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Detroit, Michigan
Wednesday, January 29, 2014
At 9:34 a.m.

- - -

THE CLERK: This is Case Number 13-08885,
People of the State of Michigan versus Reginald Walker.
This matter is here for a jury trial in progress.

Appearances, please.

MS. DEYOUNG: Good morning, your Honor.

Sarah DeYoung on behalf of the People.

MR. SHORT: Good morning.

May it please this most Honorable Court,
Rowland A. Short on behalf of Mr. Walker.

THE COURT: Okay. We read to get back into the
trial?

MS. DEYOUNG: Yes, your Honor. The People
have -- do have one preliminary matter to ask the
Court --

THE COURT: Okay.

MS. DEYOUNG: -- about before we get started.

Yesterday when Mr. Walker testified he
indicated that he has been a narcotics user since 2003.
He indicated that he's had powder cocaine and crack
cocaine on him. And then there's also been all these
allegations about bias of the Taylor Police Department,

1 and specifically the bias of Detective Schwein.

2 The People like a ruling on whether or not the
3 defendant has opened the door for his prior convictions
4 for possession with intent to deliver cocaine
5 involving --

6 THE COURT: What was the last thing you said
7 after you said he -- you talked about using, he talked
8 about what he had on him, and you said something about
9 Officer --

10 MS. DEYOUNG: There's been --

11 THE COURT: -- Schwein.

12 MS. DEYOUNG: -- allegations about bias and
13 prejudice of Detective Schwein against Mr. Walker.

14 THE COURT: Yeah.

15 MS. DEYOUNG: So the People would like a
16 preliminary ruling about whether or not we are now
17 allowed to introduce his prior convictions for narcotics
18 in the City of Taylor and to show that he has had prior
19 contacts and there haven't been allegations made up
20 about him. There's been no bias shown. There have been
21 nothing.

22 Detective --

23 THE COURT: I think another point in terms of
24 how I rule on such a motion is that the, the defendant
25 contends that the animosity that Sergeant Schwein has

1 towards him is based on the defendant's failure to
2 cooperate in a murder investigation. And he's also said
3 that the detective -- is it Detective or Sergeant
4 Schwein?

5 DETECTIVE SCHWEIN: Detective, sir.

6 THE COURT: Detective Schwein said that he
7 didn't like the defendant's lifestyle which is -- that
8 was brought out actually in the cross-examination of
9 Schwein by defense counsel. So now that's out there.

10 And I think, Mr. Short, that to a degree anyway
11 that opens the door, although I'm ready to hear from you
12 to the contrary, that opens the door for the jury to
13 know that the defendant has been arrested and convicted
14 of prior drug crimes, at least when they occurred in
15 Taylor, as explaining that there could be a reasonable
16 basis for the antagonism between the defendant and the
17 members of the Taylor Police.

18 There's another angle here, too, which I guess
19 we'll air out because I think it needs to be talked
20 about.

21 Under 404(b) prior unlawful acts are admissible
22 if, if they're offered to prove certain specific things,
23 one of which is intent. And the defendant here is
24 charged with possession with intent to sell. And even
25 looking at the narcotics that he had on him at the time

1 of his arrest, which he admits to having on him, he's
2 claimed that his intent was only to use, it would seem
3 to me that under 404(b) prior convictions for possession
4 with intent to deliver might be relevant as undercutting
5 his claim that he had no intent to deliver on this
6 occasion.

7 Now, that would be under 404(b) and would
8 require prior notice. And so I don't think I can let
9 the evidence that you're interested in, Ms. DeYoung, in
10 explicitly under 404(b), or do you think you can get it
11 in under that.

12 MS. DEYOUNG: No. I had thought about that as
13 well. And I think the prior intent to deliver are not
14 involving this particular circumstance.

15 I think Mr. Walker did open the door for it to
16 come in just based on his testimony yesterday. I wasn't
17 anticipating him to say that was -- he was in possession
18 of these drugs.

19 On the -- on his statement to Detective Schwein
20 that's recorded he denies three times that there were
21 any drugs in his pocket, and suggest that the officers
22 are lying when they put that in their reports.

23 THE COURT: Oh, really. Okay.

24 MS. DEYOUNG: So I didn't anticipate this
25 defense yesterday.

1 THE COURT: Um-hum. Well, the ever shifting
2 defense problem.

3 Okay. Well then I guess sort of get your
4 point.

5 Now, which of these prior convictions emanate
6 from the City of Taylor?

7 MS. DEYOUNG: Detective Schwein indicates that
8 Mr. Walker has been arrested 21 times by the City of
9 Taylor.

10 There is a prior conviction on -- from 2008 and
11 an arrest that occurred in August of 2000 -- 2007 where
12 he pled guilty to delivery and manufacturing less than
13 50 grams of cocaine or less --

14 THE COURT: Okay.

15 MS. DEYOUNG: -- of a controlled --

16 THE COURT: Hold on a second.

17 MS. DEYOUNG: -- substance.

18 THE COURT: Now, I don't have a 2007 conviction
19 here.

20 MS. DEYOUNG: There's a 2008 conviction on a
21 2007 case.

22 THE COURT: Oh, okay. August 7th?

23 MS. DEYOUNG: Yep.

24 THE COURT: August 7th, 2008 he was convicted
25 of?

1 MS. DEYOUNG: No. August 7th -- August 9th,
2 2007 he was arrested by Taylor PD for drugs and a
3 weapon. He was convicted on February 4th, 2008 --

4 THE COURT: Oh, yeah.

5 MS. DEYOUNG: -- by plea of possession with
6 intent to deliver or delivery/manufacture --

7 THE COURT: Less than.

8 MS. DEYOUNG: -- less than 50 grams.

9 THE COURT: Now, those two convictions that
10 occurred in '0 -- in August of '08?

11 MS. DEYOUNG: There's August of '08 he's also
12 convicted by a plea of delivery/manufacturing scheduled
13 four by rule, which I understand from the detective,
14 please correct me if I'm wrong, it was Xanax.

15 DETECTIVE SCHWEIN: Yes.

16 THE COURT: Okay.

17 MS. DEYOUNG: Yes, it was Xanax.

18 And then also delivery and manufacture of
19 marijuana he pled guilty in 2008.

20 THE COURT: Did those come out of Taylor?

21 DETECTIVE SCHWEIN: Yes.

22 MS. DEYOUNG: Yes.

23 THE COURT: Was Detective Schwein involved in
24 those cases in any way at all?

25 MS. DEYOUNG: He'd have to speak to that

1 himself, your Honor.

2 DETECTIVE SCHWEIN: Yeah. The '07 case that
3 led to the, a guilty plea in '08 I was involved, yes.

4 THE COURT: Okay.

5 DETECTIVE SCHWEIN: And that stems out of the
6 previously spoken murder investigation.

7 THE COURT: Okay. All right.

8 Well, that we don't have to get into anymore
9 than we have already.

10 And then what about his '09 and '10
11 convictions?

12 MS. DEYOUNG: The L.E.I.N. -- let me go back to
13 the Odyssey printouts because the L.E.I.N. doesn't have
14 the updated information.

15 August of 2010 that does come from a Taylor
16 arrest in July of 2010. But the, the L.E.I.N. doesn't
17 show the ultimate disposition on that one.

18 Let me look here.

19 THE COURT: Well, there's a September 21, 2010
20 conviction for PWID under 50 offense of a drug.

21 MS. DEYOUNG: September 21.

22 THE COURT: Yep.

23 MS. DEYOUNG: That does come out of -- let's
24 see. He's currently on probation to Judge Kenny for
25 that one.

1 THE COURT: Right.

2 MS. DEYOUNG: And that does come out of Taylor.
3 That was preliminary exam in from of Judge Salomone.

4 THE COURT: Oh, it was. Okay. All right.

5 And what, then what about the '09, the
6 August 17th, '09. He was convicted of attempted
7 delivery of ecstasy.

8 MS. DEYOUNG: Ecstasy case.

9 That one had a preliminary exam in front of
10 Judge Kandrevas, so I'm wondering if that is actually
11 from Southgate.

12 THE COURT: Yeah. Okay.

13 All right. Mr. Short, anything you wanna say
14 on this?

15 MR. SHORT: Certainly, your Honor. We believe
16 that any introduction of any previous crimes or arrest
17 would be certainly more prejudicial than probative. We
18 are certain that any mention of these crimes would cause
19 a jury to find Mr. Walker guilty of the crimes alleged
20 here which certainly is prohibited by law.

21 Mr. Walker was found with, allegedly with some
22 cocaine in his pocket and, and some money. And we
23 simply offered a defense for that.

24 We offered the defense that Mr. Walker was in
25 fact a drug user and not a drug seller, which is

1 certainly permitted by law as a defense. We offered an
2 explanation for the money in his pocket which is
3 certainly a defense for that, for that as well.

4 Certainly the -- a jury is going to look at
5 these previous convictions and believe that Mr. Walker
6 is guilty of the crimes alleged here today.

7 The bias between Mr. Walker and, and Detective
8 Schwein, if the Court is inclined to let the jury hear
9 portions of that video, we would object to it. We don't
10 think that that falls -- that so gave as for the jury to
11 hear about previous convictions.

12 If they wanna impeach, impeach Mr. Walker based
13 on the video, I can certainly understand the Court's
14 ruling on that. But to talk about all of his previous
15 convictions would certainly result in a conviction and
16 has nothing to do with the acts or the acts alleged to
17 have occurred on, on the date in question.

18 THE COURT: Okay. Well, I don't know what's in
19 the video. Is it -- does he talk -- is he questioned
20 about his prior convictions in the video?

21 MS. DEYOUNG: No. But there's, there's some
22 talk about you're the dope man in the City of Taylor. I
23 know you're the dope man in the City of Taylor. I --
24 there's sections --

25 THE COURT: Well, those are comments made by

1 the officer.

2 MS. DEYOUNG: Right. But there's, there's
3 sections of the video that I wanna play where the
4 officer indicates the shit's on you and Mr. Walker
5 responds hell no. I don't be in Taylor like that.
6 Denying that the stuffs in his pocket.

7 THE COURT: Yeah.

8 MS. DEYOUNG: And then there's the -- a back
9 and forth exchange that goes on for approximately under
10 two minutes with -- finally with Mr. Walker indicating
11 there's no dope in my pocket.

12 There's a second segment that is maybe 30
13 seconds long, if that, about the officer, the arresting
14 officer is lying about having, him having a pocket full
15 of dope. That involves an exchange between the officer
16 and Mr. Walker.

17 THE COURT: Oh, he accuses the officer of lying
18 about the pocket full of dope?

19 MS. DEYOUNG: Yes.

20 THE COURT: Okay.

21 MS. DEYOUNG: Then there's a third exchange
22 that last probably 20 seconds. Wasn't no -- where
23 Mr. Walker indicates wasn't no dope by me, wasn't no
24 dope in my pocket.

25 THE COURT: Okay.

1 MR. SHORT: And --

2 THE COURT: All right. Well, Mr. Short, that
3 goes directly to the defendant's credibility. In his
4 sworn testimony he, he admitted that he had dope in his
5 pocket. He laid out in fact in some detail what he had.
6 And then at the same time he's also accusing Taylor PD
7 of having a beef against him, thus explaining the
8 multiplicity of charges that have been piled up against
9 him in this case.

10 And so his, his denials of any criminal
11 liability at the time of his arrest in this case and his
12 subsequent admissions at trial create a question of fact
13 about his credibility. You know that it raises serious
14 issues about his credibility as a witness on all counts,
15 on all points, including the source of the \$5300 he had
16 in his pocket which he says he got from giving parties.

17 He may as well have said he got it mowing
18 lawns. But, anyway, that's what he said. And it's up
19 to the jury to decide whether that's true or not.

20 Knowing that he either lied under oath on the
21 witness stand, or he lied to the police when he was
22 giving a statement will be important for the jury to
23 take into account in deciding if he's credible about
24 anything that he said.

25 Then the -- although I would -- these, these

1 arrest and/or convictions are clearly not admissible
2 under 609. And, and I don't believe they would be
3 admissible under 404(b) if only because there was no
4 prior notice.

5 And I, and I'm not because -- and the 404(b)
6 does require prior notice. And I'm not even certain
7 that there's -- there might be some case law on the
8 admissibility of prior drug convictions in a drug case
9 under 404(b), but we don't need to explore that issue.

10 The, the more important or overriding fact is
11 that the defendant's conviction on February the 4th,
12 2008 and then the two convictions on August the 7th,
13 2008 in Taylor cases in cases where the officer in
14 charge who's the one being accused of having a beef
15 against the defendant is involved are clearly, clearly
16 have significant evidentiary value in refuting the
17 defendant's claim that the Taylor Police had an
18 unjustifiable and unfounded beef with him. And, and
19 that the -- it also goes to explain that the beef
20 didn't -- wasn't just limited to the defendant's refusal
21 to cooperate in a homicide investigation. It explains
22 why, and you brought this out in cross-examining the
23 OIC, why the OIC has, quote, a problem with the
24 defendant's lifestyle, close quote.

25 That, that point that you made on

1 cross-examination is otherwise completely unexplained
2 without an explanation of these prior contacts with
3 Taylor Police for drug use and/or sale, and the fact
4 that the defendant was indeed convicted, whether by
5 trial or by plea of those three prior incidents. So --

6 MR. SHORT: May I respond, your Honor?

7 THE COURT: So it, it sort of also goes to, to
8 intent. But, but I, I don't wanna rule that this is
9 admissible under 404(b) so much as it is just admissible
10 to complete the record.

11 And, yes, it's prejudicial. Of course it is.
12 All the evidence that the People present is prejudicial.
13 The, the, the real question is whether it's unfairly
14 prejudicial. Whether it, whether it's prejudicial value
15 outweighs its probative value. And in my view it does
16 not in this case. And it is admissible only because the
17 defendant has opened the door for admission of this
18 incident by his own testimony and by his defense.

19 MR. SHORT: May I respond, your Honor?

20 THE COURT: And, yes, you may respond.

21 MR. SHORT: Thank you, your Honor.

22 The -- I believe the exact quote from Detective
23 Schwein was I don't like you. I don't like your
24 lifestyle. That doesn't indicate that he doesn't like
25 Mr. Walker's perceived lifestyle of selling drugs. It

1 could certainly mean he doesn't like his perceived
2 lifestyle of using drugs and being in places where drugs
3 are sold or used.

4 We would definitely object. We think that this
5 evidence is surely going to result in a conviction of
6 Mr. Walker for this crime based on crimes that occurred
7 before. And what we don't see any way that the jury can
8 look past that, and certainly more prejudicial than
9 probative in this matter. And it certainly will result
10 in conviction if this evidence is allowed, your Honor.

11 THE COURT: Okay. Well, he's pretty much
12 admitted possession under 50 grams anyway.

13 MR. SHORT: That's correct, your Honor. We do
14 not --

15 THE COURT: The only question is whether or not
16 what his intent was at various other points. But, okay,
17 but duly noted. Your objection is noted.

18 I'll allow the People to inquire into the
19 February 4th and August the 7th cases.

20 MS. DEYOUNG: 2008 and 2007 -- oh, no. Those
21 are all 2008 cases.

22 THE COURT: They're all -- February 4th, 2008
23 conviction for possession with intent to deliver less
24 than 50 grams of something. I don't know what. You
25 probably have that. All I have is controlled

1 substances. I don't know what it was.

2 And then August 7th, there were two

3 convictions.

4 MS. DEYOUNG: The -- we also talked about, and

5 I'm not trying to push it, I just want clarification.

6 We also talked about the September 10th arrest for the

7 possession with intent to deliver less than 50 grams

8 also stemmed out of the City of Taylor for this, the

9 September 10th conviction.

10 THE COURT: September 10th conviction. Was

11 it --

12 MS. DEYOUNG: Sorry. September 21st, 2010

13 conviction.

14 THE COURT: Oh, that was a Taylor case?

15 DETECTIVE SCHWEIN: Yes.

16 MS. DEYOUNG: Yes, it was.

17 THE COURT: Oh, yeah. Well, okay. You can get

18 that in, too. I, I didn't -- I thought you said that

19 was -- that wasn't the Kandrevas case.

20 MS. DEYOUNG: The ecstasy case was the

21 Kandrevas case. That was the --

22 THE COURT: Okay.

23 MS. DEYOUNG: -- 2009 case.

24 THE COURT: All right. And -- well and then

25 also is -- I'll ask you now since we're on the record,

1 was Detective Schwein involved in the September 21, 2010
2 PWID case?

3 DETECTIVE SCHWEIN: No, sir.

4 THE COURT: You were not in any way involved in
5 that?

6 DETECTIVE SCHWEIN: I don't believe so. No,
7 sir.

8 THE COURT: All right. My recollection of the
9 way this testimony is gone in so far is that the
10 defendant thinks he had a beef with Schwein or Schwein
11 had a beef with him, not the whole Taylor Police
12 Department, but.

13 Well, how might the September 2010 conviction
14 figure in here?

15 MS. DEYOUNG: The way it, it may come in is
16 that --

17 THE COURT: Hold, hold on a second. Let's go
18 off the record.

19 (At 9:52 a.m., off the record)

20 (At 9:53 a.m., back on the record)

21 THE COURT: All right. Back on the record.

22 Yes. We were talking about the September 2010
23 conviction.

24 MS. DEYOUNG: Yes, your Honor. For the City of
25 Taylor, and historically they did have a narcotics unit

1 that was led by sergeant, I think he's now captain,
2 chief, whatever, Troy Cox. And Detective Schwein was
3 involved when Troy Cox was leading the narcotics
4 division. And the 2010 arrest was initiated by Troy
5 Cox. So there is some history there, but the People
6 acknowledge it's little attenuated.

7 THE COURT: Okay.

8 MS. DEYOUNG: Also just for the record --

9 THE COURT: Was Cox at all involved in the
10 investigation of this case?

11 MS. DEYOUNG: Not directly.

12 DETECTIVE SCHWEIN: No.

13 THE COURT: Okay. I, I think the -- from what
14 we've heard so far, the claim or the, or the perception
15 is that the defendant claims that Schwein has a beef
16 with -- in the -- in direct testimony do you recall if
17 the defendant claimed that he had a -- that the Taylor
18 Police in general had a problem with him?

19 MS. DEYOUNG: I don't think --

20 THE COURT: That they were --

21 MS. DEYOUNG: -- that was part of the trial.

22 MR. SHORT: They did not, your Honor. This is
23 all been between Mr. Walker and Detective Schwein.

24 THE COURT: Yeah. Okay.

25 All right. Well then we better leave the

1 September 21, 2010 conviction out of it.

2 MS. DEYOUNG: Okay. With that logic then also
3 in speaking with Detective Schwein on the break, the
4 two -- the February 4th, 2008 convict was one he was
5 involved with. That's the possession with intent to
6 deliver less than 50 grams.

7 THE COURT: Right.

8 MS. DEYOUNG: The August 7th conviction he was
9 not involved with.

10 THE COURT: Not at all?

11 MS. DEYOUNG: Or wait, wait, wait.

12 The August --

13 DETECTIVE SCHWEIN: Hold on.

14 MS. DEYOUNG: -- 7th for the Xanax and the
15 marijuana.

16 DETECTIVE SCHWEIN: The August 9th where he
17 pled guilty.

18 MS. DEYOUNG: So he's got the one conviction
19 from February 4th, 2008 that was involving Detective
20 Schwein.

21 THE COURT: Okay. And then how many times has
22 Detective Schwein arrested the defendant, even if those
23 arrest did not involve convictions?

24 DETECTIVE SCHWEIN: Maybe twice. For sure the,
25 the February of '08 conviction. Certainly I was there

1 and one of the arresting officers for that.

2 And I'm, I'm going from memory, Judge. There

3 are --

4 THE COURT: Okay.

5 DETECTIVE SCHWEIN: -- 21 incidents of arrest

6 and I'm, I'm sure I would have been involved in at least

7 one other.

8 THE COURT: 21 arrest in Taylor?

9 DETECTIVE SCHWEIN: Yes. From what I could

10 tell from the computer this morning.

11 THE COURT: But not a lot of convictions.

12 Okay.

13 MS. DEYOUNG: Not felonies.

14 THE COURT: Well, I mean -- yeah. Okay.

15 DETECTIVE SCHWEIN: Total.

16 THE COURT: Oh, there were misdemeanor

17 convictions?

18 DETECTIVE SCHWEIN: Yeah. Judge, they were

19 from traffic violations up to this particular case.

20 THE COURT: Okay.

21 DETECTIVE SCHWEIN: And everything in between.

22 THE COURT: Okay. Well, I think in your case

23 in chief, or in your examination, cross-examination

24 rather of the defendant, Ms. DeYoung, then you should be

25 permitted only to cross-examine the defendant on his

1 February 4th, '08 arrest and conviction for possession
2 with intent to deliver less than 50 grams of whatever it
3 was.

4 Now, if he further opens the door by the way he
5 answers that question, whatever, we'll, we'll take that
6 up.

7 MR. SHORT: Your Honor, may I have a
8 clarification of your ruling is, is it just the
9 prosecution may talk about the February 4th, 2008
10 case --

11 THE COURT: Conviction, yes.

12 MR. SHORT: -- only?

13 THE COURT: Because that's the only one, as far
14 as I can tell, involving Detective Schwein. And it is
15 the animosity between the defendant and Schwein which I
16 think is his point, the defendant's point here. I don't
17 believe that he painted with a broader brush. But if he
18 did or if he does, then, of course, that will change the
19 picture.

20 MS. DEYOUNG: One other thing, so the Court is
21 aware. I talked about playing this two-minute video
22 clip from his statement. It does reference the Red Roof
23 Inn incident that the Court has said that we shouldn't
24 go into initially. And I think that was, the door was
25 opened on that as well by the defense witness Diamond

1 Seals testifying that she went to the Red Roof Inn.
2 There was an assault.

3 The part of the conversation, the two-minute
4 clip that deals with the Red Roof Inn is Mr. Walker's
5 denying his involvement from. I don't -- which is
6 consistent with what Ms. Seals testified to. So I don't
7 think that's prejudicial given the fact that she's
8 already indicated that --

9 THE COURT: Said -- yeah. She said he didn't
10 go with her, didn't she?

11 MS. DEYOUNG: Right.

12 THE COURT: Yeah.

13 MS. DEYOUNG: Right.

14 MR. SHORT: I don't think it's relevant. I
15 don't think it's -- can be used for impeachment as
16 exactly in line with the defendant. Ms. Seals testified
17 to. She said that he wasn't there. He's gonna say on
18 the video he wasn't there. There's no need for it, your
19 Honor.

20 THE COURT: Well, but it's also harmless then
21 if he said he wasn't there. There's actually been no
22 introduced -- no evidence introduced by the People that
23 he was there. So now they're just introducing another
24 piece of evidence that he wasn't there.

25 Okay. You know -- and otherwise we'll be

1 editing this tape all day, so.

2 All right. You can just -- you can play that.

3 I don't see the harm of it.

4 Okay. So we're clear?

5 MS. DEYOUNG: I believe so, your Honor.

6 THE COURT: Okay. Let's bring the jury out.

7 (At 9:59 a.m., jury returned)

8 THE COURT: All right. You may be seated.

9 Thank you.

10 Okay. Well, we've been busy taking care of

11 some other evidentiary issues outside your presence.

12 But we're ready to continue now with the

13 cross-examination by Ms. DeYoung of the defendant.

14 Mr. Walker, would you resume the stand, please.

15 Okay. Ms. DeYoung, your witness.

16 MS. DEYOUNG: Thank you.

17 REGINALD WALKER

18 (At 10:00 a.m., having been previously sworn

19 testified as follows)

20 CROSS-EXAMINATION

21 BY MS. DEYOUNG:

22 Q Good morning, Mr. Walker.

23 A Good morning, ma'am.

24 Q Now, let's talk about your testimony from yesterday,

25 okay.

1 A Yes, ma'am.

2 Q You indicated that you were at, you called him JJ,
3 Johnny Nettleton's house?

4 A Yes, ma'am.

5 Q And that was on the 21st of August, right?

6 A Yes, ma'am.

7 Q And you were there to celebrate your friend Nathaniel
8 Manning coming home?

9 A Yes, ma'am.

10 Q Okay. Now, you had talked yesterday with about two
11 people, Boss and Orlando being in that house that day,
12 correct?

13 A Yes, ma'am.

14 Q Now, what are Boss and Orlando's real names?

15 A Um, I don't know -- I think Orlando name, real name is
16 Orlando. Um, Boss real name either, either Vonta or
17 Jovonta.

18 Q Okay. Nathaniel Manning, he's, he is a white male,
19 correct?

20 A Yes. Puerto Rican and white.

21 Q Okay. And Nathan -- Boss and Orlando, those are black
22 males?

23 A Yes, ma'am.

24 Q Okay. So you can't confuse those guys with each
25 other --

1 A Correct.

2 Q -- right?

3 And everybody was there on the 21st?

4 A Um, at some period of time, yes. Like when we was

5 drinking, when we started drinking, that when everybody,

6 um, kind of arrived.

7 Q Okay.

8 A Nathaniel Manning arrived before that. Um, Diamond

9 Seals arrived. She was there with me all day. Um, Boss

10 and Orlando, they was gone for the majority of the day

11 til the night.

12 Q When did Boss and Orlando get there?

13 A Um, about 8:20.

14 Q So --

15 A About eight, between eight and 8:20, somewhere around

16 there.

17 Q That would've been about the time that Diamond Seals

18 came back from the liquor store?

19 A Yeah. When she was going from back, yeah. Around the

20 same time.

21 Q How did Boss and Orlando get there, if you know?

22 A They got there in a silver car.

23 Q Okay. Not the Chevy, not the Tahoe or the Jimmy that,

24 the tan Jimmy with the dealer plate?

25 A It was Blazer. She said it was a Jimmy, but it's

1 Blazer. You know, they -- people get that mixed, get
2 the two trucks mixed up.

3 Q But that wasn't their car?

4 A No. Um, that's, that's, um, that's Larry car. The
5 Blazer is Larry car or but, um, they was driving. The
6 silver car they was driving was I wanna either say it
7 was a Buick or kind of like Lincoln or something like
8 that.

9 Q Okay. What car did you drive over there?

10 A I got picked up.

11 Q Do you have a car?

12 A No.

13 Q And were Orlando and Boss there when Diamond Seals was
14 there then?

15 A Um, after we started drinking with -- by the time she
16 came back from the liquor store, yes. They keep leaving
17 and coming back though.

18 Q Okay. But she was there when they were there?

19 A Yes. Basically, yeah. When we was drinking, yeah.

20 Q And you indicated yesterday in your direct examination
21 that you ended up buying drugs from Boss or Orlando.
22 Which one?

23 A Boss.

24 Q Boss.

25 And was that when Diamond Seals was there?

1 A When I bought the, um, cocaine, I brought it when he
2 picked me up.

3 Q When who picked you up?

4 A When Boss picked me up.

5 Q When did Boss pick you up?

6 A He picked me up earlier that day. Around 11,
7 12 o'clock. He picked me up from my brother house on
8 Pembroke and Meyers.

9 Q And is he the one that dropped you off at JJ's house?

10 A Yes.

11 Q But he didn't stay?

12 A No.

13 Q Now, you didn't mention anything about Boss selling you
14 drugs when you talked to Detective Schwein after you got
15 arrested, right?

16 A No.

17 Q You talked to Detective Schwein. He read you his rights
18 or he ready you your rights, right?

19 A Yes.

20 Q You have the right to remain silent. You have the right
21 to an attorney. All the rights that they're just like
22 on TV, right?

23 A Yes, ma'am.

24 Q And he didn't threaten, you?

25 A Correct, ma'am.

1 Q He didn't promise you anything?

2 A Correct, ma'am.

3 Q And you agreed to talk to Detective Schwein, didn't you?

4 A Correct.

5 Q And you talked to him for somewhere around about an

6 hour, right?

7 A Yes, I believe so.

8 Q Okay. And you talked about this incident?

9 A Yes.

10 Q And in -- on the time that you talked to him, Detective

11 Schwein, you never mentioned that you bought drugs from

12 Orlan -- from Boss?

13 A No, ma'am.

14 Q You never mentioned that Orlando and Boss sell drugs?

15 A No, ma'am.

16 Q You never mentioned that Boss and Orlando sell drugs out

17 of JJ's house?

18 A No, ma'am.

19 Q You never indicated that the guy that's sleeping

20 upstairs when the police come in the door, he's kind of

21 the muscle for Boss and Orlando?

22 A He's not the muscle. That's just who he trust. But no,

23 ma'am.

24 Q Not -- that never got mentioned in the hour that you

25 talked to Detective Schwein on August 21st?

1 A No, ma'am.

2 Q So in fact the first time you're talking about Boss and
3 Orlando selling drugs is yesterday?

4 A Yes, ma'am.

5 Q Now, in fact when Detective Schwein was asking you about
6 the drugs that were in your pocket, you said there were
7 no drugs in my pocket, right?

8 A Yes, ma'am.

9 Q And you said that the police were lying in their police
10 reports when they said there was drugs in your pocket,
11 didn't you?

12 A Yes, ma'am.

13 Q You actually told Detective Schwein that that wasn't
14 true. You told him three times during that interview
15 that those drugs weren't in your pocket?

16 A Yes, ma'am.

17 Q And then about 40 minutes into the interview you sign --
18 you indicate there wasn't no dope by me. There wasn't
19 no dope in my pocket?

20 A Yes, ma'am.

21 Q And yesterday you came in and you said you bought 25
22 rocks from Boss?

23 A Yes. After I start drinking.

24 Q But you never mentioned any of that in -- on August 21st
25 right after this happened?

1 A Yes, ma'am.

2 THE COURT: Yes, you didn't mention it?

3 THE WITNESS: No. I never mentioned it to, um,

4 Detective Schwein.

5 BY MS. DEYOUNG:

6 Q Instead you called the police officers liars about where

7 they found the drugs in your pocket?

8 A I really didn't want to talk to Detective Schwein to be

9 honest. I, um, I, I --

10 THE COURT: That's not the question. Answer

11 the question.

12 THE WITNESS: Yes. Yes, ma'am.

13 BY MS. DEYOUNG:

14 Q Okay. Well, about 20 minutes into the interview and

15 Detective Schwein tell you, hey, if you wanna get a

16 lawyer and stop the interview, we can stop right now,

17 right? He give that you option?

18 A Correct. But --

19 Q And then you keep talking, don't you?

20 A Yes. We was talking about other issues.

21 Q But you just told the jury that you didn't wanna talk to

22 Detective Schwein, right?

23 A About that issue --

24 Q He gave you --

25 A -- yes.

1 Q -- the option to terminate the interview and you kept
2 talking, correct?
3 A Yes, ma'am.
4 Q Now, let's talk about this Metformin for a minute, okay.
5 A Yes, ma'am.
6 Q How long have you been a diabetic?
7 A Since January 7, 2013.
8 Q When you'd been diagnosed?
9 A Yes, ma'am.
10 Q Sorry. Diagnosed as a diabetic?
11 A Yes, ma'am.
12 Q And how often do you see your doctor?
13 A I see my doctor once a month.
14 Q Once a month?
15 A Yes.
16 Q Do you let your doctor know that you use crack cocaine?
17 A No, ma'am.
18 Q Do you let him know that you use powdered cocaine?
19 A No, ma'am.
20 Q Diabetics, they're not supposed to be drinking alcohol,
21 are they?
22 A Um, we was told we can drink wine.
23 Q Okay. Do you --
24 A Was allowed to drink wine.
25 Q Do you let him know that you drink 1800 Tequila?

1 A No, ma'am.

2 Q Did you think all of that would affect your treatment?

3 A I'm honestly not for sure, ma'am.

4 Q And you indicated yesterday that your weight's been
5 fluctuating a lot, correct?

6 A Yes, ma'am. I lost like a hundred and some pounds in a
7 matter of five months.

8 Q Okay. And wouldn't that affect the treatment you
9 receive for your diabetes?

10 A Yes, ma'am.

11 Q Now, you indicated that when you bought 25 rocks of
12 cocaine from Boss, that was all gonna be for personal
13 use?

14 A Yes, ma'am.

15 Q And then by -- and you said you bought that when?

16 A After we start drinking.

17 Q You bought it after you started drinking?

18 A Yeah. I was already drinking.

19 Q That's when you bought it?

20 A Yes.

21 Q Had you already bought the powdered cocaine at that
22 point?

23 A Yes. I bought the powder cocaine as soon as we -- that
24 he picked me up.

25 Q And the rocks you bought at night?

1 A At night when we started -- after I started drinking.
2 Q Okay. And all those 25 rocks were just gonna be for
3 you?
4 A Yes.
5 Q Now, you were there with -- you told Detective Schwein
6 in your interview you were at the house with Aliah?
7 A Alicia.
8 Q Alicia.
9 And were you gonna share any of those crack
10 rocks with Alicia?
11 A No. She don't smoke. I told you not too many people
12 know that I smoke.
13 Q So you weren't smoking in front of Diamond Seals?
14 A No.
15 Q The crack pipe that was found at the house, was that
16 yours?
17 A It was JJ's, but I used it.
18 Q Let's talk about JJ for a minute.
19 A Yes.
20 Q How often have you been to his house?
21 A I been to his house a few times.
22 Q Okay. And would you say that you're friends with JJ?
23 A Yes. Something like that, yes.
24 Q Okay. And when there was a knock on the door at 2:00 in
25 the morning, what did you, what did you do?

1 A I had leaned on the couch, looked out the -- I was kind
2 of high. So when I leaned on the couch, I looked out
3 the window, I didn't see nobody. JJ immediately opened
4 the door. So when he opened the door, we looked out.
5 We still didn't see nobody. When he --
6 Q Wait, wait.
7 A -- pushed --
8 Q Wait, wait.
9 You opened the door and you looked out?
10 A JJ opened the door.
11 Q And you still didn't see anybody?
12 A No. We still didn't see nobody.
13 Q You opened the front, the front door, the --
14 A Yeah.
15 Q The solid door?
16 A The solid door.
17 Q This is People's Exhibit Number 20.
18 Do you recognize that picture?
19 A Yes.
20 Q What's that?
21 A The picture of his front door.
22 Q Okay. And the front door is kind of a cracked open,
23 right?
24 A Yes.
25 Q Here's People's Exhibit 18.

1 Front door is a solid door, right?

2 A Yes.

3 Q But going back to People's 20, when you open the front
4 door, there's a screen door with two big windows in it,
5 right?

6 A Yes.

7 Q And it's our testimony today that when JJ opened the
8 door, you couldn't see who was at the door?

9 A No. Because wasn't nobody on the porch. They was on
10 the ground. So when we opened the door, it was real
11 dark. It was three o'clock in the morning. Um, so when
12 we -- when he pulled the door open, I peered through the
13 door. I didn't have glasses on or anything. I peered
14 through the door, didn't see it. When he pushed the
15 door oh -- open, that's when we seen the figures around
16 the like porch area.

17 Q So you heard the knock. How long did it take to -- for
18 JJ to open that door?

19 A A few seconds because, like I said, I leaned on the
20 couch first and looked out the window. Right there you
21 can't see. But right there it's a couch, and it's a
22 window right there. So like right there at the door.
23 So you can -- I leaned right there and, and looked and I
24 didn't see nobody.

25 Q Okay. Here's People's Exhibit 21.

1 Is that the couch?

2 A That's the couch and that's the window.

3 Q Okay. You can kind of see it on the far right-hand

4 side, right?

5 A Yes. And I looked directly out that window and I didn't

6 see nobody.

7 Q You didn't see eight police officers standing out there?

8 A No, ma'am. I didn't see nobody outside.

9 Q Was there someone else you were expecting to come to the

10 door at two o'clock, three o'clock in the morning?

11 A I was expecting Boss and Orlando to come back. They

12 just left right before this incident, right before the

13 police came. That's who I was expecting.

14 Q Oh, they'd just left?

15 A They had just left. That why it wasn't, that why it

16 wasn't any car in the driveway. And the Blazer was

17 parked on the street because they car was in the

18 driveway at first.

19 Q Okay. So you guys, you and, both you and Mr. Nettleton,

20 you look out the door, you can't see anybody?

21 A Until we pushed the screen door open.

22 Q And at that point you can see people?

23 A Yes.

24 Q And he's talking to the police that are standing on the

25 cement porch at that point, correct?

1 A There wasn't anyone on, actually on the cement porch.
2 When he pushed the screen door open, the porch is small.
3 The screen door was still closed. If you was to push
4 the screen door open while someone standing on the
5 porch, you'll push them off the porch. So they was, so
6 they was kind of like on the step. It's only like a
7 two-step porch.

8 Q Let's see --

9 A If I'm, if I'm correct.

10 Q Let's see if we can find a picture.

11 A Yeah. I think it's only like a two-step porch.

12 Q This is People's Exhibit 17.

13 Okay. This is the house here, correct?

14 A Yes.

15 Q And here's the A right there. There's three steps on
16 that porch?

17 A Three steps.

18 Q Let's see if I can zoom in on those steps?

19 Does that help?

20 A Yes. Two steps and then the actual porch. So they
21 wasn't actually on the porch.

22 So when the screen door got -- if you can see,
23 the screen door kind of comes to the end of the porch.
24 So there wasn't anyone actually on the porch when the
25 door got opened.

1 Q But you said they were on the steps?

2 A Like, yeah, like the steps. Like, like I couldn't see
3 all the police officers. I just seen the immediate
4 police officers as soon as the door opened, and they was
5 like right there on the steps. So as soon as he said
6 I'm about to step out and talk 'em, close the door. He
7 was stepping out. I started closing the door behind
8 him.

9 Q Wait a minute.

10 You could only see the police officers when the
11 door was open and you saw them standing on the steps?

12 A Yes. On the steps like right there in front of the
13 door. The officers that was directly in front of the
14 door.

15 Q There were officers directly in front of the door?

16 A Yeah. On the steps. Not -- if, if you can see the
17 steps and you see the door, how the door and the steps
18 line up, those the officers I was able to see. This --
19 the -- wasn't no actual police officer on the porch,
20 only on the steps.

21 Q Okay. And that's not visible through the double screen
22 window door. You have to open the windows to be able to
23 see onto the steps?

24 A It wasn't visible through the window or the screen door.
25 I was able, only able to see them after the screen door

1 was opened.

2 Q Okay.

3 A I told you I didn't have no glasses on, plus I been
4 drinking and I was impaired a lot that night.

5 Q So then you testified you closed the door?

6 A Yes.

7 Q After you know it's the police?

8 A Yes. When he was stepping out I went to close the door
9 behind him.

10 Q To leave him out there with the police?

11 A Yeah. He was gon' talk to 'em.

12 Q And what's -- what would be the purpose of closing the
13 door then?

14 A Because I had drugs on me, ma'am, and I --

15 Q And that's, that's what you've indicated yesterday,
16 right?

17 A Yes.

18 Q But that's not what you told Detective Schwein on
19 October -- August 21, 2013?

20 A Correct, ma'am.

21 Q Okay. And then by your testimony you were closing the
22 door and you flew back when the officers hit the door?

23 A Yeah. I stumbled back. When they, when they hit the
24 door, I didn't -- they said that I was -- I kept moving
25 back. It was kind of like a stumbled back when they hit

1 the door. They had to force they way in because I was
2 pushing the door closed on them.

3 Q You were pushing the door closed on them?

4 A Yes. Because when I went to close the door, one of the
5 officer yelled he closing the door, he closing the door.
6 And when they said that, they started pushing on the
7 door so I start pushing back on the door.

8 Q Okay. And your testimony yesterday was that on
9 August 21st you weighed about 275 pounds?

10 A Yes.

11 Q And you -- the force of the -- of that, of the officers
12 pushing on the door pushed you backwards?

13 A Yes.

14 Q Did you end up in the kitchen as the result of that
15 force?

16 A No, ma'am. I told you I was like halfway. Like in
17 between the door and the kitchen. I was halfway in
18 between the two. Between the front door and the kitchen
19 door. I was like halfway in between the two.

20 Q So what you -- where are you trying to tell this jury
21 you were actually arrested?

22 A I was close to the kitchen, but I was halfway. I was
23 not at the front door and I was not actually in the
24 kitchen. The kitchen you have to go to the hallway and
25 make a left to be actually in the kitchen. I never made

1 no left to go into the kitchen. I never made no right
2 to go towards the bedroom or the bathroom. I was still
3 in the living room, but close to the kitchen.

4 Q And so it's your testimony that it was Officer Collop
5 that apprehended you?

6 A Yes, ma'am.

7 Q Did you know him as Officer Collop on August 21st?

8 A No, ma'am.

9 Q When did you find out his name was Officer Collop?

10 A When I got the police report.

11 Q And you've had those police reports for how long now?

12 A I, I had the partial police reports since
13 September 30th.

14 Q September.

15 So October, November, December, January. About
16 four months?

17 A Yes.

18 Q Okay.

19 All right. Now, you indicated that you make
20 your money by having all these parties, right, or what
21 did, what did you call them?

22 A Parties.

23 Q Parties?

24 A Party promotion.

25 Q Party promotion. And that you made money on the 4th of

1 July about \$7,000 you said?

2 A I made -- no. On the 4th of July I made, yeah, about

3 \$7,000.

4 Q Okay.

5 A \$5,000 off the door and \$2,000 off bottles.

6 Q How many people came to that party?

7 A It was about, it was about 500 people at the, um, at the

8 club.

9 Q Now, did you have --

10 A Well --

11 Q -- entertainment that night?

12 Oh, sorry.

13 A No. There was about 300 people. About 300 people. I'm

14 sorry. About 300 people.

15 Q Okay. That's and you said you get -- what did you get,

16 \$20 a head for that night?

17 A \$20 a head, yes.

18 Q So that's 300 times 20. \$6,000?

19 A Yes. But I made about 2,000 off of bottles, but I pay,

20 I have to pay DJs, pay bouncers, and stuff like that.

21 But I took home about \$7,000.

22 Q And when was your aunt's birthday party?

23 A My aunt's birthday party was directly after that. Um,

24 I'm not for sure the date well right now.

25 Q Directly after that, so like a week after that?

1 A About two weeks after that.

2 Q Two weeks after that, so that's probably --

3 A Because we had a, we had a family reunion in between

4 that.

5 Q So it's probably about July 18th. If it was a 4th of

6 July party, two weeks after would be July 18, right?

7 A Yeah. About 20th. 20th, somewhere around there.

8 Q Okay.

9 A The weekend of in the 20s.

10 Q So the last time you made money as a party promoter was

11 over one month before this incident?

12 A Yes. Probably so. Yeah.

13 Q And one month later you still have \$5,300 left over from

14 that incident -- from the party promotions?

15 A Ma'am, I had more money than that. That's just what I

16 had on me that night.

17 Q That night?

18 A Yes. Nate just came home and I had mo' money on me

19 the -- that day than, um, then that when Nate just came

20 home and I bought him some shoes, a outfit and gave him

21 the money so he can get around to handle all his

22 business, and for the auntie because he moved in with

23 his auntie.

24 Q Okay. So --

25 A I had, I had --

1 Q -- the \$241 that's in Nate's pocket, is that money that
2 you gave him?

3 A Yes.

4 Q Okay. You told Detective Schwein you got bills you
5 gotta pay as well, right?

6 A Yes.

7 Q And you do put some of your money into the bank for your
8 party promotion business?

9 A Fifth Third Bank, yes.

10 Q Okay. And you -- when all that's gone, you still have
11 \$5,311?

12 A Yes, ma'am. Because I don't, I don't just -- it's not
13 just big parties that I give. At Timeout Sports Bar and
14 Grill on Plymouth and Abington we also open up every
15 weekend. Every -- we open up everyday actually except
16 Mondays. Sell food there and everything. So any given
17 day if I'm there actually working, I can bring in a
18 couple hundred dollars.

19 Q Okay. But you didn't talk about that yesterday.

20 A Because he, he asked me about my party promotion. He
21 didn't ask me about my, um, everyday job.

22 Q Okay. Yesterday didn't you indicate that this was your
23 job, the party promotion?

24 A Yes, it's my business. That's my company. I got tax ID
25 number and everything for that.

1 Q And you also indicated that you gave Orlan -- Boss.
2 Sorry. Boss \$250 for crack cocaine for personal use --
3 A I gave him --
4 Q -- in one day.
5 A I gave him \$200 and he gave me \$250 worth.
6 Q Then yesterday on direct examination didn't you say it
7 was \$250 that you gave him?
8 A No. I said it was \$250 worth that he gave me, but I
9 gave him \$200 for it. He gave me 25 crack rocks for
10 \$200.
11 Q And that's for personal use?
12 A Yes. It was a deal.
13 Q Because you are a, according to your testimony, you use
14 crack cocaine and you use cocaine powder?
15 A Yes.
16 Q But one month after your party planning events you still
17 have \$5,000?
18 A Yes. Crack, crack is not a everyday habit. It's only
19 like when I'm drunk and I'm around people who do it.
20 You gotta understand. JJ doing it would, would make me
21 wanna do it. And everyday I'm not around that
22 environment.
23 Q Let's talk about your relationship with Detective
24 Schwein for a minute.
25 A Yes, ma'am.

1 Q You indicated that you have an unfriendly relationship
2 him, correct?
3 A Yes, ma'am.
4 Q And yet you agreed to start -- to speak with him for an
5 hour when you got arrested, correct?
6 A Yes, ma'am.
7 Q Okay. And actually when you and he were talking on
8 August 21st, he indicated, and you agreed that you guys
9 haven't talked in a number of years, correct?
10 A Yes, ma'am.
11 Q Okay. In fact, the last time you had contact with
12 Detective Schwein directly was in Octo -- in 2007,
13 correct?
14 A It was either 2000 (sic) or 2008, ma'am.
15 Q Okay. And that's because in 2007 he arrested you,
16 didn't he?
17 A Yes, ma'am.
18 Q For a drug case?
19 A Yes, ma'am.
20 Q And you actually got convicted of that drug case in
21 2008, February 4th, 2008?
22 A Took a plea, ma'am. Yes.
23 Q You plead guilty to that?
24 A Yes, ma'am.
25 Q On a case with Detective Schwein?

1 A Yes, ma'am.

2 Q And that was possession with intent to deliver cocaine,
3 correct?

4 A Yes, ma'am.

5 Q Detective Schwein -- and that was right around the time
6 that all the, the bad feeling was going on about this
7 murder case, right?

8 A Yes, ma'am.

9 Q Detective Schwein didn't plant any drugs on you?

10 A No, ma'am.

11 Q No. And you pled guilty to the charges in 2008?

12 A I pled guilty to what I had, yes, ma'am.

13 Q Okay. And since 2008 you really hadn't seen Detective
14 Schwein?

15 A Correct.

16 MS. DEYOUNG: Nothing further.

17 THE COURT: Any redirect?

18 MR. SHORT: Thank you, your Honor.

19 REDIRECT-EXAMINATION

20 BY MR. SHORT:

21 Q Mr. Walker, as a result of your plea conviction in 2008,
22 did you undergo any type of therapy or treatment?

23 A Yes, sir.

24 Q Tell the jury what kind it was.

25 A Gateway.

1 Q What is that?

2 A It's a rehab program on Jefferson and Lillibridge.

3 Q And at Gateway what did -- what happened? What did you

4 do there?

5 A I did inpatient for three months. And I did outpatient

6 in they Phoenix program and then I, um, I was released.

7 Q Did you receive treatment for drug addiction?

8 A Yes. Drug addiction, yes.

9 MR. SHORT: Nothing further, your Honor.

10 THE COURT: What may I ask was the point of

11 that redirect?

12 MR. SHORT: The point of the redirect, your

13 Honor, is that Mr. Walker is and has alleged to be a

14 drug user, not a drug seller.

15 THE COURT: And because he went to Gateway

16 right after the 2008 conviction that -- okay.

17 Well, Ms. DeYoung, does that raise any --

18 MS. DEYOUNG: May we approach?

19 THE COURT: -- interesting issues?

20 Yes, you may.

21 MS. DEYOUNG: Yes, it does.

22 (At 10:27 a.m., bench conference off the

23 record)

24 (At 10:28 a.m., bench conference

25 concluded)

1 THE COURT: Briefly at side bar -- we can make
2 a more complete record on this at another time. But
3 what we discussed at side bar was I said because the
4 defendant, because you got into this drug treatment with
5 immediately after his 2, 2-4-08 conviction, the
6 implication being that he has a use problem and that he
7 had treatment for it, that opens the door for subsequent
8 convictions that this defendant has had which I had
9 previously had ruled were not admissible out of concern
10 for how it might prejudice his case. But, you know,
11 given the way you conducted your redirect and the way
12 he's answered those questions, that it does become
13 relevant. So --

14 MR. SHORT: May I respond, your Honor?

15 THE COURT: -- Ms. --

16 MR. SHORT: For the record.

17 THE COURT: Yes. Okay.

18 MR. SHORT: Your Honor, we believe that this
19 information is highly prejudice, more prejudicial than
20 probative. Given the fact the prosecution brought up a
21 previous drug conviction we were specifically and
22 totally within our rights to explain that Mr. Walker
23 received drug treatment as a result of that conviction.

24 It's been our contention since the beginning
25 that Mr. Walker has received drug treatment for his drug

1 use problem. And we disagree that that opens up any
2 prior convictions.

3 We think it's more prejudicial than probative
4 and would only serve to make the jury attempt or want to
5 convict Mr. Walker for the crimes here based on things
6 that happened before.

7 THE COURT: I used some very careful
8 circumspection here in what I allowed Ms. DeYoung to get
9 into in terms of the defendant's prior convictions for
10 selling drugs. And I allowed her to get into only the
11 2004 -- '08 conviction in a case in which Detective
12 Schwein was involved for reasons that I stated on the
13 record before the jury came out.

14 But the way you and your client conducted this
15 redirect examination it leaves the jury with the false
16 impression that he is only a user and that he has
17 received treatment for his use problem. And there's a
18 sort of a vague implication there that that was
19 successful. And, of course, that is a completely false
20 impression as the jury will soon learn because I'm gonna
21 allow Ms. DeYoung to get into the subsequent
22 convictions. And young --

23 MR. SHORT: If I may respond.

24 THE COURT: That you two opened the door for,
25 so there you are.

1 MR. SHORT: May I respond, your Honor?

2 THE COURT: You have already have. It's
3 enough. We're not gonna argue about it anymore. You
4 can squawk about it in the Court of Appeals if you'd
5 like.

6 Ms. DeYoung, go at it.

7 RECROSS-EXAMINATION

8 BY MS. DEYOUNG:

9 Q Mr. Walker, you indicated you got drug treatment after
10 the 2000 -- is the February 4th, 2008 conviction?

11 A Yes.

12 Q For possession with intent to deliver cocaine?

13 A Yes.

14 Q Now, you also had another conviction that you pled
15 guilty to on August 7th, 2008, correct?

16 A Yes.

17 Q That was for two counts, correct?

18 A Yes.

19 Q One for --

20 A For marijuana.

21 Q Marijuana?

22 A And Xanax pills.

23 Q Marijuana and Xanax pills?

24 A Yes.

25 Q And that was for possession with intent to deliver those

1 items?

2 A Yes.

3 Q And you pled guilty to that as well?

4 A Yes.

5 Q Then further in 2010 there were -- you pled guilty again

6 to possession with intent to deliver less than 50 grams

7 of cocaine, correct?

8 A Yes. I got, um --

9 THE COURT: Yes, you did plead guilty?

10 THE WITNESS: Yes.

11 THE COURT: Okay.

12 THE WITNESS: And I received --

13 THE COURT: That was the only question she

14 asked and you've answered.

15 BY MS. DEYOUNG:

16 Q And that conviction occurred on September 21st, 2010?

17 A Yes.

18 MS. DEYOUNG: Nothing further.

19 THE COURT: Okay. You can step down.

20 MR. SHORT: Your Honor, I have recross.

21 THE COURT: You already had recross --

22 redirect. Your -- it's your client. What do you mean

23 recross?

24 MR. SHORT: May I ask my client some questions,

25 your Honor?

1 THE COURT: No.

2 MR. SHORT: Regarding, regarding these new
3 convictions that have been brought up.

4 THE COURT: Well then you're gonna open the
5 door for re re recross, and I think we've had enough re
6 everything. So, no, you may not ask him any more
7 questions. You've covered it as far as I can tell.

8 MR. SHORT: Thank you, your Honor.

9 THE COURT: And the defendant can step town.

10 MR. SHORT: Thank you, your Honor.

11 Your Honor, the defense rest.

12 THE COURT: Okay.

13 I assume there's no rebuttal.

14 Any rebuttal?

15 MS. DEYOUNG: No rebuttal, your Honor.

16 THE COURT: Okay. Ladies and gentlemen, we're
17 going to excuse you for just a minute. And when you
18 come back, we'll begin with closing arguments and then
19 jury instructions.

20 All right. Probably about a 20-minute break.

21 (At 10:33 a.m., jury excused)

22 THE COURT: Okay. We have -- I think we had
23 jury instructions already, didn't we?

24 Did you give it to Judge Kenny?

25 MR. SHORT: Your Honor, I do have a motion to

1 make at the Court's behest.

2 THE COURT: All right. Go ahead.

3 We're looking for our jury instructions right
4 now.

5 Okay. Go ahead.

6 All right. Go ahead, Mr. Short.

7 MR. SHORT: Thank you, your Honor.

8 Your Honor, this is the defense motion for a
9 directed verdict. Even if this Honorable Court looked
10 at the, the evidence presented in a light most favorable
11 to the prosecution, the jury could not and would not
12 find Mr. Walker guilty of Count 1, that being controlled
13 substance delivery/manufacture of cocaine, 50 grams or
14 more but less than 450 grams.

15 The primary reason for that, your Honor, is
16 that the laboratory reports were conducted in error.
17 The amounts that were weighed were weighed with the
18 plastic. And when they were taken out and weighed
19 without the plastic, the laboratory technician testified
20 that the piece of cocaine weighed .21 grams. She used
21 the amount for that one particular crack rock or piece
22 of crack to determine that the other 163 crack rocks
23 would come to a specific weight. This is not the proper
24 procedure for weighing drugs.

25 All of the drugs, all of the crack cocaine, the

1 rock pieces should have been taken out of each piece of
2 plastic, put together and weighed in order to come to
3 the specific amount. And if that were done, the amount
4 would certainly be underneath 50 grams.

5 And in addition, your Honor, there's been no
6 evidence --

7 THE COURT: How do you know it would be under
8 50 grams?

9 MR. SHORT: The point of the matter is, your
10 Honor, that none of us know because it was --

11 THE COURT: Well, you just said we would know
12 it was under 50 if it all had been weighed together.
13 That's what you just said --

14 MR. SHORT: I misspoke.

15 THE COURT: -- isn't it?

16 MR. SHORT: I misspoke, your Honor.

17 The point of the matter is that there, there is
18 no specific or determining -- determinative scientific
19 evidence that the evidence in question weighs over 50
20 pounds (sic) because of the analysis was done in an
21 incorrect manner. We'll have no way of ever knowing how
22 many -- how much the drugs weighed because they weren't
23 weighed in a proper scientific manner.

24 In addition to that argument, your Honor,
25 there's been no evidence proffered by the prosecution to

1 suggest that Mr. Walker was ever seen dealing drugs,
2 giving anyone drugs or possessing, possessing or
3 intending to deliver any drugs from that specific large
4 bag that was found near the steps or the landing of the
5 staircase.

6 There's been no one that testified that they
7 saw Mr. Walker throw that bag of drugs either before or
8 after the police entered the, entered the domicile.

9 There's certainly were -- there was no
10 fingerprint analysis done on any of the scales, any of
11 the bags used to point to Mr. Walker to determine that
12 he was the one that was handling the drugs, packaging
13 them up and/or distributing them, your Honor.

14 In addition, there were eight people in the
15 house including Mr. Walker, four of which were males who
16 had at least as much opportunity, if not more, to take
17 that big bag of drugs and to toss it either down the
18 stairs or over to the landing that Mr. Walker had.
19 Those people being John Nettleton, Mr. Nathaniel
20 Manning, Mr. Herman, Raymond Herman I believe it is, and
21 a person by the name of Sheldon whose last name escapes
22 me at this time.

23 For those reasons, your Honor, we don't believe
24 that there's been a showing, even if the evidence is
25 viewed in the light most favorable to the prosecution,

1 for Count 1 and we request that that count be dismissed.

2 THE COURT: All right. Well, I'll take your,
3 your motion as a timely motion because I don't think we
4 gave you an opportunity to make it when the People
5 rested.

6 But other than that, Ms. DeYoung, what would
7 you like to say about it?

8 MS. DEYOUNG: Your Honor, under the Hampton
9 standard the evidence at the close of the People's
10 proofs is to be taken in the light of most favorable to
11 the People on whether or not a reasonable trier of fact
12 could come back guilty given that evidence.

13 As for the -- the easy part is the drugs that
14 were lying at the Mr. Walker's feet. There was
15 testimony from the officers that Mr. Walker was the only
16 person around that door.

17 There was testimony from Officer Diggs-Taylor
18 that the drugs that were found in Mr. Walker's pocket
19 were packaged the exact same way as the drugs that were
20 found on the floor right next to where Mr. Walker was
21 seen standing.

22 There was testimony from the officers that all
23 of the people in the living room were subdued and would
24 have been unable to drop anything once the officers had
25 entered.

1 There's also testimony from, I believe, Officer
2 Barnosky and, and several other officers that the only
3 person that was found upstairs was sleeping. That given
4 all of the testimony in the light most favorable to the
5 People, the location of the drugs, the location of
6 Mr. Walker, the drugs in his pocket in addition to the
7 cash money that was in his pocket, a reasonable trier of
8 fact would be able to believe that those drugs were his.
9 And I would ask the Court to deny that part of the
10 motion.

11 As to --

12 THE COURT: And then there is the Metformin.

13 MS. DEYOUNG: Yes. Not even to mention that.

14 THE COURT: Which was found in the larger
15 stash.

16 MS. DEYOUNG: As to the chemist, the People are
17 unaware of any kind of requirement that requires every
18 single baggie to be weighed scientifically. What the
19 chemist testified to yesterday was that she did pull out
20 one -- I forget the term she used, but for, for easy
21 references, one rock out of one the baggies and weighed
22 that rock without the baggie. From there she counted
23 the number of, of baggies of that were in there and
24 extrapolated a number.

25 She explained to the jury how she got those

1 numbers. She did it once for items six where I think
2 one -- that one might have been the .21, and that had
3 163 baggies in it.

4 She did it once for the item 14 which had 23
5 baggies in it and that weighed .17 grams.

6 There was testimony from Officer Barnosky that
7 he recovered a digital scale from the location that's
8 been used for weighing crack cocaine.

9 The, the -- that the rocks would vary so
10 greatly to be .9 grams or something. She, she testified
11 that all of the, the rocks that she were able -- was
12 able to observe on a visual inspection were
13 approximately the same size.

14 Based on her testimony, based on the fact that
15 there's a scale there, the People believe that the jury
16 do have ample evidence to make a decision. If the
17 evidence is viewed in a light most favorable to the
18 People, there is enough for them to find possession with
19 intent to deliver over 50 grams.

20 THE COURT: As far as the weight goes I think
21 it's frankly kind of a close call, but I agree that
22 there's probably enough to let it go to the jury on over
23 50.

24 I would think that the better practice would be
25 to weigh all of the cocaine so that the witness can come

1 into court and say what all the cocaine weighed rather
2 than weighing one rock and then multiply it by the
3 number of rocks maybe because it could have been more
4 than 52.44 grams. But then again I guess it could have
5 been less, and that is very close, of course, to the
6 threshold.

7 It seems to me like this could easily be
8 accomplished by just putting all the rocks, even in
9 their cellophane bags and weighing it all, jotting down
10 what that weight is, taking it off the scale and then
11 weighing one bag and then multiplying that result by the
12 number of bags and subtract that from the prior gross
13 weight, and that's the weight of the cocaine. I don't
14 know why it wasn't done that way. But it wasn't, and
15 yet the methodology used by the witness was fully
16 explored on cross-examination.

17 The jury knows exactly how the 52.44 grams was
18 arrived at. And if they don't think it was sufficient
19 in showing that he was in possession of more than 50
20 grams, well I guess that's their privilege.

21 As to whether or not the large stash with the,
22 the additional cocaine and heroin, the pills, et cetera,
23 were in the defendant's possession, again there's been
24 enough circumstantial evidence of his possession or
25 control of that bag to allow the jury to consider it.

1 The Metformin, the prescription medicine for
2 which he -- of which he was in possession anyway
3 apparently, I, I didn't -- it would surprise me that
4 somebody who has to take Metformin would carry the
5 Metformin around with them when they go to parties. But
6 maybe that's what he did, or maybe he was trying to sell
7 his Metformin pills to people as Xanax or Vicodin. That
8 would have been clever, but would've resulted in some
9 disappointed customers, maybe.

10 But the presence of his Metformin in the rest
11 of the stash, and it was evidently his Metformin,
12 although I recognize that the, the label on the
13 prescription bottle and the prescription of the pills
14 varies a little, but still it's Metformin. There's no
15 other explanation where Metformin would have got in that
16 stash. So the jury could conclude that that was his
17 Metformin.

18 And the presence of his Metformin in the, in
19 the larger stash is circumstantial evidence that it was
20 his. So that can go to the jury.

21 Was there anything else?

22 MR. SHORT: No, your Honor.

23 THE COURT: Okay. So the motion for directed
24 verdict is denied.

25 Now, let me look quickly while we're here at --

1 jury instructions would've been -- accompanied the file
2 down here from Judge Kenny's courtroom.

3 All right. He has the crimes here.

4 Let's see. And I have a form of verdict. Why
5 don't you -- would you come here and take a look at
6 this.

7 Do, do any of you contend that there are any
8 lesser includeds here?

9 MR. SHORT: We do, your Honor. As a matter of
10 fact, thank you for raising that. If we could put that
11 on the record.

12 THE COURT: Okay. Go ahead.

13 MR. SHORT: Your Honor, we are requesting that
14 the, the jury form be amended to include possession
15 without, I guess, an intent to distribute charge as well
16 since it is our contention that Mr. Walker did possess
17 drugs in his pocket, but that he intended only to use
18 them for personal use. And we think that the facts do
19 support --

20 THE COURT: Okay. Well, that is what he said.
21 So I guess we can -- all right.

22 So would that go for Count 1? Would that go
23 for all the counts, even the marijuana and the pills?

24 MR. SHORT: I don't believe so, your Honor. I
25 think just the --

1 THE COURT: Because he denied that he -- all he
2 said that he had for use was cocaine, right?

3 MR. SHORT: That's correct, your Honor.

4 THE COURT: Okay. So not for heroin.

5 MR. SHORT: No, your Honor.

6 THE COURT: All right. Well, the way it's
7 charged, it's in counts -- well, actually Count 1 where
8 he's charged with possession with intent to deliver more
9 than 50 grams, that's only cocaine, right?

10 MS. DEYOUNG: That's only cocaine.

11 THE COURT: Not heroin. So -- all right. I
12 gotta just change the description here.

13 And then in Count 2 he's charged with
14 possession with intent to deliver less than 50 grams of
15 heroin or cocaine. That would be the stash.

16 MS. DEYOUNG: That's the cocaine in the
17 alternative if it's -- really when I charged it, I was
18 concerned about the weight.

19 THE COURT: Right.

20 MS. DEYOUNG: So if they believe it's under 50
21 grams, then it could be what's in his pocket or in the
22 stash. It doesn't matter. But if the jury doesn't
23 believe that it's over 50 grams, then that's the
24 alternative count.

25 THE COURT: Okay. So, but that's cocaine

1 and --

2 MS. DEYOUNG: That's --

3 THE COURT: -- heroin.

4 MS. DEYOUNG: No. The heroin count should be

5 Count 3.

6 THE COURT: Oh. Okay. Okay. So one and two

7 are alternatives?

8 MS. DEYOUNG: Yes.

9 THE COURT: Or could you say a lesser included?

10 MS. DEYOUNG: Either way.

11 THE COURT: All right. That gets a little --

12 all right.

13 Well, anyway, Count 3 is possession with intent

14 to deliver less than 50 grams of heroin.

15 MS. DEYOUNG: Yes.

16 MR. SHORT: Yes, your Honor.

17 THE COURT: Count 4 I think is

18 delivery/manufacture.

19 Oh, that's the pills.

20 MS. DEYOUNG: That is the Vicodin, the

21 hydrocodone.

22 THE COURT: Okay. How do you spell Vicodin?

23 V-I-C-O?

24 MS. DEYOUNG: D-I-N.

25 THE COURT: And it's possession with intent to

1 deliver, right?

2 MS. DEYOUNG: Correct.

3 THE COURT: And then five is?

4 MS. DEYOUNG: Xanax.

5 THE COURT: The Xanax. Same thing, possession

6 with intent to deliver?

7 MS. DEYOUNG: Correct.

8 X-A-N-A-X. The --

9 THE COURT: Z-A-N-E-X, right?

10 MS. DEYOUNG: X-A-N-A-X.

11 THE COURT: Oh, is it X-A-N?

12 MS. DEYOUNG: Yep.

13 MR. SHORT: Yes.

14 MS. DEYOUNG: I did, in the information I

15 charged both by the street name and by the chemical

16 name. I'm not sure how the Court wants to write it up.

17 THE COURT: I'll just write is as Xanax.

18 MS. DEYOUNG: Okay.

19 THE COURT: And we don't need to say added to

20 schedule four by board rule. I mean it's just in the --

21 not in the jury verdict form anyway.

22 Okay. So Count 5 is possession with intent to

23 deliver Xanax.

24 And then six is, is it simple possession of

25 marijuana?

1 MS. DEYOUNG: Yes, your Honor.
2 THE COURT: Okay. All right.
3 Now, let's go back and figure out how one and
4 two relate to each other.
5 Is there -- I don't think there's any such
6 crime as just simple possession of less than 500 grams,
7 is there, of cocaine?
8 MS. DEYOUNG: Less than 50 grams?
9 THE COURT: There is less than 50.
10 MR. SHORT: I believe there's also --
11 MS. DEYOUNG: Less --
12 MR. SHORT: -- still a less than 25.
13 THE COURT: Yeah, I know that. I'm -- but
14 going up the scale, is there a crime of simple
15 possession of less than 500?
16 MS. DEYOUNG: But --
17 THE COURT: Or is possession from 50 to 4, 499
18 invariably possession with intent to deliver?
19 MS. DEYOUNG: Oh, no, no, no. You -- those can
20 also be possessions.
21 THE COURT: Oh, they can?
22 MS. DEYOUNG: Um-hum.
23 THE COURT: Okay. So Count 1, of course, the
24 defendant denies having even having had possession of
25 the drugs described -- well, no, he doesn't. No, no,

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.

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.

1 Is that possession with intent to deliver? Is
2 that simple possession or is that not guilty?

3 THE COURT: But the trouble is that -- oh.
4 Well, all right. But then you've got the drugs that
5 are, that are part of Count 2 also part of Count 1.

6 Doesn't that present a bit of a problem?

7 MS. DEYOUNG: I think ultimately if they decide
8 guilty on both counts, he can only be convicted of one
9 of those counts.

10 THE COURT: And let -- could he be found guilty
11 of Count 1 and then in Count 2 guilty of the lesser
12 included simple possession?

13 What if they to that? That would confuse the
14 issue.

15 MS. DEYOUNG: Yeah.

16 THE COURT: I think the better, the better way
17 to put this to the jury is either let's say Count 1,
18 possession of -- possession with intent to deliver
19 cocaine without a, without an amount. And then either
20 not guilty or guilty of possession with intent to
21 deliver more than 50, or guilty of possession with
22 intent to deliver less than 50, or simple possession.

23 MS. DEYOUNG: Then eliminate Count 2 entirely?

24 THE COURT: Yeah. Or I could just put Count 2
25 in, in parenthesis next to the third option. So there'd

1 be four options. And then there no danger of the jury
2 finding him guilty of duplicating their findings and
3 then, and then creating the confusion that that would --

4 MS. DEYOUNG: I have no objection to that
5 solution.

6 THE COURT: What do you think about that,
7 Mr. Short?

8 MR. SHORT: Well, your Honor, Mr. Walker wants
9 to indicate to the Court that he doesn't believe that
10 crack cocaine and powder cocaine can be added together
11 to, to reach an aggregate amount.

12 THE COURT: He wants you to say that. Okay.

13 MR. SHORT: Yes, your Honor.

14 THE COURT: All right. That hardly requires a
15 response.

16 MR. SHORT: Thank you, your Honor.

17 THE COURT: Okay. Well, anyway, so then you're
18 not going to indicate your ascent one way or the other
19 to the way I suggested we construct these charges.
20 That's what I asked you to do.

21 MR. SHORT: Yes, your Honor.

22 THE COURT: I didn't ask you to repeat some
23 hairbrained notion that your client asked you to tell
24 me.

25 MR. SHORT: I just wanted to protect myself on

1 the record, your Honor.

2 THE COURT: Well, fine.

3 Now tell me what do you think about my proposal
4 about the way this should go to the jury?

5 MR. SHORT: Your Honor, can you repeat the
6 proposal?

7 THE COURT: The proposal is that in Count,
8 Count 1 be described as possession with intent to
9 deliver cocaine. And then it is either, the first
10 voting option is not guilty.

11 The second voting option is guilty of
12 possession in excess of 50 grams.

13 The third voting option is guilty of possession
14 with intent to deliver less than 50 grams. And in
15 parenthesis I will say Count 2.

16 And then the fourth option will be guilty of
17 possession of cocaine less than 50 grams.

18 MR. SHORT: As it relates to those charges,
19 your Honor, we don't believe that it's necessary to
20 include a count for simple possession for 50 to 450
21 grams.

22 THE COURT: It, it doesn't, it doesn't do that.
23 You weren't listening.

24 The only possession option is less than 50.

25 MR. SHORT: We have no problem that option,

1 your Honor. Actually the possession we believe should
2 be under 25 grams. The simple possession charge because
3 the amounts found in Mr. Walker's pocket were, I
4 believe, 12.4 and four point something, your Honor.

5 THE COURT: All right. You may be right about
6 that. I -- does that --

7 Is that right, Ms. DeYoung, to your
8 recollection?

9 MS. DEYOUNG: Yeah. The People would stipulate
10 to the under 25 grams.

11 THE COURT: Okay.

12 MR. SHORT: Thank you, your Honor. Otherwise
13 that sounds fine.

14 THE COURT: Okay. That's the way we'll set it
15 up.

16 And then, Count 3 will be possession of less
17 than -- possession with intent to distribute less than
18 50 grams of heroin, and ten Vicodin and then Xanax and
19 then marijuana.

20 MR. SHORT: No objections, your Honor.

21 THE COURT: Okay. Now, the, the instructions
22 that Judge Kenny sent down here, so for Count 1 the --
23 it reads the defendant is charged with the crime of
24 allegedly possessing with intent to deliver a controlled
25 substance. To prove this.

1 Yeah. All right. I could say that in Count 1
2 the defendant is charged with the crime of illegally
3 possessing with intent to deliver cocaine, comma, a
4 controlled substance because we've split the heroin
5 charge.

6 To prove this charge the prosecutor must prove
7 each of the following elements beyond a reasonable
8 doubt:

9 First, that the defendant knowingly possessed a
10 controlled substance, namely, cocaine.

11 Second, the defendant intended to deliver the
12 substance to someone else.

13 Third, that the substance possessed was cocaine
14 and the defendant knew it was.

15 Fourth, that the substance was in a mixture
16 that weighed 50 grams or more.

17 And then I will tell the jury that they can
18 consider the lesser offense of possession with intent to
19 deliver less than 50 grams of cocaine or the still
20 lesser crime of simple possession of less than 25 grams
21 of cocaine without the intent to deliver.

22 Okay.

23 MR. SHORT: Yes, your Honor.

24 THE COURT: Okay. And I'll just tell the jury
25 that that'll be for Counts 1 and 2.

1 And then the next one is the defendant is
2 charged with the crime of illegally possessing with
3 intent to deliver less than 50 grams of heroin. To
4 prove this charge the prosecutor must prove the
5 following:

6 First, the defendant knowingly possessed
7 heroin.

8 Secondly, that the defendant intended to
9 deliver this substance to someone else.

10 Third, that the substance possessed was heroin.

11 Secondly, the defendant intended to deliver it
12 to someone else.

13 Third, that the substance possessed was heroin
14 and the defendant knew it was.

15 And, fourth, that the substance was in a
16 mixture that weighed less than 50 grams.

17 Okay. And then in Count 4, the defendant is
18 charged with the crime of illegally possessing with
19 intent to deliver Vicodin.

20 I don't know what's wrong with just naming the
21 drug.

22 And to prove this charge the prosecutor must
23 prove each of the following beyond a reasonable doubt:

24 First, the defendant knowingly possessed
25 Vicodin.

1 Second, that the defendant intended to deliver
2 this substance to someone else.

3 Third, that the substance possessed was
4 hydrocodone Vicodin and defendant knew it was. There's
5 no amount required there.

6 Okay. And then in Count 5, the defendant is
7 charged with illegally possessing with intent to --
8 Xanax. Okay. And to prove this the same thing.

9 First, that the defendant knowingly possessed
10 Xanax, a controlled substance.

11 Secondly, the defendant intended to deliver
12 this substance to someone else.

13 Third, that the substance possessed was Xanax,
14 or I guess its generic name is Alpro -- Alprazolam.

15 MS. DEYOUNG: Alprazolam.

16 THE COURT: Alprazolam. That's the generic
17 name, Xanax is a brand?

18 MS. DEYOUNG: Yes, your Honor.

19 THE COURT: Never had that one before. Okay.

20 And then the defendant is charged with the
21 crime of knowingly or intentionally possessing a
22 controlled substance, marijuana. To prove this charge
23 the prosecutor move prove each of the following:

24 First, the defendant possessed a controlled
25 substance.

1 Secondly, that it was marijuana.

2 Third, that the defendant knew he was
3 possessing marijuana.

4 And then the meaning of possession is given.
5 Possession is -- well, you know what that is. So that's
6 there.

7 All right. We can quickly go through the
8 general jury instructions here. I don't think -- I'm
9 not even gonna have them printed up separately. I don't
10 think they're that controversial.

11 I'll be giving 3.1, duties of judge and jury,
12 of course. 2.2, presumption of innocence -- three.

13 No, I won't give that.

14 Now 3.4 is impeachment by prior convictions.

15 I suppose you want me to give some sort of
16 limiting instruction about the stuff that came up,
17 Mr. Short?

18 MR. SHORT: Yes, your Honor.

19 THE COURT: Such as?

20 You -- well, let's see. Let me think about
21 that.

22 The -- you heard evidence that the defendant
23 had been convicted of prior drug offenses in the past.
24 The only purpose for which you can consider that
25 evidence is to determine the credibility of the

1 defendant on the issue of whether or not members of the
2 Taylor Police Department had targeted him or, or had
3 improperly arrayed evidence against him in this case or
4 something like that.

5 MR. SHORT: Just something, your Honor, to the
6 effect that any prior convictions can't be used to, to
7 prove his --

8 THE COURT: Tendency or propensity to commit
9 crimes.

10 MR. SHORT: For this crime. Okay.

11 THE COURT: It'll be sort of more lie a 404(b)
12 instruction.

13 MR. SHORT: Thank you, your Honor.

14 THE COURT: Okay. And then 3.5 is evidence.
15 Witness credibility.

16 And, of course, and then time and place venue.
17 I'll give that.

18 And then I'll give 11, 12, and 13 at this end.
19 At the end. That's the one about electing the foreman
20 and all that.

21 Okay. So then in chapter four defendant's
22 statements as well. You didn't introduce any statements
23 in the end I guess.

24 MS. DEYOUNG: I didn't think I could because he
25 admitted to it, so.

1 THE COURT: Yeah. Okay. Yeah. Probably so.
2 Circumstantial evidence. I'll give that.

3 Prior inconsistent statement. Well, I guess
4 he -- yeah, he did admit to a prior inconsistent. Okay,
5 I'll give that.

6 Do either one of you want me to give motive?

7 I don't know how that applies in this case.
8 But if either one of you want me to give it, I'll give
9 it.

10 MS. DEYOUNG: I -- the People are not asking
11 for it.

12 MR. SHORT: Motive in respect to you -- who,
13 your Honor?

14 THE COURT: Motive. Just, you know. And the
15 instruction is you can consider whether the defendant
16 had a motive to commit the crime.

17 MR. SHORT: No, your Honor. I don't think
18 that's necessary.

19 THE COURT: I don't need to give it here.
20 Okay.

21 Oh, 4.11. Other evidence.

22 You know, maybe that's where I'll give the
23 limiting instruction because I've got it written down
24 right there.

25 All right. I'll give, I'll give 4.11 as I've

1 indicated already. That's about it.

2 And then in chapter five I won't give
3 impeachment to weighing conflicting wit -- the number of
4 witnesses, I'll give that.

5 That's about it. I'll give police witness.

6 Oh, expert witness. That's about it I think,
7 and then the crimes, right.

8 MS. DEYOUNG: Your Honor, there are two that
9 I'm curious about. One is the intent. Intent may be
10 proved by what a person did. That may be within the
11 body of the possession with intent to deliver
12 instruction. I'm not sure.

13 THE COURT: It's -- okay. It might be. But
14 it's not included in what was sent down here from
15 upstairs. I know -- I remember that in the assault with
16 intent to murder instruction.

17 Is it in the drug instruction, too?

18 MS. DEYOUNG: I, I don't have it in front of
19 me. I can't recall at this time.

20 THE COURT: Oh, well, I'll soon see.

21 MS. DEYOUNG: Also while -- if the Court is
22 looking through the drug instructions, the People are
23 also going to ask for the definition of possession.

24 THE COURT: Yeah, that's included. 12.7.

25 MS. DEYOUNG: Okay.

1 THE COURT: Possession does not necessarily
2 mean ownership.

3 MS. DEYOUNG: Yes. That's the one.

4 THE COURT: All right. I don't think the
5 definition of intent is in here.

6 I don't remember seeing it.

7 All right. I can just -- yeah. I don't think
8 it's in here. But, you know, I sort of -- I have a
9 general idea what it is.

10 Intent can be inferred from what the, the
11 defendant did, what he said, and all of the other
12 evidence in the case. There's something -- is that
13 about it?

14 MS. DEYOUNG: That's, that sounds about right.

15 And then also I don't know if the Court had --
16 I don't think there is an instruction for the
17 aggregation part of it. But could the Court instruct
18 the jury that we -- aggregating narcotics is allowed
19 under the statute somehow.

20 THE COURT: Okay. I'll mention that when I'm
21 reading the charges.

22 Okay.

23 MR. SHORT: Your Honor, that in -- the aggre --
24 the aggregate, I guess, counting method is for just the
25 cocaine, and that would be separate from the heroin in

1 that instruction as well?

2 THE COURT: Yeah. And that's the cocaine is
3 the only drug for their -- they have charged a higher
4 threshold anyway, so.

5 MR. SHORT: Thank you, your Honor.

6 THE COURT: Okay. Now, let me talk to my
7 secretary for just a minute about the jury verdict form
8 and then we can get the jury out and argue and get them
9 charged and get going.

10 (At 11:13 a.m., proceedings recessed)

11 (At 11:20 a.m., proceedings resumed)

12 THE COURT: All right. Back on the record.
13 We ready for the jury?

14 MR. SHORT: Yes, your Honor.

15 THE COURT: Okay.

16 (At 11:20 a.m., jury returned)

17 THE COURT: All right. You may be seated.
18 Thank you, folks.

19 All right. Both sides have rested, ladies and
20 gentlemen. We've now come to the point in the trial
21 where the attorneys will deliver their closing
22 arguments. And then you'll hear instructions and you'll
23 begin your deliberations.

24 Let me remind you that the People have the
25 burden of proof. And because they have that burden,

1 they're allowed to argue twice.

2 We'll be closing argument with Ms. DeYoung.
3 That will be followed by Mr. Short. And then Ms.
4 DeYoung will be allowed to come back with a brief
5 rebuttal argument as well. Then you'll begin your
6 deliberations.

7 All right. Ms. DeYoung.

8 MS. DEYOUNG: Thank you.

9 THE COURT: Okay.

10 PEOPLE'S CLOSING ARGUMENT

11 MS. DEYOUNG: Good morning.

12 THE JURORS: Good morning.

13 MS. DEYOUNG: I'm trying to get more
14 technically advanced. I've got a power point. We're
15 gonna see how it goes this morning.

16 Oh. And it's a little bit dark. It's like I
17 don't know to fix that. I tried it and it's supposed to
18 be working, but.

19 This is a case of People versus Reginald
20 Walker. As Judge Hathaway instructed you when we went
21 started this on Monday or Tuesday, there are multiple
22 charges in this case. And for each charge there are
23 multiple elements that I need to prove to you beyond a
24 reasonable doubt in order for you to find the defendant
25 guilty of the charges.

1 All of the counts except for the possession of
2 marijuana, the Count 6 are basically possession with the
3 intent to deliver. For the five counts that are
4 possession with intent to deliver, the elements will be
5 the same. So instead of going through the, the cocaine,
6 the heroin, the Xanax, and the Vicodin, we'll do it all
7 at once and, and try and be a little bit more efficient.

8 The first element that I need to prove to you
9 beyond a reasonable doubt is that the defendant
10 knowingly possessed a controlled substance. For Count 1
11 and 2 that would be cocaine. For Count 3 that would be
12 the heroin. All of it falls right along.

13 How do we know that Mr. -- well, let's see.

14 The second element for all of five counts is
15 that he intended to deliver this substance to someone
16 else. For all those counts he's charged possession with
17 intent to deliver.

18 The third element that I need to prove is that
19 the substance possessed was whatever ele -- whatever
20 count we're talking about, and that the defendant knew
21 that it was.

22 Only for Count 1, only for the possession with
23 intent to deliver 50 to 450 grams there is a fourth
24 element for that. Substance was in a mixture that
25 weighed between 50 grams and 450 grams. That's the

1 element just for the cocaine count on Count 1.

2 So how do we know that Mr. Walker knowingly
3 possessed the narcotics. For the cocaine he -- the
4 officers testified that they pulled the -- that they
5 pulled cocaine out of his pockets. Mr. Walker testified
6 yesterday that there was cocaine in pockets and it was
7 him. He knowingly possessed the cocaine. He admits
8 they're in his pockets.

9 What about the baggie on the floor. How do we
10 know that Mr. Walker knowingly possessed the baggie that
11 was found on the floor.

12 First of all, we have the testimony from the
13 police officers. The other drugs are on the floor right
14 where he was standing.

15 Secondly, we have the fact that the defendant
16 try -- admits that he tries to close the door when the
17 police officers come in. It's guilty knowledge that he
18 has the cocaine in on him and that he knows about the
19 drugs that are in the house.

20 Here's the thing that came out this morning
21 that didn't get put into the power point. Mr. Walker
22 indicated that he bought this cocaine from a person
23 named Boss. He said Boss was at the house that day.

24 Boss sells drugs out of that house. Boss
25 doesn't trust the homeowner JJ or Johnny Nettleton

1 because Johnny Nettleton is a crack addict. The only
2 person that Boss trust in that house is the person that
3 the officers testified is upstairs asleep when the
4 police come in the house.

5 So, um, the other thing that Mr. Walker
6 indicated was that Boss and Orlando left the house right
7 before the officers got to the door.

8 So what do we know from Mr. Walker's own
9 testimony. Boss and Orlando sell drugs, but it just
10 so -- Boss and Orlando don't trust Johnny Nettleton and
11 they don't feel comfortable leaving their drugs there
12 without somebody else there that they trust or they
13 don't feel comfortable selling drugs there without
14 somebody that they trust and they left.

15 The person that they trust is asleep. That
16 doesn't make any sense at all. Because if Boss and
17 Orlando were in possession of those drugs, Boss and
18 Orlando would have taken them with them because they
19 don't trust anybody that is, is in the house with -- you
20 are not gonna leave what we can figure out from
21 extrapolating 163 crack rocks times \$10 a rock, that
22 alone is \$1600 plus the Vicodin, plus the Xanax, plus
23 all that. You're gonna leave thousands of dollars of
24 narcotics just around in this house with someone who is,
25 who's a drug addict. That doesn't make any sense at

1 all. That's too convenient.

2 That bag is Mr. Walker's. The bag is
3 Mr. Walker's and we know it because it's at his feet
4 when the police officers come into the door.

5 You've looked at those pictures of the way the
6 door works. And when you hear the testimony that, oh,
7 yeah, the drugs are found kind of behind the door and in
8 the space between the door and the stairs, if you're
9 thinking about normally how houses work, there's,
10 there's kind of a gap between the door and the stairs.
11 There's no gap here. There's no room for anyone else
12 there besides Mr. Walker and the drugs that are found
13 there.

14 The only other person that would have had
15 access to throw drugs there is upstairs asleep. I mean
16 and if you look at the way the stairwell is constructed,
17 you really can't even throw the drugs down the stairs
18 like that. And why would you.

19 Why would you throw them down right where the
20 police are, are coming in. It doesn't make any sense.
21 Those are Mr. Walker's drugs and he knew it.

22 Let's even talk about the Metformin. Sorry.
23 Getting ahead of myself.

24 The Metformin, the diabetic medication that's
25 in those baggies that are on the floor. Mr. Walker

1 his Metformin just happens to be a different
2 prescription on the table in the other room. It's just
3 all a big coincidence.

4 Out of the blue no, no Metformin for 23 years
5 and all of a sudden we have two diabetic people in the
6 same house where the drugs are being sold. That doesn't
7 make any sense. That's too convenient.

8 The next element is that the substance was
9 intended to be delivered. The packaging alone for the
10 cocaine, there's 163 packages of crack rocks in Exhibit
11 6. That's the drugs that were found on the floor.

12 In addition to that, there are, there's heroin.
13 There's pills. All of these different -- it's like a
14 whole pharmacy right at the foot of Mr. Walker. That's
15 not for personal use. That's for delivery.

16 As far as the pills that are in Mr. Walker's
17 pocket, 23 rocks for personal use, that's a joke.
18 There's no way. There's, there's -- we got the scale.

19 Let's see. We got the scale that's found in
20 the house used for weighing out drugs. We got the
21 baggies that are found in the house.

22 And you looked at the -- had a chance to look
23 at the baggies that were wrapped up, the rocks that were
24 wrapped up. They're wrapped up in the corners of
25 sandwich baggies all consistent with packaging for

1 delivery, for sale.

2 In addition to that, Mr. Walker has over \$5,000
3 in his pocket consistent with drug activity. He wants
4 to come in here and tell you that he's making all this
5 money as a music promoter. But what he testified is
6 he's made all this money a month before this happened.

7 He tries to say today that he can make a couple
8 hundred dollars here and there. But really if he is
9 a -- as big of a crack addict as he's is telling you, I
10 bought 25 rocks for personal use, that money is gonna be
11 gone long before we get to August 21st. That doesn't
12 make any sense at all.

13 The money in his pocket, the money that's
14 wrapped around the powder cocaine, that's his from drug
15 sales. And that's how we know that he intended to
16 deliver this substance.

17 The substance possessed was, Count 1, is the
18 cocaine. We can go through all of it. And that the
19 defendant knew that it was.

20 Again, we have the fact that he's trying to
21 close the door on the officers. He's trying to get --
22 separate the police from his stash.

23 He admits on his testimony that the rocks in
24 his pocket were cocaine. All of the other items, all
25 the other contraband is packaged up with the cocaine.

1 Detective Schwein and some of the other
2 officers, I believe, also testified Xanax and Vicodin
3 are commonly used for the narcotics trade. Those are
4 all -- those are two of the controlled substances,
5 narcotics, the pills that you see often when you're
6 fight -- looking at people who are selling drugs.

7 The chemist Tiffany Staples, she came in here
8 and she testified that she tested the cocaine, the
9 heroin, and the Vicodin using instrumental test, all
10 these other test, and that she found all of those items
11 to be heroin, cocaine, and Vicodin.

12 For the Xanax, the Xanax was not tested by Ms.
13 Staples. If you were listening, you heard that she, she
14 actually did not identify the Xanax. But what we heard
15 was she looked -- when she was identifying the Vicodin
16 and even the Metformin, she was referencing this drug ID
17 bible. The drug bible is kind of the slang term for it.

18 Detective Schwein said that when he was looking
19 at the pills that were taken into evidence, he looked at
20 the drug bible. He was able to identify the same things
21 that Ms. Staples could identify.

22 The Metformin was identified in the drug bible
23 that she did as well and also the Vicodin. Detective
24 Schwein said he was able to identify the Xanax in the
25 drug Bible.

1 And also we know from the testimony from the
2 officers that Xanax, that's something that is commonly
3 used in the narcotics trade is as something that's
4 commonly sold. That's how we know what the substances
5 were that was possessed.

6 This is the tricky part; that the mixture
7 weighed more than 50 grams but less than 50 (sic) grams.
8 And that's only the element for the cocaine.

9 And there's two pieces to this. First of all,
10 Judge Hathaway is going to tell you that under the,
11 under the case law under the statutes we are allowed to
12 aggregate cocaine. When, when we have cocaine in one
13 place and cocaine in a second place, all of that
14 cocaine, all that substance can be aggregated to get to
15 the 50 gram threshold.

16 So if you're looking at the drugs in
17 Mr. Walker's pocket and the drugs that are on the floor,
18 you can aggre -- on the -- excuse me.

19 The cocaine that's in his pocket and the
20 cocaine that's on his -- on the floor, you can put that
21 all together to get to the over 50 gram threshold. We
22 can't add in the heroin and we can't add in any other
23 substances, but the one substance by itself can be put
24 together.

25 And for that why can we put those together,

1 because of the testimony from the officers about where
2 the drugs are found.

3 Again, because of the money on him we can show
4 that it's all his. The only person, other person in the
5 house with money on him is Mr. Manning. And Mr. Walker
6 testifies, well, I gave that money to Mr. Manning.

7 Ms. Seals, Diamond Seals testifies, well, Mr.
8 Manning had just gotten out of jail so we're throwing
9 him a big party. The person upstairs is asleep. The,
10 the drugs are Mr. Walker's. There's nobody left to
11 blame at that point.

12 Again, follow the Metformin. You got the, the
13 Metformin in the bag on the floor. The Metformin in the
14 prescription bottle with Mr. Walker's name on it.

15 The other part of it is showing that if you
16 aggregate all of the cocaine from the baggie and from
17 the floor, it's still going to weigh over 50 grams. And
18 that we brought in the chemist Tiffany Staples to
19 testify about her methodology and what she did to
20 determine the weight of the cocaine.

21 She indicated that it's 52.44 grams. If it's
22 extrapolated out -- she took one of the 163 baggies.
23 She took the cocaine out of one of those baggies and
24 weighed that and then used that number to get to the
25 number for, for the part six for the Exhibit 6.

1 She did the same thing on Exhibit 14, the
2 cocaine rocks that were found in Mr. Walker's pocket.

3 Is it possible that some baggies may be less?
4 It's possible. It's also possible that some baggies may
5 be more. But the number that she got to is 52.44 grams
6 based on her methodology that she testified to.

7 As jurors, what is reasonable. What is a --
8 you are to find the elements and find -- the elements,
9 my burden to prove is beyond a reasonable doubt.

10 It's your, your decision in this case to decide
11 what's reasonable about whether or not this was over 50
12 grams. And the People would submit that it is
13 reasonable that this is over. There is no reasonable
14 doubt that this over 50 grams.

15 Most of this case relies on credibility. And
16 there's, there's only a few parts of this case where the
17 things are -- where the facts are really at issue. And
18 when you're looking at credibility, it's important to
19 look at all of the witnesses.

20 Let's look at the police officers who came to
21 the scene. They've all testified they've only been
22 officers, all four of them, for two years or less. None
23 of them have ever met Reginald Walker. I think
24 Mr. Diggs-Taylor said he had some contact with him on a
25 traffic stop or something.

1 They've got no reason to lie about what they
2 saw. They've got no reason to lie about what they did.
3 They don't have any connection to Reginald Walker at
4 all.

5 Officer Barnosky testifies I did the narrative
6 report. Officer Toth did the in, inventory section of
7 the report. Their report is entered before Detective
8 Schwein gets to the office.

9 Once a report is entered, and you heard
10 testimony from Detective Schwein and Officer Barnosky,
11 you can't go back in and change that.

12 Officer Toth testified I went in, because our
13 drop down menu box insist that we ascribe all of the
14 items found to someone if it wasn't taken directly from
15 that person, I didn't get -- I didn't assign it -- I
16 assigned it to the homeowner because I had to assign it
17 to someone.

18 Are they manufacturing the story? No.

19 They're telling you exactly what they did and
20 why they did it. If they were going to manufacture a
21 story and try to pin a case on Mr. Walker, why wouldn't
22 they say then all of these drugs came from Mr. Walker.
23 And if they're gonna go that way, if they're gonna
24 manufacture the case, wouldn't they say, oh, yeah,
25 everything was in his pocket. All of those drugs were

1 all in his pocket. They don't tell you that because
2 that's not what happened, because that's not what they
3 did. That's not where they found those items.

4 Detective Schwein, he's been very forthcoming
5 with you. Yes, I know Reginald Walker. I have history
6 with him. But his prior case with Reginald Walker is
7 six years old.

8 The homicide that Mr. Walker was a witness on,
9 that's been resolved. Detective Schwein said those two
10 guys are in prison.

11 Do you really think that Detective Schwein is
12 gonna hold onto a grudge for six years about this. He's
13 been very honest and forthright about his relationship
14 with Mr. Walker. He's not trying to sit up here and say
15 we're best friends, we get along very well, nothing like
16 that. He's very honest about his relationship with him.

17 The reports aren't changed. And Detective
18 Schwein was gonna manufacture a story just to get back
19 at this guy who may or may not have done him wrong six
20 years ago, why don't the reports now say, and contrary
21 to what the officers testified to, that all of this
22 stuff was found on Reginald Walker. Because he didn't
23 change anything.

24 He tells you what he's doing. He's doing good
25 police work. He's submitting the case that was

1 presented to him as it was presented.

2 The testimony of the young officers aren't --
3 isn't changed. They come in here, they're telling you
4 exactly what they saw, exactly what they did, exactly
5 what's consistent with reports. Nobody's manufacturing
6 any testimony.

7 Detective Schwein was never at the scene. He
8 doesn't come in until eight o'clock in the morning the
9 next day. He wasn't there. There's no reason. He's
10 been involved in multiple cases over the course of his
11 career. There's no reason for him to risk his entire
12 career on this one case. That doesn't make any sense.

13 If you're a good police officer, you're going
14 to be happy when someone who you gets is -- has drugs in
15 their pocket, selling drugs, you're gonna be happy when
16 that person is brought to justice. There's nothing
17 wrong with being excited about that.

18 Let's look at the defense witnesses in this
19 case and their credibility. Diamond Seals' testimony
20 directly conflicts with Reginald Walker's testimony.
21 Diamond Seals came in yesterday. She said I never saw
22 Reginald Walker with drugs. I never saw drugs in that
23 house. I never saw anything in that house.

24 Reginald Walker got up and testified yesterday
25 right after her. He says, no, I bought drugs there. I,

1 I was -- I smoked crack there.

2 And it, it, it directly conflicts with what
3 Diamond Seals was telling you. Nothing was going on. I
4 didn't see anything, but I was with Mr. Walker all day
5 long except for two periods of time. That doesn't make
6 any sense. That's not credible testimony.

7 Mr. Walker's own testimony conflicts with the
8 statement he gave at the police department on
9 August 21st. So which story is it that is -- that, that
10 he wants us to believe. You don't know.

11 The -- maybe there he's willing -- he's lying
12 on the witness stand. He's lying in the, in the witness
13 room. We -- in the interview room.

14 We don't know what's going on. We don't know.
15 And it conflicts with what Diamond Seals is telling us.

16 He doesn't mention anything about Orlando or
17 Boss selling drugs until yesterday. He also wants you
18 to believe that 23 rocks are personal use. Common sense
19 and logic dictates that 23 rocks are not personal use.
20 That's ridiculous. That's just ridiculous.

21 And then he's got \$5,300 left after six weeks.
22 Counting from July 4th down to August 21st, that's four
23 weeks if you wanna -- we wanna say the benefit of the
24 doubt. The aunt's party's on the -- I don't remember
25 what that was. The 14th.

1 Someone who is a self-professed drug addict is
2 gonna have that much cash left over. That's not, that's
3 not credible. That's not reasonable.

4 Based on all of the evidence in this case there
5 is no reasonable doubt of the defendant's guilt. And I
6 ask you to find him guilty of all counts including the
7 Count 6, the possession of marijuana which is fairly
8 self-explanatory.

9 Thank you.

10 THE COURT: All right. Mr. Short.

11 MR. SHORT: Thank you, your Honor.

12 DEFENDANT'S CLOSING STATEMENT

13 MR. SHORT: Good morning, ladies and gentlemen.

14 THE JURORS: Good morning.

15 MR. SHORT: Mr. Walker and I would like to
16 thank you for your attention throughout these past few
17 days. What seemed to be a simple drug case has turned
18 out to be a four-day trial, and we appreciate your
19 attention throughout.

20 Ladies and gentlemen, when I gave my opening
21 statement, I told you one thing of real importance.
22 That's that the boulder of the prosecution, her burden
23 of proof would not move from her table to mine, and it
24 still hasn't.

25 That burden is still there, ladies and

1 gentlemen, that she must prove every element of every
2 crime beyond a reasonable doubt in order for you to find
3 Mr. Walker guilty, and they haven't.

4 Even before we put Mr. Walker on the stand and
5 his witness, reasonable doubt started to creep into your
6 mind. You started thinking about possible biases
7 between Detective Schwein. The fact that there were no
8 witnesses that saw Mr. Walker selling drugs that night.
9 The fact that there was no fingerprint evidence. These
10 reasonable doubts start to creep into your mind even
11 before we started to present our case.

12 If there is a more likely explanation or at
13 least as likely of an explanation for the events that
14 happened, you already have reasonable doubt.

15 The Judge will -- this wise and learned judge
16 who you've seen he and I have gone back and forth
17 doesn't mean we don't like each other. I'm advocating
18 on behalf of my client. He's the judge. Whatever he
19 says goes.

20 That also holds true with sister counsel and
21 Detective Schwein. Don't think that we won't be
22 friendly after this. But we're all doing our jobs here.

23 They're doing their jobs because they wanna rid
24 the City of Taylor from drugs. And I applaud them for
25 that. But when you start to change evidence or you

1 start to show bias or you don't follow proper procedure,
2 then that means that the people who are really
3 responsible are still there. And only a patsy is here
4 before you, and that's what's happen here today.

5 Let's look at the facts of this case that are
6 irrefutable, beyond dispute, undisputable. In that
7 house that day there were eight people. At least four
8 of whom had access to the big bag of drugs.

9 And I'm gonna talk mostly about the big bag of
10 drugs first and then I'll talk about the drugs that were
11 found in Mr. Walker's pocket.

12 The big bag of drugs, at least four other
13 people had access to them. Nathaniel Manning who was in
14 the living room with arms -- within arm's reach who
15 could have thrown the drugs. This person upstairs who
16 could of thrown the drugs downstairs to where the drugs
17 were found on the landing.

18 We have Mr. Johnny Nettleton who answered the
19 door. The drugs were as close to him as they were to
20 Mr. Walker. And you also have this person Sheldon who
21 ran away when the officers entered the house. That's
22 four causes or instances of reasonable doubt already,
23 and I've just started my closing statement.

24 People that had access to the drugs as much, if
25 not more, than Reginald Walker that could have as easily

1 thrown the drugs. And there's been no evidence to prove
2 that he did it.

3 Let's look at the testimony. Let's look at the
4 statements. No witness ever saw Mr. Walker touch the
5 drugs.

6 You don't have any statements from Mr. Walker
7 or any of the other people in the house that say
8 Mr. Walker was selling drugs.

9 They didn't even take Johnny Nettleton who owns
10 the house to save his own skin and bring him in to
11 testify that Mr. Walker was selling the drugs. No one
12 did. Mr. Walker certainly said I wasn't selling drugs.

13 Yeah, he said he didn't have the drug in his
14 pocket. Of course, what are you gonna say when you're
15 being interrogated by, by the police officer.

16 They didn't bring Sheldon in to say Mr. Walker
17 was selling drugs. They didn't bring Mr. Herman who was
18 upstairs and say he was selling drugs. They didn't
19 bring Nate Manning in to say he was selling drugs. Not
20 one witness testified that Mr. Walker was selling drugs.

21 Let's talk about the fingerprint evidence or
22 the lack thereof. Detective Schwein testified that
23 hundreds of cases he's submitted fingerprints and there,
24 there was never a fingerprint found on the baggie. He
25 never told you, however, that he's never submitted a

1 scale and a print never came back. Those words never
2 came out of his mouth.

3 And there was a plethora of evidence that was
4 found in the house that day. Not one iota of which was
5 submitted for fingerprint analysis.

6 And I submit to you, ladies and gentlemen, if
7 it had been, and if only one print from any of these
8 digits had come back from Reginald Walker on a scale, a
9 baggie, anything, we won't be here today. There'd be no
10 need. He'd be guilty beyond a reasonable doubt. I have
11 no argument.

12 He would have touched that scale and you could
13 of come to the determination that he was the one
14 packaging and selling those drugs. But they didn't feel
15 it necessary. Or is there an alternative reason.

16 Let's look at the property list. The property
17 list names 48.1 grams to Johnny Nettleton. The heroin
18 to Johnny Nettleton. Marijuana to Johnny Nettleton.
19 The scales, Johnny Nettleton. Everything points to
20 Johnny Nettleton.

21 Maybe they didn't fingerprint it on purpose
22 because they didn't want Johnny Nettleton's fingerprints
23 coming back. Maybe because they knew Mr. Walker's
24 fingerprints wouldn't be on there. Either way they
25 should have done it. It would've helped you.

1 Now you're in a position where you have to
2 determine this man's guilty or innocence without the
3 proper procedure being done. And it's not fair to you,
4 and it certainly not fair to him.

5 We're talking about the property list somewhat.
6 Everything said owner. Johnny Nettleton. The cocaine,
7 the heroin. Everything but what was in Mr. Walker's
8 pocket. And he testified that, yes, I had that in my
9 pocket. The other stuff, it wasn't mine.

10 We know that once the officer submitted that
11 report to Detective Schwein, that Detective Schwein
12 finalized the charges. He went in and he talked to
13 Mr. Walker.

14 I'm not gonna tell you that Detective Schwein
15 is a bad guy. In fact, he and I talk almost every day.
16 I think he's a great detective. And I think you should
17 be steadfast when you try to rid the streets of drugs,
18 but not to put it on somebody else.

19 Part of me says you fucked me over back in the
20 day, but I'm past it. We're talking about the drug
21 case. He was supposed to testify to help out Detective
22 Schwein, but he didn't.

23 When you catch this felony, you're finally
24 gonna get what you deserve. Part of me knew I was going
25 to get played, and that's exactly what happened.

1 You're a cancer. I also told him I didn't like
2 his lifestyle. You put your ass on my plate and now
3 you're mine. And then the warrant was filled out and
4 completed. And guess who got charged with everything
5 despite Johnny Nettleton being attributed as the owner.
6 Mr. Walker.

7 They talked about the Metformin that was found
8 in the bag. You'll have a chance to look at the
9 evidence in this case. You'll see the prescription
10 pill.

11 The Metformin is obviously different than the
12 Metformin that was found in the big bag of drugs. The
13 Metformin in Mr. Walker's prescription bottle says 13 on
14 one side, eight on the other. The other Metformin says
15 48 and 93. You'll have these.

16 One's 500 milligrams, the other's 850. You
17 can't even split 850 in half and take 500 milligrams.

18 There's at least three people in the house that
19 are overweight and probably diabetic of some sort. But
20 then again it's not out point -- it's not our burden to
21 prove to you who has diabetes, and not our burden to
22 prove to you that these are somebody else's pills. It's
23 their burden to prove to you that these are his
24 Metformin pills.

25 His prescription wasn't found in that big bag

1 of drugs. They were just somebody's diabetic pills.
2 Could be anybody's. That's not enough for a conviction.

3 Let's talk about the specific charges for a
4 second and go through them. The big one in this case
5 obviously, ladies and gentlemen, is possession with
6 intent to distribute 50 grams or more or less than 450.
7 That's the whopper. That's the most important. That's
8 the one I'm gonna spend the most time on.

9 You heard from a laboratory witness who
10 testified to you that the aggregate amount of the crack
11 and the cocaine found in Mr. Walker's person and in that
12 big bag of drugs was over 50 grams. And the way that
13 she did that was to say that she took only one of those,
14 I'm gonna call it a crack rock. She's like she said
15 pieces of rock or pieces of cocaine out.

16 She took it out the plastic wrapper and it
17 weighed .21. That's improper scientific analysis.

18 And I'm sorry, I didn't go to medical school.
19 I wasn't smart enough, so I became a lawyer. You guys
20 will be able to figure this out I'm sure much easier
21 than I could or I was able to.

22 But that doesn't mean that every piece of crack
23 or every rock of cocaine in that bag was .21. The 163
24 at .21 is certainly a different amount than the 163
25 rocks at .18.

1 And I don't know too many drug dealers out
2 there that are trying to give people more than what they
3 paid for. If anything, they would err on the side of
4 caution to make more of their rocks .18 than .21. And
5 if that happens, then we're clearly under the 50 gram
6 mark. You'll be able to do the math yourselves, ladies
7 and gentlemen.

8 3.27 grams of cocaine. 3.91 of cocaine. 11.03
9 grams of cocaine, and 34.23 grams. All these numbers
10 were not completed in a scientific method in order to
11 prove that these amounts were over 50 grams. You can't
12 use any of it really. We don't know how much the
13 amounts are because it wasn't done properly. It wasn't
14 properly computed.

15 Mr. Walker took the stand even though he didn't
16 have to ladies and gentlemen. He took the stand and he
17 told you that he was there to buy drugs.

18 And, again if, there's an explanation that's
19 more likely or as likely in this case, then you already
20 have reasonable doubt. I don't think there's any doubt
21 here in anyone's mind that Mr. Walker has used drugs and
22 has a drug problem. I don't think there's any doubt at
23 all.

24 He explained to you he went to Gateway. He was
25 inpatient. He was outpatient.

1 He explained to you how when he snorts cocaine,
2 he's the life of the party. However, when he smokes
3 cocaine, he's drinking, and he's around other people and
4 he gets stuck.

5 These aren't just things that people hear.
6 These are things that he's personally experienced and
7 looked you in the eyes and told you about. He has a
8 drug problem. He was there using drugs that night.
9 That's the only thing that the evidence has proved.

10 You also heard evidence of Mr. Walker's weight
11 loss. Mr. Walker testified that he's lost, he lost over
12 a hundred pounds when he was using drugs. And that
13 wasn't just from his own mouth. You also heard one of
14 the officers testify. Yeah, he was a lot skinner
15 before.

16 Well, he's gained weight since this happened.
17 He hasn't been able to use drugs. But at one point he
18 was over 380 pounds and he went down to 270. All
19 consistent with drug use.

20 And, again, if there is more than one
21 reasonable explanation, you already have reasonable
22 doubt.

23 We're gonna ask to go in the back, ladies and
24 gentlemen. Specifically and first and foremost I'm
25 gonna ask you to look at the weight of the evidence.

1 Look at that 50 to 450 grams. The scientific evidence
2 there cannot prove that Mr. Walker had 50 to 450 grams
3 with the intent to distribute.

4 The numbers just aren't, similarly aren't
5 there. They were done in an incorrect manner by the
6 laboratory expert. She didn't weight way them properly.

7 The proper way to weigh the drugs would be to
8 take everything out, put it together on a scale and
9 weight it. And we don't have that weight. So it's
10 impossible for them to prove that case. It's impossible
11 for them to prove that charge.

12 The only charge here, ladies and gentlemen,
13 that we submit you should be giving any credence to
14 would be the possession with intent to distribute under
15 50 grams, the drugs that were in his pocket.

16 And we submit to you as well that Mr. Walker
17 has given you an alternative explanation. He's given
18 you the reason for drugs being in his pocket. 23 rocks
19 and powder cocaine.

20 We're not talking about a drug kingpin here.
21 We're talking about someone with a drug problem with the
22 powder in one pocket and the crack in the other.

23 One hit. You think it's not possible for
24 somebody to hit a rock of cocaine 23 times in a day or
25 two. He was there partying.

1 These are all reasonable doubts your -- ladies
2 and gentlemen. And at the end of the day when you take
3 all the evidence back, you think about the testimony,
4 think about Mr. Walker.

5 He admitted to what he had on him. He looked
6 you in the eyes. He didn't falter when sister counsel
7 questioned him. No, ma'am. No, ma'am. Yes, ma'am. I
8 have a drug problem. I smoke this. I did this. You
9 can judge his credibility.

10 After you take all these things back, there'll
11 be only one possible verdict for you, ladies and
12 gentlemen, and that's going to be simple possession of
13 under 25 grams.

14 Thank you very much.

15 THE COURT: Ms. DeYoung, any rebuttal?

16 MS. DEYOUNG: Just briefly.

17 PEOPLE'S REBUTTAL ARGUMENT

18 MS. DEYOUNG: A reasonable doubt in this case
19 is a doubt that's based on reason and common sense.
20 Reason and common sense.

21 What does common sense tell us. That based on
22 the testimony that we've heard when the officers knock
23 on the door, Mr. Nettleton has to go outside to see
24 who's there.

25 Mr -- Destiny or Diamond Seals testifies she's

1 drunk when the police officers knock on the door. She's
2 not paying attention to who's coming. She's, she's
3 laying out on the couch.

4 The only people that know that the police are
5 at the door then are the two people at the door.
6 Mr. Nettleton who's already outside talking to the
7 police and Mr. Walker.

8 Who's gonna throw the drugs, the guy that's
9 upstairs sleeping and doesn't know the police are at the
10 door, the other people in the house that have been
11 drinking all the 1800 Tequila all night long. That --
12 there is no common sense in any of those objections.
13 There's, there's nothing. There's no common sense
14 there.

15 A reasonable doubt is a doubt that's based on
16 reason and common sense. Nothing in the logic that
17 anybody could have tossed those drugs is based on reason
18 or common sense.

19 The charge in this case, the charges, all five
20 counts, it's not delivering drugs. It's possession with
21 intent to deliver them. Possession with intent to
22 deliver. That doesn't mean that somebody has to watch
23 him deliver drugs that day.

24 The question becomes what is his intent when he
25 is in possession of those drugs. Judge Hathaway will

1 read you an instruction that says intent can be based on
2 the circumstances surrounding evidence.

3 We don't have to see a hand-in-hand transaction
4 to know what the intent was behind having 163 crack
5 rocks in the, in the baggie on the floor and 23 crack
6 rocks in our pocket along with \$5,000.

7 There's been this ploy for sympathy about poor
8 Mr. Walker. He's just a poor drug addict. He's just a
9 poor drug addict. He, he just takes his -- he just
10 takes the drugs. He doesn't sell the drugs.

11 How do you think using reason and common sense
12 he gets the money to buy the drugs that he's taking. He
13 sells the drugs. He's selling the narcotics. He's
14 gonna sell the drugs that are in his pocket. He's gonna
15 sell the drugs that are on floor at his feet.

16 As far as the proper way to weigh the drugs,
17 you heard Tiffany Staples testify. You heard her
18 analysis. She was cross-examined on it.

19 What she told you is that the lab policy
20 requires that they test two drugs of all of the ones
21 that come in on a certain case. She went out of her way
22 to test four drugs the first time. Then she reopened
23 the case to look at even more of the cocaine to see if
24 it was going to make 50, 50 grams or not. That was the
25 threshold.

1 What she said was that if she was to open all
2 186 baggies, she would have to do 186 individual tests
3 on each one of those crack rocks.

4 Use your reason and common sense in
5 extrapolating whether or not this is over 50 or under 50
6 grams of cocaine. She's abiding by currently practice.
7 She's doing above and beyond what's required of her at
8 the lab. And that's what the chemist, the professional
9 chemist who analyzes drugs for a living; that's the
10 practice that she used in determining of weight of these
11 drugs.

12 Everybody wants to talk about fingerprints and
13 where is the fingerprints and where is the DNA sample
14 that we can pluck out of thin air. And where is the
15 carpet fiber that's only made in one place and it's only
16 in ten specific carpets all over the world.

17 Judge Hathaway talked to you about that in voir
18 dire about this, the CSI concept and, and how what
19 happens in real life is not what happens on TV.

20 The fingerprint evidence. All those fancy
21 technology things. Where's the fingerprints? Where's
22 the fingerprints? They should of sent the scale for
23 fingerprints.

24 Detective Schwein, what he actually testified
25 to is of all of the items I've ever sent, I've only

1 gotten five fingerprints back. Not just baggies, all of
2 the items that he sent.

3 So they say in law, in the practice of law that
4 if you don't have the facts, you argue the law. And if
5 you don't have the law, then you argue the facts. And
6 if you don't have either, you bang the table because
7 it's a distraction. It distracts you away from what's
8 being said on the witness stand. It distracting you
9 away from the evidence as admitted in this case.

10 This argument about fingerprints is table
11 banging. It's trying to distract you from the testimony
12 you heard, from the evidence that was admitted in this
13 case.

14 I ask you to use reason and common sense in
15 determining what happened on August 21st, 2013. Use
16 reason and common sense in assessing the charges and Mr.
17 Walker's responsibility for them. And I submit to you
18 that if you are using reason and common sense, you'll
19 come back with a verdict of guilty.

20 Thank you.

21 JURY INSTRUCTIONS

22 THE COURT: All right. Ladies and gentlemen,
23 members of the jury, the evidence and the arguments in
24 this case are now finished and I'm going to instruct you
25 on the law. That is, I'm going to tell you the law that

1 applies to this case.

2 Please remember that you have taken an oath to
3 return a true and just verdict based only on the
4 evidence and my instructions on the law. You are not to
5 let sympathy or prejudice influence your decision.

6 As jurors, you must decide what the facts of
7 the case are. You have to decide what happened, in
8 other words. And this is your job, and one else's. And
9 in doing so think about all of the evidence and then
10 decide what each piece of evidence means to you and how
11 important you think it is. And this includes whether
12 you believe what each of the witnesses said. In the
13 end, what you decide about any fact in this case is
14 final.

15 Meanwhile, it is my duty to instruct you on the
16 law. And you must take the law as I give it to you. At
17 various times, I've already given you some instructions
18 about the law. You are to take all of my instructions
19 together as the law you're to follow. So in other
20 words, you should not pay attention to some instructions
21 and ignore others.

22 So to sum up, it's your job to decide what the
23 facts are, to apply the law as I give it to you to those
24 facts, and, in that way, to decide the case.

25 Remember that a person accused of a crime is

1 presumed to be innocent. And this means that you must
2 start with the presumption that the defendant is
3 innocent. And this presumption continues throughout the
4 trial and entitles the defendant to a verdict of not
5 guilty unless or until you're satisfied beyond a
6 reasonable doubt that he is guilty.

7 Every crime is made up of parts called
8 elements. I'll tell you about the elements of these
9 crimes in a few minutes. The People are obligated to
10 prove each element of each crime beyond a reasonable
11 doubt. The defendant is not required to prove his
12 innocence or to do anything. So in the end, if you find
13 the prosecutor has not proven every element beyond a
14 reasonable doubt, then you must find the defendant not
15 guilty.

16 And, again, a reasonable doubt is a fair,
17 honest doubt growing out of the evidence or lack of
18 evidence. It is not merely an imaginary or a possible
19 doubt. It's a doubt based on reason and common sense.
20 So a reasonable doubt is just that, a doubt that is
21 reasonable, after a careful and considered examination
22 of all of the facts and circumstances of this case.

23 Now, when you discuss the case and decide on
24 your verdict, you may only consider the evidence that
25 has been properly admitted in this case. And,

1 therefore, it's important for you to understand what is
2 evidence and what is not evidence.

3 Evidence here only includes the sworn testimony
4 of witnesses and the exhibits admitted into evidence.

5 There were exhibits, right? Are there? There
6 were some exhibits?

7 MS. DEYOUNG: 20, 22.

8 THE COURT: That's right. 20, yeah. Okay.

9 Many things are not evidence. Things that you
10 might have thought of as evidence are actually not
11 evidence.

12 For example, the mere fact the defendant is
13 charged with a crime and is on trial is not evidence of
14 his guilt.

15 Likewise, the lawyers' statements and arguments
16 and -- are not evidence. They're only meant to help you
17 understand the evidence and each side's legal theories.
18 You should only accept things the lawyers have said that
19 are supported by the evidence or by your own common
20 sense.

21 Even my questions to witnesses are not
22 evidence. Nor are the lawyers. You should consider
23 these questions only as they give meaning to the
24 witnesses' answers.

25 My comments, rulings, and questions and even my

1 instructions that I'm giving now are not evidence. It
2 is my duty to see that the trial is conducted according
3 to the law and to tell you the law that applies to the
4 case. However, when I make a comment or give an
5 instruction, I'm not trying to influence your vote or
6 express a personal opinion about how you should decide
7 the case. You are the only judges of the facts, and you
8 must decide this case only from the evidence itself.

9 Now as I said earlier, I think we -- this came
10 up on the day of jury section, but bears repeating. It
11 is your job to decide the facts of the case. And in
12 doing so you often have to decide which witnesses you
13 believe and how important you think their testimony is.
14 You do not have to accept or reject everything a witness
15 says. You are free to believe all, or none, or any part
16 of any witness' testimony.

17 And in deciding which testimony you believe,
18 rely on your own common sense, but set aside any bias or
19 prejudice that you may have based on the race, gender,
20 or national origin of the witness.

21 Now, there's no fixed set of rules for judging
22 whether to believe a witness, but it may help you to
23 think about certain factors such as was the witness able
24 to see or hear clearly? How long was the witness
25 watching or listening? Was there anything else going on

1 that might have distracted the witness?

2 Another thing to keep in mind is did the
3 witness seem to have a good memory?

4 Also, how did the witness look and act while
5 testifying? Did the witness seem to be making an honest
6 effort to tell the truth or did the witness seem to be
7 evading questions or arguing with the lawyers?

8 Does the witness' age or maturity affect how
9 you judge his or her testimony?

10 Also, does the witness have any bias, or
11 prejudice, or personal interest in how this case is
12 decided?

13 In general, does the witness have any special
14 reason to tell the truth or any special reason to lie?

15 And, all in all, how reasonable does the
16 witness' testimony seem to you when you think about all
17 of the other evidence in the case?

18 Now, sometimes the testimony of different
19 witnesses will not agree, and then you have to decide
20 which testimony to accept. And in doing so, think about
21 whether the disagreement involves an important point or
22 not and whether you think someone is lying or simply
23 mistaken. People do, after all, do see and hear things
24 differently, and witnesses may testify honestly but
25 simply be wrong about what they thought they saw or

1 remembered. And it's always a good idea to think about
2 which testimony agrees best with all of the other
3 evidence in the case.

4 You may conclude, however, that a witness
5 deliberately lied about something that is important to
6 how you decide the case. And, if so, you may choose not
7 to accept anything that witness said. On the other
8 hand, if you think the witness lied about some things
9 but told truth about others, you may simply accept the
10 part you think is true and ignore the rest.

11 Now, facts can be proven by direct evidence
12 from a witness or an exhibit. And direct evidence is
13 evidence of something that we actually see or hear.

14 So to use the common example that we use around
15 here, if you were to look outside and see it raining
16 outside, that would be direct evidence that it was
17 raining outside.

18 But facts can also be proven by indirect, or
19 what we call circumstantial evidence. And
20 circumstantial evidence is simply evidence that leads to
21 certain inevitable conclusions. So maybe you don't
22 actually see it raining from a -- raining outside, but
23 you see someone walk in the courtroom wearing a raincoat
24 and carrying an umbrella all covered with small drops of
25 water, well, that would be circumstantial evidence that

1 it's raining outside. That would also be very welcome
2 evidence given the weather we're having right now.

3 And you may consider circumstantial evidence.
4 Circumstantial evidence by itself, or together with
5 direct evidence, can be used to prove the elements of a
6 crime.

7 Now, if you believe that witness a previously
8 made a statement inconsistent with his testimony here at
9 the trial, the only purpose for which that earlier
10 statement can be considered by you is in deciding
11 whether the witness testified truthfully here in court.

12 Now, you heard some evidence during the course
13 of the trial that show that the defendant had been
14 convicted of other drug offenses in the past.

15 So if you believe that evidence, you must be
16 very careful only to consider it for certain purposes.
17 And in this case it was introduced not to show that the
18 defendant is a bad person, or that he has a propensity
19 to commit offenses involving the selling of drugs, it
20 was introduced for a couple of limited purposes. First
21 of all, to, to show or to answer the charge that the
22 defendant made or implied that Detective Schwein was
23 sort of piling on evidence against the defendant because
24 of some prior beef the that Detective Schwein had with
25 him relating to his refusal to testify as a witness in a

1 homicide case.

2 And then it was also offered to answer the
3 testimony that the defendant gave that he had been to
4 drug rehabilitation after one of his offenses in 2008.
5 And that his going to drug rehabilitation, I'm not sure
6 what that was meant to prove or suggest. But in any
7 event his, his offenses, his drug offenses subsequent to
8 that were offered to undercut that claim.

9 You must not consider this evidence from -- for
10 any other purpose. For example, you must not decide
11 that it shows the defendant is a bad person, as I said,
12 or that he's likely to commit crimes. You must not
13 convict the defendant here because you think he's guilty
14 of some other bad conduct. All of the evidence that you
15 consider must convince you beyond a reasonable doubt
16 that the defendant committed the crimes alleged here in
17 this case, or you must find him not guilty.

18 Also -- as a technical matter the People are
19 obligated to prove that the crimes charged in this case
20 occurred in Wayne County, and that they occurred on or
21 about August the 21st, 2013.

22 Now, you should not decide this case based on
23 which side presented more witnesses. Instead, you
24 should think about each witness and each piece of
25 evidence and whether you believe them. And then you

1 must decide whether the testimony and the evidence that
2 you believe proves beyond a reasonable doubt that the
3 defendant is guilty or not.

4 You heard testimony from police officers during
5 the course of this trial. As I mentioned to you during
6 jury selection, the testimony of a police officer is to
7 be judged by the same standards that you would use to
8 judge the testimony of any other witness.

9 You also heard from an expert witness in this
10 case; that was Tiffany Staples. She testified as a
11 Forensic Scientist with Michigan State Police about the,
12 the content of the drug evidence, the testing that she
13 did and the measuring that she it. She gave you her
14 expert opinion in that field. Experts are allowed to
15 give opinions in court about matters they are experts
16 on.

17 However, you don't have to believe an expert's
18 opinion. Instead, you should decide whether you believe
19 it and how important you think it is. When you decide
20 whether you to believe an expert's opinion, think
21 carefully about the reasons and the facts that she gave
22 for her opinions and whether those facts are true. And
23 then you should also think about the expert's
24 qualifications and whether her opinion makes sense when
25 you think about all of the other evidence in the case.

1 All right. Now, when you go to the jury room
2 to begin deliberating in the case you're going to
3 receive something calling a form of verdict. And it is
4 essentially a ballot. And it gives you your voting
5 options on the various charges that have been lodged
6 against the defendant in this case. Two page form of
7 verdict.

8 And let me explain the form of verdict first
9 and say a little something about your voting options and
10 then I'll define the crimes that are contained in the
11 form of verdict and tell you what elements must be
12 shown.

13 I did do all a little compressing and modifying
14 here. I think as I mentioned to you at the beginning of
15 the trial the defendant was charged in Count 1 with a
16 possession with intent to deliver between 50 and 449
17 grams of cocaine. And in Count 2 he's charged with
18 possession with intent to deliver less than 50 grams. I
19 kind off merged those two counts in here as you'll see.

20 And so for Count 1, which is what the header
21 says on the vert -- verdict form, you are to consider
22 the crime of possession with intent to deliver cocaine
23 more than 50 grams. And you vote for one of these four
24 options. Either not guilty or guilty of possession with
25 intent to deliver greater than 50 grams, or guilty of

1 possession with intent to deliver less than 50 grams, or
2 guilty of mere possession of less than 25 grams of
3 cocaine.

4 Now, you are permitted to, and in deciding the
5 cocaine case, to add the aggregate of the cocaine that
6 was put into evidence in this case. It is within the
7 range of your -- the -- within the parameters of your
8 findings as a jury to, to either believe or disbelieve
9 that the defendant had possession of the larger amount
10 of cocaine, the cocaine that was found on the floor by
11 his, according to some of the testimony, near the
12 defendant's feet and add that to the cocaine that was
13 found in his pocket.

14 So you can add those two things together so
15 long as you conclude that he was in possession of both
16 or all three of those stashes.

17 And as far as the measurement goes, you heard
18 the witness testify how she came to conclude that the
19 aggregate amount of cocaine was, I think, a little over
20 52 grams. And you can accept that as a, as a viable
21 estimate. It was her opinion that it was or not. I
22 mean that's entirely up to you.

23 But in any event, the, the, initial charge in
24 Count 1 is possession with intent to deliver more than
25 50 grams of cocaine. And you can find the defendant

1 either not guilty or guilty as charged of possession
2 with intent to deliver greater than 50 grams or guilty
3 of possession to deliver less than 50 grams or simple
4 possession of less than 25 grams.

5 Then in Count 3, since I merged one and two
6 together, you are to consider the crime of possession
7 with intent to deliver heroin less than 50 grams. Your
8 voting options are either not guilty or guilty on that
9 charge.

10 And then in Count 4, possession with intent to
11 deliver Vicodin, either not guilty or guilty.

12 Count 5, possession with intent to deliver
13 Xanax, not guilty or guilty.

14 And finally possession of marijuana, not guilty
15 or guilty.

16 Now, let me give you the elements of these
17 offenses. And this -- these jury instructions will be
18 sent in to you along with the jury verdict form, by the
19 way, so you can have them for your, for your reference.

20 So in Count 1 the defendant, as I said, is
21 charged with the crime of illegally possessing with
22 intent to deliver cocaine, a controlled substance. And
23 to prove this charge the prosecutor must prove each of
24 the following beyond a reasonable doubt:

25 First, that the defendant knowingly possessed a

1 controlled substance. Here namely cocaine.

2 Secondly, that the defendant intended to
3 deliver this substance to someone else.

4 Third, that the substance possessed was cocaine
5 and the defendant knew it was.

6 And then for the primary charge it would be,
7 fourth, that the substance was in a mixture that weighed
8 50 grams or more.

9 But as I said, you can also consider the lesser
10 offense of guilty with a -- possession with intent to
11 deliver less than 50 grams or simple possession without
12 the intent to deliver element of less than 25 grams.

13 All right. Then in Count 3 he's charged with
14 possession with intent to deliver heroin. And to prove
15 this charge the prosecutor again must prove each of the
16 following:

17 That the defendant knowingly possessed heroin.

18 Secondly, that the defendant intended to
19 deliver this substance to someone else.

20 Third, that the substance possessed was heroin
21 and the defendant knew it was.

22 And, fourth, that the substance was in a
23 mixture that weighed less than 50 grams.

24 And in Count 4 he's charged with unlawful
25 possession of intent to deliver Vicodin. And to prove

1 this charge the prosecutor must prove each of the
2 following beyond a reasonable doubt:

3 First, that the defendant knowingly possessed
4 Vicodin.

5 Second, that the defendant intended to deliver
6 this substance to someone else.

7 And, third, that the substance possessed was
8 hydrocodone or Vicodin and the defendant knew it was.

9 There's no amount necessary for you to find in
10 that count. And, and that's also true of Count 5, the
11 Xanax. There's no particular amount threshold.

12 In order to find the defendant guilty of Count
13 5 where he's charged with possession with intent to
14 deliver Xanax, the People have to prove first that the
15 defendant knowingly possessed Xanax, a controlled
16 substance.

17 Secondly, that the defendant intended to
18 deliver this substance to someone else.

19 Third, that the substance possessed was Xanax
20 or it's generic name is Alprazolam and the defendant
21 knew it was.

22 And finally in Count 6, the defendant is
23 charged with the crime of knowingly or intentionally
24 possessing marijuana. And to prove that the People must
25 show first that the defendant possessed marijuana and

1 that the defendant knew he was possessing marijuana.

2 Now you may ask, well, what does possession
3 mean. And there is a legal definition of possession
4 that's important for you to know.

5 Possession does not necessarily mean ownership.
6 Possession means either that the person has actual
7 physical control of the substance. And I have an
8 example as like I do this piece of paper that I'm
9 holding up in my right hand which happens to be
10 something I own because I bought the pad. But so I own
11 the paper and I possess it but I don't own this
12 microphone, but I possess it.

13 So owner -- possession doesn't necessarily
14 require ownership. It means that the person has actual
15 physical control of the substance or the thing, or that
16 the person has a right to control the substance even
17 though it may be in a different room or a different
18 place.

19 Possession may be sole, where one person alone
20 possesses it, or it can be joint where two or more
21 people share possession.

22 It is not enough if the defendant merely knew
23 about the controlled substances. The defendant
24 possessed the controlled substances only if he had
25 control over them or the right to control them either

1 alone or together with someone else.

2 All right. Now, when you go to the jury room
3 first you are gonna be provide with a copy of the
4 instructions relating to the elements of the crimes I
5 just read to you. The first thing you should do is
6 choose a foreperson. And the foreperson should see to
7 it that your discussions are carried out in a
8 businesslike way and that everyone has a fair chance to
9 be heard.

10 Actually I think what I'm gonna do, since it's
11 25 minutes after 12, is send you to lunch first for an
12 hour and then you'll come back. Then choose a
13 foreperson and begin your deliberations.

14 I have to do that because we -- I know you
15 might be anxious to begin your deliberations, but I have
16 to give my staff a break here for lunch. And we can't
17 have you deliberating in there all by yourself without
18 someone being out here in the courtroom. So we're gonna
19 have to send you to lunch for an hour.

20 But in any event, when you come back, choose a
21 foreperson. See to it that your deliberations are
22 carried out in a, in a businesslike way and that
23 everybody has a fair chance to be heard.

24 A verdict in a criminal case, of course, must
25 be unanimous. So in order to return a verdict, it's

1 necessary that each of you agrees on that verdict. In
2 the jury room discuss the case among yourselves. Take
3 your notes with you when you do that, of course. And
4 ultimately each of you will have to make up your own
5 mind. The jury must -- or a verdict must represent the
6 individual considered judgment of each one of you.

7 It's your duty as jurors to talk to each other
8 and make every reasonable effort to reach agreement.
9 Express your opinions and the reasons for them, but keep
10 an open mind as you listen to your fellow jurors.
11 Rethink your opinions and don't hesitate to change your
12 mind if you think you were wrong. Try your best to work
13 out your differences.

14 However, although you should try to reach
15 agreement, none of you should give up your honest
16 opinion about the case just because the other jurors
17 disagree with you or just for sake of reaching a
18 verdict. Because in the end, your vote must be your
19 own, and you must vote honestly and in good conscience.

20 As I mentioned the other day, too, possible
21 penalty should not influence your decision. It is my
22 duty as the judge to fix the penalty within the limits
23 provided by law.

24 If you wanna communicate with me while you're
25 in the jury room, please have your foreperson write a

1 note and knock on the door. One of my deputies will
2 come to the door and get your note and we'll respond to
3 your note as best we can and as quickly as we can.

4 I think I'm starting a nonjury trial here this
5 afternoon, so we might -- if we don't get right on the
6 note, it's not because we've ignored -- we're ignoring
7 you or forgot about you. It's just that we might not be
8 able to get back to it real quickly. And then, of
9 course, I gotta have all the parties assembled here as
10 well. So just continue your deliberations and we will
11 respond as quickly as we can.

12 As you discuss the case, you're not to let
13 anyone, not even me, know how your voting stands. So
14 until you return with a unanimous verdict, do not reveal
15 that information to anyone outside the jury room.

16 If you wanna look at any of the exhibits that
17 have been admitted in this case, then all you need to do
18 is ask for them by writing a note.

19 All right. Counsel, would you approach,
20 please.

21 (At 12:29 p.m., bench conference off the
22 record)

23 (At 12:30 p.m., bench conference
24 concluded)

25 THE COURT: When I, when I was giving you the

1 instructions on the elements of the offenses here for
2 several of the -- several of the charged crimes involve
3 possession with intent to deliver. I failed to define
4 intent, and I probably should do that because you,
5 you -- you're gonna have to decide what the defendant's
6 intention was with respect to the drugs.

7 He admitted that he had some of them with him
8 for his own use. And you have to decide whether or not
9 that's truthful or whether he had the intent to deliver.

10 So how do you decide what a defendant's intent
11 was. Well, you look at what he said, what he did, the
12 nature of the evidence, and any other evidence in the
13 case that helps you determine or infer what the
14 defendant's intent was. It's up to you. Use your own
15 common sense in looking at the evidence and deciding
16 what the defendant's intent was.

17 All right. Ordinarily at this time point I
18 would have my clerk draw the names of two you by lot to
19 see which two of you are going to be alternates. But I
20 think we'll do, do that after lunch so that all 14 of
21 you can have lunch together it that's what you want or
22 not. But and when you come back, we'll assemble you in
23 the jury ver -- the jury box and then we'll choose two
24 of you as alternates.

25 Okay. So go to lunch. Don't take your notes

1 with you to lunch. Don't talk about the case at lunch
2 yet. Don't talk about the case until you begin your
3 deliberations then -- did I get a hand?
4 Did you have your up or just --
5 JUROR NUMBER 9: No. I was stretching but --
6 THE COURT: Oh.
7 JUROR NUMBER 9: -- my pen is broken.
8 THE COURT: Your what's broken?
9 JUROR NUMBER 9: My pen is broken.
10 THE COURT: Well, it's a County pen, so I'm not
11 surprised. It probably won't be replaced either, but
12 okay. Leave it out of the --
13 JUROR NUMBER 9: Okay.
14 THE COURT: Yeah. Just remind me of that. I'm
15 sorry.
16 Okay. So we'll see you back here at 1:30.
17 (At 12:32 p.m., jury excused)
18 THE COURT: Can we stay on the record here for
19 just a second.
20 I wanna establish that you've seen the jury
21 verdict form.
22 Does the jury verdict look okay?
23 MS. DEYOUNG: Yes, your Honor.
24 MR. SHORT: Yes, your Honor.
25 THE COURT: Okay. Any objections to the charge

1 as given?

2 MS. DEYOUNG: No, your Honor.

3 MR. SHORT: No, your Honor.

4 THE COURT: Okay. When the jury comes back,
5 we'll, we'll seat them again. We'll pick the alternates
6 and then they'll begin their deliberations.

7 MS. DEYOUNG: Thank you.

8 MR. SHORT: Thank you, your Honor.

9 MS. DEYOUNG: I'm sorry. The Court wanted them
10 back at 1:30?

11 THE COURT: Yeah, 1:30. I think that's what I
12 told them.

13 (At 12:35 p.m., court recessed)

14 (At 1:44 p.m., court reconvened)

15 THE CLERK: We are back on the record on People
16 versus Reginald Walker.

17 Appearances, please.

18 MS. DEYOUNG: Sarah DeYoung on behalf of the
19 People.

20 MR. SHORT: May it please this most Honorable
21 Court, good afternoon.

22 Rowland Short on behalf of Mr. Walker.

23 THE COURT: Okay. I think the only thing we
24 have to do is dismiss two alternates, right?

25 MS. DEYOUNG: Yes, your Honor.

1 MR. SHORT: Yes, your Honor.

2 THE COURT: Okay. Let's do that now. Let's
3 pull the jury out.

4 (At 1:44 p.m., jury returned)

5 THE COURT: Okay. You may be seated. You're
6 all here, right.

7 Okay. The only thing left to do is to select
8 two of you as our alternate jurors. My clerk's gonna
9 call the names of two of you by lot. You hear your name
10 called as an alternate, please get your belongings in
11 the jury room and then have a seat on that short bench
12 in front of the door, please.

13 THE CLERK: The court would like to thank and
14 excuse juror in seat number 14.

15 THE COURT: Mr. Gaedke, okay.

16 THE CLERK: And the court would also like to
17 thank and excuse the juror in seat number four.

18 THE COURT: Ms. Perkins. Okay.

19 All right. Madam clerk, you can administer the
20 deputies oaths.

21 THE CLERK: Deputies, raise your right hands,
22 please.

23 Do you solemnly swear or affirm to keep this
24 jury in the manner and form prescribed by law?

25 THE DEPUTY: Yes.

1 THE DEPUTY: Yes.

2 THE CLERK: Thank you.

3 THE COURT: All right. Ladies and gentlemen,
4 you may begin your deliberations.

5 THE DEPUTY: You guys can take your binders
6 now.

7 (At 1:46 p.m., jury excused)

8 THE COURT: All right. Be seated.

9 I wanna have a word with our alternates,
10 Mr. Gaedke and Ms. Perkins.

11 This has been a relatively short trial, but
12 still I know there's a sort of a letdown when you're
13 taken off as an alternate juror after you've been
14 spending a couple of days and spent at least one day, a
15 day and a half listening to evidence. But believe me,
16 your value to us as alternate jurors is every bit as
17 important, every bit as high as the people that are in
18 there deliberating on the case right now.

19 We cannot have jury trials without jurors. We
20 can't have jury trials without alternate jurors.

21 And the reason, the reason we need alternates
22 is because sometimes, it doesn't happen very often, but
23 sometimes a juror can fall ill or have a family
24 emergency in the middle of deliberations and we have to
25 replace that juror with an alternate, and have the jury

1 start over again. So that's why we have to have
2 alternates. So it is possible that your jury duty is
3 not finished yet.

4 What I'm gonna ask you to do, maybe you've done
5 it already, is provide my deputy with a phone number
6 where we can reach you later today or tomorrow if we
7 need to call you and bring you back in.

8 The other thing I'm gonna ask you to do is not
9 talk about the case among yourselves, even with each
10 other or with anybody else until you know there's been a
11 verdict. Now, you can call here at the end of the day
12 or tomorrow to find out if you are curious. You're
13 welcome to do that. But until you know for sure that
14 there's been a verdict, please do not discuss the case
15 with anyone including each other.

16 All right. With that I thank you very much for
17 you service. We look forward to seeing you back here in
18 January of next year. And --

19 JUROR NUMBER 14: Thank you.

20 THE COURT: -- be well. Thank you again.

21 (At 1:49 p.m., alternate jurors excused)

22 THE COURT: Okay. The exhibits are where
23 exactly, the --

24 MS. DEYOUNG: Did you want us to divide up what
25 was narcotics and what was regular exhibits?

1 THE COURT: Yeah. Maybe you should. We don't
2 wanna send the narcotics in there unaccompanied.

3 MS. DEYOUNG: Or the money.

4 THE COURT: Oh, that's right. You have the
5 money, too. This is true.

6 Okay.

7 MS. DEYOUNG: And just I had said earlier that
8 we had 22 exhibits. Exhibit Number 1, the initial
9 scale, that was never admitted as an exhibit so it's --
10 it will be Exhibits 2 through 22.

11 THE COURT: Okay. All right. I think there
12 were some defense exhibits, weren't there?

13 Didn't you put something in?

14 MR. SHORT: I don't think you let me, your
15 Honor.

16 THE COURT: A, B, C or something.

17 Oh, yeah. Maybe not. Okay.

18 Well, you had 'em marked. Okay.

19 All right. So just refresh my recollection,
20 you got the drugs, you got the money.

21 MS. DEYOUNG: We've got four photographs, one
22 printed photograph, the sandwich baggies, a scale.
23 There is the Met --

24 THE COURT: Oh, the scale is -- oh, you mean
25 the little scale?

1 MS. DEYOUNG: Yeah. There were two scales. He
2 could --

3 THE COURT: Yeah, that's right.

4 MS. DEYOUNG: -- identify one but not the
5 second one.

6 So the scale. There is the Metformin which is
7 not a controlled substance, but which is still in the
8 lab bags. There is the Metformin that's in the
9 prescription bottle. That's not a controlled substance,
10 but still would be a -- I don't know if you wanna send
11 that in. And then also I think everything in the green
12 box that's remaining is all narcotics evidence.

13 What we can do, if they wanted to see the
14 narcotics, we still have the elmo blown up. We can
15 probably try and blow the exhibits on elmo so they can
16 all come out and look at them that way.

17 THE COURT: Ah, okay.

18 All right. Well, let's see what they ask for.
19 I trust you two will be nearby?

20 MS. DEYOUNG: Yes.

21 MR. SHORT: Yes, your Honor.

22 THE COURT: Okay. As long as we know where
23 they are.

24 So we'll, we'll deal with questions as they
25 come in.