

# Trial Techniques

Practice Pointers, Not Legal Citations

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**Area Prosecutions Division**

# About Area Prosecutions

- **11 Assistants**
- **Average about 50 trials per year**
  - **Major felonies**
  - **Public official misconduct / conflict cases**
  - **Sexually violent predators**
  - **Medicaid / Medicare fraud**
  - **E.g.: Lottery fraud case; Ed Thomas murder by Mark Becker; Creston cops sexual abuse; Seth Techel.**
- **Trials in virtually every county in the State.**

# It's About Persuasion

- Jurors (and Judges!) are folks – so talk to them that way
  - No legalese
  - KISS
  - No cop-speak or expert-speak
- “Trix are for kids”
  - Any attempt to bamboozle a jury is a serious mistake that could snatch defeat from the jaws of victory
  - The shotgun approach is rarely successful
    - It says: “I’m losing and I know it. So I might as well give this a whirl.”



# Persuasion=Integrity

- I heard an attorney say at a prosecutors conference that jurors expect defense attorney's to be mean, difficult, angry and underhanded.
- I believe that all trial attorneys' credibility and integrity are essential to success in the courtroom.
- If a jury thinks you'll do or say anything to win, how are they going to trust you or your evidence?

# Play on Your Field

- Whether plaintiff or defense, make your case about YOUR case, not a negation of the other side's case.



# Play on Your Field

- What are YOU going to prove?
- What is YOUR theory of the case?
- What does YOUR evidence show?
- Why is the jury going to enter its verdict for your side, no matter what the other side does?

# Opening Statement

- Tell the story of your case
- Tell it simply
- Tell it in chronological order
- Briefly summarize the evidence that proves that story
- Tell the jury that this evidence will make it their duty under the law to vote for you
- **SIT DOWN!!!**

# Wasting the Jury's Time

- ... is a cardinal sin!
  - Your job is hard enough without giving them a good reason hate you
- Be prepared
- Be organized
- Get to the point
- Send the jury home if a long conference is expected

**“To be seen, stand up. To be heard, speak up. To be appreciated, shut up!”**

# Jury Selection

- I'm looking for contrarians.

Family Guy - Brian the Contrarian



# Jury Selection

- Contrarians are jury hangers.
- They disagree because everyone else agrees (forget the evidence)
  - Would you agree that a running chain saw can be dangerous?
  - Is it fair to assume that if two people are screaming at each other, they are probably angry?
- Those who want to argue against the obvious are GONE!

# Jury Selection

- Educate about:
  - Issues affecting your case. E.g.:
    - CSI Effect – Science Fiction
    - Misconceptions (how victims act)
    - Fairness in assigning fault / awarding damages – function of civil liability
  - Duty to follow the law
- Build rapport:
  - Be honest, straight-forward and non-judgmental
  - Be yourself, but know yourself and choose the tone.

# Presenting / Defending Against Evidence

- Prepare a trial notebook
- Prepare your witnesses
- Be the cruise ship director
- Have witness and exhibit lists prepared and e-filed in advance
  - This also makes Judges and court reporters like you and eliminates claims of unfair surprise
- If it doesn't hurt you, leave it alone
  - Remember: 1) you're playing on your field; and 2) you're not going to waste the jury's time
- Try hard to never be a angry or hostile to the other side or a witness

# Closing Argument

- Put all the pieces together
- Connect the evidence to the elements of proof
- Technology
  - Use it!
  - It is what people have come to expect
  - Every study shows that evidence and arguments are more effective when presented orally and visually.
  - You can learn how to use it
  - It is powerful stuff!

# State v. Tekippe Schubert Drugs

- Oct. 2006, 248.2 g cocaine seized in four bags.
  - Exhibit 27

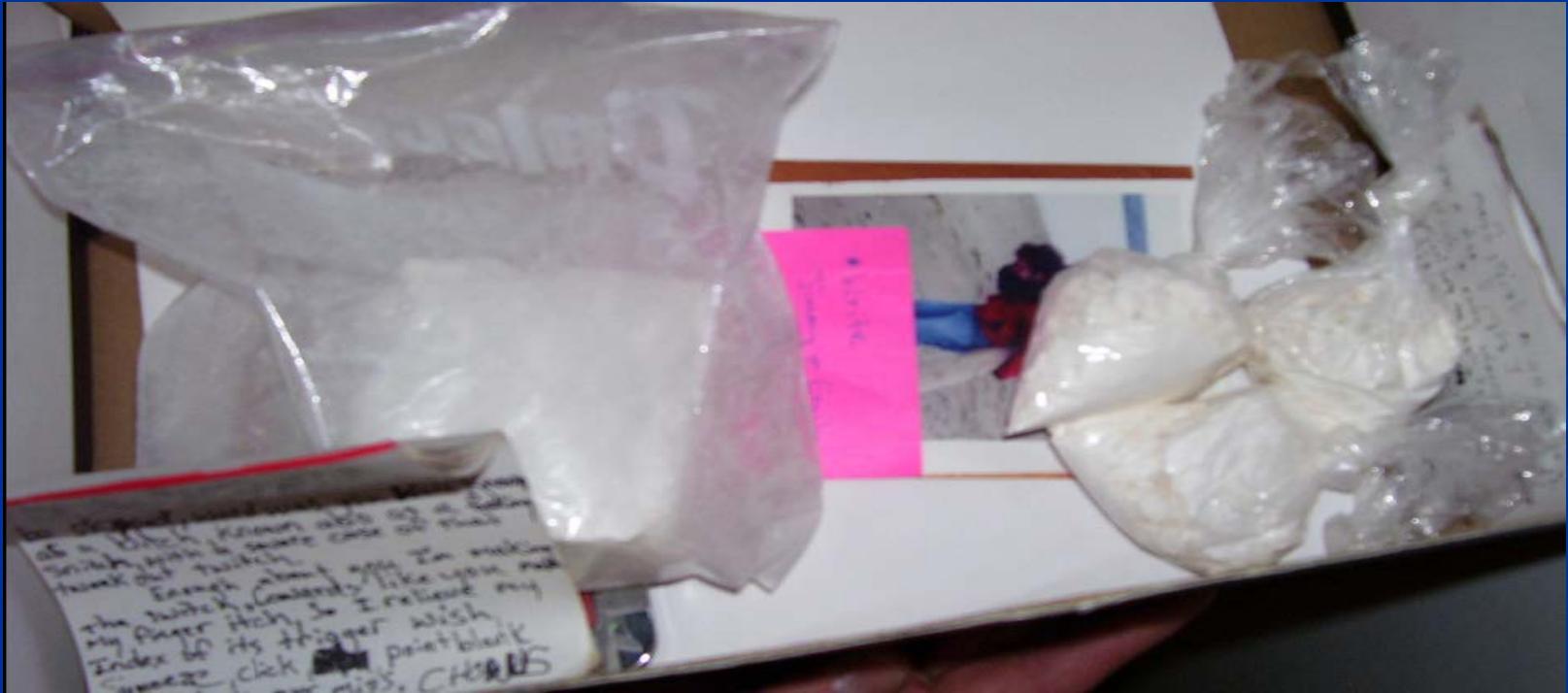
ion:  
**FOUR SEPARATE PACKAGES**

**248.2 gr**

<b>Item #1</b>	<b>Bin #</b> <u>DB, 10</u>
<i>Property Description:</i> <b><u>COCAINE IN FOUR SEPARATE PACKAGES</u></b>	<i>Condition:</i> _____
<i>Make:</i> _____	<i>Model:</i> _____
<i>Serial #:</i> _____	<i>Color:</i> <u>WHITE</u>
<i>NCIC Run:</i> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<i>NCIC Hit:</i> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<i>Indicate:</i> <input checked="" type="checkbox"/> Evidence <input type="checkbox"/> Safekeeping <input type="checkbox"/> Found <input type="checkbox"/> Seizure for Forfeiture	<i>Value:</i> \$ _____
	<i>Quantity (Drugs):</i> <u>248.2 gr</u>

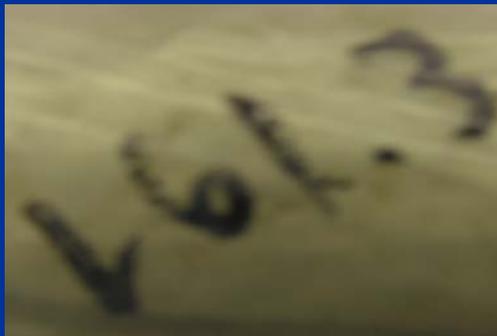
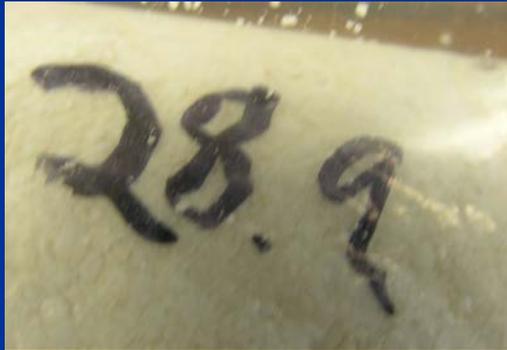
# Schubert Drugs When Seized

- One "Ziploc" brand bag
- Three sandwich bags
- No numbers on bags. **Exhibit 66:**



# Schubert drugs now

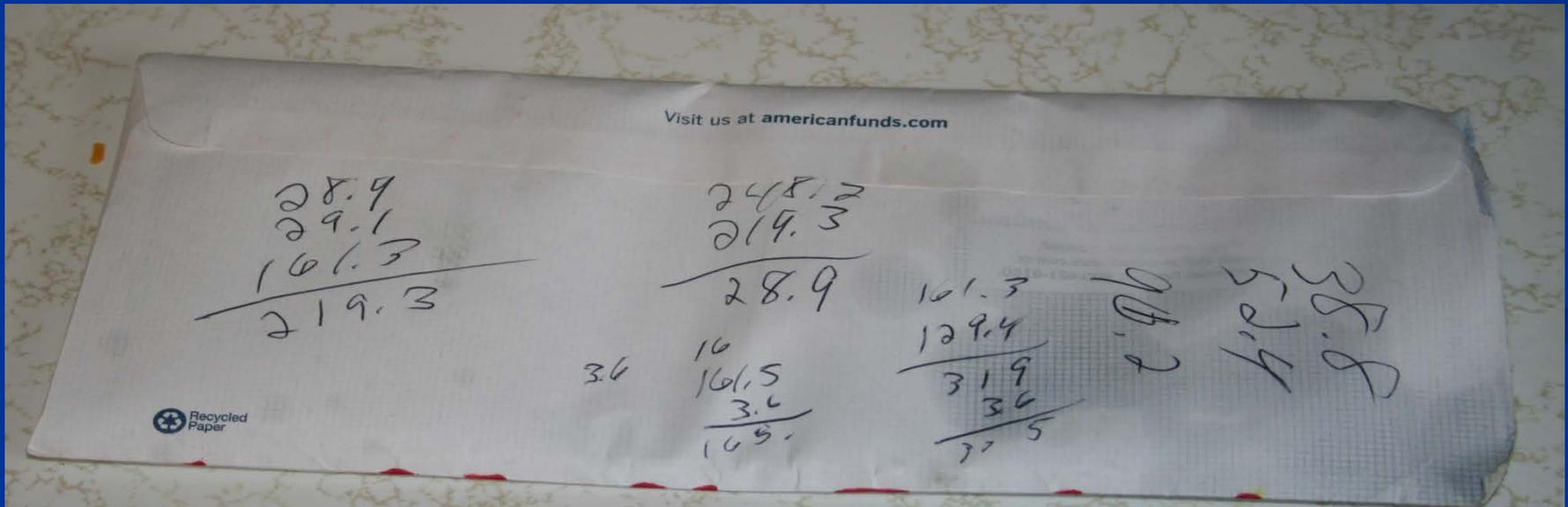
- Returned bags have numbers written on them. Exhibit 63:



- NO "ZIPLOC" brand bag. Exhibit 63

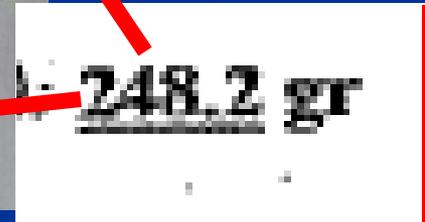
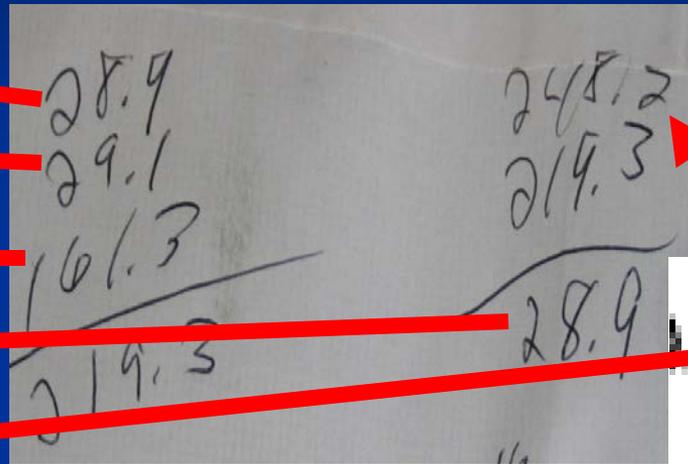
# Schubert Drugs cont.

- On February 1, consent searches of Defendant's office and home conducted.
- At house, police find an envelope with math calculations in Defendant's handwriting on it, Exhibit 121:



# So is the envelope related to the Schubert drugs?

$$\begin{array}{r} 28.9 \\ + 29.1 \\ + 161.3 \\ + \underline{28.9} \\ = 248.2 \end{array}$$

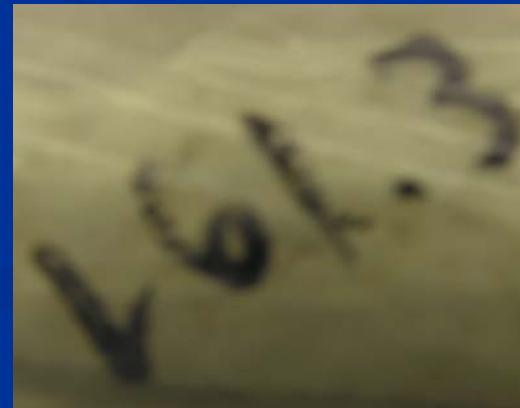
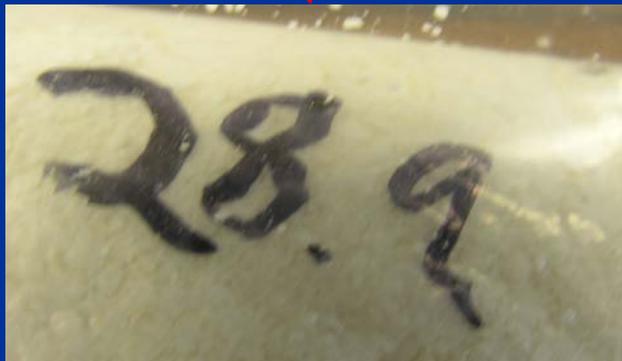


Item #1	Bin # <u>DBX</u>
Property Description: <b>COCAINE IN FOUR SEPARATE PACKAGES</b>	Condition: _____
Make: _____	Model: _____
Serial #: _____	Color: <b>WHITE</b>
NCIC Run: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NCIC Hit: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Indicate: <input checked="" type="checkbox"/> Evidence <input type="checkbox"/> Safekeeping <input type="checkbox"/> Found <input type="checkbox"/> Seizure for Forfeiture	Value: \$ _____
	Quantity (Drugs): <b>248.2 gr</b>

THE DEFENDANT WAS FIGURING OUT HOW MUCH COCAINE HE HAD TO ADD TO MAKE THE SHUBERT DRUGS WEIGH OUT CORRECTLY!

# And where else have we seen these numbers? Exhibit 63

$$\begin{array}{r} 28.9 \\ + 29.1 \\ + 161.3 \\ + \underline{28.9} \\ = 248.2 \end{array}$$



# Closing Argument

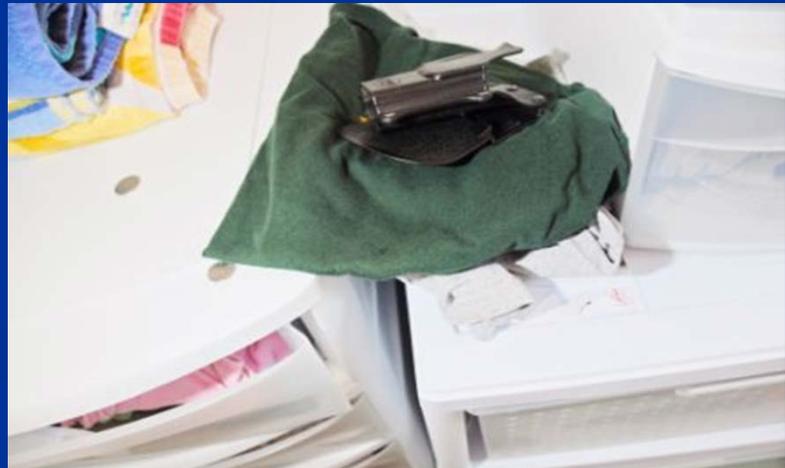
- If your evidence literally speaks, let it do the talking
- Illustrate the commentary with admitted photographs
- Example: State v. Techel

# Impossible Story

- Defendant makes it clear that he grabs gun from its holster:



- But the holster is found in the gunroom:



# Portraying Yourself And the Profession to the Public

- The following is not a trial technique
- And probably won't qualify for ethics credits
- But there is a moral
- .....and it's a fun way to end



Just Because You Did It  
Doesn't Mean You're Guilty.

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# Portraying Yourself And the Profession to the Public

Oh, he's that attorney from the billboard whose clients did it. Why are we here?????



**So go forth and try  
cases with  
professionalism and  
expertise**