

1 SUPERIOR COURT OF CHATHAM COUNTY

2 EASTERN JUDICIAL CIRCUIT OF GEORGIA

3
4 STATE OF GEORGIA)

5)
6 vs.)

7)
8 FABIAN K. NOTTO,)

9 Defendant.)
10

CASE NUMBER: CR13-2673-J4

Possession/delivery of c/s
w/intent to distribute (2)
Possession of marijuana
w/intent to distribute

11 **COPY**

12
13 Transcript of the proceedings heard during a
14 MOTION HEARING in the above-styled case at the Chatham
15 County Courthouse, Savannah, Georgia, on the 20th day of
16 June, 2014, before The Honorable Louisa Abbot, Judge,
17 Superior Court, Savannah, Chatham County, Georgia.

18
19 APPEARANCES:

20 For the State:

NOAH ABRAMS, Esq.
Assistant District Attorney
Savannah, Georgia

21 For the Defendant:

JONAH L. PINE, Esq.
Savannah, Georgia

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I N D E X

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1 (NOTE: The above-captioned proceedings
2 commenced at 2:46 p.m. on the aforementioned
3 date.)

4 THE COURT: This is State of Georgia versus
5 Fabian, is it, Notto or Notto?

6 MR. PINE: Notto, Your Honor.

7 THE COURT: Notto. Okay.

8 It's CR13-2673. He is present here in court with
9 his attorney Jonah Pine. I'll need to have the
10 witnesses be sworn, please.

11 (NOTE: Witnesses sworn.)

12 THE COURT: Thank you. And I understand this is
13 the State's -- the State's proceeding with basically a
14 404(b) motion to present evidence of other crimes. Is
15 that right?

16 MR. ABRAMS: Well, I mean, I could -- I will
17 proceed with that via proffer. Actually this is a
18 motion to suppress, a Jackson-Denno hearing, that
19 Mr. Pine was given a little extension and filed that in
20 Monday, but we've spoken so...

21 THE COURT: Okay. Well, let me look for that
22 because obviously I did not get that, so I have not had
23 a chance to review that motion. So it's Fifth
24 Amendment issue?

25 MR. PINE: Your Honor, we've got a Jackson-Denno

1 that we're going to raise. We've got the 404(b) that
2 we're prepared to argue, the suppression issue is going
3 to revolve around the traffic stop and search and
4 seizure --

5 THE COURT: There's a Fourth Amendment issue as
6 well?

7 MR. PINE: Yes, Your Honor.

8 THE COURT: Where are the motions? I don't have
9 anything in the file. We don't have any record of any
10 motion having been filed other than the State's notice,
11 so I haven't had a chance to review any of that.

12 When was it filed?

13 MR. PINE: I filed it this Monday, Your Honor.

14 THE COURT: This Monday?

15 MR. PINE: Yes, Your Honor.

16 THE COURT: Like four days ago?

17 MR. PINE: Yeah, I had --

18 THE COURT: And you expect me to have gotten that
19 and reviewed it? Nobody sent a copy to me.

20 MR. PINE: Okay. Well, I apologize for not doing
21 that, Your Honor.

22 THE COURT: Moreover, the standing order -- my
23 scheduling order requires all motions to be filed ten
24 days, amended motions filed ten days prior to a
25 hearing.

1 We're passing it. Thank you, everybody.

2 We'll schedule it for sometime in September.

3 MR. PINE: Your Honor, just by way of reminding --
4 I think I should point out we had discussed the fact
5 that we were waiting on a transcript that had just --

6 THE COURT: Hold up. Hold up. He needs to stay.

7 MR. PINE: -- been made available the day that I
8 made the announcement. The Court had granted us an
9 extension based on that. And --

10 THE COURT: Somebody should have actually
11 delivered a copy of a motion to my office. If I'm
12 going to hear it, I'm going to review it.

13 I mean, if y'all want to hear it, fine. I'll do
14 it, but I have had no chance to review this at all.
15 But if you want -- if both parties want to go forward
16 today --

17 MR. ABRAMS: I do have a witness flown in from
18 Ohio for today.

19 THE DEFENDANT: Your Honor, can I speak to you for
20 a minute?

21 THE COURT: Sure. Come on up.

22 THE DEFENDANT: Your Honor, I don't feel like Mr.
23 Pine is representing me right. I would like to have a
24 little ample time to get me another client, if you can,
25 ma'am.

1 And I would like to know can -- is it possible I
2 can get some of my money back because I gave him
3 \$19,400 from my mother.

4 THE COURT: Well, I can't deal with that at all.
5 I can't deal with anything about the money. I
6 understand you're not happy with Mr. Pine, and at the
7 moment I'm not really happy either, but that doesn't
8 mean he's not doing a good job for you.

9 THE DEFENDANT: I need to get me another client --
10 I mean another --

11 THE COURT: Well, you can't -- another lawyer.

12 THE DEFENDANT: -- lawyer. Yes, ma'am.

13 THE COURT: I understand that. I'm going to let
14 the State put on your out-of-town witness today. Okay.
15 And we can make a record on that and then we'll see
16 where we go from here.

17 Today I'm going to let the State put on whatever
18 witness they have here from out of town, because
19 obviously the person's flown in from out of town.

20 And then you and I can discuss the issue about Mr.
21 Pine later. You're always entitled to get another
22 lawyer.

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: That's no problem whatsoever. You
25 hired him. You can fire him. That's not up to me.

1 THE DEFENDANT: All right.

2 THE COURT: So have a seat at the back table. And
3 we're invoking the rule, I assume?

4 MR. PINE: Yes, Your Honor.

5 THE COURT: Okay. Who is the witness that you
6 have from out of down?

7 MR. ABRAMS: Officer Knoop.

8 THE COURT: All the other witnesses who took the
9 oath need to step outside the courtroom, please.

10 MR. ABRAMS: And so I understand we're simply
11 going to do this one officer and then revisit this at a
12 later date?

13 THE COURT: That's my plan.

14 MR. ABRAMS: Okay.

15 THE COURT: We've got a lot of things, obviously,
16 to visit before we get to that point.

17 MR. ABRAMS: Yes, ma'am.

18 DIRECT EXAMINATION

19 BY MR. ABRAMS:

20 Q. Good afternoon, Officer. Would you mind stating
21 your name for us.

22 A. It's Kyle Knoop.

23 Q. And would you mind spelling it for the court
24 reporter.

25 A. K-Y-L-E, K-N-O-O-P.

1 Q. And where are you employed?

2 A. Currently employed with Troy Police Department in
3 Ohio.

4 Q. And how long have you been with Troy Police
5 Department?

6 A. Since end of March.

7 Q. March of 2014?

8 A. I believe so, yeah.

9 Q. Okay. And prior to that where were you employed?

10 A. Savannah-Chatham.

11 Q. With the police department as an officer?

12 A. Yes.

13 Q. And how long were you with Savannah-Chatham Metro
14 Police Department?

15 A. Roughly three and a half years.

16 Q. Were you a police officer anywhere else?

17 A. No.

18 Q. Okay. And you worked at Savannah-Chatham Metro
19 Police Department as an officer back in October of 2013?

20 A. Yes.

21 Q. Okay. Now, I'd like to direct your attention --
22 and what was your duties back in October of 2013?

23 A. October 2013 I was assigned to central precinct
24 crime suppression unit.

25 Q. And what were your duties as a member of the crime

1 suppression unit?

2 A. Basically daily we go out and target crimes that
3 are happening in our area, Precinct 3, whether it be
4 break-ins, drugs, anything that sergeants deem that we need
5 to go for.

6 Q. And where is Precinct 3? What are your sort of
7 bounds --

8 A. You're going to be Ogeechee Road over to Truman,
9 Anderson on the north end and then south end. You can kind
10 of say Derenne, a little bit south of it but not much.

11 Q. And you would also sometimes leave this area of
12 Precinct 3 to --

13 A. Yeah. We assisted every precinct. Just -- I
14 mean, all they had to do is say something and we'd be over
15 there.

16 Q. And would you drive in a marked unit?

17 A. Most of the time I was in a marked unit, but we
18 did use unmarked units.

19 Q. Okay. And most of the time, then, you were also
20 in full uniform?

21 A. Yes.

22 Q. Okay. Now, some of your duties would be to
23 conduct traffic stops, conduct investigations with, you
24 know, third parties just on the street, things of that
25 nature as well?

1 A. Yes.

2 Q. Okay. And do you have any special training and
3 experience as an officer? Do you get any training while you
4 work?

5 A. Just the training that you receive from being an
6 officer at central precinct, a street officer.

7 And then going to the crime suppression unit
8 you're trained there basically for what you're going to be
9 doing, dealing with more career criminals that have had that
10 pattern behavior every day. That's who you're dealing with.

11 Q. Higher risk situations?

12 A. Yes.

13 Q. Now, as -- during your time as a police officer,
14 have you made any arrests for marijuana-related offenses?

15 A. Yes, a lot.

16 Q. A lot?

17 A. A lot.

18 Q. Okay. More than 50 you think?

19 A. Probably, yeah.

20 Q. Okay. Now, based on your experience and whatever
21 training they gave you at the academy, do you recognize the
22 smell of marijuana?

23 A. Yes.

24 Q. Now, directing your attention to October 8th of
25 2013, do you recall if you were working on that day?

1 A. I was.

2 Q. Okay. Now, focus sort of towards the afternoon
3 around 3:30, 3:45 in the afternoon.

4 A. Oh, yes, yes.

5 Q. Okay. You were working at that time?

6 A. Working, yes.

7 Q. Now on that date, do you recall if you were in
8 plain clothes or uniform?

9 A. I was in uniform and a marked vehicle.

10 Q. And you were patrolling as part of your CSU
11 duties?

12 A. Yes.

13 Q. Did you have occasion to come into contact with
14 this Defendant on that date?

15 A. Yes, I did.

16 Q. And were you able to identify who he is?

17 A. Yes.

18 Q. Okay.

19 A. Same --

20 Q. Who is the Defendant?

21 A. Fabian Notto.

22 Q. Okay. And I see you pointing. Could you indicate
23 that you see him in court by some --

24 A. Yes, what he's wearing, orange.

25 Q. Okay. And let the record reflect that he

1 identified the Defendant.

2 Now, how was it that you came into contact with
3 Mr. Notto on that day and time?

4 A. Another officer in our unit, Officer Fikes,
5 initiated a traffic stop. It was actually out of our
6 precinct bounds, but he was -- I believe it was Whitaker --
7 it was around -- the final stop was Oglethorpe and Whitaker,
8 but he called it out prior to that.

9 And just by the way he was calling it out, it kind
10 of sounded like he was having a tough time either getting to
11 the vehicle or the vehicle wasn't wanting to stop right
12 away, so that raised a -- I was with Officer Garcia at the
13 time. We were doubled up in one vehicle.

14 So that raised our suspicion a little bit, so we
15 started really driving to get over there to back him up on
16 that traffic stop.

17 He announced that he got it stopped at Oglethorpe
18 and Whitaker and we were there a short time after that.

19 Q. A short time, within a matter of minutes?

20 A. Oh, yeah, definitely.

21 THE COURT: Remind me again what time of day this
22 was.

23 THE WITNESS: This is 3:44.

24 BY MR. ABRAMS:

25 Q. P.m., right?

1 A. P.m. Yes, p.m.

2 Q. Now, when you arrived to this Oglethorpe and
3 Whitaker, had the vehicle already stopped?

4 A. Yes. The vehicle was stopped almost in the
5 intersection there, right at the corner of Oglethorpe and
6 Whitaker on Oglethorpe in an eastbound lane.

7 Q. Now, as you approached you had said you already
8 had some heightened suspicion relating to this stop
9 particularly?

10 A. Yes. Normally it doesn't take that long. In
11 circumstances where it takes that long, there's a high
12 probability that there's something else involved for
13 whatever reason.

14 Q. One possible reason could be flight or secretion
15 of contraband in hidden locations, things like that?

16 A. Yes. Normally people who just don't want to be
17 stopped for whatever reason. It could be a myriad of
18 different things.

19 Q. When you arrived, do you recall where Officer
20 Fikes was?

21 A. Officer Fikes was parked in his patrol vehicle.
22 He was running the information. I think -- so I believe he
23 had already made contact with the driver and he was back
24 running the driver's license, the vehicle information.

25 And since I had -- it was me and Officer Garcia

1 arriving at the same time, we went ahead and made contact
2 with the vehicle just because of the nature of it. And him
3 being alone, we wanted to have eyes on the vehicle right
4 away.

5 Q. Okay. So did you approach the driver's side or
6 the passenger's side?

7 A. I approached the driver's side.

8 Q. And who was driving the car?

9 A. Mr. Notto was driving the vehicle.

10 Q. When you approached, was the window up or down?

11 A. It was down.

12 Q. As you approached, did you have -- were you able
13 to observe Mr. Notto's demeanor in any way?

14 A. Yes. I got -- I approached right to the window
15 and actually put myself basically in that window. And it
16 was a truck so we were almost eye height at that time. And
17 I could see that he was nervous in the way that he was
18 acting a little bit.

19 It's just something you kind of -- you pick up on
20 the mannerisms of people, how they behave with you. And
21 right away from standing there -- it had only been a few
22 seconds from when I got there -- I could smell a really
23 strong odor of marijuana and it smelled like it was coming
24 from the vehicle.

25 Q. Did you say anything to Mr. Notto?

1 A. I believe --

2 MR. PINE: Your Honor, I'd just ask that the
3 record reflect that he is referring to his report.

4 THE WITNESS: Yes.

5 THE COURT: Certainly. And you can refer to your
6 report only to the extent that it refreshes your
7 independent recollection of what occurred.

8 If it doesn't refresh your recollection, then you
9 can't rely on the report.

10 THE WITNESS: Okay. I believe -- I was just
11 referring to it. The vehicle was still running and my
12 first contact with him was asking him to turn the
13 vehicle off for me, and he didn't reply --

14 THE COURT: Okay. Let me make sure -- okay. The
15 vehicle was still running when you got there?

16 THE WITNESS: Uh-huh. Like it was on. It wasn't
17 off. It was on.

18 THE COURT: Okay. Go ahead.

19 THE WITNESS: And the reason I say that is because
20 with the way the stop was, the prolonged stop, and then
21 the behavior of Officer Fikes, sounded like he couldn't
22 get the vehicle stopped, and then finally the vehicle
23 was able to stop.

24 With the vehicle running, it's just something we
25 pay attention to because there's a high chance that

1 they can then just take off.

2 So you have to be aware of where you're at that
3 you don't get run over or hit by the vehicle if it
4 decides to flee at any time, so I always note that.

5 BY MR. ABRAMS:

6 Q. Did he comply and turn off the vehicle or --

7 A. He didn't respond to me at all to me. And then I
8 asked him to do it again. And in between that time he was
9 really nervous and just shifting and he kept looking around
10 in the vehicle.

11 And then he reached up towards the keys at that
12 point, or the gear shift there; and I was worried that he
13 was going to do exactly that. It happens every day.

14 Q. And "exactly that" mean flee?

15 A. Yeah. Flee the vehicle --

16 Q. Pop it into drive?

17 A. -- with us, officers on both sides of the vehicle.

18 So at that time I opened the door and as I did
19 that -- I was still asking him if he would get out of the
20 vehicle and then he -- once I had opened the door he
21 immediately -- he got out and was compliant with me.

22 Q. Now, you said when you walked up you positioned
23 yourself directly in front of the window?

24 A. Yeah. Right to the side of the window.

25 Q. Okay. And it's about face height. And you said

1 you smelled the distinct odor of marijuana?

2 A. Yes.

3 Q. And about how many times can you estimate that
4 you've smelled marijuana?

5 A. Hundreds.

6 Q. Okay. This smell that you distinctly smelled on
7 this day out of that vehicle, do you have really any doubt
8 in your mind as to what it was that you had smelled?

9 A. Zero.

10 Q. Once Mr. Notto turned the car off and exited the
11 vehicle, what did you do next?

12 A. Right when I opened the door and he came out, I
13 asked him if he would move in the back of the vehicle. I
14 wanted to get him out of that door area where there could be
15 weapons.

16 Because of his behavior and nervousness, there's
17 usually -- they're looking for something. I just wanted to
18 take that element out. So I asked him to step a few feet to
19 the rear of the vehicle, so we just walked just literally
20 three steps down the side of the vehicle.

21 And then I asked him if he had any weapons on him
22 or anything illegal and he said he didn't. And I asked him
23 if I could search him and he replied that I could.

24 And as I went to -- as I was conducting the
25 search, I got down to his thigh and butt area and I noticed

1 he was really -- I could feel it tighten up. And it really
2 made me uneasy because I thought he might be holding a
3 weapon in there somewhere between his legs or in his
4 waistband there.

5 And I asked him if he could spread his legs a
6 little bit for me and he kind of did. He spread them. And
7 then he immediately clenched his thighs and butt again,
8 which really started getting my suspicions going that there
9 is something there and he's trying to hide it, like a
10 weapon.

11 So I asked him again if he could please spread his
12 legs a little further, and as he did that, I heard something
13 hit the ground and I looked down and you could see that
14 there was a plastic bag. I believe it was a clear plastic
15 bag with what looked to be like marijuana and various pills
16 in there.

17 And at that time -- I believe Officer Fikes was
18 walking up, because I -- when I first got to the truck, I
19 had tried to signal to them that I could smell something but
20 they were both busy. And he was walking up and we ended up
21 putting handcuffs on him right there with Officer Fikes.

22 Q. Now, when you conducted the search you -- he's
23 faced against his vehicle?

24 A. Yes.

25 Q. And this is a pat down search with your hands,

1 right?

2 A. Yes.

3 Q. Okay. Now, when the suspected marijuana and I
4 guess the pills or capsules, whatever they were, fell to the
5 ground, did you seize them or take possession of them or
6 what happened to them?

7 A. Once they fell to the ground, I was -- I wasn't
8 worried about the drugs, because I could see that's what it
9 was, but I still had to deal with him and by myself so I
10 just looked at them and noted that they fell.

11 And I saw Officer Fikes walking up and moved -- I
12 wanted to move him away from it so he couldn't do anything
13 to it, and I didn't want him -- and I still didn't know what
14 he had on him, whether it was the drugs or the weapon that
15 he might have had.

16 So we moved him two steps to the right, more
17 toward the back of the vehicle now, as Officer Fikes arrived
18 and then we went ahead and placed him in handcuffs and then
19 did a more thorough search of that area that I was really
20 worried about.

21 Q. Was there anything else recovered?

22 A. There was nothing.

23 Q. Now, did you have any contact with the passenger
24 of the vehicle?

25 A. I had zero contact with the passenger.

1 Q. Okay. I just wanted to clarify that.

2 Now, once Mr. Notto was placed in cuffs, was he
3 then placed in a patrol vehicle?

4 A. Yes, he was.

5 Q. All right. Did he say anything to you during this
6 time?

7 A. I didn't speak to him at all after he was placed
8 in handcuffs.

9 Q. Do you recall then if anyone else seized the drugs
10 that were on the ground or --

11 A. Once he was placed in handcuffs, Officer Fikes
12 took him to the car and I took two steps to my left and
13 picked up the bag. And Agent Cogswell with CNT was actually
14 on scene so it made it really convenient. He just took
15 possession of all the drugs that were found there.

16 There was others from the passenger, but I don't
17 know if it was related to Mr. Notto or not.

18 Q. Okay. Once Mr. Notto was placed in the patrol
19 vehicle, did that end your involvement then in this case?

20 A. Yeah. I mean, I made sure that Agent Cogswell
21 received the drugs and he -- once he took them out of my
22 possession, that ended my involvement in it.

23 MR. ABRAMS: Okay. Did I miss anything? I have
24 no further questions, Your Honor.

25 THE COURT: Thank you. Mr. Pine.

CROSS-EXAMINATION

BY MR. PINE:

Q. Officer Knoop, thank you for coming in from out of town for this matter.

When you were involved in this incident, you were actually with the crime suppression unit, correct?

A. Yes.

Q. And the crime suppression unit was called in in this matter by Agent Cogswell, correct?

A. I believe so.

Q. Okay. You don't necessarily know who it is --

A. He didn't call me, no, no.

Q. Okay. Basically then you would not really be aware of anything that Agent Cogswell may have been involved with as far as his investigation, right?

A. Zero.

Q. Okay. And you had not really had any contact with this particular Defendant prior to this incident either, right?

A. Not that I can remember, no.

Q. Okay. So at the time that you wound up doing what you did, you didn't even really know who it was you were approaching, right?

A. No.

Q. You didn't know as to whether or not there was any

1 Fourth Amendment waiver that he was on or anything like
2 that, correct?

3 A. No.

4 Q. You also were not privy to any traffic violation.
5 You yourself did not see him involved in any
6 traffic violation, correct?

7 A. I didn't see him, but I knew that there had been a
8 violation that vehicle had committed over the radio traffic.

9 Q. Well, it's not something that you yourself saw,
10 but something that somebody else may have seen, right?

11 A. Yes.

12 Q. Okay. And certainly there -- as far as your
13 involvement in this investigation, you're not aware of any
14 charge that he got for trying to flee from the police or
15 refusal to pull over or anything like that, correct?

16 A. Not that I know of, no.

17 Q. Okay. So, I mean, basically you got involved
18 after Officer Fikes had initiated the traffic stop, right?

19 A. Yes.

20 Q. Now, when Officer Fikes initiated that traffic
21 stop, do you know of any reason why he wouldn't have been
22 the first person to approach the vehicle as opposed to you?

23 A. He was the first person to approach the vehicle.

24 Q. Okay. So he approached first. And then did he
25 come back and talk to you or --

1 A. He was -- the way it is is crime suppression unit
2 were a unit and when one person's riding solo, any time
3 someone makes -- and this goes for patrol as well. It
4 doesn't matter if you're in a unit or not.

5 Anytime someone makes a traffic stop, every
6 available officer is headed that way until we know this
7 isn't a crazy situation.

8 Q. Right.

9 A. Because any situation can go to that level at any
10 point. So I was just responding to back up Officer Fikes on
11 that stop. And when we get there basically we want to
12 get -- we want to control the environment as much as you
13 can.

14 And when he was in his car, I had already -- I
15 could see that he had a license or something, that he was
16 running the information like most officers do. So we're
17 there for back up and to make contact with those people to
18 make sure nobody else gets hurt there.

19 Q. So you really did not get involved until Officer
20 Fikes had pursued a little bit of an investigation in
21 reference to a traffic violation?

22 A. Yeah.

23 Q. Okay. You were there and you were in a vehicle
24 with Officer Garcia, correct?

25 A. Yes.

1 Q. Okay. And we know that Officer Fikes was there in
2 a separate vehicle. We also know that Officer Castro was
3 there in an unmarked unit, correct?

4 A. I do not believe he was actually on scene there,
5 no.

6 Q. You don't recall if he ever arrived on the scene?

7 A. I do not recall. I don't believe he did at
8 Oglethorpe and Whitaker, no.

9 Q. Ultimately Agent Cogswell did arrive. He was also
10 in an unmarked unit?

11 A. I don't know what he was driving, but I know he
12 arrived.

13 Q. Okay. He actually is the one who wound up
14 investigating most of the issues revolving around what was
15 found in that bag, right?

16 A. I'm assuming so, yeah.

17 Q. Okay. So after Officer Fikes had spoken to the
18 Defendant here, did he come back and say something to you
19 that made you approach the vehicle or did --

20 A. No.

21 Q. -- you just wait for him to do some of that and
22 then you approached?

23 A. When I showed up, he was already back at his
24 vehicle. I mean, you could see that he was running
25 information in his vehicle. And I'm not going to stay back

1 there with him. I'm going to go forward to make sure
2 everything in the vehicle is okay and safe.

3 Q. And you don't recall receiving any statement from
4 Officer Fikes in reference to anything that he saw or
5 smelled in terms of contraband?

6 A. No. I didn't have any contact with Officer Fikes
7 before approaching the vehicle.

8 Q. Okay. So you then approached the driver's side
9 and you asked Mr. Notto to exit the vehicle, correct?

10 A. Yeah, after I smelled the marijuana.

11 Q. Okay. Now, as far as the smell of marijuana goes,
12 you're pretty familiar with the smell based on your training
13 and experience, right?

14 A. Very.

15 Q. You also then are aware that the smell of
16 marijuana can linger and that sometimes you might smell
17 marijuana even when there isn't any marijuana there, right?

18 A. Not the strength of smell. It's not the same, no.

19 Q. Okay. You didn't really indicate in your report
20 anything about being overwhelmed by the smell, but you said
21 it was a strong smell. Is that an accurate statement?

22 A. Strong odor.

23 Q. Okay. So once you smelled the strong smell,
24 that's when you asked him to exit the vehicle, right?

25 A. Yeah.

1 Q. And when you did so, it kind of sounded more like
2 a command. Sir, would you step out of the vehicle, sir.
3 That kind of a statement?

4 A. No. If I asked him, I asked him.

5 Q. Okay. Now, at that point he made no attempt to
6 flee, correct?

7 A. No.

8 Q. You say he did appear kind of nervous and he
9 looked around, right?

10 A. Yeah.

11 Q. At one point during your testimony just now you
12 stated that you feared that he was reaching for the shift on
13 the car, but that's not really what you put in your report,
14 right?

15 A. I said keys or shift.

16 Q. Okay. You said keys or shift?

17 A. Yeah.

18 Q. Okay. Now, you wrote a report in this incident,
19 right?

20 A. Uh-huh.

21 Q. It's an accurate report, correct?

22 A. Yes.

23 Q. It's a complete report to the best of your
24 knowledge?

25 A. Uh-huh.

1 Q. Okay. And you've actually referred to that report
2 throughout your testimony here, correct?

3 A. Uh-huh. Yep.

4 Q. And mostly just to help you refresh your
5 recollection of what happened, right?

6 A. Yeah.

7 Q. Because you do a lot of these?

8 A. Yeah.

9 Q. Okay. Now, nowhere in the report does it indicate
10 that you actually saw him make a motion as if he was trying
11 to put the car in gear, correct?

12 A. No, nothing about putting the vehicle in the gear.

13 Q. Okay. In fact, what you put in the report is that
14 he reached for the keys that were still dangling inside the
15 ignition, right?

16 A. Yes.

17 Q. And it's not an uncommon thing that if you're
18 going to exit a car that you're going to take the keys out
19 of the ignition, right?

20 A. Could be.

21 Q. Okay. And, in fact, reaching for the keys in no
22 way can be connected to trying to flee, correct?

23 A. Yeah.

24 Q. Okay.

25 A. Could be.

1 Q. So in all fairness you never really saw Mr. Notto
2 do anything that indicated he was going to flee?

3 A. Other than his behavior.

4 Q. Which was nervousness?

5 A. Very nervous and delayed response, along with the
6 nervousness, the shifty, the looking around.

7 And I've had, I don't know, a lot of people do the
8 exact same behaviors the moment before they throw it in gear
9 and drive away or before they start to fight an officer or
10 before they flee on foot.

11 Q. But fortunately in this case none of that
12 happened, right?

13 A. No. We were able to --

14 Q. And he didn't do anything that gave you the
15 impression he had a weapon either, right?

16 A. His behavior in general is the exact same behavior
17 that you would see from someone who did have a weapon on
18 them.

19 Q. You never found any weapon on Mr. Notto, right?

20 A. No, I did not.

21 Q. And, as a matter of fact, I don't believe -- well,
22 you're not aware of any weapon involved in this incident,
23 right?

24 A. Not to my knowledge.

25 Q. Okay. After two occasions of you asking him, you

1 actually opened up the door to the vehicle, right?

2 A. Yes.

3 Q. And did you assist Mr. Notto in exiting out of the
4 car?

5 A. No.

6 Q. No. Okay. Once he got out, you walked him a few
7 feet back towards the rear of the car, correct?

8 A. Yes.

9 Q. And you asked him to put his hands on the top of
10 the vehicle, correct?

11 A. I'll have to refer to the report. I know he
12 was -- it was right there in that area. I don't know if I
13 actually told him to put his hands on the car or not.

14 Q. If I can draw your attention to the statement, I
15 had Mr. Notto exit the truck, walk roughly three feet
16 towards the rear end of the truck, placed both of his hands
17 against the truck. That's an accurate statement, right?

18 A. Yes, it is. Sorry.

19 Q. Okay. And it was at that point then that you
20 asked him if he had weapons. He said no, right?

21 A. Yes.

22 Q. Okay. You said that you asked him for consent to
23 pat him down and you said that he could?

24 A. Actually I think it was -- I asked him for consent
25 to search.

1 Q. Okay. And he said that you could?

2 A. Yes.

3 Q. You don't have any recording or video or audio of
4 that statement, do you?

5 A. No.

6 Q. Okay. Based on that, then, you wound up patting
7 him down, and that's when you felt him tighten up, right?

8 A. Uh-huh.

9 Q. Okay. Now, you had described hearing something
10 hitting the ground, but you didn't really describe that in
11 your report, did you? You just said that after you had
12 patted him down, you noticed something on the ground, right?

13 A. That -- yeah, noticing.

14 Q. It says, I looked on the ground and saw a medium
15 clear plastic bag had fallen to the ground, right?

16 A. Yes.

17 Q. Okay. You did not actually see that bag come out
18 of Mr. Notto's pants, right?

19 A. Well, I noticed the action of it coming out, I
20 guess you could say. When he spread his feet, you could see
21 -- you know, you could notice that something was coming
22 out. But I guess actually coming out of the bottom of his
23 pants, no.

24 Q. Okay. You saw something that you believe was
25 shifting in his pants?

1 A. I guess when you see -- it's like something just
2 appear kind of. You notice it, you know. Like a new
3 object.

4 Like if I just put my piece of paper at your feet,
5 you would notice that something new was there that wasn't
6 there a second ago.

7 Q. And that's what happened here, right?

8 A. Yes.

9 Q. It's not like you saw something falling in his
10 pants and you followed it all the way down and you saw it
11 drop out, right?

12 A. No.

13 Q. I mean, bottom line is that you patted him down.
14 You felt him tighten up. You felt something shift and
15 moments later you noticed something on the ground that you
16 didn't recall seeing before, correct?

17 A. Yes.

18 Q. And the bag virtually fell underneath the vehicle,
19 correct?

20 A. No. It was not underneath the vehicle at all.

21 Q. Okay. Now, you did not say anything about that
22 bag to Mr. Notto, did you?

23 A. No. I didn't actually want him to know that I
24 noticed it fall.

25 Q. So at that time you wound up, along with I believe

1 Officer Fikes, placing him in cuffs, correct?

2 A. Yeah. Removed him from it and then placed in
3 handcuffs.

4 Q. Wound up placing him in Officer Fikes' police
5 vehicle, correct?

6 A. I believe it was his vehicle. It was either his
7 or my vehicle at the time. They were parked right beside
8 each other.

9 Q. Placed inside a police vehicle.

10 And did you read him his rights at that time?

11 A. No, I didn't.

12 Q. And you say that you did that because you noticed
13 this bag there on the ground. You had not yet inspected the
14 contents of that bag at that time, right?

15 A. I could see clearly when I -- you can clearly see
16 that it was marijuana that was in there. The pills I
17 couldn't identify, you know, from a few feet up what pills
18 were in there, but you could see there were bags of
19 marijuana inside. Because it was a clear bag. It wasn't
20 like a bag bag. It was a --

21 Q. A transparent bag?

22 A. Yeah. You could see the contents, but I couldn't
23 identify which the pills were.

24 Q. Okay. So you're saying that when you first
25 noticed the bag, you could actually see what was inside of

1 it?

2 A. Yeah. The -- yeah.

3 Q. Okay. After Mr. Notto was placed in custody
4 inside the vehicle, who went back to retrieve the bag?

5 A. I did. I was actually there. I never left the
6 bag. We -- once he was placed in handcuffs, Officer Fikes,
7 I believe, then took him and then I was the one that
8 retrieved the bag. It was only a couple feet from me.

9 Like I say, we only moved him a couple feet, and I
10 just went back a couple feet and retrieved the bag. And
11 then Agent Cogswell was on scene and I gave the bag to him.

12 Q. And once Cogswell took custody of the bag, you did
13 not pursue anything in reference to what was inside the bag
14 at that time?

15 A. No. It was his from that point.

16 Q. Okay. You never actually heard anybody read Mr.
17 Notto read his rights at that time, did you?

18 A. No. I mean, to my knowledge I didn't -- in my
19 mind he wasn't necessarily under arrest. He was just -- he
20 was being detained at that point for my purposes.

21 Q. So you're saying that when he was handcuffed and
22 put in the back of the car he was not under arrest?

23 A. At that -- for me, we -- I would -- it would just
24 be detaining him for my purposes at that point. Because I
25 was worried about more weapons being on him other than just

1 the drugs falling to the ground.

2 Q. Just one moment, please, Officer.

3 MR. PINE: I have nothing further for this
4 witness. Thank you, Your Honor.

5 THE COURT: Anything else?

6 MR. ABRAMS: Just a couple of questions.

7 REDIRECT EXAMINATION

8 BY MR. ABRAMS:

9 Q. One of the things -- when you say he was detained
10 for your purposes, that was prior to you having picked up
11 the bag and be able to examine the contents a little bit
12 more --

13 A. I could -- I could -- yeah. Well, I could
14 automatically tell that the one was marijuana. I've dealt
15 with it that much that you can tell just by looking at it
16 from a foot or two feet away that it's marijuana, and the
17 smell coming from it.

18 Because when I was in the window, you could smell
19 marijuana of the truck. I'm moving two, three feet away and
20 that smell doesn't go away at all. It's still just as
21 strong as it was at the window.

22 And then the bag drops and you see that there's
23 something that looks just like marijuana on the ground, and
24 then a bunch of -- I think it was three or so different
25 types of pills that you could see in there.

1 Q. How big was this bag?

2 A. I would say like seven by four inches maybe or so.

3 Q. So this isn't a tiny little -- it's a good sized
4 bag?

5 A. No. This is a good sized bag.

6 Q. Okay. So when you first brought Mr. Notto to the
7 side of the vehicle, was that bag laying on the ground?

8 A. When I first brought him to the -- no. There was
9 nothing -- and that would have been -- we would have both
10 had to walk over that bag if it was there.

11 Q. All right. So you were able to see that the
12 ground --

13 A. Yeah, there was nothing there.

14 Q. -- did not have just prior to patting him down?

15 A. No.

16 Q. And it happened as he was shifting and clenching
17 and --

18 A. Yeah. It fell -- I mean, it fell literally in the
19 path that I would have walked to his vehicle. It fell right
20 there. It wasn't under the vehicle. I mean, it was --

21 Q. Not something easily overlooked?

22 A. No way.

23 MR. ABRAMS: I have nothing further, Your Honor.

24 THE COURT: Do you know how to spell Officer
25 Fikes?

1 THE WITNESS: F-I-K-E-S.

2 THE COURT: Okay. Spelled it correctly. And the
3 court reporter got that. Okay.

4 Any other questions of this witness?

5 MR. PINE: Not for the Defense, Your Honor.

6 THE COURT: Okay. Will we need this witness for
7 any other purposes, for any other motions?

8 Apparently he didn't do any kind of Miranda. He
9 didn't -- he's not involved in Fifth Amendment issue
10 and --

11 MR. ABRAMS: Nor the 404, nothing. This is the
12 sole matter.

13 THE COURT: Thank you, sir. You're excused.

14 THE WITNESS: Thank you.

15 THE COURT: Lawyers, I'm sort of in limbo here. I
16 now sort of got an idea of what the Fourth Amendment --
17 I haven't read your motion yet, but I'm assuming it has
18 to do with the traffic stop and something surrounding
19 all of that. Obviously don't know what the Fifth
20 Amendment issue might be.

21 Do you all want to proceed with these other
22 witnesses or not? And also I have the issue of
23 Mr. Notto wanting to revisit his employment of you,
24 Mr. Pine, so I'm little unsure about how to proceed.

25 MR. PINE: Your Honor, I would defer to the Court.

1 What I think may be safest at this time, since the
2 out-of-state witness has testified and his statements
3 are on the record, maybe we can take our time and
4 double dot our I's and cross our T's as to these other
5 issues. I'll go bring a copy of the motion and just
6 bring it to your office right now for you.

7 THE COURT: Well, that'd be great. I think what
8 must have happened, it got lost somewhere between the
9 clerk's office and my office.

10 Because as you all know, my staff attorney is
11 very, very vigilant about monitoring motions. And it
12 sounds like it has a lot to do with something to do
13 with the preliminary hearing transcript. Is that --

14 MR. PINE: Yes, Your Honor. We had made an
15 announcement previously that we were not ready to
16 proceed and right when we made that announcement, the
17 court reporter let me know, oh, I've got it right here.

18 THE COURT: Right. Exactly. I recall that.

19 MR. PINE: And in all fairness, Judge, even with
20 that it's not like I turned around within two or three
21 days and got it done.

22 I was in touch with Mr. Abrams. We were trying to
23 negotiate. It didn't seem like we were working things
24 out. And then I spoke to him at the very end of last
25 week, said, well, I'll make sure I get that in for you.

1 You've got an out-of-state witness. That takes us
2 here.

3 Mr. Notto, I understand his concern with me. It
4 revolves around the seriousness of the sentences that
5 are being offered, and I would love an opportunity to
6 sit down with him and reassure him that I do have his
7 interests in mind.

8 THE COURT: Well, I can see -- surely having seen
9 you in court today he realizes that you are highly
10 competent to represent him and this is what you do for
11 a specialty and, perhaps, that's reassuring.

12 I hope, Mr. Notto, you feel somewhat better having
13 seen Mr. Pine in action today. But maybe it is best to
14 give everybody a little bit of time. I'm sorry to
15 inconvenience the witnesses but they're all local.

16 MR. ABRAMS: Yes, ma'am.

17 THE COURT: So maybe what we need to do then is
18 give me a chance to look over the amended motion to
19 suppress, the Fifth Amendment thing, which I usually
20 wouldn't do, you know, except on the morning of trial.
21 But if you all think it's an issue that needs to be --
22 I would do the 404(b).

23 It's my understanding that Mr. Notto is under
24 sentence in both federal and a superior court sentence
25 and so I understand that there may be issues the State

1 wants to bring forward.

2 Is the Fifth Amendment issue something that I need
3 to address pretrial or?

4 MR. PINE: Judge, in all fairness I'm having a
5 difficult time finding any authority to back up what
6 position I would love to take on that Fifth Amendment
7 issue.

8 I think in all fairness, the Court would probably
9 make short shrift of it. And I just say that in an
10 abundance of unfortunate reality.

11 What I can say, though, is that this Saturday I'm
12 taking a leave of court. I'm going to be gone for a
13 week. This case is down for a trial week of July the
14 9th, and that might create some concern in terms of
15 timing.

16 Mr. Notto does have a federal hold on him. And at
17 this point the best offer that has been made has been
18 12 years with no parole. If the Court feels that we
19 might need to move things farther down the road, we
20 won't object.

21 THE COURT: What might happen in federal court?
22 How much time does he have left if he gets revoked in
23 federal court?

24 MR. PINE: The amount of probation that he had
25 left at the time that he was arrested was about three

1 years from the time of his arrest.

2 THE COURT: Okay.

3 MR. PINE: He's recently been notified that they
4 would be seeking the full amount. And I would point
5 out that they're not limited by the end date on
6 probation in federal court either.

7 THE COURT: Right.

8 MR. PINE: So when they say that they're going to
9 try and give him a high sentence, that could go even
10 beyond the three years.

11 THE COURT: Why don't we put you out to a motion
12 date to recommence this proceeding. August 26th.
13 How's that?

14 MR. PINE: That would be terrific, Judge.

15 THE COURT: And that way if Mr. Notto decides that
16 he wants to hire a new attorney, that attorney would
17 have time to prepare. That would be at three o'clock
18 on August 26th to take up -- well, it sounds like
19 mostly it's going to be the 404(b) motion. I
20 appreciate your candor about the Fifth Amendment issue.
21 If you got Miranda, you know.

22 MR. ABRAMS: And we would submit the recording of
23 the interview. It was audio and video recorded at CNT,
24 so...

25 MR. PINE: I always have no argument as to that

1 part. There was, then, a subsequent interview that was
2 not on audio or video, and my concerns are also largely
3 with that.

4 THE COURT: All right. Well, I'll be happy to
5 hear all of. But I think maybe, you know, the right
6 thing to do is to move it down the road and you and
7 Mr. Notto can speak and decide whatever it is --
8 Mr. Notto, whatever you decide you want to do.

9 If you want to get a new lawyer, you can get a new
10 lawyer. You have the right to hire a new lawyer if you
11 want to. That's entirely up to you, not up to me.

12 And do we know when -- does he have a hearing
13 scheduled for federal court or are they waiting to see
14 what happens over here?

15 MR. PINE: They're waiting to see what happens
16 here, Judge.

17 THE COURT: Okay.

18 MR. ABRAMS: Your Honor, I guess the only last
19 matter is Mr. Pine and I had discussed pleas for some
20 time and he's been conveying counteroffers. He's been
21 visiting Mr. Notto at the jail. He's been really
22 pushing me, pushing me to waive recidivism, which you
23 know I loathe to do and I would not comply with that.

24 But what I did say to Mr. Pine was if I'm flying a
25 witness in for a motion to suppress, then the offer

1 would only be good until that date, and that does
2 remain.

3 So the 12 years to serve was in contemplation of
4 us resolving the matter ahead of time, so I would to
5 make Mr. Notto known.

6 THE COURT: Okay. Mr. Notto.

7 Have Mr. Notto come step forward, please.

8 You are Fabian Notto?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And I know I'm probably not saying
11 your last name correctly.

12 THE DEFENDANT: Notto.

13 THE COURT: Notto?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay. And, Mr. Notto, we're here
16 today because there was some motions filed by both the
17 State and on your behalf.

18 And obviously you've had a chance to hear the
19 evidence from one of the officers that the State would
20 plan to call.

21 You are charged with possession -- or delivery of
22 a controlled substance with intent to distribute.

23 That's two counts and that would be schedule?

24 MR. PINE: One, Your Honor. Meth alone.

25 THE COURT: Okay. And that's a one to --

1 MR. ABRAMS: That's 10 to 40 or life.

2 THE COURT: Oh, okay. I'll have to --

3 MR. ABRAMS: Schedule I, possession with intent.

4 THE COURT: I'll have to hear about all of that in
5 just a second.

6 MR. ABRAMS: Yes, ma'am.

7 THE COURT: And possession of marijuana with
8 intent to distribute is 1 to 10 years. And apparently
9 there would be some enhancements that would relate to
10 recidivism issues if you went to trial and were
11 convicted.

12 Just tell me -- outline those for me, please.

13 MR. ABRAMS: Yes, ma'am. The State alleges that
14 Mr. Notto has been convicted in Indictment CR05-1191 in
15 the Superior Court of Chatham County for which he was
16 sentenced on May 26th, 2006, for trafficking cocaine.

17 MR. PINE: Your Honor, I'm going to intervene on
18 Mr. Noah's behalf here. He's reading from the
19 indictment and the indictment has mistakenly listed his
20 brother's prior felonies under the recidivist count.
21 But they put us on notice about that in their motion to
22 introduce prior convictions in other places in the
23 discovery.

24 THE COURT: Mr. Abrams, do you have certified
25 copies?

1 MR. ABRAMS: Yes, Your Honor. I have certified
2 copies of conviction.

3 THE COURT: That would be probably the best
4 evidence.

5 MR. ABRAMS: And in the -- as Mr. Pine said, in
6 the discovery of disclosure I believe it caught the
7 mistake because Mr. Notto's brother was arrested very
8 short in time so...

9 THE COURT: It's not a fatal mistake any way you
10 look at it.

11 MR. ABRAMS: No.

12 THE COURT: Something could be corrected at the
13 very end of trial, if need be. But in any event, just
14 go ahead -- just tell me what the priors are for.

15 MR. ABRAMS: He's been convicted of possession of
16 a controlled substance, possession of a controlled
17 substance, then sale of a controlled substance.

18 THE COURT: Two possessions and one sale.

19 MR. ABRAMS: Yes. And then the federal
20 convictions which I do not have a certified yet, but I
21 am attempting to obtain. If I'm not mistaken that is a
22 drug-related offense as well.

23 THE COURT: So help me out here --

24 MR. PINE: It was actually counterfeit.

25 MR. ABRAMS: Oh, counterfeit.

1 THE DEFENDANT: Counterfeit, not drugs.

2 THE COURT: Okay. So the sale would bump him
3 up -- the prior sale, if proven, would bump him up into
4 the 10 to 40 or life range.

5 MR. ABRAMS: Correct.

6 THE COURT: The federal conviction, if it's a
7 nondrug felony conviction, then would put him -- you're
8 going to have to help me out -- and 17-10-7(a) as well?

9 MR. PINE: Well, Your Honor he is dealing with a
10 problem. He's got a second -- this would be a second
11 conviction under 16-13-30(b), that kicks us up to 10 to
12 40 years or life.

13 Under the Jones decision from 2004, the 10 years
14 on that would be a minimum to serve sentence.

15 Then he's facing recidivism punishment under
16 17-10-7(c) because of his previous felonies. And
17 Mr. Abrams only pointed out a few of them as well as
18 the federal conviction which counts as a prior felony.

19 When I add up the prior felonies, I'm estimating
20 five prior felony convictions, which means then that he
21 is facing a no parole situation.

22 And as far as whether or not he's facing
23 17-10-7(a), which means he must get the maximum, he is
24 facing that problem because the federal conviction is a
25 prior conviction that's not a drug conviction.

1 THE COURT: Okay. That was my question. And I
2 think -- I mean, you can correct me if I'm wrong, but I
3 think with a nondrug conviction he's looking at my
4 having to sentence him to the maximum, because that
5 takes him into 17-10-7(a), right?

6 I mean, he's got one strike you're out on the
7 nondrug thing. If it were a drug conviction, we might
8 still be within the 10 to 40 or life, but I think --

9 MR. ABRAMS: Except that 17 --

10 MR. PINE: Because of 16-13-30(d) --

11 MR. ABRAMS: "B" -- yeah, "d" is the one that --

12 MR. PINE: Well, "d" is saying that "a" will not
13 apply.

14 THE COURT: "A" does not apply.

15 MR. PINE: I submit that what he's facing is a
16 maximum penalty of life without parole or 40, no
17 parole.

18 I believe the Court has the right to probate or
19 suspend any portion of it but the 10-year minimum. And
20 if he is given that 10-year minimum, it would be
21 without parole under Section C.

22 MR. ABRAMS: Yes.

23 THE COURT: Okay. This is why I ask y'all to help
24 me out on this one.

25 MR. ABRAMS: Yes, ma'am.

1 THE COURT: So Mr. --

2 MR. ABRAMS: We went through the minimum/maximum
3 range of the charges that he's facing.

4 THE COURT: Well, it's 10 to 40 or life on the two
5 counts and 1 to 10, right?

6 MR. ABRAMS: Yes, ma'am.

7 MR. PINE: Yes.

8 THE COURT: So we're looking at a total potential,
9 maximum of two life's without parole, plus 10 years as
10 the maximum or anywhere between a minimum of 10 years
11 without parole, up to 40 years without parole plus the
12 10 years without parole, so...

13 MR. PINE: The 10 years would be with parole
14 because it's marijuana and 17-10-7(b) does not allow
15 for a no parole sentence on a marijuana case.

16 THE COURT: I'll take your word for it.

17 All right. Have we sworn the defendant in?

18 THE CLERK: No, ma'am.

19 (NOTE: Defendant sworn.)

20 THE COURT: Mr. Notto, this obviously is a
21 difficult area that we're in in terms of sentencing,
22 but I am going to take the lawyers word for it.

23 That because of your prior felony convictions I am
24 still authorized by law, if you go to trial, if you are
25 convicted, to sentence you anywhere from a minimum of

1 10 years to serve without parole up to 40 years without
2 parole or I could sentence you to life without parole.

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Life without parole means life without
5 parole. Okay? You got that, right?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And then 1 to 10 years on the
8 possession of marijuana. So you could get life, plus
9 life, plus 10 years, which essentially means you'd
10 serve the rest of your life in prison. You understand
11 that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: The State's offer to you is 12 years
14 to serve without parole, presumably concurrent to
15 whatever happens in federal court. Is that right?

16 MR. ABRAMS: No, not particularly. I made no
17 representation about that. I sort of contemplated that
18 it would be.

19 THE COURT: Do you have any objection to it
20 running concurrent if the federal government is willing
21 to run it --

22 MR. ABRAMS: If the federal government's willing
23 to, I will not object.

24 THE COURT: We are not in charge of the federal
25 government.

1 MR. ABRAMS: We are not.

2 THE COURT: So if the federal government is
3 willing to run whatever sentence they give you based
4 upon whatever they decide over there in federal court,
5 if they're willing to run these two things together,
6 the total amount, at least from my standpoint, if you
7 accept the offer, is 12 years to serve without parole,
8 and you would get credit for all the time you've served
9 since October 8th, 2013, the date of arrest.

10 Now, what the Feds do is up to the Feds, but I
11 have no objection to their running this together at the
12 same time.

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Do you understand the potential
15 maximum sentence you could receive if you go to trial
16 and if you're convicted?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Do you understand the State's plea
19 offer to you?

20 THE DEFENDANT: Uh-huh.

21 THE COURT: You understand that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: You understand that according to
24 Mr. Abrams, the State's attorney, the plea offer is now
25 no longer available to you as of today's date, until

1 five o'clock today basically?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: You understand that? Are you ready to
4 make a decision right now about what you want to do?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Okay. Tell me what else you would
7 like to do? Is there somebody in your family you want
8 to talk to? Is there somebody -- I mean, you want to
9 talk to Mr. Pine some more?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: You'd like to talk to Mr. Pine some
12 more.

13 THE DEFENDANT: I'd like to talk to my mother.

14 THE COURT: You'd like to talk to your mother.

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Is she here today? Is your mom here?

17 THE DEFENDANT: No, ma'am.

18 MR. PINE: She's been ill too, I believe.

19 THE DEFENDANT: Yeah, she's very sick.

20 THE COURT: Oh, I'm so sorry.

21 THE DEFENDANT: Yeah. She got a lot of problems.
22 She's the only thing I got. You know what I'm saying?

23 THE COURT: Right.

24 THE DEFENDANT: That's why I'm trying -- that's
25 why I really want to go and try to get the best offer.

1 You know what I'm saying?

2 Because 12 without parole I never make it -- I
3 probably never make it home, you know, because what's
4 going on up in the prison system. And that's all I got
5 is my mother. She's very ill.

6 She gave me all of what money she had because my
7 daddy left, because my daddy died from the sugar
8 refinery out of the asbestos thing.

9 THE COURT: My goodness.

10 THE DEFENDANT: And I'm really trying to get back
11 out there to her and that is not -- that right there is
12 not what's -- you know, 12 years plus what the Feds
13 going to give me, you know. I would take a 10 do 1 or
14 10 do 2.

15 But the Feds, I got to go to the Feds too --

16 THE COURT: Right. And I completely understand
17 that you want to be able to be available to your
18 mother. And I'm --

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: -- sure every one here understands
21 that. What I can't give you is any other choice.

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: I'm not in charge of what the plea
24 offer is. I don't -- I can't -- that's all up to the
25 State. I don't have anything to do with that. I heard

1 about it today for the first time. I didn't know
2 anything about your case until today until I heard it.
3 Okay.

4 So I can't make the State give you a different
5 plea offer. And Mr. Pine can't. He has no ability to
6 control that. He's already asked. He put it on the
7 record that he asked Mr. Abrams to waive recidivist,
8 which would mean to ask that you would be eligible for
9 parole. Mr. Abrams is not willing to do that and
10 that's his choice.

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: He gets to make that decision.

13 If you decide you want to go to trial, which you
14 have an absolute right to do, Mr. Pine will do an
15 excellent job for you. You can see, he knows how to
16 cross-examine a witness. He knows how to present
17 evidence. He will do a great job.

18 Then at the end of the day, a jury, 12 people,
19 will decide if they believe that you did or did not
20 possess this controlled substance and marijuana.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And they'll decide. And once they
23 make that decision, then I have to sentence you. And
24 my hands are pretty much tied.

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: I can't do less than 10 without
2 parole. I can't. The law won't let me do that. The
3 law let's me do up to 40 without parole or life without
4 parole.

5 I mean, I have to make a decision after I hear all
6 the evidence, see the prior convictions. I make a
7 decision based upon what I believe is the appropriate
8 sentence. But again, I can't change the no parole
9 thing. I cannot.

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: I have no ability to change that. So
12 I think if you're holding out for a sentence offer
13 that's like 10 do 1 or something, I don't -- there's no
14 way Mr. Pine is going to be able to convince Mr. Abrams
15 to offer that, and I can't make him do it. No way.

16 I want you to be able to make the best decision
17 for yourself, but if you think it's going to be just a
18 matter of walking out the door.

19 THE DEFENDANT: No.

20 THE COURT: That's not even remotely likely. For
21 one thing, I'm moving the case along for a motion
22 hearing and you're probably going to go to federal
23 court and have to deal with all of that, whatever they
24 do. Who knows what they'll do.

25 Is your mom able to talk to you on the phone?

1 THE DEFENDANT: Yes.

2 THE COURT: Can she actually physically come see
3 you at the jail or is she too ill to --

4 THE DEFENDANT: Yeah. She got somebody there to
5 drive her around because she can't drive.

6 THE COURT: What age is your mom?

7 THE DEFENDANT: 65 or sixty something.

8 THE COURT: She knows the situation you're in?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. You understand what I'm telling
11 you. That you -- I mean, you can roll the dice. You
12 can go to trial, see what a jury does. I mean, I still
13 got to hear the rest of the motions and all of that,
14 you know. You can wait and see what happens.

15 But I can only give you those two options. There
16 is one, take the deal or, two, go to trial. That's
17 really pretty much what we're down to. You been around
18 this -- you been around this before. You know what I'm
19 talking about.

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: The issue I have right now today is to
22 make sure that you understand that the State's lawyer
23 is taking that plea offer off the table, so there is no
24 deal from here on out. That's gone. The 12 years is
25 gone. He can do whatever -- he can offer more. He can

1 just go to trial, whatever, you know. I can't control
2 that.

3 I just don't want you to walk away from something
4 and then come back next week or the next week or if you
5 go to trial and get convicted and come back and tell
6 me, Judge, I wish I had made a different decision,
7 because I can't change it then. There's nothing I can
8 do.

9 Mr. Abrams, if I schedule this case --

10 MR. ABRAMS: Uh-huh. I'm sorry. I'm listening.

11 THE COURT: -- a few more days. Can I just give
12 him a chance to talk to his mom?

13 MR. ABRAMS: I got to draw the line somewhere. I
14 would pull the offer -- I meant to say I pulled it
15 before I called my first witness as the final.

16 It actually expired on Wednesday, the discussions
17 with Mr. Pine and I in order to have the opportunity to
18 call off the witness. And then in showing up today, I
19 said so -- a 10-1 counteroffer I don't think he's
20 close. I'm not willing to really pull the --

21 THE COURT: No, no, no. I don't think he -- I'm
22 not going to hold the Defendant accountable for what he
23 might want. I mean, I think you understand that 10 do
24 1 is not going to happen. It's just -- that's not even
25 possible under the law in Georgia.

1 MR. ABRAMS: Your Honor, there's the one other
2 option. He can plead guilty and just -- the sentence
3 will be up to you.

4 I'm not going to keep a 12-year offer over. I
5 think he deserves more. I did think that was fair at
6 the stage in the proceeding.

7 THE COURT: Yeah. Well, that is the other option
8 and I didn't explain that. You could decide to plead
9 guilty in front of me.

10 I still couldn't do any less than ten years
11 without parole. That's the -- that is literally --
12 that is the least sentence I could give you, but I
13 could give you more, up to 40 or life. And I don't
14 know what I would do. I have no idea.

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: The plea is still open as we speak
17 right this moment, Mr. Abrams?

18 MR. ABRAMS: Yes, Judge.

19 THE COURT: Okay. Did you want to talk to
20 Mr. Pine for a few minutes before I end up leaving here
21 this afternoon?

22 THE DEFENDANT: No. Go ahead and do what you got
23 to do. I'm probably go to get me another counsel
24 anyway, you know.

25 THE COURT: Then you understand that the plea

1 offer is off. There's --

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: There's nothing I can do about that.
4 That's his choice.

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And then if you decide to get another
7 lawyer, that's fine.

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: That's absolutely fine. August, what
10 did I say, 26th?

11 MR. ABRAMS: 26th, I believe.

12 THE COURT: I think I said August 26th we'll
13 resume the hearing.

14 MR. PINE: And, Mr. Notto, I'll be leaving town
15 tomorrow, but I will see you when I get back. And if
16 you need help with another attorney, I'll give you some
17 recommendations for that as well.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. August 26th at 1:30. I
20 think --

21 MR. ABRAMS: I believe you said 3:00.

22 THE COURT: Did I say 3:00? Okay. Three o'clock
23 is fine.

24 MR. PINE: Thank you, Judge.

25 (NOTE: The proceedings adjourned at 3:41 p.m.)

C E R T I F I C A T E

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

7 That the foregoing fifty-seven (57) pages of
8 typewritten material were taken down and transcribed by me
9 and that the same contain a true and accurate transcript of
10 the proceedings as stated in the caption.

11 I further certify that I am not of kin nor counsel to
12 any of the parties hereto, nor am I an interested party to
13 these proceedings.

14 This, the 2nd day of September, 2014.

15
16
17 

18 AMY JO KASKA, CCR-2531
19 Springfield, Georgia
20 California CSR No. 12572
21
22
23
24
25

CERTIFICATE OF SERVICE

This is to certify that I have this date served Assistant Public Defendant Felicia Spears, attorney of record for Defendant, with a copy of the above MOTION IN LIMINE TO ADMIT THE FORMER TESTIMONY OF KYLE KNOOP PURSUANT TO 24-4-804(b)(1) , by leaving a copy of said Motion in the Public Defender's pickup box in the District Attorney's Office.

This 14 day of September, 2015.

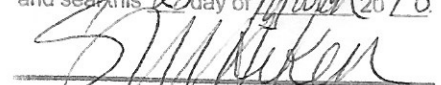


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CERTIFIED COPY

This document is a certified copy of the original document placed on record in the office of the Clerk of Superior Court, Chatham County, GA. Given under my hand and seal this 23 day of March 2018.



Deputy Clerk, S.C.C.C., GA