1	no. That's not right because Count 1 is the
2	aggregate --
3	MS. DEYOUNG: Yes.
4	THE COURT: -- of what was -- what's charged in
5	Count 2 plus other stuff.
6	MS. DEYOUNG: Yes.
7	THE COURT: So I think the way we need to set
8	this up is under Count 1 he's charged with possession of
9	fifth -- more than 50. We can just say more than 50
10	grams of cocaine.
11	And he's either guilty or not guilty of that.
12	MR. SHORT: We prefer not guilty first, your
13	Honor.
14	THE COURT: Actually that is the way I have it
15	set up.
16	MR. SHORT: Thank you, your Honor.
17	THE COURT: And then for Count 2, it would be
18	PWID under 50 of cocaine with a third voting option of
19	the lesser included of simple possession would you say?
20	MS. DEYOUNG: A third option or a second.
21	THE COURT: Well, the first -- the options is
22	either not guilty or guilty.
23	MS. DEYOUNG: Yes.
24	THE COURT: Or guilty of a lesser included
25	simple possession.

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 1              MS. DEYOUNG:  Yes.

 2              THE COURT:  Of less than 50.  Because he could

 3    conceivably be convicted, he could be found guilty of

 4    Count 1 and guilty of simple possession in Count 2

 5    theoretically.  I mean the jury could believe that the,

 6    they could believe that he had possession of all of --

 7    no, because doesn't add up to 50.

 8              MS. DEYOUNG:  The only way we get to 50 is to

 9    add all the cocaine found in the house.

10              THE COURT:  Yeah.  And then he's either guilty

11    of with the intent to possess it.

12              All right.  So -- all right.  So how do we do

13    this?

14              MS. DEYOUNG:  Can I, can I make a suggestion?

15              THE COURT:  Yeah.

16              MS. DEYOUNG:  If we could maybe just ascribe

17    Count 1 to be the jury's determination as to weight if

18    he's -- if it's for everything that's in the house, it's

19    either possession with intent to deliver over 50 grams

20    or in the alternative possession with the intent to

21    deliver less than 50 grams.  That can go for the baggie.

22    The aggregate and the baggie on the floor.

23              THE COURT:  Okay.

24              MS. DEYOUNG:  Count 2 could be for the drugs in

25    his pocket.
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