

GREGORY E. MONK

591277019 - (7173)

No. 1208
Sept. 1995

Gregory Monk

591277019

transcript

ORIGINAL IN THE CIRCUIT COURT FOR BALTIMORE CITY

GREGORY ERIC MONK

*

*

*

V.

*

CASE NO.: 591277019

*

STATE OF MARYLAND

*

*

*

*

*

*

*

*

*

BALTIMORE, MARYLAND

MAY 3, 1995

BEFORE THE HONORABLE ALBERT J. MATRICCIANI, JUDGE

APPEARANCES:

RICHARD H. BOUCHER, ESQUIRE,

ON BEHALF OF THE STATE.

NORMAN N. YANKELLOW, ESQUIRE,

ON BEHALF OF THE DEFENSE.

REPORTED BY:

LESLIE ELISE GROSS,

OFFICIAL COURT REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

WITNESSES ON BEHALF OF THE PETITIONER:

	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>
GREGORY ERIC MONK	20	-	-	-

EXHIBITS

	PAGE
PETITIONER'S EXHIBIT NUMBERS 1(A), 1(B), 1(C) IN EVIDENCE	19

1 AMENDED PETITION IN WHICH HE ALLEGES THAT THE COURT
2 UNFAIRLY SENTENCED HIM. AND IF YOUR HONOR PLEASE, WE
3 WISH TO ENTER INTO THE RECORD, AS PART OF THE RECORD
4 OF THE POST-CONVICTION PROCEEDINGS, THE ENTIRE
5 TRANSCRIPT FROM THE ORIGINAL TRIAL, THE TRANSCRIPT OF
6 THE SENTENCING HEARING BEFORE JUDGE WARD ON SEPTEMBER
7 29TH AND THE DOCKET ENTRIES IN THIS PARTICULAR CASE.

8 THE COURT: AND THOSE -- ARE THEY CONTAINED
9 IN THE FILES AND DOCUMENTS WHICH YOU HAVE HANDED UP TO
10 ME?

11 MR. YANKELLOW: I JUST HANDED YOUR CLERK THE
12 TRANSCRIPT FOR THE SEPTEMBER THE 29TH PROCEEDINGS.
13 THE REST OF IT IS IN THE FILE.

14 THE COURT: OKAY. IS THERE ANY OBJECTION?

15 MR. BOUCHER: NO, JUDGE.

16 THE STATE DOES HAVE SOME PRELIMINARY MOTIONS
17 IF THE COURT WISHES TO ENTERTAIN THOSE.

18 THE COURT: OKAY. THOSE WILL BE MADE PART
19 OF THE RECORD, MR. YANKELLOW.

20 MR. YANKELLOW: THANK YOU.

21 MR. BOUCHER: AT THIS TIME, THE STATE IS
22 GOING TO MAKE A MOTION TO DISMISS, AND IN ADDITION,
23 THE STATE IS ALSO GOING TO ASK FOR SOME CLARIFICATION
24 BY COUNSEL AND THE COURT.

25 AS THE COURT IS AWARE, THE DEFENDANT HAS

1 FILED TWO SEPARATE PETITIONS. THERE WAS AN INITIAL
2 PETITION THAT WAS SUBMITTED TO THE COURT ON OR ABOUT
3 DECEMBER THE 5TH, 1994, I BELIEVE. SUBSEQUENTLY,
4 THERE IS A DOCUMENT CAPTIONED AMENDMENT TO PETITION
5 FOR POST-CONVICTION RELIEF FILED ON 12/8/94.

6 JUDGE, I HAVE HAD AN OPPORTUNITY TO REVIEW
7 THESE PETITIONS. THEY DO NOT NECESSARILY CONTAIN THE
8 EXACT SAME ALLEGATIONS OF ERROR AND REQUESTS FOR
9 RELIEF. THAT BEING THE CASE, I WOULD ASK THE COURT
10 TO ASK OF COUNSEL AND THE PETITIONER WHICH PETITION WE
11 ARE GOING TO BE PROCEEDING ON.

12 MR. YANKELLOW: THE SIMPLE ANSWER IS BOTH.

13 YOU HAVE TO UNDERSTAND THAT THIS WAS PRO SE
14 PETITION FILED BY MR. MONK DIRECTLY, AND HE FEELS THAT
15 THE GROUNDS IN THE ORIGINAL PETITION PLUS THE GROUNDS
16 IN WHAT HE CALLED AN AMENDED PETITION SHOULD BE HEARD
17 BY THE COURT.

18 THE COURT: AND TELL ME WHAT ISSUES ARE
19 CONTAINED IN THOSE TWO PETITIONS, IF YOU CAN.

20 MR. MONK: ISSUE ONE IS THAT THE STATE
21 FAILED TO PROVE ITS BURDEN BEYOND A REASONABLE DOUBT
22 THAT PETITIONER PREVIOUSLY WAS CONVICTED OF QUALIFIED
23 CRIMES TO AUTHORIZE IMPOSITION OF THE ENHANCEMENT
24 SENTENCE.

25 THE COURT: I UNDERSTOOD THAT TO BE ONE OF

1 THE ISSUES. AND WHAT OTHER ISSUE?

2 MR. MONK: AND THAT PETITIONER WAS
3 PREJUDICED BY THE STATE BECAUSE IT DID NOT MEET ITS
4 BURDEN OF PROVIDING PETITIONER WITH THE REQUIRED
5 NOTICE OF ENHANCEMENT PENALTIES AS TO IMPOSE AN
6 ENHANCEMENT PENALTY FIFTEEN DAYS PRIOR TO THE
7 SENTENCING. I WAS NOT MADE ACCURATE AS TO THAT, AND
8 THUS DEPRIVED OF A PROPER DEFENSE AT TRIAL.

9 THE COURT: ARE THERE ANY OTHER ISSUES?

10 MR. MONK: YES. THIS IS THE LAST ONE, YOUR
11 HONOR.

12 THE COURT: IS IT THE ALLEGATION ABOUT NOT
13 HAVING HAD AN APPROPRIATE OPPORTUNITY TO REHABILITATE
14 YOURSELF?

15 MR. MONK: YES, SIR.

16 THE COURT: THAT WAS THE LAST ISSUE.

17 MR. MONK: THAT'S THE LAST ISSUE.

18 THE COURT: SO WE HAVE THREE ISSUES BY YOUR
19 UNDERSTANDING?

20 MR. MONK: YES, SIR.

21 THE COURT: MR. BOUCHER, YOU ARE MOVING TO
22 DISMISS FOR WHAT REASON?

23 MR. BOUCHER: A MYRIAD OF REASONS.
24 INITIALLY I WILL ASK THE COURT TO DISMISS BOTH
25 PETITIONS FOR POST-CONVICTION RELIEF IN THAT THIS

1 DEFENDANT FILED, AFTER HIS INITIAL CONVICTION, AN
2 APPEAL TO THE COURT OF SPECIAL APPEALS.

3 THE COURT, IN FACT, THAT BEING THE COURT OF
4 SPECIAL APPEALS, ENTERTAINED THE APPEAL AND IN FACT
5 GRANTED RELIEF ON AT LEAST ONE OF THE ISSUES THAT WERE
6 PRESENTED TO IT.

7 IT IS THE STATE'S CONTENTION HERE TODAY THAT
8 THESE ISSUES ARE, IN FACT, APPELLATE ISSUES. THEY
9 SHOULDN'T HAVE BEEN INCLUDED IN THE INITIAL APPEAL TO
10 THE COURT OF SPECIAL APPEALS, AND BECAUSE THESE ISSUES
11 WERE NOT APPEALED TO THE COURT OF SPECIAL APPEALS,
12 THEY ARE, IN FACT, DEEMED WAIVED AT THIS TIME, AND
13 THESE PETITIONS SHOULD NOT BE HEARD AND A HEARING
14 SHOULD NOT BE GRANTED.

15 IN ADDITION, YOUR HONOR, I WOULD ALSO
16 INDICATE TO THE COURT THAT THIS, AT LEAST AS FAR AS
17 THE STATE IS CONCERNED, IS THE SECOND PETITION FOR
18 POST-CONVICTION RELIEF. THE COURT IS PROBABLY WELL
19 AWARE OF THE FACT THAT A HEARING WAS HELD ON THE
20 INITIAL POST-CONVICTION PETITION BY JUDGE HOLLANDER,
21 AND IN FACT RELIEF WAS GRANTED AS TO THE SENTENCE IN
22 THIS PARTICULAR CASE.

23 I WOULD INDICATE TO THE COURT THAT IT IS THE
24 STATE'S CONTENTION THAT THESE ISSUES SHOULD HAVE BEEN
25 CONTAINED IN THE INITIAL OR FIRST POST-CONVICTION

1 PETITION. BECAUSE IT WAS NOT CONTAINED IN THAT
2 PETITION, THESE ALLEGATIONS ARE DEEMED TO BE WAIVED
3 AND THIS COURT SHOULD NOT GRANT A HEARING.

4 FINALLY, JUDGE, I AM GOING TO ASK THAT THE
5 COURT GRANT THE STATE'S MOTION TO DISMISS BASED ON A
6 FAULTY PETITION FOR POST-CONVICTION RELIEF.

7 I WILL INDICATE THAT UNDER THE MARYLAND
8 RULES TITLE 4, SECTION 402, SUBSECTIONS (A)6 AND (A)7,
9 IT IS REQUIRED THAT A POST-CONVICTION PETITION CONTAIN
10 A STATEMENT INDICATING WHAT THE PREVIOUS PROCEEDINGS
11 WERE, AND UNDER (A)7, A SHORT STATEMENT OF FACTS
12 INDICATING WHY THE ALLEGATIONS OR ERRORS THAT ARE
13 CLAIMED HAVE NOT BEEN WAIVED.

14 I WILL INDICATE TO THE COURT THAT BASED ON
15 MY READING OF THESE PETITIONS, THAT REQUIREMENT HAS
16 NOT BEEN ADHERED TO. AS SUCH, THE PETITIONS ARE
17 FAULTY AND DEFECTIVE AND SHOULD BE DISMISSED.

18 THE COURT: LET ME ASK YOU A QUICK QUESTION,
19 MR. BOUCHER. WHAT IS IT THAT BARS HIM FROM RAISING
20 THE ISSUES THAT -- ASSUMING YOU ARE RIGHT, THAT THEY
21 COULD HAVE BEEN RAISED ON THE DIRECT APPEAL, WHAT BARS
22 HIM FROM RAISING THEM ON POST-CONVICTION PETITION?

23 MR. BOUCHER: AGAIN, BECAUSE THOSE WERE
24 APPELLATE ISSUES AND COULD HAVE BEEN ADDRESSED BY THE
25 COURT OF SPECIAL APPEALS. THE COURT, THROUGH THE

1 POST-CONVICTION ACT, WOULD DEEM THE ISSUES TO BE
2 WAIVED. ONE CANNOT SEEK POST-CONVICTION RELIEF WHEN
3 ONE HAD AN OPPORTUNITY TO OBTAIN RELIEF THROUGH THE
4 APPROPRIATE CHANNEL, THAT BEING THE APPEAL TO THE
5 COURT OF SPECIAL APPEALS, AND IF ONE DOES NOT TAKE
6 ADVANTAGE OF THAT RELIEF, THEN YOU WAIVE IT.

7 THE COURT: THE DISTINCTION THAT YOU ARE
8 DRAWING IS, FOR EXAMPLE, THE RECORD WAS COMPLETE UP TO
9 THE POINT THAT THE TRIAL AND SENTENCING WERE
10 COMPLETED, THEREFORE, IF SOMEONE WANTS TO POINT TO
11 ERROR, THEY COULD TAKE IT UP DIRECTLY. IT WASN'T
12 SOMETHING ESTRANGED OF THE RECORD.

13 WHAT CAN YOU RAISE BY POST-CONVICTION THAT
14 IS NOT A DIRECT APPEAL ISSUE?

15 MR. BOUCHER: I GUESS DENIALS OF FUNDAMENTAL
16 VERSUS NONFUNDAMENTAL RIGHTS.

17 MR. YANKELLOW: EFFECTIVE ASSISTANCE OF
18 COUNSEL.

19 MR. BOUCHER: I CAN GIVE YOU A MYRIAD OF
20 EXAMPLES.

21 THE COURT: THAT WAS THE ISSUE IN THE FIRST
22 POST-CONVICTION, CORRECT?

23 MR. BOUCHER: ONE OF THEM.

24 THE COURT: THAT WAS THE ONE THAT JUDGE
25 HOLLANDER AGREED TO, BECAUSE IT -- COUNSEL HAD BEEN

1 UNDER THE WRONG UNDERSTANDING OF THE SENTENCING, IS
2 THAT CORRECT?

3 MR. BOUCHER: OR AT LEAST THAT WAS NOT
4 PRESENTED TO JUDGE WARD AT THE TIME OF SENTENCING,
5 YES.

6 THE COURT: THIS ISSUE, FOR EXAMPLE, OF
7 WHETHER OR NOT THE SENTENCING STATUTE REQUIRES THE
8 STATE TO INTRODUCE EVIDENCE AT SENTENCING, I GUESS, OR
9 AT SOME POINT, AS TO WHETHER OR NOT HE'S BEEN AFFORDED
10 AN APPROPRIATE OPPORTUNITY FOR REHABILITATION, YOU
11 CLAIM THAT THAT'S A DIRECT APPEAL ISSUE?

12 MR. BOUCHER: I WOULD SUBMIT TO THE COURT
13 THAT THAT IS NOT AN APPELLATE OR A POST-CONVICTION --

14 THE COURT: I DON'T DISAGREE WITH THAT, BUT
15 IF IT WERE A VIABLE ISSUE, CAN HE RAISE IT IN A
16 POST-CONVICTION?

17 MR. BOUCHER: IF IT WERE A VIABLE ISSUE, I
18 WOULD SAY YES. HOWEVER, I DON'T THINK THAT THAT IS A
19 CAUSE OF ACTION FOR WHICH RELIEF CAN BE GRANTED.

20 THE COURT: BECAUSE YOU DON'T THINK THE
21 STATUTE REQUIRES IT?

22 MR. BOUCHER: EXACTLY. TO THE BEST OF MY
23 KNOWLEDGE, THERE IS NO INDICATION IN THE STATUTE THAT
24 THE DEPARTMENT OF CORRECTION REHABILITATES AN
25 INCARCERATED DEFENDANT TO SUCH A STANDARD THAT IT CAN

1 THEN BE MEASURED THAT HE HAS IN FACT BEEN
2 REHABILITATED OR NOT AND THEN APPLY THAT STANDARD TO A
3 MANDATORY OFFENDER ADDENDUM THAT'S BEEN FILED IN A
4 SUBSEQUENT CRIMINAL PROCEEDING.

5 THE COURT: WHY DIDN'T YOU RAISE THESE IN
6 YOUR APPEAL?

7 MR. MONK: IT'S OBVIOUS, YOUR HONOR, THAT
8 HE'S TRYING TO OBFUSCATE THE ISSUES HERE.

9 THE ISSUE THAT I AM RAISING HERE -- I AM
10 RAISING -- REENTERING THESE ISSUES BECAUSE -- BASED ON
11 THE FACT THAT JUDGE HOLLANDER GAVE ME A NEW SENTENCE,
12 AND Y'ALL -- -- I FILED THE POST-CONVICTION. THEY
13 FILED IT AS A SECOND PETITION.

14 THE COLLATERAL PROVISION -- MISS CHANCE, SHE
15 CHECKED THE RECORD, OBVIOUSLY, AND SENT YOU A LETTER
16 INFORMING YOU THAT UNDER THE LAWS THIS IS ACTUALLY A
17 FIRST POST-CONVICTION.

18 WHAT THE PROSECUTOR IS SAYING HERE IS THAT I
19 DON'T HAVE THE RIGHT TO FILE A POST-CONVICTION,
20 PERIOD.

21 THE COURT: NO, I DON'T THINK THAT'S WHAT
22 HE'S SAYING.

23 MR. MONK: YEAH, HE'S --

24 THE COURT: HE SAYS YOU CAN RAISE, FOR
25 EXAMPLE, A DENIAL OF FUNDAMENTAL RIGHTS ON

1 POST-CONVICTION.

2 MR. MONK: YEAH, BUT --

3 THE COURT: HE SAYS YOU'RE LIMITED.

4 MR. MONK: YEAH, BUT THIS IS -- IT'S NOT
5 ATTACKING ANYTHING THAT WAS BACK THEN. THIS IS
6 ATTACKING THE SENTENCE.

7 THE COURT: THE QUESTION IS, IS IT TIMELY.
8 WHY DIDN'T YOU RAISE THESE ON APPEAL?

9 MR. MONK: WHY DIDN'T I RAISE --

10 THE COURT: YOU WENT TO THE COURT OF SPECIAL
11 APPEALS.

12 MR. MONK: I'M A LAYMAN IN LAW.

13 THE COURT: WERE YOU REPRESENTED IN YOUR
14 APPEAL?

15 MR. MONK: YES, I WAS REPRESENTED. I
16 DIDN'T FILE THE APPEAL MYSELF. I'M TOTALLY LAYMAN.
17 I JUST CAME INTO THE KNOWLEDGE OF THE LAW VIA A
18 COMPUTER DOWN AT D.C.I. CORRECTIONAL INSTITUTION.

19 AS YOU CAN SEE, I FILED THE PETITION THE
20 BEST THAT I KNOW HOW, AND I'M SEEKING REPRESENTATION
21 FROM THE PUBLIC DEFENDER'S OFFICE. I DON'T HAVE
22 REPRESENTATION. I NEVER HAD A PAID LAWYER AT THE
23 FIRST TRIAL, SO YOU KNOW, IT SHOWS THAT I'M INDIGENT
24 AND I'M TOTALLY --

25 THE COURT: I UNDERSTAND YOUR POSITION.

1 MR. YANKELLOW, WHAT'S YOUR POSITION ON THIS?

2 MR. YANKELLOW: IF YOUR HONOR PLEASE, MR.

3 BOUCHER, WITHOUT CITING IT, IS REFERRING TO

4 MCELROY V. STATE.

5 MCELROY SAYS THAT IF IT IS AN APPEALABLE

6 ISSUE AND IT IS NOT RAISED ON APPEAL, THEN IT IS

7 DEEMED WAIVED. HOWEVER, IT'S ONE OF MANY OPINIONS OF

8 THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS THAT

9 I DISAGREE WITH, BECAUSE IT DOES NOT TAKE INTO

10 CONSIDERATION PRACTICALITIES.

11 AS MR. MONK STATED, HE IS UNLEARNED IN THE

12 LAW. HE DOES NOT KNOW OR DID NOT KNOW AT THE TIME OF

13 HIS APPEAL THE TECHNICAL POSITION THAT THE LAW

14 REQUIRES AN ENHANCED PENALTY TO -- THAT NOTIFIES OF AN

15 ENHANCED PENALTY TO BE SOUGHT BY THE STATE'S ATTORNEY

16 OF THE DEFENDANT MORE THAN FIFTEEN DAYS FROM THE DATE

17 OF SENTENCING.

18 IF HIS APPELLATE COUNSEL DID NOT RAISE THAT,

19 MR. MONK IN REVIEWING HIS OWN TRANSCRIPT -- AND THIS

20 IS WHERE WE GET DOWN TO THE SECOND SENTENCE. MR.

21 MONK'S POSITION IS THAT THE FIRST SENTENCING WAS VOID

22 BECAUSE IT WAS NOT WITHIN THE PRECEPTS OF

23 COLLINS V. STATE. THEREAFTER, HE HAD A SECOND

24 SENTENCING WHICH WAS THE ORIGINAL FIRST SENTENCE, AND

25 HE IS SAYING THAT HE DID NOT HAVE THE REQUISITE NOTICE

1 BY THE STATE OF THE MANDATORY SENTENCING PROVISION,
2 ENHANCED PENALTY.

3 AS I SAY, IF YOUR HONOR PLEASE, I FEEL THAT
4 IN POST CONVICTIONS -- THAT MCELROY SHOULD NOT BE
5 INTERPRETED STRICTLY BY POST-CONVICTION JUDGES,
6 BECAUSE IT DOES NOT TRULY MAKE SENSE.

7 THE COURT: WELL, AT WHAT POINT DOES IT?
8 CAN HE JUST GO BACK TO HIS CELL AND KEEP COMING UP
9 WITH NEW IDEAS?

10 MR. YANKELLOW: NO, YOUR HONOR. THE
11 QUESTION OF THE LEGALITIES -- AND I AGREE THAT ONCE
12 POST-CONVICTION IS FILED, THAT SHOULD ATTEMPT TO
13 CONCLUDE ALL OF THE THINGS THAT ARE REQUIRED. THIS
14 IS WHY MR. MONK IS SAYING THAT THIS SENTENCE AS OF --
15 JUDGE WARD'S LATEST SENTENCE IS HIS ORIGINAL SENTENCE,
16 BECAUSE THE FIRST SENTENCE WAS NOT CARRIED OUT
17 ACCORDING TO THE LAW.

18 THE COURT: WAS THERE A -- WASN'T THERE AN
19 APPEAL FROM THE SECOND SENTENCE?

20 MR. YANKELLOW: NO, THERE WAS NOT AN APPEAL
21 FROM THE SECOND SENTENCE.

22 NOW, AS FAR AS THE CONTINUITY OF THE CASES,
23 I THINK THAT WE ARE HERE -- THAT ALL OF THE FACTUAL
24 CIRCUMSTANCES OF THE CASE CAN BE BROUGHT OUT VERY
25 QUICKLY. THE COURT HAS THE TRANSCRIPT OF THE ENTIRE

1 RECORD, AND I THINK THAT THIS COURT CAN DETERMINE
2 WHETHER OR NOT MY CLIENT RECEIVED A FAIR SENTENCE AND
3 IF HE DID NOT, THEN IT SHOULD BE SENT BACK A THIRD
4 TIME FOR A SENTENCE. THIS IS WHAT WE ARE ASKING.

5 IS THAT CORRECT, MR. MONK?

6 MR. MONK: YES, SIR.

7 THE COURT: DO YOU HAVE ANYTHING ELSE, MR.
8 BOUCHER?

9 MR. BOUCHER: I WILL JUST POINT THE COURT'S
10 ATTENTION TO THE ACTUAL POST-CONVICTION PROCEDURE ACT,
11 ARTICLE 27 SECTION 645(A) SUBSECTION (F), THAT BEING
12 RIGHT TO COUNSEL AND HEARING. IT'S VERY BRIEF.

13 A PETITIONER IS ENTITLED TO THE ASSISTANCE
14 OF COUNSEL AT A HEARING ON THE FIRST PETITION FILED BY
15 THE PETITIONER UNDER THIS SECTION. THE COURT SHALL
16 DETERMINE IF ASSISTANCE OF COUNSEL OR A HEARING SHOULD
17 BE GRANTED ON A SUBSEQUENT PETITION FILED BY A
18 PETITIONER.

19 THAT SAYS, ESSENTIALLY, THAT IT IS IN THE
20 DISCRETION OF THIS COURT AS TO WHETHER THIS PETITIONER
21 IS ENTITLED TO ANOTHER HEARING. HE HAS ALREADY BEEN
22 GRANTED RELIEF AS TO THE EXACT SAME CASE, THE EXACT
23 SAME SENTENCE, ON A PRIOR POST-CONVICTION PETITION,
24 AND IT IS THE STATE'S POSITION THAT HE SHOULD NOT BE
25 GRANTED A HEARING AS TO THESE ISSUES. IN FACT, THEY

1 HAVE BEEN WAIVED --

2 THE COURT: DOESN'T ONE OF HIS ISSUES GO TO
3 THE SECOND SENTENCING PROCEEDING?

4 MR. BOUCHER: QUITE FRANKLY, I THINK THAT'S
5 A SUBTERFUGE FOR THE PETITIONER TO GET AN OPPORTUNITY
6 TO ARGUE THE CASE BEFORE THE COURT, AND THE REASON WHY
7 IS THIS: IF IN FACT NOTICE WAS AN ISSUE, THEN
8 CERTAINLY IT WAS AN ISSUE AT THE INITIAL SENTENCING
9 BACK IN 1992.

10 IF THAT IS IN FACT SO, WHY WASN'T THAT
11 RAISED EITHER ON APPEAL, OR NUMBER TWO AND MOST
12 IMPORTANTLY, AT THE FIRST POST-CONVICTION HEARING?
13 THAT WAS THE APPROPRIATE FORUM TO HAVE THAT CLAIM
14 LITIGATED, NOT HERE AND NOW, AFTER HE'S ALREADY BEEN
15 SENTENCED. HE HAD HIS DAY IN COURT.

16 THE COURT: WAS HE REPRESENTED AT THE SECOND
17 SENTENCING?

18 MR. BOUCHER: YES, BY MR. ANGELOS, THE
19 ORIGINAL ATTORNEY AT THE TRIAL.

20 THE COURT: WAS HE PRIVATELY RETAINED?

21 MR. YANKELLOW: PUBLIC DEFENDER.

22 MR. MONK: PUBLIC DEFENDER.

23 THE COURT: DOES THE PUBLIC DEFENDER'S
24 OFFICE THEN REVIEW THOSE TRANSCRIPTS WITH THE CLIENTS
25 FOR PURPOSES OF DETERMINING WHETHER THERE ARE

1 APPEALABLE ISSUES?

2 MR. MONK: NO, SIR.

3 MR. YANKELLOW: IF YOUR HONOR PLEASE, IT'S
4 UP TO THE CLIENT TO DETERMINE WHETHER OR NOT HE IS
5 GOING TO FILE AN APPEAL. HE WAS ADVISED OF HIS
6 RIGHTS, THAT HE HAD THIRTY DAYS IN WHICH TO FILE AN
7 APPEAL. WHY MR. MONK DID NOT FILE AN APPEAL, I HAVE
8 NO IDEA. WE DON'T EVER TELL A CLIENT THAT YOU HAVE
9 GROUNDS FOR -- A REAL GROUNDS FOR AN APPEAL OR YOU
10 DON'T HAVE ANY GROUNDS FOR AN APPEAL. THAT'S A
11 DECISION THAT THE CLIENT HAS TO MAKE INDIVIDUALLY.

12 MR. MONK: ARE YOU TALKING ABOUT THE SECOND
13 SENTENCE?

14 MR. YANKELLOW: YES.

15 MR. MONK: I TRIED TO EXPLAIN TO JUDGE WARD,
16 AND IF YOU ASCERTAIN THE TRANSCRIPT --

17 MR. YANKELLOW: WE HAVE IT.

18 MR. MONK: -- YOU CAN SEE THAT I TRIED TO
19 EXPLAIN TO JUDGE WARD THE SAME THING THAT I AM TRYING
20 TO RAISE HERE.

21 THE COURT: WELL, HE DISAGREED WITH YOU.

22 MR. MONK: NO, HE DIDN'T DISAGREE. HE
23 DENIED ME MY RIGHT TO CHALLENGE THE SENTENCE UNDER DUE
24 PROCESS -- UNDER DUE PROCESS, SPECHT V. PETERSON --
25 AND HE DENIED ME THAT RIGHT AT THAT SENTENCING. SO

1 NOW I AM HERE ON POST-CONVICTION SEEKING RELIEF OR
2 PROPER RELIEF IN FRONT OF THIS COURT, BECAUSE I WAS
3 DENIED IN FRONT OF THE SENTENCING JUDGE WHEN I TRIED
4 TO EXPLAIN TO HIM THE --

5 THE COURT: RATHER THAN BELABOR THIS, I
6 THINK THERE ARE SOME VERY SERIOUS ISSUES ABOUT THE
7 FINALITY OF ALL OF THIS. I AM GOING TO DENY THE
8 MOTION AND LET YOU PROCEED, BUT I HAVE REAL QUESTIONS
9 ABOUT DOING IT, GIVEN THAT YOU WERE REPRESENTED ALL
10 ALONG THE WAY. I AM STILL GOING TO DENY IT. LET'S
11 GO FORWARD.

12 MR. BOUCHER: VERY WELL, JUDGE.

13 MR. YANKELLOW: FOR WHAT IT IS WORTH, MR.
14 MONK MENTIONED THE CASE SPECHT V. PATTERSON 386 U.S.
15 605.

16 THE COURT: THANK YOU.

17 MR. YANKELLOW: MR. MONK, PLEASE TAKE THE
18 STAND.

19 MR. MONK: ARE YOU GOING TO DENY IT?

20 MR. YANKELLOW: NO, HE DENIED THE STATE'S
21 OBJECTION.

22 MR. MONK: THANK YOU, YOUR HONOR.

23 THE CLERK: WOULD YOU RAISE YOUR RIGHT HAND,
24 PLEASE?

25 WHEREUPON,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

GREGORY ERIC MONK,

AFTER HAVING BEEN DULY SWORN IN ACCORDANCE WITH LAW,
WAS EXAMINED AND TESTIFIED AS FOLLOWS:

MR. MONK: CAN I GIVE COPIES TO THE COURT?

MR. YANKELLOW: WHAT HAVE YOU GOT HERE?

THE COURT: GIVE THEM TO MR. YANKELLOW.
HE'S GOING TO QUESTION YOU.

MR. MONK: YEAH, BUT I WANTED -- I'VE GOT A
COPY FOR YOU. COPIES FOR YOU.

MR. YANKELLOW: COPY FOR THE STATE?

MR. MONK: YEAH, THAT'S FOR THE STATE.

MR. YANKELLOW: I WILL ENTER THOSE AS
PETITIONER'S EXHIBIT 1(A), (B) AND (C).

THE COURT: ANY OBJECTION?

MR. BOUCHER: NO OBJECTION.

THE COURT: THEY'RE ADMITTED.

(COUNSEL FOR THE PETITIONER
INTRODUCED PETITIONER'S
EXHIBIT NUMBERS
1(A), 1(B), 1(C) IN EVIDENCE.)

THE CLERK: STATE YOUR NAME FOR THE RECORD
AND YOUR LAST KNOWN ADDRESS.

THE WITNESS: GREGORY MONK, 2931 FOREST GLEN

1 ROAD. IT'S A HOUSE.

2 DIRECT EXAMINATION

3 BY MR. YANKELLOW:

4 Q. MR. MONK, YOU FILED A PRO SE PETITION AND
5 AMENDED PETITION. WE HAVE HAD DISCUSSIONS WITH THE
6 JUDGE ABOUT THE PETITION. I DON'T WANT YOU TO REPEAT
7 WHAT YOU SAID, BUT WHY DID YOU FEEL THAT YOU DID NOT
8 RECEIVE A FAIR SENTENCING?

9 A. DO YOU WANT ME --

10 THE COURT: I DIDN'T HEAR YOUR QUESTION.

11 MR. YANKELLOW: I SAID BECAUSE WE HAD THE
12 DISCUSSION AT THE BENCH THAT I DIDN'T WANT HIM TO
13 REPEAT THAT WHICH HAD PREVIOUSLY TRANSPIRED. I WANT
14 HIM TO EXPLAIN ANY OTHER REASONS WHY HE FELT HE DID
15 NOT HAVE A FAIR HEARING, FAIR SENTENCING.

16 THE COURT: WE'VE ONLY GOT THREE ISSUES IN
17 FRONT OF US.

18 I WANT TO KNOW WHY YOU SAID THERE WAS NO
19 PROOF OF YOUR PRIOR CONVICTION.

20 THE WITNESS: ALL RIGHT, THE PRIOR
21 CONVICTION PETITION --

22 THE COURT: THE TRANSCRIPT INDICATES THAT
23 THERE WAS A COLLOQUY BETWEEN THE SENTENCING JUDGE AND
24 MR. BOUCHER ABOUT A CERTIFIED DOCKET ENTRY OF YOUR
25 PRIOR CONVICTION IN CASE NUMBER 29009933. IT WAS

1 ADMITTED WITHOUT OBJECTION BY MR. ANGELOS, AND THEN
2 THE COURT INQUIRED -- COUNSEL INQUIRED AS TO WHETHER
3 YOU WERE THE SAME GREGORY MONK WHO WAS THE DEFENDANT
4 IN THE CASE BEFORE, AS IN THE PREVIOUS CASE, AND YOUR
5 ATTORNEY AGREED THAT YOU WERE.

6 THE WITNESS: ALL RIGHT.

7 THE COURT: WHAT OTHER EVIDENCE DID THE
8 STATE HAVE TO ADDUCE?

9 THE WITNESS: ON THAT ISSUE WHAT I AM SAYING
10 IS THAT IN MY RELIEF BY JUDGE HOLLANDER, I RECEIVED A
11 NEW SENTENCING IN WHICH I AM BACK BEFORE YOU NOW ON,
12 AND WHAT I AM SAYING IS THAT THE REASON THAT JUDGE
13 HOLLANDER OVERTURNED THE CASE IS BECAUSE MY LAWYER DID
14 NOT EXPLAIN IN -- HE TOLD ME, BASICALLY, TO PUT IT IN
15 SHORT TERMS, THAT I COULDN'T FILE SOME TYPE OF RELIEF
16 BECAUSE -- RELIEF BECAUSE --

17 MR. YANKELLOW: I CAN SHORTEN THAT. THE
18 JUDGE GRANTED THE RELIEF BECAUSE THE SENTENCE DID NOT
19 FOLLOW THE PRE --

20 THE WITNESS: IT DIDN'T FOLLOW COLLINS,
21 BASICALLY, IS WHAT I AM SAYING. SO I AM SAYING BASED
22 ON THAT, I WAS GRANTED A NEW HEARING, A NEW
23 SENTENCING, AND -- AS MISS CHANCE WROTE YOU IN THE
24 LETTER, SHE INDICATES THAT THE DOCKET ENTRY FORMS
25 SHOWS THAT I HAD A NEW SENTENCE ON THE 29TH OF

1 DECEMBER.

2 THE COURT: UH-HUH.

3 THE WITNESS: SO THE DOCKET ENTRY SHOWS THAT
4 I HAD THIS NEW SENTENCE. SO WHAT I AM SAYING, JUST
5 BECAUSE I WIN A NEW SENTENCE, IT DOES NOT NEGATE ME
6 THE PRIVILEGE OF HAVING THE WHOLE PROCESS DONE OVER
7 AGAIN, AND IT IS INCUMBENT UPON THE STATE TO ESTABLISH
8 THIS. AND EVEN IN FORD V. STATE, THE -- THE -- THE
9 COURT OF APPEALS STATED THAT IT IS NOT ENOUGH JUST FOR
10 THE STATE TO SAY THAT THEY HAVE -- THAT I HAVE A PRIOR
11 CONVICTION. NO, THEY MUST ENTER INTO THE RECORD
12 EITHER BY PRESENTENCE INVESTIGATION, OR, IN LIEU OF
13 PRESENTENCE INVESTIGATION, BY CERTIFIED COPY OF PRIOR
14 CONVICTION.

15 WHAT I'M SAYING IS THAT SINCE I WAS GIVEN A
16 NEW SENTENCE, THAT THE PRIOR SENTENCE OR EVIDENCE
17 ENTERED IN THE PRIOR SENTENCE IS RENDERED MOOT
18 ACCORDING TO DOCKET ENTRY, AND SO --

19 THE COURT: I UNDERSTAND YOUR ARGUMENT.

20 GO AHEAD.

21 TELL ME ABOUT WHY -- ABOUT FIFTEEN DAY
22 NOTICE.

23 THE WITNESS: OKAY, TO THE FIFTEEN DAY
24 NOTICE, AGAIN -- AND THESE ARE THE TRANSCRIPTS THAT I
25 GAVE -- I HAVE BOTH OF THESE TRANSCRIPTS.

1 IN FRONT OF JUDGE BROWN ON MARCH 17TH, I
2 RECEIVED A PRELIMINARY HEARING. I WAS SCHEDULED TO
3 GO IN TO TRIAL IN FRONT OF JUDGE BROWN THAT DAY, BUT
4 JUDGE BROWN WAS HEARING A CASE. HE WAS ON TRIAL.
5 SO WE WENT FOR POSTPONEMENT IN FRONT OF A POSTPONEMENT
6 JUDGE.

7 THEY DIDN'T GRANT THE POSTPONEMENT, BECAUSE
8 JUDGE BROWN WAS GOING TO ALLOW ME TO GO BACK OUT ON
9 BAIL. IF YOU CAN SEE IT RIGHT THERE -- SEE IT THERE?

10 THAT PREVIOUS HEARING, THE PROSECUTOR HAD
11 ARGUED IF I WAS LET OUT ON BAIL THAT I WOULD NOT
12 RETURN TO COURT. SO SOMEHOW THE BAIL FILES WAS NOT
13 IN -- IN THE RECORD.

14 SO THEY TOLD -- THE JUDGE TOLD MY LAWYER TO
15 GO AND CHECK AND I WAS GOING TO GET OUT ON BAIL --
16 BACK OUT ON BAIL THAT DAY BECAUSE I WAS ONLY FIVE
17 MINUTES LATE.

18 SO THAT DAY I WAS DENIED. I WENT -- I WAS
19 DENIED THE -- THE POSTPONEMENT.

20 I WENT STRAIGHT OVER TO JUDGE WARD. WHEN I
21 WENT IN FRONT OF JUDGE WARD, THERE STILL WAS NO NOTICE
22 REQUIREMENT OF ENHANCEMENT OF PENALTIES BY THE
23 STATE. AS A MATTER OF FACT, HE HAD JUST OFFERED ME
24 THREE YEARS. SO THIS INDICATED -- THIS IS OFF THE
25 RECORD, BUT I'M JUST SAYING HE OFFERED ME THROUGH MY

1 LAWYER, BUT THAT INDICATED THAT HE DIDN'T EVEN KNOW
2 THAT HE WAS GOING TO SEEK AN ENHANCEMENT PENALTY.

3 IN SULLIVAN V. STATE, UNDER -- IN FORD
4 VERSUS -- I MEAN TEETER AND SULLIVAN, THE SUPREME
5 COURT SPECIFICALLY SAY -- BECAUSE PROSECUTORS ARGUE
6 THAT THIS PUTS A PREMIUM ON A DEFENDANT'S SENTENCING,
7 THAT THEY HAVE TO GIVE HIM A NOTICE, A REQUIREMENT OF
8 FIFTEEN DAYS PRIOR TO TRIAL.

9 SO WHAT THEY SAY IS -- I'M QUOTING FROM
10 STATE V. FORD, AND THEY SAID -- THIS IS THEIR
11 FOOTNOTES BEFORE THEY VACATED THE SENTENCE AND SENT IT
12 BACK FOR RESENTENCING.

13 THEY SAY, "WE RECOGNIZE THAT THIS MIGHT SEEM
14 TO PUT A PREMIUM ON DEFENDANT'S SILENCE TO THE
15 DETRIMENT OF THE STATE."

16 THEN WE GO BACK TO WHY I DIDN'T PROTEST
17 THIS, BECAUSE IT WAS NEVER CHALLENGED. I AIN'T GOT
18 TO CHALLENGE NOTHING THAT'S NEVER CONTESTED. IT'S
19 NOT INCUMBENT UPON ME TO DO SO. THIS IS TOTALLY
20 BASED ON THE STATE. THIS IS AN EXTRA BURDEN THAT HE
21 HAS TO GIVE ME AN ENHANCEMENT PENALTY, AND THEY
22 FURTHER SAID THIS NEED NOT BE SO. THE STATE NEED
23 ONLY FOLLOW THE RULING OF BUTLER, TEETER AND SULLIVAN
24 TO AVOID THIS POTENTIAL TRAP.

25 THE STATE -- THE APPELLATE COURT EVEN SAYS

1 THAT IT IS A POTENTIAL TRAP. SO THEY ARE ACQUIESCED
2 TO THIS IF IT'S NOT DONE.

3 THE COURT: MR. MONK, ARE YOU -- DID THEY
4 TELL YOU ON THAT DAY THAT THEY WERE SEEKING THE
5 PENALTY?

6 THE WITNESS: NO, YOUR HONOR. WHEN I WAS
7 INFORMED THAT I WAS GOING TO SEEK -- GET AN
8 ENHANCEMENT PENALTY, IT WAS THE DAY OF MY SENTENCING.

9 THE COURT: SO YOU ARE CLAIMING THAT YOU
10 WERE ENTITLED TO HAVE IT FIFTEEN DAYS EARLIER?

11 THE WITNESS: PRIOR TO TRIAL, BECAUSE IT
12 NEGATED ME MY -- TO PREPARE A PROPER DEFENSE. IF I
13 WOULD HAVE KNOWN, I WOULD HAVE RECEIVED AN ENHANCEMENT
14 PENALTY, NO PAROLE WITHOUT -- I COULD HAVE A PROPER
15 TYPE OF CONNOTATION TO WEIGH THE EVIDENCE, AND YOU
16 KNOW, MAKE A PROPER DEFENSE. I WAS NEGATED A PROPER
17 DEFENSE BECAUSE HE WITHHELD EVIDENCE, AND TO GO TO THE
18 SENTENCING, I --

19 THE COURT: I THINK I UNDERSTAND YOUR
20 ARGUMENT.

21 THE WITNESS: I JUST WANT TO SAY THIS ONE
22 THING. AT THE SENTENCING HEARING, WE GOT IT ON THE
23 TRANSCRIPT -- NOW THIS IS -- NOW THE SUPREME COURT
24 ALREADY NOTED THAT THIS MUST BE DONE, BUT AT THE
25 SENTENCING HEARING, HE SAYS THAT HE BELIEVES

1 THAT HE -- THAT HE FURNISHED ME WITH A COPY OF THE --
2 OF A NOTICE REQUIREMENT, AND THIS IS HIM RIGHT HERE.
3 I AIN'T GOING TO LIE. HE SAID I BELIEVE THAT THE
4 STATE INCLUDED IN ITS PRELIMINARY MOTION THAT WE WERE
5 TO FILE IN THIS MATTER A MANDATORY -- AND HE ADDED
6 THIS AS AN ADDENDUM TO SOMETHING THAT NEVER EVEN
7 EXISTED.

8 THE COURT: SO YOU SAY YOU NEVER GOT IT.

9 THE WITNESS: I NEVER EVEN GOT IT.

10 THE COURT: TELL ME ABOUT THE RIGHT TO
11 REHABILITATION. WHERE DO YOU GET THAT?

12 THE WITNESS: REHABILITATION? ALL RIGHT.

13 WHAT I AM SAYING ON REHABILITATION IS
14 THAT -- AND I'M CITING GARGNEANO V. STATE ON --

15 THE COURT: WHAT ARE YOU SIGHTING?

16 MR. YANKELLOW: LET ME GET IT SO I CAN -- 95
17 MARYLAND APP. 593 GARGNEANO V. STATE.

18 THE WITNESS: AND WHAT I AM CITING,
19 GARGNEANO--

20 THE COURT: YES, SIR, I'M SORRY.

21 THE WITNESS: THE REASON I CITED GARGNEANO,
22 I AM WELL AWARE THAT GARGNEANO IS SENTENCED UNDER 286
23 (C), WHICH I WAS SENTENCED UNDER 286 (C), BUT WHAT THE
24 PROSECUTOR MAY ARGUE, THAT I WASN'T SENTENCED UNDER
25 THE TYPE OF RELIEF THAT I AM TRYING TO ASCERTAIN, BUT

1 I AM USING GARGNEANO AS A CITATION TO SHOW YOU THAT
2 THE SUPREME COURT JUST RULED ON A CASE BASICALLY THE
3 SAME THING AS WHAT I AM SAYING, AND GARGNEANO WAS
4 SENTENCED UNDER 286 (C) AND HE RECEIVED RELIEF BASED
5 UNDER 286 (D).

6 THE COURT: SO YOU SAY THAT THE COURT OF
7 SPECIAL APPEALS' DECISION IN GARGNEANO IS THE SAME AS
8 YOUR SITUATION?

9 THE WITNESS: YES, IN WAYS. NOT EXACTLY,
10 BUT WHAT I AM CITING -- I AM CITING FROM THAT CASE.

11 THE COURT: OKAY. DID YOU KNOW THAT CASE
12 WENT UP TO THE COURT OF APPEALS? I HAVEN'T READ THEM
13 YET, SO I CAN'T TELL YOU WHETHER IT WAS ON THE SAME
14 POINT.

15 THE WITNESS: ALL RIGHT, BUT WHAT I AM
16 SAYING IS THAT THE LEGISLATURE IN -- IN MAKING THE
17 LAWS PERTAINING TO ENHANCEMENT PENALTIES, THEY CITED
18 IN GARGNEANO V. STATE FROM STATE V. WOODMAN THAT IT IS
19 A PROVISION OF LAW THAT THE CRIMINALS WHO --
20 DISCIPLINE HAS HERETO FAILED TO REFORM BY PRIOR
21 CONVICTION AND PUNISHMENT FORM A CLASS OF DEFENDANTS
22 TO BE SEVERELY PUNISHED MORE THAN THE FIRST OFFENDER.

23 AND HE ALSO CITED MORGAN V. CONWORTH, THAT
24 IT IS NOT INTENDED THAT THE HEAVIER PENALTY PRESCRIBED
25 FOR THE COMMISSION OF A SECOND OFFENSE SHOULD DESCEND

1 UPON ANYONE BUT THE INCORRIGIBLE ONE WHO, AFTER BEING
2 REPROVED STILL -- THE HEAVIER PENALTY PRESCRIBED FOR
3 THE SECOND VIOLATION IS VISITED UPON ANYONE WHO HAS
4 NOT HAD THE BENEFIT OF REPROOF --

5 THE COURT: ARE YOU READING FROM GARGNEANO?

6 THE WITNESS: YES. ALL OF THIS IS IN
7 GARGNEANO.

8 THE COURT: IS THERE ANYTHING ELSE YOU HAVE
9 TO SUPPORT THAT ISSUE?

10 THE WITNESS: THE LAST ONE, THE COURT
11 FURTHER CITED JONES V. STATE, THAT THOSE WHO RECEIVED
12 ENHANCEMENT -- THOSE WHO --

13 MR. YANKELLOW: YOU ARE READING FROM YOUR
14 PETITION?

15 THE WITNESS: YEAH, BUT --

16 MR. YANKELLOW: THE JUDGE CAN READ YOUR
17 PETITION AS WELL AS YOU CAN. I DON'T THINK THAT YOU
18 HAVE TO READ --

19 THE WITNESS: THOSE SEEKING ENHANCEMENT
20 PENALTIES HAVE BEEN AFFORDED A FAIR CHANCE WITHIN THE
21 PRISON SYSTEM AND NOT RESPONDED, AND WHAT I AM SAYING
22 NOW IS THAT I DIDN'T HAVE THAT CHANCE TO BE
23 REHABILITATED WITHIN THE PRISON SYSTEM BECAUSE OF THE
24 FACT THAT I WAS NOT WITHIN THE CITY JAIL. DUE TO THE
25 OVERCROWDEDNESS OF CITY JAIL, I WAS SENT TO A

1 NONPROFIT ORGANIZATION. I FORGOT WHAT STREET IT'S ON,
2 AND IT DOES NOT FALL DIRECTLY ON -- UNDER THE D.O.C.
3 THEY ARE JUST HELPERS FOR THE STATE. THEY ARE NOT --
4 THEY ARE -- THERE IS NOT C.E.O.S THERE. EVERYBODY IS
5 CIVILIANS. THEY ARE NOT PROPERLY TRAINED AS AN
6 OFFICER WOULD BE.

7 THE COURT: YOU WOULD RATHER HAVE BEEN IN
8 THE CITY JAIL?

9 THE WITNESS: NO. MAYBE I WOULD HAVE
10 RECEIVED SOME TYPE OF REHABILITATION. I DIDN'T ASK
11 TO GO TO THIS NONPROFIT ORGANIZATION. I WAS SENT
12 THERE DUE TO THE OVERCROWDEDNESS. SO I FEEL THAT IT
13 IS NOT MY FAULT THAT I DIDN'T RECEIVE WHAT THE
14 LEGISLATURE HAS SET UP THAT I BE ACQUIESCED TO
15 AND TO -- A D.O.C. INCARCERATION --

16 THE COURT: I CAN LOOK AT THE CASES IN YOUR
17 PETITION AND DEAL WITH THAT.

18 ARE THERE ANY OTHER BASES FOR THOSE THREE
19 ISSUES THAT YOU HAVE JUST CITED?

20 THE WITNESS: NO, SIR.

21 THE COURT: DO YOU HAVE ANY QUESTIONS, MR.
22 BOUCHER?

23 MR. BOUCHER: NO QUESTIONS, JUDGE. THANK
24 YOU.

25 MR. YANKELLOW: THAT WOULD BE THE

1 PETITIONER'S CASE, IF YOUR HONOR PLEASE.

2 THE COURT: THANK YOU.

3 YOU MAY STEP DOWN.

4 DO YOU WANT TO RESPOND MR. BOUCHER?

5 MR. BOUCHER: YES, JUDGE.

6 MR. YANKELLOW: HE MAY RESPOND. I AM NOT
7 GOING TO ARGUE ANYTHING. I THINK MR. MONK HAS CITED
8 ALL THAT IS NECESSARY IN THIS CASE. THERE HAS BEEN
9 FULL RESPONSE AS FAR AS THE PETITIONER IS CONCERNED.

10 THE COURT: THANK YOU.

11 MR. BOUCHER: BRIEFLY, IN THE ORIGINAL
12 TRANSCRIPT, WHICH I BELIEVE THE COURT HAS IN ITS
13 POSITION, YOU WILL NOTE UNDER THE PORTION PERTAINING
14 TO MARCH THE 18TH, 1992, THAT'S PAGE 122, THE
15 DEFENDANT IS TECHNICALLY PUT ON NOTICE AS TO THE FACT
16 THAT THE STATE INTENDS TO INVOKE THE MANDATORY
17 OFFENDER PENALTY WHICH HAD BEEN FILED PREVIOUSLY.

18 I WILL BE FORTHRIGHT, I HAVE TAKEN A VERY
19 CURSORY LOOK THROUGH THE COURT FILE, I CANNOT FIND MY
20 WRITTEN MANDATORY OFFENDER ADDENDUM.

21 I WOULD INDICATE TO THE COURT THAT THE
22 TRANSCRIPT AND THE ORIGINAL FILE APPEAR TO HAVE
23 BEEN -- CHANGED ORDERS, HAVE BEEN CHANGED SOMEWHAT, I
24 AM SURE, TO COMPLY WITH THE REQUIREMENTS OF THE COURT
25 OF SPECIAL APPEALS WHEN THOSE FILES ARE TRANSPORTED

1 DOWN TO ANNAPOLIS, BUT NEVERTHELESS --

2 THE COURT: DO YOU HAVE TO FILE IT TO
3 COMPLY?

4 MR. BOUCHER: NO. IT'S MY POSITION THAT
5 ORAL NOTICE IS SUFFICIENT.

6 IN ADDITION, THE DEFENDANT MADE REFERENCE TO
7 THE NOTICE -- TO THE NOTICE PROVISION THAT IT HAS TO
8 BE FIFTEEN DAYS BEFORE SENTENCING, NOT BEFORE A
9 TRIAL. AND I WOULD SUBMIT THAT IN FACT THAT
10 PROVISION WAS COMPLIED WITH.

11 THE COURT WILL NOTE THAT ON MARCH THE 18TH,
12 THE DEFENDANT AND COUNSEL ARE PUT ON NOTICE THAT THE
13 STATE INTENDS TO SEEK THE ENHANCED -- THE MANDATORY
14 PENALTIES, AND THEN IN THE TRANSCRIPT, THE SENTENCING
15 PROVISION DATED 4/2/92, WHICH IN FACT IS FIFTEEN DAYS
16 FROM THE DATE OF THE CONVICTION AND FIFTEEN DAYS
17 BEFORE THE SENTENCING, YOU WILL NOTE MY REFERENCE --
18 IN SPEAKING TO JUDGE WARD, A REFERENCE TO THE
19 MANDATORY OFFENDER ADDENDUM THAT HAD BEEN FILED.

20 IN ADDITION, I BELIEVE THAT THE PETITIONER,
21 IN HIS TESTIMONY TO THE COURT, INDICATED THAT THERE
22 HAD BEEN NO PROOF OF HIS PRIOR CONVICTION THAT HAD
23 BEEN SUBMITTED BY THE STATE.

24 THE COURT: LET ME STOP YOU FOR A SECOND.
25 SUPPOSE YOUR MANDATORY OFFENDER ADDENDUM

1 HADN'T BEEN FILED AT THAT POINT.

2 MR. BOUCHER: I STILL THINK THAT THE ORAL
3 NOTICE WAS SUFFICIENT.

4 THE COURT: YOU CAN MAKE REFERENCE TO A
5 DOCUMENT THAT'S NOT IN THE RECORD AND THAT DOES IT?

6 MR. BOUCHER: THAT PUTS THE DEFENDANT ON --
7 PUTS THE DEFENDANT ON NOTICE THAT THE STATE INTENDS TO
8 SEEK THAT ENHANCED OR MANDATORY PENALTY.

9 THE COURT: WHEN YOU WERE SPEAKING TO JUDGE
10 WARD, AT THAT POINT WAS COUNSEL PRESENT FOR MR. MONK?

11 MR. BOUCHER: YES. IT WAS AFTER THE VERDICT
12 HAD BEEN RENDERED.

13 JUDGE, YOU WILL ALSO FIND, IN THE BODY OF
14 THE COURT FILE, A TRUE TEST COPY OF THE DEFENDANT'S
15 PREVIOUS CONVICTION UNDER CASE NUMBER 29 --

16 THE COURT: IT'S IN THE RECORD THAT THE
17 ARGUMENT HE MAKES IS THAT YOU HAD TO PUT IT IN
18 AGAIN. ISN'T THAT WHAT HE SAID?

19 MR. MONK: YES, SIR.

20 MR. BOUCHER: I BELIEVE THAT THAT'S PART OF
21 WHAT HE SAID.

22 THE POINT IS THAT I DON'T BELIEVE THAT
23 THAT'S THE CASE, AND IN THE SECOND SENTENCING HEARING,
24 I ASKED JUDGE WARD TO INCORPORATE BY REFERENCE THE
25 EXHIBITS THAT HAD BEEN INTRODUCED PREVIOUSLY IN THE

1 FIRST SENTENCING HEARING, AND THAT WAS, IN FACT,
2 ACCEPTED AND GRANTED BY THE COURT.

3 JUDGE, AS TO THE CONTENTION BY THE
4 PETITIONER THAT HE WAS NOT AFFORDED AN OPPORTUNITY --
5 AN OPPORTUNITY TO BE REHABILITATED, QUITE FRANKLY, I
6 WOULD AGAIN SUBMIT TO THE COURT THAT THAT IS NOT A
7 CAUSE OF ACTION THAT RELIEF CAN BE GRANTED FOR.

8 IN ADDITION -- AND I BELIEVE THAT THE --
9 THE COURT: ARE YOU FAMILIAR WITH THESE
10 CASES, GARGNEANO --

11 MR. BOUCHER: NO, JUDGE, AND I WILL ALSO
12 INDICATE TO THE COURT THAT IT'S JUST IN MY VERY
13 CURSORY READING. THE PETITIONER CITED FORD V. STATE
14 AND CONTINUES TO REFER TO SECTION 36 (B) SUB -- (B)
15 SUB 2. THAT'S THE HANDGUN STATUTE. I SUSPECT WHAT
16 HE'S MAKING ANALOGY OF IS ENHANCED PENALTY FOR A
17 SECOND CONVENTION FOR A HANDGUN OFFENSE AND APPLYING
18 IT TO ARTICLE 27 SECTION 286.

19 THE COURT: WOULD PUBLIC POLICY OR
20 LEGISLATIVE PURPOSE BEHIND THE ENHANCED SENTENCING
21 STATUTE DIFFER FROM --

22 MR. BOUCHER: THE ONLY ARGUMENT THAT I CAN
23 SUBMIT TO THE COURT THAT WOULD DIFFER OR WOULD MAKE
24 THAT DIFFERENT IS THAT THE LEGISLATURE MAY HAVE SOME
25 DIFFERENT INTENT AS TO MANDATORY SENTENCES FOR DRUG

1 OFFENDERS VERSUS PEOPLE WITH HANDGUNS. THAT'S THE
2 ONLY DISTINCTION THAT I MIGHT BE ABLE TO DRAW.

3 THE COURT: THAT WAS NO INDICATION ON MY
4 PART THAT I AGREE WITH HIM ABOUT THAT.

5 MR. BOUCHER: THE OTHER THING I WILL SIMPLY
6 POINT OUT AGAIN, BASED ON THAT REHABILITATION
7 ARGUMENT, IS THAT IN THE DEFENDANT'S ORIGINAL
8 CONVICTION UNDER THE 290 NUMBER, I WOULD INDICATE TO
9 THE COURT THAT WHEN HE WAS CONVICTED ON 7/25/90, HE
10 WAS CONVICTED OF POSSESSION WITH INTENT TO DISTRIBUTE
11 COCAINE, TO BE SENTENCED TO FIVE YEARS TO THE DIVISION
12 OF CORRECTION, SUSPENDING ALL BUT THE TIME HE HAD
13 SERVED AND PLACING HIM ON FIVE YEARS SUPERVISED
14 PROBATION. SO WHEN THAT CONVICTION WAS TO END, HE
15 WAS ESSENTIALLY RELEASED AND PLACED ON PROBATION.
16 THAT BEING THE CASE, HE WAS NOT, BUT FOR THE DIVISION
17 OF PROBATION AND PAROLE, UNDER THE AUSPICES OF ANY OF
18 THE DEPARTMENT OF CORRECTION TREATMENT PROGRAMS OR
19 REHABILITATION PROGRAMS, BECAUSE HE WAS NOT
20 INCARCERATED. THAT BEING THE CASE, I THINK THAT THE
21 ARGUMENT IS MOOT, BECAUSE HE WAS NEVER UNDER THE
22 AUSPICES OF THE DEPARTMENT OF CORRECTION.

23 IF IN FACT THERE IS SOME REQUIREMENT, WHICH
24 I SUBMIT THAT THERE IS NOT, BUT IF THERE IS SOME
25 REQUIREMENT THAT REHABILITATION BE MEASURED AND THEN

1 APPLIED, THAT IS NOT APPLICABLE IN THIS PARTICULAR SET
2 OF CIRCUMSTANCES.

3 THE COURT: ANYTHING ELSE?

4 MR. BOUCHER: I THINK THAT'S IT. THANK
5 YOU.

6 THE COURT: MR. MONK, ANYTHING ELSE?

7 MR. MONK: YES. WHAT HE IS SAYING TO --
8 THAT THERE IS NO MEASURE, THERE IS A MEASURE UNDER 286
9 (D). THEY -- THE CASE SPECIFICALLY STATES THAT IT'S
10 WITHIN ONE HUNDRED EIGHTY DAYS THAT THE COURT WILL
11 DETERMINE THAT A DEFENDANT HAS RECEIVED A PROPER
12 REHABILITATION, AND WHAT HE IS SAYING THAT I WAS NOT
13 LOCKED UP. I WAS. I WAS LOCKED UP FOR FOUR MONTHS IN
14 THIS -- IN THIS NONPROFIT ORGANIZATION UNTIL I
15 RECEIVED THE PROBATION.

16 THE COURT: WHAT HE WAS SAYING WAS THAT
17 AFTER JUDGE PINES SENTENCED YOU, YOU WERE OUT ON THE
18 STREET. ISN'T THAT TRUE?

19 MR. MONK: YES, I WAS OUT ON THE STREET. I
20 NEVER WAS LOCKED UP WHEN JUDGE PINES SENTENCED ME.
21 SO -- BUT HE'S TALKING -- I GUESS --

22 AREN'T YOU TALKING ABOUT WHEN I -- WHEN I
23 GOT THE OTHER SENTENCE AND WHAT I AM TALKING ABOUT
24 NOW?

25 THE COURT: I GUESS YOUR ARGUMENT IS -- HIS

1 ARGUMENT IS THAT THERE WAS -- IF THERE IS A
2 REQUIREMENT, IT APPLIED AFTER THE SECOND SENTENCING
3 WHEN HE WAS REMITTED TO D.O.C.

4 MR. MONK: AND THAT'S UNDER 286 (D) AND THEY
5 STATE SPECIFICALLY A HUNDRED EIGHTY DAYS, IF A
6 DEFENDANT IS LOCKED UP ONE HUNDRED EIGHTY DAYS. IF HE
7 IS NOT LOCKED UP MORE THAN A HUNDRED EIGHTY DAYS, THEN
8 HE CAN'T RECEIVE THAT ENHANCEMENT PENALTY.

9 THE COURT: I THINK THE LIGHT HAS GONE ON.
10 SOMEBODY HAD BETTER INFORM ME -- I SEE THE PROVISION
11 HE'S REFERRING TO, BUT I DON'T KNOW WHAT IT MEANS.

12 MR. BOUCHER: I THINK I UNDERSTAND WHAT THE
13 DEFENDANT IS SAYING OR THE PETITIONER IS SAYING, AND
14 UNFORTUNATELY, AND WITH ALL DUE RESPECT TO HIM, HE'S
15 CONFUSED.

16 WHAT THE SITUATION IS IS THIS: HE WAS
17 SENTENCED UNDER 286 (C).

18 THE COURT: YES. HE CONCEDED THAT.

19 MR. BOUCHER: RIGHT. WHAT HE IS DOING NOW
20 IS APPLYING HIS SITUATION TO 286 (D) 1.

21 WHAT THAT SPECIFICALLY DEALS WITH IS A
22 MANDATORY SENTENCING PROVISION. THAT DEALS WITH
23 TWENTY-FIVE YEARS WITHOUT PAROLE, AND THERE IS A
24 REQUIREMENT THAT IN ORDER FOR THAT MANDATORY SENTENCE
25 TO BE IMPOSED, THAT AT LEAST ONE TERM OF CONFINEMENT

1 MUST BE SERVED OF ONE HUNDRED EIGHTY DAYS OR MORE.

2 MR. MONK: IT'S A MEASUREMENT. IT'S A
3 MEASUREMENT.

4 THE COURT: IT IS, BUT IT -- YOU WEREN'T
5 SENTENCED UNDER THAT. YOU DIDN'T GET TWENTY-FIVE
6 YEARS WITHOUT PAROLE.

7 MR. MONK: YEAH, BUT THAT'S WHY I CITED
8 GARGNEANO NOT KNOWING THAT HE RECEIVED RELIEF BASED ON
9 THIS, BECAUSE IT WAS CITED WITHIN HIS CASE FROM THE
10 SUPREME COURT.

11 THE COURT: I WILL READ THAT.

12 MR. MONK: THAT'S ALL I WANTED YOU TO
13 TAKE --

14 THE COURT: OKAY.

15 MR. MONK: WHAT HE'S SAYING ABOUT THE
16 FIFTEEN DAY REQUIREMENT, IT'S OBVIOUS THAT YOU HAVE
17 GOT TO TELL SOMEBODY THAT YOU ARE PLANNING TO SEEK
18 EXTRA PENALTIES, WHICH THE COURT SAYS THEY --

19 THE COURT: THAT'S TRUE, BUT YOU WERE
20 REPRESENTED BY COUNSEL AND COUNSEL IS FAMILIAR WITH
21 THE -- WHAT HE'S REFERRING TO AND IS ON NOTICE. THERE
22 MAY BE A PROBLEM.

23 MR. MONK: IT WAS NEVER ENTERED INTO ANY
24 KIND OF RECORD, YOUR HONOR. HE IS SAYING THAT IT WAS
25 AND THEN --

1 THE COURT: HE SAYS HE SAID IT ON THE RECORD
2 AND HE BELIEVES HE FILED IT.

3 MR. MONK: HE SAID HE SAID IT IN PRELIMINARY
4 HEARING, AND IT IS NOT INDICATED IN THE PRELIMINARY
5 HEARING WITH JUDGE BROWN, NOR IS IT INDICATED IN THE
6 PRELIMINARY HEARING THAT I JUST GAVE YOU WITH JUDGE
7 WARD.

8 THE COURT: I HAVE TO LOOK AT THE
9 TRANSCRIPT.

10 MR. MONK: ANYTHING AFTER -- ANYTHING AFTER
11 THAT IS AFTER I WAS CONVICTED. I WAS -- I PICKED THE
12 JURY ONE DAY, THE NEXT DAY I WAS CONVICTED.

13 THE COURT: WHEN WERE YOU SENTENCED?

14 MR. MONK: AND I WAS SENTENCED APRIL 2ND.
15 I WAS CONVICTED MARCH 17TH.

16 THE COURT: IS THAT FIFTEEN DAYS?

17 MR. MONK: BUT I DIDN'T RECEIVE NO TYPE OF
18 NOTICE. IT'S SUPPOSED TO BE THE DOCUMENT AS IN
19 SULLIVAN. IT SAYS THAT I WAS SUPPOSED TO RECEIVE A
20 DOCUMENT, AND IN SULLIVAN, THE PETITIONER IN
21 SULLIVAN -- THIS WAS HIS ISSUE AND THIS IS WHAT
22 SUPREME COURT DENIED HIS ISSUE ON, HE SAID THAT THE
23 DOCUMENT WAS SERVED UPON HIM, BUT THE DOCUMENT DID NOT
24 INDICATE CLEARLY THE DATES OF HIS CONVICTIONS.

25 SO WHEN HE SAYS THAT ORAL STATEMENT IS --

1 IS -- IS SUFFICIENT, HE KNOWS HE'S LYING.

2 THE COURT: I'LL LOOK AT THE CASE THAT YOU
3 REFER TO AND IF IT REQUIRES THAT, THEN I WILL DEAL
4 WITH IT.

5 MR. MONK: ALL RIGHT.

6 THAT'S IT. THANK YOU.

7 THE COURT: THANK YOU.

8 I WILL HAVE TO ISSUE A WRITTEN OPINION.

9 MR. YANKELLOW: THANK YOU, YOUR HONOR.
10 THANK YOU FOR MAKING MY JOB SO EASY. MR. MONK SAID
11 IT ALL.

12 THE COURT: I'M SORRY?

13 MR. YANKELLOW: THAT'S ALL RIGHT.

14 THE COURT: I DIDN'T MEAN TO RUSH PEOPLE,
15 BUT I DO HAVE A JURY WAITING.

16 MR. YANKELLOW: I KNOW.

17 CONCLUSION

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I, LESLIE ELISE GROSS, AN OFFICIAL COURT REPORTER OF THE CIRCUIT COURT FOR BALTIMORE CITY, DO HEREBY CERTIFY THAT I RECORDED STENOGRAPHICALLY THE PROCEEDINGS IN THE MATTER OF GREGORY ERIC MONK V. STATE OF MARYLAND IN THE CIRCUIT COURT FOR BALTIMORE CITY ON MAY 3, 1995.

I FURTHER CERTIFY THAT THE FOREGOING PAGES CONSTITUTE THE OFFICIAL TRANSCRIPT AS TRANSCRIBED BY ME FROM MY STENOGRAPHIC NOTES TO THE WITHIN COMPUTER-AIDED TRANSCRIPT IN A COMPLETE AND ACCURATE MANNER. IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME THIS 9TH DAY OF JUNE, 1995.



LESLIE ELISE GROSS,
OFFICIAL COURT REPORTER

CRIM
Post conviction

• Volume

No. 1208 SEPTEMBER TERM, 19 95
(LEAVE BLANK)

APPLICATION LEAVE TO APPEAL POST CONVICTION NO. 7173

TRANSCRIPT OF RECORD

FF

FROM THE

CIRCUIT COURT FOR BALTIMORE CITY

Judge: ALBERT MARICCIANI, JR.

IN THE CASE OF

STATE OF MARYLAND

Appellant

VS.

GREGORY E. MONK

Appellee

TO THE

COURT OF SPECIAL APPEALS

HONORABLE J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL OF MARYLAND

HONORABLE PATRICIA JESSAMY
STATE'S ATTORNEY FOR BALTIMORE

FOR APPELLANT

R=50
S=0

~~RICHARD H. BOUCHER~~
~~303 ROOM~~
~~110 N. CALVERT STREET~~
~~BALTIMORE, MARYLAND 21202~~

Gregory Monk 222890
30420 Revells Park Rd
Westover 21271

FOR APPELLEE

Filed 10/2/95
(LEAVE BLANK)

11/13

3/96

PC 7173

Start 3.14.95

Sent. 5.16.95

Appeal 6.14.95

*Julie
Matricciani J.
Crawe*



MANDATE

Court of Special Appeals

Maryland Relay Service
1-800-736-2258
TT/VOICE

No. 1208, September Term, 1995

State of Maryland
vs.
Gregory E. Monk

JUDGMENT: May 6, 1996: Per Curiam filed.
Judgment reversed. Costs to be paid by
appellee.

June 5, 1996: Mandate issued.

STATEMENT OF COSTS:

In Circuit Court: for BALTIMORE CITY
PC7173

Record.....	50.00
* Total *	50.00 *

In Court of Special Appeals:

Filing Record on Appeal.....	50.00
Printing Brief for Appellant.....	154.80
Reply Brief.....	50.40
* Total *	255.20 *
Printing Brief for Appellee.....	493.20
* Total *	493.20 *

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals this 5 day of June A.D. 1996

Ledie D. Hadet
Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

FILED

REC'D COURT OF SPECIAL APPEALS OF MD

FILED

JUN 21 1995

95 JUN 27 AM 10:15

L.D. GRADET, CLERK JUN 22 1995

CIRCUIT COURT FOR BALTIMORE CITY

CIRCUIT COURT FOR BALTIMORE CITY

GREGORY E. MONK

IN THE CIRCUIT COURT

VS.

* FOR BALTIMORE CITY

* PC 7173

STATE OF MARYLAND

* CASE NO. 591277019

* * * * *

pc 5/95

ANSWER TO STATE'S APPLICATION FOR LEAVE TO APPEAL

Now comes Norman N. Yankellow, attorney for the Petitioner, Gregory Monk, in response to the State's application for leave to appeal and respectfully says:

QUESTION I.

DID THE CIRCUIT COURT ERR IN FAILING TO GRANT THE STATE'S MOTION TO DISMISS THE POST CONVICTION PETITION?

The hearing judge was absolutely correct in denying the State's Dismissal Motion; the motion that was filed by the State on March 16, 1995 in the Circuit Court is a boiler plate paper, prepared by a secretary who fills in the appropriate blanks.

Unfortunately, that paper filing totally ignores the dictates of the Maryland Rules of Practice and Procedure because it does not contain a certificate of Service on either the petitioner or his attorney (see Applicant's Exhibit) and is therefore totally void and of no consequence.

QUESTION 2

DID THE CIRCUIT COURT ERR IN GRANTING POST CONVICTION RELIEF BY INTERPRETING ART. 27, SECTION 28C(C) AS AN ENHANCED PENALTY STATUTE AND NOT A MANDATORY PENALTY STATUTE AND BY RECOGNIZING THE CORRESPONDING NOTICE AS SUCH?

The petitioner Gregory Monk concedes that the State met the time constraints for notice if Rule 4-245(c) applies.

But he argues strenuously that the hearing Judge correctly interpreted the law by requiring enforcement of rule 245(b).

The appellants own argument reflects the fact that 286(c) is not mandatory in nature.

"This statute does allow some very limited discretion on the part of the sentencing Judge."

Black's Law dictionary defines "mandatory sentence" statutes as follows:

"Statutes in some jurisdictions require a judge to sentence a convicted defendant to a penal institution and furnish no room for discretion."

The appellant's reliance on State v. Thompson (332 Md. 1) should give it little solace

"...the determination as to whether Defendant must serve remainder of sentence after completion of drug rehabilitation program remain in the discretion of the sentencing judge."

(emphasis added)

The hearing judge considered the applicable rules, statutes and appellate opinions before reaching his well reasoned decision.

WHEREFORE, the petitioner urgently requests that the State's application for leave to appeal be denied.

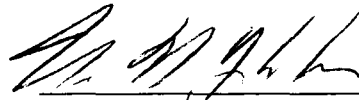
Respectfully submitted,



Norman Yankellow, Of Counsel
Office of the Public Defender
Collateral Review Division
300 W. Preston Street
Suite 213
Baltimore, Maryland 21201
(410) 225-4816

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this foregoing Answer to State's Application for Leave to Appeal was mailed to Richard Boucher, Esquire, Office of the State's Attorney for Baltimore City, Clarence M. Mitchell Jr., Courthouse, 100 N. Calvert Street, Baltimore, Maryland 21202, on this 18 day of June, 1995.



Norman Yankellow, Of Counsel

591277019 + 20

7173

CIRCUIT COURT FOR BALTIMORE CITY
CRIMINAL DIVISION

YEAR

INDICTMENT NO. 591277019 + 20

FILE NO. 7173

PAGE 174

TITLE OF CASE	NUMBER	DATE	DESCRIPTION OF PAPER
Gregory E. MONK #222-870 E.C.I. PLAINTIFF	1	3-7-94	Petition under Post Conviction Procedure, pd.
	2	3-7-94	Docket Entries, pd.
	3	3-8-94	State's answer to Petition, pd.
	4	8-26-94	Order granted as to sentencing only. As to remainder of Petition denied. Dollarholer, J.
3320 Dorithan 413-678 #17 12-11-69 NAR / RA. DEFENDANT	5	9-14-94	Application leave to Appeal record trans COSA.
	6	12-8-94	Application for Leave to Appeal Denied, C.O.S.A.
	7	3-14-95	2nd Petition under Post Conviction Procedure Act, filed.
	7	3-14-95	Certified Copy of Docket Entries Filed.
	8	3-16-95	State's Answer to Petition Filed. Copy Forwarded to Petitioner.
ATTORNEY FOR PLAINTIFF	9	5-15-95	Order Petition for Post Conviction Granted - In Part. Granted a Resentencing Hearing, Denied all other allegations, Judge Matrynski
	10	6-14-95	Application leave to Appeal - State filed Appeal.

591277021 413678 12/14/69
 MONK, GREGORY ERIC

CIRCU

591277020 413678 12/17/69
 MONK, GREGORY ERIC

RE CITY

CASE(S)# _____ TERM _____

591277019 413678 12/17/69
 MONK, GREGORY E

IDENT. NO. _____

3320 DURITHAN B/M

DOB _____

A.R. NO. _____

BALTIMORE MD 21217 36701181
 AKA PAYNE, JOSEPH

2931 *Bowen Glen Rd.*

CHARGE(S) *VIOLENT*

*RA
 LOITERING*

TRACKING # _____

ATTORNEY	DATE	LOCATION	DATE	COURT REPORTER	DATE
<i>John C. Angeles</i>	<i>11-19-91</i>	BCJ. /	SUMMONS	<i>Shirley Mitchell</i>	<i>11-19-91</i>
		DOC.	BAIL	<i>Brown B-17-92</i>	
		O.R.		<i>Oddo</i>	<i>3/17/92</i>
<i>Richard Baucher</i>				<i>Oddo</i>	<i>3/18/92</i>
ASST. STATE'S ATTY.				<i>Oddo</i>	<i>4/2/92</i>

DATE	DOCKET ENTRIES
<i>10/4/91</i>	<i>Circuit Court Docketing Date</i>
	<i>Recognizance taken / District Court</i>
	<i>Recognizance taken / Circuit Court</i>
	<i>Appearance of Defense</i>
	<i>Appearance of State</i>
	<i>Arraigned and Pleads Election of Trial</i>
	MOTIONS
	DEFENSE STATE
	Motion for Discovery Fd. [] Motion for Discovery Fd.
	Answers To State Discovery Fd. [] States Disclosure Fd.
	Defense Disclosure Fd. [] Answers To Defense Discovery Fd.
	Motion Pursuant To Md. Rule ____ [] Notice of States Reliance Fd.
	Motion To Suppress Fd. [] Answers To Defendants Bill of Particulars Fd.
	Defendant Demand For Witness Fd. [] Motion For Additional Penalties
	Motion To Dismiss Fd. [] Notice of Plea Bargain Policy
	Motion For Bill of Particulars Fd. []
	Ominbus Motion Fd. []
	Motions for Speedy Trial []
	Motion For Grand Jury Testimony []

Charles Long 7/29/94

FILE NO. 591277

019
 20
 1

DATE	DOCKET ENTRIES
11-19-91	Pretrial reset for Pt. 14 on 1/21/91 - 9:30am Request for Bail Review heard and "denied"
1-21-92	To admin. judge. Bail set at \$25000. J. Brown
3-17-92	To Admin Judge - Hurd waived J. Brown
3/17/92	Reassigned and pleads: Not Guilty as to 591277019-20. Jury trial heard before Hard, J. Voir dire oath administered Jurors. Jury selected and sworn. Hard, J.
3/17/92	Def's motion to suppress evidence seized heard and denied. Hard, J.
3/18/92	Not concluded, to resume 3/18/92, Pt. 22, 9:35am. Hard, J.
3/18/92	As the close of the State's Case, Def's motion for Judgment heard and denied. As to 591277019-20, granted as to 591277021. Release fd. Hard, J.
3/18/92	As the close of the Def's Case, Def's renewed motion for Judgment heard and denied. Hard, J.
3/18/92	Verdicts of Jury: 591277019 - 1st Cr. - Guilty (P. Cocaine) 1/2 Dis " - 2nd Cr. - Guilty (P. Cocaine) 591277020 - 1st Cr. - Guilty (Possessing Access) Held sub Curia. Keys for disposition 3/24/92, Pt. 22, 9:30 AM. (Doc. Filed) Hard, J.
3/20/92	Motion for New Trial fd.
4/2/92	Def's motion for new trial heard and denied. Hard, J.
4/2/92	NO. 591277019 CT DISPLEA CHG GOC 1st Cr. (P. Cocaine) 1/2 Dis VERD TYPE TC TIME 10:00 BEGIN 7/24/91 LOC DOC CULP TIME PROB 1st Cr. (P. Cocaine) 1/2 Dis FINE COSTS 535.00 Costs waived due to in- sufficiency. Appeal bond set at \$90,000.00. Hard, J.
4/2/92	NO. 591277019 CT DISPLEA CHG GOC 2nd Cr. (P. Cocaine) VERD TYPE TIME BEGIN Merge w/ Cr. 1. LOC SUSP TIME PROB Hard, J. FINE COSTS

(over)

7398 MF



DATE	DOCKET ENTRIES	NO.
4/2/92	NO. 591277020 CT DIS PLEA CHG GOC 185 Co. (Criminal Justice)	
	VERD _____ TYPE T TIME 1 yr B'GIN Cond/w/ 591277019 1st Ct.	
	LOC DOC SUSP _____ P/TIME _____ PROB _____	
	FINE _____ COSTS _____ Ward, J.	
4-3-92	Notice of Appeal Filed to The Ct. of Special Appeals ^{Ward, J.}	
4/6/92	Appearance of Dennis M. Henderson	
5-29-92	Transcript of testimony of Richard trans COSA	
3/4/93	MANDATE: Court of Special Appeals No. 578, September Term 1992	
	Opinion: 591277020 - RESISSING ARREST - REVERSED PER CONVICTION - AFFIRMED PER COCAINE	
	Mandate Issued: 3/1/93 NEED NEW COMMITMENT	
3/5/93	COMMITMENT AT DIRECTION COSA FOR NEW COMMITMENT	
3/5/93	New Commitment and Release on (1) 104RC For 591277019 AND Release Per Sentence 591277020	
3-7-94	Post Conviction (7173)	
8-26-94	Order granted as to re-sentencing only. As to rest of Petition denied, Holland, J.	
8-26-94	Copies of Opinion: Judge Ward, Al. Paterson, Ara. Orlove, Julie Perkins, Richard Boucher.	
9/29/94	Change of Sentence Hearing: Petition denied. Sentence to remain the same. Ward, J.	

95 JUN 21 AM 10:07

JOHN BRADET, CLERK

GREGORY E. MONK * IN THE CIRCUIT COURT
 VS. * FOR BALTIMORE CITY
 * PC 7173
 STATE OF MARYLAND * CASE NO. 591277019
 * * * * *

ANSWER TO STATE'S APPLICATION FOR LEAVE TO APPEAL

Now comes Norman N. Yankellow, attorney for the Petitioner, Gregory Monk, in response to the State's application for leave to appeal and respectfully says:

QUESTION I.

DID THE CIRCUIT COURT ERR IN FAILING TO GRANT THE STATE'S MOTION TO DISMISS THE POST CONVICTION PETITION?

The hearing judge was absolutely correct in denying the State's Dismissal Motion; the motion that was filed by the State on March 16, 1995 in the Circuit Court is a boiler plate paper, prepared by a secretary who fills in the appropriate blanks.

Unfortunately, that paper filing totally ignores the dictates of the Maryland Rules of Practice and Procedure because it does not contain a certificate of Service on either the petitioner or his attorney (see Applicant's Exhibit) and is therefore totally void and of no consequence.

QUESTION 2

DID THE CIRCUIT COURT ERR IN GRANTING POST CONVICTION RELIEF BY INTERPRETING ART. 27, SECTION 28C(C) AS AN ENHANCED PENALTY STATUTE AND NOT A MANDATORY PENALTY STATUTE AND BY RECOGNIZING THE CORRESPONDING NOTICE AS SUCH?

The petitioner Gregory Monk concedes that the State met the time constraints for notice if Rule 4-245(c) applies.

But he argues strenuously that the hearing Judge correctly interpreted the law by requiring enforcement of rule 245(b).

The appellants own argument reflects the fact that 286(c) is not mandatory in nature.

"This statute does allow some very limited discretion on the part of the sentencing Judge."

Black's Law dictionary defines "mandatory sentence" statutes as follows:

"Statutes in some jurisdictions require a judge to sentence a convicted defendant to a penal institution and furnish no room for discretion."

The appellant's reliance on State v. Thompson (332 Md. 1) should give it little solace

"...the determination as to whether Defendant must serve remainder of sentence after completion of drug rehabilitation program remain in the discretion of the sentencing judge."

(emphasis added)

The hearing judge considered the applicable rules, statutes and appellate opinions before reaching his well reasoned decision.

WHEREFORE, the petitioner urgently requests that the State's application for leave to appeal be denied.

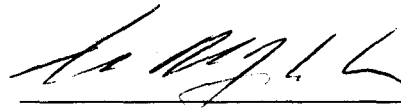
Respectfully submitted,



Norman Yankellow, Of Counsel
Office of the Public Defender
Collateral Review Division
300 W. Preston Street
Suite 213
Baltimore, Maryland 21201
(410) 225-4816

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this foregoing Answer to State's Application for Leave to Appeal was mailed to Richard Boucher, Esquire, Office of the State's Attorney for Baltimore City, Clarence M. Mitchell Jr., Courthouse, 100 N. Calvert Street, Baltimore, Maryland 21202, on this 19 day of June, 1995.



Norman Yankellow, Of Counsel

MS



Court of Special Appeals

Courts of Appeal Building
Annapolis, Md. 21401-1699

LESLIE D. GRADET
CLERK

(410) 974-3646
WASHINGTON AREA (301) 261-2920

KATHARINE M. KNIGHT
CHIEF DEPUTY

April 2, 1996

Diane E. Keller, Esquire
Office of the Attorney General
200 St. Paul Street
Baltimore, Maryland 21202

Re: State of Maryland vs. Gregory E. Monk
No. 1208, September Term, 1995

Dear Ms. Keller:

Be advised that Appellant's Motion to Correct Omission in the Record filed in the captioned case was granted. A copy of the Order is enclosed. The material which was attached to the motion is being placed with and made a part of the record in this appeal.

Very truly yours,

Leslie D. Gradet

Leslie D. Gradet
Clerk

LDG:ls

Enclosure

cc: Gary S. Offutt, Esquire

95 FEB 07 12

THE STATE OF MARYLAND,

Appellant

v.

GREGORY ERIC MONK,

Appellee

* IN THE
* COURT OF SPECIAL APPEALS
* OF MARYLAND
* September Term, 1995
* No. 1208

* * * * *

MOTION TO CORRECT OMISSION IN THE RECORD

The State of Maryland, Appellant, by its attorneys J. Joseph Curran, Jr., Attorney General of Maryland, and Diane E. Keller, Assistant Attorney General, moves, pursuant to Maryland Rule 8-414, to correct an omission in the record transmitted to this Court by the Clerk of the Circuit Court for Baltimore City. In support, Appellee respectfully represents unto this Honorable Court as follows:

1. On June 14, 1995, the State applied for leave to appeal from the May 12, 1995 partial grant of Appellee's second petition for post conviction relief.

2. The record on appeal was received and docketed by this Court on October 2, 1995. Review of the record discloses that a portion of the transcript of the May 3, 1995 post conviction hearing before the Honorable Albert J. Matricciani, Jr., is incomplete as it is now included in the record on appeal.

3. Undersigned counsel has confirmed that the original transcript in its entirety has now been provided to the Clerk for the Circuit Court of Baltimore City. In addition, counsel for Appellee has been provided with the complete transcript and a copy thereof has been included in the Joint Record Extract prepared by

Appellee's counsel at pages 47 through 88.

4. The missing portion of the transcript is necessary for a full and fair consideration of the merits of the instant case.

5. This motion is not presented to this Court for the purpose of delaying argument in the case.

WHEREFORE, Appellant respectfully requests this Honorable Court to direct the Clerk of the Circuit Court for Baltimore City to transmit the aforesaid transcript of this Court and that it be made part of the record in this case.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland



DIANE E. KELLER
Assistant Attorney General

Office of the Attorney General
Criminal Appeals Division
200 St. Paul Place
Baltimore, Maryland 21202
(401) 576-7294

Counsel for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of February, 1996 a copy of the foregoing Motion to Correct Omission in the Record was hand delivered to Gary S. Offutt, Assistant Public Defender, Office of the Public Defender, Appellate Division, 6 St. Paul Street, Suite 1302, Baltimore, Maryland 21202.

Diane E. Keller

DIANE E. KELLER
Assistant Attorney General

STATE OF MARYLAND,
Appellant

v.

GREGORY ERIC MONK,
Appellee

* IN THE
* COURT OF SPECIAL APPEALS
* OF MARYLAND
* September Term, 1995
* No. 1208

* * * * *

ORDER

Upon consideration of the Motion to Correct Omission in the Record filed herein, it is this 2nd day of April, 1996, by the Court of Special Appeals of Maryland,

ORDERED, that the Clerk of the Circuit Court for Baltimore City transmit to this Court the transcript of the hearing on Gregory Eric Monk's petition for post conviction relief, held on May 3, 1995 before the Honorable Albert J. Matricciani, Jr., and that said transcript be made part of the record in this case.

Chief Alan M. Wilner
Judge

Judge

Judge



LESLIE D. GRADET
CLERK

Court of Special Appeals
Courts of Appeal Building
Annapolis, Md. 21401-1699

(410) 974-3646
WASHINGTON AREA (301) 261-2920

KATHARINE M. KNIGHT
CHIEF DEPUTY

October 3, 1995

Mary Ellen Barbera, Esquire
Assistant Attorney General
200 St. Paul Place
Baltimore, MD 21202

Dennis M. Henderson, Esquire
Assistant Public Defender
6 St. Paul Center
Suite 602
Baltimore, MD 21202

Re: State of Maryland v. Gregory E. Monk
No. 1208, September Term, 1995

Dear Counsel:

Enclosed find a copy of an Order of this Court dated October 2, 1995, with regard to the above referenced case. If transcripts are necessary, Appellant shall order them.

Very truly yours,

Leslie D. Gradet
Clerk

LDG/df

Enclosure

cc: Richard H. Boucher, Esquire
Assistant State's Attorney
Mr. Gregory Monk

State of Maryland

v.

Gregory E. Monk

In the
COURT OF SPECIAL APPEALS
of Maryland

Application for Leave to Appeal
(POST CONVICTION)

No. 55

September Term, 1995

Transferred to Direct Appeal
Docket No. 1208, September
Term, 1995

ORDER

It is this 2nd day of October, 1995, by the Court of Special Appeals,

ORDERED that the captioned Application for Leave to Appeal is granted; and that the case is hereby transferred to the regular appeal docket of this Court as No. 1208, September Term, 1995.

It is further

ORDERED that the brief of the appellant be filed on or before November 13, 1995 and that the brief of the appellee be filed thirty days after the filing of the appellant's brief (Maryland Rule 8-502) . It is further

ORDERED that this case be argued during the Court session commencing March, 1996.

Alan M. Wilner
Chief Judge

GREGORY E. MONK

2ND PETITION

Petitioner

IN THE

CIRCUIT COURT

V.

FOR

STATE OF MARYLAND
Respondent

BALTIMORE CITY

RECEIVED
CIRCUIT COURT FOR
BALTIMORE CITY
1995 MAR 16 P 3:56

CASE NO: 591277019-20

CRIMINAL DIVISION

PETITION NO: 7173

* * * * *

MOTION TO DISMISS POST CONVICTION PETITION
AND RESPONSE

NOW COMES Patricia C. Jessamy, State's Attorney for Baltimore City who moves this Court to dismiss the above-captioned post conviction petition stating for cause:

1. Maryland Rule 4-402 (a) (3) requires the petition to include the allegations of error upon which the petition is based. The petition filed by the petitioner does not include allegations of error; and,
2. Maryland Rule 4-402 (a) (4) requires the petition to include a concise statement of facts supporting the allegations of error. The petition filed by the petitioner does not include a concise statement of facts supporting the allegations of error; and,
3. Maryland Rule 4-402(a) (6) requires the petition to include all previous proceedings, including appeals, motions for new trial and previous post conviction petitions, and the determinations made thereon. The petition filed by the petitioner does not include a statement of all previous proceedings and determinations thereon; and,
4. Maryland Rule 4-402(a) (7) requires the petition to include a statement of the facts or special circumstances which show that the allegations of error have not been waived. The petition filed by the petitioner does not include such a statement of the facts or special circumstances as required.

WHEREFORE, the Respondent, the State of Maryland prays the following relief:

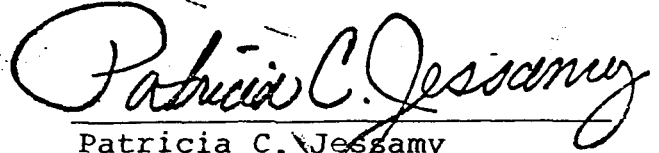
A. THAT this Court dismiss the Post Conviction Petition filed by the Petitioner in this action; or

B. THAT, in the alternative, if the Respondent's Motion To Dismiss is denied, that this Court accept the following as a Response to the Post Conviction Petition:

1. That the causes of detention of the Petitioner are warrants of commitment herewith produced, together with certified copies of the Docket Entries of the Circuit Court of Baltimore appertaining to the said Petitioner's trials and convictions of crimes and incarcerations therefore;
2. That the said Petitioner is not now illegally imprisoned, detained and restrained of his liberty;
3. That each and every allegation contained in the said Petition for Application for a Proceeding under the Post Conviction Act alleging illegal trials and imprisonment is hereby denied and traversed;
4. That said Petitioner was legally convicted of crimes, in a Court of competent jurisdiction; that the sentences of judgements were not imposed in violation of the Constitution of the United States or the Constitution or laws to impose the sentences; that the sentences do not exceed maximum authorized by law; that the convictions and sentences are not otherwise subject to collateral attack upon any ground of alleged error heretofore available under a Writ of Habeas Corpus, Writ of Coram Nobis, or other common law or statutory remedy; and further, that the alleged errors have been previously and finally litigated or waived in the proceedings resulting in the Petitioner's convictions and/or in other proceedings that the Petitioner has taken to secure relief from said conviction.

C. AND, for such other and further relief as Respondent's cause may require.

Respectfully submitted,



Patricia C. Jessamy
State's Attorney for
Baltimore City

Points and Authorities

Maryland Rule 4-402

Maryland Rule 4-404

Strickland vs. Washington, 104 S.Ct. 2052 (1984)

State vs. Tichnell, 306 Md. 422 (1986)

Harris vs. State, 303 Md. 685 (1985)

DATE: March 16, 1995

TRIAL DATE: To Be Set By Trial Judge

GREGORY MONK
Petitioner
VS.
STATE OF MARYLAND
Respondent

* IN THE
* CIRCUIT COURT
* BALTIMORE CITY
* 1995 APR 7 10 32
* BALTIMORE CITY
* CRIMINAL DIVISION
* CASE NO. 591277019 & 20
* POST CONVICTION NO. 7173

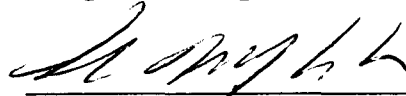
* * * * *

NOTICE OF APPEARANCE AND REQUEST

DEAR CLERK:

1. Please enter the appearance of Norman Yankellow as counsel for the Petitioner in the above-captioned post conviction case.
2. Counsel hereby requests a copy of all motions and adverse pleadings heretofore filed in this post conviction case.
3. Please contact Petitioner's counsel before scheduling a hearing in this case so that we may endeavor to avoid scheduling conflicts.

Respectfully submitted,



Norman Yankellow, Of Counsel
Office of the Public Defender
Collateral Review Division
300 W. Preston Street
Suite 213
Baltimore, Maryland 21201
(410) 225-4816

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this foregoing Notice of Appearance was mailed to the Office of the State's Attorney for Baltimore City, Clarence M. Mitchell Jr., Courthouse, 100 N. Calvert Street, Baltimore, Maryland 21202, on this 4 day of April, 1995



Norman Yankellow, Of Counsel

IN THE CIRCUIT COURT FOR BALTIMORE CITY

STATE OF MARYLAND

v.

NO. 891277019.20

GREGORY E. MONK

BALTIMORE, MARYLAND

MARCH 17, 1992

*Preliminary Proceedings
in front of Brown*

BEFORE:

THE HONORABLE ROGER W. BROWN, JUDGE

APPEARANCES:

RICHARD BOUCHER, ESQUIRE, ON BEHALF
OF THE STATE OF MARYLAND.

JOHN ANGELOS, ESQUIRE, ON BEHALF
OF THE DEFENDANT.

REPORTED BY:

LINNIE E. BROWN,
OFFICIAL COURT REPORTER

7 out of 8 errors

1 THE CLERK. I have a bail set at
2 \$25,000.00.

3 MR. ANGELOS. Just to explain my
4 client's position, Your Honor, he paid the bail
5 when he was on bail. This is when he overslept
6 when he was coming before Judge Gerstung.

7 THE COURT. Judge Gerstung. What you
8 have to do is file Habeas.

9 MR. ANGELOS. Could his bail be
10 reinstated where it was? He did make the bail of
11 \$25,000.00. That's where he came back late and
12 Judge Gerstung locked him up.

13 THE COURT. He is going to have to file
14 Habeas.

15 MR. ANGELOS. Back on the 21st, you set
16 the bail back to 25, and my client tells me the
17 bail was reinstated. He was able to be released
18 and on the street, as opposed to set at
19 \$25,000.00.

20 THE CLERK. I don't have a bail piece in
21 here for the original charge for Monk. He needs
22 proof of the first bail, for one.

23 MR. ANGELOS. Would that be at the
24 District Court?

25 THE COURT. Probably. When it came down.

1 it should have come down with him.

2 Well, Mr. Angeles, when you find the
3 time, you check into it.

4 THE CLERK. Actually, go down to the
5 Bail Department; maybe it hasn't reached his
6 folder yet.

7 (Pceedings adjourned.)

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

3

IN THE CIRCUIT COURT FOR BALTIMORE CITY

STATE OF MARYLAND

*

V.

* CASE NO. 591277019-20

PART 22

GREGORY E. MONK

*

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

(Trial on the Merits)

TUESDAY, MARCH 17TH, 1992

BALTIMORE, MARYLAND

BEFORE:

Preliminary hearing in front of ward

THE HONORABLE THOMAS WARD, ASSOCIATE JUDGE

(And a Jury)

APPEARANCES:

For the State:

RICHARD BOUCHER, ESQUIRE

For the Defendant:

JOHN ANGELOS, ESQUIRE

ROBERT GAVIN ODDO

Official Court Reporter

Room 535 Courthouse East

Baltimore, Maryland 21202

TUESDAY, MARCH 17TH, 1992

2 (P-R-O-C-E-E-D-I-N-G-S)

3 THE COURT: All right.

4 (The following discussion took
5 place in chambers:)

6 THE COURT: Call the case, please.

7 MR. BOUCHER: Your Honor, may it please the
8 court, Richard Boucher, Assistant State's Attorney, calling
9 the matter of State of Maryland v. Gregory Monk, also known
10 as Joseph Payne.

11 Judge, these are Case Nos. 591277019, 020 and
12 021, here on the court's trial docket.

13 THE COURT: All right. Read the charges,
14 please. Turn around, sir, stand and face the clerk.

15 THE CLERK: Circuit Court for Baltimore City,
16 calls the matter of Gregory E. Monk, Case No. 591277019,
17 where the State is charging you with violation of narcotic
18 laws. As to 591277020, the State is charging you with
19 resisting arrest during your narcotic violation, and as to
20 Case No. 591277021, the State is charging you with loiter-
21 ing.

22 What is your plea as to each charge?

23 THE DEFENDANT: Not guilty.

24 THE CLERK: And your election of trial?

25 THE DEFENDANT: Jury trial.

THE COURT: You can have a seat.

2

THE CLERK: What is your age?

3

THE DEFENDANT: 22.

4

THE CLERK: Your date of birth?

5

THE DEFENDANT: 12/11 --

6

THE CLERK: 12 what?

7

THE DEFENDANT: 11/69.

8

THE CLERK: And your address?

9

THE DEFENDANT: 2931 Forest Glen Road.

10

THE CLERK: 2931?

11

THE DEFENDANT: Forest Glen Road.

12

THE CLERK: Is that a house or an apartment?

13

THE DEFENDANT: House.

14

THE CLERK: Thank you.

15

THE COURT: All right. You have a preliminary

16

motion?

17

MR. ANGELOS: Yes, we have, Your Honor. John

18

Angelos, Assistant Public Defender, representing Mr.

19

Gregory Monk this afternoon. We have a preliminary motion

20

to suppress the evidence recovered here.

21

THE COURT: All right, Mr. Angelos. In view

22

of the fact that the State is contesting your right to make

23

the motion, do you want to outline to me what it is you

24

hope to prove by the motion?

25

MR. ANGELOS: Yes, Your Honor. What defense

1 hopes to prove by the motion is that the narcotics, the
2 observations made by the police officer were insufficient to
3 establish probable cause to make the arrest of the defendant,
4 as the defendant was subsequently chased from the scene
5 and arrested at that point, and the narcotics subsequently
6 recovered or the items subsequently recovered were identi-
7 fied as narcotics.

8 THE COURT: Well, as I understand the facts,
9 which I don't think anybody is contesting, these, these drugs
10 were found on the ground. Is that correct?

11 MR. ANGELOS: That's where the police officer
12 would testify to.

13 THE COURT: And in fact your defense is that
14 it didn't belong to your client?

15 MR. ANGELOS: That's correct, Your Honor.

16 THE COURT: So, what would be the legal issue?

17 MR. ANGELOS: That the arrest was effectuated
18 before the defendant, before there was probable cause to
19 arrest the defendant, and the seizure by him indicates he
20 was not free to go and there was no probable cause to
21 arrest him. And the remedy should be to exclude whatever
22 else, what the police officers are attempting to place on
23 the defendant.

24 THE COURT: Nothing was found in the arrest
25 itself, the search, was it?

1 MR. BOUCHER: No, Judge.

2 THE COURT: All right. I would be glad to
3 hear from you.

4 MR. BOUCHER: Your Honor, most respectfully,
5 I believe that the court should deny the defense's motion
6 to suppress the evidence and to deny the defense a hearing
7 on this matter, and the reasons would be as follows:
8 That --

9 THE COURT: Well, do you want to argue -- maybe
10 he wouldn't have any objection to offer the facts and
11 attach the charging document as the facts that the State
12 intends to rely on?

13 MR. BOUCHER: That is correct, Judge, and I
14 would do that.

15 THE COURT: Is there any objection to that?

16 MR. ANGELOS: No, sir.

17 THE COURT: All right. Do you have any follow-
18 up argument?

19 MR. BOUCHER: Only that based on the evidence
20 that is contained within the statement of facts that there
21 is no Fourth Amendment violation, there is no illegal
22 police action, that being the case, the defense is not
23 entitled to a motion to suppress the evidence, because there
24 was no Fourth Amendment violation and the exclusionary rule
25 does not apply.

1 THE COURT: All right. Motion is denied. I
2 agree with the State's position, and therefore the motion
3 to suppress is denied.

4 The jury has been called for and as soon as the
5 jury gets here, let me know.

6 THE LAW CLERK: Yes, sir.

7 THE COURT: And you can take the defendant back
8 out into the courtroom. You can use my door, and counsel
9 can use my door, too.

10 MR. ANGELOS: Judge, Mr. Monk wanted to use the
11 facilities.

12 * THE OFFICER: He's got to go down to the
13 second floor.

14 MR. ANGELOS: Would that --

15 THE COURT: It's up to the officer where he
16 takes him, whether he takes him to the second floor or takes
17 him down the hall.

18 THE OFFICER: I have to take him back to the
19 lock-up.

20 THE COURT: All right. Take him back to the
21 lock-up. When you come back up, make sure the jury --
22 well, you can bring him up right away, but just call up
23 and find out if the jury is here..

24 THE OFFICER: Okay.

25 THE COURT: Now, you know why, Officer. We want

1 IN THE CIRCUIT COURT FOR BALTIMORE CITY

2 STATE OF MARYLAND *

3
4 V.

* CASE NO. 591277019, 20

5
6 GREGORY MONK *

7
8 REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
9 (Disposition)

10 THURSDAY, APRIL 2, 1992

11 BALTIMORE, MARYLAND

12 *Sentencing hearing*

13 BEFORE:

14 THE HONORABLE THOMAS L. WARD, ASSOCIATE JUDGE

15 APPEARANCES:

16 For the State:

17 RICHARD BOUCHER, ESQUIRE

18 For the Defendant:

19 JOHN ANGELOS, ESQUIRE

20
21 ROBERT GAVIN ODDO
22 Official Court Reporter
23 Room 535 Courthouse East
24 Baltimore, Maryland 21202
25

1 THURSDAY, APRIL 2, 1992

2 (P-R-O-C-E-E-D-I-N-G-S)

3 THE COURT: Good morning everybody. How are
4 you all this morning?

5 All right. Can we call the disposition, please?

6 MR. BOUCHER: Yes, Judge. May it please the
7 Court, Richard Boucher, Assistant State's Attorney,
8 calling the matter of State of Maryland v. Gregory Monk.
9 Your Honor, this is Case No. 591277019.

10 THE CLERK: And 20.

11 MR. BOUCHER: And 20. Thank you.

12 THE COURT: All right. Now, what is -- what, if
13 any, preliminary statements do you have to make or any
14 evidence to show me?

15 MR. BOUCHER: Your Honor, " " I believe that the
16 State included in its preliminary motions that were filed,
17 in this matter a mandatory offender addendum indicating that
18 the State intended to seek a mandatory 10 years without
19 parole should the defendant be convicted of a felony drug
20 charge in this particular matter. The reason being because
21 he was on probation at the time of this offense for another
22 felony drug charge.

23 THE COURT: All right. Now, I don't have to
24 tell you, Mr. Boucher, what's the next question I'm going to
25 ask?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

VERSUS

CASE NO. 591277019

GREGORY MONK

_____/ SEPTEMBER 29, 1994

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE:

THE HONORABLE THOMAS WARD, JUDGE

APPEARANCES

ON BEHALF OF THE STATE:

RICHARD BOUCHER, ESQUIRE
ASSISTANT STATE'S ATTORNEY

ON BEHALF OF THE DEFENDANT:

JOHN ANGELOS, ESQUIRE
ASSISTANT PUBLIC DEFENDER

REPORTED BY:

Charles H. Long
Official Court Reporter
Mitchell Courthouse, Room 507
Baltimore, Maryland 21202

1 MR. BOUCHER: Good Morning. Richard
2 Boucher, Assistant State's Attorney calling for
3 resentencing the matter of State of Maryland
4 versus Gregory Monk also known as Joseph Payne.
5 This is Case Number 591277019.

6 THE COURT: This is for resentencing.
7 I'll be glad to hear from the State first.

8 MR. BOUCHER: Your Honor, as the Court
9 knows Mr. Monk, also known as Mr. Payne, was
10 granted post conviction relief as to sentencing
11 only. Judge Hollander in granting that post
12 conviction relief found that the Court was not
13 presented with an option of committing the
14 Defendant under the Health General Article to a
15 drug rehabilitation program should, number one,
16 the Court find that the Defendant had a drug
17 problem and, number two, that there was an
18 appropriate program that the Court felt the
19 Defendant could have been admitted to. However,
20 the the State is going to ask the Court's
21 permission to incorporate by reference all of the
22 information including the true test copy of the
23 docket entry of the Defendant's prior conviction
24 for the purposes of this hearing and, Judge, I'm
25 going to urge the Court to reimpose the ten year

1 without parole sentence. It is the State's
2 understanding at this juncture that there is no
3 evidence to be presented in regards to any drug
4 dependency or any rehabilitation program that the
5 Defendant has been accepted by. That being the
6 case I believe that the Health General Articles
7 should not be considered at this juncture and in
8 addition the Health General Article does not
9 command the Court to do it. It is discretionary.
10 That being the case I'm urging the Court to
11 reimpose the ten years without parole. Thank you.

12 MR. ANGELOS: Good morning, Your Honor.
13 John Angelos for Mr. Monk.

14 Your Honor, I don't know if you received
15 a letter from Mr. Monk.

16 THE COURT: Received what?

17 MR. ANGELOS: Any letters from Mr. Monk.

18 THE COURT: I have a letter of September
19 8th, a letter of September 8th, a letter of -- an
20 undated letter and I think that's it.

21 MR. ANGELOS: Judge, I think -- has the
22 Court reviewed those letters?

23 THE COURT: Yes, I have read them at the
24 time they came in.

25 MR. ANGELOS: Your Honor, Mr. Monk has

1 had substance abuse problems throughout his
2 growing up years at times. What he's done, he's
3 been incarcerated for three years and two months
4 from the original date of sentence of this case.
5 He has written to Second Genesis, attempted to get
6 into their program. They have referred him or
7 told him to address his efforts.

8 THE COURT: Let me correct one thing.
9 These letters of September 8th were not from your
10 client.

11 MR. ANGELOS: From family members.

12 THE COURT: From family.

13 MR. ANGELOS: Thank you.

14 THE COURT: The letter -- the undated
15 letter before that was from him.

16 Okay. Go ahead.

17 MR. ANGELOS: Judge, what Mr. Monk would
18 ask, if the Court would consider a referral to
19 alternative sentencing so he can be assessed for
20 his substance abuse problems that he's suffered
21 for many years. He does have convictions for
22 narcotics offenses. He has no other crime of
23 violence or any other conviction of that nature
24 and all his activities, his criminal activities
25 has led to -- his convictions for narcotics arise

1 from a substance abuse problem and also his using
2 and selling at the same time.

3 What we would be asking for, if the
4 Court would consider, is letting him, if the Court
5 would sign an order to let him be referred to
6 alternative sentencing so they can do a work up, a
7 history, a case history, a medical, psychological,
8 physiological etecetera, so if he would be -- if
9 he could get into a drug treatment program, which
10 would -- certainly he isn't going to be released
11 in the fairly near future -- but a program that
12 would allow him to get a handle on his substance
13 abuse problem. The Legislature at least in the
14 code does address this problem and I think the
15 alternative sentencing can determine if he is a
16 person that would fall in this. It is articulated
17 in the statute that this is an option in the
18 discretion of the Court and I think if this
19 individual can qualify, should qualify for it he
20 should be given an opportunity of all alternative
21 sentencing and again it would always come back to
22 you and you would be the ultimate decision, but it
23 gives him and the Court an opportunity to see
24 about his background. He's been a model prisoner
25 as he's been in the three years two months. He's

1 served a substantial portion of this sentence and
2 that would be what we would ask for if the Court
3 would consider that today in lieu of reimposing
4 essentially the original sentence that he was
5 given before. I was not aware at the time three
6 years ago to ask for that and due to my my errors
7 that's why we're back here today.

8 What would you like to say to the Judge,
9 sir?

10 THE DEFENDANT: Your Honor, the last
11 time I was here I didn't know very much about the
12 law and I didn't know very much about anything and
13 during the trial I didn't take the stand or
14 nothing because I couldn't, you know, explain
15 myself to the Court nor could I have got on the
16 stand, you know, and told a bold face lie. So, at
17 this time like I told you at the original sentence
18 that I was going to go into the Department of
19 Correction and regain the knowledge and wisdom and
20 emotional understanding so I could grow and become
21 a better man and I respectfully say, Your Honor,
22 that I have not made it all the way yet but I am
23 on the path and I would ask for help, you know,
24 from the Court in sentencing. From my
25 understanding it seems like you wanted to do

1 something for me, you know. You gave me a
2 sentence which I still remember, but if I remember
3 you saying about keep your nose clean because, you
4 know, 10 years you get out and other than that to
5 keep my nose clean and that's what I've done. I
6 only have one ticket since I been incarcerated and
7 that was for not carrying my ID to chow hall.

8 So, I ask this Court for help. I was,
9 you know, blessed by God to win a resentencing
10 hearing and the post conviction which I filed
11 myself from studying the law books and I would ask
12 the Court to grant me drug treatment.

13 MR. ANGELOS: Mr. Monk, how long had you
14 been on drugs before you got arrested -- using
15 them?

16 THE DEFENDANT: I would say three years.

17 MR. ANGELOS: What kind of drugs were
18 you using?

19 THE DEFENDANT: First I started off with
20 marijuana and then from marijuana a friend, you
21 know, introduced me to putting what they call --
22 putting crack inside marijuana and that led me to
23 my addiction. In the beginning I had no job. I
24 was doing nothing for myself. I was not trying.
25 I was out there doing what I had to do to support

1 drug program, a drug problem and, two, that anyone
2 is willing to do anything about it. No program
3 has been presented to me under this. I don't
4 think it's Mr. Angelos' fault. He cannot create
5 facts. He cannot create facts which are not there
6 and that's where I think Judge Hollander got
7 confused. Somehow she must have assumed that all
8 of this evidence was in the record, but of course
9 it isn't.

10 I have to reimpose the same sentence.
11 With respect to Case Number 591277019, Count 1,
12 the sentence of ten years without parole to the
13 Department of Corrections is imposed. With
14 respect to Count 2, I merged it before, I merge it
15 again. The case ending in 020, Count 1, resisting
16 arrest, one year to Department of Corrections
17 concurrent with Count 1 to the charge ending in
18 19.

19 MR. BOUCHER: Judge, most respectfully,
20 20 was -- the conviction was reversed when it was
21 appealed to the Court of Special Appeals.

22 THE COURT: Oh, it was?

23 MR. BOUCHER: Yes, Judge.

24 THE COURT: That charge is gone.

25 THE DEFENDANT: May I say something,

1 Your Honor?

2 THE COURT: That leaves him only with
3 Count 1, the charge ending in 19.

4 MR. BOUCHER: That's right, Judge.

5 THE COURT: Yes, go ahead.

6 THE DEFENDANT: Upon studying the law
7 the Legislature has imposed under Tom versus State
8 that the defendant in receiving an enhanced
9 penalty must first be ordered a hundred and eighty
10 days on his first prior conviction in order to be
11 eligible for enhanced penalty.

12 THE COURT: All right. Thank you very
13 much.

14 Mr. Angelos, advise him of his rights.

15 MR. ANGELOS: Okay. Mr. Monk, you have
16 the resentence today. So, you have thirty days to
17 appeal this sentencing hearing today and I would
18 also say you do have ninety days to ask His Honor
19 to modify or reduce the sentence. I would suggest
20 if there is any possibility in you articulating
21 your facts to substance abuse problems and
22 solutions to that that if you included that in a
23 motion you file that with His Honor and those
24 things are to be done in writing with the Clerk.

25 THE COURT: All right.

FILED

JUN 14 1995

GREGORY E. MONK

Petitioner-Appellee

v.

STATE OF MARYLAND

Respondent-Appellant

IN THE

CIRCUIT COURT
CIRCUIT COURT FOR
BALTIMORE CITY

FOR

BALTIMORE CITY

P.C.P.A. NO. 7173

CASE NO. 591277019

* * * * *

APPLICATION FOR LEAVE TO APPEAL

Pursuant to Section 645-I of Article 27 of the Annotated Code of Maryland and Maryland Rule 8-204, Appellant, the State of Maryland, by Patricia C. Jessamy, State's Attorney for Baltimore City, and Richard Boucher, Assistant State's Attorney for Baltimore City, hereby applies for leave to appeal from the May 12, 1995 Memorandum and Order of the Circuit Court for Baltimore City in the above-referenced case, granting post conviction relief to Appellee, Gregory E. Monk. A copy of the Memorandum and Order is attached.

QUESTION PRESENTED

1. Did the Circuit Court err in failing to grant the State's Motion for Dismiss the Post Conviction Petition?

2. Did the Circuit Court err in granting Post Conviction relief by interpreting Article 27, Section 286(c) as an enhanced penalty statute and not a mandatory penalty statute, and by requiring the corresponding notice as such?

PROCEDURAL HISTORY

On March 17 and 18, 1992, Appellee/Petitioner was tried by a jury on charges of Possession with the Intent to Distribute Cocaine, Possession of Cocaine and Resisting Arrest. A guilty verdict was returned and entered on March 18, 1992. After the verdict was entered, the State indicated to the Court and the Appellee/Petitioner its intention to invoke the mandatory offender addendum based on Appellee/Petitioner's prior conviction for felony CDS violations.

On April 2, 1992, sentencing was held and pursuant to Article 27, Section 286(c)(1), the State invoked the mandatory offender addendum, Judge Thomas Ward sentenced Appellee/Petitioner to 10 years without parole to the Department of Corrections. The possession count merged with the felony and a concurrent one year sentence was imposed for the resisting arrest conviction. A timely appeal was noted, and the Court of Special Appeals affirmed the felony drug conviction, but reversed the resisting arrest. Mark v. State, 94 Md App. 738 (1993).

Appellee/Petitioner filed his first Petitioner for Post Conviction relief on March 7, 1994. After a hearing on July 28, 1994, Judge Ellen Hollander opined that Appellee/Petitioner had been deprived of the effective assistance of counsel because of his counsel's erroneous belief that the trial court had no alternative but to impose a ten year without parole sentence. Judge Hollander found that the trial judge was allowed to consider sentencing

Petitioner to a drug rehabilitation program. The matter was remanded for resentencing. All other allegations of error were denied.

On September 29, 1994, Judge Ward again sentenced the Appellee/Petitioner to 10 years without parole, pursuant to Article 27, Section 286(c)(1) after determining that Appellee/Petitioner was not an appropriate candidate for consideration under Article 27, Section 286(c)(3).

On December 1, 1994, Appellee/Petitioner Application for Leave to Appeal from the Denial of Post Conviction relief was denied.

On or about December 5, 1994 and December 15, 1994, a second Post Conviction Petition and subsequent Addendum were filed by Appellee/Petitioner with the Circuit Court for Baltimore City. The State's Motion to Dismiss and Response were filed thereafter.

A hearing on the merits was held on May 3, 1995.

ARGUMENT

I. The Circuit Court judge erred in failing to grant the State's Motion to Dismiss prior to a hearing on the merits. See footnote 1, page 3 Memorandum Opinion and Order attached.

The State made a Motion to Dismiss the Petition (TR-4) and put forth the reasons why (TR-9)(TR 15-17). These reasons included that the error was deemed to be waived. Md. Ann. Code, Article 27, Section 645A(c), McElroy v. State, 329 Md. 136 (1993), that a Post Conviction Petitioner was not the appropriate remedy for the errors alleged, Md. Ann. Code, Article 27, Section 645A(c) that the Petition(s) were objective, Md. Rule 4-402(a)(6), (a)(7),

that the allegations should have been raised in the first Post Conviction Petition, and that Appellee/Petitioner was not entitled to a second Petition or hearing. Md. Ann. Code, Article 27, Section 645A(f).

II. The Circuit Court judge erred by granting Post Conviction Relief in that the Court misinterpreted Article 27, Section 286(c) and misapplied Collins v. State, 89 Md. App. 273 (1991).

Article 27, Section 286(c)(1) is a mandatory sentencing provision:

"...shall be sentenced to imprisonment for not less than 10 years if the person previously has been convicted."

This statute does allow some very limited discretion on the part of the sentencing judge. See Article 27, Section 286(c)(3), but nevertheless mandates a specific sentence otherwise. See also State v. Thompson, 332 Md. 1 (1993). (Statute is a mandatory sentencing provision, and the determination as to whether Defendant must serve remainder of sentence after completion of drug rehabilitation program remain in the discretion of the sentencing judge).

The common error of sentencing judges is that they believe that they have no alternative. See Collins. See also Judge Hollander's Opinion granting relief in the case at bar. See attached.

The Court misinterprets Article 27, Section 286(c)(1) and construes it as an "enhanced" sentencing statute and not a "mandatory" sentencing statute. cf. Md. Ann. Code, Article 27,

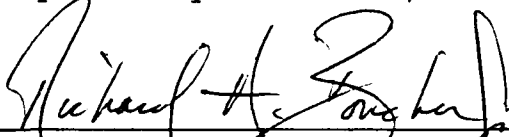
Section 293. See also Armstrong v. State, 69 Md. App. 23 (1986) (enhanced penalty for subsequent offender of handgun statute - appropriate notice requirement. Court has wide latitude and discretion in sentence range). This Court, because of its erroneous interpretation, applied to incorrect notice provisions under Md. Rule 4-245(b) versus Md. Rule 4-245(c). See also State v. Montgomery, 334 Md. 20 (1994).

Neither Appellee/Petitioner's pretrial nor trial strategy was prejudiced. See Md. Rule 4-245(d).

The State complied with the notice requirements under Md. Rule 4-245(c). The date of the verdict of the jury was March 18, 1992. Notice was provided at that time. Sentencing was held on April 2, 1992. See Md. Rule 1-203.

WHEREFORE, the State respectfully requests that leave to appeal be granted and that the grant of Post Conviction relief be reversed.

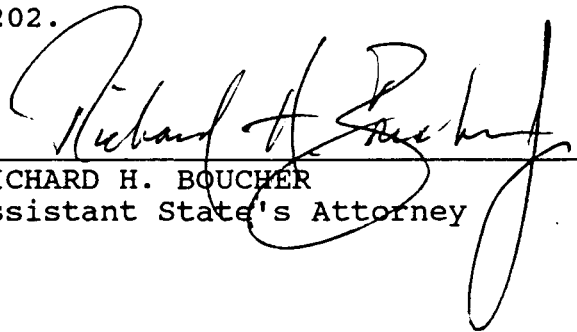
Respectfully submitted,



RICHARD H. BOUCHER
Assistant State's Attorney
303 Mitchell Courthouse
110 North Calvert Street
Baltimore, Maryland 21202

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of June, 1995,
a copy of the foregoing Application was mailed to Norman
Yankellow, Esquire, Office of the Public Defender, 300 West Preston
Street, Baltimore, Maryland 21202.


RICHARD H. BOUCHER
Assistant State's Attorney

GREGORY ERIC MONK

Petitioner

v.

STATE OF MARYLAND

Respondent.

* IN THE

* CIRCUIT COURT

* FOR

* BALTIMORE CITY - Part 20

* CASE NO.: 591277019

* PETITION NO.: 7173

* * * * *

MEMORANDUM OPINION AND ORDER

Petitioner filed a petition for Post Conviction relief pursuant to the Uniform Post Conviction Procedure Act, Annotated Code of Maryland, Article 27, Section 645A and Section 4-401 through and including Section 4-408 of the Maryland Rules of Procedure.

A review of the procedural history in this case is as follows:

On March 17 and 18, 1992, Gregory Monk (hereinafter "petitioner" or "Monk") was convicted by a jury of the crimes of possession of a controlled dangerous substance, possession of a controlled dangerous substance with the intent to distribute (hereinafter "PWID"), and resisting arrest. On April 2, 1992, Judge Thomas Ward, under the authority of Md. Code Ann. art. 27, Sect. 286(c) (1957, 1987 Repl. Vol., 1991 Cum. Supp.), sentenced petitioner to ten (10) years without the possibility of parole on the possession with intent to distribute charge. The lesser possession charge was merged and a concurrent sentence of one year for resisting arrest was imposed. The enhanced penalty was entered as a result of petitioner's prior 1990 conviction for possession of a controlled dangerous substance with intent to distribute. On appeal, the Court of Special Appeals affirmed the PWID conviction, but reversed the resisting arrest conviction. Monk v. State, 94 Md. App. 738 (1993).

Petitioner filed his first Petition for Post Conviction Relief on March 7, 1994. After a hearing on July 28, 1994, Judge Ellen Hollander found that Monk had been deprived of the effective assistance of counsel because of his counsel's erroneous belief that the trial court had no choice but to impose a ten year sentence. Judge Hollander found that the trial judge was allowed to consider sentencing petitioner to a drug program. Judge Hollander remanded the case to Judge Ward for resentencing. All other assigned allegations of error were denied.

On September 29, 1994, a resentencing hearing was held before Judge Ward. Petitioner's original sentence of ten (10) years without the possibility of parole was reinstated. On December 1, 1994, petitioner's application for leave to appeal from the denial of post conviction relief was denied.

On March 14, 1995, Petitioner filed this, his second Petition for Post Conviction Relief. In this petition, Monk's allegations of error go only toward the reimposition of the ten year sentence without the possibility of parole. Specifically, petitioner alleges that:

(A) STATE FAILED TO PROVE ITS BURDEN BEYOND A REASONABLE DOUBT THAT PETITIONER WAS PREVIOUSLY CONVICTED OF QUALIFYING CRIMES SO AS TO AUTHORIZE IMPOSITION OF AN ENHANCED SENTENCE;

(B) PETITIONER IS NOT ELIGIBLE FOR AN ENHANCEMENT PUNISHMENT BECAUSE HE WAS NOT AFFORDED A FAIR CHANCE AT REHABILITATION THROUGH HIS PRIOR CONVICTION.

By way of amended petition, petitioner states that:

(C) THE DEFENSE WAS PREJUDICED BY THE STATE'S FAILURE TO PROVIDE NOTICE OF ITS INTENTION TO SEEK THE ENHANCED PENALTY UPON CONVICTION AS REQUIRED BY MD. RULE 4-245(c).

A post conviction hearing was held on May 3, 1995 in the Circuit Court for Baltimore

City, Part 20. Both parties were represented by counsel. ¹

CLAIM (A)

Petitioner does not dispute that actual evidence of his prior conviction was introduced into evidence at his first sentencing hearing. However, it is petitioner's position that the State had the burden of proving his prior conviction for PWID again at resentencing beyond a reasonable doubt. As shown below, this argument is without merit.

A decision to pursue a subsequent offender mandatory sentence is part of the prosecutorial function. Middleton v. State, 67 Md. App. 159, 169, 506 A.2d 1191, *cert. denied*, 308 Md. 146, 517 A.2d 771 (1986). Proceedings to increase punishment for a charged offense because of prior convictions are part of the sentencing procedure. Teeter v. State, 65 Md. App. 105, 113, 499 A.2d 503, 507 (1985), *cert. denied*, 305 Md. 245, 503 A.2d 253 (1986). For purposes of mandatory sentencing, the State has the additional burden of proving the prior conviction beyond a reasonable doubt. Teeter, 65 Md. App. at 114, 499 A.2d at 507. As such, the State must prove the factual predicates of Section 286(c) with competent evidence. ² Id. at 114, 499 A.2d at 507. Competent evidence requires actual evidence. Ford v. State, 73 Md. App. 391, 402, 534 A.2d 992, 997 (1988); Sullivan v. State,

¹ At the hearing, the court denied the State's motion to dismiss and proceeded to the merits of the petition.

² Md. Code Ann. art. 27, Sect. 286 (1957, 1992 Repl. Vol., 1994 Cum. Supp.), in pertinent part, provides that:

(a) Except as authorized by this subheading, it is unlawful for any person:

(1) To manufacture, distribute, or dispense, or to possess a controlled dangerous substance in sufficient quantity to reasonably indicate under all circumstances an intent to manufacture, distribute, or dispense, a controlled dangerous substance;

(b) Any person who violates any of the provisions of subsection (a) of this section with respect to:

(1) A substance classified in Schedules I or II which is a narcotic drug is guilty of a felony and is subject to imprisonment for not more than 20 years, or a fine of not more than \$25,000, or both

(c)(1) A person who is convicted under subsection (b)(1) or subsection (b)(2) of this section, or of conspiracy to violate subsection (b)(1) or (b)(2) of this section shall be sentenced to imprisonment for not less than 10 years if the person previously has been convicted:

29 Md. App. 622, 631, 349 A.2d 663, 669 (1976). Section 286(c) requires only a previous conviction to subject a defendant to an enhanced penalty. Gargliano, 334 Md. at 438, 639 A.2d at 685.

In the case *sub judice*, there was ample evidence presented at the first sentencing hearing. A true test copy of petitioner's prior conviction for PWID was introduced and moved into evidence. The following excerpt from the transcript illustrates:

MR. BOUCHER: Your Honor, I believe that the State included in its preliminary motions that were filed in this matter a mandatory offender addendum indicating that the State intended to seek a mandatory 10 years without parole should the defendant be convicted of a felony drug charge in this particular case. The reason being because he was on probation at the time of this offense for another felony drug charge.

COURT: All right. Now, I don't have to tell you Mr. Boucher. What's the next question I'm going to ask?

MR. BOUCHER: Do I have a certified copy of the docket entry for that?

COURT: Yes, and do you have an agreement as to that the person in that charge is the same person that is here today or are you going to prove identity?

MR. BOUCHER: No, Judge. We have an agreement.

COURT: You have an agreement?

MR. BOUCHER: Yes, sir.

² continued

(i) Under subsection (b)(1) or subsection (b)(2) of this section;
(ii) Of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this section; or
(iii) Of an offense under the laws of another state, the District of Columbia, or the United States that would be a violation of subsection (b)(1) or subsection (b)(2) of this section if committed in this State.

(2) The prison sentence of a person sentenced under subsection (b)(1) or subsection (b)(2) of this section, or of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this section or any combination of these offenses, as a second offender may not be suspended to less than 10 years, and the person may be paroled during that period only in accordance with Article 31B, Sect. 11 of the Code.

(3) This subsection does not prevent, prohibit, or make ineligible a convicted defendant from participating in the rehabilitation program under Title 8, Subtitle 5 of the Health-General Article, because of the length of sentence, if imposed under subsection (b)(1) of this section.

COURT: That the person -- well, go ahead. Place all your evidence in the record.

MR. BOUCHER: Judge, at this time I would ask to be marked as State's Exhibit No. 1 for identification and would move into evidence, and I believe counsel has seen a copy of this, a true test copy of Mr. Monk's prior conviction for --

COURT: All right. Read it to me as to what the conviction is.

MR. BOUCHER: Judge, this is Case No. 29009933. The defendant was convicted of possession with intent to distribute cocaine on July 25, 1990 before The Honorable Joseph Pines of the Circuit Court for Baltimore City, and this is a true test copy of the docket sheet in that particular matter.

COURT: All right. And no appeal was taken?

MR. BOUCHER: Not to my knowledge, Judge, and the appeal time has expired. And I would move that into evidence at this time.

COURT: All right. Any objection?

MR. ANGELOS: No, sir. No objection.

COURT: All right. Now, the person that was the subject of 29009933, who is that person?

MR. BOUCHER: That is Gregory Monk.

COURT: And is this the same Gregory Monk as we have here today?

MR. BOUCHER: It is, Your Honor.

COURT: Is that Gregory Monk this Gregory Monk, counsel, Mr. Angelos?

MR. ANGELOS: Yes, Your Honor.

COURT: All right. I'm asking -- I'm not -- I'm asking questions to put everything on the record to determine what your position is on each one of these points.

All right. Now, is there any other statements or evidence that you wish to present?

MR. BOUCHER: No other evidence, Your Honor. The only other statement or -- is this the appropriate time for the State to make any recommendations?

COURT: Yes.

(State's Exhibit No. 1, docket entries, received and entered into evidence.)

T. 2, p. 2-4 (emphasis supplied).

At the subsequent (resentencing) hearing before Judge Ward on September 29, 1994, Mr. Boucher moved to "incorporate by reference all of the information including the true test copy of the docket entry of Defendant's prior conviction for the purposes of this hearing..."

T.4, p. 2. His motion received no objection from defense counsel or defendant at the time.

Consequently, a true test copy of petitioner's prior conviction for possession with the intent to distribute cocaine was not only admitted into evidence but also proved beyond a reasonable doubt at both sentencing hearings. Therefore, petitioner fails to establish that an error was committed with respect to this claim for relief.

CLAIM (B)

On July 25, 1990, petitioner was tried and convicted of PWID. Monk was placed on probation upon that first conviction. Subsequently, on March 18, 1992, petitioner was convicted a second time for PWID. Section 286(c) mandates a penalty of not less than ten (10) years imprisonment without parole "if the person previously has been convicted" under those sections of the law. Gargliano, 334 Md. at 438-39 639 A.2d at 679; *See*, Md. Code Ann. art. 27, Sect. 286, *supra* note 1.

The thrust of petitioner's claim that he did not receive a fair chance at rehabilitation centers on the legislative intent behind Section 286(d), a statute prescribing punishment for third convictions under Section 286. However, that section is not relevant to a discussion of

the legislative intent behind Section 286(c).

The general purpose of enhanced penalty statutes is "to deter the future commission of criminal offenses by persons who have previously been convicted and subject to the threat of punishment." Gargliano, 334 Md. at 442-43, 639 A.2d at 682; *See, e.g., Jones v. State*, 324 Md. 32, 38, 595 A.2d 463, 466 (1991). The Court of Appeals has construed similar enhanced penalty statutes and determined that the purpose of these statutes is

identifying defendants who have not reformed their behavior after prior convictions and incarcerating such defendants for a longer period than would otherwise be applicable in order to protect the community and deter others from similar behavior.

Gargliano, 334 Md. at 444, 639 A.2d at 682; *See, e.g., Jones v. State*, 324 Md. at 38, 595 A.2d at 466; Montone v. State, 308 Md. 599, 606, 521 A.2d 720, 723 (1987); *see also Garrett v. State*, 59 Md. App. 97, 118, 474 A.2d 931, 941, *cert. denied*, 300 Md. 483, 479 A.2d 372 (1984).

Recidivist statutes are enacted in an effort to deter and punish incorrigible offenders ... They are intended to apply to persistent violators who have not responded to the restraining influence of conviction and punishment. It is the *commission* of the second felony *after conviction* for the first, and the *commission* of the third felony *after conviction* of the second that is deemed to make the defendant an incorrigible.

Gargliano, 334 Md. at 444, 639 A.2d at 682, citing Montone, 308 Md. at 609, 521 A.2d at 725 (citations omitted) (quoting State v. Ellis, 214 Neb. 172, 333 N.W.2d 391, 394 (1983) (emphasis in original)). The Legislature's intent in enacting Section 286(c) was not only to protect the public, but also to deter repeat offenders from committing other crimes under threat of an extended period of confinement. Gargliano, 334 Md. at 445, 639 A.2d at 683; Hawkins v. State, 302 Md. 143, 148, 486 A.2d 179, 182 (1985).

Petitioner cites Jones as dispositive of this issue. In Jones, the Court of Appeals held that Section 286(d) evinced a legislative intent "that those who received the enhanced punishment had been accorded a fair chance at rehabilitation in the prison system and had not responded." Jones, 324 Md. at 38, 595 A.2d at 466. It is apparent that petitioner's reliance on the holding of Jones is misplaced. Section 286(d) is designed for a third violation and conviction under Section 286. It prescribes a mandatory penalty of 25 years without parole upon a third conviction. The General Assembly imposed the harsher sentence as the penalty for not only the third conviction, but also for the failure of the person to conform his ways to the law. However, a requirement of this section is that the defendant has served one term of confinement of at least 180 days in prison prior to the third conviction. There is no express language in Section 286(c) requiring that. Petitioner argues that the legislature intended that this 180 day requirement be applicable to the provisions of Section 286(c) as well. This argument is novel, but without merit.

Section 286(c) speaks to the failure of a person to conform his ways to the law as evidenced by a second conviction for the same offense. However, a second PWID conviction is not punished as harshly as a third conviction for PWID under Section 286. Petitioner's reliance on the holding in Jones is misplaced, however, because that decision spoke to the legislative intent behind Section 286(d). Petitioner was sentenced under Section 286(c).

Petitioner was originally convicted on the charge of PWID on July 25, 1990 before Judge Pines. Judge Pines had the authority to order the petitioner incarcerated but chose to give petitioner a suspended sentence and place him on probation. Petitioner thus received a chance to rehabilitate himself and to walk away from the perils of controlled dangerous

substances. Having disregarded that chance, he subjected himself to the possibility of more stringent penalties. Gargliano, 334 Md. at 442; 639 A.2d at 681.

Secondly, Section 286(c) does not contain language requiring a previous term of confinement of at least 180 days in prison prior to the second conviction, as stated above. Accordingly, this claim fails as well.

CLAIM (C)

Petitioner alleges that he never received statutorily required notice from the State at any time prior to trial that it was planning to seek an enhanced penalty upon conviction. Md. Rule 4-245.³ Petitioner claims that this lack of notice severely prejudiced his defense strategy. The State counters that it believes such notice was given prior to trial, but if not, oral notice was given counsel and petitioner at trial.

In Collins v. State, 89 Md. App. 273, 291, 598 A.2d 8, 16 (1991), the court concluded: "A simple reading of the statute [286(c)] suggests that a second drug offender sentenced under subsection (b)(1) ... remains eligible for drug treatment under Sect. 8-507(a) of the Health-General Article." The court therefore held that the trial court erred in determining it lacked discretion to sentence the defendant to drug treatment instead of the mandatory sentence. Collins, 89 Md. App. at 293, 598 A.2d at 15.

³ Maryland Rule 4-245 (b) and (c) provide, in pertinent part:

(b) **Required Notice of Additional Penalties.** - When the law permits but does not mandate additional penalties because of a specified previous conviction, the court shall not sentence the defendant as a subsequent offender unless the State's Attorney serves notice of the alleged prior conviction on the defendant or counsel before the acceptance of a plea of guilty or nolo contendere or at least 15 days before trial in circuit court or five days before trial in District Court, whichever is earlier.

(c) **Required Notice of Mandatory Penalties.** - When the law prescribes a mandatory sentence because of a specified previous conviction, the State's Attorney shall serve a notice of the alleged prior conviction on the defendant or counsel at least 15 days before sentencing in circuit court or five days before sentencing in District Court. If the State's Attorney fails to give timely notice, the court shall postpone sentencing at least 15 days unless the defendant waives the notice requirement.

Sections (b) and (c) of Rule 4-245 address somewhat different concerns. If the law prescribes a *mandatory* penalty based on prior convictions, the only relevant issue is whether the defendant meets the criteria for subsequent offender status; if he does, there is no discretion in terms of sentencing... That issue is of concern only at sentencing. It can have no bearing on trial or pre-trial strategy, and, thus, reasonable notice before sentencing is all that is required for the defendant to challenge the State's assertion that he is a subsequent offender subject to a mandatory sentence.

Where the law merely *permits* but does not *mandate* an increased sentence, the issue of subsequent offender status, including whether the State intends to seek the increased sentence, can affect the defendant's pre-trial and trial strategy. It is a factor to consider in plea bargaining and in deciding whether to plead guilty.

Armstrong v. State, 69 Md. App. 23, 35, 515 A.2d 1190, 1197 (1986) (citations omitted)

(emphasis in original).

Based on Collins and Armstrong, it is apparent that pre-trial rather than pre-sentence notice was required to be served on petitioner. The court in Collins determined that a judge, for purposes of sentencing under Section 286(c), is empowered to consider either a ten year sentence without the possibility of parole or a drug treatment program. Since Section 286(c) thus permits, but does not mandate an increased sentence, pre-trial notice of the State's intention to seek the enhanced penalty is required at least 15 days prior to trial in the circuit court under Md. Rule 4-245(b). Without this notice, the defendant's pre-trial and trial strategy is prejudiced.

In the present case, the court file contains various documents filed by the State, but makes no mention of the required notice. After conviction, the State's attorney stated that he would be seeking the enhanced penalty. T.2, p. 122. At the first sentencing hearing, the State's attorney stated that he "believe[d] that the State included in its preliminary motions that were filed in this matter a mandatory offender addendum indicating that the State

intended to seek a mandatory 10 years without parole..."⁴ T.3, p. 2. In light of the serious liberty interests at stake in this matter, we cannot say that these statements, without more, provide sufficient evidence to show that notice was served on the petitioner or his counsel at least 15 days prior to trial. (emphasis added). Accordingly, the lack of notice may have prejudiced petitioner's pre-trial and trial strategy, requiring this case to be remanded again for resentencing. This time, however, the enhanced penalty under Section 286(c) is not a viable option for the court.

Upon consideration of the evidence presented at a hearing in the above matter on the 3rd day of May, 1995, it is this ~~3~~⁴ day of May, 1995;

ORDERED that the Petition for Post Conviction Relief be and same is hereby GRANTED in part for the reasons set forth in the foregoing Opinion.

THE HONORABLE
ALBERT J. MATRICCIANI JR.

SIGNATURE APPEARS ON
ORIGINAL DOCUMENT

W-5102

TRUE COPY
BEST

5-16-95

Sandra E. Banks
PCC

SAUNDRA E. BANKS, CLERK



⁴ During oral argument in this court on May 3, 1995 the Assistant State's Attorney conceded that he was unable to locate the mandatory offender addendum in the court file.

IN THE CIRCUIT COURT FOR BALTIMORE CITY

1ST PETITION
(7173)

TRIAL - Judge WARD

GREGORY E. MONK,
ECE 222-870
Petitioner

Vs.

STATE OF MARYLAND,
Respondent

*	Crim. Cases:	591277019 & 20
*	Docket	_____
*	FOLIO	_____
*	Misc.	_____
*		

PETITION AND APPLICATION FOR
POST CONVICTION RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, In Pro. Per., Gregory E. Monk, (hereinafter Petitioner), pursuant to the MD. Code Ann. Art. 27, Sec. 645A and M.R.P. Rules 4-401 thru 4-407, for a proceeding under the Maryland Uniform Post Conviction Procedure Act. And in support thereof avers:

(a) Petitioner is indigent and consequently unable to pay and/or prepay the necessary costs involved for this proceeding.

1) Petitioner is Gregory E. Monk, supra, his prison number is #222-870; and he is confined by Respondent at the Eastern Correction Institution located at 30420 Revells Neck Road, Westover, MD. 21871;

2) Petitioner was convicted by jury before Judge Thomas Ward on March 17th & 18th, 1992 on criminal offenses a) resisting arrest, b) possession of CDS and c) poss. with the intent to distribute; and on April 2nd, 1992, Judge Ward imposed a ten year sentence without possibility of parole for poss. W/I to distribute, merged the possession and imposed a one year concurrent sentence for resisting arrest;

3) Petitioner presents the following Allegations of error for consideration, via, an evidentiary hearing before this Court:

- (A) PETITIONER WAS DENIED A FAIR AND IMPARTIAL TRIAL IN CIRCUMVENTION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.
- (B) PETITIONER WAS DENIED HIS CONSTITUTIONAL RIGHT TO A FAIR AND IMPARTIAL JURY OF HIS PEERS.
- (C) PETITIONER WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL ON DIRECT/TIMELY APPEAL.
- (D) PETITIONER WAS CONVICTED ON THE PERJURED TESTIMONY OF POLICE OFFICERS AND THE PROSECUTOR PARTICIPATED KNOWINGLY IN THE PERJURED TESTIMONY OF SAID OFFICERS.

4) Petitioner presents the following concise statement of facts in support of Allegations (A & B), supra:

Judge Ward refused to ask the prospective jurors a) whether they were related to police officials and b) whether they were victims of or convicted of a crime, e.g.:

"MR. ANGELOS: 5. Pardon me. 5 and 7, I meant.

THE COURT: Oh, on this one. Okay. 5.

MR. ANGELOS: If anybody is related to anybody, police officers and --

THE COURT: All right. Denied as to 5. Which was the next one you said? Vol. 1, T. 31;

MR. BOUCHER: I beg the court's indulgence. I have heard the questions asked if anyone has been a victim of a crime. I have not heard the question whether anyone has ever been charged or convicted of a crime.

THE COURT: That's true. Denied. I am not going to ask that." Vol. 1, T. 32.

Judge Ward allowed, impermissible and highly prejudicial, incriminating testimony indirectly that could have been brought in directly, i.e., the name Joseph Payne, subject to the recall of Officer Warren Smith, via, the prosecutor, e.g.:

"MR. ANGELOS: Well, that He's, any statement that he made is going to come in.

THE COURT: Well, I am going to allow any evidence that is offered with respect to what name he gave at the time of his arrest, if it comes from the person that he gave it to, and I will allow him to recall the other officer for that purpose, if he wants to. Now, if he doesn't want to and is not going to, then this has to come off and we'll rephotostat it. Now, what's your position?

MR. BOUCHER: I will call the other officer, Judge. Vol. 11, T. 63;

MR. BOUCHER: Judge, do you prefer that I call officer Smith before I elicit this from --

THE COURT: No. No. You have made a proffer. That's good enough.

MR. BOUCHER: Thank you, Judge.

Q. Officer Coleman, can you indicate the name of the defendant that appears on that particular document?

MR. ANGELOS: Objection.

THE COURT: Well, subject to your proffer that you're going to provide officer, recall officer Smith with respect to this matter, overruled.

A. Joseph Payne" Vol. 11, T. 65.

"THE COURT: Okay. We're here on the jury question. And the jury question states as follows: 'Why does State's Exhibit No. 2 show defendant as Joseph Payne? State's Exhibit No. 2 is the analysis sheet indicating that the drugs submitted were cocaine. Down at the left-hand corner of the sheet, it shows the name Joseph Payne and the address.' Its my inclination to tell the jury that, 'There is evidence that the jury may consider that the defendant gave this name -- I guess I should say, Joseph Payne -- at the booking when he was arrested.' Vol. 11, T. 111;

"MR. ANGELOS: Objection. There is no evidence to that, Judge.

THE COURT: What was the evidence then?

MR. ANGELOS: The police officer had a call from Warren Smith.

THE COURT: At booking, and he gave that name.

MR. ANGELOS: Judge, the problem is --

THE COURT: Is that true or not?

MR. ANGELOS: No.

THE COURT: What occurred?

MR. ANGELOS: That's the name he got, he said he called back and got the name and put it down on there.

THE COURT: Didn't he state that was the name that he was told that the defendant gave at booking from Officer Smith?" Vol. 11, T. 112.

MR. ANGELOS: Judge, with your permission, I am going to read it outloud anyway, so that it's part of the transcript. T. 113;

THE COURT: All right.

MR. ANGELOS: The answer that the judge is providing is that there is evidence that the jury may consider along with all the other, with all the evidence in this case in accordance with my instructions, that the defendant gave the name of Joseph Payne as his name at the time of booking. Thomas Ward, Judge.

Defense vehemently objects to this characterization that it's introducing, reintroducing evidence that is already into the record and is not necessary to be told to the jury. The last sentence should be pulled out, and just simply say that the evidence is in there and the jury should consider all the evidence that they listened to and heard. Nothing more; nothing else." Vol. 11, T. 114.

Petitioner avers that the Court assured defense that officer Smith would be recalled to the witness stand in order to verify that Petitioner gave him the name of Joseph Payne; however, officer Smith wasn't recalled, thus, there was no direct evidence that Petitioner gave the name Joseph Payne to anyone; and therefore it was improper for this court to permit this evidence to go to the jury room. Even Judge Ward, commented during Petitioner's Sentencing and Motion for New Trial, that if this were the case and had defense tendered the transcript confirming same, this would be an excellent issue for appeal, e.g.:

"MR. ANGELOS: No, sir. I think that prejudiced the case against my client because it, any confusion or defense, and that was part of our defense, knowing that piece of evidence would go to the jury, it would confuse them. It was part of our defense that, who the person was exactly in the street that the drugs were recovered from. I think that prejudiced our case, and I believe that that, that in itself warrants a motion for new trial, to have that evidence properly presented to the jury.

THE COURT: All right. Is there anything else in your motion?

MR. ANGELOS: No. Not at this time, Your Honor.

THE COURT: Mr. Boucher?

MR. BOUCHER: Judge, most respectfully --

THE COURT: On the motion for new trial.

MR. BOUCHER: I would ask the court to deny that motion. First of all, none of those averments are contained within the body of the motion for new trial, unless Mr. Angelos intends that those averments be included under Item --

THE COURT: Well, it's --

MR. BOUCHER: --No. 4.

THE COURT: It's included in there because he's M.8, got here, because the evidence is insufficient in law to sustain the verdict. He says that there was no such evidence that the police officers at the time of booking said that he gave the wrong or something like that. I don't recall.

MR. BOUCHER: Judge, I would simply respond by saying that I believe that the court acted correctly and appropriately in this circumstance, and I would submit based on that.

"THE COURT: All right. Anything else you want to say with respect to the motion for new trial?

MR. ANGELOS: No, Your Honor.

THE COURT: All right. I am going to deny the motion for new trial. I think you have an interesting point, though, on this with respect to appeal. Obviously, if it didn't happen, you've got an excellent point.

My memory is that it didn't, but I have to be honest with you. It's now been what, a couple of weeks, isn't it?

MR. ANGELOS: About two and half weeks, yes, sir.

THE COURT: I've had so many cases since then that it's unbelievable.

It's too bad you don't have a transcript. No time to prepare it in that time, I'm sure. M. 9."

Judge Ward permitted evidence that Petitioner resisted a lawful arrest without benefit of instructing the jury that Petitioner could have resisted an unlawful arrest; and because of this dereliction Petitioner's jury assumed he was guilty of resisting arrest. That conviction was subsequently reversed on direct appeal because Judge Ward didnot instruct or advise that jury that an illegal arrest could be resisted.pp. 6-7 Opinion of Md. Ct. App. No. 516, Sept. Term, 1992, Filed: January 28, 1993, Monk v. State.

Petitioner avers that his instant conviction for possession with intent to distribute CDS was predicated upon the jury's belief that Petitioner must be guilty because he resisted a lawful arrest. And it is for that reason that Petitioner believes he was denied the trial guaranteed by the Constitution, i.e., a fair and impartial

trial by an impartial jury.

This Court will note that not once did the arresting officer, viz., Warren Smith mention that he advised Petitioner that he was under arrest. As a matter of fact there was not one iota of testimony by Officer Smith that he said anything to Petitioner!

5) Petitioner will now presents facts in support of his Allegation (C), e.g., Denied effective assistance of appellate counsel:

Petitioner was represented by Public Defender Melissa Moore, on direct appeal from the instant judgement; and Petitioner believes that Ms. Moore denied him the counsel contemplated by the Constitution and Laws of this State, via, failing to take cognizance of the issues/Allegations set forth, supra, and presenting same to the Court of Special Appeals along with the QUESTIONS she did present to that Court.

For reasons stated on this Allegation of error, Petitioner was denied the effective assistance of counsel on direct timely appeal to the Md. Ct. Sp. App.

6) Petitioner will now present facts in support of his fourth and last Allegation of error, i.e., that he was convicted based solely on the perjured testimony of police officers, knowingly participated in by the prosecutor Richard Boucher:

Officer Warren Smith was the State's case and Petitioner could not have been convicted but for Smith's perjured testimony.

Petitioner will now point out crucial segments of Smith's testimony where he actually lied under oath in order to obtain the

instant conviction:

Officer Smith while patrolling around the area of 1800 block Loretta Avenue at approximately 12:20 a.m...

Mr. Monk, while standing there, on the odd side, the even side of the street, excuse me, he was (T. 54), accompanied by an unknown individual. As I grew closer to Mr. Monk, I observed his right hand opened, and I could see neon objects, which were piled up in the palm of his hand.

Q. What do you mean by neon?

A. They were a bright yellow color, neon yellow. With my training and expertise as an officer and my numerous arrests, I believed that this individual was participating in a narcotics -- excuse me -- narcotic activity. (T.55)

A. Okay. I observed Mr. Monk standing with an unknown individual with those neon objects in his right hand.

A. The defendant was approximately 15 to 20 feet away from me. (T.56):

A. I could see it was numerous items.

A. At that time I exited my vehicle, and as I did, the defendant dropped the items to the ground, and started to run east-bound in the rear of the 1800 block of Edmondson Avenue. (T.57)

Petitioner points out here that officer Smith was still in his vehicle until after he says Petitioner had numerous neon objects in his palm of the hand. And that Petitioner was standing with an unknown individual. This will become important later in argument.

A. I observed the defendant drop the drugs, and I was, I began pursuit after him;

A. Oh! As I ran past, I did look down and observed items on the ground, and found them to be ziplocks containing white objects. Several ziplocks containing white objects along with, just on the ground ziplock bags.

A. At that point, the defendant was caught in the rear of the 1800 block of Edmondson Avenue. I called for back-up units. Units arrived on the scene. I, myself, along with officer Coleman, after the units were on the scene, they stood with the defendant while Officer Coleman and I returned to the location where the defendant was to recover the items. (T.59);

Q. You indicated that there were some other individuals on the scene at the time when you first observed the defendant. Is that correct? (Smith mention an individual and not the plural, the State lead this witness to indicate more than one by the way the question was posed)

A. That is correct.

A. I believe they were black females, and they left the scene after the pursuit started.

A. I believe the defendant was showing the narcotics which he had in his right hand. He was showing them to them --

A. Okay. His hand was like this, and the items were like in a ball, cupped like this in his hand. I could see them clearly. Just like that. (T. 60);

A. He was caught in the rear, rear of a back yard in the 1800 block of Edmondson Avenue. I called for back-up units. They arrived on the scene. They stood with the defendant while officer

Coleman and I went back to recover the narcotics.

Once we did so, we returned and advised the units and officers that the individual was to be placed under arrest. At that point the defendant started to fight. It was an ongoing fight. Maybe two minutes it took, maybe four to five officers to finally detain him and put the cuffs on him. (T. 61). (Officer Coleman testified that Petitioner was in handcuffs when he arrived on the scene)(T.73).

A. THE officers that were there. We all, once I got back to the yard and said the individual was to be placed under arrest, that's when the fighting started. The defendant at that time, he was throwing fists whatever, We got him to the ground. Once he was to the ground he was kicking, whatever he could do, trying to get away. Cuffs were placed on him.(T.62)

Quoting from Vol. 11 of transcript:

THE COURT: You caught him running in the same block, a short distance.

THE WITNESS: That's correct.

THE COURT: And then is that when you placed him under arrest?

THE WITNESS: No, it was not.

THE COURT: It was not. You stopped him.

THE WITNESS: I stopped him.

THE COURT: And did you give him any instructions the defendant?

THE WITNESS: Well, at that time the units arrived on the scene, and I had those units stand with the (T. 13); defendant.

THE COURT: No, but when you first stopped the defendant, did you give, did you say anything to him?

THE WITNESS: I don't recall saying anything to him.

THE COURT: All right. And then, then you radioed for assistance?

THE WITNESS: That's correct.

THE COURT: And you stood right there waiting for the assistance.

THE WITNESS: That's correct.

THE COURT: And the assistance came, and how many came?

THE WITNESS: I would say maybe five, six, seven officers or more.

THE COURT: And then you went back up to the drugs. Is that right?

THE WITNESS: Officer Coleman and I went back to the drugs.(T. 14).

Petitioner in addition to the perjured testimony, supra, will continue pointing out obvious testimony that was perjured, via, cross examination of officer Smith and through the testimony of officer Coleman, leaving no doubt in this Court's mind that officer Smith intentionally lied under oath and prosecutor Boucher knew or should have know that this testimony was perjured. Mr. Boucher is chargible with his witnesses and their integrity...

CROSS BY ANGELOS:

Q. ...Okay. You testified yesterday that when you saw Mr. Monk, you said there were some objects in his hand. Is that right?

A. That's correct.

Q. Okay. What color did you describe those objects as?

A. Neon yellow.

Q. Neon yellow. When you wrote your report, when you first made the observation, did you know that those objects were neon yellow?

A. Yes, I did.

Q. Okay. And how did you know that?

A. Because I observed them to be neon yellow.

Q. Okay. Did you write that down in your statement of charges?

A. The word neon, no, I did not. I wrote that they were yellow.

Q. Do you have that statement of charges with you? I'll show you the State's copy of it. Show me where you wrote down that they were yellow in your statement of charges. (T. 28);

THE WITNESS: Well, yellow was not indicated in that part of it.

BY MR. ANGELOS:

Q. Well, you found things on the ground, you said were yellow. Is that right?

A. Yes.

Q. You didn't see any yellow objects in his hand, did you, when you first observed him?

A. I guess not.

(Petitioner points out that this very same officer testified that he seen neon objects in his hand, piled up in the palm of his hand; T. 55-56; but now denies that he seen any such objects)

Q. No, you didn't. Let me show you your police report,

as the judge has indicated. This is a crime incident report that you, second report that you make also. Is that correct?

A. That's correct.

Q. Okay. Would it say yellow in there, sir? Or neon, or any color? (T. 29);

A. They would corroborate both, both should have corroborated it. I don't think it says it in here, either.

Q. When do you fill out that report?

A. Same evening.

Q. Same evening. So, according to these two reports that you filled out, on July 24th, a long time ago, both times you say all you saw were objects. Is that right?

a. that is right.

Q. Okay. All right. Did you ever see a brown paper towel?

A. No, I did not.

Q. Okay. Did you ever see a brown bag?

A. No, I did not

Q. Right, but you recovered a brown item, is that right?

A. That's correct.(T. 30);

(Petitioner asserts that officer Coleman testified that the objects were found on the ground and described they as yellow ziplock bags, most of them wrapped within a paper towel, T. 53: Thus, once again officer Smith has been caught lying as he first said the items were neon yellow piled in the palm of Petitioner's hand, he lied when he testified to that and he could not have possibly seen these objects as there were inside a paper towel, according to officer Coleman):

BY MR. ANGELOS:

Q. Is it fair to say that when you first observed this defendant, Mr. Monk, when you saw him, that he had drugs in his hand?

A. He had items in his hand.

Q. Items? Okay. So, you didn't know what those items were?

A. At that time, I did not.

Q. ...Okay. So, you didn't arrest that time, at that time?

A. No, I did not. (T. 35);

Q. And you went back to the area where Mr. Monk and these two women were. Is that right?

A. That's correct.

Q. You went with your flashlights, you and officer Coleman had flashlights. Is that right?

A. Well, officer Coleman had a flashlight. I did not.

DIRECT EXAMINATION OF OFFICER COLEMAN BY PROSECUTOR BOUCHER:

Q. Can you indicate to the ladies and gentlemen of the jury what the nature of your response was?

A. I received information over the radio that officer Smith was in foot pursuit of a suspect that I didn't know at the time what he was wanted for, and when I arrived, officer Smith told me that he was looking for a gentleman wanted for a CDS violation. I responded as a back-up unit to officer smith. (T. 51);

Q. What, if anything, did you find upon your arrival at the scene?

A. I got there a little late. The gentleman officer Smith was after had already been taken into custody. I accompanied officer Smith back to the area where the drugs --where he saw this suspect drop some drugs, and I accompanied Officer Smith to that area, and recovered some suspected CDS with him.

THE WITNESS: I illuminated the area where Officer Smith said he saw the objects fall, and with (T. 52); light I saw some yellow ziplock bags containing a white rock-like substance laying on the ground. Most of them were wrapped within a paper towell, and a few were scattered on the ground. (emphasis added to point out that Officer Smith lied when he testified that he saw neon yellow CDS piled in the palm of Petitioner's hand; he also couldn't identify and even denied seeing a paper towell, thus, he couldn't have possibly seen said CDS in Petitioner's hand within seeing the paper towell that this CDS was wrapped in!) (T. 53)

Q. Okay. Mr. Monk was handcuffed at that time. Is (T.72), that correct?

A. That's correct.

Q. Okay. He was under arrest at that time. Is that correct?

A. That's correct.

Q. That's when you and officer Smith went back to the area of the street. Is that right?

A. I believe so. Yes, sir. (T. 73); .

Petitioner believes he has presented irrefutable facts, via, the instant trial transcript of the testimony of both Officer Smith and Officer Coleman, verifying that Officer Smith perjured himself while testifying for the State and, obviously, prosecutor Boucher knew or should have known that this officer lied when he testified that he saw neon and yellow piles of CDS in Petitioner's palm, had Smith seen what he claimed he seen, he would have seen the paper towell that this alleged CDS was covered in, e.g., Officer Coleman testified that most of the CDS was wrapped within said paper towell;

And again, inter alia, Smith lied when he testified that Petitioner was not arrested and/or in handcuffs, but what does officer Coleman say? He testified that Petitioner was in handcuffs when he arrived and when he went with Smith to retrieve the CDS!

For all intents and purposes the two females could have left the CDS in the area where they were found; particularly given the instant circumstances, the three persons were in a huddle when Smith drove up, it was dark as they needed a flashlight in order to find/locate the CDS, and Smith didn't know that the CDS was contained within a paper towell. There is no doubt but that Smith didn't see anything in Petitioner's hand, because he would have known that the CDS was in yellow ziplock baggies, as testified to by Coleman; he would have known that this same CDS was wrapped inside a paper towell, and certainly had he seen Petitioner drop/throw this CDS on the ground he wouldn't have had to search for same with a flashlight! Remember Smith testified that this was a well-lit area, as a matter of fact he testified that Petitioner was standing under a street lamp!

This was a gross miscarriage of justice and a intentional abuse of what the police and courts stand for. Society doesn't need or want convictions based on this kind of misrepresentations of the truth. Officer Smith didnot see Petitioner with any CDS; he assumed CDS was involved because of the area, the time and three people on an empty lot.

WHEREFORE, Petitioner believes that the totality of the circumstances surrounding this case evidence a total disregard for justice and the Constitution that assures same; and for those reasons this Court ought to grant the following relief:

7) REQUESTED RELIEF.

A. An evidentiary hearing before this Court on his Application/Petition for post conviction relief;

B. Appointment of counsel, via, the Public Defender's Office, See, attached forma pauperis in support of indigency;

C. Reversal of the instant judgement/conviction and the granting of a new trial;

D. Any further and other relief deemed appropriate and just.

8) PREVIOUS PROCEEDINGS:

A. Direct/timely appeal to the Special Court of Appeals, GREGORY MONK VS. STATE OF MARYLAND, No. 516, Sept. Term, 1992, Filed: January 28, 1993. Judgement for resisting arrest reversed and vacated.

No other proceedings have been filed in this or any other Court heretofore.

9) None of the instant allegations of error have been previously raised or waived.

10) (c) Amendment.

Petitioner reserves the right to amend his petition should the need arise in order to do substantial justice.

FINALLY, Petitioner declares pursuant to penalty of perjury that everything herein described is true and correct upon his belief, information and knowledge.

Respectfully Submitted,

s/ Gregory E. Monk
Gregory E. Monk, #222-870
Eastern Correction Inst.
30420 Revells Neck Road
Westover, Maryland 21871

CERTIFICATE OF SERVICE

Petitioner, Gregory E. Monk certifies that copies of the foregoing post conviction application/petition and affidavit of indigency were mailed this 23 day of February, 1994, postage prepaid to:

- 1) Sandra E. Banks, Esq.
Clerk of Court
111 N. Calvert Street
Baltimore, Maryland 21202
- 2) Mr. Stuart O. Simms, Esq.
State's Attorney
206 Clarence Mitchell Ct. House
Baltimore, Maryland 21202

S/ Gregory E. Monk
Gregory E. Monk #222-870

	*	IN THE
Petitioner	*	CIRCUIT COURT
V.	*	FOR
STATE OF MARYLAND	*	BALTIMORE CITY
Respondent	*	CASE NO: 591277019-20
	*	PETITION NO: 7173

* * * * *

MOTION TO DISMISS POST CONVICTION PETITION AND RESPONSE

NOW COMES Stuart O. Simms, State's Attorney for Baltimore City who moves this Court to dismiss the above-captioned post conviction petition stating for cause:

1. Maryland Rule 4-402 (a) (3) requires the petition to include the allegations of error upon which the petition is based. The petition filed by the petitioner does not include allegations of error; and,
2. Maryland Rule 4-402 (a) (4) requires the petition to include a concise statement of facts supporting the allegations of error. The petition filed by the petitioner does not include a concise statement of facts supporting the allegations of error; and,
3. Maryland Rule 4-402(a) (6) requires the petition to include all previous proceedings, including appeals, motions for new trial and previous post conviction petitions, and the determinations made thereon: The petition filed by the petitioner does not include a statement of all previous proceedings and determinations thereon; and,
4. Maryland Rule 4-402(a) (7) requires the petition to include a statement of the facts or special circumstances which show that the allegations of error have not been waived. The petition filed by the petitioner does not include such a statement of the facts or special circumstances as required.

WHEREFORE, the Respondent, the State of Maryland prays the following relief:

A. THAT this Court dismiss the Post Conviction Petition filed by the Petitioner in this action; or

B. THAT, in the alternative, if the Respondent's Motion To Dismiss is denied, that this Court accept the following as a Response to the Post Conviction Petition:

1. That the causes of detention of the Petitioner are warrants of commitment herewith produced, together with certified copies of the Docket Entries of the Circuit Court of Baltimore appertaining to the said Petitioner's trials and convictions of crimes and incarcerations therefore;
2. That the said Petitioner is not now illegally imprisoned, detained and restrained of his liberty;
3. That each and every allegation contained in the said Petition for Application for a Proceeding under the Post Conviction Act alleging illegal trials and imprisonment is hereby denied and traversed;
4. That said Petitioner was legally convicted of crimes, in a Court of competent jurisdiction; that the sentences of judgements were not imposed in violation of the Constitution of the United States or the Constitution or laws to impose the sentences; that the sentences do not exceed maximum authorized by law; that the convictions and sentences are not otherwise subject to collateral attack upon any ground of alleged error heretofore available under a Writ of Habeas Corpus, Writ of Coram Nobis, or other common law or statutory remedy; and further, that the alleged errors have been previously and finally litigated or waived in the proceedings resulting in the Petitioner's convictions and/or in other proceedings that the Petitioner has taken to secure relief from said conviction.

C. AND, for such other and further relief as Respondent's cause may require.

Respectfully submitted,

Stuart O. Simms

Stuart O. Simms
State's Attorney for
Baltimore City

Points and Authorities

Maryland Rule 4-402

Maryland Rule 4-404

Strickland vs. Washington, 104 S.Ct. 2052 (1984)

State vs. Tichnell, 306 Md. 422 (1986)

Harris vs. State, 303 Md. 685 (1985)

DATE: March 7, 1994

TRIAL DATE: To Be Set By Trial Judge

IN THE CIRCUIT FOR BALTIMORE CITY

*2nd PET
7173
JUDGE HO HANDEK
(1ST PET.)*

GREGORY E. MONK

Crim. Case : 591277019 & 20

Petitioner

v.

STATE OF MARYLAND

Respondent

PETITION AND APPLICATION FOR
POST CONVIVTION RELIEF

* * *

TO THE HONORABLE JUDGE OF SAID COURT :

Comes now in Pro. Per., GREGORY E. MONK, HEREINAFTER
Petitioner , pursuant to the MD. Code ANN. Art. 27, Sec. 645A
and M.R.P. 4-401 thru 4-407, for a proceeding under the Maryland
Uniform Post Conviction act. Also pursuant to Code 1957, Art. 27
Sec. 36B(b)(ii). ford V. state 534 A.2d 992, 73, Md App. 391.

(a) Petitioner is indigent and consequently unable to pay
the nessary cost involved for this proceeding.

(1) Petitioner is Gregory Monk supra, his prison number is
22-870; and he is confined by responded at Eastern Correctional I
nstitution located at 30420 Revells neck rd. Westover Md. 21871

(2) Petitioner was convicted by judge Ward on march 17th/18th
1992. On criminal offenses, resisting arrest, possession of CDS,
possession /with/ intent to distribute cocaine. Judge Ward impose
d a ten year sentance with out parole. On Febuary 23, 1994 petiti
ner filed post convition relief. On August, 25, 1994. Judge
E. Hollender granted the post conviction relief, for petitioner
to be resentence .

(3) Petitioner presents the following Allegations of error
for consideration, via, an evidentiary hearing before this court;

(A) STATE FAILED TO PROVE IT'S BURDEN BEYOUND RESONABLE
DOUBT THAT PETITIONER WAS PREVIOUSLY CONVICTED OF
QUALIFYING CRIMES SO AS TO AUTHORIZE IMPOSITION OF
OF ENHANCED SENTANCE

(B) PETITIONER IS NOT ELIGABLE FOR AN ENHANCEMENT PUNISHMEN
T BECOUSE HE WAS NOT AFFORDED A RAIR CHANCE AT REHABIL-
ITATION

BY PRIOR CONVICTION WHICH IS INSURED BY LEGISLATION BEFORE
BE ANY SUCH SENTENCE CAN BE IMPOSED.

Petitioner will now present fact insupport of Allegations
of (A&B), supra:

#####

(4) Allegation (A);

On September, 29, 1994 petitioner was resentenced
via, Order by Judge Hollander. Petitioner requestd a presentance
investagation (via) alternitive sentanceing unit, in wich Judge
Ward, denied, relieving the state #of it's burden to prove that
petitioner #### was previously convicted of a first crime. also
the state didnt present certified copy of convition as requied
in order to imposed an enhancement ##### punishment agian. This
most important burden was not met at petitioner resentancing
hearing. In addition Petitioner tried to present evendence that
he may have not been eligable for such a sentance but Judge
Ward cut him off while he in the middle of explaining, and
denied him the right to ## present crucial evadence that may
have resulted in releiving him him of the enhancement punishment.

FORD v. STATE, 534 A.2d 992, 73 Md. App. 391.

" Prosecutor's mere statement that defendent had previously
been convicted of armed robbery and related hand gun violation,
in absence of ether presentancing investagation report or
certified copy of conviction, was insufficient to meet stat's
burden of proving beyound resonable doubt that defended was con-
victed of a previous qualifing crime so as to imposing or
authofizing an enhancement sentance.

(5) Allegation (B);

Petitioner is not eligable for an enhancement piunshmen
t because he was not afforded a fair chance ### at rehabilitatio
n by prior conviction.

"NOTE" the following supporting case the defendent was
sentance under sec.286(c). and was awarde relief
from cases sentance under sec. 286(d)

GARGLIANO V. STATE 95 Md. App. 593, 602, 622, A.2d ,767
744, (1993)

The Court sighted State# v Woodman;
" It is a salutary provison of law that criminals who the law's

discipline has hitherto failed to reform by prior conviction and punishments should form a class of defendant's to be more severely punished than the first offender's.

The Court also sighted Morgan v. Commonwealth.

" It was not intended that the heavier penalty prescribed for the commission of a second offence should descend upon any one except the incorrigible one, who after being reproved still hardeneth his neck, if the heavier penalty prescribed for the second violation is visited upon the one who has not had the benefit of the reproof of a first conviction, then the purpose of this statute is lost.

The Court further sighted Jones v. State.

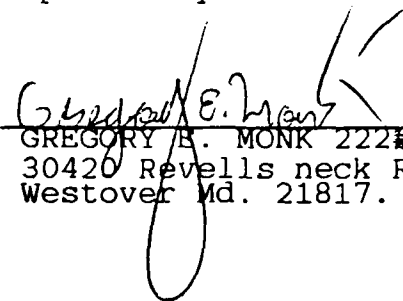
" That those who received the enhancement punishment had been accorded a fair chance at rehabilitation in the prison system and not respoded."

Applicant adds. That he only served sixty to seventy days plat time, and out of that sixty to seventy approxemently fourty of those days were served in a non profit organization wich hold's inmates due to the over crowding of the Baltimore, City jail. In wich all of the persanal that work there are civillions. Wich surely brings applicant's reformability into question. Because the ### personal are not properly trained as correctional officers are? in the area of rehabilitation.

WHEREFORE, Petitioner believes that the totallity of the circumstances surrounding this case evidence a major error in in his sentance, and pray that the couart grant the just and proper relief ,to be relived of an enhancement punishment that he is not eligable to have had recived.

FINALLY, Petitioner declares pursuant to penalty of purjury that everthing herein described is true and correct upon his belief, information and knowledge.

...
Respectfully Submitted,

s/ 
GREGORY B. MONK 222#870
30420 Revells neck RD.
Westover Md. 21817.

CERTIFICATE OF SERVICE

±±

Petitioner, Gregory E. Monk certifies that the fore
going ~~with the above~~ ~~copies~~ Application /petition and
affidavit of indigency were mailed this ~~5~~, day of ~~Dec.~~
~~2011~~. postage paid: 5

Dec.

s/ Gregory Monk
Gregory e. Monk 222-870

copy of the order

certified rehabilitation program, as the request was never even posed. Consequently, Monk has carried his burden with respect to the failure of his attorneys to raise this alternative disposition. Petitioner is entitled to be re-sentenced.

Conclusion

Accordingly, Monk's Petition is, this 25th day of August, 1994, by the Circuit Court for Baltimore City, hereby GRANTED as to sentencing only. It is further ORDERED that the remainder of Monk's Petition be, and the same hereby is, DENIED.

/s/ Hollander, J.
Judge Ellen L. Hollander

cc: ✓ Mr. Gregory E. Monk
Norman Yankellow, Esq., Assistant
Public Defender
Richard Boucher, Esq., Assistant
State's Attorney

IN THE CIRCUIT FOR BALTIMORE CITY

GREGORY MONK,
PETITIONER

v.

STATE OF MARYLAND
RESPONDENT

RECEIVED
CIRCUIT COURT case. no #591277019-20
BALTIMORE CITY

*
1995 MAR 14 P 12:40

*
CRIMINAL DIVISION

*

*

*

AMENDMENT TO PETITION
FOR POST CONVICTION RELIEF FILED ON
12/8/94

COMES NOW, YOUR PETITIONER GREGORY E. MONK PRO. SE,
AND PURSUANT TO THE MARYLAND ANNOTATED CODE, art. 27 sec. 645(a)
and maryland rule 4-401 thru 4-406 and pursuant to rule 4-245 (c)
to petition this Honorable court fore an amended application for
relief under the post conviction proceedure act and the petitioner
asserts the following :

1. The petitioner is presently confined at the Eastern Correc-
tion Instatution (E.C.I.) in Westover md. serving the sentence this
court imposed.
2. On March 17, and 18, petitioner was tried by jury and convicted
in this court before Honorable Judge T. Ward on charges of poss/
w/I/ to dist. cocain.and was therefore sentence to serve a sentence
of ten years without parole. .
 - A. PETITIONER ASSERTS THAT HE RECIVED AN SENTANCE TOTALLY BASED
ON ILLEGAL TERMS. AND NOT PURSANT TO RULE 4-245 (c) and 36B(b)
(ii).
 - B. PETITIONER THAT HE WAS PREJUDICED BY THE STATE BECOUSE THE
DID NOT MEET THERE BURDEN AND PROVIDE PETITIONER WITH THE
"REQUIRED NOTICE OF ENHANCED PENITEES. AND AS A RESULT HE
COULD NOT PREPAIR A PROPER DEFENCE AT TRILE.(did not meet
the 15 day notice prior to trile)

HISTORY OF CASE

On March 17, 1992 petitioner was scedule to go to trile
infront of Judge Brown. at this time the state didnt' inform
petitioner that a mandatory sentence would be applied if convicted.
and this was the same day trile was to start and later on that day
it did start,

(2)

As a result Judge Brown was on trile with another case that day so petitioner was sent to trile in front of Judge T. Ward and the jury was picked that same day. (AND THE STATE DID NOT PROVIDE PETITIONER WITH NOTICE EVEN AT THIS POINT.

On march 18, petitioner was convicted by jury, and there was still no notice.

On april 2 petitioner was sentance to ten years with out parole with out the requied notice. And to add to the states wrong doing and total failuer to produce the requied notice, it lied on recored at sentacing and said it did so in preliminary hearings. (see. Sentacing transcrip. T. 2. (Petitioner will like to point out that he was subjecte to this illegal action not once but twice and would like this Court to take cognazace of the facts because he had two senaanceing hearings on the same case.

RESPECTFULLY SUBMITTED,


GREGORY E. MONK.

PETITIONER VOULS THAT EVERTHING IN THIS FOREGOING PETITION IS TRUE AND ACURATE. AND MILED TO BOTH COURT OF BALTIMORE COTY CIRCUIT. AND TO THE THE STATES ATTORNEY OF SAME THIS DAY DEC. 15 1994.


GREGORY E. MONK 222-370

GREGORY E. MONK

2ND PETITION

Petitioner

IN THE

CIRCUIT COURT

V.

FOR

STATE OF MARYLAND

BALTIMORE CITY

Respondent

CASE NO: 591277019-20

PETITION NO: 7173

* * * * *

MOTION TO DISMISS POST CONVICTION PETITION
AND RESPONSE

NOW COMES Patricia C. Jessamy, State's Attorney for Baltimore City who moves this Court to dismiss the above-captioned post conviction petition stating for cause:

1. Maryland Rule 4-402 (a)(3) requires the petition to include the allegations of error upon which the petition is based. The petition filed by the petitioner does not include allegations of error; and,
2. Maryland Rule 4-402 (a)(4) requires the petition to include a concise statement of facts supporting the allegations of error. The petition filed by the petitioner does not include a concise statement of facts supporting the allegations of error; and,
3. Maryland Rule 4-402(a)(6) requires the petition to include all previous proceedings, including appeals, motions for new trial and previous post conviction petitions, and the determinations made thereon. The petition filed by the petitioner does not include a statement of all previous proceedings and determinations thereon; and,
4. Maryland Rule 4-402(a)(7) requires the petition to include a statement of the facts or special circumstances which show that the allegations of error have not been waived. The petition filed by the petitioner does not include such a statement of the facts or special circumstances as required.

WHEREFORE, the Respondent, the State of Maryland prays the following relief:

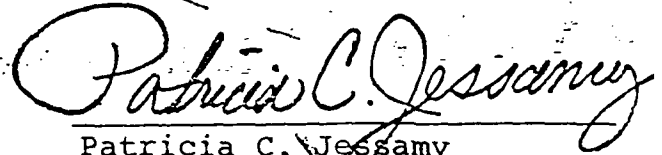
A. THAT this Court dismiss the Post Conviction Petition filed by the Petitioner in this action; or

B. THAT, in the alternative, if the Respondent's Motion To Dismiss is denied, that this Court accept the following as a Response to the Post Conviction Petition:

1. That the causes of detention of the Petitioner are warrants of commitment herewith produced, together with certified copies of the Docket Entries of the Circuit Court of Baltimore appertaining to the said Petitioner's trials and convictions of crimes and incarcerations therefore;
2. That the said Petitioner is not now illegally imprisoned, detained and restrained of his liberty;
3. That each and every allegation contained in the said Petition for Application for a Proceeding under the Post Conviction Act alleging illegal trials and imprisonment is hereby denied and traversed;
4. That said Petitioner was legally convicted of crimes, in a Court of competent jurisdiction; that the sentences of judgements were not imposed in violation of the Constitution of the United States or the Constitution or laws to impose the sentences; that the sentences do not exceed maximum authorized by law; that the convictions and sentences are not otherwise subject to collateral attack upon any ground of alleged error heretofore available under a Writ of Habeas Corpus, Writ of Coram Nobis, or other common law or statutory remedy; and further, that the alleged errors have been previously and finally litigated or waived in the proceedings resulting in the Petitioner's convictions and/or in other proceedings that the Petitioner has taken to secure relief from said conviction.

C. AND, for such other and further relief as Respondent's cause may require.

Respectfully submitted,



Patricia C. Jessamy
State's Attorney for
Baltimore City

Points and Authorities

Maryland Rule 4-402
Maryland Rule 4-404
Strickland vs. Washington, 104 S.Ct. 2052 (1984)
State vs. Tichnell, 306 Md. 422 (1986)
Harris vs. State, 303 Md. 685 (1985)

DATE: March 16, 1995

TRIAL DATE: To Be Set By Trial Judge

ORIGINAL IN THE CIRCUIT COURT FOR BALTIMORE CITY

GREGORY ERIC MONK

*

*

*

V.

* CASE NO.: 591277019

*

STATE OF MARYLAND

*

* * * * *

BALTIMORE, MARYLAND

MAY 3, 1995

BEFORE THE HONORABLE ALBERT J. MATRICCIANI, JUDGE

APPEARANCES:

RICHARD H. BOUCHER, ESQUIRE,
ON BEHALF OF THE STATE.

NORMAN N. YANKELLOW, ESQUIRE,
ON BEHALF OF THE DEFENSE.

REPORTED BY:

LESLIE ELISE GROSS,
OFFICIAL COURT REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

WITNESSES ON BEHALF OF THE PETITIONER:

	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>
GREGORY ERIC MONK	20	-	-	-

EXHIBITS

	PAGE
PETITIONER'S EXHIBIT NUMBERS 1(A), 1(B), 1(C) IN EVIDENCE	19

1 AMENDED PETITION IN WHICH HE ALLEGES THAT THE COURT
2 UNFAIRLY SENTENCED HIM. AND IF YOUR HONOR PLEASE, WE
3 WISH TO ENTER INTO THE RECORD, AS PART OF THE RECORD
4 OF THE POST-CONVICTION PROCEEDINGS, THE ENTIRE
5 TRANSCRIPT FROM THE ORIGINAL TRIAL, THE TRANSCRIPT OF
6 THE SENTENCING HEARING BEFORE JUDGE WARD ON SEPTEMBER
7 29TH AND THE DOCKET ENTRIES IN THIS PARTICULAR CASE.

8 THE COURT: AND THOSE -- ARE THEY CONTAINED
9 IN THE FILES AND DOCUMENTS WHICH YOU HAVE HANDED UP TO
10 ME?

11 MR. YANKELLOW: I JUST HANDED YOUR CLERK THE
12 TRANSCRIPT FOR THE SEPTEMBER THE 29TH PROCEEDINGS.
13 THE REST OF IT IS IN THE FILE.

14 THE COURT: OKAY. IS THERE ANY OBJECTION?

15 MR. BOUCHER: NO, JUDGE.

16 THE STATE DOES HAVE SOME PRELIMINARY MOTIONS
17 IF THE COURT WISHES TO ENTERTAIN THOSE.

18 THE COURT: OKAY. THOSE WILL BE MADE PART
19 OF THE RECORD, MR. YANKELLOW.

20 MR. YANKELLOW: THANK YOU.

21 MR. BOUCHER: AT THIS TIME, THE STATE IS
22 GOING TO MAKE A MOTION TO DISMISS, AND IN ADDITION,
23 THE STATE IS ALSO GOING TO ASK FOR SOME CLARIFICATION
24 BY COUNSEL AND THE COURT.

25 AS THE COURT IS AWARE, THE DEFENDANT HAS

1 FILED TWO SEPARATE PETITIONS. THERE WAS AN INITIAL
2 PETITION THAT WAS SUBMITTED TO THE COURT ON OR ABOUT
3 DECEMBER THE 5TH, 1994, I BELIEVE. SUBSEQUENTLY,
4 THERE IS A DOCUMENT CAPTIONED AMENDMENT TO PETITION
5 FOR POST-CONVICTION RELIEF FILED ON 12/8/94.

6 JUDGE, I HAVE HAD AN OPPORTUNITY TO REVIEW
7 THESE PETITIONS. THEY DO NOT NECESSARILY CONTAIN THE
8 EXACT SAME ALLEGATIONS OF ERROR AND REQUESTS FOR
9 RELIEF. THAT BEING THE CASE, I WOULD ASK THE COURT
10 TO ASK OF COUNSEL AND THE PETITIONER WHICH PETITION WE
11 ARE GOING TO BE PROCEEDING ON.

12 MR. YANKELLOW: THE SIMPLE ANSWER IS BOTH.

13 YOU HAVE TO UNDERSTAND THAT THIS WAS PRO SE
14 PETITION FILED BY MR. MONK DIRECTLY, AND HE FEELS THAT
15 THE GROUNDS IN THE ORIGINAL PETITION PLUS THE GROUNDS
16 IN WHAT HE CALLED AN AMENDED PETITION SHOULD BE HEARD
17 BY THE COURT.

18 THE COURT: AND TELL ME WHAT ISSUES ARE
19 CONTAINED IN THOSE TWO PETITIONS, IF YOU CAN.

20 MR. MONK: ISSUE ONE IS THAT THE STATE
21 FAILED TO PROVE ITS BURDEN BEYOND A REASONABLE DOUBT
22 THAT PETITIONER PREVIOUSLY WAS CONVICTED OF QUALIFIED
23 CRIMES TO AUTHORIZE IMPOSITION OF THE ENHANCEMENT
24 SENTENCE.

25 THE COURT: I UNDERSTOOD THAT TO BE ONE OF

1 THE ISSUES. AND WHAT OTHER ISSUE?

2 MR. MONK: AND THAT PETITIONER WAS
3 PREJUDICED BY THE STATE BECAUSE IT DID NOT MEET ITS
4 BURDEN OF PROVIDING PETITIONER WITH THE REQUIRED
5 NOTICE OF ENHANCEMENT PENALTIES AS TO IMPOSE AN
6 ENHANCEMENT PENALTY FIFTEEN DAYS PRIOR TO THE
7 SENTENCING. I WAS NOT MADE ACCURATE AS TO THAT, AND
8 THUS DEPRIVED OF A PROPER DEFENSE AT TRIAL.

9 THE COURT: ARE THERE ANY OTHER ISSUES?

10 MR. MONK: YES. THIS IS THE LAST ONE, YOUR
11 HONOR.

12 THE COURT: IS IT THE ALLEGATION ABOUT NOT
13 HAVING HAD AN APPROPRIATE OPPORTUNITY TO REHABILITATE
14 YOURSELF?

15 MR. MONK: YES, SIR.

16 THE COURT: THAT WAS THE LAST ISSUE.

17 MR. MONK: THAT'S THE LAST ISSUE.

18 THE COURT: SO WE HAVE THREE ISSUES BY YOUR
19 UNDERSTANDING?

20 MR. MONK: YES, SIR.

21 THE COURT: MR. BOUCHER, YOU ARE MOVING TO
22 DISMISS FOR WHAT REASON?

23 MR. BOUCHER: A MYRIAD OF REASONS.
24 INITIALLY I WILL ASK THE COURT TO DISMISS BOTH
25 PETITIONS FOR POST-CONVICTION RELIEF IN THAT THIS

1 DEFENDANT FILED, AFTER HIS INITIAL CONVICTION, AN
2 APPEAL TO THE COURT OF SPECIAL APPEALS.

3 THE COURT, IN FACT, THAT BEING THE COURT OF
4 SPECIAL APPEALS, ENTERTAINED THE APPEAL AND IN FACT
5 GRANTED RELIEF ON AT LEAST ONE OF THE ISSUES THAT WERE
6 PRESENTED TO IT.

7 IT IS THE STATE'S CONTENTION HERE TODAY THAT
8 THESE ISSUES ARE, IN FACT, APPELLATE ISSUES. THEY
9 SHOULDN'T HAVE BEEN INCLUDED IN THE INITIAL APPEAL TO
10 THE COURT OF SPECIAL APPEALS, AND BECAUSE THESE ISSUES
11 WERE NOT APPEALED TO THE COURT OF SPECIAL APPEALS,
12 THEY ARE, IN FACT, DEEMED WAIVED AT THIS TIME, AND
13 THESE PETITIONS SHOULD NOT BE HEARD AND A HEARING
14 SHOULD NOT BE GRANTED.

15 IN ADDITION, YOUR HONOR, I WOULD ALSO
16 INDICATE TO THE COURT THAT THIS, AT LEAST AS FAR AS
17 THE STATE IS CONCERNED, IS THE SECOND PETITION FOR
18 POST-CONVICTION RELIEF. THE COURT IS PROBABLY WELL
19 AWARE OF THE FACT THAT A HEARING WAS HELD ON THE
20 INITIAL POST-CONVICTION PETITION BY JUDGE HOLLANDER,
21 AND IN FACT RELIEF WAS GRANTED AS TO THE SENTENCE IN
22 THIS PARTICULAR CASE.

23 I WOULD INDICATE TO THE COURT THAT IT IS THE
24 STATE'S CONTENTION THAT THESE ISSUES SHOULD HAVE BEEN
25 CONTAINED IN THE INITIAL OR FIRST POST-CONVICTION

1 PETITION. BECAUSE IT WAS NOT CONTAINED IN THAT
2 PETITION, THESE ALLEGATIONS ARE DEEMED TO BE WAIVED
3 AND THIS COURT SHOULD NOT GRANT A HEARING.

4 FINALLY, JUDGE, I AM GOING TO ASK THAT THE
5 COURT GRANT THE STATE'S MOTION TO DISMISS BASED ON A
6 FAULTY PETITION FOR POST-CONVICTION RELIEF.

7 I WILL INDICATE THAT UNDER THE MARYLAND
8 RULES TITLE 4, SECTION 402, SUBSECTIONS (A)6 AND (A)7,
9 IT IS REQUIRED THAT A POST-CONVICTION PETITION CONTAIN
10 A STATEMENT INDICATING WHAT THE PREVIOUS PROCEEDINGS
11 WERE, AND UNDER (A)7, A SHORT STATEMENT OF FACTS
12 INDICATING WHY THE ALLEGATIONS OR ERRORS THAT ARE
13 CLAIMED HAVE NOT BEEN WAIVED.

14 I WILL INDICATE TO THE COURT THAT BASED ON
15 MY READING OF THESE PETITIONS, THAT REQUIREMENT HAS
16 NOT BEEN ADHERED TO. AS SUCH, THE PETITIONS ARE
17 FAULTY AND DEFECTIVE AND SHOULD BE DISMISSED.

18 THE COURT: LET ME ASK YOU A QUICK QUESTION,
19 MR. BOUCHER. WHAT IS IT THAT BARS HIM FROM RAISING
20 THE ISSUES THAT -- ASSUMING YOU ARE RIGHT, THAT THEY
21 COULD HAVE BEEN RAISED ON THE DIRECT APPEAL, WHAT BARS
22 HIM FROM RAISING THEM ON POST-CONVICTION PETITION?

23 MR. BOUCHER: AGAIN, BECAUSE THOSE WERE
24 APPELLATE ISSUES AND COULD HAVE BEEN ADDRESSED BY THE
25 COURT OF SPECIAL APPEALS. THE COURT, THROUGH THE

1 POST-CONVICTION ACT, WOULD DEEM THE ISSUES TO BE
2 WAIVED. ONE CANNOT SEEK POST-CONVICTION RELIEF WHEN
3 ONE HAD AN OPPORTUNITY TO OBTAIN RELIEF THROUGH THE
4 APPROPRIATE CHANNEL, THAT BEING THE APPEAL TO THE
5 COURT OF SPECIAL APPEALS, AND IF ONE DOES NOT TAKE
6 ADVANTAGE OF THAT RELIEF, THEN YOU WAIVE IT.

7 THE COURT: THE DISTINCTION THAT YOU ARE
8 DRAWING IS, FOR EXAMPLE, THE RECORD WAS COMPLETE UP TO
9 THE POINT THAT THE TRIAL AND SENTENCING WERE
10 COMPLETED, THEREFORE, IF SOMEONE WANTS TO POINT TO
11 ERROR, THEY COULD TAKE IT UP DIRECTLY. IT WASN'T
12 SOMETHING ESTRANGED OF THE RECORD.

13 WHAT CAN YOU RAISE BY POST-CONVICTION THAT
14 IS NOT A DIRECT APPEAL ISSUE?

15 MR. BOUCHER: I GUESS DENIALS OF FUNDAMENTAL
16 VERSUS NONFUNDAMENTAL RIGHTS.

17 MR. YANKELLOW: EFFECTIVE ASSISTANCE OF
18 COUNSEL.

19 MR. BOUCHER: I CAN GIVE YOU A MYRIAD OF
20 EXAMPLES.

21 THE COURT: THAT WAS THE ISSUE IN THE FIRST
22 POST-CONVICTION, CORRECT?

23 MR. BOUCHER: ONE OF THEM.

24 THE COURT: THAT WAS THE ONE THAT JUDGE
25 HOLLANDER AGREED TO, BECAUSE IT -- COUNSEL HAD BEEN

1 UNDER THE WRONG UNDERSTANDING OF THE SENTENCING, IS
2 THAT CORRECT?

3 MR. BOUCHER: OR AT LEAST THAT WAS NOT
4 PRESENTED TO JUDGE WARD AT THE TIME OF SENTENCING,
5 YES.

6 THE COURT: THIS ISSUE, FOR EXAMPLE, OF
7 WHETHER OR NOT THE SENTENCING STATUTE REQUIRES THE
8 STATE TO INTRODUCE EVIDENCE AT SENTENCING, I GUESS, OR
9 AT SOME POINT, AS TO WHETHER OR NOT HE'S BEEN AFFORDED
10 AN APPROPRIATE OPPORTUNITY FOR REHABILITATION, YOU
11 CLAIM THAT THAT'S A DIRECT APPEAL ISSUE?

12 MR. BOUCHER: I WOULD SUBMIT TO THE COURT
13 THAT THAT IS NOT AN APPELLATE OR A POST-CONVICTION --

14 THE COURT: I DON'T DISAGREE WITH THAT, BUT
15 IF IT WERE A VIABLE ISSUE, CAN HE RAISE IT IN A
16 POST-CONVICTION?

17 MR. BOUCHER: IF IT WERE A VIABLE ISSUE, I
18 WOULD SAY YES. HOWEVER, I DON'T THINK THAT THAT IS A
19 CAUSE OF ACTION FOR WHICH RELIEF CAN BE GRANTED.

20 THE COURT: BECAUSE YOU DON'T THINK THE
21 STATUTE REQUIRES IT?

22 MR. BOUCHER: EXACTLY. TO THE BEST OF MY
23 KNOWLEDGE, THERE IS NO INDICATION IN THE STATUTE THAT
24 THE DEPARTMENT OF CORRECTION REHABILITATES AN
25 INCARCERATED DEFENDANT TO SUCH A STANDARD THAT IT CAN

1 THEN BE MEASURED THAT HE HAS IN FACT BEEN
2 REHABILITATED OR NOT AND THEN APPLY THAT STANDARD TO A
3 MANDATORY OFFENDER ADDENDUM THAT'S BEEN FILED IN A
4 SUBSEQUENT CRIMINAL PROCEEDING.

5 THE COURT: WHY DIDN'T YOU RAISE THESE IN
6 YOUR APPEAL?

7 MR. MONK: IT'S OBVIOUS, YOUR HONOR, THAT
8 HE'S TRYING TO OBFUSCATE THE ISSUES HERE.

9 THE ISSUE THAT I AM RAISING HERE -- I AM
10 RAISING -- REENTERING THESE ISSUES BECAUSE -- BASED ON
11 THE FACT THAT JUDGE HOLLANDER GAVE ME A NEW SENTENCE,
12 AND Y'ALL -- -- I FILED THE POST-CONVICTION. THEY
13 FILED IT AS A SECOND PETITION.

14 THE COLLATERAL PROVISION -- MISS CHANCE, SHE
15 CHECKED THE RECORD, OBVIOUSLY, AND SENT YOU A LETTER
16 INFORMING YOU THAT UNDER THE LAWS THIS IS ACTUALLY A
17 FIRST POST-CONVICTION.

18 WHAT THE PROSECUTOR IS SAYING HERE IS THAT I
19 DON'T HAVE THE RIGHT TO FILE A POST-CONVICTION,
20 PERIOD.

21 THE COURT: NO, I DON'T THINK THAT'S WHAT
22 HE'S SAYING.

23 MR. MONK: YEAH, HE'S --

24 THE COURT: HE SAYS YOU CAN RAISE, FOR
25 EXAMPLE, A DENIAL OF FUNDAMENTAL RIGHTS ON

1 POST-CONVICTION.

2 MR. MONK: YEAH, BUT --

3 THE COURT: HE SAYS YOU'RE LIMITED.

4 MR. MONK: YEAH, BUT THIS IS -- IT'S NOT
5 ATTACKING ANYTHING THAT WAS BACK THEN. THIS IS
6 ATTACKING THE SENTENCE.

7 THE COURT: THE QUESTION IS, IS IT TIMELY.
8 WHY DIDN'T YOU RAISE THESE ON APPEAL?

9 MR. MONK: WHY DIDN'T I RAISE --

10 THE COURT: YOU WENT TO THE COURT OF SPECIAL
11 APPEALS.

12 MR. MONK: I'M A LAYMAN IN LAW.

13 THE COURT: WERE YOU REPRESENTED IN YOUR
14 APPEAL?

15 MR. MONK: YES, I WAS REPRESENTED. I
16 DIDN'T FILE THE APPEAL MYSELF. I'M TOTALLY LAYMAN.
17 I JUST CAME INTO THE KNOWLEDGE OF THE LAW VIA A
18 COMPUTER DOWN AT D.C.I. CORRECTIONAL INSTITUTION.

19 AS YOU CAN SEE, I FILED THE PETITION THE
20 BEST THAT I KNOW HOW, AND I'M SEEKING REPRESENTATION
21 FROM THE PUBLIC DEFENDER'S OFFICE. I DON'T HAVE
22 REPRESENTATION. I NEVER HAD A PAID LAWYER AT THE
23 FIRST TRIAL, SO YOU KNOW, IT SHOWS THAT I'M INDIGENT
24 AND I'M TOTALLY --

25 THE COURT: I UNDERSTAND YOUR POSITION.

1 MR. YANKELLOW, WHAT'S YOUR POSITION ON THIS?

2 MR. YANKELLOW: IF YOUR HONOR PLEASE, MR.

3 BOUCHER, WITHOUT CITING IT, IS REFERRING TO

4 MCELROY V. STATE.

5 MCELROY SAYS THAT IF IT IS AN APPEALABLE
6 ISSUE AND IT IS NOT RAISED ON APPEAL, THEN IT IS
7 DEEMED WAIVED. HOWEVER, IT'S ONE OF MANY OPINIONS OF
8 THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS THAT
9 I DISAGREE WITH, BECAUSE IT DOES NOT TAKE INTO
10 CONSIDERATION PRACTICALITIES.

11 AS MR. MONK STATED, HE IS UNLEARNED IN THE
12 LAW. HE DOES NOT KNOW OR DID NOT KNOW AT THE TIME OF
13 HIS APPEAL THE TECHNICAL POSITION THAT THE LAW
14 REQUIRES AN ENHANCED PENALTY TO -- THAT NOTIFIES OF AN
15 ENHANCED PENALTY TO BE SOUGHT BY THE STATE'S ATTORNEY
16 OF THE DEFENDANT MORE THAN FIFTEEN DAYS FROM THE DATE
17 OF SENTENCING.

18 IF HIS APPELLATE COUNSEL DID NOT RAISE THAT,
19 MR. MONK IN REVIEWING HIS OWN TRANSCRIPT -- AND THIS
20 IS WHERE WE GET DOWN TO THE SECOND SENTENCE. MR.
21 MONK'S POSITION IS THAT THE FIRST SENTENCING WAS VOID
22 BECAUSE IT WAS NOT WITHIN THE PRECEPTS OF
23 COLLINS V. STATE. THEREAFTER, HE HAD A SECOND
24 SENTENCING WHICH WAS THE ORIGINAL FIRST SENTENCE, AND
25 HE IS SAYING THAT HE DID NOT HAVE THE REQUISITE NOTICE

1 BY THE STATE OF THE MANDATORY SENTENCING PROVISION,
2 ENHANCED PENALTY.

3 AS I SAY, IF YOUR HONOR PLEASE, I FEEL THAT
4 IN POST CONVICTIONS -- THAT MCELROY SHOULD NOT BE
5 INTERPRETED STRICTLY BY POST-CONVICTION JUDGES,
6 BECAUSE IT DOES NOT TRULY MAKE SENSE.

7 THE COURT: WELL, AT WHAT POINT DOES IT?
8 CAN HE JUST GO BACK TO HIS CELL AND KEEP COMING UP
9 WITH NEW IDEAS?

10 MR. YANKELLOW: NO, YOUR HONOR. THE
11 QUESTION OF THE LEGALITIES -- AND I AGREE THAT ONCE
12 POST-CONVICTION IS FILED, THAT SHOULD ATTEMPT TO
13 CONCLUDE ALL OF THE THINGS THAT ARE REQUIRED. THIS
14 IS WHY MR. MONK IS SAYING THAT THIS SENTENCE AS OF --
15 JUDGE WARD'S LATEST SENTENCE IS HIS ORIGINAL SENTENCE,
16 BECAUSE THE FIRST SENTENCE WAS NOT CARRIED OUT
17 ACCORDING TO THE LAW.

18 THE COURT: WAS THERE A -- WASN'T THERE AN
19 APPEAL FROM THE SECOND SENTENCE?

20 MR. YANKELLOW: NO, THERE WAS NOT AN APPEAL
21 FROM THE SECOND SENTENCE.

22 NOW, AS FAR AS THE CONTINUITY OF THE CASES,
23 I THINK THAT WE ARE HERE -- THAT ALL OF THE FACTUAL
24 CIRCUMSTANCES OF THE CASE CAN BE BROUGHT OUT VERY
25 QUICKLY. THE COURT HAS THE TRANSCRIPT OF THE ENTIRE

1 RECORD, AND I THINK THAT THIS COURT CAN DETERMINE
2 WHETHER OR NOT MY CLIENT RECEIVED A FAIR SENTENCE AND
3 IF HE DID NOT, THEN IT SHOULD BE SENT BACK A THIRD
4 TIME FOR A SENTENCE. THIS IS WHAT WE ARE ASKING.

5 IS THAT CORRECT, MR. MONK?

6 MR. MONK: YES, SIR.

7 THE COURT: DO YOU HAVE ANYTHING ELSE, MR.
8 BOUCHER?

9 MR. BOUCHER: I WILL JUST POINT THE COURT'S
10 ATTENTION TO THE ACTUAL POST-CONVICTION PROCEDURE ACT,
11 ARTICLE 27 SECTION 645(A) SUBSECTION (F), THAT BEING
12 RIGHT TO COUNSEL AND HEARING. IT'S VERY BRIEF.

13 A PETITIONER IS ENTITLED TO THE ASSISTANCE
14 OF COUNSEL AT A HEARING ON THE FIRST PETITION FILED BY
15 THE PETITIONER UNDER THIS SECTION. THE COURT SHALL
16 DETERMINE IF ASSISTANCE OF COUNSEL OR A HEARING SHOULD
17 BE GRANTED ON A SUBSEQUENT PETITION FILED BY A
18 PETITIONER.

19 THAT SAYS, ESSENTIALLY, THAT IT IS IN THE
20 DISCRETION OF THIS COURT AS TO WHETHER THIS PETITIONER
21 IS ENTITLED TO ANOTHER HEARING. HE HAS ALREADY BEEN
22 GRANTED RELIEF AS TO THE EXACT SAME CASE, THE EXACT
23 SAME SENTENCE, ON A PRIOR POST-CONVICTION PETITION,
24 AND IT IS THE STATE'S POSITION THAT HE SHOULD NOT BE
25 GRANTED A HEARING AS TO THESE ISSUES. IN FACT, THEY

1 HAVE BEEN WAIVED --

2 THE COURT: DOESN'T ONE OF HIS ISSUES GO TO
3 THE SECOND SENTENCING PROCEEDING?

4 MR. BOUCHER: QUITE FRANKLY, I THINK THAT'S
5 A SUBTERFUGE FOR THE PETITIONER TO GET AN OPPORTUNITY
6 TO ARGUE THE CASE BEFORE THE COURT, AND THE REASON WHY
7 IS THIS: IF IN FACT NOTICE WAS AN ISSUE, THEN
8 CERTAINLY IT WAS AN ISSUE AT THE INITIAL SENTENCING
9 BACK IN 1992.

10 IF THAT IS IN FACT SO, WHY WASN'T THAT
11 RAISED EITHER ON APPEAL, OR NUMBER TWO AND MOST
12 IMPORTANTLY, AT THE FIRST POST-CONVICTION HEARING?
13 THAT WAS THE APPROPRIATE FORUM TO HAVE THAT CLAIM
14 LITIGATED, NOT HERE AND NOW, AFTER HE'S ALREADY BEEN
15 SENTENCED. HE HAD HIS DAY IN COURT.

16 THE COURT: WAS HE REPRESENTED AT THE SECOND
17 SENTENCING?

18 MR. BOUCHER: YES, BY MR. ANGELOS, THE
19 ORIGINAL ATTORNEY AT THE TRIAL.

20 THE COURT: WAS HE PRIVATELY RETAINED?

21 MR. YANKELLOW: PUBLIC DEFENDER.

22 MR. MONK: PUBLIC DEFENDER.

23 THE COURT: DOES THE PUBLIC DEFENDER'S
24 OFFICE THEN REVIEW THOSE TRANSCRIPTS WITH THE CLIENTS
25 FOR PURPOSES OF DETERMINING WHETHER THERE ARE

1 APPEALABLE ISSUES?

2 MR. MONK: NO, SIR.

3 MR. YANKELLOW: IF YOUR HONOR PLEASE, IT'S
4 UP TO THE CLIENT TO DETERMINE WHETHER OR NOT HE IS
5 GOING TO FILE AN APPEAL. HE WAS ADVISED OF HIS
6 RIGHTS, THAT HE HAD THIRTY DAYS IN WHICH TO FILE AN
7 APPEAL. WHY MR. MONK DID NOT FILE AN APPEAL, I HAVE
8 NO IDEA. WE DON'T EVER TELL A CLIENT THAT YOU HAVE
9 GROUNDS FOR -- A REAL GROUNDS FOR AN APPEAL OR YOU
10 DON'T HAVE ANY GROUNDS FOR AN APPEAL. THAT'S A
11 DECISION THAT THE CLIENT HAS TO MAKE INDIVIDUALLY.

12 MR. MONK: ARE YOU TALKING ABOUT THE SECOND
13 SENTENCE?

14 MR. YANKELLOW: YES.

15 MR. MONK: I TRIED TO EXPLAIN TO JUDGE WARD,
16 AND IF YOU ASCERTAIN THE TRANSCRIPT --

17 MR. YANKELLOW: WE HAVE IT.

18 MR. MONK: -- YOU CAN SEE THAT I TRIED TO
19 EXPLAIN TO JUDGE WARD THE SAME THING THAT I AM TRYING
20 TO RAISE HERE.

21 THE COURT: WELL, HE DISAGREED WITH YOU.

22 MR. MONK: NO, HE DIDN'T DISAGREE. HE
23 DENIED ME MY RIGHT TO CHALLENGE THE SENTENCE UNDER DUE
24 PROCESS -- UNDER DUE PROCESS, SPECHT V. PETERSON --
25 AND HE DENIED ME THAT RIGHT AT THAT SENTENCING. SO

1 NOW I AM HERE ON POST-CONVICTION SEEKING RELIEF OR
2 PROPER RELIEF IN FRONT OF THIS COURT, BECAUSE I WAS
3 DENIED IN FRONT OF THE SENTENCING JUDGE WHEN I TRIED
4 TO EXPLAIN TO HIM THE --

5 THE COURT: RATHER THAN BELABOR THIS, I
6 THINK THERE ARE SOME VERY SERIOUS ISSUES ABOUT THE
7 FINALITY OF ALL OF THIS. I AM GOING TO DENY THE
8 MOTION AND LET YOU PROCEED, BUT I HAVE REAL QUESTIONS
9 ABOUT DOING IT, GIVEN THAT YOU WERE REPRESENTED ALL
10 ALONG THE WAY. I AM STILL GOING TO DENY IT. LET'S
11 GO FORWARD.

12 MR. BOUCHER: VERY WELL, JUDGE.

13 MR. YANKELLOW: FOR WHAT IT IS WORTH, MR.
14 MONK MENTIONED THE CASE SPECHT V. PATTERSON 386 U.S.
15 605.

16 THE COURT: THANK YOU.

17 MR. YANKELLOW: MR. MONK, PLEASE TAKE THE
18 STAND.

19 MR. MONK: ARE YOU GOING TO DENY IT?

20 MR. YANKELLOW: NO, HE DENIED THE STATE'S
21 OBJECTION.

22 MR. MONK: THANK YOU, YOUR HONOR.

23 THE CLERK: WOULD YOU RAISE YOUR RIGHT HAND,
24 PLEASE?

25 WHEREUPON,



!

—

[Faint, illegible horizontal band of text]

[Faint, illegible horizontal band of text]

Bra Crowe

GREGORY E. MONK	*	IN THE
Petitioner	*	CIRCUIT COURT
v.	*	FOR
STATE OF MARYLAND	*	BALTIMORE CITY
Respondent	*	CASE NO. 591277019, 020
	*	PETITION NO. 7173
* * * * *	*	* * * * *

MEMORANDUM OPINION AND ORDER

Introduction

On March 17 and 18, 1992, Petitioner Gregory Monk ("Monk" or "Petitioner") was tried before a jury and convicted of the offenses of possession of a controlled dangerous substance (the "Possession" charge), possession of a controlled dangerous substance with the intent to distribute (the "PWID" charge), and resisting arrest. On April 2, 1992, Judge Thomas Ward sentenced Monk to ten years without possibility of parole for the PWID charge, merged the Possession charge, and imposed a concurrent sentence of one year for the offense of resisting arrest. On appeal, the Court of Special Appeals affirmed the PWID conviction but reversed the conviction for resisting arrest. Monk v. State, 94 Md. App. 738 (1993).

Monk has now filed his first Petition for Post Conviction Relief (the "Petition") pursuant to the Post Conviction Procedure Act, Md. Ann. Code of 1957, Article 27, §§ 645A - 645J (1991 & Supp. 1993).¹ This court held a hearing on the Petition on July 28,

¹Hereinafter, all statutory references are to Md. Ann. Code of 1957, Article 27 (1991 & Supp. 1993), unless otherwise specified.

1994 (the "Hearing"). The following is a brief summary of relevant facts.²

Factual Background

On July 24, 1991, at approximately 12:30 a.m., Officer Warren Smith ("Smith") was driving in the 1800 block of Loretta Avenue when he saw Monk standing under a streetlamp. T1.53-54, 56-57. Smith observed Monk with "his right hand opened, and . . . neon objects were piled up in the palm of his hand." T1.55. As Smith exited his patrol car, Monk dropped the objects he was holding and ran. T1.57. Smith pursued Monk, called for backup, and apprehended Monk. After Officer Milton Coleman ("Coleman") arrived, Smith retrieved the dropped items, and then arrested Monk. T1.59-62. Thirty ziploc bags were recovered and analyzed; the baggies contained crack cocaine. T1.63-64. The chemical analysis report, however, indicated that name of the individual from whom the items were recovered was Joseph Payne. T2.61-65.

John Angelos, Esq., Assistant Public Defender ("Angelos"), was appointed as counsel for Monk. At trial, Angelos moved to suppress the cocaine, but the motion was denied. T1.3-6. During voir dire, Judge Ward refused to ask the panel a question proposed by the prosecutor, Richard Boucher, Esq. ("Boucher"), as to whether "anyone has ever been charged or convicted of a crime." T1.32.

²References to the official Transcript of the trial proceedings on March 17, 1992, are abbreviated "T1" followed by the page number of the transcript. References to the official Transcript of the trial proceedings on March 18, 1992, are abbreviated "T2" followed by the page number of the transcript. References to the official Transcript of the sentencing proceedings on April 2, 1992, are abbreviated "T3" followed by the page number of the transcript.

At trial, Coleman was called as a witness. Angelos objected to a question concerning Payne's name on the chemical analysis report, to the extent that it erroneously implied that Monk lied as to his name when he was arrested. T2.60-62. Boucher proffered that Coleman would testify that he wrote the name "Joseph Payne" on the report because Smith told him that this was Monk's name. He also proffered that Smith would testify, on recall, that Monk said his name was Joseph Payne when Smith originally booked him. Judge Ward overruled the defense objection. T2.62-65. However, when Boucher recalled Smith, Angelos expressly withdrew his objection to the admission of the chemical analysis report. T2.76.

During jury deliberations, Payne's name on the chemical analysis report apparently led the jury to send a note to the court. The jury asked: "Why does State's Exhibit No. 2 show defendant as Joseph Payne?" T.111. Judge Ward proposed as a reinstruction the following: "There is evidence that the jury may consider that the defendant gave this name-- I guess I should say, Joseph Payne--at the booking when he was arrested." T2.111. Angelos objected to Judge Ward's proposed reinstruction on the grounds that it unnecessarily restated the evidence. T2.113. The objection was overruled, and the Judge proceeded to reinstruct the jury as proposed. T2.113. Thereafter, the jury returned a verdict of guilty on all three charges. T2.119.

At the sentencing hearing on April 2, 1992, Angelos filed a motion for a new trial on the grounds that, inter alia, the jury was prejudiced by Judge Ward's reinstructions. Specifically, Angelos indicated he did not want the court to highlight the link between Monk and the name Joseph Payne; he hoped the jury would be confused. T3.7-8. Judge Ward denied the motion for new trial, and pursuant to Code § 286(c), imposed a sentence of 10

years without possibility of parole for the offense of PWID, with a concurrent sentence of 1 year for the offense of resisting arrest. T3.9, 11.

Monk appealed the conviction to the Court of Special Appeals. On appeal, Melissa Moore, Esq., Assistant Public Defender ("Moore"), represented Monk. The Court reversed the conviction for resisting arrest on grounds not relevant to the present proceedings. Monk v. State, 94 Md. App. at 740-45. Moore also argued that Judge Ward's reinstruction as to the name on the chemical analysis was erroneous, because the State *never* produced evidence that Monk had ever given the name of Joseph Payne to anyone. Id. at 745-46. The claim on appeal (failure of proof) was in marked contrast to Angelos' reason for his objection (highlighting evidence already on the record). The Court held that Monk had waived that issue by failing to preserve it below. Nevertheless, the Court went on to observe that the issue was meritless because "a reasonable inference could be drawn from the evidence presented that appellant gave his name as Joseph Payne during the booking." Id. at 746.

Issues Presented

In his Petition, Monk raises four grounds which he claims entitle him to post-conviction relief. He states:

(A) PETITIONER WAS DENIED A FAIR AND IMPARTIAL TRIAL IN CIRCUMVENTION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

(B) PETITIONER WAS DENIED HIS CONSTITUTIONAL RIGHT TO A FAIR AND IMPARTIAL JURY OF HIS PEERS.

(C) PETITIONER WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL ON DIRECT/TIMELY

APPEAL.

(D) PETITIONER WAS CONVICTED ON THE PERJURED TESTIMONY OF POLICE OFFICERS AND THE PROSECUTOR PARTICIPATED KNOWINGLY IN THE PERJURED TESTIMONY OF SAID OFFICERS.

Monk orally amended his Petition at the Hearing to include a claim that Judge Ward erred in stating that Code § 286(c) required him to impose 10 years without possibility of parole as a minimum sentence. Petitioner claims that Md. Health Gen. Code Ann., § 8-507(a) (1988 & Supp. 1992), gave Judge Ward the discretion to commit Monk for drug treatment. Monk also orally amended his Petition to include a claim that Angelos was ineffective by not advising Judge Ward of this error and by failing to propose the alternative disposition of commitment for drug treatment (together, the "Amended Claims").

As discussed below, Monk has not met his burden of demonstrating that he is entitled to relief on any of the grounds raised in his Petition. In contrast, Monk's Amended Claims have merit.

Discussion

Claim A

Claim A is a vague and bald allegation of a denial of Monk's constitutional rights under the Sixth and Fourteenth Amendments to the U.S. Constitution. The claim is patently unsupported by facts or specific citations to law. Petitioner has not presented a shred of evidence that he was denied a fair trial by an impartial jury, and has made no attempt to specify how the trial was procedurally inadequate. Maryland law is clear that bald allegations afford no grounds for post-conviction relief. Austin v. Warden, 237 Md. 314

(1965); Reeves v. Warden, 231 Md. 613 (1963); Matthews v. Warden, 223 Md. 649 (1960); State v. Merchant, 10 Md. App. 545 (1970).

Claim B

A contention that the trial court improperly questioned a jury panel on voir dire goes to the regularity of the proceedings at trial. While it may be reviewed on direct appeal if properly reserved, it is not available in post-conviction procedure. Stewart v. Warden, 243 Md. 697 (1966); Matthews, *supra*; Ross v. Warden, 1 Md. App. 46 (1967).

Petitioner has waived the issue of improper voir dire. The issue of waiver in post-conviction petitions was thoroughly discussed in Wyche v. State, 53 Md. App. 403 (1983). See also, McElroy v. State, 90 Md. App. 48 (1992) (waiver when petitioner does not file an appeal). In general, if the underlying issue concerns a fundamental right, the right can only be waived if the judge finds that the defendant has made an "intelligent and knowing" waiver. *Id.* at 406, citing State v. Magwood, 290 Md. 615, 624 (1981). If a right alleged to have been waived is fundamental, the finding of "intelligent and knowing" waiver may be satisfied when:

1. The record expressly reflects that the defendant had a basic understanding of the nature of the right which was relinquished or abandoned; and
2. The record expressly reflects acknowledgement that the relinquishment or abandonment of that right was made or agreed to by the defendant.

Wyche, 53 Md. App. at 406.

Where the issue does not concern a fundamental right, "waiver will be found if it is

determined that the possibility existed for the petitioner to have raised the allegation in a prior proceeding, but he did not do so." Id. at 407, citing Davis v. State, 285 Md. 19 (1979). When a post-conviction petitioner has failed to raise an issue concerning a nonfundamental right in all prior proceedings, waiver will be rebuttably presumed. Williams v. Warden, 240 Md. 205 (1965); see also State v. Torres, 86 Md. App. 560 (1991). Failure to raise an issue at the original trial can constitute waiver of that issue. Ellis v. Warden, 241 Md. 176 (1966); Washington v. Warden, 1 Md. App. 56 (1967).

The right to have a specific question asked of a jury pool is not fundamental.³ Nevertheless, where circumstances support a finding of a waiver of a right, waiver will be excused in cases having "special circumstances." Wyche, 53 Md. App. at 407; Md. Code § 645A(c). Actual ineffective assistance of counsel would qualify as a "special circumstance." Austin v. Director, Patuxent Institution, 237 Md. 314 (1965); see also Harris v. State, 303 Md. 685 (1985). Monk has presented nothing but bald, conclusory allegations that Moore was ineffective in failing to raise the issue on appeal.⁴ Accordingly, this court finds there are no special circumstances applicable here to excuse Monk's waiver of his right to raise this issue. Moreover, even if Petitioner has not waived this right, the claim is groundless

³Some rights found to be fundamental include the right to counsel, to a trial by jury, to be properly advised before the acceptance of a guilty plea, to be free from double jeopardy, to confrontation, to a speedy trial, to have counsel present at a post-indictment, pre-trial lineup, and to be free not to give self-incriminating evidence. Id. at 406, citing Curtis v. State, 284 Md. 132, 142-44 (1978) and Schneckloth v. Bustamonte, 412 U.S. 218, 236-39 (1973). See also, State v. McKay, 280 Md. 558, 572 (1977) (fundamental right to a unanimous jury verdict).

⁴For a discussion of the standards for establishing ineffective assistance of counsel, see infra, at 13-14.

because the question Judge Ward refused to ask was a question propounded by the prosecution, not the defense. TT.32.

With respect to the alleged improper jury instructions, improper instructions are not reviewable in post-conviction petitions. Steward v. Warden, 243 Md. 697 (1966). Even if it were available, Petitioner has already litigated the issue thoroughly on his direct appeal. Monk v. State, 94 Md. App. at 745-46. Code § 645A(b) dictates that the allegation of error shall be deemed "finally litigated" whenever "an Appellate Court of the State has rendered a decision on the merits thereof . . . upon direct appeal" In other words, the issue must have been specifically raised by Monk and specifically decided by the Court of Special Appeals. See Wells v. Warden, 244 Md. 723, 724 (1966); Bryant v. Warden, 235 Md. 658, 660 (1963); Boucher v. Warden, 5 Md. App. 51, 56-57 (1967). Consequently, this allegation cannot provide a basis for post-conviction relief.⁵

Claim C

Monk's claim that he was denied his constitutional right to effective assistance of appellate counsel is entirely specious. As previously observed, Petitioner has presented nothing to substantiate his allegation that Moore's representation was in any way "ineffective." Indeed, to overcome the preliminary requirements of Harris v. State, 303 Md. 685, 696-97 (1985), Petitioner has failed to provide anything but bald, conclusory assertions in stating that Moore was ineffective by "failing to take cognizance of the issues/Allegations

⁵If not previously litigated, this right is waived. See Davis v. State, 285 Md. 19 (1979).

set forth, supra, and presenting same to the Court of Special Appeals along with the QUESTIONS she did present to that Court." Petition, at 8. Such assertions cannot provide a basis for post-conviction relief. Green v. Warden, Md. House of Corrections, 3 Md. App. 266 (1968). Moreover, his allegation of ineffectiveness is undermined by the fact that Moore successfully won a reversal on the charge of resisting arrest. Monk v. State, 94 Md. App. at 740-45.

Claim D

Petitioner's fourth claim is barred by waiver. Claims of perjury by a witness for the State are presumed waived when not raised on direct appeal. Baldwin v. Warden, 243 Md. 346 (1966). Even if Monk has not waived the issue, his claim of perjury in essence addresses the weight of the evidence presented at trial. Questions of guilt or innocence, as well as the sufficiency of the evidence presented, are issues that must be raised on appeal and cannot be raised by a post-conviction petition. Meadows v. Warden, 243 Md. 710 (1966); McClosky v. Director, Patuxent Inst., 242 Md. 717, cert. denied, 385 U.S. 951 (1966); Greene v. Warden, 238 Md. 651 (1965); Simon v. Warden, 238 Md. 27 (1965); Turner v. Warden, 220 Md. 669 (1959); cert. denied, 364 U.S. 885 (1960).

Only where the State knowingly participated in the perjury can the perjury provide grounds for post-conviction relief. DeVaughn v. Warden, 241 Md. 411 (1966). Perjured *police* testimony is tantamount to knowing participation by the State. Baldwin v. Warden, 243 Md. 326 (1966). Nevertheless, mere inconsistencies and discrepancies in testimony, and even some statements that are in fact false, are inherent risks of every trial arising from the

limits of human memory, and do not necessarily amount to perjury. Slater v. Warden, 233 Md. 609 (1963). While Monk has provided examples of inconsistencies and discrepancies in the testimony of Smith and Coleman, he has not provided any evidence whatsoever to prove actual perjury. The evaluation of the believability of witnesses and the weight to be accorded their testimony is entirely the province of the jury, and their determination is not reviewable on a petition for post-conviction relief.

Amended Claims

Code § 286(a) prohibits, inter alia, possession with intent to distribute, distribution, and manufacture of controlled dangerous substances. Section 286(b) references, inter alia, the various schedules of controlled dangerous substances encompassed by § 286(a), and contains penalty provisions. Section 286(c) provides:

- (1) A person who is convicted under subsection (b)(1) or subsection (b)(2) of this section . . . shall be sentenced to imprisonment for not less than 10 years if the person previously has been convicted:
 - (i) Under subsection (b)(1) or subsection (b)(2) of this section;
 - (ii) Of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this section;
or
 - (iii) Of an offense under the laws of another state, the District of Columbia, or the United States that would be a violation of subsection (b)(1) or subsection (b)(2) of this section if committed in this State.
- (2) The prison sentence of a person sentenced under subsection (b)(1) or subsection (b)(2) of this section . . . as a second offender may not be suspended to less than 10 years, and the person may be paroled during that period only in accordance with Article 31B, Section 11 of the Code.
- (3) This subsection does not prevent, prohibit, or make ineligible a convicted defendant from participating in the rehabilitation program under Title 8, Subtitle 5 of the Health General Article, because of the length of sentence, if imposed under subsection (b)(1) of this section.

Md. Health Gen. Code Ann., § 8-507(a), provides:

If a court finds in a criminal case that a defendant has an alcohol or drug dependency, the court may commit the defendant as a condition of release, after conviction, or at any other time the defendant voluntarily agrees to treatment to the Department for inpatient, residential, or outpatient treatment.

At sentencing, the evidence showed that Monk had a prior felony drug conviction for the offense of possession of cocaine with intent to distribute. T3.3-4. As a subsequent offender, he qualified for mandatory sentencing under § 286(c)(1). Nevertheless, under Code § 286(c)(3) and Md. Health Gen. Code Ann., § 8-507(a), the trial court retained the discretion to order treatment for Monk at an appropriate drug rehabilitation facility. Collins v. State, 89 Md. App. 273 (1991).

In Collins, a case virtually on all fours with the matter sub judice, the trial judge thought that he was statutorily compelled to impose a 10-year sentence upon the defendant, who was a second offender with a long-standing drug problem. He therefore rejected a defense request for drug treatment in lieu of prison. After careful review of the applicable statutes, the legislative history, and the principles of statutory construction, the Court concluded: "A simple reading of the statute [§ 286(c)] suggests that a second drug offender sentenced under subsection (b)(1) . . . remains eligible for drug treatment under § 8-507(a) of the Health-General Article." Id., at 291. The Court therefore held "that the trial court erred in holding that it had no discretion to sentence appellant to drug treatment in lieu of the mandatory sentence." Id., at 293.

Based on Collins and the statutes it considered, Judge Ward was not automatically required to sentence Monk to a minimum 10-year term. Rather, Petitioner was eligible for

drug treatment in lieu of the prison sentence. But the following colloquies at the sentencing hearing before Judge Ward demonstrate that both Angelos and Judge Ward believed that the court had no alternative to the mandatory 10-year sentence.

Court: All right. I am going to, in order to permit both sides to gather themselves together in this case, you are asking for--
Boucher: Mandatory.
Court: Mandatory penalties in this case. How much time do you need?
Boucher: I'm ready to go now, Judge.
Court: Are you ready to go now?
Angelos: Judge, the defense would be requesting a presentence investigation.
Court: Well, I am going to turn that down. I don't think I need one in this case.

T2.122-123.

Court: Now, what is--what, if any, preliminary statements do you have to make or any evidence to show me?
Boucher: Your Honor, I believe that the State included in its preliminary motions that were filed in this matter a mandatory offender addendum indicating that the State intended to seek a mandatory 10 years without parole should the defendant be convicted of a felony drug charge in this particular matter. The reason being because he was on probation at the time of this offense for another felony drug charge.

* * *

Court: What is your recommendation on Count One as to ending, charge ending in 19?
Boucher: 10 years to the Department of Correction, Your Honor.
Court: With or without parole?
Boucher: Without parole.
Court: Under what section of the Code?
Boucher: That would be Article 27, § 286.

* * *

Court: All right. I'll be glad to hear from you, Mr. Angelos.
Angelos: Good morning, Your Honor. My client is 22 years old. He has--
Court: Let me say to you right away, I'm not going to exceed this. I've told you this right along, Mr. Angelos. *That I'm not going to exceed 10 years without parole, and I haven't the authority to go below it.* You understand that, young man?
Angelos: *Your Honor, I'm going to submit.* Mr.--

Court: I told you that, and to your client, even before this case started.
Angelos: Okay. Mr. Monk, do you have anything to say to the [J]udge before sentencing? This is your right of allocution. Is there anything you would like to say, sir?
Defendant: No, sir.

* * *

Angelos: You also have a right to file a motion for reduction of sentence, in which the judge, within the next 90 days, which the judge can consider your sentence the same or lower it, *but under the circumstances here, there is no way he can lower the sentence.*

T3.2-13 (emphasis added).

Analysis does not end with a finding of error by the defense attorney or the court. The question of whether Monk has waived his right to raise this issue remains.⁶ Monk claims his attorney's performance was defective because he erroneously believed the trial court had no choice but to impose a ten-year sentence, and thus never pursued the alternative disposition. The right to effective assistance of counsel does involve a fundamental right, Strickland v. Washington, 466 U.S. 668 (1984), and the post-conviction statute is the proper vehicle to challenge the adequacy of counsel.

Applying the requirements of Wyche here, no waiver can be found. At sentencing, Monk was advised of his right to appeal. However, the clear import of the comments from his counsel and the court was that the law required the court to impose the 10-year sentence. As a lay person, Monk reasonably would have believed any appeal on the sentencing issue (assuming it was preserved) would have been fruitless.

To establish ineffective assistance of counsel, Petitioner must show that "(1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defense." Harris

⁶For a full discussion of the standards for establishing waiver, see supra, at 6-7.

v. State, 303 Md. 685, 696 (1985) (emphasis in original), explaining Strickland v. Washington, 466 U.S. 668 (1984). To satisfy the requirement that the performance was deficient, Petitioner must:

- (1) identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment;
- (2) show that his counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment--that, considering all of the circumstances, the representation fell below an objective standard of reasonableness; [and]
- (3) overcome the presumption that, under the circumstances the challenged action might be considered sound trial strategy.

Harris, 303 Md. at 697 (footnotes omitted; emphasis in original). To satisfy the requirement that the deficient performance prejudiced the defense, Petitioner must show that "'counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.'" Harris, 303 Md. at 699 (quoting Strickland, 466 U.S. at 688). It is not enough for Petitioner "to show that the errors had some conceivable effect on the outcome of the proceeding, or that the errors impaired the presentation of the defense." Id. at 700.

Deficient performance requires Petitioner to demonstrate

that there is a reasonable probability that, but for counsel's unprofessional errors, the result [of the proceeding] would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

Strickland, 466 U.S. at 694.

When a post-conviction court must review an attorney's performance, the reviewing court must be "highly deferential" to counsel, and counsel's actions must be evaluated "from

counsel's perspective at the time." Id. at 689. Neither perfection nor freedom from error is demanded. Pressley v. Warden, 242 Md. 405 (1966). Instead, the inquiry must be whether counsel was "a reasonably competent attorney," whose advice and actions are within the range of competence demanded of attorneys in criminal cases. Strickland, 466 U.S. at 688.

Applying this standard of review, Angelos' conduct was deficient.⁷ At the post-conviction hearing, no witnesses were called by the State or Petitioner as to the practice of "effective" counsel in the context of sentencing for subsequent drug offenders.⁸ Regardless, attorneys are charged with the duty to know the law--especially in an area where they routinely practice. Collins had been decided as of Monk's sentencing, and the statutory scheme, offering a drug-treatment alternative to prison time without parole, was already in existence.

Moreover, the record clearly establishes that Angelos erroneously believed Judge Ward had no alternative to the mandatory 10-year sentence. This no doubt explains why he never asked Judge Ward to consider treatment instead of prison. As a result, Petitioner was deprived of a valuable opportunity to ask the court to order his commitment to a drug program. Had the court been made aware by defense counsel of the alternative to the 10-year sentence, the court may well have afforded Monk the opportunity for a pre-sentence investigation, as requested by Angelos, and ultimately may have considered drug treatment. Instead, Petitioner did not receive any consideration by the court as to commitment to a

⁷It is not altogether clear whether Petitioner attacks Moore's performance on the ground that she did not challenge the sentence on appeal.

⁸Neither Angelos nor Moore testified at the Hearing, although they were prepared to testify, had the State chosen to call them.

certified rehabilitation program, as the request was never even posed. Consequently, Monk has carried his burden with respect to the failure of his attorneys to raise this alternative disposition. Petitioner is entitled to be re-sentenced.

Conclusion

Accordingly, Monk's Petition is, this 26th day of August, 1994, by the Circuit Court for Baltimore City, hereby GRANTED as to sentencing only. It is further ORDERED that the remainder of Monk's Petition be, and the same hereby is, DENIED.

cc: Mr. Gregory E. Monk
Norman Yankellow, Esq., Assistant
Public Defender
Richard Boucher, Esq., Assistant
State's Attorney

JUDGE
ELLEN L. HOLLANDER
THE JUDGE'S SIGNATURE APPEARS
ON THE ORIGINAL
DOCUMENT ONLY

C E R T I F I C A T I O N

STATE OF MARYLAND, CERCUIT COURT FOR BALTIMORE, TO WIT:

I HEREBY CERTIFY, the foregoing is a true and correct copy of the case file folder entries (docket entries) in the case mentioned hereon;

STATE OF MARYLAND

VS

NAME: GREGORY E. MONK

No. 7173

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY the foregoing is a true copy of the Record of Proceedings of the Circuit Court for Baltimore,

In Testimony Whereof; I
here unto set my hand
and affix the Seal of the
Circuit Court, this,

14TH day of JUNE

19 95

Sandra E. Banks
Clerk - Circuit Court
for Baltimore City

RECORD ON APPEAL

Costs for Preparation of Record (Privately Retained) \$ 50.00 -

Costs for Transcript of Proceedings (Stenographer) \$

TOTAL \$ 50.00

591277019,20

Gregory E Monk - MONK

591277020-Resisting Arrest REVERSED
Remaining-Affirmed

NO. 516
Sept. 1966

9

1

2

7

7

WARD, J
PERKINS - CAO
RICHARD BOUCHER
ASA - 309 - W
ASA - ER0W - 309

MANDATE

Court of Special Appeals

No. 516, September Term, 1992

Gregory Monk
vs.
State of Maryland

JUDGMENT: January 28, 1993: Opinion by Alpert, J.
Judgments reversed as to conviction of
resisting arrest; judgment affirmed as to
possession of cocaine in sufficient quantity;
costs to be paid one-half by Mayor and City
Council of Baltimore and one-half by appellant.

March 1, 1993: Mandate issued.

STATEMENT OF COSTS:

In Circuit Court: for BALTIMORE CITY
591277019,20

Stenographer Costs.....	530.00
* Total *	530.00 *

591277020 - RESISTIN ARREST - REVERSED
see pp 1 to top of 8 -
WARD, J
NEED NEW COMMITMENT

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this ^{first} day of March A.D. 19 93

Lucie D. Gadet
Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

ECT-222870

REPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 516

September Term, 1992

GREGORY MONK

v.

STATE OF MARYLAND

Wilner, C.J.,
Alpert,
Fischer,
JJ.

Opinion by Alpert, J.

Filed: January 28, 1993

Gregory Monk, convicted by a Baltimore City jury on two drug-related counts, plus an additional count of resisting arrest, appeals, asking us to address the following two questions:

- I. DID THE LOWER COURT ERR IN ITS INSTRUCTIONS AND REINSTRUCTIONS TO THE JURY REGARDING THE LAW OF RESISTING ARREST?
- II. DID THE LOWER COURT ERR IN INSTRUCTING THE JURY REGARDING EVIDENCE THAT DID NOT EXIST?

We answer the first question in the affirmative and, therefore, reverse.

Appellant was observed by a Baltimore City police officer at 12:30 a.m. standing on the street with "his right hand opened . . . and . . . neon objects . . . piled up in the palm of his hand." When the officer approached the appellant, appellant dropped the items to the ground and began to run eastward. When the officer ran past the area where he observed appellant drop something, he saw "ziplocks" containing white objects on the ground. It was later determined that those objects contained cocaine. A motion to suppress that evidence was denied, the motions judge implicitly finding probable cause for the warrantless arrest. The case proceeded to trial by jury before the same judge.

I.

On the resisting arrest count, the trial court, inter alia and over defense objection, instructed the jury as follows:

The legality of the arrest is not at issue in this case. The only question for you, the jury, is whether or not the defendant was arrested and, if so, whether or not the defendant resisted that arrest.

Defense counsel stated the grounds for objection in the following exchange:

MR. ANGELOS [defense counsel]:

I take exception to the fact that you [the trial judge] indicated that the arrest was lawful.

I would ask that an instruction be given that an officer may lawfully arrest without a warrant if he finds probable cause, and under the testimony of this case, the evidence is inconsistent. The police officer testified first that he detained him, and went back and found to establish probable cause; however, the next officer testified and came on and said that he was already under arrest, and then he went back and took the drugs. That the other party had established the probable cause. Because of the inconsistent testimony, I ask that the instruction be given that a police officer may lawfully arrest without a warrant as long as he has probable cause, and continue with that the substance of all definitions of probable cause is a reasonable ground to believe that the person about to be arrested is guilty. That reasonable grounds of probable cause for arrest exists when the facts and circumstances within the knowledge of the officer, which is reasonably trustworthy information that an offense is being committed.

And taking it one step further, I would ask that you instruct the jury that, if you determine that the defendant was not lawfully arrested, the defendant has a right to resist that arrest. That's his defense, and that if you find that the defendant was not lawfully arrested, the defendant has a right to resist

that arrest. One who is illegally arrested may use reasonable force to effectuate his escape. * * * *

THE COURT:

* * * * [Defense counsel previously] made [a motion] with respect to the suppression of all evidence, and as to the fact of probable cause for the arrest in the first place. And this matter was heard and I have found, and I have denied your motion and found that there was a proper arrest and that there was probable cause.

Actually, I said a great deal more on the subject. Now, the question arises as to whether or not this means that you can have an instruction that there was not probable cause and that there was legality of arrest in the event that the defendant resists the arrest. To me this would be totally not only inconsistent -- first of all, I have already made a legal finding and the courts have held that that is binding.

Secondly, the facts of this case indicate that there is absolutely no evidence whatsoever . . . to show that the arrest was anything other than legal. There's not even a scintilla of evidence that the police officers did anything other than based upon the facts before them. Therefore, it doesn't rise to the issue of an issue.

Based on both of those reasons, I deny your exception[.]

During their deliberations, the jury requested Judge Ward to define "resisting arrest" again. Over defense objection, the court sent in the same exact instruction, "word-for-word without change." Appellant now contends that the lower court improperly instructed (and, similarly, improperly "reinstucted") the jury. We agree.

The Court of Appeals has defined resisting arrest as "[a] refusal to submit to lawful arrest * * *." State v. Huebner, 305 Md. 601, 608 (1986). Thus, an essential element of resisting arrest is that the arrest be lawful. In Maryland, "one illegally arrested may use any reasonable means to effect his escape, even to the extent of using such force as is reasonably necessary." Diehl v. State, 294 Md. 466, 479 (1982), cert. denied, 460 U.S. 1098 (1983) (citing Sugarman v. State, 173 Md. 52, 57 (1937)). If, however, the arrest is lawful, one is not justified in resisting it. Sharpe v. State, 231 Md. 401, 403, cert. denied, 375 U.S. 946 (1963) (emphasis added). See also Kellum v. State, 223 Md. 80, 85 (1960).

Because it is essential that the State prove the arrest was lawful, the trial judge erred in refusing, over defense counsel's objection, to instruct the jury on the issue. See M.R. 4-325(c). In fact, the judge specifically instructed the jury not to consider the legality of the arrest. Rather, he said, "the legality of the arrest is not at issue in this case. The only question for you, the jury, is whether or not the defendant was arrested and, if so, whether or not the defendant resisted that arrest." (Emphasis added.) In addition, when the jury requested the judge to reinstruct them on the offense, he reiterated his original instruction verbatim.

It is obvious that the trial judge made these decisions (vis-a-vis the instruction and re-instruction) based upon the

mistaken belief that his finding of probable cause for the warrantless arrest was binding on the trier of the fact -- in this case, the jury. It was not. Justice Brennan, writing for the United States Supreme Court, held that "Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." In Re Winship, 397 U.S. 358, 364 (1970) (emphasis added). Similarly, the Court of Appeals in Hoey v. State, 311 Md. 473 (1988), opined that "the State must bear the burden of proof on every element of a criminal offence." (Emphasis added.) By not instructing the jury on all elements of the crime, the judge usurped the jury's function to decide whether the State had proved beyond a reasonable doubt all elements of the crime.

It should be noted, however, that a citizen's right to resist an arrest applies only in limited circumstances. The trend in Maryland is to diminish the opportunity for "self-help," while increasing the resolution of questionable police activity in the courtroom (rather than the streets).

In Rodgers v. State, 280 Md. 406, cert. denied, 434 U.S. 928 (1977), the Court of Appeals distinguished between situations where an arrest is based on an officer observing a crime, and an arrest based on a defective warrant. In refusing to extend the right to resist an unlawful arrest in the latter situation, the

court held,

At least where a citizen resists with force an illegal arrest made by a police officer without a warrant, that force is directed at the individual responsible for the improper deprivation of the citizen's liberty; but the officer engaged in carrying out the mandate of a court that he arrest an individual named in a warrant is blameless if that warrant has been issued in error, and it would be a betrayal of our duty to such an officer to say that the citizen is entitled to inflict injury on the officer because the courts had erred in issuing the warrant.

Id. at 418-19.

In addition, the court in Rodgers elaborated on the policy reasons for abolishing the right to engage in violent self-help behavior. The court noted that the potential harm to the officer, the arrestee, and the innocent bystander far outweighs the injustice resulting from limiting the arrestee's recourse in the courts. While recognizing that the available judicial remedies for unlawful arrest are often inadequate, the court held that "when balanced against the State's interest in discouraging violence, [it] cannot be realistically considered a deprivation of liberty." Id. at 421.

X More recently, in Barnhard v. State, 86 Md. App. 518 (1991), aff'd, 325 Md. 602 (1992), we refused to extend the right to resist an unlawful warrantless arrest to situations involving an unlawful Terry stop. We reasoned,

Much of the underlying rationale in Rodgers for restricting the right to resist arrest is applicable here. If it were not, police

officers would be subject to attack in every instance when, during the course of their investigation, they temporarily detain someone. To recognize the right to resist such momentary seizures, short of an arrest, serves only to expand the danger of violence. In keeping with the rationale set out in Rodgers, we conclude that there is no right to resist an "illegal" stop.

Id. at 527-28.

Moreover, in State v. Blackman, ___ Md. App. ___, Sept. Term, 1992, No. 1144 (Dec. 30, 1992), we, relying on Rodgers and Barnhard, refused to extend the right to resist an unlawful warrantless arrest to situations involving unlawful frisks. We emphasized the policy reasons set forth in Rodgers for not allowing violent self-help and hinted, but did not hold, that the right to resist an unlawful warrantless arrest should be eliminated as well. Blackman, slip op. at 23. In support thereof, we noted that Rodgers did not reaffirm Sugarman and its progeny, but rather distinguished itself from them. Id. at 24. Moreover, we reiterated the validity of the analysis set forth in Rodgers vis-a-vis the abolishment by jurisdictions of the right to use force to resist an unlawful arrest. Id. at 25. Furthermore, we emphasized Maryland's trend of restricting the right to resist unlawful police activity to unlawful warrantless arrest. In so doing, we questioned whether the original rationale for the right to resist an unlawful arrest is still feasible in today's complex society. Until the legislature or Court of Appeals tells us otherwise, however, the law remains

that a citizen may resist an unlawful, warrantless arrest.

II.

At one point during the trial, the State sought to admit a written chemical analysis of the substance that appellant was charged with possessing. As part of its attempt to lay a proper foundation for the admission of the analysis, the prosecutor asked his foundation witness ("Officer Coleman") -- over defense objection -- whether or not the appellant's name appeared on that particular document. The State then proffered that the name "Joseph Payne," which appeared on the document in lieu of appellant's correct name, was the name that appellant gave the attendant police officer ("Officer Smith") at the time of booking. After hearing from counsel, the court then permitted Officer Coleman to relate that fact provided that the State subsequently recalled Officer Smith (who had testified earlier in the trial) to repeat it. Defense counsel subsequently withdrew the objection, and thereby relieved the State of its burden to recall Officer Smith.

During their deliberations, the jury sent a note to the court asking, "Why does [the written chemical analysis] show [the] defendant[']s name] as Joseph Payne?" The court drafted its response, to which the defense objected. Defense counsel summarized the situation thusly:

The answer that the judge is providing
[to the jury] is that ["T]here is evidence
that the jury may consider along with all the

. . . evidence in this case in accordance with my instructions that the defendant gave the name of Joseph Payne as his name at the time of booking. Thomas Ward, Judge.["]

Defense vehemently objects to this characterization [in] that it's . . . reintroducing evidence that is already into the record and [therefore it] is not necessary to be told to the jury [again]. The last sentence should be pulled out, and just simply say that the evidence is in there and the jury should consider all the evidence that they listened to and heard. Nothing more; nothing else.

Now, on appeal, appellant contends for the first time that the court's response was in error -- not because the court was reintroducing evidence that was already in the record (which was defense counsel's stated grounds for objection at trial) -- but because of the exact opposite reason: "The court . . . erroneously placed before the jury evidence never elicited at trial that appellant used a false name when he was arrested." In other words, defense counsel -- at trial -- objected based on grounds that Judge Ward's response to the jury's question was redundant based on evidence of record; on appeal, appellant attempts to argue that Judge Ward's response set forth facts which were not in the record at all. Accordingly, appellant has failed to preserve adequately this issue for appeal.

As in Brecker v. State, 304 Md. 36 (1985), under "well-settled" Maryland law,

when an objector sets forth the specific grounds for his objection, although not requested by the court to do so, the objector

will be bound by those grounds and will ordinarily be deemed to have waived other grounds not specified.

Id. at 39-40 (citations omitted).

Because appellant did indeed set forth a specific ground for his objection, we consider all other grounds -- including the ground stated in appellant's brief before this court -- as waived. Even if preserved for our review, appellant would not prevail. A reasonable inference could be drawn from the evidence presented that appellant gave his name as Joseph Payne during the booking.

**JUDGMENT REVERSED AS TO CONVICTION OF
RESISTING ARREST; JUDGMENT AFFIRMED AS TO
POSSESSION OF COCAINE IN SUFFICIENT
QUANTITY.**

**COSTS TO BE PAID ONE-HALF BY MAYOR AND
CITY COUNCIL OF BALTIMORE AND ONE-HALF BY
APPELLANT.**



DISTRICT COURT OF MARYLAND FOR

LOCATED AT (COURT ADDRESS)

5800 WABOSU AVE

C



* 3 6 7 0 1 1 B 1 *

POYNE JOSEPH

RELATED CR/TR CASE

367011B1

POSSESSION OF COCAINE
WITH INTENT TO DISTRIBUTE

367011B1

MONK, GREGORY ERIC

PT./LOC.	RELATED CASES	TRACKING NUMBER 367011B1
----------	---------------	-----------------------------

COMPLAINANT				DEFENDANT			
NAME (LAST, FIRST, M.I.)		TITLE		NAME (LAST, FIRST, M.I.)		TITLE	
Smith, Warren		PO		MONK, GREGORY ERIC			
AGENCY AD	SUB-AGENCY 5907	I.D. NO. (POLICE) E-154		I.D. NO.	RACE B	SEX/HT. M 5'08"	WT. 180
				OCA 413.678	HAIR Blk	OTHER DESCRIPTION	
WORK TELEPHONE (301) 396-2477	HOME TELEPHONE ()			WORK TELEPHONE ()	HOME TELEPHONE ()		
ADDRESS 1034 N. Mount st.	APT. NO.			ADDRESS 2931 Forest Glen Rd.	APT. NO.		
CITY Balto.	STATE Md	ZIP CODE 21217		CITY BALTO	STATE MD.	ZIP CODE 21216	

STATEMENT OF CHARGES

THE DEFENDANT HAS BEEN ARRESTED UPON THE FOLLOWING INFORMATION OR OBSERVATION: (MAKE A PLAIN, CONCISE AND DEFINITIVE STATEMENT OF ESSENTIAL FACTS CONSTITUTING THE OFFENSE CHARGED)

ON 24 July 91 at approx. 0020hrs. I was on routine patrol in the 1800 BIK. Lauretta ave, A marked patrol unit and I was working in full uniform ^{Capacity}. While driving in a easterly direction I observed the defendant standing on the odd side 1800 BIK Lauretta ave accompanied by an unk individual. The defendant had his right

IT IS FORMALLY CHARGED THAT THE DEFENDANT (CONTINUED ON ATTACHED SHEET CR701A OR DC/CR1A)

1	MDCCS	AR	ON OR ABOUT (DATE)	AT (PLACE)
			24 July 91	

... did possess a CAS of schedule II to wit cocaine in sufficient quantity to indicate an intent to distribute.

IN VIOLATION OF:
 MD ANN. CODE, ART. 27 SEC. 286 ; COMMON-LAW OF MD ; PUB. LOCAL LAW, ART. SEC. AGAINST THE PEACE, GOVERNMENT AND DIGNITY OF THE STATE.

COMAR OR AGENCY CODE NO. ; ORDINANCE NO.

CONTINUED ON ATTACHED SHEET DC/CR 3A

I SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE MATTERS AND FACTS SET FORTH IN THE FOREGOING DOCUMENT ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

DATE 7/24/91 ARRESTING OFFICER Warren Smith

I HAVE REVIEWED THE STATEMENT OF CHARGES AND HAVE DETERMINED THAT

THERE IS PROBABLE CAUSE TO DETAIN THE DEFENDANT

THERE IS NOT PROBABLE CAUSE TO DETAIN THE DEFENDANT AND I HAVE ACCORDINGLY RELEASED HIM ON HIS OWN RECOGNIZANCE.

DATE 7/24/91 JUDICIAL OFFICER J. English COMMISSIONER ID NO. 113

NOTICE OF ADVICE OF RIGHT TO COUNSEL

TO THE PERSON CHARGED:

1. This paper charges you with committing a crime.
2. If you have been arrested, you have the right to have a judicial officer decide whether you should be released from jail until your trial.
3. You have the right to have a lawyer.
4. A lawyer can be helpful to you by:
 - (A) explaining the charges in this paper;
 - (B) telling you the possible penalties;
 - (C) helping you at trial;
 - (D) helping you protect your constitutional rights;and
(E) helping you to get a fair penalty if convicted.
5. Even if you plan to plead guilty, a lawyer can be helpful.
6. If you want a lawyer but do not have the money to hire one, the Public Defender may provide a lawyer for you. The court clerk will tell you how to contact the Public Defender.
7. If you want a lawyer but you cannot get one and the Public Defender will not provide one for you, contact the court clerk as soon as possible.
8. **DO NOT WAIT UNTIL THE DATE OF YOUR TRIAL TO GET A LAWYER.** If you do not have a lawyer before the trial date, you may have to go to trial without one.

RECEIPT

I have read or have had read to me the contents of the above notice and acknowledge receipt of a copy thereof.

.....
Date

.....
Signature of Defendant

Defendant's Name

Payne, Joseph
AKA: MONK, GREGORY ELL

Case No.

36701131
76, 59205

CONTINUATION SHEET

APPLICATION FOR STATEMENT OF CHARGES/STATEMENT OF PROBABLE CAUSE

hand open on in his palm I observed several objects. With my training and experience as a police officer, I believed the objects to be CAS and also this area is a designated drug free zone known for high narcotic distribution. As I exited my vehicle the defendant dropped the objects to the ground and fled eastbound in the rear of the 1800 Blk Edmondson ave. A foot pursuit ensued and the defendant was caught in a rear yard in the rear of the 1800 Blk of Edmondson ave. With other unit on the scene to stand by the defendant I then went back to recover the objects discarded by the defendant. Recovered was 30 yellow ziplock bags containing a white rock substance (suspected "Rock Cocaine"). The defendant was then placed under arrest and transported to Western district and charged accordingly.

I have been a sworn member of B.C.P.D. for a period of 3 1/2 yrs. During this time I have participated in over 400 CAS arrests. During the B.C.P.D. academy I was given specialized training in the field of Narcotic by CTD drug unit and also during yearly in-service training sessions.

24 July 91

Date

Warren Smith

Applicant's Signature

Defendant's Name

Payne, Joseph
AKA MONK, GREGORY ELL

Case No.

367011B1
7G 59205

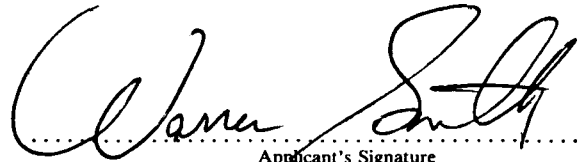
CONTINUATION SHEET

APPLICATION FOR STATEMENT OF CHARGES/STATEMENT OF PROBABLE CAUSE

The defendant after being advised that he was under arrest would not allow the handcuff to be placed on him. It took four officer and myself to restrain him as he was attempting to flee. The defendant after approx. 2min was handcuffed and placed in wagon and transported.

24 July 91

Date



Applicant's Signature



DISTRICT COURT OF MARYLAND FOR

LOCATED AT (COURT ADDRESS)

DEP MONIC, GREGORY ERIC

STATE OF MARYLAND - VS -

DEFENDANT

Payne, Joseph

DOB

12/11/69

TRACKING NUMBER

36701131

STATEMENT OF CHARGES (CONTINUED)

UPON THE FACTS CONTAINED IN THE SWORN APPLICATION OF (NAME AND ADDRESS OF APPLICANT)

IT IS FORMALLY CHARGED THAT THE DEFENDANT

MDCCS AR ON OR ABOUT (DATE) AT (PLACE)

32751 24 July 91 1800 B/K Lauretta ave

... did possess a CBS of schedule II to wit Cocaine

IN VIOLATION OF:

MD ANN. CODE, ART.

27

SEC.

287

COMMON LAW OF MD;

PUB. LOCAL LAW, ART.

SEC.

COMAR OR AGENCY CODE NO.

ORDINANCE NO.

AGAINST THE PEACE,
GOVERNMENT AND
DIGNITY OF THE STATE.

MDCCS AR ON OR ABOUT (DATE) AT (PLACE)

32751 24 July 91 1800 B/K Lauretta ave

... did resist the ^{Lawfull} arrest & apprehension of P/O Warren Smith

IN VIOLATION OF:

MD ANN. CODE, ART.

SEC.

COMMON LAW OF MD;

PUB. LOCAL LAW, ART.

SEC.

COMAR OR AGENCY CODE NO.

ORDINANCE NO.

AGAINST THE PEACE,
GOVERNMENT AND
DIGNITY OF THE STATE.

MDCCS AR ON OR ABOUT (DATE) AT (PLACE)

32751 24 July 91 1800 B/K Lauretta ave

did loiter about or remain in a public place within a certified drug free zone

IN VIOLATION OF:

MD ANN. CODE, ART.

19

SEC.

58C

COMMON LAW OF MD;

PUB. LOCAL LAW, ART.

SEC.

COMAR OR AGENCY CODE NO.

ORDINANCE NO.

AGAINST THE PEACE,
GOVERNMENT AND
DIGNITY OF THE STATE.

MDCCS AR ON OR ABOUT (DATE) AT (PLACE)

IN VIOLATION OF:

MD ANN. CODE, ART.

SEC.

COMMON LAW OF MD;

PUB. LOCAL LAW, ART.

SEC.

COMAR OR AGENCY CODE NO.

ORDINANCE NO.

AGAINST THE PEACE,
GOVERNMENT AND
DIGNITY OF THE STATE.

CONTINUED ON ATTACHED SHEET (FORM DC/CR 3A)

DATE

24 July 91

TIME

JUDICIAL OFFICER / ARRESTING OFFICER

Warren Smith

RECEIVED

1991 OCT 10 AM 9 24

COURT
BALTIMORE, MARYLAND
SAUNDRA E. BANKS
CLERK

75

CRIMINAL
CDS OFFENSE
1ND

1 volume

No. 516 SEPTEMBER TERM, 19 92
(LEAVE BLANK)

TRANSCRIPT OF RECORD

FROM THE

CIRCUIT COURT FOR BALTIMORE CITY

Judge: THOMAS WARD

IN THE CASE OF

✓ GREGORY MONK

Appellant

VS.

✓ STATE OF MARYLAND

Appellee

TO THE

COURT OF SPECIAL APPEALS

✓ Dennis M. Henderson 333-4861
201 St. Paul Place
Baltimore, Maryland 21202

FOR APPELLANT

R=0
S=530

✓ Honorable J. Joseph Curran, Jr
Attorney General of Maryland

✓ Honorable Stuart O. Simms
State's Attorney for Baltimore

FOR APPELLEE

Filed 6/1/92 H.D.
(LEAVE BLANK)

7/13

12/92

Start 10/4/91

Sent. 4/2/92

Appeal 4/3/92

INDEX

Docket Entries.....	1 - 3
Statement of Charges.....	4 - 7
Ciminal Information.....	8 - 11
Appearance Notice.....	- 12
State's Disclosure.....	13 - 15
State's Request for Discovery.....	16 - 17
Entry of Appearance & Request to File Motions.....	- 18
Motion to Demand The Presence of The Chemist, Analyst & Any Person In The Chain of Custody.....	- 19
Notice of Plea Bargain Policy.....	- 20
Motion for Joint Trial of Defendant.....	21 - 22
Notice of State's Reliance on Written Laboratory Report and Written Chain of Custody Statement.....	23 - 25
Voir Dire.....	26 - 29
State's Requested Voir Dire.....	30 - 31
Jury Panel Selection.....	32 - 35
Possible Exhibit (Copy of Docket Entries).....	- 36
State's Exhibit #2 (Laboratory Report).....	- 37
Jury Questions.....	38 - 40
Verdict Sheet.....	- 41
Motion for New Trial.....	- 42
Notice of Appeal.....	- 43
Appointment of Dennis M. Henderson counsel for appellate-----	- 44
Statementof Costs and Certification sheet-----	- 45
Transcript of testimony-----	- 46

591277021 413678 12/14/09
MONK, GREGORY ERIC

B/M

CIRCU

591277020 413678 12/17/09
MONK, GREGORY ERIC

RE CITY

CASE(S)# _____ TERM _____

591277019 413678 12/17/09
MONK, GREGORY E

IDENT. NO. _____

3320 DURITHAN

DOB _____

B/M

A.R. NO. _____

BALTIMORE MD 21217 36701181
AKA PAYNE, JOSEPH

2931 *Howes Glen Rd.*

CHARGE(S)

VIOLENT

RA

LOITERING

TRACKING #

ATTORNEY	DATE	LOCATION	DATE	COURT REPORTER	DATE
<i>John C. Angelos</i>	<i>11-19-91</i>	B.C.J. /	SUMMONS	<i>John T. Hall</i>	<i>11-19-91</i>
		D.O.C.	BAIL	<i>Brown B-17-92</i>	
		O.R.		<i>Oddo</i>	<i>3/17/92</i>
				<i>Oddo</i>	<i>3/18/92</i>
				<i>Oddo</i>	<i>4/2/92</i>

Richard Rucker
ASST. STATE'S ATTY.

DATE	DOCKET ENTRIES
<i>10/4/91</i>	Circuit Court Docketing Date
	Recognizance taken / District Court
	Recognizance taken / Circuit Court
	Appearance of <i>Defense</i>
	Appearance of <i>State</i>
	Arraigned and Pleads <i>Election of Trial</i>
	MOTIONS
	DEFENSE STATE
	Motion for Discovery Fd. [] Motion for Discovery Fd.
	Answers To State Discovery Fd. [] States Disclosure Fd.
	Defense Disclosure Fd. [] Answers To Defense Discovery Fd.
	Motion Pursuant To Md. Rule ____ [] Notice of States Reliance Fd.
	Motion To Suppress Fd. [] Answers To Defendants Bill of Particulars Fd.
	Defendant Demand For Witness Fd. [] Motion For Additional Penalties
	Motion To Dismiss Fd. [] Notice of Plea Bargain Policy
	Motion For Bill of Particulars Fd. []
	Ominbus Motion Fd. []
	Motions for Speedy Trial []
	Motion For Grand Jury Testimony []

FILE NO.

591277

019

20



DATE	DOCKET ENTRIES
11-17-91	Continued next day 17. 14 on 1/21/92 - 9:30am Request for Bail Review heard and denied
3-21-92	1st admin judge. Bail set at \$25000.00
3-17-92	Jo Annen was - 1st heard waived
7/92	Rearraigned and pleads: Not Guilty as to 591277019-20. Jury trial heard before Hard, J. Vivian Bath administered Jurors. Jury selected and sworn. Hard, J.
3/17/92	Def't's motion to suppress evidence seized heard and denied. Hard, J. Not concluded, to resume 3/18/92, Pt. 22, 9:35am. Hard, J.
3/18/92	At the close of the State's Case, Def't's motion for Judgment heard and denied as to 591277019-20, granted as to 591277021. Release fd. Hard, J.
3/18/92	At the close of the Def't's Case, Def't's renewed motion for Judgment heard and denied. Hard, J.
3/18/92	Verdicts of Jury: 591277019 - 1st Ct. - Guilty (P. Cocaine) 1/2 lbs " - 2nd Ct. - Guilty (P. Cocaine) 591277020 - 1st Ct. - Guilty (Resisting Arrest) Read sub Curia. Recs for transportation 3/24/92, Pt. 22, 9:30 Am. (Rec. Jail) Hard, J.
3/20/92	Motion for New Trial fd.
4/2/92	Def't's motion for new trial heard and denied. Hard, J.
4/2/92	NO. 591277019 CT DISP PLEA _____ CHG _____ GOC 1st Ct. (P. Cocaine) 1/2 lbs VERD _____ TYPE TC TIME 10:30 BEGIN 7/24/91 LOC DOC CULP _____ TIME _____ PROB <i>Practically unfiled</i> FINE _____ COSTS 535.00 <i>Costs waived due to in-</i> <i>adequacy. Appeal bond set at \$90,000.00. Hard, J.</i>
4/2/92	NO. 591277019 CT DISP PLEA _____ CHG _____ GOC 2nd Ct. (P. Cocaine) VERD _____ TYPE _____ TIME _____ BEGIN _____ <i>heard w/ Ct. 1.</i> LOC _____ SUSP _____ TIME _____ PROB _____ <i>Hard, J.</i> FINE _____ COSTS _____

(over)

State of Maryland,

City of Baltimore, in wit:

IN THE CIRCUIT COURT FOR BALTIMORE CITY

The State of Maryland

-vs-

GREGORY E. MONK otherwise
called JOSEPH PAYNE

Defendant(s)

Date of offense: July 24, 1991

Location: 1800 block Laretta Ave.

Complainant: Off. Warren Smith

CRIMINAL INFORMATION

The State's Attorney for Baltimore City, duly authorized by law, on his official oath informs the said Court that the above named DEFENDANT(S), late of said City, heretofore on or about the date(s) of offense set forth above, at the location set forth above, in the City of Baltimore, State of Maryland, unlawfully did Possess a certain Controlled Dangerous Substance of Schedule # 2, to wit: Cocaine which [~~is~~/~~is not~~] a Narcotic Drug, in sufficient quantity to reasonably indicate under all the circumstances an intent to Manufacture and Distribute such Controlled Dangerous Substance; contrary to the form of the Act of Assembly, in such case made and provided, and against the peace, government and dignity of the State.

[Art. 27, Sec. 286]
(1 0233)

SECOND COUNT.

And the State's Attorney aforesaid, with powers and authority as aforesaid, informs the said Court that the said DEFENDANT(S), late of said City, on the said date(s), at the said place, at the City aforesaid, unlawfully did Possess a certain Controlled Dangerous Substance of Schedule # 2, to wit: Cocaine: contrary to the form of the Act of Assembly, in such case made and provided, and against the peace, government and dignity of the State.

[Art. 27, Sec. 287]
(4 3550)

Thurston O. Dimmock

The State's Attorney for the City of Baltimore.

C.I. # 591277019

STATE OF MARYLAND

vs.

GREGORY E. MONK alias
JOSEPH PAYNE (91-32751- 01,02)

Eric

Information

Thurston O. Dimmes

The State's Attorney for the City
of Baltimore

Mr. Clerk:

Please file, etc.

769205

WITNESSES:

Off. Warren Smith WD (PPO)
Off. Milt Coleman WD
Marta Iwashko Chemist CL

1. This paper charges you with committing a crime.
2. If you have been arrested. You have the right to have a judicial officer decide whether you should be released from jail until your trial.
3. You have the right to have a lawyer.
4. A lawyer can be helpful to you by:
 - (A) explaining the charges in this paper;
 - (B) telling you the possible penalties;
 - (C) helping you at trial;
 - (D) helping you protect your constitutional rights;
 and
 - (E) helping you to get a fair penalty if convicted.
5. Even if you plan to plead guilty, a lawyer can be helpful.
6. If you want a lawyer but do not have the money to hire one, the Public Defender may provide a lawyer for you. The court clerk will tell you how to contact the Public Defender.
7. If you want a lawyer but you cannot get one and the Public Defender will not provide one for you, contact the court clerk as soon as possible.
8. DO NOT WAIT UNTIL THE DATE OF YOUR TRIAL TO GET A LAWYER. If you do not have a lawyer before the trial date, you may have to go to trial without one.

VIOL. NARC. LAWS, ETC.

10233

*Jail
8.26.91*

367011B1

413.678

24.91

RESISTING ARREST

State of Maryland,

City of Baltimore, to wit:
IN THE CIRCUIT COURT FOR BALTIMORE CITY

The State of Maryland

-vs-

GREGORY E. MONK otherwise
called JOSEPH PAYNE

Defendant(s)

Date of offense: July 24, 1991

Location: 1800 block Laretta Ave.

Complainant: Off. Warren Smith

CRIMINAL INFORMATION

The State's Attorney for Baltimore City, duly authorized by law, on his official oath informs the said Court that the above named Defendant(s), late of said City, heretofore on or about the date(s) of offense set forth above, at the location set forth above, in the City of Baltimore, State of Maryland, the aforesaid Complainant(s), being then and there a Police Officer(s) of said City, [was/were] in the lawful discharge of [his/her/their] [duty/duties] as such Police Officer(s), in the act of arresting the above named Defendant(s), for the crime of Violation Narcotic Laws, whereupon the aforesaid Defendant(s), late of said City, well knowing the premises, did then and there unlawfully resist an arrest by the said Complainant(s), so being then and there a Police Officer(s) as aforesaid, in the said lawful discharge of [his/her/their] [duty/duties] by pulling, pushing and laying hold of the said Officer(s) the said Complainant(s); against the peace, government and dignity of the State.

[Destry-Criminal Law-Sec. 76]
(1 4801)

Thuart O. Dimms

The State's Attorney for the City of Baltimore

C.I. # 591277020

STATE OF MARYLAND

vs.

GREGORY E. MONK alias
JOSEPH PAYNE (91-32751-03)

24.91

Information

Thrust O. Dimms

The State's Attorney for the City
of Baltimore

Mr. Clerk:

Please file, etc.

WITNESSES:

Off. Warren Smith WD (PPO)
Off. Milt Coleman WD
Marta Iwashko Chemist CL

1. This paper charges you with committing a crime.
2. If you have been arrested. You have the right to have a judicial officer decide whether you should be released from jail until your trial.
3. You have the right to have a lawyer.
 - A. A lawyer can be helpful to you by:
 - (A) explaining the charges in this paper;
 - (B) telling you the possible penalties;
 - (C) helping you at trial;
 - (D) helping you protect your constitutional rights;
 - and
 - (E) helping you to get a fair penalty if convicted.
5. Even if you plan to plead guilty, a lawyer can be helpful.
6. If you want a lawyer but do not have the money to hire one, the Public Defender may provide a lawyer for you. The court clerk will tell you how to contact the Public Defender.
7. If you want a lawyer but you cannot get one and the Public Defender will not provide one for you, contact the court clerk as soon as possible.
8. DO NOT WAIT UNTIL THE DATE OF YOUR TRIAL TO GET A LAWYER. If you do not have a lawyer before the trial date, you may have to go to trial without.

RESISTING ARREST

14801



APPEARANCE NOTICE
CIRCUIT COURT FOR BALTIMORE CITY
CRIMINAL DIVISION

CASE NO. 591277019

CHARGE WAR

DEFENDANT
FULL NAME Gregory Monk

PLEASE ENTER MY APPEARANCE AND REQUEST TO FILE MOTIONS ON RECORD (PER AGREEMENT)

PLEASE ENTER MY APPEARANCE IN THE ABOVE CAPTIONED CASE(S)

REPRESENTATION
(Check One)

Private Attorney (ADF)

Public Defender (APD)

Panel Attorney (APA)

State's Attorney (SA)

TRIAL NOTIFICATION INFORMATION (PRINT OR TYPE)

John C.M. Angeles
ATTORNEY NAME

CLIENT SECURITY NO.

201 St. Paul Pl.
ATTORNEY MAILING ADDRESS

CITY/TOWN

ZIP CODE

ATTORNEY TELEPHONE NO.

John C.M. Angeles
ATTORNEY SIGNATURE

11/19/91
DATE

STATE OF MARYLAND

*

IN THE

V.

*

CIRCUIT COURT

GREGORY MONK, A.K.A.

*

FOR

JOSEPH PAYNE

*

BALTIMORE CITY

CASE NO. 591277019,20,21

*

* * * * *

DEPT. OF
STATE
CLERK
OF
MARYLAND
DEC 19 11 21 AM '15

STATE'S DISCLOSURE

Now comes Stuart O. Simms, State's Attorney for Baltimore City, and Richard Boucher, Assistant State's Attorney for Baltimore City, and in accordance with the provisions of Rule 4-263 of the Maryland Rules of Procedure respectfully state the following:

1. The defendant made no statement or confession, oral or written, which is known to the State at the present time.

2. There are no co-defendants.

3. The defendant has not been identified at any pretrial identification procedure.

4. Any information known to the State which tends to negate the guilt of the defendant as to the offense or which tends to reduce his punishment therefor is attached hereto. If no such attachment is included, no such information is known to the State at this time.

5. Any relevant material or information regarding specific search and seizures, wiretaps and electronic devices used in the preparation of this case is attached hereto.

6. Upon reasonable notice to this office, the defendant or his counsel may inspect, copy and photograph any books, papers, documents, recordings, photographs or tangible objects which the

State intends to use at a hearing or trial.

7. Upon reasonable notice to this office, the defendant or his counsel may inspect, copy or photograph any item obtained from or belonging to the defendant.

8. Upon reasonable notice to this office, the defendant or his counsel may inspect and copy all written reports or statements made in connection with this case by each expert consulted by the State. If any oral report has been made by such an expert, a report will be attached hereto indicating the substance of the report and any conclusions reached. The State intends to call as witnesses every person whose name appears on the attached reports.

9. The names and addresses of the witnesses now known whom the State may call to prove its case in chief, or to rebut alibi testimony are as follows:

a. Each co-defendant, if applicable.

b. All desk sergeants, turnkeys, and chain of custody witnesses listed on reports (unless notice pursuant to CJP Section 10-1001-03 is attached).

c. Off. Warren Smith-BCPD-Western District (PPO)

Off. Milt Coleman-BCPD-Western District

Marta Iwashko Chemist CL

10. The State reserves the right to amend and/or supplement this answer, upon reasonable notice to the defendant or his counsel, by supplying information not presently known to the State's Attorney's Office.

11. As to all other requests by the defendant pursuant to any motion for discovery and inspection the State declines to answer because such requests are not within the purview of Maryland Rule 4-263.

Richard Boucher

Richard Boucher
Assistant State's Attorney
Narcotics Investigations Unit
396-1757

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this *11th* day of *December*, 1991 a copy of the State's Disclosure was mailed to Antonio Gioia, Esquire; 2 E. Fayette Street, Baltimore, Maryland 21202.

Richard Boucher

Richard Boucher

STATE OF MARYLAND

*

IN THE

V.

*

CIRCUIT COURT

GREGORY MONK, A.K.A.

*

FOR

JOSEPH PAYNE

*

BALTIMORE CITY

CASE NO. 591277019,20,21

*

* * *

RECEIVED
CLERK
AUG 21 1991


STATE'S REQUEST FOR DISCOVERY

Now comes Stuart O. Simms, State's Attorney for Baltimore City and Richard Boucher, Assistant State's Attorney for Baltimore City, and in accordance with Rule 4-263 of the Maryland Rules of Procedure, respectfully request that the following questions be answered by the defendant within ten (10) days:

1. That the defendant produce and permit the State to inspect and copy all written reports made in connection with this case by each expert which the defendant intends to call as a witness at the hearing or trial.

2. That the defendant furnish the state with the substance of any oral report and conclusion made in connection with this case by each expert which the defendant intends to use at the hearing or trial.

3. That the defendant furnish the State with the name and address of each witness whom the defendant intends to call to show that they were not at or near 1800 block Lauretta Avenue, on or about July 24, 1991.


Richard Boucher
Assistant State's Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this *7/9th* day of *December*,
1991, a copy of the State's Request for Discovery was mailed to
Antonio Gioia, Esquire; 2 E. Fayette Street, Baltimore, Maryland
21202.

Richard Boucher

Richard Boucher

STATE OF MARYLAND

*

IN THE

v.

*

CIRCUIT COURT

GREGORY E. MONK

*

FOR BALTIMORE CITY

CASE NO(S). 591277021

*

Criminal

* * * * *

ENTRY OF APPEARANCE

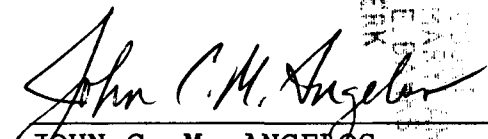
AND

REQUEST TO FILE MOTIONS

The undersigned attorney hereby enters his appearance on behalf of the above-named Defendant; and

FURTHERMORE, per Agreement and Master Filings on record with the Clerk of the Circuit Court for Baltimore City, requests the following to be filed on behalf of the Defendant in this case:

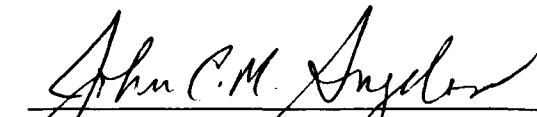
- Motion for Speedy Trial
- Motion to Produce Documents
- Request for Discovery
- Defendant's Answer to State's Motion for Discovery
- Motions to Suppress Pursuant to Md. R. 4-252 and 4-253
- Motion for Grand Jury Testimony


 JOHN C. M. ANGELOS,
 Assistant Public Defender
 201 St. Paul Place
 Baltimore, MD 21202
 333-4910

26 PM 1:40
 RECEIVED
 CLERK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Entry of Appearance and Request to File Motions was delivered to the Office of the Assistant State's Attorney for Baltimore City this 26th day of November, 1991.


 JOHN C. M. ANGELOS,
 Assistant Public Defender

STATE OF MARYLAND

*

IN THE

v.

*

CIRCUIT COURT

GREGORY E. MONK

*

FOR BALTIMORE CITY

CASE NO(S). 591277021

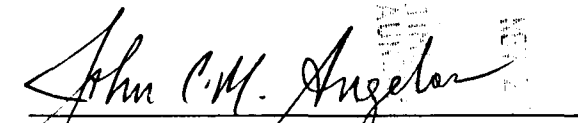
*

Criminal

* * * * *

MOTION TO DEMAND THE PRESENCE OF THE
CHEMIST, ANALYST AND ANY PERSON IN THE
CHAIN OF CUSTODY

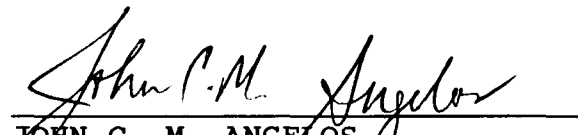
Now comes the Defendant, by his attorney, John C. M. Angelos, Assistant Public Defender, and demands that the State produce the chemist, analyst and any person in the chain of custody of the physical evidence in this case as a prosecution witness pursuant to the Annotated Code of Maryland, Courts and Judicial Proceedings, Sections 10-1003.



JOHN C. M. ANGELOS,
Assistant Public Defender
201 St. Paul Place
Baltimore, Maryland 21202
333-4910

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 26th day of November, 1991, a copy of the foregoing Motion to Demand the Presence of the Chemist, Analyst and any Person in the Chain of Custody was hand-delivered to the Office of the Assistant State's Attorney for Baltimore City, Mitchell Courthouse, Baltimore, Maryland, 21202.



JOHN C. M. ANGELOS,
Assistant Public Defender

OFFICE OF THE STATE'S ATTORNEY
FOR
BALTIMORE CITY

206 THE CLARENCE M. MITCHELL, JR. COURTHOUSE
BALTIMORE, MARYLAND 21202

STUART O. SIMMS
STATE'S ATTORNEY

PHONE:
396-1757

December 10, 1991

DEFENDANT: GREGORY MONK, A.K.A. JOSEPH PAYNE

CASE NUMBER: 591277019,20,21

NOTICE OF PLEA BARGAIN POLICY

In the event that the defendant and counsel for the defendant request a discussion with the Office of The State's Attorney to establish a plea bargain the following procedure will be followed:

1. No Law Enforcement Official other than the Assistant State's Attorney handling the case or his superiors is authorized to engage in the plea bargain process.

2. A plea bargain is not considered complete and binding unless it is evidenced by a writing signed by the defendant, the defendant's counsel, and an Assistant State's Attorney.


Assistant State's Attorney

STATE OF MARYLAND

*

IN THE

V.

*

CIRCUIT COURT

GREGORY MONK, A.K.A.

*

FOR

JOSEPH PAYNE

*

BALTIMORE CITY

CASE NO. 591277019,20,21

*

* * *

CLERK OF COURT
BALTIMORE CITY
MAY 11 1981

MOTION FOR JOINT TRIAL OF DEFENDANT

Now comes Stuart O. Simms, State's Attorney for Baltimore City by Richard Boucher, Assistant State's Attorney and pursuant to Maryland Rules of Procedure 4-253 petitions this Honorable Court to grant a joint trial of all defendants and offenses and for reasons states:

1. All Defendants participated in the same act(s) or transaction(s) or series of acts and transactions giving rise to the above captioned charges.

2. The charges and evidence in support thereof would be mutually relevant and admissible at separate trials of each charges.

3. Joinder of all charges and Defendant's would obviate the need for duplicative trials and would promote judicial economy and time.

4. The Defendant(s) will not be so prejudice by this joinder as to prevent a fair trial.

WHEREFORE, your petitioner moves that this Honorable Court grant the Motion for Joinder of all Defendants and Offenses.

Respectfully submitted,
Richard Boucher
Richard Boucher
Assistant State's Attorney

POINTS AND AUTHORITIES

Md. Rules of Procedure 4-253

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of December, 1991 a copy of the foregoing Motion was mailed to Antonio Gioia, Esquire; 2 E. Fayette Street, Baltimore, Maryland 21202.

Richard Boucher
Assistant State's Attorney

STATE OF MARYLAND

*

IN THE

V.

*

CIRCUIT COURT

GREGORY MONK, A.K.A.

*

FOR

JOSEPH PAYNE

*

BALTIMORE CITY

CASE NO. 591277019,20,21

*

*

* * * * *

DEC 19 11 21 AM '15
BALTIMORE
STATE OF MARYLAND
CLERK
T. E. BANKS


NOTICE OF STATE'S RELIANCE ON WRITTEN LABORATORY REPORT AND
WRITTEN CHAIN OF CUSTODY STATEMENT

Now comes Stuart O. Simms, State's Attorney's for Baltimore City, by Richard Boucher, Assistant State's Attorney for Baltimore City, and makes it known that:

1. The State of Maryland, pursuant to Maryland Annotated Code, Courts and Judicial Proceedings Article, Section 10-1001, intends to establish that the physical evidence in this case is a controlled dangerous substance by way of a written or analyst who prepared the report; and


2. The State of Maryland, pursuant to Maryland Annotated Code, Courts and Judicial Proceedings Article, Section 10-1002, intends to establish the chain of physical custody or control of the controlled dangerous substance(s) in this case by way of a written statement signed by each person in the chain of custody and does not intend to produce in court the persons signing the statement.

In accordance with Maryland Annotated Code, Courts and Judicial Proceedings Article 10-1003, a copy of the aforementioned Laboratory Report and Statement of the Chain of Evidence Custody is either attached or, if not attached, available for inspection, with advance notice, in the Office of the State's Attorney, Narcotics Investigations Division, Room 303 Clarence M. Mitchell, Jr. Courthouse, Baltimore, Maryland 21202.


Richard Boucher
Assistant State's Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this *11th* day of *December*, 1991 a copy of the foregoing Notice with its attachments was mailed to Antonio Gioia, Esquire; 2 E. Fayette Street, Baltimore, Maryland 21202.


Richard Boucher

Investigating/Seizing Officer(s) P/O Milt Coleman WD E156	Dist./Div.	Seq. Number	Date 07-24-91	Time 0020	Property # N 109672
			Location of Recovery or Seizure 1800 LAURETTA AVE.		

ITEM	<input checked="" type="checkbox"/> Seizure <input type="checkbox"/> Search Warrant <input type="checkbox"/> Purchase <input type="checkbox"/> Recovery	Officer's Count	Analyst's Inventory			ITEM	LABORATORY REPORT	
			Count	Weight	Used in Analysis		RESULTS	SCHEDULE
1		1						
1		30	30	5.63g	Seal	1A	Cocaine Base / Sch. II	
ONE BROWN PAPER TOWEL WITH THIRTY YELLOW ZIPLOC BAGS CONTAINING- WHITE SUBSTANCE								
DEF: JOSEPH PATYNE M/B/ 12-11-69 2931 FOREST GLEN RD								

BALTIMORE POLICE
 JUN 25 7 52 AM '91
 EVIDENCE CONTROL

I hereby certify that the above listed Controlled Dangerous Substance(s) were properly tested by me, and am certified by, and used analytical and quality control procedures approved by the State Department of Health and Mental Hygiene.

Marta Washko C149 7-24-91

The undersigned hereby certify that the evidence in this case and listed above, while in my presence, so remained and was then delivered to the person indicated on the date and time stated and it is in essentially the same condition as when it came into my presence, except that material or portion thereof consumed in the analysis.

Printed Name of Investigating/Seizing Officer(s) P/O Milt Coleman	Date/Time 7/24/91 02:00	Received/Resealed by (Seal <input type="checkbox"/> Broken <input type="checkbox"/> Intact <input type="checkbox"/> (Printed Name) MARTA WASHKO C-149	Date/Time 7-24-91 835
Signature <i>Milt Coleman</i>	Location CPS ROOM	Signature <i>Marta Washko</i>	Location Chem
Received/Resealed by (Seal <input type="checkbox"/> Broken <input type="checkbox"/> Intact <input type="checkbox"/> (Printed Name) SHIRLEY M KEENEY	Date/Time 7-24-91 0530	Received/Resealed by (Seal <input type="checkbox"/> Broken <input type="checkbox"/> Intact <input type="checkbox"/> (Printed Name) BARBARA L MALONEY	Date/Time 7-25-91 2060
Signature <i>Shirley Keeneey</i>	Location	Signature <i>Barbara Maloney</i>	Location
Received/Resealed by (Seal <input type="checkbox"/> Broken <input type="checkbox"/> Intact <input type="checkbox"/> (Printed Name) MARTA WASHKO C-149	Date/Time 7-24-91 820	Received/Resealed by (Seal <input type="checkbox"/> Broken <input type="checkbox"/> Intact <input type="checkbox"/> (Printed Name) OFF. JOHN MANUSH	Date/Time 7-25-91 757
Signature <i>Marta Washko</i>	Location Chem	Signature <i>John Manush</i>	Location

STATE OF MARYLAND * IN THE
v. * CIRCUIT COURT
GREGORY MONK * FOR BALTIMORE CITY
CASE NO(S). 591277019, 20, 21 * Criminal
* * * * *

VOIR DIRE

Now comes the Defendant, by his attorney, John C. M. Angelos, Assistant Public Defender, and respectfully requests the Court to briefly outline the following situation to the jury panel and propound the following questions to the jurors on their voir dire examination.

This case arose in Baltimore City on August 2, 1991, when the Defendant is alleged to have possessed controlled dangerous substances in sufficient quantity to indicate an intent to distribute.

With that brief explanation, you are asked to respond to the following questions:

1. Does any member of the panel know anything about the facts of this case other than what you have heard in Court today?
2. Does any member of the jury panel know, or are you related to John C. M. Angelos, the Assistant Public Defender, or Richard Boucher, the prosecutor in this case?
3. Does any member of the jury panel know any of the persons who may be called as witnesses for either the State or the defense; namely:

Defense

State

Officer Warren Smith-BCPD-Western District
Officer Milt Coleman-BCPD-Western District
Martha Iwashko Chemist CL

4. Is there any member of the jury panel friendly, associated with, or related to anyone in the Baltimore City Police Department, the State's Attorney's Office, or any other law enforcement agency?

Denied 5. Has any member of the jury panel, a family member or close friend ever:

(a) Been a witness for the State in a criminal case?

(b) Been convicted of a crime?

(c) Been the victim of a serious crime?

(d) Had any other experience with the criminal justice system which would or might affect your ability to sit as a fair and impartial juror in this case?

6. Has any member of the jury panel ever served on a Grand or Petit Jury?

7. Has any member of this jury panel served on a jury trial when, after the verdict was rendered, the judge or the attorneys for either side made a comment to you about the case or the parties involved? Would this or any other experience you had as a juror on that case(s) affect your ability to sit as a juror on this case?

Denied 8. Is there any member of the panel that believes merely because a person is indicted by the Grand Jury or charged by a Criminal Information, that this raises a presumption of guilt on the part of that individual?

Criminal Information, that this raises a presumption of guilt on the part of that individual?

9. There may be in this case testimony from one or more Baltimore City Police Officers. Would you give more weight to the testimony of a police officer merely because he/she is a police officer, than to other witnesses in this case?

10. Does anyone have such strong feelings concerning the use of controlled dangerous substances that you would be unable to render a fair and impartial verdict based on the evidence.

11. This trial is expected to take one day. Is there any juror who has any serious scheduling problems which may conflict with the trial of this case?

12. Does any member of the jury panel have any matters that would prevent you from giving this case your full undivided attention during the trial and deliberations.

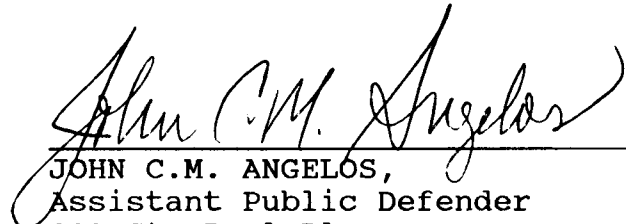
Denied (13.) The Defendant in every criminal case is presumed innocent. Unless you are satisfied beyond a reasonable doubt of the Defendant's guilt solely from the evidence presented in this case, the presumption of innocence alone requires you to find the Defendant not guilty. Is there any member of the jury panel who is unable or unwilling to uphold and abide by this rule of law?

Denied (14.) In every criminal case, the burden of proving the guilt of the Defendant rests solely and entirely on the State. The Defendant has no burden and does not have to prove his innocence. Is there any member of the jury panel who is unable or unwilling to uphold and abide by this rule of law?

15. Is there any other reason not already explained why any member of the jury panel cannot be a fair and impartial juror in this case?

16. Has any member of the jury panel had any training in the legal filed?

17. Has any member of the jury panel or a member of your family or close friend ever been accused of a crime involving illegal drugs, or been involved with drug abuse or witnessed any drug transactions?



JOHN C.M. ANGELOS,
Assistant Public Defender
201 St. Paul Place
Baltimore, Maryland 21202
Telephone: 333-4910

STATE OF MARYLAND	*	IN THE
V.	*	CIRCUIT COURT
GREGORY MONK	*	FOR
CASE NO. 591277019-21	*	BALTIMORE CITY
	*	*

STATE'S REQUESTED VOIR DIRE

This case involves Narcotics Violations. Does anyone have any prior knowledge of this incident?

1. Is any member of the jury panel related to or personally acquainted with the Defendant(s)?

2. Is any member of the jury panel related to or personally acquainted with, or a present or former client of the Defense Attorney or Assistant State's Attorney?

ASSISTANT STATE'S ATTORNEY

DEFENSE ATTORNEY

Richard Boucher

John Angelos, Esquire

3. Is any member of the jury panel related to or personally acquainted with any of the following witnesses that may be called to testify:

Off. Warren Smith-BCPD-Western District (PPO)

Off. Milt Coleman-BCPD-Western District

Marta Iwashko, Chemist CL

4. Has any member of the jury panel or any member of your family ever been the victim of, charged with, or convicted of a crime?

5. Does any member of the jury panel know of any reason whatsoever that might affect his or her ability to render a fair and impartial verdict based solely upon the evidence presented?

4. Has any member of the jury panel or any member of your family ever been the victim of, charged with, or convicted of a crime?

5. Does any member of the jury panel know of any reason whatsoever that might affect his or her ability to render a fair and impartial verdict based solely upon the evidence presented?

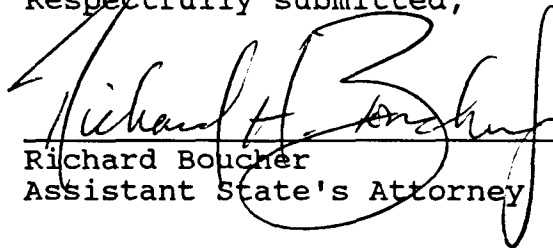
6. Would any member of the jury panel give more or less weight to the testimony of a police officer simply because he/she is a police officer.

Denied

7. Have any member of the jury panel or any member of your family been treated for, or is currently undergoing treatment for any type of substance abuse.

8. Does any member of the jury panel believe that any drug or substance currently found to be illegal in the State of Maryland should be legalized or decriminalized.

Respectfully submitted,


Richard Boucher
Assistant State's Attorney

JURY PANEL SELECTION
State of Maryland Gregory E. Monk

JURY SWORN 3/17/1992.
FOREMAN

591277019-20

DOCKET NUMBER: 591277021 COURTROOM : 528 NUMBER REQ : 040
JUDGE : WARD

SEQ FL	J U R O R	N A M E	STREET	SEX	ZONE	AGE	ED	MARITAL STATUS	SUMMONS NUMBER	DAYS SERV
001	REAVES NURSE	IDA M	MADISON ST	FEMALE	05	56	16	WIDOWER	031792-059	✓
002	DOLES STUDENT	SHEILA C	TREMONT ROAD	FEMALE	29	19	11	SINGLE	031792-062	S
003	BROWN CLERK	MARY E	AUTUMNLEAVES	FEMALE	02	50	11	SEPARATED	031792-073	D
004	TENHOOPEN BANKER	DIANE E	YORKSHIRE DR	FEMALE	12	33	16	SINGLE	031792-075	S
005	BAGINSKI SELF EMPLOYED	DANIEL M	MARY AVE	MALE	06	37	13	SINGLE	031792-079	D
006	STOKES CLERK	KAREN J	SILVERTHORNE	FEMALE	39	37	12	SINGLE	031792-087	S
007	TURPIN BUS DRIVER	LORETTA	ARGYLE AVE	FEMALE	01	41	15	DIVORCED	031792-092	D ✓
008	DECOSMO HOUSE WIFE	ANGELINA G	FAIRMOUNT AVE	FEMALE	24	59	08	MARRIED HEAVY EQUIPMENT O	031792-094	S
009	MEDLEY SPECIALIST	RAINA K	LOUDON AVE	FEMALE	16	31	16	MARRIED SPECIALIST	031792-099	✓
010	SLIVEY SALESPERSON	DORIS	WOODRING AVE	FEMALE	34	62	09	MARRIED UNEMPLOYED	031792-114	D

SC1 (X)

S

(2)

D

DC1

S

(3)

D

SC3

(X)

S

DC2

D ✓

DC8

(X)

S

DC6

(6)

D

011	HUFFMAN SALESPERSON	LUCY M TOLNA ST	FEMALE	65	12	MARRIED	031792-119	(7) S
				24	EARL	STEEL WORKER		
012	SINCLAIR HOMEMAKER	SHIRLEY D CALLOW AVE	FEMALE	43	14	MARRIED	031792-126	(8) D
013	CRAWLEY RESEARCHER	BARBARA E PATTERSON PAR	FEMALE	41	18	SINGLE	031792-129	(9) S
014	HUNT EXAMINER	EMILY N WICKFORD ROAD	FEMALE	34	18	MARRIED	031792-137	(10) S
				10	JOHN	ATTORNEY		
015	COLBERT STUDENT	DEBORAH DIENER PL	FEMALE	38	10	SINGLE	031792-139	(11) D
016	HOWARD SALESPERSON	ANNETTE DURHAM ST	FEMALE	41	12	MARRIED	031792-142	DC3 S
017	SLETTEBAK CONSULTANT	JOHN A AVON AVE	MALE	37	19	MARRIED	031792-143	(12) D
				18	GRACIENA	LAB TECHNICIAN		
018	LATTMAN PROFESSOR	EATON E CHARLES ST	MALE	51	20	MARRIED	031792-144	DC4 S
				18	SUSAN	PHYSICIAN		
019	SCHOEFFIELD HOUSE WIFE	ELEANOR E WISTERIA AVE	FEMALE	61	12	MARRIED	031792-147	DC5 D
				14	WILLIAM	SUPERVISOR		
020	LANE ATTORNEY	MICHELE LANVALE ST	FEMALE	38	20	SINGLE	031792-150	(13) S
021	CRYAN INSURANCE SALESPERSON	VERONICA C BOSTON ST	FEMALE	44	16	DIVORCED	031792-159	(14) D
022	RICHARDS BARTENDER	DEREK M PRESTON ST	MALE	26	12	SINGLE	031792-161	SC2 S
023	THORNE INVESTIGATOR	ELIZA D EDGEWOOD RD	FEMALE	50	12	SINGLE	031792-162	DC7 D

024	PRICE RETIRED	MILDRED E 43RD ST	FEMALE	65	12	MARRIED HOWARD	031792-167	UNEMPLOYED	DC10 ④ S
	KLOZE HOMEMAKER	VICKI C MERVILLE AVE	FEMALE	48	16	MARRIED LAWRENCE	031792-173	OCCUPATION UNKNOW	④ D
026	MCCURLEY HOMEMAKER	MARGARET M BENTALOU ST	FEMALE	69	10	MARRIED LEROY	031792-180	MAINTENANCE PERSO	DC9 S
027	DOVE PART-TIME EMPLOYEE	THELMA M FAYETTE ST	FEMALE	58	12	SEPARATED	031792-184		SC4 D
028	BUTTA HOMEMAKER	PHYLLIS A STRATHMORE AV	FEMALE	53	10	MARRIED CHARLES	031792-186	MASONRY	⑤ S
029	COOK TEACHER	LESLIE T PEMBRIDGE AVE	FEMALE	32	16	MARRIED HARRY	031792-190		⑥ S
030	BROWN SALESPERSON	VALERIE S REGESTER ST	FEMALE	31	14	SEPARATED	031792-191		AI S
031	EBBENHOUSE SECRETARY	KAREN S ELRINO ST	FEMALE	39	14	DIVORCED	031792-192		
032	MOORING BABYSITTER	ANNETTE E WINDSOR GARDE	FEMALE	65	12	DIVORCED	031792-196		
033	CORRIGAN JR PROFESSOR	ROBERT E MILTON AVE	MALE	51	18	SEPARATED	031792-197		
034	MONT MECHANIC	RONNIE R ELLAMONT ST	MALE	33	10	SINGLE	031792-200		
035	DEAS DOMESTIC WORKER	THERESA H YORK ROAD	FEMALE	62	08	DIVORCED	031792-201		
036	COFIELD JR FEDERAL EMPLOYEE	WILLIE G BELVIEU AVE	MALE	50	12	MARRIED DORIS	031792-205	FEDERAL EMPLOYEE	

037 TURNER MAUREEN D FEMALE 30 15 *Handwritten* 031792-211
BOOKKEEPER ELDERON AVE 15 ANTOINE UNEMPLOYED

038 BYRD LISA M FEMALE 32 14 MARRIED 031792-212
ASSISTANT HICKORY AVE 11 CLAUDY PLUMBER

039 STROUP ESTHER V FEMALE 69 12 MARRIED 031792-219
RETIRED DORIS AVE 25 HARRY RETIRED

040 GOSS JOSEPH K MALE 49 09 MARRIED 031792-221 ✓
HEAVY EQUIPMENT OPER BURNETT ST 30 JACQUELINE HOMEMAKER

END OF JURORS

LENGTH OF TRIAL IN DAYS: _____

COMPLETION DATE AND TIME : ____/____/____ _____

OUTCOME OF TRIAL _____

CIRCUIT COURT FOR BALTIMORE CITY

10:42

29009933-34 413678 12/17/69

CASE(S)# _____ TERM _____

MONK, GREGORY ERIC

IDENT.NO. _____

3320 DORITHAN 1C B/M
BALTIMORE MD 21217 304148B5

DOB _____

A.R.NO. 07878

0102

03

SXI

CHARGE(S) VIOL NARC LAWS
BA

TRACKING# _____

ATTORNEY	DATE	LOCATION	DATE	COURT REPORTER	DATE
<u>Moia, T</u>	<u>7/25/90</u>	B.C.J. <input checked="" type="checkbox"/> SUMMONS		<u>Vader</u>	<u>7/25/90</u>
		D.O.C. <input type="checkbox"/> BAIL			
		O.R. <input type="checkbox"/>			

Woods, C.

ASST. STATE'S ATTY.

DATE	DOCKET ENTRIES	
<u>4990</u>	Circuit Court Docketing Date	
	Recognizance taken / District Court	
	Recognizance taken / Circuit Court	
<u>5-7-90</u>	Appearance of <u>A Moia</u>	Defense
<u>5/8/90</u>	Appearance of <u>Cynthia R. Wood</u>	State
	Arraigned and Pleads	Election of Trial <u>5- 7-25-90 PT18</u>
	MOTIONS	
	DEFENSE	STATE
	Motion for Discovery Fd.	<u>[6/14/90]</u> Motion for Discovery Fd.
	Answers To State Discovery Fd.	<u>[6/14/90]</u> States Disclosure Fd.
	Defense Disclosure Fd.	<u>[]</u> Answers To Defense Discovery Fd.
	Motion Pursuant To Md. Rule _____	<u>[6/14/90]</u> Notice of States Reliance Fd.
	Motion To Suppress Fd.	<u>[]</u> Answers To Defendants Bill of Particulars Fd.
	Defendant Demand For Witness Fd.	<u>[]</u> Motion For Additional Penalties
	Motion To Dismiss Fd.	<u>[6/14/90]</u> Notice of Plea Bargain Policy
	Motion For Bill of Particulars Fd.	<u>[]</u>
	Omnibus Motion Fd.	<u>[]</u>
	Motions for Speedy Trial	<u>[]</u>
	Motion For Grand Jury Testimony	<u>[]</u>
		<u>[]</u>

710 2600 V 110

DATE

DOCKET ENTRIES

5-7-90 Recognizance taken in Circuit Court Property Bond \$ 7,500 Def's 3320 Northwood apt #1-C 21217

7/25/90

NO. 133 CT 1 PLEA M CHG Dist. Cocaine GOC
VERD M TYPE TSPC TIME 5yrs BEGIN
LOC Doc SUSP 4yrs 9mo 11days P/TIME PROB
FINE COSTS 190.00

Art 27 Section A

Cts payable thru Probation w/fe lamas.
As to '34- NP entered by State all present

Pines, J.



TRUE COPY
TEST

Sandra E. Banks
1-10-92
SAUNDRA E. BANKS, CLERK

Possible Exhibit
(Copy of Docket Entries)

Complaint No. 76-59105

Investigating/Seizing Officer(s) P/O Milt Coleman WD E156 Dist./Div. WD Seq. Number E156

Date 07-24-91 Time 0820
Location of Recovery or Seizure 1800 LAURETTA AVE.

Property # N 109672

ITEM	<input checked="" type="checkbox"/> Seizure <input type="checkbox"/> Search Warrant <input type="checkbox"/> Purchase <input type="checkbox"/> Recovery	Officer's Count	Analyst's Inventory			ITEM	LABORATORY REPORT	
			Count	Weight	Used In Analysis		RESULTS	SCHEDULE
1		1						
1		30	30	5.63g	1a	1a	Cocaine Base / Sch. II	
ONE BROWN PAPER TOWEL WITH THIRTY YELLOW ZIPLOC BAGS CONTAINING WHITE SUBSTANCE								
DEF: JOSEPH PITNEY M/B / 12-11-69 2931 FOREST GLEN RD								

STATE'S EXHIBIT
2
PENCAD-Baltimore, Md.

EVIDENCE CONTROL
 JUL 25 7 52 AM '91

I hereby certify that the above listed Controlled Dangerous Substance(s) were properly tested by me, and am certified by, and used analytical and quality control procedures approved by the State Department of Health and Mental Hygiene.

Marta Deszable C149 7-24-91

The undersigned hereby certify that the evidence in this case and listed above, while in my presence, so remained and was then delivered to the person indicated on the date and time stated and it is in essentially the same condition as when it came into my presence, except that material or portion thereof consumed in the analysis.

Printed Name of Investigating/Seizing Officer(s) P/O Milt Coleman Date/Time 7/24/91 0820
 Signature [Signature] Location CPS ROOM

Received/Resealed by (Seal Broken Intact (Printed Name) SHIRLEY M KEENEY Date/Time 7-24-91 0530
 Signature [Signature] Location [Blank]

Resealed by (Seal Broken Intact (Printed Name) MARTASHKO G-149 Date/Time 7-24-91 820
 Signature [Signature] Location Chem

Received/Resealed by (Seal Broken Intact (Printed Name) MARTA WASHKO G-149 Date/Time 7-24-91 835
 Signature Marta Deszable Location Chem

Received/Resealed by (Seal Broken Intact (Printed Name) BARBARA L MALONEY Date/Time 7-25-91 0600
 Signature [Signature] Location [Blank]

Received/Resealed by (Seal Broken Intact (Printed Name) OFF. JOHN MANTUOSI Date/Time 7-25-91 757
 Signature [Signature] Location [Blank]

State's Exhibit #2
(Lab. Report)

Why does ^{Stata's} "Eytch" #2
Show dependent as
JOSEPH PAYNE?


Jury Question # 1
3/18/92

There is evidence that the jury
may consider along with all the
evidence in this case in accordance
with my instructions that the defendant
gave the name of Joseph Payne as
his name at the time of his booking
J. Ward, v.

July Junction #2
3-18-92

Please define
"Resisting Arrest"
for us again.

Jury Questions

38-40

RESISTING ARREST

The legality of an arrest is not at issue in this case. The only question for you, the jury, is whether or not the defendant was arrested, and, if so, whether or not the defendant resisted that arrest.

An arrest has been defined as the taking, seizing, or detaining of the person of another, touching or putting hands upon him in the execution of process, or any act indicating an intention to arrest. In other words, an arrest is the detention of a known or suspected offender for the purpose of prosecuting him for a crime.

There is detention only when there is a touching by the arrestor or when the arrestee is told that he is under arrest and submits. Where there is no touching, the intention of the arrestor and the understanding of the arrestee are determinative, for in order for there to be an arrest in such case, there must always be an intent on the part of one to arrest the other and an intent on the part of the other to submit. When one is approached by a police officer and merely questioned as to his identity and actions, this is only an accosting and not an arrest.

If you find that the defendant was arrested, you must then proceed to determine whether he refused to submit to that arrest, whether that resistance was to an officer of the law in the performance of his legal duties, and whether the officer had identified himself as such. The police officer must have made known his identity before making the arrest.

STATE OF MARYLAND

vs.

GREGORY ERIC MONK

Defendant

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Part 22
* Case Nos.: 591277019-21

* * * * *

VERDICT SHEET

Case No. 591277019:

Ct. 1 - Possession of Cocaine with
Intent to Distribute

NOT GUILTY _____

GUILTY

Ct. 2 - Possession of Cocaine

NOT GUILTY _____

GUILTY

Case No. 591277020:

Ct. 1 - Resisting Arrest

NOT GUILTY _____

GUILTY

STATE OF MARYLAND

*

IN THE

v.

*

CIRCUIT COURT

GREGORY MONK

*

FOR BALTIMORE CITY

CASE NO(S). 591277019-21

*

Criminal

* * * * *

MOTION FOR NEW TRIAL

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Now comes the Defendant, by his/her attorney, John C.M. Angelos, Assistant Public Defender, and moves this Honorable Court, pursuant to Maryland Rule 4-331, for a new trial for the following reasons:

1. Because the verdict is against the evidence.
2. Because the verdict is against the weight of the evidence.
3. Because the evidence is insufficient in law to sustain the verdict.
4. And for such other and further reasons to be given at the hearing of this Motion.

MARYLAND
 CLERK
 JUDICIAL
 E. BANKS
 20 MAR 20 PM 2:20

John C.M. Angelos

John C.M. Angelos,
 Assistant Public Defender
 201 St. Paul Place
 Baltimore, Maryland 21202
 333-4910

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 20th day of March, 1992, a copy of the foregoing Motion for New Trial was hand-delivered to the Office of the State's Attorney for Baltimore City, Mitchell Courthouse, Baltimore, Maryland, 21202.

John C.M. Angelos

John C. M. Angelos,
 Assistant Public Defender

Copy forwarded to J Ward

STATE OF MARYLAND

* IN THE

v.

* CIRCUIT COURT

GREGORY E. MONK

* FOR BALTIMORE CITY

CASE NO(S). 591277019-21

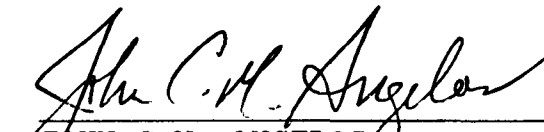
* Criminal

* * * * *

NOTICE OF APPEAL

MADAM CLERK:

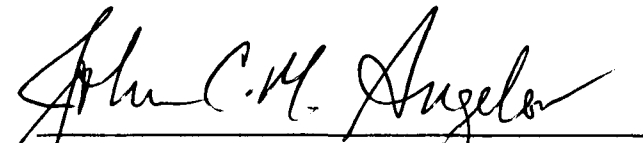
Please enter an Appeal to the Court of Special Appeals of Maryland from the judgment and sentence in the above-captioned case(s).



JOHN C.M. ANGELOS
Assistant Public Defender
201 St. Paul Place
Baltimore, Maryland 21202
333-4910

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 3rd day of April, 1992, a copy of the foregoing Notice of Appeal was hand-delivered to the Office of the State's Attorney for Baltimore City, Mitchell Courthouse, Baltimore, Maryland, 21202.



JOHN C.M. ANGELOS
Assistant Public Defender

CLERK
SAUNDRA E. BANKS
BALTIMORE, MARYLAND
92 APR - 3 AM 10: 22

BRW
28

GREGORY MONK

APPELLANT

V.

STATE OF MARYLAND

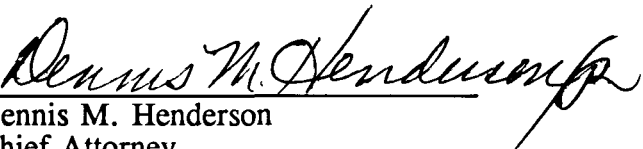
APPELLEE

* IN THE
* CIRCUIT COURT FOR
* BALTIMORE CITY
* IND. NO.
* 591277019-20

* * * * *

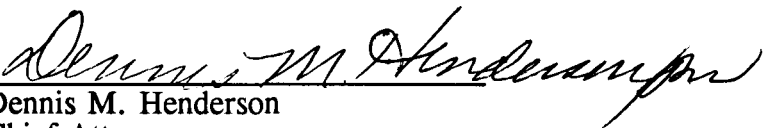
NOTICE OF APPEARANCE FOR APPEAL

Please enter my appearance as counsel for appeal only in the above captioned case.


Dennis M. Henderson
Chief Attorney
Appellate Division
Public Defender's Office
201 St. Paul Place
Baltimore, MD 21202
333-4861

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed this 10th day of April, 1992, to the Attorney General's Office, 200 St. Paul Street, 17th Floor, Baltimore, MD 21202.


Dennis M. Henderson
Chief Attorney
Appellate Division

Transmit Date: 6/2/92

STATE OF MARYLAND



WILLIAM DONALD SCHAEFER
GOVERNOR

OFFICE OF THE PUBLIC DEFENDER
APPELLATE DIVISION
201 SAINT PAUL PLACE
BALTIMORE, MARYLAND 21202

STEPHEN E. HARRIS
PUBLIC DEFENDER
333-4830

RONALD A. KARASIC
DEPUTY PUBLIC DEFENDER
333-4832

DENNIS M. HENDERSON
CHIEF ATTORNEY
APPELLATE DIVISION
333-4861

April 8, 1992

Linnie Brown & Gavin Oddo
Court Reporters
Baltimore City Circuit Court
Baltimore, Md. 21202

Dear Court Reporter:

Please prepare the transcript of the trial and disposition for the case indicated below and bill our office accordingly. This includes all arguments and statements of counsel as well as instructions to the jury and all evidentiary pretrial hearings. We require an original of your bill and ask that you show there on each trial date covered. Please also include your social security number.

Please deliver the original of the transcript to the Clerk's office, one copy to the Attorney General's Office and one copy to this office.

Should you have any questions or need an extension of time, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Dennis M. Henderson".

Dennis M. Henderson
Chief Attorney
333-4837

RE: Gregory E. Monk
INDICTMENT NO. (S): 591277019-20
JUDGE: Ward
TRIAL DATE (S): Brown 3/17/92, Oddo 3/17/92, 3/18/92, 4/2/92
APPEAL FILED: 4/3/92
RECORD DUE TO BE TRANSMITTED: 6/2/92

cc: Appeals Clerk

(Dear Clerk: Please include this letter in the record on appeal in accordance with Rule 8-411(c).)

C E R T I F I C A T I O N

STATE OF MARYLAND, CERCUIT COURT FOR BALTIMORE, TO WIT:

I HEREBY CERTIFY, the foregoing is a true and correct copy of the case file folder entries (docket entries) in the case mentioned hereon;

STATE OF MARYLAND

VS

NAME: GREGORY MONK

No. 591277019, 20

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY the foregoing is a true copy of the Record of Proceedings of the Circuit Court for Baltimore,

In Testimony Whereof; I here unto set my hand and affix the Seal of the Circuit Court, this,

29th day of MAY
19⁹²

Laundra E. Banks
Clerk - Circuit Court
for Baltimore City

RECORD ON APPEAL

Costs for Preparation of Record (Privately Retained)	\$	-
Costs for Transcript of Proceedings (Stenographer)	\$	530.00
TOTAL	\$	530.00

#517.50

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE CIRCUIT COURT FOR BALTIMORE CITY

STATE OF MARYLAND *

V. *

CASE NO. 591277019-20

PART 22

GREGORY E. MONK *

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

(Trial on the Merits)

TUESDAY, MARCH 17TH, 1992

BALTIMORE, MARYLAND

BEFORE:

THE HONORABLE THOMAS WARD, ASSOCIATE JUDGE
(And a Jury)

APPEARANCES:

For the State:

RICHARD BOUCHER, ESQUIRE

For the Defendant:

JOHN ANGELOS, ESQUIRE

ROBERT GAVIN ODDO
Official Court Reporter
Room 535 Courthouse East
Baltimore, Maryland 21202

1 TUESDAY, MARCH 17TH, 1992

2 (P-R-O-C-E-E-D-I-N-G-S)

3 THE COURT: All right.

4 (The following discussion took
5 place in chambers:)

6 THE COURT: Call the case, please.

7 MR. BOUCHER: Your Honor, may it please the
8 court, Richard Boucher, Assistant State's Attorney, calling
9 the matter of State of Maryland v. Gregory Monk, also known
10 as Joseph Payne.

11 Judge, these are Case Nos. 591277019, 020 and
12 021, here on the court's trial docket.

13 THE COURT: All right. Read the charges,
14 please. Turn around, sir, stand and face the clerk.

15 THE CLERK: Circuit Court for Baltimore City,
16 calls the matter of Gregory E. Monk, Case No. 591277019,
17 where the State is charging you with violation of narcotic
18 laws. As to 591277020, the State is charging you with
19 resisting arrest during your narcotic violation, and as to
20 Case No. 591277021, the State is charging you with loiter-
21 ing.

22 What is your plea as to each charge?

23 THE DEFENDANT: Not guilty.

24 THE CLERK: And your election of trial?

25 THE DEFENDANT: Jury trial.

1 THE COURT: You can have a seat.
2 THE CLERK: What is your age?
3 THE DEFENDANT: 22.
4 THE CLERK: Your date of birth?
5 THE DEFENDANT: 12/11 --
6 THE CLERK: 12 what?
7 THE DEFENDANT: 11/69.
8 THE CLERK: And your address?
9 THE DEFENDANT: 2931 Forest Glen Road.
10 THE CLERK: 2931?
11 THE DEFENDANT: Forest Glen Road.
12 THE CLERK: Is that a house or an apartment?
13 THE DEFENDANT: House.
14 THE CLERK: Thank you.
15 THE COURT: All right. You have a preliminary
16 motion?
17 MR. ANGELOS: Yes, we have, Your Honor. John
18 Angelos, Assistant Public Defender, representing Mr.
19 Gregory Monk this afternoon. We have a preliminary motion
20 to suppress the evidence recovered here.
21 THE COURT: All right, Mr. Angelos. In view
22 of the fact that the State is contesting your right to make
23 the motion, do you want to outline to me what it is you
24 hope to prove by the motion?
25 MR. ANGELOS: Yes, Your Honor. What defense

1 hopes to prove by the motion is that the narcotics, the
2 observations made by the police officer were insufficient to
3 establish probable cause to make the arrest of the defendant,
4 as the defendant was subsequently chased from the scene
5 and arrested at that point, and the narcotics subsequently
6 recovered or the items subsequently recovered were identi-
7 fied as narcotics.

8 THE COURT: Well, as I understand the facts,
9 which I don't think anybody is contesting, these, these drugs
10 were found on the ground. Is that correct?

11 MR. ANGELOS: That's where the police officer
12 would testify to.

13 THE COURT: And in fact your defense is that
14 it didn't belong to your client?

15 MR. ANGELOS: That's correct, Your Honor.

16 THE COURT: So, what would be the legal issue?

17 MR. ANGELOS: That the arrest was effectuated
18 before the defendant, before there was probable cause to
19 arrest the defendant, and the seizure by him indicates he
20 was not free to go and there was no probable cause to
21 arrest him. And the remedy should be to exclude whatever
22 else, what the police officers are attempting to place on
23 the defendant.

24 THE COURT: Nothing was found in the arrest
25 itself, the search, was it?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. BOUCHER: No, Judge.

THE COURT: All right. I would be glad to hear from you.

MR. BOUCHER: Your Honor, most respectfully, I believe that the court should deny the defense's motion to suppress the evidence and to deny the defense a hearing on this matter, and the reasons would be as follows:
That --

THE COURT: Well, do you want to argue -- maybe he wouldn't have any objection to offer the facts and attach the charging document as the facts that the State intends to rely on?

MR. BOUCHER: That is correct, Judge, and I would do that.

THE COURT: Is there any objection to that?

MR. ANGELOS: No, sir.

THE COURT: All right. Do you have any follow-up argument?

MR. BOUCHER: Only that based on the evidence that is contained within the statement of facts that there is no Fourth Amendment violation, there is no illegal police action, that being the case, the defense is not entitled to a motion to suppress the evidence, because there was no Fourth Amendment violation and the exclusionary rule does not apply.

1 THE COURT: All right. Motion is denied. I
2 agree with the State's position, and therefore the motion
3 to suppress is denied.

4 The jury has been called for and as soon as the
5 jury gets here, let me know.

6 THE LAW CLERK: Yes, sir.

7 THE COURT: And you can take the defendant back
8 out into the courtroom. You can use my door, and counsel
9 can use my door, too.

10 MR. ANGELOS: Judge, Mr. Monk wanted to use the
11 facilities.

12 THE OFFICER: He's got to go down to the
13 second floor.

14 MR. ANGELOS: Would that --

15 THE COURT: It's up to the officer where he
16 takes him, whether he takes him to the second floor or takes
17 him down the hall.

18 THE OFFICER: I have to take him back to the
19 lock-up.

20 THE COURT: All right. Take him back to the
21 lock-up. When you come back up, make sure the jury --
22 well, you can bring him up right away, but just call up
23 and find out if the jury is here.

24 THE OFFICER: Okay.

25 THE COURT: Now, you know why, Officer. We want

1 to screen out him from the jury.

2 Okay, folks. I'll see you in the courtroom.

3 MR. BOUCHER: Judge, there is also a stipula-
4 tion between the parties in regards to this matter. We
5 would stipulate as to the chemical analysis and to the
6 chain of custody.

7 THE COURT: All right. What was it, cocaine?

8 MR. BOUCHER: Yes, Judge.

9 THE COURT: You said it was cocaine, right?

10 MR. ANGELOS: But you are going to enter that
11 into evidence?

12 MR. BOUCHER: Oh, yes.

13 THE COURT: To answer your question.

14 (The proceedings in chambers were
15 concluded).

16 (Prospective jurors present in
17 courtroom, and the following pro-
18 ceedings resumed in open court).

19 THE COURT: Everyone except the jury, please be
20 seated, and the clerk will swear the jury.

21 (The prospective jurors were
22 sworn and questioned on their
23 voir dire examination).

24 THE COURT: Arraign the defendant.

25 THE CLERK: The Circuit Court for Baltimore

1 City calls the matter of Gregory Eric Monk. Mr. Monk,
2 would you please stand? Thank you so much.

3 Case No. 591277019, the State charges you
4 with violation of the narcotics laws. Case No. 591277020,
5 the State is charging you with resisting arrest during
6 your activities of violating the narcotic laws, and Case
7 No. 591277021, the State is charging you with loitering.

8 What is your plea to each charge?

9 THE DEFENDANT: Not guilty.

10 THE CLERK: And your election of trial?

11 THE DEFENDANT: Jury.

12 THE CLERK: Thank you. Counsel, will you enter
13 your names for the record, please?

14 MR. ANGELOS: Good afternoon, Your Honor. John
15 Angelos, Assistant Public Defender, representing Mr.
16 Gregory Monk this afternoon.

17 MR. BOUCHER: Good afternoon, Your Honor. May
18 it please the court, Richard Boucher, Assistant State's
19 Attorney, representing the State.

20 THE COURT: Ladies and gentlemen of the jury,
21 my name is Thomas Ward, and I will be the judge in this
22 jury case which is about to begin, and I'm going to be asking
23 you certain questions concerning your qualifications as
24 jurors, and if the answer is yes or no, please say that so
25 I can get right on to the next question.

1 The first questions involve identification,
2 and I am going to ask John Angelos, the defense counsel, to
3 stand and face you and ask you whether you know him, have
4 had any association with him now or in the past. If the
5 answer is yes, please stand. And there is no response.
6 You may be seated, Mr. Angelos.

7 He represents Gregory Monk, who is standing,
8 the defendant in this case. Mr. Monk, stand up and face
9 the panel, please. Standing and facing you. The same
10 question: Do you know him? If the answer is yes, please
11 stand. And there is no response and you may be seated.

12 Richard Boucher, Assistant State's Attorney,
13 is charged with the prosecution of this case. Same
14 question: Do you know him? If the answer is yes, please
15 stand, and there is no response.

16 Certain persons may be called as witnesses
17 in this case and they may include Warren Smith, Police
18 Officer. Is he here? Here he is. And Officer Milton
19 Coleman. Same question, ladies and gentlemen of the jury,
20 if you know them, please stand.

21 Thank you, gentlemen, you may be seated, and
22 there's no response.

23 Does any member of the panel belong to any
24 religious faith or sect which would prevent you from
25 rendering a decision with respect to your fellow persons?

1 For example, the Watch Tower is such a group
2 that believes that. So, if you do belong to such a religious
3 faith or sect that believes that, please stand. And there's
4 no response.

5 Has any member of the panel been a victim
6 of a crime of violence in the last five years? Now, a
7 crime of violence is exactly what you think it is, murder,
8 rape, robbery or attempted robbery, attempted robbery,
9 attempted rape, serious assault. It is not breaking and
10 entering, burglary, theft, car theft, traffic charges and
11 so forth. So, if that applies to you, please stand.

12 Yes, sir, what his your number?

13 JUROR NO. 144. 144.

14 THE COURT: And which one is it, Mr. Lattman?

15 JUROR NO. 144: I was the victim of a crime.

16 THE COURT: Yeah, but which one?

17 JUROR NO. 144: I was held up at an ATM machine.

18 THE COURT: What year was that?

19 JUROR NO. 144: 1989.

20 THE COURT: Okay. Was anyone arrested?

21 JUROR NO. 144: No.

22 THE COURT: Were you hurt?

23 JUROR NO. 144: No.

24 THE COURT: Now, how much was taken, not
25 recovered through insurance or some other way, round numbers?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 144: \$100.00.

THE COURT: Now, before I ask the next question, I was to ask the whole jury this question. I forgot to ask them this.

This case, ladies and gentlemen, as you have already heard, is, involves the allegations by the State that this defendant on the 24th of July, 1991, was in possession of a certain quantity of drugs, which would indicate possession with intent to distribute.

Does any member of the panel believes that he or she knows anything about this case? If you do, please stand, and I assume you two are standing for other reasons. But if you are standing for this reason, let me know. And there's no response.

All right. Now, I'll come back to the last question. You know what the nature of the case is, can you be fair and impartial and decide this case on the facts and law?

JUROR NO. 144: Yes, sir.

THE COURT: Questions from counsel? If not, please be seated.

Your number, ma'am?

JUROR NO. 92: 92.

THE COURT: M's Turpin. How does that apply to you?

1 JUROR NO. 92: Well, I was the victim of
2 assault with intent to murder.

3 THE COURT: Now, what year was that, ma'am?

4 JUROR NO. 92: October of '91.

5 THE COURT: And was there an arrest?

6 JUROR NO. 92: Yes.

7 THE COURT: And was there -- did you -- was
8 there a trial?

9 JUROR NO. 92: Yes.

10 THE COURT: And were you hurt?

11 JUROR NO. 92: Yes.

12 THE COURT: Were you hospitalized?

13 JUROR NO. 92: Yes.

14 THE COURT: And for how long?

15 JUROR NO. 92: 10 days. I was out of work
16 for three months.

17 THE COURT: Do you have any permanent injuries?

18 JUROR NO. 92: Yes.

19 THE COURT: Uh-huh, and what are they?

20 JUROR NO. 92: Well, I had a pierced colon,
21 stab wound to the abdomen, and those wounds and scarring --

22 THE COURT: Were all your injuries caused by
23 a knife?

24 JUROR NO. 92: Yes.

25 THE COURT: No gun?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR NO. 92: No gun.

THE COURT: Uh-huh. Were drugs involved in your case?

JUROR NO. 92: No, I don't think so.

THE COURT: Can you be fair in this case?

JUROR NO. 92: No.

THE COURT: All right. Come up here and tell me why. And, ma'am, I'll see you up here right after her. Why don't you stand over here and I'll get to you in a second. It will be faster that way.

Counsel. You can come right over, ma'am.

(Counsel and the defendant approached the bench for individual voir dire of the jurors as follows:)

THE COURT: We will wait for everybody. Are you a transit driver?

JUROR NO. 92: Yes.

THE COURT: How can you wrestle all those big wheels around?

JUROR NO. 92: It took a lot.

THE COURT: I see some of these ladies with these big bus wheels come around the corner, and I say, please hang onto that wheel and don't run over me.

Now, M's Turpin, why can't you be fair and

1 impartial?

2 JUROR NO. 92: Well, one thing, I am a transit
3 driver so I see everybody. The second thing is the fact
4 that in my case the guy plea-bargained with the court. He
5 was given probation. He is out on the streets, and --

6 THE COURT: And you're mad about that?

7 JUROR NO. 92: Yes, I am.

8 THE COURT: All right. Let me ask you some-
9 thing. In this case, where you don't know the defendant,
10 don't know anything about the case --

11 JUROR NO. 92: Uh-huh.

12 THE COURT: -- the question is, can you be
13 fair and impartial without blaming him --

14 JUROR NO. 92: I don't, well, it's not --

15 THE COURT: Well, just let me finish.

16 JUROR NO. 92: Oh, excuse me.

17 THE COURT: Listen to the facts of this --
18 you can call the facts any way you want.

19 JUROR NO. 92: Okay.

20 THE COURT: But what, what I'm trying to find
21 out is, you know, are you going to hear these facts and then
22 say, I'm going to get even or you could go the other way,
23 too and say, you know, I'm like, for some reason or other,
24 I'm going to find him not guilty independent of the facts
25 of the case, or for some reason or the other, I am going

1 to find him guilty independent of the facts of this case.

2 What I want is a juror who can listen to
3 the facts of the case, separate herself from this terrible
4 happening that happened to you in the past and be fair.
5 Can you? Can you do that or not?

6 JUROR NO. 92: Okay. The issues of the cases
7 are different from what happened with me, so that would,
8 you know --

9 THE COURT: True.

10 JUROR NO. 92: -- make me have a clear mind
11 with that. I just, I'm still angry about what happened
12 with me. Okay.

13 THE COURT: You're mad at the judge.

14 JUROR NO. 92: Yes.

15 THE COURT: I hope it's not me.

16 JUROR NO. 92: No, it wasn't you.

17 That's about it.

18 THE COURT: Can you or can't you?

19 JUROR NO. 92: Yeah, I could, but I --

20 THE COURT: All right. Questions?

21 MR. ANGELOS: Mr. Turpin --

22 THE COURT: Ask me, and I'll ask and I'll
23 ask the juror.

24 MR. ANGELOS: Your vocal --

25 THE COURT: What's the question?

1 MR. ANGELOS: You're still upset.

2 THE COURT: Well, yeah, she's upset. You're
3 upset, aren't you?

4 JUROR NO. 92: Yes. The guy, every day, the
5 guy is on the street.

6 THE COURT: About what happened to you. Now,
7 anything else?

8 MR. ANGELOS: How many times did she have to
9 come to court?

10 JUROR NO. 92: I didn't come to court.

11 THE COURT: Wait a minute.

12 JUROR NO. 92: Oh, excuse me.

13 THE COURT: Denied. Come on.

14 MR. ANGELOS: You're still upset today?

15 THE COURT: You asked that question. Denied.
16 Any other questions?

17 MR. ANGELOS: That's all, Judge.

18 MR. BOUCHER: No, Judge.

19 THE COURT: You may be seated, ma'am.

20 MR. ANGELOS: For the record, I will make a
21 motion.

22 THE COURT: Not now. I'll let you know when.

23 MR. ANGELOS: Okay.

24 THE COURT: All right. Next juror, please.
25 You don't want to do that at that point. Okay? Your

1 number, ma'am?

2 JUROR NO. 191: 191.

3 THE COURT: Uh-huh. And we're still on the
4 basic issue. You say you've been the victim of a crime.
5 Is that right?

6 JUROR NO. 191: Yes.

7 THE COURT: What was it?

8 JUROR NO. 191: Robbery at a ATM machine,
9 and just like the other gentleman.

10 THE COURT: It was a machine, too?

11 JUROR NO. 191: Yes.

12 THE COURT: What's going on around these
13 machines? Goodness gracious, that's two of them in a row.
14 I'm glad I go into the bank.

15 Now, ma'am, what year was that.

16 JUROR NO. 191: February of '91.

17 THE COURT: Was anyone arrested in that case?

18 JUROR NO. 191: No.

19 THE COURT: No arrest. All right. And were
20 you hurt?

21 JUROR NO. 191: Yes.

22 THE COURT: And were you hospitalized?

23 JUROR NO. 191: No.

24 THE COURT: How were you hurt?

25 JUROR NO. 191: Pushed around and --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Pushed around?

JUROR NO. 191: -- then knocked down.

THE COURT: And can you, how much was taken and not recovered through insurance or some other way?

JUROR NO. 191: About \$55.00.

THE COURT: Can you be fair in this case?

JUROR NO. 191: Yes.

THE COURT: Questions? Thank you. You may be seated.

JUROR NO. 191: Okay. Thank you.

THE COURT: Next? What's your number, ma'am?

JUROR NO. 59: 59.

THE COURT: Oh, you're No. 1, M's Reaves, on the list I have.

Now, what was it that happened to you?

JUROR NO. 59: It, it's just a feeling I might be biased about this. Since 1987 I've been working with adolescents and children.

THE COURT: Working with what?

JUROR NO. 59: Adolescents and children.

THE COURT: Uh-huh.

JUROR NO. 59: Different drug discipline and whatever.

THE COURT: Uh-huh.

JUROR NO. 59: So, I don't know if I can be

1 really, you know, --

2 THE COURT: Well, here's the question. The
3 question is, you're allowed to have knowledge in the
4 community and be on the jury. After all, we have doctors,
5 nurses.

6 JUROR NO. 59: Yes, I know it.

7 THE COURT: We have lawyers. We have judges
8 on juries. I serve on juries. Now, listen --

9 JUROR NO. 59: Yes.

10 THE COURT: -- let me finish before you make
11 comment. Let me, let me get it all out.

12 JUROR NO. 59: Uh-huh.

13 THE COURT: The question is, not whether you have
14 knowledge or don't, or whether you're a nurse or whether
15 you're this or that. The question is, can you be fair?
16 That's the issue --

17 JUROR NO. 59: Well, I --

18 THE COURT: -- now wait a minute. I'm not
19 finished yet. In a case involving drugs, you're not
20 supposed to be isolated from the community. You're not
21 supposed to, you know, be ignorant.

22 JUROR NO. 59: Uh-huh. Right.

23 THE COURT: The question is, can you be fair
24 in a case that you know nothing about and call the shots as
25 you see them, but don't come in with a preconceived opinion

1 as to guilt or innocence.

2 JUROR NO. 59: Right. Uh-huh.

3 THE COURT: Or a preconceived prejudice one
4 way or the other, which would prevent your ability from
5 being fair. And that's the question.

6 JUROR NO. 59: Yeah. That's what I'm just
7 telling you because --

8 THE COURT: Do you have such a prejudice or
9 inclination?

10 JUROR NO. 59: Well, it's not that I can
11 explain. Even though about working with children, I just
12 would like to be excluded from the case, that is all
13 children and adolescents.

14 THE COURT: Uh-huh, but you see, you're not
15 reaching me. What is it you're telling me?

16 JUROR NO. 59: I'm saying that I don't know if
17 I can just say, well, I can be a no or a yes.

18 THE COURT: What would you do?

19 JUROR NO. 59: Well, I believe they need help
20 with the sickness. I see their sickness.

21 THE COURT: You say, you mean -- are you talking
22 about drugs?

23 JUROR NO. 59: Yes, sir.

24 THE COURT: You think that drugs are a sickness?

25 JUROR NO. 59: Big time.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Uh-huh. Well, here's the question. The question in this case is, not whether it's a sickness or not, --

JUROR NO. 59: Uh-huh.

THE COURT: -- you see, the punishment is strictly up to me if there's a finding of guilt.

JUROR NO. 59: Right.

THE COURT: But the jury's job is to decide whether we get to that point or not. Guilt or innocence. That's all you are concerned with.

JUROR NO. 59: Okay.

THE COURT: And you're concerned with the facts of the case. Now, if you think that you would lean one way or the other, I naturally want you to tell me.

JUROR NO. 59: I feel a little hurt.

THE COURT: Huh?

JUROR NO. 59: I feel a little hurt when I see a child, anytime.

THE COURT: You would lean one way or the other?

JUROR NO. 59: Would I? When I see a child, it depends on the crime, you know.

THE COURT: As to guilt or innocence, that's the issue.

JUROR NO. 59: Yes.

1 THE COURT: And this case involved drugs.

2 JUROR NO. 59: Yes. And I don't know what
3 I would do. You see, I'm not talking --

4 THE COURT: Well, I'm not going to put --
5 I'm not quite positive, and since I'm --

6 JUROR NO. 59: Right.

7 THE COURT: -- I'm in a doubt as to what --

8 JUROR NO. 59: Yes.

9 THE COURT: -- exactly you're telling me --

10 JUROR NO. 59: Yes.

11 THE COURT: -- I'm going to excuse you, M's
12 Reaves, --

13 JUROR NO. 59: Yes, and --

14 THE COURT: -- and let you go back to the Jury
15 Assembly Room.

16 JUROR NO. 59: Thank you so much.

17 THE COURT: All right, folks. You can go back
18 to the trial table.

19 (Counsel and defendant returned
20 to trial tables).

21 THE COURT: Now, ladies and gentlemen of the
22 jury, I want to continue on with the questions. The next
23 question is, does any member of the panel have any opinions
24 or beliefs about law enforcement officers which in any way
25 would cause him or her, meaning you, to give more or less

1 weight to the testimony of a police officer simply because
2 the witness was a police officer? If you would so do,
3 please stand.

4 And there's no response.

5 Would the race, sex or age of the defendant,
6 the nature of this case, which I already told you is involv-
7 ing drugs, or any other circumstance have any effect on
8 your ability to render a fair and impartial verdict? If
9 there is such a circumstance, please stand.

10 Your number, ma'am?

11 JUROR NO. 99: 99.

12 THE COURT: All right. And what is the
13 circumstance?

14 JUROR NO. 99: A member of my family was
15 arrested for resisting arrest, and he was brutally --

16 THE COURT: All right. Come up and tell me
17 the rest. What is your number, ma'am, the lady right there.

18 JUROR NO. 129: 129.

19 THE COURT: 129? All right. M's Crawley,
20 why don't you come right up here, too, right behind you,
21 and what is your number?

22 JUROR NO. 211: 211.

23 THE COURT: 39?

24 THE CLERK: 211.

25 JUROR NO. 211: 211.

1 THE COURT: 211. All right, and why don't
2 you come up, too.

3 (Counsel and defendant approached
4 the bench, and the following
5 individual voir dire ensued:)

6 THE COURT: All right. And let's see. You are
7 99.

8 JUROR NO. 99: Right.

9 THE COURT: Okay. Now, somebody in your
10 family, who was it?

11 JUROR NO. 99: My brother.

12 THE COURT: Your brother was arrested?

13 JUROR NO. 99: Yes.

14 THE COURT: And what --

15 JUROR NO. 99: They said --

16 THE COURT: And how would this arrest affect
17 your ability to be fair and impartial as a juror?

18 JUROR NO. 99: Well, he went -- first of all,
19 --

20 THE COURT: Well, first of all, would it
21 affect you?

22 JUROR NO. 99: Yes, it would.

23 THE COURT: It would?

24 JUROR NO. 99: Definitely.

25 THE COURT: All right. And how would it affect

1 you?

2 JUROR NO. 99: Because when he was arrested,
3 he was on a known drug-trafficking corner. He was arrested
4 and the police brutally beaten, had beaten him, and he was
5 taken and held in Northwest District or whatever, and
6 we had three day to get him out. We couldn't get him out.
7 So, three days they held him. They wouldn't let him talk
8 with an attorney. They wouldn't let him go. They find
9 anything on him, and he -- well, from what he told us, he
10 thought the police tried to plant something in his pocket.

11 So, I do have a problem with trying to get the
12 fair verdict to this particular individual.

13 THE COURT: Well, you wouldn't lean one way
14 or the other?

15 JUROR NO. 99: Yes.

16 THE COURT: Okay. Well, I'm going to excuse you
17 then M's Medley, and you can go back to the Jury Assembly
18 Room.

19 JUROR NO. 99: Okay.

20 THE COURT: All right. Now, I'd like to have
21 -- here it is -- M's Crawley.

22 Now, M's Crawley, I assume you're up here
23 because you say you can't be fair and impartial?

24 JUROR NO. 129: Because of the nature of the
25 crime. I work very hard with my community association to --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: You're against drugs?

JUROR NO. 129: Yes.

THE COURT: Well, let me -- let me see if I can direct it into a channel.

JUROR NO. 129: Okay.

THE COURT: I want to know your answer, but let me say this: That there's no one in this courtroom, I'm pretty sure, who is not against drugs.

JUROR NO. 129: Right.

THE COURT: I can assure you that whether I would be a juror or a judge, that I'm against drugs. The question here isn't whether you're against parking tickets or drugs or hold-ups or murders, we're all against crime.

JUROR NO. 129: Right.

THE COURT: I mean, that's why all the politicians always come out against crime. It's a good safe subject.

JUROR NO. 129: Uh-huh.

THE COURT: The question is whether you can be fair. Now, I know -- let me finish. I know you're going to tell me that my community association is against crime, and I have a lot of drugs in my neighborhood or something like that, and I think it's a pretty fair statement to say that it's everywhere.

JUROR NO. 129: It's everywhere. It's true.

1 THE COURT: Can you sit on a jury, though, and
2 determine whether this defendant, who you don't know, is
3 guilty or innocent of possession of drugs with intent to
4 distribute and/or possession of drugs and other charges
5 -- that's the question -- in a case you don't know anything
6 about? Or would you step into the jury box with a pre-
7 conceived inclination to do one thing or another?

8 JUROR NO. 129: I think I would step into the
9 jury box with a preconceived notion, and I would --

10 THE COURT: Well, then, I will have to excuse
11 you. You understand that, don't you?

12 JUROR NO. 129: Yes, I do.

13 THE COURT: And you may go back to the Jury
14 Assembly.

15 JUROR NO. 129: Thank you.

16 THE COURT: All right. M's Turner.

17 M's Turner, you're up here because you think
18 you can't be fair. Is that the reason?

19 JUROR NO. 211: Uh-huh.

20 THE COURT: And why is that?

21 JUROR NO. 211: Because I had been, had a
22 trial 11 years ago, where I was the victim of sexual assault,
23 and nothing was done for me, and I was like the one that
24 I was on trial. And I have no faith in --

25 THE COURT: That was because of the way the

1 lawyers handled you and --

2 JUROR NO. 211: Right, the way the whole case
3 went.

4 THE COURT: Uh-huh.

5 JUROR NO. 211: I took the person to court
6 three times, and nothing was done, and that person is still
7 walking the streets of Baltimore. And then my god-daughter
8 was attacked by her, by her father, and he was using drugs
9 and everything, and nobody has done anything about that,
10 and he's still walking the streets, too.

11 THE COURT: All right. Now, look at me a
12 minute. A person may or may not have justifiable complaints
13 about lots of things, and I, you know, I don't doubt, I'm
14 not going to get into that. In your case, you do, you have
15 all kinds of complaints.

16 The question in this case however is not
17 whether or not whether or not you have had things happen
18 to you that are unfair.

19 JUROR NO. 211: Uh-huh.

20 THE COURT: The question is whether you as
21 a juror can be fair, if you understand my point.

22 JUROR NO. 211: I understand your point.

23 THE COURT: My point is, whether or not
24 can you now, with a system of justice in the palm of your
25 hand as to one issue only, guilt or innocence, whether or

1 not you can listen to the facts, call the shots as you want
2 to, but not lean for or against anybody before you get into
3 the jury box. If you're going to lean, if you're going to
4 be mad and hold it against somebody, one side or the other,
5 then I should strike you.

6 Now, you tell me what I should do.

7 JUROR NO. 211: You should strike me.

8 THE COURT: All right.

9 JUROR NO. 211: I guess, since I would be
10 leaning.

11 THE COURT: All right, ma'am. I am going to
12 do that, and I am going to excuse you and you can go back
13 to the Jury Assembly Room.

14 All right, folks. Any other --

15 THE REPORTER: There's another one.

16 THE COURT: Oh. All right.

17 JUROR NO. 221: 221.

18 THE COURT: Come -- 221? Come on up.

19 The last one here on the list, Mr. Goss.

20 JUROR NO. 221: I know. My job is drug
21 related. I work for the United Nations Commission.

22 THE COURT: That's wonderful. Now, you keep
23 that old card. You might need it some day. Maybe it will
24 bring you a horse that comes in a little faster than mine
25 came in.

1 JUROR NO. 221: I hope so. I hope they come in
2 straight.

3 THE COURT: Now, in this case, I mean, I don't
4 care whether you're a narcotics officer, I don't care
5 whether you're chief of police or a judge or what, I want to
6 know whether you can be fair in a case that you know nothing
7 about. Call the shots as you see them, but call them only
8 based on the law and facts in a case that you know nothing
9 about. That's the issue. Can you do that or not?

10 JUROR NO. 221: Yeah.

11 THE COURT: Any questions?

12 MR. BOUCHER: No, Judge.

13 THE COURT: You can be seated then.

14 MR. ANGELOS: Thank you.

15 THE COURT: All right. We'll -- are there any
16 more? No more. All right. Any other questions from the
17 State?

18 MR. BOUCHER: I would just direct the court's
19 attention to the final three questions on State's voir dire,
20 dealing with drug use of the --

21 THE COURT: Since I don't have them, I don't
22 know how you can direct my attention.

23 MR. BOUCHER: I'm sorry, Judge. I thought I
24 had given a copy to your law clerk.

25 THE COURT: You did and -- I'm sure. Have you

1 got any more copies?

2 MR. BOUCHER: Yes, I do.

3 THE COURT: If you want me to see them, you'll
4 have to bring them up. The last three questions? I
5 already asked six. Denied. Denied as to seven. Denied as
6 to eight.

7 I'm going to -- State's exceptions to my
8 voir dire questions. All right.

9 MR. BOUCHER: Thank you, Judge.

10 THE COURT: That was 6, 7 and 8. All right.

11 MR. ANGELOS: 8.

12 THE COURT: Denied as to 8.

13 MR. ANGELOS: 5. Pardon me. 5 and 7, I meant.

14 THE COURT: Oh, on this one. Okay. 5.

15 MR. ANGELOS: If anybody is related to anybody,
16 police officers and --

17 THE COURT: All right. Denied as to 5.
18 Which was the next one you said?

19 MR. ANGELOS: No. 7. No 8, pardon me.

20 THE COURT: All right. Denied as to 8.

21 THE REPORTER: Are these defense's?

22 THE COURT: These are on the record. Bob, are
23 you here today?

24 THE REPORTER: I couldn't recognize the voices.

25 THE COURT: Okay. Well, it's probably that you

1 haven't heard mine very much. Denied as to 13. And I'll
2 give that instruction, and denied as to 14.

3 THE COURT: As to the questions, defense
4 exceptions to my voir dire instructions. Any challenge
5 as to the panel? State?

6 MR. BOUCHER: I beg the court's indulgence.
7 I have heard the question asked if anyone has been a victim
8 of a crime. I have not heard the question whether anyone
9 has ever been charged or convicted of a crime.

10 THE COURT: That's true. Denied. I am not
11 going to ask that.

12 MR. BOUCHER: Thank you.

13 THE COURT: Any other -- anything else you
14 can think of?

15 MR. ANGELOS: 144, Your Honor, the first
16 gentleman who came up here.

17 THE COURT: 144?

18 MR. ANGELOS: Yes.

19 THE COURT: That was the one that you --

20 MR. ANGELOS: Yes, made a statement about --

21 THE COURT: Don't, by the way, for your own
22 sake, don't make challenges in front of jurors because, you
23 see, if I deny it, then the juror knows you don't like him.

24 MR. ANGELOS: Uh-huh.

25 THE COURT: Now, in this particular case, I

1 think Mr. Lattman is going to make a fine juror.

2 MR. ANGELOS: This would be the bus driver.

3 THE COURT: I've got the wrong one?

4 MR. ANGELOS: No. 92.

5 THE COURT: The bus driver. No, I think she
6 understands it. I think he's mad as a hornet --

7 MR. ANGELOS: Yes, but the reason she gave --

8 THE COURT: -- over what happened to her.

9 MR. ANGELOS: But the recency of the thing and
10 the injuries she received, I don't think she's, I feel she's
11 uncomfortable in the court, and I don't think she would be
12 able to sit here and give a fair decision.

13 THE COURT: Oh, my goodness. She's not un-
14 comfortable at all. Did you see the way she handled herself
15 up here? She's mad --

16 MR. ANGELOS: There's no question she's mad.

17 THE COURT: She's mad as a hornet over what
18 happened before.

19 MR. ANGELOS: Right. I don't think that's
20 sensible for her --

21 THE COURT: No, I don't agree with you.
22 Denied. Anything else?

23 MR. ANGELOS: No. 191, victim of robbery/deadly
24 weapon. That would be M's Brown.

25 THE COURT: Uh-huh.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Well, I thought she would make a good juror.
Denied.

MR. ANGELOS: I would just proffer that she was just a recent victim of a crime and that the defendant wasn't caught, and that would be my reason why she wouldn't be able to give a fair decision.

THE COURT: I'll go one step further, and I'll tell you that probably most of the panel has been a victim of some kind of crime or other recently because that's what is happened today in our society.

MR. ANGELOS: But if they are recent and --

THE COURT: No, no, no. These are only felony crimes I asked about.

MR. ANGELOS: Uh-huh.

THE COURT: And that's just the way it's going. Everybody is a victim of crime today. Denied. All right, folks. Go pick your panel.

MR. BOUCHER: Thank you.

THE COURT: Felony jury, 10 and 5.

(Counsel and defendant returned to trial tables).

THE COURT: Ladies and gentlemen of the jury, listen carefully to M's Rosemond, and she will give you instructions with respect to selection of the panel.

(Counsel exercised their right of

1 peremptory challenge,; a jury was
2 selected.)

3 THE COURT: Swear the panel.

4 (The jury was sworn and duly
5 impaneled).

6 THE COURT: Ladies and gentlemen of the jury,
7 the case will now begin, and my first job is to appoint a
8 foreman or a forelady, which I am going to do right now.
9 All 12 of you, of course, are eligible. But I am going to
10 appoint Veronica Cryan to be the forelady of the panel. She
11 is sitting in the first seat. I must admit that that gave
12 me an edge, gave you an edge.

13 I'll tell you about your limited obligations
14 later on.

15 The case will begin by opening statements,
16 wherein the lawyers tell you what they hope to prove, and
17 then evidence. And after all the evidence is in, then I
18 will give you my instructions with respect to the law in
19 Maryland as it applies to the facts of this case, and then
20 the lawyers will make their final arguments asking you to
21 hold the way they want you to hold, and then you will go
22 across to the jury room and hold unanimously the way you
23 want to hold.

24 Now, I know you don't know where the jury room
25 is, but when you leave today, we will show you.

1 A few other little things just so we're
2 oriented. We're going to go to 4:30 today, and then we're
3 going to start tomorrow at 9:30 right on the button. This
4 case has priority with me and everything else -- well,
5 actually, 25 minutes of 10:00. I'm going to call the roll
6 in here on other cases, and then I'm going to start with
7 this case.

8 The one thing you have to do before showing
9 up in my jury room tomorrow morning, which is right across
10 the hall from this door over there, is to get paid. And the
11 best way to remember how to do that is to come in the St.
12 Paul Street entrance of the Mitchell Courthouse, using your
13 badges which will have you treated as courthouse employees,
14 and go up the stairway right next to the x-ray machine
15 at that entrance, St. Paul Street, and you will be next to
16 the pay booth where you were paid today. Only tomorrow
17 you will go to the right side because you are on a continu-
18 ing panel, whereas this morning you were on the left side.

19 Of course, after that, you have to come back
20 out of that building and over to this building on Calvert
21 Street, the old Post Office Building, where we are now,
22 and get into the elevator and come up to the fifth floor,
23 where we are now. Turn right to the end of the hall; turn
24 left to the end of the hall, and you will be next to the
25 jury room where you will be waiting to be brought over here

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

at 25 minutes of 10:00.

Please don't go back to the Jury Assembly Room anymore. You're finished with that. You belong to my courtroom right here.

Now, at the end of the day when you go home, please don't discuss the case among others or among yourselves until the case is over with for obvious reasons. How can you discuss it if you don't know what to discuss?

At the end of the case tomorrow morning, you will -- at the end of your decision, whenever that is, now the case will be over with tomorrow morning -- you will get a work slip covering both days if you want it. If you don't want it, of course, you don't have to take it.

If you get lost, if all is lost and you can't remember where you are, remember to call me or ask any uniformed personnel and they can tell you where I am.

Have I covered anything? Does anybody have any questions? You all know what to do? Okay. Then I'm going to time the lawyers in their opening statements, like I do in every single case. I'm going to give them the same amount of time that they're going to get in every single case, and that will be five minutes each.

You may begin, sir.

MR. BOUCHER: Thank you, Judge.

MR. ANGELOS: Your Honor -- excuse me, Your

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Honor.

THE COURT: Yes.

MR. ANGELOS: May we approach briefly?

THE COURT: What is it you want?

MR. ANGELOS: May we approach the bench?

THE COURT: Well, tell me right from there.

MR. ANGELOS: Well, to have a police officer
step outside.

THE COURT: All right. Then you're making a
motion --

MR. ANGELOS: To sequester witness.

THE COURT: -- to exclude all witnesses
until they're called?

MR. ANGELOS: Yes, sir.

THE COURT: All right. The motion is granted.
The clerk will make the instructions.

THE CLERK: All persons who are here to testify
in the case of State of Maryland v. Gregory Eric Monk,
please wait on the outside until your names are called to
testify.

THE COURT: And you may begin, sir.

MR. BOUCHER: Thank you, Judge. May it please
the court, Madam Forelady, ladies and gentlemen of the jury.
My name is Richard Boucher. I am the Assistant State's
Attorney. I am the individaul who will present evidence

1 on behalf of the State, and because I represent the citizens
2 of Baltimore, specifically, I will present evidence on their
3 behalf as well.

4 Before I get into the facts of the case, what
5 I want to do is take an opportunity to thank each and every
6 one of you for your participation today. This is especially
7 applicable because we are in the midst of an election year,
8 and it is my contention, as it is just about other lawyer's
9 especially criminal lawyers and the judge who deals with
10 criminal cases in the City of Baltimore that it is imperative
11 for the citizens of whatever community you happen to be
12 dealing with to participate in our system of government
13 and in our system of justice. If we don't have your
14 participation, the system could not function, and that is
15 why I'm taking this opportunity to thank you.

16 With the exception of the right to vote and
17 I know all of you are registered voters, I hope that you
18 have voted and will vote in November. With that possible
19 exception, serving on a jury is the most important civic
20 duty and civic obligation that anyone can undertake. I want
21 to thank you for that.

22 Now, the facts of the case and what the State
23 will show and will prove, it's very simple. That on the
24 night of July the 24th, 1991, it's approximately 12:30 a.m.,
25 it's in the 1800 block of Loretta Avenue, which is in the

1 Western District, the western section of the City, in
2 Baltimore City. Officer Warren Smith, who is a regular
3 patrol officer, he's not a drug enforcement officer, no
4 special title such as that, is on routine patrol in a well
5 lit section of the block.

6 He pulls into the block and he sees that
7 gentleman, the defendant, known as Gregory Monk, at a
8 -- what he would call a lot that is located in that block.
9 What he sees the defendant doing is holding something
10 in his hand, and he's displaying whatever it is to other
11 individuals who happened to be there with him.

12 Now, the officer -- the defendant doesn't see
13 the officer. The officer pulls up. The headlights of the
14 police cruiser shine on the defendant. Now, the officer
15 sees what he believes are packets of drugs, controlled
16 dangerous substances, and you're going to hear a lot of
17 these little lingo items, CDS or controlled dangerous
18 substances, or DEU. Those types of things, but they will
19 be explained. But CDS is controlled dangerous substances,
20 and that is any item that is prohibited from your possession
21 by law.

22 Anyway, the officer believes that that
23 individual, the defendant, is in possession of controlled
24 dangerous substances.

25 He stops his car and gets out. At this time,

1 the defendant looks, realizes it's the cops, throws the
2 stuff down and starts running. He throws the stuff right
3 where he was standing. The officer has to pass by in order
4 to follow the defendant. Sure enough. He looks down.
5 It's drugs or so he believes.

6 He chases the defendant, apprehends him.
7 They discover that it is, in fact, drugs. He advises the
8 defendant that he's under arrest for possession with intent
9 to distribute, and the defendant then resists arrest,
10 begins to struggle and ultimately you will hear from the
11 witness stand that it takes four officers to subdue the
12 defendant.

13 There is a stipulation in this case, and
14 that's an agreement between myself and Mr. Angelos, the
15 defense attorney. That stipulation is this: That the items
16 that were recovered and were analyzed were, in fact,
17 cocaine. It's also known as cocaine base, and you folks
18 probably know it commonly as crack. That's the substance
19 that is involved here.

20 You're not going to hear any testimony from
21 any chemist or any individual from the Baltimore City
22 Crime Lab who analyzed the stuff. It's an agreement that
23 we have that the stuff is crack.

24 Your job, your determination is to determine
25 whether it was that man who was in possession of the drugs

1 when the officer saw him, and that he was the one who
2 threw those drugs down.

3 Ladies and gentlemen, after you hear the
4 testimony of the police officer, there will be no doubt in
5 your mind that this is the individual who possessed those
6 drugs, that that is the individual who threw down those
7 drugs, and once he was informed that he was going to be
8 arrested, he is the individual who resisted that arrest.

9 One other item that I will bring to your
10 attention: This particular block, the 1800 block of

11 --

12 THE COURT: Time is up, sir.

13 MR. BOUCHER: Thank you, Judge.

14 MR. ANGELOS: Ladies and gentlemen, this is
15 Gregory Monk, 22 years old, black man, young, streets of
16 Baltimore, Western District, the worst crime area of the
17 City. It's a terrible area. It's an awful area. Drugs
18 being sold everywhere. People milling around. Killings.
19 It's a bad, bad place.

20 He's there. He's on that street corner,
21 and that police officer comes around the corner in his
22 marked patrol car, with his badge and everything else.
23 He's there on the corner. He's there with other people,
24 several other people.

25 What kind of people? Young, black, males, just

1 like Gregory Monk. What's going on in the streets? We can
2 all assume, drugs, bad things are happening there in the
3 streets of Baltimore's Western District. My client is
4 standing there in a bad area, very bad.

5 But he comes to you today in the courthouse in
6 Baltimore City, Circuit Court, and he comes to you in a good
7 area, and he asks that you not think of him as being a bad
8 person from Western District. He comes to you saying, I
9 am here in the courthouse. I want a fair shake.

10 The police officers are trained and they do
11 their duty. They come around the corner in their police
12 car. Someone shouts the words, 5-0. When I grew up, I
13 used to watch that on television. 5-0 means here comes the
14 cops, and that's the lingo, as the State's Attorney said, on
15 the streets. That's the lingo that happens, and when it
16 happens, everybody scatters. He scatters. Everybody
17 scatters. Many, many young, black males on the streets
18 scatter.

19 Drugs are found in the street. Drugs that the
20 State has to show proof belonged to my client. And I want
21 you to pay very careful attention to what the police officers
22 say, because they are the ones who are going to testify and
23 they are the ones that are holding a case against my client
24 today, and the way they can observe things and what they
25 see when they come around the corner, when somebody yells,

1 5-0, and all these young, black males scatter, and drugs are
2 found.

3 They find some drugs and that's why we're here
4 today. They say it's Gregory Monk's drugs. Gregory Monk
5 comes to you today and says, they're not my drugs. I didn't
6 throw them down. I was on the corner. I was in the bad
7 Western District. I am from Baltimore City. I live there.
8 That's his home. They're not his drugs, not his.

9 Please pay careful attention to what the police
10 officers say. They're the ones that made the arrest on the
11 street; they are the ones who are saying all those things
12 today and they work there, and they know all the bad and
13 awful things that happen.

14 But there, today, you people will decide
15 what exactly happened out there, and if those drugs are
16 suddenly going to belong to Gregory Monk. And he comes
17 before you today and ask that you not preconceive him just
18 as a young, black male.

19 He has a decent education. He's not a high
20 school graduate, but he comes to you and asks for a fair
21 shake today. The State has the burden to prove their case
22 beyond a reasonable doubt that that's what happened on the
23 street that night, that it is clear in your minds, to a moral
24 certainty that that man threw those drugs down, and in fact,
25 those were drugs and everything else that happened. The

1 State has got to prove it.

2 My client asks for a fair shake here today.
3 Listen to the evidence and consider all the options of
4 what happened. Thank you.

5 THE COURT: Call your first witness.

6 MR. BOUCHER: The State will call Officer
7 Warren Smith.

8 OFFICER WARREN SMITH,
9 a witness produced on call of the State, after having been
10 first duly sworn, was examined and testified as follows:

11 THE CLERK: You may be seated. State your
12 name and assignment for the record, please .

13 THE WITNESS: Officer Warren Smith, Western
14 District, Uniformed Patrol.

15 DIRECT EXAMINATION

16 BY MR. BOUCHER:

17 Q Officer Smith, how long have you been a
18 Baltimore City Police Officer?

19 A Approximately four and a half years.

20 Q Now, you indicated that you are at Western
21 District. Can you indicate to the ladies and gentlemen
22 of the jury where is Western District, just the basic
23 parameters?

24 A The perimeters of Western District range from
25 Gwynns Falls Parkway, south on Poplar Grove to Baltimore

1 Street, from Baltimore Street, east until you get to
2 Martin Luther King Boulevard, and Martin Luther King back
3 up to Gwynns Falls, that area.

4 Q Where specifically are you assigned within
5 Western District?

6 A I'm assigned to Sector 2.

7 Q Now, would you indicate to the ladies and
8 gentlemen of the jury what Section 2 means.

9 A The parameters of Section 2 are from Lafayette
10 Street west until Poplar Grove, from Poplar Grove down to
11 Baltimore Street, from Baltimore Street to parts of Martin
12 Luther King Boulevard, and back up to Lafayette.

13 Q Officer, how long have you been assigned to
14 Sector 2?

15 A Since I've been in Western District, about
16 four and a half years.

17 Q Never been assigned anywhere else?

18 A No, I have not.

19 Q Officer, I am going to ask you some questions
20 in regards to your expertise in regards to narcotics.

21 Can you indicate to the ladies and gentlemen
22 of the jury what kind of training you have had in the area
23 of narcotics?

24 A During my Academy training, I was given two
25 weeks of training by the CID Narcotics Unit, and since

1 graduating from the Academy --

2 Q Officer, would you indicate to the ladies and
3 gentlemen of the jury what CID means?

4 A That's one of our high profile drug units that
5 work downtown and handle the larger cases, Criminal Investi-
6 gation Division, and also during our daily roll calls, we
7 are given updates on different things concerning CDS,
8 controlled dangerous substances, and during bi-annual in-
9 service training, we have, we also are given updates.

10 Q Officer, is it fair to say that your training
11 in this area is ongoing?

12 A That is true.

13 Q Officer, what kind of training have you had
14 particularly with the drug cocaine?

15 A Well, I've, I've arrested several individuals
16 where the drug cocaine has been recovered, and cocaine,
17 you have the powdered form cocaine, and you also have the
18 rock form of cocaine, you call it ready rock. And I have
19 recovered both of those items off of the street before.

20 Q Officer, are you familiar with how the drug
21 cocaine is packaged?

22 A Yes. The drug cocaine is normally packaged
23 in ziplock bags.

24 Q Is it, have you ever found it to be packaged
25 in any other --

1 A Well, they've been packaged in ziplock bags,
2 or in larger proportions in sandwich bags or something of
3 that nature, also.

4 Q Can you indicate what type of price cocaine
5 brings on the streets of Baltimore?

6 A For a, a small ziplock bag of cocaine, it can
7 range from at least, depending on the size, \$10.00 to
8 even up to \$20.00 depending on the size of it.

9 Q Officer, you indicated that there were
10 different types of cocaine, and you mentioned the term
11 ready rock. Is there another term that that particular
12 type of cocaine is known as?

13 A Besides ready rock or just plain rock cocaine,
14 that's all that comes to mind right now.

15 Q Is that different from -- how is that different
16 from other types of cocaine that you have seen?

17 A Ready rock is crystalized, it's like a rock.
18 As you know, the word, term rock is used, and the powder is
19 similar to either sugar, granulated or something of that
20 nature.

21 Q Officer, are you familiar with the price of
22 cocaine as it's sold on the streets?

23 A Yes, I am.

24 Q And can you indicate to the ladies and gentlemen
25 of the jury the prices that cocaine is found in?

1 A Well, with the street level dealers, selling
2 the individual ziplock bags, they can range, it's usually
3 sold for \$10.00 per unit, per small ziplock bag.

4 Q Officer, have you had an occasion to undergo
5 either training or personal interviews with members of the
6 Western District Drug Enforcement Unit?

7 A Yes, I have.

8 Q Do you or have you discussed packaging of
9 cocaine, the price of cocaine and have you ever discussed
10 street level distribution with those individuals?

11 A Yes, I have.

12 Q Can you indicate in your four and a half years
13 as a Baltimore City Police Officer the number of arrests that
14 you have made dealing specifically with narcotics?

15 A Over my whole four year period?

16 Q Yes.

17 A I'd say, approximately, I participated in over
18 6, 700 narcotics arrests.

19 Q Have you ever had an opportunity to submit
20 drugs as a result of these arrests?

21 A Yes, I have.

22 Q To the Evidence Control Unit?

23 A Yes, I have.

24 Q Can you indicate to the ladies and gentlemen
25 of the jury approximately how many times?

1 A I have submitted to the Drug Unit, I mean
2 Drug Evidence Control Unit downtown, I would say, maybe,
3 2 to 300 times.

4 Q Officer Smith, have you had an opportunity to
5 speak with individuals whom you have arrested for narcotics
6 possession and discussed with them packaging, types of
7 cocaine, prices of cocaine and street level distribution?

8 MR. ANGELOS: Objection.

9 THE COURT: Overruled.

10 A Yes, I have.

11 Q Can you indicate generally how many times?

12 A Gee, I'd have to say over 1,000 times.

13 Q Have you had an opportunity to study the items
14 that you have seized?

15 A Yes, I have.

16 Q Have you ever had an opportunity to speak to
17 individuals who would be identified as a confidential
18 informant, individuals who provide you with information
19 in regards to narcotics activities within the Western
20 District?

21 MR. ANGELOS: Objection.

22 THE COURT: Going way beyond this case, aren't
23 we?

24 MR. BOUCHER: Judge, it's just basically forming
25 the basis of the officer's expertise.

1 THE COURT: Well, I think it's -- it's not
2 necessary for this case. Sustained. Let's narrow the --
3 let's get on with it.

4 BY MR. BOUCHER:

5 Q Officer, have you ever been qualified as an
6 expert in the area of narcotics and narcotics law enforce-
7 ment in the State of Maryland?

8 A Yes, I have.

9 Q Have you ever been qualified in the District
10 Court for Maryland?

11 A Yes, I have.

12 Q How many times?

13 A Approximately 10 times.

14 Q Have you ever been qualified as an expert in
15 the area of narcotics and narcotics law enforcement in the
16 Circuit Court?

17 A Yes, I have.

18 Q How many times?

19 A I guess I would say about the same amount,
20 maybe 10 times.

21 Q Is that strictly in Baltimore City?

22 A That is correct.

23 MR. BOUCHER: Your Honor, at this time I would
24 offer the witness for voir dire.

25 MR. ANGELOS: If I may ask him a few questions,

1 Your Honor.

2 CROSS EXAMINATION (Qualifications)

3 BY MR. ANGELOS:

4 Q Officer Smith, you stated that you have
5 participated in 600 or 700 arrests in the past four and a
6 half years. Is that accurate?

7 A That's correct.

8 Q Okay. Does that break down to about an arrest
9 a day while on duty?

10 A What I'm saying is, when I say participate,
11 not necessarily may be my arrest, but I was there to
12 assist officers in those arrests.

13 Q Is it fair to say when you testified -- have
14 you only testified 20 times through all those arrests?

15 A Uh, excuse -- repeat that, please.

16 Q You stated that you were declared an expert
17 in District Court approximately 10 times, approximately 10
18 times in Circuit Court. Are those the only times you
19 testified through all those numerous arrests?

20 A That's the only times where I had to be
21 clarified as an expert in the, in the field.

22 Q And it's your testimony that you submitted
23 drugs to Evidence Control approximately 200 or 300 times,
24 and you are very familiar with the procedures of submitting
25 narcotics?

1 A That's correct.

2 Q Okay.

3 MR. ANGELOS: No further questions, Your
4 Honor.

5 MR. BOUCHER: Your Honor, I would offer
6 Officer Warren Smith as an expert in the area of narcotics
7 and narcotics law enforcement dealing specifically with the
8 Western District for Baltimore City.

9 THE COURT: Ladies and gentlemen of the jury,
10 this witness will be received as an expert in the field of
11 narcotic enforcement, including identification, the packaging,
12 sales and other drug activity in the western side of our
13 City, including the drug cocaine.

14 You may continue your direct examination.

15 MR. BOUCHER: Thank you, Your Honor.

16 CONTINUED DIRECT EXAMINATION

17 BY MR. BOUCHER:

18 Q Officer Smith, I am going to direct your
19 attention to July the 24th, 1991, at approximately -- let
20 me strike that. July the 24th, 1991, can you indicate to the
21 ladies and gentlemen of the jury what shift you were working
22 on that date?

23 A At that time I was working the midnight
24 shift, 12:00 to 8:00 in the morning in a uniformed capacity.

25 Q Officer, I am going to direct your attention

1 to approximately 12:20 a.m. in and around the area of the
2 1800 block of Loretta Avenue. Can you indicate to the
3 ladies and gentlemen of the jury what, if anything, unusual
4 took place on that day, at that time, at that location.

5 A Okay.

6 MR. ANGELOS: I am going to object to the
7 form of the question, Judge. It asks for many answers.

8 THE COURT: Well, you're going to get right
9 to the issues in this case, aren't you?

10 MR. BOUCHER: Yes, Judge.

11 THE COURT: Well, I'm going to overrule it
12 based on that proffer.

13 A Okay. While driving eastbound in my marked
14 patrol unit, I observed the defendant standing on the even
15 side of 1800 block of Loretta Avenue.

16 Q Now, just let me, for purposes of the record,
17 would you identify the individual that you saw on that
18 block?

19 A Mr. Monk, sitting, seated at the trial table.

20 Q For purposes of the record, Your Honor, the
21 witness has identified the defendant, Gregory Monk, as
22 the individual.

23 Excuse me. Officer, please continue.

24 A Mr. Monk, while standing there, on the odd
25 side, the even side of the street, excuse me, he was

1 accompanied by an unknown individual. As I grew closer
2 to Mr. Monk, I observed his right hand opened, and I could
3 see neon objects, which were piled up in the palm of his
4 hand.

5 Q What do you mean by neon?

6 A They were a bright yellow color, neon yellow.
7 With my training and expertise as an officer and my numerous
8 arrests, I believed that this individual was participating
9 in a narcotics -- excuse me -- narcotic activity.

10 Q Officer, let me interrupt you. How would you,
11 as an experienced officer in Sector 2 of the Western District
12 describe the 1800 block of Loretta Avenue in terms of
13 narcotic activities?

14 A This area is saturated with drug activity,
15 and is one of the designated drug free zones of Baltimore
16 City.

17 Q And would you describe to the ladies and
18 gentlemen of the jury what drug free, what a drug free zone
19 is, what it represents?

20 A Well, it was something that Kurt Schmoke, great
21 mayor, designated this area as, targeted different areas which
22 was known for narcotic activity and gave us the right to
23 stop and field interview individuals in these particular
24 areas.

25 Q And what, what was your understood purpose of

1 the drug free zones?

2 A Excuse me?

3 Q What was -- what did you understand the purpose
4 of the drug free zones to be?

5 A To stop narcotic activity in those particular
6 areas.

7 Q I'm sorry, Officer. You may continue.

8 A Okay. I observed Mr. Monk standing with an
9 unknown individual with those neon objects in his right
10 hand.

11 Q Now, approximately how far away from you was
12 the defendant when you saw him with those objects in his
13 hand?

14 A The defendant was approximately 15 to 20
15 feet away from me.

16 Q Now, Officer, it's 12:00, approximately 12:20
17 at night. Is that correct?

18 A That is correct.

19 Q Can you describe for the ladies and gentlemen
20 of the jury what lighting conditions were like at the
21 1800 block of Loretta Avenue?

22 A Well, the defendant was in close proximity to
23 an overhead street lamp, which helped illuminate the area,
24 along with my headlights on my patrol vehicle.

25 Q How would you characterize the lighting?

1 A I would say it was pretty good.

2 THE COURT: Sir, if you want to take notes,
3 you will have to --

4 MR. BOUCHER: Yes, Judge.

5 THE COURT: -- get somebody to come in and
6 -- got to keep moving.

7 Q Officer, you stated that you saw some items
8 in the hand of the defendant, and you characterized them as
9 neon yellow. At that particular time were you able to
10 determine how many items there were?

11 A I could see it was numerous items.

12 Q And what, if anything, did you do then?

13 A At that time I exited my vehicle, and as I
14 did, the defendant dropped the items to the ground, and
15 started to run eastbound in the rear of the 1800 block of
16 Edmondson Avenue.

17 Q When did the defendant see you?

18 THE COURT: In the rear of what?

19 A The 1800 block of Edmondson Avenue.

20 It's an alley that separates the 1800 of Loretta and
21 the 1800 block of Edmondson Avenue. So, it's one alley
22 in between that separated the two.

23 Q My question to you was: When did the defendant
24 see you?

25 MR. ANGELOS: I'm going to object to that

1 question, Your Honor.

2 THE COURT: Yes. Sustained. If he saw him.
3 When did he see, if you know.

4 Q If you know.

5 THE COURT: And well -- I'll sustain it on
6 other grounds, too. Describe how he knows whether he --
7 was the defendant looking at him at that time, and so forth.
8 I think that's the way to go about it.

9 MR. BOUCHER: Judge, most respectfully, I
10 believe that the officer has already indicated that when
11 the defendant saw him, he ran. My question to him is, when
12 did the defendant see.

13 THE COURT: Overruled, then.

14 MR. BOUCHER: Thank you.

15 THE COURT: Based on the prior answer.

16 You may answer.

17 THE WITNESS: Can you repeat it, please?

18 BY MR. BOUCHER:

19 Q When did the defendant see --

20 THE COURT: When did this happen? When did he
21 drop the stuff and run; when did that happen?

22 A He dropped the --

23 THE COURT: What, at what point were you and
24 where was he?

25 A I was still seated in the car. I believe he

1 observed me put the car in park and started opening up the
2 door, when he dropped the narcotics and began to run.

3 Q What were you look at, at that time?

4 A I, what was I looking at?

5 Q Yes.

6 A I observed the defendant drop the drugs, and
7 I was, I began pursuit after him.

8 Q What, if anything, did you do with regard
9 to the items that he dropped at that particular time?

10 A Oh! As I ran past, I did look down and
11 observed items on the ground, and found them to be ziplocks
12 containing white objects. Several ziplocks containing
13 white objects along with, just on the ground ziplock bags.

14 Q Would you describe what you did to the ladies
15 and gentlemen of the jury next?

16 A At that point, the defendant was caught in the
17 rear of the 1800 block of Edmondson Avenue. I called for
18 back-up units. Units arrived on the scene. I, myself,
19 along with Officer Coleman, after the units were on the
20 scene, they stood with the defendant while Officer Coleman
21 and I returned to the location where the defendant was to
22 recover the items.

23 Q Well, let me ask you this. Approximately
24 how far did the defendant run from the place where he dropped
25 the drugs?

1 A I'd say maybe the length of this courtroom.
2 It wasn't a very far pursuit at all.

3 Q Did you ever lose sight of the defendant?

4 A No, I did not.

5 Q You indicated that there were some other
6 individuals on the scene at the time when you first
7 observed the defendant. Is that correct?

8 A That is correct.

9 Q Could you describe those individuals to the
10 ladies and gentlemen of the jury?

11 A I believe they were black females, and they
12 left the scene after the pursuit started.

13 Q What, if anything, did you see those individuals
14 doing in regards to the defendant?

15 A I believe the defendant was showing them the
16 narcotics which he had in his right hand. He was showing
17 them to them --

18 MR. ANGELOS: Objection.

19 THE COURT: Overruled.

20 Q Officer Smith, would you demonstrate to the
21 ladies and gentlemen of the jury exactly what the defendant
22 was doing with his hands?

23 A Okay. His hand was like this, and the items
24 were like in a ball, cupped like this in his hand. I could
25 see them clearly. Just like that.

1 Q Thank you.

2 A And he was showing them to the individuals.

3 Q Now, you indicated that you chased the defendant,
4 and you were about to describe where, where you ultimately
5 caught him.

6 A He was caught in the rear, rear of a back yard
7 in the 1800 block of Edmondson Avenue. I called for back-
8 up units. They arrived on the scene. They stood with the
9 defendant while Officer Coleman and I went back to recover
10 the narcotics.

11 Once we did so, we returned and advised the
12 units and officers that the individual was to be placed
13 under arrest. At that point the defendant started to fight.
14 It was an ongoing fight. Maybe two minutes it took, maybe
15 four to five officers to finally detain him and put the
16 cuffs on him. And there was a struggle from that point.
17 I believe leg irons had to be put on him also. There was
18 still a struggle all the way to the paddy wagon to take him
19 to the station.

20 Q Now, Officer, the place where the items were
21 dropped to the ground, was there anything on the ground that
22 could have been confused, other trash or anything, that you
23 could have confused for the items that fell from the
24 defendant's hand?

25 A No, there was not. I saw the actual dropping of

1 the, of the items, and I saw where they were dropped, and
2 I knew exactly what I was looking for.

3 Q Can you describe -- you indicated that the
4 defendant began to fight. Can you describe exactly what his
5 actions were upon being advised that he was under arrest?

6 A Well, an attempt, he was trying to flee, get
7 away from the officers. He was fighting, throwing fists
8 or whatever, trying to get away.

9 Q Who was he throwing these fists towards?

10 A The officers that were there. We all, once
11 I got back to the yard and said the individual was to be
12 placed under arrest, that's when the fighting started.

13 The defendant at that time, he was throwing
14 fists whatever. We got him to the ground. Once he was to
15 the ground he was kicking, whatever he could do, trying to
16 get away. Cuffs were placed on him. The wagon showed up
17 on the scene, and leg irons were placed on him. They had
18 problems putting him in the wagon. A big crowd was coming
19 around because of the ruckus that was coming of the
20 incident. Finally we got him in the wagon and was able to
21 take him to the district.

22 Q Officer, you have been qualified as an expert
23 in the area of narcotics, especially in the area of Western
24 District of this City, and all of these facts that you've
25 been referring to, all these did take place in Baltimore City,

1 did they not?

2 A That is correct.

3 Q Officer, based on your training and expertise
4 in the area of narcotics, can you indicate to the ladies
5 and gentlemen of the jury, first of all, how many items
6 were ultimately recovered?

7 A 30 yellow ziplock bags were recovered, along
8 with brown paper towel.

9 MR. BOUCHER: Your Honor, may I approach the
10 witness?

11 THE COURT: Uh-huh. Along with a paper towel?
12 Did I misunderstand you?

13 THE WITNESS: No, that was correct. A brown
14 paper towel.

15 BY MR. BOUCHER:

16 Q Officer Smith, I am going to ask you to identify
17 the item that I'm handing to you for the ladies and gentlemen
18 of the jury.

19 A These are the items that I recovered that
20 night, the 24th of July, and they are 30 ziplock bags and
21 the brown paper bag that was recovered that night, also.
22 These were the items that were submitted to the Evidence
23 Control Unit, and processed and found to come back cocaine.

24 MR. BOUCHER: Your Honor, I am going to ask that
25 these items, or I guess this bag be marked as State's Exhibit

1 No. 1 for identification at this time.

2 (State's Exhibit No. 1, 30 ziplock
3 bags, marked for identification).

4 Q Officer Smith, as an expert in the area of
5 narcotics and narcotic law enforcement, dealing specifically
6 with the Western District, for Baltimore City, I'm going to
7 ask based on your experience, training and expertise whether
8 30 items of crack cocaine that are recovered from an
9 individual would indicate to you as an expert whether those
10 items were for personal use or whether they were for sale
11 or distribution.

12 A That amount of narcotics would definitely be
13 for distribution.

14 Q And why do you say that?

15 A Because of the number of items the individual
16 had, and the location where he was would indicate that
17 he was there for the purpose of selling narcotics.

18 And I also might add that the actions of the
19 defendant, showing the objects to the other individuals
20 also would indicate that, also.

21 MR. BOUCHER: Your Honor, at this time, I have
22 no further questions, no other questions of this witness.

23 THE COURT: Ladies and gentlemen of the jury,
24 the direct examination of this witness has been concluded,
25 and tomorrow at 25 minutes of 10:00 we'll begin with the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

cross examination. You may be excused for the evening.
I hope you all have a nice St. Patrick's evening. Stay
safe, and I'll see you all tomorrow morning.

And, M's Rosemond, would you take the jury
to the jury room, and show them where the room is. And we
will stand in recess until tomorrow morning at 9:30.

(CONCLUSION OF PROCEEDINGS)

* * * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I, Robert Gavin Oddo, an Official Court Reporter of the Circuit Court for Baltimore City, do hereby certify that I recorded the proceedings in the matter of State of Maryland v. Gregory E. Monk, Case No. 591277019, 20 on March 17, 1992.

I further certify that the foregoing pages constitute the official transcript of proceedings as transcribed under my direction in a complete and accurate manner.

In witness whereof, I have hereunto set my hand this 27th day of May, 1992.

R Gavin Oddo

OFFICIAL COURT REPORTER

I-N-D-E-X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESS		PAGE
OFFICER WARREN SMITH		
Direct Examination by Mr. Boucher		45
Cross Examination (on qualifications)		
by Mr. Angelos		52
Continued Direct Examination by Mr. Boucher		53
STATE'S EXHIBIT NO. 1	30 Ziplock Bags	64

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE CIRCUIT COURT FOR BALTIMORE CITY
STATE OF MARYLAND *

V. * NO. 591277019,20

GREGORY E. MONK *

* * * * *

BALTIMORE, MARYLAND
MARCH 17, 1992

BEFORE:

THE HONORABLE ROGER W. BROWN, JUDGE

APPEARANCES:

RICHARD BOUCHER, ESQUIRE, ON BEHALF
OF THE STATE OF MARYLAND.

JOHN ANGELOS, ESQUIRE, ON BEHALF
OF THE DEFENDANT.

REPORTED BY:

LINNIE E. BROWN,
OFFICIAL COURT REPORTER

1 THE CLERK: I have a bail set at
2 \$25,000.00.

3 MR. ANGELOS: Just to explain my
4 client's position, Your Honor, he paid the bail
5 when he was on bail. This is when he overslept
6 when he was coming before Judge Gerstung.

7 THE COURT: Judge Gerstung. What you
8 have to do is file Habeas.

9 MR. ANGELOS: Could his bail be
10 reinstated where it was? He did make the bail of
11 \$25,000.00. That's where he came back late and
12 Judge Gerstung locked him up.

13 THE COURT: He is going to have to file
14 Habeas.

15 MR. ANGELOS: Back on the 21st, you set
16 the bail back to 25, and my client tells me the
17 bail was reinstated. He was able to be released
18 and on the street, as opposed to set at
19 \$25,000.00.

20 THE CLERK: I don't have a bail piece in
21 here for the original charge for Monk. He needs
22 proof of the first bail, for one.

23 MR. ANGELOS: Would that be at the
24 District Court?

25 THE COURT: Probably. When it came down,

1 it should have come down with him.

2 Well, Mr. Angelos, when you find the
3 time, you check into it.

4 THE CLERK: Actually, go down to the
5 Bail Department; maybe it hasn't reached his
6 folder yet.

7 (Proceedings adjourned.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I, Linnie E. Brown, an Official Court Reporter of the Circuit Court for Baltimore City, do hereby certify that I recorded stenographically the proceedings in the matter of State of Maryland vs. Gregory Monk in the Circuit Court for Baltimore City, on March 17, 1992.

I further certify that the foregoing pages constitute the proceedings as transcribed by me from my stenographic notes to the within typewritten matter in a complete and accurate manner.

In Witness Whereof, I have hereunto subscribed my name this 29th day of May 1992.

Linnie E. Brown
LINNIE E. BROWN
OFFICIAL COURT REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE CIRCUIT COURT FOR BALTIMORE CITY

STATE OF MARYLAND

*

V.

* CASE NOS. 591277019, 20

GREGORY E. MONK

*

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

(Trial on the Merits)

WEDNESDAY, MARCH 18TH, 1992

BALTIMORE, MARYLAND 21202

BEFORE:

THE HONORABLE THOMAS WARD, ASSOCIATE JUDGE

(And a Jury)

APPEARANCES:

For the State:

RICHARD BOUCHER, ESQUIRE

For the Defendant:

JOHN ANGELOS, ESQUIRE

ROBERT GAVIN ODDO

Official Court Reporter

Room 535 Courthouse East

Baltimore, Maryland 21202

1 WEDNESDAY, MARCH 18TH, 1992

2 (P-R-O-C-E-E-D-I-N-G-S)

3 THE COURT: Good morning, please be seated.
4 How are you all this morning?

5 All right, folks. Come on up. We're ready
6 for your case. I've cleared everything else away.

7 Did you want to speak to me?

8 MR. ANGELOS: Yes, Judge. As my client was
9 brought up this morning, two of the jurors saw him in
10 handcuffs and leg irons coming up.

11 THE OFFICER: No leg irons.

12 MR. ANGELOS: Pardon me?

13 THE OFFICER: No leg irons.

14 MR. ANGELOS: Just handcuffs, coming up. In
15 fact, the two jurors were a little tardy, and they saw him
16 in his handcuffs.

17 THE COURT: Well, what do you want me to do
18 about it?

19 MR. ANGELOS: Well, I would ask if you could,
20 perhaps we could speak to them and see if they caused them
21 undue influence in seeing my client.

22 THE COURT: Well, I have to say, tell you
23 that no matter how hard we try to place defendants in a
24 neutral position with respect to incarceration, that I don't
25 think we've ever fooled anybody because in every single

1 case the jurors tell us afterwards that they know, you
2 know, that he's, the person is incarcerated, and the reason
3 they know it is because they see the security right here,
4 and there's just no way -- I don't think it makes the
5 slightest bit of difference.

6 MR. ANGELOS: I think the fact that he was
7 walking with the handcuffs, I think it -- in the middle of
8 the trial --

9 THE COURT: And the reason I tell you it doesn't
10 make any difference is because they release so many of them.
11 I mean, not guilty verdicts. I mean, there have been more
12 than a couple.

13 MR. ANGELOS: Right.

14 THE COURT: And these people have been incar-
15 cerated. So, it doesn't seem to have any effect on them.
16 So, they have convicted them when they're not incarcerated,
17 and they've convicted them when they are incarcerated, and
18 they've let them go both ways, too.

19 MR. ANGELOS: All right, Judge. I would just
20 ask the court if you could ask those two jurors if that
21 would influence them in any way in their decision. If
22 they're going to talk to the other jurors --

23 THE COURT: All right. Do you know which two
24 they are?

25 MR. ANGELOS: It was -- I know it was the two

1 black -- there's two black lady jurors. They -- I'm not
2 exactly sure --

3 THE COURT: Well, when they get in the box --

4 MR. ANGELOS: Okay.

5 THE COURT: -- you come on up and tell me
6 then which ones they are.

7 MR. ANGELOS: Okay.

8 THE COURT: You'll be able to recognize them?

9 MR. ANGELOS: Yes, sir.

10 THE COURT: Won't you?

11 MR. ANGELOS: Thank you.

12 THE COURT: All right. Bring the jury in,
13 please.

14 THE REPORTER: Your Honor, this morning when
15 I was coming into the courtroom, the sheriff purposely
16 stood between the walkway, between the two sections of the
17 building, so that the jurors could not see anybody.

18 THE COURT: Yeah, but these two got lost, I
19 hear.

20 MR. ANGELOS: They were late.

21 THE COURT: Or were late or something.

22 You just can't help it. It's impossible. I mean, if they
23 wander around the halls. When I was in the other building,
24 406, it was easier because the lock-up was right down the
25 hall, and we had such a short distance to go between the two.

1 But here, they've got to come up three floors in the
2 elevator and down two public hallways.

3 Anything else before the jury comes in?

4 MR. BOUCHER: No, Judge. I am just going to
5 ask that I be allowed to continue my direct.

6 THE COURT: I told you yesterday that I was
7 going to. I said that --

8 MR. BOUCHER: May I step outside the courtroom
9 for just a second?

10 THE COURT: Yes.

11 MR. BOUCHER: Thank you, sir.

12 THE COURT: But come right back in, because I
13 want to keep right on schedule.

14 MR. BOUCHER: Yes, sir.

15 (Brief pause).

16 (Jury present in courtroom).

17 THE COURT: All right. Come to the bench,
18 please.

19 (Counsel and defendant approached the
20 bench and the following ensued:)

21 THE COURT: All right. Give me the numbers.

22 MR. ANGELOS: Juror No. 2 and I don't recognize
23 the other one, which one it was, whoever she was walking
24 with.

25 THE COURT: All right. M's Brown, may I see you

1 a moment up here?

2 And who was the other one? M's Brown, who were
3 you with this morning when you were walkng down the hall?
4 Could I see you, too, please?

5 M's Brown and M's Colbert, this morning you
6 were following the defendant when he was coming down the
7 hall.

8 JUROR NO. 2: No.

9 JUROR NO. 10: We just got off the elevator.

10 THE COURT: Just got off the elevator?

11 JUROR NO. 10: Uh-huh.

12 THE COURT: Did you see him? Did you see
13 the defendant?

14 JUROR NO. 10: Yeah, we seen him, but we
15 weren't close to him.

16 THE COURT: I mean, did you see him, though?

17 JUROR NO. 10: Yeah.

18 THE COURT: That's all, that's all I'm asking.

19 JUROR NO. 10: Uh-huh. Yeah, we saw him.

20 JUROR NO. 2: Uh-huh.

21 THE COURT: And you, did you notice anything
22 unusual about him when you were following him down the
23 hall?

24 JUROR NO.2: No, I didn't really look at him.

25 JUROR NO. 10: No.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Didn't look at him?

JUROR NO. 2: No.

THE COURT: Did you see anything which in any way would affect your ability to be fair and impartial?

JUROR NO. 10: No, not really.

THE COURT: First of all, M's Brown.

JUROR NO. 10: No.

JUROR NO. 2: No, sir.

THE COURT: All right. Any questions, Counsel?

MR. ANGELOS: No, sir, I'm satisfied.

MR. BOUCHER: No, Judge.

THE COURT: Thank you very much.

You can take your seats.

(The jurors returned to the jury box, counsel and defendant returned to trial tables and the proceedings resumed in open court.)

THE COURT: M's Brown, and also M's Colbert, don't read anything into my questions, you know. There's nothing, nothing sinister about it.

JUROR NO. 10: Okay.

THE COURT: It was just a precaution that I engage in. That's why I asked you. It was a routine question that I would ask any juror, the same circumstances.

JUROR NO. 10: Okay.

1 THE COURT: Ladies and gentlemen, I want to
2 thank you very much for being on time, and I've kept my
3 commitment to you, and you've kept your commitment to me.
4 And as a result of that, off we go. And you may -- do
5 you have -- where's your witness?

6 MR. BOUCHER: He's out in the hall, Judge.

7 THE COURT: All right. Call the witness.

8 MR. BOUCHER: Judge, the State would recall
9 Officer Warren Smith to the stand.

10 OFFICER WARREN SMITH,
11 was recalled to stand by the State, after being reminded that
12 he was still under oath, was examined and testified further
13 as follows:

14 THE CLERK: Please be seated.

15 THE WITNESS: Thank you.

16 THE CLERK: State your name again for the
17 record, please.

18 THE WITNESS: Officer Warren Smith, Western
19 District, Uniformed Patrol.

20 CONTINUED DIRECT EXAMINATION

21 BY MR. BOUCHER:

22 Q Officer Smith, there were some questions that
23 I need to ask you to follow up on our session yesterday.
24 Based on the time constraints, we weren't able to get
25 into all of those things.

1 Again, I am going to direct your attention to
2 July the 24th, 1991, at approximately 12:20 a.m. in the 1800
3 block of Loretta Avenue.

4 Officer, you indicated in response to my
5 direct examination that you were on routine patrol when you
6 pulled into that block, and you stated that you saw the
7 defendant on the even side of the street. Is that correct?

8 A That is correct.

9 Q Officer, when you pulled onto that, onto that
10 street, can you indicate to the ladies and gentlemen of the
11 jury approximately how fast your patrol unit was going?

12 A I'd say maybe, maybe 5 to 10 miles per hour.
13 Not very fast at all.

14 Q Was the defendant on the same side of the
15 street or the opposite side of the street from you?

16 A He was on the same side of the street as I was.

17 Q Specifically where in the block, when you
18 pulled onto that block, where in the block was the defendant
19 located?

20 A He was located, I would say, 10 to 15 feet
21 into the block maybe. 10 to 15 in the block, and once I
22 made the corner, I -- well, he was about 10 to 15 feet
23 into the block.

24 Q Now, would you describe that particular block
25 to the ladies and gentlemen of the jury?

1 A Okay. The 1800 block of Loretta Avenue is
2 a very short block. The whole length of that block, I would
3 say, is approximately maybe 50 feet. The defendant was
4 standing not midway of the block, but closer to the corner
5 of Edmondson and Monroe Street. I would say, like I said
6 earlier, 10 to 15 feet into the block.

7 Q When you stopped your police car, can you
8 indicate how far the defendant was from you when you actually
9 stopped the vehicle?

10 A When I stopped my patrol vehicle, I would say
11 I was maybe four feet from the defendant.

12 Q Can you indicate to the ladies and gentlemen
13 of the jury what the weather conditions were like on the
14 24th of July, 1991?

15 A It was clear and dry.

16 Q Officer, when you pulled onto that block and
17 saw the defendant what, if any, obstructions to your view
18 were present in the 1800 block of Loretta Avenue?

19 A No obstructions. There were no cars parked
20 on that even side of that block. There were no obstructions.
21 I had a clear view of the defendant.

22 Q Where specifically was the defendant standing?

23 A He was standing on the sidewalk, 10 to 15
24 feet into the block.

25 Q Now, you indicated that you stopped your

1 vehicle, and this was yesterday, you stopped your vehicle,
2 began to get out, and then you saw the defendant run.

3 A That's correct.

4 Q Is that correct? When you exited your vehicle,
5 what, if anything, did you hear from anywhere on that block?
6 Did you hear anything?

7 A I don't recall hearing anything.

8 Q You've indicated in response to my examination
9 yesterday that there were two black females on the scene
10 along with the defendant.

11 A That is correct.

12 Q What, if anything, did you see either of those
13 two individuals drop when you arrived on the scene?

14 A I didn't observe those individuals drop
15 anything.

16 Q Can you indicate to the ladies and gentlemen
17 of the jury approximately how much time elapsed from the
18 time that you first saw the defendant, when you pulled onto
19 the 1800 block of Loretta Avenue, until the defendant was
20 informed that he was under arrest?

21 A I'd say two, two and a half minutes.

22 Q Can you describe to the ladies and gentlemen
23 of the jury how the drugs were recovered, or the suspected
24 CDS? You indicated that you and Officer Coleman --

25 MR. ANGELOS: Your Honor, I object to the, to

1 the soliloquy that the prosecutor is asking. If he's going
2 to repeat the testimony from yesterday, I don't think that's
3 necessary under each question, if he wants to ask a
4 question.

5 THE COURT: Well, I'm not sure it was asked
6 yesterday, was it?

7 MR. ANGELOS: He's repeating testimony that was
8 -- that he states was elicited yesterday.

9 THE COURT: Well, I don't want him to repeat
10 any, but I'm not, I'm not, I don't think it was that clear
11 as to exactly who picked up what when. So, I am going to
12 allow the question.

13 BY MR. BOUCHER:

14 Q Thank you, Judge. Officer Smith, would you
15 describe exactly what took place when the drugs were recovered
16 from the sidewalk?

17 THE COURT: Well, let me see if I can, because
18 since my mind is the one that has this question, I am sure
19 the jury has the same, maybe the same --

20 MR. BOUCHER: Go right ahead, Judge.

21 THE COURT: -- lack of memory. First of all,
22 you were with somebody else? Were you with another officer?

23 THE WITNESS: In my patrol car? No, I was not.

24 THE COURT: All right. Was it another officer
25 that came on the scene?

1 THE WITNESS: Yes. My back-up units came.

2 THE COURT: At what point did this other person
3 come on the scene?

4 THE WITNESS: After I had stopped the defend-
5 ant and called for back-up units. Once the units arrived --

6 THE COURT: This -- this -- you actually
7 radioed for a back-up?

8 THE WITNESS: Yes, I did.

9 THE COURT: And this radioing took place
10 after you had, after the, as you described yesterday, you
11 ran past, or walked or ran past the drugs that the defendant
12 allegedly threw down, then you stopped him or caught him.

13 THE WITNESS: That's correct.

14 THE COURT: You caught him running in the same
15 block, a short distance.

16 THE WITNESS: That's correct.

17 THE COURT: And then is that when you placed
18 him under arrest?

19 THE WITNESS: No, it was not.

20 THE COURT: It was not. You stopped him.

21 THE WITNESS: I stopped him.

22 THE COURT: And did you give him any instructions,
23 the defendant?

24 THE WITNESS: Well, at that time the units
25 arrived on the scene, and I had those units stand with the

1 defendant.

2 THE COURT: No, but when you first stopped the
3 defendant, did you give, did you say anything to him?

4 THE WITNESS: I don't recall saying anything
5 to him.

6 THE COURT: All right. And then, then you
7 radioed for assistance?

8 THE WITNESS: That's correct.

9 THE COURT: And you stood right there waiting
10 for the assistance.

11 THE WITNESS: That's correct.

12 THE COURT: And the assistance came, and how
13 many came?

14 THE WITNESS: I would say maybe five, six,
15 seven officers or more.

16 THE COURT: And I think yesterday you said you
17 left the defendant then in their possession.

18 THE WITNESS: That's correct.

19 THE COURT: And then you went back up to the
20 drugs. Is that right?

21 THE WITNESS: Officer Coleman and I went back
22 to the drugs.

23 THE COURT: All right. Who picked the drugs up?

24 THE WITNESS: We both collectively picked up
25 the drugs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Both of you.

THE WITNESS: That's correct.

THE COURT: I have to ask you, how can you collectively, both pick something up?

THE WITNESS: Well, the drugs were scattered, once he dropped them, so Officer Milton Coleman with his flashlight and I both were picking up the drugs that fell to the ground.

THE COURT: Off the ground?

THE WITNESS: That's correct.

THE COURT: All right. Then after you both collectively picked it up, what did you do with the collected items that you picked up?

THE WITNESS: Gave them all to Officer Coleman. I then responded --

THE COURT: So, part, the things you picked up, you gave to him?

THE WITNESS: That's correct.

THE COURT: The things that he picked up, he kept?

THE WITNESS: That's correct?

THE COURT: All right.

MR. BOUCHER: Thank you, Judge.

BY MR. BOUCHER:

Q Officer, did there come a time when you had an

1 occasion to search the defendant?

2 A That's correct.

3 Q Can you indicate to the ladies and gentlemen
4 of the jury when he was searched?

5 A At the point he was stopped, I did check him
6 for any weapons or anything. Once my units arrived on the
7 scene, they stood with him and once we got back before he
8 was placed into the wagon, he was searched once again.

9 Q What, if anything, was recovered from the
10 person of the defendant?

11 A I believe \$6.00 in U.S. currency was recovered
12 from him.

13 Q Officer, you have been qualified as an expert
14 in the area of narcotics and narcotic law enforcement in the
15 Western District. I am going to ask you what, if any,
16 opinion you have in regards to the amount of U.S. currency
17 that was recovered from the defendant on the 24th of July,
18 1991?

19 A Well, I could say two things. Either he had
20 just began selling his drugs or he was working in conjunction
21 with someone else, who was collecting the money and keeping
22 it so that if he was caught, the money would not be, you
23 know, seized also along with the narcotics.

24 Q Have you, in your experience, run into this
25 type of situation before?

1 A Yes, I have.

2 Q Officer, what, if anything, else was found
3 with the, with the drugs when they were recovered from the
4 sidewalk?

5 A It was a brown paper towel.

6 Q Officer Smith, did you at any time see that
7 brown paper towel prior to the recovery on the sidewalk?

8 A No, I did not.

9 Q Officer -- Your Honor, may I retrieve the
10 Exhibit No. 1? I believe Officer Coleman still has it in
11 his custody? Thank you.

12 (Brief pause).

13 Q Officer Smith, I am going to show you what has
14 been marked as State's Exhibit No. 1. Your Honor, may I
15 approach the witness, please?

16 Officer, you indicated yesterday that there
17 were 30 yellow ziplock bags containing a white rock substance.
18 Officer, I am going to ask you, based on your training,
19 experience and expertise in the area of narcotics and
20 narcotics law enforcement, can you, to a reasonable degree
21 of certainty, give the jury an opinion as to the value of
22 those drugs individually, per bag, and collectively for the
23 entire amount, please?

24 A Well, each, each of these bags street valuewise,
25 would be worth \$10.00. \$30.00, I mean, \$10.00, 30 ziplock

1 bags, of course, will equal \$300.00 streetwise.

2 Q Officer Smith, have you ever, in your
3 experience as a Baltimore City Police Officer --

4 THE COURT: Excuse me just one minute.

5 (An off record discussion took
6 place on an unrelated matter, at
7 the bench).

8 (The court took up another
9 brief matter).

10 THE COURT: I guess, ladies and gentlemen
11 of the jury, it's more interesting to have a little something
12 different happen once in a while, and maybe you can see how
13 it, see how it works.

14 Some judges like everything at the bench, you
15 know. The juries don't hear anything, and the day can get
16 right long, because I was on jury service, too, and I know.
17 I thought the day would never end, in fact.

18 All right. Do you have any more? You said
19 you had a couple of questions this morning. Do you have any
20 others?

21 MR. BOUCHER: Yes, Judge, just a couple.

22 THE COURT: All right.

23 BY MR. BOUCHER:

24 Q Officer Smith, did there come a time when you
25 had occasion to write a police report in regards to this

1 matter?

2 A That's correct.

3 Q Officer -- Judge, I mean, may I approach the
4 officer, please?

5 THE COURT: Yes. I'm going to waive it for
6 both of you for the balance of the trial. You don't have to
7 ask for permission to approach the witnesses.

8 Q Thank you, Judge.

9 Officer, can you identify the document that
10 I'm showing you now?

11 A Yes, I can. This is a statement of charges.

12 Q Officer, can you indicate what, if any,
13 mistake appears in the body of that charging document in
14 regard to the facts?

15 A Yes, I have one mistake in here in regards to
16 where the defendant was standing on the 1800 block of Loretta
17 Avenue. I had the odd side on the charging documents, and
18 I felt he was on the even side.

19 Q Are there any other mistakes, to your know-
20 ledge?

21 A To my knowledge, I don't recall any.

22 Q Thank you

23 Officer, is there any doubt in your mind that
24 the defendant is the person that you saw in possession of
25 this CDS --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. ANGELOS: Objection.

THE COURT: Yes. It was asked and answered yesterday.

Q Officer, did you receive any promotion? Did you receive any pay raise or did you receive any type of reward whatsoever in regards to your participation or your arrest of the defendant in this particular case?

A No, I did not.

MR. BOUCHER: Your Honor, I have no further questions of the witness at this time.

CROSS EXAMINATION

BY MR. ANGELOS:

Q Officer Smith, summer day, July 23rd, right?

A 24th.

Q 24th, early evening. Early morning, pardon me. Coming up Monroe Street and making a left on Loretta Avenue. Is that correct?

A That's correct.

Q Okay. Window down or have you got the air conditioning on?

A I don't recall. Most likely, if it was summer, I probably had the air conditioning on.

Q Okay. You had been working there for four and a half years in that district?

A Yes.

1 Q Okay. A lot of air conditioning in those
2 homes along Loretta Avenue?

3 A Well, I can't really say.

4 Q It's fair to say that perhaps a lot of people
5 were standing outside and on the streets that hot summer
6 night?

7 A I don't -- I don't recall anybody else being
8 on the street besides the three individuals.

9 Q You only saw three individuals at that time?

10 A That's correct.

11 Q Who were those individuals?

12 A Mr. Monk and two other individuals that I don't
13 know.

14 Q Were they men or women?

15 A Two women.

16 Q Two women on the street?

17 A That's correct.

18 Q Okay. You testified just a few minutes ago
19 that -- well, strike that. Let's start where we are. You
20 make the turn around Loretta Avenue with your car. Okay.
21 The lights flash across the street, yes?

22 A Correct.

23 Q Okay. No cars parked on the street at all.
24 Is that right?

25 A No, not on the even side.

1 Q Is it a one-way?

2 A Yes, it is.

3 Q Okay. So, when you say even side, were there
4 cars parked on the opposite side of the street? Right side?

5 A There could have been. You can park on either
6 side of the street.

7 Q You can park on either side of the street?

8 A Yes.

9 Q Okay. You make the turn. You stop three
10 individuals. How close are they?

11 A They're in close, close proximity.

12 Q Are they huddled?

13 A Are they what?

14 Q Huddled. Close together, like a huddle.

15 A Yeah, they're pretty close.

16 Q Okay. Did you see the backs of one of them?

17 A Side to the back, yes.

18 Q Okay. It's a no-loitering zone, right?

19 A Yes. It's a drug free zone.

20 Q Okay. No loitering. Okay.
21 You see this man and two other people, right?

22 A Correct.

23 Q Okay. Stop the car. Put it in park.
24 Defendant, Mr. Monk, and the other people see you.

25 A Correct.

1 Q Okay. They run.

2 A Mr. Monk was the only person that ran.

3 Q So, you're saying that those two other people
4 that were standing near him stayed right there?

5 A They walked.

6 Q They walked. Where did they walk?

7 A After I ran past them, I have no idea where
8 they walked to.

9 Q So, you ran past these two people standing
10 there? Where did they walk? Did they walk the other way?

11 MR. BOUCHER: Objection, Your Honor. He has
12 already answered that.

13 THE COURT: Well, he said he didn't know where
14 they went, but it's cross examination. If he wants to poke
15 around a little bit more, we'll let him.

16 Q So, you say Mr. Monk ran?

17 A Yes, he did.

18 Q You already had the car in park? Yes?

19 A Correct.

20 Q Okay. Opened the door? Yes?

21 A Correct.

22 Q Okay. Got out of the car?

23 A Getting out.

24 Q Slammed the door?

25 A Are you asking me where is running at while I

1 was doing all of these events?

2 Q Did you slam the door? Did you close the
3 door behind you?

4 A Yes, I did.

5 Q Okay. You say Mr. Monk is running down
6 Loretta Avenue. Yes?

7 A Yep.

8 Q It was a short block. Middle of the block
9 there's a playground.

10 A That's correct.

11 Q Okay. Mr. Monk runs around the playground.
12 Through the playground.

13 A Through the playground.

14 Q Around the corner. You're behind him.

15 A Correct.

16 Q Okay. Turns the corner again and goes
17 behind houses. You're still behind him.

18 A Correct.

19 Q You chase him.

20 A Yes.

21 Q About two minutes did you chase him?

22 A No, I did not.

23 Q Well --

24 A Very short chase. Chase, two and half, three
25 seconds.

1 Q That quick?

2 A Yes.

3 Q Okay. Now, he was 15 feet away from you when
4 he got out of the car. Is that right?

5 A When I got out the car?

6 Q Yes, sir.

7 A He was about four feet away from me.

8 Q Four feet. Did you catch him in a back yard?

9 A Correct.

10 Q What number was the house, sir, back yard, was
11 that?

12 A I don't recall.

13 Q How many houses down did you pass?

14 A I don't recall.

15 Q And you were in full uniform as you are today?

16 A That's correct.

17 Q Okay. Did you have to hop over a fence, short
18 fence, low fence?

19 A I believe it was a high, wooden fence.

20 Q Okay. But you had to go over it?

21 A Correct.

22 Q Okay. Because you had to get in the back yard?

23 A Yes.

24 Q Okay. And you held the defendant there. How
25 did you hold him?

1 A I placed him up against the wall.

2 Q Okay. And you searched him.

3 A Patted him down.

4 Q Okay. And you said you were looking -- you

5 testified this morning that you were looking for some type

6 of weapon or something?

7 A Possibility.

8 Q Okay. There was never any indication from

9 Mr. Monk that he had a weapon, was there?

10 A No, but for my safety, I checked him.

11 Drug dealers are normally --

12 MR. ANGELOS: Object to what you're saying,

13 about drug --

14 MR. BOUCHER: Objection, Your Honor.

15 MR. ANGELOS: If he --

16 MR. BOUCHER: The witness should be allowed to

17 answer the question.

18 THE COURT: All right. Your objection is

19 overruled. Your objection is sustained. It was in answer

20 to your question as to why he checks people for weapons, and

21 he's allowed to answer, and you may finish your answer.

22 MR. ANGELOS: Officer, everybody that you --

23 THE COURT: Wait a minute. Have you finished

24 your answer?

25 THE WITNESS: I said narcotic dealers are known

1 to carry weapons.

2 BY MR. ANGELOS:

3 Q Okay. So, are drug dealers.

4 A Yes.

5 Q Okay. And in your mind this man was a drug
6 dealer, right? You didn't see him sell any drugs, did
7 you?

8 A No, I did not.

9 Q Okay. You testified yesterday that when you
10 pulled around the corner, Mr. Monk and a couple or two other
11 people were standing under a light or near a light. Is that
12 right?

13 A Correct.

14 Q Okay. What was Mr. Monk wearing?

15 A I don't recall exactly what he was wearing.

16 Q The other two women that he was with, what
17 were they wearing?

18 A I don't recall that either.

19 Q Okay. How old were those women?

20 A I don't recall that either.

21 Q Okay.

22 A I recall that they were being females.

23 Q Okay. And how did you know they were women?

24 A Hairstyles, maybe.

25 Q Excuse me?

1 A Hairstyles.

2 Q Hairstyles? Now, you looked at your statement
3 of charges. In fact, that's what the prosecutor handed you.
4 Is that what you have? Do you still have that with you?

5 Okay. You testified yesterday that when
6 you saw Mr. Monk, you said there were some objects in his
7 hand. Is that right?

8 A That's correct.

9 Q Okay. What color did you describe those
10 objects as?

11 A Neon yellow.

12 Q Neon yellow. When you wrote your report, when
13 you first made the observation, did you know that those
14 objects were neon yellow?

15 A Yes, I did.

16 Q Okay. And how did you know that?

17 A Because I observed them to be neon yellow.

18 Q Okay. Did you write that down in your state-
19 ment of charges?

20 A The word neon, no, I did not. I wrote that
21 they were yellow.

22 Q Do you have that statement of charges with
23 you? I'll show you the State's copy of it. Show me where
24 you wrote down that they were yellow in your statement of
25 charges.

1 THE COURT: Well, do you have his report, too?
2 MR. ANGELOS: Pardon?
3 THE COURT: Was there a report written, too?
4 MR. ANGELOS: Yes, sir.
5 THE COURT: Well, show him his report, too.
6 MR. ANGELOS: Well, one at a time.
7 THE WITNESS: Well, yellow was not indicated
8 in that part of it.
9 BY MR. ANGELOS:
10 Q Okay.
11 A But at the recovery, it was.
12 Q Well, you found things on the ground, you
13 said they were yellow. Is that right?
14 A Yes.
15 Q You didn't see any yellow objects in his hand,
16 did you, when you first observed him?
17 A I guess not.
18 Q No, you didn't. Let me show you your police
19 report, as the judge has indicated. This is a crime
20 incident report that you, second report that you make
21 also. Is that correct?
22 A That's correct.
23 Q Okay. Would it say yellow in there, sir?
24 Or neon, or any color?
25 A May I see it?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Sure.

A They would corroborate both, both should have corroborated it. I don't think it says it in here, either.

Q When do you fill out that report?

A After filling out the statement of charges.

Q That same evening or the next morning?

A Same evening.

Q Same evening. So, according to these two reports that you filled out, on July 24th, a long time ago, both times you say all you saw were objects. Is that right?

A That is correct.

Q Okay. All right. Did you ever see a brown paper towel?

A No, I did not.

Q Okay. Did you ever see a brown bag?

A No, I did not.

Q Right, but you recovered a brown item. Is that right?

A That's correct.

Q Okay. That's the brown item in there?

A Right.

THE COURT: Counsel, for the sake of -- I know you're all experienced, but I'm asking, but partially suggest-

1 ing, can we tell the jury, if it's true, that the packaging
2 here was not, was put on by somebody else, by the Police
3 Department? Is that true or not true?

4 MR. BOUCHER: That is true, Judge, but that
5 testimony would have come out through Officer Coleman, who
6 will be the next State's witness.

7 THE COURT: So, the jury is really not seeing
8 -- you're walking back and forth. They're not seeing some-
9 thing that was present that night. That packaging is for the
10 sake of packaging.

11 MR. BOUCHER: That's correct.

12 THE COURT: Do you have any objection to telling
13 the jury that?

14 MR. ANGELOS: I misunderstand your point.

15 THE COURT: That cellophane, I really can't --

16 MR. ANGELOS: Oh! The outside of what this is
17 contained in?

18 THE COURT: Yeah.

19 MR. ANGELOS: Okay.

20 THE COURT: That's that not --

21 MR. ANGELOS: It's my understanding that this
22 can't be opened until it's admitted into evidence.

23 THE COURT: Well, that cellophane and that
24 piece of cardboard behind it has all been added by the
25 Police Laboratory --

1 MR. BOUCHER: Yes, sir.

2 THE COURT: -- Division or the Police Depart-
3 ment.

4 MR. BOUCHER: Yes, sir.

5 THE COURT: It wasn't there that night.

6 MR. ANGELOS: There is a brown item in here.
7 There's a -- would you like to see, Judge?

8 THE COURT: No. I'll just --

9 MR. ANGELOS: There's a paper towel in here.
10 That was recovered from the scene that night.

11 THE COURT: You see, you see, people like
12 myself and the jurors, you see a piece of evidence like
13 that, and you think that that was what it was, you know, but
14 in actual fact, that that packaging has been added, all that
15 red tape and the identification tags and all those other
16 things have been put on there by the Police Department.

17 MR. ANGELOS: Well, when it is admitted into
18 evidence, we'll open it up and let everybody see.

19 THE COURT: All right. Now, folks, don't leave
20 that laying around.

21 MR. BOUCHER: I won't, Judge.

22 THE COURT: All right.

23 MR. ANGELOS: Yes, sir.

24 BY MR. ANGELOS:

25 Q Did you -- let me get this straight. You didn't

1 see anybody else on the street of Loretta Avenue besides
2 three people at that time. Is that right? That's your
3 testimony?

4 A That's correct.

5 Q Okay. If somebody would have shouted 5-0,
6 or an indication that the police were coming, would you have
7 heard that, because you tell me you probably had your air
8 conditioning on. Could you have heard that sound --

9 MR. BOUCHER: Objection, Judge.

10 Q -- that noise?

11 THE COURT: Sustained. You're asking him to
12 speculate on something that he says didn't happen or at
13 least --

14 Q Did you hear any --

15 THE COURT: -- he didn't hear it.

16 Q Did you hear anybody yell anything?

17 A No, I did not.

18 Q Officer Smith, when you stopped the defendant
19 and searched him, in the back yard, is that when you called
20 for back-up?

21 A Well, during the foot pursuit, I was giving
22 out my location where I was running. So, units were coming
23 that way, and once I stopped, I gave my location and then
24 they continued to come.

25 Q Can you tell the ladies and gentlemen of the

1 jury how you do that?

2 A Using a police radio.

3 Q And where is that located on you?

4 A It's right here on my right shoulder.

5 Q And when you were running after Mr. Monk,
6 going after him, you had a hand there and were kind of talking
7 at the same time?

8 A That's correct.

9 Q Okay. But when you jumped over the fence, you
10 had both your hands free. Right?

11 A That's correct.

12 Q Okay. Now, you stopped the defendant, and
13 you searched him for your protection. Did you find anything?

14 A No, I did not.

15 Q Okay. But you detained the defendant. You
16 didn't arrest him at that time, did you?

17 A No, I did not arrest him.

18 Q Okay. Why didn't you arrest him at that time?

19 A Because I wanted to go back and recover the
20 items that the defendant had dropped and confirm that they
21 were CDS.

22 Q You testified yesterday you were sure those
23 were drugs thrown down. Isn't that right?

24 MR. BOUCHER: Objection, Your Honor.

25 THE COURT: Basis?

1 MR. BOUCHER: That was not the testimony that
2 the officer gave yesterday.

3 THE COURT: Well, I'll tell you the truth, I
4 can't remember it. So, I will let you re-ask the question
5 as to what he said.

6 BY MR. ANGELOS:

7 Q Is it fair to say that when you first observed
8 this defendant, Mr. Monk, when you saw him, that he had
9 drugs in his hand?

10 A He had items in his hand.

11 Q Items? Okay. So, you didn't know what those
12 items were?

13 A At that time, I did not.

14 Q Okay. That's why you detained the defendant.
15 Is that right?

16 A Well, if you're speaking of when I first
17 turned onto the block, and I --

18 Q No, no. When you stopped, and after you had
19 put him up against the wall in the back yard, you detained
20 him at that time?

21 A That's correct.

22 Q That's the word you used. Okay. So, you
23 didn't arrest that time, at that time?

24 A No, I did not.

25 Q Okay. Now, you waited how long before the other

1 police officers came for back-up?

2 A Back-up took approximately, I would say maybe
3 30, 40 seconds.

4 Q Not two and a half minutes, but 30 or 40
5 seconds?

6 A That's correct.

7 Q And 5, 6, 7 or 8 police officers came?

8 A That's correct.

9 Q Okay. And they held the defendant?

10 A After they located me. They came and they
11 held this defendant.

12 Q And you went back to the area where Mr. Monk
13 and these two women were. Is that right?

14 A That's correct.

15 Q Was anybody else in the area there?

16 A No, it was not.

17 Q Very quiet.

18 A Very.

19 Q Everybody had gone?

20 A Deserted.

21 Q You went with your flashlights, you and Officer
22 Coleman had flashlights. Is that right?

23 A Well, Officer Coleman had a flashlight. I
24 did not.

25 Q Okay. Why did he have that flashlight, if you

1 know?

2 A Well, I got out the car pretty fast. I guess
3 I didn't have a chance to grab it.

4 Q Okay. But what was he using the flashlight
5 for?

6 A To go back to the drugs and help me gather
7 them.

8 Q It was dark?

9 A Where the drugs were dropped?

10 Q Yes.

11 A Well, they were scattered, so it was, they
12 were --

13 Q How far were they scattered?

14 A Well, I would say maybe from -- I would say
15 maybe, not far, maybe a foot away from the fence where the
16 defendant was.

17 Q So, the defendant was by a fence?

18 A That's correct.

19 Q And the fence would naturally be against the
20 building or far from the sidewalk, right?

21 A Correct.

22 Q Okay. The sidewalk is only four feet wide.
23 Is that right?

24 A No, that's not correct.

25 Q How wide is the sidewalk?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A I'd say maybe two feet.

Q Two feet?

A Yes, sir.

Q Okay. So, you pulled up two feet away from the curb.

A Well, I said I was four foot away from the defendant.

Q So, the sidewalk was this, this narrow?

A I'd say maybe the length of this.

Q Okay. How were the three people standing on the sidewalk? Were they standing side-by-side-by-side?

A As you indicated, they were kind of in a huddle.

Q Okay. So, they're in like a two foot square foot huddle, these three people. Now, it's your testimony that you saw the defendant's hand inside this huddle.

A Correct.

Q Okay. Left hand or right hand?

THE COURT: I couldn't hear you.

Q Left hand or right hand?

A Right hand.

Q Now, you and Officer Coleman came back to recover the narcotics. He had a flashlight.

A Yes, he did.

Q Okay. And you say the narcotics were kind of

1 spread in a one foot area?

2 A Yes.

3 Q Okay. What was the flashlight for?

4 MR. BOUCHER: Objection.

5 THE COURT: Where was what?

6 MR. ANGELOS: What was the flashlight for.

7 THE WITNESS: Well --

8 THE COURT: What was what flashlight for?

9 MR. BOUCHER: Objection.

10 MR. ANGELOS: The flashlight that was used to
11 recover the narcotics.

12 MR. BOUCHER: Your Honor, this line of
13 questioning has already been gone through, and the officer
14 has already responded to those questions.

15 THE COURT: You're talking about when Officer
16 Coleman came up with him --

17 MR. ANGELOS: Yes, sir.

18 THE COURT: -- to look for the things?
19 Sustained. He said he used it to try to find the drugs that
20 were scattered.

21 BY MR. ANGELOS:

22 Q And you never saw the, any other objects with
23 him, with Mr. Monk, did you?

24 A Any other objects?

25 Q At all, besides just these -- just these objects

1 is all you saw?

2 THE COURT: But you're a little, slightly
3 confusing, but what point are you talking about? Do you mean
4 at the --

5 MR. ANGELOS: I'll withdraw it. You're right,
6 Your Honor. That is confusing.

7 BY MR. ANGELOS:

8 Q Did you submit the narcotics?

9 A No, I did not.

10 THE COURT: Now, the jury doesn't know what you
11 mean by submit the narcotics.

12 MR. ANGELOS: If I may, Judge, I'll --

13 THE COURT: Uh-huh.

14 BY MR. ANGELOS:

15 Q The arresting officer who recovered -- is you,
16 is that correct?

17 A Yes, I was the arresting officer.

18 Q Is it, is it right for you to take the narcotics
19 and submit them to Evidence Control, which I'm saying is,
20 take them down to Central District, and take them to the
21 chemical analysis?

22 THE COURT: Well, in the Police Department,
23 all things by regulation have to be turned in to a depository,
24 an authority that's designated by the Police Department. Is
25 that right?

1 THE WITNESS: That's correct.

2 THE COURT: And so that in the event that you
3 obtain a weapon, guns, whatever in an arrest, you have to
4 take it to a designated location. Is that correct?

5 THE WITNESS: That's correct.

6 THE COURT: And that's what you're talking
7 about?

8 MR. ANGELOS: Yes, sir.

9 BY MR. ANGELOS:

10 Q Why didn't you submit the drugs?

11 A Well, Officer Coleman and I both seized the
12 drugs from the ground, so Officer Coleman submitted the
13 drugs while I processed the defendant at Western District.

14 Q Did you give any -- did you give Officer
15 Coleman any instructions as to what, how to submit the drugs
16 or any procedures to submit the drugs?

17 A No, I did not.

18 Q Okay. He just took the drug and submitted
19 them himself. Is that right?

20 A Yes, he did.

21 MR. ANGELOS: One moment, Your Honor. Is
22 that the heat turned on?

23 THE COURT: Yes, I hear it. It was kind of
24 short here on Monday though when we needed it. Now you
25 know why the federal government gave this building to the

1 City for a buck. That's what they charged them. This is
2 the old Federal Courthouse, you know, years ago, while
3 we're waiting for counsel for his next question, and this
4 was a federal court, and of course, this was also the building
5 which was the post office building. It shows you how
6 bureaucracy has grown, because in those days we had the
7 post office here, all of it, the FBI, all of it, the
8 Immigration Service, all of it, the federal court system,
9 all of it, and whatever else they have -- oh, Internal
10 Revenue, all of it, all in this building. Not that many
11 years ago. Now they all have their own buildings.

12 All right. Now, are you ready for your
13 next question?

14 BY MR. ANGELOS:

15 Q Yes, sir. Now, Officer, you testified that
16 you got out of the car and you ran, chased the defendant,
17 you ran past the drugs on the corner. Is that right?

18 A That's correct.

19 Q Okay. Did you look down?

20 A Yes, I did.

21 Q And you saw that they were drugs?

22 A I saw they were ziplock bags containing a white
23 item.

24 Q As an expert, as you have been qualified here
25 today, what did you think they were?

1 A Definitely, great possibility they were
2 narcotics.

3 Q Okay. Did -- at that time, did it go through
4 -- I mean, did you think that those were drugs?

5 A It was a good indication that they were
6 drugs.

7 Q Okay. And if you see those drugs, you are
8 going to arrest the defendant. Right?

9 A Well, I wanted to go back and recover them
10 and make sure what I saw was what I saw.

11 Q Okay. So, you're not sure what you saw
12 at that time?

13 A I did see the ziplocks, and I did see items
14 inside, but I did want to go back and recover before I
15 placed the defendant under arrest.

16 Q You didn't write down in your, any of your
17 reports, that you ran past and saw drugs on the ground, did
18 you?

19 A No, I did not.

20 Q Okay. In fact, the only thing you ever wrote
21 down was that there were just simply objects that you saw,
22 and then you chased the defendant. Is that right?

23 A I can't really say without the use of my
24 reports.

25 Q Okay. That area, that part of the sidewalk, who

1 was watching that area when you were chasing the defendant?

2 THE COURT: Who was watching the area?

3 Q When you were chasing the defendant.

4 A No one.

5 Q Okay. You say you recovered some money from

6 Mr. Monk. Is that right?

7 A Yes, I did.

8 Q Okay. Did your -- how much was it?

9 A I believe it was \$6.00.

10 Q What happened with that money?

11 A It was seized and taken down to Evidence

12 Control, also, and submitted.

13 Q Did you write down on your report that you

14 seized any money from him?

15 A I believe it was written in the report.

16 Q Which report would that be?

17 A I believe the offense report.

18 Q And I'll ask you again if you can point that

19 out.

20 A Mr. Boucher has the offense report with the

21 seizure, the required seizure report on it, also, I believe.

22 Q In your training and experise, people don't

23 give drugs away on the street, do they?

24 A No, they do not.

25 Q They sell them.

1 A Correct.

2 Q And you indicated that this, these were \$10.00
3 bags. Is that right?

4 A Correct.

5 Q Okay. You didn't see -- did you see anybody
6 selling any drugs on that street that night?

7 A No, I did not.

8 Q Okay. And certainly didn't recover any
9 \$10.00 bills from my client, did you?

10 A No, I did not.

11 MR. ANGELOS: Okay. Judge, that's all the
12 questions I have of this officer at this time.

13 MR. BOUCHER: Just a few re-direct, Judge.

14 RE-DIRECT EXAMINATION

15 BY MR. BOUCHER:

16 Q Officer, when you first pulled onto the 1800
17 block of Loretta Avenue, you indicated that you saw the
18 defendant holding objects in his hand and displaying those
19 objects to the two females. Was your attention ever diverted
20 from those three individuals to anywhere else in the 1800
21 block of Loretta Avenue after you saw the defendant?

22 A No, it was not.

23 Q Officer, defense counsel pointed out that in
24 the body of your reports, you did not indicate that there
25 were yellow neon objects in the hand of the defendant. You

1 simply described them as objects. Officer, are you required
2 to include in the body of your reports each and every detail
3 of, of every arrest that takes place?

4 A No, I am not.

5 Q Officer, would it be fair to say that the
6 reports that you write are general summaries of the
7 actions that transpired on the date in question?

8 A That is correct.

9 Q Officer, how much time passed when back-up
10 units arrived on the scene until the time that you responded
11 to the location where the narcotics were found, approximately?

12 A Okay. Due to the defendant and ^I being inside
13 of an enclosed fence and the high wooden fence, I would
14 guess, maybe, it was maybe six foot high, the units arrived
15 on the scene and they had problems locating me right away.
16 So, the time that transpired in between the units arriving
17 on the scene and myself calling for them -- is that what
18 you're ask -- could you, if -- repeat the question, please.

19 Q From the time that the back-up units responded
20 to the scene and took custody of the defendant until you
21 responded back to where the drugs were, how much time passed?

22 A Gee, um, that was quick. Maybe 10, 10 seconds,
23 10, 15 seconds.

24 Q Officer, defense counsel, or you responded to
25 defense counsel's question in regard to the location of the

1 three individuals on the street, and you indicated that they
2 were in kind of a huddle with the defendant displaying his
3 back and right side to you. Is that correct?

4 A That is correct.

5 Q Officer, you indicated in response to my
6 questions that the defendant had his hand open and was dis-
7 playing these items. Is that fair to say?

8 A That's correct.

9 Q Officer, when you saw that action by the
10 defendant, what, if anything, did you think was going on at
11 that particular location?

12 MR. ANGELOS: Objection.

13 THE COURT: Now, we're not going to try this
14 case twice.

15 BY MR. BOUCHER:

16 Q Officer, I'll ask you to identify this
17 document for the ladies and gentlemen of the jury.

18 A This is called U.S. currency seized and
19 acquired, the \$6.00 that were recovered from the defendant,
20 which was submitted to the Evidence Control Unit, was
21 documented on part of my offense report here.

22 Q Thank you.

23 A Uh-huh.

24 MR. BOUCHER: Judge, I have no further
25 questions. Thank you.

1 MR. ANGELOS: Judge, I have a few re-direct
2 upon the State's re-direct.

3 RE-CROSS EXAMINATION

4 BY MR. ANGELOS:

5 Q You state that your attention was never
6 diverted from watching those three people. Is that right?

7 A That's correct.

8 Q Okay.

9 THE COURT: At what point, again?

10 Q When you approached upon the scene, your
11 attention was never diverted? How do you know there was
12 nobody else on the side streets?

13 A I didn't see anyone.

14 Q You weren't looking, were you?

15 A That's correct.

16 Q Okay. Now, you say -- briefly, I don't want
17 to get into this too much, but just the color of the things,
18 the objects, the neon color again. You wrote this report on
19 July 24th. Is that right?

20 A That's correct.

21 Q Almost, over six months ago. Is that correct?

22 A Yes.

23 Q Okay. And is it fair to say things were
24 fresh in your mind when you wrote these things down?

25 A Yes, very fresh.

1 Q Because it happened right at the time. Is
2 that correct?

3 A That's correct.

4 Q Okay. And you know that this, this document
5 is going to be used in court or could be used in court, and
6 in fact, you signed the bottom, you know, under the penalties
7 of perjury what I say here is true. Is that right?

8 A That is correct.

9 Q Okay. And you try to include everything you
10 can in this report, don't you? And your, in fact, your
11 superior officer also signs this, doesn't he?

12 A No, not the statement of charges. No, he
13 doesn't.

14 Q Okay. Um, which one does he sign?

15 A My sergeant signs offense reports.

16 Q Okay. This one?

17 A Yes.

18 Q Okay. And is it fair to say both of these
19 reports are extremely similar?

20 THE COURT: Extremely what?

21 Q Similar. My voice not carrying up there, Your
22 Honor?

23 THE COURT: Well, it comes with the number --

24 MR. ANGELOS: Do you want me to speak up?

25 THE COURT: -- of years that I've been on

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

earth.

MR. ANGELOS: Can everybody in the jury hear me?

THE JURORS: Yes.

MR. ANGELOS: Good.

That's all I have. Thank you, Your Honor.

THE COURT: All right, sir. You may step down.

Call your next witness.

MR. BOUCHER: Judge, the State would call Officer Milton Coleman.

THE COURT: All right, Sheriff.

OFFICER MILTON COLEMAN,

a witness produced on call of the State, after having been first duly sworn, was examined and testified as follows:

THE CLERK: You may be seated. State your name and your assignment for the record, please.

THE WITNESS: Police Agent Milton Coleman, Western District, Uniformed Patrol.

DIRECT EXAMINATION

BY MR. BOUCHER:

Q Officer Coleman, how long have you been a police agent for the Baltimore City Police Department?

A I've been a police agent since September of '89. I have worked with the Department since September of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

'87.

Q Can you indicate to the ladies and gentlemen of the jury how long you have been assigned to the Western District?

A Four and a half years.

Q Officer Coleman, were you, in fact, employed by the Baltimore City Police Department on July the 24th, 1991?

A Yes, I was.

Q And did you work that evening, if you can recall?

A Yes, sir, I did.

Q I'm going to direct your attention to approximately 12:20 a.m. Did you have an occasion to respond to the area of the 1800 block of Loretta Avenue in Baltimore City?

A Yes, sir.

Q Can you indicate to the ladies and gentlemen of the jury what the nature of your response was?

A I received information over the radio that Officer Smith was in foot pursuit of a suspect that I didn't know at the time what he was wanted for, and when I arrived, Officer Smith told me that he was looking for a gentleman wanted for a CDS violation. I responded as a back-up unit to Officer Smith.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q What, if anything, did you find upon your arrival at the scene?

A I got there a little late. The gentleman Officer Smith was after had already been taken into custody. I accompanied Officer Smith back to the area where the drugs -- where he saw this suspect drop some drugs, and I accompanied Officer Smith to that area, and recovered some suspected CDS with him.

Q When you arrived on the scene where the suspected narcotics were located what, if anything, did you do?

A I got out of my car with my flashlight, illuminated the area where Officer Smith saw the objects dropped, and --

MR. ANGELOS: Objection to where he saw the objects dropped; where he was told.

THE COURT: Well, what is your objection now?

MR. ANGELOS: To the objects --

THE COURT: What he was told by somebody?

MR. ANGELOS: What the officer -- yes.

THE COURT: Well, I'm going to allow it, to explain what he did.

Overruled. Go ahead.

THE WITNESS: I illuminated the area where Officer Smith said he saw the objects fall, and with my

1 light I saw some yellow ziplock bags containing a white
2 rock-like substance laying on the ground. Most of them
3 were wrapped within a paper towel, and a few were scattered
4 on the ground.

5 BY MR. BOUCHER:

6 Q Was that recovered as well?

7 A Yes, sir, it was.

8 Q Officer, I am going to show you what has been
9 marked as State's Exhibit No. 1 for identification. Can you
10 indicate to the ladies and gentlemen of the jury whether you
11 have seen that item before?

12 A Yes, sir. This appears to be the items that
13 I recovered from the 1800 block of Loretta Avenue, and the
14 paper towel that they were wrapped in.

15 Q Officer, how can you tell that those are the
16 items?

17 A We have a system whereby the items that you
18 submit to ECU are put inside a bag that is sealed with
19 evidence tape, and you sign the tape, and it's not opened
20 by anyone except the laboratory technician that does the
21 testing on the CDS, and then it's resealed and put back
22 in a bag.

23 Q Officer, to the best of your knowledge,
24 are those the items that you sealed in that cellophane
25 envelope on the 24th of July, 1991?

1 A To the best of my knowledge, yes, sir.

2 Q Officer, did you have an occasion to prepare
3 a report in regards to the submission of those items?

4 A A laboratory report was prepared to have the
5 items analyzed to find out what they are.

6 Q Sir, I'm going to ask if you can identify
7 this particular document to the ladies and gentlemen of the
8 jury?

9 A This is the form that I filled out to have
10 these items analyzed. This is the laboratory report showing
11 the complaint number of 7G59105, and the property number of
12 N109672, under which these items were submitted to the
13 Laboratory Division.

14 Q Officer, how do you know that you were the one
15 who filled out that particular report?

16 A It's in my handwriting, and I signed the
17 report.

18 Q Officer, would you indicate to the ladies and
19 gentlemen of the jury what the itemized objects that were
20 submitted to the Chemical Analysis Division on the 24th of
21 July, 1991 were?

22 A Item 1 is one brown paper towel. Item A is
23 30 yellow ziplock bags containing white substance.

24 Q Officer, would you break the seal on that
25 evidence bag, please?

1 (Pause while witness complies with
2 request).

3 Q Officer, can you indicate to the ladies and
4 gentlemen of the jury whether these, these bags which the
5 smaller bags are contained in, are these also evidence
6 enclosure bags or were these bags present at the scene when
7 you recovered them?

8 A The bag that the red -- the big bag that the
9 red tape is on, is an evidence enclosure bag. The small
10 yellow bags with the white substance inside is how we found
11 them at the scene.

12 Q Officer --

13 THE COURT: In other words, the Police Depart-
14 ment surrounded the bag they're in?

15 A Yes, sir.

16 Q To the best of your knowledge, are those
17 yellow bags, each containing a white item in the same or
18 substantially the same condition as when you recovered them
19 on July the 24th, 1991, in the 1800 block of Loretta Avenue
20 in Baltimore City?

21 A Yes, sir, with one exception. The Crime Lab
22 technician numbered the bag. I did not do that. They number
23 them in order to, to have an accurate count of the bags.

24 Q Now, Officer, is there another item that was
25 contained in that larger bag?

1 A Yes, sir. This is the paper towel that I also
2 submitted.

3 Q Does that appear to be in substantially the
4 same condition, or substantially the same condition as when
5 it was recovered from the 1800 block of Loretta Avenue on
6 July the 24th, 1991?

7 A It was flattened out to be submitted, but
8 when we recovered it, it was crinkled up and contained the
9 yellow bags with the white powder in it, white substance.

10 Q Did it contain all of them or --

11 A Just most of them. Maybe 10, 10, 12 were laying
12 on the ground.

13 Q Thank you.

14 Your Honor, I am going to ask at this particular
15 time to move these items into evidence. These were marked
16 as State's Exhibit No. 1 for identification. However there
17 are two individual items that were contained in this evidence
18 control bag. I don't know whether you want to keep them
19 simply as Exhibit 1 or --

20 THE COURT: Keep them all as Exhibit 1.

21 MR. BOUCHER: Okay.

22 THE COURT: Give them to the clerk.

23 MR. BOUCHER: Thank you. And they are admitted
24 without objection?

25 THE COURT: Did you hear any?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. BOUCHER: No, Judge.

(State's Exhibit No. 1 received
in evidence).

MR. BOUCHER: Your Honor, at this particular
time, based on the testimony of --

THE COURT: All right. Let's take -- I want
to hesitate just one minute here. As soon as they're marked,
I'm going to look at these items, and then I'm going to
give them to the jury.

MR. BOUCHER: Okay. Thank you.

THE COURT: All right. When you give them to
the jury, separate them out and let them pass them down.
You wait for them, though.

Ladies and gentlemen of the jury, we're going
to pass down this evidence. We're going to take them out of
the bag.

Now, if you want the bag, the evidence bag
opened where the little objects are in the Police Department
bag, you're welcome to tell the clerk that you want her to
break it open, and she'll do it. She'll pass down whatever
you want to see.

THE CLERK: I can't break it open.

THE COURT: Well, I'll break it open if you
want me to. Do you want me to break it open for you?

Anybody -- raise your hand if you want me to

1 break it open. All right.

2 THE CLERK: Once you break it open, I can't
3 touch it.

4 THE COURT: You understand that what I'm breaking
5 open -- now, I'm not -- it's open. These are, however,
6 gathered together inside the bag. What I'm -- what's this
7 bag?

8 THE WITNESS: Your Honor, that's the bag
9 containing the seal that the technician opened. That has
10 my signature on the tape.

11 THE COURT: Oh, that's the one he took -- they
12 are the ones he took out and tested?

13 THE WITNESS: Yes, sir.

14 THE COURT: All right. I'm not going to break
15 that one open. Does anybody want me to break that open?
16 Raise your hand. No. All right. Give that to them, and
17 this, and this. I'll let you hold.

18 THE CLERK: Don't give this to them?

19 THE COURT: No. I have some little white
20 particles here on my bench. I don't know whether anybody
21 would like to gather this up or not.

22 MR. BOUCHER: Well, Judge, you don't want to
23 be charged.

24 THE COURT: Any volunteers?

25 (Exhibit passed to the jurors by

the clerk).

1
2 THE COURT: M's Marcus, how do they do that
3 on television? You see, ladies and gentlemen, I'm at a
4 disadvantage. I don't have a television set, so I have to
5 ask once in a while what you all -- I've never had one in
6 my entire life. Am I missing anything? You know at that
7 crime meeting the other day, this has nothing to do with
8 this case, of course, I noticed in the paper that somebody
9 told the mayor when he, you know, he wanted to know, what
10 can we do about things in Baltimore. Somebody told the
11 mayor, he says that I recommend you take every television
12 set out of every home and throw it away.

13 Now, I know you think, you're going to think
14 I'm a nut, but I really agree with that, because I see these
15 kids come in here -- it has nothing to do with this case, but
16 I see young people come in here that can't talk and they
17 can't think and they can't relate. I'm not talking about
18 because of any crimes. I mean because they're -- they've lost
19 the ability to, to communicate. Think.

20 That's my own little commercial. See, that's
21 the advantage you have when you're a judge. You can tell
22 stories.

23 (Brief pause).

24 THE COURT: All right. The clerk will take
25 possession of the State's Exhibit No. 1, and turn it over to

1 the agent when he leaves the courtroom at a later point.
2 And, Agent, you will keep these objects until they're called
3 for later on, when the jury is deliberating in this case.

4 THE WITNESS: Yes, sir.

5 MR. BOUCHER: Thank you, Judge.

6 BY MR. BOUCHER:

7 Q Officer Coleman, again I am going to show you
8 the analysis. Can you indicate the name of the defendant
9 that -- excuse me. Strike that.

10 Is there a defendant's name listed on that
11 particular document?

12 A Yes, sir.

13 Q And can you indicate the name of the defendant
14 that is displayed --

15 MR. ANGELOS: Objection.

16 THE COURT: Basis?

17 MR. ANGELOS: May we approach?

18 THE COURT: Yes.

19 (Counsel and defendant approached
20 the bench and the following ensued:)

21 MR. ANGELOS: Judge, it's my understanding that
22 the name on the --

23 THE COURT: Let me have the -- let me have
24 the document, please.

25 MR. ANGELOS: It's the name of somebody else,

1 Joseph Payne, and it's my understanding that the defendant
2 gave a different name when he was being booked, and what I
3 think the State is doing here is trying to get out in the
4 evidence that he gave a false name, which would in a sense
5 be asking the defendant to testify, and the client, my
6 client --

7 THE COURT: Well, this is the same address
8 he gave. What is his name?

9 MR. ANGELOS: Gregory Monk.

10 THE COURT: His correct name is Monk. Is that
11 right?

12 MR. ANGELOS: Yes. And this is a way for the
13 State to get in that he gave a false name at the time.

14 THE COURT: Well --

15 MR. ANGELOS: What it is, is asking for
16 testimony.

17 THE COURT: Well, that's, that's admissible,
18 though, isn't it?

19 MR. ANGELOS: I would make a motion to
20 suppress the statement, I mean, if it's going to be let in
21 on this way.

22 THE COURT: Well, let's see. One of these two
23 officers wrote this down. This was this officer. Is that
24 right?

25 MR. BOUCHER: I suspect so, Judge, yes.

1 THE COURT: And can you tell me whether or
2 not that he would answer that if were asked, that this was
3 the name he was given?

4 MR. BOUCHER: I believe that would be his
5 testimony.

6 MR. ANGELOS: He wasn't the arresting officer.
7 He wasn't given any name. Anything he could say would be
8 hearsay.

9 THE COURT: That somebody else told him?

10 MR. ANGELOS: Right.

11 THE COURT: So, would the other officer have
12 been given that name?

13 MR. BOUCHER: Yes, Judge, either that officer
14 or --

15 THE COURT: Let me talk to him. Agent, come
16 over here a minute, will you, please?

17 (The witness joined the discussion
18 at the bench, as follows:)

19 THE COURT: Agent, who gave you the name Payne,
20 Joseph Payne?

21 THE WITNESS: When I went down to ECU,
22 Officer Smith accompanied the defendant to the station. I
23 called from ECU to get the information.

24 THE COURT: And you got that from?

25 THE WITNESS: Officer Smith.

1 THE COURT: Officer Smith. All right. Thank
2 you. You can go back.

3 (The witness returned to the
4 witness stand, and the discussion
5 continued at the bench).

6 THE COURT: All right. Now, he can call
7 Officer Smith again and ask him that.

8 MR. ANGELOS: I'm also concerned about my
9 client's right. If they're going to bring out a statement
10 that he made, that's going to say that he testified. That
11 he's testifying.

12 THE COURT: And that he testified?

13 MR. ANGELOS: Well, that he's, any statement
14 that he made is going to come in.

15 THE COURT: Well, I am going to allow any
16 evidence that is offered with respect to what name he gave
17 at the time of his arrest, if it comes from the person that
18 he gave it to, and I will allow him to recall the other
19 officer for that purpose, if he wants to.

20 Now, if he doesn't want to and is not going
21 to, then this has to come off and we'll rephotostat it.
22 Now, what's your position?

23 MR. BOUCHER: I will call the other officer,
24 Judge.

25 MR. ANGELOS: We have already stipulated to

1 everything here. If he's going to call the other officer,
2 I'm going to, I guess I'm going to demand to have the chemist
3 come in here.

4 THE COURT: Well, I'm not going to let you do
5 that for that reason, because you're quibbling with my
6 decision, and you're doing it like, well, if you don't do
7 this, then I'll do that type of thing.

8 MR. ANGELOS: The other thing is that it's
9 quite clear --

10 THE COURT: It has nothing to do with the
11 chemist.

12 MR. ANGELOS: It's quite clear that the booking
13 -- let me just say this that the police officer --

14 THE COURT: I couldn't hear you.

15 MR. ANGELOS: When the other officer, Warren
16 Smith, when he testified, he's got his report and he knows
17 that the defendant gave a false statement. In fact, in that
18 report that he wrote at the same time, says, that we found
19 out that it is Gregory Monk.

20 THE COURT: Well, when people give wrong
21 names, they're not supposed to do it.

22 MR. ANGELOS: Right. Right, but I'm also saying
23 that the police officer knew at the time who it was; it was
24 Gregory Monk. And, in fact, he --

25 THE COURT: And you can ask him that. You can

1 ask him that on cross exam.

2 All right. Overruled. The objection is
3 overruled. Give the report back to the --

4 MR. BOUCHER: Judge, do you prefer that I call
5 Officer Smith before I elicit this from --

6 THE COURT: No. No. You have made a proffer.
7 That's good enough.

8 MR. BOUCHER: Thank you.

9 (Counsel and defendant returned to
10 trial tables).

11 THE COURT: All right. The objection is over-
12 ruled. Go ahead.

13 MR. BOUCHER: Thank you, Judge.

14 BY MR. BOUCHER:

15 Q Officer Coleman, can you indicate the name
16 of the defendant that appears on that particular document?

17 MR. ANGELOS: Objection.

18 THE COURT: Well, subject to your proffer
19 that you're going to provide Officer, recall Officer Smith
20 with respect to this matter, overruled.

21 A Joseph Payne.

22 Q Thank you.

23 Your Honor, based on the identification of
24 this document by Officer Coleman, and based on the stipulation
25 that's been entered into by the parties, I would now offer

1 the chemical analysis as State's Exhibit No. 2 for identifi-
2 cation, and would move it into evidence at this time.

3 THE COURT: Give it to the clerk.

4 MR. ANGELOS: Defense objects.

5 THE COURT: Overruled.

6 MR. ANGELOS: To the form.

7 THE COURT: You adopt your prior remarks on
8 this subject. Is that correct?

9 MR. ANGELOS: Yes. The defense would ask that
10 certain portions be redacted from that.

11 THE COURT: Yes. Overruled.

12 Now, I'll waive my -- no, I want to see it
13 again, M's Rosemond.

14 (State's Exhibit No. 2, chemical
15 analysis, marked and received in
16 evidence).

17 THE COURT: All right. You can give it to the
18 jury.

19 Now, ladies and gentlemen of the jury, keep in
20 mind that on these written documents, that you may receive
21 in evidence during the trial, will be with you in the jury
22 room when you are deliberating. So, if you miss something --

23 MR. ANGELOS: Judge, I ask that it not be
24 placed to the jury right now, subject to my --

25 THE COURT: Subject to his proffer, I'm allowing

1 it. Overruled.

2 MR. BOUCHER: Thank you, Judge.

3 THE COURT: All right. We are going to take
4 a short recess at this time, 10 minutes and, ladies and
5 gentlemen of the jury, I am going to recover that and allow
6 you to go to the jury room. I understand one of you wants
7 to go to the, someplace. So, we'll take a short recess.
8 10 minutes.

9 (Brief recess).

10 THE COURT: Bring the jury in, please,
11 Sheriff.

12 (Jury present in courtroom).

13 THE COURT: Give State's Exhibit 2 back to the
14 jury, please. And we are on direct examination, still?

15 MR. BOUCHER: Yes, Judge.

16 THE COURT: All right. Go ahead, sir.

17 MR. BOUCHER: Thank you.

18 BY MR. BOUCHER:

19 Q Agent Coleman, very briefly, would you
20 describe for the ladies and gentlemen of the jury while
21 they are perusing the chemical analysis what your procedures
22 are in submitting CDS that's recovered.

23 A Okay. Once I recover the CDS, I take it
24 immediately to the Evidence Control Room, which is located
25 downtown in the Headquarters Building. There I fill out the

1 form you're looking at, along with another form, smaller
2 than that, but similar with the same information. Once I'm
3 down there, I fill it out as best I can. Then I called
4 Officer Smith, who responded to the station with the arrestee.

5 When I called Officer Smith, Officer Smith
6 at that time has gotten all the information on the arrestee,
7 as identified by the arrestee at that time. He gives me the
8 complaint number, the arrestee's name, as he was identified
9 at the station, and I give Officer Smith, in turn, the number
10 of bags that I counted of the CDS.

11 Q What, what if anything did you do in actually
12 submitting the CDS to the Chemical Analysis Division?

13 A Once the forms are all filled out, I take the
14 CDS into a room where the CDS is photographed, and then it's
15 put into the sealed bags. I sign the sealed bags, and they
16 are put into a vault until a technician can retrieve them
17 and analyze the CDS.

18 Q And those were, in fact, the procedures that
19 you followed in this matter?

20 A Yes, sir.

21 Q Thank you. Agent, for the edification of the
22 jury, what's the difference between a police agent and a
23 police officer?

24 A The only difference is, a police agent has
25 a college degree. That's the only difference, and an agent

1 -- it's something that you don't automatically get when you
2 get a degree. You're psychologically tested. There's an
3 interview you go through, and it's an appointment by the
4 Police Commissioner.

5 That's the only difference, though.

6 Q Agent Coleman, directing your attention again
7 to the scene of the crime, the 1800 block of Loretta
8 Avenue, on the 24th of July, 1991, after you recovered the
9 narcotics on the sidewalk what, if anything, did you do
10 after the recovery?

11 A Okay. I had the CDS. I put it in my pocket
12 so I wouldn't lose it. I observed when I walked past
13 the person that was arrested, he was extremely combative
14 even with the handcuffs on, kicking and flailing. It took
15 at least four officers to hold him and put him into the
16 wagon.

17 MR. BOUCHER: Judge, I have no further questions
18 at this time.

19 THE COURT: Well, before cross exam, I just
20 want a word of explanation, Officer. You mentioned complaint
21 number. Could you tell the jury what you're talking about?

22 THE WITNESS: Yes, sir. Every time that we
23 receive a call over the radio or every time that we come
24 onto an incident in progress, such as this one was, we have
25 to get a complaint number, and this complaint number identi-

1 files that incident to which you responded to. In this --

2 THE COURT: Are there ever more than -- is
3 anything ever given the same number?

4 THE WITNESS: No, sir. Each incident is only
5 given one complaint number; similar to your Social Security
6 number; nobody has the same number.

7 THE COURT: Does that number follow any
8 evidence that's obtained in that case?

9 THE WITNESS: Yes, sir. All the evidence that
10 is submitted is submitted under that same complaint number
11 for that case.

12 MR. ANGELOS: Thank you.

13 CROSS EXAMINATION

14 BY MR. ANGELOS:

15 Q Officer Coleman, continuing on your trek
16 through when you take the narcotics down to, for chemical
17 analysis, you stated that you, the first place you stop,
18 is you take pictures and you photograph the drugs. Is that
19 correct?

20 A After the forms are filled out, yes, sir.

21 Q Okay. You next say that you put them into
22 sealed bags and drop them into the vault. Is that right?

23 A Put them into the sealed bags, and then you
24 sign teh tape and then they are gathered up by the technician
25 there and put into the vault.

1 Q Okay. What is between, when you're walking
2 through the room, what is between the place where you
3 photograph and when you fill out those last tapes and
4 drop them into the vault?

5 A I'm not sure I understand the question.

6 Q Okay. Is there -- there's another table and
7 there's a hood there, isn't there?

8 A In the photograph room.

9 Q The same room where you take all the drugs.
10 They're all in the same room. Everything that you do is in
11 the same room. Correct?

12 A Well, it's two different rooms, actually.

13 Q So, what's the first room?

14 A The first room is where you sit down, count
15 your CDS, fill out the forms. You then go get somebody to
16 unlock the locked door where the vault and the photograph
17 area is. You go in there. You lay everything out. Count
18 it in front of them, and then you put everything in the
19 separate bags, seal it and that's when it's dropped into the
20 vault.

21 Q What else is in the photograph room, that
22 second room?

23 A Well, I'm still not sure I understand. There's,
24 there's --

25 Q Is there a table, that there's a hood, and maybe

1 there's some dusting powder or anything there?

2 A I believe that maybe that used to be there.
3 That's now out in the hall.

4 Q Okay. What is that, that used to be there?

5 A That's for doing fingerprints, I believe, is
6 what you're --

7 Q Okay. And a police agent, as a trained
8 college appointed police agent for the Baltimore City
9 Police Department, you're aware that fingerprints can be
10 lifted from items such as those recovered. Isn't that
11 correct?

12 A Yes, sir.

13 Q Okay. Did you do any fingerprint analysis for
14 those items?

15 A No, sir.

16 Q Did you do any fingerprint analysis of that
17 paper bag that was -- pardon me -- the brown paper towel
18 that was recovered?

19 A No, sir.

20 Q Let me turn your attention back to when you
21 arrived on the scene. You stated that the police officers,
22 or at least in this instance, Officer Smith had already
23 had Mr. Monk. Is that correct?

24 A That's correct.

25 Q Okay. Mr. Monk was handcuffed at that time. Is

1 that correct?

2 A That's correct.

3 Q Okay. He was under arrest at that time.

4 Is that correct?

5 A That's correct.

6 Q That's when you and Officer Smith went back

7 to the area of the street. Is that right?

8 A I believe so. Yes, sir.

9 Q Okay. And you had your flashlight?

10 A That's correct.

11 Q Okay. And you started searching around in that

12 area. Is that right?

13 A I have shown it on the area where Officer Smith

14 said it was, and that's where it was.

15 Q Okay. And you searched that area?

16 A I wouldn't call it a search. I illuminated

17 the area and found the items --

18 Q Okay.

19 A --laying on the ground.

20 Q Okay. And is it your testimony that approx-

21 imately 20 of the items were already balled up in that

22 brown paper towel?

23 A Yes, sir.

24 Q Okay. If I may have that brown paper towel.

25 THE COURT: State's Exhibit No. 1.

1 Q Oh, do you have all of them?

2 A Oh, I'm sorry.

3 Q Court's permission to remove this?

4 And this is the brown paper towel you recovered

5 from the scene?

6 A It appears to be, yes, sir.

7 Q You picked it up, didn't you?

8 A I believe Officer Smith actually picked the

9 towel up. I was picking the loose, loose items up off of the

10 ground.

11 Q And you testified that the items were inside

12 here balled up?

13 A To the best of my knowledge, yes.

14 Q If you remember, or if you recall, when you

15 saw this on the ground, was it crumpled up to that effect?

16 A It was crumpled up. I don't know how tightly

17 it was crumpled.

18 Q Okay. And you say there were approximately

19 20 vials -- pardon me, 20 glassine bags?

20 A That would be a guesstimate.

21 Q Okay. Did you find anything else on the ground

22 besides the brown paper towel and the glassine bags?

23 A No, sir.

24 Q Was there any other trash in the area?

25 A Not that I took note of, not that I remember.

1 Q Were there any cars parked on the side of the
2 road and there was trash near there?

3 A I don't recall.

4 Q And what kind of flashlight do you have or use?

5 A I have a three cell C metal flashlight with
6 a halogen bulb.

7 Q Very bright?

8 A Very bright.

9 Q Okay. And that lit up the whole area for you.

10 A Yes, sir.

11 Q Okay.

12 That's all I have for this officer. Thank you.

13 RE-DIRECT EXAMINATION

14 BY MR. BOUCHER:

15 Q Officer, or Agent -- excuse me. You were not
16 the primary officer in this case?

17 A No, sir, I wasn't.

18 Q When you responded to the scene where the drugs
19 were located, you stated in response to counsel's cross
20 examination, that there were approximately 20 items within
21 the confines of that paper towel. Correct?

22 A Yes, sir.

23 Q But you're not really sure exactly --

24 A I'm not sure, no.

25 MR. ANGELOS: Objection to the leading nature.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Yes, it is, and it is also
repetitious.

MR. BOUCHER: Judge, I have no further questions.

THE COURT: Step down, sir. You may be
excused. Call your next witness.

MR. BOUCHER: Judge, I would recall Officer
Warren Smith.

MR. ANGELOS: Judge, at this time, the defense
will withdraw the objections made prior to the admission of
that document.

THE COURT: What document?

MR. ANGELOS: The chemical analysis.

THE COURT: All right. So, what are you
saying, that you -- that Officer Smith is not necessary?

MR. ANGELOS: That's correct, Your Honor.

THE COURT: All right. Then I -- then I
deny your request to call Officer Smith in view of the
withdrawal of the objection.

MR. BOUCHER: Thank you, Judge. You're not
needed, Officer Smith.

Judge, at this particular time, that is all the
evidence that the State has to present. The State would
rest.

THE COURT: All right. Come to the bench,
please.

1 Ladies and gentlemen of the jury, I don't mind
2 if you talk among yourselves for a few moments. I will only
3 be a few moments.

4 (Counsel and defendant approached
5 the bench and the following ensued:)

6 THE COURT: Now, I am going to advise you of
7 your right to testify at this time. You have a right to
8 testify or not to testify. If you decide to testify, I am
9 not going to permit the State to ask about your prior con-
10 viction. I have made that determination in this case,
11 in balancing all the equities, and I feel that it would be,
12 under the facts of this case, difficult for you to get a
13 fair trial. Therefore, they are not going to ask you
14 that you have been convicted of drug dealing in the past.

15 However, you also have a right to remain
16 silent, and if you do remain silent, and if your lawyer
17 asks me, I will tell the jury that you have a right to do
18 so under the proper instructions.

19 If you do testify, you have a right to be
20 cross examined on anything, and if you testify that you have
21 never--for example say certain things which would raise the
22 right to ask you about the prior case based on your testimony
23 only. Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay. You make your election to

1 counsel. Now, do you have a motion?

2 MR. ANGELOS: Yes. I make a motion for judgment
3 of all the counts, on the possession with intent to distri-
4 bute and the possession, and I'll submit without argument.

5 THE COURT: All right. The motion is denied.
6 You go to trial table and tell me what your election is
7 at that time.

8 MR. ANGELOS: Okay. And the resisting arrest
9 I would make a motion at this time. I am also asking the
10 State if they are going to call the loitering in a drug
11 free zone; if he's going to call that --

12 MR. BOUCHER: The State would not call that,
13 Judge.

14 THE COURT: All right. So, it's granted as
15 to -- I'll have to redo this. Strike off the loitering.
16 All right. Granted as to the loitering.

17 MR. ANGELOS: How do you want me -- if we elect
18 not to call any witnesses, how are we going to do that?

19 THE COURT: I'm going to turn to you, and I'm
20 going to ask you to call your first witness. At that point
21 you're going to stand up and say, Your Honor, the defense
22 rests.

23 MR. ANGELOS: Okay.

24 THE COURT: Or you do whatever you want to do.

25 MR. ANGELOS: Okay.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. BOUCHER: Thank you, Judge.

(Counsel and defendant returned
to trial tables).

THE COURT: All right. Ladies and gentlemen of
the jury, the State has completed its case and now the
defense will begin.

MR. ANGELOS: Could the defense have one
moment, Your Honor?

THE COURT: Yes.

MR. ANGELOS: Thank you.

(Mr. Angelos conferred with the
defendant).

MR. ANGELOS: Your Honor, the defense rests.

THE COURT: All right. Do you want to come
up to the bench and give me a piece of information? I want
to ask you about instructions.

(Counsel and defendant approached
the bench and the following ensued:)

THE COURT: Do you want me to give the silence
instruction or not?

MR. ANGELOS: Oh, yes, I would.

THE COURT: Do you want to renew your motion?

MR. ANGELOS: Yes. I renew my motions, all counts.

THE COURT: All right. And I am going to deny
it, except for the -- I am going to affirm my previous dis-

1 missal of the loitering.

2 I am going to give all the instructions. I am
3 going to still give you the opportunity to come up after my
4 instructions and tell me whether or not I have made any
5 errors or whether I've left something out.

6 MR. BOUCHER: Thank you, Judge. Judge, I am
7 specifically going to request instructions in regards to
8 flight.

9 THE COURT: All right.

10 MR. BOUCHER: That's a 3.24.

11 THE COURT: You don't have it with you, do you?

12 MR. BOUCHER: The actual instruction?

13 I have the, I have the Pattern Maryland --

14 THE COURT: Do you have that with you?

15 MR. BOUCHER: Yes, I do.

16 THE COURT: May I see it?

17 MR. BOUCHER: Yes, sir.

18 MR. ANGELOS: What is the flight instruction?

19 Is there supposed to be some type of meaning to that?

20 THE COURT: Well, in a case where a person
21 runs or tries to hide, one or the other, that's called
22 flight. If it's after the police officer comes on the scene
23 and in this particular case I would say it was appropriate,
24 then I am going to let you read it and see for yourself.
25 Where is it, do you know?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. BOUCHER: Yes, Judge. It's located at Title 3, §.24, or §3.24.

THE COURT: There must be an easier way to do this. I'll give it back to you.

MR. BOUCHER: Thank you, Judge. Judge, I have taken the liberty of identifying all of the sections of the Maryland Criminal Jury Instructions that I believe is applicable in this matter as far a the State is concerned. I would simply point out to the court in regards to the specific offenses that are charged that would be submitted to the jury, possession with intent, possession, resisting arrest, and the location of those instructions, the instruction as to flight, the instruction as to what a stipulation is, which has been entered into in this particular matter, and then at the court's discretion with regards to the identity of the defendant and in regards to the credibility.

THE COURT: Okay. Thank you.

All right, folks. Go on back to the trial table and I am going to give you a total of 10 minutes each on this case. Anything else?

MR. ANGELOS: No, sir.

THE COURT: All right. 10 minutes each is enough?

MR. BOUCHER: Yes, Judge.

THE COURT: A total of 10 minutes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. ANGELOS: Well, we'll see. No longer than 15.

THE COURT: No, we don't -- you see, if I tell you 10 minutes and you're locked into 10 minutes.

MR. ANGELOS: Well, I want to make sure I get everything out that needs to be said.

THE COURT: Well, I'm going to say 10 minutes. So that's all you have. 10 minutes, folks, so eliminate any unnecessary verbiage.

MR. ANGELOS: I won't mention anything repetitive and nothing unnecessary.

THE COURT: All right. I'm sure you won't have time to repeat yourself.

MR. BOUCHER: Can I split it up, Judge?

THE COURT: Yeah. You can split it up any way you want.

MR. BOUCHER: Okay. Four and six.

THE COURT: All right. I'll tell you after you've completed four. If you haven't, that means you haven't completed it, and it's up to you.

MR. BOUCHER: Okay.

MR. ANGELOS: Judge, could I ask that maybe we can have 15 minutes each, would that be permissible?

THE COURT: No. I'm going to deny it. It's on the record.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. ANGELOS: Well, 12, perhaps?

THE COURT: No. I am going to hold you to 10.
That's what I do in every case like this.

MR. BOUCHER: Would the court be kind enough
to indicate when I have one minute left?

THE COURT: Yes, indeed. I give you a two-
minute warning or one-minute warning.

MR. BOUCHER: No more than one minute is
necessary.

THE COURT: Okay.

MR. BOUCHER: Thank you very much.

THE COURT: May I have that sheet back? Some-
body took the sheet.

(Counsel and defendant returned to
trial tables).

THE COURT: Remind me to give that sheet back
to you.

MR. BOUCHER: Thank you, Judge. Yes, I will.

THE COURT: Because I probably won't remember
it.

Now, ladies and gentlemen of the jury, all the
evidence is now in in this case. The State has completed
its case and the defense has completed his case, and now the
time has come for me to give you my instructions with respect
to the law in Maryland as it applies to the facts of this

1 case. What I say concerning the law is binding upon you
2 and must be followed by you regardless of any opinion that
3 you may have as to what the law should be. However, any
4 comments that I may make with respect to the facts of the
5 case or that the lawyers may make with respect to the
6 facts of the case are advisory only because you are the
7 judges of the facts.

8 If your memory of the facts differs from that
9 of the lawyers or myself with respect to any comments that
10 are made on the facts, it's your memory that counts.
11 However, you must only use the facts that you have seen and
12 heard during the course of this trial and any reasonable
13 inferences which can be drawn therefrom.

14 You are the sole judges of the credibility
15 and believability of each and all the witnesses. And you
16 can tell the officers, Sheriff, that they are welcome to
17 come back in if they want.

18 In considering credibility, you may apply your
19 own common sense and your own every day experiences. You
20 may consider the behavior of the witness on the witness
21 stand, the witness' intelligence, demeanor, manner of
22 testifying; whether the witness had an opportunity to see
23 and hear the facts about which the witness is testifying;
24 does the witness have any interest in the outcome of the
25 case; the extent to which the witness' testimony is

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

consistent.

I further instruct you that the defendant is presumed to be innocent of the crimes charged until proven guilty beyond a reasonable doubt and to a moral certainty. The defendant comes into court clothed in this presumption of innocence, which remains with him from the beginning to the end of the trial and the presumption is fixed as though it were testified to and supported by evidence that the defendant is innocent.

The burden of proving the defendant guilty is upon the prosecution from the beginning to the end of the trial for every element of the crimes charged, and the defendant has no burden to sustain and does not have to prove his innocence.

I further instruct you that the charges against the defendant are not evidence of guilt. They are merely a complaint to let the jury and the defendant know what the charges are.

After the jury has fairly and carefully reviewed all the facts in this case, if you feel that the prosecution has failed to prove beyond a reasonable doubt and to a moral certainty all the facts necessary to constitute the crimes charged, then the defendant must be acquitted.

The test of reasonable doubt is that the

1 evidence that the State has produced must be so convincing
2 that it would enable you to act on an important piece of
3 business in your every day life. The words, to a moral
4 certainty do not mean absolute or mathematical certainty,
5 but a certainty based upon convincing grounds of probability.
6 The phrase "beyond a reasonable doubt" does not mean beyond
7 any doubt or all possible doubt, but as the words indicate,
8 beyond a doubt that is reasonable.

9 You are further instructed that the burden is
10 on the State to prove beyond a reasonable doubt not only
11 that the offenses were committed, but that the defendant is
12 the person who committed them.

13 I am going to ask M's Rosemond to give the
14 jury sheet -- do all counsel have their jury sheets? M's
15 Cryan, this is the jury verdict sheet, which you will take
16 into the jury room with you and with the jury. I am going
17 to go over it with you now, but this is your obligation.
18 You are to check off the decisions, unanimous decisions of
19 the panel with respect to each of the charges. I'm going
20 -- first I'm going to read the verdict sheet to you, go
21 over it with you, see if you understand it, and then I'm
22 going to define the charges.

23 The defendant is charged in the case ending
24 in 19, in Count One, with possession of cocaine with
25 intent to distribute. And following that are the words "Not

1 Guilty" and a space, and the word "Guilty" and a space.

2 And you, ladies and gentlemen of the jury, will check off
3 through your forelady the appropriate block.

4 Count Two charges the defendant with possession
5 of cocaine, and after that are the same words "Not Guilty"
6 and a space, and "Guilty" and a space, and again through
7 your forelady you will check off the appropriate block.

8 In case ending in 20, the defendant is charged
9 in Count One with resisting arrest, and again the same words
10 follow, "Not Guilty" and a space, and "Guilty" and a space,
11 and you, through your forelady, will check off the appropriate
12 block.

13 Do the members of the panel understand the
14 verdict sheet? Do you understand that I want you to reach
15 a verdict in every charge; do you understand that? And
16 once you have done that, then, of course, you will have
17 completed your work.

18 All right. Now I'm going to go and define
19 them, and the first one I am going to define is Count Two,
20 possession of cocaine, just possession.

21 It is an offense to possess certain specifically
22 designated substances except as authorized by law. In order
23 for the defendant to be found guilty of this offense, the
24 State must prove beyond a reasonable doubt that, one, he had
25 possessoin of cocaine, which has been designated by the

1 statute to be a controlled dangerous substance, and two,
2 that the possession was not authorized by law.

3 Possession means the act or condition of having
4 on one's person or taking into one's control. Holding at
5 one's disposal or control means to exercise a restraining
6 or directing influence over something. Possession need not
7 be immediate and direct. There may be constructive
8 possession.

9 Constructive possession exists when an article
10 is taken into a person's control or he holds it at his
11 disposal but it is not on his person.

12 Does the panel understand the definition of
13 possession of cocaine? All right. then I will now go to
14 Count One.

15 Possession of cocaine with intent to distribute.
16 The defendant is also charged with the crime of possession
17 of cocaine with intent to distribute. In order to convict
18 the defendant, the State must prove all the elements of
19 possession of cocaine, and must also prove that the
20 defendant possessed the substance, cocaine, with the intent
21 to distribute some or all of it.

22 Distribute means to sell, exchange or
23 transfer possession of the substance or to give it away.
24 No specific quantity is required for you to find the intent
25 to distribute. There is no specific amount below which the

1 intent to distribute disappears, and there is no specific
2 amount above which the intent to distribute appears.

3 You may find the intent to distribute a
4 substance from the possession of such a quantity of it,
5 which when considered with all the other circumstances in
6 this case, reasonably indicates the intent to distribute.

7 Does the panel understand that definition?
8 Does anybody not understand it? Incidentally, ladies and
9 gentlemen of the jury, anticipating with all due respect
10 to you, a television question, I do not have a transcript
11 of this trial. I get that question all the time. It must
12 be something that's showing up somewhere else, and I get
13 requests for that, and this is the only time you will hear
14 my instructions, too. That's why I'm asking you if you
15 understand it, and if you don't, now is the time to tell
16 me.

17 Resisting arrest. Now, the State has dropped
18 the charge of being in a drug free zone, so I am not going
19 to define that. That was originally read to you when this
20 case started. That charge is gone. I've dismissed that
21 case, that charge. So, the final charge, of resisting arrest,
22 I am now going to define.

23 The legality of the arrest is not at issue in
24 this case. The only question for you, the jury, is whether
25 or not the defendant was arrested and, if so, whether or not

1 the defendant resisted that arrest. That's with respect to
2 this charge, of course. The arrest has been defined as the
3 taking , seizing or detaining of the person of another,
4 touching or putting hands upon him the execution of process
5 or any act indicating an intention to arrest. In other
6 words, an arrest is the detention of a person or a suspected
7 offender for the purpose of prosecuting him for a crime.

8 There is detention only when there is a touch-
9 ing by the arrestor or when the arrestee is told that he is
10 under arrest and submits. When there is no touching, the
11 intention of the arrestor and the understanding of the
12 arrestee are determinative for in order for there to be an
13 arrest in such case, there must always be an intent on
14 the part of the one to arrest the other and an intent on the
15 part of the other to submit.

16 When one is approached by a police officer and
17 merely questioned as to his identity and action, this is
18 only an accosting and not an arrest. If you find that the
19 defendant was arrested, you must then proceed to determine
20 whether he refused to submit to that arrest, whether that
21 resistance was to an officer of the law in the performance
22 of his legal duties and whether the officer had identified
23 himself as such.

24 The police officer must have made known his
25 identity before making the arrest.

1 A person's flight immediately after the
2 commission of a crime or after being accused of committing
3 a crime, is not enough by itself to establish guilt, but
4 it is a fact that may be considered by you as evidence of
5 guilt. Flight under these circumstances may be motivated by
6 a variety of factors, some of which are fully consistent with
7 innocence.

8 You must first decide whether there is
9 evidence of flight. If you decide there is evidence of
10 flight, you then must decide whether this flight shows a
11 consciousness of guilt.

12 You may have noticed that the defendant did
13 not testify in this case. If the defendant chooses not to
14 testify, you must not hold this against him nor draw any
15 conclusions or inferences from that fact that he did not
16 testify. The defendant has a constitutional right not
17 to testify, and the jury must base its conclusions upon
18 all of the evidence as to the defendant's guilt or innocence
19 based upon the evidence presented.

20 And, finally, your verdict must be unanimous,
21 that is, all 12 of you must agree as to all of your
22 verdicts.

23 Approach the bench, please, Counsel.

24 (Counsel and defendant approached
25 the bench, and the following ensued:)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Any exceptions?

MR. BOUCHER: No, Judge.

MR. ANGELOS: Yes, Your Honor. Resisting arrest, the court stated that the fact of whether the arrest was lawful or not is not an issue. I take exception to that, that it is at issue, and I'm asking the court to instruct the jury that, that the elements of this is that there must be an arrest which is lawful and his refusal to submit, his resistance, and the officer had identified himself.

I take exception to the fact that you indicated that the arrest was lawful.

I would ask that an instruction be given that an officer may lawfully arrest without a warrant if he finds probable cause, and under the testimony of this case, the evidence is inconsistent. The police officer testified first that he detained him, and went back and found to establish probable cause; however, the next officer testified and came on and said that he was already under arrest, and then he went back and took the drugs. That the other party had established the probable cause. Because of the inconsistent testimony, I ask that the instruction be given that a police officer may lawfully arrest without a warrant as long as he has probable cause, and continue with that the substance of all definitions of probable cause is a reasonable ground to believe that the person about to

1 be arrested is guilty. That reasonable grounds of probable
2 cause for arrest exists when the facts and circumstances
3 within the knowledge of the officer, which is reasonably
4 trustworthy information that an offense is being committed.

5 And taking it one step further, I would ask
6 that you instruct the jury that, if you determine that the
7 defendant was not lawfully arrested, the defendant has a
8 right to resist that arrest. That's his defense, and that
9 if you find that the defendant was not lawfully arrested,
10 the defendant has a right to resist that arrest. One who
11 is illegally arrested may use reasonable force to
12 effectuate his escape.

13 I ask that you -- and if you find that the
14 defendant was not lawfully arrested, you must find him not
15 guilty. I think that based upon the testimony that those
16 instructions should be given to the jury.

17 THE COURT: All right. You have in this
18 particular case raised the issue of whether or not the
19 defendant, whether or not the police had probable cause,
20 first of all, to obtain from the ground the drugs that the
21 police officer said that he saw the defendant throw there.
22 And secondly, as to the search.

23 MR. ANGELOS: What I'm saying is that the
24 police officer did not have probable cause to stop him.
25 He was under arrest; they achieved that probable cause after

1 he was arrested.

2 THE COURT: All right.

3 MR. BOUCHER: Judge, if I may respond to that?
4 The testimony was by quoting Officer Smith, that he detained
5 the defendant and waited until --

6 THE COURT: Well, I remember the evidence.

7 MR. BOUCHER: Well, obviously defense counsel
8 either did not or is mixing apples and oranges.

9 THE COURT: Well, the record will show. In any
10 event, the motion was made with respect to the suppression
11 of all evidence, and as to the fact of probable cause for
12 the arrest in the first place. And this matter was heard
13 and I have found, and I have denied your motion and found
14 that there was a proper arrest and that there was probable
15 cause.

16 Actually, I said a great deal more on the
17 subject. Now, the question arises as to whether or not
18 this means that you can have an instruction that there was
19 not probable cause and that there was legality of arrest
20 in the event that the defendant resists the arrest. To me
21 this would be totally not only inconsistent -- first of all,
22 I have already made a legal finding and the courts have held
23 that that is binding.

24 Secondly, the facts of this case indicate that
25 there is absolutely no evidence whatsoever to, nor has there

1 been any submitted by you or by anyone other than by the
2 State to show that there was any standing on the part of
3 your client to contest the intention of the State to
4 Exhibit No. 1, nor is there any evidence whatsoever to show
5 that the arrest was anything other than legal. There's not
6 even a scintilla of evidence that the police officers did
7 anything other than based upon the facts before them.
8 Therefore, it doesn't rise to the issue of an issue.

9 Based on both of those reasons, I deny your
10 exceptions.

11 All right, Gentlemen.

12 MR. BOUCHER: Thank you, Judge.

13 (Counsel and defendant returned to
14 trial tables).

15 THE COURT: Now, ladies and gentlemen, now you're
16 going to hear final argument in this case, and I'm going to
17 time the lawyers as I do in every single case, and I am going
18 to give them the same amount of time that I always give
19 them, which is 10 minutes each.

20 Now, the State has the burden of proof, so
21 they have the right to open and close, but he has 10
22 minutes total, you know, in other words, added together.
23 And the defense will have the center argument, and he also
24 has 10 minutes, and you may begin.

25 MR. BOUCHER: Thank you, Judge. May it please

1 the court, Madam Forelady, ladies and gentlemen of the jury,
2 again, I want to thank you for your patience, your time,
3 your consideration in regards to these matters. I don't
4 have a lot of time, so I'm going to be as prompt and as
5 concise as I can be.

6 The evidence in this case is uncontroverted.
7 The defense has put on no case. They have put on no evidence.
8 The only evidence that you, as the jury, can consider is the
9 evidence that the State has put on. There is nothing to
10 controvert anything that the State has put on.

11 That is an extremely important consideration
12 that you have to keep in mind in making your deliberations.
13 The evidence is consistent; it is clear and it comes from
14 an expert who testified before you.

15 12:20 a.m. the officer is on routine patrol.
16 He pulls into the 1800 block of Loretta Avenue. He
17 described it as a very short block. He sees the defendant
18 approximately mid-block. He sees the defendant with these
19 bags and notices at least some of them.

20 Now, there is also this brown paper tower. The
21 officer doesn't see it when he initially looks at the
22 defendant. What I am going to suggest to you is that that
23 brown paper towel may have been, and I am not going to take
24 these out, may have been in the palm of his hand with some
25 of the items on top and some of the items within the confines

1 of this brown paper towel. That would be consistent with
2 the testimony of the officer.

3 And what happened? The defendant doesn't
4 see him initially. The officer is able to pull up within
5 four feet and that was the testimony of Officer Smith.
6 Defense counsel in his opening statement says, 5-0 rings
7 out, which is a street term for police presence. The
8 officer doesn't hear that, but the point is, as he's hold-
9 ing the item and he says, the officer says, two black
10 females, if these two ladies happen to be the females,
11 ladies and gentlemen, what is he doing displaying those
12 items to those two individuals especially in a high narcotic
13 area, as Officer Smith testified. He was displaying his
14 wares. He's a street vendor, and unfortunately that
15 particular block is known for that kind of activity.

16 What happens? The items are on top. He's
17 displaying his wares. The officer pulls up, and what does
18 he do? He sees the officer; he throws the stuff down
19 and he boogies. Why does he run? Because he's caught.
20 He's dead up. He's displaying his wares and the police
21 are four feet away from him.

22 Now, if you were doing the same thing, what
23 are you going to do? You're going to run. And that's
24 exactly what he did. The officer was able to catch him,

25 The officer also indicated that he glanced

1 down, suspected they were CDS as he did when he saw them
2 displayed in the defendant's hands. That the defendant
3 right there, whom he identified, but he detained the
4 defendant, waited for back-up, came back and confirmed
5 his suspicions. That is the proper procedure, the correct
6 procedure. The officer did a good job. He did what he was
7 supposed to do.

8 He confirms that they are, in fact, CDS.
9 This CDS, ladies and gentlemen. He then goes back to the
10 scene and as his testimony indicates, he informs the
11 defendant that he is under arrest.

12 Well, the defendant doesn't want to hear that
13 so what does he do? He resists the arrest of the officer.
14 He flails, as the officer testified, and not only that,
15 it took four officers to initially subdue him.

16 You also heard the testimony of Officer or
17 Agent Coleman indicating that he was still resisting even
18 after he was cuffed. Officer Smith indicated that he had
19 to be put in shackles or leg irons, and then placed in the
20 paddy wagon because of his resisting, and the violence of
21 his resisting.

22 Ladies and gentlemen, the evidence is uncon-
23 tradicted, and what this case is going to basically come down
24 to is credibility. Do you believe the officer or not. The
25 officer is an expert. He has been qualified at least 20

1 times in both the District and Circuit Court, expert in the
2 area of narcotics, narcotics law enforcement in the Western
3 District. He has never been assigned to any other district.
4 The officer knows what is happening on those streets.

5 THE COURT: Four minute warning.

6 MR. BOUCHER: That's four minutes, Judge?

7 THE COURT: Yeah.

8 MR. BOUCHER: Ladies and gentlemen, I will speak
9 to you again, after defense counsel has had an opportunity.
10 We will take up this discussion then.

11 MR. ANGELOS: Ladies and gentlemen, I am not
12 going to talk about television. I'm not going to talk about
13 you being in Western District, either. This is Gregory
14 Monk, who lives in Western District, that terrible narcotics
15 area we hear of. It's a bad place. Western District?
16 Gregory Monk? Presumed guilty before innocent.

17 The police officer comes around the corner,
18 and as he says, two foot, small sidewalk and I was so close.
19 Gregory Monk with two unknown individuals, but he does say
20 they're women. We eventually find that out. They're
21 huddled back. The officer said, Gregory Monk's back is
22 turned. They're huddled. Three people close and tight
23 together. What's going on? Do we know what's going on?

24 The police officer says he sees something,
25 objects. He comes in today, six months later, and says they

1 were these objects, colored objects. Everything else, but
2 he doesn't see anything at that time. He says there's a
3 nice street light under there, and it's bright or at least
4 the light was and he can see this.

5 But when they come back to find the drugs, the
6 guy has got his big flashlight out with the beam, and
7 looking to find what is on the ground.

8 The police officer comes around the corner and
9 sees these people altogether. He's the expert. There's
10 signs, no loitering, don't stay around. In fact, those
11 signs allow the police officer to arrest anybody loitering
12 on the street. That's what the loitering means. So, he
13 is going to arrest somebody.

14 MR. BOUCHER: Objection.

15 Judge, none of that evidence ever came in
16 during any testimony, and I object to the reference to it.

17 THE COURT: Well, I'm going to leave it up to
18 the jury to determine that. The jury has already been told
19 that they are the determinators of whether or not the
20 evidence is correct with respect to the argument of counsel.
21 You are the deciders of the evidence, ladies and gentlemen
22 of the jury.

23 MR. ANGELOS: You are. And Mr. Gregory Monk
24 is the man that's there. He runs. He's a black man on the
25 street that runs. I don't live there. I don't know if you

1 folks live there. Many of you know they tell by the
2 color of your skin. But those that do know what's going
3 on and do see those things know that the police are going
4 to come after him and chase this man down. And he runs?
5 So what? He runs. He's getting out of there. He's loiter-
6 ing. He runs.

7 The evidence from the police officer is so,
8 so small, he doesn't, he just doesn't see anything except
9 a black man huddled down and runs.

10 Now, he says he sees a hand cupped. He doesn't
11 see -- just sees objects, but he doesn't see this paper
12 towel where the majority of these objects are located. He
13 doesn't see these things. He just takes off and chases
14 him. And the other two people there, what are they doing?
15 Why are the other two people there? Do they have things?
16 Who knows? All we know is that there are these women.
17 Something is happening there.

18 The officer comes in and tells you, you know,
19 I ran and grabbed him, and I saw certain things and everything
20 else, but he doesn't know anything until he gets back and
21 sees drugs on the ground. He's gone for anytime between
22 30 seconds and two minutes. He's been gone, running around,
23 chasing after this guy, and bringing him back. And he
24 arrested him. We know that. The other officer came in and
25 said, yes, when I came to the scene, he was handcuffed and

1 arrested, and we went back and looked for the things.

2 Okay. So, he was under arrest, and the officer
3 had already decided that he was under arrest. And he says
4 when he ran by, he saw things on the ground. Doesn't
5 write that down in his report. I submit to you that he
6 doesn't do that.

7 He didn't see anything. He just arrested the
8 guy; comes back.

9 He stands before you today presumed innocent
10 and not guilty here in this courtroom. That is the law of
11 this State, in Maryland and everywhere. The Supreme Court
12 said that. Here he is presumed not guilty. He doesn't
13 have the burden to prove the case. It's up to the State to
14 prove this. We don't have to offer testimony and we didn't.

15 Mr. Monk didn't take the stand. That's not our
16 job. I am here to defend him. That we don't offer any
17 evidence or testimony, we don't have to. The burden belongs
18 to the State of Maryland to prove all these things. And I
19 ask you to look at the evidence.

20 There is a reasonable doubt of what happened
21 on the street. We know it was dark. We have Officer
22 Coleman with the flashlight. We don't know what the
23 police officer saw at first. Even he didn't know at first.
24 He just doesn't know.

25 The black man runs. They get him. They got him.

1 They caught somebody. The officer says there is nobody
2 else out on the street at that time. 12:20. Is the
3 area like he says? He's the expert. Maybe there's some
4 other people out. Maybe there's some commotion. Maybe
5 some sounds occurred but the fact is when the police pulled
6 up, people run.

7 And this is the guy that gets caught, and they
8 go back, and they take their flashlight, and look around and
9 they find something and here's the man. We caught him.
10 We find something. There it is. No questions asked. Come
11 into court and you got to show us. I mean, there are so
12 many inconsistencies in his statements that this man should
13 be found not guilty of everything.

14 The other thing is, then when Officer Coleman
15 comes in, with a college degree and everything and this
16 guy has drugs, and he goes by that place where you can
17 fingerprint them. Look, did he touch them; did he play
18 with them. He goes right past the place where you dust
19 them. What does he do? He walks right past that, seals
20 them up and throws them away.

21 They find \$6.00 on this guy. No money, no
22 sales, no nothing. Resisting arrest? They hold him there
23 some time, five, six, seven, eight police officers there.
24 You saw Officer Smith, big officer, big, large guy, big guy,
25 and I don't think he had any trouble handling this man.

1 The testimony was that he struggled. That's when they came
2 back and said, we have these drugs. We're sticking them on
3 you.

4 And you're right, he struggled. He's the guy
5 that's going to -- that got stuck with this charge.
6 Certainly, there's anger. Certainly, he's being surrounded
7 by a number of police officers; there was five to eight
8 officers there. And he struggled, and somebody comes back
9 to any of us and says, they're yours baby, when they're not,
10 then you're going to struggle, and you're going to scream
11 and yell and carry on. That's what he did.

12 He didn't resist arrest. He was upset. And the
13 police officers want to come in here and tell you that five,
14 six, seven, eight of them couldn't handle this guy; they
15 are not telling the truth. And we know he was handcuffed.
16 Officer Coleman came and said, when I came on the scene,
17 whatever else he was, he was handcuffed. And we know that
18 because Officer Smith, the good police officer that he is,
19 after he pats him down and frisks and finds nothing, he's
20 going to cuff him. He's got to hold him and wait for other
21 people.

22 There's no resisting arrest here. Ladies and
23 gentlemen, I ask you to think about Gregory Monk here.
24 The man who was on the street that night, with a girl or two,
25 and the man that did run, and I ask you to think if the State

1 has established their burden of proof beyond a reasonable
2 doubt of exactly what happened that night, in a dark
3 alley -- pardon me, on a dark street, on Loretta Avenue,
4 at 12:20 in the morning and nobody else is out there except
5 Mr. Monk and two ladies.

6 That's the way it happened. Nothing is seen,
7 and this is the man that's caught, and this then is the man
8 that stands before you, not in Western District, not in any
9 district, not in any precinct, not any numbers in a limited
10 area. He comes to you, and says, I'm not guilty. It's not
11 mine. I didn't do it. Please find me not guilty.

12 Thank you, ladies and gentlemen.

13 MR. BOUCHER: Ladies and gentlemen, counsel
14 brings up a number of issues that I think we really need to
15 address here.

16 Now, we've already spoken about the position of
17 the defendant when Officer Smith pulls up onto the 1800
18 block of Loretta Avenue. Counsel says that his back was
19 turned to the officer. Well, that's not necessarily true.
20 His back was turned to the street, but if you remember the
21 testimony of the officer, he was, back turned to the street
22 and turned to the right. So, if I am the defendant, as I'm
23 standing there on the 1800 block of Loretta Avenue, like
24 this, displaying my wares to those two individuals, the
25 officer is coming up the street like this: The back is to the

1 street, but the officer can still see what's happening on
2 that street. He's displaying his wares.

3 One thing that I take some offense to is the
4 fact that counsel continues to refer to the defendant as
5 this black man. This black man. As if there is a racial
6 issue involved in this case. Well, it has escaped anybody,
7 Officer Smith happens to be black. This isn't a racial
8 issue here. It's a matter of a crime taking place and a
9 trained police officer responding when he sees that crime.

10 That is the only thing that happened in the
11 1800 block of Loretta Avenue, and I take offense to that.

12 Now, the officer admitted while he was on the
13 stand that he had made a mistake in regards to writing his
14 report. He said that it was the even side and he put in his
15 report that it was the odd. He made an honest mistake, and
16 he came forward and told you that.

17 In addition, he also admitted that he did not
18 put neon yellow in the report. He simply put objects. He
19 saw the objects that were in the hand of the defendant.
20 Ladies and gentlemen, all that does, as far as the
21 credibility of the police officer is concerned, is enhance
22 his credibility. He's honest. He came forward and told
23 you, yes, I admitted that. Yes, I made a mistake.

24 However, the point is, you have to judge the
25 credibility of that police officer, and I think that based

1 on his testimony in every other area and the fact that he
2 admitted where he made mistakes, makes him a very credible
3 individual.

4 You heard the testimony of the officer in
5 regards to why there was not a large amount of money on the
6 defendant. You also saw that he, in fact, did write a
7 report even though counsel tried to infer that the money was
8 never accounted for. Well, it certainly was and it was
9 submitted to the Evidence Control Unit.

10 The fact is, that because the officer is an
11 expert, he presented two scenarios to you as to why there
12 wasn't a lot of money on the defendant; either he had just,
13 what we call, reupped his stash, which means that he had
14 gone wherever he went, got his supply of narcotics, and then
15 went back out on the street and hadn't sold any, or he was
16 working with another individual. That individual would be
17 called the money man, and he would be called the stash man.
18 That prevents, if there are robbers or the police happen
19 to show up on the scene, if they get the money, they don't
20 get the drugs. If they get the drugs, they don't get the
21 money. It's just common sense as far as street distribution
22 sales are concerned.

23 The fingerprint issue. It comes up in every
24 case like this, and all it is, is a smoke screen, ladies
25 and gentlemen. You heard the testimony of Officer Smith.

1 He saw the defendant with his hand open, with these items
2 in his hand. He saw the defendant throw those items down.
3 He chased the defendant because he's an experienced, trained
4 police officer. He suspected that those items were CDS,
5 and sure enough, that's exactly what they were.

6 And the analysis indicates that. He knew what he was doing.

7 You don't need fingerprints when you see the
8 person in possession of those items. Why? It's useless.
9 The point is, is that it's a red herring; it's a smoke
10 screen presented by defense counsel to you to try and
11 blur the issue. The point is, the defendant was in
12 possession of those items. There is no question about
13 that.

14 In addition, the officer also testified
15 as an expert that based on the number of items, he intended
16 to distribute those. You can see, and you all handled this,
17 there are 30 individual ziplock bags. Any particular
18 drug user would not have that number of bags in his
19 possession, nor would he be displaying those items on the
20 street if, in fact, he did have them in his possession.
21 The only reason that someone would have these number of
22 bags is to distribute those on the street.

23 Finally, you heard Mr. Angelos refer to the
24 fact that the defendant struggled because he was upset that
25 this charge was being placed on him, and that that wasn't

1 his charge, and this was all a big mistake. Well, ladies
2 and gentlemen, that's not why he struggled. He struggled
3 because he knew he was caught dead up. The officer rolled
4 right up on him and before he knew it, the officer was four
5 feet away. Uh-oh; Got to go! Throws the stuff down; tries
6 to run.

7 The officer waits until he actually confirms
8 that these items were what he thought they were.

9 THE COURT: All right. The time -- no, you've
10 got a half a minute. Half a minute.

11 MR. BOUCHER: Thank you.

12 He struggles because he was upset that he had
13 gotten caught. There is no question about that.

14 Ladies and gentlemen, I'm going to ask you to
15 go back to the jury room. I'm going to ask you to weigh
16 the evidence. I know that when you weigh the evidence
17 that has been presented and uncontradicted that you will
18 find the defendant guilty of possession with intent to
19 distribute controlled dangerous substances, to wit: Crack
20 cocaine, also known as ready rock.

21 In addition, you will also find him guilty of
22 resisting arrest and I thank you for your time and your
23 consideration of this matter.

24 THE COURT: M's Brown, do you have any
25 belongings in the jury room?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ALTERNATE NO. 1: My coat.

THE COURT: Do you want to get it, and then go over to the jury room and get your coat, and then come right back up here in front of me. I want to talk to you. So you get your coat and come, come see me.

M's Cryan, M's Brown, M's Baginski, M's Kloze, M's Butta, M's Cook, M's Hoffman, M's Sinclair, M's Hunt, M's Colbert, Mr. Stetteyman and M's Lane, the time has now come for you to retire for the purpose of considering your unanimous verdict.

M's Cryan, when the jury has reached a verdict, on all the charges, you will knock on the door loud enough for M's Rosemond, right in front of me, to hear it. She will come over and find out if that is what it is, and then I'll assemble everybody at trial table ready to receive your verdict, and then I'll have you all come over at one time.

You may now retire. Now, the one thing that I want to tell you before you go is, I am going to send over State's Exhibit No. 1, but it will be in the custody of M's Rosemond and the sheriff. That's State's Exhibit No. 1. You may recall, and if you want to look at it more thoroughly, she'll just bring it in, in her hand, you're welcome to do so. You give her instructions as to what you want, but she is going to bring that back out of the jury room then and keep it here.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

All right. You may now retire.

Counsel, agree that all other evidence to go to the jury, and we'll stand in recess awaiting the call of the jury.

(The jurors retired at 12:12 p.m. to deliberate their verdicts).

(Recess).

(The proceedings resumed in chambers and out of the hearing of the jury.)

THE COURT: All right, now. Folks, you're in here.

THE CLERK: Pardon me, Judge. We need the people to speak up.

THE COURT: Okay. We're here on the jury question. And the jury question states as follows: "Why does State's Exhibit No. 2 show defendant as Joseph Payne? State's Exhibit No. 2 is the analysis sheet indicating that the drugs submitted were cocaine. Down at the left-hand corner of the sheet, it shows the name Joseph Payne and the address."

It's my inclination to tell the jury that, "There is evidence that the jury may consider that the defendant gave this name -- I guess I should say, Joseph Payne -- at the booking when he was arrested. At his booking when he was arrested."

MR. BOUCHER: That's fine, Judge.

1 MR. ANGELOS: Objection. There is no evidence
2 to that, Judge.

3 THE COURT: What was the evidence then?

4 MR. ANGELOS: The police officer had a call
5 from Warren Smith.

6 THE COURT: At booking, and he gave that name.

7 MR. ANGELOS: Judge, the problem is --

8 THE COURT: Is that true or not true?

9 MR. ANGELOS: No.

10 THE COURT: What occurred?

11 MR. ANGELOS: That's the name he got, he said
12 he called back and got the name and put it down on there.

13 THE COURT: Didn't he state that was the name
14 that he was told that the defendant gave at booking from
15 Officer Smith?

16 MR. ANGELOS: I don't know, Judge. I'm not
17 sure. All I know is --

18 THE COURT: Is my memory incorrect on that?

19 MR. BOUCHER: No, Judge. I believe your
20 memory is correct.

21 THE COURT: Yeah. Well, why would you, why
22 would you say I'm wrong when that was what it was?

23 MR. ANGELOS: I'm not sure. I'm not sure.
24 All I thought was that he said that he got a call, he called
25 or he got a call, and he gave a number. He said there were

1 30, so he wrote 30 on his report, and he said the defendant's
2 name was Joseph Payne. Okay. I think the proper thing is
3 that the evidence is in, and we have to consider all the
4 evidence. What your statement is saying is that you're
5 reiterating some evidence there. The evidence is already
6 in, and that's a piece of evidence. We can't put that
7 piece of evidence in again to reinforce what is already in
8 there. They've got the evidence before them, all the evidence.

9 THE COURT: Well, that's what I'm going to do.
10 Okay, folks. We all agree that that is what, what occurred.
11 is that correct?

12 MR. BOUCHER: Yes, Judge. The testimony of the
13 Agent Coleman.

14 THE COURT: All right.

15 MR. ANGELOS: Judge, should we read it into
16 the record.

17 THE COURT: Well, no. It's -- you can if you
18 want, but it's listed on the exhibit which will go into the
19 file as Jury Question No. 1, and M's Rosemond, you can tell
20 the jury not to throw away this question. It remains as an
21 exhibit in the file.

22 THE CLERK: Yes, sir.

23 MR. ANGELOS: Judge, with your permission, I am
24 going to read it outloud anyway, so that it's part of the
25 transcript.

1 THE COURT: All right.

2 MR. ANGELOS: The answer that the judge is
3 providing is that there is evidence that the jury may
4 consider along with all the other, with all the evidence in
5 this case in accordance with my instructions, that the
6 defendant gave the name of Joseph Payne as his name at the
7 time of booking. Thomas Ward, Judge.

8 Defense vehemently objects to this characteriza-
9 tion that it's introducing, reintroducing evidence that
10 is already into the record and is not necessary to be told
11 to the jury. The last sentence should be pulled out, and
12 just simply say that the evidence is in there and the
13 jury should consider all the evidence that they listened to
14 and heard. Nothing more; nothing else.

15 MR. BOUCHER: I agree with the court.

16 THE COURT: All right. M's Rosemond, you can
17 give it to the jury.

18 THE CLERK: Yes, sir.

19 THE COURT: And, M's Rosemond, I have a
20 committee meeting -- off the record.

21 (The proceedings in chambers were
22 completed, and counsel and defend-
23 ant left the court's chambers).

24 THE COURT: All right. We are on the record.
25 Present is the defendant, defense counsel and the State's

1 Attorney. We're here on the question from the jury,
2 saying please define "resisting arrest" for us again.
3 My inclination is to send in the instruction which I gave
4 before, word-for-word without change.

5 MR. ANGELOS: Judge --

6 THE COURT: Your name?

7 MR. ANGELOS: John Angelos, Assistant Public
8 Defender representing Mr. Monk in this trial. I objected
9 to the --

10 THE COURT: Do you want to adopt your same
11 objections that you had before?

12 MR. ANGELOS: Yes. The objection was that
13 I wanted the court to read in essentially --

14 THE COURT: Well, you gave it in detail at
15 the bench. Do you want to adopt all of that?

16 MR. ANGELOS: I'm just going to give them
17 one sentence.

18 THE COURT: Okay.

19 MR. ANGELOS: Just one. That the defendant
20 feels he's being illegally detained, that he has a right
21 to resist arrest. That's the gist of it, and I want to
22 incorporate all of my objections to what was read into the
23 record and what needed to be read into the record at the
24 bench.

25 I would also like to add, Your Honor, with

1 your permission, that as far as the jury question, No. 1,
2 I want to put this on the record before the jury came back.

3 THE COURT: Wait a minute now. You can't
4 -- you can't object to anything other than your objections
5 are already on the record.

6 MR. ANGELOS: Okay.

7 THE COURT: Unless there's a new objection
8 with respect to the proper form of my answering this jury
9 question. You can't rework your objections to my original
10 instructions to the jury. That would be improper.

11 MR. ANGELOS: Oh, no, that's --

12 THE COURT: That's over with.

13 MR. ANGELOS: Okay.

14 THE COURT: We're only talking about a question
15 of the jury. That's all we're talking about.

16 MR. ANGELOS: Okay. Then I will make a motion
17 for mistrial at this point, and raise the following --

18 THE COURT: Well, you're too late for that,
19 too.

20 MR. ANGELOS: Jury Question No. 1 and 2.
21 Well, for the record, because the jury --

22 THE COURT: You can ask for a motion for a new
23 trial, but at the end of the -- in the event there is a
24 conviction, then you make a motion for a new trial. But the
25 trial is over with. The jury is considering the matter.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. ANGELOS: What I was talking about was the jury question No. 1 that they sent back down here, the one we just discussed prior to, what does the State's Exhibit No. 2 show the defendant. I just wanted to make sure --

THE COURT: All right. Well, you can make a motion -- do you mean based on that, you think --

MR. ANGELOS: The response of the court, about the answer that they gave.

THE COURT: So, you are making a motion for a mistrial.

MR. ANGELOS: On -- yes, on the jury instruction No. 1 -- pardon me, jury question No. 1, Your Honor.

THE COURT: All right. That motion is overruled. Your objections to this method of -- I mean to this definition of resisting arrest is also overruled.

MR. ANGELOS: Okay. Now, I'll make a motion for mistrial on that, too, Your Honor, for the record.

THE COURT: All right. That's overruled, too.

MR. BOUCHER: Judge, the State has no objection to the court sending back the --

THE COURT: Your name for the record.

MR. BOUCHER: Richard Boucher, on behalf of the State. I have no objection to the --

THE COURT: I'm going to -- M's Rosemond, I'm

1 going to staple this to the question. Once again, tell the
2 jury not to throw these things away so they can go back in
3 the record.

4 All right, folks. I will excuse you all
5 again and I have a feeling that, Officer, it's not going to
6 be that long before we have a verdict.

7 THE OFFICER: No problem.

8 THE COURT: They need to stay right here,
9 out in the courtroom.

10 THE OFFICER: I would rather have him down-
11 stairs, Your Honor. Just give me call and I'll have him
12 up here in a matter of minutes.

13 THE COURT: Okay. No problem.

14 (The in-chambers proceedings were
15 concluded and counsel and defendant
16 left the court's chambers).

17 (Jury present in courtroom).

18 THE COURT: Is defense and the State ready
19 to receive the jury's verdict?

20 MR. BOUCHER: The State is ready, Your
21 Honor.

22 MR. ANGELOS: The defense is ready, Your
23 Honor.

24 THE COURT: All right. The clerk will take
25 the verdict.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE CLERK: Members of the jury, have you
agreed upon your verdicts?

THE JURORS: Yes.

THE CLERK: Mr. Monk, will you stand.

THE COURT: You say yes.

THE JURORS: Yes.

THE CLERK: Who will say for you?

Madam Forelady, please stand.

How do you find the defendant, Gregory Eric
Monk in Case No. 591277019, as to Count One, possession of
cocaine with intent to distribute, not guilty or guilty?

THE FORELADY: Guilty.

THE CLERK: As to Count Two, possession of
cocaine, not guilty or guilty?

THE FORELADY: Guilty.

THE CLERK: And as to Case No. 591277020,
as to Count One, resisting arrest, not guilty or guilty?

THE FORELADY: Guilty.

THE CLERK: You may be seated.

THE COURT: Do you wish to poll the jury?

MR. ANGELOS: Yes, Your Honor.

THE COURT: Poll the jury.

THE CLERK: Juror No. 2, is your verdict the
same as Madam Forelady's?

JUROR NO. 2: Yes.

1 THE CLERK: Juror No. 3?
2 JUROR NO. 3: Yes.
3 THE CLERK: Juror No. 4?
4 JUROR NO. 4: Yes.
5 THE CLERK: Juror No. 5?
6 JUROR NO. 5: Yes.
7 THE CLERK: Juror No. 6?
8 JUROR NO. 6: Yes.
9 THE CLERK: Juror No. 7?
10 JUROR NO.7: Yes.
11 THE CLERK: Juror No. 8?
12 JUROR NO. 8: Yes.
13 THE CLERK: Juror No. 9?
14 JUROR NO. 9: Yes.
15 THE CLERK: Juror No. 10?
16 JUROR NO. 10: Yes.
17 THE COURT: Juror No. 11?
18 JUROR NO. 11: Yes.
19 THE CLERK: And Juror No. 12?
20 JUROR NO. 12: Yes.
21 THE CLERK: Harken to the verdict as the
22 court has recorded it. You say Gregory Eric Monk in
23 Case No. 591277019 as to Count One, possession of cocaine
24 with intent to distribute, he is guilty. And as to
25 Count Two, possession of cocaine, he is also guilty.

1 As to Case No. 591277020, as to Count One,
2 resisting arrest, you say he is guilty and so say you all.

3 THE JURORS: Yes.

4 THE CLERK: Thank you.

5 THE COURT: All right. You may be seated.
6 M's Cryan and ladies and gentlemen of the jury, I want to
7 thank you, first of all, for your services as jurors.
8 When you leave the courtroom, the sheriff will be at the
9 door and he will pick up your badges as you go out.

10 You have already been given a work slip and
11 you have that, and, of course, if you don't wish to keep it,
12 of course, you don't have to.

13 Sometimes the lawyers like to talk to jurors
14 about your deliberations, to help them with their, I hope
15 that their reason is, so that they can help themselves with
16 respect to their work in the future. However, you don't have
17 to talk to them if you don't want to. You can brush right
18 past them. That's your right, or if you wish to talk to
19 them about it, it's not secret. You can tell them anything
20 you want to tell them.

21 I did want to say one more thing to you,
22 though. You might be interested to know that the defendant
23 has been previously convicted of possession with intent to
24 distribute drugs. He's on probation right now for five years
25 to Judge Pines, who just recently retired from this bench,

1 and so this, of course, is a similar conviction for the
2 same thing. This is not his first time. I elected not to
3 -- well, he didn't take the stand, but if he had of taken
4 the stand, I would have kept this fact from you because I
5 thought it would make it difficult for him to have you
6 deliberate in this case if you knew that he had done the
7 same thing in the past.

8 So you wouldn't have heard it, even if he had
9 testified. That was my decision in this case and so if
10 I'm right or wrong, I have to be guided by what the Court of
11 Appeals tells me.

12 I hope you've enjoyed your service as jurors,
13 I have enjoyed having you here, and you are excused.

14 (Jury excused and left the courtroom).

15 THE COURT: All right. I am going to, in order
16 to permit both sides to gather themselves together in this
17 case, you are asking for --

18 MR. BOUCHER: Mandatory.

19 THE COURT: Mandatory penalties in this
20 case. How much time do you need?

21 MR. BOUCHER: I'm ready to go now, Judge.

22 THE COURT: Are you ready to go now?

23 MR. ANGELOS: Judge, the defense would be
24 requesting a presentence investigation.

25 THE COURT: Well, I am going to turn that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

down. I don't think I need one in this case.

I will give you a week to get ready for sentencing. You can bring in anybody you want, young man, at that time. Do you understand? Somebody who wants to speak on your behalf, you're welcome to have them here.

Set this down at 9:30 a.m. one week from today. What's wrong?

THE CLERK: No State's Attorneys on that date. How about the 31st?

THE COURT: No. Move it up one day. Make it Tuesday. So, disposition, the 24th of March. 9:30 a.m. Now, I will keep inside the 25 minutes, so be on time and we will start on time.

MR. BOUCHER: Thank you, Judge.

THE COURT: All right, folks. I enjoyed having both of you here. Good luck to you.

MR. ANGELOS: Thank you, Judge.

(CONCLUSION OF PROCEEDINGS)

** * * * * **

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I, Robert Gavin Oddo, an Official Court Reporter of the Circuit Court for Baltimore City, do hereby certify that I recorded the proceedings in the matter of State of Maryland v. Gregory E. Monk, Case No. 591277019, 20 on March 18th, 1992.

I further certify that the foregoing pages constitute the official transcript as transcribed under my direction in a complete and accurate manner.

In witness whereof, I have hereunto set my hand this 27th day of May, 1992.

R. Gavin Oddo
OFFICIAL COURT REPORTER

I-N-D-E-X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESS

PAGE

OFFICER WARREN SMITH

Direct Examination Continued by Mr. Boucher 8
Cross Examination by Mr. Angelos 20
Re-Direct Examination by Mr. Boucher 45
Re-Cross Examination by Mr. Angelos 48

OFFICER MILTON COLEMAN

Direct Examination by Mr. Boucher 50
Cross Examination by Mr. Angelos 70
Re-Direct Examination by Mr. Boucher 75

JURY CHARGE

83

STATE'S EXHIBIT NO. 2

Chemical Analysis

66

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE CIRCUIT COURT FOR BALTIMORE CITY

STATE OF MARYLAND *

V. * CASE NO. 591277019, 20

GREGORY MONK *

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

(Disposition)

THURSDAY, APRIL 2, 1992

BALTIMORE, MARYLAND

BEFORE:

THE HONORABLE THOMAS L. WARD, ASSOCIATE JUDGE

APPEARANCES:

For the State:

RICHARD BOUCHER, ESQUIRE

For the Defendant:

JOHN ANGELOS, ESQUIRE

ROBERT GAVIN ODDO
Official Court Reporter
Room 535 Courthouse East
Baltimore, Maryland 21202

1 THURSDAY, APRIL 2, 1992

2 (P-R-O-C-E-E-D-I-N-G-S)

3 THE COURT: Good morning everybody. How are
4 you all this morning?

5 All right. Can we call the disposition, please?

6 MR. BOUCHER: Yes, Judge. May it please the
7 Court, Richard Boucher, Assistant State's Attorney,
8 calling the matter of State of Maryland v. Gregory Monk.
9 Your Honor, this is Case No. 591277019.

10 THE CLERK: And 20.

11 MR. BOUCHER: And 20. Thank you.

12 THE COURT: All right. Now, what is -- what, if
13 any, preliminary statements do you have to make or any
14 evidence to show me?

15 MR. BOUCHER: Your Honor, I believe that the
16 State included in its preliminary motions that were filed
17 in this matter a mandatory offender addendum indicating that
18 the State intended to seek a mandatory 10 years without
19 parole should the defendant be convicted of a felony drug
20 charge in this particular matter. The reason being because
21 he was on probation at the time of this offense for another
22 felony drug charge.

23 THE COURT: All right. Now, I don't have to
24 tell you, Mr. Boucher, what's the next question I'm going to
25 ask?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. BOUCHER: Do I have a certified copy of the docket entry for that.

THE COURT: Yes, and do you have an agreement as to that the person in that charge is the same person that is here today or are you going to prove identity?

MR. BOUCHER: No, Judge. We have an agreement.

THE COURT: You have an agreement?

MR. BOUCHER: Yes, sir.

THE COURT: That the person -- well, go ahead. Place all your evidence in the record.

MR. BOUCHER: Judge, at this time I would ask to be marked as State's Exhibit No. 1 for identification and would move into evidence, and I believe counsel has seen a copy of this, a true test copy of Mr. Monk's prior conviction for --

THE COURT: All right. Read it to me as to what that conviction is.

MR. BOUCHER: Judge, this is Case No. 29009933. The defendant was convicted of possession with intent to distribute cocaine on July the 25th, 1990 before The Honorable Joseph Pines of the Circuit Court for Baltimore City, and this is a true test copy of the docket sheet in that particular matter.

THE COURT: All right. And no appeal was taken?

MR. BOUCHER: Not to my knowledge, Judge, and the

1 appeal time has expired. And I would move that into evidence
2 at this time.

3 THE COURT: All right. Any objection?

4 MR. ANGELOS: No, sir. No objection.

5 THE COURT: All right. Now, the person that was
6 the subject of 29009933, who is that person?

7 MR. BOUCHER: That is Gregory Monk.

8 THE COURT: And is this the same Gregory Monk
9 as we have here today?

10 MR. BOUCHER: It is, Your Honor.

11 THE COURT: Is that Gregory Monk this Gregory
12 Monk, Counsel, Mr. Angelos?

13 MR. ANGELOS: Yes, Your Honor.

14 THE COURT: All right. I'm asking -- I'm not --
15 I'm asking questions to put everything on the record to
16 determine what your position is on each one of these points.

17 All right. Now, is there any other statements
18 or evidence that you wish to present?

19 MR. BOUCHER: No other evidence, Your Honor.
20 The only other statement or -- is this the appropriate time
21 for the State to make any recommendations?

22 THE COURT: Yes.

23 (State's Exhibit No. 1, docket
24 entries, received and entered into
25 evidence).

1 MR. BOUCHER: Your Honor, as the court may
2 recall, Mr. Monk was also convicted in the present matter
3 of resisting arrest. I would ask the court to run any
4 time that the court deems appropriate in regards to the
5 resisting arrest conviction to run concurrently with --

6 THE COURT: What is your recommendation on
7 Count One as to ending, charge ending in 19?

8 MR. BOUCHER: 10 years to the Department of
9 Correction, Your Honor.

10 THE COURT: With or without parole?

11 MR. BOUCHER: Without parole.

12 THE COURT: Under what section of the Code?

13 MR. BOUCHER: That would be Article 27, §286.

14 THE COURT: All right. Now, with respect to the
15 charge ending in 20, what's your recommendation, Count One?

16 MR. BOUCHER: Whatever period of incarceration
17 the court deems appropriate. I would simply ask that it be
18 run concurrently with those 10 years.

19 THE COURT: Now, do you wish to say anything
20 else before I turn to the defense?

21 MR. BOUCHER: No, Judge. Thank you.

22 THE COURT: All right. I'll be glad to hear
23 from you, Mr. Angelos.

24 MR. ANGELOS: Good morning, Your Honor. My
25 client is 22 years old. He has --

1 THE COURT: Let me say to you right away, I'm
2 not going to exceed this. I've told you this right along,
3 Mr. Angelos. That I'm not going to exceed 10 years without
4 parole, and I haven't authority to go below it. You under-
5 stand that, young man?

6 MR. ANGELOS: Your Honor, I'm going to submit.
7 Mr. --

8 THE COURT: I told you that, and to your client,
9 even before this case started.

10 MR. ANGELOS: Okay. Mr. Monk, do you have
11 anything to say to the judge before sentencing? This is your
12 right of allocution. Is there anything you would like to
13 say, sir?

14 THE DEFENDANT: No, sir.

15 THE COURT: You have filed also a motion for
16 new trial, Mr. Angelos.

17 MR. ANGELOS: Yes, sir.

18 THE COURT: I'll be glad to hear from you on that
19 first.

20 MR. ANGELOS: Your Honor, I know you have a copy
21 of that in front of you. What I'd like to point out to the
22 court is that the defense still takes, takes exception to
23 the, when the Jury Instruction No. 1 was returned, was
24 asked -- pardon me. When the jury asked the question, the
25 first question it asked, the identification of the name on

1 the chemical analysis, which said Joseph Payne, and I took
2 exception at the time that the court wrote back saying that
3 was the name the defendant gave at the time of booking, and
4 I thought that was reintroducing evidence. Based upon that,
5 I think that caused the jury to be prejudiced --

6 THE COURT: You mean recommented, you mean
7 commenting on the evidence.

8 MR. ANGELOS: Yes. I --

9 THE COURT: I mean, I didn't reintroduce it.
10 It was already in evidence.

11 MR. ANGELOS: Well, we, we had conflicted
12 against that, also. I didn't know -- we didn't have the
13 exact transcript of what the Agent, the police officer said,
14 of what he, the words he heard from Officer Smith. I took
15 exception to exactly what his testimony was, and I would
16 continue to take exception with that and disagree with that
17 statement.

18 THE COURT: You took -- you're confusing me.

19 MR. ANGELOS: I don't believe that that
20 evidence was given, was said by the police agent on the
21 stand.

22 THE COURT: You're saying that it didn't occur?

23 MR. ANGELOS: Yes.

24 Okay. And I --

25 THE COURT: Well, did you check with Mr. Oddo

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

about that and get a copy of the transcript?

MR. ANGELOS: No, sir.

I think that prejudiced the case against my client because it, any confusion or defense, and that was part of our defense, knowing that piece of evidence would go to the jury, it would confuse them. It was part of our defense that, who the person was exactly in the street that the drugs were recovered from. I think that prejudiced our case, and I believe that that, that in itself warrants a motion for new trial, to have that evidence properly presented to the jury.

THE COURT: All right. Is there anything else in your motion?

MR. ANGELOS: No. Not at this time, Your Honor.

THE COURT: Mr. Boucher?

MR. BOUCHER: Judge, most respectfully --

THE COURT: On the motion for new trial.

MR. BOUCHER: I would ask the court to deny that motion. First of all, none of those averments are contained within the body of the motion for new trial, unless Mr. Angelos intends that those averments be included under Item --

THE COURT: Well, it's --

MR. BOUCHER: -- No. 4.

THE COURT: It's included in there because he's

1 got here, because the evidence is insufficient in law to
2 sustain the verdict. He says that there was no such
3 evidence that the police officers at the time of booking
4 said that he gave the wrong or something like that. I don't
5 recall.

6 MR. BOUCHER: Judge, I would simply respond
7 by saying that I believe that the court acted correctly
8 and appropriately in this circumstance, and I would submit
9 based on that.

10 THE COURT: All right. Anything else you want
11 to say with respect to the motion for new trial?

12 MR. ANGELOS: No, Your Honor.

13 THE COURT: All right. I am going to deny the
14 motion for new trial. I think you have an interesting
15 point, though, on this with respect to appeal. Obviously,
16 if it didn't happen, you've got an excellent point.

17 My memory is that it didn't, but I have to be
18 honest with you. It's now been what, a couple of weeks,
19 isn't it?

20 MR. ANGELOS: About two and half weeks, yes,
21 sir.

22 THE COURT: I've had so many cases since then
23 that it's unbelievable.

24 It's too bad you don't have a transcript. No
25 time to prepare it in that time, I'm sure. Is that right?

1 MR. ANGELOS: Yes, sir.

2 THE COURT: All right. Now, with respect to
3 sentencing. The State has made its recommendation. The
4 motion for new trial is denied, M's Rosemond. Here's your
5 original, and I'll be glad to hear from you or your client
6 with respect to sentencing.

7 MR. ANGELOS: Anything you would like to say,
8 Mr. Monk?

9 THE DEFENDANT: Yes, sir.

10 MR. ANGELOS: All right.

11 THE DEFENDANT: Your Honor, I know I've been
12 convicted in the past of, you know, the same thing, but I
13 guess this is a case, you know, being with the wrong people,
14 and I don't look at it, you know, in a negative way. I look
15 at it as God showing -- I mean God's way of serving justice
16 for the times that I did, you know, commit crimes and got
17 away with it in the past. So, I'm not going to take this
18 time in a negative way. I'm going to take it in a positive
19 way so I can go onto the Department of Correction and get
20 the knowledge and wisdom and most of all to understand to
21 put me back on path to be a better man.

22 And like I told you before the trial, I can do
23 anything if I put my mind to it. Thank you.

24 THE COURT: Well, Mr. Monk, obviously, I'm
25 impressed by that statement, and I was going to give you that

1 advice anyway, but since I don't have to give it to you,
2 let me emphasize that you're right. There's times in life
3 when things don't go the way you want them to go. Sometimes
4 they don't go that way because it's your own fault. In this
5 case there's no question in my mind that you were dealing
6 drugs.

7 Therefore, you have a very severe punishment.
8 The State has elected to go under a provision of the Code
9 where I have no authority to make any other type of sentence.
10 This is equivalent to my giving you a 35 year sentence.
11 That's about what it amounts to. 10 years without parole.
12 You're going to have to serve over nine of those, about nine
13 of those years.

14 Now, during those nine years, there's still
15 some, there's still some opportunities available to you.
16 You never know what's going to happen in this world. The
17 State Legislature may change its mind on this section of the
18 Code. The governor could always give you a pardon or they
19 could bring up new programs, such as -- well now they have
20 the Boot Camp, but that's only available to people with
21 sentences of seven or less years, but you never know, they
22 might extend it, might make it 10 years. Do you see what
23 I mean?

24 Now, the people who are going to get advantage,
25 take advantage of these new ideas that may come forth are

1 people who have kept their nose clean while they're in the
2 system. And your attitude will play an important part as
3 to whether you qualify for any other type of program.
4 So, you're right, keep a straight, go down the straight and
5 narrow path. Avoid all those dummies in there who are going
6 to give you advice. Watch out for them. You understand what
7 I mean, don't you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You've got a lot of them. Smart
10 asses. They think they know everything. That's why they're
11 in there. They're going to tell you this and they're going
12 to tell you that. They're going to try to get you involved
13 in gangs and groups and power plays and everything else.
14 Beware. Mind your own, you know.

15 I agree with you. That's the way to go. Good
16 luck to you, sir.

17 Now, with respect to Case No. 591277019, Count
18 One, the sentence is 10 years to the Department of Correction
19 dating from the day of his arrest, isn't it?

20 MR. ANGELOS: July 22 --

21 THE COURT: July 25th?

22 MR. BOUCHER: Judge, that would be July the
23 24th, 1991.

24 THE COURT: Almost a year to the day from the
25 previous sentence. July 24th, 1991, 12:20 a.m. All right.

1 With respect to -- and Count Two shall merge
2 with Count One.

3 With respect to Case No. 591277020, Count One,
4 resisting arrest, the sentence is one year to the Department
5 of Correction, to run also concurrently with 19, from the
6 24th of July, 1991.

7 Costs are waived in view of incarceration.
8 I find him indigent.

9 All right. Advise him of his rights.

10 MR. ANGELOS: Mr. Monk, we have a right to file
11 an appeal within 30 days of today's disposition, and I will
12 file that appeal for you today.

13 You also have a right to file a motion for
14 reduction of sentence, in which the judge, within the next
15 90 days, which the judge can consider your sentence the
16 same or lower it, but under the circumstances here, there's
17 no way he can lower the sentence. If you wish to exercise
18 this right, either of these two rights, you must do so in
19 writing with the clerk of the Circuit Court.

20 I will advise that I will file the appeal today,
21 with the Appellate Division of the Public Defender's
22 Office. Do you understand, sir?

23 THE DEFENDANT: Yes.

24 MR. ANGELOS: Okay. Do you have any questions
25 of myself or the court?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Judge, Mr. Monk asks if an appeal bond could be set.

THE COURT: All right. What bond did you have in mind?

MR. ANGELOS: \$25,000.00.

THE COURT: Mr. Boucher?

MR. BOUCHER: Judge, the State would be opposed to that considering the sentence that's just been imposed by the court, as well as the time that Mr. Monk is backing up on his prior conviction. I believe that the defendant may be a risk of flight. In addition, I believe that the, especially in regards to the issues that have been brought before the court, pursuant to the motion for new trial, I don't believe that they are legitimate or, or issues that will merit this matter being overturned.

I think that the court has handled the, those issues correctly and appropriately, and I believe that the sentence should be imposed and executed today.

THE COURT: All right. I'll set an appeal bond of \$90,000.00.

We'll stand in recess awaiting the next case.

MR. BOUCHER: Thank you, Judge.

(CONCLUSION OF PROCEEDINGS)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I, Robert Gavin Oddo, an Official Court Reporter of the Circuit Court for Baltimore City do hereby certify that I recorded the proceedings in the matter of State of Maryland v. Gregory Mon, Case No. 591277019, 20 on April 2, 1992.

I further certify that the foregoing pages constitute the official transcript as transcribed under my direction in a complete and accurate manner.

In witness whereof, I have hereunto set my hand this 27th day of May, 1992.

R Gavin Oddo

OFFICIAL COURT REPORTER

MSAREF.NET, MSA SC 5458
An Archives of Maryland Publication

D. Lee
2-19-10
Image 460

| ▶ **Edit & Modify Entries** | ▶ **Search** | ▶ **Search MAILREF** | ▶ **Contact Webmaster** | ▶ **Home** | ▶ **End Session**

MSA SC 5458-82-152

Dates: 2010/02/17

Description: Case numbers received from J. Hollander -

BALTIMORE CITY CIRCUIT COURT (Paternity Papers) Arrington v. Rodriguez, 1989, Box 169
Case No. 119070 [MSA T3351-923, CW/16/31/25]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Rolnik v. Union Labor Life
Ins. Co., 1987, Case No. 87313071
Case is split between 2 boxes:
Box 387 [MSA T2691-2026, HF/8/35/8]
Box 388 [MSA T2691-2027, HF/8/35/9]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Shofer v. The Stuart Hack
Co., Box 128 Case No. 88102069 [MSA T2691-2232, HF/11/30/3]
See also for "brick binders":
Box 527 [MSA T2691-2631, HF/11/38/18]
Box 528 [MSA T2691-2632, HF/11/38/19]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Attorney Grievance
Commission v. Yacono, 1992, Box 1953 Case No. 92024055 [MSA T2691-4591,
OR/12/14/65]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Feldmann v. Coleman,
1993, Box 391 Case No. 93203022 [MSA T2691-5466, OR/22/08/037]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Jefferson v. Ford Motor
Credit Corp., 1993, Box 470 Case No. 93251040 [MSA T2691-5545, OR/22/10/20]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Shofer v. The Stuart Hack
Co. and Blum, Yumkas, Mailman, 1993, Box 518 Case No. 93285087 [MSA T2691-5593,
OR/22/11/20]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Booth v. Board of Appeals,
1993, Box 589 Case No. 93330026 [MSA T2691-5665, OR/22/12/45]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Scott v. Dept. of Public
Safety, 1993, Box 603 Case No. 93342002 [MSA T2691-5679, OR/22/13/11]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Stubbins v. Md. Parole Comm'n., 1993, Box 616 Case No. 93354003 [MSA T2691-5692, OR/22/13/24]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Fitch v. DeJong, 1994, Box 109 Case No. 94077005 [MSA T2691-5817, OR/28/9/2]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Criminal Papers) State v. Bowden, 1987, Box 142 Case No. 18721501 [MSA T3372-984, CW/2/23/13]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Criminal Papers) State v. Redmond, 1988, Box 191 Case No. 48828071 [MSA T3372-1282, HF/11/23/43]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Criminal Papers) State v. Parker, 1990 Box 100 Case Nos. 290213034,35 [MSA T3372-1476, OR/16/16/8]
Box 104 Case Nos. 290221060,61 [MSA T3372-1480, OR/16/16/12]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Criminal Transcripts) State v. Monk, 1991, Box 78 Case No. 591277019 [MSA T3657-403, OR/17/11/21]
File should be named msa_sc5458_82_152_[full case number]-####

D. Lee
2-19-10
Image 460

BALTIMORE CITY CRIMINAL COURT (Transcripts) Eraina Pretty, 1978, Box 43 Case Nos. 57811846, 57811847, 57811848, 57811858, 57811859, 57811860 [MSA T496-3990, OR/18/22/41]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Criminal Papers) State v. Johnson (or Johnson-Bey), 1987, Box 11 Case No. 28701917 [MSA T3372-853, CW/2/20/26]

Accession No.: MSA SC 5458-82-152

Date Entered: 02/17/2010

Date Completed:

No. Pages: 0

Amount paid: \$0.00

Amount due: \$0.00

Tracking No.: T -0

Notes

Edit Database Entry

| ▶ **Edit & Modify Entries** | ▶ **Search** | ▶ **Search MAILREF** | ▶ **Contact Webmaster** | ▶ **Home** | ▶ **End Session**

System design by Dr. Edward C. Papenfuse and Nancy Bramucci.
Programmed in *Microsoft SQL Server* and *Cold Fusion 7.0* by Nancy Bramucci.
Technical support provided by Wei Yang, Dan Knight, Tony Darden, and Matt Davis.
Version 2.8.1