

1 STATE OF OHIO,)

2) SS:

3 COUNTY OF LORAIN.)

4

5 IN THE COURT OF COMMON PLEAS

6 THE STATE OF OHIO,)

7 PLAINTIFF,)

8 VS.) NO. 11CR083104

9 CLIFTON A. JACKSON,) C/A 14CA010555

10 DEFENDANT.)

11

12 * * *

13 VOLUME I

14 DEFENDANT'S COMPLETE

15 TRANSCRIPT OF PROCEEDINGS

16 * * *

17 APPEARANCES:

18 Appearing on behalf of the State of Ohio:

19 Dennis Will, Lorain County Prosecutor
20 By: Peter Gauthier, Assistant Prosecuting Attorney

21 Appearing on behalf of the Defendant:

22 Mark Aufdenkampe, Esq.

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PLAINTIFF,)

VS.) NO. 11CR083104

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DEFENDANT.)

* * *

BE IT REMEMBERED, THAT ON TUESDAY, THE 11TH
DAY OF FEBRUARY AND WEDNESDAY, THE 12TH DAY OF FEBRUARY,
2014, BEING THE REGULAR DAYS OF THE FEBRUARY 2014 TERM
OF SAID COURT, BEFORE THE HON. JOHN R. MIRALDI,
PRESIDING JUDGE OF SAID COURT, THE ABOVE-CAPTIONED CAUSE
CAME ON FOR TRIAL UPON THE INDICTMENT FILED HEREIN.

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I N D E X

STATE'S WITNESSES:

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Trooper Christopher Beyer	87	118	143	146
Trooper Mike Trader	147	156	-	-
Det. Geno Taliano	170	176	183	184
Agent James Goodwin	186	192	-	-
Dr. Timothy Husk	194	203	207	-

STATE'S OPENING: 80
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 STATE'S INITIAL CLOSING: 229
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INDEX OF EXHIBITS

STATE'S EXHIBITS:

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1 - DVD of traffic stop	P/M	217	218
2-10 - Photos	P/M	217	218
11 - DEA Lab Report	P/M	217	218
12 - Traffic Citation	P/M	217	218
13 - Defendant's Driver's License	P/M	217	218
14 - Packaging Materials	P/M	217	218
15 - Cocaine	P/M	217	218
16 - Notice of seizure of Money	P/M	W/D	
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***STATE'S EXHIBITS 14, 15 AND 19 WERE RETURNED TO THE OHIO STATE HIGHWAY PATROL OFFICE

P R O C E E D I N G S

February 11, 2014

* * *

OUT OF THE PRESENCE AND HEARING OF THE JURY

* * *

THE COURT: We're on the record in Case Number 11CR083104. I understand there is a singular issue with respect to the jury pool in this case. State of Ohio.

MR. GAUTHIER: Thank you, your Honor.

Your Honor, as I was looking through the jury questionnaires, I happened upon the questionnaire of Susan Trujillo, T-R-U-J-I-L-L-O. Your Honor, I recognized her name because back in 2011, in May of 2011, I prosecuted both Ms. Trujillo and her husband, Roger, in an arson case in front of Judge Zaleski. Her Case Number 09CR079642, trial lasted from 5-4 to 5-9 of 2011. Judge Zaleski did grant a Rule 29 in that case.

Given that I have prosecuted her within the last couple of years, the State's concerned about Ms. Trujillo being on the panel, number one; and number two, maybe making comments to any of the other jurors. So I'm asking that she be dismissed from the panel completely, not even being brought up.

THE COURT: Defense.

MR. AUFDENKAMPE: Your Honor, I didn't

1 know this. There is no problem.

2 THE COURT: That will be so ordered. Any
3 pretrial issues we need to discuss on the record at this
4 time?

5 MR. GAUTHIER: Your Honor, I did tell
6 Mr. Aufdenkampe this morning, hopefully I told the Court
7 too, the two kilos are being shipped in from Chicago;
8 they should arrive between 10 and 11 o'clock this
9 morning, I expect. They're being FedEx'd overnight. I
10 don't expect any issues with that. DEA is trying to get
11 those in for me because they were sent to Chicago for
12 testing purposes. They should be here later this
13 morning.

14 THE COURT: Defense.

15 MR. AUFDENKAMPE: Nothing.

16 THE COURT: Okay.

17 * * *

18 WITHIN THE PRESENCE AND HEARING OF THE JURY

19 * * *

20 THE PROSPECTIVE JURORS WERE DULY SWORN

21 FOR VOIR DIRE EXAMINATION

22 * * *

23 THE COURT: All right. Good morning.

24 I'm Judge John Miraldi. I'm one of six elected
25 county trial court judges that serve you.

1 I want to just give you a brief outline of
2 what's going to happen this morning. I'll make some
3 necessary opening remarks, I will introduce my court
4 personnel to you, I will tell you a little bit about the
5 case, have the attorneys introduce themselves, and then
6 we will begin with what's called the jury selection
7 process.

8 First, I will ask you a number of questions,
9 then the attorneys will ask you questions. You need to
10 answer those audibly, so that the court reporter can
11 take down everything that you say. And what we're
12 trying to do is get the jury pool down to 13; 12 jurors
13 who will hear the case and one alternate.

14 During the selection process, you may hear the
15 term "cause challenge." Some of you may be excused for
16 cause. Don't take that personally. It may be as simple
17 as you know some of the attorneys or you're familiar
18 with the case.

19 After we get through the cause challenge period
20 of this, we will go into what are called peremptory
21 challenges, and each side gets to exercise a number of
22 peremptory challenges. They do those in private by
23 passing a sheet of paper. And they can excuse a juror
24 number for any reason at all using the peremptory
25 challenges. Okay? So that should take -- the entire

1 process should take about an hour, hour and fifteen
2 minutes, just to the give you a heads-up of where the
3 morning is going.

4 I do want to thank you all for answering your
5 summons to appear here for jury service. I know it's
6 cold. I know the parking arrangements aren't good, but
7 we do appreciate the effort that you're making. And I
8 do want to emphasize to you that jury duty service is
9 one of the highest duties of citizenship that you can
10 partake in, because in our country you participate in
11 the administration of justice between one person or
12 another, or in this case, which is a criminal
13 case, between the State of Ohio and an individual.

14 So my opening remarks and the remarks that
15 counsels are about to make are directed to all of you
16 who have been summoned as prospective jurors. It's
17 important that you all pay attention, even if you're not
18 one of the 23 people seated in front of the rail. Those
19 of you behind, it's unlikely that you will serve, but
20 you do need to pay attention because if some are
21 excused, you will be brought forward and you will be
22 asked if your answers to the questions that I ask would
23 be the same as we pose to these 23 jurors here.

24 Finally, I want to recognize that some of you
25 have made sacrifices, be it day care, be it work, to

1 appear here this morning, and on behalf of the court
2 system and the County of Lorain, I want to thank you for
3 your public-spirited activity here this morning.

4 All right. You've already met my bailiff, Lee
5 Cannaday. He's here to take care of any needs you have
6 during the process and especially those who are chosen
7 to be jurors in this case.

8 Seated in front of me is Cathlene Camp, and you
9 can see that her fingers are busy. She takes down
10 everything that is said in this courtroom. So during
11 the jury-selection process, it's really the only time
12 that you'll get to speak during this trial, so it's
13 important that when you're asked questions if you could
14 speak up so that she can hear you and take down
15 everything that's being said. And also, try not to talk
16 over the person asking you the questions, okay?

17 Now, you've been summoned as prospective jurors
18 in a criminal case entitled State of Ohio versus Clifton
19 A. Jackson. We anticipate the trial to last
20 approximately two days. In this case, the defendant has
21 been charged with the following crimes: One count of
22 trafficking in drugs, which is a felony of the first
23 degree; one count of possession of drugs, a felony of
24 the first degree; and one count of possession of
25 criminal tools, a felony of the fifth degree.

1 Now, the first and second counts contain what's
2 called a specification. I will go into a little more
3 detail, but he's been charged as a major drug
4 offender.

5 Here's what is important: This indictment is
6 not evidence. It merely informs the defendant that he
7 has been charged with a crime. The fact that it was
8 filed may not be considered for any purpose. To this
9 indictment, the defendant has entered a plea of not
10 guilty, which is a denial of all the charges and puts in
11 issue all of the essential elements of the crimes
12 charged.

13 The defendant does not have to prove
14 his innocence. The defendant is presumed innocent until
15 his guilt is established beyond a reasonable doubt. You
16 must acquit or find not guilty the defendant, unless the
17 State produces evidence which convinces you beyond a
18 reasonable doubt of each and every essential element of
19 the crimes charged in the indictment. Later, the Court
20 will define the term "reasonable doubt" for you.

21 The State of Ohio is represented by Prosecutor
22 Peter Gauthier. I would ask him to introduce himself
23 and anyone seated at the counsel table with him.

24 MR. GAUTHIER: Thank you, your Honor.

25 Good morning, Ladies and Gentlemen. My name is

1 Pete Gauthier; I'm with the Lorain County Prosecutor's
2 Office. Sitting with me today is Trooper Michael Trader
3 of the Ohio State Highway Patrol.

4 THE COURT: Prosecutor Gauthier, would you also
5 indicate any witnesses by name you intend to call.

6 MR. GAUTHIER: Trooper Christopher Beyer, also
7 with the Ohio State Highway Patrol; Geno Taliano of the
8 Lorain County Drug Task Force and DEA; James Goodwin
9 with Cleveland DEA; and Timothy Husk, who is a chemist
10 in Chicago, coming from Chicago.

11 THE COURT: To the 23 people, do any of you know
12 Trooper Trader, Trooper Beyer, Mr. Taliano, Mr. Goodwin
13 or Mr. Husk?

14 Juror Number One, who do you know?

15 THE JUROR: Mr. Taliano.

16 THE COURT: How do you know him?

17 THE JUROR: His son and my son went to school
18 together. And I was actually an athletic director; he
19 was one of the coaches.

20 THE COURT: And you are Mr. Warner?

21 THE JUROR: Yes.

22 THE COURT: Mr. Warner, the fact that you know
23 Mr. Taliano, will that prevent you from being fair and
24 impartial in this case?

25 THE JUROR: No, sir.

1 THE COURT: I will let counsel follow up with
2 that. Yes, Juror Number 16. Is it Mr. Kramer?

3 THE JUROR: Yes, it is.

4 THE COURT: Good morning. You know?

5 THE JUROR: Yes. I know Geno. My wife worked
6 with his wife, and we did extracurricular activities
7 outside of work.

8 THE COURT: You socialize with them?

9 THE JUROR: Yes.

10 THE COURT: The fact that you socialized with
11 Detective Taliano, would that prevent you from being
12 fair and impartial in this case?

13 THE JUROR: No.

14 THE COURT: I'm going to let counsel follow up
15 with that, okay.

16 Anybody else know any of those witnesses?

17 Okay. The defendant, Mr. Jackson, is
18 represented by Attorney Aufdenkampe. If you would
19 introduce yourself and your client, please.

20 MR. AUFDENKAMPE: Good morning. I'm attorney
21 Mark Aufdenkampe, counsel for the defendant, Clifton
22 Jackson.

23 THE COURT: Any witnesses, Attorney Aufdenkampe?

24 MR. AUFDENKAMPE: No, your Honor.

25 THE COURT: All right. Each party is entitled

1 to jurors who approach the case with open minds and
2 agree to keep their minds open until a verdict is
3 reached. Jurors must be as free as humanly possible
4 from bias, prejudice or sympathy and not be influenced
5 by preconceived ideas either as to the facts or the
6 law. You are all undoubtedly qualified to serve as a
7 juror in this case; however, there may be something that
8 could disqualify you in this case.

9 At this time the Court is going to begin asking
10 you a number of questions and then counsel will ask you
11 questions as well. These questions are not intended to
12 pry into your personal affairs, but to discover, one, if
13 you have any knowledge of this case; or if you have any
14 preconceived opinion which you cannot lay aside; or if
15 you maybe had an experience, personal or within your
16 family, that might cause you to identify with one party
17 over the other. These questions are necessary, really,
18 to assure that what we get, in the end, a fair and
19 impartial jury.

20 Now, again, I'm going to address these first
21 questions to the 23 who are in front of the rail. But,
22 again, those of you behind the rail, pay attention in
23 case you are called forward. If I do ask you a question
24 and you want to speak in private about your answer, and
25 it's happens in a number of cases, just say "May I speak

1 to you in private," and what will happen is the court
2 reporter will hit this button and it will create an
3 interference noise.

4 * * *

5 THE COURT REPORTER PLAYED THE
6 WHITE NOISE TO THE JURY

7 * * *

8 THE COURT: And then what will happen is you
9 will approach over here. Counsel will have to be
10 present, but we will speak in a quiet tone so nobody in
11 the courtroom will hear what your concern or issue is
12 with that answer, okay. So don't be afraid. What you
13 will do is say, "I'd like a sidebar to speak in
14 private."

15 Okay. First question: Do all of you understand
16 the English language well enough to permit you to
17 understand the facts and the law in this case? I am
18 going to take it by your silence that your answer is
19 that you can.

20 Have any of you been convicted of a
21 felony, which is a crime punishable by a year or more in
22 prison, which, by law, renders you disqualified to serve
23 as a juror? Raise your hand if that's the case. No
24 hands were raised.

25 Do any of you suffer from chronic alcoholism or

1 you're drug dependent to the point that you cannot
2 participate in this trial? All right, no hands were
3 raised.

4 Were any of you a member of the Grand Jury that
5 found the indictment in this case? All right, no
6 hands were raised.

7 Have any of you been subpoenaed as a witness in
8 this case? Again, no hands raised.

9 Have any of you had prior jury service?
10 Now, would you do me a favor, because there are a number
11 of you, would you hold your hands up high. Nobody in
12 the front row.

13 Okay. Juror Number 2, okay. One, two -- that's
14 going to be Juror Number 11 and Juror Number 23.

15 Okay. And again, Mr. Warner, I'll start with
16 you. First of all, when did you have prior jury
17 service?

18 THE JUROR: I would say probably 15, 20 years
19 ago. I was chosen as the alternate and the trial never
20 went forth; we were sent home after lunch.

21 THE COURT: Okay.

22 THE JUROR: So I never served.

23 THE COURT: It was a criminal or civil trial?

24 THE JUROR: I honestly don't remember.

25 THE COURT: Anything about that service that you

1 think would make it difficult for you to serve on this
2 jury?

3 THE JUROR: No, sir.

4 THE COURT: Thank you. Mr. Smith.

5 THE JUROR: In Oberlin, end of October, first
6 two weeks of November.

7 THE COURT: Okay.

8 THE JUROR: I didn't get called in; I was in the
9 backup.

10 THE COURT: Okay. So you never sat on a case?

11 THE JUROR: No.

12 THE COURT: Thank you. Ms. Stewart.

13 THE JUROR: Yes.

14 THE COURT: Good morning.

15 THE JUROR: I never sat on a case. I was in the
16 jury.

17 THE COURT: In the pool?

18 THE JUROR: Yeah.

19 THE COURT: Very good. Now, Mr. Ferrell.

20 THE JUROR: I never sat down on the case, but I
21 was on the --

22 THE COURT: Just in the pool. And I thought the
23 last one, was it, Mr. Mueller.

24 THE JUROR: Yes.

25 THE COURT: Good morning.

1 THE JUROR: It was in federal, in Cleveland
2 Federal Courthouse, and I sat on a case.

3 THE COURT: How long ago was that?

4 THE JUROR: Last May.

5 THE COURT: And what type of case was it?

6 THE JUROR: Criminal.

7 THE COURT: Criminal case. Anything about that
8 experience that would make it difficult for you to be
9 fair and impartial in this case?

10 THE JUROR: No.

11 THE COURT: All right. Do any of you have any
12 personal health problems with hearing, with medication,
13 or have work or family problems that would distract you
14 from giving this case the full attention that it
15 deserves? Would you raise your hand if that's the case
16 for you? Okay.

17 All right. Juror Number 15, Ms. Steele.

18 THE JUROR: Yes.

19 THE COURT: Mr. Steele, I'm sorry. Are you
20 comfortable speaking about it?

21 THE JUROR: No, I'm not.

22 THE COURT: Okay. You want to approach?

23 THE JUROR: Can I?

24 THE COURT: Absolutely.

25 * * *

1 A SIDEBAR DISCUSSION WAS HAD AS FOLLOWS

2 * * *

3 THE COURT: Good morning. We will to wait for
4 them. You can speak at a normal tone here. Here's the
5 microphone.

6 THE JUROR: April 8th of, what, last year, my
7 son committed suicide; we found him dead.

8 THE COURT: I'm sorry.

9 THE JUROR: I get emotional a lot.

10 THE COURT: Okay. Was it drug related?

11 THE JUROR: No. He --

12 THE COURT: Okay. I don't need to know. I just
13 want to the make sure it wasn't drug related.

14 THE JUROR: It wasn't drug related; he just
15 committed suicide. We found him at home. I get
16 emotional.

17 THE COURT: Are you on any medication or in
18 therapy for this?

19 THE JUROR: I've been going to church. My
20 pastor, I talk to him a lot, but I tend to think a lot
21 of things about him.

22 THE COURT: It's difficult for you to focus
23 then?

24 THE JUROR: At times it is.

25 THE COURT: Counsel, you want to ask Mr. Steele

1 any questions on this?

2 MR. GAUTHIER: Just briefly, Judge.

3 Mr. Steele, do you think you would be unable to bring
4 your full attention to this trial?

5 THE JUROR: Honestly, I would say, yes, I would
6 have problems.

7 MR. GAUTHIER: Okay.

8 MR. AUFDENKAMPE: I have no objection with that
9 response.

10 MR. GAUTHIER: No objection for cause.

11 THE COURT: No objection for cause, okay. I
12 think what I'll do is I'll just have the him sit behind
13 the rail now and bring somebody up.

14 MR. GAUTHIER: Yeah.

15 THE COURT: Okay. We will do that.

16 * * *

17 THE SIDEBAR DISCUSSION ENDED

18 * * *

19 THE COURT: By agreement of the parties, we're
20 going to excuse Mr. Steele on cause challenge. What we
21 will do at this point is we will ask Juror Number
22 24, Timothy Wheatley, to come forward. Mr. Wheatley, if
23 you would come forward and take the place of
24 Mr. Steele.

25 Okay. Mr. Wheatley, you're in the hot seat.

1 You were behind the rail and now you've been called
2 forward. Anything about those questions that I went
3 through earlier with the jury that you were thinking I
4 would need to raise my hand or I would have to --

5 THE JUROR: No.

6 THE COURT: -- answer differently?

7 THE JUROR: No.

8 THE COURT: No health problems?

9 THE JUROR: No.

10 THE COURT: Very good. Thank you.

11 Okay. Now, we also had a Juror Number 18. I
12 can barely see you there. Is it Ms. Fritz?

13 THE JUROR: Yes.

14 THE COURT: Good morning. Do you want to speak
15 in private, or are you okay?

16 THE JUROR: That's fine.

17 THE COURT: Sure.

18 THE JUROR: I'm a full-time primary caregiver
19 for my 89-year-old mother, who just Sunday morning fell
20 and broke her arm.

21 THE COURT: Okay. And is she currently where,
22 in a nursing home?

23 THE JUROR: She's currently in the hospital
24 waiting surgery.

25 THE COURT: Okay.

1 THE JUROR: But normally, I take care of her at
2 her own home.

3 THE COURT: Okay. Counsel.

4 MR. GAUTHIER: No objection, your Honor.

5 MR. AUFDENKAMPE: No objection.

6 THE COURT: Okay. All right, Ms. Fritz, we're
7 going to excuse you under the circumstances.

8 THE JUROR: Thank you.

9 THE COURT: And I would ask that Juror Number
10 25, Shad Briggs come forward.

11 THE JUROR: Yes, sir.

12 THE COURT: Mr. Briggs, if you would just step
13 forward in front of the rail and take Ms. Fritz's seat.

14 THE JUROR: Thank you.

15 THE COURT: You're welcome. You do need -- I
16 should say that if you get excused, just stay here in
17 the gallery until we dismiss the entire pool.

18 THE JUROR: Thank you.

19 THE COURT: Mr. Briggs, you heard the questions
20 that I asked the pool as a whole. Would your answers
21 have been any different, or is there anything you need
22 to speak to the Court about?

23 THE JUROR: I was just in a jury pool about 15,
24 16 years ago in Lorain County Court.

25 THE COURT: Okay. Did you actually serve?

1 THE JUROR: I didn't serve, no, sir.

2 THE COURT: Thank you. All right. Is it
3 Signor?

4 THE JUROR: Signor.

5 THE COURT: Signor.

6 THE JUROR: Yeah. I have severe loss of hearing
7 and I have severe asthma, too. Sometimes stress will
8 bring on an attack. I have my inhaler. It says right
9 on it, right on here.

10 THE COURT: Okay. How long have you been in
11 this -- how long has this particular pool been called
12 for service? Is it a week, or is this the first week?

13 THE JUROR: Third.

14 THE BAILIFF: Third week.

15 THE COURT: All right.

16 THE BAILIFF: This is the last week, your
17 Honor.

18 THE JUROR: I sent in the questionnaire. I sent
19 in for my severe loss of hearing.

20 THE COURT: Right. Well, the attorneys get
21 that. They may question you about that. Are you having
22 difficulty hearing me with the speaker system?

23 THE JUROR: Yeah. Sometimes I don't -- I don't
24 hear the letters right.

25 THE COURT: Okay.

1 THE JUROR: Like, I get S's and B's mixed up.

2 THE COURT: Do you have aids, hearing aids?

3 THE JUROR: No.

4 THE COURT: Counsel.

5 MR. GAUTHIER: No objection, your Honor.

6 MR. AUFDENKAMPE: No objection.

7 THE COURT: Okay. We've got some really nice
8 attorneys here. Usually we don't let them out that
9 easily. You're all set, thank you. We're going to
10 excuse you. If you would go sit in the gallery.

11 And then I'll have Juror Number 26, Stacy
12 Schmidt come forward, please, and take Ms. Signor's
13 seat.

14 Good morning, Ms. Schmidt. Would your answers
15 have been any different to the questions that I asked of
16 the pool as a whole earlier, anything that you heard
17 that you thought you might want to bring to the court's
18 attention?

19 THE JUROR: No.

20 THE COURT: Okay, thank you. And I thought we
21 had one more. Boy, that's a tough name. I'm not going
22 to even try it. Number 22.

23 THE JUROR: Josette Szpisjak. That's a hard
24 one. I need to talk private.

25 * * *

1 A SIDEBAR DISCUSSION WAS HAD AS FOLLOWS

2 * * *

3 THE COURT: How do you pronounce your name?

4 THE JUROR: Szpisjak. Hungarian. My son is a
5 recovering heroin addict. I cannot be in any trial with
6 any drugs.

7 THE COURT: I'm going to --

8 THE JUROR: I will throw the book at him.

9 THE COURT: You're not --

10 THE JUROR: Sorry. How dare you represent a
11 drug dealer.

12 THE COURT: Hold on. Hold on a second. The
13 court-appointed him. It's very important because people
14 are watching right now.

15 THE JUROR: I know.

16 THE COURT: You need to maintain your calm.

17 THE JUROR: I know, I know.

18 THE COURT: Just go.

19 THE JUROR: Thank God he's clean for eight
20 months.

21 THE COURT: That's good news.

22 * * *

23 THE SIDEBAR DISCUSSION ENDED

24 * * *

25 THE COURT: The Court wishes to thank but

1 excuse Juror Number 22, Josette. I will call you by
2 your first name.

3 THE JUROR: That's fine. A lot of people do.

4 THE COURT: That's a tough one. Then we would
5 bring forth Juror Number 27, Reichert.

6 THE JUROR: Yes.

7 THE COURT: Good morning, Ms. Reichert.

8 THE JUROR: Good morning.

9 THE COURT: You heard the questions that I asked
10 the pool as a whole. Would your answers have been any
11 different or was there a question you thought you should
12 bring to the Court's attention?

13 THE JUROR: No, sir.

14 THE COURT: Thank you. And I believe that's
15 everyone. All right.

16 THE JUROR: I didn't raise my hand earlier.

17 THE COURT: Yes.

18 THE JUROR: My hearing is fine now, but I do
19 have acoustic neuroma in the right ear. What happens is
20 the ring would get to a point I wouldn't be able to get
21 to anyone in the room. I haven't had an episode in four
22 years.

23 In two episodes, what I have to do is I have to
24 see my ENT doctor, and he gives me hydrosteroids and
25 just monitors, MRI and stuff like that, to watch the

1 growth pattern. Right now I don't have a problem; not
2 to say something could happen.

3 THE COURT: I appreciate you mentioning that to
4 the Court. We're going keep you on at this point.

5 THE JUROR: That's fine.

6 THE COURT: Anyone else? Are any of you or any
7 member of your immediate family a party to another
8 action pending in any court in which the attorneys in
9 this case are either the attorney for or against you in
10 that case? Raise your hand if that's the situation. No
11 hands raised.

12 Are any of you related by blood or marriage
13 within the fifth degree to the defendant, Clifton A.
14 Jackson? No hands are raised.

15 Are any of you the employer, employee, the
16 counselor, the agent or the attorney of any of those
17 that I named, meaning the attorneys or Mr. Jackson?
18 Raise your hand. No hands were raised.

19 Are any of you acquainted in any way with any of
20 those that I just named: The defendant, Mr. Clifton
21 Jackson, and the attorneys?

22 Okay. Juror Number 8.

23 THE JUROR: Yes.

24 THE COURT: Ms. Robertson.

25 THE JUROR: I'm a deputy clerk at Avon Lake

1 Municipal Court and I know Mr. Aufdenkampe through
2 that.

3 THE COURT: Okay. Anything about your dealings
4 with Mr. Aufdenkampe that would cause you to have a
5 difficult time to be fair and impartial in hearing this
6 case?

7 THE JUROR: No.

8 THE COURT: All right. I'll let counsel pursue
9 that further. Thank you. Anyone else?

10 Do any of you or any member of your immediate
11 family have a court case pending with the State of Ohio
12 or the defendant, Mr. Jackson? No hands are raised.

13 Do any of you in any way have any hostility,
14 prejudice or bias towards the defendant or the State of
15 Ohio? No hands were raised.

16 Do any of you have personal experience or
17 involvement in a manner similar to the charge in this
18 indictment? This is a drug possession, drug trafficking
19 case. No hands were raised.

20 Have any of you read or heard about this case?
21 It occurred sometime in June of 2011, in Lorain County,
22 Ohio. Anybody hear about it, recognize the name?
23 Again, no hands are raised.

24 Have any of you previously formed or expressed
25 an opinion as to the guilt or the innocence of the

1 accused? No hands are raised.

2 Do you recognize that the defendant is presumed
3 innocent of the charge as he sits at the table? Raise
4 your hand if you agree with that. I expect to see some
5 hands.

6 Do you recognize that the defendant is presumed
7 innocent of the charge as he sits at the table? All
8 right, all hands were raised. Thank you.

9 Do you accept fact that this presumption of
10 innocence remains with the defendant throughout the
11 trial until the jury retires to deliberate in this case?
12 All hands were raised.

13 Do you accept the fact that you must find the
14 defendant not guilty unless the State presents evidence,
15 testimony and evidence which convinces you beyond a
16 reasonable doubt -- I didn't end that with a question
17 mark.

18 Do you accept fact that you must find the
19 defendant not guilty unless the State presents testimony
20 and evidence which convinces you of guilt beyond a
21 reasonable doubt? All hands were raised, great.

22 Do you recognize that the accused has a
23 constitutional privilege against self-incrimination and
24 he can sit silently throughout the trial and his silence
25 cannot be construed by you as an admission of any fact

1 or deed? Thank you. All hands were raised.

2 Do you recognize that you must apply the same
3 evaluation for credibility to the testimony of police
4 officers as you would for any other witness? All hands
5 were raised.

6 Do you recognize that you must decide this case
7 only upon the evidence presented to you in this
8 courtroom? Yes, all hands were raised.

9 Can you set aside any concept of the law as you
10 know it to be or you would like it to be and be guided
11 by the law as charged to you by the Court in this case?
12 And all hands are raised.

13 If chosen as a juror, will you render an
14 impartial verdict according to the law and the evidence
15 submitted to the jury at this trial? You will. Thank
16 you. All hands were raised.

17 Is there any member of the panel who has been a
18 victim of, a witness to or charged with a criminal
19 offense within the past 10 years? Okay, I saw some
20 hands go up. If you would hold your hand up.

21 Juror Number 7. Okay.

22 THE JUROR: Stadul.

23 THE COURT: Stadul. Good morning.

24 THE JUROR: Good morning. My home was broken
25 into twice and my husband's box truck was vandalized in

1 our driveway, all three separate occasions.

2 THE COURT: How recent?

3 THE JUROR: The most recent one, I would say,
4 about seven years ago.

5 THE COURT: Okay. Did you get involved as a
6 witness in any criminal prosecution for those cases?

7 THE JUROR: No, they never found anybody.

8 THE COURT: Anything about the experience of
9 unfortunately being a victim of a crime that --

10 THE JUROR: No.

11 THE COURT: -- that would make it difficult for
12 you to be fair and impartial in this case?

13 THE JUROR: No.

14 THE COURT: Thank you. Okay, Ms. Pinto.

15 THE JUROR: I was a witness to a case --

16 THE COURT: Criminal?

17 THE JUROR: -- involving a -- do you want me to
18 tell you what it involved?

19 THE COURT: Please.

20 THE JUROR: A lady was accused of stealing from
21 a youth football fund and I found -- I was a witness.

22 THE COURT: Okay. Did you actually have to go
23 in and testify?

24 THE JUROR: I did. Yes, I did.

25 THE COURT: Anything about that experience that

1 would make it difficult for you to be fair and impartial
2 in this case?

3 THE JUROR: I'm going to guess not.

4 THE COURT: All right. Anyone else? Okay,
5 yes. Is it Piwowar?

6 THE JUROR: Piwowar.

7 THE COURT: Do you believe these names?

8 THE JUROR: I had trouble, too.

9 THE COURT: I have the sheet and I said, "These
10 are spelled wrong." Good morning.

11 THE JUROR: Good morning.

12 THE COURT: Okay.

13 THE JUROR: My house was broken in -- I live in
14 Vermilion -- in November, my purse stolen.

15 THE COURT: Did you have to -- did they find the
16 person who did it?

17 THE JUROR: No.

18 THE COURT: You had not been asked to
19 participate?

20 THE JUROR: I had contact with the police and
21 Sheriff's Department. They said it's getting very
22 common and it's happened so much that the drug problem's
23 out of hand. That's what they're doing, easy way to
24 make money, just go in and grab what you can.

25 THE COURT: Well, you mentioned a drug

1 problem. Now you know this case involves allegations.

2 THE JUROR: Yes.

3 THE COURT: And your home was broken into. And
4 I guess for some reason the police thought it might be
5 somehow related?

6 THE JUROR: Uh-huh.

7 THE COURT: Are you going to be able to sit
8 here?

9 THE JUROR: Yeah.

10 THE COURT: And be fair and impartial on this
11 case?

12 THE JUROR: Uh-huh.

13 THE COURT: Yes?

14 THE JUROR: Yes.

15 THE COURT: I'll let counsel pursue
16 that. Anyone else? Almost finished here.

17 Is there any member of the panel who is a
18 lawyer, or who is attending law school, or who is in law
19 enforcement or a special peace officer or retired from
20 any such position? Anybody have any law enforcement or
21 legal background? Mr. Warner.

22 THE JUROR: I'm an assistant area director for
23 the Occupational Safety and Health Administration,
24 federal enforced.

25 THE COURT: OSHAA.

1 THE JUROR: OSHAA.

2 THE COURT: Can that result in criminal
3 indictments?

4 THE JUROR: It can. If there is a death
5 involved, we can assess, through the Department of
6 Justice, criminal charges.

7 THE COURT: Okay. Anything about that position
8 that you hold that would make it difficult for you to be
9 fair and impartial here today?

10 THE JUROR: No.

11 THE COURT: Anyone else? Do any of you have a
12 strong moral or religious conviction that would prevent
13 you from passing judgment on someone else? No hands
14 were raised.

15 Is there any member of the panel who has a
16 really -- a close friend who's in law enforcement?
17 Just keep those hands up.

18 Juror Number 4, Juror Number 9, Juror Number
19 10, 11. Okay, Ms. Hanlon.

20 THE JUROR: Yes.

21 THE COURT: Good morning.

22 THE JUROR: Good morning. My cousin's husband
23 is in the DA's office here in Elyria.

24 THE COURT: Do you often see your cousin's
25 husband?

1 THE JUROR: Yes.

2 THE COURT: Do you speak about his work?

3 THE JUROR: Yes.

4 THE COURT: I'll let counsel follow up with
5 that because you may have some knowledge or bias as a
6 result of that. Thank you. Mr. Jackman.

7 THE JUROR: Yes.

8 THE COURT: Good morning.

9 THE JUROR: Good morning. I'm a security guard.
10 Now I'm getting into law enforcement as soon as
11 possible, once I can afford it, but I know, I mean,
12 multiple -- three or four of my close friends are
13 police. I've done ride-alongs with multiple cities and
14 things like that.

15 THE COURT: Okay. All right. I'll let counsel
16 pursue that.

17 Mr. Welsh, good morning.

18 THE JUROR: My son's brother-in-law is a State
19 Trooper; and Hans Vanwormer, detective with the Elyria,
20 we attend church together. We've known each other all
21 our lives. And my son is going to the police academy.

22 THE COURT: Is police work a common topic at
23 your household?

24 THE JUROR: Now it is, since my son is entering
25 the police academy.

1 THE COURT: I'll let counsel pursue that.

2 Ms. Pinto, did you have your hand up?

3 THE JUROR: Yes, I did. Many good friends on
4 the Elyria Police Department. Very good friend of mine
5 lives down the street, her husband was a State
6 Trooper and unfortunately passed away a year ago. I
7 also, in my job, come in contact with the local police
8 department, deal with them on a -- one works where I
9 work, and there are a lot of contacts with those as
10 well. A lot of very good friends work at the prison.

11 THE COURT: Given the extent of the exposure you
12 have to law enforcement, do you think that you would
13 favor one side, being --

14 THE JUROR: Yes, I would.

15 THE COURT: -- being the law enforcement side?

16 THE JUROR: Yes, I would.

17 THE COURT: You do not think you could be fair
18 and impartial?

19 THE JUROR: Probably not in that aspect. It
20 would be difficult, to be honest.

21 THE COURT: I'm going to let counsel pursue that
22 further. Ms. Stewart.

23 THE JUROR: There are several that I'm close to
24 because of my work, and there's one that we hang out
25 regularly with, close with, pretty much every weekend.

1 THE COURT: You mentioned your work.

2 THE JUROR: Hair. I cut hair.

3 THE COURT: Okay. Do you find that you're
4 speaking a lot with law enforcement people about their
5 work, or just cutting their hair?

6 THE JUROR: I do, yeah. I do, but -- yeah.

7 THE COURT: Anything about the experience that
8 you have with those people that would prevent you from
9 being fair and impartial or favoring law enforcement in
10 this case?

11 THE JUROR: No.

12 THE COURT: Thank you. Mr. Kramer again.

13 THE JUROR: Yes.

14 THE COURT: Okay.

15 THE JUROR: Friends with quite a few Elyria
16 police officers, play hockey with: Mike Fairbanks, Hans
17 Vanwormer. Detective Lee Frank, his son plays soccer
18 with my boys. I would see him numerous times of the
19 week. I'm on the board, and Lee Frank is the president,
20 so board meetings. We have quite a bit of interaction
21 with police officers, and my neighbor is Dan Makruski in
22 Amherst.

23 THE COURT: So I understand you have personal
24 relationships and social relationships, but do you talk
25 shop a lot? Are they telling a lot of what they're

1 doing, or you're acquainted with these people?

2 THE JUROR: You know, depending on which case
3 they're working on, yeah. Sometimes at hockey we will
4 talk about some stuff.

5 THE COURT: Anything about conversations that
6 you've had with friends who are in law enforcement that
7 would cause you to favor one side, being law enforcement
8 over the other?

9 THE JUROR: No.

10 THE COURT: I'll let counsel go further. And
11 Mr. Mueller.

12 THE JUROR: My sister-in-law is an ATF agent.

13 THE COURT: Is she local ATF?

14 THE JUROR: No, DC.

15 THE COURT: Do you speak with her often about
16 her work?

17 THE JUROR: No, not much.

18 THE COURT: Anything about the fact that you
19 have a sister-in-law who is an ATF agent that would
20 cause you to favor one side over the other?

21 THE JUROR: No.

22 THE COURT: Thank you. Anybody else? Well, if
23 we get you in front of the rail, then we will.

24 THE JUROR: Okay.

25 THE COURT: We will talk to you on that. Thank

1 you.

2 Here's the catch-all. Is there any other reason
3 why any member of this panel believes they could not sit
4 fairly and impartially and give this case the full time
5 and attention that it deserves, anything else that I
6 didn't cover? No hands are going to be raised.

7 All right. At this point I'm going to let
8 counsel start to question you, but before I do that I
9 want to give you an instruction, because it's relevant,
10 on the burden of proof and reasonable doubt.

11 The defendant is presumed innocent until
12 his guilt is established beyond a reasonable doubt. The
13 defendant must be acquitted unless the State produces
14 evidence which convinces you beyond a reasonable doubt
15 of every essential element of the crimes charged in the
16 indictment.

17 Reasonable doubt is present when, after you have
18 carefully considered and compared all of the evidence,
19 you cannot say you are firmly convinced of the truth of
20 the charge. Reasonable doubt is a doubt based on reason
21 and common sense. Reasonable doubt is not mere possible
22 doubt because everything relating to human affairs or
23 depending on moral evidence is open to some possible or
24 imaginary doubt.

25 Proof beyond a reasonable doubt is proof of such

1 a character that an ordinary person would be willing to
2 rely and act upon it in the most important of his or her
3 own affairs. If after a full and impartial
4 consideration of all of the evidence you are officially
5 convinced of the truth of the charge, the State has
6 proven its case beyond a reasonable doubt. If you are
7 not firmly convinced of the truth of the charge, you
8 must find the defendant not guilty.

9 You are the sole judges of the facts, the
10 credibility of the witnesses and the weight of the
11 evidence. To weigh the evidence, you must consider the
12 credibility of the witnesses. You will apply the tests
13 of truthfulness which you apply in your daily lives.

14 These tests include the appearance of each
15 witness upon the stand; their manner of testifying;
16 their opportunity to see, hear and know the things
17 concerning which they testified; their accuracy of
18 memory; frankness or the lack of it; intelligence,
19 interest and bias, if any; together with all the facts
20 and circumstances surrounding the testimony. Applying
21 these tests you will assign to the testimony of each
22 witness such weight as you deem proper.

23 You are not required to believe the testimony of
24 any witness simply because they were under oath. You
25 may believe or disbelieve all or a part of the testimony

1 of any witness. It is your province to determine what
2 testimony is worthy of belief and what testimony is not
3 worthy of belief.

4 All right. Since the State has the burden of
5 proof, they get to the go first in all the proceedings.
6 Prosecutor Gauthier will question you now.

7 MR. GAUTHIER: Thank you, your Honor. And good
8 morning, Ladies and Gentlemen.

9 THE JURORS: Good morning.

10 MR. GAUTHIER: We are, every one of us, a result
11 of our life experiences, and I am no different. So the
12 first question I'm going to ask you may sound kind of
13 silly, but I'm going to ask it anyway.

14 You may notice that I currently have my glasses
15 kind of perched on my forehead. No big deal, right?
16 Except, a number of years ago I tried a case and a jury
17 found an individual not guilty in that case. And it
18 turns out that one of the jurors met a lawyer that I
19 knew, and got back to me that the jury absolutely hated
20 my guts. They hated my guts because my glasses were on
21 my forehead.

22 So because I am also a product of my life
23 experiences, my first question to you, silly as it may
24 seem, is will any of you hold the fact that I put my
25 glasses on my forehead against me? I probably -- I have

1 bifocals, but I don't use them all that much. When I'm
2 trying to read something close, I put them on my
3 forehead. Anybody have a problem with that? I know it
4 sounds silly, but it is what it is.

5 That's why we are asking these questions, Ladies
6 and Gentlemen, to see if there is anything that might
7 affect your deliberations in this particular case.

8 Again, the judge told you this is a drug
9 case. A drug case may affect one person and not
10 another. Another person may have had their house broken
11 into and they can't be fair and impartial in those
12 cases, can't be in a drug case and vice versa. That's
13 the purpose of asking all these questions, to find out
14 if there is anything, anything at all.

15 When I finish my, hopefully brief, comments to
16 you, Ladies and Gentlemen, and questioning of you, I'm
17 going to ask you a catch-all question: Is there
18 anything that I haven't brought up that you think might
19 affect your deliberations in this particular case?
20 You may not think it's a big deal, but if you're
21 thinking about it, I ask that you bring it forth to
22 us.

23 My wife was in a jury many years ago; married to
24 a county prosecutor, sitting on a criminal case. She
25 never got the chance to say, "By the way, you know, my

1 husband is a prosecutor. I think you might ought to
2 know that." Nobody gave her that opportunity. I will
3 give you that opportunity.

4 There are no right or wrong answers, Ladies and
5 Gentlemen, just honest answers. We appreciate your
6 honest answers so far today.

7 Crimes are, as the Court indicated, given by
8 definition. The definition of reasonable doubt that was
9 just read to you may be different. You probably all
10 heard that phrase before. Your definition may be
11 different, but the definition you are required to use is
12 the one given by the Court. Again, you're all a product
13 your life experiences.

14 So let me pick on Mr. Kramer.

15 THE JUROR: Yes.

16 MR. GAUTHIER: I'm going to pick on you briefly,
17 demonstrate how your life may -- your definition may be
18 different than the legal definition.

19 So, are you married, sir?

20 THE JUROR: Yes, I am.

21 MR. GAUTHIER: So you and your wife go out one
22 night to dinner, go to a movie, and come home and you
23 open the door, and your TV is gone, your DVD player is
24 gone, the Xbox is gone, couch is overturned. You turn
25 to your wife and say, oh, my God we've been --

1 THE JUROR: Robbed.

2 MR. GAUTHIER: Robbed, right. I've asked that
3 question about a hundred times and everybody says the
4 same thing, except one guy. One guy a couple of years
5 ago said "burglarized." He's the guy that got it right,
6 because in Ohio the definition of burglary is when
7 somebody breaks into your residence to commit another
8 crime. A robbery is when you use force against another
9 individual to commit a theft offense. I don't expect
10 you to know the difference. What I'm trying to get
11 through to you is that your life experiences, you may
12 have a different definition. You all need to use the
13 Court definitions.

14 Can you all do that for me? Yes? Great.
15 Thank you.

16 Most of the witnesses, except for the lab person
17 in this case, are going to be police officers. Has
18 anyone ever had an unpleasant experience with a police
19 officer; that is, a speeding ticket, they think the cop
20 was unfair or something like that, something where
21 either the police were unfair to you or an incident?

22 I believe, Ms. Stadul, you said that you had two
23 house break-ins --

24 THE JUROR: Yes.

25 MR. GAUTHIER: -- and one vehicle --

1 THE JUROR: Yes.

2 MR. GAUTHIER: -- or a situation where you think
3 the police didn't do enough. So any unpleasant
4 experiences or a case where you were the victim of a
5 crime where you think the police didn't do enough?
6 Anyone?

7 Okay. Mr. Warner.

8 THE JUROR: Yeah. I was issued a speeding
9 ticket this past summer --

10 MR. GAUTHIER: Okay.

11 THE JUROR: -- by a state trooper, and I did not
12 think that I was speeding, nor did my wife, who was in
13 the car.

14 MR. GAUTHIER: Okay. I'm going to have some
15 state troopers -- it wasn't Trooper Trader, was it?

16 THE JUROR: I don't believe so, no.

17 MR. GAUTHIER: Good. It wasn't a trooper that
18 was 6'7?

19 THE JUROR: No, sir.

20 MR. GAUTHIER: That's the other trooper in case.
21 He's actually 6'7. Are you going to hold that against
22 the state patrol, this case, that you got a ticket last
23 year?

24 THE JUROR: Absolutely not.

25 MR. GAUTHIER: Still be fair and impartial?

1 THE JUROR: Yes.

2 MR. GAUTHIER: Anyone else? No one else.

3 Mr. Warner, I'm going on pick on you one more
4 time. You indicate that you know Geno.

5 THE JUROR: Yes.

6 MR. GAUTHIER: Geno is probably going to testify
7 in this case. Do you believe that if you don't think
8 the evidence is present, you find the defendant not
9 guilty beyond a reasonable doubt, despite the fact that
10 Geno got up there and said whatever he said, you can
11 still face Geno and say, hey, you know what, you just
12 didn't have the evidence in that case?

13 THE JUROR: Yes.

14 MR. GAUTHIER: You will be able to do that?

15 THE JUROR: Yes.

16 MR. GAUTHIER: You're not going to be
17 intimidated by Geno and say, "I have to do what Geno
18 wants me to do"?

19 THE JUROR: No.

20 MR. GAUTHIER: All right. And who else knew
21 Geno? Mr. Kramer, same question to you. Are you going
22 to be -- you indicated that you know Geno as well.

23 THE JUROR: Yes.

24 MR. GAUTHIER: The fact -- if you sit on this
25 jury, if Geno testifies, are you going to have to agree

1 with the State just because Geno testified?

2 THE JUROR: No.

3 MR. GAUTHIER: You would be able to look him in
4 the eye afterwards and say, "You know what? The
5 evidence just wasn't there"?

6 THE JUROR: Absolutely.

7 MR. GAUTHIER: Or hopefully the evidence will be
8 there. And that goes to the same for everyone else who
9 knows police officers. I know a number of you raised
10 your hands and indicated you knew police officers.

11 Is there anybody who raised their hand or
12 anybody on the panel who believes that their
13 relationship with a police officer, the fact they know
14 them, that they feel compelled or influenced to render a
15 guilty verdict simply because they know the police
16 officers and, golly gee, I ought to agree with the
17 police? Anybody? Ms. Pinto.

18 THE JUROR: It's not necessarily compelled, just
19 that I trust them.

20 MR. GAUTHIER: Okay, all right. I would hope
21 most people trust police officers. And do you think you
22 could assess the evidence that I present to you fairly
23 and render a fair verdict to the defendant and to the
24 State?

25 THE JUROR: I hope so.

1 MR. GAUTHIER: Okay. Ms. Pinto, you mentioned
2 something earlier, actually, about being a witness
3 before.

4 THE JUROR: Yes.

5 MR. GAUTHIER: And that case involved Ms. Herb;
6 is that correct?

7 THE JUROR: Yes.

8 MR. GAUTHIER: Do you remember the prosecutor in
9 that case?

10 THE JUROR: Yes.

11 MR. GAUTHIER: Okay. Was it --

12 THE JUROR: I don't know the name. It was --

13 MR. GAUTHIER: Was it a handsome guy?

14 THE JUROR: Did he wear his glasses on his head?

15 MR. GAUTHIER: He did.

16 THE JUROR: It was you. I never remembered.
17 You looked familiar.

18 MR. GAUTHIER: It was me. Yeah, I did try that
19 case, and I guess you were a witness for me.

20 THE JUROR: I was.

21 MR. GAUTHIER: Okay. Now that we figured that
22 out, do you think you could be fair and impartial to the
23 State --

24 THE JUROR: I hope so.

25 MR. GAUTHIER: -- and to the defendant?

1 Seriously, do you think that might affect your
2 deliberations in this case, the fact you have testified
3 as a witness, you've been on the witness stand and
4 testified with me asking you questions?

5 THE JUROR: Yeah.

6 MR. GAUTHIER: All right. No, seriously.

7 THE JUROR: I mean, I don't like -- I really
8 don't like to answer definite yes or no because --

9 MR. GAUTHIER: You'll make every effort --

10 THE JUROR: I'll make an effort.

11 MR. GAUTHIER: -- to be fair to both sides?

12 THE JUROR: Yes, I will.

13 MR. GAUTHIER: That's all I ask. Thank you.

14 Anybody else know me, by the way, while we're
15 here? Anybody recognize me?

16 As the Court indicated earlier, one of the
17 questions -- you assess a police officer's
18 credibility, their believability the same way you would
19 assess any other individual's credibility, their
20 demeanor, their honesty, their forthrightness, et
21 cetera, et cetera. Anybody have a problem with that?
22 No.

23 The next thing I want to touch upon is
24 television. Once again, we have a little theme going
25 that we're a product of our life experiences. Most of

1 us watch television, and a lot of shows on television
2 are things like *CSI* and *Bones* and *Law and Order* and
3 *Castle* and *NCIS*. And I think *NCIS* is the most popular
4 show in the country. Anybody watch *NCIS*? A good number
5 of people.

6 My concern as a prosecutor is that because
7 people watch these shows, their expectations are that
8 what they see on those shows might actually be
9 true, okay. And I will assert to you, Ladies and
10 Gentlemen, that a lot of the stuff they base this on,
11 some stuff can be true; a lot of it is not. Anybody
12 have a problem with that? Anybody disagree with me?
13 Ms. Stadul.

14 THE JUROR: No, I'm agreeing with you.

15 MR. GAUTHIER: I saw you shaking your head, and
16 I want to talk to you. One of the characters on *NCIS* --

17 THE JUROR: Yes.

18 MR. GAUTHIER: -- Abbey.

19 THE JUROR: Yes.

20 MR. GAUTHIER: She does tire tracks and paint
21 chips --

22 THE JUROR: Yeah.

23 MR. GAUTHIER: -- and drugs and all kinds of
24 stuff like that. In real life that's about 30 different
25 people.

1 THE JUROR: Yeah, absolutely.

2 MR. GAUTHIER: And a lot of the stuff that
3 she -- you know, I like when *NCIS*, the head guy, Gibbs,
4 tells somebody to do something, and they go to a
5 computer and within like four seconds they track
6 somebody's phone to a certain location.

7 THE JUROR: They got all the graphics and
8 showing the little lines.

9 MR. GAUTHIER: Right. You all realize this is
10 television and that's not actually real life,
11 okay. There's other issues that need to be addressed:
12 Permission from judges, warrants, all kinds of stuff.
13 You can't just -- anybody disagree? Everybody
14 understand that?

15 Another thing, *NCIS* and some of the other shows
16 there's DNA everywhere, apparently. Obviously, each of
17 us has their own DNA. On the television everybody gets
18 DNA and it's present, and 30 seconds or less -- it
19 takes, you know, 30 seconds or less and it is
20 everywhere. You understand that that's not necessarily
21 true? Anybody believe that's true? No? Good.

22 There's a lab director at one of the state labs
23 in Ohio who has a phrase, he calls it Swab
24 America, because people, again because of television,
25 have this idea that, you know, you could just -- DNA

1 tells everything. I will tell you right now, Ladies and
2 Gentlemen, in this particular case there's not going to
3 be any DNA. This is not a case involving DNA. It's a
4 case involving the stop of a car on the turnpike.
5 You'll see a video. And it's recovering of some cocaine
6 in the car driven by the defendant, okay. No DNA
7 involved. Not going to be any DNA.

8 Is there anybody here on the panel who is
9 sitting there thinking to themselves, you know what, I
10 want to see me some DNA and if I don't see some DNA, I'm
11 not going to render a verdict? I don't care what the
12 evidence is, I want me some DNA. If I don't get
13 it, that's it. Anybody like that?

14 All right. A fellow prosecutor of mine tried a
15 case a couple years ago where an individual robbed a
16 store. Again, it was on video. The store owner
17 identified the person that robbed him. As the person
18 was going out the door, they put their hand on the door
19 and they pushed the door out. One of the jurors in that
20 case -- for that juror that was it. They wanted DNA
21 from that door and they didn't get it, and that juror
22 voted not guilty. So that's, again, that's why I'm
23 asking this question. That's why I'm concerned.

24 I know the judge asked if any of you were
25 lawyers. Does anybody know any lawyers? Lots of

1 people. Okay. And those of you who know lawyers -- I'm
2 going to pick on Ms. Hanlon. How are you? You indicate
3 that your -- you have a family member who is related
4 to --

5 THE JUROR: My cousin's husband.

6 MR. GAUTHIER: She's married to Mr. Strait?

7 THE JUROR: Yes.

8 MR. GAUTHIER: He's at the Elyria Municipal
9 Court, correct?

10 THE JUROR: I believe so.

11 MR. GAUTHIER: He's a prosecutor as well.

12 THE JUROR: Uh-huh.

13 MR. GAUTHIER: The fact that you know
14 prosecutor -- do you socialize with them?

15 THE JUROR: Yes.

16 MR. GAUTHIER: The fact that you know Scott, do
17 you believe that might affect your deliberations in this
18 case?

19 THE JUROR: I don't believe so.

20 MR. GAUTHIER: You can assess the evidence
21 fairly from the witness stand?

22 THE JUROR: Uh-huh.

23 MR. GAUTHIER: Thank you. The rest of you who
24 raised your hands for knowing lawyers, the same question
25 applies. The fact that you know lawyers, whether they

1 are prosecutors or defense attorneys or they only
2 practice civil law, does that -- any of you feel that it
3 might affect your deliberations in this case? No hands.
4 Very good.

5 As said a number of times in this case already,
6 this is a drug case. The state of Colorado recently
7 legalized marijuana. Does anybody on the panel feel
8 that cocaine should also be legalized? Anybody have a
9 strong feeling one way or the other about that?

10 In Ohio marijuana is still illegal and cocaine
11 is still illegal. You can all follow the law with
12 regard to that? Yes?

13 Has drugs touched any of you or your family
14 member's lives, the friends who had a problem with drugs
15 or family member, anything like that, such that it would
16 make it difficult for you to sit as a juror in this
17 case? No?

18 Okay. Ladies and Gentlemen, also in this
19 case you will hear from Trooper Trader, when he
20 testifies, that he is a K-9 officer; that is, he has a
21 dog to detect the odor of narcotics. Anybody have any
22 strong opinions about K-9s? Anyone?

23 Mr. Warner, you kind of shook your head a little
24 bit.

25 THE JUROR: Love them. I have three pugs at

1 home.

2 MR. GAUTHIER: All right. You understand that
3 their K-9s can be trained to detect the odor of
4 narcotics, and accept that?

5 THE JUROR: Yes.

6 MR. GAUTHIER: Anybody on the panel who cannot
7 accept the fact that K-9s can be trained to detect the
8 odor of narcotics?

9 Ms. Stadul, I picked on you a lot today. I
10 apologize. You indicated in your questionnaire that you
11 are concerned about sitting on a jury where there was a
12 violent or graphic crime.

13 THE JUROR: Yeah. It doesn't sound like the
14 case, no.

15 MR. GAUTHIER: So you're all set?

16 THE JUROR: Yeah.

17 MR. GAUTHIER: All right. Mrs. Stewart, you
18 indicated that you might have to close down your
19 shop. Did you have to close down today?

20 THE JUROR: Yeah.

21 THE JUROR: All right. Is the fact that this is
22 probably going to take two days, is that going to be too
23 much of a financial burden for you to be able to pay
24 attention?

25 THE JUROR: Um.

1 MR. GAUTHIER: Are you going to be sitting there
2 thinking, oh, my God --

3 THE JUROR: Yeah, I am. Yeah, it's tough. You
4 know, there's people that depend on me.

5 MR. GAUTHIER: And I appreciate that. My
6 mother-in-law lives with me. She gets her hair done
7 religiously every week, and you can't throw her off her
8 schedule. Do you think that it would be so overwhelming
9 that you wouldn't be able to pay attention to the
10 evidence?

11 THE JUROR: Not overwhelming, no.

12 MR. GAUTHIER: You would still be able to pay
13 attention to the evidence?

14 THE JUROR: I think so.

15 MR. GAUTHIER: All right. Ms. Schmidt, you work
16 for Children Services?

17 THE JUROR: I do.

18 MR. GAUTHIER: Do you work with some county
19 prosecutors?

20 THE JUROR: Yes.

21 MR. GAUTHIER: Do you think that might affect
22 your deliberations in this case, one way or the other?

23 THE JUROR: No.

24 MR. GAUTHIER: Okay, thank you.

25 Ladies and Gentlemen, I told you I would ask you

1 one final question; and that is, is there anything that
2 either the Court has raised or I have raised or that
3 you're raising yourself in your own lives about your
4 service on this particular jury that you would like to
5 raise now? Anyone? No hands.

6 All right. Ladies and Gentlemen, I thank you
7 for your attention.

8 State passes for cause, your Honor.

9 THE COURT: Thank you. Mr. Aufdenkampe.

10 MR. AUFDENKAMPE: Good morning. This is the
11 only chance we get, as I think the Court had told you,
12 to actually talk to you and hear what you have to say,
13 give you an opportunity to talk about some of the
14 concerns you have.

15 Now, naturally, from my position, one of the
16 things that I'm concerned about is does everybody here
17 agree that the defendant has a right to be represented,
18 a right to be silent in the case? Oftentimes, as
19 attorneys, whether we're sitting in the position of the
20 State or in my position -- I get friends that say, "how
21 can you represent somebody that's a defendant?"
22 Well, everyone deserves an opportunity to have a
23 defense. Do you agree with that, or you disagree with
24 that? If you disagree with that, that's fine. As
25 Mr. Gauthier said, we're just seeking truth here. We

1 just want an honest answer from you because we want to
2 make sure we get a jury that's impaneled that would
3 consider the case based on the presumption of innocence.
4 Everybody agree?

5 How many of you have been stopped by the police
6 before? Raise of hands. Almost everybody. Jeez, we
7 must be bad people. We all have been stopped by the
8 police.

9 How many people were stopped by the police and
10 then they said, "Well, better call the police dog in and
11 check you out"? Anybody have the dog called after you
12 were stopped.

13 Yes, sir. What happened?

14 THE JUROR: I don't know. There was an alcohol
15 sobriety checkpoint. They had a dog there, and the dog
16 barked on my car and made me get out.

17 MR. AUFDENKAMPE: Okay. How did you feel about
18 that?

19 THE JUROR: I didn't care for it too much.

20 MR. AUFDENKAMPE: All right.

21 THE JUROR: It made my car a wreck after they
22 got done.

23 MR. AUFDENKAMPE: Now, what about situations
24 where perhaps you're driving down the street and you see
25 somebody pulled over, what's the first thought that

1 enters your mind?

2 THE JUROR: That person is having a bad day.

3 THE JUROR: Speeding. You're stopped, says
4 you're speeding.

5 MR. AUFDENKAMPE: Stopped for speeding.

6 THE JUROR: Mostly.

7 MR. AUFDENKAMPE: Are they guilty? You kind of,
8 in the back of your mind, oh, they must have done
9 something wrong. They had some reason to stop them. So
10 I mean, if we follow through that, we're basically
11 saying somebody who is stopped by the police is guilty
12 of something. That doesn't make much sense, does
13 it, under our constitution with the rights we have as
14 U.S. citizens? So we want to make sure that we agree --
15 I want to make sure that you agree that there is a
16 presumption of innocence and just because you're stopped
17 or charged with something that doesn't necessarily make
18 you guilty of something. Do we agree with that?

19 Mr. Warner, you seem a little hesitant on the
20 that.

21 THE JUROR: No, I agree. It's hard.

22 MR. AUFDENKAMPE: So, sir, you like dogs. You
23 have a couple of dogs. Do you understand that even a
24 trained K-9 can alert to a car and there will be no
25 drugs? It's not every time the dog alerts there's

1 drugs. They make errors just like we make errors. Do
2 you understand that?

3 A lot of people know police officers. And,
4 Ms. Pinto, you seem to have some stronger feelings about
5 police officers. I didn't follow, I guess, everything
6 that was said. You know a lot of Elyria PD and a
7 trooper, at least.

8 THE JUROR: Uh-huh. He's deceased. The trooper
9 just recently, about a year ago, year and a half ago
10 passed away. Also at my work, I deal a lot with the
11 local police department.

12 MR. AUFDENKAMPE: And your work involves what?

13 THE JUROR: High school.

14 MR. AUFDENKAMPE: High school.

15 THE JUROR: Which does involve drugs from time
16 to time.

17 MR. AUFDENKAMPE: Okay. Now, you also appeared
18 as a witness.

19 THE JUROR: Yes, I did.

20 MR. AUFDENKAMPE: In fact, appeared as a witness
21 with Mr. Gauthier; is that correct?

22 THE JUROR: Yes.

23 MR. AUFDENKAMPE: Were you a State's witness; in
24 other words, were you a witness for the State?

25 THE JUROR: I was a witness for the

1 prosecution, yes.

2 MR. AUFDENKAMPE: Mr. Welsh, you've been kind of
3 sitting there in the back, with the exception of the
4 fact that your son's brother-in-law is a trooper.

5 THE JUROR: Yes. He just became a trooper year
6 and a half ago. I have a nephew that's a Sacramento
7 police officer. My son tested for the Cleveland Police
8 Department, and my son-in-law is in the secret service,
9 so there's a lot of --

10 MR. AUFDENKAMPE: -- police officers.

11 THE JUROR: Actively within the family, yes.

12 MR. AUFDENKAMPE: Is it something that is
13 discussed often?

14 THE JUROR: Not too often. Most of it is with
15 my son-in-law, the secret service, talking about the
16 President, what's going on, how his wife's doing.

17 MR. AUFDENKAMPE: A little different law
18 enforcement activity than we have before us today.

19 THE JUROR: Yes.

20 MR. AUFDENKAMPE: Would you have a
21 predisposition or would you feel that as a police
22 officer thing; therefore, it must be true?

23 THE JUROR: No.

24 MR. AUFDENKAMPE: Mr. Kramer, you had known DEA
25 Taliano?

1 THE JUROR: Yes.

2 MR. AUFDENKAMPE: He's going to
3 testify. Wouldn't it be difficult to sit there and not
4 presume that everything he says is correct and true?

5 THE JUROR: No.

6 MR. AUFDENKAMPE: Okay. You think you could
7 still be open and make him prove the case --

8 THE JUROR: Yes.

9 MR. AUFDENKAMPE: -- or prove the issue?

10 Mr. Jackman, you had indicated you're actually
11 trying to get into law enforcement.

12 THE JUROR: Yes.

13 MR. AUFDENKAMPE: So I'll ask you the same
14 question. Do you have a predisposition to say that,
15 well, it's a police officer, I want to be a police
16 officer, therefore it must be true?

17 THE JUROR: No.

18 MR. AUFDENKAMPE: You think you can be fair and
19 impartial?

20 THE JUROR: I think that's a part of law
21 enforcement, same both sides.

22 MR. AUFDENKAMPE: Okay. So you think that just
23 because they are police officers, it's your role to be
24 become a police officer, that you could still be fair?

25 THE JUROR: Yeah.

1 MR. AUFDENKAMPE: Okay. Ms. Stadul, I don't
2 mean to pick on you. So, I know your house was broken
3 into. The fact that your house was broken into, you've
4 been a victim of crime, how do you feel about that when
5 you look at another person who is charged as a
6 defendant?

7 THE JUROR: Well, every circumstance is
8 different. So depends on -- what happened with me is
9 not what happened here.

10 MR. AUFDENKAMPE: Is there any presumption on
11 your part just because he is the defendant that --

12 THE JUROR: Not at all.

13 MR. AUFDENKAMPE: -- that you've been a victim,
14 that there would be a problem issuing a fair and
15 impartial decision?

16 THE JUROR: (Shaking head.)

17 MR. AUFDENKAMPE: Ms. Robertson, we do know each
18 other, and simply because I've practiced in the court in
19 Avon Lake; is that correct?

20 THE JUROR: Yes.

21 MR. AUFDENKAMPE: We don't have any personal
22 relationship. I can't imagine that that relationship
23 that we do have, being an attorney who simply practices
24 in your court, would affect you one way or the other.

25 THE JUROR: It would not.

1 MR. AUFDENKAMPE: Now, you deal with a lot of
2 police officers in your position as well. Are you of
3 the opinion that you would be predisposed to believe
4 just because a police officer said something, would that
5 be more likely true than not?

6 THE JUROR: I would say, yes, I support our
7 officers and troopers; that they wouldn't file charges
8 if there wasn't actual evidence that something
9 happened. Would I try to be open minded and fair? Yes.
10 But I do support the officers personally.

11 MR. AUFDENKAMPE: You have any kind of personal
12 relationships with the officers; in other
13 words, socializing or anything like that?

14 THE JUROR: No.

15 MR. AUFDENKAMPE: No, okay. If I may, I'll call
16 you Marjorie because I'll butcher your last name. I
17 think that's why you're not asked a lot of
18 questions. You were basically a victim as well. Now,
19 what are your thoughts on the fact that standing before
20 you is someone that's --

21 THE JUROR: Totally different. I mean, I have
22 an open mind. I have to listen to the evidence. And
23 what happened to me isn't going to change my attitude
24 about things.

25 MR. AUFDENKAMPE: What I found interesting is

1 evidently the police you talked to did indicate it's
2 probably, you know, a drug problem that caused this, and
3 this is a drug case. That's what the allegation
4 is. Will that affect you at all as you deliberate, as
5 you listen to the testimony?

6 THE JUROR: No. What the biggest shock to me
7 was I felt it was my responsibility to talk to one of my
8 neighbors. I live -- basically, it was a crime-free
9 neighborhood, and I found out that it's amazing how many
10 people are going through the same thing. It's just
11 getting so common. I just don't understand. So I feel
12 a little worried, more worried than I was before, but
13 it's not going to affect my attitude about whether
14 somebody is guilty or innocent unless I hear all of the
15 information.

16 MR. AUFDENKAMPE: Ms. Hanlon, you know Scott
17 Strait, you socialize with him.

18 THE JUROR: Uh-huh.

19 MR. AUFDENKAMPE: Scott Strait is a prosecutor
20 in Elyria.

21 THE JUROR: Yes.

22 MR. AUFDENKAMPE: Does he talk much about
23 his work?

24 THE JUROR: General terms, yes.

25 MR. AUFDENKAMPE: Nothing specific?

1 THE JUROR: Occasionally, he will talk about
2 cases that are more high profile in terms of this is
3 what's going on in the court, this is what recently
4 happened; but other than that, it's more general.

5 MR. AUFDENKAMPE: Well, the fact that you're
6 good friends with someone who is a prosecutor who
7 represents the State, will that influence you at all in
8 your deliberations --

9 THE JUROR: I don't think so.

10 MR. AUFDENKAMPE: -- as you listen to the
11 testimony? Now, was there a cousin's husband; is that
12 Scott?

13 THE JUROR: Yes. And his father is a
14 magistrate, Jerry Strait.

15 MR. AUFDENKAMPE: Ms. Stewart, you own your own
16 business?

17 THE JUROR: (Nodding head.)

18 MR. AUFDENKAMPE: I own my own business; I know
19 it's hard. It's hard for me because I'm here today and
20 I have other clients.

21 THE JUROR: Right.

22 MR. AUFDENKAMPE: They need my attention and
23 they deserve it, yet I'm here. But this is my
24 job. This is not cutting hair for you and that can have
25 a big influence on you as an individual. We're not

1 asking for you to be here and financially harm
2 yourself. I'm sure this goes for everyone. Are you
3 going to be able to give this case the attention it
4 deserves, or is this financially too big a burden for
5 you?

6 THE JUROR: Well, it doesn't help me
7 financially, but I hope it's just not a long one.

8 MR. AUFDENKAMPE: What is a long one?

9 THE JUROR: It is?

10 MR. AUFDENKAMPE: No. I say what is a long one
11 for you? Three days? Four days?

12 THE JUROR: Yeah.

13 MR. AUFDENKAMPE: Well, we anticipate this will
14 probably be a two-day trial. Is that going to harm your
15 business?

16 THE JUROR: Maybe a little, but nothing major.

17 MR. AUFDENKAMPE: As we sit here, I want to make
18 sure my client, or any one of us really, we have
19 constitutional rights. The State's got the burden of
20 proof, as the Court has told you, and Mr. Gauthier
21 understands they have got the burden of proof beyond a
22 reasonable doubt. And the Court's going to instruct you
23 on what beyond a reasonable doubt means. And part of
24 that definition is that you rely on that in the most
25 important of your own decisions. Can you meet that

1 burden? Can you hold the State to that standard, or are
2 you, because of your relationships or life history, are
3 you in a position where I really can't probably do that?
4 Anybody have a problem with that?

5 And like Mr. Gauthier, if you have anything that
6 you want to bring out, this is your last chance, your
7 last opportunity to bring forward anything that you have
8 to state. Any concerns that you have as far as your
9 impartiality? Nothing?

10 Thank you very much.

11 THE COURT: Any cause challenges?

12 MR. AUFDENKAMPE: I would say

13 Ms. Pinto, please.

14 THE COURT: You want to --

15 * * *

16 A SIDEBAR DISCUSSION WAS HAD AS FOLLOWS

17 * * *

18 THE COURT: You challenge?

19 MR. AUFDENKAMPE: Yeah. My challenge would be
20 Ms. Pinto. She's got such a close relationship, she
21 seems very biassed towards the police. She seems to be
22 unable to hold them to the standard that they should be
23 held on to.

24 MR. GAUTHIER: I think she's fantastic, are you
25 kidding? I have no objection, Judge.

1 THE COURT: Any other cause challenges?

2 MR. AUFDENKAMPE: I had one more for
3 Mr. Warner. I could use a peremptory on him.

4 THE COURT: Okay. Any other cause challenges
5 from the defense?

6 MR. AUFDENKAMPE: No.

7 * * *

8 THE SIDEBAR DISCUSSION ENDED

9 * * *

10 THE COURT: Okay. The Court's going to grant
11 the cause challenge as to Juror Number 10, Ms. Pinto,
12 but I want to say something. This is how it's supposed
13 to work. You were very honest and upfront about your
14 answers. You admitted that you are close to police
15 officers and that might influence you, and that's how
16 this is supposed to work, so that you don't remain quiet
17 and then find out later that there was someone who was
18 going to favor one side. So I want to thank you in
19 front of everyone for your honesty here this morning and
20 your service.

21 Okay, great. All right. So that means Juror
22 Number 28, Charlene Kalo. Good morning. You need to
23 come up and take a seat in Number 10, please.

24 Okay. Ms. Kalo, you've sat through -- I know
25 it's been some time -- all the questions that I asked of

1 the jury pool.

2 THE JUROR: Yes, sir.

3 THE COURT: Would any of your answers have been
4 any different to some of the questions that I asked or
5 you feel you need to address a specific question that I
6 asked?

7 THE JUROR: In all honesty, I will tell you that
8 I sat in that chair and admire the impartiality of this
9 whole jury. I live in Amherst, your Honor, and we all
10 know that this problem is ruining a small town. I had
11 an attempted break-in this last summer, and the officers
12 there, too, said that this was more than likely the
13 reason for what happened to me and what happens in my
14 small town every day. I don't believe, because of my
15 feeling of how this has impacted my life, how I thought
16 I was safe in a small town -- I'm single, I live alone,
17 I was very frightened. I still resented that that
18 happened to me. And I don't know, although I will try
19 very hard to be impartial, I can't tell you that I, a
20 hundred percent, could be.

21 THE COURT: Okay. I know you didn't come out
22 and say it, but I'm assuming that the officers indicated
23 in some way that the break-in was related to someone who
24 may have had a drug habit. And I was trying to --

25 THE JUROR: Yes, your Honor.

1 THE COURT: That's true, all right. I tell you
2 what, I'm going to let counsel question you on this a
3 little bit and we will see how it plays out.

4 THE JUROR: Okay.

5 THE COURT: I appreciate you being upfront on
6 this. Prosecutor.

7 MR. GAUTHIER: Thank you, your Honor.

8 Ms. Kalo, I appreciate your honesty as well.
9 Mr. Aufdenkampe and I and the Court, that's all we want,
10 and I do appreciate that.

11 The first thing you said impressed me. You said
12 you admired the impartiality of all the individuals up
13 here. Given that admiration, do you still think you can
14 be fair, because what I'm hearing is you might not be
15 fair to the defense? Is that --

16 THE JUROR: That's what -- that would be my
17 fear.

18 MR. GAUTHIER: Right. I understand that would
19 be your fear, but understanding that and knowing
20 that, would you put forth every effort to be fair and
21 impartial to the defendant?

22 THE JUROR: Yes, I would.

23 MR. GAUTHIER: Thank you. We asked a whole lot
24 of questions about police.

25 THE JUROR: Yes. Clear there. Clear there.

1 MR. GAUTHIER: I'm sorry?

2 THE JUROR: I'm okay with all of those
3 questions. It was just --

4 MR. GAUTHIER: All right. Thank you very
5 much.

6 THE COURT: Attorney Aufdenkampe.

7 MR. AUFDENKAMPE: So you were actually broken
8 into?

9 THE JUROR: No, it was an attempt.

10 MR. AUFDENKAMPE: It was just an attempt.

11 THE JUROR: And I was in the house.

12 MR. AUFDENKAMPE: So it was occupied by
13 yourself?

14 THE JUROR: Yes.

15 MR. AUFDENKAMPE: All right. And what made you
16 believe that it was drug related; because of what the
17 police told you?

18 THE JUROR: And there had been a series of
19 break-ins for that reason that week.

20 MR. AUFDENKAMPE: Okay. So you're being honest
21 with us. You indicate you're not sure you could be
22 impartial?

23 THE JUROR: I'm saying that I would hope to
24 try, but may not be as impartial as someone who didn't
25 have that happen to them, you know.

1 MR. AUFDENKAMPE: Okay. And this is a drug
2 case.

3 THE JUROR: Yes.

4 MR. AUFDENKAMPE: Do you understand that?

5 THE COURT: Counsel I'm going to jump in
6 here. I think that there's -- I think that, Ms. Kalo, I
7 want to thank you, but I think we're too close to the
8 situation and so I'm going to remove you for
9 cause. Thank you.

10 THE JUROR: Okay.

11 THE COURT: So that would bring forward Juror
12 Number 29, Linda, is it, Gross?

13 THE JUROR: Yeah.

14 THE COURT: Good morning. Thank you, Ms. Kalo.

15 THE JUROR: You're welcome.

16 THE COURT: Okay. Ms. Gross, I know you sat
17 through a series of questions. Anything about the
18 questions that I asked that you feel compel an answer to
19 me?

20 THE JUROR: No.

21 THE COURT: All right, thank you. State of
22 Ohio, you want to question Ms. Gross?

23 MR. GAUTHIER: No, Judge, I have no questions.

24 THE COURT: Mr. Aufdenkampe?

25 MR. AUFDENKAMPE: You heard all of the questions

1 that have been asked. Do you have anything that you
2 would like to say in response to any of those questions?

3 THE JUROR: No.

4 MR. AUFDENKAMPE: No relationship to any police
5 officers?

6 THE JUROR: No.

7 MR. AUFDENKAMPE: Have you ever been stopped?

8 THE JUROR: Twice, for speeding.

9 MR. AUFDENKAMPE: Okay. And again, did they
10 call the drug dog on you?

11 THE JUROR: No.

12 MR. AUFDENKAMPE: Okay. Do you feel that you
13 can be fair and impartial?

14 THE JUROR: Yes.

15 MR. AUFDENKAMPE: Ever been on a jury before?

16 THE JUROR: No.

17 MR. AUFDENKAMPE: I know you probably answered
18 questions, but I was focused on people sitting in the
19 jury box and I apologize on repeating
20 myself. Again, you understand the State's burden is
21 beyond a reasonable doubt?

22 THE JUROR: Yes, I do.

23 MR. AUFDENKAMPE: We have no obligation even to
24 respond. We can sit here quietly and not present a
25 witness, not take the witness stand. Would you hold

1 that against my client?

2 THE JUROR: No.

3 MR. AUFDENKAMPE: I don't have anything
4 else, your Honor.

5 THE COURT: Okay. At this stage, and we're
6 almost done, each side will exercise those peremptory
7 challenges that I spoke about. So they're going to
8 write down a name on a sheet of paper and exchange it
9 back and forth. And while they're doing that, you folks
10 can stand for a minute. You've been sitting for an hour
11 and a half. Get up and stretch, take about a minute.
12 Everybody get up and feel free to stretch. I'm going to
13 read some instructions. Kill two birds with one
14 stone.

15 Okay. Again, if you're excused at this point,
16 don't take it personally. If I call your name, if you
17 would stand up and go ahead and leave the area here and
18 sit in the gallery.

19 Juror Number 11, Karen Stewart, you are thanked
20 but excused. Good news for you and your
21 business. Juror Number 16, Mr. Kramer, you are thanked
22 but excused; Juror Number 1, Mr. Warner, you are thanked
23 but excused; Juror Number 4, Mr. Jackman, you are
24 thanked but excused.

25 All right. Now, let the record reflect that the

1 State and the defendant passed on any further peremptory
2 challenges. So this is the extent of the peremptory
3 challenges. As a result of this, this is what I'd like
4 you to do. Mr. Smith, if you would move over into seat
5 number one; Ms. Hanlon, if you would move into seat
6 number two; Mr. Mytnick --

7 THE JUROR: Mytnick.

8 THE COURT: M-Y-T-N-I-C-K. You're in seat
9 number three. Ms. Kime, is it?

10 THE JUROR: Yes.

11 THE COURT: You're in seat number
12 four. Ms. Stadul, you're in seat number five;
13 Ms. Robertson your in seat number six.

14 All right. Juror Number 7 will be
15 Mr. Welsh. You want him down? Stay right where you
16 are. We will change your seat number. Juror Number 8
17 is Ms. Gross; Juror Number 9 is Mr. Orlowski. So if you
18 just scoot over one. Ms. Kee, you're Juror Number 10;
19 Mr. Ferrell, you're Number 11, if you scoot over.
20 Mr. Wheatley, you're Number 12; and Piwowar --

21 THE JUROR: With a P.

22 THE COURT: Juror Number 13.

23 What I need to do is I need to swear in the jury
24 so it's official before anybody leaves. So if you would
25 all stand, the 13, raise your right hand.

1 * * *

2 THE JURORS WERE DULY SWORN TO HEAR THE CASE

3 * * *

4 THE COURT: All right. Folks, thank you.
5 Please be seated. The rest of you, you are free to
6 go. You do need to report to the jury
7 commissioner. Thank you for your service this
8 morning, folks.

9 This is going work out good for you folks. I
10 have to give more instructions. It won't be too long,
11 maybe five minutes. Then we're going to have you break
12 and go into the jury room so you get acquainted with
13 that with Bailiff Cannaday, then we're going to come
14 back at about 20 to 12:00. They told me their opening
15 statements aren't that long, so that about 12:10, 12:15
16 we will break for lunch and come back after lunch.

17 All right. So here we go. Members of the jury,
18 those of you who have participated in lawsuits must do
19 so in accordance with established rules. That's true of
20 the witnesses, of the lawyers and the judge with respect
21 to his part in the case, and is equally true as for you
22 as jurors.

23 Lawyers present the evidence according to
24 rules. The judge enforces the rules and determines the
25 admissibility of evidence.

1 You will be the sole judges of the facts, the
2 credibility of the witnesses and the weight to be given
3 to the testimony. Later, the Court will furnish the law
4 and you will apply the law to the facts of the case. It
5 is your sworn duty to the accept the law as given to you
6 by the Court.

7 The procedure for the trial is as
8 follows. First the prosecuting counsel gives
9 his opening statement. This tells you what the State's
10 case is about, and he outlines what he expects
11 his evidence to show. Then the defendant's counsel will
12 give his opening statement. This tells you what the
13 defendant's case is about, and he outlines what he
14 expects his evidence to show. Neither the prosecutor's
15 opening statement or the defense counsel's opening
16 statement is evidence, and it can't be considered as
17 evidence.

18 The prosecutors then actually do present their
19 evidence and the defendant presents their evidence. The
20 prosecutor may then present what is called rebuttal
21 evidence, and the prosecutor then gives their closing
22 arguments and the defendant gives his closing argument,
23 and then court will instruct you on what the law is in
24 this case. Thereafter, you will deliberate on the
25 verdict.

1 It's important that you be fair and attentive
2 throughout the trial. Do not discuss this case amongst
3 yourselves or with anyone else. Do not permit anyone to
4 discuss this case with you or in your presence. Do not
5 form or express an opinion on this case until it is
6 finally submitted to you.

7 Now, look, you're going to go home today and
8 your spouse, your family is going to say, "What did you
9 do today? What kind of case did you hear?" You cannot
10 speak with them about the case. You cannot go on the
11 internet in this digital age and research anything about
12 this case or go on to any website. This is true among
13 yourselves when you're together, and you will get to
14 know each other and enjoy each other during the next two
15 days, but you can't talk, hey, what do you think, what
16 do you think of that witness, or you think, you
17 know, how do you think you're going to vote. You don't
18 do any of that until all of the evidence is in and I
19 instruct you as to the law, and then you go back and
20 deliberate.

21 By a show of hands, do you all understand that?
22 Good.

23 Now, you may run into the lawyer or the
24 defendant in the elevator or see them and they don't say
25 anything to you. They're not being rude. They know

1 they're not allowed to talk to you until it's all
2 over, okay.

3 All right. At this point we're going to take a
4 break. It will be until about -- let's go until about
5 11:35. You can go back and get a drink of coffee, get
6 comfortable with each other in the jury room, and then
7 we will bring you back in for closing arguments.

8 * * *

9 OUT OF THE PRESENCE AND HEARING OF THE JURY

10 * * *

11 THE COURT: Sir, your name is?

12 THE JUROR: Robert Ferrell.

13 THE COURT: Robert Ferrell. The court's just
14 been advised that Juror Robert Ferrell had advised the
15 jury commissioner that he's to be a pallbearer in a
16 funeral tomorrow. Obviously did not come out in the any
17 of the questioning that we all had. The jury has been
18 sworn in. I think the only option to present is whether
19 we would move this case forward without an alternate.

20 MR. GAUTHIER: It's going to be a short case,
21 Judge. I don't see a problem going forward with just
22 12.

23 THE COURT: With no alternate?

24 MR. GAUTHIER: That's what I mean, just 12.

25 THE COURT: Attorney Aufdenkampe?

1 MR. AUFDENKAMPE: Just a moment, your Honor.

2 THE COURT: Sure.

3 MR. AUFDENKAMPE: No objection.

4 THE COURT: Thank you. Let the record reflect
5 that there is no objection from either side. We will
6 proceed, then, with 12 jurors less Mr. Ferrell.

7 Thank you, counsel. All right, see you back at
8 11:35.

9 * * *

10 A RECESS WAS HAD

11 * * *

12 WITHIN THE PRESENCE AND HEARING OF THE JURY

13 * * *

14 THE COURT: Now it's time for opening
15 statements. The State will go first, followed by the
16 defense. Again, opening statements are not
17 evidence, but an outline of what they expect the
18 evidence to show on their behalf.

19 Prosecutor Gauthier.

20 MR. GAUTHIER: Thank you, your Honor.

21 So please don't anybody get sick over the next
22 two days.

23 Ladies and Gentlemen, thank you once again for
24 your kind attention. The evidence in this case will
25 show that on June 14th, 2011, Trooper Christopher Beyer,

1 Ohio State Highway Patrol, was sitting at about mile
2 marker 133 out in the middle of the highway, just
3 viewing traffic. A car went by following too closely
4 behind a motor home being pulled behind a pickup
5 truck. It was too close behind this, only about two car
6 lengths. It was unsafe.

7 He pulled out where he was, when it was safe to
8 do so, and turned on his video camera. And you will
9 actually see the video, and you will see where the
10 vehicle was, how close it was behind this other
11 vehicle. So Trooper Beyer pulled this vehicle over.
12 This vehicle was driven by Mr. Jackson, the defendant.

13 Trooper Beyer had a brief conversation with
14 Mr. Jackson, and Mr. Jackson gave him some rather
15 confusing answers. First, the car was his cousin's,
16 then it was his girlfriend's, and he was unclear about
17 where he was going, and he was hesitant in
18 his answers. Also, the vehicle wasn't even registered
19 to Mr. Jackson; it was a rental vehicle, and it was
20 rented by a Latrice Thomas. The rental agreement, quite
21 frankly, did not have anyone else listed as a potential
22 driver.

23 Trooper Beyer asked Mr. Jackson whether he
24 should be driving that vehicle. At that time Trooper
25 Beyer went back to the vehicle and started calling it in

1 and running his license and writing a citation, and he
2 called for Trooper Trader. Trooper Trader and Trooper
3 Beyer work together. Not only do they do traffic
4 patrol, but they do drug intervention on the turnpike.

5 Trooper Trader is a K-9 officer. The dog has
6 been trained to detect the odor of narcotics, and he's
7 been doing this for a couple years now. I believe about
8 four years or so. The dog walked around the car and the
9 dog indicated on the car. You will see in the video the
10 dog, on the driver's side rear, just starts going crazy
11 with his paws. That's how he indicates; he starts
12 scratching the car. That gave the officer probable
13 cause to search the vehicle.

14 Prior to doing this, of course, they put
15 Mr. Jackson in the back of the vehicle for their own
16 safety while Trooper Beyer watched the traffic to make
17 sure Trooper Trader was safe. At that time Mr. Jackson
18 was not under arrest, but they indicated to him they
19 were going to perform a search of his vehicle based on
20 what happened with the dog.

21 Well, they started searching the vehicle, and in
22 a luggage in the trunk of the vehicle they found two
23 kilos of cocaine, over two thousand grams, about 4.4
24 pounds when converted to pounds. He immediately told
25 Mr. Jackson he was under arrest.

1 During this time, Trooper Beyer's video was
2 rolling, and you will watch the whole video, about an
3 hour and 12 minutes. But during this time the video was
4 rolling, Mr. Jackson was on the phone. And it was nice
5 of him to actually be on the speaker phone. He is
6 having a conversation with a female and a male. And
7 while the officers were searching the car, there is some
8 back and forth, and you will hear Mr. Jackson tell the
9 person on the other -- on the end of the phone that he
10 put it in his luggage. In his luggage. And then when
11 the officers pulled the luggage and take the cocaine out
12 of the luggage, you hear Mr. Jackson say, Oh darn, they
13 found it. Well, they found it. What they found was two
14 kilos of cocaine.

15 So, Ladies and Gentlemen, you will hear some
16 other conversations that Mr. Jackson had in the back of
17 the vehicle about things that he said, and et cetera,
18 all indicating that Mr. Jackson knew those drugs were
19 there. In fact, when the troopers asked him if
20 everything in the vehicle was his, he indicated that it
21 was.

22 He was placed under arrest, Ladies and
23 Gentlemen. The drugs -- the DEA was called out. A
24 couple of agents from the Drug Enforcement Agency were
25 called out and they -- to see what they could do to help

1 out the case. They ended up taking the drugs and
2 sending them to Chicago for testing.

3 You will hear from Timothy Husk. He is a
4 chemist with the DEA lab in Chicago. He'll fly in and
5 he will tell you he tested these two kilos. They tested
6 positive for cocaine, over two thousand grams, over two
7 kilos, 4.4 pounds.

8 Ladies and Gentlemen, at the close of the
9 evidence in this case, I will ask you to find the
10 defendant guilty of all of the counts in this particular
11 case: Knowingly possessing drugs, using his car as a
12 criminal tool to transport those drugs, and for drug
13 trafficking for transporting those drugs knowing that
14 they would be sold or resold by himself or another.

15 Thank you.

16 THE COURT: Thank you. Attorney Aufdenkampe.

17 MR. AUFDENKAMPE: As the Court told you, this is
18 our opportunity to tell you what we think the evidence
19 will show, the way things will play out.

20 This is a situation that the State presents it
21 being pretty much cut and dry. I think that once you
22 have an opportunity to look at the evidence, to hear the
23 testimony, Trooper Beyer, Trooper Trader here, and as
24 well as the expert witness testimony coming in from
25 Chicago, that you will see maybe things are not as cut

1 and dry as they first appear to be, or you were told
2 they were.

3 There's going to be inconsistencies here. There
4 are going to be reasons why you may ask yourself: Why
5 did they do that; why didn't they do that; why did they
6 stop him in the first place. There may be a lot of
7 questions that you may have at the end of this case that
8 may give you reasonable doubt as to whether or not they
9 prove this case beyond a reasonable doubt.

10 Again, beyond a reasonable doubt, a point where
11 you would rely on that information in the most important
12 of your own decisions. So please go into this with an
13 open mind, give the State and give us an opportunity to
14 present the case to you, to raise the issues, to raise
15 the questions that certainly the facts of the case will
16 show, and then at the end of the case, of course, we
17 don't want a guilty verdict, we want an acquittal
18 here. You have to be unanimous in your decision. If
19 any one of you feels there isn't enough evidence here to
20 convict, we're asking that you stand by your
21 convictions, that you look at the evidence, and if you
22 don't feel the case has been proven, then don't
23 convict.

24 I think that there are many issues that will
25 come up. It's not as cut and dry as the State

1 presents. I think that once you take an opportunity to
2 look at all of the evidence that is presented, they
3 cannot prove their case beyond a reasonable doubt.

4 Thank you.

5 THE COURT: Thank you. You want to call a
6 witness?

7 MR. GAUTHIER: No, judge. I want to set up the
8 video, so if we could take a lunch break now and let me
9 set up the video.

10 THE COURT: All right. Folks, I didn't think
11 they would be that brief, but we're going to go ahead
12 and take our lunch break now. Why don't you plan on
13 being ready to go in the courtroom by one o'clock, which
14 means you have to come back at, you know, ten to one.
15 We're going to get started right at one o'clock.

16 * * *

17 A LUNCH RECESS WAS HAD

18 * * *

19 THE COURT: We're going to proceed now with the
20 State's case. They're going to call their first
21 witness. State of Ohio.

22 MR. GAUTHIER: Thank you, your Honor.

23 MR. AUFDENKAMPE: Your Honor, excuse me. Your
24 Honor, I ask for a separation of witnesses.

25 THE COURT: Very good. Are there others in the

1 room that are going to testify?

2 MR. GAUTHIER: This trooper is just observing,
3 Judge.

4 THE COURT: I'm sorry.

5 MR. GAUTHIER: This trooper is just observing.

6 MR. AUFDENKAMPE: There was a DEA agent here
7 earlier.

8 THE COURT: He left.

9 MR. AUFDENKAMPE: We have a separation, thank
10 you.

11 THE COURT: Sure.

12 * * *

13 Thereupon, the State of Ohio, in order to
14 maintain the issues on its part to be maintained, called
15 **TROOPER CHRISTOPHER BEYER** as a witness, upon being first
16 duly sworn, was examined and testified as follows:

17 **DIRECT EXAMINATION OF TROOPER CHRISTOPHER BEYER**

18 BY MR. GAUTHIER:

19 Q. Trooper, can I have you state your name and
20 spell your last name, please?

21 A. Absolutely. Trooper Christopher Beyer,
22 B-E-Y-E-R.

23 Q. And by whom are you employed?

24 A. The Ohio State Highway Patrol.

25 Q. And as what?

1 A. A trooper and currently K-9 handler as well.

2 Q. How long have you been a trooper?

3 A. I've been commissioned since November of 2004.

4 Q. So nine and a half years, a little over nine
5 years?

6 A. Yep.

7 Q. How long have you been a K-9 officer?

8 A. Been commissioned since February of 2012. So
9 it's just been slightly over two full years now.

10 Q. All right. As a trooper, what post are you
11 assigned to or what post were you assigned to, actually,
12 in June of 2011?

13 A. Milan Highway Patrol post as a road trooper. I
14 was temporarily assigned to work with Trooper Trader and
15 Sergeant Lottman in the Trooper Patrol Unit.

16 Q. In 2011?

17 A. Correct.

18 Q. What were your duties?

19 A. My duties, primary duties were to enforce the
20 criminal section of the Ohio Revised Code. We also
21 still write basic traffic citations and aide and assist
22 motorists, and handle traffic crashes as well.

23 Q. What, if anything, are your responsibilities
24 with regard to narcotics in terms of your general
25 everyday duties?

1 A. That's my basic job that I do now, and what I
2 did then is we go ahead to look for the quality of
3 violations, narcotics. That's a primary thing we look
4 for on the highway.

5 Q. When you say "highway," you primarily work what
6 highways?

7 A. Primarily myself, the Ohio State or -- the Ohio
8 turnpike I patrol.

9 Q. And were you working on the turnpike on June
10 14th of 2011?

11 A. I was.

12 Q. And were you alone -- you have your own marked
13 cruiser?

14 A. I do.

15 Q. And were you in that marked cruiser that day?

16 A. I was.

17 Q. Is it a regular car, or is it an SUV-type
18 vehicle?

19 A. It's a regular patrol car, white Crown Vic with
20 the old bubble gum lights on top.

21 Q. Were you alone or with a partner?

22 A. I was alone in my car; Trooper Trader was
23 sitting alone in his SUV. We were in the mile marker
24 133 crossover monitoring the eastbound traffic, which is
25 Henrietta Township by Gore Orphanage.

1 Q. That Lorain County?

2 A. It is.

3 Q. When Trooper Trader was right next to you, what
4 direction were you facing?

5 A. Eastbound traffic.

6 Q. So you were watching eastbound traffic?

7 A. Correct.

8 Q. Was Trooper Trader watching the eastbound
9 traffic as well, or was he monitoring the westbound?

10 A. He was monitoring the eastbound.

11 Q. So you were both facing the same direction?

12 A. Yes.

13 Q. This is June. Were your windows down, talking
14 to each other?

15 A. They were, yes. It was a warm, sunny day in
16 June.

17 Q. All right. And about 8:40-ish in the morning,
18 can you tell me what happened?

19 A. Sure. While on stationary patrol monitoring the
20 eastbound traffic, I observed a couple of vehicles in
21 the right lane, and there was an older motor home in the
22 right lane being followed closely -- two, three car
23 lengths -- by a silver Toyota Camry, which I later came
24 to find was the defendant. It was following the vehicle
25 about two to three car lengths away, which is extremely

1 close. The reasonable, prudent distance would be a good
2 one car length for every 10 miles an hour. At two to
3 three car lengths, I knew he was well outside what the
4 reasonable, prudent person would be if stopped they
5 could do so, so I immediately observed the violation.

6 After it was safe to pull out of the crossover,
7 I did, and I caught up to him at mile maker 135, which I
8 activated my in-car audio camera by pressing the button.
9 I zoomed in to observe the violation and so anyone in
10 the future could observe it as well. And at that point
11 in time, the vehicle was -- he was still two to three
12 car lengths away from this SUV. I caught up to him and
13 was slightly pacing him a tenth or two of a mile. He
14 was doing anywhere between 60 and 65 miles an hour. I
15 also had the opportunity to look at my video and see
16 that he was about two of the dotted lines away from the
17 vehicle in front of him. Those dotted lines are
18 journalized by the Ohio Turnpike sign shop folks.
19 They're 6 inches wide and 10 feet long and 30 feet
20 apart. He was almost exactly two of those away, only 60
21 feet away from that vehicle.

22 Q. Let me stop you right there. Did you pull this
23 vehicle over?

24 A. I did.

25 Q. And you mentioned a moment ago that your vehicle

1 is equipped with video equipment?

2 A. It is.

3 Q. Is it the same equipment you use today?

4 A. No.

5 Q. Okay.

6 A. It's is a little, little older. It was a VHS at
7 the time.

8 Q. Okay. And you said you turned it on. You had
9 the ability to turn it on?

10 A. Yes.

11 Q. How would it normally turn on?

12 A. When the lights come on.

13 Q. So the way your vehicle was equipped back in
14 June of 2011, if you put your lights on, your top lights
15 on, the video would automatically start recording?

16 A. It would. The audio would not; the video
17 would. I would have to manually turn on the mike pack
18 that sits on the belt. You have to zoom and hear what
19 I'm saying. The audio in the in-car and the video was
20 on.

21 Q. So you physically turned it on before you turned
22 your lights on?

23 A. I did.

24 Q. All right. And have you looked at State's
25 Exhibit Number 1?

1 A. I have.

2 Q. You were looking at it this morning as a matter
3 of fact?

4 A. I did, completely.

5 Q. Is that a true and accurate copy of the video
6 that you shot that day?

7 A. Yes.

8 * * *

9 PLAYING STATE'S EXHIBIT 1 IN OPEN COURT

10 * * *

11 Q. Trooper, is this the beginning your video?

12 A. It is. That is where I activated it.

13 Q. It's a little grainy, correct?

14 A. A little bit.

15 Q. I'm going to give you a laser pointer.

16 A. Okay.

17 Q. With the orange button, there is the red dot
18 there. Can you see that?

19 A. Yes.

20 Q. This video is from your vehicle?

21 A. It is.

22 Q. And that vehicle that was following the other
23 vehicle two-car lengths behind, could you point that
24 out, please?

25 A. I'm sorry. I might be red-dot illiterate

1 here. Okay, I got it. It's this vehicle right here
2 (indicating).

3 Q. Okay. So that vehicle on the lower right-hand
4 side of the video?

5 A. Yes, that is the motor home he was following.

6 Q. And the lines you're talking about a second ago,
7 they're --

8 A. Right here, these dotted lines (indicating).

9 Q. You indicate he was two dotted lines --

10 A. Yes.

11 Q. -- behind that vehicle?

12 A. Yes, which is 60 feet.

13 Q. Is this the part you indicated you zoomed in?

14 A. It is, yeah. And I zoomed in and I quickly
15 zoomed back out as well.

16 A. I'm zooming back out there.

17 * * *

18 PLAYING STATE'S EXHIBIT 1 IN OPEN COURT

19 * * *

20 Q. Okay. And what did the vehicle that you were
21 following do at that point, at 8:39:30?

22 A. He initiated his turn signal and went around the
23 vehicle in the middle lane.

24 * * *

25 PLAYING STATE'S EXHIBIT 1 IN OPEN COURT

1 * * *

2 Q. Now, Trooper, I stopped at about 8:39:56. Can
3 you tell me -- you were pulling up on his left side.
4 What was the purpose of that?

5 A. To get a good view of the license plates, to
6 make sure I was calling it in accurately, which it just
7 started to be there. It paused.

8 Q. Sorry.

9 * * *

10 PLAYING STATE'S EXHIBIT 1 IN OPEN COURT

11 * * *

12 Q. At about 8:40:22 the vehicle comes to a complete
13 stop, both yours and his?

14 A. The time on that is a little bit off. It was
15 actually 8:44 when I completely stopped and began
16 walking up there. It's a little off.

17 Q. 8:44 based on the watch on the in-car?

18 A. No, based on the CAD, computer-aided design, for
19 my incident recall. Everything is time stamped in the
20 computer when I radio dispatch the call. It was a
21 recorded system and ran VHS. It was slightly off. It
22 was off four minutes. It was 8:44.

23 Q. So at least on the video --

24 A. Yes, that is accurate for the video's sake.

25 Q. All right. Now, approximately what distance was

1 this vehicle two to three car lengths behind the mobile
2 home? Did you observe for a brief second, or how long
3 did you observe it for?

4 A. I never lost sight of it. It may have
5 fluctuated slightly. I never lost sight of him when he
6 passed me in the crossover. When I observed him, it was
7 at mile marker 133; when I stopped him it was about mile
8 marker 137. So that's roughly three and a half, four
9 miles. He had changed lanes after that. About three
10 miles he was following closely there about two to three
11 car lengths. It could have varied slightly. I never
12 lost visible sight of him the entire incident.

13 Q. You're sitting at mile marker 133, you are
14 perpendicular, I think is the proper term, to the
15 traffic?

16 A. North and south, facing the traffic and going
17 this way, and I'm facing south.

18 Q. You're facing south; the traffic is going east?

19 A. Yes.

20 Q. So the traffic is going from your --

21 A. Right to left.

22 Q. Right to left. All right. And so when this
23 vehicle and the mobile home went by you, was he already
24 behind the vehicle --

25 A. Yes.

1 Q. Okay, all right. And then you said for about
2 three miles or so until we just saw him change lanes?

3 A. Skip a little bit.

4 Q. From the time you initially saw him until the
5 time he changed lanes, he was approximately how far
6 behind that?

7 A. Two to three car lengths

8 * * *

9 PLAYING STATE'S EXHIBIT 1 IN OPEN COURT

10 * * *

11 Q. Trooper, is that you?

12 A. It is.

13 * * *

14 PLAYING STATE'S EXHIBIT 1 IN OPEN COURT

15 * * *

16 Q. Trooper, it is about 8:42:10 on the video. I
17 think it was hard to hear in this big room here. Can
18 you tell us about the conversation you had with the
19 driver of that vehicle?

20 A. Certainly. As I began to speak to him and he
21 began to tell me what was going on, my -- we call it a
22 reasonable articulable suspicion. Basically, that is
23 where we're finding out there may be potentially more
24 than just a simple traffic violation, stopped for
25 potentially something more criminal down there. There

1 were three things I put in place to base my suspicion
2 there may be something going on there.

3 Initially, this was a third-party rented
4 vehicle. Based on my training and experience, that's
5 very common in narcotics traffickers. Also, the family
6 member or sick mother in this case -- I was trying to
7 count this out beforehand. I've had at least 10 to 20
8 cases in bulk narcotics or bulk money seizures where
9 there was a sick family story.

10 I should say there's four things, actually.
11 Short stay; he'd he got the vehicle the day before and
12 drove from Buffalo to spend the night in Detroit to
13 visit his sick mother and it was 8:44 in the morning.
14 To get to Lorain County, where we are, about three
15 hours, give or take a little bit, he would have to leave
16 awful early. How much time are you spending with your
17 mother to then go all that distance and actually end up
18 here? Before I took the document back to my car and
19 began to run it, he couldn't tell me where he was
20 going. He was um, ah, off 480 over there. Gave me
21 someplace I never heard of. I've lived in this area my
22 whole life. I'm not familiar with the location he
23 gave. That's actually four things that rose my
24 articulable suspicion this was something more than just
25 the traffic violation going on.

1 Q. So you indicated that it was rented by somebody
2 else?

3 A. It was. It was rented by, he said, his cousin
4 then he said his girlfriend. It was confusing. He gave
5 a name of Latrice Thomas.

6 Q. Did he produce a rental agreement?

7 A. He did.

8 Q. Was he a named driver on that?

9 A. He was not anywhere on that.

10 Q. Okay. So based on the conversation you had
11 with -- first of all, is the person you had that
12 conversation with in the courtroom here today?

13 A. He is. He's seated to my right. He's in the
14 dark gray shirt.

15 MR. GAUTHIER: Your Honor, may the record
16 reflect he's identified the defendant?

17 THE COURT: It will be so recorded.

18 Q. So after you had this conversation with
19 Mr. Jackson, what did you do?

20 A. I came back to my car and immediately radioed
21 Trooper Trader and requested him to come to the scene to
22 assist me so he could deploy his narcotic detection K-9
23 for a free-air sniff around the vehicle.

24 Q. Trooper Trader is a K-9 officer as well?

25 A. Yes.

1 Q. And did Trooper Trader arrive at the scene?

2 A. He did. He arrived at approximately 8:50. I
3 exited the vehicle and I re-approached Mr. Jackson's
4 vehicle, and I asked him to come back. The reason I
5 have him come back out of the vehicle is for our safety.
6 We can't keep track if he's walking around the car with
7 the dog to do a free-air sniff. We can't keep track of
8 him and I can't keep track of traffic for his safety, so
9 we have people exit the vehicle, stand outside the car,
10 stand outside so we could keep track of their hands, so
11 there's no dangers to us and safety for the dog and
12 handler.

13 I had him come back to my vehicle. He was
14 voluntarily patted down and voluntarily sat down in the
15 back of my patrol car, at which point I watched traffic
16 while Trooper Trader deployed his K-9 Argo around the
17 car.

18 Q. Was Mr. Jackson arrested at this point in time?

19 A. He was not.

20 Q. Was he handcuffed in any way?

21 A. He was not.

22 Q. He was sitting in the back of your vehicle?

23 A. He was.

24 Q. Is your vehicle equipped with audio equipment as
25 well?

1 A. It is. In the back of our patrol, on the back
2 of the Crown Vics, in all the vehicles it says, all
3 audio and video are -- all conversations are subject to
4 the audio and video recording in that patrol car. It's
5 on a big red sticker right in front about this big
6 (indicating), so someone was sitting behind me could see
7 it. It's clearly posted there.

8 * * *

9 PLAYING STATE'S EXHIBIT 1 IN OPEN COURT

10 * * *

11 Q. Trooper, during this time, what are you doing
12 after you get back to the vehicle and after you call
13 Trooper Trader?

14 A. You can kind of hear in the background just a
15 second ago I was trying to --

16 Q. I'm sorry, go ahead.

17 A. You can hear I was trying to enter his license
18 that he gave me on LEADS, at which point it came up on
19 the terminal that LEADS was down. I was not able to run
20 a driver's license check on his criminal history,
21 nothing. LEADS was completely down. I think it was
22 maintenance at the time. That's all documented in my
23 report at the time that LEADS was down. I wasn't able
24 to check anything; license, criminal activity, history,
25 et cetera.

1 * * *

2 PLAYING STATE'S EXHIBIT 1 IN OPEN COURT

3 * * *

4 THE COURT: You want to the hit pause and
5 approach?

6 * * *

7 A SIDEBAR DISCUSSION WAS HAD AS FOLLOWS

8 * * *

9 THE COURT: Is there anyway around this where
10 you guys have times marked where we don't have five
11 minutes and nothing happening where you can fast forward
12 by agreement? I mean, if you're going to be five
13 minutes waiting -- go ahead.

14 MR. GAUTHIER: I would love to. I would love
15 to. My guess is, though, the defendant wants the whole
16 thing played.

17 THE COURT: Okay.

18 MR. GAUTHIER: And, you know what? I'm willing
19 to grant him his wish, because if I don't do it, Mark is
20 going to do it. If we do it once --

21 MR. AUFDENKAMPE: Rather just go through it
22 once.

23 THE COURT: I'm going to mention to the jury
24 there may be something.

25 * * *

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THE SIDEBAR DISCUSSION ENDED

* * *

THE COURT: Folks, there may be some extended periods of time where there's not a whole lot of things going on in the video. It's important it be played from beginning to end. I wanted to make you aware we're not asleep up here.

MR. GAUTHIER: My apologies. It's about an hour and twelve minutes long total.

THE COURT: Okay.

* * *

PLAYING STATE'S EXHIBIT 1 IN OPEN COURT

* * *

A. That's when Trooper Trader arrived on scene.

Q. I'm sorry?

A. I exited my vehicle; Trooper Trader arrives on scene here; I briefed him on the incident. I have the gentleman back in my vehicle, at which point I watched traffic while he deployed his K-9. That was a few minutes after this. I was bringing him back as Trooper Trader arrived on scene, and then I briefed him on the incident.

* * *

PLAYING STATE'S EXHIBIT 1 IN OPEN COURT

* * *

1 Q. Okay. At about 8:46:55, the noise kind of
2 changes. What did you do?

3 A. I turned my audio mike back off to have a
4 private conversation with Trooper Trader.

5 Q. And so are any mikes on at this point in time?

6 A. The in-car audio will always stay on and
7 record.

8 * * *

9 PLAYING STATE'S EXHIBIT 1 IN OPEN COURT

10 * * *

11 Q. Is anyone else in the back of the vehicle with
12 Mr. Jackson?

13 A. No.

14 Q. Did Mr. Jackson have a cell phone with him that
15 day?

16 A. Actually, he had two cell phones he had with
17 him. He made sure he grabbed them before he went back
18 to my car.

19 Q. Did he speak into those in your car?

20 A. He is speaking the entire time the video plays,
21 actually.

22 * * *

23 PLAYING STATE'S EXHIBIT 1 IN OPEN COURT

24 * * *

25 A. That's where his dog was indicating a narcotic

1 odor in the vehicle.

2 Q. That's Trooper Trader?

3 A. It is.

4 * * *

5 PLAYING STATE'S EXHIBIT 1 IN OPEN COURT

6 * * *

7 Q. Okay. At 8:49:30 you were asked -- you read him
8 his rights, correct?

9 A. Correct, which he understood.

10 Q. About 8:49:30 you asked him if everything in the
11 car was his?

12 A. Yes.

13 Q. What did he respond?

14 A. His initial response was not everything in the
15 car is mine, but there are no drugs, and he quickly
16 retracted and said, yes, everything in the vehicle was
17 his.

18 * * *

19 PLAYING STATE'S EXHIBIT 1 IN OPEN COURT

20 * * *

21 Q. Okay. About 8:50:25 or so, you and Trooper
22 Trader approach the car. What was your purpose?

23 A. We were going to conduct a probable cause search
24 of the vehicle, which the very second as you paused it,
25 I was turning my audio mike off, my body mike off for

1 administrative conversation to search the vehicle.

2 Q. That was pursuant to the indication by the dog?

3 A. Correct.

4 * * *

5 PLAYING STATE'S EXHIBIT 1 IN OPEN COURT

6 * * *

7 Q. About 8:53:32, what did Mr. Jackson say?

8 A. "They just found it in my luggage."

9 Q. And did you find something in his luggage?

10 A. We did.

11 Q. What did you find in his luggage?

12 A. Trooper Trader unzipped the front of the large
13 orange duffel bag that was located in the trunk. We
14 found two kilograms of contraband, which we later found
15 to be two kilos or 4.4 pounds of cocaine hydrochloride.

16 Q. You were coming back to the vehicle for what?

17 A. Place him in handcuffs under custodial arrest.

18 * * *

19 PLAYING STATE'S EXHIBIT 1 IN OPEN COURT

20 * * *

21 A. He's not immediately complying with my orders,
22 my lawful orders. I'm advising -- re-advising him we
23 didn't want any problems, we did have a k-9 there. This
24 was basically -- he continued the conversation and
25 initially ignored me. He did eventually comply and

1 placed his hands in the back of the seat, and we placed
2 him under arrest and searched to arrest.

3 * * *

4 PLAYING STATE'S EXHIBIT 1 IN OPEN COURT

5 * * *

6 Q. Trooper, was there a problem with the cuffs at
7 that point in time?

8 A. Yeah. He complained they were a little bit too
9 tight, so I worked with him a little bit here and tried
10 to loosen them up where he was able to move the cuffs
11 off of his bone there, and they were a little bit more
12 comfortable for his sake.

13 Q. He's still on his cell phone in the back of your
14 vehicle?

15 A. Yeah, he is continuing his conversation on the
16 speaker phone with an unknown subject.

17 * * *

18 PLAYING STATE'S EXHIBIT 1 IN OPEN COURT

19 * * *

20 A. During this search, LEADS did come back in
21 service, and I was able to check on his driver's license
22 and his criminal record, which was later given back to
23 me by the dispatcher.

24 * * *

25 PLAYING STATE'S EXHIBIT 1 IN OPEN COURT

1 * * *

2 A. It's a pretty telling statement there.

3 MR. AUFDENKAMPE: Object.

4 THE COURT: Yeah, strike that. You're to
5 disregard that. If there is no question to you,
6 Trooper, there's nothing coming out of the witnesses.

7 How much time is left?

8 MR. GAUTHIER: Judge, we've gone about 49
9 minutes. I know it seems longer.

10 THE WITNESS: Another 45 minutes or something.

11 * * *

12 PLAYING STATE'S EXHIBIT 1 IN OPEN COURT

13 * * *

14 Q. All right. Trooper, I'm going to stop this
15 about -- on the counter it says 9:30:23.

16 A. Okay.

17 Q. I believe it goes to about 9:30, excuse me,
18 9:51; is that correct?

19 A. I'm not a hundred percent sure.

20 Q. Give or take. Is this a fair and accurate copy
21 of the video that was made from your cruiser that day?

22 A. Yes.

23 THE COURT: Just for the record, let the record
24 reflect that there was an agreement to stop the video at
25 that mark.

1 MR. GAUTHIER: Yes, Judge.

2 Q. Trooper Beyer, I'm going to have you view
3 State's Exhibits 2 through 10. And just to start with,
4 tell me if you recognize those.

5 A. Yes, I do recognize them.

6 Q. Okay. Why don't you look through all of
7 them, please. And what are items 2 through 10?

8 A. They're photographs of the vehicle, said
9 contraband, and some of the contents that were in the
10 vehicle and inside his bag, as well as some money that
11 we seized, along with some fake jewelry we ended up
12 giving back to him.

13 THE COURT: Any objection to those being
14 published to the jury at this time?

15 MR. AUFDENKAMPE: No objection.

16 Q. Trooper, did you take those photos or were you
17 present with they were taken?

18 A. Two-part: I took part of them, I believe
19 Trooper Trader took some of them as well; and yes, I was
20 present.

21 Q. Do these photos fairly and accurately represent
22 what you saw on June 14th, 2011 --

23 A. Yes.

24 Q. -- on the Ohio turnpike?

25 A. Yes.

1 Q. Start with State's Exhibit Number 2. Can you
2 tell me what's in this photo?

3 A. Some of the contents inside his orange duffel
4 bag that was inside the trunk, the main zipper portion.

5 Q. State's Exhibit 3.

6 A. That is the contraband and the bagging in the
7 very front zipper portion.

8 Q. State's Exhibit 4?

9 A. That is contraband, some fake jewelry that was
10 laid down on the pavement there.

11 Q. Now, on the left, bottom left, there are letters
12 scrolled on that item. What letters are they?

13 A. PES.

14 Q. State's Exhibit 5.

15 A. Those would be the kilograms separated on the
16 pavement and photographed.

17 Q. On the right-hand side, are there markings on
18 that package?

19 A. Yes.

20 Q. And what is that marking?

21 A. That is PES as well.

22 Q. Now, in these two photographs, are these
23 packages in the same position and just turned over?

24 A. They may have been. I don't recall a hundred
25 percent.

1 Q. State's Exhibit 6.

2 A. That is contraband, the jewelry and now the
3 money that was inside his pocket. He admitted it was
4 his.

5 Q. Do you recall how much money it was?

6 A. It was \$1,262.

7 Q. What was done with the money?

8 A. That money was the forfeiture of the money with
9 the large narcotic seizure, and he was served with a
10 notification, written notification of the seizure and
11 forfeiture of the money. He was given copies and signed
12 copies of them.

13 Q. Did that money go back to the post, or where did
14 the money go?

15 A. That was turned over to Agent Taliano with DEA
16 Task Force later on.

17 Q. State's Exhibit 7?

18 A. I'm sorry. The money went to Key Bank at first
19 and then there was a check cut out to U.S. Marshal
20 Service, which then went to Agent Taliano.

21 Q. Thank you. State's Exhibit 7?

22 A. That's the vehicle and engine compartment.

23 Q. Eight?

24 A. Front of the engine.

25 Q. Nine?

1 A. The left front of the engine.

2 Q. And State's Exhibit 10, can you tell me what
3 that is?

4 A. That is the scratch marks from where his dog
5 indicated when he smelled the narcotics. That would be
6 just in front of the left rear wheel well as you see
7 that, going back over the left rear well area.

8 Q. When you say left, you mean driver's side or
9 passenger's?

10 A. Driver's.

11 Q. So this bottom, the dark portion of the bottom
12 right under the photograph, that would be under the
13 wheel well of the back driver's side tire?

14 A. Yes.

15 Q. Okay, all right. State's Exhibit 13, can you
16 tell me what that is?

17 A. That is a photocopy of Mr. Jackson's New York
18 driver's license.

19 Q. Is that a fair and accurate copy of the license
20 he gave you on June 14th, 2011?

21 A. Yes.

22 Q. And State's Exhibit 12, can you tell me what
23 that is, please?

24 A. That is a uniformed traffic citation that all
25 troopers have, and that is the citation I issued

1 Mr. Jackson for following too closely.

2 Q. Is this the citation you issued him on June
3 14th, 2011?

4 A. It is.

5 Q. First, I'm going to show you State's Exhibit
6 Number 16. Can you tell me what that is, please?

7 A. It is a photocopy of the forfeited money I
8 served Mr. Jackson, and he signed at the bottom.

9 Q. Did you also sign that yourself?

10 A. I did.

11 Q. Trooper, I'm going to show you State's Exhibit
12 Number 14, also going to give you a glove. I'm not sure
13 if you can --

14 A. They kind of fit --

15 Q. Can you pull those items out of the bag,
16 please, State's Exhibit 14?

17 A. Sure.

18 Q. Can you please tell me what those items are?

19 A. This is the packaging that the two kilograms of
20 cocaine were in -- actually, the packaging less the
21 cocaine inside.

22 Q. And on this part here, does any lettering appear
23 on that?

24 A. That is PES as well.

25 Q. Okay. And on the other side?

1 A. That is PES as well.

2 Q. And is that the packaging that we saw on those
3 photographs taken on June 14th, 2011?

4 A. That is correct.

5 Q. And the other part of this is what?

6 A. That is the packaging, the other kilograms.

7 Q. How were these items packaged?

8 A. Well, they were packaged with numerous
9 things. There was saran wrap over the top, there was
10 black tape, and then later we found a little bit of axle
11 grease when we cut into the kilogram to do a presumptive
12 test. It's a test we do to determine what it is.

13 Q. So the PES is on the plastic wrap?

14 A. Yes, it is.

15 Q. And then beneath the plastic wrap it looks like
16 a darker item. Is that the other part of State's
17 Exhibit 14?

18 A. Yes.

19 Q. Now, were any other officers or task force
20 members present that day, or did they become present?

21 A. Yes.

22 Q. And how did that happen?

23 A. We called them -- I'm not sure if myself or
24 Trooper Trader phoned them -- and asked them to respond
25 to the Milan Highway Patrol Post. That was after the

1 vehicle was towed. We went with Mr. Jackson.

2 Q. Okay.

3 A. I believe Taliano and Agent Goodwin came, and
4 there was a rookie agent. I don't recall her name. She
5 was present as well. Two DEA agents and Task Force
6 Taliano.

7 Q. And did you keep possession of the two kilos?

8 A. I did not.

9 Q. What did you do with them?

10 A. I signed them over to, I believe, Agent Taliano
11 at the patrol post.

12 Q. At that time did you know whether your agency or
13 DEA was going to handle these matters?

14 A. I was uncertain at this time.

15 Q. Did you know whether the state court or federal
16 court was going to handle this matter?

17 A. I was uncertain.

18 Q. Trooper, in June 2014 (sic), what was the speed
19 limit on the turnpike?

20 A. Part of '11 --

21 Q. When this traffic stop occurred, what was the
22 speed limit?

23 A. I believe it was 65 still.

24 Q. When did it change to 70; do you recall?

25 A. The exact month I don't know. It might have

1 been roughly -- there you go. April 1st, 2013.

2 Q. So the speed limit was 65 this day?

3 A. Correct.

4 Q. You indicated when you were first at mile marker
5 133 that was in Lorain County?

6 A. Yes.

7 Q. When you finally pulled Mr. Jackson over at mile
8 marker, approximately, 137, was that still in Lorain
9 County?

10 A. It was a different township. It was Brownhelm
11 Township.

12 Q. This entire event occurred in Lorain County?

13 A. It did.

14 Q. When you turned these items, the two kilos, over
15 to Detective Taliano, had you opened the two packages,
16 the two kilos, to see what was inside?

17 A. I recall opening the one. And it was not
18 myself; it was Trooper Trader that opened one by pulling
19 out his knife and carefully putting it through the
20 packaging to get to the material inside, at which point
21 he drew a small amount out of the white chunky substance
22 and put that into a presumptive test called a NIK
23 test. I don't recall if we opened the second one as
24 well.

25 Q. So would you be able to identify the substance

1 other than the positive NIK test, the positive test,
2 would you be able to identify the substance that was
3 inside those two packages?

4 A. Other than it was cocaine, no.

5 Q. But the packages that -- showing you State's
6 Exhibit 14, those are the same items --

7 A. Yes.

8 Q. -- that are in the photographs?

9 A. Yes.

10 MR. GAUTHIER: One second, your Honor.

11 Q. Trooper Beyer, as part of your training, do you
12 have any training in the odor of cocaine?

13 A. Not in our academy. Although, I certainly have
14 knowledge of the odor of cocaine as a K-9 handler. I've
15 also smelled it on seizures, and I can clearly smell it
16 on the packaging you brought here, as well as the
17 cocaine. It's one smell, and it smells like itself
18 alone.

19 MR. GAUTHIER: Thank you. Nothing further,
20 Judge.

21 THE COURT: At this point we're going to take
22 our afternoon break. We will resume at 2:45.

23 If you would heed my admonition not to speak
24 about the case amongst yourselves until we
25 deliberate, okay?

1 Trooper, you're under oath, so you're subject to
2 the cross-examination. So please don't discuss your
3 testimony with anyone during the break as well.

4 * * *

5 A RECESS WAS HAD

6 * * *

7 THE COURT: Cross-examination by the defense.

8 MR. AUFDENKAMPE: Thank you, your Honor.

9 * * *

10 **CROSS-EXAMINATION OF TROOPER CHRISTOPHER BEYER**

11 BY MR. AUFDENKAMPE:

12 Q. Trooper, you had indicated that there were
13 several issues or indicators, if you will, that alerted
14 you that you might have more going on here than what
15 first appeared?

16 A. Correct.

17 Q. And again, what were those?

18 A. What were they?

19 Q. Yes.

20 A. It was a third-party rental vehicle; it was a
21 sick family member; his location where he said he was
22 going to, he couldn't remember. There was one other, I
23 believe. Just give me a second to look back here. I
24 don't recall off the top of my head what that one was.

25 Q. Well, when dealing with, dealing with the rental

1 agreement, what did the rental agreement say?

2 A. The rental?

3 Q. As far as who rented the car?

4 A. It was rented by a Latrice Thomas. The location
5 escapes me. His name was -- Mr. Jackson's name was
6 nowhere on the agreement.

7 Q. How many pages was the rental agreement?

8 A. I believe it was one page with a couple carbon
9 copies.

10 Q. Fine print?

11 A. Yes.

12 Q. Can you show me a copy of that rental agreement?

13 A. No, I do not have one.

14 Q. Why did you not preserve that as evidence?

15 A. It's notated in the report. I didn't, didn't
16 feel the need at the time.

17 Q. But yet that was critical to you going further
18 with your stop?

19 A. That was part of the totality of the
20 circumstances, yes.

21 Q. Wouldn't that be important information to
22 retain?

23 A. And it was dialogued in the investigative
24 narrative of my report.

25 Q. But wasn't deemed important enough to preserve

1 as evidence?

2 A. I did not preserve it.

3 Q. I'm looking at your report, probably the same
4 thing you have in front of you, and it indicates you
5 were on patrol on the Ohio Turnpike at mile post 135
6 eastbound, Brownhelm Township. You observed a silver
7 Toyota Camry. Didn't you testify earlier that's not
8 where you were; that you were actually at 133, two miles
9 away?

10 A. Initially, when my in-car audio/video camera was
11 turned on by myself, I was at mile marker 135.

12 Q. You're saying you're at 135 when you first
13 observed. Earlier you were saying, no, I was at 133
14 with Trooper Trader.

15 A. No, I don't believe that's stated anywhere in my
16 report.

17 Q. It says, "While on patrol on the Ohio Turnpike
18 at mile post 135 eastbound, I observed the silver 2010
19 Toyota Camry."

20 A. I'm sorry, I was referring to when I first
21 observed. Is that in here?

22 Q. So you first observed it actually at 133, but
23 your report says 135?

24 A. Yes.

25 Q. Why were you and Trooper Trader both together at

1 that point at 133 sitting side by side?

2 A. We work together as a team.

3 Q. What's your job as a team when you're working
4 together like?

5 A. To assist each other, help out with traffic
6 stops. It's a dangerous job, what we do, especially
7 when we work with narcotics and subjects involved.

8 Q. So you're actually out there looking for
9 somebody to stop who may have or may not have narcotics?

10 A. Always.

11 Q. And you're basing that on what?

12 A. Training and experience.

13 Q. Okay. And what does your training tell you to
14 look for?

15 A. Certain things in behavior, certain things after
16 we speak with them that we get.

17 Q. Okay. What leads you to initially stop or focus
18 on a certain individual?

19 A. This was a following too close traffic
20 violation.

21 Q. Had you had any information prior to the stop
22 about this vehicle?

23 A. None.

24 Q. Do you work with DEA on a regular basis?

25 A. No.

1 Q. Does the highway patrol have, like, an
2 operations center that focuses on drugs?

3 A. We have criminal patrol teams in each
4 district. There's no operation center per se.

5 Q. Okay. So there's no central agency or central
6 location that compiles information to pass it on to you
7 guys?

8 A. What type of information is past? What
9 information are you referring to specifically if I might
10 ask?

11 Q. Rental vehicle perhaps, for example. Is there
12 some way you could follow a vehicle, a rental vehicle?

13 A. Other than when a vehicle goes by and you might
14 see a bar strip. I don't recall ever seeing that prior
15 to the stop and knowing it was a rental prior to me
16 speaking with --

17 Q. How many stops would you say you make, say, a
18 monthly period?

19 A. It varies so much, I couldn't give you a figure.

20 Q. How about an annual number?

21 A. We could pull those numbers, but I can't give --
22 I can't give you a number.

23 Q. But you do keep track of those numbers?

24 A. Everywhere.

25 Q. Obviously, Mr. Jackson is black. Did that have

1 anything to do with it?

2 A. No.

3 Q. You pulled up near him as you got to, evidently,
4 135 when you turned on the camera?

5 A. Uh-huh.

6 Q. And you checked his license plate. Did you call
7 that in, the license plate number?

8 A. Yeah. That was -- I got close so I could see
9 and call it into our dispatcher.

10 Q. Why do you do that?

11 A. I need to call the license plate into my
12 dispatcher so they know the vehicle I'm stopping with.

13 Q. Do they run that through, like, LEADS or
14 something?

15 A. Normally they would, but they couldn't at this
16 time because it was down.

17 Q. Okay. How did you know it was down? You called
18 it in. We listened to the tape, and there was no
19 response. They just evidently --

20 A. Said okay.

21 Q. -- took the information and said okay?

22 A. I believe we were previously advised it was
23 down. A lot of times they say, "All units, signal four.
24 Be advised when it comes back online." It's pretty
25 common, actually.

1 Q. You said you saw the vehicle pass. It was two
2 to three car lengths behind the mobile home, correct?

3 A. Yes.

4 Q. At some point in prior testimony you indicated
5 you first noticed the two to three car lengths from
6 approximately three to four hundred feet behind the
7 vehicle; is that correct?

8 A. That was when I started the recording and
9 turned that on. That was the observation from that
10 distance, yes.

11 Q. So when we start to see this, is that when
12 you're back four to five hundred feet?

13 A. I believe it's three to four hundred feet I
14 testified.

15 Q. I'm sorry. I agree, three to four hundred. So
16 you're like a football field or a third behind this
17 vehicle and you can tell how close it is?

18 A. Yeah. It's -- that's why I activated my camera,
19 to zoom in so everyone could see that. I have a screen
20 in my patrol car with my camera that I can observe the
21 same thing you do.

22 Q. Why did you wait until the point that you turned
23 on the camera when you observed him earlier? In other
24 words, you're at 133. I understand you have to pull
25 out. Why did you wait until mile marker 135?

1 A. No reason in particular.

2 Q. That's just when you chose to do it?

3 A. Yes.

4 Q. All right. You noted that he had a New York
5 license, driver's license?

6 A. Yes.

7 Q. And you did make a copy of that?

8 A. Yes.

9 Q. And I think what's been disconcerting, to me
10 anyway, is that we also have a rental agreement, and we
11 don't have the rental agreement because it wasn't
12 preserved, but yet that's one of the reasons that you
13 decided to go a little further with this
14 investigation, because he wasn't on the rental
15 agreement.

16 A. One of several.

17 Q. Now, you asked him a series of questions when
18 you stopped him. Very difficult to hear those answers
19 on the video. What did you ask him?

20 A. I asked him the same questions I ask just about
21 everyone I stop: Where are you going? Where are you
22 coming from?

23 Q. What if --

24 A. It was a rental agreement, so there was some
25 questions in there about the rental agreement because

1 his name was not on there. Who rented the vehicle? He
2 said his cousin, then he said his girlfriend. It was a
3 little confusing there.

4 Q. Now, in terms of the stop itself, you asked him
5 where he was coming from. Does he answer you?

6 A. Yes.

7 Q. What did he tell you?

8 A. Michigan, Detroit area, near Beloit. I may be
9 pronouncing that wrong.

10 Q. So was there anything unusual about that type of
11 answer?

12 A. Not in and of itself, no.

13 Q. Okay. And then when you asked him next, "Where
14 are you going to?"

15 A. He states, "Cleveland."

16 Q. Okay. Nothing unusual there?

17 A. Not by itself.

18 Q. Okay. I sense you're setting me up for in
19 totality this is what --

20 A. That's absolutely what this incident is about,
21 the totality.

22 Q. So the answer to your question about where you
23 are coming from, he answers your question about where he
24 is going. You had indicated you then asked him some
25 more specifics about where he's going?

1 A. Yes, where he was going to. He paused and hem
2 hawed for a second and then pointed off 480 over there.
3 He motioned with his hand. I remember this. Off 480,
4 Stoney Brook or Stoney Point. I don't know anyplace
5 like that. There could be someplace like that, but I
6 never heard anything like that, living in the area.

7 Q. He said he was going off of 480, right?

8 A. Yes.

9 Q. That would be a logical assumption once you're
10 at this point on the turnpike he understood there was a
11 480, correct?

12 A. Uh-huh.

13 Q. Couldn't Stoney Brook or Stoney Point have been
14 a development that perhaps you never heard of?

15 A. Could be.

16 Q. I guess what I'm looking for is what's an
17 indicator where you can stop somebody, any of us, and
18 say, well, let's have the dog come out?

19 A. Well, you're getting a little ahead of yourself.

20 Q. Just, all I want you to do is answer my
21 question.

22 Okay. I know you guys are used to being in
23 charge. You're used to being in control and doing
24 things your way, but I'm just asking you to answer the
25 question.

1 So based on these answers, is there anything
2 suspicious?

3 A. Yes, as I already indicated.

4 Q. That he might be going someplace; you don't know
5 where it is because you hadn't heard of it?

6 A. Someplace he couldn't immediately think of.

7 Q. You've been a trooper for about nine and a half
8 years?

9 A. Yes, sir.

10 Q. Were you ever stopped prior to being a trooper
11 by the police?

12 A. One time.

13 Q. Okay. How did you feel then? A little
14 disconcerting, isn't it?

15 A. Sure.

16 Q. So people might hem and haw, they might forget;
17 isn't that true?

18 A. I can't recall ever forgetting where I'm going
19 to.

20 MR. GAUTHIER: Your Honor, could we approach?

21 * * *

22 A SIDEBAR DISCUSSION WAS HAD AS FOLLOWS

23 * * *

24 MR. GAUTHIER: Your Honor, I appreciate

25 Mr. Aufdenkampe's statement earlier that he was going

1 into some of these issues purely for, you
2 know, inconsistencies, but he's not even doing that.
3 He's going into the probable cause that's an issue
4 already decided, so I would ask that we move on. I
5 didn't want to raise the issue in front of the jury. If
6 you're going for inconsistencies, I'd like to see some.

7 MR. AUFDENKAMPE: We've got 133/135.

8 MR. GAUTHIER: That's fine, but --

9 THE COURT: And to the questions about why he
10 stopped him. That was all part of the ruling on the
11 motion to suppress.

12 MR. AUFDENKAMPE: I understand.

13 THE COURT: With respect to inconsistent
14 testimony, I will allow you to explore that on
15 cross-examination. I'm going to presume now that the
16 State's going to be ready to object.

17 MR. AUFDENKAMPE: Okay.

18 THE COURT: All right.

19 MR. GAUTHIER: Thank you.

20 * * *

21 THE SIDEBAR DISCUSSION ENDED

22 * * *

23 BY MR. AUFDENKAMPE:

24 Q. You had indicated, I believe in your report, I
25 believe, that Mr. Jackson's answers were slow and

1 deliberate?

2 A. Yes, sir.

3 Q. Is there something wrong with that?

4 MR. GAUTHIER: Objection, Judge. Same
5 objection.

6 THE COURT: Yeah. I'm going to sustain it.

7 Q. In your work with Trooper Trader, the K-9 is
8 available for your use when you stop the vehicle, is
9 that correct, is that why you work together, so the dog
10 is available in close proximity?

11 A. Yes.

12 Q. I guess I'm actually looking for what prompted
13 you to call for the dog.

14 MR. GAUTHIER: Objection.

15 THE COURT: Response, counsel?

16 MR. AUFDENKAMPE: Your Honor, well --

17 THE COURT: I can hear it.

18 MR. GAUTHIER: It's not a credibility
19 question.

20 THE COURT: Okay. I'll sustain it.

21 Q. Why did you remove Mr. Jackson from the vehicle?

22 A. For the safety of myself, my partner, his dog.

23 Q. Okay. You removed him from the vehicle while
24 waiting for the dog?

25 A. I believe he just arrived on scene, at which

1 point I re-approached and asked Mr. Jackson to exit the
2 vehicle and come back to my car.

3 Q. Did you explain to him that it was for safety?

4 A. No.

5 Q. Once again, you could not hear that?

6 A. No, I don't believe so. I said that.

7 Q. Isn't it possible that he felt he was under
8 heavy custodial arrest or detention?

9 MR. GAUTHIER: Objection. Speculation.

10 THE COURT: It's cross-examination. I'll let
11 him answer. Go ahead.

12 A. That would be hard for me to testify what he was
13 feeling. I don't know.

14 Q. When you put him in the back of the car, he
15 can't get out of the car, correct?

16 A. Correct.

17 Q. So he is confined to the back of the car?

18 A. Yes.

19 Q. You knew he took the two cell phones with him?

20 A. Yes.

21 Q. When you are outside of the car, was there
22 anyway of hearing what is going inside the car, say you
23 got a radio transmission or what he's saying in the car?

24 A. Radio transmission I could hear on my portable,
25 which I have on my shoulder. His actual conversation I

1 couldn't tell until after the incident when I reviewed
2 my in-car video.

3 Q. Now, when were you finally able to do something
4 with LEADS?

5 A. I believe it was about somewhere between nine
6 o'clock and about ten after nine is when it came back on
7 line.

8 Q. And how did you know it came back on line?

9 A. I believe they advised us. I'm not a hundred
10 percent sure. I believe they advised us, or I may have
11 asked again because I wanted to have that information
12 put out there and ran.

13 Q. That being the case, would that have been
14 captured on the audio-visual, the DVD?

15 A. It may or may not have.

16 Q. I didn't hear it on there, that's why I'm
17 asking. It was convenient, it came on after you found
18 the drugs.

19 In his conversation in the car, you hear him say
20 a lot of things. One of the things we hear him say over
21 and over is, "They had no reason to stop me." Do you
22 remember hearing that?

23 A. Yes.

24 Q. When he's saying "They have no reason to stop
25 me, I wasn't too close --" I understand I'm not getting

1 into the suppression hearing that occurred -- but in
2 his mind, couldn't he have reasonably felt that he was
3 not too close?

4 MR. GAUTHIER: Objection. Speculation.

5 THE COURT: Sustained.

6 Q. In looking at the video, because I've seen it
7 many times, I notice that as the video is playing there
8 are several instances where cars are in some cases
9 probably closer than Mr. Jackson was to the mobile
10 home. I don't -- I'm not saying you should stop those
11 cars, but why Mr. Jackson in particular and not all
12 these other cars?

13 A. There's one of me and a lot of traffic
14 violations; I can take one stop at a time.

15 Q. Now, as far as your training, you had provided
16 training. You said you're in what you call criminal
17 patrol area, that's what your assignment is?

18 A. Criminal patrol, yes.

19 Q. And how much training have you had in criminal
20 patrol, if there is specific training for that?

21 A. To that date and time, there were four different
22 classes of several-hour classes that you had. One was
23 in the academy, there was one in 2008 and 2011, which is
24 a few months prior to the stop with Mr. Jackson. So
25 total of four trainings prior to this.

1 Q. And what do you learn? Do they vary, or is it a
2 repeat on the same thing periodically?

3 A. Some repeat, some new things.

4 Q. Can you give us some idea as to what areas they
5 focused on?

6 A. They focus on behavior of people. They focus
7 on, you know, where they are coming from, going to, et
8 cetera. It would be -- it's impossible to narrow
9 everything down and say everything.

10 Q. Well, obviously, being in the special unit where
11 you're working with someone else, there is specialized
12 training for that?

13 A. Yes.

14 Q. And again, what's the training involved? How do
15 you know what you look for in the vehicle? You're
16 taught what to look for in the individual?

17 A. Sure. Some of those things I actually testified
18 to at the beginning, which was the totality of the
19 circumstances. Those are -- some of those things I
20 pointed out in my previous training and I happened to
21 recognize on this traffic stop.

22 Q. Now, I noticed once you found the drugs, you did
23 immediately place Mr. Jackson under arrest?

24 A. Yes, sir.

25 Q. You did Mirandize him?

1 A. Yes, sir.

2 Q. Yet you left him in the back of the car with two
3 cell phones?

4 A. Yes.

5 Q. You handcuffed him and he was able to talk. Did
6 you do that intentionally?

7 A. Not at the time.

8 Q. You didn't know he was still talking on the cell
9 phone?

10 A. No.

11 Q. Yet you took the cell phones?

12 A. Later.

13 Q. When the whole incident was over, correct?

14 A. I did, yeah.

15 Q. What did you do with the cell phone?

16 A. They were given to Agent Taliano, I believe, at
17 end of it.

18 Q. So the state patrol didn't have anything further
19 with the cell phone; they're just gone at this time?

20 A. Yes. Yeah, I don't know what they did with them
21 after that. They were signed over to DEA task force
22 agent.

23 Q. You also took a necklace, a bracelet, and a
24 ring. Why was that?

25 A. That was given back to him.

1 Q. You state --

2 A. It was taken initially because if it was real it
3 would be -- I think we could certainly articulate it was
4 drug-related purchases. And if it was truly real, it
5 would have been very expensive pieces.

6 Q. But it turns out it was not, so you guys had no
7 interest in it?

8 A. Correct.

9 Q. How about the money?

10 A. \$1,262, we did seize that.

11 Q. Okay. And he had indicated to you that
12 his occupation was what?

13 A. A collections agent.

14 Q. Would it be unusual for a collections agent to
15 have that amount of money?

16 A. I don't know what he would do as a collections
17 agent. I would have to speculate to that.

18 Q. I know at one point we had asked for information
19 regarding the LEADS logs. Are there no LEADS logs
20 available?

21 A. Correct.

22 Q. Why are the LEADS logs not available?

23 A. I can't speculate to that. You would have to
24 ask one of the dispatch supervisors. I'm certain my
25 lieutenant looked into that and that's the answer that

1 was received, though.

2 Q. Okay. You had responded at some point about the
3 the LEADS and said it wasn't legal to give those LEADS
4 out.

5 MR. GAUTHIER: Objection, your Honor.

6 THE COURT: Basis?

7 MR. GAUTHIER: Objection as to relevance.

8 THE COURT: Response, Attorney Aufdenkampe?

9 MR. AUFDENKAMPE: Your Honor, I have an e-mail
10 here.

11 THE COURT: Let's sidebar this before you talk
12 too much.

13 * * *

14 A SIDEBAR DISCUSSION WAS HAD AS FOLLOWS

15 * * *

16 THE COURT: The question was at some point the
17 LEADS wasn't legal to give out. Objection, relevance.

18 MR. GAUTHIER: It goes to the suppression issue
19 again, Judge.

20 MR. AUFDENKAMPE: How is this a suppression
21 issue? It was still going on January 16th, long after
22 the suppression issue is completed.

23 THE COURT: Why do you need his testimony that
24 giving out the LEADS wasn't legal? Are you going to
25 impeach him? Do you have something?

1 MR. AUFDENKAMPE: I have this, which came from
2 you.

3 MR. GAUTHIER: Right, at your request.

4 MR. AUFDENKAMPE: Right.

5 THE COURT: What is it? What is it?

6 MR. AUFDENKAMPE: It says, "LEADS information
7 cannot be produced." This isn't from Pete; it came from
8 highway patrol.

9 MR. GAUTHIER: It was from his lieutenant,
10 actually.

11 THE COURT: Okay. So isn't that consistent with
12 what he just testified, that it's not legal to produce
13 it?

14 MR. AUFDENKAMPE: He didn't say it's not legal
15 to produce. But what I'm going for is they're citing
16 codes here that don't have any application to LEADS at
17 all.

18 MR. GAUTHIER: That may have been --

19 THE COURT: His testimony was giving out LEADS
20 wasn't legal, which it seems to me is exactly what that
21 says.

22 MR. AUFDENKAMPE: Right. But I'm saying, based
23 on what -- based on the information that they provided,
24 and most of this, although we couldn't find the federal
25 codified statute, which you now have, you said --

1 MR. GAUTHIER: I have the Ohio Administrative
2 Code.

3 THE COURT: I'll overrule the objection, but I'm
4 just going to watch where you go with it, okay. I'm not
5 sure yet, where you're going with it.

6 * * *

7 THE SIDEBAR DISCUSSION ENDED

8 * * *

9 BY MR. AUFDENKAMPE:

10 Q. Trooper, LEADS are used in cases all the time,
11 correct?

12 A. Yes.

13 Q. So if I had a bad driving record, had something
14 to dealing with a case, you could submit into evidence
15 the LEADS information. Happens all the time. Why was
16 LEADS information not available with my client in
17 preparation for this trial?

18 A. I can't speculate on -- it might be a matter of
19 the court.

20 Q. Who is Lieutenant Lawrence Furbank?

21 A. Lawrence Furbank is my immediate commander.

22 Q. And it says, "Information --" the e-mail I'm
23 speaking of --

24 A. Okay.

25 Q. -- came from your immediate supervisor?

1 A. Yes, sir.

2 Q. I misunderstood and believed that this came from
3 you.

4 A. Oh, no.

5 Q. Once my client was taken back to the Milan
6 post, what happened there in terms of -- you said you
7 called for assistance for DEA; is that correct?

8 A. Yes.

9 Q. Why was that?

10 A. It was a large amount of narcotics -- 4.4 pounds
11 of cocaine -- so sometimes they, they like to adopt the
12 cases that are that large for narcotics.

13 Q. Okay. So you do work closely with DEA?

14 A. On an infrequent basis.

15 Q. Okay. And did they send agents to the Milan
16 post then?

17 A. Three.

18 Q. At that point did you have conversation with
19 those agents about them taking this case?

20 A. Yes.

21 Q. And what was the result of that conversation
22 with them?

23 A. I don't believe I had an immediate result. I
24 answered either way. A lot of times it's by the U.S.
25 District Attorney to see if they're willing to adopt the

1 case.

2 Q. Yet, in a situation where the DEA takes control
3 of a case, I can understand they would receive the drugs
4 for testing and all of that. What happens if they turn
5 down a case?

6 A. Well, they did turn down this case, but they
7 still did the testing for us.

8 Q. Is that a common occurrence?

9 A. I don't know. This is the only incident that I
10 personally dealt with, so -- of that nature.

11 Q. When did you come on shift that day?

12 A. I think we were working 7:00 to 3:00 that
13 day. 7:00 to 3:00 or 8:00 to 4:00.

14 Q. So those vary for you?

15 A. Yes.

16 Q. Had you made any other stops similar to this
17 that day?

18 A. I don't recall if I had any other stops prior to
19 this.

20 Q. An average day for you, approximately how many
21 stops do you make while you're working on this criminal
22 control unit?

23 A. May I explain my answer when I give it to you?

24 Q. Yes.

25 A. First of all, there's no average day. It would

1 be impossible for me to say how many stops I have. It
2 really varies greatly.

3 Q. Are you aware that my client had filed a
4 complaint against you --

5 A. No.

6 Q. -- with the highway patrol?

7 A. No.

8 Q. So that wouldn't influence you one way or the
9 other, as you have no idea that's even out there at this
10 point?

11 A. No, I don't know about it. First knowledge of
12 that.

13 * * *

14 (Discussion had off the record between
15 Attorney Aufdenkampe and the Defendant.)

16 * * *

17 Q. You had indicated that the video that we saw was
18 off time-wise?

19 A. Yes, sir.

20 Q. And it was accurate as to the amount of time
21 that was elapsing?

22 A. Yes, sir.

23 Q. But not the proper time?

24 A. Yes, sir.

25 Q. When LEADS came back on, it was approximately

1 what time?

2 A. Between 9:00 and -- 9:00, 10:00, I believe.

3 Q. Okay. I believe in the past you had indicated
4 it was five to 9:00, about 9:01.

5 A. That's possible. I don't recall the exact time.

6 Q. And again, you were notified how; by radio?

7 A. I think so. I'm not a hundred percent certain.

8 Q. But you were still recording. You could hear
9 Mr. Jackson's conversation, but you couldn't hear any
10 radio communications saying LEADS is back or anything
11 like that. Why would that be?

12 A. I don't know.

13 MR. AUFDENKAMPE: I don't have anything else.

14 THE COURT: Any redirect?

15 MR. GAUTHIER: Just a couple questions.

16 * * *

17 **REDIRECT EXAMINATION OF TROOPER CHRISTOPHER BEYER**

18 BY MR. GAUTHIER:

19 Q. Trooper Beyer, I just want to confirm a few
20 things here.

21 A. Yes, sir.

22 Q. When Mr. Jackson was placed in the back of your
23 vehicle, did you know he had two phones at that point in
24 time?

25 A. Yes.

1 Q. Okay. Did you know whether he was using either
2 one of them at the time?

3 A. I did not.

4 Q. When did you discover that Mr. Jackson was
5 having a conversation throughout the entire time
6 practically that he was in the back of your vehicle?

7 A. It was almost at the end of the traffic stop,
8 when we were getting ready to head back to the Milan
9 patrol post that he had been talking. I didn't know he
10 was talking the whole time. I knew at that time. I
11 didn't realize until the end.

12 Q. And I also want to confirm that you indicated to
13 Mr. Aufdenkampe that you cannot hear what Mr. Jackson is
14 saying in the back of your car. So there's, what, the
15 camera in your vehicle is recording is not something
16 that you're hearing simultaneously?

17 A. Correct.

18 Q. That's something you have to review after the
19 fact?

20 A. Yes.

21 Q. Okay. You indicated that -- he asked you about
22 the questions that you asked. You indicated these are
23 questions you ask everyone?

24 A. Yes.

25 Q. Where are you going? Where are you coming from?

1 A. Yes.

2 Q. Black, white, purple, green, Trooper Beyer, do
3 you stop anybody based on the color of their skin?

4 A. No.

5 Q. Does the highway patrol monitor that?

6 A. Yes.

7 Q. And how do they do so?

8 A. They have a system that has race codes. When we
9 clear a traffic stop, we indicate whether it be a white
10 male, black male, Hispanic, Asian, unknown, we put that
11 down there as far as what the disposition of what the
12 traffic stop was, and we put that down there.

13 That's monitored. It's monitored quarterly on
14 who stopped, and it's based on statewide percentage of
15 how many white folks, how many black folks, Hispanics,
16 Asians, et cetera. It's monitored quarterly. Then
17 there's a year-end statistic done as far as search and
18 seizure. That's yearly done. That's monitored closely.
19 If you're flagged in that, they would inform you and
20 bring you in and ask you a few questions, et cetera.

21 Q. What constitutes getting flagged?

22 A. You might be slightly be over what the average
23 percentage of, say, black fellows, white fellows you
24 would stop. They may bring you in if you're a little
25 high this month and ask if there is any reason, maybe

1 some reason for it.

2 Q. Now, Trooper, have you ever been flagged?

3 A. Not prior to this stop.

4 Q. All right. Now, when a car is driven by you and
5 you're stationary, sitting perpendicular to the highway,
6 and cars are going by you between 60, 65 miles an
7 hour, how easy is or difficult is it for you to tell the
8 race of the individual driving the vehicle?

9 A. It's very hard to determine one way or the other
10 exactly what race they are. It could be someone that
11 has a great tan in the middle of summer. Who knows?

12 MR. GAUTHIER: Nothing further, Judge.

13 THE COURT: Any recross?

14 MR. AUFDENKAMPE: One moment, please, your
15 Honor.

16 * * *

17 **RE-CROSS-EXAMINATION OF TROOPER CHRISTOPHER BEYER**

18 BY MR. AUFDENKAMPE:

19 Q. Trooper, with respect to, you were talking about
20 certain statistics you have and information being
21 retained after each stop for statistical
22 purposes, correct?

23 A. Yes.

24 Q. Why do you do that? Why is that done if you
25 know?

1 A. To avoid racial bias and to address it if it
2 need be.

3 Q. Do you then get specific training on
4 constitutional rights and that of defendants?

5 A. I don't know much what goes past that.

6 MR. AUFDENKAMPE: Okay. I don't have anything
7 else, your Honor.

8 THE COURT: State, any other witnesses?

9 MR. GAUTHIER: Put Trooper Trader on.

10 THE COURT: Great.

11 * * *

12 WITNESS EXCUSED

13 * * *

14 Thereupon, the State of Ohio, in order to
15 further maintain the issues on its part to be
16 maintained, called **TROOPER MIKE TRADER** as a witness,
17 upon being first duly sworn, was examined and testified
18 as follows:

19 **DIRECT EXAMINATION OF TROOPER MIKE TRADER**

20 BY MR. GAUTHIER:

21 Q. Trooper, do you like that chair?

22 A. No.

23 Q. Would you like a different chair?

24 A. I'll be all right.

25 Q. All right. Trooper, can I have you state your

1 name and spell your last name, please?

2 A. It's Mike Trader, T-R-A-D-E-R.

3 Q. And by whom are you employed?

4 A. I am employed with Ohio State Highway Patrol.

5 Q. And as what, Trooper?

6 A. A state trooper and K-9 officer.

7 Q. How long have you been a state trooper?

8 A. I've been a state trooper, started the academy
9 October 1998.

10 Q. So about?

11 A. Fifteen years.

12 Q. Fifteen years. And how long have you been a K-9
13 officer?

14 A. It will be four years this fall.

15 Q. What's your K-9's name?

16 A. His name is Argo.

17 Q. And do you work with Argo all the time?

18 A. Yes. It's almost a 24-hour-a-day job.

19 Q. Apart from your regular shift as a highway
20 patrolman, Argo lives with you, correct?

21 A. Yes, with the exception when I go to the gym or
22 go to the store, he's within 3 feet of me 24 hours a
23 day.

24 Q. With the expectation of right now?

25 A. He's in my car.

1 Q. All right. And do you and Argo -- did you
2 receive training?

3 A. Yes, we did.

4 Q. And just briefly detail your training for us.

5 A. In March of 2010, I was approached about a K-9
6 position that was opening on the Ohio Turnpike, and I
7 applied for the spot. I think there were about 20 of us
8 that did. Out of the 20 or so that applied, they
9 interviewed five of us. I was chosen after the
10 interview process, and my dog got imported September of
11 2010, I believe it was a Friday. On Monday he started
12 his pretraining with our dog trainer in Columbus.

13 I had the opportunity to go down several times
14 with the pretraining, which was about a five-week
15 period. We have a master training that is a vendor
16 that's hired by highway patrol who trains our dogs. He
17 did all of the pretraining with the dogs. And I went
18 down and monitored it. We had six dogs in the
19 class. After the dogs were pretrained and ready to
20 go, the handlers were selected, were then sent to start
21 the class. It was a 200-hour class. It was a
22 challenging, stringent class. We got rated every week,
23 and it was literally every Friday you got your grade.
24 You didn't know if you would be coming back on Monday.

25 It was a tough class. It was a lot more than

1 hanging on to a leash and watching a dog scratch a
2 car. It's very foreign to be able to walk backwards,
3 watch your dog out of peripheral vision on the scene and
4 alert to odor on a vehicle. All along you could get
5 knocked on your butt. Did that for five weeks.

6 We're certified by the Ohio Peace Officer
7 Training Academy. At the time the dog would be
8 certified every two years. That law has since changed.
9 Our dogs now have to be certified every year. As far as
10 employment with the highway patrol, I'm also a K-9
11 evaluator for OPATA. Part of my duties are to travel
12 around state and certify police K-9s for other
13 departments.

14 Q. Now, do you do continuing training as well in
15 addition to that 200 hour initial training?

16 A. Yes. We have to do training a minimum of 16
17 hours for what we call a single-purpose dog, which is
18 narcotics. If we have one that's a dual purpose K-9,
19 which my dog is, they want us to train 24 hours a
20 month. Dual purpose means my dog is trained to track,
21 do area searches, article searches for evidence,
22 narcotics, obedience, and suspect apprehension, animal
23 protection. He's basically trained in anything you see
24 a K-9 is trained to do.

25 Q. And you've done this training, this 24 hours a

1 month, for the last couple of years?

2 A. Every month there's a minimum of 16. We have
3 24. Every other month we have 16 because we've been so
4 busy. There's months we have 40. We do a lot of
5 training. In addition to that, we do quarterly training
6 with the master training in Columbus where we go down
7 for two days every three months. Our spouses love that
8 we're gone every three months. It's hands-on with our
9 master trainer for continual training. Then at least
10 once a year he comes to where we are. We have about 35
11 K-9 teams across the state. So we're all over. At
12 least once a year he comes up and spends two days with
13 us in our respective areas and does training with the
14 K-9s in the normal working environment.

15 Q. Does your training include negative training or
16 blank training?

17 A. Yes.

18 Q. What is that?

19 A. We don't use that terminology, but a lot of our
20 training is -- let's say we will do -- we will go down
21 there for training. We will do a narcotics search in a
22 home. We have several homes through Columbus that we
23 have access to, and they're fully-furnished houses, like
24 a two- or three-bedroom, two-story apartment. We will
25 walk in and search the whole thing with the K-9 in the

1 unknown searches for hammers. And usually there's one
2 find out of two bathrooms, a kitchen, living room, three
3 bedrooms, closets. You search the whole thing. We do
4 that all the time. So we do a lot of negative-based
5 training so the dog doesn't get used to every time he
6 goes and sniffs something he's going to find something.
7 He's got to get his reward.

8 With that being said, when we do negative
9 training, we're searching a row of cars, there's nothing
10 found, and after the dog services the cars and does what
11 he's supposed to do and sniffs them and doesn't indicate
12 to something that's not there, it's more important that
13 the praise and the reward for the dog is greater than if
14 he had found something and you throw him his toy. The
15 last thing you want to do if he sniffs a car and there
16 is nothing there, you take him back and put him in the
17 car. You wouldn't want him to do anything wrong. You
18 wouldn't want the dog to go do anything wrong and
19 everything is great and he gets his paycheck.

20 Q. So whether a dog does or does not indicate, he
21 gets praise both times?

22 A. As long as the dog is working, yes. If the dog
23 goes out and walks around the vehicle to sniff, if he
24 engages, he's sniffing the areas you're presenting, he
25 does everything you want him to do, he doesn't indicate

1 any odors, it's more important to give your dog praise
2 on that than if he does find something.

3 Q. Is your dog certified?

4 A. Yes.

5 Q. Is he recertified every year since you were
6 originally certified?

7 A. The laws just changed June 1st last year to
8 yearly, so I was grandfathered in. My dog is certified
9 every two years. Starting this fall he has to be
10 certified every year.

11 Q. Trooper, were you on duty on June 14th of 2011?

12 A. Yes.

13 Q. Were you working in conjunction with any other
14 officers?

15 A. Yes. I had Trooper Chris Beyer with me. He was
16 working with me as we call a temporary unit, where we
17 will take road troopers from regular posts and work with
18 them for a few months at a time to kind of show them
19 what we do, try to look beyond the traffic stop instead
20 of going out and writing speeding tickets and sending
21 people down the road where there may be some other
22 crimes.

23 Q. Did Trooper Beyer make a traffic stop that
24 morning?

25 A. Yes, he did.

1 Q. And did you assist?

2 A. Yes. Trooper Beyer stopped the vehicle and
3 asked me to 20 with him, which means meet with him at
4 the scene. And I arrived and he asked me to walk my dog
5 around the vehicle for a sniff.

6 Q. Did you walk your dog around the vehicle?

7 A. Yes.

8 Q. And did the dog give an indication?

9 A. Yes, the dog did give an indication to the odor
10 of illegal controlled substance. His indication or
11 trained final response, what we call it, his trained
12 final response is not to sit or to bark. His trained
13 final response is to scratch. In his mind, when he
14 scratches and the toy bounces off the car, in his mind
15 he's scratching it out of the car.

16 Q. Showing you what I've marked as State's Exhibit
17 Number 10, do you recognize what's in this photo?

18 A. Yes. That's a photograph of the scratch marks
19 that were caused by Argo when he indicated the odor of
20 illegal controlled substance. That's the back driver's
21 side door and the front. I'm sorry, the left or
22 driver's side rear quarter panel, the front part of
23 that.

24 Q. That's where Argo made its indication?

25 A. Yeah, that's where he indicated, where he was

1 trained.

2 Q. Is that notable on the video?

3 A. Yes.

4 Q. After that indication, what did you and Trooper
5 Beyer do?

6 A. After I was finished with the dog, put the dog
7 away, we did a probable cause search, which we were
8 obligated to do, and which time we located the duffel
9 bag in the trunk that had two kilos of cocaine.

10 Q. Showing you State's Exhibit Number 3. Can you
11 tell me what that is, please?

12 A. Yes. That's a duffel bag that we located in the
13 trunk of the vehicle. That's the side zipper pouch and
14 the two kilos that were wrapped up inside.

15 Q. Showing you State's Exhibit Number 14. Do you
16 recognize what's in that item?

17 A. Yes. Those are the wrapping materials that they
18 use to mask or try to conceal the cocaine that was in
19 the vehicle.

20 Q. And did you do a field test?

21 A. Yes. As Trooper Beyer described, we do a NIK
22 test, NIK. Basically, we cut the package and take out
23 an amount of the suspected cocaine, break it up left to
24 right and wait for a color change. And it did.

25 Q. And you assisted Trooper Beyer in the search of

1 the vehicle?

2 A. Yes.

3 Q. And did you find any other drugs in the vehicle?

4 A. No.

5 MR. GAUTHIER: Nothing further, Judge.

6 THE COURT: Any cross-examination?

7 MR. AUFDENKAMPE: Yes, your Honor.

8 * * *

9 **CROSS-EXAMINATION OF TROOPER MIKE TRADER**

10 BY MR. AUFDENKAMPE:

11 Q. Trooper, when you're called in when you're
12 working in conjunction with Trooper Beyer, how does that
13 work; you just come in and you run the dog around the
14 vehicle?

15 A. Are you talking about this case?

16 Q. Well, this case in particular.

17 A. What happened was I was told in the crossover
18 monitor traffic, Trooper Beyer called me on the radio
19 and asked me to meet with him. When I arrived he asked
20 me to walk my dog around.

21 Q. When you arrived you don't get into any
22 background as to the stop itself, why the stop took
23 place?

24 A. Yes. Sometimes when I do assist the trooper, if
25 it's someone I'm not familiar with, I will ask what they

1 have, to make sure there is enough reasonable
2 articulable suspicion, enough clues in case we were
3 prolonging a traffic stop, enough clues to make sure
4 we're okay to have him detained while I run the dog
5 around the vehicle.

6 Q. And different dogs alert or indicate in
7 different manners, correct, is that what I understand?

8 A. Well, the alerts are going to be the same. The
9 alert is a natural change in behavior the dog shows when
10 it gets the odor. K-9 alert is going to be increased
11 respiration, change in body posture, head snap to find
12 out what the odor is, and scratching at the odor. And
13 the indicating of a trained final response is different
14 depending how the dog is trained. My dog is
15 an aggressive indicator; he scratches. Trooper Beyer
16 now has a dog. He has a passive dog and it sits.

17 Q. That's fine, Officer. Thank you. Your dog,
18 when we looked at the videotape, it seems kind of high
19 strung. Is it high-strung dog?

20 A. He's a little high strung, as are malinois,
21 M-A-L-I-N-O-I-S. He's not super high strung as far as
22 malinois go. He's very proud of himself. He prances
23 around all the time.

24 Q. His initial reaction when you took him to the
25 car was a normal reaction?

1 A. Yes. When I went up to the vehicle, I present
2 the vehicle, he knows what we're doing, and he engages
3 the vehicle, he sniffs along the vehicle. We can hear
4 his nose working. You can hear him change, like a
5 vacuum sucking up air, when he gets an odor.

6 Q. You're taking him around the car in this
7 particular -- taking him around the car from what area
8 to what area?

9 A. In this particular case, I started at the left
10 rear, which is the passenger corner, and I presented the
11 vehicle in a counterclockwise motion. I also present
12 counterclockwise motion.

13 Q. You always do it the same way?

14 A. I always present in the counterclockwise motion.
15 I don't always start and end in the same spot.

16 Q. Now, the dog did go around by the trunk?

17 A. Yes. We actually started at the trunk of the
18 vehicle.

19 Q. And it didn't indicate or didn't scratch at all?

20 A. No, he didn't show any change in behavior at the
21 trunk; he was engaged. No change of behavior, no
22 indication, which would lead me to believe there was no
23 odor coming out of the trunk.

24 Q. Okay. As you work your way around the car, you
25 get to the driver's side rear passenger door, you bend

1 over, looks like, before the dog starts to scratch
2 because he hesitated there, but it almost looked like
3 you had tapped the vehicle or pointed to the vehicle.
4 Would that cause the dog --

5 A. I didn't notice it. I, again, always present
6 different scenes on the vehicle. When a dog actually
7 shows a change in behavior, I don't smother the dog or
8 get on him. I let him work it out and he does all this
9 on his own. Once he shows me a change in behavior, all
10 I simply do is monitor him and make sure he has an odor
11 and gives me his trained final response.

12 Q. When you work with your dog, is there some way
13 you can actually make him alert, some physical
14 signal, pull on the collar, some way you can prompt an
15 alert type of reaction?

16 A. It's impossible to get my dog to alert. The
17 alert is a dog's natural change in behavior when he's in
18 odor. The only way I could have him alert on a vehicle
19 is if he's in odor.

20 Q. So there's no way that you can make the dog
21 scratch, I don't know, if the dog would scratch right
22 here?

23 A. That's an indication, that's not an alert. I
24 actually had a time in the past where I actually set my
25 dog up for failure where I wanted to make sure he would

1 be honest. And I walked him around this vehicle and I
2 was doing overpresentation and stopping and waiting for
3 him to give me a false indication on a vehicle so I
4 could correct it and make sure he was on the right, and
5 he wouldn't do it for me. That's the only time I tried
6 it, and it did not work out where I could get a
7 correction.

8 Q. So there's no way you can make the dog indicate
9 to a certain area?

10 A. That was the only time I tried it was in a
11 training once, and it did not work.

12 Q. Pointing doesn't do anything, tapping doesn't do
13 anything?

14 A. No, sir.

15 Q. When you arrive at the scene in this particular
16 case, did you talk to Trooper Beyer about why the stop
17 was made?

18 A. I'm sure I spoke with him. He turned off
19 his mike for administrative conversation. What we spoke
20 about, I couldn't tell you. I'm sure he did advise me.

21 Q. That would be your normal course of conduct?

22 A. Yes.

23 Q. Now, you're a state trooper, you do more than
24 just do the dog, use the dog. You're responsible for
25 all the other duties of a trooper in terms of

1 investigation?

2 A. Well --

3 Q. Traffic stops?

4 A. With police officers you're going to be -- get
5 to arrest people every day and not have to, you
6 know, handle little complaints here and there. It took
7 me 19 years, but I'm there. This is the job. The
8 majority of my job is going out and being proactive.

9 Q. All right, I get it. So you don't have any
10 involvement with preserving evidence, any of that type
11 of thing, other than finding the drug itself and
12 preserving that drug? In other words, you're not
13 involved with Trooper Beyer in this case in retaining
14 any evidence, doing reports?

15 A. No. This stop was Trooper Beyer's stop. I
16 assisted him with the sniff of the vehicle, and I
17 assisted him with the search of the vehicle. It would
18 have been really rude of me to try to go in and take
19 over. He's very capable of doing the job.

20 Q. So at that point you didn't talk to him about
21 the reason for the stop or -- did you ever see the
22 rental agreement?

23 A. Yeah, I don't remember if I seen the rental
24 agreement or not. Again, you know, I'm sure we had
25 dialect. I don't remember what the dialect was.

1 Q. Now, in your mind, is the rental agreement
2 something that should have been preserved?

3 A. There are stops where we do make photocopies of
4 them. Do I make them on every stop? No. Maybe it is a
5 good idea.

6 Q. In this particular case, which was evidently a
7 significant stop, should the rental agreement have been
8 preserved?

9 A. I don't think it's a bad idea to make it -- to
10 make a photocopy of it, but again, when we're doing the
11 job, we're taking pieces of a puzzle, we're painting a
12 picture.

13 Q. All right, thank you. Did you have any
14 involvement with the DEA when they became involved in
15 the case?

16 A. No. I don't even -- I know they were there, and
17 I remember seeing Taliano -- is that his name -- seeing
18 his name in the report, but I didn't remember -- there
19 were three guys there. I don't remember. We took them
20 to the Milan post. Sometimes we go to Milan post and
21 sometimes we go to the maintenance building. This was
22 three years ago. If there was interviews conducted, I
23 had a hundred percent no part of the interviews. If
24 there were DEA agents there, I'm sure I did speak with
25 them.

1 Q. And again, your dog didn't alert to the trunk?

2 A. No, he showed no alert or no indication to the
3 trunk.

4 Q. Why would that be if that's where the drugs were
5 located?

6 A. Where he indicated, the odor is pretty much
7 where the duffel bag was found inside the vehicle. It
8 was a deep find. On this particular day, we had a
9 little wind; it was south, southwest. There's different
10 areas of the vehicle where odor escapes. It's very
11 important, or can be important, to go in the vents and
12 things in vehicles. And where he had indicated was the
13 first place that he had caught the odor. He didn't
14 catch it at the trunk. It was a deep find. Where he
15 was in odor was the driver's side rear of the vehicle.

16 Q. That was more actually the passenger
17 compartment, at the rear passenger compartment.

18 A. It was the rear well and back door of the
19 vehicle.

20 Q. Thank you.

21 A. Yes, sir.

22 THE COURT: Any redirect?

23 MR. GAUTHIER: No, your Honor.

24 THE COURT: All right. You're free to step
25 down, Officer.

1 THE WITNESS: Thank you.

2 * * *

3 WITNESS EXCUSED

4 * * *

5 MR. GAUTHIER: Sorry, Judge, that's all I have
6 for today.

7 THE COURT: Ladies and Gentlemen, we're going
8 to finish -- we are finished for the day. Please
9 remember my admonition not to speak about the case with
10 anyone overnight. Be back here tomorrow -- let's try to
11 be ready to go at 8:30.

12 MR. GAUTHIER: Absolutely, Judge.

13 THE COURT: 8:30. That way we probably get this
14 done and get the case to you tomorrow. Should be plenty
15 of time to deliberate. All right, see you back tomorrow
16 at 8:30.

17 * * *

18 OUT OF THE PRESENCE AND HEARING OF THE JURY

19 * * *

20 THE COURT: All right, Counsel, anything we need
21 to handle at this stage?

22 MR. GAUTHIER: Your Honor, the only thing I
23 would ask is that I have two kilos of cocaine here that
24 I really would rather not take home with me, so I was
25 hopeful that Cathy could lock it up.

1 THE COURT: No, the cops have got to take it.

2 MR. GAUTHIER: I'm going to see if I can lock it
3 in the Prosecutor's Office safe and go from there.

4 THE COURT: Well, you're going to see if you
5 can, or you are going to lock it?

6 MR. GAUTHIER: I guess I really don't have much
7 choice. I don't feel like taking it home.

8 THE COURT: Well, it's been tested. It's all
9 been --

10 MR. GAUTHIER: And weighed.

11 THE COURT: Where are we in terms of your case?

12 MR. GAUTHIER: I have Detective Taliano, who is
13 the one that seized the drugs and sent them off to
14 Chicago. I have Detective Goodwin, who picked them up
15 this morning when they were sent back here, and I have
16 the lab person from Chicago.

17 THE COURT: So if we start at quarter to
18 nine, you'll be done when?

19 MR. GAUTHIER: Ten minutes to 9:00. No, not
20 very long. I mean, should take me an hour at the most.

21 THE COURT: So you will rest before noon?

22 MR. GAUTHIER: I should. I don't see any reason
23 why I shouldn't.

24 THE COURT: We have some jury instructions to go
25 over, that's why I asked, and you'll decide your

1 strategy then after that. See you back here tomorrow at
2 8:30.

3 * * *

4 THE COURT RECESSED FOR THE DAY AND THE
5 PROCEEDINGS RESUMED ON WEDNESDAY, FEBRUARY 12, 2014

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