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AUDIO TRANSCRIPTION

SUPPRESSION HEARING IN RE:

RACHEL LEATHERMAN

DATE: NOVEMBER 27, 2006

TRANSCRIBED BY: TERRI L. HORTON-TURNER, RPR, CSR (IL)

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1 THE COURT: Mr. Kautz, you represent  
2 Ms. Leatherman.

3 MR. KAUTZ: Yes, sir.

4 THE COURT: This is a suppression hearing.  
5 This is about a [inaudible].

6 MR. KITCHEN: Yes, sir.

7 THE COURT: Is your witness [inaudible]?

8 MR. KITCHEN: Yes, sir.

9 The witness, DEPUTY EDDIE McGUIRE, after  
10 first having been duly sworn, testified as  
11 follows:

12 THE COURT: Have a seat.

13 MR. KAUTZ: Judge, I would move for  
14 separation of witnesses.

15 THE COURT: Do you have any other  
16 witnesses?

17 MR. KITCHEN: No, sir.

18 THE COURT: Mr. Kitchen?

19 MR. KITCHEN: Thank you, Judge.

20 DIRECT EXAMINATION BY MR. KITCHEN:

21 Q. Sir, you are Deputy Eddie McGuire of the  
22 McCracken County Sheriff's Department?

23 A. Yes, sir.

24 Q. Deputy McGuire, on or about June 28th, 2006,  
25 did you arrest this defendant, Rachel

1 Leatherman?

2 A. Yes, I did.

3 Q. Okay. Can you describe to the Court what took  
4 place prior to the arrest?

5 A. At about 2019 hours, officers responded to area  
6 of Queensway Drive on a complaint of a dark  
7 blue Buick LeSabre occupied by a female subject  
8 with blond hair who had come up to our  
9 complainant's house, who called, and asked  
10 about heroin.

11 Q. Okay. Let's talk about that complaint. Did  
12 the complainant give the name -- give their  
13 name?

14 A. No, he didn't give her name.

15 Q. Did he give his --

16 A. He gave his own name.

17 Q. Gave his own name.

18 Okay. And who was that? Who was the  
19 complaint?

20 A. Vernon Wilkey.

21 Q. Okay. And what did Mr. Wilkey tell the police?

22 A. He told -- at that time, he told dispatch  
23 that -- he gave the vehicle description and  
24 gave a description of her, saying that she had  
25 on, I believe, a -- I think his statement was a

1 blue shirt and blue jeans. Officers at that  
2 time responded to the area. At that time, we  
3 were unable to locate the vehicle.

4 Q. Okay. What else did Mr. Wilkey say? What had  
5 she been doing?

6 A. He said when she got out of the vehicle that  
7 her pants were unbuttoned and unzipped. And  
8 then according to his statement, which he'll  
9 testify to, I suppose, he said that she looked  
10 like she was under the influence of something.

11 Q. And that's -- is that the information that you  
12 had when you responded to the area where this  
13 allegedly took place?

14 A. At the time we responded, the only information  
15 ~~A~~ that we had was the fact that she had come up  
16 to his house and asked about heroin. I got the  
17 statement from him after the incident had  
18 already occurred.

19 Q. Okay. All right. And so you were in the area  
20 looking for this vehicle that she was driving?

21 A. Yes, sir.

22 Q. Okay. Did you find the vehicle?

23 A. Yes, sir. After -- we were unable to locate it  
24 in that area. I was coming back into town on  
25 60 eastbound when I located it at approximately

1 Cairo and 60.

2 Q. Okay. And what did you observe the vehicle  
3 doing?

4 A. As I was passing the vehicle, she had her left  
5 blinker on as if she was going to turn out in  
6 the passing lane, but she never did.

7 And then as I was going to go ahead and go  
8 past her, I noticed that the license plate --  
9 it was a Washington license plate was the  
10 description that was also given at the time of  
11 call. So when I noticed that, I slowed down  
12 and let her go back by me, and then when I  
13 pulled in behind her, she pulled over.

14 Q. At the time the defendant pulled her vehicle  
15 over, were your emergency -- or were your  
16 lights activated?

17 A. No. I just pulled in behind her, and she  
18 started to pull over. That's when I lit her  
19 up.

20 Q. And that was -- you say you lit her up after  
21 she pulled over; is that correct?

22 A. Yes. I activated my emergency equipment when I  
23 seen that she was going to go ahead and pull  
24 over.

25 Q. Okay. What did you observe when you approached

1 the defendant?

2 A. Upon contact with her, I went ahead and asked  
3 her to step out of the vehicle first thing. Of  
4 course, I asked her about the allegations that  
5 had been made. I seen that she has glassy  
6 eyes. Of course, then I also noticed that her  
7 pants were unbuttoned and unzipped, and I  
8 believe even one pant leg was rolled halfway  
9 up.

10 Whenever we -- we asked her about the  
11 complaint. She, of course, denied being out  
12 there to -- she denied being out there to buy  
13 heroin, obviously. She said she was looking  
14 for the law school. She was trying to find the  
15 law school, which I believe is out there at  
16 Information Age Park.

17 Q. Okay. So you saw she had glassy eyes. Did you  
18 notice anything in the vehicle?

19 A. She had an empty -- or, I'm sorry, a full -- a  
20 cup of beer sitting in the console and then I  
21 believe a wine bottle that was open in the  
22 floorboard over on the passenger side.

23 Q. Did you conduct field sobriety tests?

24 A. I conducted an HGN, which she showed six clues  
25 on the HGN. When I asked her about the

1 balancing test, she said that she'd had prior  
2 surgery on her back or her ankle and didn't  
3 perform -- or could not perform any balancing  
4 tests. So I did not perform those.

5 Q. Okay. What does six clues on the HGN mean?

6 A. Six clues is -- lack of smooth pursuit is the  
7 first clues. When you ask the subject to  
8 follow your finger, her eyes -- her eyes do not  
9 follow in a smooth fashion or in a smooth  
10 pursuit. She had nystagmus [inaudible]  
11 45-degree angle, and then she had nystagmus at  
12 max deviation, which is out the corner of her  
13 eye she had nystagmus.

14 Q. Now, what do these six clues on the HGN  
15 indicate to you as an officer?

16 A. That she was impaired or intoxicated on some  
17 substance.

18 Q. And then what did you do?

19 A. I then began to ask her about -- more indepth  
20 about what was going on with the heroin. I  
21 asked why this gentleman would call out of the  
22 blue and ask why she was, you know, trying to  
23 buy heroin from him, and she referred to him as  
24 a snitch.

25 The officer -- then I asked if she was on

1 my prescription medications, and then she told  
2 me she was on Adderall, Metoprolol and  
3 Clonazepam.

4 At that time, I had not placed her under  
5 arrest yet. So I went ahead and gave consent  
6 to search with Deputy Walters as a witness to  
7 the consent, and we located the pill bottles  
8 that she said that she was on prescription for,  
9 as well as, obviously, the full can of beer and  
10 half-empty bottle of wine in the floorboard.

11 Q. Now, I assume you placed her under arrest at  
12 some point?

13 A. At that time after we located all of that, I  
14 placed her under arrest for DUI and then  
15 transported her to Lourdes for a blood sample.

16 Q. Okay. Did you find anything in your vehicle  
17 after -- on transporting the defendant?

18 A. Once I got to Lourdes, I saw that -- when she  
19 got out of the vehicle, I saw the small baggy  
20 and her watch was sitting in the crack of where  
21 my seat belt was.

22 Q. Small baggy and what?

23 A. Small baggy and her watch was laying there to  
24 where the seat belt comes up, you know, in the  
25 back seat of the Crown Vic's.



1 MR. KITCHEN: That's all the questions I  
2 have, Judge.

3 THE COURT: Mr. Kautz?

4 MR. KAUTZ: Thank you, sir.

5 CROSS-EXAMINATION BY MR. KAUTZ:

6 Q. Deputy, you first received this call relative  
7 to the complaint at what time?

8 A. I believe the report shows 2019, which is  
9 8:19 p.m.

10 Q. And while we're on the subject of the report,  
11 I've been furnished by Mr. Kitchen's office  
12 this uniform offense report which contains a  
13 narrative and then one, two -- two other pages,  
14 a total of four pages.

15 A. The only other thing I have is a copy of the  
16 citation.

17 Q. Citation itself?

18 A. I have the [inaudible] for the cocaine and  
19 Mr. Wilkey's statement.

20 Q. Okay. And so you say you received the call at  
21 what time, sir?

22 A. My report shows 2019, which is 8:19 p.m.

23 Q. Okay. And do you know what time Ms. -- this  
24 suspect had been dealing with Mr. Wilkey?

25 A. I do not know what time as far as when she

1 was -- when she was actually at Mr. Wilkey's  
2 house?

3 Q. Right.

4 A. I assume -- I believe it was before that.

5 Q. Sure. But without reference to assumption --

6 A. I don't know exactly when, no.

7 Q. Okay. Just at some time prior to your  
8 receiving a call?

9 A. A call from him, yes.

10 Q. A person -- and what was the description of  
11 this person that you were given?

12 A. Just the blond female is all that was in the  
13 description of the initial report and then the  
14 dark blue Buick LeSabre with the Washington  
15 tag.

16 Q. Okay. And so the initial report was that at  
17 some point prior to your receiving this  
18 information, a subject matching this  
19 description in a vehicle matching this  
20 description --

21 A. Correct.

22 Q. -- had asked Mr. Wilkey about purchasing  
23 heroin?

24 A. That's what the report says.

25 Q. And is that just what you remember about what

1 was radioed over the --

2 A. That's what the -- yeah. That's what they told  
3 us. They dispatched myself and Deputy Walters  
4 to the area.

5 Q. But you don't have, like, the 911 records or  
6 anything like that?

7 A. No. Not with me, no.

8 Q. You're just testifying from memory?

9 A. Correct.

10 Q. Okay. And so how long did it take you to  
11 respond to the area of Queensway Drive?

12 A. That's quite a ways. I would say, just  
13 estimating, 20 minutes probably.

14 Q. So you came from downtown?

15 A. Probably downtown somewhere. I think I might  
16 have even been on the east side at that time.

17 Q. Okay. And so did you have contact with  
18 Mr. Wilkey when you responded to the Queensway  
19 Drive area?

20 A. Not until after I had made contact with her,  
21 no.

22 Q. Okay. So, basically, you were looking for a  
23 dark blue LeSabre with --

24 A. With Washington plates.

25 Q. -- Washington plates?

1 A. Yes, sir.

2 Q. Didn't find it in the area of Queensway Drive?

3 A. Correct.

4 Q. And so you were heading back to Paducah on new  
5 U.S. 60?

6 A. Yes, sir.

7 Q. And that's where you observed my client --

8 A. Yes.

9 Q. -- driving toward Paducah, I assume?

10 A. Yes, sir. I was coming up behind her. We were  
11 both in the eastbound lanes. She was in the  
12 right lane, and I was coming up in the left  
13 lane.

14 Q. Okay. And, apparently, your testimony is that  
15 she had on her turn signal?

16 A. She had her left turn signal on as if she was  
17 going to come into the left lane. That's what  
18 brought my attention to that vehicle to begin  
19 with. And then as I was passing her, I noticed  
20 it had Washington tags on it.

21 Q. So I guess there's at least a possibility she  
22 was going to move into the left lane and --

23 A. Right.

24 Q. -- saw your vehicle and elected not to?

25 A. Correct. That's possible.

1 Q. Were you going the speed limit?

2 A. I don't know. Possibly.

3 Q. She was driving appropriately?

4 A. I was going -- yes. She didn't -- she didn't  
5 bring my attention as far as weaving or nothing  
6 like that. Speed wasn't a factor.

7 Q. Okay. About the only unusual thing was the  
8 turn signal?

9 A. Blinker, yes.

10 Q. Okay. When you -- as you were passing the  
11 vehicle, I guess it hit you that that was --

12 A. I seen the Washington tags when I was going, by  
13 her is when it hit me. I don't see real well,  
14 so I didn't notice the Washington tags as I was  
15 coming up on her until I seen -- until I was  
16 going by her.

17 Q. Okay. Now, when you're talking about your  
18 eyesight, are you farsighted or nearsighted?

19 A. I can't see far away.

20 Q. Which I think means you're nearsighted?

21 A. I guess.

22 Q. But you can see close up real good?

23 A. Correct.

24 Q. No problems there?

25 A. As far as I know, no.

1 Q. Okay. The glasses you're wearing are to help  
2 you see at distance?

3 A. Correct.

4 Q. When you're wearing those glasses, can you see  
5 up close fine?

6 A. Yes.

7 Q. Okay. So when you realized it was the  
8 vehicle -- that it could be the vehicle you  
9 were looking for, you went ahead and, I guess,  
10 slowed down and let the vehicle pass you?

11 A. Let her pass me back, and then I got behind  
12 her, and then that's when she started to pull  
13 over. So I went ahead and activated my lights.

14 Q. Okay. But you activated your lights even  
15 before she came to a complete stop?

16 A. Correct.

17 Q. Because I know that in what you told the grand  
18 jury was you stopped the vehicle and asked her  
19 to exit.

20 A. Right.

21 Q. So, technically, you did stop the vehicle?

22 A. I was going to, anyway, yes. When she started  
23 to pull over, I just went ahead and turned my  
24 lights on.

25 Q. Okay. So she wasn't -- okay.

1                   At what point did her turn signal -- did  
2 she -- did that --

3                   A. She turned her other turn signal on when she  
4 was -- when she was going into the emergency  
5 lane just to stop.

6                   Q. When she was getting ready to pull over?

7                   A. Yes.

8                   Q. Okay. I'm sure that -- and so the only  
9 inappropriate -- she responded fairly quickly  
10 to your signal -- well --

11                  A. Yes. She was already beginning to --

12                  Q. When you fell in behind her, she pretty much --

13                  A. She -- yeah. I suppose she assumed I was going  
14 to stop her, so she went ahead and pulled over,  
15 anyway.

16                  Q. Safe assumption under those circumstances?

17                  A. Right.

18                  Q. The first thing you would have asked her to do  
19 is produce some sort of ID?

20                  A. Identification, proof of insurance.

21                  Q. No problem doing that?

22                  A. No.

23                  Q. And then you would have asked her, I'm sure, to  
24 exit the vehicle?

25                  A. Yes.

1 Q. Deputy, I've been provided a copy of the  
2 videotape relating to this case.

3 A. Yes, sir.

4 Q. And there is no -- there's no sound on it --

5 A. Right.

6 Q. -- the majority of the time.

7 Is there a reason for that?

8 A. I don't -- I don't have a body mike. It  
9 doesn't work.

10 Q. Okay.

11 A. I've got a back seat mike. You can hear the  
12 audio on it whenever she's -- after she's  
13 already arrested. The back seat mike works,  
14 but the wireless mike --

15 Q. Let me ask you this, have you had an  
16 opportunity to review this tape?

17 A. I believe I've watched it, yes.

18 Q. Is the sound quality -- I meant to find time to  
19 listen to the original of the tape --

20 A. Right.

21 Q. -- but the evidence officer these days is hard  
22 to find down there.

23 A. I understand that.

24 Q. Is the sound quality, if you remember, of poor  
25 quality as far as when she's talking in the



1 back seat of the car?

2 A. You can make out some things she's saying,  
3 because I -- I could hear, so I knew what she  
4 was going to say on the tape. If a bystander  
5 was to listen it, they may not be able to  
6 understand it.

7 Q. So if my copy is of pretty bad sound quality,  
8 that -- in all probability, the original's not  
9 much better?

10 A. Correct.

11 Q. When you asked her to exit the vehicle, she had  
12 no problem doing that?

13 A. Not that I recall.

14 Q. And I know there's nothing on your citation  
15 about her being unsteady on her feet or  
16 anything like that.

17 A. No.

18 Q. No slurred speech?

19 A. No, I don't believe so.

20 Q. The only manifestation, I guess, of being under  
21 the influence that I've heard at this point is  
22 something about glassy eyes.

23 A. The glassy eyes, and then I believe I testified  
24 in the preliminary she was just very -- just  
25 very nervous. As far as once you observe

1 people, you can tell that they're nervous, and  
2 she appeared very nervous.

3 Q. And it is true that very often people who have  
4 done little or nothing wrong are nervous when  
5 they're pulled over by police officers?

6 A. Sure. That's a possibility, yes.

7 Q. So pretty much what you're talking about is  
8 glassiness to her eyes?

9 A. Yes, sir.

10 Q. Okay. And no inappropriate driving other than  
11 the turn signal?

12 A. Sure.

13 Q. The only field sobriety test you had her do --  
14 no, wait. You had her --

15 A. Just the HGN, because she told me that she had  
16 had a back surgery and I think ankle surgery --  
17 back surgery and she had a bad ankle.

18 Q. Now, and this -- I'm going to ask the judge at  
19 his leisure probably to look at the videotape  
20 at least up to the point of the arrest.

21 A. Correct.

22 Q. Would you agree with me that she was --  
23 appeared to be steady on her feet?

24 A. For the most part, yes, sir. I didn't notice  
25 that she was unsteady, or I would have

1           documented it.

2           Q.    Okay.  So pretty much, it's your practice if  
3           considering charging DUI to document all of  
4           those things that would be consistent with  
5           alcohol or drug impairment?

6           A.    Yes.

7           Q.    And pretty much what you documented in this  
8           case is the performance on the HGN --

9           A.    Yes.

10          Q.    -- and the blood -- not bloodshot, but glassy  
11          eyes?

12          A.    Yes, sir.

13          Q.    Okay.  Do you know whether or not  
14          Ms. Leatherman has any allergy-type condition  
15          that might explain the eyes or whether she  
16          wears contacts, anything like that?

17          A.    One of the questions that you ask before you  
18          give an HGN, I always ask them if they have  
19          contacts in, and she said no.  And then I don't  
20          believe I even mentioned allergies or she never  
21          mentioned them to me, so that wasn't an issue.

22          Q.    Okay.  I take it you received the training on  
23          the administration of the HGN?

24          A.    Yes, sir.

25          Q.    And you wouldn't make an arrest in a DUI case

1 based strictly on the HGN?

2 A. Correct. That with the open -- the beer and  
3 just the corroboration of the evidence.

4 Q. Okay. And now that you've brought me to the  
5 point of the beer, you say there was a cup that  
6 had some alcoholic beverage, some beer in it?

7 A. Yes.

8 Q. And then there was also, I guess, a partially  
9 consumed bottle of wine in the car?

10 A. In the floorboard, I believe.

11 Q. And I take it it had a cork in it?

12 A. Yes. It wasn't [inaudible].

13 Q. Ms. Leatherman was given a portable breath  
14 test, a PBT, on the side of the road?

15 A. I believe Deputy Walters gave her one, yes.

16 Q. And she showed no alcohol in her system; is  
17 that correct?

18 A. I don't think so. I can't remember what the  
19 PBT showed. I know that the lab results came  
20 back zero.

21 Q. Okay. So you're aware that -- to get ahead of  
22 myself, at some point, you took her to the  
23 hospital, and she agreed to take a blood test?

24 A. She contented to a blood test, yes.

25 Q. And that came back zero zero for alcohol?

1 A. Yes, sir.

2 Q. And were you -- and I don't think you've even  
3 received --

4 A. \*I don't know what the lab -- the other lab  
5 results back.

6 Q. Okay. Is this the lab results you just talked  
7 about where it's come back zero zero for  
8 alcohol?

9 A. Yes, sir, it is.

10 Q. And I'm going to present to you now?

11 MR. KAUTZ: Judge, could I ask that this  
12 be marked Defense -- or could I mark it as  
13 Defense Exhibit No. 1? Do you have a sticker?

14 And No. 2.

15 Q. Deputy, I know you haven't seen this, because  
16 the secretary of the Commonwealth Attorney's  
17 has just caused this to be faxed to her from  
18 the lab, but I'm going to present you an  
19 exhibit that I've caused to be marked Defense  
20 Exhibit No. 2.

21 Does this appear to be the -- a lab result  
22 where they found no drugs in Ms. Leatherman's  
23 blood?

24 A. That's what the lab report says.

25 Q. Okay. And this -- this lab result indicates

1           that date and time taken 6/28/06, 2215?

2           A.    Yes, sir.

3           Q.    By Marisa Mason, Lourdes Hospital?

4           A.    Yes, sir.

5           Q.    And is that the very same information contained  
6           on the alcohol lab report?

7           A.    Yes, sir.

8           Q.    Okay.  And I don't know if you were even aware.  
9           Did you know that one lab, for whatever reason,  
10          tests for alcohol and then they send it  
11          somewhere else?

12          A.    I wasn't aware of that until that point.

13                   MR. KAUTZ:  Move for the admission of 1  
14                   and 2, Your Honor.

15                   MR. KITCHEN:  No objection.

16          Q.    Now, en route to the hospital, there was, as I  
17          recall from listening to the tape, very little  
18          conversation between you and Ms. Leatherman?

19          A.    From what I remember, yes.

20          Q.    You didn't see Ms. Leatherman hide anything?

21          A.    No, I did not.

22          Q.    Ms. Leatherman was searched thoroughly on the  
23          side of the road, was she not?

24          A.    I called for a female officer to search her,  
25          yes.

1 Q. And that would be Paducah Police Officer  
2 Gretchen Dawes?

3 A. Gretchen searched her, yes, sir.

4 Q. And she even -- I think Ms. Leatherman even  
5 before Gretchen arrived had emptied her  
6 pockets?

7 A. [Inaudible] her to empty her pockets out, yes,  
8 sir.

9 Q. And that would be, I guess, her front two  
10 pockets?

11 A. Yes.

12 Q. And I know because of the female/male thing,  
13 you really weren't comfortable doing a complete  
14 body search yourself, which is why you --

15 A. Her pants were undone, so I wasn't going to  
16 touch her.

17 Q. Which is why -- well, were her pants still  
18 undone when Gretchen arrived?

19 A. I assume. I don't think she ever buttoned them  
20 back up. I don't remember.

21 Q. Okay. And then Gretchen Dawes conducted a more  
22 thorough search, correct?

23 A. Yes, sir.

24 Q. And that would have been after Rachel was  
25 arrested?

1 A. I believe so, or just prior to.

2 Q. And under the circumstances, Gretchen was not  
3 only looking for weapons, but also looking for  
4 possible drugs?

5 A. Yes, sir.

6 Q. And found none?

7 A. Anything illegal, yes, sir.

8 Q. And Gretchen even patted down -- or put her  
9 hands actually in her rear pockets, did she  
10 not?

11 A. I assume so, yes, sir.

12 Q. Okay. As far as you could tell, Gretchen  
13 conducted a thorough search?

14 A. Yes, sir.

15 Q. En route to the hospital, you didn't detect any  
16 movement in the back seat that would suggest  
17 that Rachel was trying to hide something?

18 A. No, sir, I did not.

19 Q. When did you first see or realize that  
20 something may have been hidden by my client?

21 A. Whenever I pulled her out of the car is when I  
22 seen it where she was sitting.

23 Q. And what -- at that point, what did you see?

24 A. I just seen the watch and then the small baggy  
25 sitting -- it was in plain view right there in



1           that crack where the seat belt comes up.

2           Q.    So you could see both?

3           A.    I could see both, yes, sir.

4           Q.    Did you say anything to Rachel about that?

5           A.    Not at that time.

6           Q.    Why not?

7           A.    I just secured the vehicle.  Because I was  
8           going to ask for blood, and I knew that she  
9           would be less than cooperative if I'd said  
10          anything to her at that time.

11          Q.    Okay.  I know there's a crack where the seat  
12          part of your back seat meets the back?

13          A.    Right, and there's the crease that the seat  
14          belt comes up.  Those seats come completely  
15          out, so they're designed a little differently.

16          Q.    Is the bottom part plastic?

17          A.    No.  It's leather, pleather, whatever it is.  
18          But I can pull that completely out of the --  
19          out of the car.

20          Q.    So are you saying there's a little, like,  
21          indent where the seat belt comes out?

22          A.    Right.  Just a little -- you got a crease here,  
23          and then the seat belt would come out in a  
24          little U-shape, and the seat belt comes up from  
25          the base.

1 Q. And that's where you saw the watch and what  
2 appeared --

3 A. It was sitting right there. What appeared to  
4 be a controlled substance, yes.

5 Q. Under the watch? On top of the watch?

6 A. The watch -- I believe the watch was laying on  
7 top of the -- in the report, it just says that  
8 she dropped her watch down the same crack.

9 Q. Well, but actually it wasn't -- didn't go down  
10 the crack, apparently.

11 A. It was -- I could see both of them. It was in  
12 the crack in technicality, but it was right  
13 in -- right in the crack when she got out from  
14 where she was sitting.

15 Q. You're talking about this little indention?

16 A. [Inaudible.]

17 Q. Okay. And so you took her inside, told her --  
18 gave her the implied consent, she agreed to  
19 submit to a blood test?

20 A. Uh-huh.

21 Q. You brought her back -- I take it you cuffed  
22 her?

23 A. On the way in. I didn't cuff her back -- to  
24 come out, no.

25 Q. You knew there was possibly drugs?

1 A. Right. I was going to retrieve them. I was --  
2 I was wanting to her reaction whenever she came  
3 back to the car.

4 Q. And which side did -- do you have a key lock  
5 thing on your car?

6 A. No. I have -- not a remote.

7 Q. And so you obviously felt there were drugs in  
8 your car, you locked your car?

9 A. Yes.

10 Q. So then when you-all got back to the car?

11 A. She went to the other side. She walked -- I  
12 put her behind me whenever we were going to the  
13 jail, and then she walked to the other side of  
14 the car whenever we -- whenever we come back  
15 out.

16 Q. Was she not in your custody to some extent, or  
17 was she just --

18 A. She was walking beside me, yes.

19 Q. Okay. And when she walked to the other side of  
20 the car, what happened?

21 A. I retrieved the watch and the --

22 Q. Because she couldn't even get in the car until  
23 you unlocked it?

24 A. Unlocked it, yes.

25 Q. So you unlocked the car?

1 A. Right.

2 Q. You went into the back seat --

3 A. Right.

4 Q. -- and retrieved the watch and the what we now  
5 know to be cocaine?

6 A. Cocaine, yes, sir.

7 Q. What, if anything, did she say?

8 A. She just said -- she denied it. She said it  
9 wasn't hers. I don't know her exact words, but  
10 she said it wasn't her cocaine. I think she  
11 made a statement that hundreds of people come  
12 through my back seat.

13 Q.. I seem to remember in your report or maybe  
14 prior testimony your acknowledging that she  
15 asked you -- that she mentioned having dropped  
16 her watch.

17 A. Dropped her watch.

18 Q. At what point did she do that?

19 A. Whenever -- I guess whenever she seen it. I  
20 don't -- I don't remember that exactly. I  
21 don't know.

22 Q. You don't remember whether that was before  
23 you-all went in the hospital?

24 A. It was before. It was before we went into the  
25 hospital, I believe. I'm not 100 percent sure,

1 so I can't say.

2 Q. So you're thinking -- your best --

3 A. I know that she brought it up, that -- I  
4 remember her saying that she had dropped her  
5 watch.

6 Q. Okay. And so she told you she dropped her  
7 watch even before you saw the watch and the  
8 suspected cocaine?

9 A. I don't remember what she told me, but that she  
10 dropped the watch.

11 Q. That's not clear on the videotape, or I  
12 wouldn't be asking you this many questions.

13 A. Right.

14 Q. Have you tried to listen to that part?

15 A. I honestly don't remember. I haven't listened  
16 to it in a long time, and it's been five months  
17 since I've listened to the tape.

18 Q. Okay. So, basically, she -- I don't know how  
19 you pronounce this word -- vehemently denied --

20 A. Denied.

21 Q. -- that the drugs were hers, although she  
22 admitted the watch was hers?

23 A. True.

24 Q. And she actually -- you gave her her watch  
25 back?

1 A. I'm sure I did, yes, sir.

2 Q. Okay. At any point -- what did you say she  
3 said when you asked her about whether she had  
4 been to Queensway Drive?

5 A. In the report, it says when I asked her if  
6 she'd been there, she said that she went up to  
7 a gentleman's house asking him about some birds  
8 that she had. I don't remember that off the  
9 top of my head, but that's what's in my report.

10 Q. And when Mr. Wilkey gave his statement, he also  
11 said that there was some conversation about  
12 birds; am I correct, sir?

13 A. Barrels or -- it's hard to read his statement.  
14 It's hard to read his handwriting, to be  
15 honest.

16 Q. Did you take his statement, or was that some  
17 other officer?

18 A. I took it. I went back out there, I believe,  
19 the next day and got his statement.

20 Q. And his statement that is in your papers --

21 A. Yes, sir.

22 Q. -- doesn't make reference to Rachel attempting  
23 to purchase drugs?

24 A. It does not. I didn't want to alter the  
25 statement in any way as far as to lead him into

1 writing anything. So I just told him to write  
2 a statement about what happened, and he wrote  
3 it.

4 MR. KAUTZ: That's all. Thank you.

5 THE COURT: Do you have any questions,  
6 Mr. Kitchen?

7 MR. KITCHEN: Yes, sir.

8 REDIRECT EXAMINATION BY MR. KITCHEN:

9 Q. Deputy McGuire, prior to your placing the  
10 defendant in the back of your cruiser, had you  
11 searched the back of your cruiser?

12 A. Yes, sir.

13 Q. Okay. And when did you do that?

14 A. She was the first one to be placed in my  
15 vehicle in that workweek. Two days prior to  
16 that, I'd inspected it and actually vacuumed  
17 the back seat. My car was going in for  
18 maintenance at Deputy Terry Long's house. So I  
19 went ahead and -- I search the back seat before  
20 and after inmates come in and beginning and end  
21 of shift.

22 But I'd actually taken the seat out and  
23 vacuumed the seat out and cleaned the back seat  
24 out prior to that workweek.

25 MR. KITCHEN: No further questions.

1 MR. KAUTZ: Nothing.

2 CROSS-EXAMINATION BY THE COURT:

3 Q. Let me make sure I understand.

4 You said that she was -- she was starting  
5 to pull over, anyway, before you ever put the  
6 lights on?

7 A. Right. She switched her turn signal on to the  
8 right and began to turn into the emergency  
9 lane. That's why we -- I activated my  
10 emergency lights.

11 Q. You had the sense that she was -- knew you were  
12 going to pull her over or something?

13 A. Yes, sir.

14 Q. When she was pulling into this emergency lane,  
15 you hadn't given her any signal to pull over?

16 A. She just seen me go -- come up to her, and then  
17 when I backed off and got back behind her is  
18 the only thing. I didn't motion to her to pull  
19 over or anything like that, no, sir.

20 Q. Okay. And this crack where this thing was  
21 located, did you say it was where the seat belt  
22 comes up between the seat?

23 A. Yes, sir. It's right there. The seat belt  
24 goes up, and then it was -- it was in that  
25 crack along with her watch.



1 Q. The crack is the place where the seat, the back  
2 of the seat --

3 A. It's hard. Like, the -- like, the seat in the  
4 back comes up, and there's little notches like  
5 that where the seat belt comes up out. And it  
6 was, like, wedged in that little vortex right  
7 there.

8 Q. All right. And the watch was in that same --

9 A. It was in that area, yes, sir.

10 Q. It was not down in the crack?

11 A. Right. I could see the watch, yes, sir. I  
12 could see both.

13 THE COURT: All right. No other  
14 questions. You can step down, sir.

15 Any other proof?

16 MR. KITCHEN: No, sir.

17 THE COURT: Any proof, Mr. Kautz?

18 MR. KAUTZ: No, sir, no proof.

19 THE COURT: Let me ask you something  
20 [inaudible].

21 FURTHER CROSS-EXAMINATION BY THE COURT:

22 Q. Deputy, when you began to pull her over, did  
23 you notice that -- well, I don't guess you  
24 could see her pants probably, but could you  
25 tell whether she had this blue shirt on?

1           A.    We didn't know about the blue shirt.  All I  
2                    knew, that she was a blond.  That's all I knew  
3                    until -- the blue shirt came into the play  
4                    whenever I went back to his house the next day,  
5                    and he described her for me, the blue shirt and  
6                    the blue jeans.  That's what he wrote on his  
7                    statement.  So all I knew was that it was a  
8                    blond, and then I had a vehicle description.

9           Q.    You knew it was a black female --

10          A.    Yes, sir.

11          Q.    -- or he told you white female?

12          A.    In my report, it just says blond female subject  
13                   with blond hair and then gave the vehicle  
14                   description.

15                   THE COURT:  All right.  Any argument,  
16                   Will, you'd like to make?

17                   MR. KAUTZ:  Yes, sir, Judge.

18                   To begin with, it appears from the  
19                   testimony we've heard that the deputy responded  
20                   to the area of Queensway Drive based upon  
21                   information from a named individual, Vernon  
22                   Wilkey, that a blond with a dark blue LeSabre,  
23                   dark blue car, with Washington plates had  
24                   inquired about heroin.  What we don't know is  
25                   when that inquiry had been made.

1           The Deputy was quite candid, I guess, in  
2           telling you that he knows when he received the  
3           call, but he doesn't know when dispatch  
4           received the information or how recent or stale  
5           the information may have been by the time it  
6           found its way to dispatch.

7           I certainly take the position that my  
8           client was stopped, and basically speaking, as  
9           soon as he hit those blue lights, she wasn't  
10          free to go. If she had -- if she was preparing  
11          to voluntarily pull over, anticipating she was  
12          going to be stopped, then that may not be a  
13          stop except as soon as he hit the blue lights.  
14          If she'd taken off then, we'd have had an  
15          eluding charge. So, certainly, state action is  
16          implicated as soon as those emergency lights  
17          are activated.

18          And then the question becomes, with what  
19          reasonable suspicion of criminal activity?  
20          Even if she had been the person to inquire  
21          about purchasing drugs, that certainly doesn't  
22          mean she has any. As a matter of fact, it  
23          probably suggests the other way, the contrary,  
24          she doesn't have any, or she wouldn't be asking  
25          to purchase.

1           And so, basically, the stop in this case  
2           is based on information given by presumably  
3           Mr. Wilkey about some contact between he and a  
4           blond lady driving a Washington state car. But  
5           at what point that contact occurred, this  
6           officer had no idea. And I think the stop was  
7           based on less than reasonable suspicion of  
8           criminal activity, which, as you know, is the  
9           standard for a stop.

10           The arrest -- and that's a whole separate  
11           issue then. Obviously, an arrest requires  
12           probable cause. Basically speaking, the only  
13           evidence that we have heard that would justify  
14           an arrest based on probable cause would be this  
15           glassy eyes and horizontal gaze nystagmus. And  
16           as we know from the results, she had no blood  
17           and no alcohol in her -- no alcohol in her  
18           system and no drugs in her system.

19           And I got a little bit sloppy. I said  
20           earlier that I wanted you to look at the  
21           videotape, and I still do. I'd certainly like  
22           that to be marked as Defense Exhibit No. 3,  
23           because I think you'll agree with me when you  
24           look at the videotape -- and, really, all  
25           that's important is what happened between the

1 initial contact and Rachel's arrest.

2 I think you'll agree with me that she  
3 seemed to be anything but under the influence.  
4 She's solid as a rock standing around out  
5 there.

6 And I know you've had a long day and no  
7 lunch break, but I would ask that you -- that  
8 you take a look at it and you consider the  
9 videotape at least up to the point of Rachel's  
10 being placed in the police cruiser, because I  
11 think you'll agree with me that the tape  
12 suggests she wasn't under the influence.

13 I think she was probably arrested based on  
14 some kind of hunch that there might be drugs in  
15 her system based upon what they had already  
16 knew or thought they knew from Mr. Wilkey. But  
17 in reality, there were no drugs in her system,  
18 and there was no alcohol in her system. And  
19 there wasn't probable cause to make an arrest  
20 or reasonable suspicion to make the stop.

21 So I'd ask, Judge, that you go ahead and  
22 at your leisure review this tape, if you would.  
23 I guess it should be marked Defense Exhibit  
24 No. 3. Of course, if you want to take the time  
25 to do that now, that would be fine with me, but

1 I know you've had a long day.

2 THE COURT: [Inaudible.]

3 MR. KAUTZ: And I've cued that up. There  
4 were other sheriff's office stops on that  
5 video, and what I did was started it at the  
6 beginning of Rachel's case.

7 And, certainly, I'm prepared -- if you  
8 want me to submit some law, Judge, I'm prepared  
9 to submit a memorandum of law on these issues.

10 THE COURT: Anything further?

11 MR. KITCHEN: Yes, sir.

12 Judge, what we had here was basically a  
13 citizen tip that's not an anonymous tip. It's  
14 a citizen tip, an identified citizen, Vernon  
15 Wilkey, who told the police that he'd observed  
16 a lady, blond-haired lady with her pants  
17 unzipped and one leg rolled up, who came to his  
18 door to buy heroin. That in itself is a  
19 bizarre occurrence. He gave a prescription of  
20 a dark blue car with Washington license plate.

21 Deputy McGuire saw this vehicle, dark blue  
22 car, Washington license plate, blond-haired  
23 lady driving it, noticed that she had her left  
24 turn signal on, did not -- was not making a  
25 left turn. He noticed that when he got behind

1 her, she was pulling off to the side of the  
2 road. He got in -- he initiated his blue  
3 lights after she was pulling to the side of the  
4 road.

5 I think that in and of itself, even  
6 independent of the citizen tip, would be enough  
7 to conduct a brief investigative stop to find  
8 out why she was pulling to the side of the  
9 road. He didn't know if she needed assistance,  
10 what have you. And as we're looking at stops,  
11 you know, the subjective intent of the police  
12 officer is, is there -- is whether there was  
13 objective evidence.

14 So based upon -- we're not just relying on  
15 either one of those. We're looking at the  
16 totality of the circumstances.

17 And, certainly, the totality of the  
18 circumstances when he identified the person who  
19 a citizen had said had tried to buy heroin from  
20 him, then is initiating -- she's got her left  
21 turn signal on, she's not turning, then she  
22 pulls over to the side of the road and he pulls  
23 behind her, that gives him a reasonable  
24 suspicion that criminal activity was afoot, and  
25 that justified a brief investigative stop.

1           When he gets out into the vehicle, he  
2 noticed she has glassy eyes. She has open  
3 alcohol in the car. She failed her HGN. And  
4 she -- when asked about going to Queensbury Way  
5 [sic], she referred to that person as a snitch.  
6 That's bizarre behavior, Judge. That's not  
7 behavior we would expect from somebody.

8           I think Deputy McGuire was justified in  
9 believing that she was in some type of altered  
10 state and was impaired and not able to safely  
11 drive an automobile. Based on those totalities  
12 of the circumstances, he had probable cause to  
13 conduct the arrest.

14           And once -- I think those are really the  
15 only suppression issues. Was the traffic stop  
16 reasonable, and did he have a probable cause to  
17 make the arrest? And the answer is "yes" in  
18 both of those cases, Judge.

19           THE COURT: Are you wanting to submit  
20 something, Mr. Kautz?

21           MR. KAUTZ: Yes, sir.

22           THE COURT: [Inaudible.]

23           MR. KAUTZ: Could you give me two weeks?  
24 Ten days?

25           THE COURT: Ten days?



1 MR. KAUTZ: Yeah.

2 THE COURT: Ten days.

3 You want a chance to respond?

4 MR. KITCHEN: Yes, sir, please.

5 THE COURT: Seven?

6 MR. KITCHEN: Seven is fine. Thank you,  
7 Judge.

8 THE COURT: [Inaudible.] All right.

9 MR. KAUTZ: So, Judge, just for my  
10 bookkeeping here, ten days, would that  
11 include -- not including today, or how do you  
12 want to do that?

13 THE COURT: Well, it's ten days from  
14 today, which -- so that's Thursday.

15 MR. KAUTZ: That would be, I guess -- oh,  
16 today is Monday, so that would be Thursday.

17 Okay. That'll work.

18 THE COURT: Okay.

19 MR. KITCHEN: Your Honor, I will be out of  
20 the office the week of the 11th of December,  
21 and I'm not sure when this -- when I'm going to  
22 receive the --

23 MR. KAUTZ: Thursday is -- what is that  
24 date, Rachel?

25 UNKNOWN SPEAKER: Your seven days would be

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the 14th.

MR. KITCHEN: And that's going to be --  
five of those days, I'm going to be out of the  
office.

MR. KAUTZ: Why don't you do this, can you  
give me 14 days, and that'll give him --  
that'll bump his into a little more -- does  
that give you enough time, Tony?

MR. KITCHEN: I think so.

THE COURT: Okay. 14 days is --

UNKNOWN SPEAKER: Will's is due the 11th  
and Tony's the 18th.

THE COURT: All right.

MR. KITCHEN: Thank you, Judge.

(The above was transcribed to the best  
of the transcriptionist's ability and is not a  
certified true, correct and complete  
transcript.)