

## Preliminary Hearing Index

- :35 Antoine addresses motion about two affidavits
- :49 Begins explaining two different affidavits, marijuana and hydrocodone
- 1:00 Charged with possession with intent, 7.75 grams, illegal charge. Can't be less than half an ounce to constitute a felony. It's defective affidavit.
- 2:11 Scruggs responds. May be an over-charge, not an illegal charge.
- Says he has no problem amending to casual exchange, but not entitled to have it dismissed.
- 3:00 Commissioner says it depends on proof. If proof were that the amount were 7.75 grams
- 4:00 Commissioner says that if it's less than the amount, and packaged for sale, can be charged as felony. Consensus that most commissioners charge less than felony amount as a misdemeanor, regardless of how packaged.
- 5:00 Commissioner says that, in prelim, if proof shows that there's at least sale of illegal substance in misdemeanor amount, she can verbally amend? Antoine says it can't be possession with intent if it's less than the felony weight. ✖
- 6:00 Commissioner says it's a question of whether it's overcharged or if there's a defective affidavit. Says that's why it's a preliminary hearing. Doesn't think she will dismiss as a defective affidavit.
- 7:00 Antoine says that hydrocodone charge is too attenuated. Not sufficient facts to support the particular charge. Says the way the facts are listed are too attenuated to support this charge. Commissioner says she's being asked to prejudge something without having heard the proof. Antoine says that in order to stand before the court the affidavit must be sufficient.
- 8:00 Scruggs responds to motion on the affidavit. "I've never heard of affidavit being incorrect for attenuation." Points out that criminal court judge read affidavit and found sufficient probable cause to arrest the defendant. Commissioner says "any of us who sign arrest warrants are prone to making mistakes."
- 9:00 Commissioner says that affidavits are presented in many forms. Sometimes information is on paper, and they're being told things verbally at same time, and she understands Antoine's concern.
- 10:00 A typical defective affidavit is as Mr. Scruggs indicates, glaring inconsistencies, cut and paste. As to marijuana charge ...

(ITEM-9) 8 pgs

11:00 Question had to do with whether it was felony or misdemeanor amount. Thinks that can be addressed after hearing. As to being attenuated, thinks that can be addressed after hearing. Thinks that one can address a lot of this in cross-examination and attack those points. Will deny motion at this time.

12:00 Christensen represents Ms. Hassen. State witnesses sworn in at same time. Ashley Egan testifies first.

13:00 Egan lives in Shelby County. 26 years old. July 8, makes phone call. Called to ask if he could get her a half ounce of weed. Detective Jewell was there when she made the phone call. Was recorded. She called Imbibio's.

14:00 Bar in Millington. Might have been a bartender who answered. She spoke to him. Asked if he could get her a half ounce of marijuana. He said that would be fine. That she could pick it up at the bar.

15:00 Says it was next day that she picked it up. July 8 was when she placed call. Not sure she called before going in on that day. Have to "pre order" to get anything. Had met with Jewell and Poston before going in. They searched her.

16:00 She went in, and then met up with them at location, gave them marijuana. When she went in bar, it was her and her sister in law, ordered a couple of drinks. He said "all I've got is a quarter. Price is \$25." Gave her the weed wide in the open.

17:00 This happened all the time? Yes. She gave detectives marijuana immediately after leaving, at parking lot down Navy Road. Never lost sight of officers except when in the bar. On July 14, also spoke to Peters. 14<sup>th</sup> or 13<sup>th</sup>. Called and said she wanted pills as well. Asked if he could get some Lortab. Called her and said he knew someone who could get them.

18:00 When made phone call, tell court what you said. "Last time I saw him I told him not only do I smoke weed but I use pills and stuff too." Says he called her back, said he knew somebody who sold pills, she said "get me a few." Is assuming it was the fourteenth. Says she got to the bar, got money, detectives searched her.

19:00 She went into bar. Says Thorne left pills by the register, picked them up, left Thorne a note. Says she told him she wanted six Lortabs, and there were six pills when she went there. Bartender was Sherry. Bartender was in the courtroom at the prelim, identifies her. Witness has identified both defendants.

20:00 She knew Thorne because she dated an employee. Knew Hassan from working there as bartender.

21:00 With regard to Ms. Hassan, only thing she did was show her where pills were. Pills were in a fold-over sandwich bag, clear. Left money by register. Both transactions occurred at Imbibrios in Shelby County.

22:00 Christensen begins cross-examination. Known Ms. Hassen because she started dating guy in September of last year. Was not seeking employment there. Thorne had mentioned Egan being a bartender there. They talked about it. Her purpose in looking to buy drugs there –

23:00 I got in trouble and I am an informant. She admits she was doing this to get herself out of trouble. These arrangements she made, concerning the Lortab, made call to Mr. Peters, said she needed "some" pills. Walked in there with a sum of money.

24:00 Had enough money to cover at least \$20. Had \$300. Agreed to purchase six pills. Went in the bar with \$300. When she went in, she went in with enough money to purchase six pills, \$7 per pill.

25:00 Went in the bar between eight and ten. Met with just Jewell and another officer. Discussed with them, told them she was purchasing six Lortabs. Officers patted her down, emptied her pockets, checked shoes. Didn't search underclothing, bra, etc. Tore her car apart.

26:00 Didn't do any damage to carpet. Didn't check HER under her clothes. Package of six Lortabs was something she could fit in her bra. "My boobs are big." "They did pat my bra though. Six Lortabs you could feel. They patted me down like an officer pats you down."

27:00 A Lortab is "that big." They're pretty big. They didn't physically put their hand inside my bra. Nothing improper. There were several people in the bar. Nobody I knew too well. Sherry was sitting at bar with a customer. No one working behind the bar. Gentleman sitting next to Hassen.

28:00 Hassen was conversating with man at bar. Walks in there, was in the bar five minutes before conversing with Ms. Hassen. Asks where Thorne is. Hassen greeted her. Egan says she knows the faces of people who work there. But doesn't know who was working that night.

29:00 Hassen says that Thorne would not be back till midnight. Egan asks if Thorne left "that" for me. Hassen said "by the register." Hassen never mentioned Lortab, price or quantity. Register was maybe twelve feet away.

30:00 Facing register on left were the pills. Left a note on an index card, gave note to Hassen. Hassen never had Lortab on her. Never accepted money.

31:00 Antoine begins cross. Goes back to July 8<sup>th</sup>. This initial conversation, on eighth, phone call: Ashley and sister in law had hung out for a couple of hours. Thorne said "you have to pre-order to get anything."

32:00 Had to pre-order to get herself out of trouble. Got in trouble in January of 2008. "Know I am in the process of getting out of trouble." Making this phone call not because she was looking to buy for herself, but because of her legal troubles.

33:00 Detectives came to her and said they had information about a bar, asked her if she knew anybody, and it so happened that she did. They asked if she knew Thorne Peters or Imbibrio's. She had been there herself. On the eighth, that phone call was recorded. The first phone call. Because he said she had to pre-order.

34:00 So phone call was made. She specifically asked for half an ounce. Was told she could pick it up the next night ... "I'll be in your area, can I get a half. I told him I would get it from the bar. He said it would be fifty."

35:00 The next night, when getting ready, it was the same detectives. Two males. They patted her down. They never called a female officer. Body cavity not searched. How much money were you given? Fifty dollars. Had to sign for it. That was down the street from the bar.

36:00 Went to the bar with sister in law, ordered some drinks. Played a Wii game. Talked to Mr. Peters. Can't remember where Thorne was when she arrived. He said "I'm gonna go freshen up, I'll be back." She left while he was gone.

37:00 He told her that he got the weed from somebody. "I'm going to go over here and get it and I'll be back." Didn't immediately ask him where it was. Thorne did his "groping and hey how you doing, you're beautiful, his whole speech." He walked over to where the DJ booth is. He said "all I've got is a quarter, that will be \$25."

38:00 It was in ziploc bag. Describes where people were positioned. Like he was rubbing my hand or something, he gave me the marijuana. Forty five minutes, give or take.

39:00 When left, immediately reported to officers, in the parking lot. Met not five minutes later, down the road, in shopping center parking lot. Gave weed to Detective Jewell, who gave it to his superior officer, Chris. There were four trucks of officers.

40:00 Was patted down again. They searched them before and after. Went outside and called Detective Jewell and said "it's less than what we thought," Jewell said, "come on, that's fine." Thorne knew Ashley.

41:00 Now discussing the Lortab. With Marijuana, there were a lot of recorded phone calls. Not a phone call setting it up. Antoine asks "why wasn't there a call setting it up."

42:00 Thorne called her first. Antoine: "You've been in the bar before." Egan says she was an informant the first time she went into Imbibrios. But was not trying to seek out anything on Imbibrios the first time she went in the bar. Antoine directs her attention to July. When did you have this conversation, "Hey I do pills too."

43:00 Egan says the phone call was made. (Confusing.) A week prior to purchasing marijuana, she went to the bar, played a couple of games, had drinks, chit-chatted. They were smoking marijuana at the bar. Thorne said you have to pre-order

44:00 Ashley asked if you can get me some marijuana. Thorne said you have to pre-order. She then told him that she takes pills too. Thorne said to call before she came. Insinuating he didn't have it on him right now. "He got in trouble last year, I'm assuming that's why he didn't have it on him."

45:00 "He's very open about anything." Antoine points out she was careful with the marijuana to have a recorded phone call. Ashley says Thorne called her with the pills. "I know somebody who's got some tabs." I wrote my number down on an index card. He calls me, two or three days prior to going to get the pills.

46:00 The day AFTER she got it, she called. Antoine argues with her about that. Can't recall the exact date. Detective said "set it up, and we'll do it." Ashley explains they were going to record the call but she didn't have a car so they couldn't do it. Antoine asks what Peters said specifically, "I can get you some tabs?"

47:00 Says she is not going to make a deal without the detectives. Said she would call him back. Says she DID call Thorne back. Says she asked for ten or twelve, that Thorne said he could only get six. Says they were trying to record the call, but Ashley didn't want to wait very long for the phone call.

48:00 Pills are like crack in Shelby County. Once they're there, you need to get 'em, didn't know if he had an unlimited supply. Antoine says "so you don't have a car." No maam. Car you've been driving to and from the bar is her kids father's car.

49:00 Antoine asks why she didn't have car to get to record the phone conversation. "I didn't even wanna make the phone call the next day." Ashley says the first call, asked if he could get ten or twelve, second phone call, he said he could only get six.

50:00 Second phone call to her actually purchasing. It either happened the next day ... not sure about the dates. Says she took it upon herself? Was given \$40. Discussion of money.

51:00 Took fifty dollars to buy weed, for pills you only have \$40? Antoine asks her about being short two dollars. \$7 per pill, six pills.

52:00 Me, her, and all five of our kids. The kids were left in the car. Egan went in the bar by herself. Antoine asks what else is by the register. Egan describes.

53:00 Antoine, "where's this baggy by the register." Egan: "Like everything else it's out in the open." It doesn't have her name on it. It's the only thing there. Doesn't know if Sherry knew what she was there for. Sherry just said "it's by the register."

54:00 I left the money, left a note for him, sorry I missed you was the extent of the note. Left note there, left money by the register. Didn't hand Sherry the money. No exchange made with Sherry. In phone call with Thorne the next day. "Hey, did you get what I left WITH the note?"

55:00 She never specifically asked Thorne if he got money from her. Scruggs redirect.

56:00 Extent of conversation with Peters was "did you get what I left for you." Felt it was redundant to ask if he got the money, because he would call if he didn't get the money. Police pushed her to make that phone call. He's kind of shaky. Refers to his previous legal troubles. Pre-ordering, she figured he was being cautious.

57:00 Knows how conversations should go, "I've done this for a long time." Felt that if she made the follow up call, Thorne is going to know. For her own safety and children's safety.

State now calls detective Jewell. He states and spells his name.

58:00 Says he knows Ashley Egan as an informant. Knows Mr. Peters and Ms. Hassen from arresting them that night, July 16. Tells court what he remembers about investigation. He and Poston received information that Peters was selling marijuana and Lortab from Imbibrios. Recorded conversations.

59:00 He agreed to sell a half ounce of marijuana, \$50. They drove to the bar and watched her go in. She came out with 7.75 grams. It tested positive. He didn't see the exchange between Mr. Peters and Ms. Egan. Describes procedures, search person and vehicle, purse.

60:00 Found nothing on her. Afterwards, retrieved marijuana. Doesn't recall if her vehicle was searched afterward.

1:01 Actual exchange of marijuana was on the 9<sup>th</sup>. Phone call was on the eighth. On the ninth there was a followup call, where Peters said he would make a call to a contact. Jewell said he reviewed the tape afterwards. Following week, July 14. Wanted to make another buy. There was a phone call made, informant said deal had been set up.

1:02 Forty dollars to buy Lortab at club. Jewell instructed her to go to the area, he met her down the street. He gave her the money, signed and got thumb print for the money, searched her and the car, followed her to the club. She was there five or ten minutes. Came out and gave him the pills. Egan told Jewell about Hassen.

1:03 Identified narcotics with a drug bible. Doesn't recall the specific imprint. Describes imprint. Manufacturer may be Watson, with number underneath. Bible tells you what controlled substance it is.

1:04 On fifteenth, Egan called, "Did you get what I left you," Thorne stated "yes I did." I believe that to be money, based on what she told Jewell. After sale of Lortabs, didn't make a second search of Egan's person. Doesn't know if anyone else did.

1:05 Christensen cross. Officer known Egan a year and a half. She was doing this to get paid. Not to get out of trouble. Egan would be mistaken to say she was doing this to get out of trouble. Whether Ashley said she asked for Lortab, or whether Thorne offered it.

1:06 Jewell says she did not purchase directly from Thorne. Ashley made call to him, but not sure whether she requested Lortab, because Jewell not present. For Lortab she had \$40. Doesn't recall whether she said six Lortab. Says he asked her how much she needed, she said \$40.

1:07 Says he met her down the street by the fire department. Another female with her, and kids. Several kids under the age of ten. Patted her down. Light pat down. Checked her chest, thighs. Does not recall looking for other money.

1:08 Doesn't recall whether she had any money. She told Jewell she left a note along with some money. Says he "took the note to be money." Jewell says that's an assumption.

1:09 Says he took "note" to mean money.

Antoine cross-examination. "Did you ask her to go in there? How did she become the one you sent in there."

1:10 Discussion of how she is paid? Paid for every buy she makes? Jewell says it depends on the situation. Antoine poses hypothetical. Jewell says "results of an operation. What we recover, money, drugs, etc." No set formula.

1:11 When was she paid for this. "Throughout the operation." Go back to the first one. "You're set up to record this conversation between Ashley and Mr. Peters. How is it set up." He has digital recorder and earpiece.

1:12 That first recorded conversation. They met at a spot. They didn't always meet at the same spot. That recorded phone call takes place.

1:13 Discussion of when the deal was set up. Himself and Detective Poston. Commissioner admonishes them to speak up. She was given fifty dollars for marijuana buy. Expecting half an ounce of weed to be fifty.

1:14 How much time passes while she's in the club on the ninth. After sending her in to make a buy, thinks she was in there thirty minutes.

1:15 She came out, handed him the baggy. Clear plastic. Didn't get any money back. "People change their prices all the time." Ashley was let go, the weed was field tested at office.

1:16 First became aware of deal being set up for Lortab. Ashley called him, said she could get some Lortab. Why not a recorded phone call. Jewell says he doesn't recall why they didn't. Ashley said she needed forty dollars. Thinks Ashley was in the club five or ten minutes getting the pills.

1:17 Could only see her entering and exiting the club. Jewell assumed "a note" meant money. But now we know a note meant a note. Jewell says that it's typical to use coded, drug lingo. Hide things. Explains the lingo.

1:18 He made an assumption. Antoine finishes questioning.

Scruggs asks what he bases that assumption on his experience. Has worked many undercover operations. Doesn't recall how Egan started working for them.

1:19 End of state's proof. Scruggs submits.

Antoine makes motion to dismiss.