

**APPENDIX**

Decision and Opinion of Court of Appeals.....App. A, 1-7

Transcript of Motion Hearing of January 8, 2002 before the  
Honorable Eric J. Wahl..... App. B, 1-75

## APPENDIX A

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**November 4, 2003**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 03-0246-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 01-CF-580**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**LAWRENCE NORTHERN,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Eau Claire County: ERIC J. WAHL, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Lawrence Northern appeals a judgment of conviction entered upon a jury verdict finding him guilty of possession with intent to deliver of 15-40 grams of cocaine and 100 grams of cocaine, contrary to WIS. STAT. §§ 961.41(1m)(cm)3 and 5. Northern claims the State violated its discovery obligations in three ways, thus hampering his defense and violating his due

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process rights. We conclude Northern has failed to preserve these issues for appellate review and therefore affirm the judgment.

### **Background**

¶2 Northern was charged on September 24, 2001. Fourteen other individuals were also charged in the complaint, some in separate counts and some in the same counts as Northern. A day after the October 2 preliminary hearing, Northern's attorney served a discovery demand on the State. The demand sought, among other things, a copy of the criminal records of the State's witnesses, a summary of any of the witnesses' oral statements that would be used, and written disclosure of any promises made to any witnesses in exchange for testimony.

¶3 At Northern's October 19 arraignment, his attorney reported that the district attorney had informed him that discovery materials were available. On November 28, however, the defense attorney withdrew from the case. Northern was appointed a new public defender on December 7, who filed a new discovery demand on December 18. On January 2, 2002, Northern renewed the discovery demand.

¶4 On January 7, one of the other individuals charged in the complaint, Hollie Peterson, entered into a plea agreement in exchange for her testimony. She provided a short written statement, then a more detailed oral recitation. Later, Peterson was allowed to visit her daughter, although this was not a term of the plea agreement. On January 8, the State informed Northern and three co-defendants of the plea and its terms. The State provided Peterson's written statement, but did not mention any oral statements.

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¶5 Also on January 8, the parties were in court for various pretrial procedures. At this hearing, Northern complained that the State had provided only a list of the number of prior convictions as to each of its witnesses but not the actual detailed criminal records. The trial court essentially denied this objection, noting that no one had explained why the number was insufficient in light of the standard colloquy of whether the witness had ever been convicted of a crime and, if so, how many times.

¶6 One co-defendant objected to the timing of the State's disclosure of Peterson's plea terms. The court offered to adjourn the January 9 trial date until March if the defendants were willing to waive their speedy trial rights. Following a conference with their attorneys, the defendants, including Northern, agreed to proceed to trial on January 9, where Northern and his co-defendants apparently first learned that Peterson had given the State an oral statement after she had provided her written statement. Northern was convicted of two possession with intent to deliver charges.

¶7 Northern now appeals, contending the State breached its discovery obligations by providing only the number, not the nature, of the witnesses' prior convictions; by failing to timely and fully disclose the terms of Peterson's plea agreement; and by failing to disclose the contents of Peterson's oral statements. Because we hold that Northern failed to preserve these issues for review, we do not address his further contention that he was prejudiced by these errors.

### Discussion

¶8 Whether the State has provided sufficient information to comply with its discovery obligations under WIS. STAT. § 971.23 is a question of law that we review de novo. *State v. Schroeder*, 2000 WI App 128, ¶8, 237 Wis. 2d 575,

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613 N.W.2d 911. However, it is axiomatic that to preserve any trial court error for review, trial counsel or the party must timely object to the error with specificity to allow the trial court to review and correct any potential error. *State v. Nielsen*, 2001 WI App 192, ¶11, 247 Wis.2d 466, 634 N.W.2d 325. Absent such procedure, we may invoke the administrative waiver rule and determine an issue has not been preserved for appeal. *Id.*

### Witness Records

¶9 When Northern complained about receiving only the number of convictions for the State's witnesses, the trial court responded that under normal circumstances, the only relevant question of a witness is whether he or she has been convicted of any crimes and, if so, how many. This is because Wisconsin is a "counting" state—the number, not the nature, of the crimes is the only relevant evidence. *State v. Smith*, 203 Wis. 2d 288, 297, 553 N.W.2d 824 (Ct. App. 1996).

¶10 Northern now complains that failure to receive information on the nature of the crimes prevented him from asking witnesses about "other acts" evidence, an exception to the counting rule. When the court explained that it believed the attorneys would, in any event, be limited to asking about only the number of crimes, Northern failed to raise this "other acts" argument before the

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trial court. Thus, it has been waived because it was not properly preserved for appellate review.<sup>1</sup> *See id.*

¶11 Although Northern argues that *State v. Agnello*, 226 Wis. 2d 164, 172-73, 593 N.W.2d 427 (1999), does not require an objection to be as specific as possible, the case does require the party “object in such a way that the objection’s words or context alert the court of its basis.” *Id.* at 174. Here, Northern knew the court overruled the objection on the basis of the counting rule. Northern could have objected again, informing the court of the specific basis for his objection, arguing he was being precluded from impeaching witnesses with other acts evidence. He did not, and we will not now consider his complaint for the first time on appeal. *Wirth v. Ehly*, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980).

### Timing and Completeness of Plea Disclosure

¶12 Peterson’s plea agreement had been somewhat unexpected and inconveniently timed, coming at the eleventh hour before trial. The morning after she had made her agreement, at the January 8 pretrial hearing, each of the four defendants including Northern complained about the timing of disclosure of the agreement. The court offered the defendants the option of proceeding the next day or adjourning the trial until mid-March. The defense attorneys conferred with

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<sup>1</sup> Even if we were to address this issue’s substance, Northern’s arguments would still fail. While the State is normally required to disclose defendants’ criminal records upon demand, WIS. STAT. § 971.23(1)(f), the supreme court has held that there is no discovery violation unless the information is in the State’s exclusive control. *State v. Armstrong*, 110 Wis. 2d 555, 580, 329 N.W.2d 386 (1983). As the State points out, nothing precluded Northern from inquiring at the clerk of court’s office regarding the witnesses, nor was he precluded from accessing the Consolidated Court Automation Program (CCAP) database, which contains circuit court records from all Wisconsin counties except Walworth.

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their clients and each of them, including Northern, indicated that they would be prepared to proceed to trial the next day.

¶13 We will not review invited error. *In re Shawn B.N.*, 173 Wis. 2d 343, 372, 497 N.W.2d 141 (Ct. App. 1992). Northern complained about the timeliness of disclosure.<sup>2</sup> In response to this complaint, he was given the opportunity to adjourn the trial so he could have time to review the details of Peterson's plea agreement and potential testimony. He decided rather to proceed to trial, untimeliness notwithstanding, making himself responsible for the timeline.<sup>3</sup>

¶14 Northern also contends that not all of the details of Peterson's agreement were disclosed. On cross-examination, one of the other defendants

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<sup>2</sup> WISCONSIN STAT. § 971.23 requires the district attorney make his disclosures "within a reasonable time before trial." Although we realize that disclosure came the day before trial, we note that it also came nearly immediately after the agreement was reached. The State cannot disclose terms of a plea agreement before it is made, and the agreement with Peterson was not made until January 7. It was disclosed January 8, after State officials spent several hours preparing the information. This is reasonable under the circumstances.

<sup>3</sup> We acknowledge that the trial court asked the defendants to waive their speedy trial rights and, as Northern points out, he should not be asked to trade one constitutional right (speedy trial) for another (confrontation). However, this is premised in part on the prosecutor's discovery violation and, as we explained in note 2, there was no violation here.

Northern also fails to show that he ever asserted his speedy trial right, and we cannot assume he did so. We will not sift the record for evidence to support his argument. See *Keplin v. Hardware Mut. Cas. Co.*, 24 Wis. 2d 319, 324, 129 N.W.2d 321 (1964). Assertion of the right to a speedy trial is one of the concerns we analyze to determine whether there is a violation. *State v. Leighton*, 2000 WI App 156, ¶6, 237 Wis. 2d 709, 616 N.W.2d 126. A defendant has some responsibility to assert the right. *Id.*, ¶20.

The concerns implicated in the speedy trial right also include the length of the delay and the possible prejudice to the defendant. *Leighton*, 237 Wis. 2d 709, ¶6. Prejudice is assessed in terms of, among other things, limiting impairment of the defense. *Id.*, ¶22. The length of the delay would be slightly more than two months—a year is presumptively prejudicial, *id.*, ¶8,—and the delay would apparently have aided, not impaired the defense.



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elicited testimony from Peterson that the State allowed her to visit her child following her plea agreement. Northern did not object to this as a surprise, but now complains that it was error. We conclude that the failure to object to the testimony or otherwise bring the court's attention to the alleged State error results in waiver of the argument.<sup>4</sup>

### Summary of Oral Statements

¶15 Finally, Northern argues that the State failed to turn over a summary of Peterson's oral statements that she provided after her written statement. At one point during Peterson's testimony, the State asked her, "Did you provide the [written] information ... as an initial proffer as part of the plea agreement in this case with the agreement that you would provide a more detailed interview orally with officers after the plea was entered?" She answered yes.

¶16 Northern failed to object to this information as a discovery violation. It is also waived.<sup>5</sup>

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

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<sup>4</sup> In any event, Northern mischaracterizes the information. The record discloses that visitation with the child was not a term of the agreement, but rather a courtesy the State extended at the conclusion of the negotiations. The State is not required to disclose that which is not a term.

<sup>5</sup> Nowhere in WIS. STAT. § 971.23 is the State required to disclose its witnesses' oral statements; it must only supply copies of written or recorded statements.

## APPENDIX B

# COPY

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 2

EAU CLAIRE COUNTY

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STATE OF WISCONSIN,

Plaintiff,

vs.

MOTIONS IN LIMINETERRENCE MADISON,  
LAWRENCE NORTHERN,  
VELDEE T. BANKS,  
TYESHAWN D. COHENSCASE NOS. 01CF579  
01CF580  
01CF581  
01CF590Defendants.  
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The above-entitled matter coming on to be heard before the Honorable Eric J. Wahl, judge of the above-named court, without a jury, on the 8<sup>th</sup> day of January, 2002, commencing at the hour of 2:03 p.m., in the Courthouse in the City of Eau Claire, County of Eau Claire, State of Wisconsin.

## A P P E A R A N C E S

G. RICHARD WHITE, District Attorney, Eau Claire County Courthouse, 721 Oxford Avenue, Eau Claire, Wisconsin, 54703, appearing as counsel for and on behalf of the State.

THOMAS A. STARR, Attorney at Law, P.O. Box 81, Boyd, Wisconsin, 54726, appearing as counsel for and on behalf of the Defendant, Terrence Madison.

JAN M. BETTHAUSER  
Court Reporter, Branch 2  
Eau Claire County Courthouse  
721 Oxford Avenue  
Eau Claire, Wisconsin 54703

A P P E A R A N C E S (Continued)

DANA LEE NORGARD, Attorney at Law, N14447 County O, Greenwood, Wisconsin, 54437, appearing as counsel for and on behalf of the Defendant, Lawrence Northern.

GARY M. KING, Attorney at Law, 1241B Menomonie Street, Eau Claire, Wisconsin, 54703, appearing as counsel for and on behalf of the Defendant, Veldee T. Banks.

AARON A. NELSON, Estreen & Ogland, 304 Locust Street, Hudson, Wisconsin, 54016, appearing as counsel for and on behalf of the Defendant, Tyeshawn D. Cohens.

TERRENCE MADISON, LAWRENCE NORTHERN, VELDEE T. BANKS, and TYESHAWN D. COHENS, the defendants, appearing personally.

I N D E XWITNESSPAGETimothy W. Hoyt

Direct Examination by Mr. White

47

Cross-Examination by Ms. Norgard

55

Lawrence Northern

Direct Examination by Ms. Norgard

68

No Cross-Examination

1                   P R O C E E D I N G S

2                   THE COURT: Good afternoon.

3                   MR. WHITE: Good afternoon, Your Honor.

4                   This is State of Wisconsin versus Terrence Madison,  
5                   Lawrence Northern, Veldee T. Banks, and Tyeshawn D.  
6                   Cohens, Case Numbers 01CF579, 580, 581, and 590.  
7                   The State appears by District Attorney Rich White.  
8                   The defendant appears personally and by their  
9                   respective attorneys, Tom Starr, Dana Norgard,  
10                  Gary King, and Aaron Nelson.

11                  This is the date and time scheduled  
12                  for, two items for the Court's attention. The first  
13                  one is a Motion to Suppress filed by Ms. Norgard  
14                  on Mr. Northern's behalf addressing the stop  
15                  of a vehicle operated by Mr. Northern on September 20  
16                  in Eau Claire. And the second point of the hearing  
17                  is to address any Motions in Limine regarding  
18                  trial issues. It's my understanding that Ms. Norgard  
19                  may have a couple of those issues to address. I  
20                  don't know whether because of the other attorneys  
21                  here you want to deal with those things first and  
22                  then deal with the suppression issue secondly or  
23                  the other way around.

24                  THE COURT: Well, Mr. Starr, what do you  
25                  have for me to think about?

1           MR. STARR: Well, my concern, Your Honor,  
2           is I came here around, to court about a half  
3           an hour ago and all of a sudden I've been  
4           handed additional reports which I haven't had  
5           a chance to go through and apparently they're  
6           pretty significant. Apparently from what I have  
7           been hearing that Hollie Peterson entered a  
8           plea yesterday and is going to be giving State  
9           evidence and that one of these reports has to deal  
10          with information that she had. And I guess I have  
11          some concerns here about being provided this at  
12          this late time.

13          THE COURT: Of course, she entered a plea  
14          yesterday afternoon about --

15          MR. WHITE: Three o'clock.

16          THE COURT: Three, yes, so I'm surprised  
17          you got it this soon.

18          MR. WHITE: Yeah. We sat last night until  
19          into the night. I was up until eleven o'clock working  
20          on the case. Several officers were up late at night  
21          dictating. I don't know how we could have moved any  
22          faster.

23          THE COURT: Frankly, nor do I under the  
24          circumstances. So you raise that concern, now what's  
25          your solution?

1 MR. STARR: Well, I mean, obviously what  
2 I'm going to have to do is go through it and  
3 then go through it with my client. Again,  
4 obviously, it's in the midst of my preparation,  
5 closing argument, opening argument and then all  
6 of a sudden this and it's somewhat major and  
7 significant. And the concern I have is am I going  
8 to have enough time to do it by seven-thirty or  
9 eight-thirty tomorrow morning.

10 THE COURT: I don't know how I can postpone  
11 anything or delay anything. We -- as a practical  
12 matter next week I've got two jury trials and  
13 then I go on intake for three weeks so I mean  
14 if we're really going to adjourn it because  
15 of this kind of a matter, I don't know when we'd  
16 get it back on the calendar. We've set aside  
17 three days.

18 MR. STARR: I mean even just to have  
19 the opportunity to discuss the issue whether  
20 or not my client wishes to forge ahead and go  
21 through it tomorrow, you know, just to have  
22 that. I haven't had that opportunity even as  
23 of yet.

24 THE COURT: Well, if you want to, and  
25 this would apply to all of you, if you think



1       this late breaking development has changed the  
2       defense posture and you want some time to confer  
3       with your clients it's only two o'clock and  
4       I'd be glad to give you whatever time. If this  
5       means a different plea would be entered or  
6       something of that kind. As a practical matter,  
7       I don't know -- and, again, I'm talking to  
8       everybody -- if, indeed, you're making a request  
9       for a delay in the trial, I don't know if I can  
10      accomplish that. I'd have to go back and look  
11      and see, see if there's some ability for someone  
12      else to take intake for me next week or the week  
13      after next, that type of thing.

14               MR. STARR: Yeah. I understand, Your Honor.  
15      I know it's a very difficult thing too, difficult  
16      situation for the Court to be put in, too.

17               THE COURT: What about you, Mr. Nelson, what  
18      have you, other than I imagine you have the same  
19      concerns about --

20               MR. NELSON: Correct. I have the concern  
21      about the new information provided by Hollie Peterson  
22      as well as concerns about police records and  
23      convictions that the State has provided. I  
24      made a discovery request I think it was back  
25      in November. Discovery was provided on December 7<sup>th</sup>

1       which did not include the police, the criminal  
2       conviction records or the police records of any  
3       of the State's witnesses. I made a request in  
4       writing of Mr. White asking for those records.  
5       He responded in writing, I believe it was  
6       before Christmas, indicating that he would get  
7       that to us shortly. January 2<sup>nd</sup> we were in  
8       front of you, Your Honor, and he indicated  
9       on the record that he would get that to us by  
10      Friday which was January 4<sup>th</sup>. He did not do so.  
11      Today it was handed to me just before Your Honor  
12      walked in at two o'clock, less than twenty-four  
13      hours before we finally get to trial. I've  
14      been handed, not even the record, but with  
15      all due respect, just a letter from Mr. White  
16      indicating here is the number of convictions  
17      that they have as opposed to some sort of proof  
18      that here's the number of convictions. There's  
19      not more, there's not less. It's just a  
20      letter. Again, with all due respect, we're  
21      just supposed to take his word on what everyone's  
22      record is so I have that issue regarding the  
23      past criminal history and the record of all of  
24      the State's witnesses which was not provided until  
25      today even though Mr. White indicated both in

1 writing and on the record that he would provide it  
2 earlier prior to today.

3 The second issue is the issue with  
4 Hollie Peterson. I have discussed with my client  
5 and this is not something he wants to change  
6 his plea on. We want to forge ahead but I  
7 think we would be requesting one of two things,  
8 either A, a continuance so we can prepare a  
9 defense regarding what Ms. Peterson says in  
10 her statement and investigate her in some way  
11 other than just being told the day before trial  
12 here's what she is going to say, deal with  
13 it or, number two, to just have her stricken  
14 as a witness. This is not somebody that was  
15 on the witness list. We can certainly forge  
16 ahead tomorrow without her and if the State at  
17 this late date decides to change their position  
18 and the information that they're providing that  
19 I don't think she should be allowed to testify  
20 as a witness nor should the witnesses who  
21 their criminal history was not provided prior  
22 to today's date. The criminal discovery statute  
23 indicates that they are, when requests are made,  
24 the State needs to provide us that information  
25 within a reasonable timeframe. I don't think --

1 THE COURT: -- the day before trial is  
2 reasonable?

3 Let me deal with the criminal record  
4 aspect of it first. I don't know that Mr. White  
5 can be faulted on Ms. Peterson given the  
6 rather startling development that occurred  
7 yesterday. We didn't anticipate it, I didn't  
8 anticipate it. I don't know if Mr. White  
9 anticipated it but, in any event, it's there.

10 MR. NELSON: I'm not trying to put blame  
11 on that, Your Honor. It is there and that's  
12 something we have to deal with and due process  
13 and constitutional rights, whether fault or no  
14 fault there is still that issue out there.

15 MR. WHITE: Let me deal with the issue  
16 of this criminal record. Your Honor, over the  
17 last eleven years I have probably done one hundred  
18 seventy-five jury trials. I have never, ever, ever  
19 provided information on criminal records other  
20 than a couple of days before trial. And the  
21 reason I don't do that is because as you  
22 probably know from practical experience the  
23 vast majority of cases do not settle. If in  
24 every single case where somebody came back  
25 from their return conference and said we're

1 not accepting the offer I had to run criminal  
2 record checks, follow-ups and get specific  
3 information out to defendants, I would literally  
4 have to add one or two people onto my office  
5 staff. Now, --

6 THE COURT: I think you misspoke. I think  
7 you said they don't settle. I imagine you  
8 meant --

9 MR. WHITE: I'm sorry. The vast majority  
10 do. So the point is I had agreed in good faith  
11 to try to obtain that information by Friday.  
12 Friday afternoon at four forty-five I had the  
13 draft of the letters ready. Now, I could have  
14 faxed out that information over the weekend  
15 but the fact of the matter is since the record  
16 information doesn't change anything, it's either  
17 there or not there, and they can use the number  
18 and nothing more. They can't go into the substance.  
19 The whole point is a point of relatively little  
20 significance.

21 And it is a little bit disingenuous  
22 because Mr. Nelson came in here last week and  
23 said I have an alibi. Here are my alibi witnesses.  
24 He handed me a piece of paper with two names  
25 on it. The alibi statement says he'd provide a

1 written summary of what the alibi is. I didn't  
2 get that. He was going to get me that by Friday.  
3 I'm not complaining about that. I think things  
4 happen but things happen both ways.

5 The fact of the matter is Ms. Peterson  
6 pled yesterday. I can't change that. The  
7 substance of the information she provided is  
8 consistent with other witnesses here. In other  
9 words, about deliveries by these individuals and  
10 manufacturing activity. If they are going to  
11 request an adjournment, they have to waive the  
12 right to a speedy trial. I cannot try this case  
13 until at least probably mid February because I  
14 have a homicide trial at the end of February --  
15 or excuse me -- the end of January and then the  
16 week after that another drug case scheduled. If  
17 they believe they need an adjournment it has to  
18 be I think within that framework.

19 But as far as complying with discovery  
20 requests there's nothing in the discovery statute  
21 that says there's a deadline. It says within  
22 a reasonable period of time. My position is  
23 criminal record information of witnesses and  
24 defendants is provided within a reasonable period  
25 of time if it's provided before trial.

1 MR. NELSON: Your Honor, if I just may.

2 THE COURT: I do think this is a bit  
3 of a red herring because I don't know what  
4 you're going to do with this information. We  
5 all know the standard question, Have you been  
6 convicted of a crime? Yes, I have. How many  
7 times? One, ten, none, whatever the answer is.  
8 So I don't know that the fact that that got  
9 provided to you now is particularly relevant in  
10 that you now know how many each of the witnesses  
11 have been convicted.

12 If you do want an adjournment and if  
13 you do want to waive your right to a speedy  
14 trial, then I can go get my calendar and we  
15 can look at February or March or whenever,  
16 whenever we're all available again. And if  
17 that's what the collective wisdom of the four  
18 of you is, then let me go get the calendar. Let  
19 me see what we're going to do. I can't imagine  
20 Hollie Peterson's information is all that much  
21 of a surprise in that it is also more  
22 corroborative, I would assume, than anything  
23 we've never thought about before. I would  
24 assume what it is is that the other witnesses  
25 said on this day that happened and on this

1 day something else happened and I assume that  
2 Hollie Peterson's information is in line with what  
3 you already have.

4 MR. NELSON: I don't know, Your Honor. I  
5 haven't had a chance to read it.

6 MR. KING: I think that's the issue,  
7 Your Honor. We come here, we receive that information.  
8 In all good conscience we haven't had a fair  
9 opportunity to even look at what has been submitted  
10 to us.

11 THE COURT: I'm willing to give you,  
12 if you think -- that's what I said at the outset  
13 to Mr. Starr, if you want to confer now with  
14 your client and, say, in the light of this new  
15 information you wish to alter or change a plea  
16 or accept a deal or make a few proposals, I'm  
17 willing to give you time to do that.

18 MR. KING: And the only other thing  
19 I would add at this time is I can understand  
20 the point with respect to the criminal convictions  
21 but there are also some things in the letter here  
22 dated January 4<sup>th</sup> that I have just received today  
23 with respect to identity of confidential informants  
24 and things of that nature that were  
25 repeatedly requested over and over well before



1 last Friday and here we come to court today, the  
2 day before trial, and now we're given those,  
3 that information.

4 THE COURT: Well, again, this is getting  
5 very repetitive. If the four of you want to  
6 confer with your clients about A, changing a plea  
7 or, B, an adjournment, and waive speedy trial,  
8 then I will go get my calendar and we'll take into  
9 account, you know, the four of your calendars plus  
10 the DA's calendar and my --

11 MR. NELSON: Your Honor, can I just respond  
12 to one --

13 THE COURT: Sure.

14 MR. NELSON: First, regarding my client,  
15 we have never requested a speedy trial so I think  
16 we're perhaps in a different scenario than the  
17 other three. Again, he's not in a position to  
18 change his plea and he's not planning on doing  
19 that. It would be, just be a matter of an  
20 adjournment but I did want to clarify one thing  
21 regarding Mr. White's statement regarding our  
22 presenting an alibi. This is something I did  
23 present to him on, I think it was on January 2<sup>nd</sup>.  
24 I think that's a Wednesday. And he said he  
25 had no objection to it so what he chose to object

1 to and what he doesn't choose to object to, I  
2 shouldn't be held to do the, have to do the same  
3 thing he does. And the other thing is I did,  
4 and if Mr. White doesn't recall, I wrote down  
5 on a piece of paper in a meeting the name, phone  
6 number and address of the alibi witness on  
7 January 2<sup>nd</sup>.

8 THE COURT: And as I understand, he was  
9 voicing that a bit illustratively pointing out that  
10 things have been late breaking in these cases period.  
11 I didn't hear him objecting to it, if he could, I  
12 suppose.

13 MS. NORGARD: Your Honor, if I might just  
14 add a few words. I, you know, came into this  
15 somewhat late. I may have, not misrepresented --  
16 in terms of my client I am his second attorney  
17 with regard to this specific criminal case. I did  
18 file my discovery. I also take issue. I believe  
19 the discovery obligated the State to provide  
20 criminal records for our clients as well as for  
21 all those witnesses. I then subsequently requested  
22 a second discovery motion which I also filed.

23 There has been some latitude with regard  
24 to witnesses and, Your Honor, in my first motion  
25 that I filed, I am not overstating or

1       exaggerating this, there are thirty-eight separate  
2       reports that have taken me personally each time  
3       I've read them six hours to get through the first  
4       group and I have just again completed the second  
5       group for another six hours. That doesn't even  
6       include looking at other witnesses that might be  
7       available.

8               I don't know in terms -- I understand  
9       the difficulty that you are in but everything  
10      that I read with regard to process and procedure,  
11      the whole idea of fairness and opportunity, as  
12      Mr. Nelson referred to, is fairly critical. I  
13      personally have not read this either and my  
14      client is now perhaps even further into Ms. Peterson's  
15      report than I was and I was in the jail last night  
16      with Mr. Heit up until three-ten and watched him  
17      leave. And I do agree with other counsel that,  
18      in particular, Mr. Nelson's point, is that at  
19      this late, the option of having her removed as a  
20      witness would serve my --

21             THE COURT: I'm not going to do that. I  
22      mean that's unfair to the State. If you could  
23      show that the State had a great deal of advance  
24      knowledge that this was going to happen, this was  
25      some kind of a sandbagging operation, that would

1 be a different thing, but I'm telling the four of  
2 you, and some of you know better than others,  
3 Mr. White is an honorable person who does his job  
4 in an honorable fashion.

5 MS. NORGARD: I have not suggested at all  
6 that he hasn't, Your Honor. He's been very polite with  
7 me, but with regard to my client having materials  
8 provided I am in line with my co-counsel.

9 THE COURT: So far I've heard the chorus all  
10 saying, we're getting this late. We don't know what  
11 we're doing, so forth, so on and now for about the  
12 fifth time --

13 MR. STARR: Your Honor, I would request  
14 if you could get your calendar and give me  
15 what a potential date would be and then I could  
16 go up and talk with my client about it and say,  
17 listen, you know, either we can go tomorrow as  
18 planned or otherwise you're looking at this trial  
19 date.

20 THE COURT: All right.

21 MR. WHITE: That's fine, except for the  
22 only thing with an exact date I obviously have to  
23 check with the crime lab because we have three  
24 separate crime lab witnesses so, I can check while  
25 they're doing that.

1 THE COURT: Well, let me get my calendar.

2 MR. WHITE: I'll go and grab mine.

3 THE COURT: You know, the other thing I  
4 was thinking about in this short break is this  
5 isn't really a very complicated deal. It isn't  
6 like we've got some very complex bank fraud  
7 or anything. It seems it's complicated because  
8 of the number but it's going to be pretty  
9 straight forward evidence I would think and that  
10 is what did you see, who did you see doing it.  
11 I think you're all a bit over exaggerating the  
12 complexity of this but -- all right, Mr. White, give  
13 me your date again.

14 MR. WHITE: Well, the homicide trial I  
15 have starts the 28<sup>th</sup> and that's for a week.

16 THE COURT: The 28<sup>th</sup> of February?

17 MR. WHITE: Correct. And then February 5<sup>th</sup>  
18 I have a two-day felony drug case relatively  
19 comparable to some of the individuals involved in  
20 this case so around that.

21 MR. NELSON: Just to throw a wrench into  
22 it as well, the first two weeks of March are  
23 probably out for me. I'm expected to be a father  
24 again right around that so, if the little bugger  
25 cooperates.

1 THE COURT: Well, the first days that I  
2 can give you number one without doing handsprings  
3 or anything is March 19<sup>th</sup>, which is a Tuesday.  
4 It would be the 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> if you  
5 needed it. Or I could go to the next week. For  
6 some reason that appears to be open.

7 MS. NORGARD: Your Honor, I also don't  
8 want to be difficult but in addition to this  
9 I'm also teaching at the university and that is  
10 over in Wausau and that's Wednesdays and Fridays  
11 so obviously I guess the latter part of the  
12 week is probably just as bad as the beginning  
13 part but if you could do something from the latter  
14 part of the week I may be able to make some  
15 other arrangement for the Monday class which I'm  
16 also teaching.

17 MR. NELSON: That whole week works for me,  
18 Your Honor.

19 THE COURT: Which week?

20 MR. NELSON: March 19<sup>th</sup>, any time then is  
21 fine.

22 THE COURT: And, Ms. Norgard, you want it  
23 Wednesday?

24 MS. NORGARD: Could we start it Wednesday,  
25 Thursday and Friday instead of Monday, Tuesday and

1

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1 scheduled March 21 but I suspect that is a one-day  
2 that could be rescheduled.

3 MR. WHITE: I'm sure it's one of ours. We  
4 would --

5 THE COURT: Let's go take -- in the  
6 meantime, if you want to talk to your clients  
7 about, I mean the decisions that they, that all  
8 of you have to make is this. Do you want to  
9 change a plea, do you want to proceed tomorrow  
10 with the schedule that we've got in place? We've  
11 got jurors, I'm sure they'll be phoning in here  
12 any moment, or do you want to continue to stay  
13 where you are until the middle of March. Those are  
14 the three options.

15 Let me know when you get back.

16 MR. WHITE: Yeah, I'll --

17 (A recess was taken until 3:17 p.m.)

18 THE COURT: Well, it's now almost 3:20.  
19 You've had opportunities to talk over all of the  
20 matters with your clients, Mr. Starr?

21 MR. STARR: Yes, I have, Your Honor. I  
22 went over the report with him I had received,  
23 discussed his options in the particular case and  
24 Mr. Madison has decided he wishes to go to  
25 trial tomorrow so he's had an opportunity to



1 discuss that with me and he makes a rational,  
2 intelligent decision in that regard.

3 My understanding, the other defendants  
4 as well have also decided they want to go to  
5 trial.

6 THE COURT: All right.

7 MR. NELSON: That's correct, Your Honor.  
8 I've discussed it with my client. He's indicated the  
9 preference of two options of trying it tomorrow  
10 or trying it in March is to try it tomorrow.

11 MS. NORGARD: Mine also, Your Honor,  
12 but I don't know that I can say I feel as  
13 confident about the ten pages, in thoroughness  
14 of it, but I guess we have some more time in  
15 the meantime so we're also prepared to proceed  
16 tomorrow.

17 MR. KING: We're prepared to go forward,  
18 Your Honor. I have reviewed that report summarily  
19 with Mr. Banks who would agree to go forward  
20 tomorrow as well.

21 THE COURT: All right.

22 MR. WHITE: Your Honor, and a couple  
23 of things just for clarification. A couple  
24 of the problems the defense attorneys had I just  
25 want them to know aren't going to be problems.

1 The two confidential informants that were alluded  
2 to in the report are not going to testify.  
3 Pam Boerger and Jacqueline Kent are not going  
4 to testify.

5 MR. KING: I appreciate that.

6 MR. WHITE: The other information that I  
7 can provide to the Court and to the defense  
8 counsel, a number of witnesses, Timothy Hatleli,  
9 Linda Devney, Jan Zillmer were testifying as  
10 to Ms. Peterson's involvement only. They are not  
11 going to be testifying, obviously, given Ms. Peterson's  
12 plea. And, likewise, as to Charles Williams.  
13 He was one of the confidential informants at issue  
14 in that letter. He will not be testifying either.  
15 So I think that that would address a number of  
16 the concerns that folks had.

17 THE COURT: How many witnesses do you  
18 have?

19 MR. WHITE: I have --

20 MR. NELSON: And name them if you would  
21 please.

22 MR. WHITE: Well, what I can do is give --  
23 these witnesses will with very close to one hundred  
24 percent certainty testify. Jennifer Ellefson, --

25 THE COURT: Wait, I'm writing these down

1           because -- Jennifer --

2                   MR. WHITE: E-L-L-E-F-S-O-N.

3                   THE COURT: Okay.

4                   MR. WHITE: Sheri, S-H-E-R-I Mitchell.

5                   THE COURT: S-H- --

6                   MR. WHITE: E-R-I Mitchell.

7                   THE COURT: Okay.

8                   MR. WHITE: Chris, C-H -- do you want me  
9           to give all lay witnesses first?

10                  MS. NORGARD: Just keep going.

11                  THE COURT: Sure.

12                  MR. WHITE: Okay.

13                  THE COURT: All right, who is Chris?

14                  MR. WHITE: That's an officer. I'll give you  
15           all the lay witnesses first.

16                  Flentora Adams. She obviously had been one  
17           of the codefendants in the case originally.

18                  Adam Rindal, R-I-N-D-A-L. Chris, with a C-H,  
19           and he's a male, Emma, E-M-M-A, Connie Whitehorn,  
20           Hollie Peterson. And then the officers who I say  
21           with nearly one hundred percent certainty will  
22           testify are Paul Smith and Chris Krichman,  
23           K-R-I-C-H-M-A-N, and Tom Roemhild, R-O-E-M-H-I-L-D.  
24           They are from the University Safety and  
25           Security.

1 THE COURT: Who are, the last two?

2 MR. WHITE: All three of those, Smith,  
3 Krichman and Roemhild are university officers.

4 THE COURT: Okay.

5 MR. WHITE: Then drug unit officers who may  
6 testify are Tim Hoyt, Andy Falk, Russ Cragin.

7 THE COURT: How do you spell Cragin?

8 MR. WHITE: C-R-A-G-I-N.

9 THE COURT: Okay.

10 MR. WHITE: And Jeff Wilson. And then  
11 from the Division of Narcotics Enforcement John  
12 Spallees, S-P-A-L-L-E-E-S.

13 THE COURT: S-P-A-L-L --

14 MR. WHITE: E-E-S.

15 And then from the Eau Claire Police  
16 Department Ted Feisst, F-E-I-S-S-T, and Jerry  
17 Staniszewski, S-T-A-N-I-S-Z-E-W-S-K-I. The crime  
18 lab witnesses were identified in the reports that  
19 they have but if you need the names they are  
20 Anthony Spadafora, S-P-A-D-A-F-O-R-A, Michelle  
21 Zimmerman, and Kim Vonnahme, V-O-N-N-A-H-M-E.

22 THE COURT: Okay, Mr. Starr, do you have  
23 witnesses who you've identified so that I can ask  
24 jurors if they know the, any of them?

25 MR. STARR: I have none at this time,

1 Your Honor.

2 THE COURT: Mr. Nelson?

3 MR. NELSON: Krissy Williams, Your Honor.

4 THE COURT: Krissy?

5 MR. NELSON: Krissy, K-R-I-S-S-Y Williams.

6 THE COURT: Okay.

7 MR. NELSON: Herbert Collins, and then two  
8 other people that I think Mr. King knows their  
9 names.

10 THE COURT: Ms. Norgard?

11 MS. NORGARD: Pearl Hicks, H-I-C-K-S, and  
12 Eugene Hampton, H-A-M-P-T-O-N, and potentially  
13 Melee Eagleman, E-A-G-L-E --

14 THE COURT: The first name?

15 MS. NORGARD: Melee, M-E-L-E-E.

16 THE COURT: And the last name again?

17 MS. NORGARD: Eagleman like red eagle,  
18 E-A-G-L-E.

19 THE COURT: Okay. And, Mr. King?

20 MR. KING: Two, Your Honor. Connie Hanson  
21 and Bianca Gillett.

22 THE COURT: What was the last name?

23 MR. KING: Gillett, G-I-L-L-E-T-T.

24 THE COURT: And the first, her first name  
25 or his?

1 MR. KING: Bianca, B-I-A-N-C-A.

2 THE COURT: Okay. Have you made  
3 determination whether clients are going to testify,  
4 Mr. Starr?

5 MR. STARR: At this point in time I do not  
6 anticipate to have my client testify.

7 THE COURT: Mr. Nelson?

8 MR. NELSON: The same, or, but obviously that  
9 may change.

10 THE COURT: I understand that.

11 Ms. Norgard?

12 MS. NORGARD: The same, and I also neglected  
13 Marlin Thomas.

14 THE COURT: Who?

15 MS. NORGARD: Marlin Thomas, T-H-O-M-A-S.

16 And as my colleagues, I have not made that  
17 determination final.

18 THE COURT: Are the witnesses the defense  
19 named, are they all Eau Claire people?

20 MS. NORGARD: None.

21 THE COURT: Any of them?

22 MS. NORGARD: None.

23 MR. KING: Some, my two are from around  
24 here.

25 THE COURT: Hanson and Gillett?

1 MR. KING: (Indicating.)

2 THE COURT: Okay. As I recall on strikes you  
3 were going to take how many?

4 MR. WHITE: Five, and then the defense  
5 attorneys were going to take two each. We were  
6 originally planning on ten because of five, but  
7 obviously that would leave them with eight for a  
8 total.

9 And then we were going to have two alternates  
10 so we would end up with --

11 THE COURT: You've got an awful lot of  
12 witnesses. Are they --

13 MR. WHITE: Well, several of the witnesses  
14 should be relatively short and I suspect that the  
15 defense witnesses shouldn't be long. And I, I  
16 didn't mention Vern Vandenberg. He's another one  
17 of the drug officers that may potentially testify.  
18 All of those witnesses may not testify. Some of the  
19 officers may not.

20 THE COURT: One of the things we have to  
21 make sure is we don't get hopelessly bogged  
22 down in repetition and so I would think that  
23 when Mr. White is done with his direct examination,  
24 assuming that the witness primarily testified  
25 against, for example, Mr. Madison, I would think

1       you would lead off, Mr. Starr, with cross.     I  
2       would ask you not to be repetitious and not  
3       object -- that's going to be difficult because  
4       four lawyers have four different styles, but I  
5       think we need to avoid asking all kinds of  
6       extra questions just because you happen to  
7       think of them.     I think if they apply to your  
8       client, then fine, but I would assume there's been  
9       some witnesses where some defense lawyers have no  
10      questions.

11               MS. NORGARD:   That may well be, Your Honor,  
12      but you also suggested, and this is true by my  
13      count, there are some eighteen officers involved  
14      in this case.     And, basically, for almost every  
15      contact that I can see there are at least three  
16      to every one defendant so --

17               THE COURT:   Well, that's fine, but in the  
18      event that the, if your predecessor asks the question,  
19      you don't need to ask it.

20               MS. NORGARD:   Well, I don't think any of  
21      us want to forego any opportunity for cross-exam,  
22      Your Honor.

23               THE COURT:   I'm not asking you to forego  
24      anything.     If it gets repetitious, you're going  
25      to do so at your peril and if I have to, this



1 is for all of you, if I have to make an  
2 admonition in front of the jury, I think I will  
3 and I imagine -- that's always very difficult  
4 for me to do and very difficult for you to  
5 receive. So I'm asking all of you to listen  
6 carefully to the questions that have been asked  
7 and not to rehash them just because it's your  
8 turn and you can't think of anything else to  
9 ask because we're going to get through this trial  
10 and I want to not unduly burden the process in  
11 doing so.

12 Opening statements are going to be made  
13 at the conclusion of Mr. White's or at the  
14 beginning of your case or don't you know that  
15 yet?

16 MR. STARR: Mine would be right after  
17 Mr. White's.

18 MR. NELSON: Same, more than likely, but,  
19 of course, I --

20 MS. NORGARD: I'm in the same position as  
21 my colleague to the right.

22 THE COURT: Which is what?

23 MS. NORGARD: I would initially -- my  
24 assumption is I would go after Mr. White but,  
25 again, --

1 THE COURT: Well, all right. Again, I do,  
2 the other thing that I want to caution everybody  
3 on, if I have to put a time limit on openings  
4 and closings, I'm prepared to do so. I don't  
5 like to do that but I do think that we've got  
6 a lot of ground to cover and less time than  
7 normally to do it.

8 Mr. King, what is your thought on it?

9 MR. KING: On opening statement?

10 THE COURT: Yes, sir.

11 MR. KING: After Mr. White.

12 THE COURT: Okay.

13 MR. NELSON: Your Honor, I don't know if  
14 now is the appropriate time, but based on  
15 the information that I received regarding  
16 Hollie Peterson's statement there is a Motion in  
17 Limine that I'd like to make if now is the  
18 appropriate time.

19 THE COURT: Sure.

20 MR. NELSON: In her statement she  
21 indicates or implicates my client in several  
22 activities in Minnesota and on Exhibit Number 1,  
23 which the State handed to me, it indicates that  
24 under my client's name and Mr. Madison's name  
25 and under Mr. Banks' name there is a writing

1 "Manufacture kilograms of powder cocaine into crack  
2 cocaine and distribute it in the Eau Claire  
3 and Minneapolis/St. Paul areas," and I would move  
4 for a Motion in Limine to eliminate any talk  
5 of criminal activity taking place in Minneapolis  
6 and/or St. Paul or basically anything taking  
7 place outside of Eau Claire County especially  
8 anything regarding times prior to January 1 of 2001  
9 because the other things she mentioned are things  
10 that have taken place two years ago, three years  
11 ago and that's not relevant, my argument is that's  
12 not relevant to these counts based on timeframe,  
13 based on venue.

14 MR. KING: I guess I would join in that  
15 motion as well, Your Honor. Same points.

16 MR. WHITE: The two pieces, well, the  
17 one piece of drug information outside the timeframe  
18 of 2001 is, as Mr. Nelson alluded to, deliveries  
19 by him on an ongoing basis in the year 2000  
20 in the State of Minnesota. That's when Ms. Peterson  
21 first started dealing with him. She purchased  
22 crack cocaine from him on a nearly daily basis  
23 on an ongoing basis for several months and then  
24 did the same with Mr. Madison continuing that into  
25 Eau Claire.

1           There are multiple federal cases because  
2 federal cases tend to address this issue more  
3 often that specifically recognize that other  
4 acts evidence in drug cases is uniquely suited  
5 to those cases because you have to show  
6 capacity. We're claiming that these individuals  
7 had the capacity to deliver large amounts of  
8 crack cocaine and if we have other incidents  
9 showing them having their hands on large  
10 amounts, that's relevant as we're going to be  
11 alleging in this case huge quantities during the  
12 year 2001.

13           I don't know how much more prejudicial  
14 it is to have Hollie Peterson say I started  
15 in 2000 with Mr. Cohens. The jury is not  
16 going to think suddenly these people started  
17 out of the blue so the fact that it was ongoing  
18 in the year 2000 into the year 2001 is not  
19 unfairly prejudicial given the fact that in  
20 drug cases the courts have recognized appropriate  
21 nature of other acts evidence to show capacity.  
22 So from my perspective that's really the one  
23 out-of-state concern. There are some discussions  
24 of Chicago but the State's case, of course, is  
25 that the drugs came from Chicago.

1                   MR. NELSON:       I think it's a whole  
2 different argument to say somebody went to  
3 Chicago, brought it back, they brought that  
4 specific cocaine back, that specific person,  
5 whether it be Mr. Northern, Mr. Banks, Mr. Madison  
6 or Mr. Cohens. They brought it back. But what  
7 I'm talking about is the statement that  
8 Hollie Peterson, a witness left the State of  
9 Wisconsin, went to another state and she transported  
10 it back. That's different than somebody else  
11 going there and bringing it back. This is my client  
12 in another state according to her.

13                   The other thing is, obviously, Mr. White  
14 is in a better position to know what Hollie Peterson  
15 is going to say but my brief reading of it was  
16 that Hollie Peterson, according to Hollie Peterson  
17 she goes to Minnesota, she buys cocaine from my  
18 client in Minnesota in the year 2000. She then  
19 meets, according to Hollie Peterson, Mr. Madison  
20 and then Mr. Madison begins bringing it into  
21 Eau Claire and she has a relationship with  
22 Mr. Madison January, February, March and April  
23 and then gets in another relationship with my  
24 client again in late spring.

25                   She is not very good on dates but my

1 concern is it's into the continuum. She supplies  
2 my client in 2000 and again according to the  
3 report, what I previously saw, doesn't really  
4 have much contact with him spring, late spring,  
5 early summer and so now how is what my client  
6 did in Minnesota in another year six months  
7 prior to this relevant to what he did in  
8 Eau Claire? And I would think it's extremely  
9 prejudicial. It's unfairly prejudicial and  
10 it's the State's, the State needs to prove  
11 that those other acts evidence can come in as  
12 opposed to it's not our burden so if the State  
13 has some case law they need to present, make a brief  
14 on it, I guess --

15 MR. WHITE: If you want to give me thirty  
16 seconds I'll grab a brief on it. I've got multiples  
17 of them.

18 THE COURT: I'm satisfied what you're  
19 saying is indeed the state of the law. At least  
20 as I understand it. And provided it's merely  
21 setting the stage for the charges that exist  
22 in Eau Claire County, which it sounds like  
23 what it's supposed to be for, I'm going to  
24 deny the motion. If it gets too lengthy, then  
25 I'll deal with it then or if I feel we're getting

1 off into prejudicial territory.

2 MR. NELSON: Your Honor, can I just note  
3 for the record we're opposed, for the trial,  
4 just a continuing objection to any evidence  
5 regarding my client's alleged sales of cocaine?

6 THE COURT: I took that to be a continuing  
7 objection.

8 MR. NELSON: Great.

9 THE COURT: Same with Mr. King?

10 MR. NELSON: Thank you.

11 MR. KING: Thank you, Your Honor.

12 THE COURT: All right. What else can we  
13 do?

14 One of the concerns I have is again the  
15 sheer volume of certain things like reading the  
16 information to the jury.

17 MR. WHITE: I have a rough draft of  
18 proposed instructions that I will proof and  
19 provide to you and the defendants either late  
20 this afternoon or tomorrow morning. It's the  
21 substantive instructions and the party to the  
22 crime issue. On the issue of party to the crime  
23 the --

24 THE COURT: How do you suggest -- I  
25 typically, at the beginning of the trial I read

1 the information to the jury and say the defendant  
2 has entered not guilty pleas to all counts, you  
3 know, go into that business. But as I recall,  
4 this information is about twenty pages long.

5 MR. WHITE: Well, what you could do is,  
6 what I did in the instructions that I drafted  
7 was said that the defendants have been charged  
8 as party to the crime in counts one through  
9 five with possession with intent to deliver  
10 more than one hundred grams of cocaine and  
11 then you just list what each of the charges is,  
12 each of the defendants is, and then you give  
13 them a quick summary of the three charges because  
14 in this case --

15 THE COURT: Do you want to prepare something  
16 like that for me?

17 MR. WHITE: Sure. Sure.

18 MR. NELSON: Your Honor, briefly in response  
19 could I just ask that Mr. White provide that  
20 brief so if in the short time between now and  
21 tomorrow morning I actually have the opportunity  
22 to do any research regarding that issue I  
23 could present it again to Your Honor tomorrow  
24 morning?

25 THE COURT: All right, you're back on the



1 law on the other acts?

2 MR. NELSON: On the other acts issue, right,  
3 Your Honor.

4 MR. WHITE: That's fine. I mean, I'll --  
5 obviously, I'll provide you a copy with one of the  
6 briefs I've done recently, Your Honor, and provide a  
7 copy to Mr. Nelson.

8 THE COURT: Are there exhibits?

9 MR. WHITE: I have pre-marked nine exhibits  
10 that I have on the power point that I used in  
11 the Zimmerman case. Besides that I have the  
12 crime lab reports. The copies have been provided  
13 to the defense attorneys of those. There are I  
14 think one or two crime lab reports that, tests that  
15 I will provide tomorrow.

16 THE COURT: I'd like everything pre-marked.

17 MR. WHITE: Right.

18 THE COURT: By all of you, I mean, rather  
19 than all of a sudden start to root around in the  
20 file and take it to the clerk, have it marked and  
21 show it to counsel.

22 Do you anticipate exhibits, Mr. Starr?

23 MR. STARR: No, I don't, Your Honor.

24 THE COURT: Mr. Nelson?

25 MR. NELSON: Other than impeachment based

1 on police reports I don't have any and that's --  
2 I don't know if we necessarily want to go through  
3 and mark every police report at this point.

4 THE COURT: I don't either, but I don't want  
5 to lose a lot of time in the laundering around,  
6 carrying exhibits and showing them to the witnesses  
7 and so forth.

8 MR. NELSON: I trust that most of the  
9 officers are going to testify consistent with their  
10 reports anyway, but --

11 THE COURT: Yes, I would assume so.

12 MR. NELSON: Let's hope so.

13 MR. WHITE: The one point that I should  
14 make is that several of the defendants are  
15 charged as party to the crime with multiple counts.  
16 Three of the counts do not contain the party  
17 to the crime heading that will proceed as party  
18 to the crime. Those are counts seven, eight  
19 and thirteen. Seven and eight are possession  
20 with intent to deliver cocaine against Banks and  
21 Northern respectively, and thirteen is a delivery  
22 against Mr. Madison.

23 The Supreme Court pointed out in State v.  
24 Zelenka at 130Wis.2d34, a 1986 case, that the State  
25 can proceed as party to the crime even if we

1 don't designate, but in fairness to the defense  
2 attorneys I at least want to give them notice  
3 today that besides the counts in the complaint  
4 or in the information that are denoted party  
5 to the crime I will be reading and requesting  
6 instructions to the jury on seven, eight and  
7 thirteen as party to the crime also given what I  
8 expect the evidence to be.

9 THE COURT: When do you see that your case  
10 in chief would be done?

11 MR. WHITE: Hopefully the end of Thursday.  
12 I mean part of it is how quickly --

13 THE COURT: There better not be too much  
14 hope to it because I think that it's going to,  
15 I think everything in this trial is going to  
16 be elongated because of the number of defendants  
17 so I mean the voir dire process will take longer.  
18 I think the, obviously, the opening statements  
19 will take longer, the instructions will take a lot  
20 longer. So --

21 MR. WHITE: Yeah, I intend to, I mean I  
22 made a, I think I made a very diligent effort to  
23 hone things down quite significantly and I intend  
24 to do that even more during the trial than my  
25 initial plan so I intend to be pretty brief,

1 Your Honor.

2 THE COURT: All right.

3 MR. WHITE: What I would do just to avoid  
4 confusion is file a second amended information that  
5 gets rid of counts as to Hollie Peterson because right  
6 now the information finishes --

7 THE COURT: That would be good.

8 MR. WHITE: It finishes with count fifteen  
9 as to Mr. Madison and then it skips eight or  
10 nine counts and finishes off with Mr. Cohens and  
11 if we only submit one through fifteen and four to  
12 the jury, they're going to be wondering what  
13 happened to the interim counts so I'll submit an  
14 amended information that just has charges against  
15 these four codefendants.

16 THE COURT: Thank you.

17 All right, anything else you want to do  
18 here, Mr. Starr?

19 MR. STARR: Nothing I can think of, Your  
20 Honor.

21 THE COURT: Mr. Nelson?

22 MR. NELSON: The only thing is, Your Honor,  
23 the idea of designating a lead attorney on each  
24 witness. Is that something Your Honor is going  
25 to designate or would you like the four of us to

1 sort it out?

2 THE COURT: I guess the best way would  
3 be for the four of you to sort it out. I don't  
4 want to be heavy handed or, I mean, if I think  
5 each of you would say I really have got a pretty  
6 good idea how I'm going to approach this witness,  
7 let me go on that one. So I think if the four  
8 of you can work out something over the course  
9 of the evening just so there's some natural beginning  
10 and end.

11 MR. NELSON: Okay.

12 THE COURT: Is that agreeable?

13 MR. NELSON: I mean at least as to the lay  
14 witnesses. I'm sure we all want first crack at the  
15 different police officers but I think that should be  
16 rather simple and the lay witnesses --

17 THE COURT: And even if you want to  
18 divide those up in some kind of fashion so you  
19 can focus your cross-examination, which I would  
20 think would be easier on you to know you're  
21 going to have the laboring or on Tim Hoyt and  
22 Mr. Starr is going to have it on somebody else,  
23 and I would think it would be easier for you to  
24 prepare that way.

25 MR. NELSON: I would agree.

1 THE COURT: All right, and Ms. Norgard,  
2 what do you still have?

3 MS. NORGARD: I have a Motion in Limine,  
4 Your Honor, with regard to materials that are  
5 produced by the State about Trans Union.

6 THE COURT: About what?

7 MS. NORGARD: The Western Trans Union.

8 MR. WHITE: We're not going to introduce  
9 those.

10 THE COURT: So you just won.

11 MS. NORGARD: None of it?

12 MR. WHITE: None.

13 THE COURT: And what about your Motions for  
14 Illegal Arrest or --

15 MS. NORGARD: That I would like to continue  
16 with, Your Honor. These folks are not involved with  
17 that.

18 THE COURT: All right, Mr. King, what do you  
19 have?

20 MR. KING: Nothing further at this point,  
21 Your Honor.

22 THE COURT: All right. You want to take a  
23 two-minute break?

24 MS. NORGARD: Two minutes would be good,  
25 Judge.

1 THE COURT: Let the bailiffs take back  
2 whoever they don't need here.

3 (Defendants Terrance Madison, Veldee T. Banks  
4 and Tyeshawn D. Cohens exited the courtroom.)

5 (A short recess was taken.)

6 MR. WHITE: Your Honor, if we can put  
7 one more thing on the record. The defense  
8 attorneys are obviously entitled to know, and  
9 I would have disclosed in the direct examination  
10 anyway, that Ms. Peterson in return for her  
11 complete and truthful statement and testimony in  
12 this matter received an offer from the State  
13 which provided that in return for her plea to one  
14 count of delivery of more than one hundred grams  
15 of cocaine the State was moving to dismiss and  
16 read in all of the other pending charges against  
17 her in Eau Claire County. We agreed to recommend  
18 a prison sentence of no more than five years,  
19 the initial period of incarceration, with three  
20 years of extended supervision. The defendant  
21 could not argue for any less than three years  
22 initial period of confinement with the minimum  
23 one-quarter extended supervision. And that sets  
24 forth the substance of the agreement in Ms. Peterson's  
25 matter.

1 MR. NELSON: My only question is were there  
2 any other cases that were dismissed as well as the  
3 counts in this case?

4 MR. WHITE: There were. If you check in  
5 the clerk's office they can give you the case  
6 numbers.

7 THE COURT: Yes, there were about three or  
8 four files.

9 MR. WHITE: Ask for Steph. She can give you  
10 the clerk's notes.

11 MR. NELSON: Okay. And is that something,  
12 Your Honor, on those like Sheri Mitchell's case  
13 or on Hollie Peterson's case we can assume that  
14 the court files, you'll take judicial notice of,  
15 in case there's any issue about any of that?

16 THE COURT: I'm sorry. I guess I'm not  
17 following.

18 MR. NELSON: Well, if -- I mean I don't  
19 have these notes but I'm assuming the complaints  
20 for Sheri Mitchell in the cases that were  
21 dismissed or judgment of convictions in  
22 Sheri Mitchell's or minutes are the same for  
23 Hollie Peterson, they're all in her court file  
24 and until the next --

25 THE COURT: Oh, if you want access to those,



1 too, is that what you're saying?

2 MR. NELSON: Well, want access but I assume  
3 Your Honor is going to take judicial notice of other  
4 Eau Claire County court files.

5 MR. WHITE: I have no problem. They're  
6 going to be entitled to introduce evidence what  
7 she got in return for her testimony. Quite frankly,  
8 I'm going to introduce evidence of that so my  
9 position is it can't be repetitive after that, but  
10 if they need to, I have no problem with them  
11 asking you to take notice of that during the course  
12 of the trial.

13 THE COURT: That's fine.

14 MR. NELSON: I doubt it would be an issue  
15 but --

16 (Attorneys Starr, King and Nelson exited the  
17 courtroom.)

18 THE COURT: All right, let's proceed then on  
19 the Motions for State versus Lawrence Northern which as  
20 I recall the Motions were for Illegal Stop and Illegal  
21 Arrest. Is that --

22 MS. NORGARD: Yes, Your Honor.

23 MR. WHITE: Tim Hoyt.

24 TIMOTHY W. HOYT, called for examination,  
25 being first duly sworn, testified as follows:

1 THE COURT: Good afternoon.

2 THE WITNESS: Afternoon, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. WHITE:

5 Q. Can you state your name and spell your last name for  
6 the record please?

7 A. Timothy W. Hoyt. H-O-Y-T.

8 Q. By whom are you employed?

9 A. I'm an investigator with the Chippewa Falls Police  
10 Department currently assigned with the West Central  
11 Drug Task Force.

12 Q. Were you employed and assigned in that capacity on  
13 September 20 of this year?

14 A. Of 2001, yes.

15 Q. Yes, 2001. I'm sorry.

16 A. Yes.

17 Q. On that date did you take part in the execution  
18 of a search warrant at the Comfort Inn Motel  
19 located on Craig Road in the City and County of  
20 Eau Claire?

21 A. Yes.

22 Q. Prior to arriving at the motel that day did  
23 you or other officers from the West Central Drug  
24 Task Force receive a search warrant from the  
25 Eau Claire County Circuit Court allowing a search

1 of one of the rooms at that hotel?

2 A. Yes.

3 Q. When you arrived at the motel did you have information  
4 as to who the renter of that room was?

5 A. Yes, it was Brock Larson.

6 THE COURT: We're not using the microphones.

7 THE WITNESS: Okay. I was like -- okay.

8 MR. WHITE:

9 Q. (Continuing) At the time did you have any knowledge  
10 of possible illegal drug activity engaged in by  
11 Mr. Larson during the time period of late spring to  
12 summer into the fall of 2001?

13 A. Yes.

14 Q. Could you briefly explain what knowledge you had?

15 A. Brock Larson along with his other people he was  
16 hanging around with were dealing in large amounts  
17 of crack cocaine throughout the Eau Claire and  
18 Chippewa Falls area.

19 Q. Besides having that information through whatever  
20 sources you may have had at the time did you  
21 have sufficient information and provide that  
22 information to my office so that criminal charges  
23 were issued against Mr. Larson in May or June of  
24 2001 for possession with intent to deliver of  
25 cocaine and THC?

1 A. Yes.

2 Q. And did that involve a May 24<sup>th</sup> incident from last  
3 year?

4 A. Yes.

5 Q. Now, when you arrived at the hotel did you see  
6 Mr. Larson at the hotel?

7 A. Not immediately, no.

8 Q. At some point after that?

9 A. Yes.

10 Q. Describe for me when you saw him and what you  
11 observed.

12 A. Members of the Drug Task Force and Eau Claire  
13 Police Department entered the room and I believe  
14 it was two twenty-five of the Comfort Inn. They  
15 stated that, I don't know who stated, but somebody  
16 stated that two subjects who were frequenting  
17 the room were walking upstairs and heading  
18 towards the room. Investigator Scott Vankirk  
19 and I stepped out into the hallway, two subjects  
20 came into the hallway, turned and ran toward the  
21 exit.

22 Q. Did you recognize either of those individuals?

23 A. Yes.

24 Q. One or both?

25 A. I recognized one.

1 Q. And who would that be?

2 A. Brock Larson.

3 Q. Prior to him turning and running would he have been  
4 in a position to see you or other officers?

5 A. Yes, Investigator Vankirk and I were clearly defined  
6 as police officers with the tactical gear we were  
7 wearing.

8 Q. What did you do after he took off running?

9 A. Investigator Vankirk and I proceeded to run after  
10 them stating that we were the police, ran down  
11 the stairs, out the exit. I couldn't tell you  
12 which exit of the Comfort Inn. Ran outside and  
13 a red Pontiac Grand Am, I believe, was backing  
14 up. Investigator Vankirk and I approached the car.  
15 I looked at the passenger. Once again I knew  
16 it was Brock Larson sitting in the passenger  
17 seat. I did not yet know the subject who was  
18 driving the vehicle. Investigator Vankirk stepped  
19 in front of the vehicle and the vehicle started  
20 moving forward. We then drew our weapons, stated  
21 that we were the police and they had to stop.

22 Q. Did the driver of the vehicle immediately stop the  
23 vehicle in response to your demands?

24 A. Not immediately, no. I moved closer to the vehicle and  
25 then he stopped.

1 Q. What happened then?

2 A. I told Investigator Vankirk that that is Brock Larson  
3 sitting in the passenger seat. He is the male  
4 subject that is renting the room. Please take  
5 him out of the car. I then went to the driver's  
6 side door, opened the door and asked the male  
7 subject to raise his hands and step from the  
8 vehicle. Once he stepped from the vehicle I placed  
9 him in handcuffs.

10 Q. What was the purpose of detaining Mr. Larson and  
11 this other individual at that time?

12 A. We had prior knowledge over the past few months  
13 since that date that several of the subjects that  
14 were dealing crack cocaine carried weapons either  
15 on their person or in various places in the car,  
16 inside the engine block, in the trunk. The only  
17 reason he was placed in handcuffs was the fact  
18 that I didn't know if he had a weapon on him and  
19 I was detaining him.

20 Q. Now, the information you've been alluding to, did you  
21 receive that from one individual or more than one  
22 individual?

23 A. Several individuals including police officers and  
24 confidential informants.

25 Q. And were those individuals known to you at the time

1           they provided the information?

2       A.    Yes.

3       Q.    Now, what happened after you detained Mr. Northern  
4           outside of the vehicle? What did you do?

5       A.    Asked him who his, what his name was. He responded  
6           it was Lawrence Northern. Through contact with  
7           several individuals through the past few months I  
8           knew that Mr. Northern was dealing in large amounts  
9           of crack cocaine.

10           MS. NORGARD: Objection, Your Honor.

11           MR. WHITE: The basis for the objection?

12           THE COURT: What's the objection?

13           MS. NORGARD: You're speculating. You have  
14           no basis. You didn't even recognize who this person  
15           was.

16           MR. WHITE: She can cross-examine, Your  
17           Honor, but that is not a legal objection. The rules of  
18           evidence don't apply at a motion hearing. Officers  
19           base their actions on information they get from all  
20           kinds of sources and, of course, by definition is  
21           hearsay. She can cross-examine as to his reliability  
22           of information.

23           THE COURT: I agree. I'll overrule the  
24           objection.

25           MR. WHITE:

1 Q. (Continuing) Please go ahead.

2 A. I knew that Mr. Northern was transporting large  
3 amounts of crack cocaine to the Eau Claire area.  
4 I brought him away from the vehicle and being  
5 that I had prior knowledge that several of the  
6 subjects had carried weapons in the past I wanted  
7 to pat him down.

8 Q. Okay. Now, let me just stop you for a minute.  
9 By the time that this incident occurred on  
10 September 20, had you had some conversations with  
11 other investigators from the drug unit, had some  
12 conversations with a woman by the name of  
13 Denise Davis?

14 A. Yes.

15 Q. And some conversation with a woman by the name  
16 Sheri Mitchell?

17 A. Yes.

18 Q. Did those individuals provide you with information  
19 about the drug activities, the drug activities of  
20 Mr. Northern that you've been alluding to?

21 A. Yes.

22 Q. Okay. Now, please explain to the Court what happened  
23 after you took him out of the vehicle.

24 A. I brought him away from the vehicle and to get him  
25 away from Mr. Larson, asked if I could pat him



1 down for a weapon or contraband. He stated go  
2 ahead. As I was patting him down I felt in one  
3 of his pockets a hard object. Knowing that  
4 the subjects had carried weapons in the past I  
5 felt the object and there was other things besides  
6 the hard object inside of his pocket. I grabbed  
7 just to make sure it wasn't a gun or any other  
8 type weapon and found it was a cell phone along  
9 with a large wad of cash.

10 Q. Now, after finding that initial information or  
11 finding evidence at some point did you find  
12 evidence which provided you with the basis to  
13 arrest Mr. Northern?

14 A. Yes.

15 Q. Did that evidence come in the form of some illegal  
16 substances found in the hotel room?

17 A. Yes. They found crack cocaine.

18 Q. And how long after the stop of the vehicle was it  
19 that that evidence was located?

20 A. It was within fifteen minutes.

21 Q. Did you also receive some information from an  
22 individual named Chris Emma?

23 A. Yes.

24 Q. Did Mr. Emma implicate Mr. Northern and Mr. Larson  
25 in illegal drug activity that day?

1 A. Yes.

2 Q. How long did that information come after the initial  
3 stop of the vehicle?

4 A. It wasn't too long after the stop that Mr. Emma  
5 telephoned the cell phone which I took from one  
6 of the subjects and Mr. Falk, Investigator Falk  
7 had a conversation with Emma who proceeded to come  
8 to the scene.

9 Q. And that's when you obtained the information?

10 A. Yes.

11 MR. WHITE: I have nothing further.

12 THE COURT: MS. Norgard.

13 CROSS-EXAMINATION

14 BY MS. NORGARD:

15 Q. Yes. Detective, the Comfort Inn, tell me a little  
16 bit about the physical location. It's located  
17 where?

18 A. I can tell you it's located on Craig Road. It's  
19 by a bunch of other hotels and fast food  
20 restaurants.

21 Q. And do you recall what kind of carpeting is in the  
22 facility?

23 A. I'm sure it was a flat carpeting like this. It wasn't  
24 a shag carpet or anything.

25 Q. Color?

1 A. I don't remember, ma'am.

2 Q. Okay. Do you recall anything about the exit or  
3 entrances into that facility?

4 A. They were clearly marked by an exit sign and to  
5 get out the exit where we were we had to walk  
6 down steps to get outside to follow Mr. Northern  
7 and Mr. Larson.

8 Q. Okay. And do you recall there is that, actually  
9 is only one entrance into the main, in other words,  
10 you cannot get in an exit door, there are  
11 exit doors on the ends but in fact there is only  
12 one entrance into that facility?

13 A. You can get in on the other sides. There are doors,  
14 ma'am. They can open the door and get in on the  
15 other sides beside the main front entrance. There  
16 are glass doors.

17 Q. But you have to have a key. There is one main  
18 entrance for people coming in.

19 Room two twenty-five faces which way,  
20 Officer?

21 A. I have no clue, ma'am. I'm not -- as far as  
22 north, east, west and south in Eau Claire, I don't  
23 know.

24 Q. Okay. Let me rephrase that. Two-story building  
25 hotel, front entrance, drive-in parking lot. Room

1       twenty-five from your recollection is on what, in  
2       what relationship to the front door, where is room  
3       two twenty-five?

4       A. From the front door I walked in, walked up the  
5       stairs, took a left, walked down several, past  
6       several doors and the door was on the right side  
7       as I was walking toward the exit they ran  
8       out of.

9       Q. Okay. So what I am trying to get at, Officer,  
10      is that the front entrance door is on the opposite  
11      side of the building from room two twenty-five.  
12      Room twenty-five, does it not, face out actually  
13      into a set of condominiums out behind it?

14     A. I don't recall, ma'am.

15     Q. Okay. Room two twenty-five, a person in room  
16      two twenty-five on the other side of the wall --  
17      in other words, rooms are numbered, you know,  
18      chronologically and there are all odd numbers and  
19      there are even numbers. Room twenty-five as  
20      you're standing in the building going down the  
21      hallway is on this side of the room. I'm pointing  
22      to my left.

23     A. Uh-huh.

24     Q. The front entrance or the main parking section  
25      is on the right side and unless the doors in

1       that whole section were open, you cannot see,  
2       can you, Officer, from room two twenty-five to  
3       the downstairs parking lot where people would have  
4       to come in?

5     A.   What I can tell you is if I were --

6     Q.   That's a yes or no. Yes or no, you can see?

7     A.   I got to explain myself, ma'am. It's not that  
8       easy.

9     Q.   I'm asking you, room two twenty-five is on the  
10       opposite side of the hallway as the exit, main  
11       exit downstairs. There are a block of rooms,  
12       okay, so two ten, two twelve, two fourteen, two  
13       sixteen, two eighteen, they are even numbered;  
14       right? Odd numbered rooms are on the embankment  
15       that leads up against the back section there.  
16       They're likely townhouses. I would call them condos.  
17       They're gray.

18    A.   I recall them, yes.

19    Q.   Okay. Very good.

20               Now, you've also stated that you're a member  
21       of the West Wisconsin Drug Task Force.

22    A.   West Central Drug Task Force.

23    Q.   I'm sorry, Officer. And Officer Wilson is the primary  
24       officer, kind of the coordinator of what you call the  
25       group?

1 A. He's the supervisor.

2 Q. Supervisor, yes. I'm sorry. And in that capacity  
3 you are under his supervision; correct?

4 A. Yes.

5 Q. And you also stated earlier that you have received  
6 information from someone, and it wasn't clear who,  
7 about some possible concerns at the hotel and that  
8 you also were involved in the or, you were involved  
9 in participating and executing the search warrant;  
10 correct?

11 A. I was part of the execution of the search  
12 warrant.

13 Q. And what knowledge do you have about the basis upon  
14 which the office, and I'm talking about the  
15 housekeeping person and the manager, contacted the law  
16 enforcement?

17 MR. WHITE: Objection. Relevance, Your  
18 Honor. She has filed a motion challenging probable  
19 cause for the stop -- I mean there was no reasonable  
20 suspicion justifies the stop. She hasn't challenged  
21 the search warrant.

22 THE COURT: I agree with that. I so  
23 far haven't understood why any of these questions  
24 have been asked but didn't want to interfere. I'll  
25 sustain the objection.

1 MS. NORGARD: Well, Your Honor, part of  
2 what I'm leading up to is the initial basis  
3 of the search warrant, the folks who reported the  
4 complaint at the hotel.

5 THE COURT: That's not the motion you  
6 filed.

7 MS. NORGARD: What I am getting at, Your  
8 Honor, is I want this officer to tell me what  
9 time he was involved in executing this search  
10 warrant.

11 THE COURT: My understanding of what the  
12 officer has already testified to is he hadn't, he  
13 came with that intent and he saw your client and  
14 another man leave, that he had not executed the  
15 search warrant.

16 Did I miss something?

17 THE WITNESS: They executed the search  
18 warrant, Your Honor, and as they were in the room  
19 they stated that two subjects that were frequenting  
20 the room were coming up the stairs so the  
21 investigators were inside the room and then I  
22 walked out of the room with Investigator Scott Vankirk  
23 and the two subjects were coming up the exit  
24 toward us.

25 THE COURT: All right. Now, I'm confused.

1 And had the search warrant already been served?

2 THE WITNESS: Yes.

3 THE COURT: Had you done that?

4 THE WITNESS: I was part of that time going  
5 in, yes.

6 THE COURT: And where was Mr. Madison or  
7 Mr. Northern at that time?

8 THE WITNESS: It was within, talking  
9 minutes. They were in, we were in the room, like  
10 three minutes later they said, "Hey, there's two  
11 guys that were frequenting this room coming  
12 up the steps." And then I walked out of the  
13 room.

14 THE COURT: Now I get you.

15 THE WITNESS: Okay.

16 MS. NORGARD: And, Your Honor, I guess  
17 what I am trying to get at is the report or  
18 materials suggest that the concerns from the hotel  
19 came earlier in the day. The cleaning staff  
20 leaves between nine and eleven is when they're  
21 involved with their cleaning and I wanted to ask  
22 Officer Hoyt the time that he begins with his  
23 search warrant and I have material here that he has  
24 provided in reference to the time that the search  
25 warrant is issued.



1 Q. (Continuing) And do you recall, Officer, making  
2 this report, and I can certainly give a copy and  
3 have it marked, that you were involved with  
4 this at nine o'clock, twenty-one hundred hours  
5 to be exact, twenty-one hundred hours investigators  
6 from West Central --

7 THE REPORTER: Excuse me. Could you slow  
8 down please?

9 MS. NORGARD:

10 Q. (Continuing) At twenty-one hundred hours  
11 investigators from the West Central Drug Task Force  
12 executed a search warrant on room two twenty-five.  
13 Upon entrance into the room forty grams of cocaine,  
14 blah, blah, blah.

15 Do you recall that?

16 A. If it's in my report, I guess.

17 Q. And Officer Jeff Wilson is your superior officer?

18 A. Yes.

19 Q. Okay. And he is on the scene but his report I'd  
20 like you to identify his signature and I will  
21 mark these into evidence.

22 At ten oh one when he writes his report  
23 he says that at approximately twenty thirteen,  
24 which is eight thirteen, he's informing one of the  
25 other people in the room, a Brian Lett (ph.) of

1 his rights and he says that the investigation  
2 begins at eight o'clock. The search warrant begins  
3 at eight o'clock.

4 A. Is that a question, ma'am?

5 Q. So I want to know how it is then -- I'm going to  
6 get to the issue of the court, Your Honor.

7 I want to know how it is the commanding  
8 officer is reading somebody their rights at eight  
9 thirteen when you, in fact, you haven't even gotten  
10 to issue the search warrant until nine o'clock.  
11 And, furthermore, on that --

12 THE COURT: Let's do one question at a  
13 time.

14 MS. NORGARD: Okay.

15 Q. (Continuing) Okay. Jeff Wilson, eight o'clock, --

16 THE COURT: Do you understand what she's  
17 driving at?

18 THE WITNESS: I think what she's driving  
19 at our times are not coordinating with each  
20 other.

21 THE COURT: Can you explain that?

22 THE WITNESS: May I see my report?

23 MS. NORGARD:

24 Q. (Continuing) May you see your report? You can't  
25 recollect that report after all your extensive

1 involvement with this?

2 MR. WHITE: Your Honor, look, I've been  
3 very understanding of Ms. Norgard's apparent  
4 ignorance of the rules as to how the procedure  
5 works and, but I'm not going to stand by while  
6 she is argumentative and condescending to my  
7 officer. If she has points to make, she can  
8 make points. She doesn't have to argue and she  
9 doesn't have to be condescending.

10 MS. NORGARD: Your Honor, I don't intend to  
11 be rude but there was prior testimony about the  
12 involvement --

13 THE COURT: Why don't you just ask the  
14 question. Apparently there is a discrepancy in  
15 the time noted by Sergeant Wilson and time you  
16 noted.

17 Is that what this is all about?

18 MS. NORGARD: That's part of it, Your Honor.

19 THE COURT: All right, can you explain the  
20 discrepancy?

21 THE WITNESS: I could have made a mistake  
22 on the exact time in my report.

23 THE COURT: Or I suppose --

24 THE WITNESS: I might have not caught it when  
25 I was reviewing my report.

1 THE COURT: Or I suppose Sergeant Wilson  
2 could likewise.

3 THE WITNESS: Or Sergeant Wilson or  
4 Investigator Falk. You know, there were quite a few  
5 people there.

6 MS. NORGARD:

7 Q. (Continuing) Well, you'll forgive me if someone  
8 I see is so precise in terms of military time  
9 noting twenty-one hundred hours, and I guess the  
10 other question that I wanted to ask, Officer,  
11 you may not be aware of this but what I am  
12 talking about, your investigation at that facility,  
13 and I understand that you folks communicated  
14 or were contacted by the manager of the hotel.  
15 At nine a.m. in the morning until eleven is  
16 their routine cleaning time. Are you aware of  
17 that?

18 MR. WHITE: Objection. Relevancy.

19 THE COURT: What is the relevance?

20 MS. NORGARD: Your Honor, it relates to  
21 the fact that at nine o'clock to eleven o'clock  
22 cleaning is conducted. The complaint about what  
23 people saw or smelled or heard --

24 THE COURT: Well, I don't think this has  
25 anything to do with what I understood the motion

1 was.

2 MS. NORGARD: Well, I want to get back  
3 to that.

4 THE COURT: We're not going to wander  
5 around until you can find something you can ask  
6 about.

7 MS. NORGARD: No, no, Your Honor.

8 THE COURT: And if this is the way you  
9 intend to cross-examine in front of a jury,  
10 we've got some real problems, I can tell you  
11 right now. My understanding what we're doing here  
12 today, you were challenging whether he had a  
13 sufficient basis to, first, stop the car and then,  
14 secondly, detain Mr. Northern.

15 MS. NORGARD: That's correct, Your Honor.

16 THE COURT: All right, let's focus on  
17 that. I don't care about a cleaning schedule.  
18 I don't care what rooms folks were in, what is  
19 the discrepancy of the time. Let's focus what you  
20 brought the motions on.

21 MS. NORGARD: All I'm saying, Your Honor,  
22 is that his testimony concludes that this is the  
23 timeframe in the order of things and he is also  
24 stating that once they got to the room they had  
25 reason to proceed further on and that if they

1 weren't at the room, none of this other information  
2 would have been available on those folks coming  
3 into the hotel room.

4 Q. (Continuing) So, and other than, I guess the  
5 other question I wanted to ask you is as you begin  
6 the pat down of Mr. Northern and you feel this  
7 little, I think you referred to it as a little  
8 package or something, what would give you reason  
9 to believe that that would have been a gun or  
10 any further --

11 THE COURT: I thought he said a hard  
12 object.

13 MS. NORGARD: I thought he said a small  
14 object.

15 THE WITNESS: Hard object, ma'am. Guns come  
16 in many different sizes. It can be this big  
17 (indicating) to a little pea shot Ruger or little  
18 twenty-two or a derringer thirty-eight.

19 MS. NORGARD:

20 Q. (Continuing) Correct, but have they ever been,  
21 Officer, as small as my putting fingers together to  
22 create a little ball?

23 A. I said a hard object. The cell phone that it  
24 turned out to be was approximately that big. Guns  
25 can be that big.

1 Q. And in your experience with weapons they are easily  
2 confused with cell phones?

3 MR. WHITE: Objection, Your Honor. It's  
4 argumentative.

5 THE COURT: Sustained.

6 MS. NORGARD: All right. Thank you, Officer.

7 I'd like to call Lawrence Northern, Your  
8 Honor, for the limited purpose with regard to the stop  
9 of the car.

10 MR. WHITE: That's fine.

11 LAWRENCE NORTHERN, called for examination,  
12 being first duly sworn, testified as follows:

13 THE COURT: Good afternoon.

14 THE DEFENDANT: Afternoon, sir, Your Honor.

15 DIRECT EXAMINATION

16 BY MS. NORGARD:

17 Q. Mr. Northern, can you tell me where you were on the  
18 20<sup>th</sup> of September?

19 A. In the parking lot of the Comfort Inn Hotel.

20 Q. And can you tell me how you came to be in the parking  
21 lot of the hotel?

22 A. I was picking Brock Larson up to take a trip  
23 to Minneapolis with me.

24 Q. And what vehicle did you have on that day?

25 A. It was a rent-a-car from Avis I believe. It was

1 a Pontiac Grand Am, 2001 maybe.

2 Q. And what time did this stop with you -- I mean  
3 your effort to pick him up, what time did that  
4 occur?

5 A. Could have been between maybe seven twenty and seven  
6 thirty-five, something like that.

7 Q. Okay. This car was rented from a company?

8 A. Yes, Avis Rent-a-Car.

9 Q. And as far as you know it was in perfect operating  
10 condition --

11 A. Yes.

12 Q. -- at the time?

13 A. Yes.

14 Q. Okay. And you also were present here today  
15 and you heard the officer state that folks were  
16 out of the car and up the stairs in the hotel;  
17 correct?

18 A. Yes.

19 Q. Is that accurate?

20 A. That's what I heard them say.

21 Q. Okay. Were you ever out of the car?

22 A. No, ma'am.

23 Q. Were you ever up on the second floor?

24 A. No, ma'am.

25 Q. Do you have a bad driving record or were you



1 driving erratically before you arrived at the  
2 hotel?

3 A. No, ma'am.

4 Q. When you checked the car out were you obligated  
5 or excuse me, did the manager --

6 MR. WHITE: Your Honor, we're not claiming  
7 there are any vehicle problems. You either believe  
8 the officer or you don't. We're not claiming  
9 there was any reason to stop the car other than  
10 the officer's testimony. We're not claiming a  
11 traffic stop or any vehicle defect. If that's what  
12 it rests on, we'll lose.

13 MS. NORGARD:

14 Q. (Continuing) Okay. What time of night again?

15 A. Between seven twenty and seven thirty-five.

16 Q. And this is September --

17 A. September 20.

18 Q. Correct. And it's dark out I'm assuming at seven  
19 thirty at night?

20 A. Yes, ma'am.

21 Q. Do you believe that someone would be able to  
22 identify you from standing in a parking lot or  
23 watching the car go by?

24 A. No, ma'am.

25 Q. Do you have any reason that these officers

1 would have reason to stop you or even know who  
2 you were?

3 A. No, ma'am.

4 Q. Mr. Larson is on the right side of the car or  
5 getting into the right side of the car. You're  
6 driving the car?

7 A. Yes, I'm the driver.

8 Q. Were you aware or did you have any reason to be  
9 aware of Mr. Larson's having any difficulty or  
10 having any occasion that anyone would stop the car  
11 with him with you?

12 MR. WHITE: Objection, relevancy.

13 THE COURT: Sustained.

14 MS. NORGARD: Well, Your Honor, that's  
15 all I have and basically what I want to say  
16 is --

17 MR. WHITE: Well, let --

18 THE COURT: Do you have any cross-  
19 examination?

20 MR. WHITE: No.

21 THE COURT: All right, then you may step  
22 down, Mr. Northern. Thank you.

23 (The witness was excused.)

24 MR. WHITE: I have no further testimony.

25 MS. NORGARD: Your Honor, my point is

1       that there is no reason to have stopped the car.  
2       That Mr. Northern could not have been identified  
3       until after these folks are up in the room. The  
4       car is functioning perfectly. He has, gives  
5       them no reason whatsoever to have the car stopped  
6       and I have some concern about the manner or  
7       order in which this actually occurs. If he is  
8       stating at seven thirty the car is stopped and  
9       they're not up into the room, from which they  
10      find the information that they base their further  
11      arrest of him upon, that's my basis.

12               THE COURT:     Well, my understanding of  
13      the officer's testimony was that was primarily  
14      Mr. Larson that was identified by sight as to  
15      someone who they were interested in at the time  
16      and perhaps my understanding what the officer  
17      said they heard Mr. Northern's name, but not  
18      had yet put, names to faces, but, in any event,  
19      it was primarily stopped because it appeared  
20      Mr. Larson was leaving the area and Mr. Larson was  
21      one of the targets of the search warrant and of  
22      the whole program here.

23               It's my understanding then when they  
24      thought the car was about to leave the scene  
25      that the officer, one got ahead of the car and

1 one was on the side ordering it to stop and it  
2 stopped. At that point it seems fair, particularly  
3 when they got Mr. Larson out of the car and  
4 based on the other evidence they had tried,  
5 and determined who this gentleman was, why  
6 he was there, a pat down search seems to be  
7 perfectly appropriate under the circumstances.  
8 I heard the officer testify that he believed  
9 it could have been a weapon. It turned out  
10 to be a cell phone but, in any event, it was  
11 then later that the search warrant and the  
12 information developed linking Mr. Northern with  
13 the room. That's what I understand. Is that --

14 MR. WHITE: I agree.

15 THE COURT: All right, so on those bases  
16 I'll deny the motions. It does seem to me to,  
17 there was an absolute basis and reasonable basis  
18 to stop the vehicle and the rest of it occurred.  
19 In fact, if there seems to be discrepancy in  
20 time, I must admit that is troublesome. On the  
21 other hand, we frequently tend to sometimes  
22 misstate time when we think it's one time and  
23 another and I don't think that's particularly a  
24 fatal defect in the situation we have here.

25 MS. NORGDARD: Thank you, Judge.

1 MR. WHITE: Thank you.

2 THE COURT: Now, do you foresee any  
3 other matters that we need to deal with before  
4 tomorrow because my understanding is we're  
5 going to start picking a jury at eight-thirty; is  
6 that right?

7 MR. WHITE: Right. That's my plan.

8 THE COURT: And you will get the second  
9 amended information?

10 MR. WHITE: Before then and I will get to  
11 you that summary that I mentioned.

12 THE COURT: Thank you.

13 (The hearing concluded at 4:20 p.m.)  
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STATE OF WISCONSIN     )  
                                      ) ss.  
COUNTY OF EAU CLAIRE )

I, Jan M. Betthauser, Registered Professional Reporter, do hereby certify that I reported the foregoing matter and that the foregoing transcript, consisting of 74 pages, has been carefully compared by me with my stenographic notes as taken by me in machine shorthand and by me thereafter transcribed to the best of my ability, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge.

Dated this 12<sup>th</sup> day of November, 2002.

Jan M. Betthauser  
Jan M. Betthauser  
Registered Professional Reporter