

EX D.

1 IN THE RECORDER'S COURT OF CHATHAM COUNTY

2 STATE OF GEORGIA

3
4 STATE OF GEORGIA)

) DOCKET NUMBER: 2013-10-0089-02

5
6 vs.)

) CHARGES:

) Possession/distribution of

) cocaine

) Possession of controlled

) substance

) Lane usage

8 FABIAN KEITH NOTTO,)

9 Defendant.)
10

11 **COPY**

12
13 Transcript of the proceedings heard in the Recorder's Court
14 of Chatham County, Georgia, on the 12th day of November,
2013, before The Honorable Willie T. Yancey, Jr., Judge,
transcribed by Amy Jo Kaska, Certified Court Reporter.

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STATE'S WITNESS:

AGENT COGSWELL

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(NOTE: The following was transcribed from an analog tape-recording. Notations of "(inaudible)" indicate individuals speaking over each other and "(unintelligible)" indicates that an individual is either speaking too rapidly or too softly so as to not be intelligible.)

1 THE COURT: Who represents Wesley Johnson?

2 MS. HASTAY: I do.

3 THE COURT: And, Mr. Pine, you represent
4 Mr. Notto?

5 MR. PINE: Yes, Your Honor.

6 THE COURT: Okay. Your client, Mr. Pine, is
7 charged with -- looks like failure to drive within a
8 lane, possession of cocaine or possession of
9 controlled -- marijuana with intent to distribute --
10 maybe that's a controlled substance with intent to
11 distribute.

12 And Mr. Johnson is charged with possession of
13 marijuana with intent to distribute.

14 Swear the witness in.

15 (NOTE: Witness sworn.)

16 THE COURT: Please, Mr. Tucker.

17 DIRECT EXAMINATION

18 BY MR. TUCKER:

19 Q. All right. Sir, if you would state your name and
20 occupation for the record.

21 A. Chase Cogswell. I'm with Savannah-Chatham Police,
22 currently assigned to CNT.

23 Q. All right. Agent Cogswell, did you have occasion
24 to encounter either of these gentlemen here on the other
25 side of the courtroom on October 8th of this year?

1 A. Yes, I did.

2 Q. All right. And what was the nature of that
3 encounter? How was it that you obtained contact?

4 A. On October -- I'm sorry. On August 30th Officer
5 Tucker with the metro canine unit contacted me in reference
6 to a defendant that he had arrested that was willing to
7 cooperate and provide narcotic information to me.

8 I went out to that scene and that defendant
9 indicated that someone that he knew named Fabian Notto was
10 going to Atlanta every couple of weeks and getting five to
11 seven ounces worth of Molly or ecstasy or bath salts.
12 They're all kind of called Molly. It ended up being bath
13 salts.

14 He described what he drives which is a silver
15 Toyota Tundra. He said that he stores the drugs at 1903
16 Archer Street in the Liberty City neighborhood. And I think
17 that pretty much covers what he told me.

18 He also said the Fabian that he knew was on
19 federal release, had recently gotten out of federal prison.
20 I started looking in to the address on Archer Street and
21 found Fabian Notto who had been released from federal prison
22 in, I believe it was, February of this year, rode past and
23 saw the vehicle there and got the license plate. That was
24 all back in August.

25 On October 8th I went out with Agent Coren Clayton

1 and went out to do a surveillance on the house and see if
2 there was any truth to what the defendant had told me.

3 So at 1515 hours, at 3:15 in the afternoon, I went
4 out with the other agents and we set up to watch the house.
5 Very shortly after setting up, I saw somebody fitting the
6 size, description, height and weight description of Fabian
7 Notto come out of the house and get in the pickup truck and
8 he drove away.

9 We followed the vehicle. We followed it over to
10 West 54th Street right off of Montgomery where he pulled on
11 54th and then went behind the laundry mat right there.

12 I went on passed on 54th and he went behind the
13 laundry mat. When I came back by, he was parked all the way
14 back in the corner of it. There was nothing really back
15 there. There was a lot of parking out in the front and he
16 was -- he was all the way -- it was an odd place to park
17 given the traffic circumstances and everything.

18 So he pulled back out. When he pulled back out,
19 he had somebody else in the car which ended up being Wesley
20 Johnson. He went north on Montgomery Street.

21 Based on what I'd seen, I thought there was
22 something fishy going on so I started watching the vehicle
23 and I contacted central precinct's crime suppression unit to
24 see if they were available to assist with the surveillance
25 and see what was going on, because they frequently have

1 unmarked cars and can assist.

2 Officer Castro with an unmarked vehicle, he ended
3 up assisting with the mobile surveillance. And on
4 Montgomery Street at West Gwinnett Street going northbound,
5 he observed Mr. Notto in the left turn lane and instead of
6 turning left he went straight and kind of blew the
7 intersection.

8 Officer Fikes with the crime suppression unit
9 ended up doing a traffic stop on Liberty Street. He was
10 informed of the vehicle description, tag. He made sure
11 everything matched. He did a traffic stop on Liberty Street
12 at -- I believe it was Barnard Street when the vehicle was
13 going eastbound.

14 He approached. He also had Officer Knoop and
15 Garcia assist him. They approached the vehicle who also --
16 as soon as -- actually before the door opened -- I guess the
17 window was open and Officer Knoop could smell marijuana,
18 could smell marijuana coming out of the car.

19 He asked Mr. Notto to -- Mr. Notto was driving.
20 He asked him to turn off the vehicle, which he did. And
21 then when he asked him to step out, he said that Mr.
22 Notto -- he was -- he might take off on him.

23 He said he started reaching for the keys and the
24 officer opened the car door and at that point Mr. Notto
25 complied and stepped out of the vehicle.

1 When he stepped out, since they did smell
2 marijuana, especially -- said once the door opened there was
3 a strong smell of marijuana coming out from the passenger
4 compartment.

5 He went to pat Mr. Notto down and he said he could
6 feel him tighten up and he felt like he was trying to
7 conceal something I guess between his legs.

8 When he finally did spread his feet out, a bag
9 fell out and it had ten bags of marijuana in it at 8.5 grams
10 total and then it had a 94 capsules with bath salts, MDPV,
11 and ten more bags with bath salts in it.

12 Q. Okay. And all of this was in the same -- within
13 the same bag?

14 A. Yes. It was in separate bags within one bigger
15 bag.

16 Q. Okay. And this was felt in the pants of Mr. Notto
17 here?

18 A. Correct.

19 Q. All right.

20 A. So while they were doing that, passenger's on the
21 other side said they -- I'm sorry. The officers on the
22 other side could -- said they could smell slight odor of
23 marijuana coming from the passenger side. The window was
24 shut. The door was shut.

25 When they opened that door, they said, you know,

1 the odor hit them in the face. They could immediately smell
2 strong odor of marijuana. Passenger stepped out.

3 They said he was extremely nervous and had a bulge
4 just below his waistband but not low enough that it
5 belonged, I guess, had a large bulge right there.

6 They went ahead and patted him down and they could
7 feel a bag with what they determined to be marijuana. They
8 handcuffed him and got marijuana from his crotch area.

9 Q. And "him" being the passenger, is that Mr. Johnson
10 here?

11 A. Yes. Yes, it is.

12 Q. All right. And you said a bulge and they -- what
13 was in this bag, you said marijuana?

14 A. It was three bags of marijuana. I believe it was
15 -- it was 38 grams, I think. It was over an ounce. It was
16 39.5 grams.

17 Q. All right. And in three separate bags?

18 A. Yes. And he also had a digital scale.

19 Q. Okay.

20 A. I'm sorry. Mr. Notto also had three Viagra pills
21 in that bag. I forgot about those. I didn't charge him
22 with those.

23 Q. All right. Anything else noteworthy?

24 A. I conducted an interview. Mr. Notto did say that
25 he gets about seven ounces of Molly from Atlanta. I told

1 him that it wasn't ecstasy in the capsules and he seemed
2 surprised. I guess he thought it was ecstasy and he seemed
3 surprised it was bath salts.

4 And I -- I actually asked him what was in the
5 capsules, because I hadn't opened them up, and he said that
6 it was the same thing that was in the bags, which we already
7 tested, which was the bath salts.

8 Q. Okay.

9 A. We also did a -- I sent some agents out. Since he
10 is on federal release he's a Fourth Amendment waiver. I
11 sent some agents to the house at 1903 Archer Street, which
12 was his mother's house, and she was there, and he had \$2400
13 in a drawer and a marijuana grinder. The \$2400 was seized.

14 And he also had another digital scale in the
15 pickup truck in the glove box, which I forgot to mention.

16 MR. TUCKER: All right, Agent. The attorneys here
17 may have some questions for you.

18 THE COURT: Mr. Pine.

19 MR. PINE: Thank you.

20 CROSS-EXAMINATION

21 BY MR. PINE:

22 Q. Agent Cogswell, correct?

23 A. Yes.

24 Q. That's C-O-G-S-W-E-L-L?

25 A. Yes.

1 Q. Okay. Agent Cogswell, you began the investigation
2 based on a defendant who was in custody with a canine
3 investigator; is that right?

4 A. Yes.

5 Q. You had never actually worked with that individual
6 before, correct?

7 A. Correct.

8 Q. And since they were trying to get consideration on
9 their own arrest, you couldn't automatically assume
10 everything they told you was correct, right?

11 A. Correct.

12 Q. Based on that, then, you went to go do
13 surveillance of the residence at 1903 Archer Street; is that
14 right?

15 A. Yes. After doing some brief -- after doing some
16 brief investigation and corroborating some of the things he
17 said, yes.

18 Q. Okay. And when you went and you watched 1903
19 Archer Street, you did not see any suspicious activity
20 there, did you?

21 A. Well, almost very shortly I pulled up he left so
22 there wasn't much time. But that's what I saw was him
23 getting in the truck and leaving.

24 Q. So you saw nothing suspicious at 1903 Archer
25 Street, correct?

1 A. Correct.

2 Q. But you followed him?

3 A. Yes.

4 Q. Now, when you followed him you wound up following
5 him from 1903 Archer Street to 54th and Montgomery; is that
6 right?

7 A. Yes.

8 Q. And about how far is the distance there? Can you
9 give me an estimate?

10 A. I'd estimate two miles.

11 Q. Okay. In that two miles you did not witness
12 anything suspicious, right?

13 A. He went in a high rate of speed down 52nd Street,
14 but I wasn't trying to get him pulled over. I wouldn't say
15 it was overly suspicious, no.

16 Q. You didn't clock him on radar, right?

17 A. Right.

18 Q. You didn't witness any traffic violations,
19 correct?

20 A. Correct.

21 Q. Now, when he got to the intersection of 54th and
22 Montgomery Street, the businesses that are there, you
23 described a laundry mat. Do you know what laundry mat that
24 is?

25 A. I don't know the specific name, no. It's the only

1 one at that intersection. As far as I know it's on the
2 south side of 54th. It's the first business into that --

3 Q. Is there also a Mike's sandwich shop?

4 A. There's a Michael's, but I believe that's a
5 separate building further south.

6 Q. And where exactly did he go?

7 A. He went behind the laundry mat back to the corner.

8 Q. Okay. And after he left that location, he had
9 Mr. Johnson in the vehicle, correct?

10 A. Yes.

11 Q. Do you know if Mr. Johnson was working at that
12 laundry mat?

13 A. I don't know.

14 Q. So you said that you thought things were
15 suspicious, things looked fishy. What looked fishy?

16 A. There were a lot of -- there were a lot of open
17 parking spaces in front, where normally if I go to a
18 business I am going to go to the front. He went not only
19 off the main street, but he went all the way to the back
20 corner to pick his friend up.

21 There's apartments back there. He didn't go to
22 the apartments. There's a business there. He didn't go to
23 the front of the business. He went behind it, way out of
24 the way where there were no other cars.

25 Q. But your statement is is that he basically went

1 there to pick up a friend, right?

2 A. That's what it appeared to be, yes.

3 Q. And there's nothing illegal about that, correct?

4 A. Correct.

5 Q. And he did not trespass at that location, did he?

6 A. No.

7 Q. Okay. But at that point you contact the crime
8 suppression unit, right?

9 A. Yes.

10 Q. And your purpose in contacting the crime
11 suppression unit is to get them to basically do a traffic
12 stop on the vehicle, correct?

13 A. No. It was to get them to assist, get the mobile
14 surveillance and see where it goes with it from there. I
15 only had one vehicle. Mobile surveillance in one vehicle
16 was impossible so I wanted to utilize their unmarked unit to
17 assist with watching him.

18 Q. Okay. The unmarked unit that we're talking about
19 was Officer Castro, right?

20 A. Right.

21 Q. Castro doesn't have any video in his vehicle that
22 you know of, does he?

23 A. No, he doesn't.

24 Q. And Castro claims that he saw a traffic violation,
25 right?

1 A. Right. Which Fabian also corroborated during the
2 interview. He said that he had missed a turn is how he
3 described it.

4 Q. So he said that during a videotaped interview?

5 A. Yeah. It was video and audio recorded, yes.
6 Well, I'll tell you I -- I'm not sure of that part was or
7 not. I can check my report. He called me back in to talk
8 to me after I turned the video off, but I can check my
9 report and see if that part is recorded.

10 Q. Okay.

11 A. If you --

12 Q. I'll give you a moment to take a look at that.

13 A. Sure. Yes, that was recorded. He said that he
14 thought the reason he was at the office was he wasn't
15 wearing a seat belt and that he made a wrong turn. And I
16 asked him if he was talking about at Gwinnett Street and he
17 said yes. That was recorded.

18 Q. Now, you did not see a traffic violation, right?

19 A. Correct.

20 Q. And to the best of your knowledge Officer Fikes,
21 Officer Knoop and Officer Garcia did not see a traffic
22 violation, right?

23 A. That's correct. Only Officer Castro.

24 Q. Okay. And when Mr. Notto stated why he thought he
25 was stopped, was he not just repeating what Officer Fikes

1 relayed to him?

2 A. I don't understand the question.

3 Q. Well, in other words, Officer Fikes when he
4 approached wound up saying we're stopping you based on a
5 missed turn, correct?

6 A. I'm sure he did, yes.

7 Q. Okay. So Mr. Notto did not say that he actually
8 committed a traffic violation. He just said he thought the
9 reason he got stopped was because of an alleged traffic
10 violation, right?

11 MR. TUCKER: I'm going to object. Asked and
12 answered.

13 THE COURT: I'll let him answer.

14 THE WITNESS: He said that he thought he was there
15 because he missed a turn. That's --

16 BY MR. PINE:

17 Q. But he didn't actually state that he did miss the
18 turn, right?

19 A. I'd have to watch the interview to see exactly how
20 he stated it.

21 Q. I understand (unintelligible) -- thank you.

22 How did you contact the crime suppression unit?

23 Did you do that by calling dispatch?

24 A. No. I called -- I believe I called Officer Garcia
25 on the phone and I think it was Garcia and then I got ahold

1 of them on the radio. We were all on the same radio
2 channel.

3 Q. And so by going on the radio channel and by making
4 phone calls, there wouldn't be any record of those calls,
5 right?

6 A. Without my phone records probably not, but there
7 will be the radio traffic which was on Charlie 3.

8 Q. Okay. So that would be (unintelligible) --

9 A. That was (unintelligible) --

10 Q. -- through dispatch?

11 A. I don't know if dispatch monitors that channel or
12 not. I think they do, but I'm not sure. It was on an open
13 channel.

14 Q. Now, once Officer Fikes conducts the traffic stop,
15 I believe that it was -- was it Knoop and Garcia who then
16 approached the vehicle as back up?

17 A. Yes.

18 Q. Originally Fikes approached the vehicle, right?

19 A. I'd have to check my report. I (unintelligible)
20 through it. I can tell you for sure the order that they
21 went in.

22 Q. I'll withdraw the question. I guess what I'm
23 really trying to figure out is this: Ultimately there was
24 an officer who started asking that the driver Mr. Notto exit
25 the vehicle. And that officer was actually Officer Knoop,

1 correct?

2 A. Yes. Correct.

3 Q. Okay. So Officer Knoop was telling him to exit
4 the vehicle and he was doing that because he claimed he
5 could detect a smell of marijuana, right?

6 A. Yes.

7 Q. And the statement of Officer Knoop was that the
8 driver was reluctant to just get out of the vehicle. He
9 reached as if he was going to reach to the keys, right?

10 A. Yes.

11 Q. Which could have meant that he was going to remove
12 the keys and get out of the vehicle, right?

13 A. I don't think that was the feeling he got. He's a
14 very experienced officer. I think he can probably make a
15 judgment -- he's had plenty of cars flee from him.

16 Q. The fact is that the defendant did not actually
17 attempt to put the car in drive, though, according to
18 Officer Knoop's report, right?

19 A. He didn't flee. But as far as his demeanor of
20 what he believed he was going to do, I can't testify to that
21 because I wasn't there.

22 Q. Okay. And then when my client was reluctant to
23 exit the vehicle, the officer actually opened up the vehicle
24 himself and pulled the defendant out of the vehicle,
25 correct?

1 A. He opened the door. I'll check his report. I
2 don't think he actually put hands on him. And I can check
3 his report if you like me to.

4 Q. Okay. At the time that he was asking the driver
5 to exit the vehicle, was there anything other than the smell
6 of marijuana that made him suspicious that you know of?

7 A. Yeah. He wrote in his report that both passengers
8 were very nervous. I can refer to that and get you what
9 made him believe that if you want me to.

10 Q. No. I've actually had a chance to review that
11 report. I'll let you do that so thank you.

12 A. Okay. Sure.

13 Q. At the time that Officer Knoop was patting down
14 the defendant, he patted down one time and found nothing,
15 correct?

16 A. I don't know. All he told me -- I could check his
17 report again. I'm not 100 percent sure on that. I know --

18 Q. You would be basically just referring to the
19 report in order to (unintelligible) out?

20 A. Yes.

21 Q. Do you know whether or not the defendant was
22 handcuffed at the time that he was patted down?

23 A. I can refer to the report. I have it right here
24 if you'd like me to. I don't think he was but -- I just
25 read it but --

1 THE COURT: Were you present, Officer. Were you
2 present when it was going on?

3 THE WITNESS: No, sir. I wasn't right there.

4 THE COURT: Let's move on, Counsel.

5 MR. PINE: I'll move on.

6 BY MR. PINE:

7 Q. What's the test that y'all use with the substance
8 involved here?

9 A. Which substance?

10 Q. You were talking about bath salts, right?

11 A. Yes. We have a field test kit for it and it's
12 been set to GBI lab for further identification.

13 Q. Okay. And do you know what kind of field test
14 that is by any chance?

15 A. I don't know the brand of it, no.

16 Q. According to your investigation, though, the
17 defendant seemed surprised that it was anything other than
18 Molly; is that what you have said?

19 A. Other than MDMA, which is ecstasy, but Molly --
20 people commonly refer to the bath salts nowadays as Molly.

21 I believe -- from what he said during the
22 interview it seemed like he was surprised that he was
23 selling bath salts instead of ecstasy.

24 Q. And Molly is ecstasy, right?

25 A. Yes. But like I said it's commonly --

1 Q. (Unintelligible).

2 A. Yes. Yes. Now it's being commonly referred to as
3 bath salts, Molly as well.

4 Q. I understand. The statements that you received
5 while you were doing the interview, I'm assuming that you
6 had the defendant sign a waiver?

7 A. Yes.

8 Q. And you've got a written copy of that waiver?

9 A. Yes. In my case file, yes.

10 Q. Okay. And in that statement there were statements
11 by the defendant that he actually bought Molly in Atlanta at
12 the tune of about seven ounces; is that right?

13 A. He didn't give a written statement. He gave an
14 oral statement. And the oral statement was actually
15 given -- I turned the recorder off because he said he was
16 done.

17 I turned it off and was getting ready to call
18 transport and he called me back in the room and that's when
19 he started going into the meat and potatoes, so to speak.

20 Q. Now, the meat and potatoes, then, weren't
21 recorded?

22 A. Correct. I wasn't expecting him to say anything
23 pertinent and he did.

24 Q. And would anything have encouraged him to make a
25 second statement after he said that the interview was over?

1 A. Do you want me to answer that?

2 Q. Oh, yeah.

3 A. He was ready to inform other people and I was
4 unable to help him, but that was his motivation.

5 Q. When he said I'm not making any further
6 statements, did you ask him any more questions?

7 A. I don't believe he ever said that. I'd have to
8 check my report, but I don't think he ever said --

9 Q. At some point he said the interview was over,
10 right?

11 A. Well, at a certain point when he stopped providing
12 information I ended the interview. It was not because he
13 says "I don't have anything else to say" or "I want a
14 lawyer", it's we're not going forward.

15 Q. You had mentioned before that you weren't quite
16 sure if there was a recording of the second part of the
17 interview.

18 And I think that you earlier testified that it was
19 recorded but now you're saying that the second interview was
20 not recorded?

21 A. Sir, the first chunk was recorded. The part that
22 you asked me about was recorded. You were asking about the
23 traffic infraction being recorded, right?

24 Q. Right. And that was part of the second --

25 A. That was part of the first part. That was

1 recorded.

2 Q. Is that what you testified to earlier?

3 A. As far as I know I've testified completely
4 honestly. I'm doing the best I can. I don't understand
5 your question --

6 Q. (Unintelligible) --

7 THE COURT: (Unintelligible).

8 BY MR. PINE:

9 Q. (Unintelligible) all that took place at the CNT
10 office in the interview room, right?

11 A. Yes. Correct.

12 Q. Okay. And is there any possibility that the audio
13 might have been running without the video for the second
14 half of the interview?

15 A. No, it wasn't. I turned the whole thing off.

16 Q. Nothing preserved that has his statements that you
17 know of?

18 A. Nothing but my police report and my mind. That's
19 it.

20 Q. Other than you, who was in the room when those
21 statements were made?

22 A. I was the only one in the room. I'm not sure if
23 anyone was observing from elsewhere. I can check into that.

24 Q. Okay. Just one brief moment, please, Judge.

25 Was any citation given for any traffic violation?

1 A. I'm not sure if he was cited or not. I could
2 check the report to see if there were any in there if you'd
3 like.

4 Q. As far as the search of the residence goes, did
5 you have a search warrant to do that?

6 A. No, I didn't.

7 Q. Do you have a written consent form?

8 A. Let me check. I don't believe so. I believe it
9 was done as a stipulation of his waived Fourth Amendment
10 right.

11 Q. At the time that you were calling into the crime
12 suppression unit, had you received any information as to any
13 Fourth Amendment waiver?

14 A. When I called into them -- I knew that he was on
15 federal release --

16 Q. Specifically did you ever see or were you ever
17 told that he was under any Fourth Amendment waiver?

18 A. I was -- yes. He is under a Fourth Amendment
19 waiver. He's not only on federal release. He's also on
20 felony probation on the state level.

21 It's coming back to me. I'm sorry. And he is a
22 Fourth Amendment waiver. There's a copy of that in the case
23 file.

24 Q. I understand that. When were you made aware of
25 this Fourth Amendment waiver?

1 A. I can't recall if it was before or after I went
2 out there to do my surveillance.

3 THE COURT: Anything, Counsel?

4 MR. PINE: Thank you, Judge.

5 THE COURT: Thank you. Ma'am.

6 CROSS-EXAMINATION

7 BY MS. HASTAY:

8 Q. How much time elapsed between this canine scene
9 informant and the arrest?

10 A. It was about 38 days. It was August 30th until
11 October 8th.

12 Q. During that time was any illegal activity or trips
13 to Atlanta observed?

14 A. I -- unfortunately I'm very, very busy and I
15 didn't even get to it for 38 days. I was so tied up with
16 other cases I didn't get a chance to look into until then.
17 This was my first day of surveillance.

18 Q. Okay. I understand. And the informant gave
19 information only on Mr. Notto, not on Mr. Johnson?

20 A. Correct.

21 Q. What are the apartments that back up to the
22 parking lot in question?

23 A. There's Madison Apartments and I think the other
24 ones are called Allen Apartments.

25 Q. Are there any pathways or anything for foot

1 traffic through the apartments and through the area?

2 A. I don't know. I believe there's a fence there,
3 but I don't know.

4 Q. Do you know if Mr. Johnson lives in that area or
5 in any of those apartments or not?

6 A. He does not. He lives -- he's (unintelligible)
7 out to 16 Clay Street and he told me he lives at 16 Clay
8 Street, which is not back there. It's off of Louisville.

9 Q. When the traffic stop occurred, did the officer --
10 now which officer approached the passenger side? Could you
11 remind me of that, please.

12 A. I believe it was Officer Garcia. I'll check this
13 and confirm that it was -- I'm 90 percent sure it was.

14 Yes, it was.

15 Q. And by the way, are those reports finalized and
16 available now or are they --

17 A. Those reports are not. My report is. The
18 Savannah metro, I actually checked today before I came here,
19 and they still haven't (unintelligible) properly. I tried
20 to call the supervisor today to see if I can get that done.

21 Q. So it should be soon then?

22 A. It should be soon. I'll call them when I get out
23 of here and see if I can get that done.

24 Q. Okay. So according to Garcia's report, though,
25 just for purposes of the record today, what are the details,

1 though, supposedly -- first of all, the smell of marijuana,
2 because I think one said faint and one said strong.

3 A. The driver's side window was open, because he was
4 dealing with the traffic stopping officer, which was
5 Mr. Notto's side. He said strong. He had an open window.

6 The passenger side, Officer Garcia said it was
7 faint when the door was shut. Once the door opened, it hit
8 him in the face.

9 Q. And did he first ask for license or identification
10 or made any sort of basic contact with my client before
11 opening the door?

12 A. I'd have to check his report.

13 Q. Okay. So basically it's all in the report. You
14 don't have personal knowledge of this.

15 A. Correct. All I have is their report and what they
16 told me on the scene.

17 Q. And what were the details of him supposedly acting
18 extremely nervous in that report?

19 A. They said that he -- his chest was going back and
20 forth. He was taking extremely fast and heavy breaths. He
21 wouldn't make eye contact with the officers, which is
22 unusual.

23 You know, if there's a police officer outside the
24 window usually you'll at least look up and I guess he was
25 staring straight ahead and --

1 Q. And then it was the --

2 A. That's it.

3 Q. And then it was the pat down that triggered the
4 handcuffs?

5 A. Well, once he stepped out they saw the bulge there
6 and then they patted him down and felt the -- felt the bag
7 of marijuana stuffed in his pants.

8 Q. Okay. You mentioned a scale being removed from
9 Mr. Johnson. Was that -- did you even speak -- or was a
10 scale attributed to him?

11 A. A scale was attributed to him. I believe it was
12 on the -- I believe it was on the floorboard under him, but
13 I can check and confirm that.

14 Q. But nothing else was found on the passenger side
15 of the car, right?

16 A. The other scale was also on the passenger side,
17 but it was in the glove box and looked neat like it had been
18 there so I didn't attribute that to him. But I believe the
19 other was on the floorboard. If you want me to check, I
20 can.

21 Q. No, that's okay.

22 A. Okay.

23 MS. HASTAY: Thank you.

24 THE COURT: Counsel, any other questions?

25 MS. HASTAY: No further questions.

1 THE COURT: Okay. As it relates to Mr. Notto, I
2 do find probable cause to possession of controlled
3 substance with intent to distribute; possession of
4 marijuana with intent to distribute; and the traffic
5 violation failure to drive within the lane is also
6 bound over to Superior Court.

7 With Mr. Johnson I do find probable cause to
8 possession of marijuana with intent to distribute so
9 I'll bind that over to Superior Court. Thank you.

10 MR. PINE: Thank you, sir.

11 Your Honor, I'd like to make a brief request for a
12 bond for Mr. Notto. I will point out it appears to me
13 that he has at least four prior felony convictions and
14 that he is currently under felony sentence.

15 THE COURT: Still a -- there's a federal hold on
16 him?

17 MR. TUCKER: I'm showing he's under sentence on a
18 state and that there is a --

19 THE COURT: On a supervisory release
20 (unintelligible)?

21 MR. TUCKER: Yes. Understanding it's on a CR09,
22 Freesemann case, 0506 regarding the federal matter.

23 THE COURT: Even with that, I'm denying your
24 request, Counsel.

25 MR. PINE: Thank you, your Honor.

1 THE COURT: Yes, ma'am.

2 MS. HASTAY: May I inquire as to my client as well
3 on bond, because I don't think he has much of a record.
4 Many years have passed since his prior, one and only
5 prior.

6 MR. TUCKER: Well, Mr. Johnson --

7 MS. HASTAY: There is a hold.

8 MR. TUCKER: Yeah, he's under -- I believe more
9 than one. He's under CR110629, possession of marijuana
10 with intent. That's through December of 2015 is his
11 sentence.

12 Also he's under CR040142. That's a trafficking
13 cocaine. That's a 12-year sentence from '04.

14 THE COURT: Any consideration is also denied.
15 Superior Court. Thank you.

16 (NOTE: End of proceedings.)

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C E R T I F I C A T E

STATE OF GEORGIA:


COUNTY OF EFFINGHAM:

I, Amy Jo Kaska, Certified Court Reporter, State of Georgia, do hereby certify:

That the foregoing twenty-nine (29) pages of typewritten material was transcribed by me from an analog tape-recording; that the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages represent a true, accurate and complete record of the testimony of the witnesses and of all objections made at the time of the proceeding.

I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

This, the 17th day of May, 2014.


AMY JO KASKA,
Georgia CCR No. 2531
California CSR No. 12572