STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY

STATE OF WISCONSIN,
Plaintiff,

v. **Case No. 04-CF-001001**

LEMAR BARNES,
Defendant.

AMENDED DECISION ON ADMISSIBILITY OF EVIDENCE

A decision on defendant's request to adduce "other acts evidence" at trial was originally issued March 31, 2005. This "amended decision" is issued August 10`, 2005 and supersedes and replaces that document.

The Criminal Charge

Lemar Barnes is charged with possession of more than five grams of cocaine with intent to deliver February 22, 2004. His jury trial is scheduled for September 12, 2005. The criminal complaint alleges that Milwaukee police officers Jason Mucha and Thomas Dineen observed Mr. Barnes remove a baggie from his pocket and drop it onto the pavement. The baggie contained 34 smaller packets, each containing cocaine base.

Issues in This Case

Both Mr. Barnes, by attorney Jeffrey Jensen, and the State, by Assistant District Attorney Tiffany Harris filed motions in limine seeking a ruling on the admissibility of certain evidence the defense seeks to adduce at trial.

According to an affidavit filed by his attorney, Barnes asserts he never possessed the cocaine for which he is accused. He agrees that Milwaukee police officers found a bag of cocaine corner-cuts at the scene of his arrest. But he says he had nothing to do with the cocaine. Barnes says that as the officers came around the corner in their vehicles another man, Mr. Joseph Turney, who had been standing near Barnes, threw the bag of cocaine to the ground. Barnes says the officers did not see who dropped the baggie of cocaine that they found on the ground near the location he and Turney had been standing.

The affidavit of Attorney Jeffrey Jensen asserts:

> "The officers then arrested Barnes, cuffed him with plastic cuffs, and then took him into the lower of the duplex. There, Barnes was seated in a chair and interrogated by police. During the interrogation he was struck in the face several times and had orange soda poured over his head. One of the officers then stated that because Barnes had a record of possessing drugs they were going to 'put the cocaine on him (Barnes)'."

The defendant seeks to adduce at trial evidence that Officers Mucha and Dineen, or officers who regularly work with Mucha and Dineen, have been abusive to other suspects and have made (or threatened to make) false claims of illegal drug possession against others.

Specifically, Barnes seeks to present evidence of ten other incidents "to establish that this group of officers, at the time in question, had a routine practice of abusing persons under arrest and 'putting' controlled substances on them".

Applicable Law

Evidence of other crimes, wrongs or acts – Wisconsin Statutes § 904.04 (2)

Wisconsin Statutes §904.04 (2) sets forth an absolute prohibition of evidence of conduct not related to the specific facts of the current case to establish that a person had a character trait and acted in accordance with that trait at the time of the event involved in this case. However, conduct not directly related to facts in the current case *may be admissible* if offered for a purpose *other than* showing action in conformity with a particular character trait.

> "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." [Wis. Stat. §904.04(2)]

In *State v. Sullivan*, 216 Wis.2d 768 (1998), the Wisconsin Supreme Court set forth a three step analysis for trial judges in determining the admissibility of such "other acts" evidence:

1) "Is the other acts evidence offered for an acceptable purpose under Wis. Stat. §904.04 (2), such as establishing motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident?"

2) Is the other acts evidence relevant, using the definition of "relevant evidence" set forth in *Wis. Stat. §904.01*? To be relevant, evidence must relate to a fact of consequence to the determination of the action. Further, the evidence must tend to make the consequential fact more likely or less likely than it would be without the evidence.

3) Does the other acts evidence survive the analysis required under *Wis. Stat. §904.03*?

[Item 1, above, is a direct quote from *State v. Sullivan*, items 2 and 3 are this author's summary of the Supreme Court text]

Danger of Unfair Prejudice – Wisconsin Statutes § 904.03

All evidence proffered at trial is subject to the "904.03 analysis". A trial judge must determine if the "probative value" of the evidence is

> "substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." [*Wis. Stat.* §*904.03*]

If the probative value is substantially outweighed by any of these six factors, the evidence is inadmissible.

Character of a witness for truthfulness – Wisconsin Statutes section 906.08

The Wisconsin Code of Evidence provides that evidence of the character of a witness for truthfulness may be admissible if presented in a specified and limited manner if relevant. Wisconsin Statutes § 906.08 (1) provides that:

> " **. . .** the credibility of a witness may be attacked or supported by evidence in the form of reputation or opinion, but subject to the following limitations:
>
> (a) The evidence may refer only to character for truthfulness or untruthfulness.
>
> (b) Except with respect to an accused who testifies in his or her own behalf, evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise." [*Wis. Stat.* §*906.08(1)*]

Portions of § 906.08 (2) applicable to the issues in this case are as follows:

> "Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's credibility, **. . .** may not be proved by extrinsic evidence. They may, however, **. . .** if probative of truthfulness or untruthfulness and not remote in time, be inquired into on cross-examination of the witness or on cross-examination of a witness who testifies to his or her character for truthfulness or untruthfulness."
> [*Wis.Stat. §906.08(2)]*

Analysis

Defendant Barnes has, through counsel, named ten "other acts" witnesses he seeks to call at trial. None of these ten were at or near the scene of Mr. Barnes' arrest February 22, 2004. None claim to know if Barnes had cocaine with him on that date. Instead, counsel intends to present to the jury information about the conduct of Milwaukee police on dates and at locations *other than* the Barnes encounter. The specific officers allegedly involved in these other acts are Jason Mucha, Thomas Dineen, Brad Westegard, Timothy McNair, Joseph Warren and Ala Awadallah.

Each of the ten proposed witnesses assert that he or she had an encounter with one or more of these officers in the time period from June 2003 through February 2005. Defense attorney Jensen expects several to claim that one or more of these officers conducted themselves in a violent and abusive manner during the course of these encounters. Seven of the ten say that these officers "planted" cocaine or heroin on them; that is: the officers falsely claimed to have seen cocaine or heroin in the possession of each of these four. Six of these seven were charged with the drug possession in incidents entirely separate from each other and separate from Mr. Barnes. Two have been convicted; three are awaiting trial. The charge against another was dismissed. [1]

Of the seven who say drugs were planted, one, Earl Cosey, was never charged. Instead, he presented tape recordings to the FBI of Milwaukee Police Officer Ala Awadallah apparently seeking to extort guns from him. Cosey asserts that Officer Awadallah attempted to get guns by threatening to bring false charges of cocaine possession against Cosey.

[1] Nicholas Altman maintained his innocence on the charge discussed in this decision. On the day of trial the district attorney moved to dismiss the charge in exchange for a guilty plea to a different charge which Altman did not dispute.

Proposed Witness	Primary Arresting Officers	Alleged Acts of MPD Officers
Lemar Barnes (*this case*)	Mucha / Dineen	physical abuse / planted cocaine
Lillian Brooks & Booker Scull	Mucha / Dineen	physical abuse
Sylvester Hamilton	Mucha / Dineen / 2 other officers	physical abuse
Richard Bennette Green, Jr.	Mucha / Westegard / Awadallah	planted cocaine / physical abuse
Walter Missouri	Mucha / Westegard	planted cocaine / physical abuse
James Lee Murry	Mucha / McNair	planted cocaine
Nicholas Altman	Mucha / Dineen	planted cocaine
Brian Cathey	Mucha / Dineen	planted cocaine
Roderick Clacks	Mucha / Dineen / Warren	planted cocaine
Earl Cosey	Awadallah / 1 other officer	planted cocaine / extortion

Brooks, Scull and Hamilton

Three of the proffered witnesses offer no information about cocaine or other drugs. Lillian Brooks, Booker Scull and Sylvester Hamilton propose to testify that each observed Officers Mucha and Dineen using excessive force – violent and abusive conduct toward suspects being arrested.

In the three step analysis for the admission of "other acts evidence" described in *State v. Sullivan*, a trial judge is required to determine whether or not the proffered evidence meets the definition of "relevant evidence" set forth in *Wis. Stat. §904.01*.

Lamar Barnes is charged with possession of cocaine with intent to deliver. At trial the State will have the duty to prove that Mr. Barnes did possess the cocaine. Barnes says he was hit by officers and doused with soda during interrogation after his arrest. He is not claiming that consent to conduct a search or that a confession was extracted by use of force by the officers. Whether these officers abused *other* suspects is of no consequence to the determination of the issues in this case. When the jury in this case considers whether or not Mr. Barnes possessed cocaine it simply doesn't matter whether the very same officers were violent and abusive to others at different times or not. Therefore, testimony from Brooks, Scull and Hamilton is not relevant to the issues in the Barnes case.

Even if the specific other acts allegedly observed by Lillian Brooks, Booker Scull and Sylvester Hamilton would fit within the broad definition of relevant evidence in *Wis. Stat. §904.01*, the probative value is substantially outweighed by the danger of unfair prejudice.

> "Unfair prejudice results when the proffered evidence has a tendency to influence the outcome by improper means or if it appeals to the jury's sympathies, arouses its sense of horror, provokes its instincts to punish or otherwise causes a jury to base its decision on something other than the established propositions in the case."
> [*State v. Sullivan*, 216 Wis.2d 768, 789-790.]

Here, testimony that police officers abused suspects in custody would create precisely the harm that *Sullivan* warned against in defining the term "unfair prejudice". The probative value of such testimony is nil, and such claims would arouse the jury's sense of horror.

Jurors expect officers to uphold the law. They respect the awesome duties of police to face daily danger in order to bring peace and security to the community. Jurors know that they, as taxpayers, employ the officers and other agents of government. They expect us (police, judges and others in government) to conduct our work in a professional manner, respecting the humanity of the people we encounter and performing our public duties in a manner consistent with an even-handed application of the rule of law.

If jurors were to hear that individual officers have used tactics of violence and abuse they would be outraged. To use the language of *State v. Sullivan*, such evidence would provoke the jury's "instincts to punish" the officers and would cause the jury "to base its decision on something other than the established propositions in the case".

The problem is compounded because there is no practical way for the jury to fully examine the truth of the allegations. We cannot realistically conduct trials on each of the allegations relating to matters so far from the issues in this case. Were we to attempt this, we would encounter the additional problems presented in *Wis. Stat. §904.03* of "confusion of the issues" and "waste of time".

Decision (as to witnesses Brooks, Scull and Hamilton)

Therefore, Lillian Brooks, Booker Scull and Sylvester Hamilton will not be allowed to testify as to specific acts of police conduct any of them may have witnessed, under *Wis. Stat. §904.04 (2)*.

Character for truthfulness

Wis. Stat. §906.08 does, however, allow evidence of the character of a witness for truthfulness to be adduced by witnesses with knowledge of the veracity of a witness in the case. As stated above, the testimony must be in the form of opinion or reputation, and the character witness is not allowed to disclose the specific instances of conduct forming the basis for the opinion, except by giving responsive answers to questions on cross-examination.

In the event defendant Barnes seeks to present opinion or reputation testimony as to the truth telling tendency (veracity) of any of the State's witnesses we shall conduct a hearing outside the presence of the jury. Either party may question the proposed character witness to establish whether or not the character witness has a sufficient basis upon which to form an opinion or to know the community reputation as to the veracity of the fact witness. After the hearing this judge will determine if a sufficient basis exists with respect to each character witness. Of course the final step will be an analysis under *Wis. Stat. §904.03* with respect to each such witness.

Analysis regarding Green, Missouri, Murry, Altman, Cathey and Clacks

Richard Bennette Green, Jr., Walter Missouri, James Murray, Nicholas Altman, Brian Cathey and Roderick Clacks were each arrested by Milwaukee police officers between October 16, 2003 and October 22, 2004. Each was charged with the felony offense of possession of cocaine or heroin with intent to deliver. Lamar Barnes is accused in this case of possession of cocaine with intent to deliver on February 22, 2004. Green and Missouri maintained their innocence and were convicted by juries in Milwaukee County Circuit Court. Murray, Cathey and Clacks are awaiting trial. Altman maintained his innocence on the charge discussed in this decision. On his day of trial the charge was dismissed in exchange for a guilty plea to a different charge that Altman did not dispute.

A summary of the details of each of these six cases is included in this decision as an Appendix to this decision. Additional details of the facts of the proffered "other acts" are included in investigative reports, police reports, and court transcripts submitted by the parties. Also considered were the allegations presented in the criminal complaints against each of these six "other acts" witnesses.

Intent, Preparation, Plan

Subject to the three step process of *State v. Sullivan*, evidence of other crimes, wrongs, or acts may be admissible when offered as " **. . .** proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

The proposed testimony of Richard Bennette Green, Jr., Walter Missouri, James Lee Murry, Nicholas Altman, Brian Cathey and Roderick Clacks all relate to actions of Milwaukee Police Officer Jason Mucha or others accompanied by Officer Mucha within a one year time period (actually 53 weeks) and all within less than two miles of the location of Lamar Barnes' arrest. Each of these six people (and also Mr. Barnes) intends to testify that Officer Mucha or another officer accompanied by Mucha falsely claimed to have seen them in possession of cocaine.

Milwaukee County covers over 240 square miles. It runs more than 23 miles north to south and 10 miles east to west. The following is a list of the date sequence and proximity of the incidents at issue in this motion:

Witness	Date of arrest	Location	Case no.	Appx miles from Barnes' arrest
Lamar Barnes	*February 23, 2004*	*2450 West Vine Street*	*04-CF-1001*	
Nicholas Altman	June 15, 2004	2016 North 41st Street	04-CF-3179	1.2
Brian Cathy	October 22, 2004	1712 West Galena Street	04-CF-5883	0.6
Roderick Clacks	June 11, 2004	2674 North 24th Place	04-CF-3167	0.9
Richard Green	October 16, 2003	2679 North 45th Street	03-CF-6089	1.7
Walter Missouri	January 7, 2004	2162 North 41st Street	04-CF-0113	1.1
James Lee Murry	February 4, 2004	1732 West Clarke Street	04-CF-0658	1.0

Attorney Jensen correctly asserts the proposed testimony of Green, Missouri, Murry, Altman, Cathey and Clacks can establish proof of intent to misuse police power and a plan to obtain easy convictions by accusing people with prior criminal convictions within these neighborhoods of felony drug possession.

At the time of oral argument on Mr. Barnes motion for admission of the "other acts" evidence Assistant District Attorneys Mark Sanders and Warren Zier related some of their experience as prosecutors over the years. They argued that the six proposed witnesses have no unique information to present to the jury that ties their cases to Mr. Barnes' case or to each other. The DAs assert that drug defendants often claim that dropped bags of drugs did not belong to them.

They say mere denial of guilt is not special, unique or uncommon information that would allow for its admissibility as evidence of "other acts".

However the proximity of time, location and details of the "bad acts" claimed by these six people present a common theme in which each event is strikingly similar. The district attorneys presented *argument* that drug defendants often deny "dropping" the drugs, but did not present *evidence* (statistical or testimonial) to this effect. The author of this Decision has practiced law or presided over court in Wisconsin thirty years. The past twelve months have been devoted solely and singularly to drug possession and delivery felonies, with over 500 cases decided in that time. This judge has seen nothing similar to this compact series of accusations against a small group of officers in the entire thirty years. With respect specifically to drug felonies, only a handful of defendants chose to proceed to trial in the past twelve months. The others pled guilty of the drug offenses charged. *None* has entered an Alford plea, and no guilty plea has been accepted without a clear admission of guilt to the elements of the offenses.

Of course the personal experiences of the judge do not constitute evidence in this matter. It is related in this opinion only in relation to the DAs argument that the six "other acts" claims are common and not unusual. The judge has a duty to make a common sense analysis of the proffered evidence to determine if it meets an acceptable purpose under Wis. Stat. §904.04 (2) for admission as "other acts" evidence. The experiences of the district attorneys and the judge are reviewed merely as part of this "common sense" analysis.

The series of similar events - close in time and location - certainly could constitute evidence of a plan or intent by an officer or officers to misuse police powers and obtain additional arrests and convictions regardless of the innocence of the arrested parties. Therefore, the "other acts" evidence of these six witnesses *is* offered for an acceptable purpose under Wis. Stat. §904.04 (2), so the first leg of the *Sullivan* analysis is met.

The second *Sullivan* leg is relevance. Is the fact sought to be proved of consequence to the case, and does the evidence tend to make the consequential fact more or less likely? Absolutely. If the jury believes that Officer Mucha had the intent or plan described above the existence of such intent or plan would certainly be of consequence to the outcome of the Lamar Barnes accusation. Further, the anticipated testimony by Green, Missouri, Murry, Altman, Cathey and Clacks would make the existence of the intent or plan more likely than without the testimony.

Finally, *Sullivan* requires a *904.03* analysis. With respect to the proposed testimony of Green, Missouri and Murry the probative value is strong. Of course there is a danger of unfair prejudice

and confusion of the issues. Also, admission of such testimony and extensive impeachment of these witnesses by the State will result in additional consumption of time. However, the law allows exclusion of the evidence only if the probative value is "substantially outweighed" by the danger of unfair prejudice, confusion of the issues or waste of time. In this case the probative value of testimony by Green, Missouri Murry, Altman, Cathey and Clacks overcomes the danger of unfair prejudice, confusion of the issues or waste of time.

The state argues that statements of these witnesses should be discounted because each witness has a long criminal record. This is true; the witnesses do have records. This is a factor taken into account. But the truth is what it is. The state regularly uses police informants to arrange drug deals. In such circumstances the unsavory characters used by the State may be called to testify at trial. The State and the judge ask the jury to consider the evidence as a whole, and apply the entire list of factors set forth in Wisconsin Standard Criminal Jury Instruction #300 to assess credibility. Here the defense seeks to adduce evidence from convicts. The same principles apply as if the State called such witnesses. At trial the district attorney will have the right to use the criminal records of each witness as impeachment of his testimony.

The Wisconsin Rules of Evidence favor admissibility of relevant evidence. Properly instructed, the jury is capable of factoring in the prior convictions of any witness in assessing credibility.

Earl Cosey

Milwaukee Police Officer Ala Awadallah stands charged in the United States District Court for the Eastern District of Wisconsin with deprivation of the right of Earl Cosey to be free from unreasonable searches and seizures. Officer Awadallah was accused of threatening to falsely accuse Cosey of possession of cocaine unless Cosey obtained guns for Awadallah on February 11, 2005. Press reports indicate that Awadallah pled guilty and was convicted of two misdemeanors. Sentencing is scheduled in October 2005.

Attorney Jensen, on behalf of Lamar Barnes has submitted no information that Officers Mucha or Dineen were involved in any way in the Cosey matter. A police report in the Lamar Barnes case indicates that Officer Awadallah was present at the scene of Barnes' arrest but was apparently not a significant participant.

Nothing in the Barnes case record suggests that any prong of the *Sullivan* analysis would be met in the proposed testimony of Earl Cosey at the trial of Lamar Barnes.

Order

For the reasons set forth above, it is the order of the court that:

1. Testimony by Lillian Brooks, Booker Scull, Sylvester Hamilton and Earl Cosey of specific conduct of Milwaukee police officers will not be allowed at the trial of Lamar Barnes.

2. Testimony by Richard Bennette Green, Jr., Walter Missouri, James Murray, Nicholas Altman, Brian Cathy and Roderick Clacks of specific conduct of Officer Jason Mucha and others acting directly alongside Officer Mucha will be allowed at trial.

3. Subject to advance questioning by the parties outside the presence of the jury, and subject to a *Wis. Stat. §* 904.03 analysis, any witness with knowledge of the truth telling tendencies of a fact witness in this case may provide opinion or reputation evidence in accordance with *Wis. Stat. § 906.08*.

Dated this 10th day of August, 2005, at Milwaukee, Wisconsin.

By the court,

Charles F. Kahn, Jr.
Circuit Court Judge

APPENDIX
SUMMARY OF DETAILS OF PROFERRED "OTHER ACTS"

Richard Bennette Green, Jr.

Mr. Green was arrested by Milwaukee police officers Jason Mucha, Brad Westegard and Ala Awadallah October 16, 2003. Each of these three officers testified for the State during Green's trial February 2, 2005. Green testified that he did not possess cocaine that day. Prior to his trial, Mr. Green spoke to a private investigator hired by Lamar Barnes' attorney. The report of Barnes' investigator, Cindy Papka, summarizes what Green told Ms. Papka December 23, 2004.

Green told Papka he was sitting in the passenger seat of a parked car when officers approached with their guns drawn. One pointed the gun into the front passenger window at him. Green said there were blunt roaches (partially burned marijuana cigars) in the ashtray and that he had outstanding warrants for his arrest for misdemeanors. He was placed into a squad car. According to Green, while in the squad officers showed him a gun they said was fully loaded and found in the trunk of the car Green had been in. He denied knowledge of the gun but was told he was being taken downtown for gun charges. As he was being transferred into a paddy wagon, Green says one of the officers reached from the side and punched him hard in the stomach. As he bent over in pain, he says an officer hit him in his right cheek.

Mr. Green told investigator Papka that at the police department he was interviewed by a different officer. The interviewing officer told him the arresting officers had seen him throw cocaine while in the squad car. Green told Papka he was shocked to learn about this allegation, that no one had suggested anything earlier about cocaine, and it would have been stupid of him to throw cocaine in the presence of the officers.

From their testimony at Mr. Green's trial, it appears that Officers Mucha, Westegard and Awadallah all participated directly in Mr. Green's arrest. Green was charged with possession of cocaine with intent to deliver, but the jury convicted him only of the lesser charge of simple possession of cocaine. He was sentenced to serve time at the Milwaukee County House of Correction.

Walter Missouri

Walter Missouri's trial took place April 26 and 27, 2004. Officers Mucha and Westegard testified for the State. Mr. Missouri's testified that on January 7, 2004 while sitting in the passenger seat of a car, officer Westegard came up and pointed a gun at his face. He was ordered out of the car and placed his hands on the top of the car. He testified he was patted down by officer Mucha, then struck on the right side of the back of his head with a flashlight or gun.

Missouri testified that he then dove into the car, grabbed the steering wheel and blew the horn to attract attention to the assault upon him. The testimony continues:

" . . . if I'm not mistaken, it was Officer Mucha, he came in the car and like right up under my arm. And I could see, I could see like, you know, his eyes, you know, from the nose up; but I could feel the gun to my neck. He said, . . . let the F'ing steering wheel go or I'm going to blow your brains through the roof of the car."

Missouri testified he came out of the car with his hands up, walked to the back of the car and laid down on the ground. He said he was then kicked, stomped and hit by the officers, choked by the throat and punched twice in the face with a gloved fist. Then he says an officer stuffed a plastic bag (with cocaine) into his mouth. Eventually he was pepper-sprayed, as well.

Missouri testified he did not put cocaine into his own mouth.

Mr. Missouri was convicted of possession of cocaine with intent to deliver and resisting an officer. He is serving time in a Wisconsin state prison.

James Lee Murry

James Murry is facing trial for possession of cocaine with intent to deliver February 4, 2004. Until April, 2005 he was represented by Attorney Jeffrey Jensen, who also represents Lamar Barnes. Mr. Jensen withdrew from the representation of Mr. Murry to avoid a conflict of interest in that he seeks to call Mr. Murry as a witness at the Barnes trial.

Information supplied by Attorney Jensen suggests that Mr. Murry plans to testify that he was arrested at the home of Mr. David Bingham. Murry will say he was called repeatedly that day by Bingham and a female friend to urge him to come right over to Bingham's home. Murry is likely to admit he knew that Bingham allows drug dealers to use his home in exchange for drugs. He went there anyway.

According to information supplied by Attorney Jensen, police entered the home shortly after Murry arrived. Officer Mucha claims to have seen Murry cutting cocaine at a table. Mr. Murry denies this and asserts his innocence. Murry is prepared to testify that he was told by an officer they would "put the cocaine" on him because he has a criminal record.

Nicholas Altman

Nicholas Altman was arrested June 15, 2004 by Officers Mucha and Dineen. At that time he was out on bail for an April 2004 charge of possession with intent to deliver cocaine. As a result of the June 15, 2004 arrest the district attorney charged him with bail jumping in addition to the new count of possession of cocaine with intent to deliver cocaine.

Prior to the scheduled trial date, Altman wrote the trial judge repeatedly. He asserted his innocence and referred to the arresting officers as "crooked".

May 23, 2005 was the day set for Mr. Altman's trial on both the April 2004 charge and the June 2004 charges. Altman continued to maintain his innocence of the June allegations. Upon review, the district attorney agreed to allow a guilty plea to the April 2004 charge and to seek dismissal of both counts arising from the June 2004 arrest. Mr. Altman was sentenced to prison for the April 2004 crime.

Mr. Barnes' attorney sent investigator Cindy Papka to interview Mr. Altman at Dodge Correctional Institution. Altman told Papka that on June 15, 2004 he had been upstairs inside the home of a friend. He said Milwaukee Police Officers pounded on the door demanding entry and were denied permission to enter by Sabrina Burton. Altman told Papka that Mucha and Dineen rushed into the house anyway and entered the upstairs bedroom with their guns drawn and handcuffed Altman.

Altman told Papka that at the police station he was told that an officer claimed Altman had cocaine in his pocket when arrested. This shocked him, because it was entirely untrue.

Brian Cathey

Brian Cathey was arrested in a house at 17th and Galena Streets in Milwaukee October 22, 2004. the criminal complaint in case 04-CF-5882 asserts that Officer Jason Mucha saw Mr. Cathey conduct a drug transaction outside the house, then run into the house upon seeing officers. The complaint states that officer Mucha chased Mr. Cathey into the house and that Mucha observed Mr. Cathey reach under a large wooden armoire. After Mr. Cathey's arrest an officer discovered a baggie with 65 corner cuts of crack under the armoire.

Mr. Cathey remembers the encounter differently. He met with an investigator for defense attorney Jensen in July 2005. Mr. Cathey told investigator Cindy Papka that he did purchase two blunts of marijuana inside a store and then returned home to 1712 West Galena. Cathy says the police kicked in the door, ordered Cathey to the ground, handcuffed and searched him. He says an officer held up a bag of crack corner cuts and accused Mr. Cathey of throwing it under the dresser. Cathey says he told the officer that was not his. The officer claimed to have Mr. Cathey's fingerprints on the bag, which Cathey referred to as "bull…".

Roderick Clacks

Roderick Clacks spoke to investigator Papka in June 2005. He explained that while riding his bike in June 2004 someone in a Chevy Lumina beeped the horn to get Mr. Clacks' attention. Clacks went over and was offered drugs from the driver. Clacks told Papka that he told the drug dealer he had no money. At that point officers who came running out of nowhere tackled him off his bike. He says that officer Joseph Warren offered to let him go if he would find a dope house with guns. Clacks says he told the officer he did not know anyone like that and was taken to the police station. Eventually he was told he had been arrested for carrying nine bags of heroin. Clacks says he had no heroin.

Roderick Clacks is facing trial for possession with intent to deliver heroin in case 04-CF-3167. The criminal complaint states that Officer Jason Mucha saw Clacks throw the bag of heroin, which landed in the street.