

IN THE COUNTY COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA
CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA,

Plaintiff,

vs.

MARY WHITTAKER,

Defendant.

CASE NUMBER: MO98-25.

DIVISION: 63

FILED IN 00
CRIMINAL DIV
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LINDA A. SMITH
CLERK COUNTY COURT
ORANGE COUNTY, FL

MOTION TO SUPPRESS HEARING

BEFORE

THE HONORABLE DEB S. BLECHMAN

Recorded by Automated Court Reporters
In the Orange County Courthouse
425 North Orange Avenue
Courtroom 9B
Orlando, Florida 32801
Commencing at 11:18 a.m.
Monday, July 19, 1999
Transcribed by Diane S. Hebel

APPEARANCES:

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On behalf of the Plaintiff.

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On behalf of the Defendant.

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TESTIMONY OF KENNETH D. TAYLOR

Direct Examination by Mr. Foster

Cross Examination by Mr. Sauerheber

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TESTIMONY OF MARY WHITTAKER

Direct Examination by Mr. Foster

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PROCEEDINGS

THE COURT: The State of Florida versus Mary Whittaker.

Mr. Sauerheber is here for the Defense, and Mr. Foster is here for the State.

MR. FOSTER: I would call Officer Kevin Markham -- Kenneth Taylor --

I'm sorry.

* * * * *

WHEREUPON:

KENNETH D. TAYLOR

having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FOSTER:

Q Would you please state your name for the record?

A Kenneth D. Taylor.

Q And how are you employed?

A Deputy Sheriff, Orange County Sheriff's Office.

Q How long have you been so employed?

A Three years, four months.

Q During the first -- well, what are your duties with the sheriff's office?

A Sector I, bike unit, South Apopka.

Q Okay. And during the course of your duties with the sheriff's office bike unit, have you had occasion to come into contact with a person known to you as Mary Whittaker?

A Yes, I have.

Q Approximately how many times?

A At least seven.

1 Q And what was the nature of the contact that you've had in the past with
2 Mary Whittaker?

3 A Just on the street there and in drug activity areas.

4 Q All right. Have you had occasion to observe Mary Whittaker in violations
5 of some of the -- some of the provisions of Chapter 893?

6 A Yes, I have.

7 Q On how many occasions?

8 A Two.

9 Q And what types of -- prior to November 5 of last year, what types of 893
10 violations did you see Mary Whittaker engage in?

11 A Possession of drug paraphernalia, the same thing she's charged with this
12 time; crack cocaine, pipes.

13 Q And have you had any training -- specialized training in detection of
14 narcotics?

15 A Yes, I have.

16 Q What kind of training is that?

17 A The basic police training -- what's in the academy; afterwards, a 40-hour
18 narcotics identification class, tactical drug operation schools, undercover drug operation
19 schools.

20 Q Have you had any training in the affects of narcotics on the human body?

21 A Yes, I have.

22 Q Based upon your training and your experiences, have you seen Mary
23 Whittaker in the state of being under the influence of narcotics?

24 A Yes, I have.

25 Q On how many occasions?

1 A Two.

2 Q Now, on the date in question, November 5, 1998, did you come into contact
3 with Mary Whittaker?

4 A Yes, I did.

5 Q And where was she when you came into contact with her?

6 A It's the area that we call the hole. It's -- the best way to describe is between
7 10th Street and 11th Street, in between Central Lake and South Apopka. It's actually
8 behind apartments. They call it the hole because you have to walk through the woods or a
9 little path to get back there.

10 Q To get back into the area?

11 A To get back into the area, it's called the hole.

12 Q Is that a secluded area?

13 A Yes.

14 Q Okay. And is there frequent law enforcement activity in that area?

15 A Yes, there is.

16 Q And why is there frequent law enforcement activity in that area?

17 A When the people that buy the crack cocaine from the street dealers on the
18 corner of 10th and Central get theirs, they usually go back there to smoke it, the local
19 ones.

20 Q Okay. And have you observed people doing that?

21 A Yes, I've caught numerous back there.

22 Q And does that place have a, for a lack of a better term, reputation as an area
23 where people frequently consume narcotics?

24 A Yes.

25 Q Now, on November 5th, did you go into the secluded area known as the

1 hole?

2 A Yes, I did.

3 Q And did you see Mary Whittaker?

4 A Yes.

5 Q Did you make any observations about Mary Whittaker on that date?

6 A No. She was just walking out of the hole as I was walking in.

7 Q Walking out?

8 A The -- I guess, we call it the signal that the cops are here sign went out,
9 which is hooty-hoo. When we hear that, we know we're pretty well -- everybody knows
10 we're there. And that was heard being said, echoed throughout the people on the street.

11 Q You heard that being...

12 A Yes.

13 Q Okay. Now, did you notice anything unusual about Mary Whittaker that
14 day?

15 A No. She was just walking out. I mean, she was -- she always -- back then,
16 she was pretty much on crack a lot and she had this look -- she's always had this look on
17 her.

18 Q Okay. Did you have an opinion as to what her condition was?

19 A Thought she was high.

20 Q Okay. Now, did you engage in conversation with her?

21 A Yes, I did.

22 Q How did you go about engaging in conversation with her?

23 A Like, Mary, what are you doing back here again?

24 Q Did you give her any command?

25 A No, I did not.

1 Q In response to your question to her, what are you doing back in there again,
2 what did Mary Whittaker do?

3 A She did -- she didn't really answer, she just stood there.

4 Q Did she stop?

5 A Yes, she stopped.

6 Q All right. And stood there and she -- was she looking at you?

7 A Yes.

8 Q All right. And how were you dressed at that time?

9 A An official issued uniform of the sheriff's office, which is a premarked shirt,
10 and my gun belt on, and we wear shorts, so shorts for my pants.

11 Q Did you have your bike with you or was your bike somewhere else?

12 A No. No. Didn't have the bicycles that day.

13 Q Okay. Now, when you were talking to Mary Whittaker, describe your
14 demeanor.

15 A I was standing, facing -- that would be to the east and she was facing the
16 west. And I made it a point not to block the path because the path there is pretty narrow
17 coming in and out, so I stood beside it.

18 The other deputy, it was (indiscernible words) went on past me to see if
19 anybody else was back there. I started talking to Mary there, just like having a
20 conversation like you usually talk to her.

21 Q A normal conversation?

22 A Yes.

23 Q Did you use any authoritative language with her or anything like that?

24 A No.

25 Q Just normal street talk?

1 A Yes.

2 Q Where were your hands?

3 A Where...

4 Q Where were your hands?

5 A On my hips.

6 Q Okay. Both hands on your hips?

7 A I always keep -- when I'm just standing there talking to people, I keep one
8 hand like on my -- the top of my hand was propped up front here just to rest it and the
9 other one like on my Asp back there just to rest it.

10 Q Okay. So standing here like so?

11 A Well, I'm left-handed so it's the other way. Yes, sir.

12 Q All right. In other words, you didn't have your left hand grab ahold of your
13 gun?

14 A No. No, sir.

15 Q Right? In any way, you weren't standing in a threatening manner?

16 A No, sir.

17 Q Now, you asked her this question and she didn't respond. Did you ask her
18 any other questions?

19 A Asked her, you got anything on you today?

20 Q And what did she say?

21 A It matters if I'm going to jail or not.

22 Q I'm sorry?

23 A It matters if I'm going to jail or not.

24 Q Okay. And what did you take that to mean?

25 A Well, I've dealt with her before there and like I said in the past, I've actually

1 took some crack pipe stems off of her and not charged her by officer discretion.

2 The way I work up there, usually, when I catch somebody the first time
3 with a misdemeanor amount, I will just -- officer discretion, I won't charge her with it,
4 you know. I'll say, don't let me see you up here again; this is your break, okay. And I've
5 did that to her before. And by this, I knew at least she had a crack pipe on her.

6 Q Okay.

7 A I just felt it.

8 Q And in response to her statement, only if I'm not going to jail; was that it?

9 A Yes.

10 Q What did you say?

11 A I said, well, if you only got a crack pipe or something like that, then I'm just
12 going to give you a ticket. And a ticket is what people up there in that area call a notice
13 to appear.

14 Q And did she respond to your statement of only giving her a ticket?

15 A Yeah. She reached in her left pocket and gave me the paraphernalia, which
16 was a crack pipe.

17 Q Okay. And based upon your training and experience, you drew a
18 conclusion it was crack pipe?

19 A Yes.

20 Q Did you subsequently test any residue on that pipe?

21 A Negative. I did not.

22 Q You did not?

23 A (No verbal response)

24 Q Okay. But you took it in and placed it in evidence?

25 A Placed it in evidence.

1 Q Now, prior to telling -- prior to her reaching into her pocket and handing
2 you the crack pipe, had you touched her?

3 A No.

4 Q All right. You had not conducted any sort of a pat-down?

5 A Negative. No.

6 Q Didn't engage in a what so -- what would have been termed as an officer's
7 safety pat-down?

8 A No.

9 Q Did you tell her at any time to take anything out of her pocket?

10 A No, I did not.

11 Q Everything that you've testified to today about the conversations that
12 you-all had, is that the sum total of the conversations that you had?

13 A Up to this point, yes. I mean, after she gave that, I did search her, incident
14 to an arrest.

15 Q Okay. But up to that point, everything that you've testified to so far...

16 A Yes.

17 Q ...is the total of your conversations?

18 A Yes.

19 Q And then you issued her the notice to appear?

20 A Yes, I did.

21 Q Did you at any time tell her that she should search herself or that you would
22 search her anyway?

23 A No.

24 Q Did you ever articulate any language like that to her at all...

25 A No, I did not.

1 Q ...that she should give up whatever she had because you were going to
2 search anyway?

3 A No, I did not.

4 Q After you gave her the notice to appear, you conducted a search incident to
5 arrest?

6 A Yes, I did.

7 Q Did you find any contraband at that time?

8 A Some more copper mesh, which is used to go inside a crack pipe to act as a
9 filter.

10 Q And that's the total of the contraband you located?

11 A Yes.

12 Q Up to the time that you issued the notice to appear, what would you have
13 done if Mary Whittaker had turned around and walked back in?

14 MR. SAUERHEBER: Objection, calls for speculation.

15 THE COURT: I don't know if he knows or not. He might, and if he does,
16 I'll let him answer it.

17 BY MR. FOSTER:

18 Q What would you have done if Mary Whittaker turned around and walked
19 back into the hole? Reference her, what would you have done?

20 A I just walked back there and see what she's doing.

21 Q If she had continued walking out of the hole and onto the -- into the
22 apartment complex and out to the street, what would you have done, reference her?

23 A I made a statement such as, because this happened before, you know; I'll see
24 you next time back here, and you probably won't know I'm here the next time.

25 Q And let her go?

1 A Yes.

2 MR. FOSTER: I don't have any other questions at this time, Judge.

3 THE COURT: All right. Thank you, Mr. Foster.

4 Mr. Sauerheber.

5 * * * * *

6 CROSS EXAMINATION

7 BY MR. SAUERHEBER:

8 Q Mr. Taylor, you made the statement that you felt she had something, you
9 knew she had a pipe?

10 A Yes. Just felt...

11 Q And when you first observed her, she was walking out of this area with two
12 other females, correct?

13 A No.

14 Q She was unaccompanied? She was alone?

15 A Yes.

16 Q Okay. At that point, you didn't observe any illegal activity? You didn't
17 have any suspicion of any illegal activity?

18 A No, sir, I did not.

19 Q Nothing around you -- suspicion of? Just the fact that where she was when
20 she was there?

21 A When she got closer, I just noticed her eyes.

22 Q Okay. So as she approached you, had an instinct that she had a pipe?

23 A No, not then. After she made the statement, it matters if I'm going to jail or
24 not, that's when my suspicion rose.

25 Q But when she approached you, she was just a citizen on the street?

1 A Yes.

2 Q And you had no reason -- no reasonable suspicion or -- no suspicions of her

3 A Correct.

4 Q Mr. Foster asked you what you would have done had she kept on walking.
5 Isn't it true that you asked her for her ID?

6 A No. I know Mary Whittaker.

7 Q Okay. So you didn't ask her for her ID?

8 A No.

9 Q So it's your testimony that had she ignored you and kept walking, that you
10 would have cleared the path for her and let her go by?

11 A The path was already cleared. I was standing off the path.

12 Q You were standing off the path?

13 A Yes.

14 Q Well, wasn't it true that routinely, in these cases, that people who knew you
15 get charged with resisting?

16 A No.

17 Q No?

18 A (No verbal response)

19 Q So it's your testimony here today that she was perfectly free to ignore you
20 and keep walking?

21 A Yes, she was.

22 Q And yet you were drawn to her by the fact that you know that she's in a
23 drug area, you know that she's a drug user and, in fact, I think you testified that you've
24 seen her with something before; isn't that correct?

25 A Yes, I have. I've seen her with something before.

1 Q And yet, even though you had this suspicion of her, you were going to let
2 her keep walking and go out to the streets?

3 A Yes. It happens all the time. I know pretty much everybody up there, the
4 common drug users that frequent these areas. It happens all the time.

5 Q You never informed her that she was free to go, though, did you?

6 A No, I did not.

7 Q What do you think? You saw the situation, you were a participant. What
8 do you think a normal person would have done when they were approached by a police
9 officer in full uniform and asks, what do you have on you, what do you have on you
10 today?

11 A Yeah. Subsequently, when I approached, she was going back there. She
12 was kind of quiet. I asked, anything on you?

13 Q So your first -- what was your first statement to her?

14 A I recall it was like, what are you doing back here, Mary?

15 Q And she didn't respond?

16 A No.

17 Q Did she stop in her tracks?

18 A She -- yeah. She stopped right there and just kind of looked at me.

19 Q Okay. And you were in full police uniform?

20 A Yes, I was.

21 Q And describe for me again how narrow this path is.

22 A Lengthways, for about a foot to the left once you stand between those two
23 right there. About three foot wide.

24 Q (Indiscernible words)?

25 A Yeah. Yes, sir.

1 Q And yet you were able to stand out of the way?

2 A Yes, there's grass on either side.

3 Q Grass on either side?

4 A Yeah.

5 Q So she was -- were you in the grass or would she have had to go on the
6 grass?

7 A I was on the grass. I walked through the grass.

8 Q Okay. I thought you described this entrance as closed wooded area.

9 A Coming through the back way is a closed wooded area. The area she was
10 leaving is coming off of 10th Street. And 10th Street there -- because there's actually like
11 apartment homes back there that you would call them -- as they call them anyway. And
12 you just walk beside the fence to get back to this area and it's just dirt until you get to the
13 open area called the hole.

14 Q Okay. And you personally have made arrests back there in the past?

15 A In excess of 20.

16 Q And you stated earlier that you had contact with the defendant a total of
17 seven times?

18 A Approximately seven times.

19 Q Okay.

20 A I know her and her sons and everybody up there.

21 Q And in all those cases, she was free to leave?

22 A Yes. Only one time before this have I talked to her before and that was
23 about her crack problem there, just mutual conversation. And that's the first time she
24 gave me the crack pipe. She was free to leave at the time. And I gave her the speech like
25 I give everybody on the first time, the crack cocaine users, anyway.

1 Q So when you asked Ms. Whittaker what she was doing back there, would a
2 reasonable person have felt -- and you are dressed in full police uniform -- a reasonable
3 person have felt that they were free to ignore you and keep walking?

4 A I think a reasonable person -- the laws -- knew they was free to leave.

5 Q But maybe not a reasonable person who is not as familiar with the laws?

6 A Maybe not.

7 Q So in other words, she stopped probably because she believes she had to.

8 MR. FOSTER: Objection, speculative.

9 THE COURT: I don't know if he could answer it or not. We'll ask him if
10 he can and if he can't, then I'll sustain it.

11 BY MR. SAUERHEBER:

12 A I'm going to say this, that we've had enough dealings -- I've had enough
13 dealings and everybody else up there has had enough dealings with Mary that she knows
14 the law.

15 Q I'm asking about a reasonable person, what a reasonable person -- when
16 they're approached by the police officer dressed in full uniform and asked, what are you
17 doing here, would they feel free to continue on their way and walk...

18 MR. FOSTER: Objection, calls for a legal conclusion the province of the
19 Court can make.

20 THE COURT: When you go further -- now, you've asked him one time
21 what he thought was in Mary Whittaker's mind.

22 MR. SAUERHEBER: Yes, ma'am.

23 THE COURT: The best evidence of that is just ask Ms. Whittaker, because
24 it's true, this officer is speculating right now.

25 I sustained.

1 MR. SAUERHEBER: I know. And, there's a problem asking
2 Ms. Whittaker, I think, which I think we'll come to in a minute. But I'm asking
3 if a reasonable person, based on his experience of a law enforcement officer in
4 dealing with people on the street and particularly in places like the hole where
5 there's frequent drug activity and constantly frequented by people who know
6 what's going on there and know that the police are there to investigate something.
7 That's my question.

8 MR. FOSTER: And my objection to that is that that calls for a legal
9 conclusion, which is in the province of the Court to determine whether a
10 reasonable person was free to go, like, given the circumstances.

11 THE COURT: The truth is that you get all the facts and circumstances
12 out and then ultimately Mr. Foster is right. I have to determine about whether
13 there's enough there to be consensual or not, whether a reasonable person would
14 feel that they could leave. In fact, the appellate courts have said that it doesn't
15 even matter what the officer thinks, it's the operative facts, with all due respect,
16 you know. Because the officers are going to have a different point of view
17 sometimes in the appellate courts in regard to the overall perspective and, you
18 know, the thousands of cases that get funneled through the system. So I'll go
19 ahead and sustain the objection.

20 BY MR. SAUERHEBER:

21 Q Okay. So, just so I'm clear, your testimony is that you asked her what she
22 was doing back there; she asked, am I going to get in trouble, and what was your
23 response?

24 A It matters what you got on you or not, if you've got, you know, a crack pipe
25 or what.

1 Q And at that point when, you were questioning her, she was still free to go, is
2 that what you said?

3 A Yes.

4 Q And what was her response to it matters what you have on you?

5 A She reached in her left-front pocket and produced a crack pipe.

6 Q Just like that?

7 A Just like that.

8 MR. SAUERHEBER: I have nothing further.

9 THE COURT: All right. Thank you.

10 Sir, I believe you're free to step down.

11 Anything further, Counsel?

12 MR. SAUERHEBER: I don't know if the State has any more.

13 MR. FOSTER: No. No more witnesses.

14 THE COURT: Okay. Thank you.

15 MR. SAUERHEBER: Your Honor, Defense would like to call
16 Ms. Whittaker; however, she's informed Counsel that she will not take the stand to
17 testify today.

18 THE COURT: Okay. You might want to ask her for sure about that on
19 the record, because if you think that she should, then it has to -- you know, she's
20 giving up her right to testify. And maybe that should be clear, that she's -- really
21 understands everything about that.

22 MR. SAUERHEBER: Ms. Whittaker, is it still your intention not to testify
23 or make any statements today in the courtroom?

24 THE DEFENDANT: No. He's verified everything that he said. It had to
25 take a lot of (indiscernible words).

1 THE COURT: Ms. Whittaker, could you do us a favor, please, ma'am?

2 THE DEFENDANT: Yes.

3 THE COURT: That microphone -- Mr. Sauerheber, if you could bring it
4 over to her a little bit. She's very soft-spoken.

5 THE DEFENDANT: Well, I said he clarified everything that -- which is
6 fact that he had been harassing me like several -- seven times he spoke of. That
7 was enough. And if he had to take a lie-detector test of what he said, he
8 definitely would flunk it.

9 THE COURT: Well, the bottom line is that you have the right to testify.
10 You have the right to not testify. And it's up to you and your lawyer to figure out
11 whether that's appropriate in your case.

12 THE DEFENDANT: Well, to tell you the truth, Judge, like I said before,
13 I'm just sorry that my name was attached to this. I didn't want my name attached
14 to this. And I don't -- don't wish no part of this and I just want my name cleared so
15 I can leave and go home, free to go.

16 THE COURT: That's what everybody wants. They come into court and
17 they just want it to be over with and they don't want to have to deal with it. It's
18 like going to the dentist for a root canal. But the fact is, sometimes we have to go
19 through the root canal part.

20 If you don't want to testify, that's all right. However, you will have decided
21 that you don't want to put on evidence on your behalf. You have the right to put
22 on evidence. You have the right to tell your side of the story. If you don't do that,
23 then I will not hear it. I will only have heard one side of the story. Do you
24 understand that, ma'am?

25 THE DEFENDANT: I understand.

1 THE COURT: All right. What is your wish at this time?

2 THE DEFENDANT: (No response)

3 THE COURT: Try to do it a little bit quickly because we're going to -- I'm
4 keeping the staff from their lunch hour now.

5 MR. SAUERHEBER: Your Honor, I believe Ms. Whittaker wants to
6 testify.

7 THE COURT: Okay.

8 * * * * *

9 WHEREUPON:

10 MARY WHITTAKER

11 having first been duly sworn, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SAUERHEBER:

14 Q Could you please state your name for the record?

15 A My name is Mary Whittaker.

16 Q Ms. Whittaker, let's draw your attention to November 5th, 1998. Do you
17 recall the events of that day?

18 A Yes. Normally, I walk when it's hot, like I like to dress cool like I'm
19 dressed now, walk through a shady area.

20 In my area, they call a drug area. I live there since I was four or five years
21 old. I don't see that. But somebody done created, I cannot change it. But I am free to
22 walk anywhere I go. And every time I run into certain people, they seem to harass me,
23 not only him, him and his co-partner, they seem to harass me.

24 MR. SAUERHEBER: Your Honor, could I ask the officer to leave the
25 courtroom while this witness testifies.

1 MR. FOSTER: This is a public courtroom. He's done testifying.

2 MR. SAUERHEBER: Okay. So you're not going to call him for rebuttal?

3 MR. FOSTER: No.

4 MR. SAUERHEBER: Okay. I'm sorry. Can.....

5 BY MR. SAUERHEBER:

6 A They seem to harass me everywhere I go. Like instance -- for instance,
7 when I was searched by him -- if it's not him, it's his friend. I don't have to hand him
8 anything. He's going to go in my pocket anyway.

9 MR. FOSTER: Objection.

10 MR. SAUERHEBER: What date is the search...

11 THE COURT: Just a minute, objection.

12 Was there a legal basis for the objection?

13 MR. FOSTER: Narrative, nonresponsive, stocking multi-subjects in
14 one answer.

15 THE COURT: All right. We'll try to break it up a little bit, Mr. Foster.

16 Ms. Whittaker?

17 THE DEFENDANT: Yes.

18 THE COURT: What that means is that what we have to do is ask you
19 itty-bitty questions and if you'd focus your answer on...

20 THE DEFENDANT: Well, he can ask me itty-bitty questions, he's going
21 to get the same answers.

22 THE COURT: Okay. Well, your lawyer is supposed to direct it so that
23 you don't accidentally say something that's objectionable.

24 THE DEFENDANT: Go ahead.

25 THE COURT: So go ahead and listen to the questions and answer

1 carefully.

2 BY MR. SAUERHEBER:

3 Q Okay. So on November 5th, you're out walking because it's a hot day?

4 A That's right.

5 Q In your neighborhood?

6 A That's right.

7 Q And you see two officers, Officer Taylor and Officer Markham, correct?

8 A Well, I know one by the name as Manley. I don't know the other one.

9 Q Okay. But.....

10 A I just know him by his face.

11 Q Okay. But you did see two police officers?

12 A It was two. Manley, the one identified me. He pretend he didn't know me.

13 Q Okay. And do you see the person you know as Officer Manley in the
14 courtroom today?

15 A No. He's not in here today.

16 Q Okay. Okay. So you're out walking and you see the police officers. Could
17 you tell the Court what happens next?

18 A I'm just out walking. And all of a sudden he walks up to me, started asking
19 me questions; do you have anything illegal on you; what you got in your pocket, and
20 things like that. This constantly happens, constantly, constantly. Every day I walk the
21 street, I run into him or somebody of him.

22 Q Okay. When the officers approached you, what was their demeanor and
23 tone? Was it in the form of a command or was it in the form of something less than a
24 command?

25 A It was a demand.

1 Q It was a demand?

2 A (No verbal response)

3 Q Okay. So they ordered you to approach them or they approached you?

4 A They approached me. He was standing in front of me, directly in front of
5 me.

6 Q Blocking your path?

7 A That's right, right in my face. One in front of me, one on the side.

8 Q Okay. Did there come a point at -- in that conversation when he asked you
9 for identification?

10 A He never asked me for no identification. He asked me, did I have anything
11 illegal on me. He wanted me -- to take me to jail because I didn't have an ID. Officer
12 Manley identified me.

13 Q Okay. So they did ask you for ID?

14 A After he consent [sic] to find something that he wanted to take me to jail for
15 -- after he done searched me, harassed me and did everything to me under the sun, then he
16 asked me for an ID. I told him I didn't have one.

17 Officer Manley said, I know her, well, that's Mary Whittaker.

18 Q Okay. Okay. Did there come a period when the officers asked you to
19 search yourself or they were going to search you?

20 A Well, he -- if I search myself, he going to search me too, whether I do it or
21 not, he still going to do it.

22 I was with two guys at the time, and I was very embarrassed.

23 Q You were with two companions at the time?

24 A I was walking with two male friends and he still searched me and harassed
25 me. I was very much embarrassed. He never searched the men. He questioned them but

1 he never searched them besides me.

2 Q Okay. So the officer -- did the officer inform you to empty your pockets or
3 he was going to search you?

4 A I -- he asked me to empty my pockets. He went on to search me too.

5 Q Okay.

6 A Constantly do this all the time. This -- just one time -- the seven times
7 constantly, every time I run into him. He searched me one day and the codefendant [sic]
8 searched me the next day.

9 Q Okay. Going back to these other searches, were those prior to this day or
10 after this day?

11 A There was -- the next day after, he told me, he say, yeah, I could have took
12 you to jail. That's what he told me. He said the reason why I didn't take you to jail -- so I
13 still can take you to jail. Then his -- this codefendant [sic] searched me. The codefendant
14 [sic] searched me, and I was so embarrassed. The womens on the street was standing
15 around looking. All the people in the neighborhood were looking. He took this -- I was
16 so embarrassed, I was just standing up there with my hand -- I just -- I was too
17 embarrassed to take the stuff back after he took it out of pocket. He took it and throwed
18 [sic] it on the ground. That was the next day.

19 MR. FOSTER: Objection, relevance.

20 THE DEFENDANT: That wasn't him, that was his codefendant [sic]
21 the next day.

22 BY MR. SAUERHEBER:

23 Q Okay. So essentially, when you're out on the street -- well, okay.

24 THE COURT: I'll allow it.

25 When he makes an objection, just wait. I know it sometimes takes me a

1 moment to rule. I apologize.

2 MR. SAUERHEBER: I apologize, Your Honor.

3 THE COURT: Okay.

4 BY MR. SAUERHEBER:

5 Q When the police do stop you often and search you often and -- during those
6 instances, do you believe that you're free to leave?

7 A Never free to leave until he finds something to arrest me for. He constantly
8 keeps picking and nicking until he finds something.

9 Q And this happens regularly?

10 A That's regularly. That's constantly.

11 Q Okay. So when they approached you on this day, this was part of a
12 continuing series of events where the police...

13 A That was a continuing event, because he didn't take me to jail the day he
14 was with Officer Manley. He had his codefendant [sic] to stop and search me the next
15 day.

16 Q The other officer, the officer you know as Officer Manley?

17 A The other officer that be with him. I don't know him -- I don't know them
18 apart, because I don't really hold -- endure the conversation. And also, I don't smile in
19 their face or have nothing to do with them or -- they're out there doing their job.

20 Q Okay. You told me before that when the officers approached you, their
21 question to you was in the form of a demand?

22 A That's right.

23 Q And at that point...

24 A That guy done searched me so many times, I doubt if he can -- he can even
25 count it. Almost beginning to get like that number -- that hat on his head.

1 Q Okay. At that point, the officer demanded -- asked you to approach or
2 approached you, asked you what you were doing in the area. And at that point, you felt
3 that you were not free to leave, that the officer was detaining you, again, for some other
4 investigation?

5 A It's not like that, that I was free. When he asked me that, he was standing in
6 front of me.

7 Q Okay.

8 A He begin to ask me things about what do I got anything on me illegal, in my
9 pockets, which he got, all this kind of stuff like that. He began to start searching me.

10 Q Okay. And he told -- he asked you to search yourself at that point?

11 A That's right.

12 Q And then subsequent to your arrest, he did search you himself?

13 A No, wasn't no arrest. He started going in my pocket himself after he sees
14 something he's fixing to arrest me for.

15 Q After he saw something he could arrest you for?

16 A Yeah. He asked me to violate my own rights first.

17 Q Okay. But prior to that, he asked you to search yourself?

18 A That's right.

19 MR. SAUERHEBER: Okay. All right. I need one moment to --
20 nothing further, Your Honor.

21 THE COURT: All right. Thank you, sir.

22 Ma'am, Mr. Foster has an opportunity to ask you some questions also.

23 THE DEFENDANT: Yes, he can.

24 * * * * *

25 CROSS EXAMINATION

1 BY MR. FOSTER:

2 Q Ms. Whittaker?

3 A Yes.

4 Q Were you using crack cocaine on November 5th, 1998?

5 A Was I what?

6 MR. SAUERHEBER: Objection.

7 THE COURT: Basis?

8 THE DEFENDANT: Was I using what?

9 MR. SAUERHEBER: The reason, self-incrimination.

10 THE COURT: Just a minute.

11 MR. FOSTER: It goes to the credibility, Your Honor.

12 MR. SAUERHEBER: It has no relevance to prove whether or not she
13 was...

14 THE COURT: Well, it would be relevant. But I believe she has the right
15 to not answer the question. So I'll grant...

16 MR. SAUERHEBER (Indiscernible words).

17 MR. FOSTER: Whether she was using crack cocaine, that wouldn't
18 incriminate her. I couldn't prosecute her for possession of cocaine without any
19 evidence. And the only evidence that we're using crack cocaine and being in
20 possession of cocaine, would be your own statement and the Corpus Delicti
21 Rule would not -- would prevent me from prosecuting her for that. So it
22 wouldn't be incriminating -- self-incriminating if she said yes. And it goes to
23 her state of mind.

24 THE COURT: I've never had this issue but I believe that she's allowed to
25 refrain from answering that question. So I'll stick with the ruling.

1 Thank you.

2 BY MR. FOSTER:

3 Q Have you ever used -- were you using crack cocaine on November 5th,
4 1998?

5 MR. SAUERHEBER: Objection, same thing.

6 THE DEFENDANT: I don't have to answer that.

7 MR. FOSTER: Your Honor, I would ask that you order her to answer it
8 and failure to answer the question would place her in contempt of court. It's not
9 incriminating. She has to answer the question.

10 MR. SAUERHEBER: I think you've already ruled on it.

11 THE COURT: I did. I mean, maybe I'm wrong and clearly you disagree
12 with my ruling. But that was the best ruling I could make at that time.

13 I try to do as much research as I can if I ever anticipate issues like this. And
14 simply have never had the issue of Fifth Amendment, the extent and the scope of
15 it's application in either a pretrial hearing or a trial. In my years as a lawyer, I
16 didn't have it actually, either.

17 So that was the best ruling I could make at the time.

18 MR. FOSTER: Then I'll offer her use immunity, that I won't use that
19 statement against her in any subsequent prosecution.

20 Now, she has no -- it's not incriminatory. She has no Fifth Amendment
21 privilege.

22 THE COURT: What about the extent to which it may incriminate her in
23 this case?

24 MR. FOSTER: I won't use her statement against her.

25 THE COURT: In this one, I mean, because of it's relevance in regard to

1 bolstering the State's proof of reasonable suspicion if that were an alternative
2 basis for the State to support the stop.

3 MR. FOSTER: It's not an alternative basis for the State to support the
4 stop. I'm offering it to show that -- I'm offering it not to prove that she was in
5 possession of paraphernalia. That's not the issue here. I'm offering it to show her
6 state of mind on the day he questioned her.

7 THE COURT: In other words, that she didn't have much ability to observe
8 and see the facts about what she's testifying...

9 MR. FOSTER: Yes.

10 THE DEFENDANT: Excuse me.

11 THE COURT: Let me just -- just a minute, ma'am. We have this problem
12 here that we have to resolve.

13 I never foreclose any alternative theory that either side might argue before
14 the close of testimony. My mind is completely open. So I realize that the police
15 officer felt that he didn't have reasonable suspicion and that the Defense is going
16 on the ground of lack of consent.

17 If there's no issue in regard to the reasonable suspicion as a possibility,
18 because the police officer's characterization is not determinative anymore, then
19 there would be no incriminating effect if the State is simply going to abandon the
20 reasonable suspicion avenue as a possible justification for the stop.

21 MR. FOSTER: It's only consent.

22 THE COURT: Okay.

23 MR. SAUERHEBER: So I'm clear, the State's sole basis for the
24 stop is then based on her consent to the (indiscernible word).

25 THE COURT: That's my understanding.

1 MR. SAUERHEBER: And also, we have an agreement -- or an
2 agreement from State that Ms. Whittaker's answer and testimony won't be used in
3 this trial or any subsequent trial against her.

4 MR. FOSTER: Relating to that question, was she using crack cocaine
5 on November 5th, 1998.

6 MR. SAUERHEBER: Whether it be an impeachment or anything else?

7 THE COURT: Well, he's attempting to use it to show that she was too
8 high to remember the incident. But other than that, he's offering her use immunity.

9 MR. SAUERHEBER: I just wanted to make clear that that includes
10 impeachment.

11 MR. FOSTER: But use immunity doesn't include impeachment
12 under the law of immunity.

13 No, she can't get on the witness stand and say, I've never used crack
14 cocaine, after having admitted to using it now. The State -- use immunity that I'll
15 allow the State to use, that her statement against her in a criminal prosecution
16 (indiscernible word) subject matter of this case.

17 MR. SAUERHEBER: Well, I would maintain my objection because it
18 forecloses, etcetera, opens an avenue of possible impeachment for the trial.

19 THE COURT: Okay. I don't know -- oh, at trial?

20 MR. SAUERHEBER: Or at any subsequent trial, including this one.
21 I don't even know if she would testify at trial, you know.

22 THE COURT: I don't either. I honestly don't know if the scope of the
23 Fifth Amendment goes that far or not. But I believe that as far as this hearing is
24 concerned, that -- and for this hearing anyway, that Mr. Foster has sufficiently
25 absolved the Fifth Amendment concerns which would otherwise allow her to

1 refrain from answering the question. So I will allow Ms. Whittaker to answer
2 the question, was she smoking crack cocaine on the 5th of November.

3 MR. SAUERHEBER: Okay. Over Defense's continued objection.

4 THE COURT: I understand.

5 Ms. Whittaker, did you understand that?

6 THE DEFENDANT: Understood what?

7 THE COURT: He's given you certain immunities in regard to testifying
8 now about whether or not you smoked crack cocaine that day. He can't charge
9 you...

10 THE DEFENDANT: What does that got to do with it? What does that
11 got to do with my violation of rights?

12 THE COURT: It has to do, first of all, with whether or not you were so
13 high that you can't remember as much.

14 THE DEFENDANT: I wasn't high.

15 THE COURT: I would direct you that, at this time, you are to answer that
16 question.

17 THE DEFENDANT: I wasn't high. I'm still not high. And ain't nothing
18 wrong with my mind. The doctor told me that.

19 BY MR. FOSTER:

20 Q But the question was, were you smoking crack cocaine on
21 November 5th?

22 A No. Did you see me?

23 Q On November 5th?

24 A No.

25 Q Your testimony is that Officer Taylor -- Deputy Taylor -- you seen him

1 (indiscernible word).

2 A Yeah, I see him quite a bit. He's kind of up in my skin. Yes, I have. He's
3 like chicken pox in me.

4 Q You have stopped him...

5 A Unh-unh.

6 Q He has stopped and talked with you before hasn't he?

7 A I don't want his conversation.

8 Q He has stopped and talked to you in the past?

9 A Stopped and harassed me, yes.

10 Q He has stopped and talked to you in the past before, correct?

11 A Several times he harass me, yes.

12 Q Several times he would stop and talk to you, every time he sees you?

13 A Um-hum.

14 Q Every time he sees you?

15 A Um-hum.

16 Q And he's only taken you to jail one time, right?

17 A I don't know all the (indiscernible words). Him and his codefendant [sic].

18 Q Ma'am, we're talking about Officer Taylor.

19 A I don't know how many times he took me to jail. I don't even know this
20 man.

21 Q Well, you just testified that you...

22 A I know he stops -- and several times -- I've been arrested by so many
23 different officers. Like he may arrest, another officer may take me to jail.

24 Q Listen very carefully to my question, okay, very, very carefully to my
25 questions. And if you don't understand my question, tell me so and I'll repeat it or I'll

1 rephrase it. Okay? Okay?

2 A Yeah. Okay.

3 Q All right. Have you met Officer Taylor -- Deputy Taylor, the person who
4 testified here today, have you met him before November 5th?

5 A I seen that guy quite a few times.

6 Q Okay.

7 A But I don't really know him.

8 Q But you see him quite a few times. In fact, he stopped and talked to you
9 quite a few times before November 5th, right?

10 A I don't know 'cause sometimes they have masks on.

11 Q Let's forget the masks for a minute. Okay?

12 A Yeah. The second time he talked to me that day and the next day he talked
13 to me.

14 Q Let's talk about before, first, okay? Is that all right?

15 A November the 5th.

16 Q Before November the 5th, before he wrote you the ticket. You remember
17 him writing you the ticket, right?

18 A I don't even -- I don't even know if he was the one who wrote me the ticket.

19 Q Okay. You remember getting a ticket?

20 A I remember getting a piece of paper.

21 Q That told you had to be in court?

22 A Yes.

23 Q You remember that?

24 A Uniform then.

25 Q What?

- 1 A He was in uniform.
- 2 Q Right. You remember that?
- 3 A Yes.
- 4 Q Okay. Before the day that you got that paper that told you you had to be in
5 court, you've come into contact with this man before, haven't you?
- 6 A I believe I have.
- 7 Q All right. And he didn't take you to jail, did he?
- 8 A He didn't have no reason to take me to jail, just like he didn't then.
- 9 Q All right.
- 10 A Every time he sees me, he searching me.
- 11 Q So he didn't take you to jail, right?
- 12 A No. Hadn't been for Officer Manley, he would have.
- 13 Q Ma'am, we're not talking about Officer Manley.
- 14 A No.
- 15 Q Okay. He didn't take you to jail, right?
- 16 A No, he did not.
- 17 Q And he's also found smoking stuff on you before, right?
- 18 A No.
- 19 Q No?
- 20 A No.
- 21 Q Never? This is the only time?
- 22 A That's right.
- 23 Q Okay. You've -- you don't have other paraphernalia charges against you?
- 24 A Sure I do.
- 25 Q Okay. And from this same officer, right?

1 A I wouldn't know that either.

2 Q All right. You've gotten...

3 A Because I take less interest in the officers, sir.

4 Q You've gotten tickets before, haven't you?

5 A No.

6 Q This is the only time you've gotten a ticket?

7 A That I can recall.

8 Q All right. Every other single -- every other time you were taken down to the
9 jailhouse?

10 A I believe.

11 Q How many times?

12 A I don't know.

13 Q You don't know how many times you've been to jail?

14 A No, I don't.

15 Q How many days did you spend in jail on this case after you failed to
16 appear?

17 A I spent so many days in jail 'til I don't even -- I don't even consider to even
18 think about it.

19 Q Okay. The day that Officer Taylor wrote you the ticket, the officer that was
20 in here today, about this case right now, you said he was in full uniform, right?

21 A He had on -- I believe he might have had on some shorts or something.

22 Q All right. He had on shorts. He had on a white shirt?

23 A Probably did.

24 Q Okay. His gun stayed in it's holster the whole time you were talking to him,
25 didn't it?

1 A I can't recall the officer ever having to pull his gun out on me.

2 Q Okay. He's never pulled his gun out on you, did he?

3 A No.

4 Q He never even acted like he was going to pull his gun out on you, did he?

5 A Well, let's put it like this. I wouldn't say that he acted like he was going to
6 pull his gun out, but I was under order.

7 THE COURT: You were what?

8 THE DEFENDANT: I was under order. I couldn't go anywhere, okay.

9 I'll put it like that.

10 BY MR. FOSTER:

11 Q All right. Wait a second. He never acted like he was going to pull his gun
12 out on you, did he?

13 A No. But he could use -- what about a little force?

14 Q Okay. He never acted -- he never got out his baton, you know, did he, his
15 night stick?

16 A Beg your pardon?

17 Q His night stick?

18 A No.

19 Q He never got that out on -- did he?

20 A No.

21 Q He never raised his hand to you, did he?

22 A Yes, because -- my pockets.

23 Q He never raised his hand threatening to you, did he?

24 A No.

25 Q He didn't act like he was going to hit you?

- 1 A No.
- 2 Q He didn't yell at you, did he?
- 3 A Yes.
- 4 Q He was yelling at you?
- 5 A Yes.
- 6 Q His voice was raised?
- 7 A Yes.
- 8 Q All right. And he was hollering real nasty to you?
- 9 A Yeah, talking real nasty.
- 10 Q Talking real nasty -- dirty?
- 11 A Yeah.
- 12 Q Talking dirty to you?
- 13 A Yes.
- 14 Q Using curse words at you?
- 15 A No.
- 16 Q No?
- 17 A (No verbal response)
- 18 Q What kind of dirty talking was he doing?
- 19 A Just normal police talk, whole bunch of crap I don't want to hear.
- 20 Q Well, I want to hear it. Tell me what he was saying.
- 21 A Whole bunch of crap I don't want to hear, crap I don't care to resemble [sic].
- 22 Q Well, I want to hear it. Tell me what he was saying.
- 23 A What I was doing -- what I'm doing in a drug area, and do I have anything
- 24 on me illegal, what I got in my pocket, and all that kind of crap.
- 25 Q So he asked you those things?

- 1 A Yeah.
- 2 Q And that's dirty?
- 3 A Yeah, that's dirty.
- 4 Q Okay. So -- but he wasn't being nasty to you? He was asking...
- 5 A He was being real nasty to me.
- 6 Q But those are the questions that he was asking you, right?
- 7 A No, real nasty.
- 8 Q Those are the questions that he was asking you, right?
- 9 A (No verbal response)
- 10 Q Okay. And you didn't like him asking those questions, did you?
- 11 A Do -- would you?
- 12 Q Doesn't matter what I would. I'm asking you about you.
- 13 A No, I don't.
- 14 Q You didn't like him -- like him asking those questions?
- 15 A No. Sure don't.
- 16 Q You don't like it when anybody asks you questions like that, do you?
- 17 A All depends.
- 18 Q You didn't like it when I asked you if you were smoking crack cocaine on
- 19 that day, do you -- did you?
- 20 A No. But I was starting to ask you some questions about it.
- 21 Q You didn't like it when I asked you that question, did you?
- 22 A It don't bother me.
- 23 Q But it bothered you when the police officer asked you?
- 24 A I don't care about that.
- 25 Q It bothered you when the police officer asked you, right?

1 A Yes.

2 Q Okay. And that's the nasty talk that he was doing to you?

3 A That's right.

4 MR. FOSTER: All right. I don't have any other questions, Judge.

5 THE COURT: All right.

6 * * * * *

7 REDIRECT EXAMINATION

8 BY MR. SAUERHEBER:

9 Q Okay. You stated earlier that you don't want to talk to the police in these
10 instances when they come up to you and talk to you, correct?

11 A No, I don't.

12 Q But you don't feel that you're free to walk away from this?

13 A No, I don't. I have to respect them. I don't talk to them, I don't socialize
14 with them, I don't laugh, I don't seek an agreement with them, I try to stay out of their
15 way. Because I know they're out there for a job. And normally, they try to find some
16 victim for (indiscernible word), and I don't wish to be the victim.

17 Q Okay. So on this date, when the officer approached you, you didn't feel that
18 you could just walk away from him?

19 A No. I can't walk away from them because they always do me like that.
20 This is nothing new under the sun.

21 Q Oh, the officer described the path as, I think, about that wide, I guess.

22 A Okay. My Aunt Paula's house is right here. In this same plat, there's a
23 bunch of houses -- live up in this area. I have friends living up in there. I used to go up
24 in there since I was about four or five years old. So my Aunt Paula's house right there,
25 there's another house right here. My friend's house is right there and like this is her yard.

1 So they put a fence up across there and it's a -- it's not a path, it's a gate, like a gate. The
2 gate is not there. You walk through the gate right -- see, and there's a bunch of peoples
3 stays back in this area. And like when people walking constantly in and out -- there's a
4 back road go all the way back through the houses because it's fenced in from the front.
5 The people have to come through 11th Street, come up through back way to get to their
6 houses where they live at. They drive up in there. Okay. So we can walk through the
7 yard, all the way around, back to the -- to the back roads, go all the way back from 11th
8 Street from one end to the next. On 11th Street, you can take 11th Street, go to the Lake,
9 from Lake back to the Central Street.

10 Q Okay. And where the officer stopped you, how wide was the path of that
11 area you were traveling?

12 A When that officer stopped me, I was like talking to two guys, like standing
13 in my friends yard. And my -- and they was sort of like close to the fence like.

14 Now, Officer...

15 Q Okay. How wide is that area?

16 A The officer -- they came -- I think they came up -- I think they came up
17 walking. And I was talking to my friend. I was talking to two guys at the time when he
18 came up, was asking me all these weird questions.

19 Q Okay. How wide was the area that you were walking or standing when they
20 approached?

21 A These are people yard. I mean, like, you got yard space. Like -- you know,
22 like -- say like the houses -- like the houses kind of close. Like the yard is not large. And
23 like there's a like a -- the area where you walk down between the houses like. And so it's
24 like -- like by you walking you make it a path. But if you weren't really walking on it, it
25 wouldn't be a path, you see?

1 Q Okay. It was the area between the house and the fence?

2 A It's the area, I guess, of walking space, would be about like this. But since
3 you can walk all around the yard and houses, I wouldn't have...

4 Q Okay. Was the officer standing in the walking space?

5 A The officer was standing over in somebody else's yard also.

6 MR. SAUERHEBER: Okay. I have no further questions

7 THE COURT: All right. Counsel, I've kept the court staff about a half
8 hour into their lunch hour. Could you consider that in the rest of your closings, or
9 do you have any more evidence?

10 MR. SAUERHEBER: No, I don't think it's going to be very long.

11 THE COURT: All right.

12 MR. FOSTER: Mine will take about two minutes.

13 MR. SAUERHEBER: Yeah, I don't think we're going to do any more.

14 THE COURT: All right. Thank you very much.

15 Your motion, Counsel?

16 MR. SAUERHEBER: Okay. I think it's unrefuted that when the officers
17 approached Ms. Whittaker, they had no reasonable suspicions to approach her.
18 She was simply walking -- in her version, talking to friends; the officer's version,
19 walking alone.

20 The officers approached her -- and my view of the testimony is that they
21 ordered her to stop and testified or -- I'm sorry, search herself; or in the officer's
22 version, what do you have on you? Ms. Whittaker took that as a search herself.
23 And my opinion, that was a seizure in this case and that anything that took place
24 after that was involuntary. And it's just acquiescing to the police officer's show of
25 authority, standing there in uniform -- and I'm not clear in how wide the area was,

1 but it seems, in the officer's words, the path was fairly narrow (indiscernible
2 words).

3 THE DEFENDANT: It's a little wider than that.

4 THE COURT: All right.

5 Okay. Thank you, sir.

6 Mr. Foster?

7 MR. FOSTER: Yeah. There was no reasonable suspicion to stop the
8 defendant, but no stop occurred.

9 The officer who knows the defendant -- and the defendant says she's had
10 contact with the officer in the past -- asked her what she was doing in that
11 particular area. She didn't even respond to that. And then he asked her if she had
12 anything on her person that she shouldn't have or something illegal. And her
13 response was is it depends upon whether I'm going to jail. And when he said, if all
14 it is is paraphernalia, I'll write you a ticket. She said, here it is, and showed him
15 the paraphernalia and he wrote her a ticket. That was it.

16 He searched her later on. I mean, she's right, she got searched. He testified
17 that subsequent to the issuing of the notice to appear, a search incident to arrest
18 was that.

19 It was a purely consensual encounter. The defendant views all officers as
20 being harassing and whatnot and yet she can't -- or won't acknowledge that she's
21 come into contact with this officer before and he hasn't arrested her before.

22 As far as the demeanor of the officer, the evidence is that he never used any
23 threatening language or any threatening gestures toward her. He didn't threaten
24 with any sort -- of his weapon, which the case law -- which is one of the things that
25 the case law says to look at.

1 According to the officer, his language was normal street-level language,
2 which she doesn't dispute, Judge, which she says, he was talking nasty. But the
3 nasty was, what are you doing in this area and do you have anything illegal on you.
4 So it's a truly consensual encounter, which doesn't raise the Fourth Amendment
5 issues that the Defense has put forth.

6 THE COURT: The case law on consent seems to indicate that
7 circumstances have to be coercive somewhat in order to implicate the Fourth
8 Amendment.

9 I don't know that I've seen a case whereby that the defendant describes a
10 situation where she's been encountered many times where she basically says that
11 anytime she walks around in that area, which is evidently near where her people
12 live, that she gets searched. So her point is, Mr. Foster, and I lay this one on your
13 lap squarely, did there come a point where, because of all the facts and
14 circumstances, maybe they do know that she smoked crack before but, you know,
15 you have to wonder sometimes what does a person do after they've been searched
16 so many times. Do they just give it up because they figure they don't have a
17 choice?

18 MR. FOSTER: No, Judge. The officer testified that she's walked away
19 from him before. He let her go.

20 MR. SAUERHEBER: No, that wasn't my recollection.

21 THE COURT: Well, just wait. You'll get -- everybody gets their turn.

22 MR. FOSTER: She said -- he asked -- when I asked, what if she walked
23 away, it's happened before. He's let her walk away before. She knows the scoop,
24 Judge. And she knows that she was free to go. She knew the scoop enough to
25 engage in, for a lack of a better term, bargaining with the police officer about what

1 was going to end up happening to her and what she had, according to his
2 testimony.

3 But most importantly, he testified that she's walked away from him before.
4 It happened before. And he hasn't gone after her.

5 And I think that it's pretty demeaning to -- for me to assume that she has
6 taken the viewpoint that, oh, well, they're going to do it to me anyway, so I'll just
7 stand here and let them do it to me. She seems to be an intelligent individual. She
8 seems to be a person who's got pretty strong opinions. And if she didn't want them
9 messing with her, she would have walked away. That's the type of person that she
10 appears to be. And according to the officer, she's done that in the past.

11 So all the facts and circumstances that are before this Court should show
12 that this is not a coercive situation. The officer was engaging in normal
13 street-level conversation with this woman, wasn't doing anything coercive in either
14 word or action, and she gave up what she had.

15 THE COURT: Well, she testified that she gave it up because she knew they
16 were going to search her anyway. So in effect, what you're arguing is that, no,
17 that's not very credible because she knows the score and she's just saying that.

18 MR. FOSTER: No. She didn't testify to that. She said -- she testified that
19 she gave it up because they told her they would search here anyway. And that's
20 what they've alleged in their motion. And the evidence is totally contrary to that.
21 The evidence doesn't say that she -- that he said -- the cop said, search yourself or
22 I'm going to search you anyway. And that's what she said that they said and that's
23 what they said in their motion the police officer said. So the evidence is contrary.
24 It's conflicting. And it gets down to who do you believe, the police officer or the
25 defendant.

1 THE COURT: Or here -- I guess a better way to describe it, she perceived
2 it as a demand because, either way, she either searches herself or they will search
3 her anyway, constantly, every time she runs into them.

4 She did say several times as a result of that, that she feels it is a demand.
5 She said she felt like she was under order. And that, I guess, is the more precise
6 way of me phrasing it.

7 MR. FOSTER: Yes.

8 THE COURT: Because it is an issue of consensuality. Either it's a
9 consensual encounter or it's a situation where a reasonable person would feel that
10 they were under obligation to comply.

11 The courts have narrowly defined reasonable person to be a person who has
12 not been charged with anything. So it's difficult for me to graft that standard onto
13 this situation where she's been arrested so many times she can't even count
14 anymore. And she gets...

15 MR. FOSTER: But she hasn't been arrested so many times she can't even
16 count anymore.

17 THE COURT: Well, I don't factual -- but that's her perception. You know,
18 we might...

19 MR. FOSTER: I'm talking about by this police officer.

20 THE COURT: We might have to -- well, she has -- her perception appears
21 to be affected by her -- she almost sees all law -- all officers as alike. It's like this
22 group that she doesn't distinguish between individuals very much, you know,
23 which we often do when we're making assumptions about groups. They all harass
24 her. And her idea is that every time she walks through this field or goes down the
25 street, they're searching her. That's her perception of the situation.

1 Now, if we could possibly graft the reasonable person standard into that --
2 and she also says that she lives in this drug area, but she gets searched every time,
3 one way or another. Would a reasonable person under those circumstances have
4 reason to believe that basically it's a demand? She just has to comply because it --
5 they're going to search her anyway because she always gets searched.

6 MR. FOSTER: Which is what the law says you have to do, make it a
7 reasonable demand.

8 THE COURT: Right.

9 MR. FOSTER: And not what she thinks or what she might think or
10 anything like that. Because government shouldn't have to worry about the
11 individual peccalotos or peccadillos of an individual. If the officer acts reasonably
12 and acts towards a person as if they were a reasonable person, then that's sufficient
13 for Fourth Amendment purposes. And there is nothing in the evidence that was
14 presented in this hearing today from either the officer or the defendant if we're
15 going to turn the defendant's words the way that they seemed to have been turned
16 that indicates the police -- that the police officer was coercive to a reasonable
17 person under any ~~circumstances~~. And that's all I'm asking you to ~~do~~.

18 ~~THE COURT~~: Let me ask you this. Okay. Let's tailor the ~~question~~ this
19 way. ~~Say~~ it has to be a reasonable demand standard as far as a reasonable person's
20 ~~per~~ception and whether the facts would justify a reasonable person to believe that
21 ~~they~~ were under order and not free to deny the officer what the officer ~~was~~ asking
22 ~~for~~. Say a person really hadn't been in possession of drugs or paraphernalia, but
23 they ~~had~~ been searched a number of times by the police ~~and~~ they, in fact, are
24 encountered by ~~this particular~~ officers ~~and other~~ officers quite frequently. Could
25 there be a point at which the person -- a reasonable person would assume that

1 they're not free to say no because they've been searched so many times?

2 MR. FOSTER: I don't know. But that's not the evidence here.

3 THE COURT: Well, it's the issue. Because I've never had actually the
4 testimony that she's -- that the person had been searched so many times.

5 MR. FOSTER: Because we had -- the reason why I can't answer that
6 question in relation to this case is, is because we've got evidence that this
7 defendant has refused to sit and talk with the police when they engaged in the
8 same type of behavior. And so even if I could answer your question in the
9 affirmative, it doesn't apply here. Because she knows that she can turn around and
10 walk away according to the evidence that was presented here. So I can't answer
11 your question.

12 THE COURT: Okay. I'm trying to recall that -- the incident where you
13 clearly remember him saying that she's walked away before. I remember that he
14 said he's used officer discretion before and not arrested her.

15 MR. FOSTER: It was when I asked him, Counsel for the Defense objected,
16 speculative; when I asked him if she had turned and walked towards the hole, what
17 would you have done; objection, speculative. Your ruling was, no, that's not
18 speculative if he knows the answer to the question; I'll allow him to ask.

19 THE COURT: What would he have done?

20 MR. FOSTER: What would he have done.

21 THE COURT: Okay.

22 MR. FOSTER: And his answer to the first question, which, if she had
23 walked into the hole, what would you have done. He testified, I would have
24 followed her in there to see what she was going to do.

25 THE COURT: Did he...

1 MR. FOSTER: And the second question is, if she had walked out to the
2 apartments or towards the street, what would you have done. And his response
3 was, that's happened to me with her before; I wouldn't have done anything; I would
4 have let her go.

5 MR. SAUERHEBER: I don't recall that response. I recall...

6 THE COURT: He said -- and I make these ridiculously compulsive notes,
7 so I think I have a compulsive disorder, but I do take extremely meticulous notes.
8 Okay.

9 Well, I do remember this. This was cross examination where I took this
10 down. Isn't it true that people who ignore you get charged with resisting? Officer
11 said, no, she was perfectly allowed to leave; it happens all the time. At which time
12 I noted that Ms. Whittaker was making a physical gesture, which indicated her
13 disbelief of the officer, which is -- of course, it's not binding or anything, but I
14 noted that she reacted to that. And the officer did indicate that he didn't inform her
15 of her ability to leave. He's made 20 arrests back there, has had seven contacts
16 with her. He thinks her sons have a crack problem too. He thinks that a
17 reasonable person who knew the law might know that they don't have to leave.
18 And he thinks that she has enough legal experience to know that. But I don't recall
19 him saying specifically that she had ever actually walked away from him.

20 MR. FOSTER: He didn't in cross.

21 THE COURT: In direct, you think he did?

22 MR. SAUERHEBER: I'm not going to (indiscernible words) as the Court.
23 I recall the line of questioning where he said -- after my hypothetical objection --
24 or speculation objection, that he's allowed people to walk away in similar
25 situations or something to that effect. But I don't recall any testimony that this

1 defendant has walked away.

2 THE COURT: Yes. I have the note that Mr. Foster asked him, what would
3 you have done if she walked back into the hole or onto the street. Answer: He
4 would have let her go and told her that he would catch her the next time, at which
5 point, he gave the floor to Mr. Sauerheber, I believe. So -- okay.

6 Anything else, gentlemen?

7 MR. SAUERHEBER: No. I can't remember the name of it. I think we
8 covered my main area, which was, I don't recall that -- the response that Mr. Foster
9 recalled.

10 And my other concern was, I'm not sure of the street-level conversation,
11 you know. It seems that when police come on the scene, just by training, they take
12 control of the situation. So what normal street conversation means, I don't know.
13 I don't know what that means.

14 THE COURT: All right.

15 MR. SAUERHEBER: I think that she was seized and not free to leave
16 when the officers approached her.

17 She does have, according to case management, a prior resisting without that
18 was nol-prossed, MO97-27458.

19 THE COURT: Well, of course, you didn't explore the issues in regard to
20 that.

21 MR. SAUERHEBER: No, I didn't.

22 THE COURT: If they dealt with the same context of actually walking away
23 and got -- we've seen cases where people have walked away. And we now have a
24 bit of confusion. I believe it's legitimate and understandable. Oh, okay. In regard
25 to the officer's apprehension that a person may or may not have the ability to walk

1 away, I believe it was Officer Carlocko (phonetic) in the Johnson case, maybe.
2 The Fifth District Court of Appeals was explicit with their concern that Bostick --
3 Bostick grants the officers the ability to walk up to people and start talking to
4 them. That's not a seizure.

5 MR. SAUERHEBER: Right.

6 THE COURT: Further case law indicates that the officers can ask people
7 questions, which would normally elicit an incriminating response or intended to
8 elicit an incriminating response. But that does not in and of itself transport the
9 circumstances into a seizure. So I don't find that she was seized initially. I
10 understand your point. I disagree that the case law would support it at this point.

11 But I do -- and we even have cases on the consent issue, which are --
12 frankly, make me wonder sometimes if there is such a thing as consent or lack of
13 consent still.

14 We've got the Hosie case, in particular, where Judge Harris of the Fifth
15 District Court of Appeal found that a woman gave consent and was not
16 acquiescing to apparent authority when the police officer -- several of them
17 encountered her at some late hour of the evening in her railroad car when she was
18 in her bed clothes, had been in bed. And when they asked her for permission to
19 search, she was -- trembling voice, told them okay. And Judge Harris found that
20 that was consent. So we really don't have -- I mean, frankly, we have consent
21 cases which are differing all over the state.

22 Now, I'm not sure what it was in the Hosie case which resulted in Judge
23 Harris's decision. There have been some other decisions out of the Fifth, which
24 would indicate there's more flexibility in the consent issue. And this one might be
25 a case of first impression.

1 Ms. Whittaker appears to be a person who has a great deal of apprehension
2 about the police. Some may say that she's overreacting. Some people might argue
3 otherwise, because if she thinks that she's going to get searched every time she
4 walks down the street, she -- a normal person would become apprehensive after a
5 point.

6 There was nothing about the police officer in particular that seemed to
7 indicate that he's an unreasonable officer. But it would seem that the facts and the
8 circumstances that Ms. Whittaker is reacting to include their perception of her,
9 generally, with the Orange County Sheriff's Office down there that she's -- they
10 think that she's a drug user. And it appears that every time she steps, particularly,
11 into the vicinity known as the hole, what she's testified is immediately adjacent to
12 some homes where her relatives live, they think that she's doing crack cocaine.
13 Now, whether or not all their knowledge about her, the location of that place as a
14 drug area and her eyes seemingly giving the officer some indication to believe that
15 she was high, rose to the level of reasonable suspicion or probable cause, those
16 issues are not being debated here. The only issue is consent.

17 And if a Judge's gut reaction makes any difference in a case like this, I
18 would say that the officer didn't do anything unreasonable. But Mary Whittaker's
19 perception is that when an officer asks her to submit to a search, that she believes
20 that she must do it. And she believes this because she's encountered them so many
21 times. And that even under the officer's testimony, he's probably searched her five
22 to seven times and he doesn't discount the probability that the other officers
23 probably have too.

24 It's hard for me to imagine anybody feeling like they've got a choice when
25 they've been searched a number of times. And so I would find that Ms. Whittaker,

1 under the reasonable person standard, might have reason to have felt that she didn't
2 have a choice and that she had to give up the crack pipe.

3 I will grant the Motion to Suppress.

4 MR. SAUERHEBER: Thank you.

5 MR. FOSTER: Just so that I can be clear...

6 THE COURT: Yes, sir.

7 MR. FOSTER: You stated that the officer did not do anything
8 unreasonable?

9 THE COURT: I don't think that he did. And I would hope that when -- if
10 you have to call him and tell him that I granted it, I'm not attempting to criticize
11 him. It is a finding that the facts and the circumstances are additional to those
12 which he created that day because he -- and she has had encounters about seven
13 times. Sometimes he's let her go, sometimes he hasn't. This time, in effect, he told
14 her she wasn't going to be arrested if he gave it -- if she gave it up. That, in and of
15 itself, has some import in my decision.

16 But mainly, the entire facts and circumstances being that a person could
17 have been searched so many times by so many officers that they could reasonably
18 come to the conclusion that they no longer think they have a choice.

19 He clearly thinks that she knows that she has a choice. After this hearing,
20 she's going to clearly know that she has a choice. But whether or not a reasonable
21 person in her position at that time would have known depends on all the facts and
22 circumstances testified to in regard to this hearing, some of which are in addition
23 to these circumstances that happened on November 5th between him and her that
24 day.

25 MR. FOSTER: Well, again -- and I'm just asking for purposes of

1 clarification for the record. Is the Court making a finding that the law enforcement
2 officer did nothing coercive?

3 THE COURT: Well, you know how we depend on the terminology, the
4 totality of the circumstances, the totality being broader than what he did that day?

5 MR. FOSTER: I'm asking about the officer and what the officer did. That's
6 what I'm trying to understand, Judge.

7 THE COURT: Well.....

8 MR. FOSTER: Was the officer being coercive? I'm not asking about the
9 affect on the defendant, I'm asking about the behavior of the law enforcement
10 officer?

11 THE COURT: I guess the factual circumstances are that he testified that he
12 didn't raise his voice in any regard. She's a little bit sensitive, but she felt that he
13 raised his voice a little bit. I don't frankly know. It's just something I threw into
14 the mix.

15 But as far as him being, you know, overstepping his bounds in asking her if
16 she had anything illegal, clearly, the case law supports him in that. And I think
17 that he's in a situation where the law has given him some authority to go that far.
18 We aren't clear on the parameters of consent at this time. And that's not his fault.
19 He can't second-guess what the judges are going to do on that issue. It would be
20 clearer under the old 901.151 standard, but we're beyond that now because of
21 Bostick.

22 MR. FOSTER: Well.....

23 THE COURT: And we've gotten into uncharted territory.

24 MR. FOSTER: Who would you like to draft the order?

25 THE COURT: Well.....

1 MR. FOSTER: I'm going to appeal the Court's ruling.

2 THE COURT: I know you are.

3 MR. FOSTER: So who would you like to draft the order?

4 THE COURT: It's okay with me if the court disposition simply says the
5 Motion to Suppress is granted.

6 MR. FOSTER: I would like to have some facts, you know, placed in the
7 order rather than just the disposition and some findings of facts by the Court. So if
8 you would like for me to draft the order, I would be more than happy to draft the
9 order.

10 THE COURT: Well, I don't mind signing something that has some of the
11 factual findings detailed. What often happens though is, obviously, lawyers with
12 the strategic idea of making it support their theory, will tend to work it their way a
13 little bit. And I won't guarantee that I'll sign it. I mean, if it -- if it tracks exactly
14 what I've said here, I'll sign it regardless of who proposes it. If it doesn't track
15 what I said here, then I would prefer that the record be -- stand on its own.

16 MR. FOSTER: I'm -- would you want a proposed order presented, and if
17 so, who do you propose to do that, Your Honor?

18 THE COURT: I don't necessarily prefer any order because I'm afraid that
19 either one of you are going to tailor it to your own strategy. But if you want to
20 take the initiative, I would never -- it's not like I'm not going to read it. If it's there
21 and it really frames up what I said here, I'll send it. But other than that, I'm not
22 going to take any initiative. Although, I think that the appeal courts need fact-
23 findings. I think that I've detailed them fairly well for the record. And if you're
24 going to appeal it, it's going to get typed up anyway.

25 MR. FOSTER: All right. I mean, you know, there's -- never mind.

1 THE COURT: I know. Sometimes it's good to create orders but when you
2 do 404 cases a month, you don't do orders, on every case.

3 MR. FOSTER: Well, my appellate rights are affected by just relying upon
4 a Court disposition. So I guess I will draft an order and submit it to the Court.

5 THE COURT: I'm sorry? What -- you -- what's affected?

6 MR. FOSTER: My appellate rights are affected by relying upon court
7 minutes. And I have to have a signed order of the Court. And.....

8 THE COURT: You want me to create one that just says Motion to
9 Suppress granted?

10 MR. SAUERHEBER: It should be in order in the court file.

11 THE COURT: I think you're right. There may be some...

12 MR. FOSTER: If you don't want factual findings put in your order, fine. I
13 just have to have a signed order from the Court, otherwise, I can't appeal it.

14 THE COURT: All right. Well, that's not a problem.

15 I thought the Fifth didn't like the Court's disposition, but they would go
16 along with it, acknowledging -- I think there was -- there -- maybe there was one in
17 the other case, Mr. Sauerheber. I'm looking and looking.

18 MR. SAUERHEBER: I have one here.

19 MR. FOSTER: I will present an order to the Court.

20 MR. SAUERHEBER: I have...

21 THE COURT: Do you have an extra form, just one of those...

22 MR. SAUERHEBER: Well.....

23 THE COURT: All right.

24 MR. SAUERHEBER: I don't need it. I'm fine, but if you can put it in the
25 file.

1 THE COURT: I don't know if the clerk will create copies, though.
2 Will you?

3 THE CLERK: (Indiscernible words).

4 MR. SAUERHEBER: I can for the court file (indiscernible words).

5 MR. FOSTER: I don't necessarily need to have a copy. I just have to know
6 the date that the Court signed order was done in order for me to perfect my appeal.

7 THE COURT: Okay. 19th, July, 1999. And I guess I'll take it up to the
8 judicial assistant to make copies and have it sent out.

9 Good issue.

10 Thank you, gentlemen.

11 We'll set it on a pretrial docket assuming the State will want to perfect its
12 appellate rights. We'll just deal with it at the pretrial date in that regard.

13 MR. SAUERHEBER: Okay. Should I have her sign an affidavit of
14 insolvency now in anticipation of...

15 THE COURT: That would be fine.

16 MR. SAUERHEBER: Okay.

17 THE COURT: But we're going to break for lunch because this court staff
18 has now been deprived of a lunch hour.

19 WHEREUPON: These proceedings were concluded.

20 * * * * *

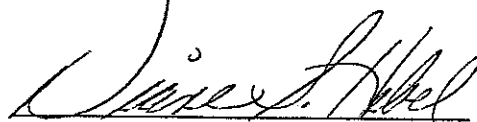
C E R T I F I C A T E

STATE OF FLORIDA:

COUNTY OF ORANGE:

I, Diane S. Hebel, being an Automated Court Reporter, as authorized by Rule 2.070(c), Florida Rules of Court and Administrative Order of the Ninth Judicial Circuit numbered 07-98-43, certify that the foregoing transcription is true and correct.

Dated this 20th day of August, 1999, in the City of Orlando, County of Orange, State of Florida.



Diane S. Hebel
Automated Court Reporter

IN THE COUNTY COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NUMBER: MI-O-98- 25:

DIVISION NO: 63

STATE OF FLORIDA,
Plaintiff,

vs.

MARY WHITTAKER,
Defendant.

Court Minutes / Order (Hearing on Motion to Suppress)

Court opened on 07/19/99, with the following officers present:

Honorable Deb S. Blechman, Judge Presiding.

Asst. State Atty.: Division 63

Court Reporter: Electronic

Court Deputy: Bill Johnson

This case came on this day for Hearing on Motion to Suppress. The Defendant was present with counsel. Counsel's Name: PD.

Count(s): CL 201- 393,147

STATE WITNESSES SWORN AND TESTIFIED:

Officer K. Taylor

DEFENSE WITNESSES SWORN AND TESTIFIED:

Mary Whittaker

Misc. Orders / Events

- Motion to Suppress Granted

Filed in Open Court this 19th day of July, 1999.

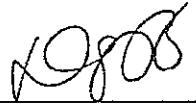
Done and Ordered at Orange County, Florida this 19th day of
July, 1999.

Linda W. Chapin

Clerk of the Circuit and County Courts

By: S. Jones,

Deputy Clerk in Attendance


Honorable Deb S. Blechman, Judge Presiding

I acknowledge receipt of a copy of this order, this 19th day of July, 1999.

Mary Whittaker

MARY WHITTAKER, Defendant

308 13TH APOPKA, FL 32701-0000

☐ ACS
☐ CFSC

☐ Dockets
☐ Court Deputy

☐ Defendant
☐ P&P/Com Cont

☐ Booking
☐ Surety

☐ Court Security
☐ S.O. on ☐

☐ Other: _____

COUNTY COURT, NINTH JUDICIAL
CIRCUIT, CRIMINAL JUSTICE DIVISION
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA
Plaintiff,

CASE NO. MO98-25.
DIVISION 63

vs.

MARY WHITTAKER
Defendant.

ORDER

THIS CAUSE having come on before the Honorable Deb S. Blechman, County Judge, in and for Orange County, Florida, to hear Defendant's Motion To Suppress, and the Court having been advised in the premises, it is hereby

ORDERED AND ADJUDGED that Defendant's Motion To Suppress be and the same is hereby granted.

DONE AND ORDERED in Chambers, at Orlando, Florida, this
the 19 day of July, 1999.

Deb S. Blechman
Deb S. Blechman, JUDGE
CRIMINAL JUSTICE DIVISION

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the Office of the State Attorney, Ninth Judicial Circuit, 415 North Orange Avenue, Orlando, Florida 32801, and the Office of the Public Defender, Ninth Judicial Circuit, 435 North Orange Avenue, Suite 400, Orlando, Florida 32801, this 19 day of July, 1999.

Judy Bauer
JUDICIAL ASSISTANT

3cc-state, felony, file 7/30/99

IN THE COUNTY OF THE NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO. MO98-251

Plaintiff/Appellant,

DIVISION: 63

vs.

MARY WHITTAKER,

Defendant/Appellee.

FILED IN OFFICE
CRIMINAL DIVISION
99 JUL 30 PM 11:01
LINDA W. CHAPMAN
CLERK COUNTY COURT
ORANGE CO., FL

Orange Co FL 1999-0334935
08/04/99 10:32:58am
OR Bk 5809 Pg 649

NOTICE OF APPEAL

Recorded - Martha D. Haynie

NOTICE IS GIVEN that the State of Florida, Appellee, pursuant to Florida Rule of Appellate Procedure 9.140, appeals to the Circuit Court, of the Ninth Judicial Circuit, Order of this Court rendered July 19, 1999. The nature of the Order is a final order suppressing before trial the evidence obtained by search and seizure.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Notice of Appeal has been furnished by U.S. mail delivery to Mary Whittaker, Defendant/Appellee, at 308 13th Street, Apopka, FL 32701, and the Office of the Public Defender, Counsel for Defendant/Appellee, at 435 North Orange Avenue, Orlando, Florida 32801, this 30th day of July, 1999.



STEVE FOSTER
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415 N. Orange Avenue
Post Office Box 1673
Orlando, Florida 32802
Telephone: (407)836-2400

COUNSEL FOR PLAINTIFF/APPELLANT

IN THE COUNTY COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO. MO98-251

Plaintiff/Appellant,

DIVISION: 63

vs.

MARY WHITTAKER,

Defendant/Appellee.

FILED IN OFFICE
CRIMINAL DIVISION
99 JUL 30 11:11 AM
LINDA W. CHAPIN
CLERK COUNTY COURT
ORANGE CO., FL

STATEMENT OF JUDICIAL ACTS

COMES NOW the State of Florida, Plaintiff/Appellant, by and through the undersigned Assistant State Attorney, and makes this statement of the following judicial acts to be reviewed:

1. The trial court's order granting the Defendant's Motion to Suppress.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by U.S. mail delivery to the Office of the Public Defender, Counsel for Defendant/Appellee, at 435 North Orange Avenue, Orlando, Florida 32801, this 30th day of July, 1999.


STEVE FOSTER
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COUNSEL FOR PLAINTIFF/APPELLANT

IN THE COUNTY COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO: MO98-25

Plaintiff/Appellant,

DIVISION: 63

vs.

MARY WHITTAKER,

Defendant/Appellee.

FILED IN OFFICE
CRIMINAL DIVISION
99 JUL 30 AM 11:04
LINDA H. CHAPIN
CLERK COUNTY COURT
ORANGE CO., FL

DESIGNATION TO COURT REPORTER

The State of Florida, Appellee, pursuant to Florida Rule of Appellate Procedure 9.200(b)(1), files this Designation to Court Reporter and directs the Official Court Reporter to transcribe an original and two (2) copies of the following portions of the proceedings in the above-styled cause for the purpose of appeal to the Circuit Court in and for Orange County, Florida, sitting in its appellate capacity.

The following are the portions of the proceedings deemed necessary for inclusion in the Record on Appeal:

1. The entire proceedings recorded by the Reporter on July 19, 1999, before the Honorable Deb Blechman.

Notice is hereby given that such notes shall be transcribed, certified, and filed with the Clerk of this Court within thirty (30) days of this designation.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by U.S. Mail delivery to the Office of the Public Defender, Counsel for Defendant/Appellee, at 435 North Orange Avenue, Orlando, Florida 32801, this 30th day of July, 1999.

STEVE FOSTER

Assistant State Attorney

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Telephone: (407)836-2400

IN THE COUNTY COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO: MO98-251

Plaintiff,

DIVISION: 63

vs.

MARY WHITTAKER,

Defendant.

FILED IN OFFICE
CRIMINAL DIVISION
99 JUL 30 AM 11:05
LINDA W. CHAPIN
CLERK COUNTY COURT
ORANGE CO., FL

EX-PARTE MOTION TO STAY PROCEEDINGS
AND TOLL SPEEDY TRIAL

COMES NOW the State of Florida, by and through the undersigned counsel, pursuant to Florida Rule of Criminal Procedure 3.191(i)(4), and requests this Honorable Court to stay the proceedings in this cause and toll the running of the speedy trial rule. In support of this motion, the State would show as follows:

1. On July 29, 1999, this Court entered an Order on Defendant's Motion to Suppress.

2. On July 30, 1999, the State of Florida filed a Notice of Appeal from said order to the Circuit Court of the Ninth Judicial Circuit, Orange County, Florida.

WHEREFORE, the State of Florida moves this Honorable Court to stay the proceedings and toll the speedy trial period in the above-referenced cause.

I HEREBY CERTIFY that a true and correct copy of the above Motion to Stay Proceedings and toll Speedy Trial has been furnished by U.S. mail delivery to the Office of the Public Defender, Attorney for Defendant/Appellee, at 435 North Orange Avenue, Orlando, Florida 32801, this 30th day of July, 1999.


STEVE FOSTER

Assistant State Attorney
Florida Bar No. 371645
415 N. Orange Avenue
Post Office Box 1673
Orlando, Florida 32802
Telephone: (407)836-2400

IN THE COUNTY COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

FILED IN OFFICE
CRIMINAL DIVISION
99 AUG -2 PM 4:47
LINDA W. CHAPMAN
CLERK COUNTY COURT
ORANGE CO., FLA

STATE OF FLORIDA,

CASE NO. MO98-23

Plaintiff,

DIVISION: 63

vs.

MARY WHITTAKER,

Defendant.

ORDER TO STAY PROCEEDINGS AND
TOLL SPEEDY TRIAL PERIOD

THIS CAUSE having come on to be heard upon the written motion of the State of Florida to stay the proceedings in this cause and to toll the time established for speedy trial, and the Court being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED

1. That the proceedings in this cause are hereby stayed pending final disposition of the State's appeal.
2. That the periods of time established pursuant to Florida Rule of Criminal Procedure 3.191 are hereby tolled until final disposition of the State's appeal.

DONE AND ORDERED at Orlando, Orange County, Florida, this 2
day of August, 1999.


Deb Blechman
COUNTY COURT JUDGE

copies: Assistant Public Defender
Assistant State Attorney

Docketed By: RE

IN THE COUNTY COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO. MO98-25

STATE OF FLORIDA

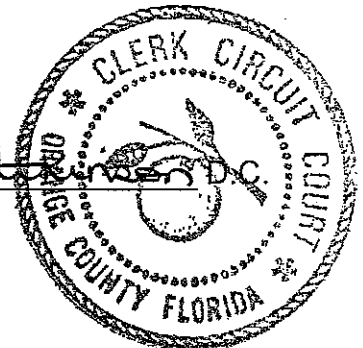
COUNTY OF ORANGE

I LINDA W. CHAPIN, Clerk of the Circuit and County Courts in and
For Orange County, Florida. Do hereby certify that the foregoing pages
Numbered One (1) through One Hundred and Sixteen (116) inclusive, contain a
correct transcript of the record in the case of State of Florida versus Mary
Whittaker and a true and correct recital and copy of all papers and proceedings
of file in this office that have Directed to be included herein.

IN WITNESS WHEREOF I HAVE hereunto set my hand and affixed
This seal of the County Court in and for Orange County, Florida, this 23rd
September 1999.

LINDA W. CHAPIN, Clerk of the Circuit
And County Court

BY: Vanya M. G...



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