CHARGED WITH.
25 THANK YOU VERY MUCH.

1 THE COURT - MR. WELCH?

2 MR. WELCH - THANK YOU, JUDGE. MAY IT PLEASE THE
3 COURT? MY NAME IS STEPHEN WELCH, AND I'M HERE TODAY WITH
4 MY FRIEND AND CLIENT, MABLE LEEBAY, BECAUSE OF
5 CIRCUMSTANTIAL EVIDENCE AND BECAUSE SOMEBODY SAID THAT
6 THEY FOUND SOMETHING SOMEWHERE BUT THEY DON'T REALLY KNOW.
7 NOW, I'M GOING TO TELL YOU A LITTLE BIT ABOUT THE CRIMINAL
8 JUSTICE SYSTEM THAT YOU'RE GOING TO BE SITTING IN TODAY
9 AND ABOUT BURDEN OF PROOF AND A LITTLE BIT ABOUT THE
10 FACTS. BUT ONE THING THAT'S VERY IMPORTANT FOR YOU TO
11 REMEMBER IS THAT THE BURDEN OF PROOF IS ON THE STATE. AND
12 THE STATE HERE IS REPRESENTED BY LAW ENFORCEMENT AND BY
13 THE SOLICITOR HERE. AND THEY DO A GOOD JOB. THEY HAVE TO
14 BECAUSE THEY HAVE A VERY STIFF BURDEN OF PROOF, BEYOND A
15 REASONABLE DOUBT. WE'RE NOT HERE TO SPECULATE. WE'RE NOT
16 HERE EVEN TO DO THE CIVIL CASE BURDEN OF PROOF, WHICH
17 BASICALLY MEANS THAT THE SCALE OF JUSTICE JUST TIPS EVER
18 SO LIGHTLY ONE WAY OR THE OTHER THAT SIDE WINS. THAT'S
19 NOT WHAT WE'RE HERE ABOUT, PREPONDERANCE OF THE EVIDENCE.
20 WE'RE HERE ABOUT BEYOND A REASONABLE DOUBT, AND DURING THE
21 COURSE OF THIS CASE, THE JUDGE IS GOING TO DEFINE THAT FOR
22 YOU, BUT IT'S A DOUBT THAT A REASONABLE PERSON WOULD
23 HESITATE TO ACT UPON IN THEIR NORMAL EVERYDAY AFFAIRS.
24 NOW, YOU'RE GOING TO HEAR TESTIMONY IN THIS CASE ABOUT
25 SOMEBODY FINDING A PACKET, AND YOU'LL HEAR TESTIMONY IN

37

1 THIS CASE ABOUT SOMEBODY SAYING THAT I THINK THAT WAS AT
2 SO-AND-SO TABLE. NOW, YOU'LL HEAR TESTIMONY IN THIS CASE
3 ABOUT SOMEBODY SAYING CALL SO-AND-SO OR GET SOMEBODY TO
4 COME DOWN, AND THEN JUST AS THE SOLICITOR SAID, WHEN
5 SOMEBODY COMES DOWN AND TAKES CONTROL OF THE PACKET, BOOM,
6 THEY'RE ARRESTED, NOTHING IN THERE. WHAT WAS THERE
7 BEFORE? NOBODY KNOWS. WHO PUT WHAT IN THERE? NOBODY
8 KNOWS. I ASSERT TO YOU THAT THE EVIDENCE DOES NOT SHOW
9 BEYOND A REASONABLE DOUBT THAT WHATEVER WAS IN THIS PACKET
10 WAS MS. LEEBAY'S. NOW, MS. LEEBAY HAS BEEN LOOKING
11 FORWARD TO THIS DAY BECAUSE YOU THE JURY ARE THE ONLY TIME
12 SHE GETS TO BASICALLY COME IN AND SAY, OKAY, PLEASE PROVE
13 BEYOND A REASONABLE DOUBT THAT THAT WAS MINE. THAT'S WHY
14 YOU'RE HERE. I ASK TWO THINGS OF YOU AS NOW YOU LISTEN TO
15 THE EVIDENCE. THE FIRST THING I ASK OF YOU IS, REMEMBER
16 THERE'S TWO SIDES TO EVERY STORY. I LEARNED A LONG TIME
17 AGO WHEN I HAD CHILDREN THAT WHEN THE FIRST ONE WOULD COME
18 IN AND BE COMPLAINING ABOUT HOW BADLY THEY WERE GETTING
19 BEAT UP OUTSIDE OR WHOSE FAULT IT WAS, TO WAIT UNTIL THE
20 OTHER ONE CAME IN AND GET BOTH SIDES OF THE STORY BEFORE
21 I MADE A DECISION. AND I ASK YOU, PLEASE, TO DO THAT.
22 IT'S VERY IMPORTANT TO THE PROCESS. AND THE SECOND THING
23 I ASK OF YOU AS YOU LISTEN TO THE EVIDENCE IN THIS CASE,
24 NONE OF US LIKES DRUGS. THIS IS A DRUG CASE, BUT THAT'S
25 NO REASON TO PUT YOUR LOGIC IN YOUR BACK POCKET AND SAY,

RHONDA WILLIAMS - DIRECT BY MR. MABRY

38

1 WELL, SHE'S SITTING BY THE DEFENSE LAWYER; SHE MUST BE
2 GUILTY. SHE ASK YOU PLEASE USE YOUR COMMON SENSE AND KNOW
3 THAT THEY'RE NOT GOING TO PROVE BEYOND A REASONABLE DOUBT
4 THAT SHE KNEW ANYTHING ABOUT THE CRACK COCAINE IN THIS
5 CASE. THANK YOU.

6 THE COURT - MR. MABRY.

7 MR. MABRY - STATE CALLS RHONDA WILLIAMS TO THE
8 STAND.

9 RHONDA WILLIAMS, AFTER FIRST BEING DULY
10 SWORN TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. MABRY:

13 Q TELL US YOUR NAME, PLEASE.

14 A RHONDA WILLIAMS.

15 Q ALL RIGHT, MS. WILLIAMS, WHERE DO YOU WORK?

16 A PEACH BLOSSOM RESTAURANT.

17 Q ALL RIGHT, AND HOW LONG HAVE YOU WORKED THERE?

18 A 31 YEARS.

19 Q AND WERE YOU WORKING THERE TODAY?

20 A YES.

21 Q I WANT TO TAKE YOU BACK TO OCTOBER 29TH OF 1997. DO
22 YOU REMEMBER WORKING THAT DAY?

23 A YES.

24 Q OKAY. IF YOU WOULD, TELL US WHAT YOU REMEMBER
25 OCCURRING THAT DAY? I BELIEVE IT WAS AROUND 1:00 O'CLOCK.

RHONDA WILLIAMS - DIRECT BY MR. MABRY

39

- 1 A I DON'T KNOW WHAT TIME IT WAS, BUT I KNEW HER AND ---
2 THE DEFENDANT AND ANOTHER WOMAN WAS IN THERE. AND THEY
3 MAY HAVE HAD A SMALL CHILD WITH THEM. I CAN'T REMEMBER.
4 THEY LEFT. ANOTHER CUSTOMER CAME IN AND SAT DOWN IN THE
5 SAME BOOTH, BROUGHT ME A LITTLE CHANGE PURSE AND SAID THEY
6 LEFT IT. I OPENED IT UP, AND I KNEW THAT SHE HAD BEEN
7 SITTING THERE. I GAVE THE CHANGE PURSE TO JOHNNY.
- 8 Q JOHNNY WHO?
- 9 A PETRIS. THE OWNER OF THE PLACE.
- 10 Q THE GENTLEMAN RIGHT HERE IN THE BLUE JEAN SHIRT?
- 11 (INDICATING)
- 12 A YES.
- 13 Q NOW, WHEN YOU SAY SHE HAD BEEN SITTING THERE, ARE YOU
14 TALKING MS. LEEBAY JETER HERE? (INDICATING)
- 15 A YES.
- 16 Q ALL RIGHT, AND WHERE HAD SHE BEEN SITTING IN THE
17 RESTAURANT? WAS IT AT A ---
- 18 A IN A BOOTH.
- 19 Q IN A BOOTH?
- 20 A (INDICATING YES)
- 21 Q AFTER SHE --- DID SHE --- AFTER SHE ATE, DID SHE COME
22 AND PAY YOU?
- 23 A YES.
- 24 Q AND SOMEBODY ELSE CAME IN AND SAT IN THE SAME BOOTH.
- 25 A YES.

RHONDA WILLIAMS - DIRECT BY MR. MABRY

40

1 Q AND THEY BROUGHT YOU SOMETHING.

2 A YES.

3 Q I SHOW YOU STATE'S EXHIBIT NUMBER 1 AND ASK YOU IF
4 THAT LOOKS FAMILIAR?

5 A I'M GOING TO TELL YOU THE TRUTH. I DON'T REMEMBER
6 WHAT IT LOOKED LIKE. I MEAN I DON'T. IT'S BEEN TWO
7 YEARS.

8 Q I UNDERSTAND. WAS IT A PURSE LIKE THAT?

9 A YES. IT ZIPPED UP. I REMEMBER IT. AND IT HAD A
10 LITTLE BOTTLE OF PERFUME.

11 Q ALL RIGHT. JUST LIKE THAT?

12 A YES.

13 Q OKAY.

14 A AND IT HAD A WHITE PIECE OF TISSUE. IT WAS EITHER
15 TISSUE PAPER OR A KLEENEX IN IT. I OPENED IT UP AND IT
16 HAD SOMETHING WHITE IN IT, A ROCK OR SOMETHING.

17 Q DO YOU REMEMBER WHAT IT LOOKED LIKE, THE ROCK?
18 ANYTHING YOU'VE SEEN BEFORE OR ---

19 A I'VE NEVER SEEN NONE. I DON'T KNOW.

20 Q LET ME SHOW YOU THIS ITEM, STATE'S EXHIBIT NUMBER 2,
21 THAT'S IN THIS BAG.

22 A YES. YES.

23 Q DOES THAT LOOK LIKE WHAT WAS IN THE ---

24 A (INDICATING YES)

25 Q --- PURSE?

RHONDA WILLIAMS - DIRECT BY MR. MABRY

41

1 A YES.

2 Q AND DID YOU TAKE IT OUT OF THE PURSE OR DID YOU LEAVE
3 IT IN THERE?

4 A I TOOK IT OUT AND OPENED IT UP TO SEE WHAT IT WAS AND
5 PUT IT BACK IN.

6 Q OKAY. AND WHO DID YOU GIVE IT TO?

7 A JOHNNY PETRIS.

8 Q OKAY. DO YOU REMEMBER WHAT HAPPENED NEXT?

9 A HE TOOK IT BACK IN THE MOTEL OFFICE. I HAVE TO STAY
10 IN THE RESTAURANT.

11 Q OKAY. AND DO YOU KNOW WHAT HE DID AT THAT TIME?

12 A HE CALLED THE POLICE I THINK.

13 Q ALL RIGHT. DID THE POLICE COME UP THERE?

14 A YES.

15 Q DO YOU REMEMBER WHAT HAPPENED NEXT?

16 A JOHNNY CALLED THE GIRL IN 108 AND ASKED HER IF SHE
17 LEFT THAT, A CHANGE PURSE, AND SHE SAID YES, AND SHE CAME
18 TO THE FRONT OF THE RESTAURANT; HE GAVE IT TO HER; SHE
19 WALKED OUTSIDE AND THE POLICE ARRESTED HER.

20 Q MS. LEEBAY JETER. (INDICATING)

21 A I CANNOT TELL YOU THAT THAT'S HER.

22 Q OKAY. BUT THE LADY CAME INTO THE RESTAURANT AND MR.

23 ---

24 A PETRIS.

25 Q ---- PETRIS HANDED HER THE PURSE?

RHONDA WILLIAMS - CROSS BY MR. WELCH

42

1 A HANDED HER THE CHANGE PURSE. SHE SAID THANK YOU AND
2 WALKED OUT.

3 Q AND THEN POLICE ARRESTED THE SAME PERSON.

4 A YES.

5 Q WHERE IS THE PEACH BLOSSOM RESTAURANT LOCATED?

6 A I-85 AND NUMBER 9.

7 Q ALL RIGHT. IT'S IN SPARTANBURG COUNTY?

8 A YES.

9 MR. MABRY - THAT'S ALL I HAVE FROM THIS WITNESS.
10 THANK YOU, MA'AM.

11 MR. WELCH - THANK YOU, JUDGE.

12 CROSS EXAMINATION

13 BY MR. WELCH:

14 Q MA'AM, ON THE DAY THAT YOU WERE WORKING --- NOW, YOU
15 SAY 31 YEARS?

16 A YES.

17 Q THAT'S A LONG TIME. I CONGRATULATE YOU ON THAT. AND
18 I BELIEVE MR. PETRIS HAS BEEN WORKING THERE A LONG TIME,
19 TOO?

20 A I'VE BEEN THERE LONGER THAN HE HAS.

21 Q BUT HE'S BEEN THERE ABOUT 30?

22 A I DON'T KNOW. I WORKED FOR HIS MOM AND DADDY BEFORE
23 HIM.

24 Q IN FACT, MA'AM, ON THAT DAY WHEN YOU WERE WORKING
25 THERE, DID YOU KNOW THAT MS. LEEBAY JETER WAS THERE

RHONDA WILLIAMS - CROSS BY MR. WELCH

43

1 BECAUSE OF A HOUSE FIRE AND THE RED CROSS HAD PUT HER UP
2 THERE?

3 A I KNEW SHE WAS STAYING AT THE MOTEL.

4 Q BECAUSE OF ---

5 A BUT I DIDN'T KNOW.

6 Q --- THE HOUSE FIRE?

7 A I DON'T REMEMBER.

8 Q DO YOU HAVE A SITUATION WHERE SOMETIMES THE RED CROSS

9 ---

10 A YES, SIR.

11 Q --- PUTS PEOPLE UP IN SITUATIONS?

12 A (INDICATING YES)

13 Q AND SO THEY WOULD DO THAT AT YOUR ---

14 A YES.

15 Q --- RESTAURANT AND HOTEL?

16 A YES.

17 Q AND IF THE RED CROSS PUTS YOU UP, THEY PAY THE BILLS,
18 TOO, DON'T THEY, SOMETIMES?

19 A YES.

20 Q NOW, MA'AM, ON THAT DAY, THIS LITTLE PACKET, I
21 BELIEVE YOU TOLD ME THAT EARLIER THAT SOMEBODY CAME UP TO
22 YOU AND HANDED YOU THIS.

23 A YES. ONE --- I SAID SOMEBODY ELSE SAT DOWN IN THE
24 BOOTH SHE WAS IN.

25 Q RIGHT. NOW, WHOEVER IT WAS WAS NOT SOMEBODY THAT WAS

RHONDA WILLIAMS - CROSS BY MR. WELCH

44

1 WITH MS. LEEBAY JETER, WAS IT?

2 A NO. NO.

3 Q IN FACT, SHE'D ALREADY LEFT.

4 A YES.

5 Q OKAY. AND THEY WALKED UP AND SAID THAT SOMEBODY HAD
6 LEFT THIS.

7 A YES.

8 Q AND THEN THERE WAS ANOTHER WOMAN, A MS. MASSEY? DO
9 YOU KNOW WHO THE OTHER WOMAN WAS?

10 A THE OTHER WOMAN --- WHO?

11 Q THAT WAS --- YOU TESTIFIED THAT THERE WAS ANOTHER
12 WOMAN WITH MS. LEEBAY JETER?

13 A I DIDN'T --- I DIDN'T KNOW THEIR NAMES OR NOTHING.

14 Q BUT YOU KNEW THERE WAS ANOTHER WOMAN.

15 A YES. THERE WAS TWO WOMEN.

16 Q BUT I WANT YOU TO TELL THIS JURY, DURING THE TIME
17 THAT YOU WAITED ON THEM AND YOU SERVED THEM, YOU NEVER SAW
18 THEM WITH THIS, DID YOU? (INDICATING)

19 A OH, I DIDN'T WAIT ON THEM. I JUST TAKE CASH.

20 Q WHO WAITED ON THEM?

21 A I DON'T REMEMBER.

22 Q BUT YOU NEVER SAW THEM WITH THIS, DID YOU?

23 A NO.

24 Q AND WHETHER OR NOT THIS BELONGED TO MS. LEEBAY JETER,
25 YOU DON'T KNOW, DO YOU?

RHONDA WILLIAMS - RE-DIRECT BY MR. MABRY

45

1 A NO.

2 Q AND YOU'RE NOT TELLING THIS JURY THAT, ARE YOU?

3 A NO.

4 Q IN FACT, MA'AM, WHEN YOU SAY THAT --- IS IT PETRIS?

5 A (INDICATING YES)

6 Q WHEN YOU SAY THAT MR. PETRIS CALLED AND ASKED IF IT
7 WAS HERS, HAD SHE ALREADY GONE TO THE ROOM?

8 A YES.

9 Q DID YOU ACTUALLY LISTEN TO HER TALK ON THE TELEPHONE?

10 A NO. I DIDN'T HEAR NONE OF THE CONVERSATION.

11 Q YOU DON'T REALLY KNOW WHAT HAPPENED THEN, DO YOU?

12 A NO.

13 Q AND YOU DON'T ACTUALLY KNOW WHAT SHE WAS EVEN ASKED
14 ON THE PHONE, DO YOU?

15 A NO.

16 Q SO REALLY, MA'AM, ALL YOU CAN REALLY TELL US TODAY IS
17 THAT SOMEBODY NOT RELATED TO MY CLIENT WALKED UP AND
18 STATED SOMEBODY LEFT THIS IN THE BOOTH.

19 A YES.

20 MR. WELCH - I DON'T HAVE ANY FURTHER QUESTIONS.

21 MR. MABRY - JUST A FEW ON RE-DIRECT.

22 RE-DIRECT EXAMINATION

23 BY MR. MABRY:

24 Q MS. WILLIAMS, MR. PETRIS DID TELL YOU WHAT WAS SAID
25 OVER THE PHONE AFTER THE INCIDENT.

JOHN PETRIS - DIRECT BY MR. MABRY

46

1 A YES.

2 MR. MABRY - OKAY. THAT'S ALL I HAVE. THANK
3 YOU.

4 THE COURT - YOU MAY STEP DOWN.

5 MR. MABRY - STATE CALLS MR. PETRIS.

6 WE'D ASK THAT MS. WILLIAMS BE EXCUSED.

7 MR. WELCH - NO OBJECTION.

8 THE COURT - YOU MAY BE.

9 (MS. WILLIAMS IS EXCUSED AND EXITS THE
10 COURTROOM.)

11 JOHN PETRIS, AFTER FIRST BEING DULY SWORN
12 TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MR. MABRY:

15 Q TELL US YOUR NAME, PLEASE.

16 A JOHN PETRIS.

17 Q OKAY. MR. PETRIS, ARE YOU THE OWNER OF THE PEACH
18 BLOSSOM MOTEL AND RESTAURANT?

19 A YES, SIR.

20 Q AND HOW LONG HAS THAT BEEN IN EXISTENCE?

21 A OVER 30 YEARS.

22 Q DID YOUR MOTHER AND FATHER OWN IT BEFORE YOU DID?

23 A YES, SIR.

24 Q AND DO YOU RUN IT NOW?

25 A YES, SIR.

JOHN PETRIS - DIRECT BY MR. MABRY

47

1 Q WERE YOU RUNNING IT BACK ON OCTOBER 29TH OF '97?

2 A YES.

3 Q IF YOU WOULD, TELL US WHAT OCCURRED THAT DAY?

4 A RHONDA GAVE ME THAT PURSE AND SAID IT HAD BEEN LEFT
5 BEHIND AND A CUSTOMER HAD GIVE TO HER, AND WE OPENED IT UP
6 AND LOOKED AND SAW SOMETHING WRAPPED IN TISSUE, AND I ---
7 I'M NOT FAMILIAR WITH DRUGS, BUT I KNEW IT LOOKED AWFUL,
8 FUNNY LIKE THAT, SO I HAD MY SON CALL ROCKY TO COME CHECK
9 IT OUT AND SEE WHAT IT WAS.

10 Q OKAY. ROCKY WOULD BE --- ROCKY CORRELL, THE
11 GENTLEMAN IN THE UNIFORM?

12 A YES, SIR. (INDICATING YES)

13 Q OKAY. YOU ALREADY KNEW HIM.

14 A YES, SIR.

15 Q YOUR SON KNEW WELL.

16 A YES.

17 Q AND DID THE POLICE COME UP TO THE HOTEL?

18 A YES, SIR.

19 Q AND WHAT OCCURRED WHEN THEY GOT UP THERE?

20 A THEY CAME UP AND TESTED IT AND SAID IT WAS COCAINE.

21 Q AND THEN WHAT OCCURRED?

22 A THEN I CALLED THAT LADY OVER THERE (INDICATING) AND
23 ASKED HER IF SHE HAD LEFT A PURSE BEHIND. SHE SAID YES,
24 AND I SAID, WELL, DO YOU WANT TO COME OVER HERE AND GET
25 IT, AND SHE COME OVER AND GOT IT.

JOHN PETRIS - DIRECT BY MR. MABRY

48

1 Q ALL RIGHT, AND THAT WOULD BE MS. LEEBAY JETER.

2 A YES, SIR.

3 Q ALL RIGHT. AND DID SHE COME WALKING FROM THE ROOM
4 SHE WAS IN?

5 A THAT'S RIGHT.

6 Q AND DO YOU REMEMBER WHAT ROOM SHE WAS IN?

7 A I THINK IT WAS 108.

8 Q WHEN SHE CAME IN, TELL THE JURY WHAT OCCURRED?

9 A WELL, SHE GOT HER PURSE AND LEFT OUT AND THE POLICE
10 OFFICER ARRESTED HER.

11 Q OKAY. HOW FAR OUT DID SHE GET WITH THE ---

12 A ON THE SIDEWALK.

13 Q SO THEY LET HER GO OUT OF THE RESTAURANT?

14 A THAT'S RIGHT.

15 Q OKAY. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
16 STATE'S EXHIBIT NUMBER 1 AND ASK YOU TO LOOK AT THAT. DO
17 YOU RECOGNIZE THAT?

18 A YES, SIR.

19 Q IS THAT THE PURSE THAT WAS BROUGHT TO YOU ---

20 A THAT'S CORRECT.

21 Q --- BY MS. WILLIAMS?

22 A RIGHT.

23 Q AND YOU SAID YOU OPENED IT UP AND IT HAD SOMETHING IN
24 IT THAT WAS ---

25 A PERFUME BOTTLE AND SOMETHING WRAPPED IN TISSUE PAPER.

JOHN PETRIS - CROSS BY MR. WELCH

49

1 Q OKAY. AND THAT'S WHY YOU CALLED THE POLICE.

2 A CORRECT.

3 Q THE OFFICERS CAME AND THEY IT TOOK OUT, YOU SAID AND
4 TESTED IT?

5 A THAT'S RIGHT.

6 Q DO YOU REMEMBER WHETHER IT --- DID THEY KEEP IT OUT
7 OR DID THEY PUT IT BACK IN, OR DO YOU REMEMBER?

8 A I DON'T REMEMBER.

9 Q STATE'S EXHIBIT NUMBER 2, THIS ITEM RIGHT HERE, DOES
10 THAT LOOK SIMILAR TO WHAT YOU SAW INSIDE ---

11 A YES, SIR, IT DOES.

12 MR. MABRY - THAT'S ALL I HAVE, YOUR HONOR.

13 CROSS EXAMINATION

14 BY MR. WELCH:

15 Q MR. PETRIS, IN TERMS OF THE LITTLE PACKET YOU TALKED
16 ABOUT HERE, NOW, YOU AGREE WITH ME THAT MS. LEEBAY JETER
17 WAS STAYING THERE; HER HOUSE HAD BURNED; AND THE RED CROSS
18 PUTS PEOPLE UP AT YOUR PLACE?

19 A THAT'S RIGHT.

20 Q AND WHEN YOU CALLED --- NOW, YOU SAY YOU CALLED.
21 WHERE DID YOU CALL?

22 A WHICH CALL YOU TALKING ABOUT?

23 Q WELL, YOU SAID YOU CALLED AND ASKED IF SOMEBODY HAD
24 LEFT SOMETHING OR SOMETHING.

25 A I CALLED HER ROOM AND ASKED HER IF THAT WAS HER.

JOHN PETRIS - CROSS BY MR. WELCH

50

1 PURSE, HAD SHE'D LEFT IT BEHIND.

2 Q OKAY. AND THEN SHE SAID ---

3 A YES.

4 Q AND SHE WOULD COME GET IT.

5 A YES.

6 Q NOW, YOU SAY SHE CAME DOWN, AND THEN YOU HANDED THIS
7 TO HER.

8 A THAT'S RIGHT.

9 Q WAS IT OPEN OR CLOSED?

10 A I BELIEVE IT WAS CLOSED.

11 Q SO WHEN YOU HANDED IT TO HER --- SHOW ME HOW YOU
12 HANDED IT TO HER.

13 A AS FAR AS I REMEMBER TWO YEARS AGO, I JUST GAVE IT TO
14 HER. (INDICATING)

15 Q AND SHE WOULD HAVE NO IDEA REALLY WHAT WAS IN IT,
16 WOULD SHE?

17 A I DON'T SEE WHY SHE WOULDN'T. IT WAS HER PURSE.

18 Q WELL, WE'VE ALREADY, BASICALLY, FROM --- IS IT
19 WILLIAMS?

20 A (INDICATING YES)

21 Q AND SHE'S HONEST, ISN'T SHE?

22 A SURE.

23 Q SOMEBODY WALKED UP AND HANDED THAT TO HER AND SAID
24 SOMEBODY LEFT THIS IN A BOOTH.

25 A SHE BROUGHT IT IN WITH HER.

JOHN PETRIS - CROSS BY MR. WELCH

51

- 1 Q DID YOU SEE HER BRING IT IN WITH HER, SIR?
- 2 A YES, SIR.
- 3 Q YOU SAW HER BRING THIS IN WITH HER?
- 4 A THAT'S RIGHT.
- 5 Q YOU'RE TESTIFYING UNDER OATH TODAY THAT YOU SAW HER
- 6 BRING IT IN WITH HER.
- 7 A YOU'RE UNDERSTANDING ME CORRECTLY. YES, SIR.
- 8 Q WELL, SIR, YOU GAVE A STATEMENT TO THE POLICE, DIDN'T
- 9 YOU, BACK ON 10/3/97 OR 11/3/97?
- 10 A (INDICATING YES)
- 11 Q DID YOU GIVE THAT STATEMENT TO THE POLICE?
- 12 A YES.
- 13 Q TELL ME IN THAT STATEMENT WHERE IT SAYS YOU SAW HER
- 14 BRING IT IN WITH HER?
- 15 A IT DIDN'T.
- 16 Q YOU DIDN'T TELL THEM THAT, DID YOU?
- 17 A NO.
- 18 Q YOU DIDN'T TELL ANYBODY BEFORE TODAY, HAVE YOU?
- 19 A NO, SIR.
- 20 Q DON'T YOU THINK THAT'S PRETTY IMPORTANT?
- 21 A I THOUGHT IT WAS OBVIOUS.
- 22 Q YOU THOUGHT IT WAS OBVIOUS THAT YOU SAW HER BRING
- 23 THIS LITTLE PURSE (INDICATING) IN WITH HER.
- 24 A NO, SIR. I THOUGHT IT WAS OBVIOUS THAT IT WAS HER
- 25 PURSE WHEN SHE CAME BACK AND CLAIMED IT AND PICKED ---

JOHN PETRIS - CROSS BY MR. WELCH

52

1 TOOK IT FROM ME AND LOOKED INSIDE IT.

2 Q I ASKED YOU IF SHE LOOKED INSIDE OF IT, AND YOU SAID
3 NO.

4 A SHE --- AFTER I GIVE IT TO HER SHE DID, YES.

5 Q WELL, I'M CONFUSED, BECAUSE YOU DIDN'T TELL THE JURY
6 THAT, WELL, IN DIRECT TESTIMONY. YOU SAID YOU HANDED IT
7 TO HER. WHEN I ASKED YOU HOW, YOU SAID CLOSED; YOU SAID
8 SHE TURNED AROUND AND WALKED OUT, AND YOU NEVER SAID SHE
9 LOOKED INSIDE OF IT UNTIL I JUST ASKED YOU WAS IT OPEN OR
10 CLOSED.

11 A IT WAS CLOSED WHEN I GAVE IT TO HER.

12 Q BUT YOU DIDN'T TELL THE JURY THAT SHE OPENED IT UNTIL
13 I ASKED YOU ABOUT THAT. YOU SAID SHE TOOK IT FROM YOU AND
14 WALKED OUTSIDE. YOU DIDN'T SAY SHE OPENED IT.

15 A (NO RESPONSE)

16 Q AND YOU REMEMBER ALL OF THIS SO CLEARLY FROM TWO
17 YEARS AGO, DON'T YOU?

18 A IT WAS A MEMORABLE OCCASION, YES, SIR. WE DON'T
19 USUALLY HAVE THAT KIND OF CLIENTELE.

20 Q IN FACT, SIR, ROCKY --- IS THAT WHAT YOU CALLED HIM?

21 A YES, SIR.

22 Q HOW LONG HAVE YOU KNOWN HIM?

23 A A FEW YEARS.

24 Q HOW MANY IS A FEW?

25 A I DON'T KNOW, THREE OR FOUR.

JOHN PETRIS - CROSS BY MR. WELCH

53

1 Q BUT YOU KNOW IMMEDIATELY WHO TO CALL, DIDN'T YOU?

2 A SIR?

3 Q YOU KNEW IMMEDIATELY WHO TO CALL IF YOU GOT SOME DRUG
4 PROBLEMS OR SOMETHING.

5 A YES.

6 Q CALL ROCKY.

7 A (INDICATING YES)

8 Q IN FACT, SIR, DO YOU AGREE WITH ME THAT SOMEBODY WE
9 DON'T KNOW BROUGHT THIS UP TO MS. WILLIAMS? DO YOU AGREE
10 WITH THAT?

11 A YES, SIR.

12 Q AND, BASICALLY, MS. WILLIAMS SAID THAT SHE GAVE IT TO
13 YOU. CORRECT?

14 A (INDICATING YES)

15 Q AND WHEN YOU CALLED ROCKY, YOU'D ALREADY LOOKED
16 INSIDE, FOUND A ROCK. DID YOU WATCH THE TEST?

17 A YES, SIR.

18 Q WHAT HAPPENS IN THE TEST? DO YOU KNOW WHAT COLOR
19 IT'S SUPPOSED TO TURN OR WHATEVER?

20 A I DON'T REMEMBER. HE PUT IT IN A TEST TUBE AND
21 DROPPED SOME CHEMICALS IN IT AND TURNS A COLOR.

22 Q BUT THEN YOU DIDN'T THINK IT WASN'T IMPORTANT TO TELL
23 THEM THAT YOU SAW HER WITH THIS WHEN SHE CAME IN AND SHE
24 HAD IT WITH HER AND YOU SAW HER.

25 A I DIDN'T SAY THAT.

JOHN PETRIS - CROSS BY MR. WELCH

54

1 Q WELL, YOU JUST TESTIFIED THAT YOU SAW HER WITH THIS
2 WHEN SHE CAME IN TO THE RESTAURANT.

3 A THAT'S RIGHT.

4 Q BUT YOU DIDN'T THINK THAT WAS IMPORTANT TO TELL THE
5 POLICE BACK THEN?

6 A I'M SORRY, I'M NOT EXPERIENCED IN THIS KIND OF CASE,
7 YOU KNOW.

8 Q THIS IS THE FIRST TIME SOMEBODY'S HAD DRUGS IN YOUR
9 MOTEL, SIR?

10 A THIS IS THE FIRST TIME WE'VE HAD A CASE LIKE THIS,
11 YES, SIR.

12 Q FIRST TIME SOMEBODY'S HAD DRUGS IN YOUR MOTEL?

13 A THAT WOULD BE FOOLISH ASSUMPTION.

14 MR. WELCH - I DON'T HAVE ANY FURTHER QUESTIONS.

15 MR. MABRY - NOTHING FURTHER. COME DOWN.

16 THE COURT - YOU MAY STEP DOWN.

17 MR. MABRY - STATE CALLS DAVID TAYLOR.

18 MR. MABRY - WE NEED MR. PETRIS EXCUSED SO HE CAN
19 GO BACK TO WORK, PLEASE.

20 MR. WELCH - I DON'T HAVE ANY FURTHER --- NO
21 OBJECTION.

22 THE COURT - YOU MAY BE.

23 (MR. PETRIS IS EXCUSED AND EXITS THE COURTROOM.)

24 DAVID TAYLOR, AFTER FIRST BEING DULY SWORN
25 TESTIFIED AS FOLLOWS:

DAVID TAYLOR - DIRECT BY MR. MABRY

55

1 DIRECT EXAMINATION

2 BY MR. MABRY:

3 Q TELL US YOUR NAME, PLEASE.

4 A DAVID TAYLOR.

5 Q MR. TAYLOR, YOU WORK AT THE SHERIFF'S OFFICE.

6 A I DO.

7 Q AND WHAT IS YOUR OCCUPATION THERE?

8 A I'M IN INVESTIGATIONS DIVISION NARCOTICS VICE.

9 Q WERE YOU WORKING IN NARCOTICS VICE BACK ON OCTOBER
10 29TH OF 1997?

11 A YES, SIR, I WAS SO.

12 Q AND DID YOU HAVE OCCASION TO GO TO THE PEACH BLOSSOM
13 MOTEL?

14 A YES, SIR, I DID.

15 Q AND WHAT WAS THAT IN REFERENCE TO?

16 A ROCKY HAD RECEIVED A PHONE CALL --- OFFICER CORRELL
17 RECEIVED A PHONE CALL. AT THAT TIME HE WAS IN NARCOTICS.
18 WE COME IN ABOUT TWO O'CLOCK EVERY DAY. I BELIEVE THE
19 CALL WAS A LITTLE EARLIER THAN THAT, 1:30-ISH I THINK. I
20 LIVE CLOSE TO IT, SO I --- WE WAS AT --- WE WENT TO THE
21 OFFICE. I APOLOGIZE. WE WENT TO THE OFFICE FIRST, THEN
22 WE ALL WENT UP THERE, AND ROCKY AND INVESTIGATOR HANCOCK
23 ALSO, RESPONDED UP THERE TO THE SCENE OF THE PEACH BLOSSOM
24 WHICH WAS A RESTAURANT AREA.

25 Q IF YOU WOULD, TELL THE JURY WHAT OCCURRED WHEN YOU

DAVID TAYLOR - DIRECT BY MR. MABRY

56

1 ARRIVED THERE. WHERE DID YOU GO AND WHO DID YOU TALK TO?

2 A WHEN I ARRIVED THERE, WE --- AS FAR AS I CAN REMEMBER

3 WE WENT BACK TO THE --- ACTUALLY THE MOTEL CHECK-IN AREA

4 OR THE OFFICE AREA WHERE THE OFFICE WOULD BE, WHERE MR.

5 PETRIS WOULD BE, AND HE SHOWED US THIS POUCH RIGHT HERE.

6 (INDICATING) INSIDE THE POUCH WAS LIKE SOME TISSUE AND

7 SOME WHITE POWDER --- OR WHITE ROCK-LIKE SUBSTANCE. WE

8 LOOKED AT IT AND ROCKY HAD A TEST KIT WITH HIM. HE TESTED

9 IT IMMEDIATELY. IT TURNED THE COLOR BLUE THAT WE WOULD

10 NEED TO SEE --- IT TESTED POSITIVE --- FIELD TESTED

11 POSITIVE FOR BEING COCAINE, AND I --- I PUT IT BACK INTO

12 THE BAG AND THEN MR. PETRIS CALLED THE LADY UP.

13 Q OKAY. ALL RIGHT, I'M SORRY THEN. I HAD IT WRONG.

14 Y'ALL TESTED IT AND YOU PUT THE DRUGS BACK IN THE BAG?

15 A THAT IS CORRECT. THE DRUGS WAS IN THE BAG. THAT'S

16 CORRECT.

17 Q ZIPPED IT BACK UP.

18 A YES, SIR.

19 Q ALL RIGHT, WHAT DID MR. PETRIS DO AT THAT POINT?

20 A MR. PETRIS AT THAT POINT CAME BACK TO THE RESTAURANT

21 AREA. MYSELF AND INVESTIGATOR HANCOCK TOOK POSITION

22 INSIDE THE RESTAURANT. WE WAS IN PLAIN CLOTHES, BLUE-

23 JEANS, T-SHIRTS. WE SAT DOWN AT A TABLE IN THE

24 RESTAURANT. WE SEEN HER COMING FROM ACROSS THE WAY. YOU

25 COULD SEE THROUGH A PICTURE WINDOW. SHE WAS COMING FROM

DAVID TAYLOR - DIRECT BY MR. MABRY

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1 ACROSS THE WAY FROM THE ROOM 108. AS SHE COME ACROSS, SHE
2 COME INSIDE. MR. PETRIS WAS STANDING IN HIS NORMAL
3 POSITION RIGHT THERE BEHIND THE CASH REGISTER WHERE MS.
4 WILLIAMS WAS STANDING; HANDED HER THE --- HANDED HER THE
5 LITTLE BAGGY --- THE BAG. SHE EXITED OUT THE FRONT DOOR
6 AND WE ALWAYS LET PEOPLE GET OUTSIDE. WE DON'T EVER TAKE
7 NOBODY DOWN IN A RESTAURANT OR IN A PUBLIC PLACE LIKE
8 THAT. I WALK OUT; I APPROACH THE DEFENDANT. I APPROACH
9 HER, ADVISE HER WHO I AM, ADVISE HER SHE'S UNDER ARREST
10 FOR TRAFFICKING IN COCAINE.

11 Q ALL RIGHT. BEFORE SHE CAME DOWN THERE, DID MR.
12 PETRIS MAKE A PHONE CALL?

13 A HE DID MAKE A PHONE CALL. HE IN TURN TOLD ME, ALONG
14 WITH THE OTHER OFFICERS, I TALKED TO HER; SHE SAID YES SHE
15 HAD FORGOT IT; SHE WAS ON THE WAY TO PICK IT UP.

16 Q OKAY. AND DID YOU WITNESS MS. LEEBAY JETER COME
17 ACROSS ---

18 A I DID WITNESS HER COME IN THE FRONT DOOR, GO TO MR.
19 PETRIS AND RECEIVE THIS, (INDICATING) AND THEN I TOOK IT
20 FROM HER ONCE WE WAS OUTSIDE.

21 Q OKAY. IF YOU WOULD, JUST TELL US WHAT OCCURRED WHEN
22 YOU TOOK IT FROM HER OUTSIDE.

23 A WHEN WE TOOK IT FROM HER OUTSIDE, THE VERY FIRST
24 THING I DO IS READ THE SUBJECT HER MIRANDA WARNINGS, ABOUT
25 THE RIGHT TO REMAIN SILENT, THAT KIND OF STUFF, AND SHE

DAVID TAYLOR - DIRECT BY MR. MABRY

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1 UNDERSTOOD THEM. SHE GAVE ME NO PROBLEMS AT ALL AT THAT
2 POINT. I ASKED HER DID SHE HAVE ANYTHING IN THE ROOM, AND
3 SHE SAID NO. SHE GAVE US VERBAL CONSENT TO GO SEARCH HER
4 ROOM, WHICH WAS --- I BELIEVE IT WAS 108. AND WE WENT
5 BACK TO HER ROOM AT THAT TIME.

6 MR. MABRY - THIS IS THAT MATTER HE HAD BROUGHT
7 UP, YOUR HONOR. WE'RE AT THAT POINT.

8 THE COURT - ALL RIGHT, LADIES AND GENTLEMEN,
9 I'VE NOT ONE LEGAL MATTER I NEED TO ADDRESS. PLEASE GO TO
10 YOUR JURY. DO NOT DISCUSS THE CASE AT ALL IN ANY FASHION.
11 WE'LL BRING YOU BACK IN JUST A FEW MINUTES.

12 (JURY EXITS THE COURTROOM.)

13 THE COURT - ALL RIGHT.

14 MR. WELCH - YOUR HONOR, AT THIS TIME --- MY
15 CLIENT'S ON TRIAL FOR TRAFFICKING IN CRACK COCAINE. SHE'S
16 NOT ON TRIAL FOR MARIJUANA. AT THE TIME THAT THE ARREST
17 WAS MADE THE OFFICERS TESTIFIED THE PACKET WAS THERE,
18 WHATEVER WAS IN THE PACKET THEY TESTIFIED TO, BUT IT'S
19 CLEAR FROM THE TESTIMONY THAT THE FINGER SCALES THAT
20 THEY'RE SEEKING NOW TO DISCUSS AND A VERY SMALL QUANTITY
21 OF MARIJUANA THAT I THINK WAS IN MY CLIENT'S PANTS POCKET.
22 IS THAT CORRECT?

23 MR. MABRY - YES.

24 MR. WELCH - AT THIS POINT IN THE PROCESS, JUDGE,
25 I THINK WE'RE FIXING TO GO DOWN THE AVENUE OF GOING TO THE

DAVID TAYLOR - DIRECT BY MR. MABRY

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1 ROOM, SEARCHING THE ROOM, FINDING THE FINGER SCALES IN THE
2 ROOM AND PATTING HER DOWN AND A LITTLE BIT OF MARIJUANA.
3 WE WOULD MOVE, JUDGE, THAT NEITHER OF THOSE ARE ADMISSIBLE
4 IN THIS CASE. NUMBER ONE, THE FINGER SCALES WERE NOT WITH
5 THIS CRACK COCAINE. THERE ARE NUMEROUS USES THAT CAN BE
6 MADE OF THOSE TYPE SCALES. THEY'RE SO HIGHLY PREJUDICIAL
7 THAT ALL THEY CAN DO BASICALLY IS GO TO PROVING THE
8 STATE'S CASE THROUGH IMPROPER EVIDENCE. THEY WERE NOT IN
9 THE PACKET. THEY HAD ABSOLUTELY NOTHING TO DO WITH WHAT'S
10 IN THIS PACKET. THE MARIJUANA I THINK IS VERY
11 PREJUDICIAL. SHE'S NOT ON TRIAL FOR THE MARIJUANA. IT'S
12 GOT NOTHING TO DO WITH THIS CRACK COCAINE. YOU COULD ---
13 THE COURT CAN SEE THAT IT IS A VERY, VERY, VERY SMALL
14 AMOUNT OF MARIJUANA, HAVE NOTHING TO DO REALLY WITH
15 DISTRIBUTION IF SHE'S EVEN CHARGED --- OR WAS CHARGED
16 EARLY ON WITH LESS AN OUNCE. WE WOULD MOVE THAT BOTH OF
17 THOSE ITEMS, BASICALLY, NOT BE ALLOWED INTO EVIDENCE AND
18 THAT THEY ALSO ANY COMMENT MADE ABOUT EITHER OF THOSE
19 ITEMS NOT BE ALLOWED BY ANYONE IN THIS CASE, JUDGE.

20 THE COURT - ALL RIGHT. SOLICITOR?

21 MR. MABRY - YES, SIR. OF COURSE, THE ISSUE IN
22 THIS CASE IS WHETHER IT'S CONSTRUCTIVE POSSESSION AND
23 ACTUAL POSSESSION, WHETHER SHE HAD KNOWLEDGE THAT THE
24 COCAINE WAS IN THE BAG THAT SHE RECEIVED, AND SHE HAD
25 MARIJUANA, ANOTHER ILLEGAL DRUG, IN HER POCKET. THERE ARE

DAVID TAYLOR - DIRECT BY MR. MABRY

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1 CASES IN SOUTH CAROLINA, DRUG CASES, THAT, ONE, THE FACT
2 THAT THE DEFENDANT HAS MARIJUANA OR SOME OTHER DRUG ON
3 THEIR PERSON AND ANOTHER DRUG IN ANOTHER LOCATION GO ---
4 IS PROBATIVE, IS NOT TOO PREJUDICIAL. IT GOES TO THE FACT
5 OF THE KNOWLEDGE OF THE EXISTENCE OF THE OTHER DRUG. IT'S
6 LIKE HAVING A GUN ON YOU. AND THE FINGER SCALES WERE
7 FOUND IN HER PURSE. AND THESE ARE SCALES THAT CAN BE USED
8 TO WEIGH OUT COCAINE. THAT'S HOW YOU PROVE CONSTRUCTIVE
9 POSSESSION OF THE EXISTENCE OF SCALES AND OTHER TYPE OF
10 DRUG PARAPHERNALIA.

11 THE COURT - OVERRULE THE OBJECTION. ANY OTHER
12 MATTER WE NEED TO ADDRESS?

13 MR. WELCH - NOT AT THIS TIME, JUDGE.

14 THE COURT - ALL RIGHT, BRING THE JURY BACK.

15 (JURY RETURNS.)

16 THE COURT - ALL RIGHT, MR. MABRY.

17 MR. MABRY - THANK YOU, YOUR HONOR.

18 (CONTINUED DIRECT EXAMINATION)

19 Q INVESTIGATOR TAYLOR, IF YOU -- FIRST OF ALL, LET ME
20 SHOW YOU STATE'S EXHIBIT NUMBER 1. DO YOU RECOGNIZE THAT?

21 A I DO.

22 Q AND WHAT IS THAT ITEM?

23 A THIS IS THE ITEM THAT MR. PETRIS GAVE THE DEFENDANT
24 IN THE CASE, AND THIS IS WHAT I TOOK OFF OF HER ON THE
25 DATE OF ARREST.

DAVID TAYLOR - DIRECT BY MR. MABRY

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1 Q ALL RIGHT. STATE'S EXHIBIT NUMBER 2. DO YOU
2 RECOGNIZE THAT?

3 A YES, I DO. THIS IS THE POWDER ROCK-LIKE SUBSTANCE
4 THAT WAS INSIDE THIS (INDICATING) AT THE TIME WHEN WE
5 RESPONDED TO THE SCENE.

6 Q AND AFTER YOU BROUGHT THAT BACK TO THE SHERIFF'S
7 OFFICE, DID YOU PUT THAT IN AN EVIDENCE BAG?

8 A WHAT I DID WHEN I GOT BACK TO THE SHERIFF'S OFFICE,
9 I PLACED THIS INTO EVIDENCE --- I PLACED THIS INTO THIS
10 SEALED BAG THAT'S INSIDE. ON THE FRONT YOU'LL SEE WHERE
11 THE DAY I SEALED IT, WHICH WAS OCTOBER THE 29TH, 1997.
12 THERE'S MY NAME, THE PERSON SEALING THE ENVELOPE. WE SEAL
13 THIS UP AT THE TOP, THIS LITTLE RED STITCH. YOU PEAL IT
14 OFF; IT SEALS UP. AND WHAT I DID FROM THAT POINT, I
15 DROPPED IN OUR DROP BOX TO WHERE OUR EVIDENCE CUSTODIAL
16 GETS IT, AND THEN THEY SEND IT ON TO THE LAB FOR ANALYSIS,
17 BUT IT WAS IN A SEALED --- IT WAS IN THIS SEALED BAG RIGHT
18 HERE WITH MY --- WITH MY NAME ON IT. (INDICATING)

19 Q AND YOU HAD --- YOU'D SEALED IT UP.

20 A I HAD SEALED IT UP, YES, SIR.

21 Q ALL RIGHT. THANK YOU. AND STATE'S EXHIBIT NUMBER --
22 - LET ME ASK YOU THIS. AFTER YOU ARRESTED MS. LEEBAY
23 JETER, DID YOU SEARCH HER INCIDENT TO THAT ARREST?

24 A SHE WAS SEARCH INCIDENT TO THE ARREST AND THIS CLEAR
25 BAG OF GREEN PLANT MATERIAL WAS RECOVERED FROM HER ---

DAVID TAYLOR - DIRECT BY MR. MABRY

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1 SMALL AMOUNT OF GREEN PLANT MATERIAL. THAT WAS INCIDENT
2 TO ARREST ON HER PERSON IN HER POCKET.

3 Q ARE YOU FAMILIAR WITH THAT IN YOUR EXPERIENCE?

4 A YES, I AM. THAT --- FROM MY EXPERIENCE, THIS IS
5 MARIJUANA. I SAY GREEN PLANT MATERIAL IS WHAT I REFER TO
6 IT AS, BUT IT IS MARIJUANA.

7 Q NOW, YOU SAID SHE HAD GIVEN YOU CONSENT TO SEARCH HER
8 ROOM?

9 A YES, SIR. LIKE I SAID, SHE DIDN'T GIVE US ANY
10 TROUBLE AT ALL. I ASKED HER ABOUT GOING TO HER --- TO HER
11 ROOM AND SEARCHING AND SHE SAID SHE DON'T HAVE ANYTHING,
12 IT'S NOT A PROBLEM. WE GO BACK THERE AND CONDUCTED THE
13 SEARCH.

14 Q ALL RIGHT. DID YOU SEARCH HER PURSE WHILE YOU WERE
15 THERE IN THAT ROOM?

16 A WE DID HER SEARCH HER PURSE. SHE SAID THAT WAS HER
17 PURSE OVER THERE. WE SEARCHED IT, AND WE FOUND A SET OF
18 FINGER SCALES.

19 Q STATE'S EXHIBIT NUMBER 3. (INDICATING)

20 A THESE ARE A SET OF SCALES THAT WE FOUND IN A LITTLE
21 POUCH IN HER POCKETBOOK.

22 Q ALL RIGHT, ARE YOU FAMILIAR WITH THOSE ---

23 A I AM.

24 Q --- IN YOUR LINE OF WORK?

25 A I AM.

DAVID TAYLOR - DIRECT BY MR. MABRY

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1 Q AND WHAT ARE THOSE USED FOR?

2 A THESE ARE USED FOR POTENTIAL --- POTENTIAL DRUG BUYER
3 OR A DRUG SELLER TO TAKE THE DRUGS, PLACE THEM IN THERE
4 AND WEIGH THEM, AND THAT'S HOW THEY GET THEIR --- THEY GET
5 THEIR WEIGHT TO DO THE CHARGE --- HOW MUCH TO CHARGE A
6 PERSON.

7 Q OKAY. AND CAN YOU DO THAT WITH COCAINE, AS WELL?

8 A THAT IS CORRECT, YES, SIR.

9 Q AND PURSUANT TO YOUR --- HOW LONG HAVE YOU BEEN A
10 NARCOTICS OFFICER?

11 A TOTAL SIX AND A HALF YEARS. I'VE BEEN WITH THE
12 SHERIFF'S OFFICE 13.

13 Q ALL RIGHT. THIS COCAINE IS ROUGHLY 11 GRAMS. WHAT
14 IS THE STREET VALUE OF THAT MUCH COCAINE?

15 A USUALLY YOU CAN --- YOU CAN AVERAGE A HUNDRED DOLLARS
16 A GRAM, SO YOU'RE --- IT'S JUST ACCORDING TO HOW THEY CUT
17 IT UP, WHAT THEY CUT IT UP WITH.

18 Q ABOUT ELEVEN HUNDRED DOLLARS?

19 A YES, SIR. AT LEAST.

20 Q ALL RIGHT. THANK YOU. AND IS THE DEFENDANT IN THIS
21 CASE WHO YOU TOOK THAT PURSE FROM? (INDICATING)

22 A YES, SIR. THAT IS HER.

23 MR. MABRY - THAT'S ALL I HAVE, YOUR HONOR, FROM
24 THIS WITNESS.

25 MR. WELCH - THANK YOU, JUDGE.

DAVID TAYLOR - CROSS BY MR. WELCH

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1 CROSS EXAMINATION

2 BY MR. WELCH:

3 Q OFFICER, YOU GO IN; YOU SIT DOWN IN THE RESTAURANT;
4 YOU'RE IN PLAIN CLOTHES, AS YOU SAY.

5 A YES, SIR.

6 Q AND MY CLIENT COMES IN, SOMEBODY SAYS SOMETHING; THEY
7 HAND HER THIS. (INDICATING) RIGHT?

8 A YES, SIR.

9 Q SHE TURNS AROUND AND LEAVES.

10 A THAT IS CORRECT.

11 Q NOW, SHE WALKS OUTSIDE WITH THIS. LET ME GET THIS
12 STRAIGHT. HOLDS IT OUT LIKE THIS. (INDICATING) RIGHT?

13 A YES, SIR.

14 Q SHE TAKES IT.

15 A (INDICATING YES)

16 Q AND THEN JUST HOLD IT OUT TO ME.

17 A (WITNESS COMPLIES)

18 Q AND THEN SHE LOOKS AND TURNS AROUND AND LEAVES.
19 RIGHT?

20 A THAT IS CORRECT.

21 Q NOW, SHE GOES OUTSIDE. YOU FOLLOW HER OUTSIDE.

22 A YES, SIR.

23 Q DID SHE EVER OPEN IT?

24 A I DIDN'T SEE HER OPEN IT, NO, SIR. I WASN'T IN A
25 POSITION TO SEE HER. I WAS KIND OF AT HER BACK.

DAVID TAYLOR - CROSS BY MR. WELCH

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- 1 Q IN FACT, I WANT YOU TO TELL THIS JURY, OFFICER ---
2 YOU ASKED HER FOR THIS; SHE HANDED IT TO YOU. (INDICATING)
3 A THAT IS CORRECT.
4 Q NOW, THE AMOUNT OF CRACK COCAINE THAT WE HAVE HERE --
5 -
6 A THAT'S COCAINE, SIR.
7 Q EXCUSE ME, AMOUNT OF COCAINE THAT WE HAVE HERE ---
8 A (INDICATING YES)
9 Q ELEVEN GRAMS IS A PRETTY BIG CHUNK OF COCAINE, ISN'T
10 IT?
11 A YES, SIR, IT IS.
12 Q AND SHE DIDN'T TRY TO RUN, DID SHE?
13 A NO, SIR.
14 Q AND SHE DIDN'T TRY TO RESIST OR ANYTHING.
15 A NO, SIR.
16 Q TOLD YOU YOU COULD SEARCH HER ROOM.
17 A YES, SIR.
18 Q IN FACT, SHE TOLD YOU THAT SHE HAD A LITTLE BIT OF
19 MARIJUANA, DIDN'T SHE?
20 A I DON'T RECALL HER SAYING THAT, NO, SIR.
21 Q YOU DON'T RECALL HER SAYING SHE HAD JUST A LITTLE BIT
22 OF MARIJUANA?
23 A NO, SIR, I DO NOT RECALL THAT.
24 Q BUT, OFFICER, WHEN YOU --- AT SOME POINT IN TIME
25 SOMEBODY OPENED THIS AND BROUGHT THIS OUT, DIDN'T THEY?

DAVID TAYLOR - CROSS BY MR. WELCH

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- 1 A YES, SIR.
- 2 Q AND WHAT DID SHE SAY WHEN THAT HAPPENED?
- 3 A SHE DIDN'T SAY A WORD.
- 4 Q SHE SAID IT WASN'T HERS WHEN YOU TRIED TO SAY IT WAS
- 5 COCAINE, DIDN'T SHE?
- 6 A I TOLD HER SHE WAS UNDER ARREST FOR TRAFFICKING
- 7 COCAINE, AND I DON'T RECALL HER SAYING NOTHING AT THAT
- 8 POINT. SHE WASN'T RUDE OR ANYTHING. SHE DIDN'T SAY
- 9 ANYTHING.
- 10 Q OFFICER, ISN'T IT TRUE THAT DURING THE COURSE OF THIS
- 11 ARREST, MS. LEEBAY JETER SAID ---
- 12 A I DON'T RECALL ---
- 13 Q --- THIS WAS NOT HERS?
- 14 A I DON'T RECALL, SIR.
- 15 Q WELL, WHEN YOU SAY YOU DON'T RECALL, ARE YOU SAYING
- 16 THAT IT DIDN'T HAPPEN OR YOU JUST DON'T REMEMBER?
- 17 A I JUST DON'T REMEMBER HER SAYING THAT, NO, SIR.
- 18 Q ALL RIGHT, NOW ---
- 19 A I JUST KNOW SHE WAS NOT --- DIDN'T GIVE US ANY
- 20 TROUBLE.
- 21 Q NO. IN FACT, OFFICER, DID YOU RUN ANY FINGERPRINT
- 22 TESTS ON THIS LITTLE GLASS BOTTLE IN HERE?
- 23 A NO, SIR.
- 24 Q DID YOU RUN ANY FINGERPRINT TESTS ON THE COCAINE?
- 25 A NO, SIR.

DAVID TAYLOR - CROSS BY MR. WELCH

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1 Q DID YOU RUN ANY FINGERPRINT TESTS ON THIS?

2 (INDICATING)

3 A NO, SIR.

4 Q DID YOU RUN ANY FINGERPRINT TESTS ON ANYTHING?

5 A NO, SIR.

6 Q OFFICER, YOU WENT BACK TO THE ROOM AND YOU FOUND THIS
7 LITTLE BIT OF MARIJUANA THAT YOU TESTIFIED TO AND THOSE
8 LITTLE SCALES. (INDICATING)

9 A YES, SIR.

10 Q RIGHT? NOW, TELL THE JURY --- WHEN SOMEBODY'S GOING
11 TO USE COCAINE LIKE THIS (INDICATING) AND --- AND I
12 BELIEVE BASICALLY THE THEORY IS THAT THIS IS SOMEBODY
13 SHE'S GOING TO RE-SELL. THAT'S WHY SHE NEEDS THESE
14 SCALES. RIGHT?

15 A THAT'S WHAT SCALES ARE USED FOR, YES, SIR.

16 Q IS IT ALSO NOT USED AT TIMES IF SOMEBODY SELLS YOU
17 MARIJUANA ---

18 A THAT'S CORRECT.

19 Q --- TO MAKE SURE YOU'RE GETTING THE PROPER WEIGHT
20 WHEN YOU'RE BUYING MARIJUANA?

21 A I DID TESTIFY TO THAT, YES, SIR.

22 Q AND IN TERMS OF WHAT MS. LEEBAY JETER, FOR ALL
23 INTENTS AND PURPOSES, IF SHE'S GETTING SOME MARIJUANA
24 HERSELF, SHE CAN USE THOSE LITTLE SCALES TO SEE --- MAKE
25 SURE SHE'S NOT GETTING RIPPED OFF, FOR LACK OF A BETTER

DAVID TAYLOR - CROSS BY MR. WELCH

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1 WORD, FOR MARIJUANA.

2 A YES, SIR.

3 Q WHAT DO YOU PUT --- IF I WAS GOING TO SELL SOME OF
4 THIS COCAINE, HOW WOULD I GET IT OFF OF HERE? IF I WAS
5 GOING TO SELL SOMEBODY LESS THAN THAT ENTIRE AMOUNT, WHAT
6 WOULD I DO?

7 A YOU COULD BREAK IT UP.

8 Q WHAT WOULD I PUT IT IN?

9 A YOU CAN PUT IT IN A LITTLE BAGGY OR SOMETHING.

10 Q AND THEN I WOULD WEIGH IT WITH A BAGGY?

11 A (INDICATING YES)

12 Q AND WHAT WOULD I USE TO CUT IT UP WITH?

13 A INOSITOL, OTHER INGREDIENTS LIKE THAT.

14 Q WHAT WOULD --- MAYBE I'M USING THE WRONG TERMINOLOGY.
15 WHEN I SAY CUT IT UP, I'M ACTUALLY REFERRING TO BREAKING
16 IT APART.

17 A YOU COULD CHIP IT RIGHT NOW.

18 Q BUT PEOPLE TYPICALLY USE SOMETHING WITH AN EDGE LIKE
19 A LITTLE KNIFE OR SOMETHING?

20 A YES, SIR, THEY DO.

21 Q AND WHEN I SAY CUT IT UP, NOW YOU TALKED ABOUT
22 INOSITOL. WHAT IS THAT?

23 A THAT'S THE STUFF THAT THEY'LL MIX THE POWDER COCAINE
24 WITH TO MAKE MORE, TO STRETCH IT, TO DILUTE IT AND --- YOU
25 KNOW, INSTEAD OF 11 GRAMS, MAKE 22 GRAMS OUT OF IT,

DAVID TAYLOR - CROSS BY MR. WELCH

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1 SOMETHING LIKE THAT.

2 Q AND SOMEBODY WITH THIS BIG A PIECE OF COCAINE WILL
3 PROBABLY DO THAT, WOULDN'T THEY? WELL, THEY COULD.

4 A I DON'T KNOW.

5 Q TELL THE JURY HOW MUCH INOSITOL YOU FOUND IN THAT
6 ROOM?

7 A WE DIDN'T FIND ANY.

8 Q TELL THE JURY HOW MUCH PARAPHERNALIA YOU FOUND IN
9 THAT ROOM TO CUT UP COCAINE?

10 A NOTHING TO CUT IT UP WITH. NO.

11 Q SO YOU GOT A WOMAN THAT TAKES SOMETHING OUT OF
12 SOMEBODY'S HAND, WALKS OUTSIDE YOUR RESTAURANT, GIVES YOU
13 PERMISSION TO SEARCH HER ROOM, BASICALLY, HAD ONE LITTLE
14 BIT OF MARIJUANA AND SOME SCALES THAT CAN BE USED TO
15 ACTUALLY MAKE SURE SHE BUYS MARIJUANA SHE GET WHAT SHE'S
16 PAYING FOR, AND YOU DIDN'T FIND ANYTHING ELSE THAT WOULD
17 BE CONSISTENT WITH HER CUTTING THAT UP TO SELL IT, DID
18 YOU?

19 A NO, SIR, I DIDN'T.

20 Q IN FACT, OFFICER, OTHER THAN THE FACT THAT SOMEBODY
21 REACHED OUT TO HAND THAT TO HER, AND OTHER THAN THE FACT
22 THAT SHE TOOK IT, YOU DIDN'T REALLY FIND ANYTHING THAT
23 WOULD ACTUALLY SAY SHE KNEW IT WAS IN THERE, DID YOU?

24 A NO, SIR, JUST HER --- BEING HER PURSE.

25 MR. WELCH - I DON'T HAVE ANY FURTHER QUESTIONS.

DAVID TAYLOR - CROSS BY MR. WELCH

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1 MR. MABRY - THAT'S ALL I HAVE OF THIS WITNESS.

2 THE COURT - YOU MAY STEP DOWN.

3 MR. WELCH - I'VE GOT ONE --- I'M SORRY. I HAVE
4 ONE QUICK QUESTION.

5 MR. MABRY - I'D OBJECT TO THAT.

6 THE COURT - GO AHEAD. HAVE A SEAT.

7 (CONTINUED CROSS EXAMINATION)

8 Q YOU DID UNDERSTAND THAT THERE WAS ANOTHER WOMAN
9 EATING WITH HER AND SOMEBODY THAT THEY DON'T EVEN KNOW
10 BROUGHT THAT THING UP AND GAVE IT TO THEM, DIDN'T YOU?

11 A YES, SIR.

12 MR. WELCH - OKAY. I DON'T HAVE ANY FURTHER
13 QUESTIONS. I'M SORRY.

14 THE COURT - YOU MAY STEP DOWN.

15 LADIES AND GENTLEMEN, I'VE GOT SOME OTHER
16 MATTERS THAT DON'T RELATE TO THIS CASE AND HAVE PREVIOUSLY
17 BEEN SCHEDULED THAT I NEED TO ADDRESS, SO WE'RE GOING TO
18 RECESS PRESENTLY IN THIS MATTER, AND WE WILL RESUME IN THE
19 MORNING AT 9:30. LET ME CAUTION YOU BEFORE YOU'RE
20 EXCUSED. KEEP IN MIND THAT DURING THE OVERNIGHT RECESS,
21 YOU'RE NOT PERMITTED TO DISCUSS THIS CASE IN ANY FASHION
22 WITH ANY PERSON WHATSOEVER. YOUR DECISION IN THE CASE HAS
23 TO BE BASED SOLELY UPON THE EVIDENCE RECEIVED DURING THE
24 TRIAL OF THIS CASE AND THE LAW THAT I WILL PROVIDE YOU,
25 AND YOU'RE NOT TO BE INFLUENCED BY ANY OUTSIDE

1. CONSIDERATION. AND THAT'S WHY IT'S IMPORTANT THAT DURING
2 THE OVERNIGHT RECESS YOU NOT TALK TO YOUR HUSBANDS OR
3 WIVES OR CHILDREN OR FRIENDS ABOUT THE CASE. IT'S
4 PERFECTLY NATURAL THAT SOMEONE MAY ASK YOU IF YOU GOT
5 SELECTED ON A CASE, AND IF YOU DID WHAT ARE YOU HEARING
6 ABOUT. YOU JUST SIMPLY TELL THEM YOU CAN'T DISCUSS IT.
7 YOU CAN TALK ABOUT IT ALL YOU WANT TO AFTER YOUR DECISION
8 HAS BEEN RENDERED, BUT UNTIL THAT TIME COMES, YOU'RE NOT
9 PERMITTED TO DISCUSS THE CASE IN ANY FASHION WHATSOEVER.
10 YOU CAN'T EVEN DISCUSS IT WITH YOUR FELLOW JURORS, AND SO
11 WHEN YOU COME BACK IN THE MORNING, DON'T TALK ABOUT THE
12 CASE. YOU CAN'T DISCUSS IT UNTIL ALL OF THE EVIDENCE HAS
13 BEEN RECEIVED, YOU'VE BEEN INSTRUCTED ON THE LAW AND
14 YOU'VE BEEN ASKED TO BEGIN YOUR DELIBERATIONS. SO WITH
15 THAT CAUTION IN MIND, HAVE A GOOD EVENING. PLEASE REPORT
16 DIRECTLY TO YOUR JURY ROOM IN THE MORNING AT 9:30, 9:30 IN
17 THE MORNING.

18 (JURY IS DISMISSED FOR THE DAY.)

19 THE COURT - ALL RIGHT, ANY MATTERS WE NEED TO
20 ADDRESS BEFORE WE RECESS?

21 MR. MABRY - NOT FROM THE STATE, JUDGE.

22 MR. WELCH - NOTHING, YOUR HONOR.

23 THE COURT - THIS MATTER IS IN RECESS UNTIL 9:30
24 IN THE MORNING.

25 (COURT ADJOURNS FOR THE DAY)

ASHLEY HARRIS - DIRECT BY MR. MABRY

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(COURT RESUMES ON 10/29/99)

THE COURT - ALL RIGHT, ARE WE READY FOR THE
JURY?

MR. WELCH - YES, SIR, JUDGE.

THE COURT - ALL RIGHT, BRING THE JURY IN,
PLEASE, SIR.

(JURY RETURNS.)

THE COURT - GOOD MORNING, LADIES AND GENTLEMEN.
AS YOU KNOW, WHEN WE RECESSED, THE STATE WAS STILL IN THE
MIDST OF THEIR PRESENTATION OF EVIDENCE, SO WE ARE GOING
TO CONTINUE WITH THAT THIS MORNING.

MR. MABRY.

MR. MABRY - STATE CALLS ASHLEY HARRIS TO THE
STAND.

ASHLEY HARRIS, AFTER FIRST BEING DULY SWORN
TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. MABRY:

Q TELL US YOUR NAME, PLEASE.

A MY NAME IS ASHLEY HARRIS.

Q MR. HARRIS, WHERE DO YOU CURRENTLY WORK?

A I WORK FOR THE SPARTANBURG COUNTY SHERIFF'S OFFICE.

Q AND WHAT IS YOUR OCCUPATION THERE?

A I AM A CHEMIST IN THE FORENSIC'S LAB AT SPARTANBURG.

ASHLEY HARRIS - DIRECT BY MR. MABRY

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1 COUNTY SHERIFF'S OFFICE.

2 Q AND HOW LONG HAVE YOU BEEN A CHEMIST?

3 A I'VE BEEN A CHEMIST FOR ALMOST THREE YEARS NOW.

4 Q IF YOU WOULD, GIVE US YOUR EDUCATIONAL TRAINING TO BE
5 A CHEMIST?

6 A I OBTAINED MY BACHELOR OF SCIENCE FROM WOFFORD
7 COLLEGE HERE IN SPARTANBURG. I THEN WENT ON TO THE
8 UNIVERSITY OF SOUTH CAROLINA TO TAKE SOME GRADUATE COURSES
9 IN ANALYTICAL SEPARATIONS AND ANALYTICAL TECHNIQUES, THEN
10 STARTED WORKING FOR THE SOUTH CAROLINA LAW ENFORCEMENT
11 DIVISION IN THE DRUG ANALYSIS SECTION, WENT THROUGH THEIR
12 TRAINING, WENT TO DEA FORENSIC CHEMIST SEMINAR, DEA
13 CLANDESTINE LABORATORY INVESTIGATIONS AND WENT THROUGH THE
14 ENTIRE TRAINING AT SLED AND SINCE THEN HAVE GONE THROUGH
15 TRAINING WITH HEWLETT PACKARD INSTRUMENTATION.

16 Q AND HAVE YOU BEEN QUALIFIED AS AN EXPERT BEFORE IN
17 COURT?

18 A YES, SIR.

19 Q IN DRUG IDENTIFICATION?

20 A TWENTY TIMES.

21 Q OKAY. AND I BELIEVE YOU WORKED THERE AT SLED AS A
22 CHEMIST AND THEN YOU NOW COME HERE TO SPARTANBURG.

23 A THAT'S CORRECT. I WAS WITH SLED FROM JANUARY OF 1997
24 TO MARCH OF 1999.

25 MR. MABRY - YOUR HONOR, AT THIS TIME I MOVE TO

ASHLEY HARRIS - DIRECT BY MR. MABRY

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1 QUALIFY HIM AS AN EXPERT IN DRUG IDENTIFICATION.

2 MR. WELCH - I HAVE NO OBJECTION.

3 THE COURT - HE IS SO QUALIFIED.

4 Q MR. HARRIS, LET ME SHOW YOU STATE'S EXHIBIT NUMBER 2.
5 IF YOU COULD, IDENTIFY THAT.

6 A YES, THIS IS A --- THE LAB NUMBER THAT I GAVE THIS
7 IDENTIFICATION TO AT THE LAB IS L990432. I RECEIVED THIS
8 FROM SLED AND DID THE ANALYSIS OF IT ON THE 25TH OF THIS
9 MONTH.

10 Q I SHOW YOU THIS ITEM. IS THIS YOUR REPORT?

11 A YES, IT IS. THE TOP PAGE IS THE REPORT THAT I
12 GENERATE AFTER I FOUND MY FINDINGS AND DID THE ANALYSIS ON
13 THIS EVIDENCE.

14 (DOCUMENT IS SHOWN TO MR. WELCH)

15 MR. WELCH - I HAVE NO OBJECTION TO IT.

16 (DOCUMENT MARKED AS STATE'S EXHIBIT NUMBER 5
17 WITHOUT OBJECTION.)

18 Q ALSO, CHAIN OF CUSTODY INFORMATION ON THE FOLLOWING
19 PAGES?

20 A YES, THAT'S CORRECT.

21 Q AND, IF YOU WOULD, TELL THE JURY YOUR EXPERT OPINION
22 --- FIRST OF ALL, WHAT --- DID YOU RUN SOME TESTS ON THOSE
23 ITEMS --- ON THE ITEM BEING STATE'S EXHIBIT NUMBER 2?

24 A YES. AND I RECEIVED THIS EVIDENCE. IT WAS IN THE
25 OUTSIDE BAG THAT'S NOW INSIDE THIS WITH THE RED SEAL

ASHLEY HARRIS - DIRECT BY MR. MABRY

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1 ACROSS THE TOP CALLED THE BEST BAG. AFTER EXAMINING THE
2 BAG, I SAW THAT IT HAD NOT BEEN TAMPERED WITH IN ANY WAY.
3 ALL THE SEALS WERE STILL IN TACT. I THEN PLACED MY
4 INITIALS AND THE DATE THAT I OPENED IT ON THE BAG.
5 OPENING THE BAG I FOUND AN ENVELOPE IN IT, AND INSIDE THAT
6 ENVELOPE WAS A PAPER TOWEL CONTAINING THIS WHITE ROCK
7 OBJECT HERE. (INDICATING) AFTER GETTING IT OUT, I TOOK
8 SHAVINGS OFF OF IT AND DID A CHEMICAL TEST ON IT WHICH IS
9 A PRESUMPTIVE TEST TO DETERMINE WHAT I --- KIND OF GIVE ME
10 AN IDEA OF WHAT I WAS LOOKING AT. IT TURNED BLUE IN THE
11 CHEMICAL TEST WHICH TENDS TO TELL ME THAT IT'S IN THE
12 CAINE FAMILY, COCAINE OR BENZOCAINE OR LIDOCAINE. AFTER
13 DOING THAT, I TOOK SOME OF THIS AND DISSOLVED IT AND RAN
14 IT ON THE INSTRUMENTATION FOR A DIRECT IDENTIFICATION, AND
15 IT CAME UP POSITIVE FOR COCAINE.

16 Q AND DID YOU WEIGH THE SUBSTANCE, THIS SUBSTANCE IN
17 STATE'S EXHIBIT NUMBER 2?

18 A YES. AFTER TAKING THE SPOT TEST AND THE SAMPLE FOR
19 THE GCMS, I OBTAINED A WEIGHT OF 11.87 GRAMS.

20 Q AND IS THIS SUBSTANCE COCAINE?

21 A YES, IT IS.

22 MR. MABRY - YOUR HONOR, AT THIS TIME WE MOVE
23 INTO EVIDENCE STATE'S EXHIBIT NUMBER 2.

24 MR. WELCH - I'D LIKE TO SEE --- I HAVE NO
25 OBJECTION TO THAT AS 2. I HAVE NO OBJECTION TO THAT.

ASHLEY HARRIS - CROSS BY MR. WELCH

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1 THE COURT - IT'S ADMITTED.

2 (DOCUMENT MARKED AS STATE'S EXHIBIT NUMBER 2
3 WITHOUT OBJECTION.)

4 MR. MABRY - YOUR HONOR, I BELIEVE STATE'S
5 EXHIBIT NUMBER 1 IS ALREADY IN EVIDENCE ALONG WITH STATE'S
6 EXHIBIT NUMBER 3 AND NUMBER 4.

7 (DOCUMENTS MARKED AS STATE'S EXHIBITS 1, 3 AND
8 4 WITHOUT OBJECTION.)

9 MR. MABRY - I WOULD PUBLISH THESE TO THE JURY AT
10 THIS TIME.

11 THE COURT - YOU MAY.

12 (EXHIBITS ARE PUBLISHED TO THE JURY.)

13 MR. MABRY - THAT'S ALL I HAVE OF THIS WITNESS.

14 CROSS EXAMINATION

15 BY MR. WELCH:

16 Q OFFICER HARRIS, IN TERMS OF THE LAB THAT YOU WORK
17 FOR, THAT'S THE SPARTANBURG COUNTY LAB?

18 A YES, SIR.

19 Q BUT YOU ALSO WORKED FOR SLED. CORRECT? AT SOME
20 POINT IN TIME?

21 A YES, SIR, I WORKED THERE FROM '97 TO '99.

22 Q DID YOU WORK IN THE LAB THERE?

23 A YES, SIR.

24 Q AND IN TERMS OF --- NOW, THE REPORT THAT YOU ISSUED
25 THAT'S ON THE COCAINE THAT'S GOING AROUND TO THE JURY, ALL

ASHLEY HARRIS - CROSS BY MR. WELCH

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1 YOU REALLY DO IS DECIDE THAT IT IS COCAINE OR NOT COCAINE.

2 RIGHT?

3 A THAT'S CORRECT.

4 Q IN FACT, WHETHER OR NOT THAT COCAINE WAS EVER IN THE
5 POSSESSION OR THE KNOWLEDGE OF MY CLIENT, MS. LEEBAY
6 JETER, YOU HAVE NO IDEA OF THAT, DO YOU?

7 A NO, SIR. I HAVE NO KNOWLEDGE.

8 Q AND YOU'RE NOT TELLING THE JURY NECESSARILY THAT THIS
9 DEFENDANT POSSESSED THAT COCAINE, ARE YOU?

10 A NO, SIR, I AM NOT.

11 Q IN FACT, SIR, WITHIN THE POLICE LAB, SLED,
12 SPARTANBURG COUNTY, THERE ARE OTHER TESTS THAT CAN BE RUN
13 ON ITEMS. FINGERPRINT TESTS? CORRECT?

14 A OH, YES, SIR.

15 Q ANY FINGERPRINT TESTS RUN ON ANY OF THIS EVIDENCE?

16 A NO, SIR.

17 Q THERE WAS NO REQUEST TO, WAS THERE?

18 A NO, SIR.

19 MR. WELCH - I DON'T HAVE ANY FURTHER QUESTIONS.

20 MR. MABRY - THAT'S ALL I HAVE.

21 THE COURT - YOU MAY STEP DOWN.

22 MR. MABRY - STATE RESTS, YOUR HONOR.

23 THE COURT - ALL RIGHT, LADIES AND GENTLEMEN,

24 THAT'S ALL OF THE TESTIMONY OR OTHER EVIDENCE TO BE
25 OFFERED BY THE STATE, AND BEFORE WE GO ANY FURTHER, I'VE

1 GOT SOME MATTERS I NEED TO ADDRESS OUTSIDE OF YOUR
2 PRESENCE, SO I'M GOING TO ASK YOU TO PLEASE GO TO YOUR
3 JURY ROOM. STILL YOU'RE NOT PERMITTED TO DISCUSS THE CASE
4 IN ANY FASHION. WE'LL BRING YOU BACK SHORTLY TO CONTINUE.
5 YOU'LL HAVE ANOTHER OPPORTUNITY TO LOOK AT THAT EVIDENCE.

6 (JURY EXITS THE COURTROOM.)

7 THE COURT - ALL RIGHT, ANY MOTIONS OR OTHER
8 MATTERS WE NEED TO ADDRESS BEFORE WE CONTINUE?

9 MR. WELCH - JUDGE, FROM THE DEFENSE, WE WOULD
10 MOVE FOR A MOTION FOR A DIRECTED VERDICT. WE BELIEVE THAT
11 THE LIGHT TAKEN MOST FAVORABLE TO THE STATE THAT THERE IS
12 NOTHING IN THE RECORD THAT WOULD REFLECT BEYOND A
13 REASONABLE DOUBT THAT THIS COCAINE WAS, IN FACT, MS.
14 LEEBAY JETER'S. THERE IS ABSOLUTELY NOTHING TO SHOW SHE
15 HAD ANY AWARENESS OF WHAT WAS INSIDE THAT POUCH. THERE --
16 - IT WAS NEVER SHOWN TO HER. THERE IS NO FINGERPRINT
17 EVIDENCE. WE BELIEVE THAT THE EVIDENCE FAILED TO --- WE
18 REMOVE FOR A DIRECTED VERDICT.

19 THE COURT - ALL RIGHT, MR. MABRY.

20 MR. MABRY - WELL, AS HE STATED, THE EVIDENCE TO
21 BE VIEWED IN THE LIGHT MOST FAVORABLE TO THE STATE, AND WE
22 BELIEVE THE EVIDENCE HAS SHOWN THAT SHE CAME AND CLAIMED
23 THIS PACKAGE WHICH DID CONTAIN THE COCAINE. SHE ALSO HAD
24 DRUGS IN HER POCKET, SCALES IN HER PURSE, THAT TIES HER TO
25 THE COCAINE IN THIS PURSE. WE BELIEVE THE EVIDENCE IS

1 SUFFICIENT TO OVERCOME A MOTION FOR A DIRECTED VERDICT.

2 THE COURT - ALL RIGHT. I BELIEVE THERE IS
3 SUFFICIENT EVIDENCE BOTH DIRECT AND CIRCUMSTANTIAL FROM
4 WHICH A JURY COULD REASONABLY FIND THE DEFENDANT GUILTY
5 BEYOND A REASONABLE DOUBT OF POSSESSION AND, THEREFORE,
6 TRAFFICKING IN COCAINE, AND THERE BEING THE EXISTENCE OF
7 THAT EVIDENCE, YOUR MOTION FOR A DIRECTED VERDICT IS
8 DENIED.

9 MR. WELCH - JUDGE, AT THIS TIME, WE HAVE NO
10 WITNESSES. MY CLIENT WILL NOT TAKE THE STAND. THE COURT
11 MAY WISH TO INQUIRE AS TO HER UNDERSTANDING OF TESTIMONY
12 AND AS TO HER DECISION NOT TO TAKE THE STAND, BUT I HAVE
13 DISCUSSED IT WITH HER. I'VE EXPLAINED TO HER HER RIGHT TO
14 TAKE THE STAND, AND I'VE EXPLAINED TO HER THAT HER
15 TESTIMONY CAN BE IMPEACHED WITH A PRIOR CRIMINAL RECORD.
16 SHE HAS SOME PRIOR CRIMINAL CHARGES, A POSSESSION OF CRACK
17 AND A POSSESSION OF TEN GRAMS OR MORE OF MARIJUANA AMONGST
18 SOME OTHERS, BUT I THINK THOSE ARE THE ONLY TWO THAT COULD
19 IMPEACH HER, BUT SHE WILL NOT TAKE THE STAND.

20 THE COURT - ALL RIGHT, MS. LEEBAY JETER, YOU'VE
21 HEARD WHAT YOUR LAWYER HAS TOLD ME ABOUT YOUR DECISION NOT
22 TO TESTIFY DURING THE TRIAL OF THIS CASE. DO YOU
23 UNDERSTAND THAT YOU DO HAVE AN ABSOLUTE CONSTITUTIONAL
24 RIGHT TO REMAIN SILENT? AND THAT IS NOBODY CAN MAKE YOU
25 TAKE THE WITNESS STAND. NOBODY CAN REQUIRE THAT YOU MAKE

1 ANY STATEMENT. NO ONE CAN REQUIRE THAT YOU ANSWER ANY
2 QUESTIONS AS THEY RELATE TO THESE PARTICULAR CHARGES, BUT
3 IF YOU WISH TO TAKE THE WITNESS STAND AND TESTIFY DURING
4 THE TRIAL OF THIS CASE TO PROVIDE THE JURY WITH ANY
5 EVIDENCE OR TESTIMONY THAT YOU WISH FOR THEM TO CONSIDER,
6 THIS IS THE ONLY OPPORTUNITY THAT YOU WILL HAVE TO PROVIDE
7 THAT TESTIMONY. DO YOU UNDERSTAND YOUR RIGHT TO TESTIFY
8 OR NOT TESTIFY?

9 MS. LEEBAY JETER - YES, SIR.

10 THE COURT - AND HAS MR. WELCH EXPLAINED TO YOU
11 THE ADVANTAGES AND THE DISADVANTAGES OF YOUR TESTIFYING
12 AND OF YOUR NOT TESTIFYING?

13 MS. LEEBAY JETER - YES, SIR.

14 THE COURT - DO YOU UNDERSTAND WHAT THOSE
15 ADVANTAGES AND DISADVANTAGES ARE?

16 MS. LEEBAY JETER - YES, SIR.

17 THE COURT - HAVE YOU HAD PLENTY OF TIME TO TALK
18 WITH YOUR LAWYER ABOUT YOUR DECISION AS TO WHETHER OR NOT
19 YOU'LL TESTIFY?

20 MS. LEEBAY JETER - YES, SIR.

21 THE COURT - DO YOU UNDERSTAND THAT WHILE MR.
22 WELCH CAN PROVIDE YOU WITH HIS OPINION AND PROVIDE YOU
23 WITH ANY ADVICE THAT HE DEEMS IS APPROPRIATE, THAT HE
24 CAN'T MAKE THAT DECISION FOR YOU. ONLY YOU CAN MAKE THE
25 DECISION AS TO WHETHER OR NOT YOU'LL TESTIFY. DO YOU

1 UNDERSTAND THAT?

2 MS. LEEBAY JETER - YES, SIR.

3 THE COURT - AND THAT YOU UNDERSTAND THAT THIS IS
4 THE ONLY OPPORTUNITY THAT YOU HAVE TO TESTIFY OR TO CALL
5 ANY OTHER WITNESSES OR PRODUCE ANY OTHER EVIDENCE?

6 MS. LEEBAY JETER - YES, SIR.

7 THE COURT - NOW, IF YOU CHOOSE TO TESTIFY, YOU,
8 OF COURSE, WOULD HAVE TO ANSWER QUESTIONS NOT ONLY YOUR
9 LAWYER WOULD ASK YOU, YOU'D HAVE TO ANSWER QUESTIONS THAT
10 THE STATE'S LAWYER WOULD ASK YOU, EVEN IF THE ANSWERS
11 MIGHT TEND TO PROVE YOU GUILTY OF THE CRIME BROUGHT
12 AGAINST YOU. AND IF YOU CHOOSE NOT TO TESTIFY, I WILL, OF
13 COURSE, INSTRUCT THE JURY THAT THEY MAY NOT CONSIDER THAT
14 FACT IN ANY WAY WHATSOEVER IN THEIR DELIBERATIONS NOR IN
15 THEIR DETERMINATION AS TO WHETHER OR NOT YOU HAVE BEEN
16 PROVEN GUILTY OF THE CRIME ALLEGED AGAINST YOU.
17 UNDERSTANDING THOSE THINGS, DO YOU STILL ADHERE TO YOUR
18 DECISION NOT TO TESTIFY?

19 MS. LEEBAY JETER - YES, SIR.

20 THE COURT - AND IS THAT A DECISION THAT YOU HAVE
21 MADE OF YOUR OWN FREE WILL AND ACCORD?

22 MS. LEEBAY JETER - YES, SIR.

23 THE COURT - HAS ANYONE PRESSURED YOU OR
24 THREATENED YOU THAT CAUSED YOU TO ARRIVE AT THAT DECISION?

25 MS. LEEBAY JETER - NO, SIR.

1 THE COURT - AND YOU'VE MADE THAT DECISION
2 UNDERSTANDING FULLY THE CONSEQUENCES OF THAT DECISION?

3 MS. LEEBAY JETER - YES, SIR.

4 THE COURT - YOU'RE SATISFIED WITH IT?

5 MS. LEEBAY JETER - YES, SIR.

6 THE COURT - NOW, MR. WELCH AND MR. MABRY HAVE
7 INDICATED TO ME THAT YOU DO HAVE A PRIOR CRIMINAL RECORD,
8 AS MR. WELCH SAID, I BELIEVE, FOR TWO PRIOR DRUG OFFENSES,
9 AND IF YOU WERE TO BE CONVICTED OR FOUND GUILTY OF THIS
10 PARTICULAR OFFENSE, TRAFFICKING IN COCAINE TEN GRAMS OR
11 GREATER, IT WOULD BE A THIRD OR SUBSEQUENT UNDER THE LAW.
12 HAS MR. WELCH EXPLAINED TO YOU THE PUNISHMENT OR PENALTY
13 FOR A THIRD OR SUBSEQUENT CONVICTION FOR TRAFFICKING IN
14 COCAINE?

15 MS. LEEBAY JETER - YES, SIR.

16 THE COURT - AND YOU UNDERSTAND WHAT THE
17 PUNISHMENT OR PENALTY IS?

18 MS. LEEBAY JETER - YES, SIR.

19 THE COURT - NOW, MR. WELCH AND MR. MABRY HAVE
20 ALSO INDICATED TO ME THAT THERE HAVE BEEN SOME
21 NEGOTIATIONS REGARDING WHAT THE STATE WOULD BE WILLING TO
22 AGREE TO IN THE EVENT THAT YOU ARE WILLING TO ENTER A PLEA
23 OF GUILTY TO THE CHARGE. AND I UNDERSTAND THAT THEY WOULD
24 BE WILLING TO REDUCE THE OFFENSE FROM A THIRD OR A
25 SUBSEQUENT TO A SECOND AS OPPOSED TO A THIRD OR A

1 SUBSEQUENT, WHICH, OF COURSE, WOULD PROVIDE FOR A
2 DECREASED EXPOSURE SO FAR AS INCARCERATION IS CONCERNED
3 AND IT WOULD ALLOW THE COURT A GREAT DEGREE OF DISCRETION
4 SO FAR AS SENTENCING IS CONCERNED. HAVE YOU HAD PLENTY OF
5 TIME TO TALK WITH YOUR LAWYER ABOUT THE OFFER MADE BY THE
6 STATE?

7 MS. LEEBAY JETER - I HAVE TALKED TO MY ATTORNEY
8 ABOUT IT, BUT COULD I JUST TAKE A FEW MINUTES AND TALK TO
9 MY FAMILY?

10 THE COURT - WELL, SURE. WE'LL TAKE A SHORT
11 BREAK. YOU TALK WITH MR. WELCH AND YOUR FAMILY MEMBERS
12 ABOUT IT, BECAUSE THAT'S AN IMPORTANT DECISION THAT YOU'VE
13 GOT TO MAKE.

14 ALL RIGHT, LET'S TAKE ABOUT TEN MINUTES BEFORE
15 WE CONTINUE.

16 (RECESS IS TAKEN)

17 THE COURT - ALL RIGHT, MS. LEEBAY, HAVE YOU HAD
18 PLENTY OF TIME TO TALK WITH YOUR LAWYER NOW?

19 MS. LEEBAY JETER - YES, SIR.

20 THE COURT - AND YOU STILL WISH TO GO FORWARD AND
21 HAVE THE JURY DETERMINE THE VERDICT IN THE CASE?

22 MS. LEEBAY JETER - YES, SIR.

23 THE COURT - ALL RIGHT. OKAY, WHAT OTHER MATTERS
24 DO WE NEED TO ADDRESS BEFORE WE BRING THE JURY IN?

25 MR. MABRY - NOTHING FROM STATE.

1 MR. WELCH - ONLY THING FROM DEFENSE, JUDGE,
2 OBVIOUSLY, WITH NO TESTIMONY AND NO DEFENSE, WE DO LAST
3 CLOSING.

4 THE COURT - WELL, LET ME ASK MS. LEEBAY ABOUT
5 THAT. MS. LEEBAY, DO YOU HAVE ANY OTHER WITNESSES YOU
6 WANT YOUR LAWYER TO CALL?

7 MS. LEEBAY JETER - THERE IS NONE.

8 THE COURT - ALL RIGHT. Y'ALL HAVE ANY REQUEST
9 FOR INSTRUCTIONS?

10 MR. WELCH - JUDGE, SINCE I KNOW THE COURT'S
11 GOING TO USE YOUR STANDARD INSTRUCTION ON CONSTRUCTIVE
12 POSSESSION AND ON THE TRAFFICKING IN MORE THAN TEN GRAMS,
13 WE DON'T HAVE ANY REQUEST.

14 MR. MABRY - OUR ONLY REQUEST IS THE STANDARD
15 CHARGE ON THE CIRCUMSTANTIAL EVIDENCE NOW WHICH IS IT IS
16 GOOD EVIDENCE THE SAME AS DIRECT EVIDENCE. IT'S NO LONGER
17 THE HYPOTHESIS CHARGE.

18 THE COURT - WELL, THAT'S NOT REALLY TRUE. BOTH
19 ARE --- BOTH ARE --- BOTH ARE STANDING CHARGES. BOTH ARE
20 APPLICABLE. THEY'RE BOTH VALID.

21 MR. MABRY - MY REQUEST ON THAT, YOUR HONOR, WAS
22 WHAT THE --- I CAN'T REMEMBER THE CASE. IT WAS --- I
23 BELIEVE IT'S A ARSON CASE THAT JUDGE FLOYD TRIED THAT WAS
24 RESERVED. THE SUPREME COURT BASICALLY STATED THAT THE NEW
25 STANDARD ON CIRCUMSTANTIAL EVIDENCE WAS THAT IT WAS THE

1 SAME AS DIRECT EVIDENCE. IT HAD TO MEET THE TEST OF
2 BEYOND A REASONABLE DOUBT.

3 THE COURT - WELL, THAT'S TRUE, BUT THAT'S ALWAYS
4 BEEN TRUE.

5 MR. MABRY - I KNOW, BUT I BELIEVE THEY --- I
6 BELIEVE THEY SPECIFICALLY SAID THAT'S THE WAY IT'S
7 SUPPOSED TO BE CHARGED TO A JURY NOW IS CIRCUMSTANTIAL
8 EVIDENCE AND DIRECT EVIDENCE ARE CHARGED THE SAME WAY.
9 IT'S NOT THAT TO THE EXCLUSION OF EVERY OTHER REASONABLE
10 HYPOTHESIS. I MAY BE WRONG ABOUT THAT, BUT I BELIEVE
11 THAT'S WHAT THEY STATED.

12 THE COURT - CAN I SEE Y'ALL JUST A MINUTE.

13 (BENCH CONFERENCE WAS HELD OUT OF THE PRESENCE
14 OF THE JURY WHICH WAS NOT REPORTED.)

15 MR. MABRY - THAT'S ALL WE HAVE, YOUR HONOR.

16 THE COURT - OKAY. (PAUSE) ALL RIGHT, BRING THE
17 JURY IN, PLEASE, SIR.

18 (JURY RETURNS.)

19 THE COURT - ALL RIGHT, LADIES AND GENTLEMEN, AS
20 YOU KNOW, THE STATE HAS RESTED IN THEIR PRESENTATION. MR.
21 WELCH, DOES THE DEFENSE WISH TO OFFER ANY EVIDENCE?

22 MR. WELCH - NO, SIR, YOUR HONOR, MY CLIENT
23 CHOOSES TO TAKE HER CONSTITUTIONAL RIGHT NOT TO TESTIFY,
24 AND SHE HAS NO EVIDENCE TO OFFER.

25 THE COURT - ALL RIGHT, LADIES AND GENTLEMEN,

1 THAT IS ALL OF THE TESTIMONY OR OTHER EVIDENCE TO BE
2 OFFERED IN THE TRIAL OF THE CASE. WHAT REMAINS TO BE DONE
3 ARE THE LAWYERS' FINAL SUMMATIONS AFTER WHICH I'LL GIVE
4 YOU THE INSTRUCTION ON THE LAW. SO I'LL ASK THAT YOU
5 PLEASE GIVE THE LAWYERS YOUR CAREFUL ATTENTION NOW AS THEY
6 GIVE YOU THEIR FINAL SUMMATIONS.

7 MR. MABRY.

8 MR. MABRY - YES, SIR, YOUR HONOR. THANK YOU.

9 CLOSING STATEMENTS

10 MR. MABRY - MADAM FORE-LADY, LADIES AND
11 GENTLEMEN OF THE JURY, AGAIN, I WANT TO THANK YOU FOR YOUR
12 TIME AND YOUR ATTENTION. I'VE WATCHED YOU DURING THIS
13 CASE AND YOU'VE PAID CLOSE ATTENTION TO THE EVIDENCE IN
14 THIS CASE. THIS IS A VERY IMPORTANT CASE TO THE STATE OF
15 SOUTH CAROLINA. IT'S A VERY SERIOUS MATTER OF TRAFFICKING
16 IN COCAINE MORE THAN TEN GRAMS. AS THE JUDGE --- JUDGE
17 COLE IS AN EXPERT ON THE LAW, AND HE'S GOING TO CHARGE YOU
18 IN JUST A LITTLE WHILE ON THE ELEMENTS OF THE CRIME THAT
19 THE STATE HAS TO PROVE. WE HAVE TO PROVE EACH ELEMENT
20 BEYOND A REASONABLE DOUBT. WE DO NOT HAVE TO PROVE MS.
21 JETER, THE DEFENDANT, GUILTY BEYOND A SHADOW OF A DOUBT OR
22 BEYOND ALL DOUBT, BECAUSE THAT'S IMPOSSIBLE. I BELIEVE
23 HE'LL TELL YOU THAT. WHAT WE HAVE TO DO IS REMOVE ANY
24 REASONABLE DOUBT IN YOUR MIND THAT SHE IS GUILTY OF THE
25 CRIME WITH WHICH SHE'S CHARGED. AND I BELIEVE THE

1 EVIDENCE HAS SHOWN, AND I'M SURE YOU WILL FIND WE HAVE
2 DONE THAT. WE'VE PROVED HER GUILTY BEYOND A REASONABLE
3 DOUBT OF TRAFFICKING IN COCAINE.

4 FIRST OF ALL, YOU HEARD THE TESTIMONY OF ASHLEY
5 HARRIS, THE CHEMIST, WHO TESTIFIED THAT THIS SUBSTANCE
6 THAT WAS FOUND THERE ON MS. JETER IS COCAINE, AND IT IS
7 MORE THAN TEN GRAMS OF COCAINE. THAT IS ONE OF THE
8 ELEMENTS OF THE CRIME THAT WE HAVE TO PROVE, THAT SHE
9 POSSESSED COCAINE. WE'VE SHOWN THAT. AND THAT IT WAS
10 MORE THAN TEN GRAMS OF COCAINE, AND WE HAVE SHOWN THAT.
11 AND, FINALLY, THAT SHE POSSESSED THAT COCAINE, ACTUALLY OR
12 CONSTRUCTIVELY. WE HAVE SHOWN THAT IN THIS CASE. ON
13 OCTOBER 29TH, 1997 SHE WENT TO BREAKFAST. SHE TOOK THIS
14 WITH HER. (INDICATING) I BELIEVE THAT'S IMPORTANT. SHE
15 TOOK IT WITH HER TO BREAKFAST. NOW, WHY DID SHE NOT LEAVE
16 IT IN HER ROOM? WELL, THERE WAS SOMETHING IMPORTANT
17 INSIDE THIS, SOMETHING SO IMPORTANT SHE WAS WILLING TO
18 COME AND GET IT AS SOON AS THEY CALLED HER. SHE MADE A
19 MISTAKE. SHE LEFT IT THERE AT THE TABLE. TWO WITNESSES
20 WHO DON'T KNOW HER FROM ADAM, WHO JUST WORKED THERE,
21 MINDING THEIR OWN BUSINESS, LITERALLY. ONE OF THEM'S
22 WORKED THERE 30 YEARS; THE OTHER ONE WAS THE MANAGER THERE
23 AT THE BUSINESS --- DO WHAT ANY PERSON WOULD DO NATURALLY.
24 SOME OF YOU HAVE PROBABLY BEEN SOMEWHERE AND YOU FOUND
25 WHERE SOMEBODY LEFT THEIR WALLET, LEFT A PURSE OR CHANGE

1 PURSE, AND YOU GIVE IT TO THE WAITRESS OR YOU GIVE IT TO
2 THE MANAGER, AND YOU SAY SOMEBODY LEFT THIS. WELL, THE
3 FIRST PERSON THAT CAME IN THE RESTAURANT AFTER SHE SAT AT
4 THAT BOOTH FOUND IT SITTING THERE AND SAID, THIS WAS LEFT
5 HERE. MS. WILLIAMS IMMEDIATELY OPENED IT AND INSIDE WAS
6 THAT TISSUE THAT WITH MORE THAN TEN GRAMS OF COCAINE WHERE
7 SHE HAD JUST LEFT IT. SHE TAKES IT AND GIVES IT TO HER
8 MANAGER, MR. PETRIS, AND HE LOOKS AT IT AND HE SAYS, THIS
9 DOESN'T LOOK RIGHT. IT MADE HIM SUSPICIOUS. SO HIS SON
10 KNEW A NARCOTICS OFFICER. HE IMMEDIATELY CALLS THE
11 POLICE. THEY COME OUT THERE AND LOOK AT IT, AND THEY TEST
12 IT. AND SURE ENOUGH, IT'S COCAINE. THEY DECIDE TO CATCH
13 THE PERSON THAT LEFT IT. THEY PUT IT BACK IN THE PURSE,
14 ZIP IT UP. THAT WAS THE TESTIMONY. THEY ASKED MR. PETRIS
15 TO CALL THE PERSON WHO LEFT IT. HE CALLS THE ROOM MS.
16 JETER'S IN, TALKS TO MS. JETER. THAT WAS HIS TESTIMONY.
17 DID YOU LEAVE A CHANGE PURSE? SHE SAID, YES, I DID; THANK
18 YOU; I'LL BE RIGHT THERE TO GET IT. AND SHE IMMEDIATELY
19 COMES ACROSS THAT PARKING LOT AT THE PEACH BLOSSOM MOTEL,
20 COMES INTO THE RESTAURANT; HE HANDS IT TO HER; SHE SAYS
21 THANK YOU. SHE TAKES IT. AS HE SAID, SHE OPENS IT AND
22 LOOKS IN IT. I THINK YOU CAN SEE HER DOING THAT RIGHT
23 NOW. SHE WANTED TO MAKE SURE THAT THE IMPORTANT THING WAS
24 IN THERE, AND THAT WAS THAT TISSUE CONTAINING THAT
25 COCAINE. SHE IMMEDIATELY --- SHE DIDN'T TELL MR. PETRIS,

1 OH, THAT'S NOT MINE; I DON'T POSSESS THAT; IT DOESN'T
2 BELONG TO ME; IT'S SOMEBODY ELSE'S. SHE GRABBED IT AND
3 TOOK IT. SHE WAS GLAD TO GET IT BACK, AND SHE WENT OUT
4 THAT DOOR. THEN WHEN SHE WAS STOPPED OUTSIDE BY THE
5 POLICE, THEY TOLD HER SHE'S UNDER ARREST FOR TRAFFICKING
6 IN COCAINE; THEY READ HER HER MIRANDA RIGHTS. THEY ASKED
7 HER IF THEY COULD SEARCH HER ROOM. AND I THINK THIS IS
8 IMPORTANT, BECAUSE SHE SAID --- SHE SAID, SURE, YOU CAN
9 SEARCH MY ROOM, BECAUSE I DON'T HAVE ANYTHING IN THERE.
10 WELL, SHE DIDN'T. SHE CARRIED THE IMPORTANT STUFF WITH
11 HER, EXCEPT WHEN SHE FORGOT THIS. (INDICATING) SHE
12 CARRIED THE COCAINE WITH HER TO BREAKFAST SO NOBODY COULD
13 COME IN THAT ROOM, A CLEANING LADY OR SOMEBODY, AND TAMPER
14 WITH HER DRUGS. SHE CARRIED THAT MARIJUANA IN HER POCKET
15 ON HER PERSON. SHE DIDN'T LEAVE THE IMPORTANT STUFF
16 BEHIND. SHE CARRIED IT WITH HER EXCEPT WHEN SHE MADE THAT
17 ONE MISTAKE, BUT SHE FORGOT ONE THING. (INDICATING) WHEN
18 SHE CONSENTED TO THE SEARCH OF THAT HOTEL ROOM, SHE FORGOT
19 THAT SHE LEFT HER SCALES IN HER PURSE. AND THEY WENT BACK
20 AND SEARCHED THAT ROOM AND IN HER PURSE, MS. JETER'S
21 PURSE, THESE SCALES THAT ARE USED TO WEIGH OUT DRUGS FOR
22 SALE. YOU HEARD THE TESTIMONY OF THE DETECTIVE WHO'S
23 WORKED IN NARCOTICS FOR SEVERAL YEARS. THE JUDGE IS GOING
24 TO CHARGE YOU ABOUT CIRCUMSTANTIAL EVIDENCE AND DIRECT
25 EVIDENCE. I BELIEVE HE'LL TELL YOU THAT THEY'RE BOTH

1 GOOD. SOMETIMES YOU HEAR ON T.V., AH, THAT'S JUST
2 CIRCUMSTANTIAL EVIDENCE; THAT DOESN'T COUNT. THAT IS NOT
3 TRUE. THAT'S TELEVISION; THAT'S NOVELS. THAT IS NOT
4 CORRECT. CIRCUMSTANTIAL EVIDENCE IS JUST AS GOOD AS
5 DIRECT EVIDENCE. HE'LL TELL YOU THAT WHEN WE RELY ON
6 CIRCUMSTANTIAL EVIDENCE, WE JUST HAVE TO PROVE THAT
7 THERE'S NO OTHER REASONABLE HYPOTHESIS OR REASON THAT ---
8 BUT THAT SHE'S GUILTY. WE HAVE DONE THAT IN THIS CASE.
9 CIRCUMSTANTIAL EVIDENCE IS IF LIKE YOU HEAR IT THUNDERING
10 OUTSIDE, YOU HEAR THE RAIN ON THE ROOF AND YOU SEE THE
11 PERSON WALK IN THE DOOR WITH AN UMBRELLA AND THEY'RE
12 SHAKING IT OFF. YOU DON'T HAVE TO SEE OUTSIDE TO KNOW
13 THAT IT'S RAINING. YOU KNOW IT'S RAINING BECAUSE THAT
14 PERSON'S SOAKING WET AND YOU CAN HEAR THE THUNDER; YOU CAN
15 HEAR THE RAIN. THE EVIDENCE IN THIS CASE IS BOTH
16 CIRCUMSTANTIAL AND DIRECT. THE FACT THAT SHE CAME AND GOT
17 THAT PURSE IMMEDIATELY AND DIRECT EVIDENCE SHE SAID THAT
18 THAT IS MY PURSE, THAT SHE TOOK IT INTO HER HANDS AND SHE
19 HAD IT. BUT THE ONE THING I WANT YOU TO USE THE MOST IN
20 THIS CASE AND DURING YOUR DELIBERATIONS, MADAM FORE-LADY,
21 LADIES AND GENTLEMEN OF THE JURY, IS YOUR GOOD COMMON
22 SENSE. JUDGE COLE IS GOING TO TELL YOU THAT YOU ARE THE
23 JUDGES OF THE FACTS. HE CAN'T TELL YOU WHAT THE FACTS
24 ARE. HE'LL GIVE YOU THE LAW, BUT HE WILL TELL YOU TO USE
25 YOUR GOOD COMMON SENSE. AND I THINK WHEN YOU LOOK AT ALL

1 THE EVIDENCE IN THIS CASE, THE WAY THIS THING HAPPENED,
2 THE WAY SHE SAID, YES, THAT'S MINE; SHE IMMEDIATELY CAME
3 AND GOT THE BAG; SHE WALKED OUT THE DOOR; SHE HAD OTHER
4 DRUGS ON HER; SHE HAD SCALES IN HER PURSE; YOUR COMMON
5 SENSE TELLS YOU ONLY ONE THING, AND THAT IS, SHE IS GUILTY
6 OF TRAFFICKING IN COCAINE. WE ASK YOU TO RETURN A VERDICT
7 OF GUILTY, BECAUSE THAT IS THE TRUTH, AND THE VERDICT
8 SHOULD SPEAK THE TRUTH. THANK YOU.

9 THE COURT - MR. WELCH.

10 MR. WELCH - THANK YOU, JUDGE. LADIES AND
11 GENTLEMEN, THAT'S ALL OF THE EVIDENCE, AND THERE ARE SOME
12 THINGS ABOUT OUR SYSTEM THAT WHEN I CAME UP TO YOU TO
13 BEGIN WITH I TOLD YOU I WANTED YOU TO UNDERSTAND, THAT I
14 WANTED YOU TO HOLD ON TO. ONE OF THEM WAS REASONABLE
15 DOUBT. WHEN I VERY FIRST STARTED DOING THIS AND OVER THE
16 YEARS AS I'VE DEFENDED PEOPLE THAT COME TO ME AND SAID I'M
17 NOT GUILTY, I DIDN'T DO THIS. AND MS. LEEBAY JETER HAS
18 SAID ---

19 MR. MABRY - OBJECTION. MAY WE APPROACH?

20 (BENCH CONFERENCE WAS HELD IN THE PRESENCE OF
21 THE JURY BUT OUT OF THE HEARING OF THE JURY WHICH WAS NOT
22 REPORTED.)

23 THE COURT - YOU MAY CONTINUE.

24 MR. WELCH - AND MS. LEEBAY JETER PLED NOT GUILTY
25 BEFORE YOU AND BEFORE THIS COURT AND HAS COME BEFORE YOU

1 TO SAY I'M GOING TO PUT THE FACTS TO YOU. AND SHE
2 UNDERSTANDS THE BURDEN OF PROOF THE STATE HAS AND WHAT THE
3 FACTS SHOW. I'VE GOT A MIDDLE CHILD THAT'S NOW 13 AND AT
4 ONE POINT IN TIME SAID, YOU KNOW, DAD I'M GOING TO DO WHAT
5 YOU DO. I WAS EXPLAINING TO HIM WHAT I DO AND WHAT
6 REASONABLE DOUBT IS. IT'S BEEN ABOUT THREE OR FOUR YEARS
7 AGO. AND WHEN I'M TRYING TO EXPLAIN TO HIM WHAT
8 REASONABLE DOUBT IS, I CAME UP WITH SOMETHING THAT I THINK
9 DISPLAYS WHAT REASONABLE DOUBT IS. KEEP IN MIND THE JUDGE
10 IS GOING TO TELL IN THE LAW WHAT IT IS. BUT I DREW THIS
11 BOX AND --- GIVE ME TWO OR THREE MINUTES ON THIS. THIS
12 BOX IS ABOUT TWO FEET BY TWO FEET BY TWO FEET AND IT'S GOT
13 A TOP, AND IF MY SON AND I --- WELL, HE'S EIGHT OR NINE --
14 - TAKE AND WE PUT A MOUSE IN THIS BOX AND WE PUT THE TOP
15 ON IT --- ABOUT THAT LONG (INDICATING) --- AND YOU PUT A
16 CAT IN THAT BOX WITH THE MOUSE WITH THE TOP ON IT, AND WE
17 TIE IT UP ON THE TOP WITH A GOOD STRONG KNOT AND WE COME
18 BACK IN 30 MINUTES AND WE UNDO THE KNOT AND WE TAKE OFF
19 THE TOP AND THE CAT'S THERE BUT THE MOUSE IS NOT. WHAT
20 HAPPENED TO THE MOUSE? THE CAT ATE IT. THAT'S WHAT CAT'S
21 DO. THE MOUSE IS GONE. IT'S IN THE CAT'S STOMACH.
22 PRETTY OBVIOUS CONCLUSION. RIGHT? BUT WE TAKE THE SAME
23 BOX AND WE TAKE THE SAME MOUSE AND WE TAKE THE SAME CAT
24 AND WE THEM IN THERE AND WE TIE THAT SAME KNOT IN THE TOP
25 AND WE COME BACK 30 MINUTES LATER AND THERE'S A LITTLE

1 MOUSE SIZE HOLE, VERY TINY, VERY SMALL, JUST BIG ENOUGH
2 FOR A MOUSE TO POSSIBLY HAVE GNAWED THROUGH REAL QUICK AND
3 GOT OUT. AND WE TAKE THE TOP OFF, AND WE CAN'T BE SURE IF
4 THAT HOLE WAS BIG ENOUGH OR NOT, BUT IT'S POSSIBLE. NOW,
5 WHAT HAPPENED TO THE MOUSE? DID THE CAT EAT THE MOUSE
6 BEFORE THE MOUSE GOT OUT? DID THE MOUSE ESCAPE? IS IT
7 SOMEWHERE ELSE IN THIS ROOM OR IN YARD WHERE WE LEFT THE
8 BOX? WE DON'T KNOW. AND THAT'S REASONABLE DOUBT. THAT
9 IS WHAT REASONABLE DOUBT IS. IT IS A TINY MOUSE-SIZE HOLE
10 THERE IN THE CORNER OF AN EVIDENTIARY BOX THAT SAYS I
11 CAN'T TELL YOU THAT, BECAUSE YOU SEE, A CRIMINAL DEFENSE
12 ACTION, LADIES AND GENTLEMEN IS NOT ABOUT, WELL, IT DOES
13 KIND OF ADD UP OR IT'S NOT ABOUT, WELL, YOU KNOW, WHEN YOU
14 PUT IT ALL TOGETHER, I MEAN I CAN SEE THE STATE'S POINT.
15 THAT'S NOT WHAT IT'S ABOUT. IT'S ABOUT SAYING, BEFORE WE
16 CONVICT YOU OF A FELONY CRIME OF TRAFFICKING IN COCAINE,
17 I'M NOT GOING TO HAVE ANY REASONABLE DOUBT IN MY MIND THAT
18 YOU'RE NOT GUILTY, PLEASE. AND THIS CASE IS FULL OF
19 LITTLE MOUSE-SIZE HOLES. NOW, IT'S A SHORT CASE IN TERMS
20 OF THE FACTS, AND PLEASE BEAR WITH ME FOR ABOUT THREE OR
21 FOUR MINUTES WHILE I GO OVER SOME OF THOSE FACTS, BECAUSE
22 I WANT TO TELL YOU WHAT THE FACTS ACTUALLY SHOW. THE
23 FACTS SHOW THAT ON THAT DATE SOMEBODY CALLED MY CLIENT.
24 SHE'S AT A MOTEL HERE IN SPARTANBURG COUNTY, BURNED OUT OF
25 HER HOUSE. SHE'S GONE OVER TO EAT SOME BREAKFAST; THE RED

1 CROSS IS PUTTING HER UP. AND SHE LEAVES THIS AT A BOOTH.
2 (INDICATING) AND SOMETIMES LATER --- SOMETIMES --- I
3 BELIEVE THEY SAID THE CALL --- YOU KNOW, EIGHT OR NINE
4 O'CLOCK OR SOMEWHERE IN THERE --- SOMEBODY WE DON'T KNOW
5 COMES UP TO THE WAITRESS. THE WAITRESS SAYS I DON'T KNOW
6 WHO IT WAS. AND THEY SAID I FOUND THIS IN THE BOOTH.
7 NOW, THE SOLICITOR WANTS YOU TO SAY THAT THIS WAS SO
8 IMPORTANT THAT IT CONTAINED SOMETHING SO IMPORTANT THAT
9 SHE TOOK IT FROM HER ROOM WITH THE COCAINE IN IT AND THEN
10 ON THE FLIP-SIDE WANTS YOU TO BELIEVE THAT SHE FORGOT IT.
11 YOU CAN'T HAVE IT BOTH WAYS. THAT'S THE MOUSE-SIZE HOLE.
12 IF SHE KNEW THIS HAD TEN OR MORE GRAMS OF COCAINE IN IT
13 AND IT WAS THAT IMPORTANT THAT SHE TOOK IT FOR THAT
14 REASON, SHE WOULDN'T HAVE FORGOT. SHE WOULDN'T HAVE LEFT
15 IT IN THE BOOTH. I ASKED THEM ABOUT FINGERPRINTS. WHY
16 DIDN'T THEY FINGERPRINT IT? WHY DIDN'T THEY FINGERPRINT
17 THE BOTTLE? WHY DIDN'T THEY FINGERPRINT THIS?
18 (INDICATING) ISN'T THAT CONCLUSIVE? WASN'T EVEN ASKED
19 TO. AND THAT'S ANOTHER MOUSE-SIZE HOLE. THE GENTLEMAN OR
20 THE PERSON THAT BROUGHT IT UP AND GAVE IT TO THE WAITRESS,
21 HOW DO WE KNOW THAT PERSON DIDN'T THINK MAYBE LAW
22 ENFORCEMENT WAS AFTER THEM AND DECIDED THAT WAS A
23 CONVENIENT WAY TO DISPOSE OF COCAINE FROM HIS OR HER
24 POCKET AND THEN LEAVE. HOW DO WE KNOW? IT'S A MOUSE-SIZE
25 HOLE. WE DON'T. AND THAT IS REASONABLE DOUBT. NOW, I

1 WANT TO EXPLAIN ONE OTHER THING TO YOU BEFORE I SIT DOWN.
2 THIS HAS GOT NOTHING TO DO WITH THIS CASE. (INDICATING)
3 ABSOLUTELY NOTHING. MY CLIENT'S BEHAVIOR BY THE
4 DETECTIVE'S OWN ADMISSION AFTER HE CAME OUT TO THE
5 RESTAURANT --- I WANT YOU TO REMEMBER ONE THING VERY
6 IMPORTANT. THE DETECTIVE SAID HE WAS SITTING THERE
7 WATCHING AS MY CLIENT REACHED OVER AND GRABBED THIS CASE.
8 HE DIDN'T SEE HER OPEN IT. SHE DIDN'T OPEN IT. AND THIS
9 GENTLEMAN THAT STOOD UP HERE AND TOLD YOU HE REMEMBERS HER
10 OPENING IT TWO YEARS AGO, HE DIDN'T PUT IT IN THE
11 STATEMENT. HE DIDN'T TELL THE POLICE THAT TWO YEARS AGO.
12 TODAY'S THE FIRST TIME HE EVER TOLD ANYBODY SHE OPENED IT,
13 BECAUSE SHE DIDN'T. SHE HAD NO REASON TO. THEY WANT THIS
14 IN THE CASE, LADIES AND GENTLEMEN. SHE TOLD THEM ABOUT
15 THIS, AND THEY WANT THIS IN THE CASE, (INDICATING) BECAUSE
16 THEY WANT YOU TO SAY BAD PERSON; IF YOU SMOKE MARIJUANA,
17 YOU'LL HAVE COCAINE. I MEAN IT JUST AUTOMATICALLY GOES
18 THAT WAY, DOESN'T IT? IF YOU'LL SMOKE MARIJUANA, YOU'LL
19 DO COCAINE OR YOU'LL TRAFFICK IN COCAINE. AND THAT'S NOT
20 TRUE. AND THAT'S NOT SOMETHING THAT YOU CAN BASE A
21 CONVICTION ON. MY CLIENT STANDS UP HERE TELLING YOU SHE
22 SMOKES MARIJUANA. SHE HAD A TINY AMOUNT OF MARIJUANA WITH
23 HER. I DON'T APPROVE OF IT. WE MIGHT NONE OF US APPROVE
24 OF IT, BUT THIS CASE IS NOT ABOUT THIS MARIJUANA. IT'S
25 NOT ABOUT THAT AT ALL. IT'S NOT ABOUT THESE FINGER

1 SCALES. THIS CASE IS ABOUT WHETHER OR NOT THAT CRACK
2 COCAINE WAS IN THE CONSTRUCTIVE POSSESSION OF MY CLIENT OR
3 SHE EVEN KNEW ANYTHING ABOUT IT. THERE'S NOT ONE BIT OF
4 EVIDENCE THAT SAYS SHE DID. AND AS YOU GO BACK IN THAT
5 JURY ROOM, DO ME AND HER AND THE SYSTEM A FAVOR, AND DON'T
6 LET THE STATE GET AWAY WITH CLOUDING YOUR JUDGMENT BY
7 PUTTING SOME MARIJUANA OUT OF HER POCKET IN FRONT OF YOU
8 AND DANGLING THAT UP HERE IN CLOSING STATEMENT AND SAYING,
9 HEY, MARIJUANA, AH, SHE'LL DO COCAINE, THAT'S NOT WHAT
10 THE SYSTEM'S BASED ON. IT'S BASED ON EVIDENCE THAT SHE
11 KNEW COCAINE WAS IN THAT POUCH.

12 ONE LAST ITEM BEFORE I SIT DOWN. WE'VE TALKED
13 ABOUT BURDEN OF PROOF BEFORE. AND PLEASE REMEMBER THAT
14 THIS BURDEN OF PROOF, IT'S NOT JUST A SLIGHT TIP OF THE
15 SCALES AS I TOLD YOU IN OPENING. IT'S BEYOND REASONABLE
16 DOUBT. AND THIS CASE HAS DOUBT IN IT. IT HAS REASONABLE
17 DOUBT IN IT. MY CLIENT DID NOT KNOW THAT COCAINE WAS IN
18 THAT POUCH, AND THERE'S NO EVIDENCE THAT SHE DID. AND
19 WHEN YOU KNOW THAT AND IN YOUR HEART YOU KNOW THAT THIS
20 CASE HAS REASONABLE DOUBT AND THERE SHOULD NOT BE A
21 CONVICTION IN THIS CASE, YOU'RE GOING BACK TO DELIBERATE,
22 BUT JUST BECAUSE IT MIGHT BE GETTING TOWARD LUNCHTIME OR
23 JUST BECAUSE IT'S FRIDAY, IT'S NO REASON YOU HAVE TO GIVE
24 UP THE TRUTH AS YOU KNOW AND COMPROMISE WHAT THE SYSTEM'S
25 BASED ON SO WE CAN ALL AGREE TO GO HOME. YOU'RE ENTITLED

1 TO HOLD ON TO WHAT YOU KNOW. AND OUR SYSTEM OF JUSTICE
2 DOES NOT SURVIVE WHEN PEOPLE COMPROMISE WITHIN THEIR HEART
3 TO KNOW AND THAT IS THERE'S REASONABLE DOUBT IN THIS CASE,
4 JUST SO THEY CAN MAKE A UNANIMOUS DECISION. PROMISE ME
5 YOU'LL FOLLOW THE RULES TO THAT EXTENT, AND WHEN THAT
6 REASONABLE DOUBT IS THERE, AND IT IS, STICK WITH IT. AND
7 ONE LAST THING. IN THIS CASE AND THIS CASE ALONE, THIS
8 VERDICT SHOULD BE NOT GUILTY. I DON'T CARE ABOUT ALL THE
9 CASES THAT COME BEFORE AND ALL THE CASES THAT COME AFTER,
10 BECAUSE THAT'S NONE OF YOUR BUSINESS. THIS CASE IS ABOUT
11 DRUGS. BUT IN THIS CASE, PERSONALLY HOW WE FEEL ABOUT
12 DRUGS OR DRUG PROBLEM IN THIS COUNTRY HAS GOT NOTHING TO
13 DO WITH YOUR VERDICT. REASONABLE DOUBT AND THE EVIDENCE
14 HERE IS THE ONLY THING THAT PLAYS A ROLE. AND PROMISE ME
15 THAT YOU WON'T LET HOWEVER YOU FEEL ABOUT DRUGS IN GENERAL
16 INFLUENCE YOUR VERDICT. AND THE LAST THING IS, AS YOU GO
17 BACK THERE TO DELIBERATE, PLEASE KEEP IN MIND THAT WHEN
18 YOU COME BACK WITH A NOT GUILTY VERDICT, YOU'RE NOT
19 SENDING A MESSAGE TO ANYBODY, TO THE POLICE OR ANYBODY
20 ELSE, THAT THEY DIDN'T DO THEIR JOB OR THAT YOU'RE UPSET
21 WITH THEM. IT'S NOT GOING TO HURT ANYBODY'S FEELINGS.
22 THE SUN'S GOING TO COME UP IN SPARTANBURG TOMORROW JUST
23 LIKE IT DID TODAY. THEY'RE GOING TO GO ABOUT THEIR JOBS;
24 YOU'RE GOING TO GO ABOUT YOUR JOBS AND FAMILY LIFE. THE
25 ONLY DIFFERENCE WILL BE THAT YOU DID WHAT THE LAW

1 REQUIRES, BUT MAYBE IT'S NOT A POPULAR THING TO DO. YOU
2 CAREFULLY ANALYZE THE EVIDENCE AND YOU SAID, I CANNOT
3 EXCLUDE THE FACT THAT THIS WOMAN'S NOT GUILTY. IT'S TRUE.
4 BECAUSE THERE'S NO EVIDENCE TO SHOW THAT KNEW THE COCAINE
5 WAS IN THERE. AND WHEN YOU DO THAT, YOU WILL HAVE
6 FULFILLED THAT OATH YOU TOOK WHEN YOU WERE SWORN IN AS
7 JURORS, AND THE SYSTEM WILL HAVE WORKED AND YOU OWE AN
8 EXPLANATION TO NOBODY. I INVITE YOU TO BE STRONG AND DO
9 THAT, AND DON'T COMPROMISE WHEN YOU'VE GOT THAT LITTLE
10 DOUBT IN THE BACK OF YOUR HEAD.

11 THE COURT - MADAM FORE-LADY AND LADIES AND
12 GENTLEMEN OF THE JURY, YOU HAVE NOW HEARD AND SEEN ALL OF
13 THE EVIDENCE AND HEARD THE FINAL SUMMATIONS OF THE LAWYERS
14 AND IT NOW BECOMES MY OBLIGATION AND DUTY TO INSTRUCT YOU
15 ON THE LAW THAT'S APPLICABLE IN THE CASE OF THIS NATURE
16 AND THEN YOU'LL BE ASKED TO GO BACK INTO THE JURY ROOM AND
17 BEGIN YOUR DELIBERATIONS, AND THROUGH THAT PROCESS YOU
18 WILL SHARE YOUR VIEWS AND IDEAS OF THE EVIDENCE WITH YOUR
19 FELLOW JURORS. YOU WILL APPLY YOUR GOOD JUDGMENT AND
20 COMMON SENSE TO THE EVIDENCE THAT YOU'VE SEEN OR HEARD
21 DURING THE TRIAL OF THE CASE. YOU WILL DECIDE THE FACTS.
22 YOU WILL APPLY THE LAW. AND YOU WILL ARRIVE AT A FAIR AND
23 JUST DECISION BASED SOLELY UPON THAT EVIDENCE AND THE LAW
24 THAT HAS BEEN GIVEN YOU. IT IS YOUR EXCLUSIVE DUTY TO
25 DETERMINE WHAT THE FACTS ARE, AND YOU DO THAT THROUGH YOUR

1 OWN EXAMINATION AND YOUR OWN EVALUATION OF ALL OF THE
2 TESTIMONY AND THE OTHER EVIDENCE RECEIVED DURING THE TRIAL
3 OF THE CASE. YOU 12 JURORS ALONE WILL DECIDE WHAT WEIGHT,
4 VALUE AND EFFECT TO GIVE TO ANY PARTICULAR TESTIMONY OR
5 OTHER EVIDENCE RECEIVED DURING THE TRIAL OF THE CASE. IN
6 SO DOING, YOU'RE JUST SIMPLY CALLED UPON TO REACH THE
7 TRUTH IN THE MATTER, AND BY DOING THAT, YOU WILL HAVE
8 FULFILLED YOUR OBLIGATIONS AS JURORS AND THAT IS TO GIVE
9 BOTH THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL
10 TRIAL. NOW, AS YOU ARE AWARE, THE DEFENDANT IS CHARGED
11 IN THE INDICTMENT WITH THE OFFENSE OF TRAFFICKING IN
12 COCAINE. THE STATE ALLEGES BY WAY OF THAT INDICTMENT THAT
13 THE DEFENDANT DID IN SPARTANBURG COUNTY ON OR ABOUT
14 OCTOBER THE 29TH OF 1997 TRAFFICK IN TEN GRAMS OR MORE OF
15 COCAINE IN THAT SHE DID KNOWINGLY HAVE IN HER ACTUAL OR
16 CONSTRUCTIVE POSSESSION A QUANTITY OF COCAINE IN THE
17 AMOUNT OF TEN GRAMS OR MORE. NOW, AS TO THE CHARGE THAT
18 IS SET FORTH IN THAT INDICTMENT, THE DEFENDANT HAS ENTERED
19 A PLEA OF NOT GUILTY, AND AS I TOLD YOU, THAT PLEA OF NOT
20 GUILTY PLACES UPON THE STATE THE BURDEN OF PROVING THE
21 ALLEGATIONS SUPPORTING THE CHARGE, THE BURDEN OF PROVING
22 EACH OF THE ESSENTIAL ELEMENTS THAT MAKE UP THE OFFENSE OF
23 TRAFFICKING IN COCAINE, AND, THEREFORE, THE BURDEN IS UPON
24 THE STATE TO ESTABLISH THE GUILT OF THE DEFENDANT TO THE
25 SATISFACTION OF YOU 12 JURORS BEYOND A REASONABLE DOUBT.

1 THE BURDEN IS NEVER UPON A DEFENDANT OR A PERSON ACCUSED
2 OF HAVING COMMITTED SOME CRIME TO PROVE THAT THEY ARE NOT
3 GUILTY OR TO PROVE THAT THEY ARE INNOCENT, BECAUSE IN MANY
4 INSTANCES THAT MIGHT NOT BE POSSIBLE. THE BURDEN IS
5 ALWAYS UPON THE STATE IN BRINGING THE CHARGE AGAINST THE
6 DEFENDANT TO ESTABLISH THEIR GUILT BEYOND A REASONABLE
7 DOUBT. I CHARGE YOU THAT IS IT A VITAL, IMPORTANT AND
8 CARDINAL RULE OF LAW THAT EVERY DEFENDANT IN A CRIMINAL
9 TRIAL, NO MATTER HOW SERIOUS MIGHT BE THE OFFENSE FOR
10 WHICH THAT PERSON STANDS CHARGED, THAT PERSON SHALL ALWAYS
11 BE PRESUMED INNOCENT OF THAT CHARGE, AND THAT PRESUMPTION
12 OF INNOCENCE REMAINS WITH THAT PERSON FROM THE TIME OF
13 THEIR ARREST THROUGHOUT THE COURSE OF THE CRIMINAL PROCESS
14 AND EVEN THROUGHOUT THE COURSE OF THE TRIAL. THAT
15 PRESUMPTION OF INNOCENCE WILL REMAIN WITH MS. LEEBAY EVEN
16 WHEN YOU GO BACK INTO THE JURY ROOM TO BEGIN YOUR
17 DELIBERATIONS, AND IT WILL STILL REMAIN WITH HER THERE AS
18 I HAVE SAID, ALWAYS, UNLESS YOU 12 JURORS DETERMINE THAT
19 SHE'S NO LONGER ENTITLED TO THAT PRESUMPTION OF INNOCENCE.
20 THAT IS BASED UPON YOUR VIEW OF THE EVIDENCE, YOUR
21 DETERMINATION OF FACT AND YOUR APPLICATION OF LAW, YOU 12
22 JURORS DETERMINE THAT HER GUILT HAS BEEN PROVEN BEYOND A
23 REASONABLE DOUBT. THE STATE IS NOT REQUIRED TO PROVE THE
24 GUILT OF ANY DEFENDANT BEYOND ALL DOUBT OR BEYOND ALL
25 POSSIBLE DOUBT BUT THE STATE DOES HAVE THE BURDEN OF

1 PROVING THE GUILT OF THE DEFENDANT TO YOUR SATISFACTION
2 BEYOND A REASONABLE DOUBT. THE TERM REASONABLE DOUBT
3 SHOULD BE GIVEN ITS PLAIN AND ORDINARY MEANING. A
4 REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A
5 REASONABLE PERSON TO HESITATE TO ACT. THE DEFENDANT IS
6 ENTITLED TO EVERY REASONABLE DOUBT THAT ARISES FROM THE
7 EVIDENCE OR LACK OF EVIDENCE IN THE CASE AND IF UPON ANY
8 FACTUAL ISSUE ESSENTIAL TO A FINDING OF A VERDICT OF
9 GUILTY YOU HAVE SOME REASONABLE DOUBT AS TO HOW THAT ISSUE
10 SHOULD BE RESOLVED, IT WOULD BE YOUR DUTY TO RESOLVE THAT
11 REASONABLE DOUBT IN FAVOR OF THE DEFENDANT AND TO RETURN
12 A VERDICT OF NOT GUILTY. ON THE OTHER HAND, AFTER YOU
13 HAVE CONSIDERED ALL THE EVIDENCE IN THE CASE, IF YOU HAVE
14 NO REASONABLE DOUBT AS TO THE DEFENDANT'S GUILT, THEN IT
15 WOULD BE YOUR CORRESPONDING DUTY TO CONVICT THE DEFENDANT,
16 THAT IS TO FIND HER GUILTY.

17 NOW, AS I'VE STATED, YOU ARE THE SOLE JUDGES OF
18 THE FACTS IN THIS CASE. YOU ARE, THEREFORE, NECESSARILY
19 THE SOLE JUDGES OF THE CREDIBILITY, THAT IS THE
20 BELIEVABILITY OF EACH WITNESS THAT HAS TESTIFIED DURING
21 THE TRIAL OF THIS CASE. YOU ALONE WILL DECIDE WHAT
22 WEIGHT, VALUE AND EFFECT TO GIVE TO ANY PARTICULAR
23 WITNESS' TESTIMONY OR EVEN PORTIONS OF TESTIMONY. THERE
24 ARE A NUMBER OF FACTORS WHICH YOU SHOULD CONSIDER IN
25 ARRIVING AT YOUR ASSESSMENT AS TO A WITNESS' CREDIBILITY.

1 AND I'M GOING TO LIST SOME OF THOSE FACTORS FOR YOU.
2 YOU MAY CONSIDER THE DEMEANOR OF THE WITNESS, THAT IS HOW
3 THE WITNESS APPEARED TO YOU AS THE WITNESS TESTIFIED FROM
4 THE WITNESS STAND. DID THE WITNESS APPEAR TO BE
5 STRAIGHTFORWARD IN RESPONDING TO QUESTIONS? DID THE
6 WITNESS APPEAR TO YOU TO HAVE KNOWLEDGE OF THE FACT TO
7 WHICH THAT WITNESS TESTIFIED? YOU MAY CONSIDER WHETHER OR
8 NOT THE TESTIMONY OF A WITNESS IS CONSISTENT OR
9 INCONSISTENT WITH THAT WITNESS' OWN TESTIMONY OR WITH
10 OTHER TESTIMONY OR OTHER EVIDENCE RECEIVED DURING THE
11 TRIAL OF THE CASE. YOU MAY ALSO CONSIDER HOW THE WITNESS
12 CAME TO KNOW THE FACTS TO WHICH THAT WITNESS TESTIFIED.
13 WHAT WAS THAT WITNESS' OPPORTUNITY TO PERCEIVE THE
14 EXISTENCE OF THE FACTS TO WHICH THEY TESTIFIED BY MEANS OF
15 THEIR SENSES AND THEN BE ABLE TO COME INTO COURT AND TO
16 ACCURATELY RECOUNT TO YOU WHAT THEY HAVE PREVIOUSLY SEEN
17 OR HEARD. YOU MAY ALSO CONSIDER ANY BIAS OR PREJUDICE
18 THAT A WITNESS MIGHT HAVE. SIMPLY PUT, DO YOU FIND SOME
19 REASON A PARTICULAR WITNESS WOULD COME INTO COURT AND
20 WOULD TESTIMONY ONE WAY OR ANOTHER TO HELP OR HURT ONE
21 SIDE OR THE OTHER? YOU MAY ALSO CONSIDER ANY INTEREST
22 THAT A WITNESS MIGHT HAVE IN THE OUTCOME OF THE CASE IF
23 YOU DETERMINE THAT THERE IS SUCH AN INTEREST AND THAT THAT
24 INTEREST WOULD BEAR UPON THAT WITNESS' CREDIBILITY. YOU
25 MAY ALSO CONSIDER WHETHER OR NOT THE TESTIMONY OF A

1 WITNESS IS STRENGTHENED OR IS IT WEAKENED BY OTHER
2 TESTIMONY OR OTHER EVIDENCE RECEIVED DURING THE TRIAL OF
3 THE CASE. NOW, YOU AS THE FINDERS OF THE FACT AND YOU AS
4 THE JUDGES OF THE CREDIBILITY OF EACH WITNESS ARE
5 PERMITTED TO BELIEVE AS MUCH OR AS LITTLE OF WHAT A
6 WITNESS HAS TESTIFIED TO AS YOU DEEM IS APPROPRIATE. AND
7 THAT SIMPLY MEANS THAT YOU MAY BELIEVE EVERYTHING THAT A
8 WITNESS TESTIFIED TO. YOU MAY CHOOSE TO BELIEVE NONE OF
9 THE WITNESS' TESTIMONY. YOU MAY BELIEVE SOME PORTION OF
10 A WITNESS' TESTIMONY AND REJECT SOME OTHER PORTION OF THAT
11 SAME WITNESS' TESTIMONY. WHATEVER YOUR GOOD JUDGMENT AND
12 COMMON SENSE TELLS YOU IS THE MOST BELIEVABLE TESTIMONY
13 AND EVIDENCE IS THE EVIDENCE YOU SHOULD ACCEPT AND REJECT
14 ANY TESTIMONY OR EVIDENCE WHICH YOU FIND NOT TO BE
15 CREDIBLE OR BELIEVABLE. AND AS I'VE SAID, YOUR SOLE
16 OBJECTIVE IS TO SIMPLY REACH THE TRUTH IN THE MATTER, AND
17 BY DOING THAT, YOU WILL HAVE FULFILLED YOUR OBLIGATIONS IN
18 THE CASE. THE SAME LAW THAT PROVIDES THAT YOU ARE THE
19 JUDGES OF THE FACTS ALSO PROVIDES THAT I AM THE JUDGE OF
20 THE LAW, AND THAT SIMPLY MEANS THAT NO ONE IS GOING TO
21 TELL YOU HOW TO ARRIVE AT YOUR DETERMINATION OF FACT IN
22 THIS CASE. YOU DO THAT, AS I'VE STATED, THROUGH THE
23 EXERCISE OF GOOD JUDGMENT AND COMMON SENSE CONSCIENTIOUSLY
24 APPLIED TO THE EVIDENCE THAT YOU'VE SEEN AND HEARD DURING
25 THE TRIAL OF THIS CASE. YOU MUST, HOWEVER, ACCEPT THE LAW

1 AS I GIVE IT TO YOU AS BEING THE LAW THAT IS APPLICABLE IN
2 A CASE OF THIS NATURE. YOU ARE NOT TO CONCERN YOURSELF
3 WITH WHAT YOU THOUGHT THE LAW WAS OR WHAT YOU THINK THE
4 LAW OUGHT TO BE OR WHAT YOU WISH THE LAW WAS. YOU MUST
5 ACCEPT THE LAW AS I GIVE IT TO YOU AS BEING THE LAW THAT
6 IS APPLICABLE IN THIS PARTICULAR CASE, AND THEN YOU SIMPLY
7 TAKE THAT LAW AND YOU APPLY IT TO THE FACTS AS YOU 12
8 JURORS DETERMINE THOSE FACTS TO BE IN ORDER TO ARRIVE AT
9 YOUR DECISION. NOW, THERE ARE VARIOUS FORMS OF EVIDENCE
10 SUCH AS TESTIMONY FROM A WITNESS, SUCH AS A PHOTOGRAPH OR
11 A DOCUMENT OR A CHART OR OTHER TYPES OF PHYSICAL EXHIBITS
12 WHICH MIGHT BE INTRODUCED DURING THE TRIAL OF A CASE, BUT
13 THERE ARE REALLY ONLY TWO TYPES OF EVIDENCE, AND THE TWO
14 TYPES OF EVIDENCE ARE DIRECT EVIDENCE AND THE OTHER IS
15 CIRCUMSTANTIAL EVIDENCE AND EITHER DIRECT EVIDENCE OR
16 CIRCUMSTANTIAL EVIDENCE OR A COMBINATION OF THE TWO TYPES
17 OF EVIDENCE MAY BE USED TO PROVE A FACT IN ISSUE OR AN
18 ELEMENT OF A CRIMINAL OFFENSE. NOW, DIRECT EVIDENCE IS
19 THE TESTIMONY OF A PERSON OR PERSONS WHO HAVE PERCEIVED
20 THE EXISTENCE OF A FACT BY MEANS OF THEIR SENSES, AS WHERE
21 A PERSON VIEWS THE COMMISSION OF SOME ACT AND THEN THEY
22 COME INTO COURT AND THEY TESTIFY AS TO WHAT THEY HAVE
23 PREVIOUSLY SEEN OR WHAT THEY HAVE PREVIOUSLY HEARD.
24 CIRCUMSTANTIAL EVIDENCE, ON THE OTHER HAND, IS THE PROOF
25 OF SOME OTHER FACT OR FACTS WHICH TAKEN EITHER SINGLY OR

1 COLLECTIVELY MAY PROVE THE EXISTENCE OF A FACT IN QUESTION
2 AS A NECESSARY CONSEQUENCE, THAT IS BY AN INFERENCE. AND
3 AN INFERENCE IS SIMPLY A DEDUCTION OF FACT THAT MAY BE
4 LOGICALLY AND REASONABLY DRAWN FROM THE PROOF OF SOME
5 OTHER FACT OR SET OF FACTS. IN OTHER WORDS, YOU MAY INFER
6 THAT A PARTICULAR EVENT OCCURRED OR THAT A PARTICULAR FACT
7 EXIST BASED UPON PROOF OF CIRCUMSTANCES WHICH WOULD
8 REASONABLY WARRANT YOUR ARRIVING AT SUCH A CONCLUSION.
9 NOW, WHERE THE STATE RELIES UPON EVIDENCE WHICH IS SOLELY
10 CIRCUMSTANTIAL IN NATURE, EVERY CIRCUMSTANCE RELIED UPON
11 BY THE STATE MUST BE PROVEN BEYOND A REASONABLE DOUBT AND
12 ALL OF THE CIRCUMSTANCES SO PROVEN MUST BE CONSISTENT WITH
13 EACH OTHER AND TAKEN TOGETHER POINT CONCLUSIVELY TO THE
14 GUILT OF THE ACCUSED TO THE EXCLUSION OF ANY OTHER
15 REASONABLE EXPLANATION. NOW, THE LAW MAKES ABSOLUTELY NO
16 DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO
17 EITHER DIRECT EVIDENCE OR CIRCUMSTANTIAL EVIDENCE, NOR IS
18 A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL
19 EVIDENCE AS OPPOSED TO DIRECT EVIDENCE. BOTH TYPES OF
20 EVIDENCE ARE EQUALLY VALID SO LONG AS YOU 12 JURORS
21 DETERMINE THAT THOSE TYPES OF EVIDENCE ARE EQUALLY VALID.
22 WHATEVER THE TYPE OF EVIDENCE USED TO PROVE A FACT, YOU
23 SHOULD CONSIDER ALL THE EVIDENCE PRESENTED IN THE CASE AND
24 AFTER CONSIDERING AND WEIGHING ALL THAT EVIDENCE IN YOUR
25 MINDS, IF YOU ARE NOT CONVINCED OF THE GUILT OF THE

1 DEFENDANT BEYOND A REASONABLE DOUBT, THEN IT WOULD BE YOUR
2 DUTY TO FIND THE DEFENDANT NOT GUILTY.

3 CRIMINAL INTENT IS A NECESSARY ELEMENT OF ANY
4 CRIME THAT MUST BE PROVEN ALSO BEYOND A REASONABLE DOUBT.
5 CRIMINAL INTENT MAY BE INFERRED FROM THE CIRCUMSTANCES
6 THAT ARE SHOWN TO HAVE EXISTED AT THE TIME OF AN EVENT,
7 AND THAT IS ORDINARILY HOW YOU MAKE A DETERMINATION AS TO
8 WHETHER OR NOT CRIMINAL INTENT IS PRESENT SINCE IT
9 ORDINARILY IS NOT SUBJECT TO PROOF BY DIRECT EVIDENCE.
10 CRIMINAL INTENT IS A STATE OF MIND WHICH OPERATES JOINTLY
11 WITH AN ACT IN THE COMMISSION OF A CRIMINAL OFFENSE.
12 CRIMINAL INTENT IS A MENTAL STATE OF CONSCIOUS WRONGDOING.

13 NOW, IN THIS CASE, AS YOU KNOW, THE DEFENDANT IS
14 CHARGED WITH TRAFFICKING IN COCAINE. AND THAT'S A
15 STATUTORY OFFENSE. IT JUST SIMPLY MEANS THAT THERE IS A
16 PARTICULAR STATUTE WHICH HAS BEEN ENACTED OR PASSES BY THE
17 LEGISLATURE, AND IT PROHIBITS CERTAIN TYPE OF CONDUCT AND
18 WHERE THAT CONDUCT IS ENGAGING IN IT PROVIDES FOR A
19 CERTAIN PUNISHMENT OR PENALTY. IN THIS PARTICULAR CASE,
20 THE STATE HAS CHARGED THE DEFENDANT WITH THE OFFENSE OF
21 TRAFFICKING IN COCAINE, AND THE STATUTE THAT THE STATE
22 ALLEGES THE DEFENDANT HAS VIOLATED IS SET FORTH IN SOUTH
23 CAROLINA CODE SECTION 44-53-370 SUBSECTION (E) SUBSECTION
24 (2). THAT PARTICULAR CODE SECTION PROVIDES IN ITS
25 PERTINENT PARTS AS FOLLOWS:

1 ANY PERSON WHO KNOWINGLY SELLS, MANUFACTURERS,
2 DELIVERS OR BRINGS INTO THIS STATE OR WHO PROVIDES
3 FINANCIAL ASSISTANCE OR OTHERWISE AIDES, ABETS OR
4 CONSPIRES TO SELL, MANUFACTURE, DELIVER OR BRING INTO
5 THIS STATE OR WHO IS KNOWINGLY IN ACTUAL OR
6 CONSTRUCTIVE POSSESSION OF TEN GRAMS OR MORE OF
7 COCAINE OR ANY MIXTURES CONTAINING COCAINE IS GUILTY
8 OF THE CRIME KNOWN AS TRAFFICKING IN COCAINE.

9 SO DEPENDING UPON HOW YOU READ THE STATUTE OR HOW YOU LOOK
10 AT IT, THERE ARE BASICALLY FOUR ELEMENTS. SOME OF THOSE
11 CAN BE COMBINED, BUT PRIMARILY WHAT THE STATE HAS TO PROVE
12 BEYOND A REASONABLE DOUBT BEFORE THE DEFENDANT COULD BE
13 FOUND GUILTY OF A VIOLATION OF THIS STATUTE IS THAT NUMBER
14 (1) ANY SUBSTANCE THAT THE DEFENDANT IS ALLEGED TO HAVE
15 POSSESSED MUST BE PROVEN TO HAVE BEEN COCAINE. IT MUST
16 ALSO BE PROVEN THAT THE DEFENDANT WAS KNOWINGLY IN ACTUAL
17 OR CONSTRUCTIVE POSSESSION OF THAT SUBSTANCE, BEING
18 COCAINE, AND IT MUST BE PROVEN THAT THERE WAS AT LEAST TEN
19 GRAMS OR MORE OF THE SUBSTANCE COCAINE, AS I SAY, WHEN I
20 SAY TEN GRAMS OR MORE OF COCAINE, I MEAN COCAINE IN ITS
21 PURE FORM OR ANY MIXTURE CONTAINING COCAINE. THEREFORE,
22 YOU MUST FIRST DETERMINE IF THE STATE HAS PROVEN BEYOND A
23 REASONABLE DOUBT THAT THE DEFENDANT WAS KNOWINGLY IN
24 ACTUAL OR CONSTRUCTIVE POSSESSION OF TEN GRAMS OR MORE OF
25 COCAINE OR ANY MIXTURE CONTAINING COCAINE. KNOWINGLY IS

1 DEFINED AS HAVING KNOWLEDGE CONSCIOUSLY AND/OR WILLFULLY.

2 NOW, WITH RESPECT TO THE DEFINITION OF

3 POSSESSION, I CHARGE YOU THAT POSSESSION REQUIRES THAT A

4 PERSON BE IN ACTUAL OR CONSTRUCTIVE POSSESSION OF THE

5 SUBSTANCE WITH ACTUAL KNOWLEDGE OF ITS PRESENCE. ACTUAL

6 POSSESSION OF A SUBSTANCE OCCURS WHEN THE SUBSTANCE IS

7 FOUND TO BE IN THE ACTUAL PHYSICAL CUSTODY OR CONTROL OF

8 THE PERSON CHARGED WITH POSSESSION. CONSTRUCTIVE

9 POSSESSION OF A SUBSTANCE OCCURS WHEN A PERSON, ALTHOUGH

10 NOT IN ACTUAL PHYSICAL CUSTODY OR CONTROL OF THE

11 SUBSTANCE, EXERCISES DOMINION AND CONTROL OVER THE

12 SUBSTANCE OR HAS THE RIGHT TO EXERCISE DOMINION AND

13 CONTROL OVER THE SUBSTANCE. AND A PERSON HAS POSSESSION

14 OF A SUBSTANCE WITHIN THE MEANING OF THE LAW WHEN HE HAS

15 BOTH OR SHE HAS BOTH THE POWER AND THE INTENT TO CONTROL

16 ITS DISPOSITION OR USE. CONSTRUCTIVE POSSESSION MAY BE

17 PROVEN BY BOTH DIRECT EVIDENCE OR CIRCUMSTANTIAL EVIDENCE

18 OR A COMBINATION OF THE TWO TYPES OF EVIDENCE.

19 CONSTRUCTIVE POSSESSION OF A SUBSTANCE MAY BE INFERRED

20 WHERE THE SUBSTANCE IS FOUND UPON A PREMISES OR IN A

21 LOCATION WHICH IS UNDER THE DOMINION AND THE CONTROL OF

22 THE DEFENDANT WITH KNOWLEDGE OF ITS PRESENCE. KNOWLEDGE

23 MAY ALSO BE INFERRED WHERE A SUBSTANCE IS FOUND IN A

24 LOCATION UNDER THE DOMINION AND THE CONTROL OF THE

25 DEFENDANT. THESE INFERENCES THAT I HAVE INDICATED TO YOU

1 ARE SIMPLY THAT. THEY ARE SIMPLY EVIDENTIARY FACTS WHICH
2 MAY BE TAKEN INTO CONSIDERATION BY YOU JURORS ALONG WITH
3 ALL OF THE OTHER EVIDENCE IN THE CASE, AND YOU MAY GIVE
4 SUCH INFERENCES SUCH WEIGHT AS YOU DETERMINE THAT THEY
5 SHOULD RECEIVE, IF ANY. SIMPLY PUT, YOU MAY INFER FACTS
6 FROM THE PROOF OF ANOTHER FACT AS I HAVE STATED IF YOU
7 DETERMINE THAT THAT INFERENCE IS REASONABLE AND LOGICAL,
8 BUT YOU ARE IN NO WAY REQUIRED TO DO SO. I DO INSTRUCT
9 YOU, HOWEVER, THAT MERE PRESENCE AT THE SCENE OF A CRIME
10 OR MERE PRESENCE WHERE A SUBSTANCE IS LOCATED IS NOT
11 SUFFICIENT STANDING ALONE TO PROVE POSSESSION ON THE PART
12 OF THE DEFENDANT. IT MUST BE SHOWN BY THE EVIDENCE THAT
13 THE DEFENDANT HAD POSSESSION OF THE SUBSTANCE AS I HAVE
14 DEFINED THAT TERM FOR YOU PREVIOUSLY. I ALSO INSTRUCT YOU
15 AND I EMPHASIZE TO YOU THE FACT THAT A DEFENDANT DOES NOT
16 TESTIFY DURING THE TRIAL OF A CRIMINAL CASE IS NOT A
17 FACTOR WHICH YOU MAY CONSIDER DURING YOUR DELIBERATIONS
18 NOR IN YOUR CONSIDERATION AS TO WHETHER OR NOT THE
19 DEFENDANT'S GUILT HAS BEEN PROVEN BEYOND A REASONABLE
20 DOUBT. IT MAY NOT BE CONSIDERED BY YOU IN ANY FASHION
21 WHATSOEVER, NOR MAY IT BE WEIGHED IN THE SLIGHTEST DEGREE
22 AGAINST THE DEFENDANT. YOU ARE TO REACH NO INFERENCE OR
23 DRAW ANY CONCLUSIONS FROM THE FACT THAT THE DEFENDANT IN
24 THE TRIAL OF A CRIMINAL CASE DOES NOT HERSELF TESTIFY, AND
25 THAT FACT MAY NOT EVEN BE DISCUSSED WHILE YOU ARE IN THE

1 JURY ROOM DURING YOUR DELIBERATIONS. AS I HAVE PREVIOUSLY
2 STATED, THE BURDEN IS UPON THE STATE TO ESTABLISH HER
3 GUILT. IT IS NOT UPON THE DEFENDANT TO ESTABLISH HER
4 INNOCENCE.

5 NOW, MADAM FORE-LADY, AS I INDICATED TO YOU
6 EARLIER, YOU'RE GOING TO HAVE THIS INDICTMENT IN THE JURY
7 ROOM. IT'S NOT EVIDENCE IN THE CASE. YOU'LL NOT CONSIDER
8 IT AS SUCH, BUT THE INDICTMENT WILL SERVE AS THE VERDICT
9 FORM, AND IT WILL BE ON THE BACK OF THE INDICTMENT THAT
10 YOU WILL INDICATE, YOU AND YOUR FELLOW JURORS, UNANIMOUS
11 DECISION. NOW, AS I'VE STATED, I'M NOT CONCERNED WITH
12 WHAT YOUR VERDICT IS BUT I DO TELL YOU THAT THE DECISION
13 OF THE JURY MUST BE UNANIMOUS. THAT IS ALL 12 OF YOU MUST
14 BE IN AGREEMENT BEFORE ANY VERDICT MAY BE RETURNED, AND IN
15 THIS PARTICULAR CASE THERE ARE TWO POSSIBLE VERDICT FORMS.
16 IF THE STATE HAS PROVEN EACH OF THE ESSENTIAL ELEMENTS OF
17 TRAFFICKING IN COCAINE AND HAVE PROVEN EACH OF THOSE
18 ESSENTIAL ELEMENTS TO YOUR SATISFACTION BEYOND A
19 REASONABLE DOUBT, THEN YOUR VERDICT WOULD BE GUILTY. IF
20 THE STATE HAS FAILED TO PROVE ANY ONE OR MORE OF THE
21 ESSENTIAL ELEMENTS OF THE CRIME OF TRAFFICKING IN COCAINE,
22 THEN YOUR VERDICT WOULD BE NOT GUILTY. NOW, MADAM FORE-
23 LADY, WHATEVER YOUR AND YOUR FELLOW JURORS UNANIMOUS
24 DECISION IS, SIMPLY WRITE THAT APPROPRIATE VERDICT FORM IN
25 THE SPACE PROVIDED ON THE BACK OF THE INDICTMENT WHERE YOU

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1 WILL SEE THE WORD VERDICT, SIGN YOUR NAME AS THE FORE-
2 PERSON, PLACE TODAY'S DATE ON IT, LET THE BAILIFF KNOW YOU
3 HAVE ARRIVED AT A VERDICT, AND WE WILL BRING YOU BACK TO
4 RECEIVE THAT VERDICT. ARE THERE ANY SMOKERS ON THE JURY
5 PANEL.

6 (JURORS RESPOND.)

7 THE COURT - ALL RIGHT, DURING DELIBERATIONS YOU
8 ARE PERMITTED TO SMOKE. YOU MAY NOT SMOKE IN THE
9 COURTHOUSE. IF YOU WANT TO SMOKE, YOU'LL HAVE TO BE TAKEN
10 OUTSIDE TO ACCOMPLISH THAT PURPOSE, BUT I INSTRUCT THE
11 PANEL THAT DELIBERATIONS MAY NOT BE ENGAGED IN UNLESS ALL
12 JURORS ARE PRESENT IN THE JURY ROOM SO THAT THEY MAY
13 PARTICIPATE. SO IF AT ANY TIME ANY JUROR IS ABSENT
14 BECAUSE OF SOME AUTHORIZED REASON, DELIBERATIONS MUST STOP
15 AND MAY ONLY RESUME WHEN ALL 12 JURORS ARE PRESENT. IF
16 YOU WISH TO ORDER LUNCH --- IT'S EARLY RIGHT NOW, BUT IF
17 THERE COMES A TIME DURING YOUR DELIBERATIONS THAT YOU
18 DETERMINE IT APPROPRIATE TO ORDER LUNCH, LET THE BAILIFF
19 KNOW, AND WE'LL ASSIST WITH MAKING THOSE ARRANGEMENTS. SO
20 I'LL ASK YOU AT THIS TIME TO PLEASE RETIRE TO YOUR JURY
21 BUT DO NOT BEGIN YOUR DELIBERATIONS UNTIL I SEND YOU WORD
22 TO DO SO. I'VE GOT SOME MATTERS I'LL NEED TO ADDRESS. IF
23 I DO NOT NEED TO BRING YOU BACK, I'LL SEND WORD BY WAY OF
24 THE BAILIFF THAT YOU MAY BEGIN YOUR DELIBERATIONS. HE'LL
25 BRING TO THE JURY ROOM EACH OF THE EXHIBITS THAT HAVE BEEN

1 INTRODUCED AND TO YOU, MADAM FORE-LADY, HE'LL BRING THE
2 VERDICT FORM. SO PLEASE RETIRE, BUT AWAIT MY INSTRUCTION
3 AS TO WHEN TO BEGIN.

4 MR. MABRY - YOUR HONOR, MAY WE APPROACH?

5 (JURY EXITS THE COURTROOM.)

6 (BENCH CONFERENCE WAS HELD OUT OF THE PRESENCE
7 AND OUT OF THE HEARING OF THE JURY WHICH WAS NOT
8 REPORTED.)

9 THE COURT - ANY EXCEPTIONS TO THE INSTRUCTION OR
10 ADDITIONS REQUESTED BY THE STATE?

11 MR. MABRY - NO, SIR.

12 THE COURT - BY THE DEFENDANT?

13 MR. WELCH - NO, SIR, JUDGE.

14 THE COURT - MR. RUPPE, AS YOU KNOW, YOUR SERVICE
15 NOW ENDS, BECAUSE THE ORIGINAL 12 ARE, APPARENTLY, ABLE TO
16 PARTICIPATE IN DELIBERATIONS, BUT WE DO SINCERELY
17 APPRECIATE YOUR PARTICIPATION AS A JUROR, NOT JUST IN THIS
18 CASE, BUT YOUR WILLINGNESS TO SERVE THIS WEEK. AND I DO
19 HOPE THAT YOUR SERVICE HAS BEEN A BENEFICIAL EXPERIENCE
20 FOR YOU AND I DO HOPE THAT IT HAS NOT BEEN TOO MUCH OF A
21 HARDSHIP FOR YOU. YOU ARE GOING TO BE EXCUSED NOW FOR THE
22 BALANCE OF THE WEEK. IT WILL NOT BE NECESSARY THAT YOU
23 REPORT BACK ANY FURTHER OR PARTICIPATE ANY FURTHER. IF
24 YOU WANT TO STAY AND SEE WHAT YOUR FELLOW JURORS DO ABOUT
25 THE VERDICT, YOU'RE WELCOME TO DO SO. YOU'RE NOT REQUIRED

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1 TO DO SO, AND IF YOU'D LIKE TO BE EXCUSED, IF YOU'LL JUST
2 SEE THE CLERK, SHE'LL EITHER GIVE YOU YOUR PAY VOUCHER OR
3 MAKE THOSE ARRANGEMENTS AND THEN YOU CAN BE EXCUSED.

4 THANKS AGAIN FOR YOUR ASSISTANT.

5 (JUROR IS EXCUSED.)

6 THE COURT - ALL RIGHT, WE'VE GOT FIVE EXHIBITS
7 AND THEY'RE ALL ---

8 MR. WELCH - ACTUALLY FOUR I THINK ARE IN
9 EVIDENCE, JUDGE.

10 (DISCUSSION HELD BETWEEN COURT REPORTER AND
11 COUNSEL WHICH WAS NOT REPORTED.)

12 MR. WELCH - THE REPORT ITSELF I STIPULATED TO
13 THE FIRST TWO PAGES, BUT THE CHAIN OF CUSTODY STUFF I
14 DON'T NECESSARILY STIPULATE TO, BUT THE FIRST TWO PAGES I
15 DID.

16 MR. MABRY - WELL, THEY HAD IT. I MEAN I ASKED
17 YOU IF YOU HAVE ANY OBJECTION AND YOU SAID NO.

18 MR. WELCH - YES, I DID TO THE REPORT.

19 MR. MABRY - AND I HANDED IT TO THE JURORS AND
20 IT'S ALREADY GONE THROUGH THE JURORS.

21 THE COURT - WELL, I MEAN ITS --- THIS IS THE
22 RULE 6 CHAIN ---

23 MR. MABRY - I DON'T MIND PULLING IT ---

24 THE COURT ---- IT'S BEEN --- DID YOU NOTIFY THE
25 DEFENDANT TEN DAYS BEFORE TRIAL YOU WERE GOING TO USE THIS

1 FOR ---

2 MR. WELCH - NO. BUT I MEAN I'M NOT GOING TO
3 OBJECT TO THE TWO TOP PAGES.

4 MR. MABRY - BUT WHAT I'M SAYING IS I --- DURING
5 THE TRIAL I ASK WAS THERE ANY OBJECTION. HE SAID NO.

6 THE COURT - WELL, I UNDERSTOOD THAT THERE WAS
7 NOT AN OBJECTION, BUT I DIDN'T KNOW --- I QUITE FRANKLY
8 DID NOT KNOW THAT ALL OF THIS WAS ATTACHED TO THE REPORT.
9 I JUST ASSUMED IT WAS A DRUG REPORT. I THOUGHT WAS MR.
10 WELCH THOUGHT.

11 MR. WELCH - I JUST THOUGHT IT WAS A DRUG REPORT,
12 TOO, JUDGE.

13 THE COURT - BUT IS THERE ANYTHING --- ANY REASON
14 WHY THE --- JUST THE REPORT ITSELF CAN'T GO BACK?

15 MR. MABRY - WELL, AFTER I ASKED THAT QUESTION I
16 TURNED AND ASKED THE AGENT, ARE THESE PAGES AFTER THE
17 REPORT CHAIN OF CUSTODY INFORMATION AND HE SAID, YES, AND
18 THEN I HANDED IT TO THE JURORS AND IT'S GONE THROUGH THE
19 JURY, SO I'M JUST CONCERNED THAT THEY GET BACK THERE AND
20 SAY, WELL, WHAT HAPPENED TO THOSE OTHER THREE PAGES THAT
21 WERE TACKED ON TO THIS ---

22 THE COURT - ALL RIGHT, WELL, IT WASN'T OBJECTED
23 TO. IT'S BEEN TESTIFIED TO. I DON'T SEE ANY HARM IN IT
24 BEING ADMITTED ---

25 MR. MABRY - THANK YOU.

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1 THE COURT - --- AS PART OF THE EXHIBIT. (PAUSE)
2 ALL RIGHT, TAKE THE EXHIBITS BACK AND TELL THE JURY TO
3 BEGIN THEIR DELIBERATIONS.

4 (JURY DELIBERATES AT 11:08 A.M.)

5 THE COURT - I'M GOING TO MAKE AS A COURT EXHIBIT
6 THE INFORMATION REQUESTED EARLIER AND THAT IS A COPY OF
7 THE BOND AND THE LETTER SENT BY MR. MABRY TO THE BONDING
8 COMPANY.

9 (DOCUMENT MARKED AS COURT'S EXHIBIT NUMBER 1.)

10 THE COURT - ALL RIGHT, WE'LL BE AT EASE WHILE
11 THE JURY DELIBERATES.

12 (JURY IN RECESS WHILE AWAITING THE JURY'S
13 VERDICT.)

14 THE COURT - THEY'VE REACHED A VERDICT. ARE WE
15 READY TO RECEIVE IT?

16 MR. MABRY - STATE'S READY.

17 MR. WELCH - DEFENSE IS READY, JUDGE.

18 THE COURT - OKAY, BRING THEM IN.

19 (JURY RETURNS WITH VERDICT AT 12:15 P.M.)

20 THE COURT - MADAM FORE-LADY, HAVE YOU AND YOUR
21 FELLOW JURORS REACHED A UNANIMOUS VERDICT?

22 FORE-LADY - YES, YOUR HONOR, WE HAVE.

23 THE COURT - HAVE YOU INDICATED THE VERDICT FORM
24 ON THE BACK OF THE INDICTMENT AS REQUESTED?

25 FORE-LADY - YES, SIR, YOUR HONOR, WE HAVE.

1 THE COURT - HAVE YOU SIGNED YOUR NAME AS THE
2 FORE-PERSON?

3 FORE-LADY - YES, SIR, I HAVE.

4 THE COURT - IF YOU WOULD, PLEASE HAND THAT UP BY
5 WAY OF THE BAILIFF.

6 (VERDICT IS HANDED UP TO THE COURT.)

7 THE COURT - YOU MAY PUBLISH THE VERDICT.

8 CLERK - INDICTMENT NUMBER 98-GS-42-3897, THE
9 STATE OF SOUTH CAROLINA, COUNTY OF SPARTANBURG, THE STATE
10 VS. MABLE IRENE LEEBAY, INDICTMENT FOR TRAFFICKING IN
11 COCAINE, VERDICT, GUILTY, SIGNED BY THE FORE-PERSON DATED
12 10/29/99. LADIES AND GENTLEMEN OF THE JURY, IF THIS IS
13 YOUR VERDICT AND STILL YOUR VERDICT, PLEASE RAISE YOUR
14 RIGHT HAND.

15 (JURY RESPONDS BY RAISING THEIR RIGHT HAND.)

16 CLERK - THANK YOU.

17 THE COURT - DOES THE DEFENDANT WISH TO HAVE THE
18 JURY POLLED.

19 MR. WELCH - YES, SIR, JUDGE.

20 THE COURT - ALL RIGHT, POLL THE JURY, PLEASE,
21 MA'AM.

22 CLERK - LADIES AND GENTLEMEN OF THE JURY, WHEN
23 I CALL YOUR NAME, IF THIS WAS YOUR VERDICT, PLEASE SAY
24 YES. SHERRIE PAGE?

25 MS. PAGE - YES.

1 CLERK - CLAUDE PITTMAN?
2 MR. PITTMAN - YES.
3 CLERK - ROBERT BRADLEY?
4 MR. BRADLEY - YES.
5 CLERK - LARRY DENT?
6 MR. DENT - YES.
7 CLERK - VERNON FORTNER?
8 MR. FORTNER - YES.
9 CLERK - DIANNE CROOK?
10 MS. CROOK - YES.
11 CLERK - BRENT BISHOP?
12 MR. BISHOP - YES.
13 CLERK - LARRY COLEMAN?
14 MR. COLEMAN - YES.
15 CLERK - TEDDY MORROW?
16 MR. MORROW - YES.
17 CLERK - BOBBY LAWTER?
18 MR. LAWTER - YES.
19 CLERK - ELIZABETH LEE.
20 MS. LEE - YES.
21 CLERK - ROBERT ROBERTSON?
22 MR. ROBERTSON - YES.
23 CLERK - THANK YOU.
24 THE COURT - ALL RIGHT, ANY OTHER MATTERS THAT
25 NEED TO BE ADDRESSED WITH THE JURY PRESENT?

1 MR. MABRY - NO, SIR.

2 MR. WELCH - NOT FROM THE DEFENSE, JUDGE.

3 THE COURT - ALL RIGHT, LADIES AND GENTLEMEN, LET
4 ME THANK YOU FOR YOUR PARTICIPATION, NOT JUST IN THIS
5 TRIAL, BUT YOUR PARTICIPATION AS JURORS THIS WEEK. YOU'RE
6 GOING TO BE EXCUSED FOR THE BALANCE OF THE WEEK, SO I DO
7 WANT TO TAKE THIS OPPORTUNITY TO SINCERELY THANK YOU FOR
8 YOUR SERVICE THIS WEEK. I DO HOPE THAT YOUR ACTUAL
9 PARTICIPATION IN THE TRIAL OF A CASE --- SOME OF YOU MAY
10 HAVE PARTICIPATED MORE THAN ONCE, BUT I DO HOPE THAT YOUR
11 ACTUAL PARTICIPATION IN THE TRIAL OF THE CASE HAS BEEN A
12 BENEFICIAL AND AN EDUCATIONAL EXPERIENCE FOR YOU, AND I DO
13 HOPE THAT YOUR JURY SERVICE HAS NOT BEEN TOO MUCH OF A
14 HARDSHIP OR INCONVENIENCE FOR YOU. THE CLERK HAS YOUR PAY
15 VOUCHERS FOR YOUR SERVICE THIS WEEK. ONCE YOU RECEIVE
16 THOSE, YOU CAN BE EXCUSED. IF ANY JUROR HAS A --- NEEDS
17 AN EMPLOYER'S STATEMENT REGARDING YOUR JUROR SERVICE, IF
18 YOU'LL LET THE CLERK KNOW, SHE'LL PROVIDE YOU WITH THAT
19 ALSO. SO IF YOU'LL GO BACK TO THE JURY ROOM ONE MORE
20 TIME, THE CLERK WILL MEET YOU THERE AND PROVIDE YOU WITH
21 THAT INFORMATION. ONCE YOU RECEIVE THAT, YOU MAY BE
22 EXCUSED. THANKS AGAIN FOR YOUR PARTICIPATION.

23 (JURY IS DISMISSED)

24 THE COURT - ANY MATTERS THAT NEED TO BE
25 ADDRESSED PRIOR TO SENTENCING?

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1 MR. WELCH - JUDGE, AGAIN, FOR PURPOSES OF THE
2 RECORD, I'D MOVE FOR A DIRECTED VERDICT JUDGMENT
3 NOTWITHSTANDING THE VERDICT HERE, THAT WE DON'T FEEL THE
4 EVIDENCE AND THE LIGHT TAKEN MOST FAVORABLE TO THE STATE
5 REACHES BEYOND A REASONABLE DOUBT.

6 THE COURT - ALL RIGHT. THOSE MOTIONS ARE
7 DENIED.

8 SENTENCING

9 THE COURT - ANYTHING FURTHER FROM THE STATE?

10 MR. MABRY - ONLY MAKE THE COURT AWARE OF HER
11 RECORD, YOUR HONOR. MARCH 12TH OF 1992 --- ACTUALLY MARCH
12 16TH OF 1992 SHE WAS CONVICTED OF POSSESSION OF CRACK
13 COCAINE. ALSO, IN 1997 SHE WAS CONVICTED OF POSSESSION OF
14 28 GRAMS OF MARIJUANA OR TEN GRAMS OF HASHISH, ON 1/7 OF
15 1997 ALSO ANOTHER COUNT OF POSSESSION OF 28 GRAMS OF
16 MARIJUANA OR ONE GRAM OF HASHISH. BOTH THOSE CONVICTIONS
17 OCCURRING ON 1/7 OF 1997, SO THIS IS A THIRD OFFENSE.

18 THE COURT - ALL RIGHT, MR. WELCH, ANY
19 DISAGREEMENT WITH THE ---

20 MR. WELCH - JUDGE, PRIOR TO STANDING UP HERE
21 TODAY I'VE TAKEN THE PRINTOUT. I'VE GONE OVER IT WITH MY
22 CLIENT, AND I'VE DISCUSSED HER PRIOR RECORD WITH HER.
23 I'VE GONE OVER THE DATES. WE'VE LOOKED AT EVERYTHING, AND
24 THERE IS NO DISAGREEMENT WITH THAT, JUDGE.

25 THE COURT - ALL RIGHT. ANYTHING FURTHER?

1 MR. WELCH - JUDGE, OBVIOUSLY, THE JURY HAS
2 SPOKEN, AND I KNOW MY CLIENT WISHES TO ADDRESS THE COURT.
3 I'VE EXPLAINED TO HER THAT THE COURT'S HANDS ARE IN
4 ESSENCE TIED IN THIS SITUATION. I'VE EXPLAINED TO HER THE
5 MANDATORY NATURE OF THE SENTENCING AND HOW THAT SENTENCE
6 IS STRUCTURED UNDER THE STATUTE AS NO PAROLE. I'VE GONE
7 THROUGH EVERYTHING WITH HER, SO SHE HAS THAT EXPLAINED TO
8 HER. SHE HAS STILL MAINTAINED DURING THE ENTIRE TRIAL AND
9 WITH ME INITIALLY THAT SHE WAS NOT AWARE OF THE FACT THE
10 COCAINE WAS IN THERE, AND I'VE EXPLAINED TO HER THAT
11 ACTUALLY THE COURT HAS NO DISCRETION IN THAT EITHER.

12 THE COURT - ALL RIGHT, MS. LEEBAY, ANYTHING YOU
13 WANT TO ADD TO WHAT YOUR LAWYER HAS TOLD ME?

14 MS. LEEBAY JETER - BASICALLY, I JUST WANT TO
15 REMAIN TO MY INNOCENT, AND I DID NOT KNOW THAT THE STUFF
16 WAS IN THAT POUCH. I ADMIT THAT I HAVE SMOKED MARIJUANA,
17 NEVER SOLD IT. I'M NOT A DRUG DEALER, YOUR HONOR. I JUST
18 --- I HAVE CHILDREN. I DO --- I'M HONEST WITH THEM. I
19 WAS YOUNG WHEN HE ANNOUNCED THAT OTHER CRACK CHARGE. IT
20 WAS ONE, ACTUAL ONE ROCK THAT WAS IN A COAT THAT WASN'T
21 EVEN MINE, BUT I DIDN'T ARGUE WITH THEM. I GOT PAROLE ---
22 I MEAN I GOT PROBATION. I DID IT. I GOT RELEASED EARLY
23 OFF OF IT. YOUR HONOR, I'M NOT A --- I KNOW THIS SOUND
24 LIKE I'M MAKING EXCUSES, BUT I'M NOT --- I JUST DON'T WANT
25 TO GO DOWN FOR SOMETHING THAT WASN'T MINE. I WAS TRYING

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1 TO COOPERATE. I VOLUNTEERED INFORMATION. BASICALLY, I
2 JUST ASK YOU TO BE LENIENT ON THE VERDICT.

3 THE COURT - ALL RIGHT, ON INDICTMENT 98-3897, AN
4 INDICTMENT FOR TRAFFICKING IN COCAINE, TEN GRAMS OR
5 GREATER, IT BEING A THIRD OR SUBSEQUENT OFFENSE UNDER THE
6 LAW, THE SENTENCE OF THE COURT IS YOU, MABLE IRENE LEEBAY,
7 BE CONFINED TO THE SOUTH CAROLINA DEPARTMENT OF
8 CORRECTIONS FOR A PERIOD OF 25 YEARS AND PAY A FINE OF
9 FIFTY THOUSAND DOLLARS.

10 (DEFENDANT FALLS AND BEGINS TO CRY OUT.)

11 THE COURT - MS. LEEBAY, YOU HAVE A RIGHT TO
12 APPEAL THE VERDICT OF THE JURY AND THE SENTENCE OF THE
13 COURT. YOU MUST FILE ANY NOTICE OF INTENT TO APPEAL
14 WITHIN TEN DAYS.

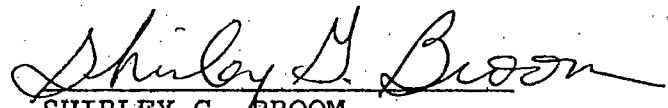
15 ----- (END OF TRANSCRIPT) -----
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CERTIFICATE

I, SHIRLEY G. BROOM, THE UNDERSIGNED COURT REPORTER, HEREBY CERTIFY THAT THE FOREGOING 121 PAGES CONSTITUTE A TRUE RECORD OF PROCEEDINGS TAKEN IN THE CASE OF STATE VS. MABLE IRENE LEEBAY AS TAKEN BY ME AT THE TIME AND PLACE STATED.

I DO FURTHER CERTIFY THAT THE PERSONS WERE PRESENT AS STATED, THAT I AM NOT OF COUNSEL FOR, RELATED TO, OR IN THE EMPLOYEE OF ANY OF THE PARTIES TO THIS ACTION AND THAT I HAVE NO INTEREST WHATSOEVER IN THE OUTCOME OF THIS CASE.

THIS THE 8TH DAY OF SEPTEMBER, 2000.


SHIRLEY G. BROOM
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MABLE IRENE LEEBAY,

APPELLANT

FINAL BRIEF OF APPELLANT

DANIEL T. STACEY
Chief Attorney

South Carolina Office
of Appellate Defense
1122 Lady Street, Suite 940
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred when it permitted evidence of appellant's involvement with marijuana, as this irrelevantly and prejudicially put her character in evidence without any basis under *State v. Lyle*?

STATEMENT OF THE CASE

Appellant was indicted in Spartanburg County (98-GS-42-3897) and charged with trafficking in ten grams or more of cocaine. She was tried commencing October 28, 1999, at Spartanburg before the Honorable J. Derham Cole, judge and a jury. Having been found guilty, she was sentenced to twenty-five years and a fine of \$50,000. This appeal follows.

ARGUMENT

The court erred when it permitted evidence of appellant's involvement with marijuana, as this irrelevantly and prejudicially put her character in evidence without any basis under *State v. Lyle*?

In this case the appellant was charged with trafficking in crack cocaine. Rhonda Williams was employed at the Peach Blossom restaurant. She saw appellant and another woman in a booth and they may have had a small child with them. Another customer came in, sat down in the booth and brought out a change purse. Rhonda gave it to Johnny Petris, owner of the restaurant. ROA p. 3, lines 1–9. The purse may have had a white rock or something in it. ROA p. 4, lines 11–19. Petris got the police there. He then called “the girl in 108” (appellant) and asked her if she had a change purse. She said, “yes,” and came to the restaurant. Petris gave it to her, she walked out and was arrested. ROA p. 5, lines 15–19. On cross-examination, Williams admitted that she had never waited on appellant or the other lady and that she did not see them with this. ROA p. 8, lines 16–23.

Johnny Petris, owner of the restaurant, testified that Rhonda gave him the purse. He and Rhonda looked in and saw something wrapped in tissue. Petris had his son call Officer Rocky Correll to come out and check to see what it was. ROA p. 11, lines 3–14. When the police came they field tested the item and said it was cocaine. ROA p. 11, lines 17–20. Then Petris called appellant and asked her to come get her purse. ROA p. 11, lines 21–25. When she went out to the sidewalk the police arrested her. ROA p. 12, lines 8–14. On cross-examination, Petris admitted that he had not told the police at the time that he had seen appellant with the purse when she came into the restaurant. ROA p. 17, line 22 – p. 18, line 11. This was in contradiction to his trial testimony:

Q. Did you see her bring it in with her, sir?

A. Yes, sir.

Q. You saw her bring this in with her?

A. That's right.

ROA p. 15, lines 1-4.

Officer David Taylor made the arrest as above described. ROA p. 21, lines 1-10. At this point the jury was sent out and appellant moved to exclude from evidence finger scales and a baggie of marijuana that were found in her room and in her pocket respectively. The defense counsel argued that the matter was so highly prejudicial and would prove the state's case through improper evidence. ROA p. 23, lines 1-11. The solicitor argued that the matter was admissible and the court overruled the objection. ROA p. 23, line 21 – p. 24, line 10. The matter was then put into evidence. The finger scales had been found in her purse during the search of the room, and the marijuana had come from her pocket.

On cross-examination, Officer Taylor stated that he knew there was another woman eating with appellant at the time and someone that no one even knew the person who had brought the bag up and given it to the restaurant people. ROA p. 34, lines 8-11.

During the closing argument, the solicitor put emphasis on the possession of marijuana as circumstantial evidence of guilt in this case. ROA p. 38, line 10 – p. 39, line 8.

The court erred when it admitted the marijuana evidence into the case. This is nothing but evidence of other drug activity which had nothing to do with the instant matter. *State v. Barroso*, 328 S.C. 268, 493 S.E.2d 854 (1997). The Supreme Court held there that testimony of other bad acts in a cocaine prosecution involving marijuana use, *inter alia*, was reversible error. The evidence adduced at the trial in *Barroso* showed isolated purchases of

marijuana in amounts demonstrating the petitioners were merely personally users. The Supreme Court held "we fail to see how this evidence of isolated marijuana transactions is probative of participation in marijuana conspiracy, much less how it has probative petitioners' alleged roles as dealers in the cocaine trafficking conspiracy. Here the problem was even more compounded. There was no evidence that appellant was trying to sell or traffic in the marijuana. She simply had some in her pocket. This evidence was probative as to her bad character, without any real relevance to the trafficking in cocaine charge which was brought in the indictment. The solicitor's contention that the evidence went to knowledge of the existence of the other drug "it's like having a gun on you," (ROA p. 24, lines 3-16), articulates no legitimate theory of admissibility pursuant to *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923) or otherwise.

Furthermore, the court performed no balancing test under S.C. Rule of Evidence 403 to determine whether the probative value of the evidence substantially outweighed the danger of unfair prejudice to appellant. There must be furthermore, a logical relevance between the two crimes and the benefit of any doubt is given to the defendant. *State v. Dubose*, 288 S.C. 226, 341 S.E.2d 785 (1986). Where the prejudicial affect outweighs the probative value, the evidence is to be excluded. *State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991). The court here simply overruled the objection to the evidence, without performing the necessary determination of whether the probative value was outweighed by prejudice to the accused.

Moreover, there was no harmless error here. The change purse was brought from the table to the cashier by a mystery person who did not testify at the trial. Furthermore, there was a second individual seated with appellant at the restaurant table. Obviously, there

was a period of time during which the appellant was not in possession of her purse. The evidence is far from being in such convincing status as to declare the error here harmless. Clearly, the solicitor invited the jury to use the marijuana possession in their deliberation process and it cannot be said that the matter did not contribute to the verdict in this case.

CONCLUSION

Appellant should receive a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel T. Stacey", written over a horizontal line.

Daniel T. Stacey
Chief Attorney

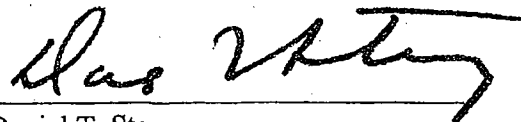
ATTORNEY FOR APPELLANT.

This 17th day of May, 2001.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 210(b), SCACR.

May 17th, 2001

A handwritten signature in black ink, appearing to read "D. Stacey", written over a horizontal line.

Daniel T. Stacey
Chief Attorney

S.C. Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201
(803) 734-1330

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

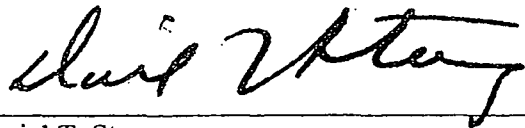
V.

MABLE IRENE LEEBAY,

APPELLANT

CERTIFICATE OF SERVICE

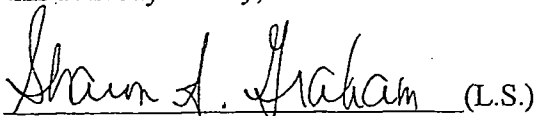
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Toyya Brawley Gray, Esquire, this 17th day of May, 2001.



Daniel T. Stacey
Chief Attorney

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 17th day of May, 2001.



Notary Public for South Carolina

My Commission Expires: April 6, 2002

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE

Respondent

VS

MABLE IRENE LEEBAY

Appellant

FINAL BRIEF OF RESPONDENT

CHARLES M. CONDON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

CHARLES H. RICHARDSON
Assistant Deputy Attorney General

TOYYA BRAWLEY GRAY
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

HAROLD W. GOWDY, III
Solicitor, Seventh Judicial Circuit

Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, South Carolina 29306
(864) 596-2575

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Where Appellant objected to the admission of evidence of marijuana found on her person on a different ground at trial than on appeal, was the issue preserved for appellate review? Further, even if the issue was preserved, where a defendant is charged with other drug charges, evidence of marijuana is admissible when it tends to establish that the defendant knowingly possessed, distributed, or intends to distribute drugs. Where police found a small quantity of marijuana and other drug paraphernalia, did the trial judge abuse his discretion in admitting evidence of the marijuana?

STATEMENT OF THE CASE

For purposes of this appeal, Respondent agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

In October of 1997, Appellant Mable Leebay and a companion ate at the Peach Blossom Restaurant. After Leebay left the restaurant, she returned to room 108 of the Peach Blossom Motel, where she was living. A short time later, another customer at the Peach Blossom Restaurant sat in the booth previously occupied by Leebay. That customer gave Rhonda Williams, the cashier at the Peach Blossom, a change purse which had been left in the booth. (R. p. 2, lines 15-25; p. 3, lines 1-6). Williams opened the change purse and saw a small perfume bottle and something wrapped in tissue. Williams opened the tissue and saw what appeared to be some type of white rock. (R. p. 4, lines 3-16; p. 5, lines 1-5). Williams gave the change purse to Johnny Petris, owner of the restaurant. Williams called the police. (R. p. 3, lines 7-9; p. 5, lines 6-12; p. 11, lines 1-19). Several officers from the Spartanburg County Sheriff's Department responded. The officers field-tested the substance in the tissue, and it tested positive for cocaine. The officers put the substance back into the purse, and Petris called Leebay to ask if she had left the purse behind. Leebay told Petris that the purse was hers, and a few minutes later, she walked from her motel room back to the restaurant to retrieve the purse. Immediately after Leebay left the restaurant, officer David Taylor arrested her on the sidewalk outside. (R. p. 11, lines 22-25; p. 12, lines 1-14; p. 19, lines 3-25; p. 20; p. 21, lines 1-10).

Leebay gave Taylor permission to search her motel room. (R. p. 22, lines 2-5; p. 26, lines 7-21). During the search of Leebay's room, police found a small set of finger scales¹ in Leebay's pocketbook in the motel room. Additionally, the police discovered a

¹Taylor testified that the scales were the kind typically used to weigh and price illegal drugs when they are being bought and sold. (R. p. 26, lines 20-25; p. 27, lines 1-6).

small quantity of marijuana in Leebay's pocket. (R. p. 25, lines 22-25; p. 26, lines 1-6). It was later determined that the cocaine weighed eleven grams and had a street value of approximately \$1100. (R. p. 27, lines 13-19).

ARGUMENT

Where Appellant objected to the admission of evidence of marijuana found on her person on a different ground at trial than on appeal, was the issue preserved for appellate review? Further, even if the issue was preserved, where a defendant is charged with other drug charges, evidence of marijuana is admissible when it tends to establish that the defendant knowingly possessed, distributed, or intends to distribute drugs. Where police found a small quantity of marijuana and other drug paraphernalia, did the trial judge abuse his discretion in admitting evidence of the marijuana?

Leebay contends that the trial judge erred in allowing the State to present evidence of the marijuana because the marijuana was evidence of other drug activity which had nothing to do with the trafficking charge and because the marijuana irrelevantly put her character into issue. (Ap. Br. p. 5; p. 7).

This issue was not preserved for appellate review. At trial, Leebay objected to the introduction of the marijuana based on its prejudicial nature. While stating the grounds for his objection to the marijuana, Leebay's defense counsel stated, "The marijuana I think is very prejudicial. She's not on trial for the marijuana. It's got nothing to do with this crack cocaine. You could - - the court can see that it is a very, very, very small amount of marijuana, have (sic) nothing to do really with distribution . . ." (R. p. 23, lines 10-15). On appeal, Leebay argues that the evidence was probative as to her bad character, while being irrelevant to the trafficking charge. (Ap. Br. p. 7). Leebay also argues that the trial judge failed to perform the balancing test to determine whether the probative value of the

marijuana outweighed its prejudicial effect as required under Rule 403 of the South Carolina Rules of Evidence.²

Leebay's objection was not specific enough to preserve the issue of the prejudicial effect of the evidence outweighing its probative value. A general objection without a specific ground is insufficient to preserve an issue for appellate review. State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997). Further, Leebay clearly failed to preserve the issue of the marijuana placing her character into issue as this ground was never asserted at trial. It is a well settled principle of South Carolina law that a party cannot argue one ground at trial and then an alternative ground on appeal. See State v. Byram, 326 S.C. 107, 485 S.E.2d 360 (1997); State v. Tucker, 319 S.C. 425, 462 S.E.2d 263 (1995); State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989).

Even so, Leebay's argument has no merit. The decision whether to admit or exclude evidence is within the trial court's sound discretion, and absent an abuse of discretion, the trial judge's ruling will not be disturbed on appeal. State v. Tucker, 319 S.C. 425, 428, 462 S.E.2d 263, 265 (1995). In this case, the marijuana was admissible as evidence of Leebay's intent to distribute the cocaine. Because the change purse was out of Leebay's possession during the time it was in the restaurant, the State needed to show that Leebay had

²Rule 403 provides:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 403, SCRE.

knowledge of the cocaine in the change purse. "Since the factfinder can seldom know with certainty what someone actually knows, knowledge must necessarily be shown circumstantially." United States v. Noibi, 780 F2d. 1419 (8th Cir. 1986) (citations omitted). The evidence of the finger scales and the marijuana viewed in totality with the cocaine, was probative of Leebay's guilt, and thus properly admitted. See State v. Scott, 303 S.C. 360, 400 S.E.2d 784 (Ct. App. 1991) (evidence of plastic baggies and marijuana seeds tended to prove that defendant knowingly possessed cocaine); State v. Hammond, 270 S.C. 347, 242 S.E.2d 411 (1978) (possession of marijuana is logically relevant to the defendant's possession of intent to distribute cocaine); United States v. Hoelscher, 914 F2d. 1527 (8th Cir. 1990) (small quantity of marijuana and other drug related items are relevant and admissible to show conspiracy to distribute cocaine); United States v. Noibi, 780 F2d. 1419 (8th Cir. 1986) (possession of marijuana and other drug related items is relevant and admissible to show the defendant knowingly possessed heroin).

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

CHARLES M. CONDON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

CHARLES H. RICHARDSON
Assistant Deputy Attorney General

TOYYA BRAWLEY GRAY
Assistant Attorney General

HAROLD W. GOWDY, III.
Solicitor, Seventh Judicial Circuit

BY:


TOYYA BRAWLEY GRAY

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

May 16, 2001

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

Respondent,

vs.

MABLE IRENE LEEBAY,

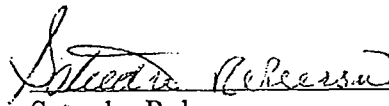
Appellant.

PROOF OF SERVICE

I, Sateedra Roberson, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Daniel Stacey, Chief Attorney, S.C. Office of Appellate Defense, 1122 Lady Street, Suite 940, Columbia, SC 29201.

I further certify that all parties required by Rule to be served have been served.

This 16th day of May, 2001.


Sateedra Roberson
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

Respondent,

vs.

MABLE IRENE LEEBAY,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

CHARLES M. CONDON
Attorney General

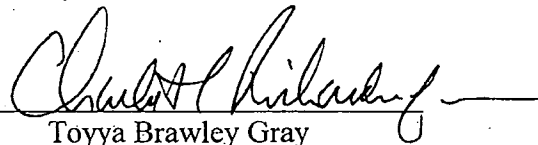
JOHN W. McINTOSH
Chief Deputy Attorney General

CHARLES H. RICHARDSON
Assistant Deputy Attorney General

TOYYA BRAWLEY GRAY
Assistant Attorney General

HAROLD W. GOWDY, III.
Solicitor, Seventh Judicial Circuit

By:



Toyya Brawley Gray

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

May 16, 2001

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Mable Irene Leebay,

Appellant.

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2002-UP-364
Submitted March 5, 2002 - Filed May 21, 2002

AFFIRMED

Chief Attorney Daniel T. Stacey, of SC Office of
Appellate Defense, of Columbia, for appellant.

Attorney General Charles M. Condon, Chief Deputy
Attorney General John W. McIntosh, Attorney General
Charles H. Richardson and Assistant Attorney General
Christie Newman Barrett, all of Columbia; and Solicitor
Harold W. Gowdy, III, of Spartanburg, for respondent.

PER CURIAM: Mable Irene Leebay appeals her conviction for
trafficking in cocaine, arguing the trial court erred in admitting other drug
evidence. We affirm.

FACTS/PROCEDURAL HISTORY

On October 29, 1997, Mable Irene Leebay was staying at the Peach Blossom Motel in Spartanburg County. She and a companion ate in the motel restaurant, after which Leebay returned to her room. Shortly thereafter, a customer in the restaurant gave cashier Rhonda Williams a small change purse that had been left in a booth. Williams opened the purse and removed a "white rock" wrapped in tissue; she then informed the restaurant owner, John Petris, who called the police.

Officers from the Spartanburg County Sheriff's Department arrived and performed a field test on the rock-like substance, determining it to be cocaine. The officers placed the drugs back in the change purse and Petris called Leebay and asked if she had left the purse. Leebay responded affirmatively, and came back to the restaurant and retrieved the purse.

The officers arrested Leebay once she left the restaurant. During a search incident to the arrest, they recovered a small bag of marijuana from Leebay's pocket. They requested permission to search her motel room, which Leebay freely granted, and subsequently discovered a small set of finger scales in her handbag.

On July 30, 1998, a Spartanburg County grand jury indicted Leebay for trafficking in cocaine. Following a jury trial held October 28-29, 1999, a jury convicted Leebay and the trial court sentenced her to twenty-five years imprisonment and a \$50,000 fine. This appeal followed.

LAW/ANALYSIS

Leebay's sole issue on appeal is whether the trial court erred in admitting into evidence the marijuana discovered during her arrest. She first argues the evidence improperly attacked her character under State v. Lyle, 125 S.C. 406, 118 S.E.2d 803 (1923). This argument is not preserved for our review.

At trial, Leebay objected to the introduction of the marijuana, stating it was "very prejudicial." Defense counsel further argued:

She's not on trial for the marijuana. It's got nothing to do with this crack cocaine. . . . [I]t is a very, very, very small amount of marijuana, hav[ing] nothing to do really with distribution if she's even charged – or was

charged early on with less [than] an ounce.

At most, this objection may be read as being based upon Rule 403, SCRE. Leebay's primary argument, however, claims the marijuana was prior bad act evidence inadmissible under Lyle. Because Leebay asserted a different ground for the objection at trial, this argument is not preserved. See State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (stating an appellant "is limited to the grounds raised at trial"); State v. Tucker, 319 S.C. 425, 428, 462 S.E.2d 263, 265 (1995) ("[A] party cannot argue one ground below and then argue another ground on appeal.").

Leebay further contends the trial court erred in failing to perform the balancing test required by Rule 403, arguing the court "simply overruled the objection to the evidence[] without performing the necessary determination of whether the probative value was outweighed by prejudice to [Leebay]." We find no error.

First, although Leebay objected to the marijuana as "very prejudicial," she never asserted Rule 403 as a basis for the objection. Thus, the argument is not preserved. See State v. Nichols, 325 S.C. 111, 121, 481 S.E.2d 118, 123 (1997) (stating that an objection must be on a specific ground); Tucker, 319 S.C. at 428, 462 S.E.2d at 265 (same). Furthermore, the record reveals the trial court overruled Leebay's objection following argument from counsel. The court then asked if there was "[a]ny other matter" that needed to be addressed, to which counsel for Leebay replied, "Not at this time, Judge." Because it is not clear from the record that the trial court did not, in fact, perform the 403 balancing test before overruling the objection, by accepting the court's decision and failing to request a further ruling on the record, Leebay has waived any argument on this issue. See, e.g., Patterson, 324 S.C. at 16, 482 S.E.2d at 765 (finding an issue is not preserved if an "objecting party accepts [the] judge's ruling and does not contemporaneously make [an] additional objection").

AFFIRMED.

HEARN, C.J., CONNOR and SHULER, JJ., concur.

STATE OF SOUTH CAROLINA

County of SPARTANBURG

In the Court of Common Pleas

MABLE IRENE LEEBEY #262208*Full name and prison number (if any) of Applicant.*

vs.

THE STATE OF SOUTH CAROLINA*Name of Respondent.*APPLICATION FOR
POST-CONVICTION RELIEF

2002-CP-42 3944

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention Leath Correctional Institution
2809 Airport Road, Greenwood, SC. 29649
2. Name and location of Court which imposed sentence Spartanburg County
General Sessions Court, Spartanburg, SC. 29336
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) indictment # 1998GS4203897
 - (b) offense of trafficking
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 29, 1999
 - (b) 25 years no parole and a 50,000 fine
 - (c) _____

Computer

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
 (b) after a plea of not guilty a jury found applicant Mable Lee-Bey, guilty
 (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. The State of South Carolina Court of Appeal
 ii. _____
 iii. _____

(b) the result in each such Court to which you appealed:

- i. The conviction of the lower court was AFFIRMED
 ii. _____
 iii. _____

(c) the date of each such result:

- i. May 21, 2002
 ii. _____
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. State V. Patterson 324. SC.5, 19, 482S.E. 2d 760, 767(1997)
 ii. (stating an applicant is limited to the grounds raised at
 iii. trial) State V. Tucker, 319S.C.425, 428, 462S.E.2d.263, 265(1995)

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) N/A
 (b) _____
 (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Counsel, in violation of applicant's
 (b) sixth amendment rights. (1) counsel offered prejudicial
 (c) comments to the court and failed to properly preserve objection

10. State concisely, and in the same order the facts which support each of the grounds set out in (9):

- (a) (paragraph #7) statement made by counsel "...It's got nothing
 (b) to do with this crack cocaine..." (paragraph #10) the court
 (c) asked if there was '[any other matter]' that needed to be addressed
to which counsel replied, 'Not at this time, Judge'.

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? N/A

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), 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. _____

15. If any ground set forth in (9) 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) Conflict of interest/ Lack of legal knowledge.

(b) Applicant never took the stand.

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Not to applicant's knowledge.

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you:

i. The Welch Law Firm, P.C. J. Stephen Welch

ii. SC Office of Appellate Defense, Daniel T. Stacey

iii. _____

iv. _____

(b) the proceedings at which each such attorney represented you:

i. Trial/Sentencing; J. Stephen Welch

ii. Appeal; Daniel T. Stacey

iii. _____

18. State clearly the relief you seek in filing this application.

NEW TRIAL.

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

VERIFICATION

County of SPARTANBURG

I, MABLE IRENE LEEBEY, 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.

Mable Irene Leebey

SWORN to and subscribed before me this 7

day of Oct, 2002

Willie M. Webb (L.S.)
Notary Public

My Commission Expires: 1-14-08

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, MABLE IRENE LEEBEY, 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 therefor.

Mable Irene Leebey
Applicant

SWORN or affirmed to and subscribed before me this

7 day of Oct, 2002

Willie M. Webb
Notary Public

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	Civil Action No. 02-CP-42-3944
	)	
Mable I. Leebeey,	)	
S.C.D.C. No. 262208,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED
CLERK OF COURT
JUL 15 PM 3:47
MARCO KITCHENS

In response to the post-conviction relief application filed October 29, 2002, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections. The Applicant was indicted for trafficking in cocaine (98-GS-42-3897). Stephen Welch, Esq. represented the Applicant on the charge.

On October 28-29, 1999, the Applicant proceeded to a jury trial on the indictment. The Applicant was found guilty of the charge. The Honorable J. Derham Cole sentenced the Applicant to imprisonment for a term of 25 years and a fine of \$50,000. The Applicant appealed her conviction. The South Carolina Court of Appeals affirmed the conviction in Unpublished Opinion No. 2002-UP-364 on May 21, 2002. The Remittitur was issued on August 7, 2002.

II.

In his application for post conviction relief the Applicant alleges that she is being held in

custody unlawfully for the following reason:

I. Ineffective assistance of counsel.

For the purpose of this Return, the Respondent incorporates the transcript, the Clerk of Court records, and the South Carolina Department of Corrections' records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent denies the allegations of ineffective assistance of counsel in the Applicant's PCR application.

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

FILED
CLERK OF COURT
JUL 15 PM 3:47
MAR 10 2010

Respectfully submitted,

HENRY D. MCMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD ZELENKA
Chief Capital and Collateral Litigation

B. ALLEN BULLARD
Assistant Deputy Attorney General

DOUGLAS E. LEADBITTER
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: _____

Attorneys for the Respondents

Columbia, South Carolina

6/27, 2003

STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

Case No. 02-CP-42-3944

MABLE IRENE LEEBEY,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Return of the Respondent been served upon opposing counsel, Patricia Anderson, by mailing one (1) copy in an envelope properly addressed with postage prepaid this 10th day of July, 2003, to the below address:

J. Patricia Anderson, Esquire
Post Office Box 1507
Spartanburg, SC 29304

Marcia E. Ward

MARCIA E. WARD
LEGAL ASSISTANT

FILED
CLERK OF COURT
JUL 15 PM 3:47
MARC WITCHENS

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
4 MABEL I. LEEBEY,)
5) TRANSCRIPT
6) APPLICANT,) OF
7) VS.) RECORD
8) STATE OF SOUTH CAROLINA,) 02-CP-42-3944
9)
10)
11)
12)
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22)
23)
24)
25)

January 13th, 2005
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE ROGER L. COUCH, Judge.

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

J. PATRICIA ANDERSON
ESQ.
Attorney for the Applicant

MOLLY R. CRUM
ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

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27

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28

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Direct examination by Ms. Crum

29

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Closing by Ms. Anderson

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Closing by Ms. Crum

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Certificate

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P R O C E E D I N G S

THE COURT: Ms. Crum.

MS. CRUM: Thank you, Your Honor.

Your Honor, this is the case of Mabel Leebeey versus the State of South Carolina. Case Number 2002-CP-42-3944. For the record, I am Molly Crum for the State Attorney General's Office. Ms. Leebeey is represented by J. Patricia Anderson today.

Your Honor, this applicant was found guilty on October 29th, 1999, by a jury trial, or, excuse me, after a jury trial she was found guilty of trafficking in cocaine greater than ten grams, and this -- it was her third offense and she received 25 years.

Your Honor, at this time the State would ask opposing counsel to please state the specific grounds she intends to proceed on the day.

THE COURT: Before we begin that, I just noticed Ms. Leebeey. I think that, during my private practice, I may have represented Ms. Leebeey on some -- seems like a divorce case or something of that nature. I'm not sure.

APPLICANT: I think you were my marriage judge.

THE COURT: I what now?

APPLICANT: I think you married me.

THE COURT: Did I actually conduct a marriage ceremony

1 or something?

2 APPLICANT: Yes.

3 THE COURT: I knew there was something that I was
4 involved in with Ms. Leebey.

5 APPLICANT: When I was divorced---

6 THE COURT: I can't remember what it was. But at any
7 rate I don't personally think that would affect my judgment
8 in this case. But I thought I'd let the State know that
9 that was the case as well as the defense. If anybody needs
10 to talk to clients I'll be happy to let you do so.

11 Any objection to my proceeding, Ms. Anderson?

12 MS. ANDERSON: No, sir, Your Honor.

13 THE COURT: Ms. Crum.

14 MS. CRUM: None from the State, Your Honor.

15 THE COURT: All right.

16 MS. ANDERSON: Your Honor?

17 THE COURT: Now Ms. Anderson.

18 MS. ANDERSON: Can I ask one thing?

19 Would it be possible for my client's handcuffs to be
20 taken off?

21 THE COURT: Any objection from the State?

22 MS. CRUM: None from the State, Your Honor.

23 THE COURT: That will be fine. She can be released.

24 All right. Now, Ms. Anderson, if you would, please
25 state the grounds on which you're proceeding today.

1 MS. ANDERSON: Okay. We're going under ineffective
2 assistance, assistance of counsel. Mr. Welch failed to
3 preserve an objection and there was also some other
4 prejudicial comments made. The case went on appeal. So,
5 that's part of it, that the objection that might have given
6 her a new trial was not preserved for trial, and also that
7 she should of been sentenced on a second offense instead of
8 a third, and basically that Mr. Welch did not meet with her
9 and did not assist her with her defense.

10 THE COURT: All right. You may call your first
11 witness.

12 MS. ANDERSON: Okay. Mabel Leebeey.

13 THE COURT: Ma'am, if you'll come forward and be sworn.

14 MABEL LEEBEY, being first duly
15 sworn, testified as follows:

16 THE COURT: Ms. Anderson, your witness.

17 DIRECT EXAMINATION

18 BY MS. ANDERSON:

19 Q Please state your full name.

20 A My name is Mabel Leebeey.

21 Q And where are you incarcerated?

22 A I'm incarcerated at Leath Correctional Institution.

23 Q You're there because you were convicted of trafficking
24 cocaine greater than ten grams, is that correct?

25 A Yes, ma'am.

Mabel Leebey - Direct examination
by Ms. Anderson

- 1 Q You were convicted by a jury trial on October 29th,
2 1999?
- 3 A Yes, ma'am, I was.
- 4 Q Okay. You were sentenced to 25 years, is that correct?
- 5 A Yes, ma'am.
- 6 Q And I believe a \$25,000 fine?
- 7 A 50.
- 8 Q \$50,000 fine.
- 9 Did -- you were represented by a Mr. Stephen Welch, is
10 that correct?
- 11 A Yes, ma'am.
- 12 Q Okay. How did you obtain Mr. Welch as your attorney?
- 13 A Honestly I do not know.
- 14 Q Okay. How did you find out he was your attorney?
- 15 A I was released on bond and I received a card with a
16 note on my door saying that I was represented by Steven
17 Welch Law Firm.
- 18 Q Okay.
- 19 A And I had appointment that Monday to go, and I had a
20 friend of mine take me down to a Greenwood office.
- 21 Q Okay.
- 22 A But I didn't meet, meet with him.
- 23 Q Cause this incident occurred in Spartanburg County?
- 24 A Yes, it did.
- 25 Q Okay. And so, you went down to Mr. Welch's office.

Mabel Leebey - Direct examination
by Ms. Anderson

- 1 Did you meet with Mr. Welch?
- 2 A No, I did not.
- 3 Q Who did you meet with?
- 4 A I met with a fellow named Ronnie Perry.
- 5 Q Okay. Who did you think he was?
- 6 A I thought he was my attorney.
- 7 Q Okay. Did you meet with him anymore?
- 8 A I met with him throughout a years period maybe on a
- 9 monthly basis. He would come to my job or I would see him
- 10 out and about, you know. It's like he just pop up.
- 11 Q In Spartanburg?
- 12 A Yes, ma'am.
- 13 Q Okay. Do you know how many times you met with him?
- 14 A No, not really. Maybe six or seven without, within a
- 15 year.
- 16 Q Okay. Did you find out he was not an attorney?
- 17 A I found out after I was sentenced and I received a
- 18 letter from him apologizing for not being at my trial.
- 19 Q Okay. Now, you were tried on October 28th and
- 20 9th of 199---
- 21 A Yes, ma'am.
- 22 Q ---7?
- 23 A Yes, ma'am.
- 24 Q Did you find out -- how did you find out you were going
- 25 to trial?

Mabel Leebey - Direct examination
by Ms. Anderson

- 1 A: My sister called me and told me that she was
2 transporting a inmate to Court and she heard my name being
3 called on a court session. She approached somebody from my
4 understanding and called, and beeped me. At the time I was
5 working at a Raddison Inn and I got an emergency phone call.
6 I called back and it was my sister asking me was I aware
7 that I was suppose to be in court and I told her no, I
8 wasn't, and she said I needed to contact Mr. Perry because
9 they were calling my name in court and that's what I did.
- 10 Q Okay. So, did Mr. Perry come get you?
- 11 A Yes, he did.
- 12 Q Okay. And you were at work that day?
- 13 A Yes, ma'am.
- 14 Q Correct?
- 15 And which sister was this that---
- 16 A Juanita Lee Bailey.
- 17 Q Juanita?
- 18 A At the time she was Juanita Lee Bailey. She's Juanita
19 Carson now..
- 20 Q And she was working for?
- 21 A She was working for SCDC, Spartanburg, Spartanburg
22 County. I'm sorry.
- 23 Q Okay. Now, with -- the number you called was who?
- 24 A It was Mr. Perry's number.
- 25 Q Okay.

Mabel Leebey - Direct examination
by Ms. Anderson

- 1 A It's the only number I had.
- 2 Q And did he come in and pick you up?
- 3 A Yes, ma'am, he did.
- 4 Q Okay. When you got to court, what happened?
- 5 A When I came into the courtroom the jury was already
- 6 picked. Mr. Welch was sitting in an area like yours and I
- 7 was directed to come down and sit with him.
- 8 Q And did you know who he was?
- 9 A No, I didn't.
- 10 Q Okay. Did you feel like you were prepared to go to
- 11 trial?
- 12 A I wasn't prepared. No, ma'am, I wasn't.
- 13 Q Okay. You're stating that you had no direct contact
- 14 with Mr. Welch in over, over a year?
- 15 A I didn't. I never met him before.
- 16 Q Did -- your only communication was with his paralegal?
- 17 A Yes, ma'am.
- 18 Q And did the paralegal ever convey to you an offer to
- 19 plead to a lesser charge?
- 20 A No, ma'am, he didn't.
- 21 Q Okay. All right. Did you know, when you went to
- 22 trial, how much time you were facing?
- 23 A No, ma'am, I didn't.
- 24 Q Okay. When did you find out that you were facing 25
- 25 years?

Mabel Leebey - Direct examination
by Ms. Anderson

1 A When I got sentenced and they told me how much time I
2 actually got is when I found out what I was actually dealing
3 with.

4 Q Okay. Okay. And you appealed?

5 A Yes, ma'am, I did.

6 Q Okay. Could you identify this document?

7 A It's my appeal.

8 Q Okay. That's the order from your appeal?

9 A Yes, ma'am.

10 Q Okay. In that -- were you given any relief?

11 A No.

12 Q Okay. Did they affirm the decision---

13 A Yes, they did.

14 A ---of the trial judge.

15 A Uh-huh. (Affirmative).

16 MS. ANDERSON: Okay. I'd like to enter this into
17 evidence.

18 THE COURT: Any objection?

19 MS. CRUM: Your Honor, I have no objection. I believe
20 that that's just the appellate records and they're already
21 in evidence.

22 THE COURT: I'll show you what's in evidence and see if
23 that satisfies you.

24 MS. ANDERSON: Let's see. It's in evidence.

25 THE COURT: Okay. All right. You may proceed.

Mabel Leebeey - Direct examination
by Ms. Anderson

- 1 Q All right. Did you read this---
- 2 A Yes, I did.
- 3 Q ---opinion?
- 4 A Yes.
- 5 Q Okay. Who represented you in your appeal?
- 6 A Mr. Stacy.
- 7 Q Okay. Was he with Appellate Defense?
- 8 A Yes, ma'am.
- 9 Q Okay. Now, in this, in the order from the Courts of
- 10 Appeals I believe, do you remember what they said about your
- 11 case?
- 12 A Not word-for-word.
- 13 Q Okay.
- 14 A But I remember that they affirmed it.
- 15 Q Okay. Is it correct that basically your only issue on
- 16 appeal was whether or not the Trial Court erred in admitting
- 17 in evidence the marijuana?
- 18 A That's correct.
- 19 Q Okay. And was this argument preserved for appellate
- 20 review?
- 21 A According to the documents it wasn't it said.
- 22 Q Okay. Can you identify this letter?
- 23 A Yes, I can.
- 24 Q Who is that letter from?
- 25 A That's from Mr. Stacy---

Mabel Leebey - Direct examination
by Ms. Anderson

1 Q Okay.

2 A ---and he was telling me that I had 30 days---

3 MS. CRUM: Objection, Your Honor, to hearsay.

4 MS. ANDERSON: I'd like to enter the letter.

5 Didn't I hand you one?

6 MS. CRUM: Your Honor, I would object to this document.

7 Mr. Stacy is not here in the courtroom today. Therefore,
8 it's hearsay.

9 THE COURT: Ms. Anderson.

10 MS. ANDERSON: All I was doing, I really wasn't putting
11 it in for the truth of the matter. Just that she was
12 contacted by them.

13 THE COURT: I'm not sure I understand who Mr. Stacy is.
14 Who is Mr. Stacy?

15 MS. ANDERSON: He's the chief attorney for the South
16 Carolina Office of Appellate Defense.

17 THE COURT: All right. Well, you just -- do you -- all
18 you're doing is asking if she was contacted by them?

19 MS. ANDERSON: After her appeal failed, yes.

20 THE COURT: I think you can ask her that question
21 without putting the letter in. I'll sustain the objection
22 at this point in time.

23 Q Okay. All right. Mabel, you received a letter from
24 Mr. Stacy?

25 A Yes, I did.

Mabel Leebey - Direct examination
by Ms. Anderson

1 Q Okay. And at that point, based on his advice, did you
2 file this PCR?

3 A Yes, I did.

4 Q And what are your -- in your PCR, you stated that
5 basically he didn't preserve grounds for appeal?

6 A Yes, ma'am.

7 Q Okay. Now, your ground is ineffective assistance of
8 counsel, correct?

9 A Yes, ma'am.

10 Q Okay. Now, was there also another problem in your
11 sentencing?

12 A Yes, ma'am, as I was going over my records I realized I
13 don't have a recollection of being sentenced more than twice
14 already for any drug offenses. I was sentenced under three
15 strikes you're out law. I don't have three strikes. If I
16 do I'm not aware of them.

17 Q Well, that's not -- but you were sentenced as a third
18 offense?

19 A Yes, ma'am.

20 Q Is that correct?

21 A Uh-huh. (Affirmative).

22 Q Okay. And you have one conviction for possession of
23 crack?

24 A Yes, ma'am.

25 Q Simple possession of crack?

Mabel Leebey - Direct examination
by Ms. Anderson

1 A Yes, ma'am.

2 Q Okay. Did you have an attorney for that one?

3 A No, ma'am.

4 Q You were in General Sessions.

5 Did you not have a public defender?

6 A Yes, ma'am, I did. Okay.

7 Q All right. The other drug charge on your record is a
8 simple possession of marijuana, is that correct?

9 A Yes, ma'am.

10 Q Okay.

11 MS. CRUM: Beg the Court's indulgence just a moment.

12 THE COURT: Yes, ma'am.

13 (Pause.)

14 MS. CRUM: Your Honor, I have no objection to this, to
15 this document.

16 THE COURT: All right. Without objection it will be
17 received and marked as Applicant's Exhibit.

18 (Whereupon, the letter was marked as Applicant's
19 Exhibit No. 1 and received into evidence at this time.)

20 THE COURT: You may proceed.

21 Q All right. Now, this conviction was January 3rd of
22 1997?

23 A Yes, ma'am.

24 Q Okay. Did you have an attorney?

25 A No, ma'am.

Mabel Leebey - Direct examination
by Ms. Anderson

1 Q Okay. And did you spend time in jail?

2 A I did.

3 Q Okay. But no attorney on this?

4 A Uh-huh. (Affirmative).

5 Q Did you have to pay a fine?

6 A I did. But I don't remember. I don't even remember
7 that at all honestly.

8 Q Okay. All right.

9 A I don't remember that.

10 Q But this would of been your second offense?

11 A Yes, ma'am.

12 Q Do you remember if you had put a bond up on that?

13 A I don't remember the charge.

14 Q Okay.

15 MS. ANDERSON: One second, Your Honor.

16 (Pause.)

17 MS. CRUM: Beg the Court's indulgence just a moment.

18 THE COURT: Yes, ma'am.

19 (Pause.)

20 MS. CRUM: Beg the Court's indulgence.

21 (Pause.)

22 MS. CRUM: Your Honor, the State has no objection to
23 the, the N.C.I.C. report.

24 THE COURT: Without objection it will be received and
25 marked as an Applicant's Exhibit.

Mabel Leebey - Direct examination
by Ms. Anderson

1 (Whereupon, the N.C.I.C. report was marked as
2 Applicant's Exhibit No. 2 and received into evidence at this
3 time.)

4 MS. ANDERSON: Thank you.

5 THE COURT: You may proceed.

6 Q Mabel, this is a copy of your arrest record?

7 A Okay.

8 Q Is that correct?

9 Now, you have been through your list of charges?

10 A Yes, ma'am.

11 Q Okay. And your second offense would of been the simple
12 possession of marijuana, is that correct?

13 A Yes, ma'am.

14 Q Okay. And I believe that's the warrant number right
15 here?

16 A Yes, ma'am, it's a different one.

17 Q No, this is it right here.

18 Okay. These are the same, but on your SLED record it
19 says possession of 28 grams of marijuana?

20 A Yes, ma'am.

21 Q But according to the Court disposition it was simple
22 possession?

23 A Yes, ma'am.

24 Q Ms. Leebey, do you think that you received adequate
25 representation in this case?

Mabel Leebey - Direct examination
by Ms. Anderson

- 1 A No, ma'am, I don't.
- 2 Q Do you believe that the outcome would of been different
- 3 had you met with your lawyer?
- 4 A I think so, yes, ma'am.
- 5 Q were you -- did you testify?
- 6 A No, I didn't.
- 7 Q why didn't you testify?
- 8 A I was told not to.
- 9 Q who were you told not to testify by?
- 10 A Mr. Welch told me not to testify.
- 11 Q Did he tell you why you shouldn't testify?
- 12 A That I might incriminate myself.
- 13 Q So, let me ask you this. I was looking over the
- 14 transcript of your trial --
- 15 A Yes, ma'am.
- 16 Q -- and the judge does question you on your decision of
- 17 whether or not to testify, is that correct?
- 18 A Yes, ma'am.
- 19 Q All right. Mabel --
- 20 A Yes, ma'am.
- 21 Q -- if you'll turn to Page 83.
- 22 A Yes, ma'am.
- 23 Q Okay. Now, this was -- well, actually on 82. The
- 24 Court is asking you about whether or not you wanted to
- 25 testify.

Mabel Leebey - Direct examination
by Ms. Anderson

1 A Yes, ma'am.

2 Q Okay. And you asked the judge to be able to speak with
3 your family?

4 A Yes, ma'am.

5 Q Okay. Did Mr. Welch participate in that conversation?

6 A Yes, ma'am, he did.

7 Q What was said during that conversation?

8 A He told me that he had been an attorney for over 15
9 years, and that I needed to trust him and that he didn't
10 want me to testify.

11 Q And that he didn't want you to testify?

12 A Yes, ma'am.

13 Q Did -- what else did he say about this because right
14 before that the judge was saying Mr. Welch and Mr. Mabry
15 indicated to me that -- this is on Page 82. Line 19.

16 A Yes, ma'am.

17 Q That they've indicated to me that there'd been some
18 negotiations regarding what the State would be willing to
19 agree to in the event you were willing to enter a plea of
20 guilty to the charge.

21 A Yes, ma'am, that's when he turned around and said that
22 some time, in his experience as being an attorney, when the
23 State or the solicitors feels that they're gonna lose the
24 case they might offer a deal. But as far as he was
25 concerned that we were winning and that he felt that we

Mabel Leebeey - Direct examination
by Ms. Anderson

1 should stand firm.

2 Q Okay. And this was what was said to you and your
3 family?

4 A Yes, ma'am.

5 Q Okay. Did anyone else overhear this conversation
6 beside you?

7 A Yes, ma'am, my sister and it was a few other people
8 sitting there that I, that's, that's not here today.

9 Q Okay. But, Mabel, at anytime did you understand that
10 you could of pled to a lesser charge?

11 A I had no knowledge about law at all. I hadn't talked
12 to my attorney or anything that he said I believed because I
13 didn't know. I didn't know any better. So, when I wanted
14 to testify, he told me that I couldn't -- I mean I didn't
15 know that I could say I didn't want him. I didn't know that
16 I could say I didn't want this attorney to represent me
17 anymore, I wanted to talk, you know, or I wanted to plead
18 guilty. I didn't know that I could overstep him or disagree
19 with him. So, I didn't argue with, with him. whatever he
20 told me to do is what I did.

21 Q Okay.

22 A When I didn't understand something, he'd tell me to
23 wait a minute, that he would discuss it with me in a minute,
24 you know, which the discussion never came about.

25 Q And that was during your trial?

Mabel Leebey - Direct examination
by Ms. Anderson

1 A Yes, ma'am.

2 Q Okay. What are you asking this Court to do?

3 A I'm asking for a new trial where I know what I'm being
4 charged with. I would like to have this case overturned and
5 be charged fairly having a hearing with an attorney that's
6 representing me properly.

7 Q Okay. Would you also be interested in having your
8 sentence---

9 A Reduced.

10 Q ---reduced to it being your second offense instead of
11 your third?

12 A Yes, ma'am, I would.

13 Q Answer any questions Ms. Crum might have.

14 THE COURT: Ms. Crum, your witness.

15 MS. CRUM: Beg the Court's indulgence just a moment.

16 THE COURT: Yes, ma'am.

17 (Pause.)

18 MS. CRUM: Your Honor, I have no questions of this
19 witness.

20 THE COURT: You may step down. Thank you very much.

21 Ms. Anderson, you may call your next witness.

22 MS. ANDERSON: Lisa Garrett.

23 THE COURT: Please come to the witness stand.

24 LISA GARRETT, being first duly
25 sworn, testified as follows:

Lisa Garrett - Direct examination
by Ms. Anderson

1 THE COURT: Your witness, Ms. Anderson.

2 DIRECT EXAMINATION

3 BY MS. ANDERSON:

4 Q Please state your name.

5 A Lisa Garrett.

6 Q And where do you work?

7 A solicitor's office.

8 Q Okay. I subpoenaed you and Mrs. Leebey's file today,
9 didn't I?

10 A Yes, you did.

11 Q Okay. Did you bring the file with you?

12 A Yes, I did.

13 Q This case was prosecuted by Anthony Mabry, right?

14 A Yes.

15 Q And he's no longer here?

16 A Yes, that's correct.

17 Q Okay. Now, you allowed me to look through the file out
18 in the hall?

19 A Yes.

20 Q And can you identify this note right here?

21 It's dated.

22 A Yes, it looks like a recommendation.

23 Q Okay. And could you just read, Rocky?

24 A You want me to read what the notes says?

25 Q Yes.

Lisa Garrett - Direct examination
by Ms. Anderson

1 A It looks like Rocky says let her plead straight up to
2 PWID if she will.

3 Q And what did she---

4 A And it's dated 9-24.

5 Q Okay. Rocky is Rocky Correll?

6 A That's what I'm assuming.

7 Q And he was the arresting officer in this case?

8 A Yes.

9 Q Okay. We also went over her rap sheet, didn't we?

10 A Yes.

11 Q Which is, was similar to the one I got from SLED.

12 Okay.

13 A Yes.

14 Q That's all the questions I have, Mrs. Garrett.

15 THE COURT: Ms. Crum.

16 MS. CRUM: I have no questions of this witness, Your
17 Honor.

18 THE COURT: All right. Ma'am, you may step down.

19 Thank you very much.

20 MS. ANDERSON: Your Honor, I would ask that she be
21 excused.

22 THE COURT: Any objection to her being excused?

23 MS. CRUM: No, Your Honor.

24 THE COURT: Ma'am, you're excused. Thank you very much
25 for coming.

Juanita Carson - Direct examination
by Ms. Anderson

1 MS. ANDERSON: Juanita Carson.

2 THE COURT: Ma'am, if you'll come forward to be sworn.

3 JUANITA CARSON, being first duly
4 sworn, testified as follows:

5 THE COURT: Ms. Anderson, your witness.

6 DIRECT EXAMINATION

7 BY MS. ANDERSON:

8 Q Okay. Please state your name.

9 A My name is Juanita Carson.

10 Q And what is your relationship to, to Mabel Leebey?

11 A She's my sister.

12 Q Or Leebey?

13 How do you pronounce that?

14 A Leebey.

15 Q Leebey.

16 At the time that Mabel went to trial, where were you
17 working?

18 A I was working at Spartanburg County Detention Center.

19 Q Okay. And you're now working in the courthouse,
20 correct?

21 A I am. That's correct.

22 Q What department do you work in?

23 A I work in the child support enforcement office.

24 Q How long have you been there?

25 A Approximately three years or a little over.

Juanita Carson - Direct examination
by Ms. Anderson

1 Q Okay. But on, on October 29th or 8, excuse me, you
2 worked for the detention center?

3 A I did.

4 Q Okay. Could you explain what happened that day as far
5 as your sister's trial?

6 A Yes.

7 Q Just tell about finding out about it first.

8 A Okay. Well, when I found out about it, I was working
9 actually getting ready to transport someone. I worked in
10 the booking area at the detention center, and a phone call
11 came through stating that Mabel was having trial, her name
12 was called, and she was having trial today and she needed to
13 get there. Now, from my response, I mean from what I
14 understood is that did I know where she was. As far as I
15 knew she was working at the Hampton Inn off of 85. So, I
16 contacted them and left a message for her to call her
17 attorney, and that she suppose to be having trial like right
18 then.

19 Q Okay. Had you known anything about the trial prior to
20 then?

21 A No.

22 Q Okay. And it was just happen stance --

23 A It happened out of the blue.

24 Q -- that you found out her trial was going on?

25 A Yes.

Juanita Carson - Direct examination
by Ms. Anderson

1 Q Okay. You were also present during her trial, is that
2 correct?

3 A Yes, I was.

4 Q All right. Well, did you participate in the
5 conversation that Mabel had with I believe she said with her
6 family and Mr. Welch?

7 A Yes.

8 Q Is that including you?

9 A Yes, ma'am.

10 Q Okay. What was said?

11 A Well, when the jurors, they were -- I think it was
12 right before they were going to deliberate or they were gone
13 or whatever, Mabel turned around and she was talking as a,
14 as a, saying what, what do I need to do. I said well, I
15 don't know, Mabel. We'll do whatever -- whatever you want
16 to do, I'm, I'm with you, whatever it is.

17 So, when he turned around, he was saying -- no, he
18 actually wasn't talking -- well, he was talking to her, but
19 he was leaning back toward where we were cause we were all
20 against that little wall thing behind you, and he was saying
21 that, you know, usually they clinch or we winning and, you
22 know, just trust me, I just heard him kept saying just trust
23 me, we got this one, you know.

24 Q Okay.

25 A So, we just -- whatever she said to him is believing in

Juanita Carson - Direct examination
by MS. Anderson

1 him. I believed in her, you know. So, I went along with
2 what she was wanting to do cause even though I worked at the
3 detention center I didn't really know what was going on. It
4 was happening real fast.

5 Q Okay. But you did hear Mr. Welch say trust me, we're
6 winning?

7 A Yes, he said that.

8 Q Okay. And unfortunately that was not the event, that's
9 not what happened?

10 A No.

11 Q Were you aware that she was facing 25 years?

12 A I did not, and when they came back and she was called
13 to the judge right there, that's when we found out about any
14 kind of sentence, and then when he said 25 years we were
15 thrown.

16 Q Okay. Thank you. Answer any questions Ms. Crum might
17 have.

18 THE COURT: Ms. Crum, your witness.

19 MS. CRUM: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. CRUM:

22 Q Ma'am, do you love your sister?

23 A I do.

24 Q And you hate to see her in jail, isn't that correct?

25 A Yes, I do.

Juanita Carson - Cross-examination
by Ms. Crum

1 Q I have no further questions.

2 THE COURT: Ma'am, you may step down. Thank you very
3 much.

4 MS. ANDERSON: Can I just have one on redirect?

5 THE COURT: Yes, ma'am, I'm sorry. Have a seat.

6 REDIRECT EXAMINATION

7 BY MS. ANDERSON:

8 Q You work here in the courthouse, don't you?

9 A I do.

10 Q Would you lie to help your sister?

11 A No, I would not.

12 Q I mean you're aware of the consequences of perjury,
13 aren't you?

14 A I am.

15 Q Okay. Thank you.

16 THE COURT: Anything to follow-up, Ms. Crum?

17 MS. CRUM: No, Your Honor.

18 THE COURT: All right. You may step down. Thank you,
19 ma'am.

20 MS. ANDERSON: Your Honor, that's our case.

21 THE COURT: State wish to call a witness?

22 MS. CRUM: Yes, Your Honor. The State wishes to call
23 Mr. Stephen Welch.

24 THE COURT: Come forward to be sworn.

25 STEPHEN WELCH, being first duly

Stephen Welch - Direct examination
by Ms. Crum

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. CRUM:

4 Q Mr. Welch, please state your full name for the record.

5 A It's James Stephen Welch, W-E-L-C-H.

6 Q Mr. Welch, did you represent the applicant?

7 A Yes, I did.

8 Q Can you tell us whether you were appointed or retained?

9 A I was retained. The applicant had a friend of hers
10 that we'd done some work for. She also had some other
11 charges other than these. She had burglary second charge
12 and a petty larceny charge that totally had nothing to do
13 with this charge. The gentleman we knew as Jay Robinson was
14 his name. He had contacted us to tell us he had a friend
15 that he wanted to assist in custody here in Spartanburg
16 County, wanted to know if we'd represent her. In fact, made
17 arrangements to pay an initial part of the attorney fees to
18 loan her some money. Based upon his request, we came up to
19 talk with her. Actually she came down to our office in
20 Greenwood. We keep time records on about everything we do.

21 So, throw back, I started out in the early 80's, late
22 70's, early 80's in Tulsa, Oklahoma, spent a little time
23 with a federal judge, and then went with a big insurance
24 defense firm, and did not like that after a very short
25 period of time, but we did time records, and, so, I've done

Stephen Welch - Direct examination
by MS. Crum

1 those religiously ever since, whether it's criminal defense,
2 contingent fee, whatever.

3 Q And just to go back a little bit, can you tell us a
4 little bit about how long you've been practicing law?

5 A I've been practicing law since 1982. I've started
6 out -- I'm from South Carolina. I went out west to law
7 school, scholarship money. I practiced in Tulsa, Oklahoma
8 from the time of my graduation there in Tulsa for Tom
9 Brett's office over to a firm called Homeland Holtsrale &
10 Dore for about almost two years, big firm. Went out on my
11 own after that in '83. Had been out either on my own or
12 with a firm that, where I owned the firm, which is currently
13 the situation. Since then, moved back home in 1989. On
14 March 28th, took the South Carolina bar exam and because
15 we don't have reciprocity here, passed that, started a firm.
16 We have offices in Greenwood and Greenville, South Carolina.

17 I'm death penalty certified. I've doing criminal
18 defense work since the early 80's along with personal
19 injury. I have been trying drug cases. I've tried cases in
20 Federal Court, State Court, and about six or eight different
21 states on drug cases, criminal cases, and one of the
22 founding members of the South Carolina Criminal Defense
23 Lawyer Association, and been past board member for two terms
24 of the South Carolina Trial Lawyers Association.

25 Q Okay. And do recall how often you met with Ms. Leebey,

Stephen Welch - Direct examination
by Ms. Crum

1 Leebey?

2 A Let me explain to you how my office operates. My
3 office has a full-time investigator. We have some other
4 attorneys. We have myself. I stay in the courtroom most of
5 the time like I am today. The initial contact with Ms.
6 Leebey was more than likely made by my investigator. His
7 name at that time was Ronnie Perry. All his cards, all his
8 anything he did, correspondents, nothing said attorney. It
9 all said investigator on everything.

10 He made the initial contact, made an appointment for
11 Ms. Leebey to come to my office. Ms. Leebey came to my
12 office, met with myself, and an attorney named Smokey Brown,
13 who's another attorney in the firm, and Ronnie Perry. Had
14 discussion of the case, explained how we work. Based upon
15 the discussions with her, then Mr. Perry and Smokey Brown
16 did most of the preparatory work.

17 I supervised motions. We immediately filed Rule 5
18 motions, Brady motions. We have a form letter that we use
19 based upon a case, a federal case called Kyle versus
20 Whitehead that puts a solicitor on notice that they have
21 more than just an obligation to look into their file folder.
22 They have an obligation, under the Kyle case, under Brady,
23 to actually go outside and look to see what else is there
24 that may assist her in her defense or may be exculpatory.

25 I signed those. After I reviewed them, they were

Stephen Welch - Direct examination
by Ms. Crum

1 prepared for me. We filed those. We then obtained the file
2 on this. Mr. Perry began the investigation, made trips here
3 to I think it was the Peach Blossom Motel I think was where
4 it occurred. Made trips here and they met with Ms. Leebey,
5 conduct the investigation.

6 We look at everything from, you know, where was the
7 booth in the, in the restaurant where she supposedly was,
8 where was her room, you know, what can we find out about the
9 person that supposedly found the pocketbook that had the
10 crack in it, made the call that brought in law enforcement.
11 Everything we can we try to investigate. You'd be surprised
12 what happens sometimes. You can take pictures sometimes.
13 People will testify they saw something that's physically
14 possible to see based upon the view of location. We did all
15 that. We got the case prepared for trial.

16 On the charges she had on the burglary second and the
17 petty larceny charge, we met with her on those charges.
18 Based upon what was there, it was like a friend situation
19 that she went in somewhere supposedly or allegedly. I think
20 she knew the person. We scheduled a preliminary hearing and
21 actually came up for that. I don't think the, anybody
22 showed at the preliminary. So, we ended up with a burglary
23 thrown out at the preliminary, and then we had the petty
24 larceny not pressed. We talked to her about that, about the
25 planning, what we were doing for the trial.

Stephen Welch - Direct examination
by Ms. Crum

1 After that, we had all the preparation done, and then
2 we basically it's gonna come up on the docket sooner or
3 later. Because it was crack, because of the volume of
4 crack, there were no -- and to be honest with you, we do not
5 go to the Solicitor's Office and say hey, tell me the best
6 deal that you'll do on this. We may do this if it gets
7 on -- the way dockets work in Spartanburg, Greenville,
8 Greenwood, Anderson, they're all the same in that they're
9 hundreds of cases on the docket. They come up not in any
10 certain order, but sort of -- I mean there's times where
11 they'll tell you that your case is close to being up at the
12 top of the docket. They'll call you the night before and
13 tell you that you're next the next day, be there with your
14 client. But we were monitoring the docket just like we do
15 in dockets.

16 Ms. Leebey's number was disconnected, and we had
17 called -- this is in the summer starting in June. I think
18 this went to trial in August if I'm not mistaken. But her
19 number was disconnected several weeks before the docket. We
20 sent notices of the docket. We tried to get in contact with
21 her, could not, stayed in contact with the Solicitor's
22 Office, came up here for jury pick, couldn't get her.
23 Finally told Ronnie Perry in my office to call her sister,
24 and I think Ronnie located the sister where she worked, got
25 the call through to her, and said where is she, we can't

Stephen Welch - Direct examination
by Ms. Crum

1 find her. She, you know, we can't find a phone number or
2 anything.

3 The sister told us where she was working, and, so, I
4 sent the investigator to get her. But we had sent, you
5 know, notices of the docket asking her to contact us. We
6 had no contact from her.

7 Q And you testified that you met with her.

8 Do you recall how many times you met with her?

9 A I met with her at least twice that I know of to discuss
10 the case. She met with Smokey Brown in my office at least
11 once, maybe twice. I know Smokey was in the initial meeting
12 there in the office. She met with Mr. Perry doing case
13 preparation work, our investigator, numerous times. I, I
14 couldn't even count those.

15 Q And during your meeting with her, did you go over all
16 the charges she was facing?

17 A I always go over the charges. In fact, if these are
18 serious charges -- trafficking third is a very serious
19 offense. It carries mandatory jail time. The, the law,
20 our, our understanding of the law, was that the way the
21 trafficking statute was -- the trafficking statute I think
22 is about the only statute that has the specific language.
23 Non-trafficking possession with intent to distribute,
24 distribution, specific priors are named that can be listed
25 as priors, but on trafficking, even simple possession, can

Stephen Welch - Direct examination
by Ms. Crum

1 be considered one of those prior acts.

2 And, so, we went through, because of her -- in fact, at
3 first she was not sure what priors she had. And, so, in
4 discovery, we got the N.C.I.C. report. She did have I think
5 the possession with intent to distribute and then a
6 possession. She was unsure about the possessions, but we
7 finally did find that there was specifically a Spartanburg
8 simple possession. I did tell her that it was 25 years. We
9 went back over there during the trial.

10 Q And you told her, you told her the minimum she was
11 facing at trial on the third offense was 25 years?

12 A Two different times. One time was prior to the trial.
13 But the other time, during the trial -- and it happens a lot
14 during the mechanics of a trial. If you have an officer
15 that is saying things on cross-examination like now,
16 officer, you, you, you didn't see that she put any crack in
17 there, you never saw her touch any crack cocaine, anything
18 of that nature, and the officers admitting no, I didn't see
19 her, no, I can't say, clients tend to basically, you know,
20 get a good feeling. I call it a warm fuzzy. I try to tell
21 clients. In fact, now we have a form that we get clients to
22 sign when they turn down a plea offer, but I try to get
23 clients to understand that that does not mean anything.
24 That jury can be disliking you and wait to convict. You
25 can't go by that.

Stephen Welch - Direct examination
by MS. Crum

1 I got concerned during the trial because Ms. Leebey,
2 Leebey would not consider we -- that -- the only thing that
3 was ever offered, they would offer to let her plead straight
4 up I think to a trafficking. I told them that's stupid
5 because the minimum you're gonna get on a trafficking by
6 statute, no discretion to the judge, on a third is 25 years.
7 And, so, that's just stupid. I'm not even going to take
8 that back to her.

9 The best that came out during the trial was let her
10 plead straight up to a second, which I think carries five to
11 thirty. But it's a lot different than 25. The minimum of
12 five is a lot different than 25. I tried to talk with her
13 about taking the plea. She did not want to even discuss
14 taking the plea. Said she couldn't do 25 years. I tried to
15 explain to her that whether she could do the 25 years or
16 not, that if she gets the 25, she's gonna have to do them,
17 that she couldn't -- she was telling me I can't do 15 years.

18 I said well, I'm just telling you that the difference
19 between five and twenty-five is tremendous and 25 is
20 85 percent time. It's a, it's a, it's a huge difference in
21 what the judge's potentials are. I became concerned enough
22 that I told the solicitor that she wouldn't take the plea.
23 You know, based upon the testimony that had been put in so
24 far, I felt she was running a risk of trafficking third.
25 The judge asked us up to the bench at one point in time,

Stephen Welch - Direct examination
by Ms. Crum

1 asked us about pleas, and I told the judge at the bench that
2 that was on the table. She didn't want to take it. The
3 judge then asked what we wanted him to do. I told him kind
4 of whatever he felt necessary. Judge says well, then if you
5 want me to make a record that this plea is on the table I
6 will.

7 So, he then called us up, jury out, and wanted to make
8 sure she understood that the trafficking third she was
9 looking at a potential second, that the trafficking third
10 was mandatory, and asked if we discussed the time, and she
11 said we had, which we had, 25 years. Nobody's got any
12 discretion in it. Nobody wanted to see Ms. Leebeey get 25
13 years, and that's in the transcript I do believe.

14 Q Okay. And I believe that it has, a third offense, has
15 a minimum of 25, but a maximum of 30?

16 A It's 25 to 30, but the judge has no discretion on the
17 25 is my understanding.

18 Q Okay. And you stated I believe that prior to the trial
19 she was offered only to plead to, to trafficking, is that
20 correct?

21 A There were no real offers prior to trial. It was
22 straight up to trafficking and that was -- the same thing
23 was offered during the trial.

24 Q Okay. And was there ever any offer for possession with
25 intent to distribute straight up?

Stephen Welch - Direct examination
by Ms. Crum

1 A No, never made.

2 MS. CRUM: Beg the Court's indulgence.

3 THE COURT: Yes, ma'am.

4 (Pause.)

5 Q And did you ever tell Ms. Leebey that you didn't think
6 she should plead, that you thought you were winning?

7 A I never tell, ever, in my life told a client that they
8 should not take a plea when there's a trafficking third with
9 a mandatory 25 years. I would never tell a client she
10 should not take a plea. I tell all the clients the same
11 thing. It's your life. It's not my life. No matter what
12 this jury does, I'm walking out of here today, and that's
13 what I told her. But if you get convicted, you won't be
14 walking out for about 22 and a half years. You've got a
15 second on the table. It would be in your best interest to
16 seriously consider taking this second. I can't make you do
17 it, I'm not gonna force you to do it. But you seriously
18 need to consider this. Anytime there are drugs found and we
19 can't suppress certain items, you don't know what a jury's
20 gonna do.

21 Q And did you ever meet with her sister that testified
22 today prior to trial?

23 A I can't say that prior to trial. I don't know if I did
24 prior to trial. I do know, during the trial, the sister sat
25 behind us and at one point in time, especially when the

Stephen Welch - Direct examination
by Ms. Crum

1 judge went over the second that was on the table, we asked
2 for some time to talk to the family, and the judge did allow
3 us that time, and I think the sister was present during that
4 conversation.

5 Q All right.

6 A I said the same thing during that conversation.

7 Q And I just want to clarify a little bit on the priors.
8 The record reflects that she was convicted of possession of
9 crack cocaine, and that it also reflects she was convicted
10 in, on 1/7/1997 of possession of 28 grams of marijuana or
11 ten grams of hash, is that correct?

12 A well, actually I think what it shows is that, that's
13 listed as a, on the N.C.I.C., I think it shows she pled to
14 simple possession, but the N.C.I.C. does show that there was
15 a charge. I don't have it in front of me to tell you if it
16 says conviction, but the N.C.I.C. will say whatever it says.
17 There was confusion as to whether or not she had two simple
18 possessions or one. She didn't remember either one of them.
19 we had verified I think in the City of Spartanburg she
20 definitely had one possession.

21 MS. CRUM: May I approach, Your Honor?

22 THE COURT: Yes, you may. This is, this one's already
23 in evidence.

24 MS. CRUM: Yes, Your Honor. I wanted to approach the
25 witness if that's okay.

Stephen Welch - Direct examination
by Ms. Crum

1 THE COURT: All right. That will be fine.

2 MS. CRUM: Okay.

3 Q Sir, can you tell us what was the conviction date of
4 the, the possession, and I believe it says possession of
5 marijuana?

6 A Well, it says Court charge 01 possession of 28 grams of
7 marijuana or 10 grams of hash first, and it has a date of
8 1/07/97 and it shows conviction on that.

9 Q Okay. And, so, to your knowledge, she had the records
10 at two prior convictions?

11 A The way we understood the law at the time was that the
12 trafficking statute made no distinction between even a
13 simple possession. Any two prior drug offenses that
14 involved and the way the statute reads it actually lists a
15 number of substances or it lists the -- I think it lists
16 marijuana or it lists the type. But anyway, any of those,
17 include simple possessions, would qualify as one of the
18 prior offenses for it to be a third. It's not third offense
19 trafficking or third offense crack. It's third drug
20 offense. This trafficking would be her third drug offense
21 the way the statute reads. I don't agree with the statute,
22 never liked the statute, but that's the way it reads.

23 Q And under the disposition on that report, it doesn't
24 say that she pled to simple possession. It simply says she
25 pled to possession of 28 grams or---

Stephen Welch - Direct examination
by Ms. Crum

1 A It says possession of 28 grams of marijuana or 10 grams
2 of hash.

3 Q And, and you're not aware whether she had another
4 charge for possession of marijuana?

5 A No, I'm not.

6 Q Okay. And do you recall ever telling her that she
7 wasn't represented by an attorney?

8 A That she wasn't represented?

9 Q Yes, sir.

10 A No, I do not.

11 Q Okay. And to your knowledge, was she represented by an
12 attorney at those pleas?

13 A I don't know. She never told me if she was or she was
14 not. Don't have personal knowledge to know.

15 Q Do you have any reason to suspect that she was not?

16 A Not at that time.

17 MS. CRUM: May I approach, Your Honor?

18 THE COURT: Yes, you may.

19 Q And during the trial you moved to suppress the finger
20 scales, is that correct?

21 A The scales and the marijuana.

22 Q Okay. And can you tell us on what grounds you moved to
23 suppress?

24 A The scales and the marijuana, the way the facts ran of
25 the case is allegedly Ms. Leebeey was having dinner in the

Stephen Welch - Direct examination
by Ms. Crum

1 Peach Blossom Restaurant there or whatever with somebody's
2 friends. They get up and leave. The person that waited on
3 them or somebody goes over and finds a pocketbook, opens it
4 for whatever reason, and sees whose it is, and discovers
5 crack cocaine in there, calls the police. The police then
6 come in and basically say, you know, call her, see if it's
7 hers so she can, the lady participates or whatever. Ms.
8 Leebey evidently identifies the bag, comes down, and
9 identifies it, and if she takes it, goes to walk out of the
10 Peach Blossom, that's when they then arrest her.

11 The testimony from the police was, was that, after they
12 arrested her, they asked for permission to search her room
13 and they patted her down. They allegedly found the finger
14 scales in her room, and they discovered the marijuana on the
15 pat down. We made motions to suppress the marijuana, and
16 the finger scales previously based upon the fact that they
17 had nothing to do with this, that there was no consent. The
18 officers had testified that she did give consent, and the
19 pat down search beside that, if they had not gotten her
20 consent, even if she hadn't of given consent of the
21 marijuana, when they go to pat her down after the search,
22 which they begun to do, the marijuana I think was in a pants
23 pockets. I'm not absolutely positive. It's been a long
24 time ago.

25 We moved to suppress. We got to the point in the trial

Stephen Welch - Direct examination
by Ms. Crum

1 where it looked like it was fixing to come up. So, I made
2 an objection, sent the jury out. After sending the jury out
3 I moved to suppress. Did not use the terms specifically
4 Rule 403, but used the suppress it on the grounds that the
5 finger scale and the marijuana were discovered after this
6 arrest took place, provided absolutely no probative value as
7 to whether or not she possessed this crack cocaine with
8 intent to traffic, and were highly prejudicial, which is
9 Rule 403. It's what Rules 403 says. Well, prejudicial
10 nature of it is, is one of the instances and it calls for a
11 balance by the judge. The judge listened to a little bit of
12 the testimony, and then basically overruled my objection,
13 allowed it to come in.

14 Now, the case law is such that if we make the
15 objection, there is some testimony on it, then the judge
16 overrules the objection, then unless, when the case, the
17 jury's brought back and the trial starts back, then unless
18 there is some evidence that comes in that would change his
19 ruling, then, when they immediately go into putting the
20 evidence in, number one, I do not feel and still do not feel
21 that there's necessity to stand up and object again because
22 I think that just draws attention to the jury, to, to what's
23 fixing to come in because the judge's gonna look at me and
24 say overruled. Just overruled before the jury came back.
25 On the -- and the judge allowed the marijuana and the scales

Stephen Welch - Direct examination
by Ms. Crum

1 in.

2 On the appeal, which we did not do the appeal, we filed
3 a notice of appeal and basically turned it over to the
4 Office of Appellate Defense. On the appeal, the appellate
5 or the Office of Appellate Defense actually made a Lyle
6 argument, not a Rule 403 argument, and the Court of Appeals
7 ruling actually came down stating to two things. One, that
8 our office -- our objection had been on prejudice, and that,
9 in the best light, to be Rule 404, that Rule 403 was not
10 argued on appeal. And, so, since they were arguing Lyle,
11 then Rule 403 is what the objection had been based on, so,
12 therefore it wasn't preserved. I think they made a mistake
13 in doing that, but, you know, that's their decision. I'm
14 not going to attack it, number one.

15 Number two, when it came down to the, making a Lyle
16 argument, the marijuana and the crack cocaine were actually
17 found after -- I mean, excuse me, the marijuana scales were
18 found after the crack cocaine. We did not make a Lyle
19 argument, and we were making an argument that it was not
20 prejudicial, and I will admit that the objection was not
21 made under Lyle because the material was discovered
22 afterwards. It wouldn't be a prior bad act. It would be
23 basically a subsequent bad act. But we did not make a Lyle
24 objection. We made a objection based upon the grounds it
25 was prejudicial, and the prejudice outweighed the probative,

Stephen Welch - Direct examination
by Ms. Crum

1 outweighed the probative value of the evidence, which is in
2 the record, did not specifically use the word Rule 403.

3 Q And in this case, the, the main issue was constructive
4 possession, isn't that correct?

5 A Yes, ma'am.

6 Q Okay. And did the applicant claim that she didn't know
7 that the drugs were in her purse?

8 A At what point in time?

9 The, the defense was that she didn't know they were in
10 there. That was the defense. She did not take the stand.

11 Q And, in your opinion based on the law, would the finger
12 scales have, have, generally been admissible?

13 A There's case law going back to probably the mid 80's
14 that would of, if the judge chose to, would put the finger
15 scales in because where you're charged with trafficking,
16 that type paraphernalia basically can be evidence that you
17 are trafficking, you got something to weigh the drugs with.
18 And, so, I think under the, the case law, it'd be judge's
19 discretion. I still personally believe that scales are
20 highly prejudicial and not probative. But she was charged
21 with trafficking.

22 Q And do you believe that the marijuana would have been
23 admissible?

24 A I don't, I don't think the marijuana should be
25 admissible. Judge -- it's in the judge's discretion. He's

Stephen Welch - Direct examination
by Ms. Crum

1 suppose to make a, weigh out the probative versus the
2 prejudicial value of it. I think it's highly prejudicial.
3 I don't think it should of been admitted. I just think it's
4 totally wrong to put other drug evidence into a case. She
5 wasn't on trial for marijuana. She was on trial for
6 trafficking.

7 Q Are you aware of the existing case law that says that
8 the marijuana is admissible?

9 A There is case law that can be interpreted to say,
10 especially Court of Appeals case law, that in those type
11 situations even the presence of other drugs goes to the
12 trafficking or distribution intent.

13 Q And during the trial, did you use any sort of strategy
14 in explaining the scales and the marijuana?

15 A Well, I think we tried to use the fact that the, the
16 scales -- it's been a long time. I don't know exactly what
17 we argued. But they were there. They couldn't be just
18 ignored, and I think we argued that the scales could be used
19 for any reason, even marijuana, which she had, not
20 necessarily crack, which is already in, I think the crack
21 rocks.

22 Q So, if the marijuana had been admitted, but the finger
23 scales had been admitted, would you have able to make that
24 argument?

25 A No, probably not. wouldn't of wanted to. Didn't want

Stephen Welch - Direct examination
by Ms. Crum

1 to make the argument to begin with.

2 MS. CRUM: Beg the Court's indulgence just a moment.

3 (Pause.)

4 MR. CRUM: Your Honor, I have no further questions of
5 this witness.

6 THE COURT: Ms. Anderson, cross-examination.

7 CROSS-EXAMINATION

8 BY MS. ANDERSON:

9 Q Mr. Welch, what was Ms. Leebey, Leebey charged with,
10 trafficking cocaine---

11 A Trafficking I think---

12 Q ---trafficking in crack?

13 A I forget. It was either crack or cocaine. It might of
14 been cocaine. I don't have the file right in front of me,
15 but it was trafficking cocaine.

16 Q Do you have the records where you say you met with her?

17 A I've got -- I don't think I've got all the billing
18 records. I've got some of the billing records. I know I
19 was in the first meeting. I don't think I did a time sheet
20 for the first meeting. But I do know that I met with her at
21 my office. There is a record here on 12, 2/12/98. I don't
22 always do time sheets. That's from Ronnie Perry. That's
23 Smokey Brown, who's L.A. Brown, Larry Brown, Smokey Brown.
24 I was in this meeting on '98. I don't think I did a time
25 sheet for it on that date, but I was in that meeting, and

Stephen Welch - Cross-examination
by Ms. Anderson

1 I'm not sure. I know, right before the trial, I don't think
2 we got the trial stuff here, right before the trial I met
3 with her again and that's some phone calls to her. But
4 there's the time sheets if you want to look at them.

5 Q Most of them say Ronnie Perry though.

6 A Ronnie Perry definitely met with her more than anybody.
7 He was the investigator, and our office has always operated
8 in that sense in terms of gathering information.

9 Q Now, someone else paid for her case?

10 A There was a gentleman that said he was loaning her some
11 money. His name is Jay Robinson.

12 Q But I see that everything you say is for professional
13 services rendered, there's no charge?

14 A We -- at some point in the process we probably wrote
15 part of it off and it zeros. I forget how much he paid at
16 first. Like \$2,500 or something like that. I don't think
17 she ever paid anything. He said he was loaning her the
18 money.

19 Q Okay. It was 3/25/98. She was already in jail.

20 A All I can tell you is, is that when he contacted us she
21 had been arrested, and he asked us if we'd go see her and---

22 Q I don't---

23 A ---we made arrangements. I think he might be the one
24 that bailed her out and she came down to our office.

25 Q Mr. Welch, I don't see in here any, any indication that

Stephen Welch - Cross-examination
by Ms. Anderson

1 you ever met with her. I'm sorry. But---

2 A Well, I'm telling you the, the time sheets right prior
3 to trial are not there and I was in the first meeting that
4 showed Mr. Brown and Mr. Perry. I was in that meeting. I'm
5 not -- and there was no time sheet for it.

6 Q Okay. And I'm also confused about this. You kept
7 calling it crack all through the trial.

8 You do not believe that was prejudicial to call it
9 crack instead of cocaine?

10 A I'm not aware that I called it crack all during the
11 trial, ma'am.

12 Q Let me have the -- thank you. All right. If you'll
13 look at Page---

14 A I don't have a transcript.

15 Q I'm handing it to you.

16 A Page 23.

17 Q You there?

18 A Yes, ma'am.

19 Q All right. I tried to find out in here where you had a
20 suppression. You made a motion to suppress this evidence.

21 A I can't find it. We filed a motion to suppress.

22 Q But did you ever make the motion?

23 A Well, put it to you this way. Until they go to put
24 some evidence into evidence the motion is on file. The
25 Court is not gonna typically let me have a -- I can have a

Stephen Welch - Cross-examination
by Ms. Anderson

1 Jackson v. Denno hearing on a statement that's supposedly
2 against her interest in terms of specific evidence. That
3 motion to go would of been made at the time that evidence is
4 actually entered. If it's not entered it's not gonna come
5 in.

6 Q You never made the motion?

7 A Ma'am---

8 Q It was entered---

9 A Ma'am, if you read the transcript, when they got to the
10 point where it looked like they were gonna enter the scales
11 or the marijuana, I then objected and asked to have the jury
12 taken out of the courtroom. When the jury was outside --
13 you filed in writing---

14 Q And it's not on the record.

15 A Yes, it is.

16 Q Well, I'm looking at Page 23, Line 14.

17 MS. CRUM: Your Honor, I would object. I believe he
18 already answered that question.

19 A It's in the record.

20 THE COURT: She's on cross-examination. I'll let her
21 ask it. We're at Page 23. What---

22 MS. ANDERSON: Page 23. Line 14.

23 Q You judge -- you consent to the search, and I don't
24 have any objection.

25 A All right. On you -- just on cocaine.

Stephen Welch - Cross-examination
by Ms. Anderson

1 Q No, this was the marijuana I believe.

2 A No, judge, she gave consent to search, and I don't have
3 any objection. They are going to lay a foundation in terms
4 of crack cocaine. Based upon the foundation that I know
5 they're going to lay, the witnesses don't have objection to
6 the admissibility. That's on the cocaine. Not the
7 marijuana or the scales.

8 Q Okay. All right. But you called it crack.

9 A I may have. The jury was not present.

10 Q Wait a minute.

11 A Look on Page 2. Remaining jury panel exits the
12 courtroom.

13 Q I realize that, but I thought they come back in.

14 A You can show it. I'll be glad to read it. But I don't
15 think it's there.

16 Q So, you had no problem with the cocaine, although you
17 kept calling it crack, being admitted?

18 A They had the affidavits. They had the witnesses set
19 on, scale. I think they talked to some of their witnesses
20 that were going to come and testify to the testing, and to
21 be honest with you, especially cocaine cases, the more you
22 put somebody up there on the stand saying I tested, I've
23 done this test to it, I've dropped the chemical on it, it
24 was definitely cocaine and weighed this amount, I think that
25 hurts the client. If it -- if there's a 99 percent

Stephen Welch - Cross-examination
by Ms. Anderson

1 possibility that it's gonna come in, I typically don't
2 object to it where they got everything lined up because I
3 think it hurts the client.

4 Q Well, show me here though where you objected to the
5 admissibility of the marijuana and the scales.

6 A Let me find it. Don't see it indexed. I think it's on
7 about 57, 58 there.

8 Q Yeah, go to 58.

9 A All right. On Page 58, the top, Mr. Taylor was on the
10 stand and on direct examination by the solicitor he was
11 starting to talk about the consent search of the room. I
12 felt that at that time it's gonna come in, and then
13 Mr. Mabry says this is the, this is what brought up, Your
14 Honor, we -- at that point I already objected to the Court
15 that -- I objected to the marijuana and the scales.

16 Mr. Mabry basically turned around, after he gets Mr. Taylor,
17 says she agreed to consent, he turned around, Court,
18 Mr. Mabry himself and says this is that point, this is that
19 matter he was referring to we had brought up, Your Honor.

20 We're at the point the Court goes all right, ladies and
21 gentlemen of the jury, I've got legal matters to address.
22 Please go to your jury room. He says jury. Do not discuss
23 the case. The jury exits. At that point in time is when I
24 get up and argue against, to suppress the marijuana and the
25 finger scales as being prejudicial and highly prejudicial

Stephen Welch - Cross-examination
by Ms. Anderson

1 and having no real probative value.

2 Q But---

3 A Two pages---

4 Q You never -- I mean according to the Court of Appeals
5 you failed to reserve this for---

6 A If I need to---

7 Q ---appellate review.

8 A If you read the Court of Appeals opinion, what's the
9 Court of Appeals opinion says is, is that the appeal was
10 based upon Lyle, and not based upon prejudicial value or
11 403.

12 Q But the bottom line that said you failed to preserve
13 the issue of the admissibility of the marijuana---

14 A No.

15 Q ---and scales for review.

16 A Not what they said. What they said is that the appeal
17 was based upon Lyle. The opinion speaks for itself. There
18 was no preservation of a Lyle issue at the trial, and I did
19 not preserve the Lyle issue such that I did not make a Lyle
20 objection. The marijuana and the finger scales were found
21 after her arrest for the cocaine.

22 Q And, so, you're saying that this, that you didn't
23 preserve it because it was worthless?

24 A Ma'am, I'm not saying worthless. I did not make a Lyle
25 motion. If I didn't make a Lyle motion, then if someone

Stephen Welch - Cross-examination
by Ms. Anderson

1 wants to make an argument that I should of made a Lyle
2 motion, I don't feel I should of made a Lyle motion because
3 the evidence they wanted to bring in were found after her
4 arrest for the, the cocaine. It was not a prior bad act.
5 It was a subsequent bad act.

6 Q I understand that, but it was still admitted into
7 evidence.

8 A I made objection for it not to be admitted into
9 evidence based upon---

10 Q But didn't preserve it.

11 A Ma'am, in terms of the, the prejudicial value, the
12 Court of Appeals opinion speaks for itself. It says that
13 the trial ruling for trial motion was made, based upon the
14 prejudicial value, not Lyle, and that would be Rule 403.
15 But there was no Rule 403 prejudicial argument made to the
16 Court of Appeals for whatever reason. An appellate lawyer
17 structured the legal issue.

18 Q Well, they did say---

19 A I mean---

20 Q ---it further that they failed to perform the balancing
21 test required by Rule 403. You didn't object to that.

22 A I made my objection. The judge did not put anything on
23 the record specifically making the balancing test, but made
24 objection based upon the prejudice nature. We argued about
25 a page and a half. The judge made his ruling. It was

Stephen Welch - Cross-examination
by Ms. Anderson

1 admissible.

2 Q And as they quote in the appeals in the, in the Court
3 of Appeals opinion, it says that objecting party accepts the
4 judge's ruling, does not contemporaneously make additional
5 objection. You can't preserve an issue. And when the judge
6 asked you you said okay.

7 A Judge asked me if I had any further objection?

8 Q Any further and you said not.

9 MS. CRUM: Objection. We ask that she let him---

10 A I will---

11 THE COURT: Let him finish.

12 You may proceed.

13 A He asked if I had any further objection. He already,
14 already had the prejudicial objection. Rule 403, he already
15 ruled on that and I did not have any other objection. I did
16 not make a Lyle motion.

17 Q why not?

18 A I've already testified to that. The marijuana and the
19 finger scales were confiscated after the arrest already had
20 been made for the cocaine, a subsequent act. Lyle, at that
21 time, case law dealt with prior bad acts. Okay. And in, in
22 terms of my opinion, it would not be a Lyle issue. I'm not
23 saying I'm right or wrong on that. I'll tell you why I did
24 not make a Lyle motion.

25 Q All right. But in this transcript it says that they

Stephen Welch - Cross-examination
by Ms. Anderson

1 used the admission of the marijuana and the scales as
2 circumstantial evidence to convict her.

3 A I don't dispute that.

4 Q I know. But you, you're saying you made a professional
5 decision not to go under Lyle, and yet the result was not
6 good for your client.

7 A Ma'am, they're a lot of tactical decisions made during
8 the jury trial on drug charges where the result of the jury
9 verdict is not guilty.

10 Q Okay. That doesn't mention you made a wrong decision,
11 but with, but prior to trial did you investigate her record?

12 A Ma'am, prior to trial I had discussions about her
13 record with my staff employees. We came in here with the
14 understanding that she did have PWID and at least one prior
15 simple possession.

16 Q But with a little digging you could of found that what
17 you kept telling the Court was possession of marijuana over
18 28 grams was a simple possession.

19 A I just told you that our understanding was that she had
20 a PWID and at least simple possession. That was it.

21 Q Well, it's here on her record and she pled to a simple
22 possession.

23 A And that was our understanding at the time of trial.
24 I'm not arguing with you.

25 Q Okay. But you kept saying to the Court that she had

Stephen Welch - Cross-examination
by Ms. Anderson

1 possession of over 28 grams was certainly different---

2 A Today?

3 Q Talk about today. No, I'm talking about in her record
4 you said she had---

5 MS. CRUM: Objection. I would object to the form of
6 the question.

7 A What I'm telling you---

8 THE COURT: Are you referring to something in the
9 transcript, Ms. Anderson, where you talked about it being
10 something other than simple possession?

11 MS. ANDERSON: Yes.

12 THE COURT: Why don't you show him that?

13 Q All right. If you look at Page 119, Number 10. This
14 is during the sentencing phase. Mr. Mabry recited her
15 record.

16 Now, according to investigation, this was a simple
17 possession. She was not found guilty of any possession of
18 marijuana 28 grams or more.

19 A Ma'am, my -- our understanding was that, on the date of
20 the sentencing, that everyone, though the N.C.I.C. read
21 whatever it reads, because it's, it says something like
22 plea---

23 Q It says possession of more than 28 grams. But if you
24 check on the warrant numbers and the ticket numbers it was a
25 simple possession.

Stephen Welch - Cross-examination
by Ms. Anderson

1 A But my point to you is, is on the date that she was
2 found guilty, our understanding was that she had at least
3 the trafficking or the PWID and one simple possession.

4 Q But that was incorrect. That's not what was said in
5 sentencing.

6 MS. CRUM: Objection. She's testifying.

7 Q Well, you---

8 THE COURT: Just one second.

9 A The Court put the record up. N.C.I.C. there. Okay.
10 On that date, after discussing with her the way N.C.I.C.
11 reads, there's the---

12 Q It's on one---

13 THE COURT: Wait a minute.

14 A Yeah, simple possession of marijuana, and then it's got
15 the possession of 28 grams of marijuana. It's got all those
16 charges on the same date, and she pled guilty to simple
17 possession or to -- it's got the guilty over here. That was
18 simple possession was the one that we knew she had. My
19 understanding of the statute was that the simple possession,
20 any prior drug offenses, would basically qualify under the
21 trafficking statute. It's prior offenses.

22 Q But I'm asking you, and maybe I'm being confused here
23 myself, but what you allowed Mr. Mabry, the solicitor, to
24 recite into the record for the purposes of sentencing was an
25 incorrect criminal record.

Stephen Welch - Cross-examination
by Ms. Anderson

1 A Put it to you this way. If -- when he says this, she
2 has a possession of 28 grams of marijuana or 10 grams of
3 hashish, 28 grams of marijuana, in terms of the amount it's
4 almost -- that, that comes within the simple possession
5 charge. It's just possession, 28 grams of marijuana.
6 That's simple possession.

7 Q But I'm asking you did you, did you not feel that you
8 had a duty to look into her record?

9 A Ma'am?

10 Q And you took it at face value?

11 A Understand me. She -- that -- what you're talking
12 here, he takes, tells the Court, judge, she's got the
13 distribution, possession with intent to distribute crack and
14 two simple possessions. That's what the Court -- okay. We
15 understood she had at least one for sure we could document
16 in Spartanburg. But it wouldn't make any difference on the
17 trafficking third because she had the possession, which our
18 understanding, and the PWID and the two possessions she got
19 there on the same date, and our opinion she had the
20 possession. What it did under that statute, what I tried to
21 explain, before the jury came back, any drug conviction,
22 prior, laid the foundation for trafficking third offense.
23 It's not third offense of trafficking. It's trafficking
24 third.

25 Q That -- I understand that. I'm just asking you that

Stephen Welch - Cross-examination
by Ms. Anderson

1 now, and I think under Baltazar about enhanced penalties, we
2 now have the Shelton case now, under Shelton, this simple
3 possession uncounseled plea would not be calculated in her
4 sentence, is that correct?

5 A Ma'am, I don't think it necessarily should be. But I
6 think the law at that tells you that the simple possession,
7 if it was an uncounseled plea, would count or not, I can't
8 tell you that.

9 Q But there is case law that it would, could not. I mean
10 that---

11 A I think it's---

12 Q The judge could decide it didn't count.

13 A I think that it is clear now that is true. I can't
14 tell you it was then.

15 Q Okay. One last quick thing.

16 Do you admit you didn't preserve I believe you said
17 earlier in your testimony according to the opinion?

18 A No, ma'am, I don't admit I didn't preserve it. I'll
19 tell you what I do admit. I do admit that I chose to make a
20 motion based upon Rule 403, the probative value of it being
21 outweighed by or not outweighed by the highly prejudicial
22 value of it. I did choose not to make a Lyle motion. The
23 Court, for whatever reason, Appellate Defense chose to argue
24 solely on Lyle. I never made a Lyle motion. I don't know
25 why they did that. But I did choose not to make a Lyle

Stephen Welch - Cross-examination
by Ms. Anderson

1 motion.

2 I think it's totally covered in the record, but that
3 was my decision at the time in terms of what motion to make,
4 and I did choose not to make a Lyle motion because the
5 paraphernalia and the marijuana was actually discovered
6 after her arrest.

7 Q But you also didn't preserve it under the 403 balancing
8 act?

9 A We think -- I did preserve it, but the Court of Appeals
10 never really had to come to that because they didn't make a
11 403 argument in the Court of Appeals. The Court of Appeals
12 is clear on that.

13 Q Let me ask you, had the marijuana not been admitted and
14 the scales, do you believe the outcome of this, of Ms.
15 Leebey's trial would of been different?

16 A I would hope so. That's why it falls so hard. I can't
17 tell you for sure. But I hope so.

18 MS. ANDERSON: Just one minute.

19 (Pause.)

20 MS. ANDERSON: That's all, Your Honor.

21 THE COURT: Any redirect?

22 MS. CRUM: Just one, Your Honor.

23 THE COURT: Yes, ma'am.

24 REDIRECT EXAMINATION

25 BY MS. CRUM:

Stephen Welch - Redirect examination
by Ms. Crum

1 Q Mr. Welch, is it common place for attorneys to rely on
2 N.C.I.C. reports?

3 A You say it's common place, we try not to rely on
4 N.C.I.C. reports, but, yes, we do. I have not many problems
5 with the N.C.I.C. reports at all. But in this case we did
6 verify with the client that she had PWID and at least one
7 prior simple possession.

8 Q Thank you. I have no further questions.

9 THE COURT: Anything to follow-up on that, Ms.
10 Anderson?

11 MS. ANDERSON: No, sir.

12 THE COURT: Thank you very much.

13 Any other witnesses for the state?

14 MS. CRUM: No, Your Honor.

15 THE COURT: Anything further in rebuttal?

16 MS. ANDERSON: No, sir.

17 THE COURT: Wish to make a closing statement?

18 MS. ANDERSON: Yes, sir.

19 THE COURT: You may proceed.

20 MS. ANDERSON: Your Honor, I do believe that it's clear
21 that Mr. Welch did not investigate this case thoroughly.
22 Very simply, was very simply a matter to discover that her
23 marijuana conviction wasn't a conviction for possession over
24 28 grams. I think that the Court of Appeals opinion speaks
25 for itself also in that had he preserved -- well, he says

1 today he made the decision not to go under Lyle. But even
2 if he says he went under Rule 403, he didn't do that
3 correctly either. I don't believe that his representation
4 met the standard at which under the -- I know the
5 Strickland -- the balancing -- I mean the two prong test. I
6 do not believe that his performance as Ms. Leebey's attorney
7 met with reasonable standards of attorneys in Spartanburg.

8 Mr. Welch said he did meet with her, but he did not
9 have any records stating that he met with her. My client is
10 looking at 25 years. But I don't know why she would make
11 anything like that up. But I do believe that had Mr. Welch
12 made the correct arguments and even preserved, if he had
13 preserved the matter, I believe that Ms. Leebey would of
14 gotten a new trial. The Court of Appeals opinion was, was
15 you know, pretty much the lawyer didn't do his job right in
16 this, and I don't think that he preserved this argument and
17 I as -- again, I say that, you know, you got -- I don't know
18 any criminal attorney in Spartanburg that we deal with that
19 doesn't question the N.C.I.C. reports. You have to go over
20 them with a fine tooth comb because they are not correct a
21 lot of the times, and I mean it's not hers. I mean this is
22 pretty much the standard and Mr. Welch should be held to
23 that standard.

24 THE COURT: Let me ask you a question, Ms. Anderson,
25 though. The record that's admitted that she had a simple

1 possession and that she had a previous cocaine conviction,
2 would that of been sufficient to support a charge or a
3 sentence on---

4 MS. ANDERSON: Yes, sir.

5 THE COURT: ---the third?

6 MS. ANDERSON: I agree it doesn't matter. I mean it
7 can be two small roaches of marijuana and -- but I do
8 believe, under the Shelton case, which unfortunately was
9 decided in 2002, in '02, but uncounseled pleas that can land
10 you in prison can't count, can't be used against you, and I
11 just think it's very unfortunate that we got this really
12 wonderful lady who I don't think got proper representation
13 in her case, and I feel that there was a lot that Mr. Welch
14 could have done like meet with his client. Ms. Leebey said
15 she didn't even know who he was and I do believe her in
16 this. But I believe that she should either get a new trial
17 or at least a sentence reduction to a second offense, and
18 that would be under Shelton.

19 But I, you know, was made these wonderful offers and
20 she, as her testimony was, she didn't know about it then
21 because if she had known she was facing 25 years she
22 certainly would of pled under, on a five to a twenty-five
23 year sentence. But anyway, I hope you will consider all of
24 this in your decision. I do not think that justice was
25 carried out in Ms. Leebey's case.

1 THE COURT: All right. Ms. Crum.

2 MS. CRUM: Thank you, Your Honor.

3 Your Honor, first the State submits that the
4 applicant's obviously not proved, met her burden of proof
5 today to prove both the two prong test of deficiency and
6 prejudice. Based on Mr. Welch's testimony, he was clearly
7 prepared. He had an investigator on this case. He sent him
8 out to the scene. They met with her several times. He did,
9 in fact, testify that he met with her at least once and I
10 believe he said it was more than once. I believe he said he
11 met with her at least twice.

12 He also testified that Mr. Smokey Brown, who's another
13 attorney in his office, also met with her at least once, and
14 the investigator. Therefore, Your Honor, the State submits
15 that Mr. Welch was credible in his testimony, that he did,
16 in fact, meet with her. He had notes that he referred to to
17 confirm those meetings. He also testified that she didn't
18 show up at trial that day because she couldn't find her,
19 that her phone had been disconnected, and had sent her to
20 the, to the addresses known that they sent information to
21 her.

22 It's her duty to keep up with her attorney, and it's
23 not her attorney's duty to go out and keep up with her.
24 It's her duty to keep in touch. It's her duty to keep in
25 touch with her attorney in the case, and, Your Honor, he did

1 try to contact her and he testified to that, and was able to
2 get her there. And I believe also missed just basically the
3 jury selection. So, therefore, Your Honor, the State
4 submits that it's proper investigation and preparation, that
5 Mr. Welch was clearly prepared to go to trial with this
6 matter.

7 with regard to the two priors, he stated that he pulled
8 her N.C.I.C. report, which I submit was reasonable. He
9 stated that he verified those convictions with his client,
10 which I also submit was reasonable. Counsel was arguing
11 essentially I believe the Shelton case applies in this case.
12 we don't think there's been any proof, other than the
13 applicant's own testimony, that she was not represented by
14 counsel at that, that simple possession guilty plea. But
15 even so, Your Honor, Shelton says that it's only a problem
16 where the judge doesn't go over the disadvantages and
17 advantages of having counsel and not having counsel, and
18 there was no proof of that in this case. That didn't
19 happen. Therefore, the State submits that Shelton
20 completely is not applicable.

21 And, Your Honor, the State submits that wasn't a --
22 there's been no proof that this was a bond forfeiture
23 situation. Therefore, it wouldn't apply either. So, she
24 had two priors based on the N.C.I.C. records, and the
25 State's submits it was properly subjected to a third

1 offense.

2 Now, with regard to the admission of the scales of
3 marijuana, Mr. Welch testified that he believed that he did
4 properly raise that objection to those, and I submit that he
5 was not deficient performance. If, however, if that was
6 deficient, which we believe it was not, the State is not
7 conceding that he was, but if he was, the State submits that
8 there was clearly no prejudice regarding the scales. Under
9 Rule 403, the scales would have, clearly have been
10 admissible, therefore not prejudicial, because the scales,
11 having scales simply is just not illegal. But considering
12 the usage of those scales and the fact that it's drug
13 paraphernalia, that is probative in this case. They would
14 also have been admissible under Lyle, and they were clearly
15 admissible under Lyle to show intent.

16 So, therefore, regardless of, of what Mr., Mr. Welch
17 did or didn't do, the State submits that there was no
18 prejudice because the finger scales were coming in. With
19 regard to the marijuana, the State also submits that the
20 marijuana was admissible because more probative than
21 prejudicial. It was necessary to show that the applicant
22 had constructive possession of the cocaine, and had
23 knowledge of the cocaine in her purse.

24 In addition, the marijuana was also admissible under
25 rule 404(b) and Lyle because it goes to identity and absence

1 of mistake, and, in addition, the State submits that was
2 also admissible under the rules, and, Your Honor, the State
3 would like to direct the Court's attention to several cases.

4 The first one being State v. Hammond. It's 242 S.C.2d
5 411, 1978, and that case basically says this, this gentleman
6 and their case was on trial for PWID cocaine and they found
7 marijuana in his truck, and the Court basically held that it
8 was -- the marijuana, the marijuana is admissible, was
9 logically relevant to show motive or intent to distribute
10 drugs. State would also direct the Court's attention to
11 State v. Scott, which was 400 S.C.2d 784, 1991 case, and in
12 this case I believe that they were arrested for trafficking
13 in cocaine, and they also, during the, during later search,
14 found baggies with some marijuana seeds in them, and both
15 baggies contained marijuana seeds were admissible because
16 the Court stated it was largely relevant to show that was
17 more than merely present.

18 Therefore, Your Honor, the State would submit that,
19 based on those cases, there's also other cases as well,
20 United States v. Holster. And, Your Honor, these cases were
21 not cited in the Respondent filing, which is also included
22 in the packet which the State submits that there was no
23 prejudice as well because they would of been admissible.

24 Thank you.

25 THE COURT: Okay. I'll take the matter under

1 advisement. Thank you very much. That concludes the
2 hearing.

3 MS. ANDERSON: Thank you, Your Honor.

4 MS. CRUM: Thank you, Your Honor.

5

6 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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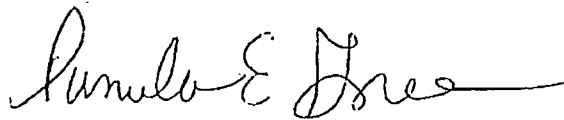
C E R T I F I C A T E

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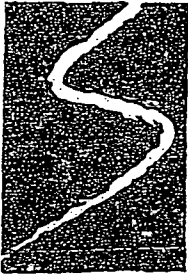
I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 13th day of January, 2005.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 6th, 2010

A handwritten signature in cursive script, reading "Pamela E. Green", written over a horizontal line.

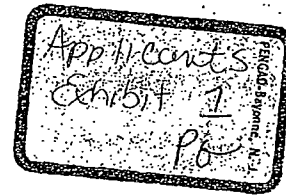
PAMELA E. GREEN, Court Reporter

JOHN LESLIE SMITH
JUDGECITY OF
SPARTANBURG

MUNICIPAL COURT

TELEPHONE: 864.596.2038

FAX: 864.596.2113



CERTIFIED COURT DISPOSITION

Docket Number: COO16717

Offender Name: Mable Jeter

Ticket/Warrant Number: OS6989AE; Simple

Disposition Information: possession marijuana 1st
Pled guilty - \$304 or
30 days - credit for time served

Offense Date: 1-3-97

Receipt Number (If Applicable): OS6989AE - OOO26684

Date of Payment (If Applicable): 1-6-97

CERTIFIED TO BE A TRUE AND CORRECT COPY
OF THE ORIGINAL DOCUMENT ON FILE WITH
THE SPARTANBURG MUNICIPAL COURT

173-05
MUNICIPAL COURT

SLED CATCH
Citizens Access to Criminal Histories**Results**

Name Mable Leebey
Date of Birth [REDACTED]
Maiden Name [REDACTED]
Gender Female
Transaction 001391323
Date of Check January 12, 2005 at 16:49

ARREST RECORD
S.C. Law Enforcement Division
WWW

This record is based on a search using last name, first initial, and date of birth. Compare all identifying data given for record subject with screening subject. Fingerprint comparison is recommended as the most reliable means to identify a record subject.

INTERNET RAP SHEET REQUEST
ORI-SCLED0000 SID-SC00842356 PUR-E
ATN-WEB, CC

AUTHORIZED USE ONLY. ***** CONTACT CONTRIBUTING
AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS.
BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-01/12/2005 TIME-16:52:57
REQ ORI-SCLED0000 S C LAW ENF DIV
SID-SC00842356 FBI-362087PA5
NAME-LEEBEY, MABLE IRENE SEX-F RACE-B
HEIGHT-504 WEIGHT-180 EYES-BRO HAIR-BLK SKIN- BORN-WA
FPC-1612130403DI13130405 HENRY-16 M 5 U OOI 3
I. 1 U OOI

PHOTOGRAPH AVAILABLE AUTHORIZED USE ONLY
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--03/24/1992 DATE OF LAST UPDATE--08/16/2002

ADDITIONAL IDENTIFIERS	BIRTH
NAME	DATES MARKS SOC SEC MISC. NUM
LEEBEY, MABLE IRENE	[REDACTED] DISC L ARM
JETER, MABLE LEE DEE	
LEEBAV, MABLE IRENE	
LEE-BEY, MABLE IRENE	
JETER, MABLE IRENE	
JETER, MABLE IRENE LEE BEY	

CONTRIBUTOR/SUBJECT	DOA/RCVD CHARGE/DISPOSITION/ETC
LEEBEY, MABLE IRENE	03/12/1992
SC0420100 SPARTANBURG PD	
CASE-22247	
WARR-D415790	

ARREST CHARGE 01-POSSESSION
OF CRACK
OFFENSE DATE-03/12/1992
PHOTOGRAPH AVAILABLE

WARR-00244TA

CIT-44-53-370 WARR-00244TA
ION

DOC-92GS4203731 WARR-D415790

ARREST CHARGE 02-POSSESSION
OF DRUG PARAPHERNALIA
COURT CHARGE 01-POSSESSDRUG PARAPHERNALIA
COURT DISP-CONVICTED;\$248 OR
30D, BOND FORFEIT
COURT DATE-03/16/1992
COURT CHARGE 02-POSS CRACK
COURT DISP-CONVICTED;1Y PROB;
1Y SUSPENDED RANDOM DRUG
TESTING
COURT DATE-08/17/1992LEEBEY, MABLE IRENE
SC0420100 SPARTANBURG PD
WARR-D412920

02/22/1993

ARREST CHARGE 01-FORGERY
OFFENSE DATE-07/10/1992
PHOTOGRAPH AVAILABLEWARR-D41
2920COURT CHARGE 01-FORGERY
COURT DISP-NON-CONVICTION;
DISMISSED
COURT DATE-05/17/1993LEEBAY, MABLE IRENE
SC0420100 SPARTANBURG PD
CASE-22247
WARR-D822014

03/24/1993

ARREST CHARGE 01-ARMED ROBBER
Y
OFFENSE DATE-03/24/1993
PHOTOGRAPH AVAILABLE

WARR-D822012

ARREST CHARGE 02-MALICIOUS
INJURY TO PERSONAL PROPERT
Y L/\$200

CIT-16-11-330(A) FELONY

DOC-00GS42 WARR-D822014

COURT CHARGE 01-ARMED ROBBERY
ROBBERY ARMED WITH DEADLY
WEAPONCOURT DISP-NON-CONVICTION;NO
BILL
COURT DATE-04/13/1993

CIT-16-11-510(B)(1) FELONY

DOC-00GS42 WARR-D822012

COURT CHARGE 02-MALICIOUS
INJURY TO PERSONAL PROPERT
Y >\$5,000COURT DISP-NON-CONVICTION;NO
BILL
COURT DATE-04/13/1993LEE-BEY, MABLE IRENE
SC0240100 GREENWOOD PD
WARR-D874411

09/01/1993

ARREST CHARGE 01-FORGERY
OFFENSE DATE-09/01/1993
PHOTOGRAPH AVAILABLE

WARR-03024WY

ARREST CHARGE 02-SPEEDING

WARR-03027WY

ARREST CHARGE 03-OPERATING
UNINSURED

WARR-03027WY

ARREST CHARGE 04-NO VEHICLE
LICENSE

WARR-03025WY

ARREST CHARGE 05-DRIVING
UNDER SUSPENSIONJETER, MABLE IRENE
SC0230400 MAULDIN PD
CASE-M9508779
WARR-07781ZO

08/21/1995

ARREST CHARGE 01-DRIVING
UNDER SUSPENSION
OFFENSE DATE-08/21/1995
PHOTOGRAPH AVAILABLE

WARR-07780ZO

ARREST CHARGE 02-SPEEDING
OFFENSE DATE-08/21/1995
COURT CHARGE 01-DRIVING UNDER
SUSPENSION
COURT DISP-CONVICTED;\$364 OR
30 DAYS

WARR-0778170

COURT CHARGE 02-SPEEDING
COURT DISP-CONVICTED;\$85

WARR-0778070

JETER, MABLE IRENE LEE BEY
SC0420100 SPARTANBURG PD
CASE-22247

11/03/1996

ARREST CHARGE 01-CRIMINAL
DOMESTIC VIOLENCE
OFFENSE DATE-11/03/1996
PHOTOGRAPH AVAILABLECIT-C/L
DOC-R84COURT CHARGE 01-CRIMINAL
DOMESTIC VIOLENCE
COURT DISP-CONVICTED;\$304 OR
30 DAYS
COURT DATE-11/04/1996JETER, MABLE IRENE
SC0420100 SPARTANBURG PD
CASE-22247
WARR-56989AE

01/03/1997

ARREST CHARGE 01-SIMPLE POSSE
SSION OF MARIJUANA
OFFENSE DATE-01/03/1996
PHOTOGRAPH AVAILABLE

WARR-56990AE

ARREST CHARGE 02-POSSESSION
OF DRUG PARAPHERNALIA
OFFENSE DATE-01/03/1996CIT-44-53-370(D)(3) MISDEMEANOR
DOC-R84 WARR-56990AECOURT CHARGE 01-POSS OF 28G
OF MARIJ OR 10G OF HASH -
1ST

CIT-44-53-370(D)(3) MISDEMEANOR
DOC-R84 WARR-56989AE

COURT DISP-CONVICTED;\$304
COURT DATE-01/07/1997

COURT CHARGE 02-POSS OF 28G
OF MARIJ OR 10G OF HASH -
1ST
COURT DISP-CONVICTED;\$304 OR
30D
COURT DATE-01/07/1997

JETER, MABLE LEE DEE
SC0420100 SPARTANBURG PD
CASE-22247
WARR-F312946

06/06/1997

ARREST CHARGE 01-PETTY LARCEN
Y
OFFENSE DATE-06/06/1997
PHOTOGRAPH AVAILABLE

WARR-F312945

ARREST CHARGE 02-BURGLARY 2ND
OFFENSE DATE-06/06/1997

LEEBEY, MABLE IRENE
SC0420000 SPARTANBURG CNTY SO
CASE-72726
WARR-F672491

10/29/1997

ARREST CHARGE 01-TRAFFICKING
COCAINE
PHOTOGRAPH AVAILABLE

CIT-44-53-370(E)(A) FELONY
DOC-98GS4203897 WARR-F672490

COURT CHARGE 01-TRAFFICK
COCAINE,10G-28G-3RD OR
MORE
COURT DISP-CONVICTED;25 YRS
AND 50,000.00, APPEAL
AFFIRMED 08/09/02
COURT DATE-10/29/1999

CIT-44-53-370(D)(3) MISDEMEANOR
DOC-98GS4203896 WARR-F672491

COURT CHARGE 02-POSS 28G/LESS
MARIJ/10G OR LESS HASH-2N
D/SUB
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-10/29/1999

JETER, MABLE IRENE
SC0420000 SPARTANBURG CNTY SO
CASE-072726
ATN-WARR-G171530

04/15/1999

ARREST CHARGE 01-POSS W/INT
TO DIST MARIJUANA
OFFENSE DATE-04/15/1999
PHOTOGRAPH AVAILABLE

WARR-45830BE

ARREST CHARGE 02-DISORDERLY
CONDUCT
OFFENSE DATE-04/15/1999

CIT-44-53-370(B)(2) FELONY
DOC-99GS4204735 WARR-G171530

COURT CHARGE 01-MANUFT, POSSES
S SCH I, II, III WITD-3RD

OR SUB
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-11/01/1999
ATN-

SC040085C WOMEN'S R&E CENTER 11/05/1999 CUSTODY STATUS-RECEIVED
CASE-262208 START DATE-11/05/1999
END OF PAGE 01 - PAGE 02 TO FOLLOW

PAGE-02 DATE-01/12/2005 TIME-16:52:57
REQ ORI-SCLED0000 S C LAW ENF DIV
SID-SC00842356 FBI-362087PA5

CONTRIBUTOR/SUBJECT	DOA/RCVD CHARGE/DISPOSITION/ETC
SC040085C WOMEN'S R&E CENTER CASE-262208 CIT-44-53-370(E)(A)-FELONY	CUSTODY STATUS-RECEIVED START DATE-11/05/1999 COURT CHARGE 01-TRAFFICK COCAINE, 10G-28G-3RD OR MORE COURT DISP-CONVICTED; 25Y ATN-

BASED ON SEARCH OF SCLED CJICS CCH FILE USING SID/SC00842356
THIS IS PROVIDED FOR THE EXPRESS PURPOSE FOR MAKING LICENSING OR
EMPLOYMENT DECISION.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING HANDGUN IN
SOUTH CAROLINA

INFORMATION SUBMITTED TO SLED CCH PURSUANT TO 16-23-10 (C) AND 23-31-110
(C) OF THE SOUTH CAROLINA CODE OF LAWS INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A CRIME OF VIOLENCE AND IS NOT PERMITTED TO POSSESS OR
ACQUIRE A HANDGUN.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIRE
ARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18 USC 922 (G)).

*** S C CJICS END OF RECORD ***

Credit Card Transaction Number 1105566342ICE223050112164900

Return Another Check

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Mabel Leehey, SCDC No. 262208.

Applicant,

VS.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS IN
SEVENTH JUDICIAL CIRCUIT
2002-CP-42-3944

ORDER

This comes before this Court by way of the Applicant's *pro se* Motion to Relieve Counsel in this Post-Conviction Relief (PCR) matter. A hearing on the Motion was convened at the Spartanburg County Courthouse on November 9, 2004. Both the Applicant and her appointed counsel, J. Patricia Anderson, Esquire, were present. The Respondent was present and represented by Molly R. Crum, Esquire, of the South Carolina Attorney General's Office. At the hearing, the Applicant informed this Court that she did not wish to proceed on her Motion.

This Court finds that the Applicant has knowingly and voluntarily withdrew her *pro se* Motion to Relieve Counsel, and her Motion is dismissed. An evidentiary hearing on the PCR Application is continued to the next term of PCR court in the Seventh Judicial Circuit.

AND IT IS SO ORDERED THAT:

1. The *pro se* Motion to Relieve Counsel in the above-referenced application for post-conviction relief is dismissed;
2. The evidentiary hearing is **CONTINUED**; and
3. The Applicant be remanded to the custody of the Respondent.

J. Mark Hayes, II,
Presiding Judge, Seventh Judicial Circuit

Spaulding, South Carolina.

11/30, 2004.

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

) SEVENTH JUDICIAL CIRCUIT

Mable I. Leebay,
S.C.D.C. No. 262208

) Case Number: 2002-CP-423944

Applicant,

VS.

ORDER

State of South Carolina,

Respondent.

This matter comes before the undersigned on the petition filed by Mable Leebay seeking relief from her conviction of trafficking cocaine which occurred on October 29, 1999. As a result of her conviction Ms. Leebay was sentenced to twenty five years in prison with no parole and a fifty thousand dollar (\$50,000) fine.

The Applicant was present at the hearing held before the undersigned and represented by Patricia Anderson, Esquire of the Spartanburg County Bar. The State of South Carolina was present and represented by Molly Crum, Esquire of the Attorney General's Office.

In her application of Post-Conviction Relief, Ms. Leebay alleged the ineffective assistance of counsel based on Counsels failure to preserve a Lyle objection to marijuana which was introduced into evidence at the trial, and for the Trial Attorney's failure to object to an improper criminal record given to the Judge at the time of sentencing.

Based on the hearing held and the evidence presented to this Court this Court makes the following:

FINDINGS OF FACT

1. Ms. Leebay was charged with trafficking in cocaine as a result of leaving a small change purse in a restaurant which contained cocaine. Upon checking the materials in the purse the Police Officers determined it to be crack cocaine. Ms. Leebay who was staying in a nearby motel, was arrested and so charged. In a search incident to her arrest the police located a small bag of marijuana as well as a set of finger scales on her person.

At her trial the defendant did not testify and was found guilty of the offense of trafficking cocaine.

2. At the sentencing phase of her trial the Solicitor read into the record, in front of the Judge, a conviction of Ms. Leebay for trafficking in marijuana. It does appear from the actual warrants and other documents involved in that case that Ms. Leebay plead guilty to simple possession of marijuana on that occasion.

3. There is no question that another prior drug offense was properly admitted before the Court.

4. During the trial, the Attorney for the Applicant, Mr. Welsh, made a motion to suppress the marijuana and finger scales based on their prejudicial effect against the Applicant under Rule 403, of the South Carolina Rules of Evidence.

5. The Appeal was based on the improper admission of the evidence under Lyle; however, it does not appear that the Attorney for the Applicant objected on a Lyle basis. Based on the fact that the evidence was discovered in a search incident to arrest, these bad acts were not prior bad acts under Lyle but, were in fact subsequent bad acts taking place after her arrest for the possession of cocaine.

CONCLUSIONS OF LAW

1. Effective representation of counsel is a requisite of due process and the sixth amendment, Rogers v. State 261 South Carolina S.C. 288, 199 S.E.2nd 761 (1973).

2. Attorneys are held to an objective standard of "reasonably effective assistance" "prevailing professional norms". There is a presumption that Counsel was effective and the Applicant must show prejudice in order to receive relief.

3. Prejudice is defined as a reasonable probability that, but for the Counsel's unprofessional error, the result of the proceeding would have been different.

4. A reasonable probability is one sufficient to undermine confidence in the outcome of the original case.

DISCUSSION

1. As to question of admissibility of evidence. At the trial of the case the Applicant's trial counsel objected to the admission of the finger scales and marijuana based on Rule 403 of the South Carolina Rules of Evidence. That Rule reads "although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentations of cumulative evidence." Rule 403, South Carolina Rules of Evidence. Since the Applicant had been charged with trafficking in cocaine it was the trial counsel's strategy and position that these particular items would have constituted post arrest bad acts and would not have been objectionable under the Lyle case. This Court agrees that a Lyle objection would not have been proper to the evidence in question, and therefore, Rule 403 was the proper objection for the Applicant's Attorney to make in this case. The fact that the court did

not agree with that objection is certainly not a basis for a finding of the ineffective assistance of counsel. The Applicant's Attorney placed the issues clearly before the Court and the issue was ruled upon within the Judge's discretion.

2. As to the sentencing question. It is clear, that the Trial Court was misinformed as to one of the convictions from the Applicant's criminal record. The Court was informed that the Applicant had a prior conviction for possession of 28 grams of marijuana or 10 grams hashish. The Applicant had been charged with such a crime, but however, at the time of her plea on that charge she plead guilty to simple possession of marijuana.

However, a review of the code sections which set forth the requirement of a charge of trafficking 3rd offense as they existed at the time of her trial and charge would reveal that a conviction for simple possession of marijuana would have served as one of the "strikes" necessary for her to be so sentenced. Therefore, while the Court was misinformed and Defense Counsel could have objected to the error, this Court finds that the resulting sentence would not have changed and she would have still been sentenced under the statute which required a mandatory sentence of 25 years in prison and a fine of fifty thousand dollars (\$50,000).

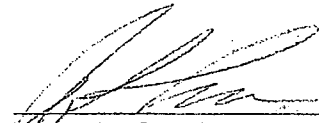
CONCLUSION

Based on the above, the Court finds that there existed no error which caused prejudice to the Applicant such that it would have undermined this Court confidence in the outcome of her trial and on that basis, the Applicant's Post-Conviction Relief application is hereby denied.

IT IS SO ORDERED.

[Handwritten signature]

Spartanburg, South Carolina



Roger L. Couch
Presiding Judge

May 9, 2005

CLERK OF COURT
SPARTANBURG COUNTY
2005 MAY -9 PM 2:51
MARCO RICHENS

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
	)	
Mable I. Leebay, SCDC No. 262208,	)	2002-CP-42-3944
Applicant,	)	
	)	
v.	)	MOTION PURSUANT TO
	)	RULE 59(e), SCRPC
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent (the State) makes the following Motion to Alter or Amend a Judgment pursuant to Rule 59(e), SCRPC. The State hereby moves to alter or amend the court's Order of dismissal in the above post-conviction relief (PCR) matter, which was filed on May 9, 2005, and received by the State on May 11, 2005, as follows:

I.

The State submits that Sentence One in Section Two on Page Two of the Order appears to state that the Solicitor told the trial judge that Ms. Leebay had a prior conviction for trafficking in marijuana. However, the trial transcript reflects that the Solicitor stated instead that she was convicted of possession of 28 grams of marijuana or 10 grams of hashish. (See page 119 of trial transcript.) Therefore, the State moves to amend Sentence One in Section Two on Page Two of the Order to read as follows:

"At the sentencing phase of her trial the Solicitor read into the record, in front of the Judge, a conviction of Ms. Leebay for possession of 28 grams of marijuana or 10 grams of hashish."

II.

The State therefore requests that the relief requested be granted and said Order to be altered or amended to reflect the above change.

WHEREFORE, having made its Motion, the State requests that the relief requested in the Motion be granted.

Respectfully submitted,

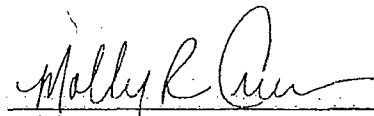
HENRY D. MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MOLLY R. CRUM
Assistant Attorney General

BY:



(ATTORNEYS FOR RESPONDENT)

Office of the Attorney General

P.O. Box 11549

Columbia, SC 29211

(803) 734-3737

Columbia, South Carolina

May 13, 2005

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

) SEVENTH JUDICIAL CIRCUIT

Mable I. Leebay,

) Case Number: 2002-CP-42-3944

Applicant

V.

The State of South Carolina,

Respondent

ORDER

THIS MATTER COMES BEFORE THE UNDERSIGNED, on Motion of The State of South Carolina represented by Molly Crum, Esquire of the Attorney General's Office, seeking to alter or amend the Order signed and dated May 9, 2005.

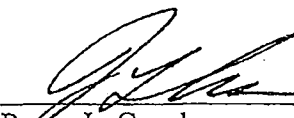
Based on review of the evidence in this case and upon full review of Respondent's Motion, this Court finds that the Order dated and filed on May 9, 2005, should not be disturbed.

For the above stated reasons, I find that Respondent's Motion to Alter or Amend dated May 13, 2005 in this matter should be denied.

IT IS SO ORDERED.

Spartanburg, South Carolina

July 7, 2005


 Roger L. Couch
 Presiding Judge

MARC KITCHENS

2005 JUL 11 PM 3:31

CLERK OF COURT

FORM 5

1494

STATE OF SOUTH CAROLINA)

COUNTY OF Spartanburg)

IN THE COURT OF COMMON PLEAS

Full name and prison number (if any) of Applicant)

Mable Lee Bey 262208)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall 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 L.C.I., Greenwood SC. 29649
2. Name and location of Court which imposed sentence Sptg County General Session
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) indictment # 1998 G 54203897 - Trafficking Cocaine
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 10/29/99 - 254R no parole and 30,000 Fine
 - (b) _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 MAR 15 AM 9:18
Revised 3/2003

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty a Jury found Applicant guilty.

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. The state of SC Court of Appeal

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. The conviction of the lower Court Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. MAY 21, 2002

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such

results: State v. Patterson 324 S.C. 5, 19, 482 S.E. 2d 760, 767 (1997) stating an applicant is limited toi. the grounds raised at trial State v. Tuckerii. 319 S.C. 425, 428, 462 S.E. 2d 263, 265 (1995)9. If you answered "no" to (7), state your reasons for not so appealing: N/A

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully: Mable Lee-Bey v. State 2002-CP-42-39

Requests to Appeal PCR Hearing of 1/12/05
 "Court ~~at~~ Errored by sentencing Applicant to 3rd Strike
 when in fact it was her 2nd strike - Request Courts to
 Reconsider her Sentence"

FILED
 COURT OF COMMON PLEAS
 JEFFERSON COUNTY
 2010 MAR 19 AM 9:18

- (a) Spartanburg County Clerk of Court Marc Kitchens
 (b) Stole drugs (Cocaine) from evidence locker - Have no
 (c) proof that applicant's evidence was or was not
taken -

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) PCR transcript last page states "Court Error"
 (b) Marc Kitchens investigation Feb. 2010
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. PCR application File 2003, Affirmed 2005
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. Spartanburg County
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. Affirmed
 ii. _____
 iii. _____

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 CLERK OF COURT
 SPARTANBURG COUNTY
 2010 MAR 19 AM 9:18

iv. _____
 (d) the date of each such disposition:

i. Jan 2005

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. although the court's error, there's no proof, therefore

ii. that the applicant would not have still been sentenced

iii. to 25 yrs for 2nd offence Trafficing

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) grounds were found during PCR hearing

(b) 1/2005

(c) grounds happen 2010

17. Were you represented by an attorney at any time during the course of:

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 CLERK OF COURT
 HARRIS COUNTY
 2010 MAR 19 AM 9:18

- (a) your arraignment and plea? yes
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

(Trail) i. J. Stephen Welch P.O. Box 3189 Greenwood SC 2964
 (Appeal) ii. Daniel T Stacey P.O. Box 116 29 Columbia SC 29211
 (PCR) iii. Patricia Anderson P.O. Box 1507 Spartanburg SC 29304

- (b) the proceedings at which each such attorney represented you:

i. Trail
 ii. Appeal
 iii. PCR

19. State clearly the relief you seek in filing this application:

Requesting Sentence Reduction and/or Time Served
OR New Trial

20. Are you now under sentence from any other court that you have not challenged?

NO

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 CLERK OF COURT
 SPARTANBURG COUNTY
 2010 MAR 19 AM 9:18

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 17
day of March, 2010.

Jean Brinsley (L.S.)
Notary Public

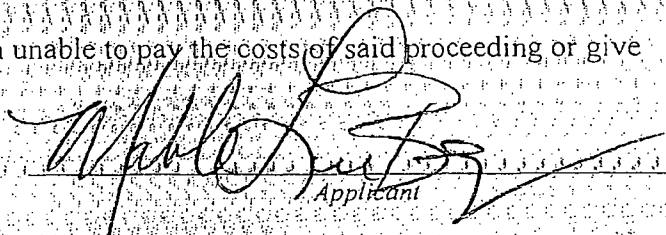
My Commission Expires: 04-14-2015

FILED
CLERK OF COURT
- JASPER COUNTY
2010 MAR 19 AM 9:18

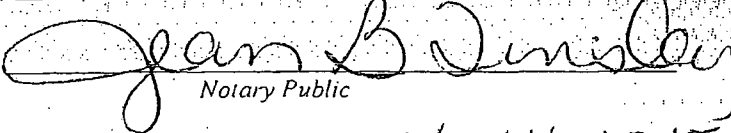
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
17 day of March, 2010


Notary Public

My Commission Expires: 04-14-2015

FILED
CLERK OF COURT
ANTHONY COUNTY
2010 MAR 19 AM 9:18

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Mable Lee-Bey, #262208,	)	2010-CP-42-1494
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION
	)	TO DISMISS
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for Post-Conviction Relief application filed March 19, 2010, would respectfully show this Court:

I.

The Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted by the Spartanburg County Grand Jury for trafficking in cocaine (98-GS-42-3897). Stephen Welch, Esquire, represented the Applicant on the charge. On October 28-29, 1999, the Applicant proceeded to a jury trial where she was found guilty of the charge. The Honorable J. Derham Cole sentenced the Applicant to imprisonment for a term of twenty-five (25) years and a fine of \$50,000.

The Applicant appealed her conviction. The South Carolina Court of Appeals affirmed the conviction in Unpublished Opinion No. 2002-UP-364 on May 21, 2002. The Remittitur was issued on August 7, 2002.

The Applicant subsequently filed an application for PCR on October 29, 2002, in which she alleged the following grounds for relief:

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 AUG 12 AM 11:29
M. HOPE BLANKLEY

1. Ineffective assistance of counsel.

The State filed its Return on July 10, 2003. On January 13, 2005, an evidentiary hearing was held before the Honorable Roger L. Couch, at which the Applicant was present and was represented by J. Patricia Anderson, Esquire. Molly R. Crum, Esquire, of the South Carolina Office of the Attorney General, represented the State. By Order dated May 9, 2005, Judge Couch denied and dismissed the Applicant's Application for PCR.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the records from the Applicants first PCR application.

II.

In her current Application, the Applicant alleges that she is being held in custody unlawfully for the following reasons:

1. "Requests to appeal PCR hearing of 1/12/05," and
2. "Spartanburg County Clerk of Court Marc Kitchens stole drugs cocaine from the evidence locker – have no proof that Applicant's evidence was or were not taken."

III.

Respondent submits that this is a successive application. Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by her in a previous application.

State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 411 (1981). The Applicant alleges that she was denied the right to appeal the dismissal of her previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 451, 409 S.E.2d 411 (1991).

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CLERK OF COURT
SPARTANBURG COUNTY
2010 AUG 12 AM 11:29
M. HOPE BISHOP

S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. The Respondent lacks sufficient information to admit or deny this allegation. The Respondent requests an evidentiary hearing on this ground for relief. Sharper, Id.; Austin, Id.

IV.

The Applicant's second claim appears to be an allegation that newly discovered or after discovered evidence exists. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant appears to allege that because the drug evidence used against her during her trial in 1999 may have been removed from the Spartanburg County Clerk of Court's evidence locker, she should now be released. However, in addition to having no knowledge of whether the evidence was used in her case is missing, Applicant offers no explanation as to how this evidence or lack thereof would change the result if a new trial were held. Respondent submits that the Applicant has not shown that the alleged evidence meets the requirements for after-discovered evidence. Most importantly, the "new evidence" offered by the Applicant is not "material to the issue of guilt or innocence," and probably would not "change the result if a new trial was had." Hayden, Id. The Court should summarily dismiss this allegation.

V.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of whether the Applicant was denied a right to appeal. As to all other allegations, the State

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CLERK OF COURT
SPARTANBURG COUNTY
2018 AUG 12 AM 11:29
D. HOPE BLANCHLEY

moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

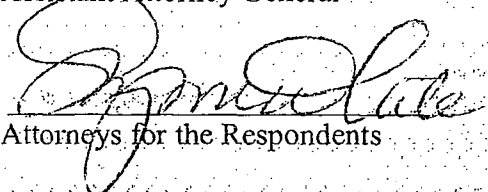
HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By:


Attorneys for the Respondents

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

Aug. 11, 2010.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 AUG 12 AM 11:29
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

MABLE LEE-BEY,

APPLICANT,

-VS-

STATE OF SOUTH CAROLINA,

RESPONDENT.

2010-CP-42-01494

TRANSCRIPT OF RECORD

NOVEMBER 2, 2010
SPARTANBURG, SOUTH CAROLINA

BEFORE:

THE HONORABLE J. MARK HAYES, II

APPEARANCES:

ATTORNEY FOR APPLICANT:

JOHN E. ROGERS, II, ESQUIRE

ATTORNEY FOR RESPONDENT:

SUZANNE H. WHITE
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.

CERTIFICATE OF REPORTER -----

6

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
-----------	--------------------	-----------	-----------------

(No Exhibits Were Presented During This Hearing)

1 MS. WHITE: Your Honor, this -- this is the honor, I
2 mean, the case of Mable Lee-Bey versus the State of South
3 Carolina. It's case number 2010-CP-42-1494.

4 This is essentially the same situation as our last one.
5 Ms. Lee-Bey had a previous PCR. It was dismissed in May of
6 2005. There was no appeal filed.

7 Apparently Ms. Lee-Bey at one point did attempt to file
8 a pro se notice of appeal, which was dismissed for some
9 reason. From looking at the files, we couldn't determine,
10 other than maybe timeliness.

11 I've spoken with her PCR counsel, who has informed me
12 that she should have appealed the PCR. And, therefore,
13 again, the State would consent to the Austin appeal.

14 But Ms. Lee-Bey did file, I believe, a couple of other
15 allegations in her application. And we'd just move to
16 dismiss all of those as based as successive and based on the
17 Statute of Limitations other than the belated PCR appeal,
18 which we would consent to.

19 MR. ROGERS: Your Honor, John Rogers representing Mable
20 Lee-Bey. I've gone over this situation with Ms. Bey. And
21 she is willing to consent to the dismissal of her other
22 grounds in her PCR application provided the agreement with
23 the State that she will be granted an appeal of her original
24 PCR.

25 THE COURT: All right. Then if the State will prepare

1 an order.

2 MS. WHITE: Yes, Your Honor.

3 THE COURT: Good luck to you, ma'am.

4 MS. LEE-BEY: Thank you.

5 THE COURT: Thank you very much.

6 MR. ROGERS: Thank you, Your Honor.

7 (Hearing Ended at 9:48 am)

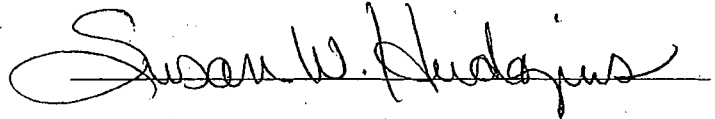
8 (End of Requested Transcript of Record)

1 Certificate of Reporter

2 I, The undersigned, Susan W. Hudgins, Official Court
3 Reporter for the Seventh Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all the
6 proceedings had and evidence introduced in the trial/hearing
7 of the captioned case, relative to appeal, in the Circuit
8 Court for Spartanburg County, South Carolina, on the 2nd day
9 of November 2010.

10 I do further certify that I am neither of kin, counsel,
11 nor interest to any party hereto.

12 November 24, 2012

13
14 

15 Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Mable Lee-Bey, #262208,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2010-CP-42-1494

ORDER OF DISMISSAL WITH
PREJUDICE AND FINDINGS
PURSUANT TO AUSTIN V. STATECLERK OF COURT
SPARTANBURG COUNTY
FILED
2010 NOV 18 PM 12:12
M. H. HESLEY

This matter comes before the Court by way of Post-Conviction Relief (PCR) application filed March 19, 2010. An evidentiary hearing was held on the matter on November 2, 2010, at the Spartanburg County Courthouse. The Applicant was present and represented by John E. Rogers II. The Respondent was represented by Suzanne H. White of the Attorney General's Office. The Court had before it the PCR application, the records of the Spartanburg County Clerk of Court, the trial transcript, records from the South Carolina Department of Corrections, and records from prior PCR actions.

I.

The Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted by the Spartanburg County Grand Jury for trafficking in cocaine (98-GS-42-3897). Stephen Welch, Esquire, represented the Applicant on the charge. On October 28-29, 1999, the Applicant proceeded to a jury trial where she was found guilty of the charge.

The Honorable J. Derham Cole sentenced the Applicant to imprisonment for a term of twenty-five (25) years and a fine of \$50,000.



The Applicant appealed her conviction. The South Carolina Court of Appeals affirmed the conviction in Unpublished Opinion No. 2002-UP-364 on May 21, 2002. The Remittitur was issued on August 7, 2002.

The Applicant subsequently filed an application for PCR on October 29, 2002, in which she alleged the following grounds for relief:

1. Ineffective assistance of counsel.

The State filed its Return on July 10, 2003. On January 13, 2005, an evidentiary hearing was held before the Honorable Roger L. Couch, at which the Applicant was present and was represented by J. Patricia Anderson, Esquire. Molly R. Crum, Esquire, of the South Carolina Office of the Attorney General, represented the State. By Order dated May 9, 2005, Judge Couch denied and dismissed the Applicant's Application for PCR.

At the hearing on November 2, 2010, the State, after sharing conversations with Applicant's first post-conviction relief Attorney regarding her failure to file an appeal following Applicant's last application, consented to allow the Applicant to pursue a belated Austin appeal, but moved to dismiss any and all other PCR allegations. The Applicant stated that she wished to go forward only on the belated appeal issue and to withdraw all other allegations. The Applicant was sworn and questioned by the Court about her withdrawal request to ensure that the withdrawal of the Application was free and voluntary and that the Applicant had not been promised anything or threatened, coerced, or induced into withdrawing the application. The Applicant was informed and testified she understood that this withdrawal would be considered with prejudice.

FILED
CLERK OF COURT
SPRINGBURN COUNTY
2010 NOV 18 PM 12:11
M. HOPE BLACKLEY

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the evidence and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), the Court makes the following findings of fact and conclusions of law.

Appeal

State law expressly authorizes the right to seek appellate review of the denial of post-conviction relief. See S.C. Code Ann. § 17-27-100 (1985). In the absence of an intelligent waiver by the applicant, counsel must advise the applicant of his appellate rights. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of post-conviction relief issues pursuant to Austin v. State. See King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992).¹

The Court affirmatively finds that the Applicant did not knowingly and voluntarily waive her right to appellate review. The Court concludes that the Applicant is entitled to a belated review of the denial of her first application. The Applicant's lack of a PCR appeal can be remedied by a petition for belated review pursuant to Austin v. State, Id. This court notes that it will be necessary for counsel for the Applicant to appeal this order to secure appropriate review pursuant to Austin.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 NOV 18 PM 12:17
M. HOPE BLANCHLEY

¹ "Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for... review (emphasis added)." Davis v. State, 288 S.C. 290, 291 at n. 1, 342 S.E.2d 60 (1986).

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All Other PCR Allegations

Based upon the Applicant's testimony, this Court finds that the dismissal of all allegations not related to the Applicant's belated Austin appeal is voluntary and that the Applicant has knowingly and intelligently elected to have said allegations dismissed with prejudice.

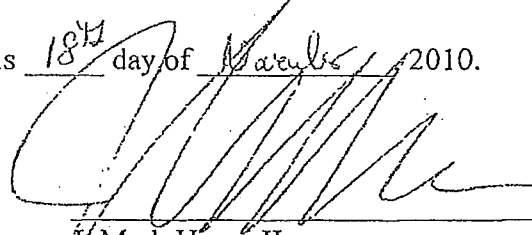
CONCLUSION

The Applicant has proven by a preponderance of evidence that her first post-conviction relief counsel failed to properly advise her of her appellate rights and that she is entitled to an appeal pursuant to Austin v. State. All other issues and allegations were voluntarily withdrawn by the Applicant.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is **DENIED AND DISMISSED WITH PREJUDICE**.
2. Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's first post-conviction relief action. Counsel and the Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and South Carolina Appellate Court Rule 243 for the appropriate procedure for a belated appeal; and;
3. The Applicant is remanded to the custody of the Respondent for the completion of her sentence.

AND IT IS SO ORDERED this 18th day of March, 2010.


T. Mark Hayes II
Presiding Judge
Seventh Judicial Circuit

Spauldy, South Carolina.

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M. Hope Blacklee
CLERK OF COURT
SPARTANBURG COUNTY

CLERK OF COURT
SPARTANBURG COUNTY
2010 NOV 18 PM 12:12
M. HOPE BLACKLEE

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

COUNTY OF SPARTANBURG)

Mable Lee-Bey, #262208,)

2010-CP-42-1494

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL WITH
PREJUDICE AND FINDINGS
PURSUANT TO AUSTIN V. STATEFILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 NOV 22 PM 4:15
M. HOPE BLACKBERRY

This matter comes before the Court by way of Post-Conviction Relief (PCR) application filed March 19, 2010. An evidentiary hearing was held on the matter on November 2, 2010, at the Spartanburg County Courthouse. The Applicant was present and represented by John E. Rogers II. The Respondent was represented by Suzanne H. White of the Attorney General's Office. The Court had before it the PCR application, the records of the Spartanburg County Clerk of Court, the trial transcript, records from the South Carolina Department of Corrections, and records from prior PCR actions.

I.

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At the hearing on November 2, 2010, the State, after sharing conversations with Applicant's first post-conviction relief Attorney regarding her failure to file an appeal following Applicant's last application, consented to allow the Applicant to pursue a belated Austin appeal, but moved to dismiss any and all other PCR allegations. The Applicant stated that she wished to go forward only on the belated appeal issue and to withdraw all other allegations. The Applicant was sworn and questioned by the Court about her withdrawal request to ensure that the withdrawal of the Application was free and voluntary and that the Applicant had not been promised anything or threatened, coerced, or induced into withdrawing the application. The Applicant was informed and testified she understood that this withdrawal would be considered with prejudice.

FILED
CLERK OF COURT
JANUARY 2004
2010 NOV 22 PM 4:11
M. HOPE BLACKLEY

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the evidence and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), the Court makes the following findings of fact and conclusions of law.

Appeal

State law expressly authorizes the right to seek appellate review of the denial of post-conviction relief. See S.C. Code Ann. § 17-27-100 (1985). In the absence of an intelligent waiver by the applicant, counsel must advise the applicant of his appellate rights. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of post-conviction relief issues pursuant to Austin v. State. See King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992).¹

The Court affirmatively finds that the Applicant did not knowingly and voluntarily waive her right to appellate review. The Court concludes that the Applicant is entitled to a belated review of the denial of her first application. The Applicant's lack of a PCR appeal can be remedied by a petition for belated review pursuant to Austin v. State, Id. This court notes that it will be necessary for counsel for the Applicant to appeal this order to secure appropriate review pursuant to Austin.

FILED
CLERK OF COURT
JANUARY 6 COUNTY
2010 NOV 22 PM 4:15
M. HOPE-BLACKLEY

¹ "Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for... review (emphasis added)." Davis v. State, 288 S.C. 290, 291 at n. 1, 342 S.E.2d 60 (1986).

All Other PCR Allegations

Based upon the Applicant's testimony, this Court finds that the dismissal of all allegations not related to the Applicant's belated Austin appeal is voluntary and that the Applicant has knowingly and intelligently elected to have said allegations dismissed with prejudice.

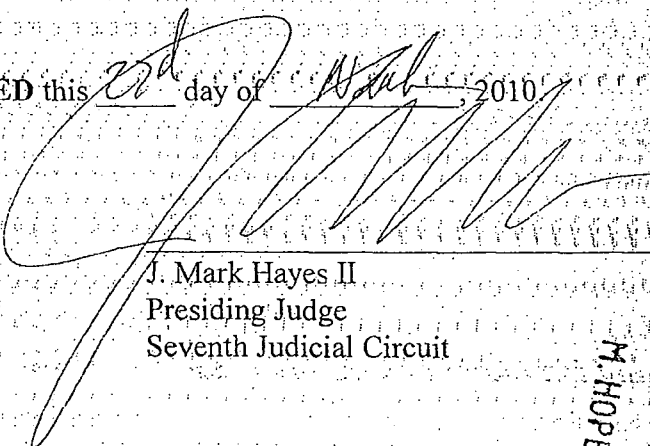
CONCLUSION

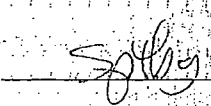
The Applicant has proven by a preponderance of evidence that her first post-conviction relief counsel failed to properly advise her of her appellate rights and that she is entitled to an appeal pursuant to Austin v. State. All other issues and allegations were voluntarily withdrawn by the Applicant.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is **DENIED AND DISMISSED WITH PREJUDICE**.
2. Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's first post-conviction relief action. Counsel and the Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and South Carolina Appellate Court Rule 227 for the appropriate procedure for a belated appeal; and;
3. The Applicant is remanded to the custody of the Respondent for the completion of her sentence.

AND IT IS SO ORDERED this 22nd day of March, 2010.


J. Mark Hayes II
Presiding Judge
Seventh Judicial Circuit

 South Carolina.

FILED
CLERK OF COURT
ANDERSON COUNTY
2010 NOV 22 PM 4:15
M. HOPE BLACKLEY

2010CP42-1494

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Mable Lee-Bey, #262208,

Applicant,

v.

State of South Carolina,

Respondent.

2010-CP-42-1494

**CONSENT ORDER
TO STRIKE ORDER
OF DISMISSAL
FILED NOVEMBER 22, 2010**

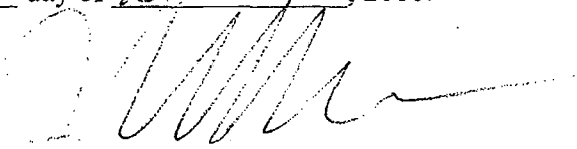
Upon motion of the Respondent, with consent of Applicant, this Court is requested to remove the Order of Dismissal, issued by this Court and filed on November 22, 2010, regarding a PCR application of Mable Lee-Bey from Applicant's file. Both parties agree that the first Order of Dismissal which was filed on November 18, 2010, is the correct Order, and should be the sole Order of Dismissal filed in this case. By inadvertence or mistake, a second Order of Dismissal (filed November 22, 2010), which contains a minor error was signed and filed in addition to the correct Order (filed November 18, 2010).

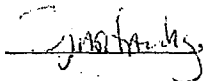
After a review of the matter, this Court finds the motion is well taken and that the Order filed November 22, 2010, should be stricken. This Court also finds that the original Order filed by the Spartanburg County Clerk of Court on November 18, 2010, shall remain in the file, while the Order of Dismissal filed on November 22, 2010, shall be stricken.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 JAN -4 PM 12:53
M. HOPE BLACKLEY

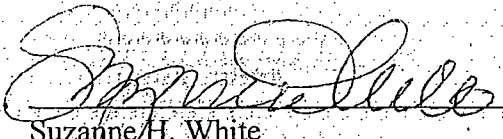
IT IS THEREFORE ORDERED that the Order of Dismissal in this matter which was filed on November 22, 2010, shall be stricken from Applicant's file (2010-CP-42-1494), and the Order of Dismissal in this matter which was filed on November 18, 2010, shall remain in Applicant's file.

AND IT IS SO ORDERED this 29th day of December, 2010.

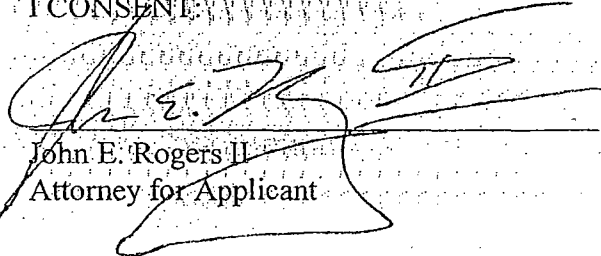

J. Mark Hayes II
Presiding Judge
Seventh Judicial Circuit

 South Carolina

I SO MOVE:


Suzanne H. White
Assistant Attorney General
Attorney for the Respondent

I CONSENT:


John E. Rogers II
Attorney for Applicant

FILED
CLERK OF COURT
SPRINGBURG COUNTY
2011 JAN -4 PM 12:53
M. HOPE BLACKLEY

DOCKET NO. 42-3891
98-GJ-42-3891
The State of South Carolina,
County of Spartanburg (04)
10/29/97

WITNESSES
Rocky L. Correll
Spartanburg County Sheriff's Dept.
POB 771
Spartanburg, SC 29309
3. CARD FILED ☒
4. INDEXED ☒
5. CHECKED MARSHAL ☒
6. CHECKED SIGNATURE ☒
7. ASSESSED AND
RECEIVED ☒
ARREST WARRANT NOTATION COPY ☐

COURT OF GENERAL SESSIONS
AUG 03 1998
TERM

THE STATE
vs.

Mable Irene Leebey

Indictment for

TRAFFICKING IN COCAINE

Holman C. Gossett

ACTION OF GRAND JURY

Debra B. Lee
[Signature]
Foreman of Grand Jury

VERDICT

Guilty

Kangadee H. Lee 10/29/99
Foreman of Petit Jury
Date:

F-672490

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF Spartanburg)

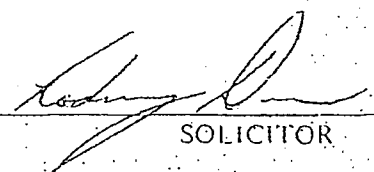
INDICTMENT FOR
TRAFFICKING IN COCAINE

At a Court of General Sessions, convened on 30 1998
the Grand Jurors of Spartanburg County present upon their oath:

That Mable Irene Leebeey did in Spartanburg County on or about October 29, 1997,
traffick in 10 grams or more of Cocaine, in violation of Section 44-53-370
(e) (2) (a) 2, SOUTH CAROLINA CODE OF LAWS, (1976), as amended, in that
Mable Irene Leebeey committed one or more of the following acts:

Knowingly sold, manufactured, cultivated, delivered,
purchased, or brought into this State, or who provided
financial assistance or otherwise aided, abetted, attempted
or conspired to sell, manufacture, cultivate, deliver,
purchase, or bring into this State, or who was knowingly
in actual or constructive possession or who knowingly
attempted to become in actual or constructive possession
of the controlled substances, the nature and amount of
which are set forth above.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF

Spartanburg

STATE

VS.

Mable Irene Leebey

AKA:

Race:

Sex:

F

DOB:

Age:

29

SSN:

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

98 -GS- 42 - 3897A/W#: F672490Date of Offense: 10/29/97S.C. Code-§: 44-53-370CDR Code #: 011417

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Traffic King in Cocaine > 10 gram 3rd off.
in violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 011417☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 2.5 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ 50,000.00; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ The Defendant is to be given credit for days/months jail time.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee \$ Payment Terms: ☐ set by SCDPPPS Recipient: *Fine: \$ § 14-1-206 - Assessments 100% \$ § 14-1-211 - Surcharge \$

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI) \$ County (3%) \$ TOTAL \$ Clerk of Court/Deputy Clerk Mark HammondCourt Reporter Shirley R. BrownPTUP: days/hours Public Service EmploymentObtain GED Attend Voc Rehab. or Job Corps May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol Testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund.Other: PRESIDING JUDGE William R. TateJudge Code: 011513Sentence Date: October 29, 1999

274

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Mable Irene Leebay,

Appellant.

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2002-UP-364
Submitted March 5, 2002 - Filed May 21, 2002

AFFIRMED

~~Chief Attorney Daniel T. Stacey~~ of SC Office of
Appellate Defense, of Columbia, for appellant.

Attorney General Charles M. Condon, Chief Deputy
Attorney General John W. McIntosh, Attorney General
Charles H. Richardson and Assistant Attorney General
Christie Newman Barrett, all of Columbia; and Solicitor
Harold W. Gowdy, III, of Spartanburg, for respondent.

PER CURIAM: Mable Irene Leebay appeals her conviction for
trafficking in cocaine, arguing the trial court erred in admitting other drug
evidence. We affirm.

FACTS/PROCEDURAL HISTORY

On October 29, 1997, Mable Irene Leebay was staying at the Peach Blossom Motel in Spartanburg County. She and a companion ate in the motel restaurant, after which Leebay returned to her room. Shortly thereafter, a customer in the restaurant gave cashier Rhonda Williams a small change purse that had been left in a booth. Williams opened the purse and removed a "white rock" wrapped in tissue; she then informed the restaurant owner, John Petris, who called the police.

Officers from the Spartanburg County Sheriff's Department arrived and performed a field test on the rock-like substance, determining it to be cocaine. The officers placed the drugs back in the change purse and Petris called Leebay and asked if she had left the purse. Leebay responded affirmatively, and came back to the restaurant and retrieved the purse.

The officers arrested Leebay once she left the restaurant. During a search incident to the arrest, they recovered a small bag of marijuana from Leebay's pocket. They requested permission to search her motel room, which Leebay freely granted, and subsequently discovered a small set of finger scales in her handbag.

On July 30, 1998, a Spartanburg County grand jury indicted Leebay for trafficking in cocaine. Following a jury trial held October 28-29, 1999, a jury convicted Leebay and the trial court sentenced her to twenty-five years imprisonment and a \$50,000 fine. This appeal followed.

LAW/ANALYSIS

Leebay's sole issue on appeal is whether the trial court erred in admitting into evidence the marijuana discovered during her arrest. She first argues the evidence improperly attacked her character under State v. Lyle, 125 S.C. 406, 118 S.E.2d 803 (1923). This argument is not preserved for our review.

At trial, Leebay objected to the introduction of the marijuana, stating it was "very prejudicial." Defense counsel further argued:

She's not on trial for the marijuana. It's got nothing to do with this crack cocaine. . . . [I]t is a very, very, very small amount of marijuana, hav[ing] nothing to do really with distribution if she's even charged - or was