

From: Alphonse Talarico contact@lawofficeofalphonsetalarico.com  

Subject: 1990CF000655

Date: December 7, 2023 at 9:32 PM

To: Paul Dulberg pdulberg@icloud.com, Paul Dulberg Paul_Dulberg@comcast.net, T Kost tkost999@gmail.com

AT

Gentlemen,

Please see the attached.

1990CF000655	1990CF000655	People v Paul
- Attor...07].pdf	- Attor...07].pdf	Dulber...07].pdf
85 KB	125 KB	

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Case Information

1990CF000655 PEOPLE VS. DULBERG, PAUL R.

TYPE **CRIMINAL FELONY - SHERIFF INDICTMENT-MCH COUNTY**
FILED **11/29/1990**
STATUS **CLOSED - 07/30/1992**

Court Events Documents Parties Charges / Sentences Summons Judgments Financials

Future Court Events

No future Court Events for this case

Previous Court Events

Date	Room	Event Type/Result	Result	Judge
09/21/1992	A340	HEARING	STRIKE - FROM CALL	ARNOLD
09/08/1992	A340	MOTION - RECONSIDER	CONTINUED - DEFENDANT'S MOTION	ARNOLD
08/17/1992	A320	ENTRY - ORDER	ENTERED - AGREED ORDER	COWLIN
08/14/1992		MOTION	ALLOWED	RHODE
08/07/1992	A340	MOTION	ALLOWED	ARNOLD
07/30/1992	A340	SENTENCING	** JUDGMENT - CONVICTION	ARNOLD
07/09/1992	A340	SENTENCING	CONTINUED - DEFENDANT'S MOTION	ARNOLD
07/01/1992	A340	MOTION	ALLOWED	ARNOLD
05/28/1992	A340	PLEA - BLIND	** JUDGMENT - CONVICTION	ARNOLD
05/21/1992	A340	HEARING - MOTION SUPPRESS	CONTINUED - DEFENDANT'S MOTION	ARNOLD
04/21/1992	307	MOTION	ALLOWED	ARNOLD
04/06/1992	307	CONFERENCE - JURY	CONTINUED - STATE'S MOTION	ARNOLD
02/28/1992	309	MOTION - RECONSIDER	DENIED	HUTCHINSON
01/17/1992		ENTRY - ORDER	ENTERED - AGREED ORDER	HUTCHINSON
01/10/1992	307	MOTION - CONTINUE	ALLOWED	FRANZ
12/20/1991	307	MOTION - CONTINUE	ALLOWED	HUTCHINSON
12/04/1991	307	HEARING	CONTINUED - DEFENDANT'S MOTION	HUTCHINSON
11/01/1991	307	HEARING	CONTINUED - COURT'S MOTION	HUTCHINSON
10/28/1991	307	CONFERENCE - JURY	SET - DATE FOR HEARING	HUTCHINSON
10/23/1991	307	HEARING - MOTION SUPPRESS	SET - DATE FOR CONFERENCE CALL	HUTCHINSON
08/21/1991	307	MOTION	ALLOWED	HUTCHINSON
07/10/1991	307	MOTION	ALLOWED	HUTCHINSON
06/24/1991	307	CONFERENCE - JURY	SET - DATE FOR HEARING	HUTCHINSON
05/07/1991	307	HEARING	DENIED	HUTCHINSON

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04/19/1991	307	STATUS - CHECK	SET - DATE FOR HEARING	HUTCHINSON
04/05/1991	307	HEARING	DENIED	HUTCHINSON
04/02/1991	307	MOTION	SET - DATE FOR HEARING	HUTCHINSON
02/19/1991	307	CONFERENCE - JURY	SET - DATE FOR JURY	HUTCHINSON
01/02/1991	307	ARRAIGNMENT	DEMAND - JURY	HUTCHINSON
12/17/1990		HEARING - PRELIMINARY	REASSIGNED	OTHER
12/12/1990	112	GRAND JURY	SET - BOND	COWLIN
12/12/1990		SET - DATE FOR PRELIMINARY HEARING	SET - DATE FOR PRELIMINARY HEARING	OTHER
12/03/1990		HEARING - BOND	STRIKE - FROM CALL	FRANZ
11/29/1990		RIGHTS	EXPLAINED - RIGHTS	ARNOLD

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02/20/1992	ORD	ORDER
01/17/1992	ORD	ORDER
01/17/1992	ORD	ORDER
01/10/1992	MOTCOT	MOTION - CONTINUE
01/10/1992	NOTM	NOTICE - MOTION
01/10/1992	ORD	ORDER
12/20/1991	ORD	ORDER
12/16/1991	MOTCOT	MOTION - CONTINUE
12/16/1991	NOTM	NOTICE - MOTION
12/04/1991	ORD	ORDER
11/04/1991	ORD	ORDER
10/28/1991	MOT	MOTION
10/28/1991	MOT	MOTION
10/28/1991	MOT	MOTION
10/23/1991	ORD	ORDER
08/21/1991	MOT	MOTION
08/21/1991	NOTM	NOTICE - MOTION
08/21/1991	ORD	ORDER
07/18/1991	REOP	REPORT - PROCEEDINGS
07/10/1991	MOT	MOTION
07/10/1991	NOTM	NOTICE - MOTION
07/10/1991	ORD	ORDER
06/28/1991	ANSSD	ANSWER - SUPPLEMENTAL TO DISCOVERY
06/24/1991	ORD	ORDER
04/18/1991	MOT	MOTION
04/18/1991	MOT	MOTION
04/18/1991	MOTDIM	MOTION - DISMISS
04/16/1991	RES	RESPONSE
04/05/1991	ORD	ORDER
04/05/1991	ORD	ORDER
04/05/1991	ORD	ORDER
04/02/1991	MOT	MOTION
04/02/1991	MOT	MOTION
04/02/1991	MOT	MOTION
04/02/1991	MOT	MOTION
04/02/1991	MOT	MOTION

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04/02/1991	MOT	MOTION	
04/02/1991	ORD	ORDER	
02/26/1991	SUP	SUBPOENA	
02/20/1991	ANSSD	ANSWER - SUPPLEMENTAL TO DISCOVERY	
02/13/1991	ANS	ANSWER	
01/02/1991	ORDREC	ORDER - RECIPROCAL	
12/12/1990	APE	APPEARANCE	
12/12/1990	ORD	ORDER	
11/29/1990	COA	COMPLAINT	
11/29/1990	FILE	ENTIRE FILE	 (http://publicrecords.co.mchenry.il.us/AKT593_0_0_0=1031091471616247603&KT948_0_0_0=1990CF000655&
11/29/1990	WARS	WARRANT - SERVED	

No Carbon Required

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19th JUDICIAL CIRCUIT
McHENRY COUNTYFILED
NOV 29 1990
VERNON W. KAYS, JR.
McHENRY CTY. CIR. CLK.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

PAUL R. DULBERG

(Defendant)

03/19/1970

(Date of Birth)

ADDRESS

551 Summer Blvd.

McHenry, IL 60050

No. 90CF655

CRIMINAL COMPLAINT

Complainant, Deputy James Fung, MCSP, on oath charges:

That on or about November 28, 1990, in McHenry County,
State of Illinois, Paul R. Dulbergcommitted the offense of UNLAWFUL POSSESSION WITH INTENT TO DELIVER CONTROLLED
SUBSTANCEin that the said defendant knowingly and unlawfully possessed with the intent to
deliver 15 grams or more, but not more than 30 grams of a substance containing
cocaine, a controlled substance, otherwise than as authorized in the Controlled
Substances Act,

in violation of chapter 56½, section 1401(a)(2), paragraph _____, Illinois Revised Statutes.

BOND: \$ 75000.00

CONTINUED TO: DATE Dec. 12, 1990

TIME 9AM Room 309

McHENRY COUNTY COURT HOUSE
WOODSTOCK, ILLINOIS

RIGHTS EXPLAINED BY:

DATE

☐ Misdemeanor ☒ Felony
kscJames Fung #125
(Complainant)

SWORN TO before me

Nov. 28, 1990
Ward Smith, Judge

No Carbon Required

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19th JUDICIAL CIRCUIT
McHENRY COUNTYFILED
NOV 29 1990
VERNON W. KAYS, JR.
McHENRY CTY. CIR. CLK.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

PAUL R. DULBERG

(Defendant)

03/19/1970

(Date of Birth)

ADDRESS

551 Summer Blvd.

McHenry, IL 60050

No. 90CF655

CRIMINAL COMPLAINT

Complainant, Deputy James Fung, MCSR, on oath charges:That on or about November 28, 19 90, in McHenry County,State of Illinois, Paul R. Dulbergcommitted the offense of UNLAWFUL POSSESSION WITH INTENT TO DELIVER CONTROLLED
SUBSTANCEin that the said defendant knowingly and unlawfully possessed with the intent to
deliver 15 grams or more, but not more than 30 grams of a substance containing
cocaine, a controlled substance, otherwise than as authorized in the Controlled
Substances Act,in violation of chapter 56, section 1401(a)(2), paragraph 1, Illinois Revised Statutes.BOND: \$ 75000.00CONTINUED TO: Dec. 12, 1990DATE 9 AM Room 309McHENRY COUNTY COURT HOUSE
WOODSTOCK, ILLINOIS

RIGHTS EXPLAINED BY:

SWORN TO before me

DATE _____

☐ Misdemeanor ☒ FelonyJames Fung #1425
(Complainant)
Nov. 28, 1990
Ward Paul Judge
19

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19th JUDICIAL CIRCUIT
McHenry COUNTY

THE PEOPLE OF THE STATE OF ILLINOIS
vs.

90CF655
No. 90CF656

PAUL R. DULBERG

(Defendant)

DOB: 03/19/1970
551 Summer Blvd.
McHenry, IL 60050

WARRANT OF ARREST

TO ALL PEACE OFFICERS OF THE STATE OF ILLINOIS:

You are hereby commanded to arrest Paul R. Dulberg

and bring said person without unnecessary delay before presiding (Judge)
of the Circuit Court of the 19th Judicial Circuit, McHenry
County, in the courtroom usually occupied by him in the McHenry County Courthouse in the
City of Woodstock, or if he is absent or unable to act, before the nearest or most accessible

court in said County, to answer a charge made against said person for the offense of UNLAWFUL POSSESSION OF CANNABIS
UNLAWFUL POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO DELIVER WITH INTENT TO DELIVER
and hold said person to bail.

The amount of bail is \$ ~~50,000~~ 100,000

ISSUED AT Woodstock, McHenry

COUNTY, ILLINOIS, this

28 day of Nov, 1990

Ward J. Shultz
(Signature)
(Title of Office)

State of Illinois

County of McHenry

S.S.

RETURN OF SERVICE

I have executed the within Warrant by arresting the within-named defendant. In accordance with
the provisions of Paragraph 110-9, Chapter 38, Illinois Revised Statutes, defendant released on bail in
Sum of \$, with security: (Description of Security)

(Surety: this 28 day of November 1990, to appear in court on Wednesday, the
12 day of December, 1990 at 9 M o'clock, Central Time
(Standard or Daylight)

FEES: Service and Return \$13; Mileage (mi. @ c) \$; TOTAL: \$13

RIGHTS EXPLAINED

BY

DATE

WPA
11-29-90

Deputy S. Shultz 1022
(Signature)
Deputy Shultz - MSP
(Official Capacity)

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19th JUDICIAL CIRCUIT
McHenry COUNTY

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

PAUL R. DULBERG

(Defendant)

DOB: 03/19/1970
551 Summer Blvd.
McHenry, IL 60050

WARRANT OF ARREST

90CF655
No. 90CF656

FILED
NOV 29 1990
VERNON W. KAYS, JR.
McHENRY CTY. CIR. CLK.

TO ALL PEACE OFFICERS OF THE STATE OF ILLINOIS:

You are hereby commanded to arrest Paul R. Dulberg

and bring said person without unnecessary delay before presiding
 of the Circuit Court of the 19th Judicial Circuit, McHenry

County, in the courtroom usually occupied by him in the McHenry County Courthouse in the
City of Woodstock, or if he is absent or unable to act, before the nearest or most accessible

court in said County, to answer a charge made against said person for the offense of UNLAWFUL POSSESSION OF CANNABIS
UNLAWFUL POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO DELIVER WITH INTENT TO DELIVER,
UNLAWFUL POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO DELIVER and hold said person to bail.

The amount of bail is \$ 100,000ISSUED AT Woodstock, McHenry

COUNTY, ILLINOIS, this

28 day of Nov, 19 90

Wad S. Shauld
(Signature)
(Title of Office)

State of Illinois

County of McHenry

S.S.

RETURN OF SERVICE

I have executed the within Warrant by arresting the within-named defendant. In accordance with
the provisions of Paragraph 110-9, Chapter 38, Illinois Revised Statutes, defendant released on bail in
Sum of \$, with security:

(Description of Security)

(Surety: (Name) (Address)
this 28 day of November, 19 90, to appear in court on Wednesday, the
12 day of December, 19 90 at 9 M o'clock, Central Time
(Standard or Daylight)
FEES: Service and Return \$ 13; Mileage (mi. @ ¢) \$; TOTAL: \$ 13

WPA
11-29-90

Deputy S. Shauld
(Signature)
Deputy Shauld - MSP
(Official Capacity)

CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

FILED
McHenry County, Ill.STATE OF ILLINOIS
COUNTY OF McHENRY

SS

DEC 12 1990

GEN. NO.

90TRO 41497

VERNON W. K. S. J.
Clerk of the Circuit Court☐ Jury ☒ Non-JuryPeople
vs.
Paul Dubberq

Date

12/12/90

Plaintiff's
Attorney

State

Defendant's
Attorney

James F. Russell

ORDER

It is hereby ordered that the above captioned matter shall appear on the court call on 12/17/90 at 10 AM Rm 309 and shall follow cases # 90CF 655 and # 90CF 656

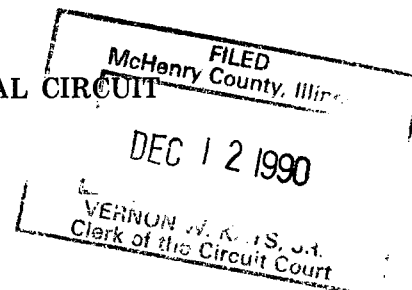
Prepared by:

Attorney for:

Attorney Registration No.:

Judge

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19th JUDICIAL CIRCUIT
McHENRY COUNTY



Perps

vs

Paul Dulberg

No. _____

APPEARANCE

The undersigned, as attorney, enters the appearance of defendant _____

PAUL DULBERG

Name JAMES F. DRISCELL

Attorney for DEFENDANT

Address 1920 N THOREAU

City SCHAUMBURG,

Telephone 397-3909

Prepared By *James F. Driscoll*

Attorney For *Defendant*

Attorney Registration No. 22843

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

vs.

PAUL R. DULBERG
551 Summer Blvd.
McHenry, IL 60050
DOB: 03/19/1970

)
)
) No. 90 CF 655
)
)

BILL OF INDICTMENT

COUNT I

The Grand Jury charges:

That on or about November 28, 1990, in McHenry County, State of Illinois, Paul R. Dulberg committed the offense of UNLAWFUL POSSESSION WITH INTENT TO DELIVER CONTROLLED SUBSTANCE, in that the said defendant knowingly and unlawfully possessed with the intent to deliver 15 or more but less than 100 grams of any substance containing cocaine, or an analog thereof, otherwise than as authorized in the Controlled Substances Act, in violation of Chapter 56 1/2, Section 1401(a)(2) of the Illinois Revised Statutes, P.A. 86-604, Section 1, effective January 1, 1990.

COUNT II

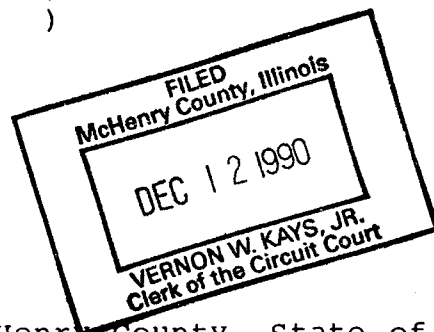
The Grand Jury charges:

That on or about November 28, 1990, in McHenry County, State of Illinois, Paul R. Dulberg committed the offense of UNLAWFUL POSSESSION OF CONTROLLED SUBSTANCE, in that the said defendant knowingly and unlawfully possessed 15 grams or more but less than 100 grams of any substance containing cocaine, or an analog thereof, otherwise than as authorized in the Controlled Substances Act, in violation of Chapter 56 1/2, Section 1402(a)(2) of the Illinois Revised Statutes, P.A. 86-604, Section 1, effective January 1, 1990.

COUNT III

The Grand Jury charges:

That on or about November 28, 1990, in McHenry County, State of Illinois, Paul R. Dulberg committed the offense of UNLAWFUL POSSESSION ~~WITH INTENT TO DELIVER~~ CANNABIS, in that the said defendant knowingly and unlawfully possessed ~~with the intent to deliver~~ more than 30 grams but not more than 500 grams of any substance containing cannabis, or an analog thereof, otherwise than as authorized in the Cannabis Control Act, in violation of Chapter 56 1/2, Section 705(2) of the Illinois Revised Statutes. *Class 4 Felony*



A TRUE BILL

Guy F. Siegner
Foreman

LIST OF WITNESSES

Deputy Romeo Jonitas _____

STATE OF ILLINOIS

IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT

McHENRY COUNTY

The within indictment returned in open court _____

December 12, _____, 1990.

Total Bail set, ~~with warrant of arrest ordered to issue.~~

\$100,000.00

Henry P. Gohi
(Judge)

Ct. I \$75,000.00

Ct. II - 0 - (NO BOND) (NEW COUNT)

Ct. III \$25,000.00

STATE OF ILLINOIS)
) SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
)
 vs.)
)
PAUL R. DULBERG)

No. 90 CF 655

O R D E R

THIS CAUSE coming on to be heard on motion of the People of the State of Illinois, and the Court being fully advised in the premises;

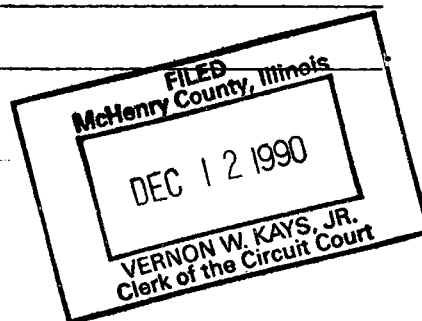
IT IS HEREBY ORDERED that the bond previously posted concerning the above captioned matter, if any, and any bond requirements, be transferred to the Bill of Indictment in this matter.

IT IS FURTHER ORDERED that the following cases are merged into the Bill of Indictment: 90 CF 656

DATED: Dec 12, 1990

ENTERED:

Henry L. Buhl
JUDGE



IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS)

- vs -)

Paul Dulberg)

No. 90 CF655

RECIPROCAL ORDER FOR DISCLOSURE

On motion of accused;

IT IS ORDERED that the State shall disclose to defense counsel the following material and information within its possession or control:

1. The names and last known addresses of persons whom the State intends to call as witnesses, together with their relevant written or recorded statements, memoranda containing substantially verbatim reports or their oral statements which the State does not disclose to defense counsel shall be submitted to the Court for examination in camera and disclosure to defense counsel if found to be substantially verbatim reports.

2. Any written or recorded statements and the substance of any oral statements made by the accused or by a codefendant, and a list of witnesses to the making and acknowledgment or such statements.

3. A transcript of those portions of grand jury minutes containing testimony of the accused and relevant testimony of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial.

4. Any reports or statements of experts, made in connection with this case, including results of physical or mental examinations and of scientific tests, experiments or comparisons; and oral reports or statements or experts shall be reduced to writing by the said experts.

5. Any books, papers, documents, photographs or tangible objects which the State intends to use as evidence or which were obtained from or belong to the accused.

6. Any record of prior criminal convictions which may be used for impeachment of persons which the State intends to call as witnesses.

7. Any material or information which tends to negate the guilt of the accused as to the offense charged, or would tend to reduce his punishment for it.

FURTHER ORDERED that the State shall comply with this Order on or before - 1 - 23, 1991, at a time and place and in a manner mutually agreeable to itself and defense counsel whereby the material and information may be inspected, obtained, tested, copied or photographed. If the parties cannot agree on a time, place and manner of compliance with the Order, the State will proceed under SCR 412 (e) effective October 1, 1971.

FURTHER ORDERED that if the State discovers after compliance with this Order additional material or information subject to disclosure under this Order, it shall promptly disclose such material or information to counsel

(overleaf)

for accused and also notify the Court of it.

On motion of the State, IT IS ORDERED that defense counsel shall inform the State's Attorney of any defenses which the accused intends to make at a hearing or trial, including affirmative defenses, nonaffirmative defenses, alternative and inconsistent defense.

FURTHER ORDERED that defense counsel shall furnish the State's Attorney with the following material and information within his possession or control or within the possession or control of the accused:

1. The names and last known address of persons he intends to call as witnesses, together with their relevant written or recorded statements, including memoranda reporting or summarizing their oral statements and any record of prior criminal convictions of said witnesses known to the accused or his counsel.

2. Any books, documents, photographs or tangible objects he intends to use as evidence or for impeachment.

3. Any reports or statements of experts, made in connection with this case, including results or physical or mental examinations, and of scientific tests, experiments or comparisons, except that those portions of reports containing statements made by the accused may be withheld if defense counsel does not intend to use any of the material contained in the report at a hearing or trial; oral reports or statements of experts shall be reduced to writing by said experts.

4. To furnish in writing to the People of the State of Illinois and any written or recorded statements, including memoranda reporting or summarizing the oral statements of any persons listed by the State as potential witnesses.

FURTHER ORDERED that defense counsel shall comply with this Order on or before 2-6, 1991 at a time and place and in a manner mutually agreeable to defense counsel and the State's Attorney, whereby said material and information may be inspected, obtained, tested, copied or photographed. If the parties cannot agree on a time, place and manner of compliance defense counsel shall notify the State's Attorney that the material and information may be inspected, obtained, tested, copied or photographed during specified reasonable times and at places reasonably accessible to the State's Attorney.

FURTHER ORDERED that if subsequent to compliance herewith, the accused or his counsel discover additional material or information which is subject to disclosure under this Order, they shall promptly disclose such information or material to the State's Attorney and also notify the Court of it.

FURTHER ORDERED that all motions, waivers and demands shall be made in open court, and above numbered cause(s) set for trial on call to commence on the 2-25 Jury Trial Calendar, subject to Conference call on 2-19 at 9:00 a.m. All pre-trial motions will be noticed,

filed and argued 60 Days, 1991.

FILED
JAN 2 1991
1 - 2
VERNON W. KAYS, JR.
CLERK OF THE CIRCUIT COURT

ENTER

JUDGE

IMAGED 8/19/2016

FILED
McHENRY COUNTY, ILLINOIS

FEB 13 1991

STATE OF ILLINOIS)
) ss
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT *Kerry A. Lopez*
McHENRY COUNTY, ILLINOIS
Clerk of the Circuit Court

PEOPLE OF THE STATE OF ILLINOIS)
)
 vs.) No. 90 CF 655
)
PAUL R. DULBERG)

ANSWER TO DEFENDANT'S MOTION FOR DISCOVERY

TO: James F. Driscoll
1920 N. Thureau
Schaumburg, IL

1. A list of eight (8) names of persons who may or may not be called as witnesses at the time of trial of the above captioned matter have been provided to counsel for the defendant.

A copy of the police report relative to the above captioned matter has been forwarded.

2. The State is unaware of any written statements, the substance of any oral statements and the witnesses to the making of those statements are as contained in the police reports and Grand Jury minutes that have been forwarded.

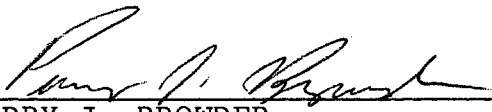
3. Grand Jury minutes were forwarded.

4. Crime lab reports were forwarded. Also forwarded was a copy of the curriculum vitae of the forensic chemist involved in the above captioned matter.

5. Any and all exhibits as listed in the police reports or referred to in the Grand Jury minutes may be introduced. They may be viewed at a mutually convenient time with the Office of the State's Attorney.

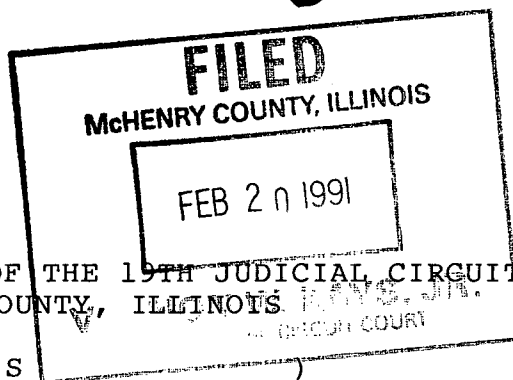
6. None.

7. None.


PERRY J. BROWDER
Assistant State's Attorney

THOMAS F. BAKER
McHenry County State's Attorney
McHenry County Government Center
2200 N. Seminary Avenue
Woodstock, IL 60098
(815) 338-2069

STATE OF ILLINOIS)
) SS
COUNTY OF McHENRY)



IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)

vs.)

No. 90 CF 655

PAUL R. DULBERG)

SUPPLEMENTAL ANSWER TO DISCOVERY

Now come the People of the State of Illinois, by and through their State's Attorney, THOMAS F. BAKER, by and through one of his duly appointed Assistants, PERRY J. BROWDER, and hereby supplements their previously filed Answers to Discovery as follows:

1. A copy of an additional police report in reference to the above captioned matter has been forwarded to defense counsel.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Perry J. Browder".

PERRY J. BROWDER
Assistant State's Attorney

THOMAS F. BAKER
McHenry County State's Attorney
McHenry County Government Center
2200 N. Seminary Ave.
Woodstock, IL 60098
(815) 338-2069

42/9

STATE OF ILLINOIS }
McHenry County } ss.

THE PEOPLE OF THE STATE OF ILLINOIS,
TO THE SHERIFF OF SAID COUNTY, GREETINGS:

FILED
MCHEMRY COUNTY, IL

FEB 26 1991

WE COMMAND YOU, That you summon Craig A. Isakson

503 S. Emerald

McHenry, IL 60050

VERNON W. KAYS
CLERK OF THE CIRCUIT COURT
JAN 20 PM 3:38
MCHEMRY CO. ILL.

to appear before the Circuit Court of said county at Woodstock, on the 4th
day of March, 1991, at the hour of 9:00am to testify and the
truth to speak in behalf of the People of the State of Illinois

_____ in a cause now pending in said Court, wherein the People of the State of Illinois are
Plaintiffs, and PAUL R. DULBERG 90 CF 655 Defendant.

And have you then and there this Writ, with an endorsement thereon, in what manner
you shall have executed the same

Please contact this
office upon receipt
of this subpoena.

PERRY J. BROWDER
(815) 338-2069

WITNESS, _____, Clerk of our said Court and seal
thereof, at Woodstock, this 20th day
of February 1991

Vernon W. Kays, Jr. Clerk.

Isakson, Craig A.

IMAGED 8/19/2016
Gen. No. 90 CF 655

People's Subpoena

McHenry County Circuit Court.

In the matter of

People of the State of Illinois

vs.

Paul R. Dulberg

Subpoena on the part of

STATE OF ILLINOIS, ss.
McHenry County

Woodstock, Ill., Feb. 25 19 91

I have duly served the within by reading the same to the within named

Craig A. Isakson (M/W-32) served
personally on 2/22/91 at 12:05 p.m.
at Robinson Ind., 11320 E. Main St.,
Huntley, IL

as I am therein commanded.

Deputy

George H. Hendle

Sherriff.

Edward Hendle #1012 add

FEES - Service 10.00

12.00

Mileage 1

51.00

Return

Filed in the Circuit Court this

day of A.D. 19

Clerk.

Attorney.

90-623/JFD

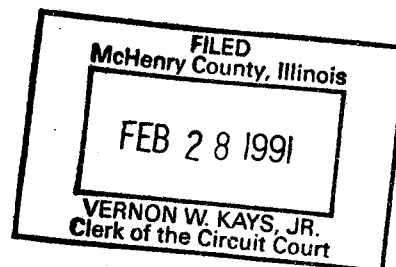
STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
Plaintiff,	)	
	)	
vs	)	No. 90 CF 655
	)	
PAUL R. DULBERG,	)	
	)	
Defendant.	)	

MOTION TO CONTINUE TRIAL

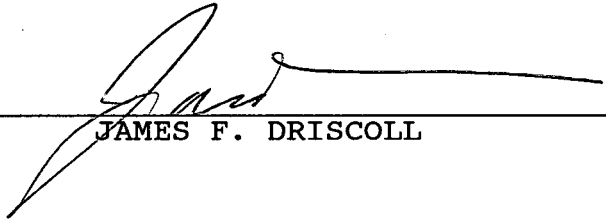
NOW COMES Defendant, PAUL R. DULBERG, by and through his attorneys, DRISCOLL & DRISCOLL, and as and for his Motion to Continue Trial, states as follows:

1. That this matter is set for trial on March 4, 1991.
2. That the pre-trial discovery order was entered on January 2, 1991.
3. That the State tendered its response to discovery on February 16, 1991 and supplemental response on February 19, 1991.
4. That the Defendant has not completed his investigation on this matter and was unable to concentrate fully on same until February 16, 1991.
5. That this case involves a Confidential Informant and Defendant shall file the appropriate motion to disclose within seven (7) days.
6. That the Defendant has not previously requested a continuance on this matter.



7. That the Defendant's attorney has not been able to prepare adequately for the trial of this matter and it would be manifestly unjust to force this matter to trial.

WHEREFORE, the Defendant prays that said matter be continued for thirty (30) days and a hearing date be set for all motions.



JAMES F. DRISCOLL

DRISCOLL & DRISCOLL
Attorneys for Defendant
1920 N. Thoreau Drive, Suite 166
Schaumburg, IL 60173
708/397-3909

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

Plaintiff,

VS

PAUL R. DULBERG,

Defendant.

No. 90 CF 655

NOTICE OF MOTION

TO: Philip Prossnitz, Assistant State's Attorney, 2200 N. Seminary Avenue, Woodstock, IL 60098

On February 28, 1991 at 9:00 A.M. or as soon thereafter as counsel may be heard, I shall appear before the Honorable Susan Hutchinson or any judge sitting in her stead, in the courtroom usually occupied by her at McHenry County Courthouse, 2200 North Seminary Avenue, Woodstock, Illinois, and then and there present the attached Motion to Continue Trial.

DRISCOLL & DRISCOLL
Attorneys for Defendant
1920 N. Thoreau Drive, Suite 166
Schaumburg, IL 60173
708/397-3909

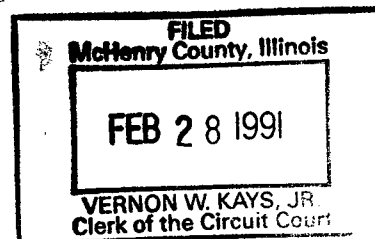
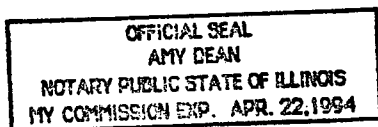
PROOF OF SERVICE BY TELECOPIER

I, FLORENCE SCHUBA, a non-attorney, on oath state I served this notice by faxing a copy to Philip Prossnitz at his telecopier number 1/815-338-2513 on February 27, 1991 at 12:00 P.M. and received an electronic confirmation that the documents had been received.

FLORENCE SCHUBA

SUBSCRIBED AND SWORN TO
before me this 27th February
day of February, 1991.

NOTARY PUBLIC



90-623/JFD

IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
McHENRY COUNTY, ILLINOIS
APR 02 1991

VERNON W. KAYS, JR.
CLERK OF THE CIRCUIT COURT

PEOPLE OF THE STATE OF ILLINOIS,)

Plaintiff,)

vs.)

PAUL R. DULBERG,)

Defendant.)

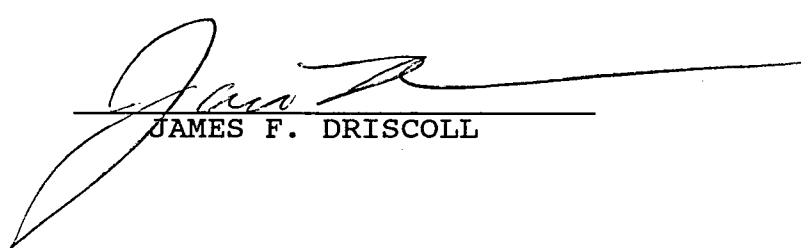
No. 90 CF 655

MOTION FOR BOND HEARING

NOW COMES Defendant, PAUL R. DULBERG, by and through his attorneys, DRISCOLL & DRISCOLL, and for his Motion for Bond Hearing, states as follows:

1. That the Defendant was arrested on November 28, 1990.
2. That the Defendant has been incarcerated since November 28, 1990.
3. That there is currently a bond in effect of \$100,000.00.

WHEREFORE, Defendant prays that this Court entertain a Motion for a Hearing to reduce the bond and to set bond on Count II of the indictment.


JAMES F. DRISCOLL

DRISCOLL & DRISCOLL
Attorneys for Defendant
1920 N. Thoreau Drive, Suite 166
Schaumburg, IL 60173
708/397-3909

90-623/JFD

IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
vs.) No. 90 CF 655
)
PAUL R. DULBERG,)
)
Defendant.)

FILED
McHENRY COUNTY, ILLINOIS
APR 02 1991
VERNON W. KAYS, JR.
CLERK OF THE CIRCUIT COURT

MOTION TO IDENTIFY THE CONFIDENTIAL INFORMANT

NOW COMES the Defendant, PAUL R. DULBERG, by and through his attorneys, DRISCOLL & DRISCOLL, and for his Motion to Identify the Confidential Informant, states as follows:

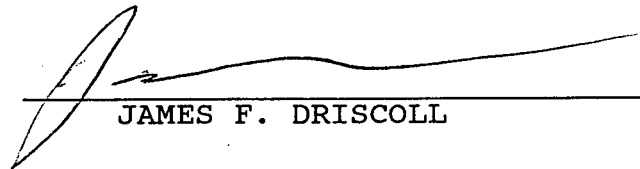
1. That a Complaint was filed and a warrant issued on the Defendant to the McHenry County State Police by a confidential informant.

2. That the Defendant needs to know the identity of the informant in order to prepare future motions and to prepare adequately for a defense.

3. That the Defendant is well aware of the argument regarding confidentiality that the State is going to raise in this matter.

4. That this information is vitally necessary in order to prepare additional Motions and to prepare for a defense in this matter and that the thrust of the State's case is based upon the information given by this informant.

WHEREFORE, Defendant prays that the Court order the State to turn over to the Defendant the identity and the last known address of the confidential informant. That the Defendant further agrees that he will not release the identity of this informant without further order of the Court.



JAMES F. DRISCOLL

DRISCOLL & DRISCOLL
Attorneys for Defendant
1920 N. Thoreau Drive, Suite 166
Schaumburg, IL 60173
708/397-3909

90-623/JFD

IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
vs.)
)
PAUL R. DULBERG,)
)
Defendant.)

No. 90 CF 655

MOTION TO COMPEL DISCOVERY BY THE STATE

NOW COMES the Defendant, PAUL R. DULBERG, by and through his attorneys, DRISCOLL & DRISCOLL, and for his Motion to Compel Discovery by the State, states as follows:

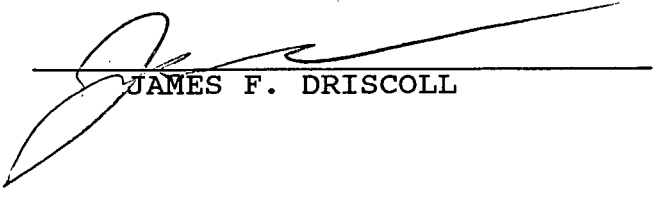
1. That there have been discovery orders entered by the State.
2. That the State has provided copies of certain police reports and lab results from the State of Illinois.
3. That the State has in their possession an unsigned statement of one Mr. Isakson that has not been previously provided to the Defendant.
4. That apparently the Defendant has been subjected to some type of identification process by either lineup or photo identification and that the Defendant does not have any of the information regarding this and we need these items to prepare further Motions and to prepare our defense.

FILED
McHENRY COUNTY, ILLINOIS

APR 02 1991

CLERK
CIRKON W. KAYS, JR.
CLERK OF THE CIRCUIT COURT

WHEREFORE, Defendant prays that this Honorable Court enter
an Order compelling discovery by the State.



JAMES F. DRISCOLL

DRISCOLL & DRISCOLL
Attorneys for Defendant
1920 N. Thoreau Drive, Suite 166
Schaumburg, IL 60173
708/397-3909

CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS
COUNTY OF McHENRY

SS

GEN. NO. 90CF655
☐ Jury ☐ Non-Jury

People vs. Paul R. Dulberg

Date 4/2/91 Plaintiff's Attorney Browder Defendant's Attorney Driscoll

ORDER

This matter coming before the court on defendant's motion to file motions. Two motions being filed. The court being fully advised hereby orders:

That the motion for Bond hearing motion to compel Discovery and motion to produce informant is set for hearing is set for 4-5-91 @ 1:30 PM. for hearing. The time is held against the defendant until trial.

~~The court~~ this ordered the 2nd day of April

Prepared by: Browder

Attorney for: People.

Attorney Registration No.: _____

1991 FILED
McHENRY COUNTY, ILL.

ADR - 2

VERNON W. KAYS
Judge
CLERK OF THE CIRCUIT COURT

[Signature]

90-623/JFD

IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
vs.)
)
PAUL R. DULBERG,)
)
Defendant.)

No. 90 CF 655

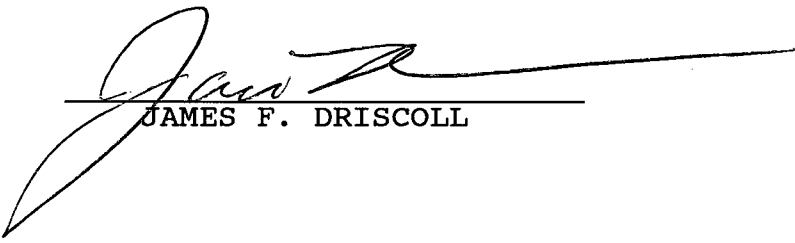
FILED
McHENRY COUNTY, ILLINOIS
APR 02 1991
VERNON W. KAYS, JR.
CLERK OF THE CIRCUIT COURT

MOTION FOR BOND HEARING

NOW COMES Defendant, PAUL R. DULBERG, by and through his attorneys, DRISCOLL & DRISCOLL, and for his Motion for Bond Hearing, states as follows:

1. That the Defendant was arrested on November 28, 1990.
2. That the Defendant has been incarcerated since November 28, 1990.
3. That there is currently a bond in effect of \$100,000.00.

WHEREFORE, Defendant prays that this Court entertain a Motion for a Hearing to reduce the bond and to set bond on Count II of the indictment.


JAMES F. DRISCOLL

DRISCOLL & DRISCOLL
Attorneys for Defendant
1920 N. Thoreau Drive, Suite 166
Schaumburg, IL 60173
708/397-3909

90-623/JFD

IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
vs.)
)
PAUL R. DULBERG,)
)
Defendant.)

No. 90 CF 655

FILED
McHENRY COUNTY, ILLINOIS
APR 02 1991
VERNON W. KAYS, JR.
CLERK OF THE CIRCUIT COURT

MOTION TO IDENTIFY THE CONFIDENTIAL INFORMANT

NOW COMES the Defendant, PAUL R. DULBERG, by and through his attorneys, DRISCOLL & DRISCOLL, and for his Motion to Identify the Confidential Informant, states as follows:

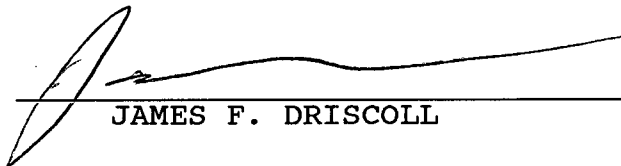
1. That a Complaint was filed and a warrant issued on the Defendant to the McHenry County State Police by a confidential informant.

2. That the Defendant needs to know the identity of the informant in order to prepare future motions and to prepare adequately for a defense.

3. That the Defendant is well aware of the argument regarding confidentiality that the State is going to raise in this matter.

4. That this information is vitally necessary in order to prepare additional Motions and to prepare for a defense in this matter and that the thrust of the State's case is based upon the information given by this informant.

WHEREFORE, Defendant prays that the Court order the State to turn over to the Defendant the identity and the last known address of the confidential informant. That the Defendant further agrees that he will not release the identity of this informant without further order of the Court.



JAMES F. DRISCOLL

DRISCOLL & DRISCOLL
Attorneys for Defendant
1920 N. Thoreau Drive, Suite 166
Schaumburg, IL 60173
708/397-3909

90-623/JFD

IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
McHENRY COUNTY, ILLINOIS

APR 02 1991

VERNON W. KAYS, JR.
CLERK OF THE CIRCUIT COURT

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
vs.)
)
PAUL R. DULBERG,)
)
Defendant.)

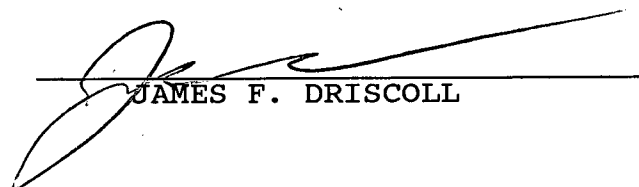
No. 90 CF 655

MOTION TO COMPEL DISCOVERY BY THE STATE

NOW COMES the Defendant, PAUL R. DULBERG, by and through his attorneys, DRISCOLL & DRISCOLL, and for his Motion to Compel Discovery by the State, states as follows:

1. That there have been discovery orders entered by the State.
2. That the State has provided copies of certain police reports and lab results from the State of Illinois.
3. That the State has in their possession an unsigned statement of one Mr. Isakson that has not been previously provided to the Defendant.
4. That apparently the Defendant has been subjected to some type of identification process by either lineup or photo identification and that the Defendant does not have any of the information regarding this and we need these items to prepare further Motions and to prepare our defense.

WHEREFORE, Defendant prays that this Honorable Court enter
an Order compelling discovery by the State.



JAMES F. DRISCOLL

DRISCOLL & DRISCOLL
Attorneys for Defendant
1920 N. Thoreau Drive, Suite 166
Schaumburg, IL 60173
708/397-3909

STATE OF ILLINOIS)
) SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, McHENRY COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS)
vs.)

Dulberg, Paul Raymond)
Defendant)

4606 Hayden et.)
Address)

McHenry IL)
City State)

Posted By:
BARBARA, Dulberg
4606 HAYDEN et.
McHenry IL 60050
9006 655

FILED

APR 10 1991

VERNON W. KAYS, JR.
McHENRY CTY. CIR. CLK.

TEN PER CENT CASH DEPOSIT BAIL BOND

The undersigned defendant, being charged with the offense of

① Unlawful Possession with Intent To Deliver (2) Unlawful Possession of Cannabis with Intent to Deliver
and now being admitted to bail in the sum of \$25,000⁰⁰, acknowledges himself to be indebted to THE PEOPLE OF THE
STATE OF ILLINOIS in the penal sum of \$25,000⁰⁰, to be levied upon his property, of whatever kind and wherever
situated, and undertakes the following as conditions of his bail.

(1) that said defendant shall appear in the Circuit Court of The 19th Judicial Circuit, McHenry County, Illinois at
Courtroom No. _____, Branch No. _____, on the 19th day of April, 1991,
and any divisions thereof as required to answer said charge, and appear thereafter as ordered by said court until discharged or
until final order of the court;

(2) that said defendant shall submit himself to the orders and process of said court.

(3) that said defendant shall not depart this state without leave of Court.

(4) that said defendant shall report any change of address to the Court.

(5) that said defendant shall not violate any federal, state or local law.

(6) that said defendant shall not contact the complainant or any of the state witnesses by telephone or otherwise nor
shall the defendant direct any other person to make said contact for him.

That the above named defendant's bond has been posted by Barbara Dulberg Defendant acknowledges
BARBARA DULBERG has posted bond. Paul Dulberg (signature of defendant)

That person other than defendant has read the following: That if the defendant fails to comply with the conditions of
the bail bond, the court shall enter an order declaring the bail to be forfeited and may be used to pay costs, attorneys fees, fines
or other purposes authorized by the court. Barbara Dulberg (signature of person posting bond)

As security for the compliance with the conditions of bail above set forth, said defendant deposits the sum of
\$2,500⁰⁰ in cash with the Clerk of this Court, which sum is equal to 10% of the amount of bail set in this cause for the
appearance of said defendant, in accordance with the provisions of Paragraph 110-7, Chapter 38, Illinois Revised Statutes.

If said defendant shall comply with the conditions of this bail bond above set forth, it shall upon order of Court be
discharged and said defendant shall be entitled to the return of 90% of said deposit, the remaining 10% of said deposit to be
retained by the Clerk of this Court as bail bond costs; provided, however, that in the event a judgement is entered against said
defendant for a fine and/or court costs, the balance of said deposit, after deduction of bail bond costs, shall be applied to the
payment of said fine 2,500⁰⁰ and/or court costs. If said defendant shall fail to comply with said conditions of his
bail, his bail shall remain in full force and effect and said defendant shall be liable for forfeiture thereon.

EXECUTED this 9th day of April, 1991

Paul Dulberg (seal)
TAKEN by me this 9th day of April, 1991

By Deputy Daniel R. Pauley - 1160
Peace Officer or Clerk of Court

APPROVED by me this _____ day of _____, 19_____, _____
(Judge)

McHenry County Sheriff's Police

WOODSTOCK, ILLINOIS 60098

815/338-2144

GEORGE H. HENDLE, SHERIFF

Posted By:

BARBARA, DULBERG

4606 HAYDEN CT

McHENRY IL 60050

FILED

APR 10 1991

VERNON W. KAYS, J.
McHENRY CTY. CLERK

NAME Dulberg, Paul RAYMOND

DATE 04-09-91

ADDRESS 4606 HAYDEN CT.

CITY McHenry

STATE IL

ZIP 60050

OFFENSE	AMOUNT
UNLAWFUL POSSESSION WITH INTENT TO DELIVER	
UNLAWFUL POSSESSION OF CANNABIS WITH INTENT TO DELIVER	
BOND	
25,000 ⁰⁰ 10% applies	2,500 ⁰⁰
COURT DATE	
2000 N. SEMINARY AVE WOODSTOCK IL 60098	CASH
04-19-91 @ 9:00AM	2,500 ⁰⁰

IF AT ANY TIME PRIOR TO THE FINAL DISPOSITION OF THIS CHARGE, YOU ESCAPE FROM CUSTODY, OR ARE RELEASED ON BOND AND FAIL TO APPEAR IN COURT WHEN REQUIRED, YOUR FAILURE TO APPEAR CONSTITUTES A WAIVER OF YOUR RIGHT TO CONFRONT WITNESSES AGAINST YOU, AND A TRIAL CAN PROCEED IN YOUR ABSENCE.

READ AND UNDERSTOOD

Paul Dulberg

RECEIVED OF

Barbara Dulberg

RECEIVED BY

Deputy Daniel R PAULY-1160

NO 33416

SCHMIDT PRINTING

CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS
COUNTY OF McHENRY

SS

GEN. NO. 90 CF 655
☐ Jury ☐ Non-Jury

Paul R. vs. Dulberg

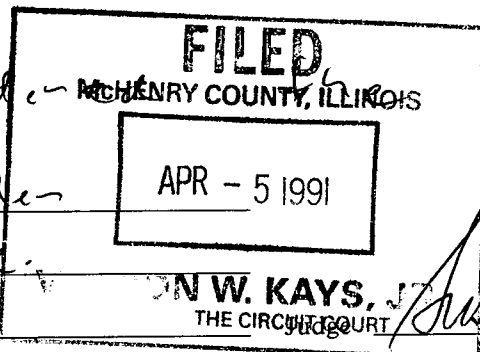
Date 4/3/91 Plaintiff's Attorney Browder Defendant's Attorney Driscoll

ORDER

This matter coming before the court on defendant's motion to produce the confidential informant, the court being fully advised hereby orders; that the defendant's motion is denied. The court further orders that if the Confidential Informant had been relied upon for arrest warrant, for probable cause to arrest, or was present during the arrest or questioning ~~the~~ the identity will be disclosed if the Confidential informant was more than a "tipster".

Prepared by: BrowderAttorney for: People

Attorney Registration No.: _____



2nd day of
April 1991
[Signature]

CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS
COUNTY OF McHENRY

SS

GEN. NO.

90 CF 655

☐ Jury ☐ Non-Jury

People

vs.

Paul R. Dulberg

Date

4/3/91

Plaintiff's
Attorney

Browder

Defendant's
Attorney

Driscoll

ORDER

This matter coming before the court for entry of an order, the court being fully advised hereby orders:

that the defendant is given leave to file further motions. The case is set for status until 4-19-91 at 9:00 to set hearing. The time until trial will be tolled against the defendant as he is in custody and will be filing motions prior to trial.

This ordered
the 3rd day
of April 1991

Prepared by:

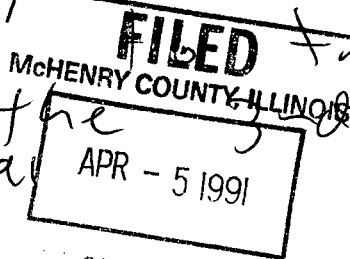
Browder

Attorney for:

People

Attorney Registration No.:

Judge

W. KAYS JR.
THE CIRCUIT COURT

[Signature]

CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS
COUNTY OF McHENRY

SS

GEN. NO.

90CF655

☒ Jury ☐ Non-Jury

People

vs.

Paul R. Oulberg

Date

4/5/91

Plaintiff's
AttorneyDefendant's
Attorney

James F. Riehl

ORDER

This matter coming on to be heard on the defendant's motion for bond reduction, and the court having heard evidence and arguments of both parties as follows:

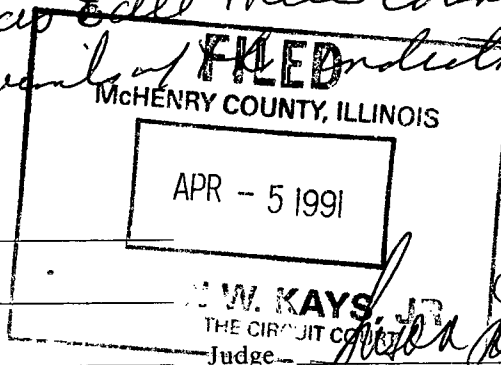
1) That the original bond of \$100,000⁰⁰ was intended to cover all three charges of the indictment and that the - o - no bond indication at event II of said indictment was not meant as absolutely no bond but rather Court II be covered in the bond of \$100,000⁰⁰

2) It is the further finding of this court that the defendant is eligible for a bond reduction and therefore this court sets bond at all three counts at \$25,000⁰⁰ combined for all 3 counts of indictment

Prepared by: _____

Attorney for: _____

Attorney Registration No.: _____

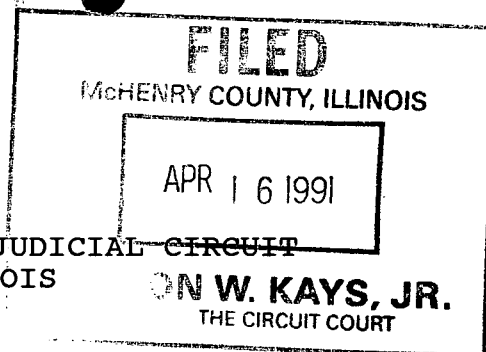


James F. Riehl

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
)
 vs.)
)
PAUL R. DULBERG)



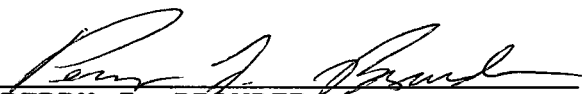
No. 90 CF 655

RESPONSE TO DEFENDANT'S MOTION TO COMPEL DISCOVERY BY STATE

Now come the People of the State of Illinois, by their attorney, THOMAS F. BAKER, State's Attorney of McHenry County, Illinois, through his duly appointed assistant, PERRY J. BROWDER, and states as follows:

1. Discovery has been complied with through an Answer to Discovery.
2. These documents have been tendered in the State's Answer to Discovery and 1st Supplemental Answer to Discovery.
3. Denial. There is no unsigned statement of Mr. Isakson.
4. Denial. No physical or photo line-up was done with Paul Dulberg for any identification purposes in the above referenced matter.

Respectfully submitted,


PERRY J. BROWDER
Assistant State's Attorney

THOMAS F. BAKER
McHenry County State's Attorney
McHenry County Government Center
2200 N. Seminary Ave.
Woodstock, IL 60098
(815)338-2069

90-623/JFD

FILED
McHENRY COUNTY, ILLINOIS

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

APR 18 1991

VERNON W. KAYS, JR.
CLERK OF THE CIRCUIT COURT

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
Plaintiff,	)	
	)	
vs	)	No. 90 CF 655
	)	
PAUL R. DULBERG,	)	
	)	
Defendant.	)	

MOTION TO DISMISS

NOW COMES the Defendant, PAUL R. DULBERG, by and through his attorneys, DRISCOLL & DRISCOLL, and for his Motion to Dismiss pursuant to Illinois Revised Statutes Chapter 38, Section 114-1(a) states as follows:

1. That this Defendant was indicted on December 12, 1990 on three (3) counts as outlined below:

- a) Unlawful possession with intent to deliver a controlled substance containing cocaine.
- b) Unlawful possession of cocaine.
- c) Unlawful possession of Cannabis.

2. That the indictment was returned upon the testimony of one Thomas Sean Jonites.

3. That Officer Jonites was neither present during the arrest nor did he participate in any way in the arrest of this Defendant.

4. That Officer Jonites' testimony consisted solely of information he obtained from reviewing certain police reports.

5. That certain information contained in the police report consisted of the conclusion that the investigating officer drew with respect to these indictments.

6. That officer Jonites' testimony was used to interpret the intent of the Defendant from the conclusion drawn by all third persons as to this Defendant's intent.

7. That additionally, Officer Jonites was called upon to testify as to what amount of cocaine was consistent with personal use.

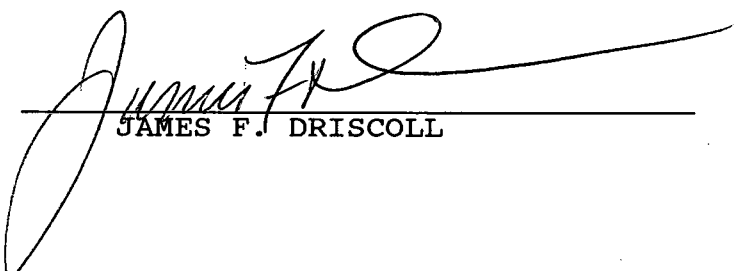
8. That Officer Jonites did not set forth with specificity what his credentials were in order to come to the conclusion or what facts he had which could relate any other information to this Defendant.

9. That Officer Jonites was used to testify in order to circumvent the purpose of the Grand Jury in questioning witnesses relative to this offense.

10. That Officer Jonites' testimony was purely speculative and conclusionary and not based on any fact or personal information.

11. That this indictment is based solely upon the testimony of an incompetent witness under Ch. 38, Sec. 114-1(a).

WHEREFORE, we pray



JAMES F. DRISCOLL

DRISCOLL & DRISCOLL
Attorneys for Defendant
1920 N. Thoreau Drive, Suite 166
Schaumburg, IL 60173
708/397-3909

McHENRY COUNTY, ILLINOIS

APR 18 1991

VERNON W. KAYS, JR.
CLERK OF THE CIRCUIT COURT

No. 90 CF 655

MOTION TO QUASH AND SUPPRESS EVIDENCE

NOW COMES the Defendant, PAUL R. DULBERG, by and through his attorneys, DRISCOLL & DRISCOLL, and for his Motion to Quash and Suppress, states as follows:

1. That on November 28, 1990, Officer Fung received a call at McHenry County Courthouse from a tipster/informant that Defendant, PAUL R. DULBERG, was in possession of and selling drugs at Defendant's place of employment in Huntley, Illinois.

2. That Officer Fung and Mayor Crabtree went to Defendant's place of employment along with a police officer from Huntley, Illinois.

3. That the Defendant had his jacket at his place of employment.

4. That the Defendant had left the premises and his jacket and when he returned his jacket had been moved and opened.

5. That no one else was present when Defendant left his jacket and only Officer Fung was present when he returned and observed his jacket open.

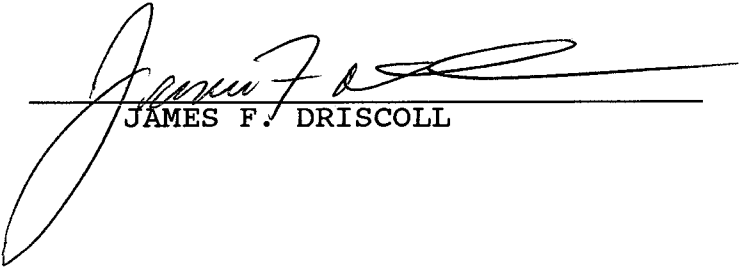
6. That Officer Fung searched the Defendant's jacket prior to his arrest and without a search warrant and without probable cause.

7. That this amounted to a search and for all practical purposes a seizure.

8. That said search and seizure were not pursuant to a Terry stop and a warrant was therefore necessary.

9. That the police did not have probable cause to search at this time based on any articulable suspicion that the Defendant had committed any crime.

WHEREFORE, Defendant prays that the evidence contained in Defendant's jacket be suppressed.



JAMES F. DRISCOLL

DRISCOLL & DRISCOLL
Attorneys for Defendant
1920 N. Thoreau Drive, Suite 166
Schaumburg, IL 60173
708/397-3909

90-623/JFD

FILED
McHENRY COUNTY, ILLINOIS

APR 18 1991

IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

VERNON W. KAYS, JR.
CLERK OF THE CIRCUIT COURT

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
vs.)
)
PAUL R. DULBERG,)
)
Defendant.)

No. 90 CF 655

MOTION TO QUASH ARREST AND SUPPRESS EVIDENCE

NOW COMES the Defendant, PAUL R. DULBERG, by and through his attorneys, DRISCOLL & DRISCOLL, and as his Motion to Quash Arrest and Suppress Evidence, states as follows:

FACTS

1. On November 28, 1990, at approximately 10:30, officer Fung of the McHenry County Sheriff's Police Department allegedly received a telephone call while he was at the McHenry County Courthouse from an informant who claimed that Defendant, PAUL R. DULBERG, was in possession of and selling drugs at his place of employment.

2. On that same date Officer Fung and Major Crabtree of Metropolitan Enforcement Group went to the Defendant's place of employment in Huntley, Illinois.

3. Officer Fung waited in the parking lot while Major Crabtree went to the Huntley Police Department to secure the assistance of a Huntley Police Officer.

4. The Defendant left his place of employment on an errand for his employer at approximately Noon while Officer Fung was still in the parking lot.

5. Officer Fung went into the Defendant's place of employment and searched the Defendant's coat and then returned to the parking lot.

6. The Defendant returned and had seen that his coat had been disturbed.

7. Major Crabtree returned with an officer of the Huntley Police Department.

8. All three officers entered the Defendant's place of employment and approached the Defendant. They demanded that the Defendant get his coat and accompany them to a conference room.

9. Officer Fung began to read the Defendant his Fifth Amendment Rights as outlined in Miranda v. Arizona when he was interrupted by Major Crabtree. Major Crabtree gave the Defendant a consent form to sign. (A copy of the consent form is attached hereto as Exhibit "A".) Officer Fung never finished the Miranda warnings.

10. After the Defendant signed the consent, the officers asked to search the Defendant's coat. They told him a search warrant was on the way if he refused. He consent to the search on that basis.

11. The officers then advised the Defendant he was under arrest and Officer Fung again attempted to read the Miranda warning to the Defendant. Officer Fung was interrupted again; this time

by the Defendant's employer to ask for his keys from the Defendant. The Defendant was then transported to the Huntley Police Station.

ARGUMENT

12. The Defendant's arrest was without probable cause and was illegal and the evidence obtained from the search of the Defendant's coat were the fruits of the illegal arrest.

13. The officers' arrest of the Defendant was without probable cause. Probable cause is defined as: "that a reasonable and prudent person in the officer's position and in possession of his knowledge would believe the person arrested committed the offense". People v. Hanrahan, 64 Ill. App. 3d 207, 380 N.E.2d 1075 (1978).

14. The officers' knowledge and belief that the Defendant committed the offense was based solely upon the information given to him by informant #81. (See Officer Fung's page 5, attached hereto as Exhibit "B".)

15. The informant in this case is apparently a professional informer. In order for the information to constitute probable cause, the informant's reliability must be established. Illinois v. Gates, 462 U.S. 213, 76 L.Ed. 2d 527, (1983).

16. Here, there is no verification of the informant's track record. Consequently, the information obtained cannot be said to establish probable cause. That the officers knew they did not have probable cause to arrest the Defendant as evidenced by the fact they did not attempt to obtain a warrant before the arrest.

17. The arrest must be quashed. However, even if this Court finds probable cause, the arrest must still be quashed because it was effectuated without a warrant.

18. Although a warrantless arrest of the Defendant is constitutionally permissible, the preferable practice is for the officer to obtain an arrest warrant. United States v. Ventresca, 350 US 102, 13 L.Ed. 2d 1084 (1965); People v. Swift, 61 Ill. App. 3d 486, 378 N.E.2d 234 (1978).

19. The officers arrested the Defendant when they entered the building and took the Defendant into custody (as opposed to when they claim they arrested him after the search of the Defendant's coat). The factors to be examined when determining whether the Defendant was under arrest are: a) the intent of the arresting officer to make an arrest; b) belief of the individual that he is under arrest; c) actual or constructive custody; People v. Clark, 9 Ill. 2d 400, 137 N.E.2d 820, (1956).

20. Here, the intent of the officers to arrest the Defendant was formulated long before they first approached the Defendant. Officers Fung and Crabtree expressly secured the assistance of an officer of the Huntley Police Department (indicating proper jurisdiction to arrest); entered the building and searched out the Defendant; brought field equipment to test for drugs; demanded that the Defendant accompany them to a conference room; and told the Defendant to bring his coat. All of these factors point to an arrest, not just an interrogation during an investigation of an informant's call. The Defendant was under the reasonable belief

he was under arrest and not free to leave. He was approached by the officers who demanded that he come with them to a small conference room. He was also specifically told to bring his coat. Again, these facts lead one to believe he is under arrest, not merely being questioned. Finally, the factors also point to custody of the Defendant.

21. There is no question Officer Fung had the ability to secure an arrest warrant for the Defendant.

22. Officer Fung received his information via a telephone call while he was literally at the courthouse. The information he used to arrest the Defendant without the warrant was available to him when he received the telephone call. He could have obtained a warrant within a matter of minutes. Instead, he went to the Defendant's place of employment with two other officers and arrested him.

23. Since the Defendant's arrest was illegal, any evidence obtained after the arrest should be suppressed. Brown v. Illinois, 422 U.S. 590, 45 L.Ed. 2d 416, (1975).

24. Further, the officers' searched the Defendant without a warrant or an exception to the warrant requirement and the evidence obtained must be quashed on that basis alone.

25. A warrantless search is per se unreasonable, subject to a few recognized exceptions. United States v. Karo, 104 S.Ct. 3296, 3304-05, 468 U.S. _____, _____ (1984); People v. Ross, 133 Ill. App. 3d 66, 68, 478 N.E.2d 575, 578 (1985).

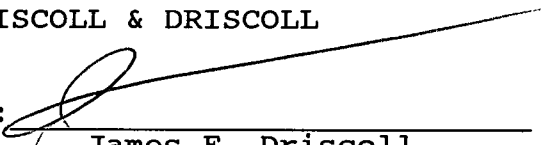
26. Here, the officers searched the Defendant's coat without a search warrant. If the Defendant was under arrest at the time the officers initially confronted the Defendant, then the arrest was without probable cause and must be quashed. If the Defendant was not under arrest, the search of the Defendant's coat was conducted without a warrant and without exigent circumstances. If he was not under arrest, the search could not be conducted incident to an arrest.

27. Consequently, the evidence was the fruits of the illegal search and should be quashed.

WHEREFORE, Defendant, PAUL R. DULBERG, prays that this Honorable Court enter an order quashing the arrest and suppressing the evidence illegally seized.

RESPECTFULLY SUBMITTED,

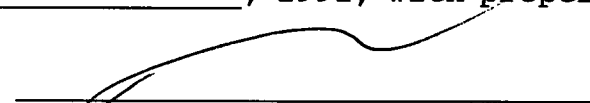
DRISCOLL & DRISCOLL

By: 

James F. Driscoll

PROOF OF SERVICE BY MAIL

JAMES F. DRISCOLL, an attorney, certifies that he mailed a copy of the above and foregoing document to each person to whom it is directed, by placing a copy of same in the U.S. Mail in Schaumburg at 5:00 p.m., on _____, 1991, with proper postage prepaid.


James F. Driscoll

DRISCOLL & DRISCOLL
Attorneys for Defendant
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Schaumburg, IL 60173
(708) 397-3909

CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS }
COUNTY OF McHENRY } SS

GEN. NO. 90CF655
☒ Jury ☐ Non-Jury

People
vs.
Paul Pulbury

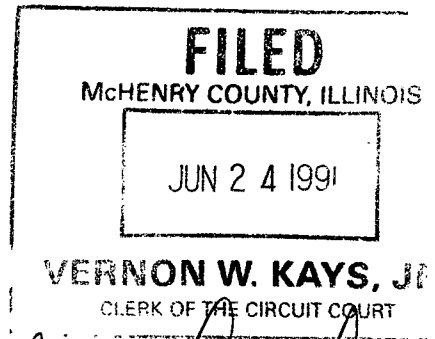
Date 6-24-91 Plaintiff's Attorney Stub

Defendant's Attorney James F. Ruzicek

ORDER

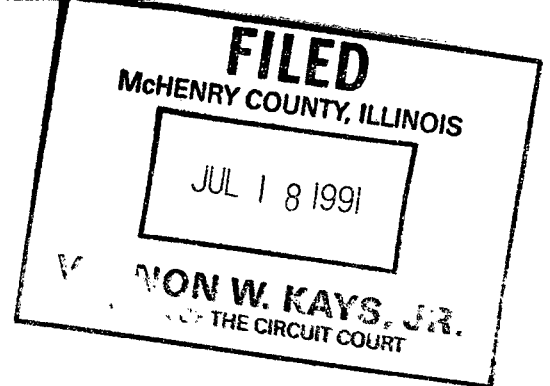
This matter coming on to be heard on the conference & sitting call and the court being advised in the presence

the court ordered that said matter is continued to 8-22-91 at 1:30 PM for hearing on motion and defendant's motion shall be a plea and/or before 8-1-91



Prepared by: James F. Ruzicek
Attorney for: Respondent
Attorney Registration No.: 72863

Judge James Lynn Pulbury



1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)

4 IN THE NINETEENTH JUDICIAL CIRCUIT
5 McHENRY COUNTY, ILLINOIS

6 THE PEOPLE OF THE)
7 STATE OF ILLINOIS,)
8)
9 Plaintiff,)
10 vs.)
11)
12 PAUL R. DULBERG,)
13)
14 Defendant.)

No. 90 CF 655

15 REPORT OF PROCEEDINGS had in the
16 above-entitled cause before the Honorable
17 SUSAN HUTCHINSON, Judge of said Court, on
18 the 7th day of May, 1991, in the afternoon
19 session.

20 APPEARANCES:

21 MR. THOMAS F. BAKER, STATE'S ATTORNEY,
22 BY: MR. PERRY BROWDER, Assistant State's
23 Attorney,

24 Appeared on behalf of the Plaintiff.

DRISCOLL & DRISCOLL
BY: MR. JAMES F. DRISCOLL
Appeared on behalf of the Defendant.

I N D E X

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3

WITNESS

EXAMINATION

PAGE

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5

ROBERT CRABTREE

Direct by Mr. Driscoll

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JAMES FUNG

Direct by Mr. Driscoll

13

8

Cross by Mr. Browder

47

9

Redirect by Mr. Driscoll

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10

Recross by Mr. Browder

77

11

12

ROBERT CRABTREE

Direct by Mr. Driscoll

82

13

Cross by Mr. Browder

118

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Redirect by Mr. Driscoll

124

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LYNETTE DOTY

Direct by Mr. Driscoll

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Cross by Mr. Browder

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ROBERT CRABTREE

Direct by Mr. Browder

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Cross by Mr. Driscoll

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EXHIBIT

MARKED

RECEIVED

24

Defendant's X #1

59

1 THE COURT: All right. This is People vs.
2 Paul Dulberg, 90 CF 655. The Defendant is
3 present. He is represented by attorney James
4 Driscoll. The State is represented by attorney
5 Perry Browder. And the matter is on the court
6 call this afternoon for hearing on certain motions
7 that have been filed on behalf of the Defendant.

8 MR. DRISCOLL: That's correct, your Honor.

9 THE COURT: Are you ready to proceed, Mr.
10 Driscoll?

11 MR. DRISCOLL: We are ready to proceed.

12 What I would do is -- not that I -- I
13 don't want to tell the Court how to do their call
14 or anything, but there was a lady in here before
15 -- I think it's the Public Defender -- that was
16 going to have a negotiated plea I thought, and she
17 asked me if I would mind if the Court -- if they
18 went first on their matter. And I had no
19 objection to it because I said I was going to be
20 about an hour and a half.

21 THE COURT: I just told them that they could
22 wait for us because that person has been up on at
23 least three times.

24 MR. DRISCOLL: That's fine with me.

1 THE COURT: I don't need any more false
2 alarms this afternoon.

3 MR. DRISCOLL: That's fine.

4 THE COURT: Okay.

5 MR. DRISCOLL: We are ready to proceed then.

6 THE COURT: I have two motions to quash.

7 MR. DRISCOLL: Right.

8 THE COURT: And --

9 MR. DRISCOLL: And a motion to dismiss.

10 THE COURT: And a motion to dismiss.

11 MR. DRISCOLL: That's right.

12 MR. BROWDER: If -- I would make a
13 recommendation -- if we could proceed with the
14 motion to dismiss as to brief legal argument on
15 behalf of both parties.

16 Were you planning on presenting evidence
17 on that?

18 MR. DRISCOLL: Not really.

19 MR. BROWDER: I didn't think so.

20 THE COURT: As I look at it, it does not
21 appear to be the type that evidence would
22 necessarily have to be helpful for. But if you
23 wish to call witnesses --

24 MR. DRISCOLL: The only thing -- I think we

1 can probably dispose of that, your Honor. There
2 might be some evidence that the Court could adduce
3 during the hearing on the motion to suppress that
4 might be of benefit to the Court, but I can raise
5 that --

6 MR. BROWDER: That's fine.

7 MR. DRISCOLL: -- subsequent to a -- just --
8 If the Court will indulge me?

9 MR. BROWDER: I have no -- it doesn't make a
10 difference in priority, because if you want to use
11 the testimony and then refer to the Grand Jury
12 transcript in comparison for the motion to
13 dismiss, that's fine, because I believe it's going
14 to be a legal issue. But the facts may enlighten
15 the Court more so after the hearing --

16 MR. DRISCOLL: Right.

17 MR. BROWDER: -- which is fine.

18 THE COURT: I do not have a Grand Jury
19 transcript in this file.

20 MR. DRISCOLL: I have prepared a copy of it.

21 MR. BROWDER: I also have a copy.

22 MR. DRISCOLL: I have a copy of the Grand
23 Jury minutes, and I would ask the Court at some
24 time to review that before the Court makes its

1 ruling.

2 THE COURT: All right.

3 MR. DRISCOLL: It's a brief one. It's only
4 10 pages.

5 THE COURT: All right. Then if you are
6 ready to proceed, you may call your first witness,
7 Mr. Driscoll.

8 MR. DRISCOLL: Thank you, your Honor.

9 Paul, you come here and sit down.

10 Your Honor, the first witness we are
11 going to call is Major Crabtree.

12 Or has he been promoted, do you know?
13 I don't want to call him by the wrong --

14 MR. BROWDER: He is now Chief. Either or
15 is the proper title.

16 (WHEREUPON, the witness was
17 duly sworn.)

18 THE COURT: Please have a seat.
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ROBERT CRABTREE

having been called as a witness herein, after
having been first duly sworn, was examined and
testified as follows:

DIRECT EXAMINATION

BY: MR. DRISCOLL

Q. Could you please state your full name
and current occupation and your current rank?

A. Robert Crabtree. I am employed as a
deputy sheriff for McHenry County, and I am the
Chief Deputy.

Q. Okay.

And on or about November 27th you were
also -- November 28th you were also with the
McHenry County Sheriff's Department, is that
correct?

A. I was.

Q. And you were a Major at that time?

A. I was.

Q. Okay.

And since that time you've been
promoted?

A. I have been.

Q. Okay.

1 And on or about the 28th of November,
2 you were involved in an investigation regarding
3 the Defendant in this case, Paul Dulberg, is that
4 correct?

5 A. I was.

6 Q. And how did you happen to become
7 involved in that investigation?

8 A. I was informed by a member of my
9 narcotics unit that he had received information
10 that the Defendant, Paul Dulberg, had in his
11 possession at a place of employment in Huntley a
12 quantity of cocaine and marijuana.

13 Q. Okay.

14 And at that -- Do you recall what time
15 you were informed?

16 You can refer to -- You have your
17 police report --

18 A. Right.

19 Q. -- with you, and you've reviewed that
20 before coming in here today, is that correct?

21 A. Right. I do.

22 Q. And can you look at that and tell me
23 what time you received -- you were notified by
24 your associate of the facts that you've just

1 testified to?

2 A. Sometime shortly after 1030 hours in the
3 morning on that date.

4 Q. Okay.

5 And where were you when you were
6 notified?

7 A. I believe in my office, but I'm not
8 positive of it. In the courthouse proper.

9 Q. You were in this building?

10 A. Yes, I was.

11 Q. This complex?

12 After you were notified, what did you
13 do?

14 A. I went to Assistant State's Attorney
15 Philip Prossnitz and talked to him on the matter.

16 Q. Okay.

17 And what did you say to him, and what
18 did he say to you?

19 A. I don't know the exact words anymore.
20 I don't think they are in the report.

21 Q. Give me the gist of the conversation?

22 A. Well, I told him that we had received
23 information that Mr. Dulberg was at his place of
24 employment in Huntley with a large quantity of

1 cocaine -- alleged large quantity of cocaine and
2 marijuana -- that he was taking down there to
3 sell.

4 Q. He was taking it out there to sell?

5 A. I believe that's what was said.

6 Q. Okay.

7 And what did Mr. Prossnitz say to you at
8 that point?

9 A. I asked him on how we should proceed or
10 basically how he would suggest we proceed because
11 of the report that we got on Mr. Dulberg.

12 He advised to go down to the plant in
13 the Huntley area where Mr. Dulberg worked at and
14 talk to Mr. Dulberg about it.

15 Q. Okay.

16 Now, who was the individual that told
17 you about Mr. Dulberg's activities?

18 MR. BROWDER: Objection, your Honor, it's
19 going to the confidential informant. I believe we
20 already had a hearing on this.

21 MR. DRISCOLL: No, no, no. I am asking
22 whether or not -- I'm asking right now --

23 BY MR. DRISCOLL:

24 Q. Just so we can get through it, who is

1 the name of the policeman that told you?

2 A. Oh, yeah, Deputy -- What about the
3 objection?

4 THE COURT: He's changed the question. He
5 is not objecting at this time.

6 THE WITNESS: Deputy Jamie Fung.

7 BY MR. DRISCOLL:

8 Q. Okay.

9 And Mr. Fung, did he get the call here?

10 A. I don't know. I believe so. I'm
11 fairly positive of it, but I cannot say for sure.

12 Q. Okay.

13 And when he went to you, he said that he
14 received this call, is that correct?

15 A. That's correct.

16 Q. And did he tell you who this call was
17 from?

18 MR. BROWDER: Your Honor, at this point I am
19 going to object. He is going to hearsay. He has
20 subpoenaed Deputy Fung. If he has questions, he
21 can ask Mr. Fung.

22 THE COURT: Do you want to respond, Mr.
23 Driscoll?

24 MR. DRISCOLL: May I withdraw the witness

1 and call Mr. Fung right now? And then I will
2 recall Major Crabtree.

3 THE COURT: You may do that.

4 MR. DRISCOLL: Would you step off the
5 witness stand?

6 (WHEREUPON, the witness was
7 excused.)

8 THE COURT: Raise your right hand.

9 (WHEREUPON, the witness was
10 duly sworn.)

11 MR. BROWDER: Your Honor, before we proceed,
12 the only thing I would ask for is a ruling that
13 since Mr. Crabtree's testimony is going to be
14 bifurcated that we can cross-examine on both his
15 previous and later testimony.

16 MR. DRISCOLL: No question.

17 THE COURT: You will be allowed to do that.

18 MR. BROWDER: Thank you.

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1 JAMES FUNG,
2 having been called as a witness herein, after
3 having been first duly sworn, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY: MR. DRISCOLL

7 Q. Could you please state your full name
8 and your current employment?

9 A. James Fung, F-u-n-g. I am a detective
10 with McHenry County Sheriff's Department.

11 Q. And how long have you been with the
12 McHenry County Sheriff's Department?

13 A. Oh, approximately six and a half years.

14 Q. Okay.

15 And are you in any specific division?

16 A. Narcotics division.

17 Q. And how long have you been in the
18 narcotics division?

19 A. About two and a half years.

20 Q. Okay.

21 And calling your attention to on or
22 about November 28, 1990, did you have an occasion
23 to conduct an investigation regarding the
24 Defendant in this case, Mr. Dulberg?

1 A. Yes, I did.

2 Q. And how did you happen to initiate the
3 investigation regarding him?

4 A. I had received a phone call here at the
5 courthouse.

6 Q. Okay.

7 And about what time did you receive the
8 phone call?

9 A. Approximately 10:30, I believe.

10 Q. And that was in this building here?

11 A. Correct.

12 Q. Okay.

13 And after you received the -- Well, what
14 was the content of the phone call?

15 What did that caller say to you, and
16 what did you say to the caller?

17 A. The caller basically said to me that he
18 was aware of the fact that Mr. Dulberg had on his
19 -- or had in his possession a quantity of cocaine
20 and marijuana that he was attempting to sell.

21 Q. Okay.

22 And do you know the person that called
23 you?

24 A. No, I do not.

1 Q. So, had you ever dealt with this person
2 before?

3 A. No, I had not.

4 Q. So, you had no concept of whether the
5 information that they gave to you at 10:30 on the
6 28th was true or not true?

7 A. That's correct.

8 Q. Okay.

9 And after you received this information,
10 what did you do?

11 A. I spoke with my superior.

12 Q. And who was that?

13 A. That was Major -- at the time Major
14 Crabtree. He is now Chief Crabtree.

15 Q. Okay.

16 And what did you say to Major Crabtree,
17 and what did he say to you?

18 A. I explained the content of the phone
19 conversation. He suggested that I speak with the
20 State's Attorney's Office.

21 That was done.

22 Q. Did you talk to the State's Attorney's
23 Office?

24 A. Yes, I did.

1 Q. Who did you talk to?

2 A. State's Attorney Phil Prossnitz.

3 Q. And was anybody else present?

4 A. I believe Chief Crabtree was there.

5 Q. Okay.

6 So, it was you and Chief Crabtree and
7 Assistant State's Attorney Prossnitz?

8 A. Correct.

9 Q. Okay.

10 And what did you say to Mr. Prossnitz,
11 and what did he say to you?

12 A. As I said, I relayed the content of the
13 phone conversation to him. It was suggested at
14 that time between the three of us that we would go
15 down and speak with Mr. Dulberg at his place of
16 employment.

17 Q. Okay.

18 Now, when you received this phone call,
19 did the person ask for you, or did you just happen
20 perchance to pick up the phone and receive this
21 call?

22 A. No, I just answered the phone. I was
23 in Chief Crabtree's office. I answered the phone
24 as Major Crabtree's office, and this person

1 advised that they had some narcotics information.

2 Q. Did that person identify themselves?

3 A. Yes, they did.

4 Q. Did you know who that person was after
5 they identified themselves?

6 MR. BROWDER: Objection, your Honor.

7 I withdraw the objection.

8 THE COURT: You may answer.

9 THE WITNESS: After they identified
10 themselves?

11 MR. DRISCOLL: Right.

12 THE WITNESS: Then I knew them to be whoever
13 they said they were.

14 BY MR. DRISCOLL:

15 Q. Had you had contact with that person
16 prior to that time?

17 A. No, I had not.

18 Q. And what exactly did this person say to
19 you after they identified -- or strike that.
20 Strike the question.

21 When you picked up the phone and said
22 this is Major Crabtree's office, did this person
23 say hello, this is my name, or did they go right
24 into a dissertation on the facts of the

1 conversation?

2 MR. BROWDER: Your Honor, I am going to
3 object. This has been asked and answered.

4 THE COURT: Overruled. I'm going to allow
5 him to answer.

6 You may answer.

7 BY MR. DRISCOLL:

8 Q. Do you remember?

9 A. The actual conversation started with the
10 facts of what this person knew.

11 Q. Okay.

12 So, they started out and told you that
13 he had a large quantity of drugs at his place of
14 employment?

15 A. That's correct.

16 Q. Did they tell you what types of drugs?

17 A. They mentioned cocaine and marijuana.

18 Q. Okay.

19 And did they say anything else about any
20 other drug?

21 A. No, not to me on the phone.

22 Q. Okay.

23 Did they tell you where you might be
24 able to find these drugs?

1 MR. BROWDER: Objection, your Honor, now
2 it's leading.

3 MR. DRISCOLL: This is --

4 MR. BROWDER: This is his witness.

5 THE COURT: It's a way of getting the
6 conversation out and with --

7 MR. BROWDER: That's if it's to preliminary
8 matters.

9 THE COURT: Well, it's not to preliminary
10 matters. But if he simply said and what, if
11 anything, was said, the information that you want
12 not revealed might be revealed.

13 So, he's asking specific questions so as
14 not to have that information revealed.

15 MR. DRISCOLL: Right. I'm trying to dance
16 around their objection.

17 THE COURT: I understand that.

18 MR. DRISCOLL: And this is all I'm trying to
19 do.

20 And I forgot my last question.

21 THE COURT: I did too.

22 MR. DRISCOLL: May I ask the Court to have
23 the court reporter read it back?

24

1 (WHEREUPON, the question
2 was read as requested.)

3 THE WITNESS: At that time not specifically
4 where they would be.

5 BY MR. DRISCOLL:

6 Q. Okay.

7 You say not at that time and not
8 specifically where they would be.

9 Did unspecifically they tell you where
10 they were?

11 A. They had told me where they possibly
12 could be.

13 Q. Where was that?

14 A. In a jacket that Mr. Dulberg had or his
15 vehicle or on his person.

16 Q. Okay.

17 So, they didn't say anything more than
18 that?

19 A. No.

20 Q. Okay.

21 And after they told you that he had the
22 drugs and after they told you where you might find
23 those, did they say -- or this person say anything
24 else?

1 A. Basically they told me who they were if
2 I would have needed to contact them. I asked them
3 if I needed to contact them would I be able to.
4 They said yes.

5 Q. Okay.

6 And so you have their name and where you
7 can contact them, is that correct?

8 A. Well, I don't know the name right now.

9 Q. But you have that in your files
10 somewhere?

11 A. No, I don't.

12 Q. Oh, you forgot the name?

13 A. To tell you the truth, I have, but I
14 probably could get the name if I had to.

15 Q. Did you ever write that name down
16 anywhere?

17 A. I had it at one point, but it was with
18 my notes, which I don't keep.

19 Q. The notes concerning this investigation?

20 A. Correct.

21 Q. Okay.

22 Would that -- And I'm not trying to put
23 words in your mouth, but would it be a safe
24 characterization that the notes that you are

1 referring to is what they call in the vernacular a
2 street file?

3 A. No, these were --

4 MR. BROWDER: Your Honor. I am going to
5 object based on relevancy. Where we are going
6 now?

7 THE COURT: Overruled. You may answer.

8 THE WITNESS: I don't know what you are
9 referring to as a street file. The notes I kept
10 were any notes I would have needed until I had
11 done my report.

12 BY MR. DRISCOLL:

13 Q. Were these in longhand? Were these
14 written out longhand by you or typed?

15 A. I just printed them out.

16 Q. Was this on some type of legal pad?

17 A. A yellow sheet of paper.

18 Q. And on this sheet of paper was this
19 person's identity?

20 A. Yes.

21 Q. Okay.

22 Had you ever dealt with this person
23 prior to this phone call?

24 A. No, I had not.

1 MR. BROWDER: Objection, your Honor. That's
2 been asked and answered.

3 THE COURT: That's at least the second time.

4 MR. DRISCOLL: I'm sorry. I apologize, your
5 Honor.

6 BY MR. DRISCOLL:

7 Q. Now, when was it that you disposed of
8 your notes?

9 A. I would have made this report the day
10 after. They would have been disposed of the day
11 after.

12 Q. Okay.
13 You make it a habit of not keeping these
14 notes?

15 A. That's correct.

16 Q. Is there any particular reason why?

17 A. Yes. I've got my report.

18 Q. Okay.

19 Was there any other information on your
20 regular notes that is not contained on this police
21 report that you typed out?

22 A. No.

23 Q. But you did intentionally keep the name
24 and the identity of the informant off this report?

1 A. That was asked of me.

2 Q. I understand.

3 By whom?

4 By the informant or by somebody else?

5 A. By the informant.

6 Q. Okay.

7 So -- And then you destroyed that?

8 A. That's correct.

9 Q. Do you know if anybody else has that

10 information anywhere?

11 A. No, no one.

12 Q. Okay.

13 A. If they do, I don't know about it.

14 Q. Okay.

15 So, you then went out to Mr. Dulberg's

16 place of employment, is that correct?

17 A. That's correct.

18 Q. And you went with Major Crabtree?

19 A. That's correct.

20 Q. And what time did you go out there?

21 A. I believe it was 1300 -- 1:00 in the

22 afternoon.

23 Q. Okay.

24 And what time did you arrive there?

1 A. Well, I'm sorry. We would have left
2 here probably at 12:30, and then we arrived there
3 at 1:00 o'clock.

4 Q. And Huntley is right down 59?

5 A. 47.

6 Q. Or 47. Right down 47.

7 And when you got to the plant, what, if
8 anything, did you do?

9 A. Well, I got to backtrack here a little
10 bit.

11 I had, upon getting this information,
12 found a license plate through the computer system
13 that registered, I believe, to a Barbara Dulberg,
14 who -- and I was able to get a driver's license
15 record of Paul Dulberg. Both show the same
16 address.

17 So, upon getting down to the plant, we
18 looked for a vehicle that would have matched what
19 I had found.

20 Q. Why would you think that Mr. Dulberg had
21 a vehicle that was registered to Barbara Dulberg?

22 A. That's the only vehicle I could find.

23 Q. Why would you think that he even drove
24 that day?

1 A. I don't know. We didn't know for
2 sure. We just went down there to the plant and
3 found his vehicle in the parking lot.

4 Q. Okay.

5 A. That was the first thing we were going
6 to check.

7 Q. Oh, okay.

8 And did you in fact check the vehicle
9 when you got down there?

10 A. We found the vehicle.

11 Q. Did you check the vehicle?

12 A. By check, you mean what?

13 Q. Well, you said you were going to check
14 it.

15 You tell me what you were going to do?

16 A. When I am referring to check, I mean
17 check for the vehicle in the parking lot.

18 We found it and observed it there.

19 Q. Okay.

20 You saw it, went into the parking lot
21 and said that's the car?

22 A. Correct.

23 Q. Did you walk up to the car?

24 A. No.

1 Q. You just didn't do anything at all with
2 the car?

3 A. No. I was in my car, and Chief Crabtree
4 was in his car.

5 Q. Okay.

6 Now, what did you do next?

7 A. At that point I was told by Chief
8 Crabtree to stay with the car. And he went to
9 the Huntley Police Station.

10 Q. And the Huntley Police Station is give
11 or take 300 yards from the plant? Would that be
12 a fair --

13 A. No. I believe it's more than that.
14 Maybe two minutes from the plant by car.

15 Q. Okay.

16 It's right exactly down the street
17 though?

18 A. It's not real far, no.

19 Q. Okay.

20 So he then left and went to the Huntley
21 Police Department?

22 A. That's correct.

23 Q. And you stayed with the car?

24 A. That's correct.

1 Q. And he came back?

2 A. That's correct.

3 Q. And what happened after that?

4 A. He came back with a Huntley police
5 officer.

6 I observed him coming back in the
7 parking lot, and I got out of my car and
8 accompanied him and the Huntley police officer
9 into the plant.

10 Q. Okay.

11 When Major Crabtree came back with this
12 Huntley police officer, did you talk to Major
13 Crabtree at all?

14 A. No. I just -- I seen them come back.
15 I got out of my car and walked towards them, and
16 we all went into the plant together.

17 Q. Did Major Crabtree tell you whether he
18 was going for a Huntley police officer?

19 A. No, he didn't, but it's not unusual for
20 us to use the city's or inform the city
21 jurisdiction that we are going into -- that we are
22 going to be there. And it's not uncommon to bring
23 one of their officers with us.

24 Q. Okay.

1 And he was a uniformed policeman?

2 A. That's correct.

3 Q. Okay.

4 And so you walked into his place of
5 employment, is that correct?

6 A. That's correct.

7 Q. And what did you do when you walked into
8 the place of employment?

9 A. Major introduced himself to a
10 receptionist at the front window, introduced
11 himself, introduced me, introduced the Huntley
12 police officer.

13 Q. Okay.

14 What did he say to the receptionist?

15 A. To my knowledge he said, "I am Major
16 Crabtree with the Sheriff's Department. This is
17 Detective Fung." Or he may have called me Deputy
18 Fung. I am not sure. "And this man is with the
19 Huntley Police Department."

20 Q. Okay.

21 And after he said that, what happened?

22 A. This -- I believe this receptionist went
23 to get a second person with a last name of Doty.

24 Q. Okay.

1 Did Major Crabtree ask to see anybody
2 when he went up to the receptionist, or did he
3 just go up and say who he was?

4 A. He must have asked to see someone, but I
5 don't recall.

6 Q. Okay.

7 A. Because Mrs. Doty then came.

8 Q. Then Mrs. Doty came.

9 And now there is a door that separates
10 the office from the lobby, is that correct?

11 A. Correct.

12 Q. Or the seeing area?

13 A. Yes.

14 Q. Now, did she come outside into the
15 waiting room, or did she ask you people to come
16 in?

17 A. Well, she asked us to come in, I
18 believe.

19 Q. Okay.

20 And did you talk with this Mrs. Doty?

21 A. I didn't, no.

22 Q. Did Major Crabtree talk to this lady?

23 A. Yes, he had a conversation with her.

24 Q. And what did you hear Major Crabtree say

1 to Mrs. Doty?

2 A. I didn't hear a lot of the
3 conversation. I heard him say he wanted to speak
4 with one of their employees named Paul Dulberg.
5 She said they had an employee named Paul Dulberg.

6 She let us into the main part of the
7 office, the -- I guess you want to just call it an
8 office -- and said she would be getting Paul.

9 Q. Okay.

10 Did she go get him and bring him out to
11 you?

12 A. Yes. She and I. I accompanied her
13 back into the plant.

14 Q. So, she directed you back to where you
15 could find him?

16 A. That's correct.

17 Q. Okay.

18 And you found him?

19 A. Yes. She pointed him out to me.

20 Q. And what happened next?

21 A. I identified myself to Paul as a police
22 officer and asked him if I could have a couple of
23 words with him.

24 Q. Okay.

1 And what did he say to you?

2 A. He said sure.

3 Q. Okay.

4 And what happened then?

5 A. I said, "Do you mind if we go up front
6 and talk?"

7 Q. Okay.

8 And what happened then?

9 A. He said sure.

10 Q. Okay.

11 And then you went up in front?

12 A. Yes.

13 Q. Okay.

14 And you went into a conference room, I
15 assume?

16 A. That's correct.

17 Q. And that conference room was supplied to
18 you by his employer?

19 A. Yes.

20 Q. And there is glass throughout that whole
21 conference room, is that correct, except for the
22 immediate left side of that area?

23 A. There is windows facing the plant
24 office, yeah.

1 Q. Okay.

2 And so you and Major Crabtree and the
3 police officer and Mr. Dulberg all walked into
4 this conference room?

5 A. That's correct.

6 Q. Now, from the time that you first met
7 Mr. Dulberg in the plant until the time you got
8 out to the conference room, did you have any other
9 conversation with Mr. Dulberg?

10 A. I asked Mr. Dulberg if he had a coat
11 with him. He advised that he did. I asked him
12 if he would bring that along. He said sure.

13 Went around, I believe it was a small
14 corner, picked up a leather jacket. I asked him
15 if it was his jacket. He said it was, and we
16 started through the hallway.

17 Q. Why did you ask him to bring his jacket?

18 A. My information at the time was that Mr.
19 Dulberg may have had some drugs on him. I was
20 not given specific information as to where those
21 drugs might have been.

22 Q. Okay.

23 But nevertheless you asked him to bring
24 his jacket?

1 A. Yes.

2 MR. BROWDER: Asked and answered, your
3 Honor.

4 BY MR. DRISCOLL:

5 Q. You -- did you --

6 MR. BROWDER: Can I have a ruling, please?

7 THE COURT: He answered it before you
8 objected. It stands.

9 MR. DRISCOLL: I will try to --

10 BY MR. DRISCOLL:

11 Q. Now, from the time you left his work
12 area until the time you got to the conference
13 room, did you have any conversation with Mr.
14 Dulberg?

15 A. Yes. Mr. Dulberg on the way through
16 the hallway said to me, "It's not even mine."

17 I said, "Paul, why don't you just wait a
18 minute, and we'll talk when we get in the
19 conference room."

20 Q. Okay.

21 And then you got to the conference room,
22 is that correct?

23 A. That's correct.

24 Q. And when you walked in the conference

1 room, who walked in?

2 The two other officers walked in with
3 you?

4 A. No, they were in there already.

5 Q. They were there already.

6 And then you and Mr. Dulberg walked in,
7 is that correct?

8 A. That's correct.

9 Q. And then what did you say to Mr. Dulberg
10 after that?

11 A. I didn't say anything to him.

12 Q. Who was the first one that spoke?

13 A. Chief Crabtree.

14 Q. And what did he say?

15 A. He introduced --

16 MR. BROWDER: Objection, your Honor,
17 hearsay. The Chief is here and subpoenaed.

18 MR. DRISCOLL: I don't think -- It's not
19 being elicited, your Honor, for the purposes of
20 the truth of what was said. I mean, we are just
21 getting right now into the aspect of who was the
22 one that conducted the interview with the
23 Defendant.

24 THE COURT: Well, we know that was at this

1 point Major Crabtree.

2 MR. DRISCOLL: Okay.

3 THE COURT: Then Major Crabtree. I don't
4 think we need to take the testimony since he is
5 available.

6 MR. DRISCOLL: Okay.

7 BY MR. DRISCOLL:

8 Q. Now, you walked into the plant -- would
9 it be safe to say at about -- Would it be
10 somewhere between 1:00 and 1:30? Would that be a
11 fair estimate of the time?

12 A. Yes.

13 Q. Now, you didn't get a search warrant for
14 the car, did you?

15 A. No, we did not.

16 Q. And you did not get a search warrant for
17 Mr. Dulberg's jacket, did you?

18 A. No, we did not.

19 Q. You did not get an arrest warrant for
20 him, did you?

21 A. No, we did not.

22 Q. Would it be fair to say then that you
23 did not have sufficient information to charge him
24 until after the fact, after you had brought him

1 back into this conference room?

2 A. That's correct.

3 Q. And at that time he was not under
4 arrest, is that correct?

5 A. No, he was not.

6 Q. Pardon?

7 A. No, he was not.

8 Q. So, he could have left at any time?

9 A. Yes, he could.

10 Q. Okay.

11 Did you tell him he could have left?

12 A. No.

13 Q. You never said anything about it?

14 A. The only thing I asked him is if he
15 wouldn't mind speaking with me.

16 Q. Okay.

17 But after you got in the conference
18 room, did you consider him under arrest?

19 A. After we got in the conference room,
20 Chief Crabtree is a superior there. The
21 investigation at that point is his.

22 Q. But did you consider him under arrest?

23 A. No, I did not.

24 Q. Even after you say that he had said to

1 you on the way from the work area to the front
2 that it wasn't even his, you didn't consider him
3 to be under arrest?

4 A. No, I did not.

5 Q. You didn't think that was sufficient to
6 place him under arrest, I take it, is that
7 correct?

8 A. That's correct.

9 Q. Now, why did you ask him to bring the
10 jacket with him?

11 A. As I said, the information I was given
12 is that he would -- that he had these drugs on
13 him. The jacket had been mentioned as a possible
14 place where these drugs might be.

15 Q. So, somebody had told you that this is
16 where the drugs might be was in the jacket?

17 A. Yes. I said that earlier.

18 MR. BROWDER: I am going to object. This
19 has been asked and answered, as indicated before.

20 THE COURT: Sustained.

21 MR. BROWDER: Thank you.

22 MR. DRISCOLL: Okay.

23 BY MR. DRISCOLL:

24 Q. Did you know that they might have been

1 in the jacket when you left the courthouse to go
2 out there?

3 MR. BROWDER: Objection, your Honor. It's
4 been asked and answered.

5 THE COURT: Sustained.

6 BY MR. DRISCOLL:

7 Q. Did you appear in front of a judge prior
8 to the time that you went out to his place of
9 employment and seek a search warrant for his
10 jacket?

11 A. No, I did not.

12 Q. Did you inform him of his rights under
13 Miranda prior to bringing him into the conference
14 room?

15 A. No, I did not.

16 Q. Now, you spent some time in that
17 conference room, is that correct?

18 A. Yes.

19 Q. And, in fact, you uncovered some kind of
20 substance from him, is that correct?

21 A. That's correct.

22 Q. Where was it that you found this
23 substance?

24 A. In Mr. Dulberg's jacket.

1 Q. In his jacket?
2 Did you find any on him?
3 A. No, not to my knowledge.
4 Q. Did you search him?
5 A. Yes, he was searched.
6 Q. When?
7 A. After every -- I believe after the
8 stuff was found in his jacket.
9 Q. How did you get -- Who got the stuff
10 out of his jacket?
11 A. Chief Crabtree.
12 Q. Did Chief Crabtree have a search
13 warrant?
14 A. No, he did not.
15 Q. So, after he found that, then you
16 searched Mr. Dulberg himself?
17 A. That's correct.
18 Q. And did you find any drugs on him -- his
19 person?
20 A. No.
21 Q. Did you search the car?
22 A. Yes, I did.
23 Q. Did you have a search warrant for the
24 car?

1 A. No, I did not.

2 Q. Did you have a -- Did you find anything
3 in the car?

4 A. No, I did not.

5 Q. So, the only place you found anything
6 was in his coat?

7 A. That's correct.

8 Q. Now, did you tell Mr. Dulberg that he
9 was going to be charged with possession of cocaine
10 and cannabis?

11 A. No, I did not.

12 Q. Do you remember anybody telling him
13 that?

14 A. Yes, Chief Crabtree.

15 Q. Okay.

16 Did you inquire where Mr. Dulberg had
17 been that morning?

18 MR. BROWDER: Objection, your Honor, as to
19 relevancy.

20 THE COURT: Mr. Driscoll?

21 MR. DRISCOLL: Strike the question.

22 BY MR. DRISCOLL:

23 Q. Did you tell anybody that you were going
24 to search or that you wanted to go and search

1 another house that morning?

2 MR. BROWDER: Objection again as to
3 relevancy. I don't see how this is before us in
4 the motions dealing with a motion to quash the
5 arrest and suppress the evidence that's been
6 testified to.

7 THE COURT: Well, I don't have the benefit
8 of the police reports or things, investigation,
9 obviously that the rest of you don't -- or do.

10 I am going to allow him to ask.

11 MR. BROWDER: I'd ask for an offer of proof
12 as to how he believes this is relevant.

13 MR. DRISCOLL: Outside the witness?

14 THE COURT: As point of procedure --

15 MR. DRISCOLL: Can we just have a sidebar
16 for a minute, and I can tell you where we are
17 going?

18 THE COURT: I am wondering how you can ask
19 for an offer of proof. I don't know procedurally
20 that you can make him make an offer of proof.

21 MR. BROWDER: I am raising the objection
22 that the questioning he is going into is
23 irrelevant.

24 THE COURT: And I was overruling it. He

1 was willing to give you some information.

2 BY MR. DRISCOLL:

3 Q. That morning when you were in the
4 conference room, did you mention to Mr. Crabtree
5 or Major Crabtree or the Huntley Police Department
6 that you wanted to go over and search a house that
7 was right near the place of employment?

8 A. No.

9 Q. Okay.

10 Did you hear anybody say they wanted to
11 go over and search that house?

12 A. No, not that I can recall.

13 Q. Okay.

14 What time was it that he was arrested,
15 do you know?

16 A. No. I couldn't say.

17 Q. Can you give me a best estimate? Would
18 it have been later in the afternoon, or would it
19 have been prior to 6:00 o'clock in the evening or
20 after 6:00 o'clock in the evening?

21 A. Prior to 6:00 o'clock in the evening.

22 Q. Okay.

23 Would it have been -- Strike that.

24 What time did you get back here after

1 you did your work out there at the plant? What
2 time did you get back here?

3 A. I am not positive. I would say within
4 two hours.

5 Q. So, it would be about 3:00 o'clock?

6 A. Yes. I am not positive of that, but it
7 would be the time frame.

8 Q. Around that. Give or take, whatever.

9 And where did you go when you came back
10 to this facility?

11 MR. BROWDER: Your Honor, I am going to
12 object to this line of questioning because
13 anything that happened after he was arrested and
14 brought back here is not relevant to this motion
15 that is before us now. It may be relevant for
16 later motions, but it's not relevant for what has
17 been presented to --

18 THE COURT: Well, I have not heard that he
19 has been arrested yet. I know he is back here,
20 but I don't know that he didn't get in the car and
21 say I'll go with you. So, I think we have to
22 establish that

23 BY MR. DRISCOLL:

24 Q. What time did you get back here?

1 A. Well, going from around 3:00.

2 Q. And neither you or Major Crabtree
3 appeared in front of a judge that afternoon, is
4 that correct?

5 A. Yes, I did.

6 Q. You did?

7 A. Yes.

8 Q. And what judge was that?

9 A. Judge Arnold.

10 Q. And what room was Judge Arnold in that
11 afternoon?

12 A. He was not in a courtroom. He was in
13 his chambers, I believe.

14 Q. Okay.

15 And you walked in there with an arrest
16 warrant, is that correct?

17 A. Yes. We had an arrest warrant typed up
18 along with a criminal complaint.

19 Q. Okay.

20 And that was done after you got back
21 here?

22 A. That's correct.

23 Q. And that was done from anywhere around
24 3:00 o'clock until the time you appeared in front

1 of Judge Arnold, is that correct?

2 A. That's correct.

3 Q. And Judge Arnold signed a complaint?

4 A. That's correct.

5 Q. Okay.

6 And the -- or the arrest warrant, is
7 that correct?

8 A. That's correct.

9 Q. And the warrant was a warrant for
10 possession with intent to distribute, is that
11 correct?

12 A. Possession with intent to deliver.

13 Q. Okay.

14 And who told you to charge him with that
15 on the arrest warrant?

16 MR. BROWDER: Objection, your Honor, as to
17 relevancy. I believe now we've established that
18 he was arrested.

19 THE COURT: I'll sustain the objection.

20 BY MR. DRISCOLL:

21 Q. What time was it that he was arrested,
22 if I may ask?

23 A. He was placed under arrest by Chief
24 Crabtree at the plant.

1 Q. Do you know what time he was placed
2 under arrest?

3 A. Well, no, I can't give you a time frame.

4 Q. Was it before he came back here to the
5 station?

6 A. Yes, it was.

7 MR. DRISCOLL: I have nothing further of
8 this witness at this time, your Honor.

9 THE COURT: Mr. Browder?

10 MR. BROWDER: Thank you, your Honor.

11

12

13 CROSS-EXAMINATION

14 BY: MR. BROWDER

15 Q. Now, when you went down to the place of
16 employment, that was Robinson Industries in
17 Huntley?

18 A. That's correct.

19 Q. And when you first got down there and
20 you were watching the car registered to a Dulberg,
21 did you ever get out of your car?

22 A. No, I didn't.

23 Q. Did you ever go and try and enter the
24 car that you were keeping an eye on?

1 A. No, I didn't.

2 Q. All right. Did you ever see anyone
3 leave Robinson's Industries and get in this car?

4 A. No, I did not.

5 Q. While Major Crabtree went to the Huntley
6 Police Department to get an assisting officer, did
7 you ever go into Robinson Industries?

8 A. No, did I not.

9 Q. Is it a matter of practice that when you
10 are going to be doing an investigation on a
11 specific town that you try to get local PD to
12 assist?

13 A. Yes. It's not an uncommon practice.

14 Q. And is it a matter of courtesy to inform
15 them what you are doing in their town?

16 A. Yes.

17 Q. Now, after Major Crabtree and the
18 Huntley police officer came back, did you along
19 with Major Crabtree and the Huntley police officer
20 enter Robinson Industries?

21 A. Yes, we did.

22 Q. Had you ever entered the premises prior
23 to that?

24 A. No, I had not.

1 Q. To your knowledge did Major Crabtree
2 ever enter the premises?

3 A. No, he has not.

4 Q. And when you went into Robinson
5 Industries and you spoke with a Miss Doty, where
6 did the Major go to?

7 A. He and the Huntley officer went over to
8 the conference room.

9 Q. And if you can describe approximately
10 the size of this conference room so we can get an
11 idea of what type of room this was?

12 A. I don't know. It was -- It would be
13 larger than this jury box area. Somewhere near
14 that size.

15 Q. Would it be fair to say that it's
16 approximately a 16 by 14 conference room, in that
17 general area?

18 A. That would be close, I would believe.

19 Q. And what was inside this room?

20 A. A table, several chairs. I believe
21 there is some type of sink.

22 Q. Now, where did you first proceed to when
23 you went into the plant?

24 A. You mean the working area itself?

1 Q. That is correct.

2 A. I followed Mrs. Doty down a small
3 hallway and then she -- I believe we took a right,
4 and we went into another area where she pointed
5 out Paul.

6 Q. And at that point did you approach Paul
7 Dulberg?

8 A. Yes, I did.

9 Q. And what was the first thing that you
10 had asked him or said to him?

11 A. The first thing I did is I identified
12 myself as a detective with the Sheriff's
13 Department.

14 Q. Did you ever identify yourself as a
15 narcotics officer?

16 A. No, I did not.

17 Q. Did you ever tell Paul Dulberg that he
18 was suspected of having narcotics?

19 A. No, I did not.

20 Q. What was the first thing that you said
21 to him?

22 A. I asked Paul if I could have a couple of
23 words with him.

24 Q. And what was his response?

1 A. He said sure.

2 Q. Did you ask or tell Paul that you wanted
3 a couple words with him?

4 A. No, I was asking him if I could speak
5 with him.

6 Q. After he said sure, what, if anything,
7 did you ask him at that point?

8 A. I asked him if he would accompany me up
9 to the -- up to a conference room so we could
10 speak there.

11 Q. And what was his response?

12 A. Again he said sure.

13 Q. Did you ask or tell him to go to the
14 conference room?

15 A. I asked him.

16 Q. Did you ever physically restrain him in
17 front of his co-workers?

18 A. No, I did not.

19 Q. Approximately how many people were in
20 this work area?

21 A. Oh, I would say around five, five or
22 six.

23 Q. All right. And what type of work was
24 going on when you had walked back there?

1 A. It appeared to me -- It looked more like
2 a drafting area of some type.

3 Q. Now, as you walked back to the
4 conference room, did you ever physically restrain
5 Mr. Dulberg at that point?

6 A. No, I did not.

7 Q. Did you ever touch him?

8 A. No, I did not.

9 Q. Did you ever cuff him?

10 A. No, I did not.

11 Q. Did you ever brandish any weapons?

12 A. No, I did not.

13 Q. Did you ever break out an ID?

14 A. I had showed Mr. Dulberg an ID when I
15 identified myself.

16 Q. And what type of clothes were you
17 wearing when you identified yourself?

18 A. I don't know. My standard clothes are
19 blue jeans and a shirt and a jacket. I'm sure
20 that's what I would have had to have on.

21 Q. So, you were not in a McHenry County
22 deputy's uniform?

23 A. No, I was not.

24 Q. Now, as you walked back towards this

1 conference room, what, if anything, did you say to
2 Mr. Dulberg along the way?

3 A. Well, I said to him, "Let's wait until
4 we get into the conference room."

5 Q. And what was that in response to?

6 A. It was in response to Mr. Dulberg's
7 stating to me that, "It's not even mine."

8 Q. At that point had you placed him under
9 arrest?

10 A. No, I had not.

11 Q. Did you wish to ask him some questions
12 at that point after he made that statement?

13 A. At that point I wanted to go back to the
14 conference room and speak with him.

15 Q. Now, after you went back to the
16 conference room and you first entered this room,
17 what was Mr. Dulberg doing?

18 A. As we entered, Chief Crabtree was --
19 introduced himself. Mr. Dulberg started crying.

20 Q. What, if anything, did Mr. Dulberg say
21 after he started crying?

22 A. Mr. Dulberg said it's not even -- "It's
23 not even mine. I took it away from him so he
24 wouldn't kill himself."

1 Q. Did you ever read him Miranda that day?

2 A. No, I did not.

3 Q. When Mr. Dulberg was walking to the
4 conference room, did he bring his jacket?

5 A. Yes, he did.

6 Q. And who was carrying it?

7 A. He was carrying it.

8 Q. Now, after Mr. Dulberg started crying
9 and said that, "Its not even mine," what, if
10 anything, occurred at that point?

11 A. At that point he was asked by Major
12 Crabtree to hold on and was given his Miranda
13 warning.

14 Q. Did you have an arrest warrant for him?

15 A. No, I did not.

16 Q. Did you have a search warrant for either
17 his person, his jacket or his car?

18 A. No, I did not.

19 Q. Now, after Mr. Dulberg was given his
20 Miranda rights, what, if anything, did he state at
21 that point?

22 A. He was asked if he understood his
23 Miranda rights. He said he did.

24 MR. DRISCOLL: Objection, your Honor. I

1 believe this is beyond the scope of my examination
2 of this witness in my case in chief.

3 MR. BROWDER: That's fine. If necessary,
4 we can recall Deputy Fung.

5 THE COURT: All right. I'll sustain the
6 objection.

7 BY MR. BROWDER:

8 Q. What, if anything, did Mr. Dulberg say
9 in regards to his car?

10 A. After he was asked if he would give us
11 permission to search his car and his property, he
12 stated that it wasn't in his car; it was in his
13 jacket. "You can look. It's a lot."

14 Q. And after he made that statement, what,
15 if anything did Mr. -- or what, if anything,
16 happened with the jacket?

17 A. After the permission to search was
18 signed by Mr. Dulberg, he was again asked if he
19 understood a permission to search. He said he
20 did.

21 Major Crabtree picked up the jacket,
22 asked Mr. Dulberg if it was his. He said it
23 was. Major Crabtree asked what was in it. He
24 said Dion's stuff. Major Crabtree asked what

1 stuff, and Mr. Dulberg said coke and pot or grass
2 or something to that effect.

3 Q. Now, after the marijuana and cocaine was
4 found in this coat, was Mr. Dulberg handcuffed?

5 A. Not directly after that, but he was
6 handcuffed prior to leaving the conference room.

7 Q. So, Mr. Dulberg was handcuffed while in
8 Huntley?

9 A. That's correct.

10 Q. And he was handcuffed while he was at
11 Robinson Industries?

12 A. Yes.

13 Q. During the time when Mr. Dulberg stated
14 that you can look in the coat, it's a lot, was he
15 ever physically --

16 MR. DRISCOLL: I move that that be stricken
17 your Honor. I don't recall this witness ever
18 testifying to that.

19 THE COURT: He just did.

20 MR. DRISCOLL: Oh, did he? Then I missed
21 it.

22 THE COURT: Just within the last frame of
23 questions.

24 MR. DRISCOLL: I missed it.

1 BY MR. BROWDER:

2 Q. When he made that statement, was he
3 physically restrained?

4 A. No, he was not.

5 Q. Did you ever touch him?

6 A. No, I did not.

7 Q. Did Major Crabtree ever physically touch
8 him?

9 A. When he was being searched after the
10 items were found in his jacket.

11 Q. Prior to him making that statement about
12 the jacket, was he ever physically restrained by
13 any of the officers that were in there?

14 A. No, he was not.

15 Q. Were any weapons brandished while he was
16 in the conference room?

17 A. No. I believe the Huntley officer
18 would have had his side arm on, but other than
19 that, no.

20 Q. And what was Major Crabtree wearing at
21 that point?

22 A. I don't know. He normally wears just a
23 shirt and a pair of slacks.

24 Q. And what was the tone of the

1 conversation between the Major and Paul Dulberg?

2 A. I don't understand the question.

3 Q. What was Major Crabtree's tone while
4 speaking to him?

5 A. He was just asking Paul, you know,
6 throughout the conversation questions.

7 Q. Was he yelling at him?

8 A. No, he wasn't.

9 Q. When Mr. Dulberg gave his responses,
10 what was his tone like?

11 A. I don't know. He answered questions.
12 He didn't -- was not yelling either.

13 Q. All right. What was his demeanor like?
14 What was he doing at that point?

15 A. Well, he was -- At a couple different
16 points in the conversation he started to cry
17 briefly.

18 Q. Did Mr. Dulberg ever ask to leave?

19 A. No, he did not.

20 Q. Did Mr. Dulberg ever tell you not to go
21 in the coat?

22 A. No, he did not.

23 Q. Did Mr. Dulberg ever tell you he didn't
24 want to bring the coat to the conference room?

1 A. No, he did not.

2 Q. Did Mr. Dulberg ever tell you he didn't
3 want to go to the conference room?

4 A. No, he did not.

5 MR. BROWDER: I have nothing further, your
6 Honor.

7 THE COURT: Mr. Driscoll?

8 MR. DRISCOLL: Just a couple.

9 Will you mark this as an exhibit,
10 please, as Defendant's Exhibit Number One for
11 Identification?

12 (WHEREUPON, Defendant's
13 Exhibit Number One was marked
14 for Identification.)

15

16

17 REDIRECT EXAMINATION

18 BY: MR. DRISCOLL

19 Q. I'm going to show you what's been marked
20 as Defendant's Exhibit Number One for
21 Identification. Would you take a look at that,
22 please?

23 Is that the consent to search that he
24 signed that day when you were there?

1 A. That's a copy of it, yes.

2 Q. Is that copy true and accurate?

3 A. Yes.

4 Q. Okay.

5 And do you see anywhere on there where
6 it says that he gives him consent to search the
7 jacket?

8 A. No. He was asked if we could search
9 property.

10 Q. No, I didn't ask that.

11 A. No, I don't.

12 Q. It's not there.

13 Now, I take it that you are telling me
14 that after Mr. Dulberg picked up his jacket and
15 started walking out of his work area that he could
16 have walked straight out the front door, and you
17 would have just let him go out the front door, is
18 that correct?

19 A. That's correct.

20 Q. Okay.

21 And that would have been the end of your
22 investigation?

23 A. At that point, yes.

24 Q. Because you had nothing at that point to

1 establish probable cause for him to be arrested,
2 is that correct?

3 A. That's correct.

4 Q. Okay.

5 And even after he said, "It's not even
6 mine," you would have still allowed him to walk
7 out of that building and to go anywhere that he
8 wanted to go, is that correct?

9 A. That's correct.

10 Q. Now, you are talking -- when you --
11 Strike that.

12 You said the conference room is about
13 the size -- a little bit bigger -- Counsel said
14 16 by 14 is the conference room you were in, is
15 that correct?

16 A. That's correct.

17 Q. And you and Major Crabtree and a Huntley
18 policeman were in that conference room?

19 A. That's correct.

20 Q. And would it be fair to say that the
21 only exit to that room is at the far -- if this
22 is in fact -- let's use the jury box as an example
23 since it's about the size of the room.

24 Would it be not -- Would it be fair to

1 say that the only entrance that -- is where the
2 bailiff is sitting in this courtroom right now,
3 which is at the far right end as I approach the
4 jury box, is that correct?

5 A. Yeah, there is one entrance.

6 Q. There was only one, and it was the far
7 right end of that -- If I were standing outside
8 looking into that conference room, it would have
9 been on my right-hand side?

10 A. Correct.

11 Q. Okay.

12 And isn't it true that the Huntley
13 police officer was standing right next to the door
14 -- to the exit of that conference room?

15 A. Myself and Huntley police officer were
16 at one end of the table.

17 Q. Which end of the table is that?

18 A. It would have been the end of the table
19 that runs along the wall facing the plant.

20 Q. And that would have been the furthest to
21 the right?

22 A. Correct.

23 Q. Okay.

24 So you and the Huntley police officer

1 were right by the door then?

2 A. That's correct.

3 Q. All right. And Paul was in the
4 conference room then more towards the end of the
5 conference room, is that correct?

6 A. He was sitting with what would have been
7 the shorter end of the table straight across from
8 the door.

9 Q. Okay.

10 But you two were effectively right at
11 the door to the exit to that conference room, is
12 that correct?

13 A. We were standing next to the door.

14 Q. If at that point he wanted to get up and
15 walk out of that conference room and leave the
16 plant and jump in his car and drive anywhere he
17 would have, you are telling us here today that you
18 would have let him do that?

19 A. At the point -- Prior to the point of
20 these drugs being found, yes.

21 Q. Now, is there any reason why you didn't
22 put search his jacket in this consent form that
23 you know of?

24 A. Yes. I believe that in asking Paul for

1 his permission, he was asked that we would be
2 requesting permission to search his vehicle and
3 other property. And I believed that real property
4 was considered his property, and was later
5 informed that real property is real estate.

6 Q. I'm sorry. What was that again?

7 A. At the point when he signed that
8 permission to search --

9 Q. Right?

10 A. -- it has on that real property.

11 Q. Right?

12 A. I was under the impression at that point
13 that real property -- I didn't -- I wasn't aware
14 that it was real estate.

15 Q. I got it.

16 MR. BROWDER: Your Honor, I'd move to strike
17 that last statement.

18 THE COURT: On what basis?

19 MR. BROWDER: That's not a question.

20 MR. DRISCOLL: What?

21 MR. BROWDER: Counsel --

22 THE COURT: The only thing I heard --

23 MR. BROWDER: Counsel's last response, I've
24 got it, I move it be stricken.

1 THE COURT: I didn't hear it.

2 MR. DRISCOLL: I'm sorry.

3 BY MR. DRISCOLL:

4 Q. But you did put this '86 Escort in
5 there, is that correct, on this consent form?

6 A. That's correct.

7 Q. Okay.

8 Were you the one that asked him to fill
9 it out then?

10 A. No.

11 Q. You had nothing to do with it then I
12 take it?

13 A. No.

14 Q. Okay.

15 Did Major Crabtree show this to you
16 before he gave it to Mr. Dulberg to sign?

17 A. No.

18 Q. Now, you also noticed that -- Strike
19 that.

20 He took the form and signed it?

21 A. That's correct.

22 Q. Okay.

23 And he signed it and gave it back to one
24 of you people?

1 A. Back to Major Crabtree.

2 Q. Okay.

3 And did somebody tell him to go back and
4 change something?

5 A. I think where he initialed, he was
6 printing his name instead of writing it and --

7 Q. Who caught that?

8 A. It would have been Major Crabtree.

9 Q. Okay.

10 Now, you also say that his demeanor
11 during this entire situation was, you know, he
12 cried a couple of times, is that correct?

13 A. Uh-huh.

14 Q. Did you question him at all during the
15 time he was in there?

16 A. No, I didn't.

17 Q. Did you ever say anything to him at all?

18 A. At the very end after -- No, I'm sorry.
19 I did not, no.

20 Q. You never said anything to him at all.

21 It's your testimony then from the time
22 that you asked him to go back out of the work
23 place into this conference room that you never
24 questioned him after that?

1 A. No, I was not questioning him.

2 Q. Pardon?

3 A. ' I was not questioning him, no.

4 Q. Did you ever talk to him?

5 A. I don't recall talking to him, no.

6 Q. Did you say to Mr. Dulberg -- While you
7 and Officer Crabtree and the Huntley police
8 officer were in that conference room, did you tell
9 Mr. Dulberg, "You can make this a lot easier on
10 yourself if you just tell us where you got it
11 right here and now"?

12 MR. BROWDER: Objection.

13 BY MR. DRISCOLL:

14 Q. Did you tell him that?

15 A. No, I did not.

16 MR. BROWDER: Leading.

17 THE COURT: Overruled. I'll allow the
18 answer to stand.

19 BY MR. DRISCOLL:

20 Q. Do you remember Mr. -- Officer or Major
21 or Deputy Crabtree telling Mr. Dulberg, "You were
22 selling it. We know you were selling it. Cut
23 the bullshit"?

24 MR. BROWDER: Your Honor, now I'm going to

1 object. This is definitely leading.

2 And before the witness has a chance to
3 answer any of these questions, I'd move for a
4 ruling.

5 THE COURT: I'm going to allow it. It is
6 leading, but there are no other ways to get that
7 particular point out. He's asking if these
8 things were said, and it's a yes or no. It
9 suggests a yes or no answer, but I don't know how
10 else to elicit that particular information.

11 MR. BROWDER: Fine.

12 THE WITNESS: Not that I recall.

13 BY MR. DRISCOLL:

14 Q. Do you remember saying yourself -- Do
15 you remember telling Mr. Dulberg, "Quit saying
16 this. It won't do you any good"?

17 A. No, I do not.

18 Q. Do you remember Major Crabtree telling
19 Mr. Dulberg that he was full of crap?

20 A. No, I do not.

21 Q. Do you remember?

22 MR. BROWDER: Your Honor, I am going to
23 object to this based on this line of questioning
24 because counsel keeps suggesting the answer. He

1 can ask what, if anything, was said to Mr. Dulberg
2 while at Robinson Industries, the whole focus of
3 this. And for him to keep bringing up all these
4 different statements as to what did -- was this
5 said to Paul Dulberg at Robinson Industries -- He
6 can ask what, if anything, was said during that
7 time period, and I believe that's the appropriate
8 way that counsel should proceed.

9 THE COURT: He can say that. But he can
10 also say it this way pursuant to my ruling.

11 I am overruling your objection.

12 MR. DRISCOLL: I forgot my last statement.
13 Could I ask the Court if the court reporter --

14 THE COURT: The one about full of crap.

15 MR. DRISCOLL: Yes, full of crap, Crabtree.

16 BY MR. DRISCOLL:

17 Q. Did you say, "You are full of crap," to
18 him?

19 MR. BROWDER: Reference point as to when?

20 BY MR. DRISCOLL:

21 Q. When you were with Major Crabtree and
22 with the police officer from Huntley in that
23 conference room?

24 A. Did I say that?

1 Q. Right?

2 A. No.

3 Q. Did you hear anybody else say that?

4 A. No.

5 Q. Did -- You did mention that somebody
6 said something -- that he said it was not his
7 whatever this was, is that correct?

8 A. Yes, he said it was not his.

9 Q. Did he tell you whose it was?

10 A. He mentioned a subject by the name of
11 Dion.

12 Q. Dion. Now, do you remember you telling
13 -- having a conversation with Mr. Dulberg
14 concerning that?

15 MR. BROWDER: Objection, your Honor. If
16 this is at Robinson Industries, that's fine.

17 MR. DRISCOLL: That's correct.

18 MR. BROWDER: If we are referring to any
19 other time --

20 MR. DRISCOLL: Withdraw the question.

21 THE COURT: All right.

22 BY MR. DRISCOLL:

23 Q. When you were in the Robinson Industries
24 in the conference room with Major Crabtree and the

1 Huntley police officer and Mr. Dulberg, did you
2 have a conversation with my client concerning
3 Dion?

4 A. No, I did not.

5 Q. You did not.

6 Do you remember Major Crabtree having a
7 conversation with my client regarding Dion?

8 A. Yes.

9 Q. And what did Major Crabtree say
10 regarding Dion?

11 A. Basically he asked -- Paul initiated the
12 conversation by saying that he had gotten it from
13 Dion. Major Crabtree asked where this had taken
14 place. Paul explained that it was somewhere near
15 Chicago. He had been out with him last night.
16 Dion had been doing some of the drugs. He was
17 afraid he was going to hurt himself -- or Dion was
18 going to hurt himself, so that's why he had taken
19 them.

20 Q. Okay.

21 Now, is that the exact nature of what
22 was said concerning Dion in that conference room
23 that afternoon?

24 A. To my recollection, yeah.

1 Q. Do you recall one of the police officers
2 saying to my client, "Get this guy Dion up here to
3 testify for you in court to say it was his"?

4 MR. BROWDER: Objection. As long as counsel
5 is willing to stipulate that all these questions
6 he is asking is while they are at Robinson
7 Industries in the conference room, I will withdraw
8 the objection.

9 THE COURT: That's where this conversation
10 is taking place if it takes place.

11 MR. DRISCOLL: Right.

12 THE WITNESS: I'm sorry. You have to repeat
13 it.

14 BY MR. DRISCOLL:

15 Q. Do you remember one of the police
16 officers saying, "Get this guy Dion up here to
17 testify for you in court to say it was his"?

18 A. Chief Crabtree said that if this Dion
19 guy would want to come up here -- I am not quoting
20 him -- and testify to those facts.

21 Q. Then what?

22 A. That's what he said.

23 Q. He said just if Dion wants to come up
24 here to testify to those facts?

1 A. Right.

2 Q. That was just out of the blue he said
3 that?

4 A. That was after Paul had said that it was
5 Dion's stuff.

6 Q. Okay.

7 Now, you have your report in front of
8 you, is that correct?

9 A. Yes, I do.

10 Q. You prepared this report?

11 A. Yes, I did.

12 Q. And would it be safe to say that if you
13 look on -- I am going to ask you to refer to your
14 report. I assume that's the report that you would
15 have. I believe it would be on Page 3. It is
16 about two -- second word of line --

17 MR. DRISCOLL: I will point it out. If I
18 may, to the Court.

19 THE COURT: All right.

20 BY MR. DRISCOLL:

21 Q. I just pointed a line out to you, is
22 that correct?

23 MR. BROWDER: Your Honor --

24

1 BY MR. DRISCOLL:

2 Q. I'll show you --

3 A. I see one.

4 Q. Pardon?

5 A. I'm not sure which line.

6 Q. I'm sorry. I apologize. I thought I
7 pointed it out to you.

8 A. Yes.

9 Q. Okay.

10 That's your -- You said in your report
11 on Page 3 that Paul was advised that he was going
12 to be charged for possession of cocaine and
13 cannabis, is that correct?

14 A. That's correct.

15 Q. You told him that?

16 A. No, I did not.

17 Q. Somebody else did?

18 A. Yes.

19 Q. Now, after he was told that he was going
20 to be charged with possession, what, if anything,
21 happened in that conference room then?

22 A. I don't recall. Specifically he was
23 placed under arrest.

24 Q. Who placed him under arrest?

1 A. Chief Crabtree.
2 Q. Okay.
3 And was he then searched?
4 A. Yes.
5 Q. And he was then handcuffed?
6 A. Yes.
7 Q. And he was taken out to Huntley?
8 A. That's correct.
9 Q. And he was actually transported to
10 Huntley while you guys did whatever paperwork you
11 were going to do and then transported down here,
12 is that correct?
13 A. I wasn't -- I didn't go to the Huntley
14 Police Station. I don't know what occurred
15 there.
16 Q. Okay.
17 But you didn't transport him back here?
18 A. To the courthouse?
19 Q. Yeah?
20 A. No. He was transported back by Chief
21 Crabtree.
22 Q. Okay.
23 Now, after he was cuffed and searched
24 and brought out to the car, did you leave then?

1 A. No. They left. I searched the car.

2 Q. You went out and searched the car?

3 A. Correct.

4 Q. Now, after you searched the car, did you
5 leave the premises?

6 A. Yes, I did.

7 Q. Okay.

8 Now, would it be fair to say that you
9 were in the conference room the entire time from
10 the time that you brought Mr. Dulberg out from the
11 work area until the time that you people placed
12 him under arrest?

13 A. Yes.

14 Q. So, you are familiar with everything
15 that was said during that period of time?

16 A. Yes.

17 Q. And then after he was arrested and
18 searched and brought out to the car, you searched
19 the other car, and you went back here, I assume?

20 A. I was heading towards the Huntley Police
21 Station at the same time Major -- Chief Crabtree
22 was leaving, and I followed him in.

23 MR. DRISCOLL: Okay. I have no further
24 questions of this witness at this time, your

1 Honor.

2 THE COURT: Any recross?

3 MR. BROWDER: Yes, your Honor.

4

5 RECROSS-EXAMINATION

6 BY: MR. BROWDER

7 Q. Now, when Paul was in the conference
8 room, when he first entered, was he standing or
9 sitting?

10 A. He was standing.

11 Q. When did he eventually sit?

12 A. I'm not positive. I believe after he
13 had been read his Miranda warning he took a seat.

14 Q. Approximate when -- How long did it
15 take from when Paul entered the conference room to
16 when he said that you could look in the jacket?

17 A. Ten minutes.

18 Q. Now, after you and the Huntley officer
19 were in the conference room, did Paul Dulberg ever
20 attempt to get up?

21 A. Not that I recall once he seated
22 himself, no.

23 Q. Did you ever restrain him from leaving
24 the room?

1 A. No, we did not.

2 Q. Did you and Officer Hewitt ever
3 completely block the door so he couldn't see out
4 of the room?

5 A. No.

6 Q. Was the door ever closed?

7 A. I believe it was closed.

8 Q. Now, while you were there, you showed
9 him what Counselor had given you as a consent to
10 search form?

11 A. Yes.

12 Q. And at that point the Major asked him if
13 he would read it and would fill it out, isn't that
14 correct?

15 A. That's correct.

16 Q. And Paul Dulberg filled out the
17 information on this consent to search form?

18 A. That's correct.

19 Q. And then he signed it?

20 A. That's correct.

21 Q. Now, when we have in there that they may
22 search residence or other real property located at
23 Robinson Industry, was that on the consent to
24 search form?

1 A. I'm not sure what you are asking me.

2 MR. BROWDER: If I could use your exhibit?

3 BY MR. BROWDER:

4 Q. Referring to Defendant's Exhibit Number
5 One for Identification purposes, was there a topic
6 area to search real property located at Robinson
7 Industries?

8 A. Yes.

9 Q. Was there a topic area to search the
10 motor vehicle?

11 A. Yes.

12 Q. Was there a topic area in the body near
13 the bottom to search any items of property
14 whatsoever they deemed pertinent to their
15 investigation?

16 A. Yes.

17 Q. Now, after you were in the conference
18 room and Mr. Dulberg was read Miranda and made his
19 statements and the cocaine and cannabis was found,
20 was he then told he would be charged with
21 possession of these substances?

22 A. Yes, he was.

23 Q. Prior to him being handcuffed, was he
24 physically searched?

1 A. Yes.

2 Q. And what, if anything, was found on his
3 person?

4 A. Several things. Would you like -- I
5 could read them.

6 Q. Would anything refresh your
7 recollection?

8 A. I know that there was money found.
9 There was a smoking pipe found.

10 Q. And did Mr. Dulberg make any statements
11 in regards to the smoking pipe?

12 A. Yes. He said it was his smoking pipe.
13 He used it to smoke marijuana.

14 MR. BROWDER: I have nothing further, your
15 Honor.

16 THE COURT: All right. Officer, you may
17 step down.

18 (WHEREUPON, the witness was
19 excused.)

20 THE COURT: And we are going to take a
21 recess of about ten minutes. We'll be back at
22 3:00 o'clock.

23 MR. BROWDER: Thank you.

24

1 (WHEREUPON, a brief recess
2 was taken.)

3 THE COURT: All right, Mr. Driscoll?

4 MR. DRISCOLL: Thank you, your Honor.

5 THE COURT: You can just return. Thank
6 you.

7 THE COURT: Mr. Driscoll?

8 MR. DRISCOLL: Thank you very much, your
9 Honor.

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ROBERT CRABTREE,

having been recalled as a witness herein, after
having been previously duly sworn, was examined
and testified as follows:

DIRECT EXAMINATION

BY: MR.DRISCOLL

Q. Chief, I'm going to -- I forget exactly
where it was that I left off with you before we
brought the other officer in, but you had received
the call, and you talked to the State's Attorney,
and you and this other detective were going out to
Robinson Industries to see Mr. Dulberg?

A. Correct.

Q. Is that fair?

A. Right.

Q. Where we left off?

A. Somewhere in that area.

No, I think you wanted to know who the
informant was.

Q. Okay. I had started. Okay.

When this Detective Fung came up to you
and told you about this information --

A. Right.

Q. -- you and he went down to the State's

1 Attorney's Office?

2 A. I don't know if he went with me or
3 not. I know I did.

4 Q. You went down there, and you talked to
5 Assistant State's Attorney Prossnitz?

6 A. That's correct.

7 Q. And he told you to go out there and talk
8 to Mr. Dulberg?

9 A. Right.

10 Q. Okay.

11 And then you picked up Officer Fung?

12 A. That's correct.

13 Q. And you drove out there?

14 A. That's correct.

15 Q. Okay.

16 A. I don't know if he drove with me or if
17 he drove out. I think he drove himself. I --
18 went together, I mean.

19 Q. Both of you went out there?

20 A. Right.

21 Q. Okay.

22 Now, prior to going out there, did you
23 or Officer Fung ever appear in front of a judge
24 and ask a judge to issue either an arrest warrant

1 or a search warrant for Mr. Dulberg or his
2 property?

3 A. No, we did not.

4 Q. Okay.

5 Did the Assistant State's Attorney ever
6 tell you to go before a judge and a complaint for
7 search warrant or arrest warrant prior to going
8 out there?

9 A. No, he did not.

10 Q. Okay.

11 Now, before you -- Strike that.

12 I take it you and the other officer
13 arrived at Robinson Industries?

14 A. That's correct.

15 Q. And would it be fair to say that -- I
16 believe you went to the Huntley Police Department
17 to get the services of a local policeman?

18 A. That's correct.

19 Q. And that's -- That Huntley Police
20 Station is real close to Robinson Industries?

21 A. Less than a half a mile.

22 Q. Okay.

23 And you went there and secured the
24 services of this officer, is that correct?

1 A. I did.

2 Q. Did he arrive in a squad car, or did you
3 bring him back?

4 A. Yes.

5 Q. He came in his own squad car?

6 A. Right.

7 Q. Okay.

8 And he was in full uniform?

9 A. Yes.

10 Q. Okay.

11 And did you search the vehicle that you
12 had --

13 MR. BROWDER: Your Honor, at this point I am
14 going to object to counsel leading. We've gotten
15 through preliminary matters.

16 MR. DRISCOLL: Okay. Strike that.

17 BY MR. DRISCOLL:

18 Q. But now that we are at Robinson --
19 Strike that.

20 THE COURT: Okay.

21 BY MR. DRISCOLL:

22 Q. Before you got to Robinson, did you know
23 what you were looking for -- what items of
24 property you were looking for?

1 A. Before we got to Robinson Industries?

2 Q. Right.

3 A. I don't understand your question.

4 Q. Well, were you going to search anything
5 when you went out there, or were you just going to
6 talk to him?

7 A. No, I was going to talk to him.

8 Q. Okay.

9 Did you determine by any way whether or
10 not he had a vehicle with him?

11 A. Yes.

12 Q. Did you do that?

13 A. I don't know. One of us did. We ran
14 some license checks.

15 Q. Okay.

16 And the license came up to Mr. Dulberg?

17 A. No, it came up to his mother, I believe.

18 Q. Okay.

19 When you left here to go out there, did
20 you intend to look into that vehicle and search
21 that vehicle?

22 A. No, not specifically.

23 Q. Okay.

24 So you went inside Robinson Industries?

1 A. That's correct.

2 Q. Okay.

3 You and this other -- Officer Fung and
4 this Huntley policeman in uniform?

5 A. That's correct.

6 Q. And you talked to a receptionist?

7 A. The office manager is who I ended up
8 talking to.

9 Q. You first went through a receptionist?
10 You identified yourself?

11 A. Right.

12 Q. And then the office manager came out?

13 A. Correct.

14 Q. What did you say to her, and what did
15 she say to you?

16 A. I informed her that we had information
17 that a subject by the name of Paul Dulberg or
18 Dulberg worked -- that worked in the factory or
19 plant had in his possession a quantity of cocaine
20 and marijuana -- alleged to have in his possession
21 -- and I asked her if he was working that day.
22 She said he was.

23 And I asked her if we could talk to
24 him. She said we could.

1 Q. Okay.

2 And did you go back and get him?

3 A. No, I did not.

4 Q. Who went back and got him?

5 A. Detective Fung.

6 Q. Okay.

7 And --

8 A. With the office manager, I believe.

9 Q. Right.

10 So, they went back and brought him in.

11 Where were you when he came back?

12 A. In a reception room right off the front

13 office.

14 Q. Okay.

15 And that was the conference room?

16 A. Conference room, yes.

17 Q. Okay.

18 And would it be fair to say that that

19 conference room is about the length of the jury

20 box and maybe a little wider?

21 A. Yes, it's wider.

22 Q. Roughly?

23 A. General idea.

24 Q. General idea.

1 And would it be fair to say that the
2 only entrance to that conference room would be
3 where the deputy is sitting in this courtroom, is
4 that correct?

5 That is, if I was in the general office
6 area of that building, and I looked into that
7 conference room, the door is on the right, would
8 that be fair?

9 A. No.

10 Q. Okay.

11 Where is the door?

12 A. The door would be -- If this was the
13 outside wall where the glass windows are --

14 Q. Right.

15 A. -- the door would be over on the
16 left-hand side.

17 Q. It's on the left-hand side?

18 A. It would be in that corner facing that
19 way into the main office.

20 Q. If you were looking out?

21 A. No, if I was looking in from the
22 outside.

23 Q. It's on the left-hand side. Okay.

24 Okay.

1 But there is only one entrance and exit
2 from that?

3 A. I think there might have been another
4 door on the other end. I don't know for sure.

5 Q. Okay.

6 And when Mr. Dulberg walked into the
7 conference room with you and the Huntley police
8 officer, did he say anything to you, and did you
9 say anything to him?

10 A. Yes.

11 Q. Okay.

12 Who said what first?

13 A. Mr. Dulberg said -- talked first.

14 Q. What did he say?

15 A. Can I refer to my notes?

16 MR. DRISCOLL: I want the record to reflect
17 that he is reviewing from his notes right now.

18 THE COURT: All right.

19 THE WITNESS: Is that all right? I can
20 refer to my notes?

21 MR. DRISCOLL: Yeah.

22 What page are you reading from?

23 THE WITNESS: I am reading from page -- the
24 back of Page 1.

1 MR. DRISCOLL: Okay.

2 THE WITNESS: And where it says in the
3 conference room Major Crabtree introduced himself
4 to Paul, and Paul started crying, saying, "It's
5 not mine. I took it away from him so he wouldn't
6 hurt himself." And at that time --

7 MR. BROWDER: Your Honor, instead of having
8 him read from the report, if we could have him
9 refresh his memory and then indicate to the Court
10 if that is what he remembers from memory.

11 THE COURT: All right.

12 Chief, if you could do that rather than
13 read it?

14 THE WITNESS: That's fine.

15 THE COURT: Thank you.

16 MR. BROWDER: Thank you.

17 THE WITNESS: When he said this, I asked him
18 to stop, and I wanted to advise him of his Miranda
19 rights -- rights under Miranda.

20 BY MR. DRISCOLL:

21 Q. Okay.

22 Now, at that time did you know what he
23 was referring to?

24 A. I believed I knew what he was referring

1 to.

2 Q. What was that?

3 A. The narcotics.

4 Q. Okay.

5 So, the minute he got into the
6 conference room then, you read him his Miranda
7 warnings?

8 A. No. He first said that, and I stopped
9 him from saying any more. And I then advised him
10 of his rights under Miranda.

11 Q. Okay.

12 That's right after you got in the
13 conference room?

14 A. Within two minutes or less.

15 Q. Okay.

16 So, he gets in. He says it's not mine;
17 it's whoever's. And you say wait, and you read
18 him his Miranda, right?

19 A. That's correct.

20 Q. Okay.

21 Now --

22 A. I didn't read him. I verbally gave him
23 his Miranda.

24 Q. Did you read it off the card that

1 everybody has got those?

2 A. No.

3 Q. You didn't read it off the card?

4 A. No.

5 Q. You know them?

6 A. I know them by heart yes, sir.

7 Q. By heart, so you just told him what they

8 were?

9 A. Right.

10 Q. And then did you question him?

11 A. At that time after I advised him of his

12 rights under Miranda, I asked him if he understood

13 them, and he said --

14 Q. Go ahead?

15 A. -- yes. And I asked him with all of

16 those rights would he still talk to us, and he

17 said yes.

18 Q. Okay.

19 And how was he at that time?

20 A. Distraught.

21 Q. Crying?

22 A. Yes.

23 Q. Was he crying when he walked in the

24 conference room?

1 A. Yes.

2 Q. Now, when he walked in the conference
3 room -- or strike that.

4 When you walked out -- When you left
5 here to go out there, was your intention to arrest
6 him?

7 A. No. I had no idea that he even had the
8 stuff.

9 Q. Okay.

10 But when he got out of the conference
11 room and said that, you knew that he was under
12 arrest?

13 A. No, I did not.

14 Q. Why would you give him his Miranda
15 rights?

16 A. I didn't want him to incriminate himself
17 any more. If he was carrying or in possession of
18 narcotics, I didn't want him to incriminate
19 himself without knowing his Miranda rights.

20 Q. Oh, so at that time he wasn't even under
21 arrest?

22 A. No, sir.

23 Q. Okay.

24 But yet you knew that he was referring

1 to some kind of drugs?

2 A. I did not know that, no.

3 Q. I thought you just told me a minute ago
4 that when he came in, he said, "It isn't even
5 mine."

6 You said that you thought he was
7 referring to narcotics?

8 A. I did not say that.

9 Q. I'm sorry. May I have -- I don't want
10 to --

11 A. I said I thought that he was referring
12 to the narcotics.

13 Q. Okay.

14 You thought he was referring to --

15 A. Yes.

16 Q. Okay.

17 At that time when you thought he was
18 referring to narcotics, did you think he was under
19 arrest?

20 A. No.

21 Q. Did you know -- You didn't think you had
22 probable cause at that time even to make an
23 arrest?

24 MR. BROWDER: Your Honor, counsel is now

1 asking him to make a legal conclusion.

2 THE COURT: Well, if that's the objection, I
3 have to overrule it.

4 So, you can proceed.

5 MR. DRISCOLL: Please.

6 BY MR. DRISCOLL:

7 Q. You did not think you had probable cause
8 to make an arrest at that point?

9 A. I don't know. I never really gave it
10 that much thought.

11 Q. Okay.

12 But at that point he could have turned
13 right around and walked out of there and be gone?

14 A. Yes, he could.

15 MR. BROWDER: Now I am going to object.
16 Counsel is leading again.

17 THE COURT: He is.

18 MR. DRISCOLL: I'm sorry.

19 BY MR. DRISCOLL:

20 Q. So, he could have just left?

21 THE WITNESS: What happened to the
22 objection?

23 THE COURT: Well, he changed the question
24 again. See, when he asks you another question --

1 THE WITNESS: What's the question now?

2 BY MR. DRISCOLL:

3 Q. When he walked in that conference room,
4 he could have turned around and walked out and be
5 gone, is that correct?

6 A. He was not under arrest, if that's what
7 you are asking me, yes.

8 Q. Okay.

9 Now, did you ask him for permission to
10 search anything?

11 A. Yes.

12 Q. What was that?

13 A. His vehicle.

14 Q. And is that -- I think I gave it to you?

15 A. It's right here.

16 Q. Oh, is it? I'm sorry.

17 I'm going to ask you to refer to

18 Defendant's Exhibit Number One for

19 Identification.

20 Can you take a look at that, please?

21 A. Yes.

22 Q. Did you -- Do you know what that is?

23 A. Yes, it's a permission to search blank.

24 Q. And where did that come from?

1 A. Our files downstairs.

2 Q. And you brought that with you?

3 A. Yes, we did.

4 Q. You brought it with you that day, is

5 that correct?

6 A. Yes.

7 Q. Okay.

8 Did you have Mr. Dulberg fill this out?

9 A. Yes.

10 Q. Okay.

11 And you asked him to -- for permission

12 to search his residence, is that correct?

13 A. No.

14 Q. Well, on the top of the form the form

15 has search my residence, is that correct?

16 A. Well, his residence wasn't -- Also it

17 says right here Robinson Industries and my motor

18 vehicle, an '86 Escort.

19 Q. Right. I see.

20 A. I mean, his residence wasn't Robinson

21 Industries, so we couldn't search it too well.

22 Q. I understand. But you didn't search

23 Robinson Industries, did you?

24 A. No, we did not.

1 Q. Okay.

2 Did you ask him to insert in there any
3 kind of clothing that he might have with him?

4 A. No.

5 Q. Did you want to search his jacket?

6 MR. BROWDER: Objection as to intent -- as
7 to what wanted to do. I don't see how it's
8 relevant.

9 THE COURT: I'll sustain as to the form of
10 the question.

11 MR. DRISCOLL: Okay.

12 BY MR. DRISCOLL:

13 Q. Other than his car and anything located
14 at Robinson Industries, what was at Robinson
15 Industries that you wanted to search?

16 A. What was there that I wanted to search?

17 Q. Right.

18 A. I don't know. I never really -- The
19 first thing I wanted to do was talk to Paul about
20 it, and then we have to go from there.

21 Q. Okay.

22 A. Obviously the one place that I would
23 think --

24 Q. Let me ask you this question: You first

1 wanted to give him his rights?

2 A. Correct.

3 Q. And then you wanted to search something,
4 right?

5 A. His vehicle, that's correct.

6 MR. BROWDER: Your Honor, again I am going
7 to object. Counsel is leading.

8 THE COURT: Well, I think he's trying to get
9 back to a point --

10 MR. DRISCOLL: Right.

11 THE COURT: -- to orient himself or the
12 witness. I am not sure which one at this point.

13 MR. DRISCOLL: I am trying to get back to
14 where we were before.

15 BY MR. DRISCOLL:

16 Q. What I am trying to determine here is if
17 you only wanted to talk to him, why did you have
18 him sign a consent for search?

19 A. I felt if he was carrying drugs, that
20 they were in his car because I felt no one would
21 be stupid enough to carry that amount of drugs in
22 their jacket.

23 Q. That's reasonable.

24 THE COURT: Counsel --

1 BY MR. DRISCOLL:

2 Q. Then at some point in time --

3 THE COURT: Counsel, that one I heard, and
4 it's annoying. So please, be careful.

5 MR. DRISCOLL: I'm sorry.

6 THE COURT: Thank you.

7 MR. DRISCOLL: I am sorry.

8 BY MR. DRISCOLL:

9 Q. So, you questioned his intelligence
10 obviously?

11 A. No.

12 MR. BROWDER: Objection, your Honor. Now we
13 are going far astream. If he is going to ask
14 questions as to what happened on that day, that's
15 appropriate. But now we are getting off the path.

16 THE COURT: Well, the Chief gave some
17 information, and he followed up. But I don't
18 think it's relevant to the issues.

19 So let's get to the next question.

20 MR. DRISCOLL: Okay.

21 BY MR. DRISCOLL:

22 Q. When was it that you had him sign this
23 consent form?

24 A. At the Robinson Industries on November

1 28.

2 Q. In terms of giving him his Miranda,
3 before or after you gave him his Miranda did you
4 ask him to sign this?

5 A. After I gave him his Miranda rights, I
6 had him sign that.

7 Q. Okay.

8 While his Miranda rights were being
9 given to him, did anybody interrupt and say, no,
10 we are going to do this the right way?

11 A. Like who?

12 Q. I don't know. Anybody that was there?

13 A. Did someone interrupt me and say, no, we
14 are going to do this the right way? Is that what
15 you are --

16 Q. Right.

17 A. No.

18 Q. Did you interrupt anybody else and say,
19 no, we are going to do this the right way and have
20 him execute the search warrant -- the consent to
21 search first?

22 A. No.

23 Q. Okay.

24 After that was done -- after the consent

1 was signed -- Strike that.

2 During the -- my client's signing this
3 consent, did he ask you any questions?

4 A. He made a statement.

5 Q. What was the statement?

6 A. That before he signed it he says -- he
7 says it's -- "I don't have to sign it. It's not
8 in the car. It's in my jacket pocket. You can
9 look, and it's a lot."

10 Q. Okay.

11 Now, then did you ask him to amend this
12 consent to search to search his jacket?

13 A. No. He had already gave me permission
14 to tell me to search -- look in his jacket.

15 Q. Okay.

16 I'm missing the chronology here then
17 because I thought that the first thing you did was
18 give him his Miranda when he walked in?

19 A. I did.

20 Q. Then you asked him to sign the consent
21 to search?

22 A. I did.

23 Q. So, there was some time between Miranda
24 and the consent to search that he told you that it

1 was in his jacket, right?

2 A. Consent to search what? His jacket?

3 Q. Consent to search?

4 A. His jacket?

5 Q. No. You said -- You told me that before
6 this was executed, that he had told you that the
7 drugs were in his jacket?

8 A. Before he signed that?

9 Q. Right.

10 A. Yeah. When I asked him to sign the
11 consent to search the car, he says, "There is no
12 reason to search the car. The stuff is in my
13 jacket pocket. You can look if you want, and
14 there is a lot of it," or words to this effect.

15 Q. Okay.

16 And you had him search -- sign a consent
17 for his car anyway?

18 A. At that time he had the consent to
19 search the car form in front of him.

20 Q. But had he signed it?

21 A. I think he was in the process of reading
22 it.

23 Q. Okay.

24 And at that point did you ask him to

1 give you consent to search his jacket?

2 A. He just told me to search it.

3 Q. But you had the consent form here.

4 Did you just ask him why don't you put
5 your jacket on here also?

6 MR. BROWDER: Now I am going to object.

7 Counsel is now repeating questions asked and
8 answered many times. It's getting to the point of
9 being confusing.

10 THE COURT: You're not necessarily making
11 the proper objection, but I'm going to sustain
12 this one.

13 It's argumentative, Counsel. He's
14 testified.

15 MR. DRISCOLL: Okay.

16 BY MR. DRISCOLL:

17 Q. At that point he was under arrest, I
18 assume?

19 A. No.

20 Q. He could have walked out then?

21 A. Yes.

22 Q. At that point did you search his jacket?

23 A. Yes, shortly thereafter.

24 Q. How shortly is shortly?

1 A. Within minutes.

2 Q. Okay.

3 And at that point was he under arrest?

4 A. After I found what was alleged to be
5 drugs, yes.

6 Q. Okay.

7 Prior to that time he was never under
8 arrest, is that correct?

9 A. That's correct.

10 Q. Now, when he was signing this consent
11 form, did you say anything to him?

12 A. Yes. I asked him if he could read and
13 write and understand English.

14 Q. What did he say?

15 A. He said he could.

16 Q. Okay.

17 Other than that, did you ask him any or
18 did he ask you any questions?

19 A. I don't really recall, Counsel.

20 Q. Okay.

21 Did you tell him -- or strike that.

22 Did he at any time voice an objection to
23 signing that consent form?

24 A. None.

1 Q. Okay.

2 Did you ever tell him that if he didn't
3 sign that, that you had a warrant back here at the
4 courthouse, and it would only take an hour for you
5 to get it down here?

6 A. No, I did not say that.

7 Q. Did Officer Fung say that?

8 A. No.

9 Q. Did the Huntley police officer say that?

10 A. No.

11 Q. So, that was never said in that office?

12 A. It was not said in that office, correct.

13 Q. Okay.

14 When you arrested Paul, I take it it was
15 you that arrested him, is that correct?

16 A. I was the one that told him he was under
17 arrest, correct.

18 Q. What did you arrest him for?

19 A. Possession of cannabis and possession of
20 cocaine.

21 Q. Okay.

22 Did he tell you where he got these
23 drugs?

24 A. Yes -- or from a first name of a subject

1 where he got it from.

2 Q. Who was that?

3 A. I believe the guy's name was Dion,
4 somewhere in the area of 53rd and Euclid.

5 Q. Okay.

6 And was there any further conversation
7 in that room that day about Dion?

8 A. Not much in that room, no.

9 Q. Okay.

10 A. With the exception saying that he took
11 it from him because he thought he was going to
12 kill himself or something in that area.

13 Q. Okay.

14 How was the conversation between you and
15 Mr. Dulberg after the consent form was signed?
16 Was it just --

17 A. After what?

18 Q. How was the tone of the conversation
19 between you and Mr. Dulberg after the consent form
20 was signed?

21 A. What do you mean?

22 Q. Well, you know, was it animated?

23 Was it just low-key?

24 Was it accusatory?

1 Was it a fatherly discussion?

2 Was it an authoritarian discussion?

3 A. I don't know. When we pulled the
4 cocaine from his jacket pocket, I told him -- I
5 said, "If this is cocaine, your ass is in a
6 jam." And he said, "It is because I know it's
7 cocaine.

8 Q. Okay.

9 Did -- When you went out there, you had
10 this consent to search --

11 A. No, I did not.

12 Q. -- form with you?

13 Where did that come from?

14 A. I've already answered that, haven't I?
15 I brought it with us.

16 Q. That's what I said, unless I missed --

17 MR. BROWDER: Your Honor, if counsel would
18 clarify his questions as to what he means, filled
19 out a consent to search form or empty consent to
20 search form.

21 MR. DRISCOLL: I'll rephrase the question.

22 BY MR. DRISCOLL:

23 Q. When you left this courthouse and went
24 out to Robinson Industries, you had the consent to

1 search form with you?

2 A. That is correct.

3 Q. You have seen the forms regarding waiver
4 of Miranda warnings, haven't you?

5 A. Yes.

6 Q. Did you bring one of those forms with
7 you that day?

8 A. I don't recall. I doubt it.

9 Q. Okay.

10 Can I ask you why you would bring a
11 consent to search and not a waiver of Miranda with
12 you?

13 MR. BROWDER: I am going to object to
14 relevancy, your Honor.

15 THE COURT: Overruled. I'll let him
16 answer.

17 THE WITNESS: I didn't see the need for it.
18 BY MR. DRISCOLL:

19 Q. Would it be fair to say that until you
20 went into his coat and pulled whatever it was out
21 of that pocket, that you did not feel that you had
22 probable cause to arrest Mr. Dulberg?

23 A. Mr. Dulberg was not under arrest at that
24 time, if that's what you are asking.

1 Q. No, I'm asking you the question.

2 MR. BROWDER: I am going to object to his
3 question. He is asking for a legal conclusion,
4 your Honor.

5 THE COURT: Overruled. I'll allow him.

6 But you have to reask because we have an
7 objection now that's been received.

8 MR. DRISCOLL: So that I can get the
9 question correct, your Honor --

10 THE COURT: Correct.

11 MR. DRISCOLL: May -- I will ask the Court
12 to ask the court reporter to read that question
13 back, please.

14 THE COURT: Mary, would you look for it?

15 (WHEREUPON, the question
16 was read as requested.)

17 THE WITNESS: I don't know how I felt.

18 THE COURT: Okay. Next question.

19 BY MR. DRISCOLL:

20 Q. Well, after you pulled whatever it was
21 that you pulled out of his jacket, you certainly
22 had some type of feeling?

23 A. That's correct.

24 Q. What was that feeling?

1 A. I felt that I was going to arrest him.

2 Q. Okay.

3 Now, with what he had told you before
4 about where it was -- it's in his jacket -- and he
5 told you that you could search his jacket, you
6 still didn't think you had sufficient grounds to
7 form an opinion one way or the other, is that
8 fair?

9 A. No. Once again, I still don't know how
10 I felt concerning that same question just in
11 different words.

12 Q. Okay.

13 Was it in the outside pockets of the
14 jacket?

15 I take it you are reading from your
16 report, is that correct, Officer?

17 A. That's correct.

18 Q. You are reading?

19 A. Yes.

20 Q. You don't have an independent
21 recollection whether it was in the inside or
22 outside pocket?

23 A. Without finding it yet, I believe some
24 was in the outside pocket, and I believe that some

1 was in. And then Paul said the rest was on the
2 inside pocket, or there is more on the inside
3 pocket, but I haven't found that part yet.

4 If you give me a minute, I'll tell you
5 for sure.

6 Q. Go ahead.

7 A. In left inside pocket of the jacket was
8 a Ziplock bag --

9 Q. Okay.

10 A. -- which appeared to be marijuana. And
11 then he advised me that the other inside jacket
12 pocket contained other narcotics or dangerous
13 drugs.

14 And I pulled that out, and it was white
15 powder that appeared to be cocaine, which tested
16 positive for cocaine.

17 Q. When you -- Mr. Dulberg was informed of
18 his Miranda rights one time in that conference
19 room that afternoon, is that correct?

20 A. That's correct.

21 Q. And did he tell you that he understood
22 those rights?

23 A. Yes, he did.

24 Q. What did he tell you?

1 A. I advised him of his rights under
2 Miranda and -- Do you want to know the rights that
3 I advised him, Counsel?

4 Q. I am sure you know them, Officer.

5 A. Do you want to know them or not?

6 THE COURT: That wasn't the question.

7 THE WITNESS: Okay. After I advised him of
8 his rights, he asked me -- I'm sorry -- I asked
9 him -- I'm sorry -- "Do you understand all these
10 rights I just gave you, Paul?" He said, "Yes, I
11 do."

12 MR. DRISCOLL: Okay.

13 THE WITNESS: I said, "Now, do you
14 understand them all? Would you still talk to me
15 about them?" He says, "Yes, I will."

16 BY MR. DRISCOLL:

17 Q. Okay.

18 And when he said, "Yes, I do," tell me
19 what you observed about his demeanor at that
20 point?

21 A. He was distraught.

22 Q. Do you think at that point that Mr.
23 Dulberg thought he was under arrest?

24 A. I have no idea what Mr. Dulberg thought.

1 MR. BROWDER: Objection as to what the
2 Defendant's thought processes were.

3 THE COURT: Well --

4 THE WITNESS: I've already --

5 THE COURT: The Chief has answered it, and I
6 think he answered it as honestly as he possibly
7 could.

8 MR. BROWDER: That's fine.

9 BY MR. DRISCOLL:

10 Q. Now, did you talk to Detective Fung
11 about this information that he got that brought
12 you out to Robinson Industries that afternoon?

13 A. I did.

14 Q. And did he give you the name of the
15 person that gave him that information?

16 A. He could have. I believe he did.

17 Q. Okay.

18 Now, do you know what happened to the
19 name?

20 I don't want you to tell me the name of
21 the person, but do you know what happened to the
22 name?

23 Is it in your card index or on your
24 report or in your file?

1 A. It's not on our reports, no.

2 Q. Okay.

3 But you have it somewhere in your
4 possession?

5 A. I don't, no.

6 Q. Okay.

7 Do you know what happened to that name?

8 MR. BROWDER: Your Honor, I believe that's
9 been asked and answered.

10 THE COURT: Well, he asked that question,
11 but then he changed it, and so it wasn't answered.

12 MR. DRISCOLL: Right.

13 THE COURT: So, let's just ask one question
14 at a time. And this is the one right now.

15 THE WITNESS: Which one was it?

16 THE COURT: The last one. Do you know what
17 happened to it?

18 THE WITNESS: To the name I had, I know. I
19 don't know what he did with his name for sure.
20 For sure I don't know.

21 BY MR. DRISCOLL:

22 Q. You had another name?

23 A. No. I said if I handled a confidential
24 informant, I know where I put it.

1 Q. Okay. I understand what you are
2 saying.

3 You don't know what he did with his?

4 A. No.

5 Q. Do you have any procedure for keeping
6 this information within your department?

7 A. We have a confidential source, yes.

8 Q. Okay.

9 And there is procedures for dealing with
10 that within your department?

11 A. That's if we use them as -- on control
12 buys and that sort of situations, yes.

13 Q. Do you know whether or not -- and again,
14 I don't want you to give me the name -- but do you
15 know whether or not this particular informant that
16 gave you this information had been used by you
17 before or Mr. -- Officer Young?

18 A. Who is Officer Young?

19 Q. Jamie?

20 THE COURT: Fung.

21 BY MR. DRISCOLL:

22 Q. Fung. I'm sorry. Officer Fung?

23 A. Oh, all right. No, I don't.

24 MR. DRISCOLL: Okay. I have nothing

1 further of this witness -- one more thing --

2 BY MR. DRISCOLL:

3 Q. On that consent form on the bottom Mr.
4 Dulberg initialed that at some point in time
5 apparently?

6 A. Where at?

7 Q. Right down here?

8 A. Well, he started. He wrote his name.
9 He started here, and he crossed it off because he
10 thought he was going to write it here. I said,
11 "As long as you crossed it out, go ahead and sign
12 it here, but you have to initial it where you
13 crossed it out."

14 MR. DRISCOLL: Okay. I have no further
15 questions of this witness, your Honor.

16 THE COURT: Mr. Browder?

17 MR. BROWDER: Thank you, your Honor.

18

19

20 CROSS-EXAMINATION

21 BY: MR. BROWDER

22 Q. Did you ever physically restrain Paul
23 Dulberg while you were in the conference room?

24 A. No, I did not.

1 Yes. At the end we put handcuffs on him
2 to take him out.

3 Q. Prior to him making these statements and
4 you finding the controlled substances in his
5 jacket, was he ever physically restrained?

6 A. No, he was not.

7 Q. Now, as to the sequence of what happened
8 when Paul Dulberg first walked into the conference
9 room, was he being restrained by Jamie Fung in any
10 manner?

11 A. No, he was not.

12 Q. Was he walking under his own ability?

13 A. He was.

14 Q. What was the first thing that Paul said
15 when he walked into the conference room?

16 A. Can I refresh -- Can I look at my
17 notes?

18 Q. If you could, please refresh your
19 memory?

20 A. I introduced myself, and Paul started
21 crying and saying, "It's not mine. I took it
22 away from a person so he wouldn't hurt himself."

23 Q. Was Paul standing at that point?

24 A. Yes, he was.

1 Q. Did he ever fall down?

2 A. No, he did not.

3 Q. Now, what, if anything, did you say to
4 Paul once he started to volunteer that statement?

5 A. I told him stop with his statements,
6 that I had some rights I wanted to tell him.

7 Q. And did you advise him of his rights?

8 A. I did.

9 Q. How did you advise him of his rights?

10 A. Verbally.

11 Q. What did you say to him?

12 A. I told Paul that he had the right to
13 remain silent. Anything he said could and would
14 be used against him in a court of law. He had
15 the right to have an attorney present with him
16 while he was being questioned, and that if he
17 could not afford to hire an attorney, one would be
18 appointed to represent him.

19 I then asked him if he understood all
20 those rights, and he said he did.

21 I asked him --

22 Q. Now, after --

23 A. I asked him if he had any questions
24 about those rights, and he said he did not. And I

1 said with all those rights in mind would he talk
2 to us, and he said he would.

3 Q. What, if anything, did he say to you
4 after you had that conversation?

5 A. He started volunteering information
6 again. And I asked him to stop again because I
7 wanted him to sign a consent form.

8 Q. Now, when you say --

9 A. I wanted to ask him if he would sign a
10 consent form to search his vehicle.

11 Q. And the People's Exhibit Number One that
12 is before you, is that the form that you handed
13 him?

14 A. That's correct. It's a copy of the
15 form, yes.

16 Q. Did you provide him an opportunity to
17 read that?

18 A. Yes, I did.

19 Q. Who filled that out?

20 A. Paul himself.

21 Q. And who signed it?

22 A. Paul himself.

23 Q. Now, after you gave him that consent to
24 search form, did it specifically have anything in

1 there about a car?

2 A. Yes, it did.

3 Q. All right. What, if anything, did Paul
4 say after you had handed him this consent to
5 search form?

6 A. He said there was no sense to search the
7 car, that he had the stuff in his jacket pocket.
8 There was a lot of it, and I could look if I
9 wanted to.

10 Q. Okay.

11 Did you eventually search his jacket?

12 A. I did.

13 Q. And did you find controlled substances
14 in this jacket?

15 A. I did.

16 Q. Now, you had indicated that you thought
17 Paul Dulberg was distraught during this time
18 period, is that correct?

19 A. He was crying, yes.

20 Q. Did he ever fall down?

21 A. No.

22 Q. Did he ever pass out?

23 A. No.

24 Q. Was he able to write?

1 A. Yes.

2 Q. Was he able to speak?

3 A. Yes.

4 Q. Did you ever threaten him on that day in
5 any manner?

6 A. No, I did not.

7 Q. Did you ever threaten him that you would
8 get a search warrant?

9 A. No, I did not.

10 Q. Did Deputy Fung ever give Paul Dulberg
11 Miranda while at Robinson Industries?

12 A. Not in my presence.

13 Q. And were you present in the conference
14 room the whole time while Deputy Fung and Officer
15 Hewitt were there?

16 A. Yes, I was.

17 Q. And did you eventually handcuff Paul
18 Dulberg and tell him that he was being placed
19 under arrest for controlled substances?

20 A. I did.

21 MR. BROWDER: Nothing further, your Honor.

22 THE COURT: Mr. Driscoll?

23

24

1 REDIRECT EXAMINATION

2 BY: MR. DRISCOLL

3 Q. From the time that Mr. Dulberg was
4 brought in by Officer Fung, did all of you people
5 remain in the conference room the entire duration
6 until you left with him under arrest?

7 A. I believe so, yes.

8 Q. Okay.

9 So, from the time that he -- Strike
10 that.

11 When he walked in --

12 A. I mean, that woman that brought us in
13 wasn't there.

14 Q. No.

15 It was you --

16 A. The Huntley police officer and Deputy
17 Fung.

18 Q. You, Fung and Huntley and Dulberg?

19 A. Right.

20 Q. And you people stayed in there the
21 entire time until you all left to go; you take him
22 back here, and the Huntley police officer went
23 wherever he went?

24 A. The Huntley police officer took him back

1 to the station.

2 Q. Right.

3 A. So myself and Deputy -- Detective Fung
4 could execute the search on the car.

5 Q. Okay.

6 So then after he was arrested, you left
7 the conference room, left the building.

8 You and Deputy Fung went to the car and
9 searched, and then the Huntley police officer took
10 him away?

11 A. Took him to the Huntley Police Station,
12 yes.

13 Q. After you searched the car, did you go
14 back into the business?

15 A. The factory?

16 Q. Right.

17 A. No.

18 Q. So, then you left and either came back
19 here?

20 A. I went to Huntley Police and picked him
21 up, I believe, and I believe Deputy Fung followed
22 me in.

23 MR. DRISCOLL: Okay. I have no further
24 questions of this witness at this time, your

1 Honor.

2 THE COURT: Mr. Browder?

3 MR. BROWDER: No questions, your Honor.

4 THE COURT: Chief, thank you. You are
5 excused.

6 (WHEREUPON, the witness was
7 excused.)

8 MR. DRISCOLL: I'm sorry. Could I have one
9 second, Judge?

10 THE COURT: Yes.

11 Is Chief under subpoena, or was he here
12 by agreement between you and counsel?

13 MR. BROWDER: I notified him, but I believe
14 it was by subpoena. I don't know what the
15 arrangements were though.

16 THE COURT: Because I don't have those
17 subpoenas in the file.

18 THE COURT: Would you raise your right hand,
19 please?

20 (WHEREUPON, the witness was
21 duly sworn.)

22 THE COURT: Please have a seat next to the
23 court reporter.

24 THE WITNESS: Okay.

1 THE COURT: Now, when you testify, we need
2 to make sure that you keep your voice up. The
3 court reporter has to take down everything that
4 you say. So, you must answer with words, and
5 everyone here needs to hear what you say.

6 THE WITNESS: Okay.

7 THE COURT: Thank you.

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1 LYNETTE DOTY,
2 having been called as a witness herein, after
3 having been first duly sworn, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY: MR. DRISCOLL

7 Q. Could you please tell us your full name
8 and where you work?

9 A. Lynette Doty, Robinson Industries,
10 L-y-n-e-t-t-e, D-o-t-y.

11 Q. And that is in Huntley, Illinois?

12 A. Yes, it is.

13 Q. I'm calling your attention to on or
14 about November 28, 1990.

15 Were you working at Robinson Industries
16 on that day?

17 A. Yes, I was.

18 Q. At approximately 1:00 o'clock in the
19 afternoon did you have an occasion to be
20 introduced to two deputies from the McHenry County
21 Sheriff's Department?

22 A. Yes.

23 Q. And was there also another Huntley
24 police officer with them?

1 A. Yes, there was.

2 Q. And could you tell me did you know who
3 these officers were?

4 A. No, I did not.

5 Q. Did they introduce themselves to you?

6 A. Not to myself.

7 Q. When they approached you, what did they
8 tell you?

9 A. That they were sheriffs or whatever, and
10 the Huntley policeman was there. And they told me
11 that they had a tip that, you know, there was
12 drugs being sold at Robinson Industries and if I
13 would let them have a room where they could talk
14 to this individual.

15 Q. Okay.

16 And you gave them a room?

17 A. Yes.

18 Q. And did they tell you the name of the
19 individual that they wanted?

20 A. Yes, when we entered in the conference
21 room.

22 Q. Okay.

23 And what did they tell you?

24 A. They just said that it was Paul Dulberg.

1 Q. Okay.

2 And then what did they ask you to do?

3 A. They asked if we would go out to get him
4 and if I would show them where he was located.

5 Q. Okay.

6 Did you go out there?

7 A. Yes, I did.

8 Q. Did you go out with one of the officers?

9 A. Yes, I did.

10 Q. Do you know which officer you went out
11 with?

12 A. The young officer.

13 Q. Would that be the younger officer that
14 was somewhat slender or --

15 A. Yes.

16 Q. Okay.

17 And you went into the plant?

18 A. Yes.

19 Q. And were you with the officer when he
20 approached Mr. Dulberg?

21 A. Yes, I was.

22 Q. And do you recall what happened when the
23 officer approached Mr. Dulberg?

24 A. He went face to face with him, and that

1 was the last that I heard at that point.

2 Q. You didn't hear any --

3 A. No, uhn-uhn.

4 Q. Do you know how far that officer was

5 from Mr. Dulberg when they went face to face?

6 A. Very close.

7 You mean how far he was to Paul?

8 Q. Right.

9 A. Just, you know. (Indicating).

10 Q. You are putting your --

11 A. Yes, they were.

12 Q. -- your hand in front of your face?

13 A. Yes.

14 Q. And that would be about a foot away?

15 Would that be a fair description of how close they

16 were?

17 A. Yes, uh-huh.

18 Q. And at that point did you hear what they

19 had to say?

20 A. No, I did not.

21 Q. Okay.

22 And did you leave the plant area with

23 Mr. Dulberg and the policeman?

24 A. No. I went back into the office.

1 Q. Okay.

2 And the office is where the conference
3 room is, is that correct?

4 A. Yes, uh-huh.

5 Q. And did Mr. Dulberg come out with this
6 policeman?

7 A. Yes.

8 Q. And did you see them come out of the
9 plant area?

10 A. Yes, I did.

11 Q. And did you see them go into the
12 conference room?

13 A. Yes, I did.

14 Q. At that point did you think that Mr.
15 Dulberg was under arrest?

16 A. Yes.

17 Q. Okay.

18 And did you have a conversation with
19 these police officers at that point?

20 A. No.

21 Q. Prior to that time had you had a
22 conversation with these police officers?

23 A. Yes, I had.

24 Q. And where was that conversation?

1 A. In the conference room.

2 Q. And who was present?

3 A. The Huntley policeman and the two
4 officers and myself.

5 Q. And what did they say to you, and what
6 did you say to them?

7 A. They asked where Paul was located, of
8 course, like we said before. And they asked --
9 said if he asked for a search warrant, that they
10 could get one.

11 Q. Okay.

12 Did they say anything else other than
13 that?

14 A. I think something like that they would
15 not leave him alone at that point. They would
16 get a search warrant, but they would not leave him
17 alone.

18 Q. Okay.

19 And when he was taken into the
20 conference room, it was your impression that he
21 was under arrest, is that correct?

22 A. Yes.

23 MR. DRISCOLL: I have no further questions
24 of this witness at this time, your Honor.

1 THE COURT: Mr. Browder?

2 MR. BROWDER: Thank you, your Honor.

3

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CROSS-EXAMINATION

6

BY: MR. BROWDER.

7

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9

Q. Now, when you first went into Robinson Industries to show Deputy Fung where Paul Dulberg was working --

10

A. Yes.

11

12

Q. -- approximately how many people were in the area where Paul Dulberg was at?

13

A. In his department?

14

Q. Uh-huh?

15

A. Probably three.

16

17

Q. All right. And that was in the middle of a workday, wasn't it?

18

A. Yes, it was.

19

20

21

Q. All right. Now, when Deputy Fung went up to Paul Dulberg, did you ever hear him say that he was under arrest at that point?

22

A. No.

23

Q. All right.

24

A. I didn't really -- I just backed off and

1 went back into the office.

2 Q. Okay.

3 When they came back, did you ever see
4 Paul get handcuffed at that point?

5 A. No.

6 Q. Now, when they went into the conference
7 room that you had showed the officers prior to
8 that, were you in there with them?

9 A. No, I was not.

10 Q. Did you see Paul get handcuffed and
11 taken into that room?

12 A. No, I did not.

13 Q. All right. So, aside from what the
14 officers had told you before about -- that there
15 was drug selling happening at Robinson Industries,
16 you didn't know what he was being in the
17 conference room for, did you?

18 A. No, just from what they had told me
19 before is that they had been tipped off that there
20 was drugs being sold in Robinson.

21 Q. Okay.

22 Did they ever tell you that they had an
23 arrest warrant for him?

24 A. No.

1 Q. All right. Now, this conversation that
2 you mentioned where the topic of a search warrant
3 came up --

4 A. Uh-huh.

5 Q. -- where was this located?

6 A. In the conference room.

7 Q. And who was present during that
8 conversation?

9 A. The three policemen and myself.

10 Q. All right. And what was said to you
11 about this?

12 A. That if and when they took him, if he --
13 or when I approached and showed him, if he wanted
14 a search warrant, that, yes, they were able to get
15 one, but they would not leave him alone.

16 Q. All right. They said that to you, that
17 they would get a search warrant?

18 A. Uh-huh, yes.

19 Q. And was that in response to you asking
20 them what they wanted him for?

21 A. I really never asked them why they
22 wanted him. They told me.

23 Q. Okay.

24 Did they ever mention anything about an

1 arrest warrant versus a search warrant?

2 A. No.

3 Q. Did you ever hear them say anything to
4 Paul Dulberg about a search warrant?

5 A. No.

6 MR. BROWDER: I have no further questions,
7 your Honor.

8 THE COURT: Mr. Driscoll?

9 MR. DRISCOLL: No further questions, your
10 Honor.

11 THE COURT: Thank you Mrs. Doty. You are
12 excused.

13 (WHEREUPON, the witness was
14 excused.)

15 THE COURT: Mr. Driscoll?

16 MR. DRISCOLL: May we approach the bench,
17 your Honor?

18 THE COURT: Yes.

19 MR. DRISCOLL: I don't know how late the
20 Court wants to go today.

21 THE COURT: I work until 5:00.

22 MR. DRISCOLL: Until 5:00, okay.

23 Can we have a two-minute recess then?

24 THE COURT: Yes. Well, we will recess.

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(WHEREUPON, a brief recess
was taken.)

THE COURT: All right. Mr. Driscoll, call
your next witness.

MR. DRISCOLL: The Defendant rests, Judge.

THE COURT: All right. Mr. Browder?

MR. BROWDER: We would have one brief
witness.

THE COURT: All right. All right. Mr.
Browder?

MR. BROWDER: Thank you, your Honor.

I advise you, you are still under oath
from the last time when you were still under
oath.

THE WITNESS: I understand.

1 ROBERT CRABTREE,
2 having been recalled as a witness herein, after
3 having been previously duly sworn, was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY: MR. BROWDER

7 Q. Could you please state your name?

8 A. Robert Crabtree.

9 Q. When you first went to Robinson
10 Industries on the 28th of November, did you speak
11 with a Lynette Doty?

12 A. I did.

13 Q. What did you say to her, and what did
14 she say to you?

15 A. I identified myself by showing my
16 credentials for the Sheriff's Department and asked
17 her if they had a Paul Dulberg working there.

18 Q. And what was her response?

19 A. I don't know if she went and checked or
20 if she just said yes. Anyhow, it was an
21 affirmative reply. And after that I asked her if
22 I could talk to Paul.

23 Q. All right. What, if anything, else did
24 you say to her after asking to speak with Paul?

1 A. Nothing that I -- I don't recall.

2 Q. All right.

3 A. I don't know what you mean.

4 Q. Did you ask her anything else?

5 A. Besides somebody else you mean?

6 Q. About Paul Dulberg?

7 A. If he was working.

8 Q. All right. Did you ever tell her
9 anything about an arrest warrant or a search
10 warrant?

11 A. No.

12 Q. Did you ever tell her anything that you
13 would not leave the premises until you were able
14 to talk with him?

15 A. No, I did not.

16 MR. BROWDER: I have nothing further, your
17 Honor.

18 THE COURT: Mr. Driscoll?
19
20

21 CROSS-EXAMINATION

22 BY: MR. DRISCOLL

23 Q. When you were in the conference room
24 with Miss Doty -- She was in the conference room

1 with you, right?

2 A. If she was, it was very very short.
3 She just showed us the conference room and left.

4 Q. Okay.

5 A. And advised -- I think she said
6 something like there is coffee there if you want
7 some coffee.

8 Q. Okay.

9 And if she came in here and testified
10 under oath that you had told her that if you
11 wanted an arrest warrant or a search warrant that
12 you could go back and get one and that you were
13 not going to leave him alone, she would be lying,
14 is that correct?

15 MR. BROWDER: Objection to the
16 characterization. I believe incorrect would be
17 appropriate.

18 MR. DRISCOLL: I believe it would be a lie,
19 your Honor.

20 THE COURT: The question will stand as it is
21 asked. It is cross-examination.

22 And hopefully you remember the
23 question?

24 THE WITNESS: No. She might have been

1 mistaken, not necessarily -- Are you saying -- Are
2 you saying that she perjured herself?

3 BY MR. DRISCOLL:

4 Q. Well, she came in here and testified to
5 the fact that you said that.

6 A. She might have been mistaken.

7 Q. Okay.

8 It's your testimony that other than
9 saying here is the coffee, you had no other
10 conversation with her, is that correct?

11 A. No. I said I had conversation
12 concerning Paul Dulberg when I first went in and
13 identified myself.

14 Q. Okay.

15 And you asked if he was working there?

16 A. That is correct.

17 Q. And she went and checked and said yes?

18 A. That's correct.

19 I don't know if she went and checked or
20 if she made a phone call or what, but somehow or
21 another there was an affirmative reply that, yes,
22 he was there.

23 Q. Other than asking whether or not Paul
24 Dulberg worked at that establishment, did you ever

1 say anything else to that woman?

2 A. Like you said threatening her, you
3 mean?

4 Q. I didn't say threatening her. I just
5 said did you ever say anything else to that woman?

6 A. Yes, I thanked her for the cooperation
7 when we left.

8 Q. Fine. Other than thanking her for her
9 cooperation, you never said another word to that
10 woman?

11 A. I don't -- I can't say I never said
12 another word to her. I didn't say the words that
13 State's Attorney man asked me, no, if that's what
14 you are referring to.

15 Q. Did Officer Young say that?

16 A. What?

17 Q. Did Officer Fung say that?

18 A. No.

19 Q. Did the Huntely police officer say that?

20 A. No.

21 MR. DRISCOLL: I have no further questions
22 of this witness, your Honor.

23 THE COURT: Mr. Browder?

24 MR. BROWDER: Nothing further, your Honor.

1 THE COURT: Thank you, Chief.

2 (WHEREUPON, the witness was
3 excused.)

4 THE COURT: Mr. Browder, do you have any
5 other witnesses at this time?

6 MR. BROWDER: No further witnesses.

7 THE COURT: Mr. Driscoll, do you have any
8 rebuttal?

9 MR. DRISCOLL: No, your Honor.

10 THE COURT: Mr. Driscoll, do you have any
11 argument?

12 MR. DRISCOLL: Your Honor, I would like -- I
13 am not going to go into a recitation of facts
14 because the Court has taken notes on this and has
15 done what the Court has to do.

16 With respect to the motion to quash and
17 suppress, I would just like -- the case that we
18 are going to be relying upon, your Honor, is
19 actually the case of People vs. Ross. I am
20 tendering a copy of the case to counsel, and I
21 tender a copy of the case to the Court, your
22 Honor.

23 THE COURT: Thank you.

24 MR. DRISCOLL: Your Honor, if the Court

1 reads this case, the Court is going to find this
2 case involves -- It's out of the Second District,
3 and it involves almost an identical situation as
4 the situation that we have up here today. What
5 happened in the Ross case was that an anonymous
6 tip came into the -- whatever police department is
7 particularly involved here -- and it said that
8 there was a man selling cocaine at a wedding
9 reception. And this information was conveyed to
10 the Elmhurst Police Department.

11 And the Elmhurst Police Department
12 dispatched one of their officers out to the scene
13 of this wedding reception. And when they got
14 there to the scene, they did run a license check
15 on the vehicle that was being -- that was owned by
16 the Defendant in the Ross case. And they went in
17 and questioned the Defendant at that point
18 concerning the sale of narcotics.

19 And the court there said that that was a
20 -- granted the motion to quash and suppress at
21 that point on the fact that there was no probable
22 cause to even initiate the confrontation with the
23 Defendant at that point. And they said that --
24 They went through the case of -- the cases that

1 are on point, and that's the Gates case. And they
2 followed the reasoning that was -- and I'm sure
3 the Court's aware of Gates, so I won't even go
4 into Gates.

5 But they said there that there was not
6 sufficient independent verification that a crime
7 had been committed for them to even approach this
8 individual and to question him regarding this.
9 They said that the difference in this particular
10 case as opposed to Ross is that in the Ross case
11 the arresting officer had had a contact with the
12 Defendant on a prior -- and it was actually a
13 narcotics contact with the Defendant in that
14 case. And yet the court went on to say that there
15 was nothing in the evidence at all to show that
16 the anonymous informant was reliable, and it does
17 not appear that it provided with any reliable
18 information to the officers in the past. They
19 said that his basis of knowledge was not
20 particularly strong.

21 And then they went on to discuss the
22 fact that the arresting officer in that particular
23 case -- even though he knew that this Defendant
24 had had a prior arrest for narcotics, this in and

1 of itself was not sufficient to establish the
2 question of probable cause here. And the Court
3 can read the case.

4 This is not a good faith situation
5 here. There is no showing of the reliability of
6 the informant in this particular case. This is
7 -- I think from the testimony that this would be
8 certainly not an informant because the evidence
9 has been destroyed as to the identity of that
10 individual.

11 But after the fact we go out. You have
12 to determine whether or not he was arrested. And
13 I think the controlling point there is Officer
14 Fung. When he testified, almost one of the last
15 things that he testified in his testimony was that
16 he told my client to bring his coat.

17 The office manager came in and testified
18 that it was her opinion that Mr. Dulberg was under
19 arrest when he left there, and she testified that
20 they had come in and informed her about this
21 situation. And you have to decide whether or not
22 this woman came in and lied and said that they
23 were not going to leave him alone if they had to
24 to get a warrant.

1 What the cases hold is that there has to
2 be some independent investigation, some
3 independent police work that is done by a police
4 department in order to corroborate the information
5 that they have before they can go out and question
6 a defendant and certainly whether or not they can
7 go out and arrest him.

8 The Court is faced with -- The situation
9 is the officer has got this information at 10:30
10 in the morning. They were in the courthouse.
11 They had an hour and a half before they got out
12 there. If they felt they had sufficient probable
13 cause at that point, they should have come before
14 one of the judges in this building and either
15 secured an arrest warrant and certainly should
16 have secured a search warrant.

17 They did nothing, which means at that
18 point they had no probable cause. They felt they
19 themselves had no probable cause.

20 Officer Crabtree this afternoon said
21 that even after, he said, what my client allegedly
22 said to him, he still didn't think he had probable
23 cause to arrest him. At that point they don't
24 have enough probable cause to even go out and

1 confront the individual without any independent
2 police work that they should have done to
3 corroborate this information.

4 It is certainly our contention, and I
5 think the evidence shows, that once they went out
6 there, they had the intention of an arrest, being
7 my client; that in fact he was arrested; that in
8 fact the evidence that was secured was secured
9 pursuant to an illegal search of his property.

10 They did have a consent form with them
11 when they came out, yet they did not have him sign
12 the consent for his jacket. What they should
13 have done at that point is they should have come
14 -- When they thought they had something, they
15 should have come back to McHenry, and they should
16 have gotten a warrant for his arrest, and they
17 should have gotten a search warrant, and we
18 wouldn't be in the situation we are in right
19 now.

20 They chose to do it their way. And
21 unfortunately, through the testimony of the
22 policemen, there just wasn't probable cause. And
23 we'll rest basically on the Ross case, your Honor.

24 THE COURT: Mr. Browder?

1 MR. BROWDER: Your Honor, in response to
2 counsel's arguments, he cites People vs. Ross.
3 But as we get in there, there is a distinguishing
4 factor. They are talking about probable cause and
5 exigent circumstances, which is what is something
6 that they need to confirm the reliability of
7 informant for.

8 On Page 263 of that case we get into the
9 thing -- initially they quote -- We must point out
10 what is not in issue in this case. The State does
11 not argue that the Defendant consented to the
12 search of a person, and they sight Schneckloth vs.
13 Bustamonte, 412 U.S. 218.

14 And it is the People's contention in
15 this case that what we have here is purely a
16 consensual encounter. We have Deputy Fung going
17 down there with an anonymous tip that someone
18 might have controlled substance -- that Paul
19 Dulberg might have controlled substances on his
20 person or his car, but that he does have them.

21 He goes down there. They ask for
22 permission to go talk to him. Deputy Fung walks
23 into there and he asks -- he doesn't demand -- he
24 makes a request: Would you come with me. Would

1 you bring your jacket. And at that time Paul
2 Dulberg does not do -- say anything like no, I
3 don't want to. Forget it. I don't have to.
4 There is no actions by Paul Dulberg indicating
5 that he is not giving consent to this. There is
6 no force being applied to him. He's not being
7 dragged out.

8 We're getting them walking towards the
9 conference room, and what happens is he does start
10 to get distraught because he knows he's in
11 trouble. And he makes the statement, "It's not
12 mine."

13 They get into the conference room.
14 Deputy Fung turns the investigation over to Major
15 Crabtree. At that point the first thing through
16 the door is a spontaneous statement, "It's not
17 mine," and he starts in on it before he's even
18 sitting down.

19 Major Crabtree tells him hold on,
20 advises him of his rights per Miranda because he
21 might be making inculpatory statements. Because
22 they had some tips about narcotics, he provides
23 him with Miranda. He indicates that he
24 understands it and at that point is willing to

1 talk.

2 They provide him with a permission to
3 search form, and on that search form it does --
4 and I believe that we should admit that for the
5 Court's reference if it is not already before you
6 because it does have on there aspects about real
7 property, a car, factors that -- Robinson
8 Industries. And it does say on the bottom in
9 standard boiler plate language any other items
10 basically that they deem relevant to the
11 investigation.

12 But this permission and consent to
13 search form is not something that was needed at
14 that point because Paul Dulberg, knowing that
15 Major Crabtree wanted to look into his car, says,
16 "You don't need it. It's not in the car. It's
17 in my jacket. You can look. It's a lot."
18 He's giving his consent at that point to go
19 through the jacket.

20 And based upon the -- When we look at
21 the actual case of Schneckloth vs. Bustamonte,
22 that is at 412 US 218, they are quoted as saying
23 that in situations where police have some evidence
24 of illicit activity but lack probable cause to

1 arrest or search, a search authorized by valid
2 consent may be the only means of obtaining
3 important and reliable evidence.

4 And this is what the People's
5 contentions are that was happening that day.
6 They went down there and got consent. To cite
7 for counsel this 412 US 218 -- and I'll tender a
8 copy to the Court if I could later on move to
9 withdraw it.

10 But in going over the evidence and
11 trying to look at it in light -- giving the
12 benefit of the doubt to the Defendant, we look at
13 the evidence that is presented. And let's assume
14 at that point in a reasonable person's mind they
15 feel they are being detained -- that Paul Dulberg,
16 as he walked in the conference room, felt he was
17 being detained. Even under that circumstance,
18 giving him the benefit of the doubt above and
19 beyond what the evidence has presented, we still
20 have a reasonable detention.

21 All the responses that he made were
22 spontaneous. The questions that the officers
23 were going to ask are reasonable investigatory
24 questions. And the fact that they later on

1 arrested him was based out of the consent that he
2 had given to go ahead and search the jacket. So,
3 we have a reasonable detention coupled with
4 consent.

5 And what I would tender -- I did bring a
6 copy for counsel and also a copy for the Court is
7 United States vs. Mendenhall, 446 U.S. 544. And
8 this is basically a very similar situation. And
9 in that case it was an airport investigation.
10 They asked if they could talk to the individual
11 about some information they had, and they took the
12 individual to a DEA room in the -- in this area.

13 And the court went on to say -- and you
14 can review it for your information -- that that
15 stop is a reasonable detention, that they can go
16 through reasonable investigatory questions, and
17 that any consent that comes out of that is
18 something that is allowed and is not tainted.

19 Based on both factors, looking at it
20 from the People's position, we believe the consent
21 was all the way through. The testimony was that
22 it was brief. It happened very fast. And even
23 giving the Defendant the best light, even taking
24 into account Mendenahll, there is still a

1 reasonable detention and reasonable investigative
2 questions.

3 To apply People vs. Ross where we are
4 arguing probable cause and exigent circumstances
5 is not the standard that should be applied here.
6 And I will give copies to Court and counsel.

7 MR. DRISCOLL: Thank you.

8 MR. BROWDER: People have no further
9 argument.

10 THE COURT: Okay. Mr. Driscoll?

11 MR. DRISCOLL: Your Honor, the Court has to
12 make the decision here with respect to -- The
13 Court knows the applicable law. I think the
14 Court has to make the decision and view the
15 witnesses as to whether or not -- the credibility
16 of the witnesses.

17 If you take -- The State's position is
18 that they can go out because somebody calls you on
19 the telephone -- and you can go out, and you can
20 detain somebody for no reason other than a person
21 has called you on the phone and said this person
22 is doing something.

23 The interesting thing -- And you can
24 read the case of Ross.

1 If the Court will give me a moment?

2 The court in Ross goes on to say that
3 it's the policy of the courts in Illinois that
4 they prefer searches with warrants as opposed to a
5 warrantless search.

6 Let's assume for a moment -- let's just
7 give the State their due, and let's further assume
8 that at that point when they get into the
9 conference room and he says -- allegedly says what
10 he says he said, that the stuff is in my jacket,
11 et cetera et cetera. At that point it's incumbent
12 upon them to get the search warrant because the
13 jacket has not been searched at that point in
14 time.

15 The jacket -- By that time there is no
16 exigent circumstances at that point in time. He
17 is in the conference room. Three police officers
18 are there. And at that point, if they do believe
19 -- because there has not been an independent
20 determination as to the tipster's reliability --
21 And the Court makes a big thing about that, and
22 they say that in a drug case we don't take rights
23 away from citizens just because it happens to be a
24 drug case. Their rights are going to be applied

1 uniformly throughout.

2 What the court does say there has to be
3 some minimal independent corroboration of the
4 anonymous tip.

5 The two police officers that came in
6 here today, they testified that they did
7 nothing. They testified that they went to the
8 States Attorney's Office, and from the State's
9 Attorney's Office they went, and they went
10 directly to the Defendant.

11 At that point the critical thing I
12 believe you have to decide there is a credibility
13 problem. Lynette Doty came in here, and she
14 testified that those police officers told her that
15 they were going to get a search warrant for him,
16 and they were not going to let him alone if he did
17 not consent. She is not a party here. She has
18 nothing to win or to lose by her testimony here.
19 The Court has to decide by viewing that woman by
20 herself whether or not that woman -- what she
21 testified to was true.

22 If you say -- If you believe that what
23 she said is true, you have to grant our motion
24 because then they knew. At that point in time

1 they knew, and at that point in time before they
2 ever approached the Defendant they should have had
3 a warrant. And they said that they could get a
4 warrant, and they could be back there in an
5 hour. I have nothing further, your Honor.

6 THE COURT: All right. Let's first set the
7 ground rules. This is a motion to quash and
8 suppress evidence. And certainly implicit in that
9 motion goes to the issue of the actual arrest.

10 Pursuant to Chapter 38, Section 114-12,
11 the burden of proving that the search and seizure
12 were unlawful shall be on the defendant.
13 Illinois is not one of the states that subscribe
14 to the premise that there is a presumption once
15 this motion is brought that the search is
16 illegal. Rather, in fact, there is a presumption
17 in a way that the search is appropriate. And it
18 is now the Defendant's responsibility on this
19 motion to prove or the burden of going forward and
20 proving that it is unlawful.

21 The Defendant has filed a motion and I
22 believe then a memorandum, I suppose is the best
23 characterization, citing certain law. The motion
24 as well as the memorandum are over counsel's

1 signature. Therefore, while the Court certainly
2 uses those motions to determine the direction of
3 the hearing, the Court cannot and in this case
4 certainly will not accept that any of the facts
5 alleged therein are truthful because, first, they
6 are not under oath; and, secondly, they are not
7 the Defendant's affidavit or the Defendant's own
8 testimony.

9 Now, on the substance the Court is going
10 to take the same approach taken by the appellate
11 court as they decide in People vs. Ross. And
12 they began after reciting the facts -- which are
13 critical here but will be addressed shortly -- by
14 saying what is not at issue. And I think that it
15 is necessary to do that here so that we can narrow
16 our record.

17 First of all, although the motions or
18 the motion on file may go to and may lead the
19 Court to believe that there is some issue of
20 entrapment, based upon the evidence that I have
21 heard here today, entrapment by a police authority
22 is not the issue to be decided in this motion.

23 In fact, the Defendant may have been set
24 up by somebody, but there is no competent evidence

1 before the Court that it was this group of police
2 officers or any governmental agency with police
3 power.

4 Furthermore, this Court does not believe
5 that the issues addressed cover failure to give
6 Miranda warnings, failure to understand Miranda
7 warnings, or a forced, coerced or threatened
8 search.

9 The primary operative in this particular
10 scenario was Chief Deputy Crabtree. Although the
11 written record cannot see or hear Chief Deputy
12 Crabtree, the Court can and did. Chief Deputy
13 Crabtree is a big, imposing presence. He has a
14 gruff voice. But the interview in question is
15 taking place in a glassed area that is either
16 facing an office or facing a work area in a
17 factory. The Court is not clear, but it is
18 apparent that in either place there are persons on
19 the other side of the glass.

20 The room may have a door at the -- we'll
21 say right end for the purposes of this courtroom
22 or left end for purposes of this courtroom based
23 upon the testimony of either officer. But the
24 fact remains that there is apparently only one

1 significant or noticed way to get in or to get
2 out.

3 There is evidence that the Defendant was
4 apparently crying, and in Chief Deputy Crabtree's
5 word, was distraught. But there is no evidence
6 that there was any force or coercion applied to
7 the Defendant or that his state of emotion in any
8 way impaired his ability to understand what was
9 going on.

10 In fact, the testimony would indicate
11 that after reading a specific document -- and
12 although I do not have the one that is at issue
13 here; the Court has seen other forms in blank and
14 other forms filled out -- that the Defendant even
15 said to the Chief Deputy something to the effect
16 that you don't really -- I don't really need to
17 go through with this. It's not in my car. It's
18 in my coat. So, it would appear from the
19 evidence that is before the Court he understood
20 that particular form and understood the purpose of
21 that particular form.

22 This Court believes that we are not
23 dealing with the issue of reliability of an
24 informant. If we were, there would have been an

1 issue addressed by Gates.

2 There may have been a search warrant.
3 There may have been a contest to that particular
4 search warrant, and the Court would have had to
5 determine the issue of veracity of the informant
6 in question.

7 But both witnesses, Deputy or -- I'm
8 sorry -- Detective Fung and Chief Deputy Crabtree
9 testified that they had not worked with this
10 person before. They had no particular prior
11 contact with this person before. And both
12 witnesses testified that although they might be
13 able to remember the name, it was not on the tip
14 of their tongue as they sat and testified.

15 In fact, according to the testimony,
16 Chief Deputy Crabtree decided to go and speak with
17 Mr. Philip Prossnitz. This Court knows Mr.
18 Prossnitz through his appearance here, and it has
19 been represented to the Court both by Mr.
20 Prossnitz and other members of the staff that Mr.
21 Prossnitz is chief of a certain unit in the
22 State's Attorney's Office.

23 Finally, this Court does not believe
24 that the issue before the Court is a search

1 incident to arrest because, in fact, as the
2 testimony is presented, the search occurs before
3 the arrest, not after the arrest.

4 But that is where we need to now address
5 the issue of the arrest and probable cause to
6 arrest the Defendant. I will start by addressing
7 the testimony of Mrs. Doty. Her testimony, as
8 represented or as she gave it, as opposed to as it
9 was summarized by counsel as they argued, are a
10 little different. And even if Deputy Crabtree,
11 Detective Fung or the Huntley police officer made
12 certain representations to her, there is no
13 evidence before the Court that in fact that is
14 what Mr. Dulberg knew or that is what Mr. Dulberg
15 thought as he entered that room.

16 Furthermore, the fact that they could
17 get a warrant and that they wouldn't leave him
18 alone is not evidence that in fact on that
19 occasion they walked in that door to arrest him.

20 Most of counsel's cross-examination of
21 the witnesses and then in his argument tone he
22 portrayed to the Court a disbelief that they just
23 went to talk to him. If they had gone to a judge
24 with the information that they had, they would

1 have left from the judge with that information and
2 without a search warrant. They did not have
3 anything reliable as they went to talk to him.
4 The only evidence by way of testimony before the
5 Court is that they went to talk to him, and they
6 did exactly that.

7 Clearly the officers had a suspicion,
8 and it is critical that I use that word because
9 the cases cited by counsel for the Defendant as
10 well as the cases cited by the State deal in
11 levels: suspicion, then reasonable suspicion,
12 then facts sufficient to allow detention, and then
13 finally facts -- articulable facts sufficient to
14 establish probable cause or a reasonable belief
15 that there is some criminal activity or object of
16 criminal activity in the area. So, we might have
17 actually four tiers.

18 But this Court finds that as the
19 officers went to Robinson Industries with the
20 direction of Mr. Philip Prossnitz, they had a
21 suspicion, and they embarked upon an
22 investigation.

23 Now, this investigation, as the
24 testimony relates, proceeded quite rapidly.

1 Although there may have been a statement made as
2 the Defendant and Detective Fung walked down the
3 hallway, Detective Fung is, for lack of a better
4 term, a courier here. He is bringing Mr. Dulberg
5 from place A to place B.

6 The operative once again appears to be
7 Chief Deputy Crabtree. Chief Deputy Crabtree
8 testified he identified himself in this conference
9 area, and the Defendant began or was already
10 crying and volunteered certain information. This
11 information clearly supported the officers'
12 initial suspicion, and Chief Deputy Crabtree
13 testified that he thought he knew what the
14 Defendant was talking about when he said, "It's
15 not even mine." The Chief Deputy then gave the
16 Miranda warnings.

17 And while it's clear that there was some
18 other conversation about where a substance came
19 from and who might otherwise be involved, the
20 sequence is not as critical in terms of that
21 information as is the sequence of the Miranda
22 warnings and then the consent to search. The
23 consent to search, according to Chief Deputy
24 Crabtree, was filled out by the Defendant. He

1 asked a question about it. And based upon that
2 particular question, some additional information
3 became known which now further supported the
4 initial suspicion of Chief Deputy Crabtree.

5 The Court finds that during this limited
6 period of time, which is no more than two hours
7 based upon the testimony of Deputy -- or Detective
8 Fung, and in fact listening to everything here is
9 more likely less than an hour, the Court finds
10 that there is a reasonable detention to -- in the
11 process of this investigation.

12 Now, the issue then concerning the
13 consent form: It is apparent from everyone's
14 argument and the testimony that it does not say a
15 jacket. It doesn't describe a jacket by color.
16 It doesn't describe a jacket by size or by
17 fabric. But according to the testimony of Chief
18 Deputy Crabtree, the Defendant said, "There is no
19 reason for me to sign this about my car. It's in
20 my jacket. It's a lot," or, "There is a lot of
21 it and go ahead and look." Certainly there could
22 have been added to the consent form jacket.

23 But based upon the testimony that is
24 before the Court and the sequence of the events,

1 to put it on at that point in time would be
2 something of a bootstrap, and that's not what that
3 form is designed to do.

4 The Defendant allowed someone to look at
5 his jacket. That someone was Chief Deputy
6 Crabtree. He was clearly a police officer. He
7 had been identified as a police officer, and he
8 had given Miranda warnings at that point in
9 time.

10 I will not necessarily repeat what the
11 Chief said, but it is clear that when he did find
12 something in the pocket and said, "If this is
13 cocaine," -- I will repeat it -- "your ass is in a
14 jam," the Defendant then said, "It is. I know
15 it's cocaine." There was not only articulable
16 facts, but there was in the legal essence of the
17 cases cited, including Ross, probable cause to
18 arrest the Defendant.

19 Upon that, the substance was then seized
20 and according to other evidence found to be -- or
21 other testimony found to be contraband.
22 Therefore, I believe consistent with the Ross
23 case, which contains a totally different set of
24 facts concerning the initial encounter, which is

1 critical here, and consistent with other Supreme
2 Court cases that have been cited and specifically
3 consistent with a case that this Court uses on a
4 regular basis, Texas vs. The United States -- but
5 the citation is not under the desk where it should
6 be -- the Court finds that the Defendant has
7 failed to establish that the search and the arrest
8 on November 28, 1990, at Robinson Industries here
9 in the County of McHenry and the State of Illinois
10 was unlawful.

11 Now, there is the motion to dismiss.
12 And on the recess I was able to read the
13 transcript.

14 Mr. Driscoll, do you want to address
15 that?

16 MR. BROWDER: If I can have one moment to
17 get these papers together?

18 Just the essence of that argument, your
19 Honor, is that what the State has done here is
20 that they have taken a deputy sheriff and brought
21 him in before the Grand Jury and had him testify
22 as to the facts and circumstances. And this is --
23 only goes to Count One. The motion is only to
24 Count One of the indictment.

1 THE COURT: Okay.

2 MR. DRISCOLL: They bring a deputy in and
3 have him testify and read off the police report to
4 get the indictment as to all three counts. And
5 in the indictment they ask him whether or not in
6 his opinion this is something to -- whether or not
7 that's consistent with possession with intent to
8 sell, and whether it's consistent with the
9 personal use or use to sell.

10 And they bypass the purpose of the Grand
11 Jury by using a police officer to come in and
12 testify off of a police report. And then in the
13 police report itself they don't even charge him.
14 They tell him when they arrest him that they are
15 only going to arrest him for possession, not for
16 possession with intent to sell. Then they bring
17 somebody else in that doesn't know the Defendant,
18 was not part of the investigation, and he comes up
19 -- in his own personal opinion comes up with the
20 intent to sell just on the amount.

21 The purpose of the argument -- The
22 purpose of the Grand Jury is to allow the Grand
23 Jury to indict people that they think that there
24 has been -- where there has been a crime

1 committed. But also the purpose of the Grand Jury
2 is to allow the Grand Jury not to indict people
3 for crimes that they have not or should not be
4 charged with.

5 And what the State's Attorney is doing
6 here is circumventing the real purpose of the
7 Grand Jury by bringing a third person in to just
8 read a police report and then allow that person to
9 give his opinion as to whether or not there was an
10 attempt to sell as opposed to allowing the Grand
11 Jury to come up with the information that's
12 presented to them to form that opinion.

13 And that's the basis of the motion
14 here. These police officers could very well have
15 gone before the Grand Jury and have gotten the
16 indictment on Count Two and Three, and the State
17 could have brought these police officers before
18 the Grand Jury and questioned them with respect to
19 Count One. But to bring a totally third person
20 in and to obviate the purpose of the Grand Jury by
21 not allowing the Grand Jury -- because they start
22 out with the Grand Jury testimony by saying I
23 wasn't involved in this, but I've become familiar
24 with this by doing nothing but reviewing the

1 police reports.

2 And nowhere in the police reports is
3 there anything about an intent to sell. They
4 only arrested him -- Even the arresting officers
5 only arrested him on possession, not on intent to
6 sell.

7 MR. BROWDER: Your Honor, in response to
8 counsel's argument as to hearsay being used in the
9 Grand Jury proceeding, I would cite to the Court
10 People vs. Creque, C-r-e-q-u-e, and that's a
11 Supreme Court case. And in that case we basically
12 have -- They allow hearsay to be used in a Grand
13 Jury indictment.

14 I will also cite People vs. Simmons, 434
15 N.E. 2d 435. And again that was an assistant
16 state's attorney that testified from a transcript
17 at the Grand Jury proceedings.

18 So, clearly hearsay is admissible in the
19 State of Illinois Grand Jury proceeding.

20 Here the officer was going on hearsay
21 when he testified. But when it comes to
22 testimony as to personal use or intent to deliver,
23 there was testimony that he works for the
24 Sheriff's Department in the narcotics division.

1 And based on that background and the testimony
2 that he had presented to the Grand Jury, those are
3 aspects that are relevant for this charge that was
4 presented in front of the Grand Jury. And from
5 what I am able to tell, there were no questions
6 asked.

7 I believe there was sufficient
8 information given to the Grand Jury for them to
9 reach their decision.

10 MR. DRISCOLL: May I rebut just briefly,
11 your Honor?

12 THE COURT: Yes.

13 MR. DRISCOLL: This is not a hearsay
14 question. I am not arguing hearsay. Hearsay
15 can be used in Grand Jury. But you cannot
16 circumvent the purpose of the Grand Jury. In a
17 proper set of circumstances hearsay is proper to
18 bring before a Grand Jury, but you cannot
19 circumvent the purposes of the Grand Jury by
20 bringing in someone to say I don't know anything
21 about this case, but I am going to read this
22 police report to you.

23 He didn't make the arrest, so he can't
24 answer those questions. And then to bring a third

1 person in to -- this person that's reading the
2 police report to give an opinion as to the amount
3 or what was had or what was not had is improper.
4 I'm not -- This is not a hearsay question with
5 respect to the Grand Jury.

6 And if they would have brought either
7 one of the other officers in, I think they might
8 be in somewhat a different position. Although the
9 reason I think they didn't bring them in is
10 because the police report. When they charged him,
11 they only charged him with possession. There is
12 nothing in here about an intent to sell at all.
13 None of the testimony did this come out regarding
14 an intent to sell. The only intent to sell we
15 have is this new police officer coming in and
16 saying, yeah, this is -- this amount is not
17 consistent with personal use. And that's it.

18 And they deny the Grand Jury the right
19 to question anybody with respect to that as to
20 this Defendant. This is not a hearsay -- this is
21 not a hearsay argument at all. This is
22 circumventing the purpose of the Grand Jury.

23 If they would have even gone by way of
24 straight indictment or information, they could say

1 that on their information and belief. But to
2 bring somebody before a Grand Jury and just say,
3 yeah, that's not consistent and he was going to
4 sell, I think that's incompetent testimony, which
5 is one of the bases for that. And I think it's
6 circumventing the purpose for the Grand Jury
7 here.

8 THE COURT: All right. First of all, the
9 entire transcript has to be considered. And the
10 Assistant State's Attorney who was in charge of
11 this presentation would appear to be Mr.
12 Prossnitz. And Mr. Prossnitz informed the Grand
13 Jury of the indictment that was being presented
14 and then informed the Grand Jury that the Grand
15 Jury has a right to subpoena and question any
16 person against whom the State's Attorney is
17 seeking a bill of indictment or any other person,
18 and to obtain and examine any documents or
19 transcripts relevant to the matter being
20 prosecuted by the State's Attorney.

21 A witness is then sworn in. That
22 witness identifies himself and indicates that for
23 the past 17 months he's been employed by the
24 narcotics division of the McHenry County Sheriff's

1 Department and then goes forward with the
2 testimony that we've just discussed.

3 Now, there is no question that they
4 could do -- they could bring in Officer Jonites --
5 I'm sorry -- Jonites rather than either Detective
6 Fung or Chief Deputy Crabtree or the Huntley
7 police officer, whoever that might be. The Grand
8 Jury could have asked for others. It appears
9 that they did not.

10 But in a case of this nature where there
11 is an allegation that the Grand Jury has in some
12 way acted improperly or without competent
13 evidence, the Defendant must establish that there
14 was in fact actual prejudice occurred to him.

15 Now, it is maybe fortuitous for me that
16 I have just finished briefing another issue on
17 this very situation where prosecutorial misconduct
18 was alleged. And the cases generally stand for
19 the basic proposition that the mere fact that an
20 indictment is returned does not establish
21 prejudice. There has to be more: That there was
22 a misrepresentation; that there was an indictment
23 by mistake, or that there was some actual and
24 knowing deceptive conduct by the state's attorney

1 who is presenting the action to lead the Grand
2 Jury down the path. I think that's some of the
3 language from the cases. And frankly, I couldn't
4 find a case where the appellate court found that
5 kind of conduct, even though the conduct described
6 was rather egregious in three of the ten cases I
7 reviewed.

8 Here a deputy who has been a narcotics
9 officer for 17 months testifies as to his
10 knowledge of this report, obviously which he's
11 gained by either discussion with the officers or
12 review of the report, and then testifies to a
13 critical issue.

14 And once again, through no particular
15 knowledge of either counsel this Court has
16 recently finished a case involving possession with
17 intent to sell, and I am very sensitive to that
18 particular case -- that particular type of case.
19 I am aware that there is an argument brought by
20 the State and allowed by appellate courts that if
21 there is found to be an amount in excess of that
22 considered reasonable for personal use, there is a
23 presumption that the amount was for purposes of
24 sale. The mere gram amount is not the issue.

1 There has to be -- This Court found some
2 evidence of what constitutes that amount
3 reasonable for personal use. According to the
4 evidence laid for foundation, Deputy Jonites has
5 sufficient background in 17 months of narcotics
6 work to testify as to his opinion what is
7 appropriate and reasonable for personal use. The
8 Grand Jury can then infer and make a reasonable
9 inference that the 27 grams or 28 grams was not
10 for personal use.

11 And finally, the State's Attorney has a
12 responsibility to bring all cases that would
13 reasonably flow from a single criminal incident or
14 activity as they define it in order to avoid the
15 concept of double jeopardy or in order to harass
16 any single Defendant, be it yours or anyone else,
17 with multiple prosecutions arising out of a single
18 incident.

19 Although the Defendant clearly was not
20 arrested on the day in question for possession
21 with intent to deliver, and Chief Deputy Crabtree
22 never even indicated that that was a charge
23 contemplated as he testified, it could be an
24 appropriate charge based upon the testimony of

1 Deputy Jonites and one that the Grand Jury could
2 infer -- reasonably infer facts sufficient to
3 charge that new count that the Defendant did not
4 know about as of November 28 of 1990.

5 So, therefore, I would find that, number
6 one, although there has been an indictment, there
7 has been no proof that the proceedings before the
8 Grand Jury were in any way tainted, there is any
9 willful misrepresentation or any mistake by the
10 Grand Jury such that there is an actual prejudice
11 to the Defendant; and, number two, the Court will
12 find that the grand jurors could have come to the
13 conclusion that it was willful intent to sell
14 based upon the testimony that they had before
15 them; and, number three, the Grand Jury was told
16 that they could subpoena and question witnesses.
17 And this record, which I believe to be a complete
18 record as tendered by both counsel, does not
19 indicate any questions brought by that particular
20 Grand Jury against this officer or any other
21 officers who may have been involved. And,
22 therefore, the motion to dismiss that particular
23 count will be denied.

24 Is this on the 13th jury call, or is

1 this on the June jury call?

2 MR. DRISCOLL: I don't think we have a jury.

3 MR. BROWDER: I don't think it's on any jury
4 conference call.

5 THE COURT: I thought we had and we were
6 trying to --

7 MR. BROWDER: It's definitely not on the
8 13th.

9 THE COURT: All right. The next available
10 conference call then is June 24th at 9:00
11 o'clock. So, that is the next time this case
12 will be up unless there are other motions.

13 MR. DRISCOLL: Thank you.

14 MR. BROWDER: I'd like to withdraw the cases
15 please.

16 (WHEREUPON, the case was
17 adjourned until June 24, 1991,
18 at 9:00 a.m.)

19

20

21

22

23

24

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF McHENRY)

4

5

6

IN THE NINETEENTH JUDICIAL CIRCUIT

7

McHENRY COUNTY, ILLINOIS

8

9

I, Mary L. Krikorian, an Official Court
Reporter of the 19th Judicial Circuit of Illinois,
do hereby certify that I reported in shorthand the
proceedings had in the above-entitled cause, and
that the foregoing is a true and correct
transcript of all the proceedings heard.

15

16

17

Mary L. Krikorian

18

19

20

21

22

23

24

STATE OF ILLINOIS)
) SS
COUNTY OF McHENRY)

FILED
McHENRY COUNTY, ILLINOIS

JUN 28 1991

IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Kenneth W. Kays, Jr.
Clerk of the Circuit Court

PEOPLE OF THE STATE OF ILLINOIS)

vs.)

) No. 90 CF 655

PAUL R. DULBERG)

**PEOPLE'S ANSWER TO DEFENDANT'S
MOTION FOR SUPPLEMENTAL DISCOVERY**

Now come the People of the State of Illinois, by and through their State's Attorney, THOMAS F. BAKER, by and through one of his duly appointed Assistants, PERRY J. BROWDER, and in response to the Defendant's Motion for Supplemental Discovery states as follows:

1. The Grand Jury minutes in reference to the above captioned matter have been forwarded.
2. A copy of a police report in reference to the above captioned matter has been forwarded.

Respectfully submitted,



PERRY J. BROWDER
Assistant State's Attorney

THOMAS F. BAKER
McHenry County State's Attorney
McHenry County Government Center
2200 N. Seminary Ave.
Woodstock, IL 60098
(815)338-2069

90-623/JFD

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)

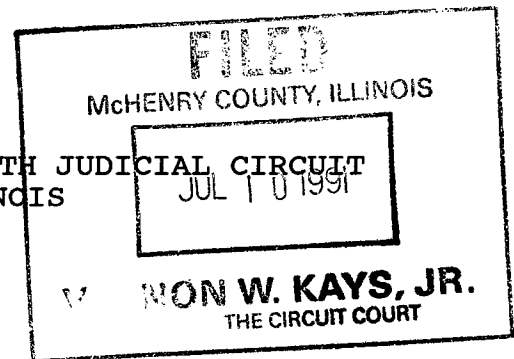
Plaintiff,)

vs)

PAUL R. DULBERG,)

Defendant.)

No. 90 CF 655



NOTICE OF MOTION

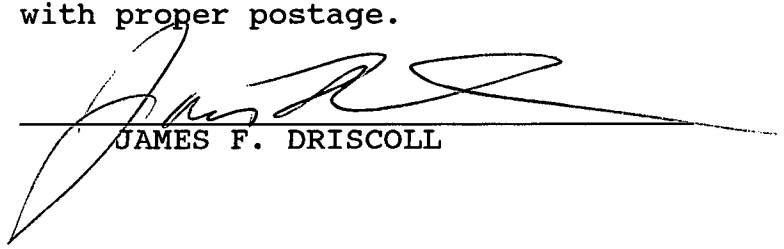
TO: Perry J. Browder, Assistant State's Attorney, 2200 North
Seminary Avenue, Woodstock, IL 60098

On July 10, 1991 at 9:00 A.M., or as soon thereafter as
counsel may be heard, I shall appear before the Honorable Susan F.
Hutchinson or any judge sitting in her stead, in the courtroom
usually occupied by her in 2200 North Seminary Avenue, Woodstock,
Illinois, and then and there present the attached Motion to
Continue the Hearing Date of August 22, 1991.

DRISCOLL & DRISCOLL
Attorneys for Plaintiff
1920 N. Thoreau Drive, Suite 166
Schaumburg, IL 60173
708/397-3909

PROOF OF SERVICE

I, James F. Driscoll, the attorney, certify I served this
notice by mailing a copy to the above named party at the above
address, and depositing same in the U.S. mail at Schaumburg,
Illinois on July 2, 1991 with proper postage.

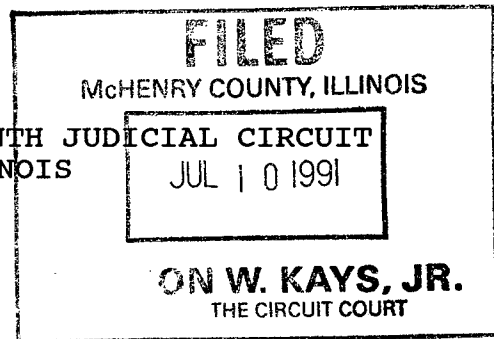

JAMES F. DRISCOLL

90-623/JFD

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
vs)
)
PAUL R. DULBERG,)
)
Defendant.)

No. 90 CF 655



MOTION

NOW COMES the Defendant, PAUL R. DULBERG, by and through his attorneys, DRISCOLL & DRISCOLL, and prays that the Hearing date set for August 22, 1991 be continued, and in support thereof, states as follows:

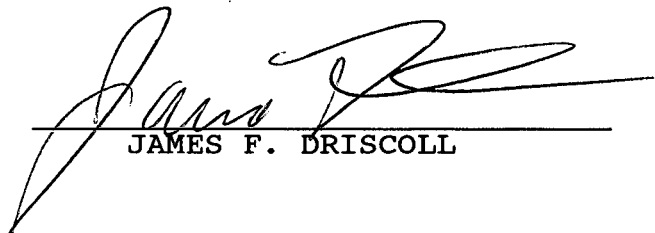
1. That this matter is set for Hearing on certain Pre-Trial Motions for August 22, 1991 at 1:30 P.M. before this Honorable Court.

2. That the Defendant is a member of the National Guard and is scheduled for training exercises in the State of Virginia from August 10, 1991 to August 24, 1991.

3. That the Defendant's Captain in the National Guard would be willing to assume custody of the Defendant during this time if the Court should allow the Defendant permission to leave the State.

4. That failure of the Defendant to continue his training would substantially jeopardize the Defendant.

WHEREFORE, the Defendant prays that he be granted permission to leave the State for his National Guard duty and that the original court date of August 22, 1991 be continued.



A handwritten signature in cursive script, appearing to read 'James F. Driscoll', is written over a horizontal line.

JAMES F. DRISCOLL

DRISCOLL & DRISCOLL
Attorneys for Defendant
1920 N. Thoreau Drive, Suite 166
Schaumburg, IL 60173
708/397-3909
2222

CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS }
COUNTY OF McHENRY } SS

GEN. NO. 90CF655
☒ Jury ☐ Non-Jury

People
vs.
Paul Dulberg

Date 7-10-91 Plaintiff's Attorney

Defendant's Attorney

Jameth Russell

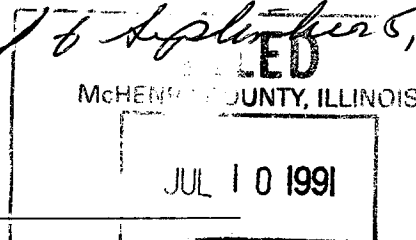
ORDER

This matter coming on to be heard on the motion of the defendant and the court being advised in the premises

It is hereby ordered that the defendant Paul Dulberg is granted permission to leave the jurisdiction of the court from August 9, 1991 through August 28, 1991.

The defendant shall not leave the confines of the Camp facilities unless it is for a general movement of personnel

It is further ordered that the hearing date of August 22, 1991 is continued to September 5, 1991 at 1:30 pm



Prepared by: _____

Attorney for: _____

Attorney Registration No.: _____

W. KAYS, JR.
OF THE CIRCUIT COURT
Judge

Susan J. Dulberg

90-623/JFD

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS
FILED
McHENRY COUNTY, ILL.
AUG 21 1991
VERNON W. KAYS, JR.
CLERK OF THE CIRCUIT COURT

PEOPLE OF THE STATE OF ILLINOIS)

Plaintiff,)

VS)

No. 90 CF 655)

PAUL R. DULBERG,)

Defendant.)

NOTICE OF MOTION

TO: Philip Prossnitz, Assistant State's Attorney, 2200 N. Seminary Avenue, Woodstock, IL 60098

On August 21, 1991 at 9:00 A.M. or as soon thereafter as counsel may be heard, I shall appear before the Honorable Susan Hutchinson or any judge sitting in her stead, in the courtroom usually occupied by her at McHenry County Courthouse, 2200 North Seminary Avenue, Woodstock, Illinois, and then and there present the attached Motion For Extension of Time.

DRISCOLL & DRISCOLL
Attorneys for Defendant
1920 N. Thoreau Drive, Suite 166
Schaumburg, IL 60173
708/397-3909

PROOF OF SERVICE

I, FLORENCE SCHUBA, a non-attorney, on oath state I served this notice by mailing a copy to Philip Prossnitz at 2200 North Seminary Avenue, Woodstock, IL 60098 and depositing the same in the U.S. mail at Schaumburg on August 12, 1991 with proposed postage prepaid.

Florence M. Schuba
FLORENCE SCHUBA

SUBSCRIBED AND SWORN TO
before me this 17th day of August 1991
CATHERINE J. MARSH
NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXP. APR 22, 1992
Catherine J. Marsh
NOTARY PUBLIC

90-623/JFD

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
McHENRY COUNTY, ILLINOIS
AUG 21 1991
VERNON W. KAYS, JR.
CLERK OF THE CIRCUIT COURT

PEOPLE OF THE STATE OF ILLINOIS

Plaintiff,

vs

PAUL R. DULBERG,

Defendant.

No. 90 CF 655

MOTION FOR EXTENSION OF TIME

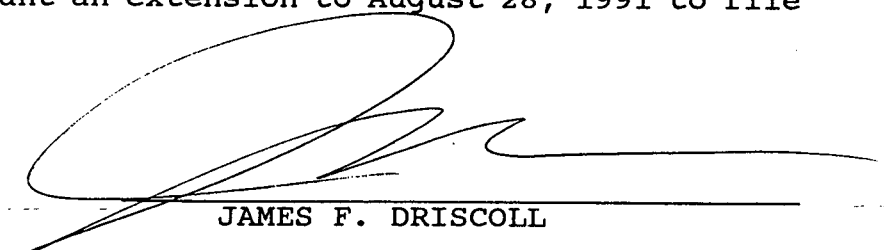
NOW COMES Defendant, PAUL R. DULBERG, by and through his attorneys, DRISCOLL & DRISCOLL, and as and for his Motion For Extension of Time, states as follows:

1. That this matter is set for Hearing on September 5, 1991.
2. That Defendant's Motion was due to be filed August 1, 1991.

3. That one of Defendant counsel's sons had an accident and required him to be away from the office for a period of time.

4. That Defendant is requesting an extension of seven (7) days to August 28, 1991 to file the appropriate motion to disclose.

WHEREFORE, the Defendant prays that this Honorable Court enter an Order granting Defendant an extension to August 28, 1991 to file its Motion.


JAMES F. DRISCOLL

DRISCOLL & DRISCOLL
Attorneys for Defendant
1920 N. Thoreau Drive, Suite 166
Schaumburg, IL 60173
708/397-3909

CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS
COUNTY OF McHENRY

SS

GEN. NO.

90CF-655

☐ Jury ☐ Non-Jury

Rogers

vs.

Duelberg
90CF-655

Date

8/21/91

Plaintiff's
Attorney

Shelly Altz

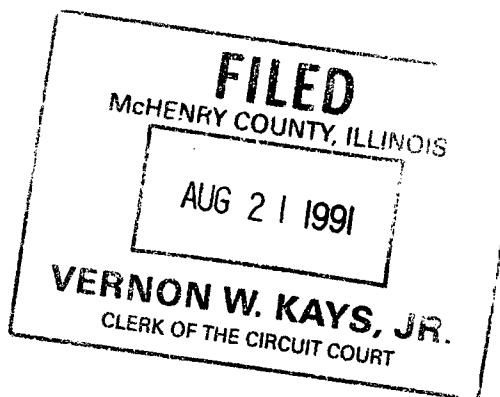
Defendant's
Attorney

James F. Kays

ORDER

*This matter coming on to a hearing on
defendant's motion*

*Defendant's motion & content is granted to
October 23, 1991 at 1:30 pm*



Prepared by:

Attorney for:

Attorney Registration No.:

22823

Judge

James F. Kays

CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS }
COUNTY OF McHENRY } SS

GEN. NO. 90 CF 655
☐ Jury ☐ Non-Jury

People vs. Paul R. Dulberg

Date 10/23/91 Plaintiff's Attorney Browder Defendant's Attorney Driscoll

ORDER

This matter coming before the court for status on motions. The court being fully advised in the premises hereby orders:

That the case is placed on the October 28, 1991 Jury Conference Call at 9:00 a.m. The defendant has until 10-28-91 to file any further pre-trial motions. Any motions filed after that date will be barred. This does not bar motions in line or supplemental discovery.

This ordered the 23rd day of October 1991

Prepared by: Browder OCT 23 1991

Attorney for: People.
VERNON W. K...
Clerk of the Circuit Court

Attorney Registration No.: _____ Judge

[Signature]

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY

FILED
McHENRY COUNTY, ILLINOIS

OCT 28 1991

VERNON W. KAYS, JR.
CLERK OF THE CIRCUIT COURT

PEOPLE OF THE STATE OF ILLINOIS)
)
Plaintiff,)
)
v.)
)
PAUL R. DULBERG,)
)
Defendant.)

No. 90 CF 655

MOTION TO QUASH ALL STATEMENTS
MADE BY THE DEFENDANT AND TO
QUASH AND SUPPRESS ANY EVIDENCE
SEIZED FROM THE DEFENDANT'S COAT

NOW COMES the Defendant, PAUL R. DULBERG, by and through his attorney JAMES F. DRISCOLL and in support of this Motion states as follows:

1. That the Defendant was not competent to knowingly waive his constitutional rights when he signed the consent form previously introduced during the original Motion to Quash the Arrest and Suppress the Evidence.

2. That the Defendant's statements to the police both immediately and prior to the time of his arrest and subsequent thereto, were not free and voluntarily made because he was under the influence of drugs at the time these statements were made.

WHEREFORE, Defendant prays that this Honorable Court enter an order quashing all statements made by the Defendant and to quash and suppress any evidence seized from the Defendant's cost.


JAMES F. DRISCOLL

DRISCOLL & DRISCOLL
Attorneys for Defendant
1920 N. Thoreau Dr.
Suite 166
Schaumburg, IL 60173
(708) 397-3909

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19TH JUDICIAL
McHENRY COUNTY

FILED
McHENRY COUNTY, ILLINOIS

OCT 28 1991
CIRCUIT

VERNON W. KAYS, JR
CLERK OF THE CIRCUIT COURT

PEOPLE OF THE STATE OF ILLINOIS)

Plaintiff,)

v.)

PAUL R. DULBERG,)

Defendant.)

No. 90 CF 655

MOTION TO RECONSIDER THE COURT'S
DENIAL OF THE DISCLOSURE OF
THE IDENTITY OF THE INFORMANT

NOW COMES the Defendant, PAUL R. DULBERG, by and through his attorney JAMES F. DRISCOLL and respectfully moves this Honorable Court to enter an order upon the State requiring them to disclose the identity of the informer in the instant cause who had knowledge or participated in the purported delivery of the controlled substance.

In support hereof, the Defendant states as follows:

1. That he is the Defendant in the above captioned cause.
2. That the Defendant indicted under Chapter 56 1/2 Section 1401 (a) (2) of the Illinois Revised Statutes, is charged with the unlawful possession with intent to deliver a controlled substance.
3. That the Defendant indicted under Chapter 56 1/2, Section 1402 (a) (2) of the Illinois Revised Statutes is charged with the unlawful possession of a controlled substance.
4. That the Defendant indicted under Chapter 56 1/2, Section 705 (d) of the Illinois Revised Statutes is charged with unlawful possession with intent to deliver cannabis.

5. That at no time on November 28, 1990 did the Defendant sell, deliver or give any controlled substance to any person whatsoever.

6. That the McHenry County Sheriff's Department case reports indicate that on or about November 28, 1990 the Defendant allegedly was trying to distribute a controlled substance to persons at the location commonly known as Robinson Industries 11320 East Main Street in the town of Huntley, Illinois.

7. That at the time as aforesaid, certain McHenry County Sheriff's Deputies were not in the presence nor did they have first hand knowledge from a known reliable source of the alleged distribution of controlled substances.

8. That on 11-28-90 Sheriff's Deputy Fung received a telephone call from an unidentified source that Defendant was distrusting controlled substances as Robinson Industries.

9. That from Deputy Fung's testimony, he did not know the informer's identity prior to November 28, 1990.

10. That from testimony of Deputy Fung that the informer never provided any information as to this Defendant or on any person prior to November 28, 1990.

11. That from testimony of Sheriff's Deputy Major Crabtree in that. he also did not know the informer's identity prior to November 28, 1990.

12. That from testimony of Sheriff's Deputy Major Crabtree that he never received information from this informer or knew of the informer's reliability.

13. That from testimony of witness Lynette Doty a co-employee at the Defendant's place of business of being informed by Sheriff's Deputies that Defendant was presently selling drugs at Robinson Industries.

14. That because the above demonstrates that the informer was either an active participant i.e. purchaser or eye witness in the alleged distribution, the Defendant respectfully requests this Honorable Court to order the State to disclose the identity of the informer and to produce him at trial.

15. Case law supports disclosure of an informant's identity once it is determined that the informant's testimony is potentially crucial to the Defendant.

16. In Roviaro v. United States, 353 U.S. 53, 77 S.Ct 623, the Supreme Court stated:

This is a case where the Government's informer was the sole participant other than the accused in the transaction charged. The informer was the only witness in a purchase to amplify or contradict the testimony of government witnesses.

Unless petitioner waived his constitutional right not to take the stand in his own defense, John Doe (the informer) was his one material witness. Petitioner's opportunity to cross examine police officer Bryson and federal narcotics Agent Durham was hardly a substitute for an opportunity to examine the man who was nearest to him and took part in the transaction. Doe had helped to set up the criminal occurrence and had played a prominent part in it.

17. The Illinois Supreme Court in a series of opinions adopted the rationale cited above in Roviaro. In People v. Lewis, 311 N.E. 2d 685, the court there stated at page 689:

As in Roviaro, here the Government's informer was the sole participant other than the accused and a purchasing police officer in the transaction charged. The informer was the only witness in a position to amplify or contradict the testimony of the Government witnesses. In such instances the Defendant must, at a minimum, be allowed to interview the informer, and if he desires, call him as his own witness, and the informer should not be made to disclose his true name and address if it can truly be shown that his life or safety is in jeopardy. Such a procedure will insure that the defendant is not denied his constitutional rights and that the informer will be provided adequate protection to insure his health and safety, and not diminish the ability of the State to use informers in the course of its narcotics investigations.

18. According to statute disclosure is warranted when the Defendant's constitutional rights are infringed. Ill Revised Statutes, ch. 110A, par. 412(j)(ii) (1989).

From paragraph 412(j):

(j) Matters Not Subject to Disclosure.

(i) Work Product. Disclosure under this rule and Rule 413 shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the State or members of its legal or investigative staffs, or of defense counsel or his staff.

(ii) Informants. Disclosure of an informant's identity shall not be required where his identity is a prosecution secret and a failure to disclose will not infringe the constitutional rights of the accused. Disclosure shall not be denied hereunder of the identity of witnesses to be produced at a hearing or trial.

(iii) National Security. Disclosure shall not be required where it involves a substantial risk of grave prejudice to national security and where a failure to disclose will not infringe the constitutional rights of the accused. Disclosure shall not thus be denied hereunder regarding witnesses or material to be produced at a hearing or trial.

Ill Rev. Stat. ch. 110A, par 412(j) (1989)

19. In deciding upon the issue of disclosure Illinois Courts have utilized a balancing test. People v. Raess, 146 Ill App 3d 384, 496 NE 2d 1186 (1986), People v. Thorton, 125 Ill App 3d 316, 465 NE.2d 1049, 80 Ill. Dec. 703 (1979). The Raess court considered the following factors as to disclosure:

1. does the disclosure relate to the guilt or innocence of the Defendant rather than to the preliminary issue of probable cause;
2. whether the informant played an active role in the criminal occurrence i.e. whether he participated in and/or witnessed the offense, or assisted in setting up its commission; and
3. whether the informant's life or safety would likely be jeopardized by disclosure of his identity.

20. As the Raess decision indicates, Illinois Courts have expanded upon the standard enunciated by the Supreme Court in Roviaro which held that disclosure would be warranted when an informer acted in a dual role of informer-participant. People v. Zambetta, 132 Ill App. 3d 740, 87 Ill. Dec, 695 (1985).

21. In Thorton the Court stated without equivocation that a crucial factor is whether the informer was also a witness to the offense "Id" 465 NE.2d 1049 at 1051.

22. In the instant case Defendant is charged with both possession and intent to deliver. The initial information received by Deputy Fung was from an unknown source. According to Deputy Fung the source made reference to the distribution of

narcotics at Robinson Industries. Upon investigating this information the Deputies Fung and Crabtree informed others that distribution was taking place. No party has been identified as having seen this Defendant distribute the narcotics as he is so charged with.

23. The Roviaro decision and Illinois holdings and statutory language indicate that Defendant's have a right to confront informants whose testimony becomes crucial their defense.

24. Here the informer witness, a potentially active participant is needed to amplify or contradict the testimony of the government witnesses.

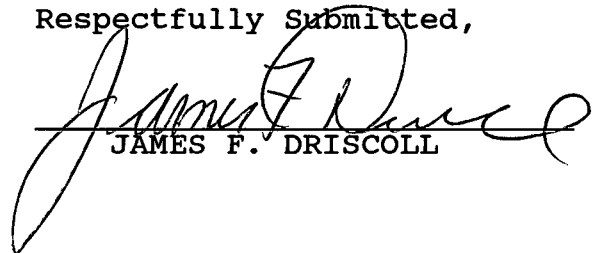
25. The Defendant respectfully moves this Honorable Court as of this date to enter an order upon the State to require the State to make efforts now to locate the informer and keep track of his whereabouts so that the informer will be available at the trial of this cause.

26. In U.S. v. Jones, 492 F.2d 239, the United States Court of Appeals held that "If for legitimate reasons the Government decides not to identify the informer in advance of trial and absent special circumstances, it must take reasonable steps to have him available when the case is called should a ruling in favor of disclosure be made." U.S. v. Jones, 492 F.2d 239 (1974)

NOW, WHEREFORE, the Defendant respectfully moves this Honorable Court to require the State to disclose the identity of the informer who participated in the alleged transaction and to introduce him at trial, and further moves this Honorable Court to

require the State as of this date to make efforts to locate the informer and keep track of his whereabouts so that he may be available at the trial of this cause.

Respectfully Submitted,



JAMES F. DRISCOLL

DRISCOLL & DRISCOLL
Attorneys for Defendant
1920 N. Thoreau Dr.
Suite 166
Schaumburg, IL 60173
(708) 397-3909

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY

FILED
McHENRY COUNTY, ILLINOIS

OCT 28 1991

VERNON W. KAYS, JR.
CLERK OF THE CIRCUIT COURT

PEOPLE OF THE STATE OF ILLINOIS)
)
 Plaintiff,)
)
v.)
)
PAUL R. DULBERG,)
)
 Defendant.)

No. 90 CF 655

MOTION TO RECONSIDER THE
DENIAL OF THE DEFENDANT'S MOTION TO
QUASH AND SUPPRESS THE EVIDENCE FILED
ON APRIL 18, 1991

NOW COMES the Defendant, PAUL R. DULBERG, by and through his attorneys, DRISCOLL & DRISCOLL, and in support of his Motion to Reconsider the Denial of the Defendant's Motion to Quash and Suppress the Evidence Filed on April 18, 1991, states as follows:

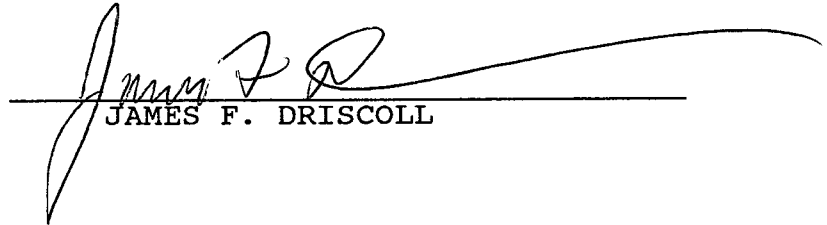
1. That the Defendant re-alleges and incorporates by reference the original facts and arguments contained in the first Motion filed on April 18, 1991.

2. That the Defendant respectfully requests this Court to specifically focus its attention to the seizure of the Defendant's coat prior to the time that the Defendant was interrogated by the police.

3. That this aspect of the Motion to Quash was not specifically addressed by the Court in its earlier ruling.

4. That the Defendant specifically relies upon the testimony of May 7, 1991 and the attached Affidavit.

WHEREFORE, Defendant prays that this Honorable Court reconsider the denial of the Defendant's Motion to Quash and Suppress the evidence filed on April 18, 1991.



A handwritten signature in dark ink, appearing to read 'James F. Driscoll', is written over a horizontal line. The signature is stylized with a large initial 'J' and a long, sweeping horizontal stroke extending to the right.

DRISCOLL & DRISCOLL
Attorneys for Defendant
1920 N. Thoreau Drive, Suite 166
Schaumburg, IL 60173
708/397-3909

CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS }
COUNTY OF McHENRY } SS

GEN. NO. 90 CF 655
☐ Jury ☐ Non-Jury

People vs. Paul Dulberg

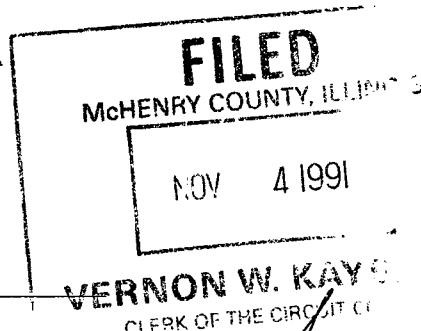
Date 11/4/91 Plaintiff's Attorney Browder Defendant's Attorney Driscoll

ORDER

This matter coming before the court for status on defendants motions. The court being fully advised in the premises hereby orders:

That this matter is set for hearing on 12-4-91 at 10:00 a.m.

This ordered the 4th day of November 1991.



Prepared by: Browder
Attorney for: People.
Attorney Registration No.: _____

Judge [Signature]

CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS }
COUNTY OF McHENRY } SSGEN. NO. 90 CF 655
☐ Jury ☐ Non-Jury

People

vs.

Paul Dulberg

Date 12-4-91 Plaintiff's Attorney Browder Defendant's Attorney Driscoll

ORDER

This matter coming before the court for hearing on the defendants motion to Quash & Reconsider. The court being fully advised hereby orders;

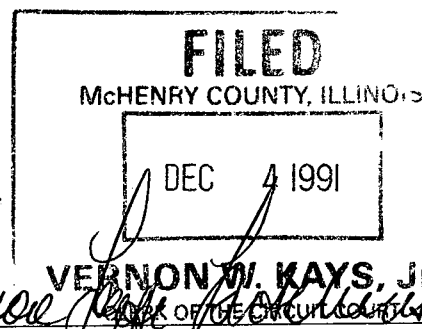
That on defendants motion the case is continued until 12-23-91 at 9:00 a.m. for hearing. The court being fully advised hereby orders that the case is set for that day. All over the State's Objection.

This ordered the 4th day of December 1991

Prepared by: BrowderAttorney for: People

Attorney Registration No.: _____

Judge



IN THE CIRCUIT COURT OF THE 19th JUDICIAL CIRCUIT

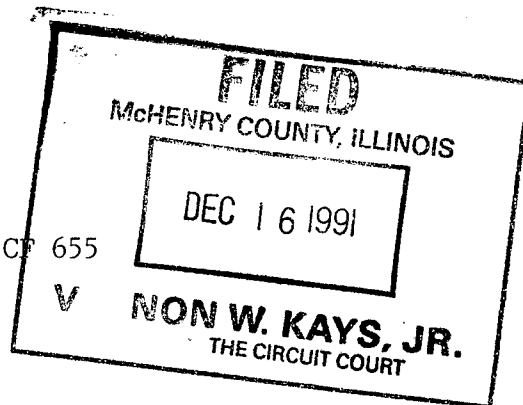
McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

vs.

PAUL R. DULBERG

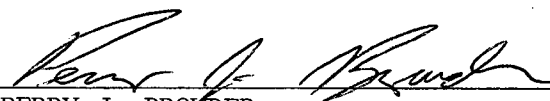
No. 90 CF 655



NOTICE OF MOTION

To James F. Driscoll
DRISCOLL & DRISCOLL
Attorneys at Law
1920 N. Thoreau Drive, Suite 166
Schaumburg, IL 60173

On December 20, 19 91, at 9:00a. m., or as soon thereafter as
counsel may be heard, I shall appear before the Honorable Judge Hutchinson or any judge sitting in
his stead, in the courtroom usually occupied by him in Court House, 2200 N. Seminary Avenue (Route 47),
Woodstock, Illinois and then and there present the attached Motion to Continue.


PERRY J. BROWDER
Assistant State's Attorney

Name THOMAS F. BAKER

Attorney for McHenry County

Address 2200 N. Seminary Ave.

City Woodstock, IL 60098

Telephone (815)338-2069

Copy received _____, 19_____, at _____, _____ m.

Prepared By _____ Attorney For _____

Attorney Registration No. _____

PROOF OF SERVICE BY DELIVERY

IMAGED 8/19/2016

I, _____
(the attorney, certify) (a non-attorney, on oath state)

On _____, 19____, I serve this notice by delivering a copy personally to each person to whom it is directed.

(If not the attorney
Signed and sworn to before me

_____, 19____

Notary Public

PROOF OF SERVICE BY MAIL

I, _____
(the attorney, certify) (a non-attorney, on oath state)

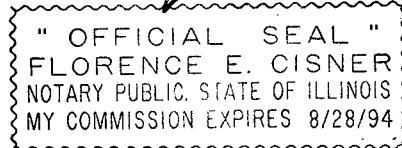
I served this notice by mailing a copy to _____
at _____
(address which appears on envelope)

and depositing the same in the U.S. Mail at _____
(place of mailing)
at 5:00p.m. on December 16, 19 91, with proper postage prepaid.

(If not the attorney)
Signed and sworn to before me

December 16, 19 91

Notary Public



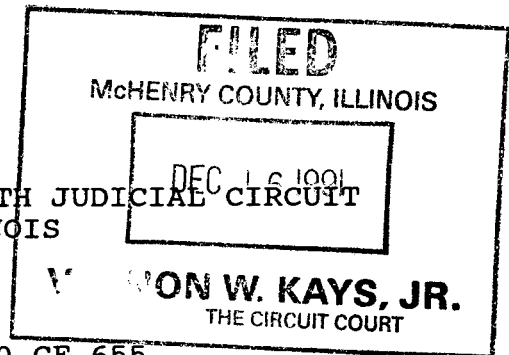
NOTE: If more than one person is served by mail, additional proof of service may be made on the reverse side.

STATE OF ILLINOIS)
) SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
)
 vs.)
)
PAUL R. DULBERG)

No. 90 CF 655

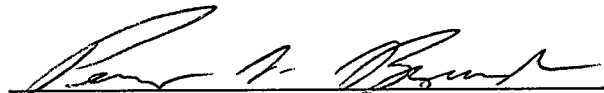


MOTION TO CONTINUE

NOW COME the People of the State of Illinois, by and through their attorney, THOMAS F. BAKER, State's Attorney for McHenry County, Illinois, by and through one of his duly appointed Assistants, PERRY J. BROWDER, and move for a continuance of the above referenced matter and in support thereof states that two material witnesses for the State in the above referenced case will be unavailable at time of trial.

WHEREFORE, the People of the State of Illinois pray for an Order from this Court rescheduling the above mentioned case.

Respectfully submitted,


PERRY J. BROWDER
Assistant State's Attorney

THOMAS F. BAKER
McHenry County State's Attorney
McHenry County Government Center
2200 N. Seminary Ave.
Woodstock, Illinois 60098
(815)338-2069

STATE OF ILLINOIS)
) SS
COUNTY OF McHENRY)

A F F I D A V I T

CHRIS JANORE, being first
duly sworn upon his/her oath, deposes and says:

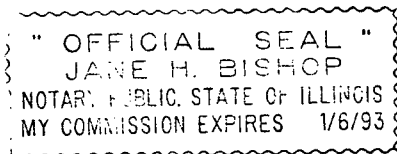
1. That ~~he~~/she is a member of the McHENRY COUNTY
SHERIFF'S POLICE.
2. That ~~he~~/she will be on vacation attending school from
DEC 20, 91 until DEC 31, 91.
3. That he/she is making this affidavit for the purpose of requesting
that the Court continue any and all cases in which he/she is a material
witness until after RETURN TO WORK TUESDAY/ DEC 31.

FURTHER AFFIANT SAYETH NOT

Chris Janore
AFFIANT
#159 DET DIV.

Subscribed & Sworn to before me
this 4th day of December, 1991.

Jane H. Bishop
NOTARY PUBLIC



STATE OF ILLINOIS)
) SS
COUNTY OF McHENRY)

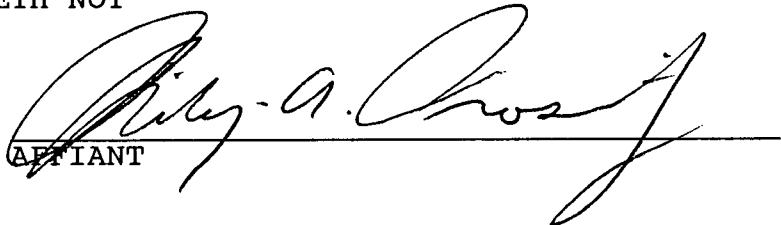
PEOPLE OF THE STATE OF ILLINOIS)
)
) NO. 90 CF 655
)
PAUL R. DULBERG)

AFFIDAVIT

Now before me the undersigned, Assistant State's Attorney
PHILIP A. PROSSNITZ upon oath states as follows:

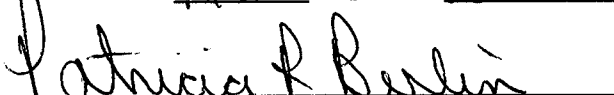
1. My name is Philip A. Prossnitz.
2. I am the senior narcotics Assistant State's Attorney in
the McHenry County State's Attorneys Office.
3. Prior to the setting of this Motion Hearing for December
20, 1991, I had submitted a request for vacation time. I will be
on vacation from December 18, 1991 at 2:15p.m. through December 27,
1991 which has been granted. Vacation time cannot be carried over
to 1992.

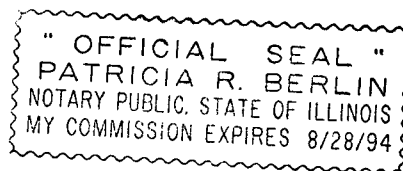
FURTHER AFFIANT SAYETH NOT


AFFIANT

SUBSCRIBED AND SWORN to before

me this 16th day of December, 1991.


Notary Public



CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS
COUNTY OF McHENRY

SS

FILED
McHENRY COUNTY, ILLINOIS

GEN. NO. 90 CF 655
☐ Jury ☐ Non-Jury

DEC 20 1991

People **ERNON W. KAYS** Paul Dulberg
CLERK OF THE CIRCUIT COURT

Date 12/20/91 Plaintiff's Attorney Browder Defendant's Attorney Herrmann

ORDER

This matter coming before the Court on State's Motion to Continue, the Court being fully advised hereby orders:

That the case is continued until January 17, 1992 for Hearing on all defendants motion, this matter previously set for hearing with state's witnesses present and defendant continuing to this date for hearing. This case will be heard on 1-17-92 with the motions to reconsider in front of Judge Hutchinson and the motion to quash confession before Judge Franz.

This ordered the 20th day of December 1991

Prepared by: Browder

Attorney for: _____

Attorney Registration No.: _____

Judge

Aaron J. Herrmann

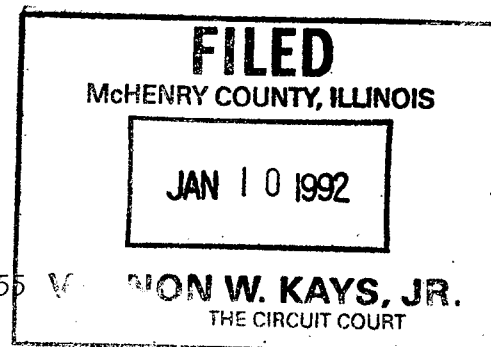
IN THE CIRCUIT COURT OF THE 19th JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

PAUL R. DULBERG

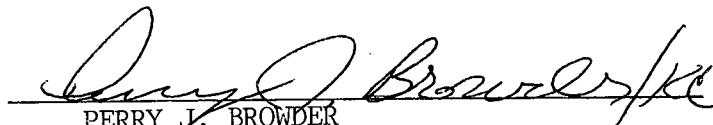
No. 90 CF 655



NOTICE OF MOTION

To James F. Driscoll
DRISCOLL & DRISCOLL
Attorneys at Law
1920 N. Thoreau Drive, Suite 166
Schaumburg, IL 60173

On January 15, 1992, at 9:00a.m., or as soon thereafter as
counsel may be heard, I shall appear before the Honorable James C. Franz or any judge sitting in
his stead, in the courtroom usually occupied by him in Court House, 2200 N. Seminary Avenue (Route 47),
Woodstock, Illinois and then and there present the attached Motion to Continue and
Affidavit.

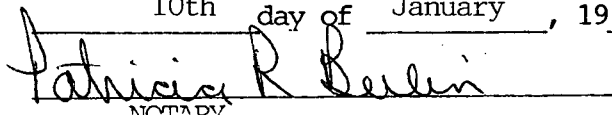

PERRY J. BROWDER
Assistant State's Attorney

Name THOMAS F. BAKER, State's Attorney
Attorney for McHenry County
Address 2200 N. Seminary Avenue
Woodstock, Illinois
City (815) 338-2069
Telephone

PROOF OF SERVICE BY MAIL

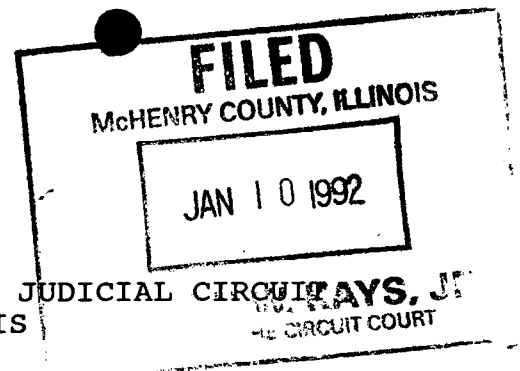
Kimberly Cundiff
I, ~~PAUL R. DULBERG~~, a non attorney, on oath attest that on 01/10, 1992, I serve this
notice by faxing a copy to James Driscoll at FAX #708-397-3909
at McHenry County Government
Center by 4:00 p.m. on January 10, 1992.

SIGNED and SWORN to before me on this
10th day of January, 1992.


Patricia R. Berlin
NOTARY PUBLIC

" OFFICIAL SEAL "
PATRICIA R. BERLIN
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 8/28/94

STATE OF ILLINOIS)
) SS
COUNTY OF McHENRY)



IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

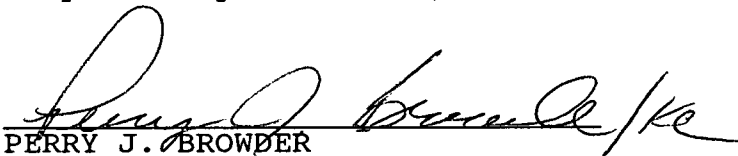
PEOPLE OF THE STATE OF ILLINOIS)
)
 vs.) No. 90 CF 655
)
PAUL R. DULBERG)

MOTION TO CONTINUE

NOW COME the People of the State of Illinois, by and through their attorney, THOMAS F. BAKER, State's Attorney for McHenry County, Illinois, by and through one of his duly appointed Assistants, PERRY J. BROWDER, and move for a continuance of the above referenced matter and in support thereof states that a material witness for the State will be absent on said date and said case would be prejudice by said witness's absence.

WHEREFORE, the People of the State of Illinois pray for an Order from this Court rescheduling the above mentioned case.

Respectfully submitted,


PERRY J. BROWDER
Assistant State's Attorney

THOMAS F. BAKER
McHenry County State's Attorney
McHenry County Government Center
2200 N. Seminary Ave.
Woodstock, Illinois 60098
(815) 338-2069

STATE OF ILLINOIS)
COUNTY OF McHENRY) SS

Perry

COPY.

AFFIDAVIT

ROBERT CRABTREE, being first

duly sworn upon his/her oath, deposes and says:

1. That he/she is a member of the McHenry County
Sheriff's Dept.

2. That he/she will be on vacation/attending school from
JAN 13, 1992 until MARCH 16th 1992.

3. That he/she is making this affidavit for the purpose of requesting
that the Court continue any and all cases in which he/she is a material
witness until after MARCH 16th 1992.

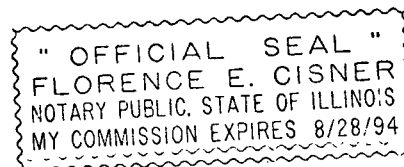
FURTHER AFFIANT SAYETH NOT

Chief Robert Crabtree
AFFIANT

Subscribed & Sworn to before me

this 4th day of December, 1991

Florence E. Cisner
NOTARY PUBLIC



CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS
COUNTY OF McHENRY

SS

GEN. NO.

90 CF 655

☐ Jury ☐ Non-Jury

People vs. Paul R. Dilberg

Date 1/15/92

Plaintiff's
Attorney

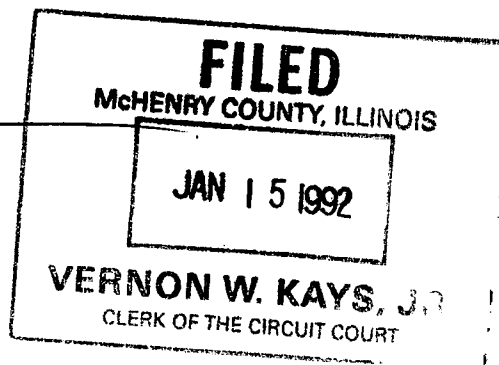
Breder

Defendant's
Attorney

Sikora

ORDER

This matter continued
on status motion for
hearing to 4-1-92
at 1:30 P.M.



Prepared by: _____

Attorney for: _____

Attorney Registration No.: _____

Judge

[Handwritten signature]

CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS
COUNTY OF McHENRY

} SS

GEN. NO. 90 CF 655
☐ Jury ☐ Non-Jury

People vs. Paul Dulberg

Date 1/17/92 Plaintiff's Attorney Browder Defendant's Attorney Driscoll

ORDER

This matter coming before the court for hearing on Defendant's motions to Reconsider. The court being fully advised in the premises hereby orders:

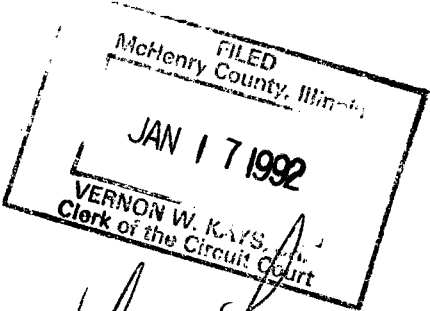
That the ~~case and~~ motions to reconsider are continued until 2-21-92 for hearing at 10:00 a.m. on defendant's motion.

This ordered the 17th day of January 1992

Prepared by: BrowderAttorney for: People.

Attorney Registration No.: _____

Judge


James Joseph Buchanan

CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS
COUNTY OF McHENRY

} SS

GEN. NO. 90 CF 655

☐ Jury ☐ Non-Jury

PEOPLE OF THE STATE OF ILLINOIS

vs.

PAUL R. DULBERG

Date 2-20-92

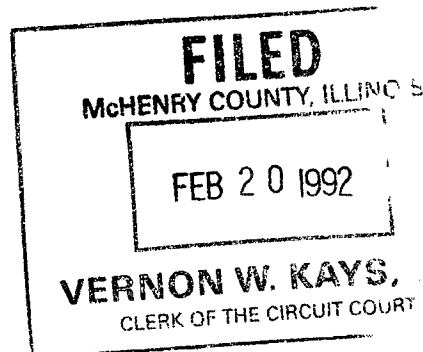
Plaintiff's
Attorney ASA- Prossnitz

Defendant's
Attorney James F. Driscoll

AGREED ORDER

This matter coming before the Court on an Agreed Order, due notice having been waived and the court having been fully advised in the premises:

It is hereby ordered that the Motion to Reconsider previously filed filed by the Defendant in this case is continued by agreement until Thursday, February 27, 1992 at 10:00 a.m. without further notice.



Prepared by: Philip A. Prossnitz

Attorney for: S.A.O.

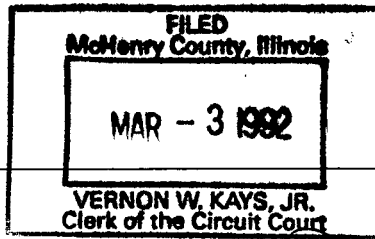
Attorney Registration No.:

Judge

A handwritten signature in dark ink, appearing to be "James C. Driscoll", written over a horizontal line.

CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS }
COUNTY OF McHENRY } SS



GEN. NO. 90 CF 655
☐ Jury ☐ Non-Jury

People vs. Paul R. Dulbey

Date 2/28/92 Plaintiff's Attorney Browder Defendant's Attorney Priscoll

ORDER

This matter coming before the court on defendant's motions to reconsider, the court being fully advised hereby orders:
that the court has reviewed the written motions to reconsider and heard argument on these motions, the defendant's motions to reconsider are denied in their entirety.

This ordered the 3rd day of March 1992

Prepared by: Browder
Attorney for: People
Attorney Registration No.: _____

Judge [Signature]

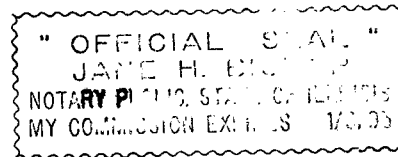
Attorney Registration No.

CERTIFICATE OF SERVICE

I, Patricia Schmitt, on oath state, I served this Notice of Motion by personally mailing a copy to James F. Driscoll, Attorney for Defendant, 1920 N. Thoreau Drive, Suite 166, Schaumburg, IL 60173 by placing a copy of the same in the mail at 2200 N. Seminary Ave., Woodstock, Illinois, 60098, at 5:00p.m., on March 4th, 1992, with proper postage prepaid

Patricia Schmitt

Signed and Sworn to before me this
4th day of March, 1992.



Jane H. Burkhart
Notary Public

CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS
COUNTY OF McHENRY

SS

GEN. NO.

90CF655

☒ Jury ☐ Non-Jury

People

vs.

Paul Dulberg

Date

4/21/92

Plaintiff's
Attorney

ASA BRODER

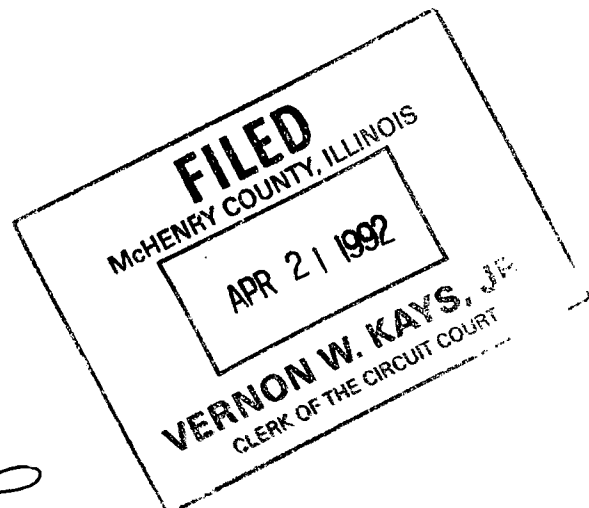
Defendant's
Attorney

JAMES E. DRISCOLL

ORDER

This matter comes on to be heard on defendant's motion to leave the jurisdiction of the court to attend the annual national Scout training camp at Ft. McCoy Wis during the period from May 30, 1992 to June 13, 1992 and the court being advised,

it is hereby ordered that the defendant be allowed to leave the jurisdiction of the court from May 30, 1992 to June 13, 1992 to attend annual training at Fort McCoy Wis.



Prepared by:

Attorney for:

Attorney Registration No.:

22863

Judge

Ward Skoold

IN THE CIRCUIT COURT OF THE 19th JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED TCA 670
McHENRY COUNTY, ILLINOIS

MAY 28 1992

VERNON W. KAYS, Jr.
CLERK OF THE CIRCUIT COURT

No. 90CF-655

PEOPLE OF THE STATE OF ILLINOIS

vs.

Paul Dulberg

WAIVER OF JURY TRIAL

Paul Dulberg, the defendant in the above entitled cause, acknowledges that he knows that he is entitled to a jury trial and that he further understands that a jury consists of twelve people chosen to determine the facts and his guilt or innocence of the criminal charge brought against him in this matter.

Paul Dulberg waives his right to trial by jury and understands that by waiving his right to trial by jury, this matter will be tried by a judge assigned to hear it.

I have read the foregoing and knowingly and understandingly waive the right to jury trial and request trial by the Court.

Paul Dulberg
Defendant

IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
STATE OF ILLINOIS
COUNTY OF McHENRY

PEOPLE OF THE STATE OF ILLINOIS

VS.

CRIMINAL
No. 90CF655

Paul R. Dulberg
Defendant

ORDER FOR PRESENTENCE INVESTIGATION AND REPORT

A judgment of conviction having been entered herein against the above named defendant for the offense of Ct. 2 (Possn Cocaine 15-100gr); Ct 3 (Possn. Cannabis 30-500gr)

IT IS HEREBY ORDERED:

1. That a presentence investigation shall be conducted by the Adult Probation Office in accordance with the provisions of Section 1005-3-2 (a) of the Unified Code of Corrections, and a written report thereof filed with the Clerk of this Court within 30 days of this Order.

2. That the Clerk shall forthwith deliver a copy of this Order to the Adult Probation Office, and this cause will stand continued to July 7, at 9 o'clock A M for a sentencing hearing.

DATED: May 28, 1992

ENTER

Circuit Judge

Ward Staudt

STATE'S ATTORNEY:

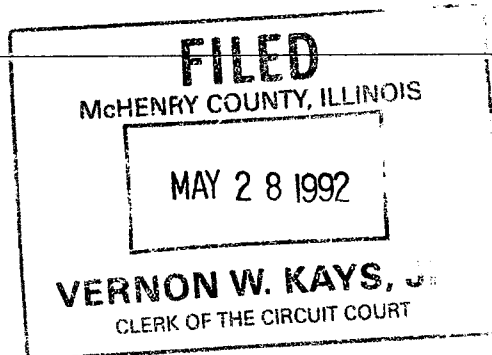
Perry Browder

DEFENSE:

James F. Driscoll

Filed

Clerk



276

STATE OF ILLINOIS }
 McHenry County } ss.

FILED
 McHENRY COUNTY, ILLINOIS

JUN 25 1992

THE PEOPLE OF THE STATE OF ILLINOIS,
 TO THE SHERIFF OF SAID COUNTY, GREETINGS: VERNON W. KAYS, JR.
 CLERK OF THE CIRCUIT COURT

WE COMMAND YOU, That you summon Craig Isakson
DOB: 07/05/1958
503 S. Emerald
McHenry, IL 60050

to appear before the Circuit Court of said county at Woodstock, on the 7th
 day of July, 1992, at the hour of 9:00a.m to testify and the
 truth to speak in behalf of the People of the State of Illinois

90 CF 655

 in a cause now pending in said Court, wherein the People of the State of Illinois are
 Plaintiffs, and PAUL R. DULBERG Defendant.

And have you then and there this Writ, with an endorsement thereon, in what manner
 you shall have executed the same

Please contact this
 office upon receipt
 of this subpoena.

PERRY J. BROWDER
 (815) 338-2069

WITNESS, , Clerk of our said Court and seal
 thereof, at Woodstock, this 18th day
 of June 1992

Vernon W. Kays, Jr. Clerk.

IMAGED 8/19/2016

Isakson, Craig

Gen. No. 90 CF 655

People's Subpoena

McHenry County Circuit Court.

In the matter of

People of the State of Illinois

vs.

PAUL R. DULBERG

Subpoena on the part of

STATE OF ILLINOIS, ss.
McHenry County

Woodstock, Ill., June 23 19 92

I have duly served the within by reading the same to the within named

Craig Isakson (M/W-33) served personally on 6/23/92 at 1:30 p.m. at 503 S. Emerald, McHenry, IL

as I am therein commanded.

Michael E. De Deputy
George H. Hendle Sheriff.

Fees - Service 10.00

Mileage 12.00

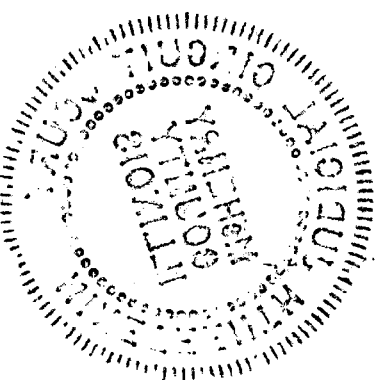
Return 5.00

Filed in the Circuit Court this

day of A.D. 19

Clerk.

Attorney.



CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS }
COUNTY OF McHENRY } SS

GEN. NO. 90 CF 655
☐ Jury ☐ Non-Jury

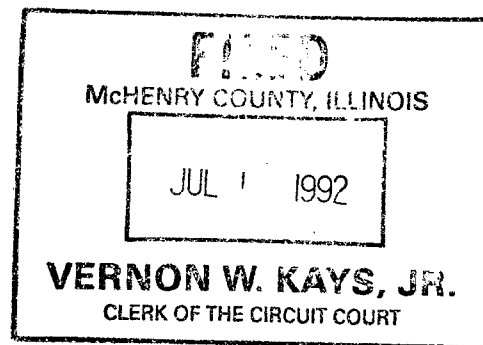
People vs. Paul Dulberg

Date 7/1/92 Plaintiff's Attorney Browder Defendant's Attorney Driscoll

ORDER

This matter coming before the court for entry of an agreed order. The court being fully advised hereby orders; that the sentencing is continued until 7-9-92 at 9:00 a.m. All Subpoenas are continued until that day.

This order entered the 1st day of July 1992



Prepared by: Browder
Attorney for: People.
Attorney Registration No.: _____

Judge Wend S. Small

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

IN THE NINETEENTH JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

THE PEOPLE OF THE)
STATE OF ILLINOIS,)
)
Plaintiff,)
)
-vs-)
)
PAUL R. DULBERG,)
)
Defendant.)

No. 90 CF 655

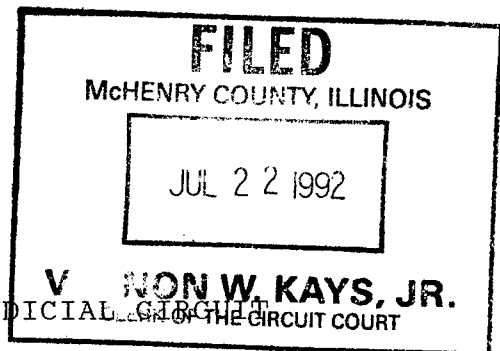
SENTENCING HEARING

REPORT OF PROCEEDINGS had of the hearing
before the HONORABLE WARD S. ARNOLD on the 9th day of
July, 1992, in the McHenry County Government Center,
Woodstock, Illinois.

APPEARANCES:

HONORABLE THOMAS F. BAKER,
State's Attorney of McHenry County, by:
MR. PERRY J. BROWDER,
Assistant State's Attorney,
appeared for the People.

DRISCOLL & DRISCOLL, by:
MR. JAMES F. DRISCOLL,
appeared for the Defendant.



1 THE COURT: People vs. Dulberg. This is 90 CF 655.
2 The matter comes on for sentencing. The defendant is
3 present with his attorney, Mr. Driscoll.

4 Mr. Driscoll, have you been provided with the
5 copy of the Presentence Investigation?

6 MR. DRISCOLL: Yes, I have. I picked it up
7 yesterday, your Honor.

8 THE COURT: Mr. Browder, is there any factual
9 matters in the Presentence Investigation with which you
10 have any dispute?

11 MR. BROWDER: No, we do not have any. The only
12 thing we would have in addition to that is, because the
13 Court did not hear the prior motions, the weight of the
14 substance, on both the cocaine, the tested amount, there
15 was a threshold matter they reasoned was 20.9 grams and
16 33.3 grams of cannabis. That's the only addition we
17 would have to the Presentence Investigation. Those were
18 the weights in which Mr. Dulberg had pled guilty to.

19 THE COURT: Mr. Driscoll, are there any factual
20 matters with which you have any dispute in the
21 Presentence Investigation?

22 MR. DRISCOLL: There's one matter, your Honor. In
23 light of the fact I don't believe it's part of the plea,
24 I don't think it should be considered by the Court;

1 that's with respect to Mr. Isakson and that's on page 4.
2 That's the only thing that we would take exception to
3 with respect to this matter.

4 The only other thing I would point out to the
5 Court is if you look at page 6, and this isn't a terribly
6 big thing I don't think, but if you look at the last
7 three -- last two convictions, there is a bond forfeiture
8 there. The reason for the bond forfeiture is my client
9 was in jail and there was a processing problem getting
10 him from the jail over to the court and he was in custody
11 at that time.

12 MR. BROWDER: That's fine. As to page 6 we would
13 have no objection to that clarification, though we do
14 reserve the right to argue any of the factors in
15 aggravation that did involve Mr. Isakson as part of the
16 investigation.

17 THE COURT: What's the status of Mr. Dulberg's
18 license -- I'm sorry, it's right here.

19 MR. DRISCOLL: He currently does have a driver's
20 license.

21 THE COURT: Does the State have any evidence in
22 aggravation?

23 MR. BROWDER: We would present nothing further in
24 aggravation except what has been presented in the

1 Presentence Investigation and we would reserve argument.

2 THE COURT: Mr. Driscoll, do you have any evidence
3 in mitigation?

4 MR. DRISCOLL: I have several letters here we would
5 like to present to the Court. We would like to call one
6 witness to the Court. There is, I think, as the Court
7 knows, a lot of people here concerned about him. Of all
8 those people, I think one person would probably
9 summarize.

10 MR. BROWDER: We would only request if there's going
11 to be documentation that we get an opportunity to review
12 it prior to making --

13 MR. DRISCOLL: I'll let you look at them.

14 Do you want me to call the witness?

15 THE COURT: All right.

16 MR. DRISCOLL: Do you want him to take the stand?

17 THE COURT: However you want to do it.

18 MR. DRISCOLL: We'll do it right here.

19 THE COURT: Sir, raise your right hand.

20 (Witness sworn.)

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TIMOTHY JAMES STEWART

called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DRISCOLL:

Q Please state your name for the Court, please.

A Timothy James Stewart.

Q And you are a captain --

A Captain.

Q -- in the National Guard?

A Illinois Army National Guard.

Q How long have you been with Illinois National Guard?

A Total military service is seventeen years; over at Illinois Army National Guard, nine years.

Q And you are currently in charge of a company?

A I'm currently in charge of Woodstock National Guard.

Q Do you know the defendant in this matter, Paul Dulberg?

A Yes.

Q How do you know him?

A He is an auto rifleman in the Second Squad,

1 Second Platoon Alpha team.

2 Q How long has he been in your company?

3 A He's been in the company through the duration
4 of my command, which is 1 September of '90.

5 Q Okay, that would --

6 A Almost two years.

7 Q Have you had direct contact with him during
8 this period of time?

9 A Yes, I have.

10 Q And when was it you became first involved with
11 him on a direct basis?

12 A Shortly after the incident occurred.

13 Q The arrest?

14 A The arrest. I became interested. Because of
15 my background as military policeman, my initial reaction
16 was: another problem child. Once Paul was released and
17 came back, I counseled him returning to the guard and he
18 was welcome in the unit and I expected him to perform as
19 a soldier until all hearings and everything were carried
20 out and we would be observing him, I would be talking to
21 him on a regular basis.

22 I began watching him very closely, as did his
23 platoon sergeant, who is also present, and Paul's
24 performance is just immaculate. There has never been a

1 mar, no problems, volunteers for every position. In the
2 absence of team leaders, he's taken the team leader role.
3 He's led the soldiers. Just done a wonderful job and
4 been a wonderful soldier.

5 Q In terms of leadership and leadership ability,
6 can you tell the Court something about that?

7 A Paul is one of the guys that the young soldiers
8 look up to a lot. He's always there. A young soldier
9 has a question how to do it, he may not ask him, but
10 they'll watch him. His movement techniques in the field
11 are some of the finest. As infantry soldier, the
12 attention to detail is critical; and Paul, as far as
13 weapons maintenance right up to the actual mission
14 completion, he's there in every aspect.

15 Q Now, in addition to that, other than what
16 you've told me about his contact with you shortly after
17 his arrest, has Paul come to the attention of the people
18 above captain?

19 A Yes.

20 Q When was that?

21 A After the plea was entered the Northwest Herald
22 ran an article. I believe the title was: National Guard
23 helps him, now the Judge has him, now the Judge decides
24 what's next. The article came forth the day before we

1 left for camp. I believe the plea was entered on
2 Thursday, in Friday's paper this article came forward.
3 I was upset, but somehow the information got to the
4 agent-general. I had informed the colonel of the
5 situation. The agent-general asked the colonel, being
6 my battalion commander, and he thought we may have a
7 convicted felon. I had to explain to him, after speaking
8 with you, he was not convicted, that a plea was entered
9 and until sentencing that everything is still as has
10 been. So --

11 Q And now if the judgment of conviction is
12 entered what will happen with respect to his position
13 with the Illinois National Guard?

14 A The position of the Illinois National Guard is
15 any conviction with the intent -- with the use of drugs
16 is automatic discharge.

17 Q So then the discharging process would begin?

18 A Correct.

19 MR. DRISCOLL: I have no further questions.

20 THE COURT: Cross examine.
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CROSS EXAMINATION

BY MR. BROWDER:

Q Captain, you had indicated you were counseling Paul Dulberg as of 11-28 of '90?

A Yes.

Q And then did he bring that to your attention that he had been charged with that offense?

A It was brought to my attention the following day.

Q Who brought it to your attention?

A His brother, Scott.

Q And in what capacity were you informed of that?

A As a commander I was informed.

Q And his brother informed you he was then in custody in McHenry County Jail?

A Yes.

Q And would not be reporting for the various duties?

A Yes.

Q To that point is it fair to say you knew Paul for about sixty days?

A As commander, he was in my command, but there's a lot of insulation between myself and privates. He had just made specialist. As a new commander, I have more

1 things to worry about.

2 Q So at that point you were still making a
3 transition?

4 A I can honestly say I didn't know him that well.

5 Q As to this counseling that you said you had
6 eventually started to do with Paul within the unit, at
7 what point did that take place?

8 A When he requested to return to the unit he met
9 with me and we discussed the situation and our legal
10 system. Like I told him that day, he's innocent until
11 proven guilty and I expect him back as a soldier.

12 Q Do you remember when you spoke with him about
13 that, what month that was?

14 A No, I do not.

15 Q Would it have been sometime in 1991 after he
16 was released?

17 A It was within a week after his release.

18 Q As part of the counseling that you afforded
19 Paul Dulberg, did you recommend that he pursue any type
20 of drug and alcohol counseling?

21 A This was -- being a civil matter and everything
22 on the civil side and the military being involved, no I
23 did not.

24 Q Even on the military side did you make

1 available to him any services that might be provided for
2 drug and alcohol counseling that might be made available
3 through the armed forces?

4 A I did not put that forth as part of my
5 counseling.

6 Q When you say "counseling", you mean
7 specifically toward his individual operation between the
8 unit?

9 A His performance as a soldier, as part of a
10 military unit, correct.

11 Q As to anything outside his military involvement
12 there was nothing you counseled him on in that matter?

13 A No.

14 Q You had indicated that later on the agent-
15 general had gotten -- was informed of this situation.
16 Was that through the press?

17 A Correct.

18 Q And that filtered up through various officers
19 to him?

20 A It filtered. I don't know how it got there.

21 Q But eventually he was informed?

22 A Eventually he got word and the word I got from
23 the colonel was that the agent-general told him -- asked
24 if he knew we had a convicted felon, which I responded,

1 no, he's not a convicted felon.

2 Q As part of your military rules and procedures
3 you are to report that to your superior above, captain,
4 when someone in your unit does have that situation
5 pending?

6 A Yes.

7 Q And did you report that to your superior?

8 A They were aware of the situation that was
9 pending.

10 Q Who is "they"?

11 A The battalion staff, the administrative
12 officers, which is Captain Anderson, met with Specialist
13 Dulberg during the May drill which was 15, 16 May, that
14 weekend, and spoke to him about some of the
15 possible --

16 Q Was that before or after the article ran?

17 A That was before.

18 Q And at that point it would be fair to say that
19 the supervisors within the Woodstock Unit were aware of
20 this?

21 A Yes.

22 Q But nobody in the regional or state --

23 A No.

24 Q -- area was aware of the situation?

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A No.

Q You had indicated that once a National Guard individual is convicted of a felony they are then discharged?

A Right, they are.

MR. BROWDER: I have no further questions, your Honor.

THE COURT: Redirect.

MR. DRISCOLL: Nothing further, your Honor.

THE COURT: Thank you, sir.

(Witness excused.)

MR. DRISCOLL: Can I have one moment.

I would like to call one more witness, Staff Sergeant Leech.

THE COURT: Sir, would you raise your right hand.

(Witness sworn.)

THE COURT: Go ahead.

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SCOTT DOUGLAS LEECH

called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DRISCOLL:

Q Sergeant, state your name for the record and your rank.

A Staff Sergeant Scott Douglas Leech.

Q You are with the Illinois National Guard?

A Yes, with the Illinois Army National Guard.

Q You are familiar with the defendant in this matter, Paul Dulberg?

A Yes.

Q How are you familiar?

A I'm his platoon sergeant.

Q How long have you been his platoon sergeant?

A For approximately a year and two months.

Q And during that period of time were you aware of the pending court matter that he was facing here in McHenry County?

A Yes.

Q How did you become aware of that?

A I was told by the prior platoon sergeant when

1 I took over the platoon.

2 Q And during the period of time he did come to
3 your command, can you tell the Court how he's handled
4 himself?

5 A Very exemplary conduct. When I take over a
6 platoon, I take it over with the intentions that all
7 soldiers started with a clean slate, I hold no grudges
8 or anything against anybody; and as far as soldiers go,
9 he is by far above the others in both his actions, his
10 personality, and when he's told to do something he does
11 it immediately, doesn't complaint, he doesn't try to get
12 out of it, just immediately goes to work and does it and
13 shows a lot of initiative on his part. He doesn't -- for
14 the most part, he's what we call a maintenance-free
15 soldier, you just -- he shows up and he does what he's
16 supposed to do, doesn't require myself or the squad
17 leaders or team leaders or anybody like that to be
18 constantly breathing down his neck to do this, do that,
19 which in the Guard we have a lot of soldiers that are
20 like that, and all around he's an excellent soldier and
21 I'd like to keep him in the unit.

22 MR. DRISCOLL: I have no further questions of this
23 witness.

24 MR. BROWDER: No cross-examination.

1 THE COURT: Thank you.

2 MR. DRISCOLL: Thank you, sergeant.

3 (Witness excused.)

4 MR. DRISCOLL: We will call no further witnesses.

5 THE COURT: I have something here, gentlemen, that
6 troubles me, and maybe I'm jumping the gun, but I think
7 I should here.

8 Mr. Driscoll, I glean from your -- maybe I
9 glean it wrong, but I glean from your conversation up to
10 this point that you are seeking probation under Section
11 1410, 710.

12 MR. DRISCOLL: That's correct, and I think -- is the
13 Court looking to one of those provisions with respect to
14 possession of firearm?

15 THE COURT: No.

16 MR. DRISCOLL: Okay.

17 THE COURT: As I read the statute and
18 Mr. Browder --

19 MR. BROWDER: Yes.

20 THE COURT: -- has and I have gone around about this
21 on several occasions as to the changes in the statute,
22 the recent changes in the statute, 1410 probation,
23 specifically 1410 now we're talking about, is available
24 for a plea or conviction under 1402(c) only. That's the

1 way I read it. Now, if I'm wrong, tell me I'm wrong.
2 As I look back on the plea on the indictment, the
3 defendant entered a plea under section 1402(a), not (c).
4 Now, I'll be happy to be educated here if you can educate
5 me.

6 MR. DRISCOLL: It was my understanding, because I
7 believe the Court -- when the Court did accept the plea,
8 the Court did indicate that he was in fact eligible for
9 1410 probation as one of the options that the Court had.
10 With that I did not anticipate today coming in and
11 arguing whether it was (a) or (c).

12 If there is going to be a problem with that,
13 Judge, I would like time to just prepare a brief
14 memorandum with respect to that because if it's going to
15 become a problem I would like to at least have the
16 opportunity to present that to the Court in form of a
17 written memorandum. But just so that you know why, when
18 the plea was entered we were informed by the Court that
19 that was one of the options, and if it had not been
20 indicated at that time, we would have probably been
21 somewhat suspect at that time, but I would at least like
22 the opportunity, because I am aware of that aspect of the
23 Court, to at least prepare memorandum in support of our
24 position with respect to that for the Court.

1 THE COURT: Mr. Browder?

2 MR. BROWDER: That's fine. If he's going to prepare
3 a memorandum, we would want time to respond to that
4 because we believe that is not the position, that he's
5 not eligible.

6 THE COURT: You believe he is not.

7 MR. BROWDER: Correct.

8 THE COURT: Well, let's solve that issue then before
9 we proceed further because, obviously, that's the
10 important issue.

11 MR. DRISCOLL: That's the important issue.

12 THE COURT: How much time do you want, gentlemen?

13 MR. DRISCOLL: Can I have ten days?

14 THE COURT: Sure. You want ten days. You want to
15 continue the sentencing hearing ten days from today.

16 MR. BROWDER: I'd like time to respond.

17 MR. DRISCOLL: I'd like ten days to file the
18 memorandum; he'll want time to respond.

19 MR. BROWDER: Ten days to respond also. If we can
20 set the sentencing date. We won't have it available
21 until the end of August then or will we make it within
22 that first week of August?

23 THE COURT: The first week is the only week I will
24 be here.

1 MR. BROWDER: Will that be within twenty days?

2 THE COURT: Yes.

3 MR. BROWDER: That's fine. We can do it that first
4 week then.

5 THE COURT: 4th of August, that's a Tuesday.

6 MR. DRISCOLL: The first ten days of August are the
7 only ten days that I have where all my kids are involved
8 with something where I'm --

9 THE COURT: I understand that. I'll be gone the
10 last part of August. Let's try the 30th of July.

11 Is that all right?

12 MR. BROWDER: That's fine.

13 THE COURT: That's a Thursday.

14 MR. DRISCOLL: That will be okay.

15 MR. BROWDER: Is that going to be a jury week? If
16 it's not, maybe we can set it in the afternoon.

17 THE COURT: It's a jury week. We probably will have
18 a jury.

19 MR. BROWDER: We'll plan on the morning.

20 MR. DRISCOLL: In light of the fact --

21 THE COURT: Now, here's the thing. I don't recall,
22 and don't get me wrong, I sometimes -- I've got a lot of
23 cases on my call and sometimes I don't recall
24 specifically; in general terms, but not specifically as

1 to what happened this morning or yesterday, but I'll
2 be -- and I don't recall indicating that 1410 probation
3 was available. If I said it, I said it, and what I would
4 like to do, however, because I think if I said it,
5 clearly, it's -- and it's not, it turns out it's not,
6 clearly that's an issue as to whether the plea shall be
7 vacated.

8 MR. DRISCOLL: I'm going to order a copy of the
9 transcript. I'll order it.

10 THE COURT: Good, that's what I wanted to get was
11 a copy of the transcript.

12 MR. BROWDER: Should we plan on hearing motions on
13 the 30th or motions and sentencing?

14 THE COURT: Let's set the thing for the whole thing.
15 We'll continue the sentencing hearing for that day, and
16 if you have any argument with regard to sentencing
17 alternatives, that's fine, and then, of course, if I make
18 a final ruling that 1410 is not available, then it puts
19 Mr. Driscoll and his client in a different position, I
20 suppose.

21 MR. BROWDER: That's fine.

22 MR. DRISCOLL: The only thing I would like to
23 indicate for the record at this point in time, I think
24 the Court can see Mr. Dulberg has had a substantial

1 amount of people appear in court for him today. I would
2 like to indicate that his brother who is in the Air Force
3 has come in from Germany for the purpose of this. I
4 would like the record to reflect that so the Court can
5 see the support aspect.

6 THE COURT: The Court is well aware of the family
7 support.

8 MR. DRISCOLL: Okay, that's fine.

9 THE COURT: To be honest with you, Mr. Driscoll,
10 it's refreshing I see people in here with family support
11 because normally I see nobody in here with any support.

12 MR. DRISCOLL: That's why I want to indicate just
13 for the record, because we don't know where we're all
14 going to be, that there was a substantial amount of
15 people in court; fourteen, if I count right.

16 Thank you very much, your Honor.

17 THE COURT: All right, thank you.

18 (WHICH WERE ALL THE PROCEEDINGS HAD
19 ON THE ABOVE-ENTITLED CAUSE THIS
20 DATE.)
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STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

IN THE NINETEENTH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

I, Karen B. Farrenkopf, one of the Official
Court Reporters of the 19th Judicial Circuit of Illinois,
do hereby certify that I reported in shorthand the
proceedings had at the hearing of the above-entitled
cause, and that the foregoing is a true and correct
transcription of all the proceedings heard.

Karen B. Farrenkopf

FILED
McHENRY COUNTY, ILLINOIS

JUL 27 1992

VERNON W. KAYS, JR.
CLERK OF THE CIRCUIT COURT

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)

4 PEOPLE OF THE STATE)
5 OF ILLINOIS,)

6 Plaintiff,)

7 -vs-)

8 PAUL R. DULBERG.)

9 Defendant.)

No. 90 CF 655

10
11 REPORT OF PROCEEDINGS had in the
12 above-entitled cause before the Honorable
13 WARD S. ARNOLD, Judge of said Court,
14 on the 28th day of May, 1992.

15
16 APPEARANCES:

17 MR. PERRY BROWDER,
18 Assistant State's Attorney,
19 Appeared on behalf of the Plaintiff;

20 MR. JAMES F. DRISCOLL,
21 Appeared on behalf of the Defendant.

1 THE COURT: People versus Paul Dulberg.

2 MR. DRISCOLL: For the record, James Driscoll
3 representing the Defendant who's currently present
4 in open court.

5 Your Honor, there has been an agreement
6 between myself and the State with respect to
7 Indictment No. 90 CF 655, and in essence, your
8 Honor, the sum and substance of the agreement that
9 we have tentatively reached is that the State is
10 going to nolle Count I of the Bill of Indictment.

11 We're going to enter a blind plea of
12 guilty and withdraw our not guilty plea as to Count
13 II, and we will also withdraw our not guilty plea
14 as to Count III, and Count III is going to be
15 amended to a Class IV for possession of cannabis.

16 MR. BROWDER: That is correct, your Honor.
17 Those are the terms of the agreement. We would be
18 requesting a presentence investigation and a later
19 sentencing date before, your Honor.

20 THE COURT: Mr. Dulberg, how old are you?

21 THE DEFENDANT: Twenty-two.

22 THE COURT: How far did you go in school?

23 THE DEFENDANT: Started college.

24 THE COURT: You can read and write the

1 English language?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: At the present time, are you
4 under the influence of any alcohol, drugs,
5 medication or anything else that would cause you
6 not to fully understand these proceedings?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: You understand that you're
9 charged in this Bill of Indictment in Count II with
10 unlawful possession of a controlled substance, in
11 that on or about November 28th, 1990, in McHenry
12 County, you committed that offense by knowingly and
13 unlawfully possessing not less than 15 nor more
14 than 100 grams of a substance containing cocaine,
15 in violation of the Illinois Controlled Substances
16 Act; you understand that charge?

17 THE DEFENDANT: Yes your Honor.

18 THE COURT: You understand that that's a
19 Class 1 felony in this state, meaning that it
20 carries a potential penitentiary sentence of not
21 less than four nor more than fifteen years or a
22 fine of up to \$200,000.00 or both; you understand
23 that?

24 THE DEFENDANT: Yes, your Honor.

1 THE COURT: If you were sentenced to the
2 penitentiary on that charge, upon your release from
3 the penitentiary, you would be required to serve a
4 period of two years mandatory supervised release
5 commonly known as parole.

6 Couldn't III, as amended, charges the
7 offense of unlawful possession of cannabis in an
8 amount not less than 30 nor more than than 500
9 grams.

10 It alleges that on or about
11 November 28th, 1990, in McHenry County, Illinois,
12 you committed the offense of unlawful possession of
13 cannabis, in that you knowingly and unlawfully
14 possessed more than 30 but less than 500 grams of a
15 substance containing cannabis, in violation of the
16 Illinois Cannabis Control Act; do you understand
17 that charge?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you recall that incident?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: That's a Class 4 felony, meaning
22 it carries a potential penitentiary sentence of not
23 less than one nor more than three years or a fine
24 of up to \$10,000.00 or both; you understand that?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: If you were sentenced to the
3 penitentiary on that charge, upon your release from
4 the penitentiary, you would be required to serve a
5 period of one year mandatory supervised release.

6 I've been told you're going to plead
7 guilty to those two counts. You're going to plead
8 guilty in what is commonly referred to as a blind
9 plea, meaning you're entering into this agreement
10 blindly. All sentencing options are open to me.
11 I could sentence you to anything from probation
12 or-- if eligible, probation under Section 1410 or
13 710 of the relevant Act, all the way to a maximum
14 fifteen years in the penitentiary; you understand
15 that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: The concessions the State is
18 making is they're going to nolle pross Count I,
19 which is a Class X felony, and they're amending
20 Count III to a lesser charge. You understand that
21 those are the only concessions the State's making
22 at this time?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: You understand that by entering

1 into this agreement, you're giving up certain
2 rights. You're giving up your right to have a
3 trial, either a trial by a Judge or a trial by a
4 jury. If you plead guilty to these two counts,
5 there will be no trial.

6 You're giving up your right to confront
7 and cross-examine witnesses against you, your right
8 to call witnesses in your own behalf, or to have
9 your attorney subpoena witnesses to testify for
10 you.

11 You're giving up your right to require
12 the State to prove the charges against you beyond a
13 reasonable doubt. You're giving up your right to
14 remain silent. You understand by entering into
15 this agreement, you're giving up these rights?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Can I have a factual basis,
18 please, Mr. Browder?

19 MR. BROWDER: Your Honor, if the witnesses
20 were called to testify, they would testify that on
21 or about November 28th of 1990, that the Defendant,
22 who's present here in court, Paul R. Dulberg
23 committed the offense of unlawful possession of a
24 controlled substance, in that he had in his

1 possession more than 15 grams but less than 100
2 grams, that being, approximately, 27 grams of
3 cocaine, all this occurring in McHenry County,
4 State of Illinois.

5 Witnesses from the McHenry County
6 Sheriff's Department would further testify that on
7 or about November 28th, 1990, Paul R. Dulberg,
8 committed the offense of unlawful possession of
9 cannabis, in that he had in his possession more
10 than 30 grams but not more than 500 grams of a
11 substance containing cannabis, all this occurring
12 in McHenry County, State of Illinois.

13 MR. DRISCOLL: So stipulate.

14 THE COURT: Mr. Dulberg, you heard the
15 Assistant State's Attorney indicate what his
16 evidence would show?

17 THE DEFENDANT: Yes.

18 THE COURT: In light of that, do you still
19 wish to plead guilty?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Have you discussed this plea
22 arrangement with your attorney?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Has anyone promised you anything

1 other than the promises contained in this agreement
2 to get you to plead guilty?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: You understand you're leaving the
5 question of penalties solely up to me?

6 THE DEFENDANT: Yes.

7 THE COURT: Has anybody threatened you or
8 forced you to plead guilty?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Do you have any questions or
11 would you like to make any statements at this time?

12 THE DEFENDANT: No, your Honor.

13 MR. DRISCOLL: Your Honor, my client has
14 already executed a jury waiver in my presence.

15 THE COURT: The Court finds the Defendant has
16 executed a written jury waiver. That he has been
17 advised of his rights, understands those rights and
18 the consequences of relinquishing those rights.
19 That he has been advised of the possible
20 punishments involved and persists in pleading
21 guilty.

22 The Court further finds that a factual
23 basis exists for the plea. That the plea was made
24 voluntarily and without any threats or promises.

1 The Court will order a presentence
2 investigation. When are you available for
3 sentencing, counsel?

4 MR. DRISCOLL: My understanding, your Honor,
5 is it takes, approximately, a month for the
6 presentence so that would take us probably sometime
7 into July. If I could ask you for the 6th or 7th
8 of July.

9 THE COURT: Those are jury weeks but that's
10 all right. July 7th at 9:00. That's a
11 Tuesday.

12
13 (WHICH WAS AND IS ALL OF THE EVIDENCE
14 OFFERED AT THE HEARING OF SAID CAUSE.)
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24

1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4
5
6 I, Wendy Lund, an Official Court Reporter
7 of the 19th Judicial Circuit of Illinois, do hereby
8 certify that I reported in shorthand the
9 proceedings had in the above-entitled cause and
10 that the foregoing is a true and correct transcript
11 of all the proceedings heard.
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Wendy Lund

(CRIMINAL DIVISION)

STATE OF ILLINOIS)
) SS
COUNTY OF McHENRY)

GEN. NO. 90 CF 655

[] Jury [] Non-Jury

THE PEOPLE OF THE STATE OF ILLINOIS

PAUL DULBERG

vs.

Plaintiff

Defendant

Court Reporter

Assistant State's Attorney

Defendant's Attorney

Perry J. Browder

Driscoll

JUDGMENT ORDER

This cause comes on to be heard for sentencing. Defendant is present in person and by counsel. The above named Defendant has been heretofore adjudicated guilty of the Crime(s) of Unlawful possession of a controlled substance and Unlawful possession of cannabis

a Class 1 and 3 felony

The Court, pursuant to Ill. Rev. Stat., Ch. 38, Sec. 1005-4-1, has:

- a. Considered all the evidence, if any, received upon the trial or the stipulation of facts or the factual basis for the adjudication of guilt;
- b. Considered the presentence investigation report, if any;
- c. Considered the evidence and information offered, if any, by the parties in aggravation and mitigation;
- d. Heard arguments as to sentencing alternatives;
- e. Considered the agreement, if any, of the parties to imposition of a specific sentence;
- f. Afforded the Defendant an opportunity to make a statement in his/her own behalf; and

based upon an independent assessment of all of the above,

THE COURT FINDS as follows:

1. In accordance with Ill. Rev. Stat., Ch. 38, Sec. 1005-3-1, the following factors of MITIGATION are present:

- [] The Defendant's criminal conduct neither caused nor threatened serious physical harm to another person.
- [] The Defendant did not contemplate that his/her criminal conduct would cause or threaten serious physical harm to another.
- [] The Defendant acted under a strong provocation.
- [] There were substantial grounds tending to excuse or justify the Defendant's conduct, though failing to establish a defense.
- [] The commission of the offense was induced or facilitated by someone other than the Defendant.

☐ The Defendant has compensated or will compensate the victim for the damage or injury.

☒ The Defendant has no history of prior delinquency or criminal activity or (s)he has led a law abiding life for a substantial period before the commission of the present crime.

☐ The Defendant's conduct was a result of circumstances unlikely to recur.

☐ The Defendant's character and attitudes indicate (s)he is unlikely to commit another crime.

☐ The Defendant is likely to comply with the terms of a period of probation.

☐ The imprisonment of the Defendant would entail excessive hardship to his/her dependents.

☐ The imprisonment of the Defendant would endanger his/her medical condition.

☐ Other mitigating factors, if any, considered by the Court: _____

2. In accordance with Ill. Rev. Stat., Ch. 38, Sec. 1005-5-3.2(a), the following factors of AGGRAVATION are present:

☐ The Defendant inflicted or attempted to inflict serious bodily injury to another person.

☐ The Defendant received compensation for committing the offense.

☐ The Defendant has a history of prior delinquency or criminal activity.

☐ The Defendant, by the duties of his/her office or by his/her position, was obligated to prevent the particular offense committed or bring the offenders committing it to justice.

☐ The Defendant held public office at the time of the offense and the offense related to the conduct of that office.

☐ The Defendant utilized his/her professional reputation or position in the community to commit the offense or to afford him/her an easier means of committing it.

☒ The sentence is necessary to deter others from committing the same crime.

☐ Other aggravating factors, if any, considered by the Court: _____

THE COURT FURTHER FINDS (if applicable):

☐ That, in accordance with Ill. Rev. Stat., Ch. 38, Sec. 1005-5-3.2(b) an extended term is appropriate, the Defendant being over 17 years of age on the date the offense was committed; and

☐ The offense was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty; or

☐ Defendant has been previously convicted in Illinois of the same or greater class felony, within 10 years, the charge being separately brought and tried and arising out of a different series of acts.

☐ That, in accordance with Ill. Rev. Stat., Ch. 38, Sec. 1005-5-3(c)(6), Defendant should be sentenced as a Class X offender since (s)he is over 21 years of age, has twice been convicted of Class 1 or Class 2 felonies in Illinois, all such charges being separately brought and tried and arising out of different series of acts, and the first felony was committed after February 1, 1978, the second after conviction on the first, and the third after conviction on the second.

☐ That Defendant should be sentenced to a term of natural life imprisonment because:

☐ (s)he has been convicted of a murder which was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty. Ill. Rev. Stat., Ch. 38, Sec. 1005-8-1(a)(1).

☐ (s)he has been adjudged a habitual criminal under the provisions of Ill. Rev. Stat., Ch. 38, Sec. 33B-1.

☐ That, in accordance with Ill. Rev. Stat., Ch. 38, Sec. 1005-8-4, a consecutive term is appropriate because:

☐ Although the offenses were committed as a part of single course of conduct, one of the offenses was a Class X or Class 1 felony, and the Defendant inflicted severe bodily harm;

☐ Such a term is required to protect the public from further criminal conduct by the Defendant.

IT IS THEREFORE ORDERED that pursuant to Ill. Rev. Stat., Ch. 38, Sec. 1005-6-1, Probation or Conditional Discharge is denied, having regard to the nature and circumstances of the offense and to the history, character, and condition of the offender, the Court being of the opinion that:

☒ Defendant's imprisonment or periodic imprisonment is necessary for protection of the public.

☒ Probation or conditional discharge would deprecate the seriousness of the offender's conduct and would be inconsistent with the ends of justice.

IT IS FURTHER ORDERED as follows:

☒ 1. That Defendant is sentenced to a term of ^{II} 4 years ^{III} and 2 years concurrent in the custody of the Illinois Department of Corrections; and

☐ 2. The term of imprisonment ordered herein shall run concurrent/consecutive to the term of imprisonment ordered by the _____ Court of the _____ Circuit/District, County of _____, State of _____ in Case Number _____.

[] 3. The Defendant shall make restitution to: _____

_____, in the amount of \$ _____ to be paid as follows: _____

[X] 4. The Defendant shall pay a fine of \$ 2,000.00 to be paid as follows:
instanter

[X] 5. Defendant is hereby given credit of 134 days for time spent in custody as a result of the offense for which the sentence is imposed.

[X] 6. The Defendant is committed to the custody of the Illinois Department of Corrections, for the term herein specified, and the Clerk of this Court is directed to issue a mittimus commanding the Sheriff of this County to transport Defendant to the nearest receiving station designated therefore by said Department.

[X] 7. Other Orders (if specified)

See Impact Incarceration recommendation

THE COURT ADVISES DEFENDANT OF THE RIGHT TO APPEAL as follows:

[] That, since this judgment is entered pursuant to a conviction after trial upon a plea of not guilty, Defendant may appeal the conviction and sentence; that Defendant has the right to request that the Clerk prepare and file a notice of appeal; that, if indigent, Defendant has the right to a transcript of the proceedings and the right to appeal will be preserved only if a notice of appeal is filed in the trial court within thirty (30) days from the date of this sentence.

[X] That, since this judgment is entered pursuant to a plea of guilty:

- a. Defendant has a right to appeal;
- b. Prior to taking an appeal, Defendant must file in the Court, within thirty (30) days of the date on which sentence is imposed, a written motion asking to have the judgement vacated and for leave to withdraw the plea of guilty, setting forth the grounds for the motion;
- c. If the motion is allowed, the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made;
- d. Upon the request of the State, any charges that may have been dismissed as a part of a plea agreement, will be reinstated and will also be set for trial;
- e. If Defendant is indigent, a copy of the transcript of the proceedings at the time of the plea of guilty and sentence, will be provided without cost and counsel will be appointed to assist Defendant with the preparation of the motions; and
- f. In any appeal taken from the judgment on the plea of guilty, any issue or claim of error not raised in the motion to vacate the judgment and to withdraw the plea of guilty, shall be deemed waived.

FILED
IT IS FURTHER ORDERED that Defendant shall pay the costs of prosecution.

Date: AUG 4 1992
August 4, 1992
VERNON W. KAYS, JR
CLERK OF THE CIRCUIT COURT

ENTER:

Ward S. Arnold
Judge

STATE OF ILLINOIS)
) ss
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE 19th JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

vs.

Paul Dulberg

No. 90 CF 655

ORDER

In furtherance of this Court's sentencing order of 7-30, 1992 in the above-captioned cause, a provision of which requires the defendant to pay a fine in the amount of \$ 2600.00, the Court finds that the seizure giving rise to the above-captioned prosecution was made by:

- ☐ 1. North Central Narcotics Task Force
- ☐ 2. Illinois Department of State Police
- ☒ 3. McHenry County Sheriff's Police
- ☒ 4. Municipal Police Department: Huntley Police Dept
- ☐ 5. Municipal Police Departments: _____

Accordingly, and pursuant to Illinois Revised Statutes, Chapter 56 1/2, Section 710.2 / 1413 / 1655.2, IT IS HEREBY FURTHER ORDERED that the Clerk of the Circuit Court for the 19th Judicial Circuit, McHenry County, Illinois, shall transmit and deposit all amounts collected toward satisfaction of this fine as follows:

A. Twelve and one-half percent (12-1/2%) to the Juvenile Drug Abuse Fund in the Illinois Treasury; and

B. Check One:

- ☐ 1. Thirty seven and one-half percent (37-1/2%) to the North Central Narcotics Task Force and Fifty percent (50%) to the McHenry County General Corporate Fund. (Check only if #1 above is indicated.)
- ☐ 2. Thirty seven and one-half percent (37-1/2%) to the Illinois Treasury and Fifty percent (50%) to the McHenry County General Corporate Fund. (Check only if #2 above is indicated.)
- ☐ 3. Eighty seven and one-half percent (87-1/2%) to the McHenry County General Corporate Fund. (Check only if #3 or #4 above are indicated.)
- ☐ 4. Thirty seven and one-half percent (37-1/2%) to municipal department or departments and Fifty percent (50%) to the McHenry County General Corporate Fund. (Check only if #2 and #4 or #2 and #5 above are indicated.) If #2 and #5 are indicated, the departments indicated in #5 shall receive the 37-1/2% as follows: _____%; _____%.

FILED
McHENRY COUNTY, ILLINOIS
JUL 30 1992
Fifty percent (50%) to municipal police departments identified in #5 above and Thirty seven and one-half percent (37-1/2%) to the McHenry County General Corporate Fund. (Check only if #5 above is indicated.) The departments indicated in #5 shall receive the 50% as follows:
80 McHenry County Sheriffs %; 20 Huntley Police %;
Department Narcotics Division %; Department 2 %.

RON W. KAYS, JR.
CLERK OF THE CIRCUIT COURT
DATE 7-30-92

Ward Small
JUDGE

STATE OF ILLINOIS)
) ss
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
)
 vs.) No.: 90 CF 655
)
PAUL DULBERG)

O R D E R

This matter coming before the Court for the sentencing of the Defendant for a violation of Chapter 56 1/2, due notice having been given, and the Court having been fully advised in the premises:

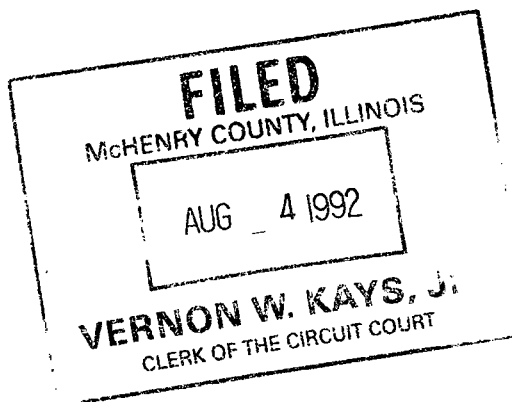
IT IS HEREBY ORDERED THAT:

1. Pursuant to Chapter 38, Paragraph 1005-9-1.1, P.A. 86-1399, effective September 10, 1990, a criminal laboratory analysis fee in the amount of \$50.00 for each offense which the defendant has been adjudged guilty of in violation of the Cannabis Control Act or the Controlled Substance Act is hereby imposed.

2. The criminal laboratory analysis fee hereby imposed is \$50.00.

3. \$5.00, which is ten percent of the criminal laboratory analysis fee assessed in this case, shall be retained by the Clerk of the Circuit Court to offset administrative costs incurred by the Clerk of the Circuit Court in carrying out the Clerk's responsibilities under this Order.

DATED: August 4, 1992



JUDGE: _____

Ward Shuold

IN THE CIRCUIT COURT FOR THE 19TH JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF
ILLINOIS,

Plaintiff,

v.

Paul R. Dulberg
Defendant.

Gen. No.

90 CF 655

SENTENCING ORDER

THE COURT FINDS, pursuant to Ill.Rev.Stat., Chap. 38, Sec. 38-5-3-1.1, that the Defendant may meet the eligibility requirements of the Department of Corrections for impact incarceration as follows:

1. The defendant is not less than 17 years of age nor more than 29 years of age.
2. The defendant has never served a sentence of imprisonment for a felony in an adult correctional facility.
3. The defendant has not been convicted of a Class X felony, first or second degree murder, armed violence, aggravated kidnapping, criminal sexual abuse or a subsequent conviction for criminal sexual abuse, forcible detention, or arson.
4. The defendant has been sentenced to a term of imprisonment of five (5) years or less.
5. The defendant appears to be physically able to participate in strenuous physical activities or labor.
6. The defendant appears not to have any mental disorder or disability that would prevent participation in the Impact Incarceration Program.
7. The defendant has consented in writing to participation in the Impact Incarceration Program and to the terms and conditions thereof.

This Court thereby approves the Defendant for placement in the Impact Incarceration Program.

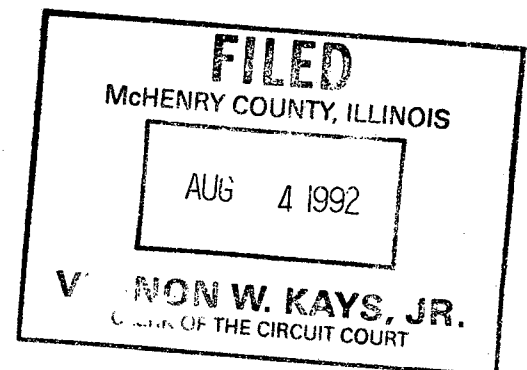
If the Department accepts the Defendant in the Impact Incarceration Program and the Department determines that the Defendant has successfully completed the Impact Incarceration Program, the Sentence of this Court shall be reduced to time considered served upon certification to the Court by the Department of Corrections that the Defendant has successfully completed the Impact Incarceration Program.

In the event the Defendant is not accepted by the Department for placement in the Impact Incarceration Program or the Defendant does not successfully complete the Impact Incarceration Program, the Defendant's term of imprisonment shall be set forth by the Court in this Order.

DATED: _____

8-4-92

Ward S. Smith
J U D G E



IN THE CIRCUIT COURT FOR THE 19TH JUDICIAL CIRCUIT
MCHEENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF
ILLINOIS,

Plaintiff,

Paul R. Dulberg

Defendant.

Gen. No.

90 CF 655

I, Paul R. Dulberg, do hereby consent to be considered for and to participate in the Impact Incarceration Program. I understand that the program will require 120 to 180 days' participation. I understand the program will include mandatory physical training and labor, military formation and drills, regimented activities, uniformities of dress and appearance, education and counseling, including drug counseling, where appropriate.

I understand that this consent does not guarantee my acceptance into the program. I understand also that the Court's recommendation that I will be considered for the program does not guarantee that I will be accepted into it by the Illinois Department of Corrections, and that I may be required to serve the full sentence imposed by the Court.

DEFENDANT

ATTORNEY FOR DEFENDANT

DATED: _____

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF McHENRY)
4

5 IN THE NINETEENTH JUDICIAL CIRCUIT
6 McHENRY COUNTY, ILLINOIS

7 THE PEOPLE OF THE)
8 STATE OF ILLINOIS)
9 vs.)
10 PAUL R. DULBERG)

90 CF 65 **FILED**
McHENRY COUNTY ILLINOIS

AUG 6 1992

VERNON W. KAYS, JR.
CLERK OF THE CIRCUIT COURT

11
12 REPORT OF PROCEEDINGS had at the hearing of the
13 above-entitled cause, before the Honorable WARD S. ARNOLD,
14 Judge of said Court, on the 30th day of July, 1992.
15

16 APPEARANCES:

17 THE HONORABLE THOMAS F. BAKER
18 State's Attorney of McHenry County
19 By: MR. PERRY BROWDER
Assistant State's Attorney

20 DRISCOLL & DRISCOLL
Attorneys at Law
21 By: MR. JAMES DRISCOLL
22 Appearing on Behalf of the Defendant
23
24

1 THE COURT: All right. 90 CF 655, People
2 versus Paul Dulberg.

3 MR. DRISCOLL: Good morning, your Honor.

4 THE COURT: Good morning, Mr. Driscoll.

5 MR. DRISCOLL: For the record, my name is
6 James Driscoll, representing the Defendant in this matter.

7 THE COURT: This is a continued date for
8 sentencing. There was some discussion at our last meeting
9 as to whether or not Mr. Dulberg, number one, was eligible
10 for probation under Section 1401, of Chapter 56 1/2, and
11 secondly, I believe there was some discussion, and I don't
12 know if it's an issue or not, but there was some discussion
13 as to whether or not at the original plea of this matter
14 Mr. Dulberg was promised or it was indicated to Mr. Dulberg
15 that he would be eligible for 1401 probation.

16 I have received a transcript and I assume
17 that you have also.

18 MR. DRISCOLL: Yes.

19 THE COURT: And I'll entertain any argument
20 that you want on that issue, but at least we have got a
21 transcript now to look at.

22 MR. BROWDER: Your Honor, I believe the
23 transcript speaks for itself.

24 MR. DRISCOLL: I believe it speaks for

1 itself, and I believe the Court correctly admonished the
2 Defendant at that time.

3 THE COURT: All right. Now --

4 MR. DRISCOLL: But if I may just interrupt.

5 THE COURT: Sure.

6 MR. DRISCOLL: I believe the Court said under
7 1401. It's -- it's 1410.

8 THE COURT: You are correct. I stand
9 corrected.

10 MR. DRISCOLL: But just because of what 1401
11 says.

12 THE COURT: Correct.

13 Again then, Mr. Driscoll, you and Mr. Dulberg
14 have been provided with a copy, and you've been able to
15 review the copy of the presentence investigation by the
16 Department of Court Services?

17 MR. DRISCOLL: That's correct, your Honor.

18 THE COURT: And the State has, also?

19 MR. BROWDER: Yes, your Honor.

20 THE COURT: Mr. Browder, do you have any
21 matters of fact with which you take any issue in the
22 presentence investigation?

23 MR. BROWDER: Nothing, your Honor.

24 THE COURT: Mr. Driscoll.

1 MR. DRISCOLL: No, your Honor, and last time
2 there were nothing of substance.

3 I did -- I did want to indicate that in the
4 one section there, with respect to certain traffic
5 offenses, there was apparently on record a BFW, but all the
6 matters have been resolved. I wanted to make sure that has
7 been resolved. But other than that, we have no substantive
8 matters.

9 THE COURT: Mr. Browder, do you have any
10 matters in aggravation or by way of evidence -- or by way
11 of evidence. Let's put it that way.

12 MR. BROWDER: Nothing we would present
13 further than has been indicated in the pretrial services
14 bond report.

15 THE COURT: Mr. Driscoll.

16 MR. DRISCOLL: No, your Honor.

17 THE COURT: Any matters in mitigation?

18 MR. DRISCOLL: We did offer some testimony
19 the last time.

20 THE COURT: That's correct.

21 MR. DRISCOLL: But we will rest on the
22 testimony that has been adduced at this time.

23 THE COURT: Then does the State have any
24 argument as to sentencing alternatives?

1 Or, first of all, I would ask Mr. Dulberg if
2 he has anything additional to indicate today. Any
3 statements or comments that you wish to make, Mr. Dulberg?

4 THE DEFENDANT: Not at this time, your Honor.

5 THE COURT: All right.

6 THE COURT: State have any alternatives --
7 sentencing alternatives?

8 MR. BROWDER: Yes, your Honor.

9 In making a recommendation to the Court, we
10 have reviewed the charges that are pending before
11 Mr. Dulberg and the presentence investigation.

12 One issue that I would like to address before
13 making any specific recommendations is there has been
14 aspects brought up whether or not Mr. Dulberg is eligible
15 for 1410 Probation.

16 The way the statute is drafted, our position
17 is, since he has pled guilty to 1402(a)(2), by the statute,
18 he is not eligible for 1410 Probation.

19 But I will assume arguendo just for a moment,
20 and a brief moment, that even assuming he was eligible,
21 based on the facts that are before the Court, it is not
22 something we would ask the Court to even consider because
23 it would be an inappropriate sentence.

24 But the statute, the way it is drafted, does

1 not allow 1410 Probation for a 1402(a)(2), unlawful
2 possession of a controlled substance, as the grams that was
3 before the Court was twenty grams of cocaine.

4 To go further in that argument, we would ask
5 the Court to refresh their memory when they were reading
6 through the pretrial evaluation that the Court had used.

7 As you can see, there are two varying
8 stories -- greatly different stories that have been
9 presented before the Court.

10 Though your Honor did not preside at the
11 hearing, there was an evidentiary hearing where testimony
12 was presented in a motion to suppress to have the cocaine
13 that was seized from Mr. Dulberg thrown out of evidence --
14 that it was an improper seizure.

15 The Court ruled that it was appropriately
16 seized from Mr. Dulberg, and it was allowed to be used in
17 evidence before this Court, whether it would be at trial,
18 bench or jury, or I believe now to consider at sentencing.

19 The amount of cocaine that was present on
20 Mr. Dulberg is a significant amount. The damage that could
21 be done from that amount of cocaine is something that we
22 have always needed to consider as a sentencing option.

23 When you go through the different versions, I
24 believe you can see that Mr. Dulberg knew of people in the

1 drug area.

2 He had told Chief Crabtree that he had gotten
3 it from an individual known as Deon in Cook County and
4 after that, they had done various phone calls to Deon after
5 Mr. Dulberg was arrested and processed. This goes to show
6 that any defense to say that it was planted on him is not
7 something that bears giving credence to.

8 When you look at it, Mr. Dulberg has stated
9 that he has not done cocaine, but he had told the officer
10 that he had done it the night before, and he was out with
11 this Deon, and Deon was using cocaine, and he took this
12 cocaine away from him to protect him.

13 Now you have two different versions of a
14 story that is being presented before the Court. Your Honor
15 can take all factors into account.

16 You heard testimony last time from -- that
17 was presented in mitigation before the Court by his Army
18 National Guard Unit -- Reserve Unit that he is in, and the
19 testimony that was presented is that Mr. Dulberg is a
20 leader. Mr. Dulberg has had great influence over others
21 within the unit.

22 And our position that we are taking is we do
23 not want to have that type of leadership when it comes to
24 someone who is possessing cocaine. The last thing that we

1 need to have in our Armed Forces is Mr. Dulberg telling war
2 stories over a campfire how he beat the system; how he had
3 twenty grams of cocaine; that he did not go to the
4 penitentiary for that.

5 We believe that if Mr. Dulberg has made this
6 change of heart, that he is now turning himself around, and
7 that he can be such a good influence on others, that it
8 would be more appropriate that he exert that influence and
9 ability through a boot camp program at the Department of
10 Corrections as opposed to through the Army Reserve Unit.

11 I hope that is true, but -- I hope it is
12 true, but then when we look at the offense that is before
13 the Court, and we look at the different stories that have
14 been told throughout this time period, and the weight of
15 the cocaine and cannabis that was on him, those pose a
16 great threat.

17 There should be a punishment for the crime
18 that has been before the Court.

19 We also ask the Court to review the aspect of
20 some of his statements that he made to a Mr. Isakson while
21 at the plant.

22 Mr. Dulberg has denied that he was doing any
23 drugs since he was eighteen in the pretrial services bond
24 report, but then he tells the version that he was present

1 with a Deon and had done cocaine the night before.

2 What is more realistic at this point? He had
3 cannabis and cocaine on him. The realistic aspect is that
4 he has done cocaine since he's eighteen. He has done drugs
5 since then.

6 He wants the Court to accept the theory that
7 this was planted on him and that he should be treated
8 lightly in this matter, but yet then there was another
9 version before the Court that he took it away from an
10 individual.

11 Again, you have two different versions and
12 you have to ask what is more credible looking at all of the
13 evidence that was adduced. He had cannabis and cocaine --
14 both are significant amounts -- on his person. Those are
15 the offenses that he has pled guilty to.

16 When we take into account what has been
17 presented about the Army Reserves, that if he is convicted
18 of a felony in this matter, that he would be discharged.
19 Well, if that is a circumstance that happens from your
20 actions, that is something that you must face, and that is
21 something that I believe is appropriate, because if
22 somebody has had cocaine on their person and cannabis, a
23 discharge is appropriate.

24 We don't need people setting an example for

1 other people that are coming in the Reserve Units that it
2 is an activity that is appropriate.

3 To say that by removing him from the National
4 Guard would have a severe impact on his person or his
5 family, the income that he receives from the National Guard
6 is approximately twelve hundred dollars a year, which is
7 minimal in taking into account what he was able to make
8 while at Robinson Industries and what he is able to make
9 while working at this point.

10 Your Honor, we believe an appropriate
11 sentence in this matter would be five years in the
12 Department of Corrections.

13 We also take into account that Mr. Dulberg
14 can be rehabilitated, that he can turn himself around, and
15 that's why we are making a recommendation that you place
16 him in the boot camp program in the Department of
17 Corrections.

18 He has the ability to make it through a boot
19 camp program from his background in the Army Reserves, but
20 if he's truly wanting to turn himself around, if he's truly
21 going to set an example for others, he would be best suited
22 in that position, to go to the boot camp program, turn
23 himself around, set an example for others within that
24 program, and benefiting himself through completing that

1 type of program.

2 We would also recommend to the Court that
3 there be a fine imposed of fifteen hundred dollars as an
4 appropriate matter for the possession of drugs that was on
5 him. There has been a bond posted. It will be significant
6 to help cover that, and we would ask that the Court impose
7 court costs.

8 We have no further recommendations for your
9 Honor.

10 THE COURT: Mr. Driscoll.

11 MR. DRISCOLL: Your Honor, before I get into
12 the 1410 aspect of this matter, I would just like to
13 address a couple things that Counsel raised, and I'm at
14 somewhat of a loss since I've been involved in this case
15 since day one as to the two different versions that Counsel
16 referred to with respect to the Defendant's position in
17 this matter.

18 There has never been two different versions
19 that I know of since I've been involved in the case, and
20 I've been involved in the case since he was arrested in
21 this case.

22 With respect to the specific aspect of one
23 conversation that he had with Mr. Erickson (sic), he is
24 leading the Court to believe somehow the version that is

1 contained in the police report is correct and that somehow
2 we misled somebody with respect to that. That's just not
3 simply true.

4 We subpoenaed Mr. Erickson (sic). He was
5 under our subpoena to come in and testify on that. I know
6 what Mr. Erickson (sic) said, and he said that he did not
7 say what was in that report. That's specifically what he
8 told me, and since he didn't testify, Counsel doesn't know
9 that.

10 But irrespective of that, I just don't
11 understand where he gets the different versions of this
12 particular facts and circumstances; that I just want to
13 clarify that.

14 What the Court has here is a serious
15 offense -- a very serious offense. Paul Dulberg made a
16 major, major mistake at nineteen years old, and the Court
17 is going to supposedly pass sentence on him for the
18 mistake.

19 The question that we have to -- the Court has
20 to address is what is the appropriate sentence under the
21 circumstances.

22 I think the Court can look at the Defendant,
23 can look at the support that has been shown, the testimony
24 that was adduced at the prior hearing, and the Court is

1 going to have to -- going to make up it's own mind whether
2 or not this man is a candidate for whatever sentence the
3 Court decides to impose.

4 I would hope the Court would take into
5 consideration the fact that whatever sentence the Court is
6 going to impose -- is going to be imposed upon Paul Dulberg
7 is going to have a far-reaching effect beyond Paul Dulberg
8 himself, and that effect is going to affect his family. He
9 is not the only one that is going to be sentenced in this
10 particular case.

11 With respect to -- They want five years in
12 the Department of Corrections, the boot camp, and fifteen
13 hundred dollars fine, and they are opposed to 1410
14 Probation.

15 1410 Probation is a rehabilitative type of
16 probation. If you look at the statute, and if you look --

17 I suppose Counsel's position would be this.
18 The Court could sentence him to five years of boot camp and
19 then enter an order removing the felony conviction. I
20 assume that's okay with the State because what the State
21 appears to be saying is that incarceration is the thing
22 that has to be done here because of the nature of the
23 offense.

24 If they're not saying that, then it's

1 somewhat serious why they want five years in the Department
2 of Corrections with respect to this thing.

3 He made a mistake. He's nineteen years old,
4 and he made a terrible mistake. He has never once -- With
5 the exception of traffic citations that have been issued to
6 him, he has never once ever come in contact with the
7 judicial system of this county, or of this state, or any
8 other governmental agency. This is the first time he's
9 ever made a mistake.

10 Fortunately, for me, when I was nineteen, I
11 wasn't punished as severely as -- for some of my
12 transgressions that the State would like to punish Paul
13 Dulberg for.

14 He has already spent almost five months in
15 jail. He has lost his job. Everybody in the county knows
16 about his arrest. It's been printed in the papers. There
17 has been an exacted punishment here for him.

18 The question that the Court has to decide is
19 how further in terms of punishment are we going to go and
20 what the end of the punishment is that the Court feels is
21 appropriate in this matter.

22 The Court has to decide. Is the Court going
23 give him that chance? Is the Court going to exercise the
24 mercy that we think is within the discretion of the Court

1 and allow him to resume some sense of normalcy back in his
2 life?

3 Or is the Court just going to simply snuff
4 out any semblance of his ability to regain something that
5 he had prior to the time that this occurrence happened?

6 If the Court should decide to grant the
7 Defendant probation, under either section, either just as a
8 Class One Felony or 1410, the Court knows that then the
9 Defendant's future is basically back in the Defendant's
10 hands, though to a certain extent, he, during that period
11 of time, will be under the scrutiny of the Court, the
12 Probation Department, and his actions will be monitored,
13 and there is some control placed back in his hands.

14 The question we feel is whether or not at the
15 termination of the probation the judgment would be vacated,
16 or that there should be a permanent judgment and conviction
17 of the felony in this matter.

18 It's our belief and it's my opinion that he
19 is eligible for probation under 1410.

20 1410 Probation means, and I'm not going belie
21 the point, but I would like to make a couple of appropriate
22 comments with regard to that.

23 Whenever any person who has not previously
24 been convicted of, or placed on probation or court

1 supervision for any offense under this Act or any law of
2 the United States, and it goes on, is found guilty of
3 possession of a controlled or counterfeit substance under
4 Section 402(b), and we know that is 1402.

5 And Counsel would take the position that the
6 only time that the Court is allowed to grant 1410 Probation
7 is if there's a finding under 1402(b).

8 That's not what -- That's not the simple
9 language of this, but the Court -- I don't believe the
10 Court can just take that first sentence. I believe the
11 Court has to read the entire chapter to find what the
12 intent of 1410 was.

13 And if you go to 1410(b), 1410(b) then refers
14 to: When a person is placed on probation, the court shall
15 enter an order specifying the period of probation, in
16 accordance with subsection (b) of Section 5-6-2 of the
17 Unified Code of Corrections, which is 105-5-6 -- (sic) I
18 believe it is -- 5-6-2.

19 And if we go to 105-5-6-2 (sic), that's the
20 section wherein the terms of probation are allowed. And
21 under 105, 5-6-2 (sic), it goes on and it says: Unless
22 terminated sooner as provided in paragraph (c) of this
23 section, the period of probation or conditional discharge
24 shall be as follows: and it goes into -- it's actually

1 5-6-2(b)(1), is for Class One or Two felony -- One or Two
2 Felony, not to exceed four years, or Class Three or Four
3 Felony, not to exceed thirty months.

4 If 1410 means that you can only get probation
5 for Class Four Felony, minimally what they would have said
6 would have been -- It would have been under subsection
7 (b)(2) of that section. They say it under section (b) of
8 Section 5-6-2, and under subsection (b) you can get
9 probation for a Class One, a Class Two or Class Three, or
10 Class Four Felony.

11 Otherwise, the legislature would have said
12 and limited that to 5-6 (b)(2), and it goes on in the rest
13 of this with respect to the other incidents of probation.

14 But if you go back to 1402, and if you look at
15 the Section 1402, as you well know, there are two
16 provisions within 1402. There's one for sentencing and
17 there is one for probation. Both of them have a 402(b).

18 When they're talking about the sentencing --

19 By the way, these -- I borrowed these glasses
20 because I left my glasses at home, and I don't normally do
21 this.

22 But, 402(b) goes to the sentencing aspect of
23 what is involved here and more importantly goes to the
24 fine -- the fine the Court can impose if the Court is going

1 to impose a fine.

2 If you look at 1402, subsection (a) says: The
3 following controlled or counterfeit substances and amounts,
4 notwithstanding any of the provisions of subsection (b) to
5 the contrary, is guilty of a Class One Felony for which the
6 offender may not be sentenced to death.

7 What they're saying is that notwithstanding
8 subsection (b), and if you look at subsection (b), they
9 talk about any other amount is a Class Four Felony, but the
10 fine shall not exceed fifteen thousand dollars.

11 And if you read -- Again, if you take the
12 entire section of 1402, where 1402(b) is used in 1410, what
13 1402(b) says is this: That you can be sentenced to a Class
14 Four Felony for any other amount of controlled or
15 counterfeit substance and fined not more than fifteen
16 thousand dollars, but they only refer in 402(2) when
17 they're talking about cocaine of fifteen grams but not less
18 than a hundred grams.

19 If you read this literally, it means if you
20 have fourteen grams of cocaine you can get a Class Four
21 Felony, and one hundred one grams of cocaine, you also have
22 a Class Four Felony. It is just simply not the case.

23 They're not going to say that you got a
24 Class One Felony for fifteen to a hundred grams, but if you

1 have one hundred one grams, we are going to give you 1410
2 Probation.

3 But if you read the section -- If you read
4 that section, that's what it says.

5 Our contention is that that is not because
6 they also say that the conditioning clause of it, and it's
7 a condition notwithstanding any provision of subsection
8 (b), which says it's a Class Four Felony. They're all
9 Class One felonies.

10 So, if it's a Class One Felony, then you have
11 to decide whether or not he's a rehabilitatible candidate
12 for 1410 Probation.

13 We feel if you read 402 -- 1402 with 1410,
14 and if you further look into it along with the Code 5-6-2
15 (b), which says it's a Three and Four Felony -- or One,
16 Two, Three, and Four.

17 In 1411, it says the sentencing matters
18 considered by the Court -- The last paragraph of that
19 says: Nothing in this section shall be construed as
20 limiting in any way the discretion of the Court to impose
21 any sentence authorized by this Act.

22 I think if you look at those various aspects
23 of that chapter that allow for 1410, he is an eligible
24 candidate to to receive 1410 Probation, and we are asking

1 the Court to sentence him under 1410 Probation.

2 If the Court does not see fit, or if the
3 Court does not feel that's applicable here, we still feel a
4 period of probation would be the appropriate thing in this
5 case if you look at his background, his age, the
6 seriousness -- and I'm not saying this is not a serious
7 thing. I'm not saying that to this Court.

8 I'm just saying to the Court how badly -- how
9 badly are we going hurt somebody that is appearing before
10 the Court for the first time with the exception of traffic
11 offenses.

12 I have nothing further.

13 THE COURT: Any rebuttal, Mr. Browder?

14 MR. BROWDER: Yes, your Honor.

15 In response to Counsel's argument, there is
16 two reasons why we should not sentence him to 1410
17 Probation. One, it's not appropriate. Two, it's not
18 provided for by the statute.

19 Counsel goes on and repeatedly cites
20 different sections, pointing to sentencing, 1402, 1410, but
21 clearly under 1402(a)(2), it is not an option.

22 We had gone before your Honor on this at the
23 last sentencing hearing where this issue came up, and your
24 Honor had asked, well, I'm going leave you some time to

1 submit some memorandums with appropriate case law on this
2 matter.

3 Nothing has been presented because nothing is
4 there. It's not an appropriate argument. It's not
5 something that the Court should consider. It's not an
6 option before your Honor based on what we have before the
7 Court.

8 Counsel has stated that, you know, this
9 sentence is something that is going to be imposed upon his
10 family, also. Mr. Dulberg has brought this upon himself.
11 He's brought this upon his family. Any cloud that is there
12 is something that he's done. It's not something our office
13 has done. It's not something your Honor has done. His
14 actions have brought it upon himself.

15 We should not be putting somebody in the
16 position they were before a crime was committed.
17 Mr. Dulberg should not be put into that position so as to
18 say that, you know, he shouldn't be punished so severely.
19 He has committed this crime. He has pled guilty to this
20 crime.

21 We are asking that you do sentence him to
22 boot camp, and the legislature has taken into account that,
23 with the Drug Act as it progressively has gone along, we
24 realize the public has had an outcry. People should be

1 sentenced appropriately for having large amounts of
2 controlled substances and cannabis.

3 Clearly Paul Dulberg had on -- in his
4 possession a large amount of cocaine and cannabis.

5 When it comes to rehabilitation, that's why
6 we now have a boot camp program for people that are
7 eligible for the Department of Corrections based on their
8 offense, but we are giving them an opportunity. That way,
9 he's not serving a full five-year sentence if he chooses to
10 go to the boot camp program.

11 And if he totally disregards what options and
12 what programs and counseling and classes there are
13 available above and beyond the training, and he chooses to
14 just reject that, then a five-year sentence is appropriate
15 because you do not have somebody that has come in and said
16 to the Court, yes, I've committed an offense. Yes, I want
17 to change and go on.

18 We would ask that you sentence him to the
19 recommended sentence because it is appropriate in this
20 matter.

21 As a brief correction, I would draw your
22 attention to page five in which the version said it was
23 planted upon him. On page three, in that version he said
24 it was from Deon.

1 And briefly in response to Mr. Driscoll's
2 argument about a Mr. Isakson, we too had subpoenaed him so
3 there is clearly two divergent opinions of what Mr. Isakson
4 would or would not testify to at trial.

5 Taking all of this into account, the
6 recommendation that we are making to the Court is clearly
7 not a harsh one and is an appropriate one for the offense
8 that Mr. Dulberg has pled guilty to, and we would
9 respectfully recommend that and ask your Honor to impose
10 such a sentence.

11 THE COURT: Anything else, gentlemen?

12 MR. DRISCOLL: Nothing, your Honor.

13 THE COURT: Mr. Dulberg has entered a plea of
14 guilty to the two counts of this three-count indictment.
15 That plea of guilty was a blind plea. It was explained to
16 Mr. Dulberg what a blind plea entails, meaning all
17 sentencing options were open to the Court.

18 His plea of guilty to count one was a plea of
19 guilty to a Class One Felony. Class One felonies are
20 extremely serious offenses.

21 It has been indicated by both sides and is
22 agreed to by the Court that what Mr. Dulberg pleaded guilty
23 to in Count One is an extremely serious matter. Possession
24 with intent to deliver --

1 MR. DRISCOLL: Whoo, whoo, whoo. He
2 didn't --

3 THE COURT: You are correct. I stand
4 corrected.

5 MR. BROWDER: Count Two.

6 THE COURT: Count Two.

7 MR. DRISCOLL: I didn't mean to say whoo,
8 whoo.

9 THE COURT: It's hard to write that down for
10 the court reporter.

11 THE COURT: Unlawful possession of a
12 controlled substance, that being cocaine. The State has
13 indicated --

14 For the record, just to make that clear,
15 Mr. Dulburg has pled guilty to Counts Two and Three.

16 MR. BROWDER: And it was an amended Count
17 Three to possession of cannabis.

18 THE COURT: That's correct.

19 And that Count Two, unlawful possession of a
20 controlled substance, that still being a Class One Felony.

21 It's indicated and it has been indicated that
22 while the minimum amount of cocaine required to fit within
23 the category of Class One Felony, making it a Class One
24 Felony, is fifteen grams, Mr. Dulberg had in his possession

1 an amount of approximating twenty grams.

2 Mr. Dulberg also pled guilty to unlawful
3 possession of cannabis in an amount that made it a Class
4 Four Felony, both of which have been acknowledged as
5 serious offenses.

6 The legislature of this State has indicated
7 that Class One felonies are punishable by a penitentiary
8 term of not less than four nor more than fifteen years,
9 assuming that various alternative sentences with regard to
10 extended sentences and other matters do not apply, which
11 they do not in this case.

12 The Court believes, based upon it's own
13 research and arguments of Counsel, that the Defendant is
14 not entitled to probation under Section 1410.

15 Count two, a Class One Felony, is a
16 probationable offense, however. Count Four is clearly also
17 probationable.

18 So, the question then becomes as to whether
19 Mr. Dulberg should be sentenced to probation, or should be
20 sentenced to a period of incarceration, or a combination of
21 the two.

22 The Court has reviewed the presentence
23 investigation and has given Mr. Dulberg an opportunity to
24 make any comments or statements he wishes.

1 The Court has taken note, and it is
2 refreshing to note, that Mr. Dulberg's family is behind
3 him. That's unusual in this court.

4 The Court also has taken note of other
5 relevant factors in aggravation and mitigation. I am
6 greatly concerned with the Defendant's level of
7 sophistication on the -- that was revealed on the date of
8 his arrest. He did not simply have a casual or small
9 amount of controlled substance in his possession. He had a
10 substantial amount. The amounts that he had were broken
11 down into smaller amounts. This Court believes that is
12 significant.

13 The Defendant's sophistication with regard to
14 knowing where to obtain more is significant.

15 The Defendant's indications as to his prior
16 activities with regard to cocaine, LSD, and marijuana is
17 significant.

18 The Defendant's association with other
19 persons who use and/or sell those substances is
20 significant.

21 The Defendant's possession of accounts which
22 by his own admission indicated that -- that these were
23 monies owed to him by other persons is significant.

24 The Court does not believe that Mr. Dulberg

1 is or was on the date of his arrest a person who was caught
2 in a trap. Mr. Dulberg was in a position of his own
3 making.

4 There is no doubt that Mr. Dulberg's family
5 will pay as much as he does for his crimes, and there is no
6 better example that I can point to of the destructive
7 nature of drugs and Mr. Dulberg, and what it has done to
8 him and what it has done his family.

9 This Court, after having taken into account
10 all relevant factors in aggravation and mitigation,
11 including those factors enumerated in Chapter 38, Section
12 1005-5, believes that probation or conditional discharge
13 would deprecate the seriousness of his conduct and be
14 inconsistent with the ends of justice.

15 The Court is further of the opinion
16 that Mr. Dulberg's imprisonment is necessary for the
17 protection of the public.

18 The Court will sentence the Defendant to a
19 term of incarceration in the custody of the Illinois
20 Department of Corrections for four years on Count Two of 90
21 CF 655.

22 The Defendant is sentenced to a term of
23 incarceration on Count Three of two years. Those terms to
24 run concurrent.

1 Mr. Dulberg shall receive credit for the time
2 he served in the McHenry County Jail awaiting trial or
3 hearing in this matter. I believe that is one hundred
4 thirty-four days, but you can calculate that.

5 According to a cursory look at the file, he
6 appears to have been arrested on November 28th and released
7 on April 9th. At least that's what his bond sheet says.
8 So, you can do the addition.

9 If you did any other time, if you can agree
10 to that, what that is, I'll certainly give him credit for
11 it.

12 This Court is of the belief that the impact
13 incarceration program would benefit Mr. Dulberg. Not only
14 would it benefit him, but he would benefit it.

15 The Court believes that he meets the
16 eligibility requirements of the Department of Corrections
17 for impact incarceration; that being that he is not less
18 than seventeen nor more than twenty-nine years old; he has
19 never served a sentence of imprisonment for a felony; that
20 he has not been convicted of a Class X Felony, or First or
21 Second Degree Murder, Armed Violence, Aggravated
22 Kidnapping, Criminal Sexual Abuse, or a subsequent
23 conviction for Criminal Sexual Abuse, Forcible Detention,
24 or Arson; that his sentence is a term of imprisonment for

1 five years or less; that he would be physically able to
2 participate in such strenuous physical activities or labor;
3 that he does not appear to have any mental disorder or
4 disability that would prevent his participation; and that
5 if he would -- if he desires to participate in such a
6 program, he must consent to that program, and if he does
7 desire such a program, this Court will order such a
8 program.

9 The Court also believes that Mr. Dulberg
10 should not, and I believe that my sentence clearly
11 indicates that he has not, profited by his activities, but
12 that in addition, a fine is appropriate, and the Court will
13 fine the Defendant two thousand dollars.

14 Mr. Dulberg understands that because this
15 sentence was entered pursuant to judgment of conviction,
16 and for the record this Court will enter a judgment of
17 conviction on both counts, because it doesn't believe it
18 has, and because of the question as to 14 -- and because of
19 the question as to 1410 Probation.

20 Because this sentence was entered pursuant to
21 judgment entered on your plea of guilty, you have a right
22 to appeal. If you do decide to appeal, you must file in
23 this court within thirty days of today's date a written
24 motion asking to have the trial court reconsider its

1 sentence, or to have the judgment vacated, and for leave to
2 withdraw your plea of guilty, setting forth the grounds in
3 the motion.

4 If that motion is allowed, the sentence will
5 be modified or the plea of guilty, sentence, and judgment
6 will be vacated and a trial date will be set on those
7 charges.

8 Upon the request of the State, any charges
9 that may have been dismissed as a result of this plea
10 agreement will also be reinstated and will also be set for
11 trial.

12 If you are indigent, a transcript --

13 Strike that. Strike that.

14 There was not a plea agreement. It was a
15 blind plea, other than the State did, as part of the plea
16 agreement, nolle pross a count.

17 MR. BROWDER: That's correct. Nolle pross
18 and amend a count.

19 THE COURT: If you are indigent, a copy of
20 the transcript of the proceedings at relevant dates will be
21 provided to you without cost, and counsel will appointed to
22 assist you in the preparation of your motion.

23 If you do decide to appeal from this judgment
24 on your plea of guilty, any issue or claim of error not

1 raised in your motion to reconsider the sentence, or vacate
2 judgment, or withdraw your plea of guilty will be deemed
3 waived.

4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Any other matters for today,
7 Mr. Dulberg?

8 MR. DRISCOLL: The only thing I ask is if we
9 could stay the mittimus thirty days.

10 MR. BROWDER: Your Honor, we ask that bond be
11 revoked and he be remanded instanter so we can get the
12 paperwork and get him processed as soon as possible so he
13 can get into the boot camp program.

14 MR. DRISCOLL: You don't even know if they're
15 going to accept him. The Court or the State has no ability
16 to determine that. That's determined by the Illinois
17 Department of Corrections.

18 THE COURT: I agree. It's a recommendation
19 made by the Court. It's up to the Department of
20 Corrections as to whether he will be placed in that.

21 MR. BROWDER: The sooner we get the
22 paperwork --

23 MR. DRISCOLL: It's probable they don't know
24 whether or not they have room for him.

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THE COURT: As a matter of practicality,
whether I sentence him today or whether I sentence him a
month from now, they won't even address the issue until
he's in their hands.

MR. DRISCOLL: I understand, but I still --

THE COURT: The Court will stay the mittimus
until August 7th at 9 a.m., at which time the Defendant is
ordered to surrender himself to the Sheriff of this county.

MR. BROWDER: Thank you, your Honor.

THE COURT: The Court stands in recess.

WHICH WAS AND IS ALL OF THE EVIDENCE

OFFERED AT THE HEARING OF SAID CAUSE.

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF McHENRY)

4 IN THE NINETEENTH JUDICIAL CIRCUIT
5 McHENRY COUNTY, ILLINOIS
6
7

8 I, Sally Miller, one of the Official Court
9 Reporters of the 19th Judicial Circuit of Illinois, do
10 hereby certify that I reported in shorthand the proceedings
11 had at the hearing of the above-entitled cause, and that
12 the foregoing is a true and correct transcription of all
13 the proceedings heard.
14
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19 Sally Miller
20
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24

CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS
COUNTY OF McHENRY

SS

GEN. NO. 90CF 655☐ Jury ☐ Non-Jury

People of the State of Illinois

vs.

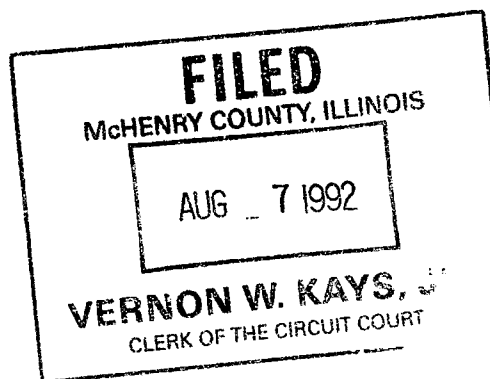
Paul R. Dulberg

Date 8.7.92Plaintiff's
AttorneyASA KokiniDefendant's
AttorneyJ. Priscoll

ORDER

This cause coming on, the defendant present and surrendering himself today to the McHenry County Sheriff, the Court being fully apprised in the premises, the defendant orally moving to keep the defendant in jail - not transporting to the Dept of Corrections until Sept. 8, 1992 or afterwards, IT IS ORDERED,

Defendant's motion is granted; defendant shall not be transported to DOC until Sept. 8, 1992 or afterwards, pending the filing of any post-trial motions



Prepared by: _____

Attorney for: _____

Attorney Registration No.: _____

Judge

Ward Small

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

IN THE CIRCUIT COURT OF THE 19th JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel THOMAS F. BAKER, State's)
Attorney for McHenry County, Illinois)

vs.)

PAUL R. DULBERG)

WARDEN
Joliet Correction Center
1125 Collins
Joliet, IL 60431

No.)

90 CF 655

FILED

MCHENRY COUNTY, ILLINOIS

AUG 14 1992

VERNON W. KAYS, JR.

CLERK OF THE CIRCUIT COURT

PETITION FOR WRIT OF HABEAS CORPUS
AD PROSEQUENDUM

Now comes THOMAS F. BAKER, State's Attorney for McHenry County, Illinois, petitioner herein, who respectfully represents unto this Honorable Court that PAUL R. DULBERG, hereinafter referred to as the defendant, is imprisoned and detained by due process of law in confinement facilities, to wit: Joliet Correctional Center, by the above named respondent.

Petitioner further represents that the cause entitled "PEOPLE OF THE STATE OF ILLINOIS vs. PAUL R. DULBERG, Case Number 90 CF 655, now pending in the Circuit Court of McHenry County, Illinois, has been set for hearing/trial before this Honorable Court, on the 17th day of August, 1991 at 9:00 a.m. and that the presence of the defendant is required at the hearing/trial of said cause.

WHEREFORE, Petitioner respectfully prays that a Writ of Habeas Corpus ad Prosequendum issue out of this Court directed to the respondent herein so that the said defendant may be brought before the said Court to attend the hearing/trial of said cause on the day

appointed and be returned immediately thereafter to the custody of the respondent, or wheresoever ordered by the Court.

Thomas F. Baker (w)

THOMAS F. BAKER

McHenry County State's Attorney

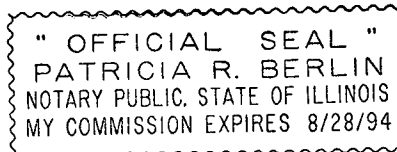
STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

THOMAS F. BAKER, being duly sworn according to law, deposes and says that he has read foregoing petition and knows its contents and that the matters and things therein stated are true to the best of his knowledge, information and belief.

Thomas F. Baker (w)

Subscribed and sworn to before me
this 14th day of August, 1992.

Patricia R. Berlin
NOTARY PUBLIC



STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE 19th JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel THOMAS F. BAKER, State's)
Attorney for McHenry County, Illinois)

vs.)

No. 90 CF 655)

PAUL R. DULBERG

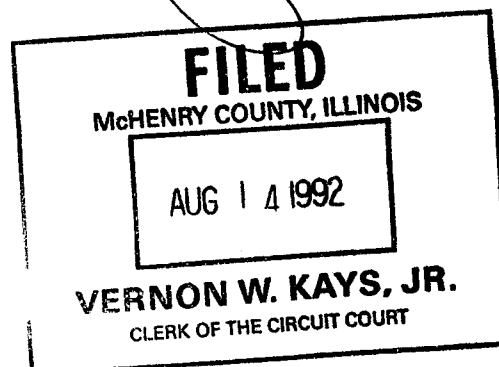
WARDEN
Joliet Correctional Center
1125 Collins
Joliet, IL 60431

ORDER FOR WRIT

Let a writ of Habeas Corpus ad Prosequendum issue in the above
entitled case, "PEOPLE OF THE STATE OF ILLINOIS vs. PAUL R.
DULBERG, Case Number 90 cf 655, as prayed in the foregoing
petition, returnable on the 17TH day of August, 1992 at 9:00 a.m.,
before the Honorable Judge Ward S. Arnold, or Judge presiding,
McHenry County Government Center, 2200 N. Seminary Avenue,
Woodstock, Illinois.

ENTERED this 14th day of August, 1992.

J U D G E



CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS
COUNTY OF McHENRY

SS

GEN. NO. 90 CF 655

☐ Jury ☐ Non-Jury

People vs. Paul Dulberg

Date 8/17/92 Plaintiff's Attorney Browder Defendant's Attorney Driscoll

ORDER

This matter coming before the court for entry of an agreed order. The court being fully advised hereby orders:

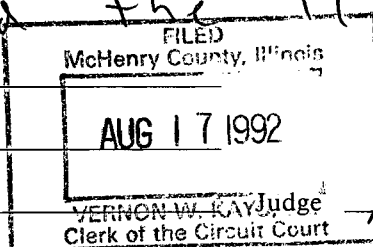
That the Department of Corrections is ordered to release Paul Dulberg to the custody of the McHenry County Sheriff's Department as provided for by the writ that was issued on 8-14-92. The defendant is to be released instantaneously to the McHenry County Sheriff's Department so he can be transported back to the facility in Woodstock.

This ordered the 17 day of August 1992.

Prepared by: Browder

Attorney for: _____

Attorney Registration No.: _____



Henry L. Gosh

90-623/JFD

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

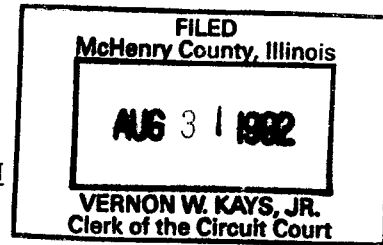
Plaintiff,

vs

PAUL R. DULBERG,

Defendant.

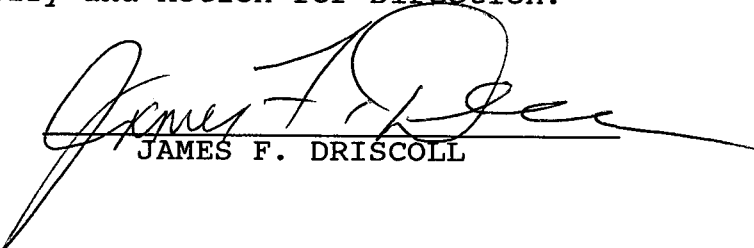
No. 90 CF 655



NOTICE OF MOTION

TO: Perry J. Browder
Assistant State's Attorney
2200 North Seminary Avenue
Woodstock, IL 60098

On September 8, 1992 at 9:00 A.M., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Ward Arnold or any judge sitting in his stead, in the courtroom usually occupied by him in Room C340, McHenry County Court House, 2200 North Seminary Avenue, Woodstock, Illinois and then and there present the attached Petition for Reconsideration and Clarification of the Sentencing, Motion to Clarify and Motion for Direction.


JAMES F. DRISCOLL

DRISCOLL & DRISCOLL
Attorneys for Defendant
1920 N. Thoreau Drive, Suite 166
Schaumburg, IL 60173
708/397-3909

PROOF OF SERVICE

I, James F. Driscoll, the attorney, certify that I served this Notice and documents referred to therein by hand delivering a copy to the above named party on August 31, 1992.


JAMES F. DRISCOLL

90-623/JFD

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)

Plaintiff,)

VS)

PAUL R. DULBERG,)

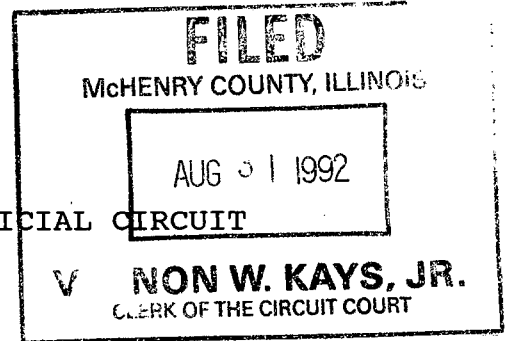
Defendant.)

No. 90 CF 655

PETITION FOR RECONSIDERATION AND
CLARIFICATION OF THE SENTENCING

NOW COMES Defendant, PAUL R. DULBERG, by and through his attorneys, DRISCOLL & DRISCOLL, and as and for his Petition for Reconsideration of the Sentencing and in the alternative for Clarification of the Sentencing, states as follows:

1. That the Defendant was sentenced on July 30, 1992.
2. That the Defendant was sentenced to four (4) years in the Illinois Department of Correction and fined TWO THOUSAND (\$2,000.00) DOLLARS and the Court recommended impact incarceration.
3. That this Court rejected prior arguments of the defense counsel with respect to 1410 probation and obviously also rejected defense counsel's argument relative to probation.
4. That in sentencing this Court did note that the Defendant's family is behind him and how unusual that is in this Court.
5. That this Court did not specify any mitigating factor except that it considered the relevant mitigating factors.



6. That this Court did not specify that this was the only time the Defendant has ever been arrested except for traffic violations.

7. That this Court seemed to indicate that the state set out certain activities of the Defendant with respect to a Mr. Isakson. The Defendant maintained that this argument violated the agreement entered into which led to the plea being entered.

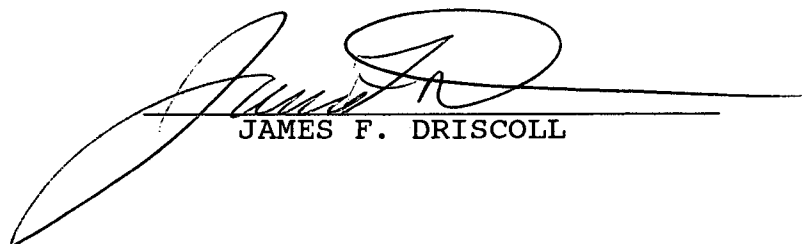
The Defendant plead guilty to possession of a controlled substance. The elements specified to by the State and reiterated by this Court were aspects of possession with intent to deliver.

8. That this Court specifically referred to Defendant's prior activities and incorrectly attributed to Defendant statements which he did not make and which are in fact false.

Specifically this Court refers to monies owed to him by other persons. (Page 26 of the Transcript)

9. That clearly this Court, in reviewing the transcript as a whole, sentenced the Defendant for activities other than those to which he plead guilty.

WHEREFORE, the Defendant prays that the sentence be vacated and set down for a new Sentencing Hearing.



JAMES F. DRISCOLL

DRISCOLL & DRISCOLL
Attorneys for Defendant
1920 N. Thoreau Drive, Suite 166
Schaumburg, IL 60173
708/397-3909

90-623/JFD

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)

Plaintiff,)

vs)

PAUL R. DULBERG,)

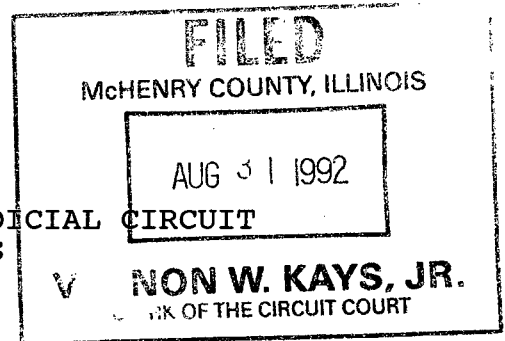
Defendant.)

No. 90 CF 655

MOTION TO CLARIFY AND
MOTION FOR DIRECTION

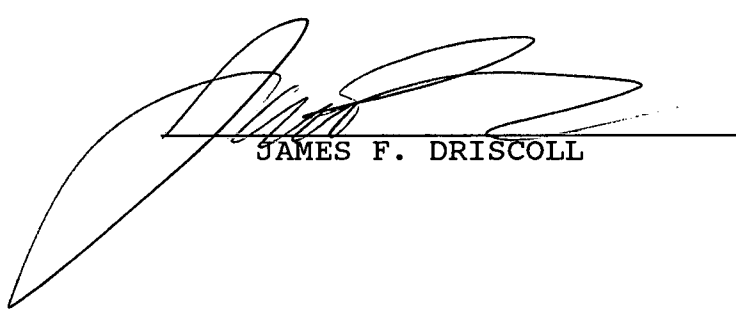
NOW COMES Defendant, PAUL R. DULBERG, by and through his attorneys, DRISCOLL & DRISCOLL, and as and for his Motion to Clarify and Motion for Direction, states as follows:

1. That the Defendant was sentenced to four (4) years in the Illinois Department of Correction.
2. That the Court indicated that Defendant should be given credit for day for day time served.
3. That the Defendant was inadvertently transferred to the Illinois Department of Correction prior to this Hearing.
4. That the Defendant was advised by the Illinois Department of Correction that he would not be given day for day credit for the time that he served prior to the trial and prior to the time that he made bond. That this period of time is one hundred and thirty-four (134) days.
5. That the Defendant has been incarcerated at the McHenry County Jail since August 7, 1992.



6. That the Defendant has served a combined total of one hundred and fifty-eight (158) days through August 31, 1992.

WHEREFORE, the Defendant prays that the Illinois Department of Correction be ordered to give the Defendant credit for the period of time served both prior to the trial and being bonded out and subsequent to the sentencing.



JAMES F. DRISCOLL

DRISCOLL & DRISCOLL
Attorneys for Defendant
1920 N. Thoreau Drive, Suite 166
Schaumburg, IL 60173
708/397-3909

CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS
COUNTY OF McHENRY

SS

GEN. NO. 90 CF 655
☐ Jury ☐ Non-Jury

People

vs.

Paul R. Dulberg

Date 9-8-92 Plaintiff's Attorney Browder Defendant's Attorney Driscoll

ORDER

This matter coming before the Court for entry of an order and hearing. The Court being fully advised hereby orders:

That the defendant's motion to clarify on the credit for time spent in custody is denied. The Court finds that the defendant is given 134 days of credit ~~post~~ ^{pre} judgment and day for day credit on all time spend in custody post judgment.

The Court further orders that the defendant is to be held in custody at the McHenry County Jail until further ordered, over State's Objection. Do Not Trans ~~FILED~~ until further Ordered.

Prepared by:

Attorney for:

Attorney Registration No.:

McHENRY COUNTY, ILLINOIS

SEP 8 1992

VERNON W. KAYS, JR.
CLERK OF THE CIRCUIT COURT

Ward Arnold

CIRCUIT COURT FOR THE 19th JUDICIAL CIRCUIT

STATE OF ILLINOIS
COUNTY OF McHENRY

SS

GEN. NO. 90 CF 655
☐ Jury ☐ Non-Jury

People vs. Paul R. Dulberg

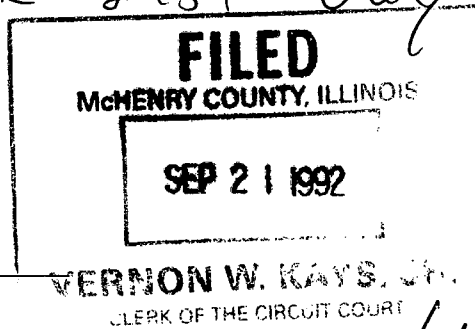
Date 9/21/92 Plaintiff's Attorney Browder Defendant's Attorney Priscoll

ORDER

This matter coming before the court for Defendant's Motion for New Sentencing, the court being fully advised hereby orders:

That the defendant's motion is stricken. The defendant is ordered to be transported to the Department of Corrections Institution.

This ordered the 21st day of September 1992



Prepared by: Browder.

Attorney for: _____

Attorney Registration No.: _____

Judge

Ward S. Small