

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 II

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.

23 * * *
24
25

1 WEDNESDAY, FEBRUARY 12, 2014

2 * * *

3 OUT OF THE PRESENCE AND HEARING OF THE JURY

4 * * *

5 (The defendant is not present.)

6 MR. GAUTHIER: Criminal Rule 43(A) provides that
7 in all prosecutions, the defendant's voluntary absence
8 after the trial has commenced, the defendant's presence
9 shall not prevent continuing the trial to and including
10 the verdict.

11 THE COURT: Okay, very good. So we will bring
12 them in. Lee, let's bring in the jury.

13 MR. AUFDENKAMPE: I have called him three times
14 and have gotten no response. Left the voicemail.

15 THE COURT: The record will reflect that the
16 Court ordered that the trial would start at 8:30 a.m. on
17 February 12th. The defendant was present when that
18 order was given. It is now 8:45 a.m. Multiple calls
19 have been placed to the defendant, with no
20 response. The jury's been here since 8:15. Everyone
21 else is present. We're going to begin, continue the
22 trial with the defendant not present. If the defendant
23 shows up, we will take an immediate break.

24 MR. AUFDENKAMPE: Your Honor, if I do receive a
25 phone call, I want the Court to know I will step out and

1 take it.

2 THE COURT: That's fine. Thank you.

3 * * *

4 WITHIN THE PRESENCE AND HEARING OF THE JURY

5 * * *

6 THE COURT: Good morning to you all.

7 THE JURORS: Good morning.

8 THE COURT: Thank you for coming out in a frigid
9 morning.

10 THE JUROR: Cold.

11 THE COURT: It really was. Hopefully, the warm
12 coffee and donuts helped a little bit.

13 You may notice that the defendant is not
14 here. He is on his way. He's late. It was pretty
15 clear that we were going to start this trial at 8:30.
16 And the rules allow us to proceed with him not being
17 present once the trial has started, and I'm not going to
18 make you sit any longer. So he may just come in the
19 courtroom and sit at the defense table, and that will be
20 perfectly fine.

21 So we will proceed. State, you want to call
22 your next witness, please.

23 MR. GAUTHIER: Thank you, your Honor. State
24 calls Detective Taliano.

25 * * *

1 Thereupon, the State of Ohio, in order to
2 further maintain the issues on its part to be
3 maintained, called **DET. GENO TALIANO** as a witness, upon
4 being first duly sworn, was examined and testified as
5 follows:

6 **DIRECT EXAMINATION OF DET. GENO TALIANO**

7 BY MR. GAUTHIER:

8 Q. Detective, can I have state name and spell last
9 name, please?

10 A. Geno, G-E-N-O, Taliano, T-A-L-I-A-N-O.

11 Q. By whom are employed?

12 A. Yes, sir, I am.

13 Q. By whom?

14 A. I work for the Lorain County Drug Task Force as
15 a task force officer/detective. I'm also a task force
16 officer for the Drug Enforcement Administration in
17 Cleveland, Ohio, Resident Office Detroit Field
18 Administration.

19 Q. How long have you been with the Lorain County
20 Drug Task Force?

21 A. Approximately 10 years.

22 Q. And how long have you been assigned also to the
23 DEA task force?

24 A. Approximately 10 years, the same period of time.

25 Q. How long have you been involved in law

1 enforcement overall?

2 A. In excess of 36 years.

3 Q. And what was -- prior to those 10 years, where
4 were you?

5 A. I retired from the Lorain Police Department as a
6 lieutenant in 2001.

7 Q. Detective Taliano, on June 14th -- excuse me
8 -- yeah, June 14th, 2011, did you receive a call to go
9 someplace?

10 A. Yes, sir, I did.

11 Q. Where did you go?

12 A. I received a call from my office in
13 Cleveland, Ohio, the DEA office, and asked me to go to
14 the Milan, Ohio State Highway Patrol post to assist the
15 state patrol in regard to an investigation.

16 Q. And did you proceed there?

17 A. Yes, sir, I did.

18 Q. And who did you go with?

19 A. Special Agent Szczepinski. I'll spell it for
20 you. S-Z-C-Z-E-P-I-N-S-K-I.

21 Q. And is she no longer with the DEA?

22 A. Special Agent Szczepinski just graduated from
23 the academy and she's now down the southwest part of our
24 country with DEA.

25 Q. Oh, okay. All right. What did you do once you

1 got out of the Milan post?

2 A. Met with the Troopers Beyer and Trader, who
3 indicated they made a traffic stop, and as a result of
4 that traffic stop, they did seize approximately two
5 kilograms of cocaine.

6 Q. And what, if anything, did you do with that
7 investigation; did you assist in the investigation at
8 all?

9 A. Special agent Szczepinski attempted to interview
10 Clifton Jackson, who was the suspect in the
11 investigation, advised him of his Miranda rights, both
12 verbally and written form. He signed the form,
13 understood that, understood the rights, and opted not to
14 speak with us, so there was no question.

15 Q. Did you take any possession of any items?

16 A. Yes, I did.

17 Q. What did you take possession of?

18 A. I took possession of, originally, two brick-size
19 packages that had been preliminary tested positive for
20 cocaine, a Scheduled II controlled substance, in excess
21 of two kilograms. I placed them in a self-sealing DEA
22 evidence envelope and sealed them and signed
23 them. Subsequently, I also received a check that was
24 made out to the United States Marshal Service this
25 morning as a result of the seizure also by the state

1 troopers. They had taken U.S. currency to a bank and
2 converted it to the Marshal Service. I took possession
3 of that and also two cellular telephones that were found
4 inside the suspects's vehicle at the time of the
5 interdiction. I took both of those items, two kilograms
6 of cocaine, two telephones.

7 The U.S. Marshal checked with the Cleveland
8 office and submitted them into evidence. The cocaine
9 was further processed and my partner, Special Agent
10 Goodwin, FedEx'd it to Chicago Central Evidence Lab for
11 further testing and identification, and the telephones
12 and the U.S. Marshal checks were placed in the nondrug
13 evidence in Cleveland, Ohio.

14 Q. Detective, I'm going to show you what I've
15 marked as State's Exhibit Number 15. And tell me if you
16 recognize that bag?

17 A. Yes, sir, I do.

18 Q. What is that bag there?

19 A. This is the bag I sealed the suspected cocaine
20 on June 14th, 2011. It bears my signature and my name
21 and identification and the location and time that I took
22 those items.

23 Q. Okay. Is that bag signed anywhere else with
24 your name?

25 A. At the time where I sealed it, TFO Taliano, my

1 initials was also done on June 14th, 2011, at the Milan
2 post of the Highway State Patrol.

3 Q. That's the bag -- you filled out all
4 information?

5 A. Yes, it is.

6 Q. That's the bag you used to seal that evidence?

7 A. Yes, sir.

8 Q. Now, when you seal that evidence, were the items
9 inside in the same condition as they currently are?

10 A. They appear to be, yes, sir.

11 Q. Well, were they packaged?

12 A. Within the package, yes.

13 Q. Okay. Let me know show you what I've marked as
14 State's Exhibit Number 5. Do you recognize this?

15 A. Yes. Those are the two brick-sized packages
16 that were initially seized by the State Highway Patrol
17 on June 14th, and those were the ones that I
18 subsequently placed in the self-sealing DEA evidence
19 bags on that same date and transported to Cleveland.

20 Q. Now, when you put those two kilos into the bag,
21 were they still in the wrappers?

22 A. Yes.

23 Q. So they're currently not in the wrappers,
24 correct?

25 A. No.

1 Q. Showing you what I've marked as State's Exhibit
2 Number 14. Do you recognize what is in that bag?

3 A. Yes. This was part of a packaging material that
4 was on or about the bricks of cocaine. I noted that
5 they put also a type of greasy material on it, and this
6 is very common, that people who transport narcotics will
7 sometimes attempt to do that to disguise the smell from
8 the K-9. Unsuccessfully, of course.

9 Q. State's Exhibit 14, the packaging material,
10 that's the same packaging material you saw on June
11 14th, 2011?

12 A. That's correct.

13 Q. Is it standard procedure for DEA to mail the
14 drugs out, FedEx the drugs out to Chicago?

15 A. It is, depending on the amount. A larger amount
16 sometimes is transported by agents. In this case we
17 were able to mail it by FedEx.

18 Q. Showing you what I've marked as State's Exhibit
19 Number 17. Can you tell me what that is, please?

20 A. It's a photocopy of the U.S. Marshal Service
21 check that I received from the state troopers in Milan,
22 Ohio for \$1,262. It's made out to Marshal Service. I
23 also transported this to the Cleveland office and put it
24 in the high value nondrug evidence.

25 Q. Thank you. Detective, do you remember the

1 tracking number, or did you record the tracking number
2 for the FedEx package that was sent to Cuyahoga?

3 A. Yes. I have it in my report. I can make
4 reference to that if you'd like.

5 Q. Could you just read the number into the
6 record, please?

7 A. Yes. The FedEx tracking number is 827990767949.

8 Q. Thank you.

9 MR. GAUTHIER: Nothing further, your Honor.

10 THE COURT: Cross-examination.

11 MR. AUFDENKAMPE: Thank you, your Honor.

12 * * *

13 **CROSS-EXAMINATION OF DET. GENO TALIANO**

14 BY MR. AUFDENKAMPE:

15 Q. Good morning, Detective.

16 A. Good morning.

17 Q. You were called in by the troopers for your
18 assistance, correct?

19 A. I received the call from the office in
20 Cleveland. I was here in Lorain County.

21 Q. All right. Are you aware of a special
22 operations division of the DEA?

23 A. I'm not sure if I know what you're referring to.

24 Q. Okay. A division that would provide information
25 that they have obtained on possible drug

1 traffickers, cars that are in transport, vehicles that
2 are in transport of drugs, that would share that
3 information with other operations, like the highway
4 patrol?

5 A. We have an intelligence division that
6 communicates with the offices and other law enforcement
7 agencies; that's correct.

8 Q. Were you aware of any prior intelligence or
9 communication about my client, Clifton Jackson --

10 A. No.

11 Q. -- at the time that you got your call?

12 A. No.

13 Q. Were you ever made aware of any intelligence or
14 communication that was forwarded to the state patrol --

15 A. No.

16 Q. -- regarding my client?

17 A. No.

18 Q. Did you receive a request from the state
19 troopers that the DEA considered taking over this case?

20 A. No.

21 Q. In terms of your assistance that you had
22 rendered to the state patrol, what does that consist of;
23 why would they call you in if you're not going to take
24 over the case?

25 A. There's a policy and procedure in case the state

1 patrol had DEA assistance in securing large sums of cash
2 during interdiction with drugs, and we process it and
3 send it out to our lab, or ask the forfeiture program
4 for the money. One of the reasons that we respond also
5 is if the person who was interdicted chose to cooperate,
6 they may have information that we could use, pass on to
7 other law enforcement agencies or utilize ourselves. In
8 this case, that wasn't the case.

9 Q. That wasn't the case?

10 A. He chose not to speak to us.

11 Q. Okay. And what about the amount of drugs, would
12 that not be something the DEA would be interested in?

13 A. It can be depending on the amount and type of
14 drug and if, in fact, if there is interstate transport
15 of those narcotics, it would be of interest, yes.

16 Q. At this point had you had an opportunity to make
17 out a report on this?

18 A. Yes.

19 Q. Okay. And I'm probably holding the same report
20 that was provided to me.

21 A. Yes.

22 Q. I'm sure you have that in front of you as well?

23 A. Yes, sir.

24 Q. In this report, it indicates that Trooper Beyer
25 had indicated to you that he was able to actually hear

1 the communication of Mr. Jackson on the cell phone while
2 he was in the back of the cruiser, and I believe it
3 says, "Due to the proximity of his being to the patrol
4 unit." Did he actually indicate that to you? It's in
5 the report.

6 A. Yes.

7 Q. I'm assuming that's the case.

8 A. I remember discussing it with him. And it was
9 also in his report, which I used to produce my report.

10 Q. Okay. Did Trooper Beyer report later while
11 approaching his patrol car to engage Jackson he heard
12 Mr. Jackson telling a female to be quiet?

13 A. I believe that I saw that in my report, so that
14 would be an extension of his report, that's correct.

15 Q. When you indicate in your report that he
16 reported to you or he said to you, or something like
17 that, that would indicate that he had actually said that
18 information to you?

19 A. It might be a combination of a discussion we had
20 back in 2011. I don't honestly recall. My report is
21 generated by the information I glean from their written
22 report.

23 Q. Okay. But you're saying that Trooper Beyer
24 heard verbal exchanges between Jackson --

25 MR. GAUTHIER: Your Honor, I'm going to object

1 at this point. It's not Detective Taliano's. He's
2 talking about Officer Beyer's statement.

3 Mr. Aufdenkampe could have cross-examined --

4 THE COURT: What's the basis of the objection?

5 MR. GAUTHIER: Lack of knowledge of Officer
6 Beyer's report.

7 MR. AUFDENKAMPE: He has firsthand knowledge of
8 something that Trooper Beyer's testified to yesterday,
9 and it differs from the --

10 THE COURT: I'm going to overrule the objection
11 because I believe the witness indicated that he took
12 some of the trooper's report and information and
13 incorporated it in his own report.

14 A. Yes, sir, that's correct.

15 Q. And much of that information was verbatim out of
16 his report. I understand that's where you got a lot of
17 your information?

18 A. Statements in my report that I generated based
19 upon the reports that I received from the State Highway
20 Patrol.

21 Q. And I guess I'm asking you specifically about
22 conversations with Trooper Beyer where your report
23 indicates he said he indicated "he reported to me"?

24 A. I have to read the exact quote that I might have
25 put. There was also a CD that was generated, and it's

1 also a nondrug evidence item that was provided to me as
2 evidence where it was recorded conversation, the suspect
3 Clifton Jackson was involved in what appeared to be two
4 separate phone call conversations. That information I
5 may then have taken from the CD itself.

6 Q. Okay. Now, let's talk about that, because when
7 you -- you didn't include that DVD that you took with
8 you as evidence that you had retained and taken with
9 you. You had a copy of that DVD?

10 A. I received that copy two days later, on the 16th
11 of June.

12 Q. What happened when you reviewed that copy?

13 A. The initial copy was blank, so I contacted the
14 state patrol and indicated there had been a technical
15 problem, and the next day, the 17th of June, I received
16 it delivered to Lorain County Sheriff's Office, the copy
17 of that. I retained that in the temporary evidence
18 locker at the Lorain County Drug Task Force. On June
19 22nd, 2011, Special Agent Goodwin transported that
20 evidence item, the CD, to the Cleveland office and
21 placed it in nondrug evidence.

22 Q. So, initially, you couldn't review the DVD
23 because it was blank and you had to wait for your new
24 copy?

25 A. The next day, that's correct.

1 Q. And in fact, I believe in your report you
2 indicated that Trooper Beyer had advised you that he
3 overheard and later verified the conversations via the
4 onboard audio?

5 A. If it's in my report, that would be the case.

6 Q. There's also a plastic bag involved here
7 containing a diamond necklace, bracelet and ring. What
8 happened with that?

9 A. I only know what I read in the report. And
10 essentially, they had that jewelry evaluated with nearby
11 jewelers to see if it was high value; and in fact, I
12 think it was returned back to Mr. Jackson's personal
13 property.

14 Q. Again, I don't want to beat a dead horse
15 here, but your report indicates Trooper Beyer heard
16 Mr. Jackson inform an unknown person with whom he was
17 engaged in a telephone conversation with in the patrol
18 unit that he was being arrested. That's also in your
19 report. So he advised you of that, evidently. I
20 understand this is a year and a half, two years ago.

21 A. Two and a half years.

22 Q. Two and a half years. So you did have an
23 opportunity to talk to Trooper Beyer about this case?

24 A. Yes.

25 Q. Does that happen initially when you get on

1 scene?

2 A. Yes.

3 Q. That's the --

4 A. I actually wasn't at the scene of the arrest or
5 the traffic stop.

6 Q. I understand that. But once you got to the
7 post --

8 A. That's correct, we discussed it.

9 MR. AUFDENKAMPE: I don't have anything further,
10 your Honor.

11 THE COURT: Any redirect?

12 MR. GAUTHIER: Just one or two follow-up
13 questions.

14 * * *

15 **REDIRECT EXAMINATION OF DET. GENO TALIANO**

16 BY MR. GAUTHIER:

17 Q. So, Detective, I understand sometimes when you
18 get involved with a case, state patrol and other
19 agencies, sometimes DEA, picks it up, or the Feds pick
20 it up, and sometimes they don't?

21 A. That's correct.

22 Q. And the statements that Mr. Aufdenkampe was
23 talking to you about that Trooper Beyer overheard, do
24 you know if Trooper Beyer overheard those when they were
25 originally made, or just from reviewing the CD?

1 A. That would have been from reviewing the CD or
2 possibly a discussion I might have had at my initial
3 meeting with the troopers at the Milan post.

4 MR. GAUTHIER: Thank you. Nothing further.

5 THE COURT: Any recross?

6 MR. AUFDENKAMPE: Yes, your Honor.

7 * * *

8 **RECROSS-EXAMINATION OF DET. GENO TALIANO**

9 BY MR. AUFDENKAMPE:

10 Q. Okay. Those conversations that you refer to in
11 your report that were either indicated to you, I think
12 another time you say reported to you, for example, on
13 page five of your report --

14 A. Could you give me the paragraph, sir?

15 Q. Yes. Paragraph six.

16 A. Six?

17 Q. Yes. And it's the last sentence, I
18 believe, Trooper Beyer further reported while
19 approaching his patrol unit, engaged Jackson, he heard,
20 verified by the onboard video recording, Jackson telling
21 a female to be quiet.

22 If you go to the one page in the very last
23 sentence, that sentence, "Trooper Beyer indicated to
24 Agent Taliano that he was able to hear the conversation
25 due to his proximity to the patrol unit occupied by

1 Jackson." Again, in paragraph eight on the same
2 page, "Trooper Beyer heard a verbal exchange between
3 Jackson and an unidentified female during the vehicle
4 search."

5 A. I'm sorry. Was there a question there?

6 Q. My question is, it appears that he actually
7 reported to you that he heard these conversations. He
8 didn't just hear them on the DVD after the fact; he
9 heard them when they took place.

10 A. That may have also been information that was in
11 his report. When we adopt the report, we take the
12 initial reports, we regenerate the information faster
13 recorded from their report, and I proceed with the point
14 we would then become involved.

15 Q. You're very experienced at this. Most of the
16 information in your report is almost verbatim from
17 his report, but these are different. These indicate
18 something that isn't in his report, that he reported to
19 you that he actually heard those conversations prior to
20 reviewing them on the video; is that fair?

21 A. I don't, I don't recall specifically how I
22 acquired that information, whether it be by reviewing
23 the CD that was later placed in evidence, or
24 conversation I had with either of the troopers. June of
25 2011. I can only refer to what I have in my report.

1 Q. Okay, that's fair enough. Like you say, it's
2 two and a half years old. I don't expect you to
3 remember every conversation, which is part of the reason
4 you make reports, correct?

5 A. That's correct.

6 Q. So if you put in there that that's what he told
7 you, I would assume that's what he told you at the time?

8 A. Yes, sir.

9 Q. Is that a fair assumption?

10 A. I think it is.

11 MR. AUFDENKAMPE: Thank you. Nothing
12 further, Judge.

13 THE COURT: All right.

14 MR. GAUTHIER: Nothing.

15 THE COURT: Next witness. Thank you.

16 MR. GAUTHIER: State calls Agent Goodwin.

17 * * *

18 Thereupon, the State of Ohio, in order to
19 further maintain the issues on its part to be
20 maintained, called **AGENT JAMES GOODWIN** as a witness,
21 upon being first duly sworn, was examined and testified
22 as follows:

23 **DIRECT EXAMINATION OF AGENT JAMES GOODWIN**

24 BY MR. GAUTHIER:

25 Q. Can I have you state your name and spell your

1 last name, please?

2 A. James Goodwin, G-O-O-D-W-I-N.

3 Q. By whom are you employed?

4 A. Drug Enforcement Administration.

5 Q. In what capacity?

6 A. Special agent.

7 Q. What are your duties?

8 A. My duty is to enforce the federal drug laws, the
9 United States and state laws.

10 Q. Okay. And how long have you been a DEA agent?

11 A. Nineteen years.

12 Q. And on June 14th, 2011, did you get involved
13 with the case?

14 A. Yes.

15 Q. And what did you do?

16 A. Well, we got notified by the Ohio State Highway
17 Patrol they had made a traffic stop; it was
18 approximately two kilos of cocaine that was seized. We
19 were very interested in that because we wanted to do
20 some follow-up on it. My partner, Task Force Officer
21 Geno Taliano and Agent Kayla Szczepinski responded to
22 meet with the troopers in an effort to possibly
23 interview the subject. If the person would
24 cooperate, maybe we could attempt to further the
25 investigation, possibly control delivery, determine

1 maybe where the drugs came from, where they were going
2 to, that we could send LEADS out to other offices.

3 Q. Ultimately, were you able to do any of those
4 things?

5 A. No.

6 Q. Okay, all right. And ultimately, the DEA picked
7 up the case?

8 A. Yes. We classified it as an adoption, an
9 assist.

10 Q. So you assisted?

11 A. Yes, that's correct.

12 Q. All right. And what was done with the drugs
13 that were packaged by Taliano?

14 A. Detective Taliano, along with Kayla Szczepinski,
15 drove down to Cleveland, Ohio. That's why I was at our
16 office downtown. What we did, we processed it as
17 evidence, we bagged it, we tagged it, we obtained an
18 exhibit number, and then we boxed it up and shipped it
19 to our North Central Laboratory located in Chicago,
20 Illinois.

21 Q. Is that standard procedure?

22 A. Yes.

23 Q. And you and Detective Taliano did that?

24 A. Yes.

25 Q. Last week did I ask to you do something for me?

1 A. Yes, you did.

2 Q. What did I ask you to do?

3 A. I notified the North Central Laboratory in
4 Chicago that we were going to need the evidence for this
5 trial. So I prepared a memorandum requesting the
6 evidence.

7 Q. And how was the evidence sent back here?

8 A. In a completely plain cardboard box with no
9 markings about laboratory or drugs or evidence.

10 Q. I guess I'll mark this.

11 * * *

12 STATE'S EXHIBIT 19 MARKED FOR IDENTIFICATION

13 * * *

14 Q. Showing you what I've marked as State's Exhibit
15 19. Is this the box that you're talking about?

16 A. Yes. Yes, it is.

17 Q. That's the box that you received yesterday?

18 A. Correct.

19 Q. About what time?

20 A. 11:00 a.m.

21 Q. And then what did you do after 11:00 a.m.?

22 A. Drove it immediately out here.

23 Q. Okay. Showing you what I've marked as State's
24 Exhibit, Exhibits 14 and 15. Can you tell me what those
25 items are?

1 A. This is Exhibit 1.

2 Q. That's your number, correct?

3 A. This is our number, Drug Exhibit 1.

4 Q. Okay.

5 A. Which is the cocaine and the wrapping, the
6 packaging.

7 Q. So 15 is the cocaine and 14 is the --

8 A. Correct.

9 Q. -- the wrap?

10 A. State's Exhibit, correct.

11 Q. State's Exhibit. The wrapping, the same
12 wrapping observed on June of 2011?

13 A. Yes.

14 Q. Okay. And those are the items that you received
15 from the lab yesterday?

16 A. Correct.

17 Q. And are they in the same condition that you
18 received them?

19 A. Well, this one's open now.

20 Q. Were you present yesterday when that was cut
21 open?

22 A. Yes.

23 Q. You watched me cut it open with a pair of
24 scissors?

25 A. Correct.

1 Q. All right. Agent Goodwin, in your duties as a
2 DEA agent, have you had the occasion to arrest people
3 with kilos before?

4 A. Yes.

5 Q. And have you had the occasion to do undercover
6 deliveries, undercover buys, undercover sales of kilos?

7 A. Yes.

8 * * *

9 (Thereupon the defendant, Clifton Jackson,
10 entered the courtroom.)

11 * * *

12 Q. Approximately how many of those have you done
13 over the 19 years?

14 A. Over 19 years, several dozen.

15 Q. All right. Based on your experience as a DEA
16 agent, can you give me an approximate value of a kilo of
17 cocaine?

18 A. Current market value is between twenty-five and
19 thirty thousand dollars for one kilogram.

20 Q. So that would be somewhere between fifty and
21 sixty thousand dollars?

22 A. Fifty, sixty thousand dollars.

23 Q. That's current prices?

24 A. Correct.

25 Q. What about 2011?

1 A. 2011, only a few years ago, probably about the
2 same for cocaine.

3 MR. GAUTHIER: Nothing further, Judge.

4 THE COURT: Counsel, could you approach, please?

5 * * *

6 A SIDEBAR DISCUSSION WAS HAD AS FOLLOWS

7 * * *

8 THE COURT: I just wanted to note for the
9 record, without disturbing the examination, that the
10 defendant entered the courtroom at 9:10 a.m.

11 MR. AUFDENKAMPE: Okay.

12 THE COURT: Agreed?

13 MR. GAUTHIER: Yes.

14 THE COURT: Okay.

15 * * *

16 THE SIDEBAR DISCUSSION ENDED

17 * * *

18 THE COURT: Cross-examination.

19 MR. AUFDENKAMPE: Thank you.

20 * * *

21 **CROSS-EXAMINATION OF AGENT JAMES GOODWIN**

22 BY MR. AUFDENKAMPE:

23 Q. Officer Goodwin, what is an adoption or assist
24 for the DEA with another agency?

25 A. It's when we're called in to follow up on an

1 investigation.

2 Q. Was there ever, to your knowledge, a request
3 made that DEA take over this case?

4 A. No.

5 Q. Are you familiar with or are you involved with
6 the professional operations division of that DEA?

7 A. Yes.

8 Q. Do you know what that division does?

9 A. Yes.

10 Q. Were you aware of any information about my
11 client, Clifton Jackson, prior to Mr. Taliano bringing
12 the evidence back to the DEA?

13 A. No, sir.

14 MR. AUFDENKAMPE: I don't have anything
15 further.

16 THE COURT: All right. Any --

17 MR. GAUTHIER: Nothing further, Judge.

18 THE COURT: Thank you.

19 THE WITNESS: Thank you.

20 * * *

21 WITNESS EXCUSED

22 * * *

23 MR. GAUTHIER: State calls Tim Husk.

24 * * *

25

1 Thereupon, the State of Ohio, in order to
2 further maintain the issues on its part to be
3 maintained, called **DR. TIMOTHY HUSK** as a witness, upon
4 being first duly sworn, was examined and testified as
5 follows:

6 **DIRECT EXAMINATION OF DR. TIMOTHY HUSK**

7 BY MR. GAUTHIER:

8 Q. Can I have you state your name and spell your
9 last name, please?

10 A. Timothy Husk, H-U-S-K.

11 Q. Mr. Husky, by whom are you employed?

12 A. Drug Enforcement Administration.

13 Q. And what are your job duties, title and duties?

14 A. I'm a senior forensic chemist.

15 Q. And as a forensic chemist what do you do?

16 A. I analyze evidence that has been submitted for
17 the presence of controlled substance, write reports to
18 the findings of those analyses, and testify when
19 necessary.

20 Q. And how long have you been doing that?

21 A. Approximately three and a half years.

22 Q. And can you tell me about your education to be a
23 forensic chemist?

24 A. I started -- I received a bachelor's in
25 chemistry from Youngstown State University, followed by

1 a doctorate in medicinal chemistry, Department of
2 Pharmaceutical, from Purdue University.

3 Q. You're a doctor of medicine, Dr. Husk?

4 A. Yes.

5 Q. Dr. Husk, did you continue your training with
6 the DEA?

7 A. Yes. Once I began my employment, I completed an
8 eight-month training program with them.

9 Q. Okay. And over the -- on average per month, how
10 many items do you test to determine whether they are or
11 are not narcotics?

12 A. Approximately a hundred.

13 Q. Every month?

14 A. Every month.

15 Q. For last three and a half years?

16 A. Yes.

17 Q. Do you undergo additional training as
18 well, ongoing training?

19 A. Yes.

20 Q. And how often do you do that?

21 A. Typically, every few months we will have some
22 sort of training that we complete, whether it's
23 instrumental or just, like, computer training.

24 Q. Okay. Have you ever published any documents or
25 any papers, or anything like that?

1 THE COURT: Hold on a second. Do you have a
2 cell phone on?

3 THE DEFENDANT: No, ankle bracelet.

4 THE COURT: Oh. Make sure anybody here that has
5 a cell phone, make sure it's powered off.

6 THE DEFENDANT: It is powered off.

7 THE COURT: It powered off?

8 THE DEFENDANT: No, it's going to keep beeping
9 because of the battery life.

10 THE COURT: Okay.

11 Q. All right. I'm sorry. I asked you if you had
12 published anything?

13 A. Yes, I have.

14 Q. What have you published?

15 A. I published some papers during my graduate
16 school.

17 Q. Okay, all right.

18 MR. GAUTHIER: Your Honor, I ask he be qualified
19 as an expert in forensic chemistry for the testing of
20 narcotics.

21 THE COURT: Defense.

22 MR. AUFDENKAMPE: Yes, your Honor.

23 THE COURT: Any objection?

24 MR. AUFDENKAMPE: No.

25 THE COURT: All right. It will be so ordered.

1 MR. GAUTHIER: Thank you.

2 Q. Dr. Husk, what is the procedure when items are
3 sent to the lab?

4 A. When items are sent to the lab, they are checked
5 in to our evidence vault by our evidence
6 technicians, and they're assigned a unique identifier or
7 lab number. That lab number is then requested by an
8 analyst for analyses.

9 Q. And did you test the item in this case?

10 A. I did.

11 Q. And how did you come to the possession of this
12 item?

13 A. I sent a request through my supervisor to check
14 this piece of evidence out of the vault, and I received
15 it from our evidence technician.

16 Q. Is there any kind of receipts that are made out
17 when the evidence is received by the lab?

18 A. There is.

19 Q. I'm going to show you what I've marked as
20 State's Exhibit Number 18, and tell me if you can tell
21 me what that is, please.

22 A. This is a DEA Form 7. That would be the receipt
23 for it coming into the lab.

24 Q. And does that receipt list a tracking number at
25 the bottom?

1 A. Yes, it does.

2 Q. Can you tell me what that is, please?

3 A. Looks likes it's FE827990767949.

4 Q. And that's the receipt for the item in this
5 particular case?

6 A. Yes.

7 Q. This is a document that's contained in your
8 records at the lab?

9 A. Yes.

10 Q. Okay. What lab number was assigned to this
11 item?

12 A. If I may refer --

13 Q. Yes.

14 A. It's 5203890.

15 Q. I'm going to show you two exhibits marked as
16 State's Exhibits 14 and 15. Can you tell me what those
17 are, please?

18 A. These are the evidence envelopes that were
19 submitted back to the vault following the analysis.

20 Q. And is there a laboratory number on there?

21 A. Yes, there is.

22 Q. And what is that number?

23 A. It's 5203890.

24 Q. Does that lab number correspond to the lab
25 number you have assigned to this case?

1 A. Yes, it does.

2 Q. Now, when you received this item from the
3 vault, was it as it is now, in two separate bags? Was
4 it in two separate bags?

5 A. No, it was not.

6 Q. Describe how it was then.

7 A. This evidence envelope here is the original bag
8 that everything was contained in.

9 Q. You're holding up State's Exhibit 15?

10 A. Yes.

11 Q. So everything was included in that particular
12 bag?

13 A. Yes.

14 Q. What did you do with the items?

15 A. Once I received it, I proceeded to obtain the
16 gross weight and net weight of the items, and then it
17 was separated for fingerprint packaging. That's why
18 there are two packages now.

19 Q. Okay. Tell me what gross weight is.

20 A. The gross weight is the weight of the evidence
21 envelope and everything that's contained inside.

22 Q. Including the packaging material?

23 A. Including the packing material.

24 Q. And the net weight is what?

25 A. If I may.

1 Q. Yes.

2 A. The --

3 Q. Just generally, what is the net weight?

4 A. Generally, sorry.

5 Q. That's all right.

6 A. The net weight is then just the weight of the
7 material.

8 Q. Itself?

9 A. Itself, without the packaging.

10 Q. Okay. And can you tell me what the gross weight
11 was in this particular case?

12 A. It was 2,274 grams.

13 Q. And the net weight?

14 A. The net weight was 2001 grams.

15 Q. That would be the net weight of the white powder
16 in State's Exhibit 15?

17 A. Yes.

18 Q. Now, you said the items are separated for
19 fingerprinting?

20 A. Correct.

21 Q. State's Exhibit Number 14, is there an evidence
22 tag on that bag?

23 A. Yes, there is.

24 Q. And who filled that out?

25 A. That was filled out by me.

1 Q. Okay. And is there a lab number on that as
2 well?

3 A. Yes, there is.

4 Q. And does that lab number correspond to the lab
5 number for this case?

6 A. Yes, it does.

7 Q. And so who prepared that State's Exhibit
8 14, that bag?

9 A. That was prepared by me.

10 Q. That was prepared by you when you originally got
11 these items all together in one bag, and you separated
12 them into two?

13 A. Yes.

14 Q. All right. Dr. Husk, how did you test an item
15 to determine if it's a narcotic or not?

16 A. We have a series of instruments that we will use
17 in order to test powders and substances for the presence
18 of controlled substance.

19 Q. What do you use?

20 A. In this case I used -- it's a fourier transform
21 infrared spectroscopy and gas chromatograph-mass
22 spectrometer.

23 Q. What do each of those items do?

24 A. Each one of those, they -- I'll start with the
25 FTIR. The fourier transform infrared spectroscopy, it

1 exposes the substance to energy. That energy is
2 absorbed in varying weight reflecting a particular
3 pattern, and that pattern is compared to a standard. We
4 do a comparative analysis there.

5 And GC-MS, or gas chromatograph-mass
6 spectrometer, that vaporizes the sample and the gas that
7 is produced, it is then separated on the gas
8 chromatograph into its components. Then those
9 components are then identified with the mass
10 spectrometer by weight.

11 Q. Did you perform those tests on State's Exhibit
12 Number 15?

13 A. I did.

14 Q. And do you have an opinion as to what is
15 included in -- what State's Exhibit 15 is?

16 A. State's Exhibit 15 contained cocaine
17 hydrochloride.

18 Q. Commonly known as?

19 A. Commonly known as cocaine.

20 Q. Do you hold that opinion to a reasonable degree
21 of scientific certainty?

22 A. Yes, I do.

23 Q. Other than -- and after you're done testing, did
24 you seal State's Exhibit 15 back up?

25 A. Yes.

1 Q. Okay. And did you put markings on both the
2 inside bags and the outside bag?

3 A. Yes, I did.

4 Q. And other than the top of State's Exhibit Number
5 14 being partially cut off, are both of these items in
6 the same condition as when you finished testing them?

7 A. Yes, they are.

8 Q. And did you sign State's Exhibit 14 as well?

9 A. I did.

10 Q. And seal?

11 A. Yes.

12 Q. And I'm sorry, just a final question. The net
13 weight of the cocaine itself was what?

14 A. It was 2001 grams.

15 Q. Thank you.

16 THE COURT: Any cross-examination?

17 MR. AUFDENKAMPE: Yes, your Honor.

18 * * *

19 **CROSS-EXAMINATION OF DR. TIMOTHY HUSK**

20 BY MR. AUFDENKAMPE:

21 Q. Good morning, Dr. Husk.

22 A. Good morning.

23 Q. How often are you called in to testify? Do you
24 do this on a regular basis?

25 A. This happens to be my first time completing the

1 testimony.

2 Q. Okay. Did you personally perform the test then?
3 You didn't just oversee them; you personally performed
4 them?

5 A. I personally did, yes.

6 Q. Is the tests that were performed on these
7 materials the most reliable way to perform a test on
8 this material, on the cocaine?

9 A. As far as I know, yes.

10 Q. Okay. What do you mean as far as you're aware;
11 you know of no better way to test it?

12 A. Yeah, currently there is no better way to test
13 it.

14 Q. How much total time did it take to perform these
15 tests?

16 A. Do you mean instrument time or --

17 Q. Actual time from the time you get the material
18 to the time your test is complete?

19 A. From the time that it's complete, it can vary
20 based on how much is there.

21 Q. How about in this particular case?

22 A. In this particular case, I believe it took one
23 week to complete all of the testing.

24 Q. Okay. So what happens to the material in
25 between -- obviously, you're not working a week

1 straight -- but in between your worked periods?

2 A. In between my work period, I have a lockbox, a
3 metal lockbox that is -- that the material is contained
4 in when I'm not physically working on it. That box is
5 locked with a combination lock that I am the only person
6 that has the combination.

7 Q. Okay. Nobody else has it; supervisors don't
8 have it?

9 A. No.

10 Q. Evidence people don't have it?

11 A. No. And overnight is it further locked in the
12 process vault.

13 Q. Okay. Now, when you say it took about a
14 week, is that eight hours a day for a week you're
15 working on this?

16 A. No.

17 Q. So you're working on it periodically along with
18 other tests and materials?

19 A. Yes.

20 Q. So if you took the time that you were spending
21 each day over the course of a week that you're working
22 on this particular material, how long does it take?

23 A. Probably about a day and a half.

24 Q. Okay. What percentage of your time is spent on
25 doing this type of analysis on actual drugs? Is that

1 your full-time job?

2 A. Yes.

3 Q. Now, I know the prosecutor had asked you several
4 times about the gross weight/net weight. What about the
5 purity of the material that you were testing for, what's
6 the percentage? You said the net weight was 2001 grams.

7 A. Yes.

8 Q. The next thing on your report indicates
9 concentration or purity 81.3?

10 A. Yes.

11 Q. Plus or minus 3.2 percent?

12 A. Yes.

13 Q. So what does that mean?

14 A. It means that of this powder material, 81.3
15 percent of the powder is cocaine.

16 Q. Okay. So what does that come out -- did you
17 weigh it? Or give us the actual weight of the cocaine
18 itself, not any added material.

19 A. The weight of the pure drug would be -- it's
20 also on the report. It would be 1,626 grams.

21 Q. Okay. So considerably less than the gross
22 weight of 2274. Now, I also see that there was a
23 packaging for latent print examination.

24 A. Yes.

25 Q. What happened with that?

1 A. That was the packaging that I had separated and
2 submitted.

3 Q. Okay. For what?

4 A. For latent print analysis.

5 Q. For fingerprints?

6 A. Yes.

7 Q. Did you do that test?

8 A. No, I did not.

9 Q. Do you know the results of the test?

10 A. I do not.

11 MR. AUFDENKAMPE: Nothing further, your Honor.

12 THE COURT: Any redirect?

13 MR. GAUTHIER: Just one question.

14 * * *

15 **REDIRECT EXAMINATION OF DR. TIMOTHY HUSK**

16 BY MR. GAUTHIER:

17 Q. Mr. Aufdenkampe mentioned your report, and I
18 forgot to have you -- I'm going to show you State's
19 Exhibit 11. Can you tell me what that is, please?

20 A. This is my report.

21 Q. All right.

22 MR. GAUTHIER: Thank you. Nothing further.

23 THE COURT: Any other witnesses, State?

24 MR. GAUTHIER: No, the State would rest subject
25 to the admission of any exhibits.

1 THE COURT: All right. You're free to step
2 down. Any motions?

3 MR. AUFDENKAMPE: Yes, your Honor.

4 THE COURT: Hold on a minute.

5 All right. At this time there may be some
6 motions because the State has finished their case. So
7 we're going to have to excuse you, and I'll have Bailiff
8 Cannaday report to you. It may be a brief 10- or
9 15-minute break.

10 * * *

11 OUT OF THE PRESENCE AND HEARING OF THE JURY

12 * * *

13 THE COURT: Okay. Any defense motions?

14 MR. AUFDENKAMPE: Yes. At this time we make our
15 Rule 29 motion for acquittal, your Honor, on the basis
16 that the State has failed to prove their case beyond a
17 reasonable doubt. There are constitutional issues that
18 have been raised, and on that basis we ask for a Rule 29
19 motion to acquit.

20 MR. GAUTHIER: Your Honor, at this point in
21 time, the State -- the Court is required to look at
22 evidence in the light most favorable to the State.
23 There have been elements on each and every element of
24 the count. The State would ask you deny their motion.

25 THE COURT: Reasonable minds could reach at

1 least different conclusions as to whether the different
2 elements of the crime have been proved beyond a
3 reasonable doubt at this stage. Okay.

4 MR. AUFDENKAMPE: That would be it, your
5 Honor. We would ask for a short break so I can consult
6 with my client.

7 THE COURT: Sure. At this point I want to go on
8 the record with you, Mr. Jackson.

9 THE DEFENDANT: Yes.

10 THE COURT: Please sit down.

11 THE DEFENDANT: Okay.

12 THE COURT: And I just want to make clear what
13 happened this morning, because we did start the trial
14 without you, which we are permitted to do under the
15 rule. You were aware that we were going to start at
16 8:30.

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: All right. And I think there was
19 some phone calls between you and your attorney by
20 8:45, which is the time that we planned, or did go ahead
21 and start, and then you finally arrived at 9:10. My
22 question to you is did you have any emergency? Did your
23 car break down?

24 THE DEFENDANT: Yes, your Honor, I had car
25 trouble, and you know, I'm not familiar with the area.

1 THE COURT: Well, hang on, because your lawyer
2 didn't tell me that at all.

3 THE DEFENDANT: I called him initially and we
4 were just missing each other on the calls. He called me
5 back. When I received his call, I missed his call. I
6 was packing the luggage back in the car. I returned
7 his call and let him know I had car trouble, I'm on my
8 way here. Hey, this is Clifton. Where are you? I'm
9 five minutes away.

10 THE COURT: What was the nature of the car
11 trouble?

12 THE DEFENDANT: It just wouldn't start. It is
13 too cold that it just wouldn't start.

14 THE COURT: How long did you have to try to
15 start it before it started?

16 THE DEFENDANT: Maybe 10, 15 minute, and then I
17 got somebody to help me, a guy, you know, that helped me
18 start it. Once we finally got it started, I made my way
19 directly here.

20 THE COURT: How did he help you start it?

21 THE DEFENDANT: I didn't know what was wrong.
22 I'm ignorant to the operations of a car, and I'm trying
23 to turn it over, trying to turn it over. Finally, I got
24 a jump. Once I got the jump, it turned over.

25 THE COURT: What time did you get that jump?

1 THE DEFENDANT: Your Honor, to be honest with
2 you, I'm rushing back and forth, and I wasn't even
3 paying attention to the time. I do know we had to be
4 here, and where we was at, we were technically, like,
5 five to seven minutes away.

6 THE COURT: Where did you stay last night?

7 THE DEFENDANT: Upper Broadway.

8 THE COURT: In Lorain or Elyria?

9 THE DEFENDANT: Lorain, I believe.

10 THE COURT: Did you stay at a hotel or private
11 home?

12 THE DEFENDANT: At a private home.

13 THE COURT: Do you have the address, by chance?

14 THE DEFENDANT: I have it in my cell phone.

15 THE COURT: Why don't you go ahead and just--

16 THE DEFENDANT: It was 13126 28th off of
17 Broadway.

18 THE COURT: Okay. So that's in the city of
19 Lorain. That's about 10 minutes from here. Did you
20 inform your attorney that you were having car trouble
21 when he contacted you this morning? Did you tell him
22 your car wouldn't start?

23 THE DEFENDANT: I told him, yes. I
24 said, "Listen, my car wouldn't start." He said -- the
25 verbiage was, "Clifton, where are you?" I said, "I'm

1 five minutes away. I had car trouble, but I'm directly
2 on my way there right now." And that was the extent of
3 the conversation because I'm on my way here. "Okay,
4 hurry up." Basically, get here.

5 THE COURT: When the Court was inquiring, we
6 weren't told that. I wasn't told that. I was just told
7 you were five minutes away, and that was at 8:45, that
8 you would be there in five minutes.

9 THE DEFENDANT: Yes.

10 THE COURT: That's -- I don't want to get in
11 between you and your client, but, you know, were you
12 advised there were car troubles?

13 MR. AUFDENKAMPE: I know we did talk when I came
14 back to the Court and said he was five minutes away, and
15 at that time he did say something about car trouble. I
16 didn't give him much of an opportunity to talk to me
17 because the Court was starting.

18 THE COURT: What time did you -- what time did
19 you get up this morning?

20 THE DEFENDANT: I actually got up, me
21 personally, I was awake at maybe 5:30 this morning.

22 THE COURT: What time did you begin -- what time
23 did you get in your car to leave to come here?

24 THE DEFENDANT: Around 8:15 we left out to the
25 car because we were told it was only a short time away.

1 THE COURT: Okay. You started to leave about 15
2 minutes to get here when it started at about 8:30.

3 THE DEFENDANT: Maybe a little bit more or
4 less.

5 THE COURT: All right. And about 10 minutes
6 away and should have you here about 8:40.

7 THE DEFENDANT: I stopped at every light. The
8 traffic was backed up.

9 THE COURT: Well, you know, given the weather
10 conditions and where you were staying and knowing that
11 the trial was to start at 8:30, I think it's reasonable
12 you could plan for some contingencies. I'm not
13 inferring that you directly or intentionally disobeyed a
14 court order; that you didn't plan properly, is that a
15 fair statement, to be here at 8:30?

16 THE DEFENDANT: I would say yes and no, because
17 I planned properly, but I just didn't take into account
18 the car situation. And once the car situation
19 started, I beelined straight here. My actions wasn't
20 intentional by any means. It's inexcusable to be late.
21 I understand the important nature of everything that we
22 discussing right now, but I won't say I didn't plan
23 properly because, in fact, I believe I did. I just
24 didn't take in to account the car wouldn't start.

25 THE COURT: Do you have any objection with the

1 trial going forward at 8:45, 25 minutes that you weren't
2 here?

3 THE DEFENDANT: I mean, I would have objections
4 because I would like to be here during the whole
5 process, to know factually what's going on. And then
6 based on that account, I had informed my attorney I also
7 would like Trooper Beyer and Trooper Trader back on the
8 witness stand for --

9 THE COURT: We're not going to discuss that
10 right now. We're just talking about -- let me have
11 counsel approach.

12 * * *

13 A SIDEBAR DISCUSSION WAS HAD AS FOLLOWS

14 * * *

15 THE COURT: What do you want to do?

16 MR. GAUTHIER: Judge, I would ask for him to be
17 remanded.

18 THE COURT: Meaning?

19 MR. GAUTHIER: Have him revoke his bond and hold
20 him for the rest of the trial.

21 MR. AUFDENKAMPE: We're going to be done today.
22 I mean, isn't that kind of a dead issue? What's the
23 point?

24 THE COURT: My concern is at the time the Court
25 made this decision, it was the Court's understanding

1 that this was a voluntary absence. And, counsel, you're
2 telling me that it was, that there was no indication of
3 car trouble when you spoke to this defendant.

4 MR. AUFDENKAMPE: Not that I recall, your Honor.
5 And if he did that, it had to be during the time that I
6 took the phone call and left the courtroom. There were
7 no voicemails.

8 THE COURT: Okay.

9 MR. AUFDENKAMPE: He did give me a text,
10 evidently, when he was parking. I did see that on my
11 phone.

12 THE COURT: Okay. All right.

13 MR. AUFDENKAMPE: But I don't have any
14 voicemails.

15 THE COURT: All right.

16 MR. AUFDENKAMPE: I did call him about three
17 times.

18 THE COURT: All right. And that was all before.

19 MR. AUFDENKAMPE: He was trying to tell me more,
20 and I just told him, "Talk to me when you get to court.
21 Just get here."

22 THE COURT: Okay. All right.

23 MR. AUFDENKAMPE: He could very well be.

24 THE COURT: Okay. All right. Very good. Are
25 you going to present any witnesses?

1 MR. AUFDENKAMPE: Well, I've got to talk -- he's
2 talking about having the troopers recalled and all kinds
3 of stuff.

4 THE COURT: That's --

5 MR. AUFDENKAMPE: -- not going to happen. I
6 understand that.

7 THE COURT: Okay. All right.

8 MR. GAUTHIER: Can we talk about the exhibits?

9 MR. AUFDENKAMPE: And I would like a few minutes
10 to talk to him.

11 THE COURT: We told them it would be a longer
12 break, so let's go ahead and go over the exhibits.

13 * * *

14 THE SIDEBAR DISCUSSION ENDED

15 * * *

16 MR. GAUTHIER: Mark, do you have any objections
17 to any of the exhibits? I've got 1 through 19, the CD,
18 the photos.

19 MR. AUFDENKAMPE: I don't have the lab.

20 MR. GAUTHIER: It should be part of the reports.

21 MR. AUFDENKAMPE: Okay.

22 * * *

23 DISCUSSION HAD OFF THE RECORD

24 * * *

25 MR. GAUTHIER: Your Honor, the State has 19

1 exhibits marked. One was the cruiser CD; 2 through 10
2 are the photos; 11 was the lab report results; 12 the
3 citation; 13 a copy of the license; 14 and 15 are the
4 packaging and material and the cocaine; 16 is the notice
5 of the seizure of the money; 17 is the certified check
6 for \$1,262; 18 is the lab receipt; and 19 is the box
7 that the drugs were shipped back in. The State would
8 move all of those items into evidence. Mr. Aufdenkampe
9 has notified the State that he has no objection to any
10 of those items except Number 16, which is the notice of
11 property seizure. Trooper Beyer testified regarding
12 that. It is not a great copy, your Honor, and I think
13 that is Mr. Aufdenkampe's.

14 MR. AUFDENKAMPE: It's illegible as far as I'm
15 concerned, your Honor. I can't tell what it says or
16 read it. I understand the State attempted --

17 THE COURT: What does this have to do with --
18 the cash?

19 MR. GAUTHIER: Yeah.

20 MR. AUFDENKAMPE: I understand the State had
21 asked for a better copy. I think this is something we
22 even discussed at one pretrial.

23 THE COURT: So your formal objection to this,
24 Attorney Aufdenkampe, is what?

25 MR. AUFDENKAMPE: It's illegible, I can't read

1 it.

2 THE COURT: I agree, I can't make it out at
3 all. It does talk about the property described as
4 follows, and then there's really no legible description
5 of it. I think it can confuse the jury, so I'm going to
6 exclude it.

7 MR. GAUTHIER: All right.

8 THE COURT: Anything else from counsel at this
9 time?

10 MR. AUFDENKAMPE: Not at this time.

11 THE COURT: So all exhibits are admitted except
12 Exhibit 16.

13 MR. GAUTHIER: Should we talk about the jury
14 instructions while we're here?

15 THE COURT: If defense rests.

16 MR. GAUTHIER: Okay.

17 THE COURT: So let's do one thing at a
18 time. Let's see what the defense is going to do, if
19 anything, and then we will discuss instructions. You'll
20 need to stay here and come get me if they have --

21 THE BAILIFF: Yes, sir.

22 * * *

23 A RECESS WAS HAD

24 * * *

25 THE COURT: Okay. We're on the record. At this

1 point we're going to discuss jury instructions.
2 Counsel, what I'd like you to do is just refer by page
3 number. We will start on the cover of the instructions
4 numbered page 1. Page 2 starts with the actual
5 instruction. Any objection to page 2 of the
6 instructions?

7 MR. GAUTHIER: No, your Honor.

8 THE COURT: Defense?

9 MR. AUFDENKAMPE: No, your Honor.

10 THE COURT: Page 3.

11 MR. GAUTHIER: No, your Honor.

12 THE COURT: Defense?

13 MR. AUFDENKAMPE: No, your Honor.

14 THE COURT: Page 4.

15 MR. GAUTHIER: No, your Honor.

16 THE COURT: Defense?

17 MR. AUFDENKAMPE: No, your Honor.

18 THE COURT: Page 5?

19 MR. GAUTHIER: No, your Honor.

20 MR. AUFDENKAMPE: No, your Honor.

21 THE COURT: Okay. Page 6?

22 MR. GAUTHIER: No, your Honor.

23 MR. AUFDENKAMPE: We have the -- hold on. I'm
24 sorry. I'm looking at my first copy, your
25 Honor, without the changes. No, your Honor.

1 THE COURT: Okay. On to page 7.

2 MR. GAUTHIER: No, your Honor.

3 MR. AUFDENKAMPE: No, your Honor.

4 THE COURT: Page 8.

5 MR. GAUTHIER: No, your Honor.

6 THE COURT: Defense?

7 MR. AUFDENKAMPE: No, your Honor.

8 THE COURT: Nine?

9 MR. GAUTHIER: No, your Honor.

10 THE COURT: Defense?

11 MR. AUFDENKAMPE: No, your Honor.

12 THE COURT: The rest are the customary ones.

13 Any objection to pages 10 and 11, which are the formal
14 closing instructions?

15 MR. GAUTHIER: No, your Honor.

16 MR. AUFDENKAMPE: No, your Honor.

17 THE COURT: All right. Now, let's go to the
18 verdict interrogatories, the questions.

19 MR. VANEK: I did find one thing. On page 9,
20 under the finding, I believe we have to say it's not
21 weapons under disability, it's criminal tools. So the
22 findings should be changed.

23 THE COURT: Page 9.

24 MR. GAUTHIER: Oh.

25 THE COURT: Finding, it should be -- yeah, the

1 element of the offense of possessing, possession of
2 criminal tools, right, instead of having weapons.

3 MR. VANEK: Yes.

4 THE COURT: And that's in both
5 paragraphs. Here's what it will read: If you find that
6 the State proved beyond a reasonable doubt all the
7 essential elements of the offense of criminal
8 tools, your verdict must be guilty. If you find the
9 State failed to prove beyond a reasonable doubt any one
10 of the essential elements of the possession of criminal
11 tools, your verdict must be not guilty. Any objection
12 to that?

13 MR. GAUTHIER: No, your Honor.

14 THE COURT: Defense?

15 MR. AUFDENKAMPE: No, your Honor.

16 THE COURT: Okay. Any objection to 10 and 11?

17 MR. GAUTHIER: No.

18 THE COURT: I believe you said none.

19 MR. GAUTHIER: That's correct.

20 THE COURT: Go ahead.

21 MR. AUFDENKAMPE: Your Honor, I just ask -- had
22 asked for an inclusion on an instruction on the
23 defendant not testifying.

24 THE COURT: Top of page 5.

25 MR. AUFDENKAMPE: Okay, thank you.

1 THE COURT: Anything else from the defense?

2 MR. AUFDENKAMPE: No, your Honor.

3 THE COURT: Okay. Let's go on to these
4 verdicts. Verdict, Count Number One, this they can find
5 him guilty or not guilty.

6 MR. GAUTHIER: That's fine.

7 THE COURT: Defense?

8 MR. AUFDENKAMPE: We're okay, your Honor.

9 THE COURT: Specification to Count One.

10 MR. GAUTHIER: Judge, I'm wondering whether
11 there should be another interrogatory regarding the
12 weight. I know we have the MDO in there as well, but
13 I'm wondering whether we should have a separate
14 interrogatory regarding the weight. I thought we had
15 one before where the jurors have to check one, like one
16 to five or something like that.

17 THE COURT: Well, I'm open. I thought we just
18 discussed that before, because in the definitions in the
19 jury instructions we define major drug offender in this
20 context.

21 MR. GAUTHIER: But that's a separate
22 finding. So I feel better if we included one.

23 THE COURT: All right. What do you want it to
24 say?

25 MR. GAUTHIER: I think we did one before for

1 Mr. Velez. Didn't we have a separate interrogatory
2 regarding the amount, Steve?

3 MR. VANEK: There was one on ranges.

4 MR. GAUTHIER: Right.

5 MR. VANEK: I'm not sure how that tacked over to
6 this case. Would it?

7 MR. GAUTHIER: We probably have to change the
8 amounts because it's under the old law, so I would.

9 THE COURT: What are the instructions in OJI?
10 Are these the ones?

11 MR. VANEK: Yeah, these are the ones. He's
12 asking for something that's outside --

13 THE COURT: No, I understand that.

14 MR. VANEK: I'll have to go --

15 MR. GAUTHIER: He could just have an
16 interrogatory indicating the jury to find a weight.

17 THE COURT: We're going to have to do that on
18 both counts, then.

19 MR. GAUTHIER: Correct.

20 THE COURT: And that interrogatory is going to
21 have to come before the MDO.

22 MR. GAUTHIER: I realize it's duplicative. I
23 would feel better if there was something separate.

24 THE COURT: Defense, you want to join in on
25 this? What we're talking about is -- let's get the

1 specific language we can agree to on the weight, and we
2 have to give them an option. We, the Jury, find
3 what, that the weight of the cocaine was or was not in
4 excess of.

5 MR. GAUTHIER: But if you find, if you find the
6 defendant guilty in verdict form Count One, we further
7 find -- proceed to page 2. We further find that the
8 weight of the substance was, and then have a check box,
9 or something like that.

10 THE COURT: Check it either.

11 MR. GAUTHIER: Yeah, just so -- I'll have to
12 look up the amounts.

13 THE COURT: Less than or more than.

14 MR. VANEK: Less than a thousand.

15 THE COURT: You have to give them the option of
16 less than, less than a thousand grams, more than a
17 thousand grams.

18 MR. GAUTHIER: Right.

19 THE COURT: Do you see what we're talking about?

20 MR. AUFDENKAMPE: Yes, I do. I thought we had
21 also discussed this.

22 THE COURT: We did. And just before we had a
23 final draft, I decided to take it out because the
24 definition of a major drug offender in the jury
25 instructions clearly states they would have to find him

1 a major drug offender, that the drugs were at least a
2 thousand.

3 MR. AUFDENKAMPE: Were over a thousand, right.

4 THE COURT: If they find him a major drug
5 offender, then they follow the instructions and found
6 that, you know --

7 MR. GAUTHIER: I know. There is recent case law
8 about that. I just, you know --

9 THE COURT: I don't have any problem doing it.
10 I think it's the right thing to do. I just want to be
11 clear. What we're going to do is have a line to check
12 for within one thousand grams or more, less than one
13 thousand grams.

14 The defense, any objection to that
15 interrogatory, which is going to proceed -- it will be a
16 part of the specification to Specification One to Count
17 One and also Specification One to Count Two.

18 MR. AUFDENKAMPE: Okay.

19 THE COURT: All right. Go ahead. Counsel for
20 the defense, anything else we need to address while
21 we're correcting the jury instructions?

22 MR. AUFDENKAMPE: Not with respect to the jury
23 instructions.

24 THE COURT: Anything else?

25 MR. AUFDENKAMPE: Your Honor, I would like to

1 enter some information into the record with respect to
2 our case. Our wish is to recall certain witnesses, and
3 the basis for that, so that it is in the record --

4 THE COURT: All right.

5 MR. AUFDENKAMPE: -- prior to the jury
6 returning.

7 THE COURT: All right. So what witnesses would
8 you like to call and what is your basis, Defense?

9 MR. AUFDENKAMPE: Your Honor, it would be our
10 desire to recall Trooper Beyer and Trooper Trader, in
11 large part, to address issues relevant to the stop
12 itself. I understand that we did not subpoena Trooper
13 Beyer to be back here today, and I understand that he
14 is, at this point, out of state, but we feel it's
15 critical to our case that we be able to recall Trooper
16 Beyer and Trooper Trader to address the Fourth Amendment
17 issues.

18 MR. GAUTHIER: Judge, those are issues that were
19 decided by Judge Zaleski over a year ago. Defense had
20 plenty of opportunity to cross-examine both Trooper
21 Beyer and Trooper Trader yesterday. The State would
22 object.

23 THE COURT: The Court will note that Trooper
24 Beyer was not subpoenaed. Had he been subpoenaed, it
25 wouldn't change this court's position that rehashing

1 issues related to the traffic stop itself are outside
2 the scope of the elements of what's to be tried here
3 and were the subject of a previous motion to suppress
4 filed by the defense.

5 In addition, the defendant was given great
6 latitude during the first day of trial to cross-examine,
7 extensively, both Trooper Trader and Trooper Beyer with
8 issues that related to this stop. And the Court, I
9 think, showed great leniency allowing those issues to
10 even be discussed. I will deny the defense's request to
11 recall those witnesses, but the objection and the
12 proffer is on the record.

13 Anything else from the defense?

14 MR. AUFDENKAMPE: I don't believe so, your
15 Honor.

16 THE COURT: Okay.

17 THE DEFENDANT: Your Honor, may I speak?

18 THE COURT: Through your attorney, you may.

19 * * *

20 DISCUSSION HAD OFF THE RECORD

21 * * *

22 WITHIN THE PRESENCE AND HEARING OF THE JURY

23 * * *

24 THE COURT: We obviously had a very extensive
25 break. That's because we went through a lot of

1 bookkeeping issues to get us ready for this stage. It's
2 my firm belief that we're going to have closing
3 arguments and you'll get this case to deliberate before
4 lunch.

5 All right. The State having rested and having
6 admitted exhibits, anything from the defense?

7 MR. AUFDENKAMPE: Nothing more than was
8 discussed earlier.

9 THE COURT: We move now to closing arguments
10 since both sides have rested their case. Closing
11 arguments are, in fact, arguments by the lawyers. Just
12 like the opening statements, they are not evidence;
13 however, they are arguments based on the evidence. This
14 is really the lawyer's chance to persuade you as to what
15 they believe their evidence has shown. I'll caution
16 them that their personal opinions are not to be
17 interjected into the closing arguments; rather, they are
18 to simply argue what the evidence has shown.

19 The State gets to go first because they have the
20 burden of proof. Any reservation for rebuttal?

21 MR. GAUTHIER: I will be reserving five minutes.

22 THE COURT: Very good. State of Ohio.

23 MR. GAUTHIER: Thank you, your Honor.

24 Good morning, Ladies and Gentlemen, and thank
25 you, once again, for your attention through this trial.

1 It hasn't been very long, and I appreciate that.

2 There's a television commercial with little kids
3 that are sitting with this guy around a table asking
4 questions. They say some kind of cute things. The tag
5 line for the commercial for AT&T is "It's not
6 complicated." This trial is kind of the same thing.
7 It's not complicated. It's actually very
8 straightforward. It's very simple.

9 I know we kind of got away from the main issue
10 in this case. We started talking about the reasons for
11 the stop, et cetera. When you get the jury
12 instructions, you're not going to have any instructions
13 about the propriety of the stop, or anything like that.
14 That's not for you to decide. Your issue is the
15 indictment. That's all you're here to decide. The
16 questions of law are decided by the Court in a separate
17 hearing.

18 So the indictment, the first count is
19 trafficking in drugs. It reads, on or about June
20 14th, 2011, in Lorain County, Ohio, the defendant did
21 knowingly prepare for shipment, shipped, transported,
22 delivered, prepared for distribution or distributed
23 cocaine or a compound, mixture, preparation, or
24 substance containing cocaine that is not crack cocaine,
25 when the defendant knew or had reasonable cause to

1 believe that he or another person intended to sell or
2 resell by the offender or another person. And we are
3 alleging that the amount of the drug exceeds 1000 grams
4 of cocaine. Well, the evidence was granted to that.

5 We have two kilos of cocaine, Ladies and
6 Gentlemen of the Jury. When you have cocaine, a
7 substance, a narcotic that is abused, there are really
8 two purposes you have it for: Your own personal use; or
9 you can have it to give away or sell to somebody
10 else. Well, when you have two kilos of cocaine with a
11 street value of somewhere between 50 and 60 thousand
12 dollars, that's way beyond personal use, Ladies and
13 Gentlemen. That's way beyond personal use.

14 Clearly, the evidence was he was transporting
15 it. It was in his car, he was on turnpike, he was
16 transporting this, and you can hear some of the
17 statements that Mr. Jackson made on the videotape.
18 Ladies and Gentlemen, clearly, he was guilty of Count
19 Number One, trafficking in drugs. He was
20 shipping, transporting, delivering drugs that were going
21 to be sold either by himself or another. Sale includes
22 even giving it as a gift.

23 Amount. The indictment reads that the drug
24 involved in the violation is cocaine or compound,
25 mixture, preparation or substance containing

1 cocaine. Well, that's important because Mr. Aufdenkampe
2 asked our lab person, Dr. Husk, about the purity and
3 about the amount of the actual drug and that's really
4 not relevant. It's a mixture. The mixture is 2001
5 grams; well over twice what we need for the
6 indictment, Ladies and Gentlemen. It's 2001 grams.
7 It's a mixture. It is a mixture. 81 percent pure.
8 It's over 2000 grams. Even if you just went to the
9 purity, it's still 1600 grams. That's more than a
10 thousand grams, Ladies and Gentlemen. You heard
11 Dr. Husk in here testify about the double testing that
12 he did on that for his conclusions.

13 Count Number Two is that on or about June
14 14th, 2011, in Lorain County, Ohio, the defendant
15 knowingly obtained, possessed or used a controlled
16 substance in violation of the revised code. The drug
17 involved in the violation is cocaine or compound,
18 mixture, substance containing cocaine. Again, over 1000
19 grams.

20 Again, Ladies and Gentlemen, you saw the
21 pictures. You saw the video. You heard the testimony
22 from the officers and from the DEA agents. You've seen
23 the cocaine, this large bag of white powder
24 here, State's Exhibit 15. This cocaine was found in the
25 back of the car that Mr. Jackson was driving. It was

1 found in his luggage. How do we know it was
2 his luggage? He told you. He told you on the
3 videotape. He's on the phone with his girlfriend, a
4 female, and he says yep, yep -- right when the officers
5 found it -- "They found it in my luggage." What did
6 they find in his luggage? Two kilos of cocaine. He
7 told you he knew it was there, he himself. I know the
8 video went on and on. You could listen to the other
9 statements in there. He talks about hiring a
10 lawyer, talks about all kinds of things.

11 Ladies and Gentlemen, if you listen to the tape,
12 even the first eight minutes of the tape, the eight to
13 ten minutes, from the tape you will hear that statement
14 from the defendant. He couldn't put it someplace else,
15 and he had to put it in the luggage. When the police
16 found it, they found it in his luggage. The defendant
17 himself tells you in this case he is guilty. The
18 amount, once again, is over a thousand grams.

19 Count Three, possession of criminal tools.
20 Ladies and Gentlemen, June 14th, 2011, Lorain
21 County, Ohio, that he possessed or had under his control
22 any substance, device, instrument or article with
23 purpose to use it criminally. What was he using to
24 transport the drugs? He was using that car.

25 So, Ladies and Gentlemen, the evidence is fairly

1 straightforward. The defendant himself tells you in
2 his own statements in the video that was provided from
3 Trooper Beyer's car, he tells you that he knew it was
4 there. I know that Mr. Jackson in the video makes a lot
5 of comments about a lot of issues. Ladies and
6 Gentlemen, some of the comments were "I was five or six
7 car lengths behind." You saw in the video he wasn't.

8 He originally told the trooper he was in
9 Detroit, then later in the video says, "I was never in
10 Detroit." So you have to wonder about the credibility
11 of those statements in the tape. He says the dog did
12 nothing -- he says to his friends, "I don't know why
13 they're searching the car. The dog did nothing."
14 Except, you saw State's Exhibit Number 10, the
15 scratchings that the dog left on the car, and you saw in
16 the video where the dog hit on the car to the scent of
17 the narcotics.

18 Ladies and Gentlemen, I appreciate what happened
19 that day. You know, we all at one point in time,
20 driving down the highway -- at one point in the video
21 you will hear Mr. Jackson say, "I saw him sitting in the
22 middle of the road." He saw the trooper. He did what
23 every one of us probably have done a million times. You
24 see a trooper, you pull behind somebody big like a
25 mobile home so the cops don't see you. Well, they did

1 see him, Ladies and Gentlemen.

2 They stopped him. And the only issues in this
3 case are whether he knowingly possessed those
4 drugs, which he himself indicated on the tape, and
5 whether they were being shipped or transported for sale
6 or resell by himself or another, and the criminal
7 tools.

8 Ladies and Gentlemen, I submit to you that the
9 State has proven each and every element, I have met my
10 burden and I have proven the defendant in this
11 particular case guilty beyond a reasonable doubt. You
12 have the drugs, you have the packaging, you see the
13 picture of the packaging. Look at those picture and see
14 the same lettering on those bags. You heard Dr. Husk
15 testify he separated those two items. You'll see
16 his report, Ladies and Gentlemen. The evidence is
17 sufficient to find the defendant guilty beyond a
18 reasonable doubt.

19 I thank you for your attention.

20 THE COURT: All right. Thank you. Defense,
21 closing argument.

22 MR. AUFDENKAMPE: Thank you.

23 Well, I'm sure the State would like you to
24 believe it's not that difficult, just like the
25 commercial he talked about. But I think the evidence

1 shows that it is that difficult, because there are a lot
2 of questions here, there are a lot of unanswered
3 questions. There are a lot of inconsistencies in the
4 statements of the officer. There's inconsistencies in
5 the report. We're basing this basically on a
6 constitutional right.

7 We all have different ideas about the
8 constitution. We can argue about them, disagree about
9 them, but in the end we're all Americans, and there's a
10 constitution there to protect us. We're fortunate to
11 have the constitution provide us with rights. It
12 provides us with protection. We have the Fourth
13 Amendment, which deals with protection from unreasonable
14 search and seizure, warrantless searches; the Sixth
15 Amendment right to a speedy trial, confront witnesses;
16 we have due process; we have equal protection rights,
17 which would protect any type of profiling.

18 What do we have here in this case? Basically,
19 we've got two troopers assigned to a specific
20 task. That task is to stop drug trafficking. So what
21 are they going to do? They're going to stop cars,
22 that's what they're doing. They're stopping cars to try
23 to find drugs. Isn't that a good idea? Isn't that what
24 we want? You want them to stop them. When they do
25 that, they have to do it within our constitutional

1 right, within our constitutional protection.

2 So we have two troopers here. They stopped
3 Mr. Jackson. I think the evidence certainly indicates
4 that the stop was questionable.

5 MR. GAUTHIER: Judge, I'm going to object at
6 this point. Not about the stop.

7 THE COURT: Counsel.

8 MR. AUFDENKAMPE: I understand it's not about
9 the stop, but I think there are issues dealing with the
10 stop that were brought into evidence. I think there are
11 issues with the stop that deal with the constitutional
12 rights. There are --

13 THE COURT: We're not going to argue the
14 legality of the stop. If you have issues with the
15 credibility of the officers as it relates --

16 MR. AUFDENKAMPE: That's where I am getting to.

17 THE COURT: That's going to be much more narrow,
18 so let's keep it to that.

19 MR. AUFDENKAMPE: Yes, your Honor.

20 THE COURT: Thank you.

21 MR. AUFDENKAMPE: Let's talk about the DVD
22 then, the actual stop itself. First of all, we see in
23 the police report, the police report says, I was on
24 patrol on mile marker one something, 135, 130
25 something. 135. Actually, when he first saw

1 Mr. Jackson, they were at 133 side by side. That's the
2 first time this came out. The report indicated they
3 were, indicated they were at 133. The explanation was,
4 oh, that's when I turned on my video. So he follows
5 Mr. Jackson from mile marker 133 to 135, turns on
6 his video. The trooper indicates that it's three to
7 four hundred feet behind Mr. Jackson at the time. He
8 can tell that he's two to three car lengths behind the
9 mobile home.

10 He follows Mr. Jackson. Mr. Jackson passes the
11 mobile home, I think it was, and then follows him two or
12 four miles before he stops. This seems a little
13 unusual. When you're charged with following too
14 close, you have, under Ohio Revised Code 4511.34, that's
15 what the ticket was they brought into evidence, that law
16 doesn't say you have to be so many car lengths behind;
17 that law says what a person believes is reasonable and
18 prudent. So reasonable and prudent to the driver.

19 Mr. Jackson's been asked several questions about
20 where he's coming from, where he's going to. He's asked
21 for his driver's license, registration and rental
22 document, which he provides. He provides his documents,
23 he's answered the questions. That caused the Trooper
24 Beyer to believe that something more is probably going
25 on. Yet, he never retained or preserved the evidence of

1 the rental agreement, and he talked a lot about the
2 rental agreement.

3 We look at testimony from Trooper Beyer; it's
4 inconsistent. The report doesn't mention they were at
5 133 together. It doesn't mention they were working as a
6 team. He follows him for two miles, allegedly, could
7 tell he's two to three car lengths behind the mobile
8 home, and yet in the video we see many cars following at
9 approximately, in some cases, probably closer. But he
10 picked out one car, picked up one person.

11 I found it really interesting that Trooper Beyer
12 had consistently said he couldn't hear the conversation
13 on the cell phones by Mr. Jackson to this female and
14 another male. Yet, when Officer Taliano came up
15 here, he testified that, in fact, Trooper Beyer had told
16 him, well, I heard the conversation and I checked them
17 out after the fact to make sure what I heard was, in
18 fact, the truth. That's what I really heard. So
19 again, that's an inconsistency under oath sitting here
20 on the witness stand.

21 The LEADS became a big issue. LEADS was
22 down. How were you notified? Told by radio. We were
23 listening to the tape. We didn't hear anything about
24 LEADS. We didn't here anything about LEADS going down,
25 didn't hear anything about LEADS coming back

1 up. Perhaps LEADS was up the whole time. I think that
2 there are a number of inconsistencies.

3 The police are there to protect us, to follow
4 our rights, to make sure that they put together good
5 reports. That's why, with Officer Taliano here, he had
6 put in there: Well, Officer Beyer advised me; Officer
7 Beyer reported to me. Yet, Officer Beyer sat on the
8 stand and said that wasn't the case when I asked him
9 those questions.

10 Could you hear the conversation? No, I
11 didn't. He let those two cell phones in the car after
12 they placed him under arrest. He knew he was still
13 talking on the phone. Did you do that intentionally?
14 Oh, no. I didn't know he had the cell phone. I think
15 that what we have here is a situation where it may --
16 again, they were so anxious to find drugs from
17 someplace, anyplace, that they basically didn't document
18 properly. They certainly didn't testify truthfully.

19 You've got Trooper Trader here with the dog. We
20 watched the video. At one point he either taps the car
21 or points to the car. It's difficult to tell with the
22 grainy video. Yet, that's where the dog scratch is. He
23 testified that pointing, tapping on it, whatever, was
24 not taught for the dog to do that. Why was it at the
25 spot he touched or pointed to? Why was that the spot

1 the dog alerted to or indicated to?

2 There's a lot of questionable things going on
3 here, and I think that based on that it may be that this
4 search shouldn't have continued, it shouldn't have
5 gotten to the point it did.

6 MR. GAUTHIER: Objection.

7 THE COURT: I'll sustain that. Disregard any
8 comment with regard to the legality of the search.

9 MR. AUFDENKAMPE: Thank you, your Honor.

10 THE COURT: Any rebuttal?

11 MR. GAUTHIER: Yes, your Honor, just a couple
12 seconds worth.

13 Mr. Aufdenkampe said there's a lot of unanswered
14 questions. There aren't. There's no inconsistencies.
15 The video is video. The State's relying primarily on
16 the video because that's the statements that Mr. Jackson
17 made. It's not about the stop. It's about whether he
18 knew the drugs were in the car, whether he possessed
19 them and whether or not there's drug trafficking and the
20 criminal tools. That's what it is about.

21 The video is the video, Ladies and Gentlemen,
22 and I ask you to find the defendant guilty. Thank
23 you.

24 THE COURT: Thank you.

25 All right. Members of the jury: You have heard

1 the evidence and the arguments of counsel. The court
2 and the jury have separate functions: You decide the
3 disputed facts and the Court provides the instructions
4 of law. It is your sworn duty to accept these
5 instructions and to apply the law as it is given to you.
6 You are not permitted to change the law, nor to apply
7 your own conception of what you think the law should be.

8 A criminal case begins with the filing of an
9 indictment. The indictment informs the Defendant that he
10 has been charged with an offense. The fact that it was
11 filed may not be considered for any other purpose. The
12 plea of not guilty is a denial of the charge and puts in
13 issue all the essential elements of each offense.

14 The defendant is presumed innocent until his
15 guilt is established beyond a reasonable doubt. The
16 Defendant must be acquitted unless the state produces
17 evidence which convinces you beyond a reasonable doubt
18 of every essential element of the offense charged in the
19 indictment.

20 Reasonable doubt is present when, after you have
21 carefully considered and compared all the evidence, you
22 cannot say you are firmly convinced of the truth of the
23 charge. Reasonable doubt is a doubt based on reason and
24 common sense.

25 Reasonable doubt is not mere possible doubt,

1 because everything relating to human affairs or
2 depending on moral evidence is open to some possible or
3 imaginary doubt.

4 Proof beyond a reasonable doubt is proof of
5 such character that an ordinary person would be willing
6 to rely and act upon it in the most important of his own
7 affairs.

8 If after a full and impartial consideration of
9 all the evidence, you are firmly convinced of the truth
10 of the charge, the State has proven its case beyond a
11 reasonable doubt. If you are not firmly convinced of
12 the truth of the charge, you must find the Defendant not
13 guilty.

14 Evidence is all the testimony received from the
15 witnesses, the exhibits admitted during the trial, facts
16 agreed to by counsel and any facts which the Court
17 requires you to accept as true. Evidence may be direct
18 or circumstantial, or both.

19 Direct evidence is the testimony given by a
20 witness who has seen or heard the facts to which he
21 testifies. It includes exhibits admitted into evidence
22 during the trial.

23 Circumstantial evidence is the proof of facts or
24 circumstances by direct evidence from which you may
25 reasonably infer other related or connected facts which

1 naturally and logically follow, according to the common
2 experience of mankind.

3 For example, if you awake in the morning and see
4 that there is snow on the ground, that is circumstantial
5 evidence that it snowed earlier. If you see human
6 footprints in sand on a beach, that is circumstantial
7 evidence that someone walked there.

8 Thus to infer or make an inference is to reach a
9 reasonable conclusion of fact which you may, but are not
10 required to make, from other facts which you find have
11 been proven, beyond a reasonable doubt, by direct
12 evidence.

13 The sufficiency of circumstantial evidence to
14 prove a fact or to prove guilt depends upon, among other
15 things, whether reason and common sense lead us from the
16 facts proven by direct evidence to the fact sought to be
17 proved by circumstantial evidence.

18 If you determine that the connection between
19 what is proven and what is sought to be proven is strong
20 enough to support a finding of proof, beyond a
21 reasonable doubt, then the circumstantial evidence is
22 sufficient.

23 On the other hand, if that connection is so weak
24 that you cannot say the fact sought to be proven by
25 circumstantial evidence has been proven, beyond a

1 reasonable doubt, then the circumstantial evidence is
2 insufficient.

3 Whether an inference is made rests entirely with
4 you. You may not make one inference from another
5 inference, but you may draw more than one inference from
6 the same facts or circumstances.

7 If the circumstances create inferences that are
8 equally consistent with either guilty or not guilty,
9 then such inferences must be resolved in favor of the
10 defendant being not guilty.

11 Direct evidence and circumstantial evidence are
12 of equal weight or probative value. Where the evidence
13 is both direct and circumstantial, the combination of
14 the two must satisfy you of the Defendant's guilt,
15 beyond a reasonable doubt, before you can return a
16 verdict of guilty.

17 The evidence does not include the indictment or
18 opening statements or closing arguments of counsel. The
19 opening statements and closing arguments of counsel are
20 designed to assist you. They are not evidence.

21 Statements or answers that were stricken by the
22 Court or which you were instructed to disregard are not
23 evidence and must be treated as though you never heard
24 them.

25 You must not speculate as to why the Court

1 sustained the objection to any question or what the
2 answer to such question might have been. You must not
3 draw any inference or speculate on the truth of any
4 suggestion included in a question that was not answered.
5 In considering the date of an offense the words "on or
6 about," include the date referenced as well as the day
7 before and after.

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

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

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

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

4 It is not necessary that the defendant take the
5 witness stand in his own defense. He has a
6 constitutional right not to testify. The fact that he
7 did not testify must not be considered for any purpose.

8 Generally, a witness may not express an opinion.
9 However, one who follows a profession or special line of
10 work is permitted to express his or her opinion, because
11 of their education, knowledge and experience. The
12 purpose of such testimony is to assist you in arriving
13 at a just verdict. As with other witnesses, upon you
14 alone rests the duty of deciding what weight is to be
15 given to the testimony of an expert.

16 In determining its weight, you may take into
17 consideration the expert's skill, experience, knowledge
18 and veracity, and also the familiarity the expert has
19 with the facts of this case. You must also consider the
20 usual rules for testing credibility and for determining
21 the weight to be given to the testimony of the witness.

22 Venue means that the offense charged, or any
23 element or elements of the offense, took place in Lorain
24 County, Ohio.

25 **TRAFFICKING IN DRUGS**

1 In Count One of the indictment, Defendant
2 Clifton Jackson is charged with trafficking in cocaine.
3 Before you can find the defendant guilty, you must find
4 beyond a reasonable doubt that on or about the 14th day
5 of June, 2011, and in Lorain County, Ohio, the defendant
6 knowingly prepared for shipment, shipped, transported,
7 delivered, prepared for distribution or distributed
8 cocaine or a compound, mixture, preparation, or
9 substance containing cocaine that is not crack cocaine,
10 when the defendant knew or had reasonable cause to
11 believe that he or another person intended to sell or
12 resell the cocaine.

13 A person acts knowingly, regardless of his
14 purpose, when he is aware that his conduct will probably
15 cause a certain result. A person has knowledge of
16 circumstances when he is aware that such circumstances
17 probably exist.

18 **SOLD**

19 "Sale" includes delivery, barter, exchange,
20 transfer, or gift, or offer thereof, and each such
21 transaction made by any person, whether as principal,
22 proprietor, agent, servant, or employee.

23 **REASONABLE CAUSE TO BELIEVE**

24 When deciding whether the defendant had
25 reasonable cause to believe that another person intended

1 to sell or resell the cocaine, you must put yourself in
2 the position of this defendant with his knowledge or
3 lack of knowledge, and under the circumstances and
4 conditions that surrounded him at that time. You must
5 consider the conduct of the persons involved and decide
6 whether their acts and words and all the surrounding
7 circumstances would have caused a person of ordinary
8 prudence and care to believe that another person
9 intended to sell or resell the cocaine.

10 **DISTRIBUTE**

11 "Distribute" means to deal in, ship, transport,
12 or deliver, but does not include administering or
13 dispensing a drug.

14 **OFFER**

15 "Offer" means to present for acceptance or
16 rejection.

17 If your verdict is guilty, you will separately
18 decide beyond a reasonable doubt the amount of cocaine
19 involved at the time of the offense. If your verdict is
20 not guilty, you will not decide this issue.

21 **SPECIFICATION ONE**

22 If your verdict is guilty, you will separately
23 decide beyond a reasonable doubt whether Defendant
24 Clifton Jackson is a major drug offender.

25 "Major drug offender" means an offender who is

1 convicted of or pleads guilty to the possession of, sale
2 of, or offer to sell any drug, compound, mixture,
3 preparation, or substance that consists of or contains
4 at least one thousand grams of cocaine.

5 **SPECIFICATION TWO**

6 If your verdict is guilty, you will separately
7 decide whether the defendant's ownership interest in the
8 property described below is subject to forfeitures due
9 to the defendant's use or intended use of said property
10 in the commission of a felony drug abuse offense:

11 1) \$1,262.00 in cash.

12 **POSSESSION OF DRUGS**

13 In Count Two to the indictment, Defendant
14 Clifton Jackson is charged with possession of drugs.
15 Before you can find the defendant guilty, you must find
16 beyond a reasonable doubt that on or about the 14th day
17 of June, 2011, and in Lorain County, Ohio, the defendant
18 knowingly obtained, used or possessed cocaine or a
19 compound, mixture, preparation, or substance containing
20 cocaine that is not crack cocaine.

21 "Knowingly" has previously been defined for you.

22 **POSSESS**

23 "Possess" means having control over a thing or
24 substance, but may not be inferred solely from mere
25 access to the thing or substance through ownership or

1 occupation of the premises upon which the thing or
2 substance is found.

3 If your verdict is guilty, you will separately
4 decide beyond a reasonable doubt the amount of cocaine
5 or the compound, mixture, preparation, or substance
6 containing cocaine that is not crack cocaine involved at
7 the time of the offense. If your verdict is not guilty,
8 you will not decide this issue.

9 **SPECIFICATION ONE**

10 If your verdict is guilty, you will separately
11 decide beyond a reasonable doubt whether Defendant
12 Clifton Jackson is a major drug offender.

13 "Major drug offender" has previously been
14 defined for you.

15 **POSSESSING CRIMINAL TOOL**

16 In Count Three of the indictment, Defendant
17 Clifton Jackson is charged with possessing criminal
18 tools. Before you can find the defendant guilty, you
19 must find beyond a reasonable doubt that on or about the
20 14th day of June, 2011, and in Lorain County, Ohio, the
21 defendant possessed or had under his control a
22 substance, device, instrument or article with purpose to
23 use it criminally.

24 **POSSESSION**

25 Possession of a substance, device, instrument or

1 article is an essential element of the offense
2 Possessing Criminal Tools.

3 A person has possession when he knows that he
4 has the object on or about his person, property or
5 places it where it is accessible to his use or direction
6 and he has the ability to direct or control its use.

7 "Possess" or "possession" means having control
8 over a thing or substance but may not be inferred solely
9 from mere access to the thing or substance through
10 ownership or occupation of the premises upon which the
11 thing or substance is found.

12 **PURPOSELY**

13 Purpose to use a tool criminally is an essential
14 element of the crime of Possessing Criminal Tools.

15 A person acts purposely when it is his/her specific
16 intention to cause a certain result. It must be
17 established in this case that at the time in question
18 there was present in the mind of the defendant a
19 specific intention to use the tools criminally.

20 When the essence of the offense is a prohibition against
21 conduct of a certain nature, a person acts purposely if
22 his specific intention was to engage in conduct of that
23 nature, regardless of what he may have intended to
24 accomplish by his conduct.

25 **FELONY USE**

1 If your verdict is guilty you will separately
2 decide whether the state has proven beyond a reasonable
3 doubt that the defendant intended to use the substance,
4 device, instrument or article to commit the offense of
5 trafficking in drugs.

6 **FINDING**

7 If you find that the state proved beyond a
8 reasonable doubt all the essential elements of the
9 offense of possessing criminal tools, your verdict must
10 be guilty.

11 If you find that the state failed to prove
12 beyond a reasonable doubt any one of the essential
13 elements of the offense of possessing criminal tools,
14 then your verdict must be not guilty.

15 **QUESTIONS BY THE JURY**

16 If during your deliberations you have a
17 question, it should be discussed in the privacy of your
18 jury room. It should not reflect the status of your
19 deliberations.

20 Any question from the jury should be reduced to
21 writing and signed by the foreperson, so that there will
22 be no misunderstanding as to what you request. It
23 should then be delivered to the Bailiff, who will submit
24 it to the Court.

25 There will be multiple verdict forms for each

1 count and some will have interrogatories or specific
2 questions attached. These will be given to you to take
3 into your deliberations and they are self-explanatory.

4 I'm going to go go through those with you. The
5 first verdict form has to do with Count One. We, the
6 Jury, find the defendant, Clifton A. Jackson, and you
7 will fill in "guilty" or "not guilty" of the trafficking
8 in drugs charge as set forth in Count One.

9 Indictment for a finding of guilty or not
10 guilty, all 12 must agree.

11 If your finding is guilty on Count One, you go
12 to the next page. If your finding is not guilty, you go
13 to page 5, and those instructions are here on these
14 forms.

15 The next question, if there is a guilty finding,
16 has to do with a specification, and it asks you to find
17 whether or not the substance was 1000 grams of cocaine
18 or less than 1000 grams of cocaine, and you will check
19 whichever box you decide on. Again, that must be signed
20 by all 12.

21 The next specification, if you find the
22 defendant guilty of Count One and if you find that there
23 was more than 1000 grams of cocaine, you will be asked
24 whether he is considered to be, is or is not, a major
25 drug offender as defined by you in these instructions.

1 Specification Two on Count One has to do with
2 the ownership interest in the money, the \$1,262. That
3 is self-explanatory. And again, it would have to be
4 signed by all 12.

5 The next is the verdict form for Count Two,
6 which has to do with possession of drugs. Same will
7 apply here, whether you find him guilty or not guilty,
8 and needs to be signed by all 12.

9 Because there's a specification to Count One --
10 Count Two, the same as Count One has to do with whether
11 or not was there 1000 -- at least 1000 grams of cocaine,
12 and you will determine whether there was that much or
13 less and sign that.

14 Then there's also a specification to Count Two,
15 which has to do with the major drug offender
16 specification.

17 And finally, the third verdict form has to do
18 with whether there was possession of criminal tools.

19 These are mostly self-explanatory, but I wanted
20 to go through them with you.

21 Finally, you may not discuss or consider the
22 subject of punishment. Your duty is confined to the
23 determination of the guilt or innocence of the Defendant
24 and to the determination of any additional finding
25 submitted to you. In the event you find the Defendant

1 guilty, the duty to determine the punishment is placed,
2 by law, upon the Court.

3 You must not be influenced by any consideration
4 of sympathy or prejudice. It is your duty to carefully
5 weigh the evidence, to decide all disputed questions of
6 fact, to apply the instructions of the Court to your
7 findings, and to render your verdict accordingly. In
8 fulfilling your duty, your efforts must be to arrive at
9 a just verdict.

10 Consider all the evidence and make your finding
11 with intelligence and impartiality, and without bias,
12 sympathy or prejudice, so that the state of Ohio and the
13 Defendant will feel that their case was fairly and
14 impartially tried. If during the course of the trial,
15 the Court said or did anything that you consider an
16 indication of the court's view on the facts, you are
17 instructed to disregard it.

18 If during your deliberations you have any
19 questions, the foreman must put your question in
20 writing, indicating specifically what is requested. Such
21 communication must be delivered to the bailiff.

22 Your initial conduct upon entering the jury room
23 is a matter of importance. It is not wise immediately to
24 express a determination to insist upon a certain verdict
25 because if your sense of pride is aroused you may

1 hesitate to change your position even if you later
2 decide you are wrong.

3 Consult with one another, consider each other's
4 views and deliberate with the objective of reaching an
5 agreement, if you can do so without disturbing your
6 individual judgment. Each of you must decide this case
7 for yourself, but you should do so only after a
8 discussion and consideration of the case with your
9 fellow jurors. Do not hesitate to change an opinion if
10 convinced that it is wrong.

11 However, you should not surrender honest
12 convictions in order to be congenial or to reach a
13 verdict solely because of the opinion of other jurors.
14 You should confer with each other in your deliberations
15 and give careful consideration to the views expressed by
16 each juror.

17 Until your verdict is announced in open Court,
18 you are not to disclose to anyone the status of your
19 deliberation or the nature of your verdict. After your
20 verdict is returned and when your jury services are
21 completed you may discuss this case with anyone but you
22 are not required to do so. Whether you discuss this
23 case with counsel, the press or anyone else after you
24 are discharged is a matter of your own free choice.

25 The court will place in your possession the

1 verdict forms and interrogatories. The foreperson will
2 retain possession of these records, including the
3 verdict, and return them to the courtroom. The
4 foreperson will see that your discussions are orderly
5 and that each juror has the opportunity to discuss the
6 case and to cast his vote; otherwise, the authority of
7 the foreperson is the same as any other juror. Until
8 your verdict is announced in open court, you are not to
9 disclose to anyone else the status of your deliberations
10 or the nature of your verdict.

11 After you retire select a foreperson and
12 whenever all twelve -- I repeat, all twelve -- jurors
13 agree upon a verdict, you will sign the verdict in ink
14 and advise the bailiff by using the telephone in the
15 jury room. You will then be returned to the courtroom.

16 On behalf of the public and the parties the
17 Court expresses appreciation for your services in
18 performing this important public function.

19 Now your job really begins to deliberate.

20 * * *

21 THEREUPON, THE JURY COMMENCED DELIBERATIONS

22 AT 11:40 A.M.

23 * * *

24 OUT OF THE PRESENCE AND HEARING OF THE JURY

25 * * *

1 THE COURT: The Court's received a question from
2 the jury. And this is the question: "Does a transcript
3 of the video/audio tape recorded during the traffic stop
4 exist? If so, can the jury review a copy for the
5 purpose of clarity?"

6 MR. GAUTHIER: A copy does not exist. It's
7 easier to hear it on a laptop than it is in this
8 courtroom.

9 MR. AUFDENKAMPE: That's true. I mean, this was
10 almost inaudible. If you play it on the laptop, I found
11 it to be much clearer.

12 THE COURT: It is on a CD?

13 MR. GAUTHIER: DVD.

14 THE COURT: Do they have a laptop in the jury
15 room?

16 THE BAILIFF: No, we do not.

17 MR. GAUTHIER: I can get one.

18 THE COURT: The bottom line is the transcript
19 does not exist. So any objection to the Court
20 answering, "A transcript of the tape does not exist"?
21 Any objection from the State?

22 MR. GAUTHIER: No objection, your Honor.

23 THE COURT: Any objection from the defense?

24 MR. AUFDENKAMPE: No, your Honor.

25 MR. GAUTHIER: Do you want to add that the

1 parties have indicated that it's easier to listen to it
2 on a laptop or provide a laptop to listen to it, or
3 something like that?

4 MR. AUFDENKAMPE: I think the bottom line was
5 does the transcript exist. The transcript does not
6 exist.

7 THE COURT: I'm going to write -- my answer is
8 going to be that no transcript of the recording
9 exists. If they have a question, a question on how can
10 we hear it, then I'll address it.

11 MR. GAUTHIER: Are we not going to provide them
12 with a laptop at this point in time?

13 THE COURT: No. If they ask for one, I would.

14 * * *

15 A RECESS WAS HAD

16 * * *

17 OUT OF THE PRESENCE AND HEARING OF THE JURY

18 * * *

19 THE COURT: The second question: "Can we get a
20 DVD player to review the audio videotape?"

21 MR. GAUTHIER: I would suggest the Court answer
22 that "We will provide you with a laptop to view the
23 videotape." They have a right to review the evidence.

24 MR. AUFDENKAMPE: I don't have an objection to
25 it.

1 THE COURT: Okay. So for the record, a player
2 will be provided.

3 * * *

4 THEREUPON, THE JURY RETURNED TO THE COURTROOM
5 WITH THEIR VERDICT AT 1:55 P.M.

6 * * *

7 THE COURT: It is my understanding that you've
8 reached a verdict. Does the foreperson have the verdict
9 forms?

10 THE FOREPERSON: Yes.

11 THE COURT: Would you present those to the
12 bailiff at this time.

13 All right. Counsel, do you want to approach?
14 We have just an issue with the labelling of one of the
15 verdicts.

16 * * *

17 A SIDEBAR DISCUSSION WAS HAD AS FOLLOWS

18 * * *

19 THE COURT: Spec one is two. Count Two -- Spec
20 One to Count Two it should be. So why don't we give it
21 to them, retire and change it and just ask them --

22 MR. AUFDENKAMPE: It's got to be changed.

23 MR. GAUTHIER: Yeah. Tell them we didn't catch
24 it. Re-fill out the new form.

25 * * *

1 THE SIDEBAR DISCUSSION ENDED

2 * * *

3 THE COURT: We made a typo. You folks did
4 fine. However, what I'm going to have you do is just
5 return briefly to the deliberation room. This has to do
6 with your verdict on Count Two. Your finding on Count
7 Two is fine; however, when it got to the specifications,
8 you made a finding as to Specification One to Count One,
9 and that was our mistake. You had a finding on Count
10 Two. It should read Specification One to Count
11 Two. These are both messed up.

12 * * *

13 A SIDEBAR DISCUSSION WAS HAD AS FOLLOWS

14 * * *

15 THE COURT: Count Two, Specification One to
16 Count Two; Specification Two to Count Two.

17 MR. GAUTHIER: Oh, okay. That's the
18 amount. This specification, it should be Interrogatory
19 One to Count Two, or something like that.

20 MR. AUFDENKAMPE: We have to get this
21 straightened out.

22 THE COURT: It's clear what they did here. It's
23 not complicated, but --

24 MR. GAUTHIER: It says "Interrogatory One to
25 Count One."

1 THE COURT: Why don't we make these changes and
2 send them back. Stay here.

3 * * *

4 THE SIDEBAR DISCUSSION ENDED

5 * * *

6 THE COURT: Page 2, we're changing from
7 Specification One to Count One to Interrogatory One to
8 Count One; page 3, Specification One to Count One
9 remains the same; page 4, Specification Two to Count One
10 remains the same; page 6 should read Interrogatory
11 Number One to Count Two; page 7 is correct,
12 Specification One to Count Two; and page 8 is correct as
13 to Count Three.

14 Do they have to go back on this?

15 MR. GAUTHIER: Err on the side of caution.

16 THE COURT: Ladies and Gentlemen, what I'm going
17 to do, I just changed the caption. You heard what I
18 did, changing the caption on some of these
19 interrogatories. You just have to go back and review
20 them and let us know if they are still consistent with
21 your verdict and find in the case. It shouldn't take
22 long.

23

24

25

1 * * *

2 THEREUPON, THE JURY COMMENCED DELIBERATIONS
3 AND WERE BROUGHT BACK INTO THE COURTROOM
4 WITH THEIR VERDICT AT 2:10 P.M.

5 * * *

6 THE COURT: Okay. Foreperson, if you would hand
7 the verdicts and interrogatories to the bailiff.

8 Thank you. You want to stand, please?

9 All right. We, the Jury, find the defendant,
10 Clifton A. Jackson, guilty of trafficking in drugs, as
11 charged in Count One of the indictment. This verdict
12 form is signed by all 12 jurors.

13 We, the Jury, find the amount of the substance
14 in possession of the defendant, Clifton A. Jackson, to
15 be 1000 grams or more of cocaine. This is their answer
16 to Interrogatory Number One to Count One of the
17 charge. This is signed by all 12 jurors.

18 We, the Jury, find the defendant, Clifton A.
19 Jackson, is a major drug offender. This is their answer
20 to Specification One of Count One. Signed by all 12
21 jurors.

22 We, the Jury, find the defendant, Clifton A.
23 Jackson, did not use or intend to use his ownership
24 interest in the \$1,262 in cash in the commission of a
25 felony drug abuse offense. This is signed by all 12

1 jurors in response to Specification Two to Count One.

2 Verdict, Count Two: We, the Jury, find the
3 defendant, Clifton A. Jackson, guilty of possession of
4 drugs, as charged in Count Two of the indictment. This
5 is signed by all 12 jurors.

6 Interrogatory Number One to Count Two: We, the
7 Jury, find the amount of the substance in the possession
8 of Clifton A. Jackson to be 1000 grams or more of
9 cocaine. This is signed by all 12 jurors.

10 Specification One to Count Two: We, the Jury,
11 find the defendant, Clifton A. Jackson, is a major drug
12 offender. This is signed by all 12 jurors.

13 Verdict on Count Three of the indictment: We,
14 the Jury, find the defendant, Clifton A. Jackson, guilty
15 of possessing criminal tools, as charged in Count Three
16 of the indictment. This is signed by all 12 jurors.

17 Anything from the defense?

18 MR. AUFDENKAMPE: We'd ask that the jury be
19 polled, your Honor.

20 THE COURT: What the defense has asked is that
21 the jury be polled. So I will go through Juror Number 1
22 and Juror Number 12, and I will ask if what I just read
23 out does, in fact, represent your verdict. You will
24 answer yes or no.

25 * * *

1 ALL JURORS AFTER BEING ASKED BY THE
2 COURT, "DOES THIS REPRESENT YOUR VERDICT,"
3 ANSWERED AFFIRMATIVELY.

4 * * *

5 THE COURT: Anything else from the defense?

6 MR. AUFDENKAMPE: Not at this time, your
7 Honor.

8 THE COURT: What we're going to do, I ask the
9 deputies to remain in the courtroom. We will move to
10 the sentencing in about a half an hour or so. We need
11 to do some research on some issues. At this point, you
12 are -- you will be directed back to the jury room and
13 then you will be discharged.

14 Oftentimes, I like to make myself available for
15 a few minutes if you might have any questions. You're
16 not required to stay and speak with me, but if you would
17 like to, you can simply do that.

18 So on behalf of the county and parties, again, I
19 want to thank you for your service in this very
20 important matter.

21 * * *

22 THE JURY WAS DISMISSED

23 * * *

24 A RECESS WAS HAD

25 * * *

1 THE COURT: We're back on the record. At this
2 time there are some issues with respect to sentencing in
3 this case, Mr. Jackson. Because this offense occurred
4 in June of 2011, there was a different sentencing
5 statute than there is, than there is today. You have a
6 right to elect which statute you want to be sentenced
7 on, but it is rather important because I want to explain
8 to you the situation or the difference between the two
9 statutes.

10 The older statute, the statute that was in
11 effect at the time of this offense, there is a mandatory
12 maximum 10-year prison term on that, under that statute,
13 for the offense that you were convicted of. In addition
14 to that, upon the Court's finding of two elements, the
15 Court could add an additional one to ten years to that.
16 So the maximum sentence under the old statute could be
17 20 years.

18 Here are the two findings that are required by
19 the Court: If the Court finds that the prison term
20 imposed pursuant to (d) (2) (a) (3) -- this is the 10
21 years, all right -- is inadequate to punish the offender
22 and to protect the public from future crime, because the
23 applicable factors under 2929.12 of the Revised Code
24 indicate a greater likelihood of recidivism or repeat
25 outweigh the applicable factors under this section

1 indicate a lesser likelihood of recidivism. That's the
2 first finding.

3 The second finding, again, under the old statute
4 would that be the Court finds that the prison term
5 imposed, meaning the 10-year term, is demeaning to the
6 seriousness of the offense because one or more of the
7 factors present under 2929.12 of the Revised Code,
8 indicating that the offender's conduct is more serious
9 than conduct normally constituting offenses are present
10 and they outweigh the applicable factors under that
11 section, indicating that the offender's conduct is less
12 conduct than the conduct normally constituting the
13 offense.

14 Those are the two findings that are there, and I
15 would have to weigh some evidence from the State to find
16 out if these could be met.

17 Factors with respect to the first finding would
18 be, when they talk about likelihood of repeat, the Court
19 would consider any prior criminal record that you have,
20 indicating that maybe there's a disposition toward
21 criminal activity. So that recidivism or repeat
22 criminal activity would be necessary. And then the kind
23 of information that would be required for the second
24 finding would be that the facts of this particular
25 offense were such that they were more egregious than

1 normally associated with these types of offenses. So
2 that would be what would be necessary under the old
3 statute. And so there's a possibility of a prison term
4 of 20 years.

5 Under the new statute, the current
6 statute, there's no discretion. It is a maximum
7 mandatory sentence of 11 years on the trafficking
8 count.

9 I do want to make clear to you that you were
10 also convicted of possession of criminal tools, which
11 also carries a prison term in the F-5 range of 12
12 months.

13 MR. GAUTHIER: Twelve months.

14 THE COURT: I could add on both of these cases
15 an additional year, regardless of which one you
16 choose. I'm telling you right now I'm not going to do
17 that. I'm going to run your sentences concurrent.
18 We're just going to talk about possibilities under the
19 different statutes for the F-1 trafficking with the MDO
20 specification.

21 Do you want a few minutes to speak with your
22 lawyer about your options, which one you want to choose?

23 MR. AUFDENKAMPE: Yes, please, your Honor.

24 * * *

25 A DISCUSSION WAS HAD OFF THE RECORD

1 BETWEEN MR. AUFDENKAMPE AND THE DEFENDANT

2 * * *

3 MR. AUFDENKAMPE: Your Honor, after discussing
4 both prior to the Court coming in and after the
5 explanation, my client has elected to be sentenced under
6 the new statute, mandatory is 11.

7 THE COURT: Is that, in fact, your decision,
8 Mr. Jackson?

9 THE DEFENDANT: Yes, sir. That's a no-brainer.

10 THE COURT: Let's proceed with sentencing. If
11 you would approach. Mr. Jackson, if you would come up
12 here as well. We have to conduct what's called a
13 sentencing hearing.

14 THE DEFENDANT: Oh, okay.

15 THE COURT: It won't take long.
16 Mr. Aufdenkampe.

17 MR. AUFDENKAMPE: Well, your Honor, I would
18 request that there be a presentence investigation in
19 this matter. Mr. Jackson has always appeared, not only
20 at these hearings and for all of his court appearances
21 here, but in the past for all of those court
22 appearances. He has had a substantial bond posted by
23 his family. He doesn't appear to be a flight
24 risk. He's made great efforts to come from quite a
25 distance, and it would give him an opportunity to get

1 his affairs in order prior to the sentencing.

2 THE COURT: Anything else?

3 MR. AUFDENKAMPE: No.

4 THE COURT: Because it's a mandatory
5 maximum, meaning I don't have any discretion in the
6 sentences, the sentence is the sentence, I'm not going
7 to require or -- I'm not going to grant the request for
8 a presentence investigation report. We're going to
9 proceed with sentencing at this time.

10 Anything you want to say on behalf of
11 Mr. Jackson with respect to the sentence?

12 MR. AUFDENKAMPE: Well, I guess I would just
13 indicate what the Court has indicated, it's a mandatory
14 sentence. The sentence is what it is.

15 THE COURT: Yeah. Mr. Jackson, you have a
16 constitutional right to speak prior to any sentence
17 being imposed. Is there anything you want to say to the
18 Court?

19 THE DEFENDANT: I need the trial transcripts
20 immediately. In light of this, I don't have anything
21 further to say.

22 THE COURT: State of Ohio.

23 MR. GAUTHIER: Your Honor, just that the State
24 would elect on the Count One. I thought it was
25 obvious. Just for the record, the State would elect on

1 Count One.

2 THE COURT: Let's get that on the record.

3 Mr. Jackson was found guilty by a jury of Count
4 One, trafficking in drugs; and Count Two, possession of
5 drugs; and Count Three, possession of criminal
6 tools. It is the State's position that Counts One and
7 Two merge, and the State's electing on Count One. It's
8 also the Court's position that those two counts
9 merge. Does the defendant have any objection to the
10 merger analysis?

11 MR. AUFDENKAMPE: No. That's been our
12 contention all along as well, your Honor.

13 THE COURT: All right. The Court has
14 considered the record, any victim impact statement as
15 well as the principles and purposes of sentencing under
16 2929.11, and the Court's balanced the seriousness and
17 recidivism factors under 2929.12.

18 The Court finds the defendant having pled not
19 guilty to and been found guilty by a jury of the
20 following charges: Count One, trafficking in drugs, a
21 felony of the first degree, and guilty of the major drug
22 offender specification attached to that count; Count
23 Two, possession of drugs, a felony of the first degree
24 with a major drug offender specification to that Count;
25 Count Three, possession of criminal tools, a felony of

1 the fifth degree.

2 The Court will also note that the defendant was
3 found not to be guilty of the forfeiture specification
4 of one of the counts.

5 Upon consideration of all matters set forth by
6 law, it is the judgment of the law and the sentence of
7 the Court that the defendant be sentenced as follows:
8 On Count One, 11 years in LorCI. This is a mandatory
9 maximum sentence required by statute as a result of the
10 major drug offender specification. On Count
11 Two, there's no sentence on Count Two, as it is merged
12 into Count One; the State electing on Count One. Count
13 Three, 11 months in LorCI. All sentencing counts are to
14 be run concurrent for a total aggregate sentence of 11
15 years.

16 Upon your release from prison, Mr. Jackson, you
17 will be subject to a term of supervision. This is
18 called post-release control, it's mandatory for five
19 years, as well as the consequences for violating
20 conditions of post-release control imposed by the parole
21 board. You are ordered to serve as part of this
22 sentence any term of post-release control imposed by the
23 parole board and any prison term for a violation of that
24 post-release control.

25 After you are released from prison, if you

1 violate post-release conditions, the adult parole
2 authority or parole board could impose a more
3 restrictive or longer control sanction, or they could
4 return you to prison for up to nine months for each
5 violation, up to a maximum of one-half of your stated
6 prison term for all violations.

7 If your violation of post-release control is the
8 commission of a new crime, you may receive a prison term
9 of the greater of one year or the time remaining on
10 post-release control, in addition to any other prison
11 term imposed for the new offense.

12 You are hereby advised of the opportunity to the
13 receive credit of up to one day per month for
14 participation in education, vocational and other
15 programs sanctioned by the Ohio Department of
16 Rehabilitation and Correction.

17 Mr. Jackson, are you an able-bodied individual?
18 You don't have any physical disabilities that would
19 prevent you from working; is that true?

20 THE DEFENDANT: I'm a diabetic and I've been in
21 two major car accidents and slip and fall -- one major
22 car accident and a slip and fall. I'm presently --
23 well, was presently seeing the chiropractor, a
24 specialist every day. At this particular point I'm
25 physically beat up.

1 THE COURT: I'm still going to find you to be an
2 able-bodied individual on that.

3 There's a mandatory fine on Count One. The
4 maximum is \$20,000. I'm going to impose a \$10,000 fine
5 on Count One.

6 All right. Also, all contraband and/or drugs
7 are hereby ordered destroyed by the law enforcement
8 agency in possession of the same. All property not
9 forfeited is hereby ordered returned to the victim or
10 owner at this point.

11 Your driver's license is suspended on Count One
12 for two years consecutive to any other suspension.

13 With respect to costs, you are ordered to pay
14 the cost of prosecution, court-appointed counsel fees
15 and any other fees permitted by law.

16 With respect to those costs, those are a
17 judgment against you. If you fail to pay or make timely
18 payments toward the judgment, the Court may order you to
19 perform community service of not more than 40 hours per
20 month until the judgment is paid. If you are ordered to
21 perform community service, you will receive a credit at
22 a specified hour credit rate and each hour performed
23 will reduce the judgment by that amount.

24 You are granted credit for all days served on
25 this offense as well as any future custody days while

1 you're awaiting transportation to the appropriate state
2 institution.

3 At this point, Mr. Jackson, I do need to advise
4 you that you do have a right to appeal this matter
5 within 30 days from the date from which the Court files
6 its sentencing entry. Do you understand that if you are
7 unable to pay the costs that are associated with an
8 appeal, and this includes something that you mentioned,
9 a copy of the transcript, the record and all relevant
10 documents required for the appeal, they will be provided
11 to you without cost. Do you understand that?

12 THE DEFENDANT: Yeah. Can we take care of that
13 matter now as well?

14 THE COURT: Well, we need to go through these,
15 and as you hear these questions, I think you'll find out
16 they will take care of themselves.

17 THE DEFENDANT: Okay.

18 THE COURT: Do you understand if you are unable
19 to pay for an appeal, you are entitled to have a notice
20 of appeal filed without payment of the filing fee? Do
21 you understand that?

22 THE DEFENDANT: Okay.

23 THE COURT: Yes?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay. Do you understand that if

1 you -- that you have a right to have a notice of appeal
2 being timely filed on your behalf? If you are unable to
3 obtain counsel for that appeal, counsel will be
4 appointed for you at no cost.

5 So at this point, Mr. Jackson, are you making a
6 request for court-appointed counsel for your appeal.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. The Court will appoint
9 Attorney Paul Griffin for your appeal. I believe that
10 covers it.

11 Is there anything else from the State with
12 respect to the sentencing?

13 MR. GAUTHIER: Nothing further, your Honor.
14 Thank you.

15 THE COURT: Anything from the defense with
16 respect to sentencing?

17 MR. AUFDENKAMPE: No, your Honor.

18 THE COURT: All right. Mr. Jackson, good luck
19 to you.

20 THE DEFENDANT: Thank you.

21 * * *

22 PROCEEDINGS CONCLUDED

23 * * *

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1 C E R T I F I C A T E

2 The State of Ohio,)
) SS:
3 County of Lorain.)

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5 I, Cathlene M. Camp, Official Court Reporter in the
6 Court of Common Pleas, Lorain County, Ohio, duly
7 appointed therein, do hereby certify that this is a
8 correct transcript of the proceedings in this case.

9 I further certify that this is a complete
10 transcript of the testimony.

11 IN WITNESS WHEREOF, I have subscribed my name this
12 24th day of June, 2014.

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Cathlene M. Camp, RPR
Official Court Reporter
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(440) 329-5564

My Commission expires August 3, 2015