

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

—————
Certiorari to Calhoun County

Honorable Kristi F. Curtis, Circuit Court Judge
—————

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Jun 13 2022

S.C. SUPREME COURT

HERMAN HUGHES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001415
—————

APPENDIX
—————

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ORDER GRANTING RIGHT TO SEEK BELATED APPELLATE REVIEW
PURSUANT TO AUSTIN V. STATE4728

1 FURTHER, TOOK SPINAL PROPULSIONS ON HER AND STARTED
2 TWO IV'S ON HER AND FLUID TO TRY TO GET HER PRESSURE
3 BACK UP AND TRY TO REDUCE HER PULSE RATE.

4 Q. ALL RIGHT. AND WHERE DID Y'ALL TAKE HER?

5 A. WE TOOK HER TO THE ORANGEBURG EMERGENCY
6 ROOM.

7 Q. TURNED HER OVER TO THE PHYSICIANS THERE?

8 A. YES, SIR.

9 MR. BAILEY: PLEASE ANSWER ANY QUESTIONS
10 MR. NEWSOME MAY HAVE.

11 MR. NEWSOME: I HAVE NO QUESTIONS, YOUR
12 HONOR.

13 THE COURT: YOU MAY COME DOWN. THANK YOU.

14 MR. BAILEY: YOUR HONOR, MY NEXT WITNESS
15 IS THE SLED CRIME SCENE TECHNICIAN, AND HIS TESTIMONY
16 WILL PROBABLY BE ABOUT 15 OR 20 MINUTES. I DON'T
17 KNOW IF YOU WANT TO TAKE A BREAK NOW OR I CAN CALL
18 HIM NOW. WHATEVER.

19 THE COURT: WELL, I HATE TO WORK THE JURY,
20 BUT I HATE TO HAVE HIM COME BACK. LET'S GO AHEAD AND
21 TAKE THIS WITNESS, AND THEN WE'LL STOP FOR THE
22 EVENING.

23 MR. BAILEY: ALL RIGHT.

24 THE CLERK: PLEASE STATE YOUR NAME FOR THE
25 RECORD.

1 THE WITNESS: STEVEN M. DERRICK.

2 STEVEN M. DERRICK,

3 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,

4 TESTIFIED AS FOLLOWS:

5 THE COURT: LADIES AND GENTLEMEN OF THE
6 JURY, THIS WILL BE THE LAST WITNESS FOR THE EVENING.

7 WE ARE NOW IN THE PROCESS OF MAKING DINNER
8 ARRANGEMENTS FOR YOU.

9 MR. BAILEY: YOUR HONOR, CAN WE APPROACH
10 BRIEFLY?

11 THE COURT: YES, SIR.

12 (WHEREUPON, COUNSEL APPROACHED
13 THE BENCH FOR AN OFF-THE-RECORD
14 DISCUSSION.)

15 THE COURT: DOES ANY MEMBER OF THE JURY
16 PANEL NEED A SHORT BREAK BEFORE WE TAKE THIS WITNESS?
17 OKAY. THIS WILL BE THE LAST WITNESS FOR THE EVENING.
18 GO AHEAD.

19 D I R E C T E X A M I N A T I O N
20 BY MR. BAILEY:

21 Q. STATE YOUR FULL NAME, PLEASE.

22 A. STEVEN M. DERRICK.

23 Q. MR. DERRICK, WHERE ARE YOU EMPLOYED?

24 A. I'M EMPLOYED WITH THE SOUTH CAROLINA LAW
25 ENFORCEMENT DIVISION, MORE COMMONLY KNOWN AS SLED.

1 Q. AND HOW LONG HAVE YOU WORKED WITH SLED?

2 A. I'VE BEEN WITH SLED A LITTLE OVER SIX
3 YEARS.

4 Q. OKAY. AND DID YOU HAVE ANY PREVIOUS
5 BACKGROUND IN LAW ENFORCEMENT?

6 A. YES, SIR, I DO. I HAVE CLOSE TO 21 YEARS
7 EXPERIENCE IN LAW ENFORCEMENT WITH SLED, WITH
8 LEXINGTON COUNTY SHERIFF'S DEPARTMENT AND THE AIKEN
9 COUNTY SHERIFF'S DEPARTMENT.

10 Q. AND RIGHT NOW, WHAT ARE YOUR DUTIES WITH
11 SLED?

12 A. I AM ASSIGNED TO THE DEPARTMENT OF LATENT
13 PRINT AND CRIME SCENE.

14 Q. OKAY. AND AS A CRIME SCENE TECHNICIAN,
15 WHAT ARE YOUR DUTIES AND RESPONSIBILITIES?

16 A. AS A CRIME -- IN THE AREA OF CRIME SCENES,
17 OUR RESPONSIBILITIES ARE TO RESPOND WHEN REQUESTED BY
18 ANY LAW ENFORCEMENT AGENCY TO A LOCATION IN THEIR
19 JURISDICTION TO PROCESS THE CRIME SCENE, COLLECT AND
20 PRESERVE EVIDENCE, RECONSTRUCT VARIOUS ASPECTS OF THE
21 CRIME SCENE, IF REQUESTED TO DO SO, TO TAKE ITEMS OF
22 EVIDENCE BACK TO THE STATE LABORATORY FOR FURTHER
23 EXAMINATION.

24 Q. AND DID YOU COME TO CALHOUN COUNTY TO THE
25 BLUE DIAMOND CASINO ON THE EVENING OF MARCH THE 18TH

1 OF LAST YEAR?

2 A. YES, SIR, I DID.

3 Q. AND DID YOU HAVE ANYBODY ELSE WITH YOU,
4 ANY OTHER SLED AGENT THAT WORKS WITH YOU?

5 A. YES, SIR, I DID. I HAD SPECIAL AGENT
6 KELVIN KRENINGER.

7 Q. AND WHO WAS -- WHO WAS IN CHARGE OF THE
8 TWO FROM SLED?

9 A. I WAS THE SENIOR AGENT IN CHARGE OF THE
10 CRIME SCENE THAT NIGHT.

11 Q. SO ABOUT WHAT TIME DID YOU ARRIVE?

12 A. I RECEIVED THE CALL AT APPROXIMATELY 8:45
13 P.M. FROM OUR HEADQUARTERS AND ARRIVED ON THE SCENE
14 APPROXIMATELY 10:00 P.M. THAT NIGHT.

15 Q. OKAY. AND WHEN YOU ARRIVED, WERE THERE
16 OTHER OFFICERS -- LOCAL LAW ENFORCEMENT OFFICERS ON
17 THE SCENE?

18 A. YES, SIR, THERE WERE. THERE WERE A NUMBER
19 OF OFFICERS THERE WHO HAD SECURED THE SCENE BEFORE
20 OUR ARRIVAL.

21 Q. AND HAD THE VICTIMS BEEN REMOVED BEFORE
22 YOU GOT THERE?

23 A. YES, SIR. THAT'S WHAT I WAS INFORMED OF.

24 Q. AND TELL THE JURY WHAT YOUR GENERAL
25 OBSERVATIONS OF THE BLUE DIAMOND WERE WHEN YOU

1 ARRIVED THERE.

2 A. THE GENERAL OBSERVATIONS DURING WHAT I
3 REFER TO AS A WALK THROUGH -- AND THIS IS DONE
4 SHORTLY AFTER OUR ARRIVAL ONCE WE RECEIVE PERTINENT
5 INFORMATION FROM THE LOCAL AUTHORITIES WHO HAVE
6 ALREADY BEEN ON THE SCENE. WE WALK THROUGH THE CRIME
7 SCENE TO GET A GENERAL IDEA OF THE TYPE OF EVIDENCE
8 WHICH IS PRESENT AND THE TYPE OF EXAMINATIONS THAT
9 WE'RE GOING TO HAVE TO CONDUCT AT THAT SCENE.

10 DURING THE INITIAL WALK THROUGH, THERE WAS A
11 BULLET HOLE NOTED THAT HAD GONE THROUGH THE BLIND
12 INTO THE WALL. THERE WERE A NUMBER OF SHELL CASINGS
13 WHICH WERE OBSERVED ON THE FLOOR. OF COURSE, THERE
14 WAS AREAS OF BLOOD LETTING BASED ON THE INFORMATION
15 THAT TWO INDIVIDUALS HAD BEEN SHOT. THE -- A DRAWER
16 TO A DESK HAD BEEN PULLED OPEN. THE CASH DRAWER HAD
17 OBVIOUSLY BEEN RANSACKED. AND I BASE THAT ON THE
18 FACT THAT THERE WAS ONLY ONE -- ONE DOLLAR BILL LEFT
19 IN THE CASH DRAWER. THE MONEY DIVIDERS WERE NOT IN
20 PLACE, THEY WERE SCATTERED ABOUT, AND SEVERAL ITEMS
21 OF PAPER WERE SCATTERED ABOUT IN THE CASH DRAWER
22 ALSO. THESE WERE THE BIG SPECIFIC ITEMS OF EVIDENCE
23 THAT WERE FIRST NOTED DURING THE WALK THROUGH.

24 Q. DID YOU PREPARE A ROUGH SKETCH OF THE
25 INSIDE OF THE BLUE DIAMOND?

1 A. YES, SIR, I DID.

2 MR. BAILEY: BEAR WITH US ONE SECOND,
3 PLEASE, YOUR HONOR.

4 BY MR. BAILEY:

5 Q. LET ME HAND YOU THIS AND ASK IF THIS IS AN
6 ENLARGEMENT OF THAT SKETCH YOU PREPARED?

7 A. (WITNESS REVIEWS ITEM.)

8 Q. AND OBVIOUSLY, THAT'S NOT TO SCALE.

9 A. YES, SIR.

10 MR. BAILEY: YOUR HONOR, I WOULD OFFER
11 THIS.

12 MR. NEWSOME: WITHOUT OBJECTION. I'VE
13 SEEN IT, YOUR HONOR.

14 THE COURT: YOU HAVE NO OBJECTION TO IT
15 GOING INTO EVIDENCE?

16 MR. NEWSOME: NO, SIR. I'VE SEEN IT.

17 THE COURT: ALL RIGHT, SIR. ORDINARILY, A
18 DEMONSTRATIVE WOULD NOT GO INTO EVIDENCE, BUT IF YOU
19 HAVE NO OBJECTIONS TO LETTING IT GO TO THE JURY, I'LL
20 PERMIT IT.

21 (STATE'S EXHIBIT NUMBER 11
22 MARKED FOR IDENTIFICATION AND
23 ENTERED INTO EVIDENCE.)

24 BY MR. BAILEY:

25 Q. I'LL HAND YOU STATE'S 11, AND IF YOU WOULD

1 -- YOU MAY WANT TO GET UP IN FRONT OF IT. I'LL LEAVE
2 IT UP TO YOU. WOULD YOU TELL THE JURY EXACTLY WHAT
3 THIS DRAWING DEPICTS AND WHAT YOU OBSERVED IN THE WAY
4 OF ANY POTENTIAL EVIDENCE THAT YOU RECOVERED?

5 A. WHAT THIS DRAWING REPRESENTS IS A
6 NOT-TO-SCALE DRAWING OF THE LOCATION THAT I WAS AT
7 THAT EVENING. THERE WAS A STORAGE AREA IN THE BACK
8 OF THE BUILDING. THERE WAS A BATHROOM AND AN OFFICE
9 AREA THAT ADJOINED THE STORAGE AREA TO THE REAR OF
10 THE BUILDING.

11 THE ITEMS OF EVIDENCE THAT WERE NOTED BY MYSELF
12 AND THE OTHER EXAMINER WERE PRIMARILY IN THIS AREA
13 FROM THE FRONT DOOR OVER TO THIS WALL. WHAT WAS
14 NOTED AND DOCUMENTED IN THIS DIAGRAM WERE ITEMS ONE
15 THROUGH FOUR, WHICH WERE BULLET SHELL CASINGS WITH
16 ONE AND TWO BEING CLOSE TO THIS WALL AND NEAR ONE OF
17 THE VIDEO POKER MACHINES, SHELL CASING NUMBER FOUR
18 BEING OVER HERE NEAR WHAT WAS A REFRIGERATOR. AND
19 I'VE LOST NUMBER THREE AT THE MOMENT. AND SHELL
20 CASING NUMBER THREE BEING ON THE FLOOR IN FRONT OF A
21 TELEVISION THAT WAS ON A STAND.

22 ALSO NOTED WAS ITEM NUMBER FIVE, WHICH WAS ALSO
23 NEAR THE AREA OF ITEM NUMBER THREE SHELL CASING. AND
24 THIS WAS A LEAD BULLET WHICH WAS LAYING ON THE FLOOR.
25 FOR ITEM NUMBER SEVEN LISTED IN THE DIAGRAM, THIS WAS

1 WHERE THE BULLET HOLE WAS NOTED IN THE WALL. IN
2 CUTTING THE WALL OUT, THE LEAD BULLET WAS RETRIEVED
3 FROM INSIDE THE WALL.

4 THE DESK WAS LOCATED HERE. THE CASH DRAWER WAS
5 LOCATED HERE INSIDE THE TOP DRAWER OF THE DESK, THE
6 DRAWER BEING PULLED OPEN. THERE WERE TWO PRIMARY
7 AREAS OF BLOOD -- ACTUALLY THREE PRIMARY AREAS OF
8 BLOOD LETTING, ONE BY THE DESK, ONE OVER BY THE
9 REFRIGERATOR, AND ONE OVER IN FRONT OF A BAR STOOL IN
10 FRONT OF THE T.V. STAND.

11 Q. AND GIVE US AN IDEA OF ROUGHLY HOW BIG THE
12 INSIDE OF THE MAIN ROOM OF THE BLUE DIAMOND IS, WHAT
13 YOU'VE GOT SHOWN THERE. IF YOU WANT TO COMPARE IT TO
14 SOMETHING INSIDE THE COURTROOM HERE --

15 A. TO THE BEST OF MY MEMORY, SAY FROM THE END
16 OF THE JUDGE'S DESK TO THE JURY DESK HERE, TO THE
17 BEST OF MY MEMORY, WOULD BE ABOUT AS LONG AS IT WAS,
18 AND MAYBE THE WIDTH ABOUT FROM THE END OF THE JURY
19 BOX TO HERE.

20 Q. SO IT'S A VERY SMALL BUILDING?

21 A. YES, SIR, IT WAS.

22 Q. ALL RIGHT, SIR. DID YOU TAKE ANY
23 PHOTOGRAPHS INSIDE OF SOME OF THE STUFF YOU DESCRIBED
24 IN THAT SKETCH?

25 A. YES, SIR, I DID.

1 Q. SIR, LET ME HAND YOU NINE PHOTOGRAPHS, AND
2 ASK YOU TO LOOK AT ALL OF THOSE AT ONCE AND LET ME
3 KNOW WHETHER OR NOT YOU TOOK ALL OF THOSE PICTURES
4 THAT NIGHT.

5 A. (WITNESS REVIEWS PHOTOGRAPHS.) YES. I
6 RECOGNIZE ALL OF THESE PHOTOGRAPHS.

7 MR. BAILEY: YOUR HONOR, I WOULD OFFER
8 THESE WITHOUT OBJECTION. MR. NEWSOME HAS VIEWED
9 THEM.

10 MR. NEWSOME: WITHOUT OBJECTION.

11 THE COURT: WITHOUT OBJECTION.

12 (STATE'S EXHIBITS NUMBERS 12,
13 13, 14, 15, 16, 17, 18, 19 AND
14 20 MARKED FOR IDENTIFICATION AND
15 ENTERED INTO EVIDENCE.)

16 BY MR. BAILEY:

17 Q. I'LL HAND YOU STATE'S 12 THROUGH 20, AND I
18 WOULD ASK IF YOU WOULD TAKE THEM ONE AT A TIME,
19 REFERRING TO THEM BY THE EXHIBIT NUMBER, AND EXPLAIN
20 TO THE JURY WHAT THOSE PICTURES SHOW.

21 A. YES, SIR. STATE'S EXHIBIT NUMBER 12 IS A
22 GENERAL PHOTOGRAPH OF THE FRONT ROOM OF THE BUILDING,
23 A PHOTOGRAPH TAKEN NEAR THE FRONT ENTRANCE DOORWAY
24 SHOWING THE T.V., THE ENTRANCE TO THE OFFICE AREA
25 THAT WAS NOTED OFF TO THE SIDE OF THE DIAGRAM, THE

1 DESK WITH THE OPEN DRAWER WHERE THE CASH DRAWER WAS
2 LOCATED, AND OF COURSE, THE VIDEO POKER MACHINES
3 PRESENT IN THE BUILDING.

4 STATE'S EXHIBIT NUMBER 13 IS A PHOTOGRAPH OF THE
5 SAME GENERAL AREA TAKEN AT A DIFFERENT ANGLE,
6 EMPHASIZING THE DESK AND THE OPEN DRAWER.

7 Q. AND WAS THAT THE CONDITION OF THE DRAWER
8 WHEN YOU WENT IN THERE?

9 A. YES, SIR. THAT WAS THE SCENE AS I FOUND
10 IT THAT NIGHT.

11 STATE'S EXHIBIT NUMBER 14 IS A PICTURE OF THE
12 BLIND OR A SECTION OF THE BLIND WHICH IS REPRESENTED
13 IN THE GENERAL PHOTOGRAPH, STATE'S EXHIBIT NUMBER 12.
14 IN THE CENTER OF THE PICTURE IS WHERE ONE OF THE
15 BLINDS HAS BEEN CHIPPED OFF. THIS OCCURRED WHEN ONE
16 OF THE BULLETS WENT THROUGH HERE AND INTO THE WALL
17 BEHIND IT.

18 IN STATE'S EXHIBIT NUMBER 18, THIS IS A
19 PHOTOGRAPH OF THE BULLET HOLE THAT WAS IN THE WALL
20 BEHIND THE BLIND.

21 STATE'S EXHIBIT NUMBER 15 WAS AN EXTERIOR SHOT
22 SHOWING THE FRONT OF THE BUILDING, WHICH WAS TAKEN BY
23 MYSELF FOR A LOCATION IDENTIFICATION.

24 STATE'S EXHIBIT NUMBER 19 IS ANOTHER PHOTOGRAPH,
25 AGAIN TAKEN FROM NEAR THE FRONT DOOR, THIS TIME

1 EMPHASIZING MORE OF THE CORNER WHERE THE REFRIGERATOR
2 WAS LOCATED; WHEREAS THE OTHER PHOTOGRAPH WAS TOWARD
3 THE OFFICE AREA, WHICH WOULD BE ON THIS END, SHOWING
4 AGAIN THE DESK DRAWER, THE LOCATION OF ITEMS IN THAT
5 FRONT ROOM.

6 STATE'S EXHIBIT NUMBER 20 IS A CLOSEUP
7 PHOTOGRAPH OF THE TWO SHELL CASINGS WHICH WERE ON THE
8 FLOOR, WHICH ARE LISTED ON THE DIAGRAM AS ITEMS
9 NUMBER ONE AND TWO.

10 STATE'S EXHIBIT NUMBER 16 IS A PHOTOGRAPH OF THE
11 ACTUAL CASH DRAWER ITSELF DEPICTING THE CHANGE, THE
12 MONEY SEPARATORS BEING REMOVED, ITEMS OF PAPER IN THE
13 CASH DRAWER STREWN ABOUT.

14 STATE'S EXHIBIT NUMBER 17 IS ANOTHER PHOTOGRAPH
15 SHOWING THE SAME ITEM OF EVIDENCE TAKEN FROM A
16 DIFFERENT ANGLE.

17 Q. OKAY. MR. DERRICK, WHEN YOU REFER TO A
18 SHELL CASING, YOU'RE TALKING ABOUT A SPENT SHELL
19 CASING THAT WOULD BE EJECTED IF SOMEBODY FIRED A
20 SEMI-AUTOMATIC PISTOL; IS THAT CORRECT?

21 A. YES, SIR. THAT'S CORRECT.

22 Q. NOW, YOU REFERRED TO SOME SHELL CASINGS.
23 I'LL SHOW YOU SOME. AND YOU'VE SHOWN SOME
24 PHOTOGRAPHS. LET ME HAND YOU FOUR ITEMS AND ASK YOU
25 IF YOU CAN IDENTIFY THOSE.

1 THE COURT: HAVE YOU HAD AN OPPORTUNITY TO
2 LOOK AT THESE SHELL CASINGS?

3 MR. NEWSOME: I'VE SEEN PICTURES OF THEM.
4 I'LL TAKE A LOOK AT THEM.

5 THE WITNESS: YES, SIR. I CAN IDENTIFY
6 ALL FOUR CONTAINERS. THEY MAY HAVE THEM TAPED UP.
7 THEY DO.

8 MR. NEWSOME: ARE THEY ALL THE SAME AS
9 THAT?

10 THE WITNESS: THE SHELL CASINGS, YES, SIR,
11 AND ONE MORE. ALL OF THESE ARE THE SHELL CASINGS.
12 I'M SORRY.

13 MR. NEWSOME: THOSE ARE THE SHELL CASINGS?

14 THE WITNESS: ALL THE SAME.

15 MR. NEWSOME: I'M SATISFIED, YOUR HONOR.

16 BY MR. BAILEY:

17 Q. MR. DERRICK, ARE THOSE THE SHELL CASINGS
18 YOU RECOVERED FROM THE BLUE DIAMOND IN THE LOCATION
19 THAT YOU'VE ALREADY TESTIFIED TO?

20 A. YES, SIR, IT IS. AND THE NUMBERS WRITTEN
21 WITH BLACK INK ON THE CONTAINERS WOULD CORRESPOND TO
22 THE NUMBERS ON THE DIAGRAM.

23 MR. BAILEY: ALL RIGHT, SIR. YOUR HONOR,
24 I WOULD OFFER THESE FOUR INTO EVIDENCE.

25 MR. NEWSOME: WITHOUT OBJECTION, YOUR

1 HONOR.

2 THE COURT: WITHOUT OBJECTION.

3 (STATE'S EXHIBITS NUMBERS 21,

4 22, 23 AND 24 MARKED FOR

5 IDENTIFICATION AND ENTERED INTO

6 EVIDENCE.)

7 BY MR. BAILEY:

8 Q. I HAND YOU TWO MORE CONTAINERS AND ASK YOU
9 TO EXAMINE THOSE.

10 A. YES, SIR. I CAN IDENTIFY BOTH OF THESE.

11 Q. ALL RIGHT, SIR. WHAT ARE THOSE?

12 A. LET'S SEE. ONE OF THEM IS THE LEAD
13 PROJECTILE OR THE LEAD BULLET WHICH WAS RECOVERED
14 FROM THE FLOOR OF THE BLUE DIAMOND, AND THE OTHER
15 ONE, NUMBER SEVEN, IS THE BULLET THAT WAS RETRIEVED
16 FROM THE WALL.

17 Q. ALL RIGHT, SIR.

18 MR. BAILEY: YOUR HONOR, I WOULD OFFER
19 THESE.

20 MR. NEWSOME: LET ME SEE THEM. WITHOUT
21 OBJECTION.

22 THE COURT: WITHOUT OBJECTION?

23 MR. NEWSOME: WITHOUT OBJECTION, YOUR
24 HONOR.

25 (STATE'S EXHIBITS NUMBERS 25 AND

1 26 MARKED FOR IDENTIFICATION AND
2 ENTERED INTO EVIDENCE.)

3 BY MR. BAILEY:

4 Q. ALL RIGHT, SIR. OKAY. MR. DERRICK, I
5 THINK WHEN YOU FIRST TESTIFIED, YOU SAID IN ADDITION
6 TO BEING A CRIME SCENE TECHNICIAN, YOU HAVE SOME
7 EXPERTISE IN FINGERPRINT IDENTIFICATION; IS THAT
8 CORRECT?

9 A. YES, SIR, I DO.

10 Q. WHAT TRAINING HAVE YOU HAD IN FINGERPRINT
11 ANALYSIS?

12 A. MY TRAINING CONSISTS OF MY FIRST COURSE
13 BEING AT THE SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY,
14 WHICH I TOOK A COURSE IN BASIC FINGERPRINTS. I'VE
15 ALSO ATTENDED THE FBI ADVANCED LATENT PRINTS SCHOOL,
16 AND I'VE ATTENDED THE FBI NATIONAL ACADEMY IN
17 QUANTICO, VIRGINIA, WHERE I COMPLETED THE
18 ADMINISTRATIVE ADVANCED COURSE IN FINGERPRINTS. I
19 HAVE ALSO ATTEND TEXAS TECH UNIVERSITY WHERE I HAVE
20 STUDIED --

21 MR. NEWSOME: YOUR HONOR, I WILL STIPULATE
22 TO HIS QUALIFICATIONS.

23 THE COURT: ALL RIGHT, SIR. HIS
24 QUALIFICATIONS AS A FINGERPRINT EXPERT IS ADMITTED.
25 THANK YOU.

1 MR. BAILEY: ALL RIGHT. THANK YOU.

2 BY MR. BAILEY:

3 Q. ALL RIGHT, SIR. MR. DERRICK, JUST FOR THE
4 JURY'S BENEFIT, HAVE YOU TESTIFIED AS AN EXPERT
5 WITNESS IN THE FIELD OF FINGERPRINT ANALYSIS IN
6 COURTS IN THIS STATE?

7 A. YES, SIR. I'VE TESTIFIED IN JUST ABOUT
8 ALL THE JUDICIAL CIRCUITS IN THE STATE OF SOUTH
9 CAROLINA AND FEDERAL DISTRICT COURT AND THE MILITARY
10 COURTS.

11 Q. WILL YOU TELL US WHAT A LATENT PRINT IS?

12 A. A LATENT PRINT IS A PRINT THAT'S NORMALLY
13 ASSOCIATED WITH THAT RIDGE DETAIL WHICH IS LEFT AT A
14 CRIME SCENE. THE WORD LATENT ITSELF MEANS INVISIBLE,
15 AND HOW A LATENT PRINT IS LEFT, ONE HAS TO GO BACK
16 AND EXAMINE THEIR HAND.

17 ON THE FINGERS AND ON THE HAND OF EACH
18 INDIVIDUAL, THERE IS A SYSTEM OF RIDGES AND FURLS
19 WHICH FLOW IN PATTERNS ON EACH FINGER SEPARATELY AND
20 THROUGHOUT THE PALM OF THE HAND. ON THE TOPS OF
21 THESE RIDGES IS A NUMBER OF PORE OPENINGS. AND
22 THROUGH THESE PORES, THERE IS A CONSTANT SECRETION OF
23 GREASES AND OILS AND MOISTURE. AS THESE PORES
24 SECRETE THE MOISTURES AND THE GREASES AND THE OILS
25 AND WE TOUCH OTHER PARTS OF OUR BODY AND TRANSFER

1 THOSE GREASES AND OILS TO THE RIDGE DETAIL ON OUR
2 FINGERS AND HANDS, IT BUILDS UP, THEREFORE OUTLINING
3 THE RIDGES WHICH ARE PRESENT.

4 THEREFORE, WHEN AN INDIVIDUAL TOUCHES ANOTHER
5 ITEM, BECAUSE OF THESE GREASES OR OILS AND MOISTURE,
6 THERE IS A POTENTIAL TO TRANSFER THE RIDGE DETAIL
7 WHICH IS PRESENT ON THE FINGER AND THE HAND TO THAT
8 PARTICULAR SURFACE. BY USING CHEMICAL AND POWDER
9 TECHNIQUES, THIS INVISIBLE PRINT, WHICH IS NOT
10 NORMALLY SEEN A LOT OF TIMES, IS THEN DEVELOPED AND
11 ENHANCED WHERE IT BECOMES VISIBLE TO THE HUMAN EYE.

12 Q. ALL RIGHT, SIR. CALLING YOUR ATTENTION TO
13 THE CASH REGISTER DRAWER, CASH DRAWER.

14 A. YES, SIR.

15 Q. DID YOU -- DID YOU TAKE ANY PAPER OUT OF
16 THAT DRAWER?

17 A. YES, SIR, I DID.

18 Q. LET ME HAND YOU TWO PIECES OF PAPER THAT
19 ARE ENCASED IN SOME PLASTIC AND ASK IF YOU CAN
20 IDENTIFY THOSE.

21 A. YES, SIR, I CAN. THEY BEAR MY CASE
22 NUMBER, INITIALS AND ITEM NUMBER.

23 Q. DID THEY COME OUT OF THAT CASH DRAWER
24 THAT'S SHOWN IN THE PHOTOGRAPHS? I HAND YOU STATE'S

25 17.

1 A. YES, SIR, THEY DO.

2 Q. ALL RIGHT, SIR. AND WOULD YOU STATE
3 WHETHER OR NOT YOU GOT ANY LATENT LIFTS OFF OF THOSE
4 PIECES OF PAPER?

5 A. YES, SIR, I DID. I USED THE APPROPRIATE
6 CHEMICAL TECHNIQUE WHICH WAS USED ON PAPER, AND ON
7 EACH ITEM OR EACH SEPARATE PIECE OF PAPER, I RAISED
8 RIDGE -- OR DEVELOPED RIDGE DETAIL WHICH WAS SUITABLE
9 FOR IDENTIFICATION.

10 MR. BAILEY: ALL RIGHT, SIR. YOUR HONOR,
11 I WOULD LIKE TO HAVE THESE MARKED FOR IDENTIFICATION
12 ONLY AT THIS TIME.

13 THE COURT: ALL RIGHT, SIR.

14 (STATE'S EXHIBIT NUMBER 27
15 MARKED FOR IDENTIFICATION.)

16 MR. BAILEY: YOUR HONOR, THAT'S ALL I HAVE
17 OF MR. DERRICK AT THIS TIME. WE WOULD RESERVE THE
18 RIGHT TO RECALL HIM TOMORROW.

19 MR. NEWSOME: YOUR HONOR, SINCE OF THE
20 LATE HOUR, I COULD EITHER COMMENCE MY
21 CROSS-EXAMINATION NOW, BUT IF HE'S GOING TO RECALL
22 HIM LATER, THE QUESTIONS I --

23 THE COURT: I WILL PERMIT YOU TO DEFER THE
24 TOTALITY OF YOUR CROSS-EXAMINATION UPON RECALL. AND
25 HE WILL BE RECALLED?

1 MR. BAILEY: YES, SIR.

2 THE COURT: ALL RIGHT. THAT'S FINE.

3 MR. NEWSOME: THANK YOU.

4 THE COURT: THIS IS -- MR. FOREMAN, LADIES
5 AND GENTLEMEN OF THE JURY, I APOLOGIZE FOR WORKING
6 YOU UNTIL 7:30 TONIGHT, BUT I KNOW, TOO, THAT YOUR
7 TIME IS ALSO VALUABLE, AND WE WANT TO MOVE ALONG
8 EXPEDITIOUSLY.

9 YOU ARE IN THE CARE AND CUSTODY OF THREE
10 SPLENDID SLED AGENTS WHO WILL TAKE CARE OF YOU. IF
11 ANY PROBLEMS ARISE, LET THEM KNOW. IF YOU NEED TO
12 COMMUNICATE WITH YOUR BUSINESS OR YOUR FAMILY, LET
13 THEM KNOW. YOU ARE OUR GUESTS. WE UNDERSTAND THAT
14 WE ARE INCONVENIENCING YOU. THEY HAVE MADE
15 ARRANGEMENTS FOR DINNER TONIGHT FOR YOU. ANY
16 PROBLEMS ARISE, YOU LET THEM KNOW, AND THEY WILL
17 CONFER WITH ME. I WILL BE AVAILABLE AT ALL TIMES.

18 NOW, ORDINARILY, WE WILL START AT 9:30 IN THE
19 MORNING. IN THE MORNING, THOUGH, WE WILL HAVE TO
20 START AT 10:15. I HAVE MADE A PRIOR COMMITMENT IN
21 COLUMBIA FOR SOME SEVERAL WEEKS AGO, BUT I'LL BE HERE
22 JUST AS EXPEDITIOUSLY AS I CAN, TOO, AND WE'LL MAKE
23 EVERY EFFORT TO START AT 10:15 IN THE MORNING.

24 SO IF YOU WILL HAVE THE JURY HERE AROUND 10:00,
25 BAILIFFS, AND MAKE APPROPRIATE ARRANGEMENTS FOR

1 BREAKFAST.

2 NOW, REMEMBER MY ADMONITION EARLIER, AND I KEEP
3 TELLING YOU, DO NOT DISCUSS THIS CASE WITH ANYONE.
4 PERMIT NO ONE TO DISCUSS IT WITH YOU. IF SOMETHING
5 HAPPENS TO COME ON TELEVISION -- IT'S UNLIKELY, BUT
6 IF IT DOES, PLEASE CUT IT OFF OR TURN IT ASIDE.
7 TOMORROW, THEY WILL MAKE THE MORNING PAPERS AVAILABLE
8 TO YOU. IF YOU'RE LIKE ME, YOU WANT YOUR MORNING
9 PAPER. DO NOT READ ANYTHING ABOUT THIS CASE IF IT
10 HAPPENS TO BE IN THE PAPER, AND THE REASON FOR THAT
11 IS RELATIVELY OBVIOUS. WHATEVER YOUR VERDICT IS, IT
12 MUST BE BASED ON WHAT YOU HEAR IN THIS COURTROOM
13 UNDER OATH AND AFTER YOU'VE HAD THE OPPORTUNITY TO
14 JUDGE THE CREDIBILITY AND THE BELIEVABILITY OF THE
15 WITNESSES WHO MAY HAVE TESTIFIED AS TO THAT ISSUE.

16 NOW, I'LL LET YOU GO TO THE JURY ROOM. THEY
17 WILL MAKE ARRANGEMENTS TO TRANSPORT YOU TO THE MOTEL
18 IMMEDIATELY AND YOUR DINNER -- THEY WILL HAVE DINNER
19 FOR YOU. THANK YOU SO MUCH, AND I LOOK FORWARD TO
20 SEEING YOU IN THE MORNING.

21 (WHEREUPON, THE JURY WAS REMOVED
22 FROM THE COURTROOM AND THE
23 PROCEEDINGS WERE ADJOURNED.)

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CERTIFICATE OF REPORTER

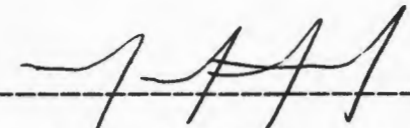
STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

I, MARK W. HAGOOD, REGISTERED PROFESSIONAL REPORTER, (RPR), COURT REPORTER FOR THE STATE OF SOUTH CAROLINA, FOURTH JUDICIAL CIRCUIT, DO HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IS A STENOGRAPHIC REPORT AND WAS TRANSCRIBED THROUGH COMPUTER-AIDED TRANSCRIPTION; THAT THE FOREGOING TRANSCRIPT CONTAINS A TRUE RECORD OF THE PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO NOR EMPLOYED BY ANY OF THE PARTIES CONNECTED TO THE ACTION, NOR AM I FINANCIALLY INTERESTED IN THE ACTION.

WITNESS MY HAND AT FLORENCE, SOUTH CAROLINA, THIS 3rd DAY OF April, 1996.



MARK W. HAGOOD, RPR

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CALHOUN IN GENERAL SESSIONS COURT

3

4 STATE OF SOUTH CAROLINA

94-GS-09-153

5

94-GS-09-154

V.

94-GS-09-155

6

94-GS-09-156

HERMAN LEE HUGHES, JR.

7

8

VOLUME SIX

9

10 THE TRIAL PROCEEDINGS HAD
IN THE ABOVE-STYLED CAUSE

11

FRIDAY, SEPTEMBER 8, 1995
ST. MATTHEWS, SOUTH CAROLINA

12

13

BEFORE: HONORABLE EDWARD B. COTTINGHAM,
CIRCUIT COURT JUDGE

14

15

A P P E A R A N C E S

16

17 FOR THE STATE: WALTER M. BAILEY, JR., SOLICITOR

18

19 FOR THE DEFENDANT: PHILLIP F. NEWSOME, ESQUIRE

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21

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10	STATE'S 15	" " "	978	978
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11	STATE'S 17	" " "	978	978
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12	STATE'S 19	" " "	978	978
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10	STATE'S 61	PHOTO - KEN PRESLEY	1381	1381
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11	STATE'S 63	PHOTO - KEN PRESLEY	1381	1381
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1 (BEGINNING OF VOLUME SIX)
2 (WHEREUPON, ON FRIDAY,
3 SEPTEMBER, 8, 1995, BEGINNING AT
4 10:01 A.M., THE FOLLOWING
5 PROCEEDINGS WERE HAD.)

6 THE COURT: GOOD MORNING, LADIES AND
7 GENTLEMEN.

8 PRIOR TO PROCEEDING WITH THE FIRST WITNESS, ARE
9 THERE ANY MATTERS WE NEED TO TAKE UP ON THE RECORD?

10 MR. BAILEY: YOUR HONOR, ONE MATTER THAT
11 I'D LIKE TO BRING UP NOW WITH THE JURY OUT IS THAT
12 UNDER RULE 801, IT STATES THAT IT'S ALLOWABLE TO
13 INTRODUCE A PRIOR CONSISTENT STATEMENT OF A WITNESS
14 OFFERED TO REBUT AN EXPRESSED OR IMPLIED CHARGE IF
15 THAT PERSON MADE A RECENT FABRICATION OR HAD IMPROPER
16 INFLUENCE OR MOTIVE.

17 DANIEL OWENS, THE THIRD WITNESS I CALLED, WAS
18 CROSS-EXAMINED AT LENGTH BY MR. NEWSOME ABOUT HIS
19 RECENT PLEA NEGOTIATIONS WITH THE STATE.

20 THE COURT: YOU WANT TO INTRODUCE THE
21 STATEMENT INTO THE RECORD?

22 MR. BAILEY: I WANT TO INTRODUCE A PART OF
23 THE STATEMENT TO SHOW THAT HE GAVE CONSISTENT -- A
24 CONSISTENT STORY TWO DAYS AFTER THIS EVENT HAPPENED.

25 THE COURT: TO INTRODUCE A PART OF IT,

1 DON'T YOU HAVE TO INTRODUCE ALL OF IT?

2 MR. NEWSOME: I THINK SO.

3 MR. BAILEY: AND I HAVE NO PROBLEM
4 INTRODUCING THE WHOLE THING, YOUR HONOR.

5 THE COURT: YOU HAVE NO PROBLEM WITH THAT?

6 MR. NEWSOME: IF HE'S GOING TO INTRODUCE
7 PART, I THINK HE OUGHT TO INTRODUCE THE WHOLE THING.

8 THE COURT: HE SAID SO. DO YOU OBJECT TO
9 THE INTRODUCTION OF THE WHOLE?

10 MR. NEWSOME: NO, SIR.

11 THE COURT: BY AGREEMENT, THEN, THE WHOLE
12 ENTIRE MATTER -- I THINK IN FAIRNESS, IF YOU
13 INTRODUCE PART OF IT, YOU OUGHT TO INTRODUCE ALL OF
14 IT.

15 MR. BAILEY: YES, SIR.

16 THE COURT: THAT WILL BE PERMITTED.
17 ANYTHING FURTHER? HOW ABOUT IT, MR. NEWSOME? I WANT
18 TO CLEAR THE DECK SO WE CAN MOVE ON HERE.

19 MR. NEWSOME: NO, SIR.

20 THE COURT: ALL RIGHT. THANK YOU. AND TO
21 YOU LADIES AND GENTLEMEN, GOOD MORNING.

22 (WHEREUPON, THE JURY WAS
23 RETURNED TO THE COURTROOM AND
24 THE FOLLOWING PROCEEDINGS WERE
25 COMMENCED IN OPEN COURT.)

1 THE COURT: GOOD MORNING, MR. FOREMAN AND
2 LADIES AND GENTLEMEN. I TRUST THAT THE ARRANGEMENTS
3 MADE FOR YOU LAST EVENING WERE SATISFACTORY. WE'LL
4 CONTINUE TO TAKE GOOD CARE OF YOU. I CONTINUE TO
5 EMPHASIZE TO YOU THAT YOU ARE THE GUESTS OF CALHOUN
6 COUNTY AND OF THIS COURT, AND WE DEEPLY APPRECIATE
7 YOUR SERVICES IN THIS CASE.

8 YOU MAY CALL YOUR NEXT WITNESS.

9 MR. BAILEY: STATE CALLS DR. STUART ADAMS.

10 THE CLERK: IF YOU WOULD, PLEASE PUT YOUR
11 LEFT HAND ON THE BIBLE. PLEASE RAISE YOUR RIGHT
12 HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

13 THE WITNESS: STUART ADAMS.

14 THE CLERK: SPELL THAT FIRST NAME.

15 THE WITNESS: S-T-U-A-R-T.

16 STUART ADAMS, M.D.,
17 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
18 TESTIFIED AS FOLLOWS:

19 THE CLERK: PLEASE COME AROUND AND HAVE A
20 SEAT.

21 D I R E C T E X A M I N A T I O N

22 BY MR. BAILEY:

23 Q. DR. ADAMS, ARE YOU A PHYSICIAN?

24 A. YES.

25 Q. AND ARE YOU IN A PARTICULAR MEDICAL

1 SPECIALTY?

2 A. EMERGENCY MEDICINE.

3 Q. ALL RIGHT, SIR. BRIEFLY, WHAT IS YOUR
4 EDUCATIONAL BACKGROUND?

5 A. MEDICAL SCHOOL AT THE UNIVERSITY OF
6 KENTUCKY AND RESIDENCY AT RICHLAND MEMORIAL HOSPITAL.

7 Q. AND ARE YOU LICENSED AS A PHYSICIAN IN THE
8 STATE OF SOUTH CAROLINA?

9 A. YES, I AM.

10 Q. HOW LONG HAVE YOU BEEN LICENSED?

11 A. WHAT, 1979, I THINK.

12 Q. ALL RIGHT, SIR.

13 A. FIFTEEN OR SIXTEEN YEARS.

14 Q. AND WHERE DO YOU WORK NOW?

15 A. PRIMARILY, ORANGEBURG.

16 Q. OKAY. AND DID YOU WORK IN THE EMERGENCY
17 ROOM IN ORANGEBURG BACK IN MARCH OF 1994?

18 A. I DID.

19 Q. AND HAVE YOU TESTIFIED PREVIOUSLY IN
20 COURT?

21 A. YES, BUT IT'S BEEN AWHILE.

22 MR. NEWSOME: YOUR HONOR, AGAIN, I'LL
23 STIPULATE TO HIS QUALIFICATIONS.

24 THE COURT: QUALIFICATIONS STIPULATED AS
25 TO MEDICAL DOCTOR AND EMERGENCY ROOM PROCEDURES.

1 MR. BAILEY: ALL RIGHT, SIR. THANK YOU.

2 BY MR. BAILEY:

3 Q. CALLING YOUR ATTENTION TO MARCH 18TH,
4 1994, WERE YOU WORKING IN THE ORANGEBURG HOSPITAL AS
5 AN EMERGENCY ROOM PHYSICIAN?

6 A. YES.

7 Q. WOULD YOU STATE WHETHER OR NOT YOU HAD ANY
8 INVOLVEMENT IN THE TREATMENT OF KELLY HOFFMAN?

9 A. YES, I DID.

10 Q. AND BASICALLY, WHAT WAS YOUR INVOLVEMENT
11 IN HER TREATMENT?

12 A. WHEN SHE WAS BROUGHT IN BY EMS, I
13 BASICALLY STABILIZED HER, SUPPORTED HER BLOOD
14 PRESSURE AND -- YOU KNOW, BASICALLY JUST STABILIZED
15 HER.

16 Q. ALL RIGHT, SIR. WHAT WAS HER CONDITION?
17 WHAT CAUSED HER CONDITION?

18 A. GUNSHOT WOUNDS. SHE HAD ONE TO THE FACE
19 AREA AND ONE TO THE CHEST.

20 Q. ALL RIGHT, SIR. NOW, SPEAKING
21 SPECIFICALLY OF THE GUNSHOT WOUND TO THE CHEST, WAS
22 THAT THE TYPE OF WOUND THAT YOU COULD TREAT IN
23 ORANGEBURG?

24 A. NO. FOR THE SIMPLE REASON THAT SHE -- THE
25 BULLET APPEARED TO HAVE TRANSECTED ONE OF THE LARGE

1 ARTERIES IN THE CHEST. AND WHEN THAT OCCURRED, YOU
2 VERY OFTEN, WHEN YOU OPERATE, HAVE TO PUT THEM ON
3 BASICALLY A HEART/LUNG BYPASS PUMP, AND WE DON'T DO
4 THAT, SO WE TRANSFERRED HER TO RICHLAND.

5 Q. WAS HER CONDITION LIFE THREATENING?

6 A. OH, ABSOLUTELY.

7 Q. AND SO YOU MADE A DETERMINATION TO
8 TRANSFER HER TO RICHLAND COUNTY HOSPITAL?

9 A. CORRECT.

10 Q. ALL RIGHT, SIR. WHAT ABOUT KEN PRESLEY?
11 WERE YOU PRESENT AT THE HOSPITAL WHEN HE WAS
12 ADMITTED?

13 A. YES.

14 Q. ALL RIGHT, SIR. WHAT WAS HIS CONDITION
15 WHEN YOU EXAMINED HIM?

16 A. BRAIN DEAD.

17 Q. ALL RIGHT, SIR. AND HOW DO YOU DETERMINE
18 IF SOMEONE IS BRAIN DEAD?

19 A. WELL, IN -- IN HIS CASE, IT REALLY
20 WOULDN'T TAKE A PHYSICIAN TO MAKE THAT DETERMINATION.
21 HIS BRAINS WERE LITERALLY BLOWN OUT. HE HAD A
22 GUNSHOT ENTRY WOUND JUST BEHIND THE EYE. IT WENT
23 THROUGH THE SKULL AND EXITED THE HEAD ON THE OTHER
24 SIDE. HE HAD BRAIN TISSUE, YOU KNOW, EXUDING FROM
25 THE EXIT WOUND.

1 Q. ALL RIGHT, SIR. AND WAS IT YOUR OPINION
2 TOGETHER WITH THE OTHER PHYSICIANS THERE THAT HE WAS,
3 IN FACT, BRAIN DEAD?

4 A. CORRECT.

5 Q. WHEN THE GUNSHOT WOUND CAME TO HIS HEAD?

6 A. CORRECT.

7 MR. BAILEY: THANK YOU, SIR. ANSWER ANY
8 QUESTIONS MR. NEWSOME MAY HAVE.

9 MR. NEWSOME: I HAVE NO QUESTIONS, YOUR
10 HONOR.

11 THE COURT: YOU MAY COME DOWN, DOCTOR, AND
12 I WILL EXCUSE THIS DOCTOR FROM FURTHER PARTICIPATION.
13 THANK YOU SO MUCH.

14 MR. BAILEY: DR. GREGORY SEXTON.

15 THE CLERK: IF YOU WOULD, PLEASE PLACE
16 YOUR LEFT HAND ON THE BIBLE AND PLEASE RAISE YOUR
17 RIGHT HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

18 THE WITNESS: GREG SEXTON.

19 GREGORY SEXTON, M.D.,
20 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
21 TESTIFIED AS FOLLOWS:

22 THE CLERK: PLEASE COME AROUND AND HAVE A
23 SEAT.

24 DIRECT EXAMINATION
25 BY MR. BAILEY:

1 Q. YOU ARE DR. GREGORY SEXTON?

2 A. YES, SIR.

3 Q. DOCTOR, WHERE DO YOU PRACTICE?

4 A. PARDON?

5 Q. WHERE DO YOU PRACTICE?

6 A. COLUMBIA.

7 Q. AND WHAT IS YOUR SPECIALTY?

8 A. PLASTIC SURGERY.

9 MR. BAILEY: AND DO YOU STIPULATE?

10 MR. NEWSOME: WE STIPULATE.

11 MR. BAILEY: ALL RIGHT, SIR.

12 THE COURT: STIPULATED AS AN EXPERT IN
13 PLASTIC SURGERY.

14 MR. BAILEY: THANK YOU, YOUR HONOR.

15 BY MR. BAILEY:

16 Q. DR. SEXTON, CALLING YOUR ATTENTION TO
17 MARCH 21ST, 1994, DID YOU HAVE A PATIENT NAMED KELLY
18 HOFFMAN?

19 A. YES.

20 Q. WHAT WAS HER CONDITION WHEN YOU FIRST
21 EXAMINED HER?

22 A. I DON'T RECALL CONDITION. THE REASON I
23 WAS CALLED TO SEE HER WAS FOR A BROKEN JAW.

24 Q. ALL RIGHT, SIR. AND DID YOU TAKE THE
25 HISTORY AS FAR AS WHAT BROKE THE JAW?

1 A. NO. I ALREADY KNEW THAT FROM WHAT THE
2 OTHER TRAUMA SURGEONS HAD TOLD ME.

3 Q. OKAY. AND WHAT BROKE HER JAW?

4 A. IT WAS PRESUMED TO BE A BULLET.

5 Q. OKAY. AND COULD YOU DESCRIBE WHERE THE
6 BREAK WAS?

7 A. IT WAS ON THE LEFT SIDE OF HER JAW AT THE
8 ANGLE OF HER JAW.

9 Q. ALL RIGHT. AND DID YOU -- DID YOU PREPARE
10 THE BROKEN JAW?

11 A. YES.

12 Q. AND BRIEFLY, HOW DID YOU GO ABOUT DOING
13 THAT?

14 A. WE TOOK HER TO THE OPERATING ROOM, HAD HER
15 PUT TO SLEEP, WIRED HER MOUTH TOGETHER, MADE AN
16 INCISION UNDER THE JAW, WENT IN, CLEANED UP ALL OF
17 THE FRAGMENTS OR CONTAMINATED MATERIAL AND THEN PUT
18 PLATES AND SCREWS ON THE BONE TO HOLD IT IN POSITION.

19 Q. ALL RIGHT, SIR. AND WAS HER JAW WIRED
20 SHUT FOR A PERIOD OF TIME?

21 A. YES.

22 Q. FOR HOW LONG A PERIOD OF TIME?

23 A. WELL, IT WAS SUPPOSED TO HAVE BEEN WIRED
24 FROM FOUR TO SIX WEEKS. WHEN SHE FIRST CAME BACK TO
25 MY OFFICE, SHE HAD TAKEN OFF HER OWN WIRES, SO I HAD

1 TO TAKE HER BACK TO THE HOSPITAL AND WIRE HER UP
2 AGAIN.

3 Q. ALL RIGHT, SIR. DID YOU PRESCRIBE ANY
4 PAINKILLERS FOR HER?

5 A. I'M SURE WE DID, BUT I DON'T RECALL RIGHT
6 OFFHAND.

7 Q. ALL RIGHT. AND IN THE PROCESS OF
8 REPAIRING THE JAW, DID YOU SEE ANY OTHER DAMAGE
9 CAUSED BY THAT PARTICULAR BULLET?

10 A. THE ENTRANCE WOUND ON HER LEFT CHECK.

11 Q. OKAY.

12 A. AND WE EXCISED THAT BULLET HOLE AND CLOSED
13 IT BACK UP.

14 Q. ALL RIGHT. AND COULD YOU TELL WHAT THE
15 TRAJECTORY OR PATH OF THE BULLET WAS AFTER IT ENTERED
16 HER FACE AND BROKE THE JAW BONE?

17 A. I REALLY COULDN'T.

18 MR. BAILEY: PLEASE ANSWER ANY QUESTIONS
19 DEFENSE MIGHT HAVE OF YOU.

20 MR. NEWSOME: I HAVE NO QUESTIONS, YOUR
21 HONOR.

22 THE COURT: YOU MAY COME DOWN. I WILL
23 EXCUSE THE DOCTOR FROM FURTHER PARTICIPATION. THANK
24 YOU SO MUCH, DOCTOR.

25 MR. BAILEY: BARBARA JOHNSON.

1 THE CLERK: IF YOU WOULD, PLEASE PLACE
2 YOUR LEFT HAND ON THE BIBLE AND PLEASE RAISE YOUR
3 RIGHT HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

4 THE WITNESS: BARBARA JOHNSON.

5 BARBARA JOHNSON,
6 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
7 TESTIFIED AS FOLLOWS:

8 TESTIFIED AS FOLLOWS:

9 THE CLERK: PLEASE COME AROUND AND HAVE A
10 SEAT.

11 DIRECT EXAMINATION
12 BY MR. BAILEY:

13 Q. MS. JOHNSON, WOULD YOU GIVE ME YOUR FULL
14 NAME, PLEASE?

15 A. BARBARA DENISE JOHNSON.

16 Q. MS. JOHNSON, WHAT I WANT YOU TO DO IS TRY
17 TO TALK UP AS LOUD AS YOU CAN BECAUSE THE AIR
18 CONDITIONER IS RUNNING, AND I WANT TO BE ABLE TO HEAR
19 YOU AND THESE JURORS.

20 THE COURT: THAT GENTLEMAN AND THAT LADY
21 IN THE BACK, THEY NEED TO HEAR YOU. SO AS YOU TALK,
22 TALK TO THEM, AND THEN I THINK EVERYONE CAN HEAR YOU,
23 PLEASE. THANK YOU SO MUCH.

24 BY MR. BAILEY:

25 Q. IF YOU -- NORMALLY YOU WOULD WANT TO LOOK

1 AT WHO'S TALKING TO YOU, BUT THE JUDGE WOULD LIKE FOR
2 YOU TO LOOK TOWARDS THE JURY INSTEAD OF ME, OKAY?

3 A. YES, SIR.

4 Q. OKAY. MS. JOHNSON, HOW OLD ARE YOU?

5 A. TWENTY.

6 Q. WHERE DO YOU LIVE?

7 A. 441 ALVA.

8 Q. AND IS THAT IN ORANGEBURG?

9 A. YES, SIR.

10 Q. AND WHO DO YOU LIVE THERE WITH?

11 A. MY MOTHER.

12 Q. ALL RIGHT. NOW, DO YOU KNOW HERMAN HUGHES
13 WHO IS SITTING HERE?

14 A. YES, SIR.

15 Q. AND HOW LONG HAVE YOU -- BACK IN MARCH,
16 HOW LONG HAD YOU KNOWN HERMAN HUGHES?

17 A. I HAVEN'T KNOWN HIM THAT LONG.

18 Q. OKAY. AND HOW DID YOU KNOW HIM?

19 A. I KNEW HIM BY JUST GOING ON PUGH STREET
20 SOME OF THE TIME, AND THAT NIGHT HE CAME TO THE
21 HOUSE.

22 Q. ALL RIGHT. WAS HE A FRIEND OF YOURS?

23 A. NOT REALLY.

24 Q. JUST SOMEBODY YOU KNEW?

25 A. YES, SIR.

1 Q. OKAY. HOW ABOUT A GUY NAMED KELSEY
2 PEARCE? DID YOU KNOW HIM?

3 A. YES, SIR.

4 Q. AND HOW DID YOU KNOW KELSEY PEARCE?

5 A. WE'RE FIRST COUSINS.

6 Q. OKAY. AND HOW ABOUT HENRY DANIEL OWENS?

7 A. JUST FRIENDS.

8 Q. OKAY. AND HAD YOU KNOWN HIM FOR A WHILE?

9 A. YES, SIR.

10 Q. ALL RIGHT. I WANT TO CALL YOUR ATTENTION
11 TO FRIDAY NIGHT, MARCH 18TH OF LAST YEAR. DO YOU
12 REMEMBER THAT NIGHT?

13 A. YES, SIR.

14 Q. WERE YOU AT HOME THAT NIGHT?

15 A. YES, SIR.

16 Q. AND BACK THEN, DID YOU STILL LIVE ON ALVA
17 STREET WITH YOUR MOTHER?

18 A. YES, SIR.

19 Q. IN ORANGEBURG. OKAY. NOW, CALLING YOUR
20 ATTENTION TO ABOUT 8:30, 9:00, DID SOMEBODY COME OVER
21 TO YOUR HOUSE?

22 A. HERMAN AND KELSEY AND DANIEL.

23 Q. OKAY. WHEN YOU SAY HERMAN, KELSEY AND
24 DANIEL, YOU'RE TALKING ABOUT HERMAN HUGHES, KELSEY
25 PEARCE AND DANIEL OWENS; IS THAT RIGHT?

1 A. YES, SIR.

2 Q. DID YOU KNOW THEY WERE COMING AHEAD OF
3 TIME?

4 A. NO, SIR.

5 Q. OKAY. AND SO WERE YOU AT HOME WHEN THEY
6 GOT THERE?

7 A. NO, SIR, NOT THE FIRST TIME THEY CAME.

8 Q. ALL RIGHT. WELL, LET'S TALK ABOUT THE
9 FIRST TIME. WHEN YOU ARRIVED HOME FROM SOMEWHERE
10 ELSE, WERE THEY AT YOUR HOUSE?

11 A. YES, SIR.

12 Q. AND DO YOU KNOW HOW THEY GOT THERE?

13 A. DANIEL -- DANIEL'S CAR.

14 Q. OKAY. AND DO YOU RECALL WHAT KIND OF CAR
15 HE HAD BACK THEN?

16 A. IT HAD TO BE -- I THINK IT WAS DANIEL'S
17 CAR. IT WAS, I THINK, A GRAY CAR.

18 Q. ALL RIGHT.

19 A. OR BURGUNDY -- SO LONG AGO.

20 Q. DID IT HAVE A FRONT SEAT AND A BACK SEAT?

21 A. YES, SIR.

22 Q. OKAY. NOW, WHEN YOU ARRIVED AT YOUR HOUSE
23 AND THESE THREE YOUNG MEN WERE THERE, WHAT WERE THEY
24 DOING?

25 A. THEY WERE ALL SITTING THERE TALKING.

1 KELSEY, HE WAS IN THE ROOM LAYING ON THE BED.

2 Q. KELSEY WAS LAYING DOWN?

3 A. (WITNESS INDICATES.)

4 Q. DID YOU -- DID YOU KNOW WHY HE WAS LYING
5 DOWN?

6 A. HE WAS DRUNK.

7 Q. HE WAS DRUNK. NOW, HOW ABOUT DANIEL
8 OWENS? WHAT KIND OF SHAPE WAS HE IN?

9 A. HE SEEMED LIKE HE WASN'T DRINKING.

10 Q. WASN'T DRINKING AT ALL, TO YOUR KNOWLEDGE?

11 A. NO, SIR.

12 Q. HOW ABOUT HERMAN HUGHES? WHAT SHAPE WAS
13 HE IN?

14 A. HE WASN'T DRUNK EITHER.

15 Q. HE WASN'T DRUNK EITHER? NOW, HOW LONG DID
16 THEY STAY AT YOUR HOUSE THAT NIGHT?

17 A. WE STAYED LIKE A GOOD 10 OR 20 MINUTES.

18 Q. OKAY. AND DURING THAT 10 OR 20 MINUTES,
19 WHAT WERE Y'ALL DOING?

20 A. THEY WERE TALKING TO MY BROTHERS, AND I
21 WAS GETTING READY TO GO TO THE EBONY LOUNGE.

22 Q. ALL RIGHT. AND DID Y'ALL -- BEFORE YOU
23 WENT TO THE EBONY LOUNGE, DID Y'ALL GO ANYWHERE IN
24 MR. OWENS' CAR?

25 A. BURGER KING TO GET MY MOTHER SOMETHING TO

1 EAT.

2 Q. NOW, WHO WENT IN THE CAR TO BURGER KING?

3 A. ME, DANIEL AND HERMAN.

4 Q. OKAY. AND HOW ABOUT -- HOW ABOUT KELSEY?

5 A. AND KELSEY. YEAH, HE WENT.

6 Q. AND DID Y'ALL GO IN DANIEL'S CAR?

7 A. YES, SIR.

8 Q. OKAY. TELL THE JURY WHO WAS DRIVING.

9 A. DANIEL OWENS.

10 Q. AND WHERE WERE YOU SITTING?

11 A. BEHIND KELSEY PEARCE.

12 Q. OKAY. AND WHERE WAS KELSEY?

13 A. KELSEY WAS ON THE PASSENGER SIDE.

14 Q. IN THE FRONT SEAT?

15 A. YES, SIR.

16 Q. AND WHERE WAS HERMAN HUGHES?

17 A. BEHIND THE DRIVER.

18 Q. OKAY. AND SO THE FOUR OF Y'ALL GOT IN THE

19 CAR, DANIEL OWENS IS DRIVING, AND Y'ALL ARE HEADED TO

20 BURGER KING TO GET YOUR MAMA SOMETHING TO EAT?

21 A. YES, SIR.

22 Q. OKAY. NOW, DID Y'ALL GET NEAR JAMISON

23 PHARMACY ON THE WAY TO BURGER KING?

24 A. YES, SIR.

25 Q. AND DID ANYTHING HAPPEN WHEN Y'ALL GOT

1 NEAR JAMISON PHARMACY?

2 A. WHEN WE STOPPED AT THE LIGHT, HERMAN FIRED
3 A SHOT OUT THE WINDOW.

4 Q. OKAY. HERMAN HUGHES, THIS MAN HERE?

5 A. YES, SIR.

6 Q. FIRED A SHOT WITH WHAT?

7 A. A GUN.

8 Q. ALL RIGHT. WAS IT A RIFLE OR A PISTOL?

9 A. IT WAS A PISTOL, BUT I COULDN'T REALLY SAY
10 WHAT KIND BECAUSE IT WAS KIND OF DARK.

11 Q. IT WAS DARK. OKAY. AND WHERE DID HE FIRE
12 THE GUN AT?

13 A. HE FIRED OUT THE DRIVER'S SIDE, DANIEL'S
14 SIDE WHERE HE WAS SITTING.

15 Q. OKAY. AND I THINK YOU SAID THAT HERMAN
16 HUGHES WAS SITTING BEHIND DANIEL --

17 A. BEHIND DANIEL.

18 Q. -- WHO WAS DRIVING. AND HE SHOT OUT THE
19 WINDOW?

20 A. YES, SIR.

21 Q. DID ANYBODY SAY ANYTHING WHEN THE GUN WENT
22 OFF?

23 A. DANIEL SAID, "MAN, PUT THAT GUN UP. THAT
24 THING'S LOUD IN MY EAR."

25 Q. DID HERMAN SAY ANYTHING THEN?

1 A. HE SAID HE THOUGHT HE HAD TAKEN ALL OF THE
2 BULLETS OUT, BUT ONE WAS IN THE CHAMBER, AND HE
3 DIDN'T KNOW.

4 Q. OKAY. AND WHAT DID HE DO WITH THE GUN
5 AFTER THAT, AFTER HE FIRED THE GUN?

6 A. AFTER HE FIRED THE GUN, HE PLAYED WITH IT
7 FOR A LITTLE WHILE, AND THEN HE JUST PUT IT UNDER THE
8 SEAT.

9 Q. WHEN YOU SAY PLAYED WITH IT, HOW DID HE
10 PLAY WITH IT?

11 A. HE JUST WAS FIDDLING WITH IT.

12 Q. OKAY. AND THEN DID Y'ALL GO IN TO BURGER
13 KING?

14 A. YES, SIR.

15 Q. OKAY. AND DID YOU EVENTUALLY GO TO THE
16 EBONY CLUB?

17 A. YES, SIR.

18 Q. AND HOW LONG DID Y'ALL STAY?

19 A. WE STAYED UNTIL IT WAS OVER LIKE.

20 Q. UNTIL IT WAS WHAT?

21 A. OVER.

22 Q. WHAT TIME DID THEY CLOSE UP?

23 A. THAT WAS LIKE THREE OR FOUR SOMETHING IN
24 THE MORNING.

25 Q. OKAY. AND WHERE DID Y'ALL GO NEXT?

1 A. AFTER WE LEFT THERE, WE WENT TO THE WAFFLE
2 HOUSE.

3 Q. ALL RIGHT. NOW, GOING BACK TO WHEN YOU
4 WERE AT THE EBONY CLUB, COULD YOU STATE WHETHER OR
5 NOT, TO YOUR KNOWLEDGE, HERMAN HUGHES HAD ANY MONEY
6 ON HIM?

7 A. YES, THEY HAD MONEY ON THEM.

8 Q. OKAY. WHEN YOU SAY "THEY," WHO HAD MONEY?

9 A. WELL, I SAW HERMAN WITH A BUNCH OF MONEY.
10 KELSEY WASN'T REALLY FLASHING IT BECAUSE HE WAS
11 DRUNK, AND DANIEL DIDN'T FLASH NOTHING.

12 Q. HOW MUCH MONEY DID YOU SEE HERMAN HUGHES
13 HAVE AT THE EBONY CLUB?

14 A. A COUPLE OF 20'S.

15 Q. A COUPLE OF 20'S?

16 A. YES, SIR.

17 MR. BAILEY: OKAY. MS. JOHNSON, PLEASE
18 ANSWER ANY QUESTIONS MR. NEWSOME MIGHT HAVE FOR YOU.

19 THE WITNESS: YES, SIR.

20 C R O S S - E X A M I N A T I O N

21 BY MR. NEWSOME:

22 Q. MS. JOHNSON, DID YOU STAY WITH DANIEL AND
23 KELSEY THAT ENTIRE EVENING?

24 A. YES, SIR.

25 Q. SO YOU WERE BY THEIR SIDE THE WHOLE TIME?

1 A. YES, SIR.

2 Q. DID YOU HEAR KELSEY DISCUSSING SOME
3 ROBBERY AT THE STORE?

4 A. NO, SIR, BECAUSE HE WAS VERY DRUNK.

5 Q. THE WHOLE NIGHT LONG HE WAS DRUNK IS YOUR
6 TESTIMONY?

7 A. YES, SIR. BUT I NOTICED HE WAS HOLDING A
8 NEWSPAPER WHILE WE WAS IN THE EBONY LOUNGE.

9 Q. YOU'RE SURE THAT HE WAS DRUNK ALL NIGHT
10 LONG?

11 A. YES, SIR.

12 Q. OKAY. AND HE WAS HOLDING A NEWSPAPER?
13 DID HE MAKE ANY STATEMENTS THEN ABOUT SHOOTING
14 PEOPLE?

15 A. NO, SIR.

16 Q. OKAY. DO YOU KNOW A PERSON NAMED RICARDO
17 GILFORD?

18 A. YES, SIR.

19 Q. WAS HE THERE AT THE --

20 A. I DON'T REMEMBER SEEING RICARDO. THE ONLY
21 TIME I REMEMBER SEEING RICARDO WAS AFTER EVERYTHING
22 WAS OVER AT THE EBONY LOUNGE, WE WENT TO THE WAFFLE
23 HOUSE AND RICARDO PICKED KELSEY UP.

24 Q. DID DANIEL SEEM SCARED WHEN HERMAN SHOT
25 THAT GUN?

1 A. HE WASN'T REALLY SCARED.

2 Q. TOLD HIM TO PUT IT UP?

3 A. YES, SIR.

4 MR. NEWSOME: THANK YOU.

5 MR. BAILEY: - A COUPLE MORE REDIRECT.

6 R E D I R E C T E X A M I N A T I O N

7 BY MR. BAILEY:

8 Q. WHEN YOU WERE AT THE EBONY CLUB, DID YOU
9 STAY INSIDE THE WHOLE TIME?

10 A. YES, SIR.

11 Q. OKAY. AND WHAT WERE YOU DOING IN THERE?
12 WERE YOU DRINKING AND DANCING OR TALKING OR WHAT?

13 A. I WASN'T DRINKING. I DON'T DRINK.

14 Q. OKAY.

15 A. JUST DANCING.

16 Q. ALL RIGHT.

17 A. AND TALKING TO FRIENDS.

18 Q. ALL RIGHT. DO YOU KNOW WHETHER OR NOT
19 HERMAN HUGHES AND DANIEL OWENS AND KELSEY PEARCE
20 STAYED INSIDE THE CLUB THE WHOLE NIGHT OR WERE THEY
21 GOING IN AND GOING OUT?

22 A. WELL, TO MY KNOWLEDGE, THEY DIDN'T --
23 DIDN'T GO OUT, BUT IF THEY DID, I DIDN'T SEE THEM.

24 Q. OKAY. BUT COULD THEY HAVE GONE OUT WHILE
25 YOU WERE TALKING TO SOMEBODY ELSE?

1 FOR AN
2 OFF-THE-RECORD DISCUSSION.)

3 THE COURT: THIS WITNESS WAS -- HAS
4 PREVIOUSLY TESTIFIED, AND THE STATE DESIRES TO
5 RE-CALL HIM FOR ADDITIONAL EXAMINATION. AT MY
6 DISCRETION, I THINK IT'S APPROPRIATE, AND YOU MAY DO
7 SO.

8 MR. BAILEY: THANK YOU, YOUR HONOR.

9 THE COURT: I BELIEVE YOU HAD -- I THINK
10 YOU HAD INDICATED AT THE TIME YOU WOULD BE RECALLING
11 HIM.

12 MR. BAILEY: THAT'S MY RECOLLECTION, YOUR
13 HONOR.

14 THE COURT: BUT ANYWAY, WITHIN MY
15 DISCRETION, I HAVE THAT AUTHORITY.

16 MR. BAILEY: ALL RIGHT, SIR. ONE SECOND,
17 YOUR HONOR.

18 D I R E C T E X A M I N A T I O N (RECALLED)
19 BY MR. BAILEY:

20 Q. NOW, MR. GREEN, YOU TESTIFIED YESTERDAY
21 THAT YOU ARE A POLICE OFFICER WITH THE CITY OF ST.
22 MATTHEWS?

23 A. YES, SIR.

24 Q. WHERE DO YOU LIVE?

25 A. ORANGEBURG COUNTY.

1 Q. DID YOU LIVE IN ORANGEBURG LAST YEAR,
2 MARCH OF 1994?

3 A. YES, SIR.

4 Q. WHEN YOU GET OFF DUTY AND GO HOME, WHAT
5 ROUTE DO YOU TAKE?

6 A. I USUALLY TRAVEL 601, 601 SOUTH.

7 Q. NOW, CALLING YOUR ATTENTION TO MARCH 19TH,
8 WHAT TIME DID YOU GET OFF WORK?

9 A. I GOT OFF AT 7:00. IT WAS PROBABLY RIGHT
10 AROUND 7:15, SOMEWHERE IN THAT AREA.

11 Q. WE'RE TALKING 7:00 A.M.; RIGHT?

12 A. YES, SIR.

13 Q. WHICH WAS THE MORNING AFTER THE SHOOTING
14 AT THE BLUE DIAMOND?

15 A. YES, SIR.

16 Q. AND WHAT ROUTE DO YOU TAKE, AGAIN?

17 A. 601 SOUTH.

18 Q. AND TO GET FROM CALHOUN COUNTY, ST.

19 MATTHEWS, TO YOUR HOUSE ON 601, DO YOU HAVE TO PASS
20 THE EBONY CLUB?

21 A. YES, SIR, I DO.

22 Q. AND WHEN YOU PASSED THE EBONY CLUB, DID
23 YOU NOTICE ANYTHING THAT MORNING?

24 A. YES, SIR. THE MORNING THAT I PASSED THE
25 EBONY CLUB, I NOTICED A GRAY MAZDA PARKED IN THE

1 PARKING LOT OF EBONY LOUNGE. IT WAS THE ONLY VEHICLE
2 THERE AT THAT TIME. WHEN I SAW THE VEHICLE, I
3 THOUGHT OF IT AS BEING THE VEHICLE THAT WAS DESCRIBED
4 TO US THAT WAS STOLEN FROM THE -- FROM THE BLUE
5 DIAMOND, AND I NOTICED THE TAG, WHICH WAS PEG 311.

6 ONCE I SPOTTED THE CAR, I DIDN'T GO UP TO THE
7 CAR BECAUSE I DIDN'T WANT TO DESTROY ANY EVIDENCE
8 THAT MAY BE AROUND IT. WHAT I DID, I PULLED OVER TO
9 THE SIDE. I LOOKED AT THE CAR GOOD. I WENT TO A
10 STORE THAT WAS -- AT THAT TIME WAS NAMED QUICK
11 RICK'S. IT'S A CONVENIENCE STORE THAT'S ABOUT A MILE
12 FROM THE CLUB. I GOT ON THE TELE--- PAY PHONE ON THE
13 OUTSIDE AND I CALLED BACK TO CALHOUN COUNTY.

14 I CALLED THE ST. MATTHEWS POLICE DEPARTMENT AND
15 I TALKED WITH CORPORAL TERRY RUSSELL. I ASKED HER TO
16 LOOK ON THE BULLETIN BOARD AND LOOK AT THE NOTICE
17 THAT WE HAD WITH REFERENCE TO THIS CAR AND FIND OUT
18 WHAT THE TAG WAS TO MAKE SURE THAT THAT WAS THE
19 VEHICLE. SHE DID, AND AT THAT TIME I LEFT -- AFTER
20 SHE GAVE ME THAT INFORMATION, I LEFT THAT QUICK
21 RICK'S.

22 I WENT OVER TO THE JAIL AND -- TO SEE COULD I
23 FIND ONE OF THE DEPUTIES. I DIDN'T FIND ANY DEPUTIES
24 OVER THERE AT THAT TIME, SO I ASKED THE JAIL TO LET
25 ME USE THE PHONE. I CALLED BACK TO CALHOUN COUNTY

1 AND HAD THEM TO CALL THE ORANGEBURG COUNTY DISPATCH
2 AND HAVE THEM TO DISPATCH SOME ORANGEBURG AUTHORITIES
3 TO THAT AREA.

4 ONCE THIS WAS DONE, I WENT BACK TO THE LOCATION
5 AND WAITED ON ORANGEBURG COUNTY AUTHORITIES. ONCE
6 THEY ARRIVED, I STAYED THERE UNTIL DEPUTY DANNY
7 KIRKLAND FROM CALHOUN COUNTY ARRIVED AND RICHARD WISE
8 FROM WISE WRECKER SERVICES ARRIVED.

9 Q. DID THEY THEN TOW THE CAR AWAY?

10 A. AT THAT TIME, ONCE CALHOUN COUNTY ARRIVED
11 AND THE WRECKER SERVICE ARRIVED, I LEFT.

12 Q. LET ME SHOW YOU STATE'S 1 AND 2 AND ASK
13 WHETHER OR NOT THAT'S THE CAR THAT YOU SAW AT THE
14 EBONY LOUNGE.

15 A. YES, SIR. THAT APPEARS TO BE THE CAR.

16 Q. AND IS THAT BUILDING IN THE BACKGROUND, IS
17 THAT THE EBONY LOUNGE?

18 A. YES, SIR. THAT IS THE EBONY LOUNGE.

19 MR. BAILEY: THANK YOU. THAT'S ALL I
20 HAVE. PLEASE ANSWER ANY QUESTIONS.

21 MR. NEWSOME: I HAVE NO QUESTIONS.

22 THE COURT: YOU MAY COME DOWN, OFFICER.

23 MR. BAILEY: GERALD CARTER.

24 THE CLERK: IF YOU WOULD, PLEASE PLACE
25 YOUR LEFT HAND ON THE BIBLE AND PLEASE RAISE YOUR

1 RIGHT HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

2 THE WITNESS: GERALD DAVID CARTER.

3 GERALD DAVID CARTER,

4 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,

5 TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MR. BAILEY:

8 Q. MR. CARTER, ARE YOU A DEPUTY SHERIFF WITH
9 ORANGEBURG COUNTY?

10 A. YES, SIR.

11 Q. ALL RIGHT, SIR. AND WERE YOU A DEPUTY
12 SHERIFF IN MARCH OF 1994?

13 A. YES, SIR.

14 Q. THE MORNING OF MARCH 19TH, 1994, DID YOU
15 GO TO THE EBONY LOUNGE TO SECURE AN AUTOMOBILE?

16 A. YES, SIR.

17 Q. AND DID YOU SECURE THAT CAR UNTIL STEVE
18 DERRICK OF SLED ARRIVED LATER ON THAT MORNING?

19 A. YES, SIR, I DID.

20 Q. AND DURING THE TIME THAT YOU WERE SECURING
21 THAT CAR AS A DEPUTY OF ORANGEBURG COUNTY, DID
22 ANYBODY COME AROUND THE CAR OR TOUCH IT OR MESS WITH
23 IT IN ANY WAY?

24 A. NO, SIR.

25 Q. AND YOU WERE THERE UNTIL MR. DERRICK

1 ARRIVED?

2 A. YES, SIR.

3 MR. BAILEY: THANK YOU. THAT'S ALL I
4 HAVE.

5 MR. NEWSOME: I HAVE NO QUESTIONS.

6 THE COURT: YOU MAY COME DOWN. THANK YOU.

7 MR. BAILEY: RE-CALL STEVE DERRICK.

8 THE CLERK: IF YOU WOULD, PLEASE STATE
9 YOUR NAME FOR THE RECORD.

10 THE WITNESS: STEVEN M. DERRICK.

11 STEVEN M. DERRICK,

12 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
13 TESTIFIED AS FOLLOWS:

14 D I R E C T E X A M I N A T I O N (RECALLED)
15 BY MR. BAILEY:

16 Q. MR. DERRICK, YOU TESTIFIED YESTERDAY ABOUT
17 GOING TO THE CRIME SCENE AT THE BLUE DIAMOND ON THE
18 EVENING OF MARCH THE 18TH, 1994?

19 A. THAT'S CORRECT.

20 Q. I WANT TO CALL YOUR ATTENTION TO THE
21 FOLLOWING MORNING AND ASK WHETHER OR NOT YOU HAD THE
22 OCCASION TO GO TO THE EBONY LOUNGE IN ORANGEBURG?

23 A. YES, SIR, I DID.

24 Q. AND WERE YOU BY YOURSELF?

25 A. NO, SIR. I HAD AGENT KRENINGER WITH ME

1 AGAIN.

2 Q. AND WHAT WAS YOUR PURPOSE IN GOING TO THE
3 EBONY LOUNGE?

4 A. I HAD RECEIVED A CALL APPROXIMATELY 8:30
5 A.M. THAT MORNING THAT THE VEHICLE WHICH HAD BEEN
6 STOLEN FROM CALHOUN COUNTY HAD BEEN LOCATED IN FRONT
7 OF A NIGHT CLUB ON HIGHWAY 601 IN ORANGEBURG COUNTY.
8 MYSELF AND AGENT KRENINGER RESPONDED TO THAT
9 LOCATION, ARRIVED ABOUT 10:00 THAT MORNING.

10 Q. ALL RIGHT, SIR. AND I HAND YOU PICTURES
11 WHICH ARE STATE'S 1 AND 2, AND ASK YOU WHETHER OR NOT
12 THAT CAR WAS THERE WHEN YOU ARRIVED AT THE EBONY
13 LOUNGE.

14 A. YES, SIR, IT WAS.

15 Q. ALL RIGHT, SIR. DID YOU PROCESS THAT CAR
16 FOR FINGERPRINTS?

17 A. YES, SIR, I DID.

18 Q. AND YOU TOLD US YESTERDAY A LITTLE BIT
19 ABOUT HOW YOU WOULD LIFT A LATENT PRINT, AND YOU WERE
20 TALKING ABOUT PAPER YESTERDAY. HOW DO YOU GET A
21 PRINT OFF OF A METAL OR GLASS SURFACE LIKE A CAR?

22 A. METAL AND GLASS SURFACES, ONCE THE PRINT
23 HAS BEEN TRANSFERRED TO THE SURFACE, CAN BE ENHANCED
24 BY A POWDER, BLACK POWDER OR GRAY POWDER, DEPENDING
25 ON THE COLOR IT'S BEING APPLIED TO. THIS POWDER WHEN

1 LIGHTLY BRUSHED OVER THE SURFACE WILL ADHERE TO THE
2 RIDGE DETAIL WHICH HAS BEEN TRANSFERRED, HIGHLIGHTING
3 IT AND CAUSING -- AND BY THE POWDER BEING THERE,
4 LIFTING TAPE CAN BE USED AND THE LATENT CAN BE LIFTED
5 AND TRANSFERRED TO A BACKER, AND THEREFORE,
6 TRANSPORTED BACK TO THE LABORATORY FOR FURTHER
7 EXAMINATION.

8 Q. AND DID YOU GET SOME LIFTS OFF THAT CAR?

9 A. YES, SIR. WE GOT A NUMBER OF LIFTS OFF
10 THE CAR.

11 Q. ALL RIGHT, SIR. WHAT PARTS OF THE CAR DID
12 YOU GET YOUR LIFTS FROM?

13 A. THE MAJORITY OF THE LATENT LIFTS THAT HAD
14 RIDGE DETAIL THAT WAS SUITABLE FOR IDENTIFICATION
15 CAME OFF THE EXTERIOR OF THE CAR, THE FRONT DOOR,
16 PASSENGER, DRIVER'S SIDE, THE WINDSHIELD, AND THE
17 VARIOUS FENDERS ON THE AUTOMOBILE.

18 Q. DO YOU HAVE THOSE WITH YOU?

19 A. YES, SIR.

20 Q. OKAY. WOULD YOU JUST HAND ME THE ONES
21 THAT YOU WERE LATER ABLE TO MATCH UP.

22 A. (COMPLIES.)

23 Q. OKAY. AND HANDING YOU THE FIRST ONE,
24 WHICH HAS GOT A NUMBER LOOKS LIKE 28 ON IT, WHERE DID
25 THAT LIFT COME FROM?

1 A. THIS LATENT LIFT CAME OFF OF THE EXTERIOR
2 SIDE OF THE WINDSHIELD ON THE PASSENGER SIDE OF THE
3 VEHICLE.

4 Q. ALL RIGHT, SIR. AND WHERE DID THIS NEXT
5 ONE COME FROM?

6 A. THIS LATENT LIFT CAME OFF OF THE DRIVER'S
7 DOOR WINDOW, THE OUTSIDE PART OF THE WINDOW.

8 MR. BAILEY: YOUR HONOR, I WOULD LIKE TO
9 MARK THESE FOR IDENTIFICATION AT THIS TIME.

10 THE COURT: ALL RIGHT.

11 (STATE'S EXHIBITS NUMBER 28 AND
12 29 MARKED FOR IDENTIFICATION.)

13 MR. BAILEY: YOUR HONOR, THAT'S ALL I HAVE
14 AT THIS TIME, BUT I RESERVE THE RIGHT TO RE-CALL HIM.

15 THE COURT: ALL RIGHT. YESTERDAY, YOU
16 WANTED TO RESERVE YOUR CROSS-EXAMINATION UNTIL THE
17 END.

18 MR. NEWSOME: YES, SIR.

19 THE COURT: MR. NEWSOME, YOU WISH TO
20 RESERVE YOUR CROSS-EXAMINATION FOR THE END?

21 MR. NEWSOME: RIGHT.

22 THE COURT: ALL RIGHT. I WILL RELEASE YOU
23 AT THIS TIME SUBJECT TO RE-CALL AND
24 CROSS-EXAMINATION. THANK YOU.

25 MR. BAILEY: CALL PHILLIP WRIGHT.

1 THE CLERK: IF YOU WOULD, PLEASE PLACE
2 YOUR LEFT HAND ON THE BIBLE AND PLEASE RAISE YOUR
3 RIGHT HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

4 THE WITNESS: PHILLIP WRIGHT.

5 PHILLIP WRIGHT,
6 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
7 TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. BAILEY:

10 Q. OKAY. MR. WRIGHT, WHAT'S YOUR FULL NAME?

11 A. PHILLIP WRIGHT.

12 Q. OKAY. AND WHERE DO YOU LIVE?

13 A. ROUTE 4, BOX 106, ST. MATTHEWS.

14 THE COURT: I'M GOING TO ASK YOU TO TALK
15 TO THESE LADIES AND GENTLEMEN BACK AT THE BACK SO WE
16 CAN ALL HEAR YOU, PLEASE, SIR.

17 BY MR. BAILEY:

18 Q. AND ARE YOU RELATED TO HERMAN HUGHES WHO
19 IS SEATED HERE?

20 A. YEAH. I'M HIS FIRST COUSIN.

21 Q. ALL RIGHT. AND I WANT TO CALL YOUR
22 ATTENTION TO SATURDAY, MARCH 19TH, 1994. DID YOU SEE
23 HERMAN THAT DAY?

24 A. YES, SIR.

25 Q. AND WHERE DID YOU SEE HIM?

1 A. HE WAS AT HIS GRANDMA'S HOUSE.

2 Q. OKAY. AND WHERE DOES HIS GRANDMOTHER
3 LIVE?

4 A. RIGHT DOWN THE STREET FROM WHERE I LIVE.

5 Q. ALL RIGHT. DID YOU HAVE SOME PLANS FOR
6 THAT DAY, WHAT YOU WERE GOING TO DO DURING THE DAY?

7 A. NO. WE WERE JUST SITTING THERE.

8 Q. WHEN YOU SAY "WE," WHO WAS SITTING THERE?

9 A. ME AND WILBUR KIMSON AND HERMAN HUGHES.

10 Q. OKAY. YOU AND KELSEY AND HERMAN?

11 A. NO. WILBUR KIMSON.

12 Q. WILBUR KIMSON?

13 A. YEAH.

14 Q. WHERE WERE THE THREE OF Y'ALL SITTING?

15 A. WE WERE IN THE BACKYARD JUST, YOU KNOW,
16 SITTING THERE TALKING.

17 Q. OKAY. AND AT SOME POINT DURING THAT DAY
18 DID Y'ALL DECIDE TO GO TO HERMAN HUGHES' MOTHER'S
19 HOUSE?

20 A. WELL, SHE CAME BY AND SUGGESTED THAT WE
21 HAVE A COOKOUT OR SOMETHING, YOU KNOW, AND --

22 Q. ALL RIGHT.

23 A. AND WE WENT DOWN THERE.

24 Q. OKAY. SO HERMAN'S MOTHER CAME TO YOUR
25 HOUSE AND SAID SHE WAS HAVING A COOKOUT?

1 A. YEAH.

2 Q. AND INVITED Y'ALL -- Y'ALL THREE TO GO;
3 RIGHT?

4 A. YES.

5 Q. YOU AND -- KIMSON AND HERMAN AND YOURSELF;
6 IS THAT CORRECT?

7 A. YES, SIR.

8 Q. WHERE DOES HERMAN'S MOTHER LIVE?

9 A. I THINK IT'S 176 BACK THIS WAY, THE CROSS
10 ROAD.

11 Q. ARE WE TALKING ABOUT HIS BIOLOGICAL
12 MOTHER, MIRANDA?

13 A. YEAH.

14 Q. OKAY. NOW, DID Y'ALL DECIDE TO GO OUT TO
15 HER HOUSE TO COOK OUT?

16 A. YES, SIR.

17 Q. WHOSE CAR DID YOU TAKE?

18 A. MINE.

19 Q. WHO GOT IN THE CAR TO GO TO HERMAN'S
20 MOTHER'S HOUSE?

21 A. ME AND WILBUR AND HERMAN.

22 Q. OKAY. AND ON THE WAY THERE, DID Y'ALL
23 MAKE ANY STOPS?

24 A. YES, SIR.

25 Q. OKAY. WHERE DID YOU STOP?

1 A. TO THE HENRY OWENS' HOUSE.

2 Q. ALL RIGHT. AND WHOSE IDEA WAS IT TO STOP
3 AT HENRY OWENS' HOUSE?

4 A. HERMAN.

5 Q. DID HERMAN TELL YOU WHY HE WANTED YOU TO
6 STOP?

7 A. NO. HE JUST ASKED ME TO STOP BY THERE,
8 AND I JUST STOPPED BY.

9 Q. OKAY. AND ABOUT WHAT TIME WAS IT WHEN YOU
10 STOPPED AT HENRY OWENS' HOUSE?

11 A. IT WAS AFTER TWELVE, YOU KNOW.

12 Q. OKAY. WHAT HAPPENED WHEN YOU STOPPED?

13 A. HE WENT INSIDE AND --

14 Q. WHEN YOU SAY "HE", USE A NAME.

15 A. HERMAN WENT INSIDE, AND HENRY'S BROTHER
16 LET HIM IN, AND HE CAME BACK OUT WITH A SHIRT OR PAIR
17 OF PANTS OR SOMETHING. HE HAD SOMETHING IN HIS HAND.

18 Q. WHEN YOU SAY "HE" --

19 A. HERMAN HUGHES.

20 Q. WE KNOW WHAT YOU'RE TALKING ABOUT. HERMAN
21 CAME OUT WITH SOMETHING IN HIS HAND?

22 A. YEAH. CLOTHES. HE CAME OUT WITH CLOTHES.

23 Q. COULD YOU TELL WHAT IT WAS AT THAT TIME?

24 A. YOU KNOW, HE HAD IT BALLED UP IN HIS HAND.
25 IT WAS EITHER A SHIRT OR A PAIR OF PANTS, BUT HE GOT

1 IN THE CAR WITH IT.

2 Q. ALL RIGHT. AND WHEN HE GOT IN THE CAR,
3 WHERE DID Y'ALL HEAD THEN?

4 A. TO HIS MOTHER'S HOUSE.

5 Q. ALL RIGHT. NOW, DID YOU FIND OUT WHAT
6 HERMAN HAD INSIDE THAT SHIRT?

7 A. YEAH. HE SHOWED IT TO US, WHAT HE HAD.

8 Q. ALL RIGHT. AND WHERE WERE Y'ALL AT WHEN
9 HE SHOWED IT TO YOU?

10 A. WE WAS ON THE WAY TO HIS MOTHER'S HOUSE.

11 Q. OKAY. AND WHAT WAS IT?

12 A. IT WAS A GUN.

13 Q. OKAY. I HAND YOU STATE'S 3 FOR

14 IDENTIFICATION AND ASK YOU IF THAT LOOKS LIKE THE GUN
15 YOU SAW?

16 A. NO, SIR.

17 Q. IT DOESN'T?

18 A. NO.

19 Q. WHAT DID THE GUN HE HAD LOOK LIKE?

20 A. THEY SAY IT WAS A .357, YOU KNOW.

21 Q. WHO SAID IT WAS A .357?

22 A. THAT'S WHAT HERMAN WAS SAYING. THAT'S
23 WHAT HE SAID.

24 Q. OKAY.

25 A. THAT WASN'T THE GUN RIGHT THERE.

1 Q. WAS THERE ANY DISCUSSION ON WHAT Y'ALL
2 WERE GOING TO DO WITH THE GUN?

3 A. OH, HE -- WELL, HE JUST HAD IT AND, YOU
4 KNOW, LIKE HE, YOU KNOW, HAD IT IN HIS POSSESSION.
5 AND WE DIDN'T DECIDE TO DO NOTHING WITH IT. HE JUST
6 -- YOU KNOW, I WAS TRYING TO FIGURE OUT WHAT HE WAS
7 GOING TO DO WITH IT, YOU KNOW. BUT HE NEVER SAID
8 ANYTHING. HE JUST SAID HE HAD -- YOU KNOW, HAD THE
9 GUN, AND WE JUST LOOKED AT IT, YOU KNOW. AND THEN
10 WHEN WE GOT --

11 Q. WHEN YOU SAY "WE" LOOKED AT IT, WHO?

12 A. ME AND WILBUR KIMSON, WE LOOKED AT THE GUN
13 AND SAID IT WAS A NICE GUN AND ALL OF THAT.

14 Q. OKAY.

15 A. AND HE STILL HAD IT, AND WHEN WE GOT TO
16 HIS MOTHER'S HOUSE, I DON'T KNOW WHAT HE DID WITH IT
17 AT THE TIME. SO, YOU KNOW, THAT WASN'T ON MY MIND
18 BECAUSE, YOU KNOW, I NEVER KNEW WHAT WAS GOING ON.
19 YOU KNOW, I WAS TRYING TO FIGURE OUT LATER ON WHAT
20 WAS GOING ON WITH THAT.

21 Q. OKAY. ALL RIGHT. NOW, WHEN YOU GOT TO
22 HERMAN HUGHES' MOTHER'S HOUSE, DID Y'ALL GET OUT OF
23 THE CAR?

24 A. YEAH.

25 Q. AND WHAT HAPPENED TO THE GUN?

1 A. WHAT HAPPENED TO THE GUN?

2 Q. YEAH.

3 A. I DON'T KNOW. I GUESS HE LEFT IT IN THE
4 CAR. YOU KNOW, WHEN I GOT OUT, I WASN'T PAYING ANY
5 ATTENTION TO WHAT HE WAS DOING OR NOT, YOU KNOW,
6 BECAUSE WHEN HE GOT IN THE CAR, HE HAD THE GUN, YOU
7 KNOW -- HAD THE CLOTHES IN HIS HAND, YOU KNOW, CLOSE
8 TO HIM, SO I DIDN'T KNOW EXACTLY WHAT WAS IN IT, WAS
9 THERE A GUN IN IT OR HE HAD IT ON HIM ALL OF THE
10 TIME, BUT I PRETTY FIGURED THAT HE GOT IT FROM THERE
11 BECAUSE WHEN HE GOT IN THE CAR AT HIS GRANDMOTHER'S
12 HOUSE, HE DIDN'T HAVE NOTHING ON HIM.

13 Q. WHERE WAS THE LAST PLACE YOU SAW THE GUN?

14 A. IT WAS IN THE BACK OF MY CAR.

15 Q. RIGHT. OKAY. SO THEN Y'ALL WENT INTO
16 HERMAN'S MOTHER'S HOUSE; RIGHT? YOU AND WILBUR
17 KIMSON?

18 A. YEAH.

19 Q. AND HERMAN HUGHES?

20 A. YEAH.

21 Q. NOW, WOULD YOU STATE WHETHER OR NOT HERMAN
22 HUGHES AND HIS MOTHER LEFT THE HOUSE AT SOME POINT?

23 A. WELL, SHE LEFT. AND SHE HAD GOT A CALL
24 SAYING THAT HERMAN WAS IN SOME TROUBLE LAST NIGHT,
25 AND SHE SAID SHE WAS GOING TO FIND OUT WHAT WAS IT,

1 YOU KNOW. AND SO WHILE SHE WAS GONE, WE WAS, YOU
2 KNOW, TRYING TO TALK TO HERMAN TO SEE IF HE WAS IN
3 ANY TROUBLE OR JUST TALK, YOU KNOW, BUT HE WAS SAYING
4 HE WASN'T IN NO TROUBLE, SO --

5 Q. YOU'VE GOT TO TALK UP JUST A LITTLE BIT SO
6 THEY CAN HEAR YOU.

7 A. HE SAID HE WASN'T IN ANY TROUBLE. WE WERE
8 QUESTIONING HIM AT THE HOUSE DID HE KNOW ANYTHING
9 ABOUT WHAT HAPPENED THE OTHER NIGHT. HE TOLD ME THAT
10 HE -- KELSEY SAID IN THE WAFFLE HOUSE THAT HE'S THE
11 ONE THAT DID THE CRIME. YOU KNOW, I DIDN'T REALLY
12 KNOW KELSEY. I HAD SEEN HIM BEFORE, BUT I DIDN'T PAY
13 NO ATTENTION BECAUSE, YOU KNOW, THAT WAS SOMEBODY
14 ELSE.

15 Q. OKAY. ALL RIGHT. NOW, DID HERMAN LEAVE
16 THE HOUSE LATER ON?

17 A. TALKING ABOUT WHEN HE WAS AT HIS MOTHER'S
18 HOUSE?

19 Q. YEAH.

20 A. WHEN HIS MOTHER CAME BACK, SHE CAME WITH
21 TWO POLICEMEN.

22 Q. OKAY.

23 A. AND THEN HE LEFT WITH THEM.

24 Q. THEN HE LEFT?

25 A. YEAH, WITH THEM.

1 Q. OKAY. AND AFTER HE LEFT, WHAT HAPPENED AS
2 FAR AS YOUR CAR?

3 A. OKAY. WELL, ME AND MY COUSIN, WE WAS JUST
4 SITTING AT THE HOUSE, AND WE WAS SAYING, YOU KNOW, WE
5 DIDN'T KNOW WHAT WAS GOING ON WITH THE GUN, AND WE
6 LOOKED TO SEE IF IT WAS STILL IN MY CAR.

7 Q. WHEN YOU SAY "ME AND MY COUSIN" --

8 A. WILBUR KIMSON, HE'S MY COUSIN.

9 Q. OKAY.

10 A. WE NOTICED THAT THE GUN WAS STILL IN MY
11 CAR, AND WE SAID, WELL, WE WAS GOING TO PUT IT UP
12 UNTIL WE FOUND OUT WHAT WAS GOING ON WITH IT.

13 Q. AND WHAT HAPPENED? DID YOU TAKE THE GUN
14 OUT OF YOUR CAR OR LEAVE IT IN THERE?

15 A. NO. IT STAYED IN THERE, BUT WILBUR LEFT
16 IN MY CAR, AND HE TOOK IT TO A LADY, BETTY'S HOUSE.

17 Q. ALL RIGHT. SO THE LAST YOU SAW OF YOUR
18 CAR, THEN, WAS WILBUR KIMSON DRIVING OFF?

19 A. YEAH.

20 Q. WITH THE GUN IN THE CAR; IS THAT RIGHT?

21 A. YES, SIR.

22 Q. OKAY. DID YOU SEE THE POLICE LATER ON
23 THAT DAY OR NIGHT?

24 A. WHEN -- WHILE THEY WAS GONE WITH HERMAN,
25 THEY SEND DOZIER BACK OUT TO THE HOUSE.

1 Q. THAT'S CHRIS DOZIER?

2 A. YES, SIR.

3 Q. ALL RIGHT.

4 A. AND HE SAID THAT HERMAN TOLD THAT HE LEFT
5 THE GUN WITH ME. THAT WAS WHAT HE SAID. I SAID,
6 WELL, THE GUN WAS IN MY CAR, AND MY COUSIN WANTED TO
7 PUT IT UP.

8 Q. WHAT DID MR. DOZIER AND YOU DO THEN?

9 A. WE GOT IN HIS CAR TO GO FIND MY CAR.

10 Q. WHEN YOU SAY "WE," YOU MEAN --

11 A. ME AND DOZIER, WE WENT TO FIND MY CAR, AND
12 WILBUR HAD IT.

13 Q. DID YOU FIND THE CAR?

14 A. YES, SIR.

15 Q. AND WHERE WAS THE CAR WHEN Y'ALL FOUND IT?

16 A. RIGHT AT THE CROSSROAD OVER ON 17 --

17 Q. WHO WAS IN THE CAR?

18 A. WILBUR.

19 Q. AND AFTER YOU AND DEPUTY DOZIER SAW WILBUR
20 KIMSON IN YOUR CAR --

21 A. YEAH.

22 Q. -- WHAT DID YOU DO THEN?

23 A. WE STOPPED HIM, AND WE TOLD HIM -- I TOLD
24 HIM THAT HERMAN SAID THAT HE LEFT THE GUN IN MY CAR
25 AND FOR HIM TO GIVE THE GUN. AND HE SAID, YOU KNOW,

1 HE TOOK IT TO BETTY'S HOUSE.

2 Q. OKAY. SO THEN WHERE DID Y'ALL GO?

3 A. WE WENT OUT TO BETTY'S HOUSE.

4 Q. ALL RIGHT. WHO WENT TO BETTY'S HOUSE?

5 A. ME -- I GOT BACK IN MY CAR, ME AND WILBUR,
6 AND DOZIER WAS IN HIS CAR, AND HE WAS FOLLOWING ME
7 AND WILBUR OUT TO BETTY'S HOUSE. AND THEN THE OTHER
8 COP, I THINK HIS NAME WAS DANNY OR SOMETHING, WHO
9 CAME AND GOT HIM AND HIS MOTHER, HE CAME BEHIND US,
10 AND HE STOPPED US, AND THEN HE LED THE WAY BECAUSE HE
11 KNEW THE WAY OUT THERE.

12 Q. ALL RIGHT. DID YOU GO INSIDE THE HOUSE?

13 A. NO. I STAYED OUT THE DOOR.

14 Q. OKAY. YOU STAYED OUTSIDE; RIGHT?

15 A. YES.

16 Q. WERE YOU OUTSIDE OF THE HOUSE WHEN THE
17 DEPUTIES CAME OUT?

18 A. YEAH.

19 Q. DID THEY HAVE A GUN WITH THEM?

20 A. YEAH.

21 MR. BAILEY: OKAY. ANSWER ANY QUESTIONS
22 MR. NEWSOME MIGHT HAVE FOR YOU.

23 C R O S S - E X A M I N A T I O N

24 BY MR. NEWSOME:

25 Q. I WANT TO TAKE YOU BACK AND ASK YOU A FEW

1 QUESTIONS BECAUSE, QUITE FRANKLY, I LOST THE TRAIL OF
2 WHERE YOU WERE ALL OF THE TIMES. YOU AND HERMAN AND
3 WILBUR KIMSON?

4 A. YEAH.

5 Q. YOU WENT OUT TO MIRANDA SINGLETARY'S
6 HOUSE?

7 A. YEAH.

8 Q. AND ON THE WAY OUT THERE, YOU STOPPED AND
9 GOT THE GUN?

10 A. YES, SIR.

11 Q. OKAY. AND THAT WAS FROM HENRY OWENS, YOU
12 CALL HIM DANIEL OWENS?

13 A. YEAH. HE WASN'T THERE, BUT HIS BROTHER
14 WAS THERE.

15 Q. HIS BROTHER WAS THERE?

16 A. YEAH.

17 Q. DID YOU GO INSIDE WITH HERMAN IN THERE?

18 A. NO. I STAYED OUT IN THE CAR, ME AND
19 WILBUR.

20 Q. DID HERMAN TELL YOU WHAT HE WAS GOING IN
21 THERE FOR?

22 A. NO, SIR.

23 Q. OKAY. NOW, AFTER YOU GOT OUT TO HIS
24 MOTHER'S HOUSE, TO MIRANDA SINGLETARY'S HOUSE, WHO
25 WAS IT THAT CAME OUT THERE AND SAID THERE WAS SOME

1 PROBLEMS, A POLICE OFFICER?

2 A. YES, SIR.

3 Q. WHICH OFFICER, DO YOU REMEMBER?

4 A. I CAN'T REMEMBER HIS NAME.

5 Q. WAS IT OFFICER KIRKLAND?

6 A. YEAH. IT WAS HIM.

7 Q. OKAY. ALL RIGHT. AND HE TALKED TO WHO

8 WHEN HE FIRST CAME OUT THERE?

9 A. HE TALKED TO HERMAN.

10 Q. HE TALKED TO HERMAN?

11 A. YEAH.

12 Q. AND WHAT WAS HE TALKING TO HERMAN ABOUT?

13 A. HE SAID SOMETHING ABOUT WE KNOW YOU DIDN'T

14 HAVE ANYTHING TO DO WITH IT OR WE JUST KNOW YOU HAVE

15 THE GUN, AND HE -- AND THEN HERMAN WOULDN'T SAY

16 NOTHING OR SOMETHING, AND HE SAID TO HERMAN, HE SAID,

17 YOU HAVE THE RIGHT TO REMAIN SILENT AND, YOU KNOW,

18 YOU DON'T HAVE TO SAY NOTHING, YOU KNOW, AND THEN

19 THEY LEFT.

20 Q. OKAY. AND THEN THEY LEFT?

21 A. YEAH.

22 Q. WHO WAS IT THAT SAID SOMETHING ABOUT

23 SOMEBODY BEING AT THE WAFFLE HOUSE?

24 A. HERMAN. YOU KNOW, HE WAS TELLING ME THAT.

25 Q. OKAY. HE WAS TELLING YOU OR THE OFFICER

1 THAT?

2 A. HE WAS TELLING ME.

3 Q. ALL RIGHT. AND THEN LATER ON, NOW,
4 OFFICER KIRKLAND LEFT?

5 A. UH-HUH.

6 Q. LATER ON, TWO OTHER OFFICERS COME OUT, OR
7 THE SAME OFFICER?

8 A. HERMAN -- A LADY COP CAME OUT THERE.

9 Q. OKAY. OFFICER KIRKLAND AND A LADY COP?

10 A. YEAH.

11 Q. AND AT THAT TIME, THEY TOOK HERMAN AND
12 MRS. SINGLETARY?

13 A. I THINK SHE FOLLOWED THEM.

14 Q. ALL RIGHT. SO OFFICER KIRKLAND TOOK HIM
15 DOWNTOWN?

16 A. UH-HUH.

17 Q. AND YOU'RE SAYING THAT STATE'S EXHIBIT 3
18 IS NOT THE WEAPON THAT YOU SAW?

19 A. NO. I -- IT PRETTY MUCH HAD A WHITE
20 HANDLE.

21 MR. NEWSOME: OKAY. I HAVE NO FURTHER
22 QUESTIONS.

23 MR. BAILEY: NO REDIRECT, YOUR HONOR.

24 THE COURT: YOU MAY COME DOWN.

25 MR. BAILEY: WILBUR KIMSON.

1 THE CLERK: IF YOU WOULD, PLEASE PLACE
2 YOUR LEFT HAND ON THE BIBLE. PLEASE RAISE YOUR RIGHT
3 HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

4 THE WITNESS: WILBUR LEE KIMSON, JUNIOR.

5 WILBUR LEE KIMSON, JR.,

6 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
7 TESTIFIED AS FOLLOWS:

8 D I R E C T E X A M I N A T I O N

9 BY MR. BAILEY:

10 Q. OKAY. AND YOU'RE WILBUR KIMSON?

11 A. YES, SIR.

12 Q. OKAY. AND WHERE DO YOU LIVE?

13 A. [REDACTED], ST. MATTHEWS, SOUTH
14 CAROLINA.

15 Q. ALL RIGHT. ARE YOU KIN TO HERMAN HUGHES?

16 A. YES, SIR.

17 Q. AND HOW ARE YOU RELATED TO HIM?

18 A. SECOND COUSIN.

19 Q. ALL RIGHT. AND YOU'RE HERE UNDER
20 SUBPOENA; IS THAT CORRECT?

21 A. YES, SIR.

22 Q. OKAY. AND MR. KIMSON, DO YOU HAVE A
23 CRIMINAL RECORD?

24 A. YES, SIR.

25 Q. WOULD YOU TELL THE JURY WHAT YOU'VE BEEN

- 1 CONVICTED OF?
- 2 A. MANSLAUGHTER.
- 3 Q. ANYTHING ELSE?
- 4 A. YEAH. MANSLAUGHTER, DRIVING UNDER
5 SUSPENSION, AND MARIJUANA.
- 6 Q. ALL RIGHT. NOW, BACK IN MARCH OF 1994,
7 WHERE WERE YOU LIVING?
- 8 A. ROUTE 2, BOX 391, ST. MATTHEWS.
- 9 Q. AND WHO WERE YOU LIVING WITH AT THAT
10 ADDRESS?
- 11 A. MY PARENTS.
- 12 Q. OKAY. DID YOU KNOW WHERE HERMAN HUGHES
13 LIVED AT THAT TIME?
- 14 A. NO, I DON'T.
- 15 Q. OKAY. HOW ABOUT LUCILLE HUGHES, HIS
16 GRANDMOTHER?
- 17 A. YES, I DID.
- 18 Q. DID YOU LIVE THERE AT TIMES?
- 19 A. YEAH.
- 20 Q. OKAY. IN 1994 -- MARCH OF '94?
- 21 A. NO, SIR.
- 22 Q. ALL RIGHT. NOW, IS LUCILLE HUGHES HERMAN
23 HUGHES' MOTHER?
- 24 A. SENIOR.
- 25 Q. IS LUCILLE HUGHES HERMAN HUGHES' MOTHER?

1 A. SENIOR. YEAH, HERMAN HUGHES, SENIOR.

2 Q. AND THIS IS HERMAN HUGHES' GRANDMOTHER;
3 RIGHT?

4 A. YEAH.

5 Q. DO YOU KNOW WHERE HERMAN HUGHES WAS LIVING
6 IN MARCH OF 1994?

7 A. NO, I DON'T.

8 Q. DID YOU SEE HERMAN HUGHES ON FRIDAY, MARCH
9 THE 18TH, 1994?

10 A. NO, I DIDN'T.

11 Q. YOU DID NOT. HOW ABOUT THE NEXT DAY,
12 WHICH WAS SATURDAY?

13 A. RIGHT.

14 Q. OKAY. WHERE DID YOU SEE HERMAN ON
15 SATURDAY?

16 A. AT MY AUNT LUCILLE'S HOUSE.

17 Q. AT LUCILLE HUGHES' HOUSE?

18 A. YES.

19 Q. WHAT TIME OF DAY DID YOU SEE HIM?

20 A. IT WAS EARLY THAT MORNING, APPROXIMATELY
21 ABOUT 8:30, 9:00.

22 Q. AND DID YOU HAVE ANY PLANS FOR WHERE YOU
23 WERE GOING THAT DAY, THAT SATURDAY?

24 A. I DIDN'T, BUT --

25 Q. OKAY. EVENTUALLY, DID YOU DECIDE TO GO

1 SOMEWHERE?

2 A. RIGHT.

3 Q. OKAY. WHERE DID YOU DECIDE TO GO?

4 A. MY COUSIN PHILLIP WRIGHT HAD COME BY TO GO
5 TO A COOKOUT.

6 Q. JUST A LITTLE LOUDER SO ALL OF THESE
7 JURORS CAN HEAR YOU BETTER.

8 A. PHILLIP WRIGHT CAME BY TO PICK ME UP TO GO
9 TO A COOKOUT AT MIRANDA'S HOUSE.

10 Q. AND THAT'S MIRANDA HUGHES, HERMAN HUGHES'
11 BIOLOGICAL MOTHER?

12 A. RIGHT.

13 Q. AND WHERE DOES SHE LIVE?

14 A. 176 ST. MATTHEWS. I DON'T KNOW THE
15 ADDRESS.

16 Q. OKAY. AND DID YOU GO WITH PHILLIP WRIGHT?

17 A. RIGHT.

18 Q. AND WHO ELSE WAS IN THE CAR GOING TO
19 MIRANDA HUGHES' HOUSE FOR THE COOKOUT?

20 A. HERMAN HUGHES, JUNIOR.

21 Q. OKAY. AND ON THE WAY THERE, DID Y'ALL
22 MAKE ANY STOPS?

23 A. YES, WE DID.

24 Q. OKAY. DO YOU KNOW THE PERSON'S HOUSE
25 WHERE YOU STOPPED AT?

1 A. NO, I DON'T.

2 Q. AND WHOSE IDEA WAS IT TO STOP SOMEWHERE?

3 A. HERMAN HUGHES, JUNIOR.

4 Q. OKAY. AND DID HE TELL YOU WHY HE WANTED
5 TO STOP?

6 A. NO, HE DIDN'T.

7 Q. WHAT HAPPENED WHEN Y'ALL DID STOP?

8 A. WELL, WE STOPPED. HE GOT OUT AND WENT
9 INTO THE HOUSE, AND HE STAYED A MINUTE OR TWO, AND
10 THEN HE CAME OUT WITH A BAG.

11 Q. OKAY. AND WHEN HE CAME OUT WITH THE BAG,
12 DID HE GET BACK IN THE CAR WITH Y'ALL?

13 A. RIGHT.

14 Q. AND WHERE DID Y'ALL PROCEED THEN? WHERE
15 DID YOU GO?

16 A. OUT TO MIRANDA'S HOUSE, HIS MOTHER.

17 Q. NOW, STATE WHETHER OR NOT YOU FOUND OUT AT
18 SOME POINT WHAT WAS IN THE BAG.

19 A. RIGHT.

20 Q. AND WHAT WAS IT?

21 A. IT WAS A GUN.

22 Q. AND WHAT KIND OF GUN WAS IT? DID YOU LOOK
23 AT IT?

24 A. I COULDN'T TELL YOU WHAT KIND IT WAS.

25 Q. WELL, CAN YOU DESCRIBE IT? WAS IT A

1 REVOLVER OR AN AUTOMATIC?

2 A. I COULDN'T SAY. IT WAS NICKEL-PLATED. I
3 CAN SAY THAT MUCH.

4 Q. NICKEL-PLATED?

5 A. RIGHT.

6 Q. DID IT HAVE A BLACK HANDLE ON IT OR A
7 WHITE HANDLE?

8 A. THE HANDLE WAS BLACK, THE BEST I CAN
9 REMEMBER.

10 Q. BUT IT WAS A SEMI-AUTOMATIC?

11 A. I CAN'T SAY.

12 Q. IF I SHOWED YOU THE GUN, WOULD YOU
13 RECOGNIZE IT?

14 A. I MAY HAVE.

15 Q. I SHOW YOU STATE'S 3 AND ASK YOU IF THAT
16 APPEARS TO BE THE GUN?

17 A. YES. THAT COULD BE THE ONE.

18 Q. WHERE WERE Y'ALL AT WHEN HERMAN HUGHES
19 SHOWED YOU THE GUN?

20 A. I THINK WE WAS AT HIS MOTHER'S HOUSE. NO.
21 I THINK WE WAS ON THE WAY OUT TO HIS MOTHER'S HOUSE.

22 Q. OKAY. AND IT WAS DAYTIME; RIGHT?

23 A. RIGHT.

24 Q. AND WAS THERE ANY DISCUSSION WITH HERMAN,
25 BETWEEN YOU AND HERMAN HUGHES ABOUT WHY HE HAD THE

1 GUN, ANYTHING ABOUT THE GUN?

2 A. NO, NOT REALLY NO DISCUSSION. WE ASKED
3 HIM, YOU KNOW, WHAT DID HE WANT WITH THE GUN. YOU
4 KNOW, THERE WASN'T REALLY NO DISCUSSION ABOUT IT.

5 Q. OKAY. AND AFTER YOU GOT TO HERMAN'S
6 MOTHER'S HOUSE, DID Y'ALL GO INSIDE?

7 A. WE WAS ON THE OUTSIDE ON THE PORCH.

8 Q. WHAT HAPPENED WITH THE GUN? THE GUN
9 STAYED IN THE CAR OR --

10 A. YEAH. I THINK IT DID.

11 Q. OKAY.

12 A. IT WAS IN THE CAR.

13 Q. ALL RIGHT. NOW, AFTER THE THREE OF Y'ALL
14 GOT OUT OF THE CAR AND GOT ON THE PORCH, DID ANYBODY
15 COME AND GO AT THAT POINT?

16 A. NO.

17 Q. DID HERMAN HUGHES STAY THERE ALL DAY WHILE
18 YOU WERE THERE?

19 A. YES, HE DID.

20 Q. HE DID? DID ANY POLICE SHOW UP?

21 A. YEAH.

22 Q. OKAY.

23 A. POLICE SHOWED UP AND CAME AND PICKED HIM
24 UP AND TOOK HIM DOWNTOWN, AND THEN THEY BROUGHT HIM
25 BACK.

1 Q. OKAY. AND WHEN THEY WERE DOWNTOWN, WHEN
2 HERMAN HUGHES HAD LEFT THE HOUSE --

3 A. RIGHT.

4 Q. -- DID YOU GET IN PHILLIP WRIGHT'S CAR?

5 A. RIGHT.

6 Q. AND WHY DID YOU GET IN PHILLIP WRIGHT'S
7 CAR?

8 A. I GOT IN PHILLIP WRIGHT'S CAR TO TAKE THE
9 GUN -- I TOOK THE GUN OUT TO BETTY'S HOUSE BECAUSE WE
10 WERE TRYING TO FIGURE OUT WHAT HE WAS DOING WITH THE
11 GUN. AFTER THE POLICE HAD BEEN THERE, I TOOK THE GUN
12 TO KEEP HER FROM GETTING IN ANY TROUBLE, JUST IN CASE
13 THE POLICEMAN CAME BACK.

14 Q. AND WHEN YOU SAY YOU WENT TO BETTY'S
15 HOUSE, THIS IS BETTY WHO?

16 A. BETTY SPAGNER.

17 Q. WHERE DOES SHE LIVE?

18 A. OUT ROAD 22.

19 Q. AND YOU DROVE PHILLIP WRIGHT'S CAR --

20 A. RIGHT.

21 Q. -- WITH THE GUN IN IT TO BETTY SPAGNER'S
22 HOUSE?

23 A. RIGHT.

24 Q. AND WHEN YOU GOT TO BETTY SPAGNER'S HOUSE,
25 WHAT DID YOU DO?

1 A. I WENT INSIDE. I TOLD HER THAT I HAD
2 BOUGHT A GUN OFF THE STREET AND I WANTED TO KEEP IT
3 HERE FOR A WHILE, SO SHE SAID OKAY.

4 Q. AND DID YOU LEAVE THE GUN AT BETTY
5 SPAGNER'S HOUSE?

6 A. YES, I DID.

7 Q. AND AFTER YOU LEFT BETTY SPAGNER'S HOUSE,
8 WHERE DID YOU GO?

9 A. I WAS COMING BACK DOWN 176 TOWARDS
10 MIRANDA'S HOUSE.

11 Q. OKAY. AND WHAT HAPPENED?

12 A. WHEN I GOT TO THE CROSSROAD, OFFICER
13 DOZIER AND PHILLIP, MY COUSIN PHILLIP, WAS AT THE
14 STOP SIGN. AND I STOPPED, AND THEY -- DOZIER ASKED
15 ME WHAT I DID WITH THE GUN, SO I TOLD HIM I TOOK THE
16 GUN OUT TO BETTY SPAGNER'S HOUSE. SO HE SAID, "WOULD
17 YOU TAKE ME OUT THERE TO GET THE GUN?" SO WE TURNED
18 AROUND AND WENT STRAIGHT BACK OUT THERE AND GOT THE
19 GUN.

20 Q. WHEN YOU WENT BACK OUT TO BETTY SPAGNER'S
21 HOUSE, WHO WENT INSIDE THE HOUSE?

22 A. I THINK IT WAS ME AND KIRK -- OFFICER
23 KIRKLAND.

24 Q. ALL RIGHT. AND DID YOU SEE THE OFFICER
25 RETRIEVE THE GUN OUT OF THE HOUSE?

1 A. YEAH.

2 Q. OKAY. AND WHERE DID THE GUN COME FROM?
3 WHERE DID HE GET IT FROM?

4 A. OUT OF A CLOSET UP TOP ON A SHELF.

5 Q. OKAY. DID YOU LOOK AT THE GUN AT THAT
6 POINT IN TIME?

7 A. NO, I DIDN'T.

8 Q. OKAY.

9 A. HE HAD IT.

10 Q. OKAY. OFFICER KIRKLAND HAD THE GUN;
11 RIGHT?

12 A. YEAH.

13 MR. BAILEY: OKAY. ANSWER ANY QUESTIONS
14 THAT THE DEFENSE MAY HAVE FOR YOU.

15 C R O S S - E X A M I N A T I O N
16 BY MR. NEWSOME:

17 Q. YOU SAID THE GUN YOU REMEMBER COULD BE
18 THIS GUN?

19 A. RIGHT.

20 Q. YOU DESCRIBED WHITE HANDLES?

21 A. I SAID IT COULD BE A WHITE HANDLE. I
22 LOOKED, AND IT'S NICKEL-PLATED. I WASN'T SURE WHAT
23 COLOR THE HANDLE WAS.

24 Q. YOU'RE SAYING YOU'RE SURE THIS IS THE GUN
25 OR YOU'RE NOT?

1 A. I'M NOT SURE.

2 Q. OKAY. NOW, WHEN YOU TOOK THAT GUN OUT TO
3 MS. SPAGNER'S HOUSE; IS THAT IT?

4 A. RIGHT.

5 Q. DID ANYBODY ASK YOU TO TAKE IT OUT THERE
6 AND HIDE IT?

7 A. HUH?

8 Q. DID ANYBODY ASK YOU TO TAKE IT OUT TO THAT
9 HOUSE?

10 A. YEAH. PHILLIP TOLD ME. PHILLIP ASKED ME.

11 Q. TO TAKE IT TO THE HOUSE?

12 A. NOT TO TAKE IT TO THE HOUSE. HE TOLD ME
13 JUST TO GET RID OF IT.

14 Q. HERMAN DIDN'T ASK YOU TO DO THAT, DID HE?

15 A. NO.

16 MR. NEWSOME: THANK YOU.

17 THE COURT: ANY REDIRECT?

18 MR. BAILEY: NO REDIRECT, YOUR HONOR.

19 THE COURT: YOU MAY COME DOWN. THANK YOU.

20 MR. BAILEY: CHRIS DOZIER.

21 THE CLERK: IF YOU WOULD, PLEASE PLACE
22 YOUR LEFT HAND ON THE BIBLE AND PLEASE RAISE YOUR
23 RIGHT HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

24 THE WITNESS: CHRISTOPHER C. DOZIER.

25 CHRISTOPHER C. DOZIER,

1 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
2 TESTIFIED AS FOLLOWS:

3 D I R E C T E X A M I N A T I O N

4 BY MR. BAILEY:

5 Q. SIR, YOU'RE CHRIS DOZIER?

6 A. YES, SIR.

7 Q. MR. DOZIER, IN MARCH OF 1994, WERE YOU A
8 DEPUTY SHERIFF WITH THE CALHOUN COUNTY SHERIFF'S
9 OFFICE?

10 A. THAT'S CORRECT, SIR.

11 Q. ALL RIGHT, SIR. CALLING YOUR ATTENTION TO
12 SATURDAY, MARCH 19TH, WERE YOU AT THE SHERIFF'S
13 OFFICE?

14 A. YES, I WAS, SIR.

15 Q. AND WOULD YOU STATE WHETHER OR NOT YOU
16 LEFT THE SHERIFF'S OFFICE TO LOOK FOR THE MURDER
17 WEAPON FROM THE BLUE DIAMOND?

18 A. YES, SIR.

19 Q. OKAY. WHEN YOU LEFT THE SHERIFF'S OFFICE,
20 WERE YOU BY YOURSELF IN YOUR CAR?

21 A. YES, I WAS.

22 Q. AND WHERE DID YOU GO?

23 A. I WENT TO A RESIDENCE OFF OF HIGHWAY --
24 ROAD 22. I DON'T RECALL THE YOUNG LADY'S LAST NAME,
25 BUT HER FIRST NAME WAS BETTY.

1 Q. OKAY. WELL, BEFORE YOU WENT TO BETTY'S
2 HOUSE, DID YOU GO SOMEWHERE ELSE?
3 A. YES, SIR. WE WENT TO A RESIDENCE OFF OF
4 HIGHWAY 176.
5 Q. OKAY. WAS THAT MIRANDA --
6 A. YES, SIR.
7 Q. -- HUGHES' HOUSE?
8 A. THAT'S CORRECT, SIR.
9 Q. DID YOU TALK TO ANYBODY AT THAT RESIDENCE?
10 A. I SPOKE WITH MR. WRIGHT. PHIL -- PHILLIP.
11 Q. OKAY.
12 A. AND A MR. KIMSON.
13 Q. OKAY. AND DO YOU RECALL WHO YOU TALKED TO
14 FIRST?
15 A. I DON'T RECALL, SIR.
16 Q. OKAY. AND AFTER TALKING -- YOU TALKED TO
17 THIS PERSON AT THE RESIDENCE, THE HUGHES RESIDENCE?
18 A. YES, SIR.
19 Q. OKAY. AND AFTER TALKING TO HIM, WHAT DID
20 YOU DO?
21 A. WE LEFT THAT RESIDENCE AND THEN PROCEEDED
22 TO THE RESIDENCE OFF OF ROAD 22.
23 Q. OKAY. WAS THAT THE SPAGNER RESIDENCE?
24 A. YES, SIR.
25 Q. AND WHO WAS WITH YOU WHEN YOU WENT BACK

1 OUT -- WHEN YOU WENT TO THE SPAGNER HOUSE?

2 A. OKAY. THE BEST OF MY RECOLLECTION, SIR,
3 IT WAS DEPUTY KIRKLAND ALONG WITH MS. MIRANDA, THE
4 DEFENDANT.

5 Q. HERMAN HUGHES --

6 A. YES, SIR.

7 Q. -- WAS THERE?

8 A. THE YOUNG AFRICAN-AMERICAN SITTING AT THE
9 DEFENSE TABLE.

10 Q. OKAY.

11 A. MR. KIMSON AND MR. PHILLIP AND MYSELF,
12 SIR.

13 Q. OKAY. AND WHEN YOU GOT TO THE SPAGNER
14 HOUSE, WHAT DID YOU DO?

15 A. DEPUTY KIRKLAND TOLD MS. BETTY WHY WE WAS
16 AT THE RESIDENCE, AND WE CAME INSIDE OF THE HOUSE AND
17 WENT TO A DOORWAY. WELL, IT LOOKED LIKE IT WAS A
18 DOORWAY, COULD HAVE BEEN GOING INTO A CLOSET, BUT IT
19 WAS A DOORWAY. SHE THEN REACHED OVER THE DOORWAY UP
20 TOP, AND AT THAT TIME DEPUTY KIRKLAND REACHED UP ALSO
21 AND GRABBED HER HAND, AND HE PULLED DOWN A WEAPON.

22 Q. DO YOU RECALL WHAT THE WEAPON LOOKED LIKE?
23 IF I HANDED IT TO YOU, COULD YOU IDENTIFY IT?

24 A. YES, SIR.

25 Q. I HAND YOU THIS MARKED FOR IDENTIFICATION

1 STATE'S EXHIBIT 3, A .380 LARSON PISTOL.

2 A. YES, SIR. I RECALL IT BEING A LARSON.

3 YES, SIR.

4 Q. OKAY. AND TO THE BEST OF YOUR KNOWLEDGE,
5 IS THAT THE GUN?

6 A. TO THE BEST OF MY KNOWLEDGE, THAT'S THE
7 WEAPON THAT WAS RETRIEVED FROM THE RESIDENCE.

8 MR. BAILEY: ALL RIGHT, SIR. PLEASE
9 ANSWER ANY QUESTIONS MR. NEWSOME HAS FOR YOU.

10 C R O S S - E X A M I N A T I O N

11 BY MR. NEWSOME:

12 Q. AS I UNDERSTAND IT, WHEN YOU WENT OUT TO
13 MS. SPAGNER'S HOUSE, HERMAN HUGHES WAS WITH YOU?

14 A. NO, SIR. HE WAS WITH DEPUTY KIRKLAND.

15 Q. HE WAS WITH DEPUTY KIRKLAND. DEPUTY
16 KIRKLAND CAME OUT THERE TO THAT HOUSE WITH HERMAN?

17 A. YES, SIR.

18 Q. AND HERMAN WAS PRESENT WHEN YOU RETRIEVED
19 THE GUN?

20 A. MR. HUGHES NEVER GOT OUT OF THE VEHICLE,
21 SIR.

22 Q. OKAY. HE WAS IN THE VEHICLE WHEN OFFICER
23 KIRKLAND WENT INSIDE THAT HOUSE?

24 A. THAT'S CORRECT, SIR.

25 Q. DO YOU KNOW ABOUT WHAT TIME OF DAY THAT

1 WAS?

2 A. NO, SIR. I DON'T RECALL, SIR.

3 MR. NEWSOME: OKAY. THANK YOU.

4 MR. BAILEY: NO REDIRECT, YOUR HONOR.

5 THE COURT: YOU MAY COME DOWN. THANK YOU.

6 MR. BAILEY: BETTY SPAGNER.

7 THE CLERK: IF YOU WOULD, PLEASE PLACE
8 YOUR LEFT HAND ON THE BIBLE AND PLEASE RAISE YOUR
9 RIGHT HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

10 THE WITNESS: BETTY SPAGNER.

11 BETTY SPAGNER,

12 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
13 TESTIFIED AS FOLLOWS:

14 D I R E C T E X A M I N A T I O N

15 BY MR. BAILEY:

16 Q. YOU'RE BETTY SPAGNER?

17 A. YES, SIR.

18 Q. MS. SPAGNER, WHERE DO YOU LIVE?

19 A. OUT ON ROAD 22.

20 Q. HOW FAR IS THAT FROM THE CITY OF ST.
21 MATTHEWS?

22 A. ABOUT THREE-AND-A-HALF MILES.

23 Q. ALL RIGHT. NOW, DID YOU LIVE AT THAT SAME
24 ADDRESS IN MARCH OF 1994?

25 A. YES, SIR.

1 Q. OKAY. DO YOU KNOW A YOUNG MAN NAMED
2 WILBUR KIMSON?

3 A. YES, SIR.

4 Q. OKAY. DID YOU SEE MR. KIMSON MARCH 19TH?

5 A. YES, SIR.

6 Q. OKAY. ABOUT WHAT TIME OF DAY WAS IT?

7 A. IT WAS IN THE EVENING ABOUT -- I GUESS
8 ABOUT 4:30, 5:00; SOMETHING LIKE THAT.

9 Q. OKAY. AND DID YOU SEE HIM AT YOUR HOUSE?

10 A. YES.

11 Q. DID HE HAVE SOMETHING WITH HIM?

12 A. YES, SIR.

13 Q. WHAT WAS IT?

14 A. A PISTOL OR GUN.

15 Q. OKAY. AND DO YOU REMEMBER WHAT THE GUN
16 LOOKED LIKE?

17 A. SORT OF.

18 Q. OKAY. IF I SHOWED YOU A GUN, RIGHT HERE,
19 STATE'S EXHIBIT NUMBER 3, DOES THAT LOOK LIKE THE GUN
20 HE HAD?

21 A. I DON'T THINK SO.

22 Q. YOU DON'T THINK SO?

23 A. NO, BECAUSE IT LOOKED LIKE IT WAS BIGGER.

24 Q. WHAT COLOR WAS IT?

25 A. SILVER.

1 Q. OKAY. BUT IT LOOKED LIKE THIS, BUT
2 BIGGER?

3 A. SOMETHING LIKE THAT.

4 Q. OKAY.

5 A. THAT MIGHT BE IT, BUT I REALLY DON'T WANT
6 TO SAY.

7 Q. YOU'RE NOT SURE IF IT IS OR NOT?

8 A. I'M NOT SURE.

9 Q. WHEN MR. KIMSON SHOWED UP THERE WITH THAT
10 GUN, WHAT DID HE ASK YOU TO DO WITH IT?

11 A. TO PUT IT UP.

12 Q. OKAY.

13 A. BECAUSE IT WAS --

14 Q. DID YOU PUT IT UP?

15 A. YES.

16 Q. OKAY. AND WHERE DID YOU PUT IT?

17 A. IN MY CLOSET IN MY BATHROOM.

18 Q. ALL RIGHT. AND LATER ON THAT SAME DAY,
19 DID THE POLICE COME OUT TO YOUR HOUSE?

20 A. ABOUT 10, 15 MINUTES AFTERWARD.

21 Q. ALL RIGHT. AND DO YOU KNOW WHAT POLICEMAN
22 CAME INTO YOUR HOUSE?

23 A. IT WAS A SHORT GUY AND ANOTHER ONE.

24 Q. OKAY. AND WHEN THEY CAME TO YOUR HOUSE,
25 WHAT WERE THEY LOOKING FOR?

1 A. HE ASKED ME WAS MY HUSBAND HOME AT FIRST,
2 AND THEN HE TELLS ME GIVE IT TO HIM, AND I SAID,
3 "GIVE YOU WHAT?" AND HE SAID, "THE GUN." AND SO --

4 Q. DID YOU SHOW HIM WHERE THE GUN WAS?

5 A. YEAH. I SHOWED HIM WHERE IT WAS.

6 Q. AND DID HE TAKE THE GUN OUT OF YOUR HOUSE?

7 A. UH-HUH.

8 MR. BAILEY: ANSWER ANY QUESTIONS THE
9 DEFENSE MAY HAVE.

10 MR. NEWSOME: I HAVE NO QUESTIONS.

11 THE COURT: YOU MAY COME DOWN. THANK YOU.

12 MR. BAILEY: YOUR HONOR, COULD I HAVE A
13 FIVE-MINUTE BREAK TO CHECK ON MY NEXT WITNESS?

14 THE COURT: YES. THIS IS AN APPROPRIATE
15 TIME. LET'S TAKE A SHORT BREAK AND THEN I'LL CALL
16 YOU BACK OUT. YOU CAN HAVE A CHANCE TO RELAX FOR A
17 MOMENT.

18 (WHEREUPON, THE JURY WAS REMOVED
19 FROM THE COURTROOM AND THE
20 FOLLOWING PROCEEDINGS COMMENCED
21 IN OPEN COURT.)

22 (WHEREUPON, A BREAK WAS TAKEN
23 FROM THE PROCEEDINGS.)

24 THE COURT: ARE YOU READY, FOR THE STATE?

25 MR. BAILEY: WE'RE READY.

1 THE COURT: FOR THE DEFENSE?

2 MR. NEWSOME: YES, SIR.

3 THE COURT: BE SEATED, PLEASE.

4 (WHEREUPON, THE JURY WAS
5 RETURNED TO THE COURTROOM AND
6 THE FOLLOWING PROCEEDINGS WERE
7 COMMENCED IN OPEN COURT.)

8 THE COURT: CALL YOUR NEXT WITNESS.

9 MR. BAILEY: WADE FLEMING.

10 THE CLERK: IF YOU WOULD, PLEASE PLACE
11 YOUR LEFT HAND ON THE BIBLE AND PLEASE RAISE YOUR
12 RIGHT HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

13 THE WITNESS: THOMAS WADE FLEMING.

14 THOMAS WADE FLEMING,
15 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
16 TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. BAILEY:

19 Q. AND YOU'RE WADE FLEMING?

20 A. YES, SIR.

21 Q. MR. FLEMING, WHERE ARE YOU EMPLOYED?

22 A. I'M EMPLOYED WITH THE SOUTH CAROLINA LAW
23 ENFORCEMENT DIVISION IN COLUMBIA.

24 Q. AND HOW LONG HAVE YOU WORKED FOR SLED?

25 A. APPROXIMATELY TWO YEARS.

1 Q. AND DO YOU HAVE ANY EXPERTISE IN
2 FINGERPRINTS?

3 A. YES, SIR.

4 Q. OKAY.

5 A. I'VE HAD BASIC FINGERPRINTS TAUGHT AT THE
6 CRIMINAL JUSTICE ACADEMY, ADVANCED FINGERPRINTS AND
7 CHEMICAL DEVELOPMENT OF FINGERPRINTS TAUGHT BY THE
8 FEDERAL BUREAU OF INVESTIGATION.

9 Q. HAVE YOU BEEN QUALIFIED AS AN EXPERT IN
10 THE FIELD OF FINGERPRINTS PREVIOUSLY?

11 A. YES, SIR, BOTH IN STATE AND FEDERAL COURT.

12 THE COURT: I FIND HIM QUALIFIED.

13 BY MR. BAILEY:

14 Q. OKAY. MR. FLEMING, WOULD YOU STATE
15 WHETHER OR NOT YOU TOOK SOME FINGERPRINTS FROM A
16 PERSON NAMED KELSEY PEARCE?

17 A. YES, SIR, I DID ON MARCH 23RD, 1994.

18 Q. DO YOU HAVE THAT CARD WITH YOU?

19 A. YES, SIR.

20 Q. OKAY. AND YOU'VE GOT PALMPRINTS AND
21 FINGERPRINTS?

22 A. YES, SIR. MAJOR CASE PRINTS CONSISTING OF
23 BOTH PALMPRINTS AND A TEN-PRINT CARD, FINGER
24 IMPRESSIONS.

25 Q. ALL RIGHT, SIR. AND AFTER YOU TOOK THESE

1 PRINTS, WOULD YOU STATE WHETHER OR NOT YOU LEFT THOSE
2 WITH THE CALHOUN COUNTY SHERIFF'S OFFICE OR WHAT DID
3 YOU DO WITH THEM?

4 A. I BROUGHT THEM BACK WITH ME AND GAVE THEM
5 TO AGENT STEVE DERRICK WHO WAS THE EXAMINER ON THIS
6 CASE.

7 MR. BAILEY: YOUR HONOR, I WOULD OFFER
8 THIS FOR IDENTIFICATION AT THIS POINT.

9 THE COURT: YES, SIR.

10 (STATE'S EXHIBITS NUMBERS 30, 31
11 AND 32 MARKED FOR
12 IDENTIFICATION.)

13 MR. BAILEY: PLEASE ANSWER ANY QUESTIONS
14 THE DEFENSE MAY HAVE.

15 MR. NEWSOME: I HAVE NO QUESTIONS.

16 THE COURT: YOU MAY COME DOWN.

17 MR. BAILEY: CALL EARL RHUDY.

18 THE CLERK: IF YOU WOULD, PLEASE STATE
19 YOUR NAME FOR THE RECORD.

20 THE WITNESS: EARL D. RHUDY.

21 THE CLERK: COULD YOU SPELL THAT LAST
22 NAME, PLEASE.

23 THE WITNESS: R-H-U-D-Y.

24 EARL D. RHUDY,

25 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,

1 TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. BAILEY:

4 Q. MR. RHUDY, WHERE ARE YOU EMPLOYED?

5 A. I'M WITH THE OCONEE COUNTY SHERIFF'S
6 DEPARTMENT.

7 Q. ALL RIGHT, SIR. YOU'RE AN INVESTIGATOR
8 OR --

9 A. I'M ON THE ROAD, UNIFORM DEPUTY NOW.

10 Q. ALL RIGHT, SIR. BACK IN MARCH OF 1994,
11 WHERE WERE YOU EMPLOYED?

12 A. WITH THE CALHOUN COUNTY SHERIFF'S
13 DEPARTMENT.

14 Q. OKAY. IN WHAT CAPACITY?

15 A. INVESTIGATOR.

16 Q. AND I'M CALLING YOUR ATTENTION TO MARCH
17 20TH, WHICH IS THE SUNDAY AFTER THE SHOOTING AT THE
18 BLUE DIAMOND.

19 A. YES, SIR.

20 Q. DID YOU HAVE AN OCCASION TO TAKE A
21 STATEMENT FROM A HENRY DANIEL OWENS?

22 A. YES, SIR, I DID.

23 Q. OKAY. LET ME HAND YOU A TEN-PAGE
24 STATEMENT AND ASK IF THAT'S THE STATEMENT YOU TOOK
25 FROM MR. OWENS ON THAT DAY.

1 THE COURT: YOU'VE BEEN PROVIDED A COPY OF
2 THE STATEMENT?

3 MR. NEWSOME: YES, SIR.

4 THE COURT: ALL RIGHT, SIR.

5 THE WITNESS: (WITNESS REVIEWS DOCUMENT.)
6 YES, SIR, IT IS.

7 MR. BAILEY: YOUR HONOR, I WOULD OFFER
8 THIS STATEMENT PURSUANT TO OUR PREVIOUS DISCUSSION
9 WITH THE COURT.

10 THE COURT: BY AND WITH THE AGREEMENT OF
11 COUNSEL FOR THE DEFENSE, IT IS ACCEPTED AS A MATTER
12 OF EVIDENCE.

13 (STATE'S EXHIBIT NUMBER 33
14 MARKED FOR IDENTIFICATION AND
15 ENTERED INTO EVIDENCE.)

16 MR. BAILEY: YOUR HONOR, I WOULD PROPOSE
17 AT THIS TIME TO PUBLISH THE STATEMENT IN ITS ENTIRETY
18 TO THE JURY.

19 THE COURT: YOU MAY DO SO. IT IS NOW INTO
20 EVIDENCE. THE JURY WILL -- IT WILL BE PUBLISHED AT
21 THIS TIME, BUT THE STATEMENT WILL BE WITH YOU DURING
22 YOUR DELIBERATIONS.

23 MR. BAILEY: YOUR HONOR, THIS IS THE
24 STATEMENT REFERRED TO BY MR. RHUDY TAKEN ON SUNDAY,
25 MARCH THE 20TH, 1994, OF HENRY DANIEL OWENS. THE

1 STATEMENT READS AS FOLLOWS: "ON FRIDAY, MARCH 18,
2 1994, HERMAN HUGHES CAME TO MY HOUSE ON HUFF DRIVE.
3 KELSEY PEARCE WAS WITH HERMAN. THIS OCCURRED ABOUT
4 5:30 OR 6:00 P.M. BEFORE DARK. THEY STAYED FOR A FEW
5 MINUTES AND THEN WENT UPTOWN, BOTH OF THEM TOGETHER,
6 AND GOT SOME BEER AND CAME BACK WITH A 15-PACK OF
7 BULL BEER.

8 "HERMAN ALREADY KNEW THAT I HAD A GUN AND WANTED
9 TO GET RID OF IT. IT WAS A .380 LARSON CHROME-PLATED
10 WITH A BLACK HANDLE AND ALSO A SEVEN-SHOT CLIP. IT
11 HAD SOME BULLETS IN IT, BUT I DON'T KNOW HOW MANY. I
12 KNOW THAT IT WAS NOT FULLY LOADED. HERMAN KNEW THAT
13 I WANTED TO GET RID OF THE GUN, SO HE SAID HE WOULD
14 GET IT OFF OF ME. HE ASKED ME HOW MUCH, AND I TOLD
15 HIM I WOULD GIVE IT TO HIM, BUT KELSEY SAID NO
16 BECAUSE IT COST TOO MUCH. THEN I SAID 25 DOLLARS AND
17 THEN I SAID 50, AND THEN HERMAN SAID HE WOULD GIVE ME
18 50 DOLLARS FOR THE GUN. HERMAN SAID THAT HE WOULD
19 GIVE IT TO ME LATER.

20 "KELSEY GOT MY CAR KEY AND GOT THE GUN OUT OF
21 THE CAR -- MY CAR, AND GAVE HERMAN THE GUN. ALL THE
22 TIME THIS WAS GOING ON, WE WERE DRINKING THE BEER.
23 AFTER THEY GOT THE GUN, WE SAT AND TALKED FOR A
24 LITTLE WHILE. THEN THEY LEFT OUT OF THE HOUSE FOR
25 ABOUT FIVE OR SIX MINUTES. THEY MIGHT HAVE BEEN

EARL RHUDY - DIRECT BY MR. BAILEY

1 OUTSIDE TO SMOKE BECAUSE I DON'T ALLOW SMOKING IN MY
2 HOUSE OR CAR. THEY, HERMAN AND KELSEY, CAME BACK IN
3 AND WE SAT AND WATCHED T.V. AND TALKED FOR ABOUT 15,
4 20 MINUTES. DON'T KNOW EXACTLY HOW LONG.

5 "THEN HERMAN AND KELSEY LEFT MY HOUSE. I DON'T
6 KNOW WHETHER THEY -- I DON'T KNOW WHERE THEY WENT,
7 BUT THEY WERE GONE FOR 30 TO 45 MINUTES, NOT SURE HOW
8 LONG. THEY, HERMAN AND KELSEY, CAME BACK THE THIRD
9 TIME. KELSEY AND ME HAD ALREADY MADE PLANS TO GO TO
10 THE EBONY LOUNGE ON U.S. 601 IN ORANGEBURG. THIS IS
11 MY FIRST TRIP -- THIS WAS MY FIRST TIME OF EVER GOING
12 THERE. I WENT TO ORANGEBURG IN MY CAR BY MYSELF. I
13 DRIVE A 1987 TOYOTA COROLLA BURGUNDY IN COLOR. I DID
14 NOT NOTICE ANY OTHER VEHICLE OTHER THAN THE ONES
15 USUALLY IN MY YARD WHEN I LEFT TO GO TO ORANGEBURG.
16 HOWEVER, DUE TO THE LANDSCAPING, THERE COULD HAVE
17 BEEN ANOTHER VEHICLE THERE AND I WOULD NOT HAVE SEEN
18 IT.

19 "WHEN I LEFT MY HOUSE, I HEARD SOME RATTLING
20 UNDER THE HOOD OF MY CAR, SO I PULLED INTO A LITTLE
21 PARK WHERE THE RAILROAD CROSSED AT U.S. 601 WITH MY
22 HEADLIGHTS FACING THE ROADWAY. I SAW A POLICE CAR
23 COMING UP THE HILL FROM THE ORANGEBURG DIRECTION WITH
24 HIS BLUE LIGHTS AND SIREN ON GOING TOWARDS ST.
25 MATTHEWS. I ALSO SAW A BLUE NISSAN GRAY MAZDA AND A

1 GREEN PICKUP TRUCK HEADING TOWARDS ORANGEBURG. IN
2 THE GRAY MAZDA, I SAW TWO BLACK MALES AND THE
3 PASSENGER HAD A DARK-COLORED CAP AND A LIGHT-COLORED
4 BILL LIKE THE ONE THAT HERMAN HAD ON WHEN HE WAS AT
5 MY HOUSE. I KNEW THE CAP BECAUSE HERMAN HAD GOT IT
6 FROM ME.

7 "I CHECKED MY CAR OUT AND FOUND THE OIL CAP WAS
8 OFF, PUT IT BACK ON AND WENT TO ORANGEBURG. ON THE
9 WAY TO ORANGEBURG, I PASSED AN AMBULANCE NEAR I-26
10 HEADING TOWARDS ST. MATTHEWS. I WENT STRAIGHT TO THE
11 EBONY CLUB ON U.S. 601. WHEN I ARRIVED, THERE WERE
12 ONLY A FEW CARS THERE, AND I SAW KELSEY AND HERMAN BY
13 A GRAY CAR, AND I THINK THEY WERE GETTING OUT AS THE
14 DOORS WERE OPEN AND THEY CLOSED THEM. THIS WAS AN
15 RX7, GRAY IN COLOR, AND IT WAS PARKED ON THE SIDE OF
16 THE CLUB. IT WAS PARKED HEADED TOWARD FACING U.S.
17 601.

18 "I PULLED UP CLOSE TO THEM, AND KELSEY SAID
19 LET'S GO TO MY AUNT'S HOUSE BECAUSE I WAS SUPPOSED TO
20 PICK UP MY FRIENDS, HIS, KELSEY'S, COUSIN'S. MYSELF,
21 HERMAN AND KELSEY WENT TO NINA JOHNSON'S HOUSE IN
22 ORANGEBURG. WE HAD TO WAIT FOR THEM TO GET DRESSED.
23 NINA ASKED ME TO DO SOME THINGS FOR HER. THAT
24 INCLUDED GOING TO BURGER KING ON OLD ST. MATTHEWS
25 ROAD TO PICK UP SOME FOOD. BEFORE GOING TO BURGER

1 KING, WE WENT BY ROCKY'S AND TALKED TO SOME GIRLS.
2 AFTER LEAVING BURGER KING, WE WENT BACK TO NINA'S
3 HOUSE AND STAYED THERE FOR 20 TO 30 MINUTES WAITING
4 ON THE GIRLS, FRIENDS.

5 "WE LEFT THERE AND WENT BACK TO THE EBONY LOUNGE
6 AND WENT IN AND HAD SOME FUN. DURING THE TIME WE
7 WENT TO BURGER KING, KELSEY WAS ASLEEP. HERMAN HAD
8 THE GUN IN HIS HAND AND SHOT OUT THE WINDOW OF THE
9 CAR. THIS IS IN THE AREA OF WHERE NINA LIVES, AND
10 IT'S NOT UNCOMMON TO HEAR SHOTGUNS THERE. WHEN
11 HERMAN SHOT THE GUN, I TOLD HIM TO PUT IT DOWN AND
12 GET IT OUT OF HIS HAND. MY EARS WERE RINGING. HE
13 PUT THE GUN ON THE FLOOR. HERMAN WAS SEATED IN THE
14 REAR SEAT BEHIND ME, I WAS DRIVING, AND KELSEY WAS IN
15 THE PASSENGER SEAT ASLEEP. THE SHOT DID NOT WAKE
16 KELSEY UP.

17 "WHILE AT THE CLUB, WE WENT OUTSIDE A NUMBER OF
18 TIMES, NOT ALWAYS TOGETHER, BUT THIS ONE TIME KELSEY
19 AND HERMAN WAS BY ME AND I WENT OVER. WE STARTED
20 TALKING ABOUT WHAT HAPPENED. WE WERE TALKING, AND I
21 DON'T REMEMBER WHO STARTED THE SUBJECT ABOUT THE
22 SHOOTING INCIDENT IN ST. MATTHEWS AT THE BLUE
23 DIAMOND, BUT KELSEY SAID HE DID NOT GO IN THE GAME
24 ROOM. HE WAS STANDING BY THE WINDOW WHEN HERMAN WENT
25 IN. KELSEY SAID THAT HERMAN WENT IN AND ASKED HOW TO

1 PLAY THE GAMES AND CAME BACK OUT. THEN HERMAN ASKED
2 KELSEY FOR SOME MONEY, AND HERMAN WENT BACK IN.
3 WHILE KELSEY WAS SAYING THIS, HERMAN AGREED TO IT.

4 "KELSEY FURTHER STATED THAT HERMAN WENT BACK IN
5 AND ASKED FOR CHANGE FOR A 50 DOLLAR BILL. THAT IS
6 WHEN HERMAN PULLED OUT THE GUN. KELSEY HEARD HERMAN
7 SAY, QUOTE, "GIVE ME THE KEYS," END OF QUOTE. AND AS
8 SOON AS HE HEARD THE KEYS HIT THE FLOOR OR COUNTER,
9 HE HEARD GUNSHOTS. KELSEY FURTHER STATED TO ME THAT
10 AFTER THE GUNSHOTS, HE SAW KELLY WITH HER HAND IN A
11 FIST AND HER HEAD ON HER KNUCKLES IN THE THINKING
12 POSITION AND BLOOD GOING DOWN HER ARM. KELSEY SAID
13 HE SAW -- HE SAW THIS THROUGH THE WINDOW.

14 "KELSEY SAID HERMAN CAME OUT AND DIDN'T SHUT THE
15 DOOR. KELSEY SAID HE SHUT THE DOOR. KELSEY THEN
16 SAID THEY GOT IN THE CAR. DURING THIS CONVERSATION,
17 HERMAN DIDN'T SAY MUCH EXCEPT WHEN HE AGREED ABOUT
18 GETTING THE MONEY FROM KELSEY AND ASKED HOW TO PLAY
19 THE MACHINES. HERMAN DID SAY THAT HE TOLD KELLY TO
20 GET OFF THE PHONE, THAT SHE COULD CALL HER BACK --
21 HIM OR WHOEVER BACK. HERMAN STATED TO ME THAT HE
22 BUCKED THEM DOWN, WHICH I KNEW HE MEANT HE, HERMAN,
23 HAD DID THE SHOOTING.

24 "AFTER THIS CONVERSATION, I WENT BACK TO THE
25 CLUB AND STAYED UNTIL ABOUT 3:30 A.M. OR 4:00 A.M. I

1 LEFT THE EBONY CLUB AND WENT TO THE WAFFLE HOUSE, AND
2 KELSEY AND HERMAN WAS THERE. WE ATE AND LEFT ABOUT
3 5:30 A.M.

4 "I WENT BACK TO NINA'S HOUSE TO TAKE MY FRIENDS
5 HOME. THEN I WENT HOME BY MYSELF. I WAS IN THE BED
6 AND A CAR PULLED UP, AND IT WAS KELSEY'S CAR COMING
7 HOME. KELSEY STAYS AT MY HOUSE MOST OF THE WEEKENDS.

8 "ON SATURDAY, MARCH 19TH, 1994, AT ABOUT 11:00
9 A.M. OR SOMETHING, KELSEY TOLD ME THAT THE GUN WAS IN
10 MY CAR YET. AND I TOOK IT OUT, I WRAPPED IT UP SO I
11 WOULDN'T PUT ANY FINGERPRINTS ON IT. I PUT IT IN A
12 BOX ON THE SIDE OF THE HOUSE, AND I WENT TO A MEETING
13 IN MASON AT 12:00. I WAS THERE UNTIL ABOUT 1:30,
14 2:00 P.M. HERMAN CAME TO GET THE GUN AFTER I GOT
15 BACK HOME. I GAVE IT TO HIM AND HE LEFT. THIS
16 OCCURRED ABOUT 12:15 TO 2:30 P.M."

17 AND IT'S SIGNED BY HENRY DANIEL OWENS, JUNIOR.
18 WITNESSED BY EARL E. RHUDY.

19 THAT'S ALL I HAVE FOR MR. RHUDY AT THIS TIME.
20 WE RESERVE THE RIGHT TO RE-CALL HIM.

21 THE COURT: SUBJECT TO RE-CALL, YOU MAY
22 CROSS-EXAMINE.

23 C R O S S - E X A M I N A T I O N
24 BY MR. NEWSOME:

25 Q. AT THE TIME OF THIS INCIDENT, YOU WERE

1 EMPLOYED BY THE SHERIFF'S DEPARTMENT HERE IN CALHOUN
2 COUNTY?

3 A. THAT'S CORRECT.

4 Q. ALL RIGHT. AND I BELIEVE YOU WERE FIRST
5 NOTIFIED ABOUT THIS INCIDENT SOMETIME FRIDAY NIGHT?

6 A. YES, SIR.

7 Q. DID YOU GO TO THE SCENE?

8 A. YES, SIR, I DID.

9 Q. OKAY. HOW LONG DID YOU STAY AT THE SCENE?

10 A. DON'T KNOW EXACTLY. PROBABLY AN HOUR,
11 HOUR AND A HALF. BY THE TIME I ARRIVED AT THE SCENE,
12 SLED FORENSICS, LIEUTENANT DERRICK AND HIS COWORKER,
13 WAS ALREADY ON THE SCENE.

14 Q. OKAY. WHAT DID YOU DO FRIDAY NIGHT AS FAR
15 AS THE INVESTIGATION?

16 A. FRIDAY NIGHT, I JUST KIND OF GOT
17 INFORMATION, AND I WENT HOME, AND AT THAT TIME, I
18 ALSO HAD AN ATTACK DOG THAT BELONGED TO THE COUNTY,
19 AND I GOT THE -- MY DOG CAR AND THE DOG, AND I WENT
20 OUT ALL NIGHT LOOKING UNTIL 5:00 A.M. LOOKING TO SEE
21 IF I COULD LOCATE THE VEHICLE.

22 Q. DID YOU FIND ANY WITNESSES OR ANY VEHICLES
23 OR ANYTHING LIKE THAT PRIOR TO 5:00 A.M.?

24 A. NO, SIR.

25 Q. WHEN WAS THE FIRST TIME YOU FOUND

1 WITNESSES TO THIS?

2 A. WELL, IN THE SEQUENCE OF WHAT HAPPENED, I
3 WENT HOME AND GOT A LITTLE BIT OF SLEEP, AND SHERIFF
4 CALLED ME OR DISPATCH CALLED ME AND TOLD ME THEY HAD
5 LOCATED A VEHICLE IN ORANGEBURG. AT THAT TIME, I GOT
6 DRESSED AND WENT OVER TO ORANGEBURG. EN ROUTE OVER
7 THERE, THE SHERIFF ALSO ADVISED ME HE WANTED ME TO GO
8 TO NEWBERRY FOR THE AUTOPSY WITH DR. SEXTON. I HAD
9 TO BE UP THERE I THINK AROUND ELEVEN, TWELVE O'CLOCK
10 THAT DAY.

11 SO I GOT TO ORANGEBURG, AND I THINK DEPUTY
12 KIRKLAND HAD SECURED THE SCENE AROUND THE AUTOMOBILE
13 THAT HAD BEEN FOUND AT THE EBONY CLUB. I WAS TOLD
14 THAT OFFICER JAMES WILLIAMS WHO WAS WITH THE ST.
15 MATTHEWS POLICE DEPARTMENT WAS ON THE WAY HOME. HE
16 KNEW ABOUT THE CASE AND HE HAD SPOTTED A VEHICLE.

17 SLED FORENSICS LIEUTENANT DERRICK AND THE SAME
18 OFFICER THAT WAS AT THE BLUE DIAMOND THAT NIGHT, THEY
19 RESPONDED DOWN TO PROCESS THE CAR. WHEN THEY
20 ARRIVED, I LEFT TO GO TO NEWBERRY AND JUST TURNED THE
21 SCENE OVER TO THEM. WE MADE SURE NO ONE FROM TIME --
22 MY UNDERSTANDING FROM DEPUTY KIRKLAND HAD MADE SURE
23 NOBODY GOT AROUND THE AUTOMOBILE, AND I DID THE SAME
24 BECAUSE HE LEFT. AND THEN WHEN LIEUTENANT DERRICK
25 AND HIS COHORT GOT THERE, I JUST TURNED THE SCENE

1 OVER TO THEM, AND THEN I LEFT TO GO TO NEWBERRY.

2 Q. WHEN YOU CAME BACK FROM NEWBERRY, WHAT
3 HAPPENED? WHAT DID YOU DO?

4 A. WHEN I GOT BACK FROM NEWBERRY, I WAS GOING
5 INTO THE FRONT OFFICE OF THE SHERIFF'S DEPARTMENT,
6 AND OFFICER KIRKLAND AND CHRIS DOZIER COME OUT OF THE
7 OFFICE. AND I SAID, "WHAT'S GOING ON?" AND HE SAID,
8 "WE'RE GOING TO GO RETRIEVE THE WEAPON." AND I SAID,
9 "YOU ARE?" AND HE SAID, "YEAH." SO I WENT IN AND
10 MOSTLY REPORTED TO THE SHERIFF WHAT I HAD FOUND OUT
11 AT THE AUTOPSY.

12 AND I THINK IT WAS THAT NIGHT IT COME UP THAT
13 THEY HAD RECEIVED INFORMATION -- THIS WAS KIND OF A
14 PUZZLE THAT WE WAS PIECING TOGETHER. I WAS DOING
15 CERTAIN THINGS. THE SHERIFF WAS DOING CERTAIN
16 THINGS, AND OTHER OFFICERS WAS DOING THEIR THINGS.
17 AND WE WAS ALL PUTTING IT ALL TOGETHER. AND I THINK
18 THAT WAS THE NIGHT THAT THEY GOT THE WARRANTS.

19 I'M NOT -- NO. NO. I'M WRONG. THIS WAS --
20 THIS WAS SUNDAY AFTERNOON WHEN THEY GOT THE WARRANTS,
21 I THINK, BECAUSE I HAD VERY LITTLE SLEEP, AND I WENT
22 HOME AND GOT SOME SLEEP THAT NIGHT. SUNDAY AFTERNOON
23 IS WHEN I CAME BACK.

24 Q. COULD IT HAVE BEEN SATURDAY?

25 A. IT COULD HAVE BEEN. I'M NOT --

1 Q. WAS NOT KELSEY PEARCE ARRESTED --
2 APPREHENDED SATURDAY NIGHT AND ARRESTED AND CHARGED
3 WITH MURDER? LOOK AT THOSE DOCUMENTS.

4 A. (WITNESS REVIEWS DOCUMENT.) YES, SIR.

5 Q. AND WOULD YOU LOOK ON THE RETURN ON THOSE
6 WARRANTS?

7 A. YES, SIR. 3-19 -- YEAH, '84 -- '94.

8 MR. NEWSOME: YOUR HONOR, AT THIS TIME, I
9 WOULD LIKE FOR IT TO BE MARKED FOR IDENTIFICATION.

10 (DEFENDANT'S EXHIBITS NUMBERS 1,
11 2, 3 AND 4 MARKED FOR
12 IDENTIFICATION.)

13 BY MR. NEWSOME:

14 Q. I SHOW YOU DEFENDANT'S EXHIBIT NUMBER 2.
15 CAN YOU IDENTIFY THAT?

16 A. YES, SIR. THIS IS WARRANT D310195, A
17 WARRANT FOR MURDER, SIGNED BY ME, ON MR. KELSEY
18 PEARCE.

19 Q. ALL RIGHT. AND YOU SWORE TO AND
20 SUBSCRIBED TO THAT ON THE 19TH OF MARCH; IS THAT NOT
21 CORRECT?

22 A. THAT'S CORRECT.

23 Q. WOULD YOU READ WHAT THE PROBABLE CAUSE IS
24 YOU HAVE IN THERE?

25 A. YES, SIR.

1 Q. READ IT OUT LOUD.

2 A. JUST THE AFFIDAVIT, SIR?

3 MR. BAILEY: YOUR HONOR, I HAVE A MATTER
4 OF LAW TO TAKE UP WITH THE COURT.

5 THE COURT: I'LL LET YOU GO TO THE JURY
6 ROOM JUST A MOMENT.

7 (WHEREUPON, THE JURY WAS REMOVED
8 FROM THE COURTROOM AND THE
9 FOLLOWING PROCEEDINGS COMMENCED
10 IN OPEN COURT.)

11 THE COURT: LET'S SEE THAT AFFIDAVIT.

12 YES, SIR.

13 MR. BAILEY: YOUR HONOR, MY OBJECTION IS
14 TO THE INTRODUCTION OF THE AFFIDAVIT. I THINK
15 THERE'S CASE LAW TO THE EFFECT THAT AN AFFIDAVIT IS
16 NOT ADMISSIBLE IN -- IN ANY CRIMINAL CASE.

17 THE COURT: WELL, IT WOULD NOT BE
18 ADMISSIBLE BY THE STATE. AND THAT'S -- YOU'RE
19 REFERRING TO AN AFFIDAVIT THAT WAS USED IN AN HORRY
20 COUNTY CASE FOUR OR FIVE YEARS AGO.

21 MR. BAILEY: YES, SIR.

22 THE COURT: BUT IN THAT INSTANCE, THE
23 STATE PROPOSED TO USE THE AFFIDAVIT AS EVIDENCE OF
24 GUILT. IN THIS CASE, I THINK HE'S GOT ANOTHER
25 PURPOSE. WHAT'S YOUR PURPOSE IN THIS?

1 MR. NEWSOME: I WANT TO SHOW THE STATE OF
2 MIND AT THAT TIME.

3 THE COURT: WHAT DO YOU MEAN, STATE OF
4 MIND?

5 MR. NEWSOME: AT THAT TIME, THERE WAS --
6 AS THE AFFIDAVIT STATES, YOUR HONOR, THEY HAD
7 EVIDENCE THAT KELSEY PEARCE HAD ADMITTED TO ANOTHER
8 PERSON THAT HE HAD SHOT THE PEOPLE THAT NIGHT, AND
9 BASED ON THAT INFORMATION, THEY SECURED AN ARREST
10 WARRANT AND ARRESTED KELSEY PEARCE.

11 THE COURT: I WILL LET YOU CROSS-EXAMINE
12 HIM ABOUT THIS, BUT I'M NOT GOING TO PERMIT THIS TO
13 GO INTO EVIDENCE.

14 MR. NEWSOME: I'M NOT ASKING IT TO GO INTO
15 EVIDENCE. I'M JUST ASKING -- THAT'S WHY I SAID FOR
16 IDENTIFICATION. I DIDN'T ASK FOR EVIDENCE.

17 MR. BAILEY: YOUR HONOR, I WOULD FURTHER
18 OBJECT TO ANY HEARSAY TESTIMONY OF SOMETHING THAT
19 SOMEBODY ELSE TOLD HIM THAT SOMEBODY SAID THAT CAUSED
20 HIM TO GET THE WARRANT OUT AGAINST KELSEY PEARCE.

21 THE COURT: WELL, HE'S THE ONE THAT SIGNED
22 THIS AFFIDAVIT.

23 MR. BAILEY: YES, SIR. I UNDERSTAND.
24 YOUR HONOR, CAN I SEE THE AFFIDAVIT?

25 THE COURT: YEAH. I'LL LET HIM

1 CROSS-EXAMINE HIM ON THAT AFFIDAVIT, AND IF HE SAYS
2 HE GAINED THAT INFORMATION FROM ANOTHER SOURCE, HE
3 CAN SAY THAT. BUT PRIOR INCONSISTENT STATEMENTS, IF
4 THEY BE INCONSISTENT, ARE SUBJECT TO
5 CROSS-EXAMINATION. I DON'T SUGGEST THAT THERE'S
6 ANYTHING IN THERE INCONSISTENT OR NOT. IF THAT BE
7 SO, IT WOULD BE FOR THE JURY TO DETERMINE. BUT ALL
8 YOU WANT TO DO IS CROSS-EXAMINE HIM ON THE -- FOR
9 WHAT -- MAY I INQUIRE AS TO WHAT PURPOSE? ARE YOU
10 TRYING TO IMPEACH HIM, CONTRADICT HIM OR WHAT?

11 MR. NEWSOME: YOUR HONOR, RIGHT NOW I'M
12 TRYING TO EXPLORE THIS WITH HIM. THIS IS DISCOVERY,
13 AND I HAVEN'T HAD A CHANCE TO TALK TO MR. RHUDY MUCH.

14 MR. BAILEY: YOUR HONOR, THE PORTION OF
15 THE AFFIDAVIT THAT I OBJECT TO IS DOWN AT THE BOTTOM
16 WHERE IT'S WRITTEN IN, "AND THAT THE DEFENDANT,"
17 REFERRING TO KELSEY PEARCE, "STATED THAT" -- IT'S
18 HARD TO READ THE HANDWRITING -- "HE HAD STOLEN SAID
19 VEHICLE AND HAD KILLED TWO PEOPLE IN ORDER TO DO SO.
20 MR. PRESLEY EXPIRED FROM GUNSHOT WOUNDS THIS
21 EVENING."

22 THE COURT: NO, SIR. I'M GOING TO EXCLUDE
23 THAT PORTION.

24 MR. NEWSOME: THAT PART THAT'S WRITTEN IN?

25 THE COURT: YES, SIR.

1 MR. NEWSOME: IT'S TYPED IN ON THESE
2 THREE, YOUR HONOR.

3 THE COURT: WELL, WHATEVER IT IS, I'M
4 GOING TO EXCLUDE THAT PORTION OF IT.

5 MR. NEWSOME: AS FAR AS IN EVIDENCE OR ME
6 ASKING ABOUT IT?

7 THE COURT: I'M NOT GOING TO PUT THE
8 AFFIDAVIT IN EVIDENCE TO START WITH. AND THAT THE
9 DEFENDANT STATED -- NO, SIR. I'M GOING TO EXCLUDE
10 THAT. THAT'S A SELF-SERVING DECLARATION OF THE
11 DEFENDANT.

12 MR. NEWSOME: THAT'S NOT THE DEFENDANT'S
13 STATEMENT, YOUR HONOR. I'VE GOT THE STATEMENT.
14 THAT'S A DIFFERENT ONE.

15 THE COURT: THIS THING HERE SAYS THE
16 DEFENDANT STATED. NOW, WHICH IS IT?

17 MR. NEWSOME: HE'S TALKING ABOUT KELSEY
18 PEARCE BEING THAT DEFENDANT. AT THAT TIME, THEY HAD
19 KELSEY PEARCE. HE WAS INITIALLY CHARGED WITH THIS
20 MURDER, YOUR HONOR. NOT THE DEFENDANT, HERMAN
21 HUGHES. THAT'S OUR WHOLE POINT.

22 MR. BAILEY: WHAT THAT REFERS TO IS SOME
23 STATEMENTS THAT KELSEY PEARCE MADE TO SOME PEOPLE AT
24 THE WAFFLE HOUSE OR THE EBONY LOUNGE.

25 THE COURT: I'M GOING TO EXCLUDE THAT.

1 NO, SIR, I'M NOT --

2 MR. NEWSOME: YOUR HONOR --

3 THE COURT: YOU MAY PROVE THAT SOME OTHER
4 WAY, BUT YOU'RE NOT GOING TO PROVE IT ON THE BASIS OF
5 THAT.

6 MR. NEWSOME: ARE YOU --

7 THE COURT: NO, SIR. THIS IS SIMPLY NOT
8 HIS ASSERTION. THIS IS AN ASSERTION THAT PEOPLE HAD
9 TOLD HIM.

10 MR. NEWSOME: AND THAT'S HEARSAY.

11 THE COURT: YES, SIR. I'M NOT GOING TO
12 LET IT IN.

13 MR. NEWSOME: IF I PUT IT IN OTHER THAN
14 FOR THE TRUTH OF THE MATTER, I'M ENTITLED TO PUT IT
15 IN, AM I NOT?

16 THE COURT: NO, SIR. I'M NOT GOING TO LET
17 YOU PUT THAT IN. NO, SIR. THIS IS JUST A STATEMENT
18 THAT HE'S MADE BASED ON AN AFFIDAVIT, ON INFORMATION
19 AS AN INVESTIGATING OFFICER THAT HE RECEIVED FROM
20 SEVERAL SOURCES. IF THAT ASSERTION BE TRUE, IT'S NOT
21 THROUGH HIM TO GET IT IN BECAUSE HE DOESN'T SAY HE
22 HAS PERSONAL KNOWLEDGE OF THAT.

23 MR. NEWSOME: I -- I'M TRYING TO GET HIS
24 STATE OF MIND AT THAT TIME WHERE THE INVESTIGATION IS
25 FOCUSING, AND I THINK AT ALL TIMES --

1 THE COURT: NO, SIR. HIS STATE OF MIND IS
2 NOT APPROPRIATE IN THESE PROCEEDINGS. I'M NOT GOING
3 TO LET THAT COME IN.

4 MR. NEWSOME: YOUR HONOR, ISN'T THAT A
5 JURY QUESTION, THOUGH, WHETHER --

6 THE COURT: NO, SIR. NOT AS TO HIM. IT
7 MIGHT BE A STATE OF MIND AS TO A DEFENDANT, BUT NOT
8 AS TO THIS WITNESS WHO WAS SIMPLY AN INVESTIGATING
9 OFFICER.

10 MR. NEWSOME: SO YOU'RE SAYING I CAN'T ASK
11 HIM ANY QUESTIONS ABOUT THAT?

12 THE COURT: NO, SIR. I'M NOT SAYING THAT.
13 I'M SAYING THAT I'M NOT GOING TO PERMIT YOU TO
14 TESTIFY THAT THE DEFENDANT STATED THAT -- THIS LAST
15 TWO LINES, NOT GOING TO PERMIT THAT BECAUSE THIS IS
16 SIMPLY INFORMATION HE GATHERED FROM A NUMBER OF
17 SOURCES AS INVESTIGATING OFFICER, AND IT MAY OR MAY
18 NOT BE TRUE. I'M NOT GOING TO PERMIT THAT.

19 MR. NEWSOME: I CAN'T CROSS-EXAMINE HIM
20 ABOUT THAT IS WHAT YOU'RE SAYING?

21 THE COURT: YES, SIR. I CERTAINLY AM NOT
22 GOING TO PERMIT IT. I'M NOT GOING TO EXCLUDE ANY
23 OTHER EVIDENCE, BUT I'M NOT GOING TO LET YOU GET IT
24 THROUGH HIM BASED ON AN AFFIDAVIT THAT HE PREPARED
25 FROM HIS INVESTIGATION, NO.

1 MR. NEWSOME: ALL RIGHT.

2 THE COURT: THAT'S YOUR POSITION, TOO,
3 ISN'T IT, SOLICITOR?

4 MR. BAILEY: YES, SIR. YOUR HONOR, I
5 STATE UNDER 804(B), IT'S INADMISSIBLE HEARSAY.

6 THE COURT: IT'S CLEARLY INADMISSIBLE IN
7 MY VIEW.

8 MR. NEWSOME: I RESPECTFULLY KNOW WELL
9 ENOUGH NOT TO ARGUE WITH YOU, BUT I WANT TO LEAVE
10 THESE AS EXHIBITS FOR THE RECORD.

11 THE COURT: YOU'RE NOT ARGUING WITH ME.

12 MR. NEWSOME: YOUR HONOR, I'LL GO AHEAD
13 AND PROFFER THIS UP BECAUSE THAT'S THE STATEMENT HE
14 TOOK --

15 THE COURT: OUTSIDE THE PRESENCE OF THE
16 JURY?

17 MR. NEWSOME: I THINK WE PROBABLY OUGHT TO
18 BECAUSE I ASSUME HE'S GOING TO OBJECT TO THAT, TOO.
19 HE'S TRYING TO KEEP ALL OF THIS STUFF OUT.

20 THE COURT: GIVE ME A COPY OF THAT
21 AFFIDAVIT SO I CAN FOLLOW.

22 MR. NEWSOME: HERE'S A STATEMENT BY A
23 PERSON THAT WE HAVE SUBPOENAED AS A WITNESS AND
24 LOOKED FOR WEEKS. HE IS THE PERSON THAT KELSEY
25 PEARCE ADMITTED TO SHOOTING THESE TWO FOLKS TO. THIS

EARL RHUDY - CROSS BY MR. NEWSOME

1 PERSON, ACCORDING TO OUR INFORMATION, TALKED WITH
2 THAT OFFICER LAST NIGHT. HE JUST CAME BACK IN TOWN,
3 AND WE SERVED THE FAMILY THEN.

4 THE COURT: WHAT IS IT YOU WANT TO ASK OF
5 THIS WITNESS?

6 MR. NEWSOME: I'M GOING TO ASK IF HE TOOK
7 A STATEMENT. JUST LEAVE IT FOR IDENTIFICATION. AND
8 WE'VE GOT RICARDO GILFORD SUBPOENAED, AND THE
9 SHERIFF'S DEPARTMENT WAS SUPPOSED TO GO GET HIM.

10 THE COURT: YOU CAN ASK HIM IF HE TOOK A
11 STATEMENT.

12 MR. NEWSOME: THAT'S ALL I'M GOING TO DO.
13 AND IT'S MARKED FOR IDENTIFICATION.

14 MR. BAILEY: I WOULD STRONGLY OBJECT TO
15 THE INTRODUCTION OF THAT STATEMENT. IT'S BLATANT
16 HEARSAY. AND YOUR HONOR, UNDER RULE 804(B)(3), IT
17 STATES, "A STATEMENT TENDING TO EXPOSE THE CRIMINAL
18 LIABILITY AND OFFER TO EXCULPATE THE ACCUSED IS NOT
19 ADMISSIBLE UNLESS CORROBORATING CIRCUMSTANCES CLEARLY
20 INDICATE" --

21 THE COURT: I UNDERSTAND THAT. NOW, WHAT
22 IS YOUR -- WHAT STATEMENT ARE YOU NOW TALKING ABOUT?

23 MR. NEWSOME: THE STATEMENT THAT'S IN YOUR
24 HAND, YOUR HONOR, IS BY RICARDO -- IT DOESN'T PUT HIM
25 IN ANY CRIMINAL LIABILITY. THE STATEMENT --

1 MR. BAILEY: MR. GILFORD IS NOT IN COURT
2 TO BE CROSS-EXAMINED ON THAT STATEMENT. IT'S
3 HEARSAY.

4 MR. NEWSOME: YOUR HONOR, I'M INFORMING
5 THE COURT AS AN OFFICER OF THE COURT WE'VE SUBPOENAED
6 THIS YOUNG MAN. WE'VE BEEN TRYING TO FIND HIM FOR
7 WEEKS. LOCATED HIM THIS WEEK.

8 THE COURT: THEN YOU BRING HIM UP HERE AND
9 PUT HIM ON THE STAND AND HE CAN TESTIFY TO IT, BUT
10 I'M NOT GOING TO LET YOU PUT THIS STATEMENT IN.

11 MR. NEWSOME: I'M NOT ASKING TO PUT IT IN.
12 I WANTED TO IDENTIFY IT.

13 THE COURT: IF ALL YOU'RE GOING TO ASK
14 HIM, DID HE TAKE A STATEMENT, I'M GOING TO PERMIT
15 THAT. DO YOU UNDERSTAND THAT?

16 MR. NEWSOME: THAT'S CORRECT, AND I JUST
17 WANTED TO HAVE THAT -- AND THAT IS THE STATEMENT THAT
18 HE TOOK.

19 THE COURT: I WILL PERMIT THAT. NOW, I'M
20 NOT RULING ON THE ADMISSIBILITY OF THIS STATEMENT.
21 I'M TELLING YOU AT THIS TIME IT'S NOT COMING INTO THE
22 TRIAL OF THIS CASE.

23 MR. NEWSOME: I DIDN'T SAY I WAS GOING TO
24 PUT IT IN AT THIS TIME.

25 THE COURT: ALL RIGHT.

1 MR. NEWSOME: WE SUBPOENAED THIS YOUNG
2 MAN. I NEEDED TO INFORM THE COURT, BECAUSE THERE'S A
3 POTENTIAL PROBLEM.

4 THE COURT: WHERE IS -- WHAT'S THE
5 POTENTIAL PROBLEM?

6 MR. NEWSOME: THE POTENTIAL PROBLEM IS,
7 YOUR HONOR, ONCE HE GOT SERVICE OF OUR SUBPOENA, OUR
8 INFORMATION AND UNDERSTANDING IS THAT HE MET WITH A
9 MEMBER OF THE SHERIFF'S DEPARTMENT, THIS SERGEANT
10 WANNAMAKER LAST NIGHT, THAT THE SHERIFF'S DEPARTMENT,
11 WE ASKED THEM TO COOPERATE AND HELP BRING HIM IN. WE
12 DON'T HAVE HIM YET. WE DON'T KNOW WHERE HE IS.

13 THE COURT: DO YOU KNOW WHERE HE IS?

14 THE SHERIFF: WE'RE LOOKING FOR HIM NOW.

15 MR. NEWSOME: WE INTEND TO CALL HIM, NOT
16 PUT IT IN HERE.

17 THE COURT: THAT'S FINE. SO ALL YOU WANT
18 TO ASK HIM --

19 MR. NEWSOME: IS DID HE TAKE THE
20 STATEMENT.

21 THE COURT: YOU CAN DO THAT IN FRONT OF
22 THE JURY, CAN'T YOU?

23 MR. NEWSOME: BUT I FIGURED HE WOULD HAVE
24 SOME PROBLEMS BECAUSE THIS IS THE PERSON --

25 THE COURT: GO AHEAD AND LET ME HEAR WHAT

1 YOU'RE GOING TO ASK HIM, AND I'LL RULE ON IT.

2 MR. NEWSOME: ALL RIGHT.

3 P R O F F E R E D T E S T I M O N Y

4 BY MR. NEWSOME:

5 Q. OFFICER RHUDY, DID YOU NOT TAKE A
6 STATEMENT FROM RICARDO GILFORD ON MARCH THE 19TH,
7 1995 (SIC)?

8 A. YES, SIR, I DID.

9 MR. NEWSOME: ALL RIGHT. AND COULD I GO
10 AHEAD AND TRY TO TIE IT IN FOR LATER ON, YOUR HONOR,
11 IN CASE YOU RECONSIDER ABOUT THE WARRANT?

12 THE COURT: LET ME HEAR WHAT YOU ASK HIM.

13 BY MR. NEWSOME:

14 Q. AND IS IT BASED ON THAT AFFIDAVIT AND THE
15 STATEMENT THAT YOU TOOK FROM RICARDO GILFORD IN WHICH
16 KELSEY PEARCE TOLD HIM HE SHOT TWO PEOPLE AND STOLE A
17 CAR?

18 THE COURT: NO, SIR.

19 MR. NEWSOME: I'M NOT ASKING THIS IN FRONT
20 OF THE JURY. IT'S JUST FOR THE RECORD.

21 BY MR. NEWSOME:

22 Q. THE BASIS WHICH YOU GOT THE WARRANT FOR
23 MURDER AGAINST KELSEY PEARCE?

24 A. THIS IS ONE PART OF IT.

25 Q. OKAY.

1 A. ALONG WITH SOME INFORMATION THAT THE
2 SHERIFF HAD ALSO COME UP WITH. LIKE I SAID EARLIER,
3 WE WENT FROM DIFFERENT ANGLES AT THIS CASE, AND TWO
4 OR THREE PEOPLE WERE WORKING ON THIS CASE, AND WE WAS
5 TRYING TO PUT IT ALL TOGETHER. I DID ONE PORTION OF
6 IT. THERE'S SOME STATEMENTS TAKEN BY OTHER OFFICERS,
7 I UNDERSTAND. I THINK OFFICER KIRKLAND HAD TAKEN
8 SOME STATEMENTS, AND WE WAS TRYING TO WORK ON THIS
9 CASE TOGETHER IS WHAT WE WERE TRYING TO DO. AND THIS
10 IS -- I'M NOT SURE THIS IS THE SOLE AFFIDAVIT OR
11 REASON WE GOT THE WARRANTS ON KELSEY PEARCE OR NOT.
12 THERE MIGHT HAVE BEEN MORE. I DON'T RECALL UNLESS I
13 SEE ALL OF THE STATEMENTS.

14 Q. ALL RIGHT. OFFICER RHUDY, DO YOU KNOW OF
15 ANY OTHER STATEMENTS THAT PEOPLE SAID THAT KELSEY
16 PEARCE ADMITTED TO SHOOTING THOSE TWO PEOPLE?

17 A. (WITNESS REVIEWS DOCUMENT.) MAYBE MORE,
18 BUT AT LEAST ONE MORE, YES, SIR.

19 Q. WHICH ONE WAS THAT?

20 A. DUANE GILMORE.

21 Q. AND WHAT DOES THAT STATEMENT SAY, SIR?

22 A. WELL, IN MY NOTES, I'VE GOT THAT DUANE
23 GILMORE HEARD KELSEY SAY THAT HE HAD SHOT SOMEONE
24 NAMED KELLY, AND KELSEY SAID THAT THEY WOULD READ
25 ABOUT IT IN THE NEWSPAPER, AND THAT ALSO THAT KELSEY

1 PEARCE APPEARED TO BE INTOXICATED AT THE TIME THAT HE
2 WAS TALKING.

3 Q. OKAY. AND THAT WAS -- THAT STATEMENT WAS
4 MADE TO YOU ON MARCH 19TH, ALSO; IS THAT NOT CORRECT?

5 A. ACCORDING TO MY NOTES, IT WAS MARCH 19TH
6 OF '94.

7 Q. LET ME SHOW YOU THIS COPY OF THAT
8 STATEMENT AND ASK YOU IS THIS THE SAME STATEMENT THAT
9 YOU WERE REFERRING TO IN YOUR NOTES?

10 A. YES, SIR.

11 MR. NEWSOME: OKAY. AND YOUR HONOR, I
12 WOULD LIKE TO MARK THAT FOR IDENTIFICATION ONLY AS A
13 DEFENDANT'S EXHIBIT.

14 THE COURT: ALL RIGHT.

15 (DEFENDANT'S EXHIBIT NUMBER 5
16 MARKED FOR IDENTIFICATION.)

17 MR. NEWSOME: I'M READY FOR THE JURY TO
18 COME BACK.

19 THE COURT: BRING THE JURY BACK. NOW, BE
20 SURE AND LIMIT THE CROSS-EXAMINATION IN ACCORDANCE
21 WITH MY RULING.

22 MR. NEWSOME: YES, SIR. I WILL.

23 (WHEREUPON, THE JURY WAS
24 RETURNED TO THE COURTROOM AND
25 THE FOLLOWING PROCEEDINGS WERE

1 COMMENCED IN OPEN COURT.)

2 THE COURT: ALL RIGHT. YOU MAY PROCEED.

3 BY MR. NEWSOME:

4 Q. ON MARCH 19TH, 1995 (SIC), WHO DID YOU
5 ARREST AND CHARGE WITH THE CRIME OF MURDER?

6 A. KELSEY PEARCE.

7 Q. AND THAT WAS BASED ON THE INFORMATION YOU
8 HAD?

9 A. YES, SIR.

10 Q. ALL RIGHT. NOW, WERE YOU PRESENT WHEN
11 HERMAN HUGHES WAS QUESTIONED ON MARCH 19TH, 1995
12 (SIC)?

13 A. I WAS THERE, BUT I DON'T REMEMBER BEING
14 WITH HIM -- BEING QUESTIONED IN THE SAME ROOM WITH
15 HIM BEING QUESTIONED.

16 Q. YOU NEVER WENT IN THE SAME ROOM WHEN HE
17 WAS QUESTIONED?

18 A. NO. I'M NOT EVEN SURE ON THAT NIGHT THAT
19 I EVEN SAW MR. HUGHES.

20 Q. OKAY. WERE YOU AROUND WHEN THE GUN,
21 WHATEVER GUN IT WAS, WAS BROUGHT TO THE SHERIFF'S
22 DEPARTMENT?

23 A. YES, SIR.

24 Q. OKAY. WAS MR. HUGHES ARRESTED AND CHARGED
25 WITH THIS CRIME ON FRIDAY -- ON SATURDAY?

1 A. NO, SIR.

2 Q. HE WAS ALLOWED TO GO HOME, WAS HE NOT?

3 A. I'M NOT SURE. LIKE I SAID, AS FAR AS MR.
4 HUGHES IS CONCERNED, I WAS WORKING ANOTHER PART OF
5 THE INVESTIGATION. I THINK SHERIFF JONES WAS DEALING
6 WITH MR. HUGHES.

7 Q. OKAY. SO KELSEY PEARCE WAS ARRESTED AND
8 CHARGED WITH MURDER ON THE NIGHT OF MARCH 19TH, 1995
9 (SIC); CORRECT?

10 A. YES, SIR.

11 Q. NOW, YOU DID FOLLOW-UP INVESTIGATION, DID
12 YOU NOT?

13 A. I DID SOME, YES.

14 Q. AND YOU ARE, IN FACT, THE FIRST PERSON WHO
15 TALKED TO KELLY HOFFMAN, THE SURVIVOR OF THIS
16 INCIDENT?

17 A. AS FAR AS I KNOW, I'M THE FIRST ONE TO
18 TALK TO HER IN THE HOSPITAL, YES.

19 Q. AT LENGTH. OKAY. AND DO YOU REMEMBER
20 HAVING A CONVERSATION WITH ME ABOUT YOU HAVING
21 INTERVIEWED HER?

22 A. YES, SIR.

23 Q. AND YOU INDICATED TO ME THAT YOU MADE A
24 RECORDING OF THAT INTERVIEW?

25 A. YES, I DID.

1 Q. ALL RIGHT. NOW I'M GOING TO SHOW YOU A
2 TAPE -- EXCUSE ME -- A STANDARD TAPE GIVEN TO US BY
3 THE SOLICITOR'S OFFICE.

4 A. THAT'S NOT THE TAPE I USED, NO, SIR.

5 MR. NEWSOME: OKAY. YOUR HONOR, THIS WAS
6 PROVIDED TO US UNDER DISCOVERY, A COPY OF THE
7 ORIGINAL.

8 THE COURT: YOU AGREE THAT THAT'S --

9 MR. BAILEY: YES, SIR, I PROVIDED THAT
10 TAPE TO MR. NEWSOME.

11 MR. NEWSOME: YES, SIR.

12 THE COURT: ALL RIGHT.

13 BY MR. NEWSOME:

14 Q. YOU TOOK A RECORDING OF THE INTERVIEW YOU
15 HAD WITH KELLY HOFFMAN; IS THAT NOT CORRECT?

16 A. I DID, ONE WEEK LATER AFTER THIS INCIDENT
17 HAD OCCURRED.

18 Q. ALL RIGHT, SIR. AND HAVE YOU HAD A CHANCE
19 TO REPLAY THAT RECENTLY AND GO OVER IT?

20 A. I LISTENED TO IT ONE TIME BEFORE I WAS --
21 I THOUGHT THE TAPE HAD BEEN LOST, AND I HAPPENED TO
22 DISCOVER IT AT MY RESIDENCE IN OCONEE COUNTY, AND I
23 GOT IN TOUCH WITH THE SOLICITOR AND LET HIM KNOW I
24 DID HAVE THE TAPE. AND I THINK I LISTENED TO IT ONCE
25 OR TWICE, AND THEN I SENT IT STRAIGHT TO THE

1 SOLICITOR'S OFFICE.

2 Q. ALL RIGHT. HAVE YOU HAD A CHANCE TO SEE A
3 COPY OF THE TRANSCRIPTION OF THAT TAPE THAT ALSO WAS
4 PROVIDED TO US BY THE SOLICITOR'S OFFICE?

5 A. NO, SIR, I HAVE NOT.

6 Q. SO YOU HAVE NOT HAD A CHANCE TO LOOK AT
7 THAT?

8 A. NO, SIR.

9 Q. WOULD YOU TAKE THIS TIME TO LOOK AT THAT
10 AND MAKE SURE THAT APPEARS TO BE THE SAME ONE FROM
11 THE INTERVIEW YOU HAD WITH KELLY HOFFMAN?

12 MR. BAILEY: YOUR HONOR, WHILE MR. RHUDY
13 IS READING THAT TAPE, I HAVE A MATTER OF LAW THAT
14 WOULD TAKE JUST A MOMENT.

15 THE WITNESS: YOUR HONOR --

16 THE COURT: WAIT A MINUTE.

17 THE WITNESS: I'M NOT SURE THAT -- AND WHY
18 AM I SUPPOSED TO BE READING IT? BECAUSE THIS IS --

19 MR. NEWSOME: EXCUSE ME.

20 THE WITNESS: THIS IS THE TAPE OF HERMAN
21 HUGHES.

22 MR. NEWSOME: MIGHT AS WELL SEND THEM OUT
23 BECAUSE I KNOW WHAT HE'S GETTING READY TO DO.

24 THE COURT: DO YOU HAVE SOME MATTER OF LAW
25 RELATIVE TO THE TAPE IF HE'S GOT ONE OF ANOTHER?

EARL RHUDY - CROSS BY MR. NEWSOME

1 MR. BAILEY: YES, SIR.

2 THE COURT: ALL RIGHT. I'LL LET YOU GO TO
3 THE JURY ROOM JUST A MOMENT.

4 THIS IS THE TAPE OF WHO?

5 MR. NEWSOME: KELLY HOFFMAN.

6 (WHEREUPON, THE JURY WAS REMOVED
7 FROM THE COURTROOM AND THE
8 FOLLOWING PROCEEDINGS COMMENCED
9 IN OPEN COURT.)

10 THE COURT: AS I UNDERSTAND IT, KELLY
11 HOFFMAN WILL BE TESTIFYING.

12 MR. NEWSOME: YES, SIR, SHE WILL.

13 THE COURT: WHAT'S THE PURPOSE OF THIS
14 TAPE?

15 MR. NEWSOME: YOUR HONOR, I'M GOING TO
16 RESERVE THE RIGHT TO RE-CALL HIM FOR
17 CROSS-EXAMINATION LATER ON.

18 THE COURT: I WILL DO THAT.

19 MR. NEWSOME: JUST WANTING TO CONFIRM --

20 THE COURT: BUT THE TIME TO DO THAT IS
21 CROSS-EXAMINE HER AFTER SHE TESTIFIES. I ASSUME
22 THAT'S --

23 MR. NEWSOME: YES, SIR.

24 THE COURT: SURE IT IS.

25 MR. NEWSOME: I JUST WANTED TO --

1 THE COURT: BRING THE JURY BACK IN.

2 MR. NEWSOME: I JUST WANTED FOR
3 IDENTIFICATION --

4 THE COURT: YES, SIR. AND I'LL KEEP HIM.
5 HERE IN CASE YOU WANT TO RE-CALL HIM.

6 MR. NEWSOME: YES, SIR.

7 THE COURT: OKAY. BRING THEM BACK.

8 (WHEREUPON, THE JURY WAS
9 RETURNED TO THE COURTROOM AND
10 THE FOLLOWING PROCEEDINGS WERE
11 COMMENCED IN OPEN COURT.)

12 THE COURT: MR. FOREMAN, LADIES AND
13 GENTLEMEN, LET ME EXPLAIN SOMETHING TO YOU THAT YOU
14 WILL UNDERSTAND. I DON'T WANT YOU TO THINK WE'RE
15 RUNNING YOU IN AND OUT LIKE A YO-YO, BUT FROM TIME TO
16 TIME, MATTERS ARISE WHEN THEY SAY, YOUR HONOR, I HAVE
17 A MATTER OF LAW THAT WE NEED TO DISCUSS WITH YOU. IT
18 IS AT THAT TIME THAT WE ASK YOU TO GO OUT BECAUSE
19 SOMETHING MAY COME UP THAT'S NOT PERTINENT TO YOUR
20 INQUIRY.

21 NOW, I WANT THIS JURY TO KNOW THAT NEITHER THE
22 STATE NOR THE DEFENSE NOR THIS JUDGE WOULD AT ANY
23 TIME EVER DEPRIVE YOU OF HEARING SOMETHING THAT
24 YOU'RE SUPPOSED TO HEAR. BUT A LOT OF TIMES IN
25 DISCUSSING MATTERS OF LAW, IRRELEVANT MATERIAL COMES

1 IN, AND THAT'S WHY IN ORDER TO MAKE SURE THAT THE
2 STATE AND THE PEOPLE OF SOUTH CAROLINA GET A FAIR
3 TRIAL AND IN ORDER TO ENSURE THAT THIS DEFENDANT GETS
4 A FAIR TRIAL AND PARTICULARLY IN ORDER TO ENSURE THAT
5 YOU THE JURY AS FINDERS OF THE FACTS MAKE YOUR
6 DECISION ONLY ON RELEVANT MATERIAL, WE ASK THAT YOU
7 VACATE THE COURTROOM.

8 SO I WANT THIS JURY TO KNOW THAT NOBODY HERE IS
9 TRYING TO KEEP ANYTHING FROM YOU. FAR BE IT FROM ME.
10 ALL OF THEM WANT TO HAVE A FULL DISCLOSURE OF THE
11 FACTS SO THAT YOU AS FINDERS OF THE FACTS CAN MAKE
12 YOUR DETERMINATION.

13 YOU MAY PROCEED.

14 MR. NEWSOME: YOUR HONOR, I WOULD
15 RESPECTFULLY REQUEST THE RIGHT TO RE-CALL HIM FOR
16 CROSS-EXAMINATION AT ANOTHER TIME.

17 THE COURT: YES, SIR. I'LL GRANT THAT.

18 MR. NEWSOME: AND I'LL RESERVE THIS
19 QUESTIONING FOR THAT TIME.

20 THE COURT: MR. DEPUTY, I WOULD ASK THAT
21 YOU REMAIN SUBJECT TO THE CALL OF THE COURT.

22 THE WITNESS: YES, SIR.

23 THE COURT: THANK YOU VERY MUCH. ANYTHING
24 FURTHER FROM THIS WITNESS?

25 MR. NEWSOME: NOT AT THIS TIME, YOUR

1 HONOR.

2 THE COURT: ANY REDIRECT?

3 MR. BAILEY: NOT AT THIS TIME, YOUR HONOR.

4 THE COURT: ALL RIGHT. YOU MAY COME DOWN.

5 MR. BAILEY: EXCUSE ME, YOUR HONOR. YES,

6 SIR, ONE THING FURTHER.

7 R E D I R E C T E X A M I N A T I O N

8 BY MR. BAILEY:

9 Q. MR. NEWSOME ASKED YOU ABOUT THE ARREST OF
10 KELSEY PEARCE RELATING TO THIS MURDER WHICH OCCURRED
11 PRIOR TO HERMAN HUGHES' ARREST?

12 A. YES, IT WAS.

13 Q. ALL RIGHT, SIR. IS IT UNUSUAL TO ARREST
14 MORE THAN ONE PERSON FOR ONE MURDER?

15 A. NO, SIR, IT'S NOT UNUSUAL.

16 MR. BAILEY: ALL RIGHT, SIR. THANK YOU.
17 THAT'S ALL I HAVE.

18 THE COURT: YOU MAY COME DOWN, SUBJECT TO
19 RE-CALL.

20 MR. BAILEY: CALL DANNY KIRKLAND.

21 THE CLERK: IF YOU WOULD, PLEASE PLACE
22 YOUR LEFT HAND ON THE BIBLE AND PLEASE RAISE YOUR
23 RIGHT HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

24 THE WITNESS: W. D. KIRKLAND.

25 W. D. KIRKLAND,

1 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
2 TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MR. BAILEY:

5 Q. STATE YOUR FULL NAME, PLEASE.

6 A. W. D. KIRKLAND.

7 Q. WHERE ARE YOU EMPLOYED, MR. KIRKLAND?

8 A. I'M A TRAINING OFFICER AT THE SANTEE
9 POLICE DEPARTMENT.

10 Q. AND BACK IN MARCH OF 1994, WOULD YOU STATE
11 WHETHER OR NOT YOU WERE A DEPUTY SHERIFF IN THE
12 CALHOUN COUNTY SHERIFF'S DEPARTMENT?

13 A. YES, SIR, I WAS.

14 Q. IN CALLING YOUR ATTENTION TO SATURDAY,
15 MARCH THE 19TH, SATURDAY AFTERNOON, DID YOU HAVE AN
16 OCCASION TO SEE THE DEFENDANT, HERMAN HUGHES, AT THE
17 SHERIFF'S OFFICE?

18 A. YES, SIR.

19 Q. ALL RIGHT, SIR. AND WOULD YOU STATE
20 WHETHER OR NOT YOU MADE AN EFFORT TO RECOVER THE
21 MURDER WEAPON FROM THE BLUE DIAMOND --

22 A. YES, SIR, WE DID.

23 Q. -- CASINO? OKAY. WOULD YOU TELL THE JURY
24 WHAT YOU DID WITH HERMAN HUGHES IN AN EFFORT TO
25 LOCATE THAT -- THAT WEAPON?

1 A. HERMAN WENT WITH US -- WHEN I SAY "US," IT
2 WAS MYSELF, I BELIEVE IT MAY HAVE BEEN HIS MOTHER AND
3 A COUPLE OF OTHER FELLOWS THAT HE KNEW AND DEPUTY
4 DOZIER, CHRIS DOZIER, WHO WAS A LIEUTENANT AT THE
5 TIME IN ANOTHER CAR. WE -- WE RODE OUT TO A
6 RESIDENCE ON 176 TO TALK --

7 Q. WHOSE RESIDENCE WAS THAT?

8 A. I'M NOT SURE WHOSE RESIDENCE IT WAS. WE
9 WENT OUT THERE TO FIND SOME OLDER FELLOW THAT HERMAN
10 HAD SUPPOSEDLY GIVEN THE WEAPON TO. WE GOT OUT
11 THERE, THE -- THE GENTLEMAN OUT THERE DIRECTED US TO
12 A HOUSE OUT ON ROAD 22, A RESIDENCE OF BUBBA AND
13 BETTY SPAGNER.

14 Q. WERE YOU FAMILIAR WITH BETTY SPAGNER?

15 A. YES, SIR. I KNEW BETTY.

16 Q. DID YOU GO OUT TO BETTY SPAGNER'S HOUSE?

17 A. YES, SIR.

18 Q. AND WHO ELSE WENT WITH YOU EITHER IN YOUR
19 CAR OR A DIFFERENT CAR?

20 A. LIKE I SAID, HERMAN, MAYBE HIS MOTHER,
21 LIEUTENANT DOZIER AND A COUPLE OF FELLOWS THAT HERMAN
22 KNEW.

23 Q. OKAY.

24 A. THEY WERE IN ANOTHER CAR.

25 Q. BACKING UP JUST A LITTLE BIT, DO YOU

1 RECALL SPECIFICALLY WHAT HERMAN HUGHES TOLD YOU ABOUT
2 THE WHEREABOUTS OF THE GUN?

3 A. WELL, TO START WITH, HE HAD TOLD ME THAT
4 HE GAVE IT TO THE OWENS, MR. OWENS.

5 Q. OKAY.

6 A. AND THAT'S WHAT TOOK US OUT TO THE HOUSE
7 ON 176.

8 Q. WHEN YOU WENT OUT TO THE HOUSE ON 1 -- THE
9 SPAGNER HOUSE, DID YOU SEE MS. SPAGNER THERE?

10 A. YES, SIR. SHE ANSWERED THE DOOR.

11 Q. AND DID YOU HAVE A CONVERSATION WITH HER?

12 A. I JUST TOLD HER WE WERE HERE TO PICK UP
13 THE GUN.

14 Q. OKAY. AND DID YOU GO INSIDE THE HOUSE
15 THEN?

16 A. YES, SIR. SHE LED US TO A ROOM -- TO THE
17 LEFT REAR OF THE HOUSE. IT WAS LIKE A -- LIKE A
18 MAKESHIFT CLOSET OR PANTRY IN THE BACK ROOM. AND SHE
19 WENT TO REACH UP IN THE TOP OF IT. I STOPPED HER,
20 AND I RETRIEVED THE WEAPON.

21 Q. ALL RIGHT. LET ME HAND YOU WHAT'S BEEN
22 MARKED STATE'S NUMBER 3 FOR IDENTIFICATION, AND I
23 ALSO HAND YOU A FORM THAT BEARS YOUR NAME, AND ASK,
24 FIRST OF ALL, IF YOU CAN IDENTIFY THAT GUN.

25 A. YES, SIR. THIS IS THE WEAPON THAT SHE

1 GAVE ME.

2 Q. TALK LOUD ENOUGH, PLEASE, SO THAT THEY CAN
3 HEAR YOU DOWN AT THE END.

4 A. YES, SIR. THIS IS THE WEAPON THAT SHE
5 GAVE ME.

6 Q. THAT BETTY SPAGNER GAVE YOU?

7 A. YES, SIR.

8 Q. AND IS THAT FORM, DOES THAT BEAR YOUR
9 NAME?

10 A. YES, SIR.

11 Q. AND WHAT IS THAT?

12 A. THIS IS A CERTIFICATE OF PROOF, CHAIN OF
13 CUSTODY THAT THE SHERIFF'S DEPARTMENT AT THAT TIME
14 USED OR INVESTIGATOR RHUDY USED AT THAT TIME.

15 Q. OKAY. AND WOULD YOU STATE WHETHER OR NOT
16 THE SERIAL NUMBER OF THE GUN APPEARS ON THAT?

17 A. YES, SIR, IT DOES.

18 Q. WOULD YOU COMPARE THAT SERIAL NUMBER ON
19 THE FORM TO THE SERIAL NUMBER ON THE GUN?

20 A. YES, SIR. THEY ARE THE SAME.

21 Q. OKAY. AND IS THIS THE GUN, STATE'S NUMBER
22 3, THAT YOU RETRIEVED FROM BETTY SPAGNER'S HOUSE?

23 A. IT APPEARS TO BE IT, SIR.

24 Q. OKAY. BASED ON THE SERIAL NUMBERS; IS
25 THAT CORRECT?

1 A. YES, SIR.

2 Q. AND WHAT DID YOU DO WITH THIS GUN?

3 A. I TURNED IT OVER TO INVESTIGATOR EARL
4 RHUDY OR THE SHERIFF.

5 Q. OKAY.

6 A. I CAN'T -- I CAN'T BE 100 PERCENT SURE ON
7 WHICH ONE I GAVE IT TO.

8 Q. ALL RIGHT, SIR.

9 A. IT WOULD PROBABLY HAVE BEEN DETECTIVE
10 RHUDY.

11 Q. WELL, READ THE FORM HERE AND SEE IF THAT
12 REFRESHES YOUR MEMORY. DOES THAT SAY YOU TURNED IT
13 OVER TO EARL RHUDY?

14 A. YES, SIR. EARL D. RHUDY.

15 Q. IS THAT YOUR SIGNATURE ON THE FORM?

16 A. YES, SIR.

17 MR. BAILEY: YOUR HONOR, I WOULD OFFER
18 THIS CHAIN OF CUSTODY FORM AT THIS TIME.

19 MR. NEWSOME: IS THAT THE ONE I HAVE?

20 MR. BAILEY: YEAH.

21 THE COURT: WITHOUT OBJECTION.

22 (STATE'S EXHIBIT NUMBER 34
23 MARKED FOR IDENTIFICATION AND
24 ENTERED INTO EVIDENCE.)

25 MR. BAILEY: YOUR HONOR, NOTHING FURTHER

1 OF THIS WITNESS AT THIS TIME. WE WOULD RESERVE THE
2 RIGHT TO RE-CALL.

3 THE COURT: ANY CROSS-EXAMINATION?

4 MR. NEWSOME: I'LL SAVE MY
5 CROSS-EXAMINATION WHEN HE RE-CALLS HIM, YOUR HONOR.

6 THE COURT: ALL RIGHT. YOU MAY COME DOWN.

7 THE WITNESS: THANK YOU.

8 MR. NEWSOME: YOUR HONOR, I TAKE THAT
9 BACK. I CAN'T COUNT ON HIM RE-CALLING HIM.

10 THE COURT: YOU MAY DO IT NOW.

11 C R O S S - E X A M I N A T I O N

12 BY MR. NEWSOME:

13 Q. INVESTIGATOR KIRKLAND?

14 A. YES, SIR.

15 Q. DID YOU TAKE ANY STATEMENTS FROM HERMAN
16 THAT AFTERNOON?

17 A. EXCUSE ME, SIR?

18 Q. DID YOU TAKE ANY STATEMENTS FROM HERMAN
19 HUGHES THAT AFTERNOON?

20 A. YES, SIR, I DID.

21 Q. AND AFTER TAKING THOSE STATEMENTS AND HIM
22 GIVING YOU THE GUN, DID YOU ARREST HIM?

23 A. I DID NOT, SIR.

24 Q. HE WAS ALLOWED TO GO HOME, WAS HE NOT?

25 A. I CAN'T TELL YOU.

1 Q. YOU DON'T REMEMBER?

2 A. NO, SIR.

3 Q. ALL RIGHT. ON YOUR AFFIDAVIT, STATE'S
4 EXHIBIT NUMBER 34.

5 A. YES, SIR.

6 Q. WHAT TIME DID YOU GET THAT GUN FROM HIM?

7 A. IT SAYS IT'S 5:45 OR 5:48.

8 Q. NOW, THAT AFFIDAVIT SAYS YOU GOT IT FROM
9 HERMAN HUGHES?

10 A. YES, SIR.

11 Q. YOU DIDN'T ACTUALLY GET IT FROM HERMAN.
12 HE GAVE YOU THE INFORMATION. YOU GOT IT FROM THE
13 OTHER PLACE; ISN'T THAT CORRECT?

14 A. THAT WOULD BE CORRECT, SIR.

15 Q. OKAY. ALL RIGHT. AND THAT WAS AFTER HE
16 HAD SIGNED THE ADVICE OF RIGHTS FORM?

17 A. YES, SIR.

18 Q. ABOUT 5:00 THAT AFTERNOON? I'LL LET YOU
19 LOOK AT IT.

20 A. 5:13, SIR.

21 Q. 5:13. OKAY. SO AFTER HE GAVE YOU THIS
22 STATEMENT, YOU WENT OUT THERE AND GOT THE GUN?

23 A. YES, SIR.

24 Q. AND DIDN'T ARREST HERMAN?

25 A. NO, SIR, I DIDN'T.

1 Q. OKAY. ALL RIGHT. NOW, LET ME ASK YOU
2 THIS, SIR. YOU WERE ALSO ON THE SCENE MARCH THE
3 18TH, WERE YOU NOT?

4 A. THE SCENE OF THE MURDER?

5 Q. YES, SIR.

6 A. YES, SIR.

7 MR. NEWSOME: ALL RIGHT. AND YOUR HONOR,
8 I THINK THAT THIS IS PROBABLY SOMETHING I SHOULD
9 RESERVE THE RIGHT TO CALL HIM LATER AFTER THE OTHER
10 WITNESSES.

11 THE COURT: ALL RIGHT. YOU MAY COME DOWN
12 AT THIS TIME.

13 MR. BAILEY: YOUR HONOR -- YOU NEED HIM ON
14 STAND-BY? YOU NEED HIM RIGHT HERE?

15 MR. NEWSOME: THAT'S FINE. I MEAN, YEAH.
16 I WOULD -- I CAN INFORM THE COURT THAT I WILL
17 PROBABLY RE-CALL HIM AFTER ANOTHER ONE OF HIS
18 WITNESSES.

19 THE COURT: JUST HAVE HIM ON STAND-BY
20 WHERE WE CAN REACH HIM, PLEASE. THANK YOU.

21 MR. BAILEY: RE-CALL EARL RHUDY.

22 EARL D. RHUDY,
23 HAVING BEEN PREVIOUSLY SWORN BY THE CLERK OF COURT,
24 TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION (RECALLED)

1 BY MR. BAILEY:

2 Q. OKAY. MR. RHUDY, YOU PREVIOUSLY TESTIFIED
3 A FEW MINUTES EARLIER, BUT WERE YOU THE CHIEF
4 INVESTIGATING OFFICER IN THIS CASE WHEN YOU WERE WITH
5 THE CALHOUN COUNTY SHERIFF'S DEPARTMENT?

6 A. AS FAR AS I WAS THE ONLY INVESTIGATOR, BUT
7 THE SHERIFF AND I WERE WORKING TOGETHER ON THE CASE.

8 Q. ALL RIGHT, SIR. IN CALLING YOUR ATTENTION
9 TO -- DID YOU RUN UP THE STAIRS?

10 A. YES, SIR.

11 Q. -- MARCH THE 19TH, WHICH WAS SATURDAY
12 AFTER THE SHOOTING, WOULD YOU STATE WHETHER OR NOT
13 YOU ATTENDED THE AUTOPSY OF KEN PRESLEY?

14 A. YES, I DID.

15 Q. ALL RIGHT. AND I HAND YOU WHAT'S BEEN
16 MARKED AS STATE'S EXHIBIT NUMBER 6, WHICH HAS BEEN
17 PREVIOUSLY IDENTIFIED BY DR. SEXTON AS BEING A BULLET
18 REMOVED FROM THE BRAIN OF MR. PRESLEY AND ASK WHETHER
19 OR NOT YOU BROUGHT THAT BACK FROM THE AUTOPSY.

20 A. YES, I DID.

21 Q. ALL RIGHT, SIR. DO YOU HAVE A MARK ON
22 HERE OR ANYTHING THAT INDICATES THAT YOU BROUGHT THAT
23 BACK FROM THE AUTOPSY?

24 A. NO. THIS IS MY HANDWRITING ON THE AMC AND
25 THE AGENCY CASE NUMBER.

1 Q. OKAY.

2 A. AND THIS WAS TAKEN STRAIGHT TO SLED
3 HEADQUARTERS.

4 Q. ALL RIGHT. BY YOU?

5 A. BY ME.

6 Q. ALL RIGHT. YOU CHECKED THAT INTO SLED AT
7 SOME POINT?

8 A. ALL OF THE EVIDENCE THAT I GOT FROM DR.
9 SEXTON WAS TAKEN STRAIGHT TO SLED HEADQUARTERS AND
10 TURNED OVER TO EVIDENCE THERE.

11 Q. OKAY. NOW, CALLING YOUR ATTENTION TO THAT
12 SAME -- THAT SAME DAY, THE 19TH.

13 A. YES, SIR.

14 Q. AT ABOUT 5:00 TO 7:00 P.M., I HAND YOU
15 STATE'S NUMBER 3 AND STATE'S 4, WHICH IS A CHAIN OF
16 CUSTODY FORM, AND ASK YOU TO STATE WHETHER OR NOT YOU
17 RECEIVED THAT .380 CALIBER LARSON PISTOL FROM DANNY
18 KIRKLAND.

19 A. (WITNESS REVIEWS DOCUMENT.) YES, I DID.

20 Q. ALL RIGHT, SIR. NOW, ON SUNDAY, MARCH
21 20TH, WOULD YOU STATE WHETHER OR NOT YOU TOOK ANY
22 FINGERPRINTS FROM THE DEFENDANT, HERMAN HUGHES?

23 A. I TOOK SOME FINGERPRINTS. I'M -- I'M NOT
24 SURE OF THE DATE, BUT I DID TAKE SOME FINGERPRINTS
25 FROM MR. HUGHES.

1 Q. DO YOU HAVE THAT CARD WITH YOU?

2 A. NOT WITH ME, NO, SIR.

3 Q. OKAY. ON MARCH 21ST, 1994, WOULD YOU
4 STATE WHETHER OR NOT YOU TOOK THAT AUTOPSY BULLET AND
5 THE PISTOL, STATE'S 3 FOR IDENTIFICATION, TO SLED?

6 A. THERE AGAIN, I WOULD HAVE TO HAVE THE --
7 THE CHAIN OF CUSTODY FORM TO MAKE SURE ON THE DATES.

8 Q. HANG ON A SECOND.

9 MR. BAILEY: YOUR HONOR, BEAR WITH ME ONE
10 SECOND.

11 BY MR. BAILEY:

12 Q. REGARDLESS OF THE DAY, DO YOU RECALL
13 TAKING THOSE TWO ITEMS TO SLED?

14 A. YES, SIR.

15 Q. ALL RIGHT.

16 A. I TOOK THEM -- IF I'M NOT MISTAKEN, I TOOK
17 THEM AND GAVE THEM TO LIEUTENANT DERRICK.

18 Q. ALL RIGHT, SIR. LET ME SHOW YOU A
19 FINGERPRINT CARD HERE AND ASK WHETHER OR NOT THAT'S
20 THE FINGERPRINT CARD THAT YOU TOOK FROM HERMAN
21 HUGHES.

22 A. IT HAS MY SIGNATURE ON IT, AND I TOOK THE
23 FINGERPRINTS OF MR. HUGHES AS A REQUEST FROM
24 LIEUTENANT DERRICK FROM STATE LAW ENFORCEMENT
25 DIVISION.

1 Q. ALL RIGHT, SIR.

2 A. TO GET HIM A COPY OF THE FINGERPRINTS.

3 MR. BAILEY: EXCUSE ME JUST ONE MOMENT.

4 BY MR. BAILEY:

5 Q. SO YOU TOOK -- TO THE BEST OF YOUR
6 RECOLLECTION, YOU TOOK THE PISTOL, THE AUTOPSY BULLET
7 AND THE FINGERPRINT CARD OF HERMAN HUGHES TO SLED; IS
8 THAT CORRECT?

9 A. YES, SIR.

10 MR. BAILEY: THANK YOU. THAT'S ALL I HAVE
11 OF THIS WITNESS, YOUR HONOR.

12 THE COURT: ANY FURTHER CROSS?

13 MR. NEWSOME: I STILL RESERVE THE RIGHT TO
14 RE-CALL HIM LATER.

15 THE COURT: ALL RIGHT, SIR. YOU MAY COME
16 DOWN NOW.

17 LADIES AND GENTLEMEN OF THE JURY, I HAVE ORDERED
18 LUNCH FOR YOU. AS SOON AS THAT LUNCH GETS HERE,
19 WE'LL TAKE A BREAK.

20 MR. BAILEY: RE-CALL STEVE DERRICK.

21 THE COURT: ALL RIGHT, SIR.

22 STEVEN M. DERRICK,

23 HAVING BEEN PREVIOUSLY SWORN BY THE CLERK OF COURT,
24 TESTIFIED AS FOLLOWS:

25 D I R E C T E X A M I N A T I O N (RECALLED)

1 BY MR. BAILEY:

2 Q. MR. DERRICK, YOU'VE PREVIOUSLY BEEN
3 QUALIFIED AS A FINGERPRINT EXPERT.

4 A. YES, SIR, THAT'S CORRECT.

5 Q. AND I WANT TO ASK YOU A FEW FURTHER
6 QUESTIONS ABOUT FINGERPRINTS. FIRST OF ALL, DO ANY
7 TWO PEOPLE HAVE THE SAME FINGERPRINTS?

8 A. NO, SIR, THEY DO NOT.

9 Q. ALL RIGHT, SIR. AND I WANT TO ASK YOU TO
10 STATE WHETHER OR NOT YOU RECEIVED A FINGERPRINT CARD
11 OF KELSEY PEARCE FROM WADE FLEMING.

12 A. YES, SIR, I DID.

13 Q. DO YOU HAVE THAT WITH YOU NOW OR THAT --
14 LET'S SEE. LET ME HAND YOU STATE'S 30, WHICH HAS
15 BEEN IDENTIFIED BY AGENT WADE FLEMING AS BEING CASE
16 PRINTS TAKEN FROM KELSEY PEARCE.

17 MR. BAILEY: YOUR HONOR, AND I NEGLECTED
18 TO ASK THE COURT REPORTER TO MARK THE HERMAN HUGHES
19 PRINTS, I WOULD MOVE TO INTRODUCE THOSE AT THIS TIME.

20 THE COURT: I WILL DO SO AT THIS TIME.

21 (STATE'S EXHIBIT NUMBER 35
22 MARKED FOR IDENTIFICATION AND
23 ENTERED INTO EVIDENCE.)

24 BY MR. BAILEY:

25 Q. I HAND YOU STATE'S 35 THAT'S BEEN

1 IDENTIFIED BY MR. RHUDY AS FINGERPRINTS HE TOOK FROM
2 THE DEFENDANT, HERMAN HUGHES. I ALSO HAND YOU
3 STATE'S 28 AND 29 WHICH WE'VE PREVIOUSLY IDENTIFIED
4 AS BEING THE LATENT PRINTS THAT YOU TOOK OFF OF THE
5 MAZDA RX7 AUTOMOBILE.

6 STATE'S 27, WHICH YOU PREVIOUSLY IDENTIFIED AS
7 BEING THE LATENT LIFTS THAT YOU TOOK OFF THE TWO
8 PIECES OF PAPER YOU FOUND IN THE CASH DRAWER AT THE
9 BLUE DIAMOND.

10 A. YES, SIR.

11 Q. OKAY. WOULD YOU TELL THE JURY HOW YOU GO
12 ABOUT COMPARING A KNOWN PRINT SUCH AS THE KNOWN
13 PRINTS FROM KELSEY PEARCE AND HERMAN HUGHES WITH THE
14 LATENT LIFTS THAT YOU DESCRIBED AS TAKING OFF THE
15 AUTOMOBILE AND THE PIECES OF PAPER?

16 A. OKAY. AS I PREVIOUSLY TESTIFIED TO ABOUT
17 HOW THE RESIDUE FORMS UP ON THE RIDGES, AN INK PRINT
18 IS A RECORDING OF THE RIDGE DETAIL THAT IS PRESENT ON
19 EACH FINGER, AND EACH FINGER IS UNIQUELY DIFFERENT
20 FROM THE OTHER FINGER.

21 WHAT MAKES A FINGERPRINT UNIQUE IS THE RIDGES
22 FLOW THROUGH A PARTICULAR PATTERN. RIDGES DO CERTAIN
23 THINGS, WHAT YOU REFER TO AS POINTS OF
24 IDENTIFICATION. THOSE POINTS CONSIST OF A RIDGE
25 FLOWING THROUGH THE PATTERN THAT ABRUPTLY STOPS OR

1 ENDS WHILE THE RIDGES AROUND IT CONTINUE TO FLOW IN
2 THAT PARTICULAR PATTERN. A RIDGE MAY ALSO BE FLOWING
3 IN THE PATTERN AND DIVIDE OFF FORMING TWO RIDGES
4 WHICH CONTINUE TO FLOW THROUGHOUT THE PATTERN OR
5 CONTINUE THE REST OF THE WAY INTO THE PATTERN. OR
6 YOU MAY HAVE A RIDGE WHICH WILL DIVIDE OFF FORMING
7 TWO RIDGES THAT FLOW A DISTANCE IN THE PATTERN AND
8 THEN CLOSE BACK UP TOGETHER FORMING ONE RIDGE, WHICH
9 CONTINUES TO FLOW IN THE PATTERN.

10 IN CONDUCTING A COMPARISON, AN EXAMINER LOOKS
11 FOR THESE POINTS OF IDENTIFICATION IN THE PATTERN.
12 WHEN THE SPECIFIC POINT OF IDENTIFICATION IS PRESENT
13 IN THE LATENT LIFT AND IN THE INKED PRINT AND
14 FOLLOWING THE SAME UNIT RELATIONSHIP TO EACH OTHER,
15 AND THERE IS A CONSISTENT NUMBER OF THEM BASED ON THE
16 TOTALITY OF THE PRINT THAT YOU'RE EXAMINING, WHEN ALL
17 OF THIS LINES UP, IT IS IN THE SAME UNIT
18 RELATIONSHIP, THEN AN IDENTIFICATION IS EFFECTED. IF
19 ONE OF THESE CHARACTERISTICS THAT IS EITHER IN THE
20 LATENT OR THE INK PRINT DOES NOT LINE UP OR FOLLOW
21 THE SAME UNIT RELATIONSHIP ONE TO THE OTHER
22 RESPECTIVELY, THEN THE PRINT IS NEGATED. IF IT BE IN
23 A LATENT COMPARED TO THE INK PRINT AND THE POINT OF
24 IDENTIFICATION IS NOT THE SAME, THEN THAT LATENT
25 WOULD BE NEGATIVE WITH THAT INK PRINT. IF ALL OF THE

1 POINTS OF IDENTIFICATION IN A LATENT ARE IN THE SAME
2 UNIT RELATIONSHIP RESPECTIVELY TO THE INK PRINT, THEN
3 THE IDENTIFICATION IS EFFECTED FROM THAT LATENT PRINT
4 TO THAT INK STANDARD.

5 Q. ALL RIGHT, SIR. DID YOU COMPARE THE
6 LATENT PRINT THAT YOU TOOK OFF THE CAR WITH THE TWO
7 KNOWN PRINTS OF HERMAN HUGHES AND KELSEY PEARCE?

8 A. YES, SIR, I DID.

9 Q. AND DID YOU GET A MATCH?

10 A. I DID ON TWO OF THEM, YES, SIR.

11 Q. ALL RIGHT, SIR. AND WHO DID THOSE LATENT
12 PRINTS FROM THE CAR MATCH WITH?

13 A. ON STATE'S EXHIBIT NUMBER 2, WHICH WAS MY
14 ITEM 36, WAS A PARTIAL PALMPRINT WHICH WAS IDENTIFIED
15 TO THE LEFT PALM OF MR. PEARCE. STATE'S EXHIBIT
16 NUMBER 29, WHICH WAS MY ITEM 28, WAS IDENTIFIED TO
17 THE LEFT MIDDLE FINGER OF MR. PEARCE.

18 Q. ALL RIGHT, SIR. NOW, GOING BACK TO
19 STATE'S 27, WHICH YOU IDENTIFIED AS BEING TWO PIECES
20 OF PAPER THAT YOU GOT OUT OF THE CASH DRAWER -- BY
21 THE WAY, HANDING YOU STATE'S EXHIBIT 17, WHICH IS A
22 PICTURE OF THE CASH DRAWER, IT SHOWS SOME PAPER. IS
23 THAT THE SAME PAPER OR DIFFERENT PAPER; DO YOU KNOW?

24 A. THOSE ARE THE SAME TWO ARTICLES OF PAPER
25 WHICH WERE IN THE CASH DRAWER AND WHICH ARE PRESENT

1 IN THE COURTROOM TODAY.

2 Q. ALL RIGHT, SIR. NOW, DID YOU PREPARE THE
3 LATENT LIFTS FROM THE PAPER OUT OF THAT CASH DRAWER
4 WITH THE KNOWN PRINTS OF HERMAN HUGHES AND KELSEY
5 PEARCE?

6 A. YES, SIR, I DID.

7 Q. ALL RIGHT, SIR. AND DID YOU GET A MATCH?

8 A. YES, SIR, I DID.

9 Q. AND WHOSE PRINTS DO THEY MATCH WITH?

10 A. I GOT ONE PRINT OFF OF EACH PIECE OF PAPER
11 THAT HAD RIDGE DETAIL SUITABLE FOR IDENTIFICATION.
12 BOTH OF THE PRINTS WERE IDENTIFIED TO THE RIGHT THUMB
13 OF MR. HUGHES.

14 Q. ALL RIGHT, SIR. AND DID YOU PREPARE --
15 COMPARE FOR DEMONSTRATION PURPOSES A BLOWUP OF THE
16 LATENT PRINT OFF OF ONE OF THE PIECES OF PAPER WITH
17 HERMAN HUGHES' THUMB PRINT?

18 A. YES, SIR, I DID.

19 Q. WOULD YOU EXPLAIN THAT TO THE JURY,
20 PLEASE?

21 A. YES, SIR. IF I MIGHT STEP DOWN.

22 Q. YES, SIR.

23 A. WHAT THIS IS IS A PHOTOGRAPHIC ENLARGEMENT
24 ON THIS SIDE OF THE LATENT PRINT, WHICH WAS PRESENT
25 ON THE PIECE OF PAPER, WHICH WAS MY ITEM 18.2. ON

1 THE OTHER SIDE OF THE CHART IS A PHOTOGRAPHIC
2 ENLARGEMENT OF THE INK PRINT OF THE RIGHT THUMB, THE
3 INK IMPRESSION FROM MR. HUGHES' CAR. WHAT I HAVE
4 DONE IN THIS CHART IS I HAVE LISTED TEN OF THOSE
5 CHARACTERISTICS THAT I HAVE PREVIOUSLY TESTIFIED TO,
6 POINTS OF IDENTIFICATION, STARTING WITH POINT NUMBER
7 ONE, WHICH IS AN ENDING RIDGE THAT IS COMING OFF AT
8 THE BASE CORE OR THE CENTER OF THE FORMATION OF THIS
9 PRINT. I HAD POINT NUMBER ONE, WHICH WAS AN ENDING
10 RIDGE AND CORRESPONDED TO POINT NUMBER ONE IN THE INK
11 IMPRESSION.

12 COMING DOWN, THE NEXT RIDGE BELOW IT WAS ANOTHER
13 ENDING RIDGE WHICH ENDED FURTHER DOWN OR STOPPED
14 WHILE THE RIDGES AROUND IT CONTINUED THROUGH
15 PATTERNS. POINT NUMBER TWO CORRESPONDS TO POINT
16 NUMBER TWO IN THE INK PRINT.

17 POINT NUMBER THREE HAD A RIDGE THAT CONTINUED
18 THROUGH THE PATTERN BETWEEN POINT NUMBER TWO AND
19 POINT NUMBER THREE, AND WHICH WAS ALSO PRESENT IN THE
20 INK PRINT, AND POINT NUMBER THREE BEING ANOTHER
21 ENDING RIDGE STOPPING WHILE THE PATTERN CONTINUED,
22 CORRESPONDING TO POINT NUMBER THREE IN THE INK PRINT.

23 DROPPING DOWN FOUR RIDGES, WE HAVE POINT NUMBER
24 FOUR, WHICH IS ANOTHER ENDING RIDGE, AND A RIDGE
25 RIGHT UNDER POINT NUMBER FIVE ENDING IN THE OPPOSITE

1 DIRECTION.

2 THE REMAINDER OF THE POINTS WHICH HAVE BEEN
3 CHARTED HERE ARE THE SAME PATTERN -- SAME POINTS OF
4 IDENTIFICATION PRESENT IN BOTH THE LATENT PRINT AND
5 THE INK PRINT. IN EXAMINATION OF BOTH, ONE WOULD
6 FIND THAT THERE ARE ALSO APPROXIMATELY TEN ADDITIONAL
7 POINTS OF IDENTIFICATION WHICH HAVE NOT BEEN CHARTED
8 IN THIS DISPLAY.

9 Q. HOW MANY POINTS OF IDENTIFICATION DO YOU
10 NEED TO ESTABLISH A MATCH?

11 A. THERE IS NO MINIMAL SET NUMBER OF POINTS
12 OF IDENTIFICATION IN THIS COUNTRY. THE
13 IDENTIFICATION IS EFFECTED BASED ON THE TOTALITY OF
14 THE PRINT AND THE EXAMINATION BETWEEN THE LATENT AND
15 THE INK PRINT.

16 Q. ALL RIGHT, SIR. ARE YOU ABSOLUTELY
17 CERTAIN THAT THE PRINTS OFF THAT PIECE OF PAPER ARE
18 THOSE OF HERMAN HUGHES AS OPPOSED TO ANY OTHER
19 INDIVIDUAL IN THE WORLD?

20 A. NO DOUBT ABOUT IT.

21 MR. BAILEY: ALL RIGHT, SIR. YOUR HONOR,
22 I WOULD OFFER THE EXHIBIT THAT MR. DERRICK PREPARED.

23 THE COURT: YES, SIR. I WILL ADMIT IT.

24 (STATE'S EXHIBIT NUMBER 36

25 MARKED FOR IDENTIFICATION AND

1 ENTERED INTO EVIDENCE.)

2 BY MR. BAILEY:

3 Q. MR. DERRICK, I'M GOING TO HAND YOU STATE'S
4 FOR IDENTIFICATION, WHICH IS THE .380 LARSON PISTOL,
5 AND STATE'S NUMBER 6, WHICH IS THE BULLET FROM THE
6 AUTOPSY, AND ASK WHETHER OR NOT YOU RECEIVED THOSE
7 FROM EARL RHUDY.

8 A. YES, SIR, I DID. MY INITIALS ARE ON BOTH
9 THE PACKAGE THAT HAS THE BULLET AND ENGRAVED ON THE
10 PISTOL.

11 Q. DO YOU RECALL WHAT DATES YOU RECEIVED
12 THOSE?

13 A. I BELIEVE IT WAS ON THE 23RD. I STAND
14 CORRECTED. MARCH 21, 1994.

15 Q. YOU RECEIVED THOSE FROM RHUDY?

16 A. YES, SIR.

17 Q. ALL RIGHT. NOW, LET ME CALL YOUR
18 ATTENTION AGAIN TO STATE'S 21, 22, 23 AND 24, WHICH
19 YOU PREVIOUSLY IDENTIFIED AS BEING SHELL CASINGS THAT
20 YOU RECOVERED FROM THE FLOOR AT THE BLUE DIAMOND.

21 A. YES, SIR.

22 Q. AND STATE'S NUMBERS 25 AND 26, WHICH YOU
23 IDENTIFIED AS BEING TWO FIRED BULLETS THAT YOU
24 RECOVERED FROM THE BLUE DIAMOND. AND WITH RESPECT TO
25 ALL OF THAT BALLISTICS EVIDENCE, THE PISTOL, THE FOUR

1 SHELL CASINGS, THE TWO FIRED BULLETS FROM THE BLUE
2 DIAMOND AND THE FIRED BULLET FROM THE AUTOPSY, WHAT
3 DID YOU DO WITH THAT EVIDENCE?

4 A. ONCE MY EXAMINATIONS WERE COMPLETED,
5 PRIMARILY THE EXAMINATION ON THE PISTOL AND THE SHELL
6 CASINGS, ALL OF THIS EVIDENCE WAS BOXED UP AND SEALED
7 AND TURNED OVER TO THE FIREARMS DEPARTMENT OF THE
8 SLED LABORATORY.

9 Q. OKAY. IS THERE A FIREPROOF SAFE TO SECURE
10 THOSE ITEMS?

11 A. YES, SIR, THERE IS.

12 MR. BAILEY: PLEASE ANSWER ANY QUESTIONS
13 THE DEFENSE MAY HAVE.

14 C R O S S - E X A M I N A T I O N
15 BY MR. NEWSOME:

16 Q. MR. DERRICK, I BELIEVE YESTERDAY YOU
17 TESTIFIED ABOUT STATE'S EXHIBIT NUMBER 11?

18 A. YES, SIR.

19 Q. ALL RIGHT, SIR. DID YOU OR ANYONE ELSE
20 THAT YOU KNOW OF MAKE MEASUREMENTS AS TO THE DISTANCE
21 FROM ONE WALL TO THE NEXT, FROM THE LOCATION OF THE
22 BULLET HOLE TO WHERE THE DESK WAS OR ANYTHING OF THAT
23 NATURE?

24 A. NO, SIR, I DID NOT.

25 Q. WOULD YOU KNOW THE DISTANCE FROM WHERE MS.

1 SHELL CASINGS, THE TWO FIRED BULLETS FROM THE BLUE
2 DIAMOND AND THE FIRED BULLET FROM THE AUTOPSY, WHAT
3 DID YOU DO WITH THAT EVIDENCE?

4 A. ONCE MY EXAMINATIONS WERE COMPLETED,
5 PRIMARILY THE EXAMINATION ON THE PISTOL AND THE SHELL
6 CASINGS, ALL OF THIS EVIDENCE WAS BOXED UP AND SEALED
7 AND TURNED OVER TO THE FIREARMS DEPARTMENT OF THE
8 SLED LABORATORY.

9 Q. OKAY. IS THERE A FIREPROOF SAFE TO SECURE
10 THOSE ITEMS?

11 A. YES, SIR, THERE IS.

12 MR. BAILEY: PLEASE ANSWER ANY QUESTIONS
13 THE DEFENSE MAY HAVE.

14 C R O S S - E X A M I N A T I O N
15 BY MR. NEWSOME:

16 Q. MR. DERRICK, I BELIEVE YESTERDAY YOU
17 TESTIFIED ABOUT STATE'S EXHIBIT NUMBER 11?

18 A. YES, SIR.

19 Q. ALL RIGHT, SIR. DID YOU OR ANYONE ELSE
20 THAT YOU KNOW OF MAKE MEASUREMENTS AS TO THE DISTANCE
21 FROM ONE WALL TO THE NEXT, FROM THE LOCATION OF THE
22 BULLET HOLE TO WHERE THE DESK WAS OR ANYTHING OF THAT
23 NATURE?

24 A. NO, SIR, I DID NOT.

25 Q. WOULD YOU KNOW THE DISTANCE FROM WHERE MS.

1 MY DIAGRAM TO KNOW WHICH OF THE WALLS THOSE SHELL
2 CASINGS WERE WITH THE CORRESPONDING NUMBERS TO THE
3 EVIDENCE CONTAINERS WHICH ARE PRESENT HERE TODAY AND
4 CORRELATE IT BACK TO THAT SPECIFIC PHOTOGRAPH.

5 Q. WAS THERE ANY EVIDENCE -- ANY EVIDENCE
6 THAT YOU THOUGHT WAS MISSING FROM THIS SCENE WHEN YOU
7 GOT THERE?

8 A. I'M NOT SURE I UNDERSTAND YOUR QUESTION.

9 Q. WAS THERE ANYTHING MISSING, TO THE BEST OF
10 YOUR KNOWLEDGE? ANYTHING MOVED THAT MIGHT HAVE
11 AFFECTED YOUR INVESTIGATION?

12 A. TO MY UNDERSTANDING, I WAS INFORMED THAT
13 THE DESK HAD BEEN MOVED FROM ITS ORIGINAL LOCATION,
14 THAT EMS HAD BEEN PRESENT, THAT THE VICTIMS HAD BEEN
15 REMOVED. AND I HAD TO TAKE INTO ACCOUNT WHAT THEY
16 MAY HAVE POSSIBLY DISTURBED OR MOVED. THE ONLY THING
17 THAT I WAS SPECIFICALLY INFORMED OF WAS THE DESK
18 ITSELF.

19 Q. OKAY. NOW, YOU FOUND FOUR SHELL CASINGS?

20 A. THAT IS CORRECT, SIR.

21 Q. AND THOSE WERE LOCATED -- IF YOU CAN,
22 WOULD YOU TELL US WHERE?

23 A. SHELL CASING NUMBER ONE AND NUMBER TWO.
24 SHELL CASING NUMBER THREE IN FRONT OF THE T.V. SHELL
25 CASING NUMBER FOUR OVER BY THE REFRIGERATOR.

1 Q. OKAY. SO TWO OVER HERE, ONE IN THIS AREA
2 AND ONE BY THE REFRIGERATOR. ALL RIGHT. IS THAT THE
3 PLACE WHERE THE DESK WAS LOCATED, BASED ON YOUR
4 INVESTIGATION?

5 A. SPECIFICALLY WHERE THE DESK WAS LOCATED I
6 CANNOT ATTEST TO BECAUSE I NEVER SAW IT IN ITS
7 ORIGINAL POSITION.

8 Q. ALL RIGHT. AND THE BULLET THAT YOU FOUND
9 IN THE WALL WAS LOCATED OVER HERE; IS THAT CORRECT?

10 A. YES, SIR.

11 MR. NEWSOME: ALL RIGHT. I HAVE NO
12 FURTHER QUESTIONS. THANK YOU.

13 MR. BAILEY: COUPLE ON REDIRECT, YOUR
14 HONOR.

15 THE COURT: OKAY.

16 R E D I R E C T E X A M I N A T I O N
17 BY MR. BAILEY:

18 Q. MR. DERRICK, I THINK I ASKED YOU ABOUT
19 THIS LIST OF PEOPLE THAT WAS GIVEN TO YOU BY OFFICER
20 SHAUB. I MAY NOT HAVE. BUT DO YOU RECOGNIZE THAT
21 PARTICULAR LIST OF PEOPLE, EMS AND POLICE OFFICERS,
22 WHO WERE THERE ON THE SCENE?

23 A. THIS IS A LIST OF WHICH I HAVE A PHOTO
24 STATIC COPY OF IN MY CASE FILE THAT WAS GIVEN TO ME
25 THAT NIGHT OF INDIVIDUALS WHO HAD BEEN AT THE SCENE

1 BEFORE MY ARRIVAL.

2 Q. ALL RIGHT, SIR. HOW MANY PEOPLE WERE ON
3 THAT LIST?

4 A. I COUNT 18.

5 Q. ALL RIGHT, SIR. AND YOU PREVIOUSLY
6 TESTIFIED THAT THE BLUE DIAMOND IS A REAL SMALL
7 PLACE. I MEAN, LIKE YOU COULD FIT THE WHOLE THING
8 INSIDE THIS PART OF THE COURTROOM?

9 A. THAT'S CORRECT, SIR, TO THE BEST OF MY
10 KNOWLEDGE.

11 Q. ALL RIGHT, SIR. WITH THIS NUMBER OF
12 PEOPLE IN THERE IN A PLACE THAT SMALL, WOULD THE
13 LOCATION OF THE SHELL CASINGS THAT YOU FOUND
14 NECESSARILY BE THE SPOTS WHERE THEY WERE EJECTED BY
15 THE GUN?

16 A. NOT NECESSARILY. I WOULD NOT KNOW THE
17 ORIGINAL LOCATION UNLESS THE SCENE HAD BEEN TOTALLY
18 SECURED AND SOMEONE COULD RELAY SPECIFICALLY THAT
19 INFORMATION TO ME.

20 MR. BAILEY: THANK YOU, SIR. THAT'S ALL I
21 HAVE.

22 MR. NEWSOME: I HAVE NO FURTHER QUESTIONS.

23 THE COURT: YOU MAY COME DOWN. THANK YOU.

24 THE WITNESS: THANK YOU, YOUR HONOR.

25 MR. BAILEY: VELLO PAAVEL.

1 THE COURT: GENTLEMEN, WE WILL PROCEED.
2 THE LUNCH WILL BE HERE MOMENTARILY, I'M TOLD. WE'LL
3 STOP AT THAT TIME. LET'S JUST PROCEED WHILE WE WAIT.

4 MR. BAILEY: CAN HE BE EXCUSED, YOUR
5 HONOR?

6 THE COURT: YES, SIR. I WILL EXCUSE YOU.
7 THANK YOU.

8 THE WITNESS: THANK YOU.

9 THE CLERK: YES, SIR. IF YOU WOULD,
10 PLEASE PLACE YOUR LEFT HAND ON THE BIBLE AND PLEASE
11 RAISE YOUR RIGHT HAND. PLEASE STATE YOUR NAME FOR
12 THE RECORD.

13 THE WITNESS: MY NAME IS VELLO PAAVEL.

14 VELLO PAAVEL,
15 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
16 TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. BAILEY:

19 Q. MR. PAAVEL, COULD YOU TELL THE JURY WHERE
20 YOU'RE EMPLOYED?

21 A. I WORK FOR THE SOUTH CAROLINA LAW
22 ENFORCEMENT DIVISION, WHICH IS COMMONLY KNOWN AS
23 SLED.

24 Q. ALL RIGHT, SIR. WHAT DO YOU DO AT SLED?

25 A. I WORK IN THE FORENSIC SERVICES LABORATORY

1 IN THE FIREARMS DEPARTMENT WHERE I'M A FIREARM AND
2 TOOL MARK EXAMINER.

3 Q. ALL RIGHT, SIR. AND HOW LONG HAVE YOU
4 WORKED FOR SLED, TOTAL TIME?

5 A. I'VE BEEN THERE ALMOST EIGHT-AND-A-HALF
6 YEARS.

7 Q. OKAY. AND HOW LONG HAVE YOU BEEN A FIRE
8 MARKS -- FIREARMS AND TOOL MARKS EXAMINER?

9 A. I'VE BEEN IN THE FIREARMS DEPARTMENT FOR
10 THAT WHOLE TIME.

11 Q. ALL RIGHT, SIR. AND WHAT TRAINING HAVE
12 YOU HAD IN FIREARMS IDENTIFICATION AND TOOL MARKINGS?

13 A. THE BULK OF MY TRAINING IN THE SPECIFIC
14 AREA OF FIREARM AND TOOL MARK IDENTIFICATION CAME
15 FROM A TRAINING PROGRAM THAT WAS ADMINISTERED BY
16 SLED, AND I HAD TO PARTICIPATE IN THAT TRAINING
17 PROGRAM DURING MY INITIAL EMPLOYMENT.

18 IN THAT TRAINING PROGRAM, WHAT I HAD TO DO WAS
19 READ, STUDY AND WORK CASES UNDER THE SUPERVISION OF
20 OTHER COURT-QUALIFIED FIREARM AND TOOL MARK
21 EXAMINERS. AND WHAT I DID WAS PREPARE THESE CASES,
22 WORK THEM, AND THEN THEY WERE REVIEWED AND CHECKED BY
23 THESE OTHER EXAMINERS. AFTER I COMPLETED THAT
24 TRAINING PROGRAM, I WAS ALLOWED TO WORK CASES ON MY
25 OWN AND TO TESTIFY IN COURT.

1 IN ADDITION TO THE SLED TRAINING, I HAVE
2 ATTENDED SEVERAL COURSES AT VARIOUS FIREARMS
3 MANUFACTURERS IN WHICH I HAVE STUDIED THE FUNCTIONING
4 AND HOW THESE FIREARMS WERE MANUFACTURED. I'VE ALSO
5 ATTENDED SEVERAL OTHER SCHOOLS IN WHICH I LEARN
6 HOMICIDE INVESTIGATION, CRIME SCENE PROCESSING,
7 LATENT FINGERPRINT IDENTIFICATION AND VARIOUS OTHER
8 ASPECTS OF LAW ENFORCEMENT WORK. I'VE ALWAYS --

9 THE COURT: EXCUSE ME. IS HIS EXPERTISE
10 ADMITTED IN THIS AREA?

11 MR. NEWSOME: YES, SIR.

12 THE COURT: IT IS ADMITTED.

13 MR. BAILEY: THANK YOU, YOUR HONOR.

14 THE WITNESS: YES, SIR.

15 BY MR. BAILEY:

16 Q. MR. PAAVEL, HAVE YOU TESTIFIED PREVIOUSLY
17 IN THE COURTS OF THIS STATE IN THE AREA OF FIREARMS
18 AND TOOL MARKS IDENTIFICATION?

19 A. YES, SIR. I'VE TESTIFIED APPROXIMATELY
20 150 TIMES AS AN EXPERT IN FIREARM AND TOOL MARK
21 IDENTIFICATION IN SOUTH CAROLINA COURT AND IN FEDERAL
22 COURT.

23 Q. ALL RIGHT, SIR. AND LET ME HAND YOU -- OR
24 DO YOU HAVE IT IN FRONT OF YOU -- STATE'S NUMBER 3
25 FOR IDENTIFICATION WHICH IS A LARSON PISTOL AND ASK

1 WHETHER OR NOT YOU'VE SEEN THAT BEFORE.

2 A. (WITNESS REVIEWS EXHIBIT.) YES, SIR. I
3 RECOGNIZE THIS ITEM. THIS IS THE HANDGUN THAT I
4 EXAMINED IN REFERENCE TO THIS CASE.

5 Q. ALL RIGHT, SIR. AND COULD YOU DESCRIBE
6 THAT GUN AS FAR -- BASICALLY HOW IT OPERATES?

7 A. YES, SIR. AGAIN, THIS IS A LARSON, WHICH
8 IS THE MANUFACTURER. THE CALIBER IS .380 AUTOMATIC.
9 IT IS A SEMI-AUTOMATIC PISTOL. WHAT THAT MEANS IS IT
10 HAS A DEVICE WHICH IS KNOWN AS A CLIP OR A MAGAZINE
11 WHICH IS INSERTED INTO THE BUTT OR GRIP OF THE
12 FIREARM. THAT DEVICE HOLDS THE CARTRIDGES. IN ORDER
13 TO FIRE THE GUN, THE SLIDE IS PULLED BACK, THE SLIDE
14 IS ALLOWED TO GO FORWARD, AND THE GUN IS THEN READY
15 TO FIRE. IF YOU CHOOSE NOT TO FIRE, A SAFETY CAN BE
16 ACTIVATED.

17 NOW, SINCE IT IS A SEMI-AUTOMATIC PISTOL, EACH
18 TIME YOU PULL THE TRIGGER, THE GUN WILL FIRE. A
19 BULLET COMES OUT THE END OF THE BARREL, AND A FIRED
20 CASING, WHICH CAN BE A SHELL CASING OR A CARTRIDGE
21 CASING, IT'S CALLED EITHER, IS THROWN FROM THE
22 FIREARM. ALSO, A NEW CARTRIDGE IS FED FROM THE
23 MAGAZINE OF THE FIREARM, WHICH AGAIN IS INSIDE THE
24 GRIP OF THE GUN, INTO THE REAR END OF THE BARREL.

25 NOW, THIS WHOLE PROCESS HAPPENS IN JUST A SPLIT

1 SECOND, SO THAT EVERY TIME YOU PULL THE TRIGGER, THE
2 GUN FIRES, SHELL CASING GETS THROWN FROM THE GUN, AND
3 THE GUN AUTOMATICALLY RELOADS ITSELF AND IS READY TO
4 FIRE AGAIN. SO YOU CAN SIMPLY PULL THIS TRIGGER --
5 OR SIMPLY PULL THE TRIGGER AS FAST AS YOU DESIRE, AND
6 EACH TIME YOU PULL THE TRIGGER, THE GUN WILL
7 DISCHARGE UNTIL YOU RUN OUT OF AMMUNITION OR YOU
8 DECIDE NOT TO SHOOT ANYMORE OR THE GUN MALFUNCTIONS.

9 Q. I THINK THE CLIP WAS REMOVED. BUT WOULD
10 THIS BE THE CLIP THAT WOULD FIT THAT GUN, OR
11 MAGAZINE?

12 A. YES, SIR. THIS IS THE MAGAZINE THAT WAS
13 SUBMITTED WITH THIS GUN.

14 Q. ALL RIGHT, SIR. NOW, MR. PAAVEL, I'LL
15 SHOW YOU WHAT'S BEEN MARKED PREVIOUSLY AS STATE'S 21,
16 22, 23 AND 24, WHICH MR. DERRICK TESTIFIED HE
17 RECOVERED FROM THE BLUE DIAMOND CASINO, AND ASK
18 WHETHER OR NOT YOU'VE EXAMINED THOSE.

19 A. YES, SIR. I RECOGNIZE THESE ITEMS ALSO.
20 THEY WERE SUBMITTED FOR EXAMINATION, AND I DID
21 EXAMINE THESE IN REFERENCE TO THIS CASE.

22 Q. ALL RIGHT, SIR. IS THERE A WAY THAT YOU
23 CAN TELL WHETHER OR NOT A PARTICULAR CARTRIDGE CASING
24 HAS BEEN FIRED BY A PARTICULAR GUN?

25 A. YES, SIR.

1 Q. TELL THE JURY, IF YOU WOULD, HOW YOU DO
2 THAT.

3 A. BY EXAMINATION OF THE MARKINGS THAT ARE
4 LEFT ON A CARTRIDGE CASING AS A RESULT OF BEING FIRED
5 FROM A GUN. WHAT I DO IS EXAMINE THE SHELL CASING,
6 THE EVIDENCE SHELL CASING, AND COMPARE IT TO A TEST
7 SHELL CASING THAT WAS FIRED BY A PARTICULAR GUN.

8 IN THIS INSTANCE, I TOOK THIS PARTICULAR
9 EXHIBIT, STATE'S EXHIBIT NUMBER 3, TEST FIRED IT AND
10 OBTAINED TEST SHELL CASINGS. AND THEN BY USING A
11 COMPARISON MICROSCOPE, I COMPARED THE TEST SHELL
12 CASINGS WITH THE EVIDENCE SHELL CASINGS, AND WHAT I
13 LOOKED FOR ARE MARKINGS THAT ARE LEFT ON THE SHELL
14 CASINGS AS A RESULT OF BEING FIRED. AND THESE
15 MARKINGS MAY HAVE BEEN CAUSED BY A FIRING PIN, AN
16 EJECTOR, AN EXTRACTOR, OR ANY OTHER PART OF THE GUN
17 THAT COMES IN CONTACT WITH THE OUTSIDE OF THE SHELL
18 CASING AS A RESULT OF THAT SHELL BEING MOVED THROUGH
19 THE GUN OR AS A RESULT OF ACTUAL FIRING.

20 Q. ALL RIGHT, SIR. AND WOULD YOU STATE
21 WHETHER OR NOT IN THIS PARTICULAR CASE YOU COMPARED
22 THOSE FOUR SHELL CASINGS WITH ITEM 3 FOR
23 IDENTIFICATION, THE LARSON PISTOL?

24 A. YES, SIR, I DID COMPARE THEM.

25 Q. AND DID YOU REACH ANY CONCLUSIONS?

1 A. YES, SIR. I CONCLUDED THAT THESE FOUR
2 SHELL CASINGS, WHICH ARE STATE'S EXHIBIT 21, 22, 23
3 AND 24, WERE INDEED FIRED BY THIS PARTICULAR HANDGUN,
4 THE LARSON .380 AUTOMATIC, WHICH IS STATE'S EXHIBIT
5 NUMBER 3.

6 Q. WOULD THAT BE TO THE EXCLUSION OF ANY
7 OTHER GUN, INCLUDING ANOTHER LARSON .380?

8 A. THAT IS CORRECT.

9 Q. ALL RIGHT. NOW, WITH RESPECT TO FIRED
10 BULLETS, IS THERE A WAY YOU CAN TELL WHETHER OR NOT A
11 BULLET THAT'S EJECTED HAS BEEN FIRED BY A PARTICULAR
12 WEAPON?

13 A. YES, SIR, THERE IS.

14 Q. I'M GOING TO HAND YOU STATE'S 25 AND 26,
15 WHICH HAVE BEEN PREVIOUSLY IDENTIFIED BY MR. DERRICK
16 AS HAVING BEEN RECOVERED AT THE BLUE DIAMOND CASINO,
17 AS WELL AS STATE'S 6, WHICH HAS BEEN IDENTIFIED AS
18 THE BULLET RECOVERED BY DR. SEXTON FROM MR. PRESLEY'S
19 AUTOPSY, AND ASK IF YOU COMPARED THOSE THREE BULLETS
20 WITH ITEM 3, THE PISTOL?

21 A. (WITNESS REVIEWS ITEMS.) YES, SIR. I
22 RECOGNIZE THESE BULLETS. AND YES, I DID COMPARE THEM
23 TO TEST BULLETS THAT WERE FIRED BY THIS PARTICULAR
24 LARSON PISTOL.

25 Q. ALL RIGHT, SIR. AND DID YOU REACH ANY

1 CONCLUSION?

2 A. YES, SIR. I CONCLUDED THAT THESE THREE
3 FIRED BULLETS, WHICH ARE STATE'S EXHIBIT 26, 25 AND
4 6, WERE INDEED FIRED BY THIS PARTICULAR LARSON
5 PISTOL, WHICH IS STATE'S EXHIBIT NUMBER 3.

6 Q. ALL RIGHT, SIR. AND HOW DO YOU TELL THAT?

7 A. I LOOK AT THE MARKINGS THAT ARE LEFT ON
8 THE OUTSIDE OF THE BULLET AS A RESULT OF BEING FIRED
9 THROUGH A BARREL. WHEN A BULLET PASSES THROUGH A
10 BARREL, ANY OF THE MARKINGS THAT ARE ON THE INSIDE OF
11 THE BARREL AS A RESULT OF THE MANUFACTURING CAN BE
12 TRANSFERRED TO THE EXTERIOR OF THE BULLET. NOW, MOST
13 MODERN ARMS SUCH AS HANDGUNS OR RIFLES HAVE A PROCESS
14 OR DEVICE INSIDE THE BARREL WHICH IS KNOWN AS
15 RIFLING. THIS RIFLING IS MANUFACTURED FOR THE
16 PURPOSE OF IMPARTING SPIN TO A BULLET SO THAT THE
17 BULLET WILL TRAVEL MORE ACCURATELY. A SIDE BENEFIT
18 FOR THIS RIFLING, FROM MY POINT OF VIEW, IS THE FACT
19 THAT THE RIFLING ENGRAVES OR SCRATCHES THE OUTSIDE OF
20 THE BULLET AS THE BULLET PASSES THROUGH THE BARREL,
21 AND I CAN USE THESE MARKINGS FOR COMPARISON PURPOSES.
22 THE MARKINGS THAT ARE LEFT ON THE INSIDE OF THE
23 BARREL AS A RESULT OF THE RIFLING PROCESS ARE UNIQUE
24 TO THAT PARTICULAR BARREL AND UNIQUE TO THAT
25 PARTICULAR GUN.

1 THEREFORE, AGAIN, BY USING A COMPARISON
2 MICROSCOPE, I WOULD COMPARE THE EVIDENCE BULLET OR
3 BULLETS WITH TEST BULLETS AND LOOK FOR THE PRESENCE
4 OF THESE IDENTIFYING MARKINGS, AND THEN I CAN RENDER
5 AN OPINION AS TO WHETHER OR NOT A BULLET WAS OR WAS
6 NOT FIRED BY A PARTICULAR GUN.

7 Q. SO IT'S YOUR TESTIMONY THAT ALL FOUR SHELL
8 CASINGS, ALL THREE BULLETS, WERE FIRED BY THAT
9 PARTICULAR GUN TO THE EXCLUSION OF EVERY OTHER GUN?

10 A. THAT IS CORRECT.

11 Q. INCLUDING ANOTHER .380 MANUFACTURED BY
12 LARSON?

13 A. THAT IS CORRECT.

14 MR. BAILEY: ALL RIGHT, SIR. THANK YOU.
15 PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

16 THE WITNESS: YES, SIR.

17 C R O S S - E X A M I N A T I O N

18 BY MR. NEWSOME:

19 Q. JUST ONE OR TWO. ARE YOU FAMILIAR WITH
20 THE TYPE OR MODEL OF THIS GUN, STATE'S EXHIBIT NUMBER
21 3?

22 A. YES, SIR.

23 Q. ALL RIGHT. ARE YOU FAMILIAR WITH THE
24 TRIGGER PRESSURE REQUIRED TO PULL THE TRIGGER?

25 A. I WILL TELL YOU WHAT THE TRIGGER PRESSURE

1 WAS WHEN I MEASURED IT DURING MY EXAMINATION.

2 Q. OKAY.

3 A. IT REQUIRED FIVE AND A HALF TO SIX POUNDS
4 OF PRESSURE ON THE TRIGGER TO FIRE THIS PARTICULAR
5 HANDGUN WHEN I MEASURED IT DURING MY EXAMINATION.

6 Q. FIVE-AND-A-HALF POUNDS?

7 A. FIVE AND A HALF TO SIX POUNDS. YES, SIR.

8 Q. IN YOUR CAPACITY AS A LAW ENFORCEMENT
9 OFFICER, ARE YOU ALLOWED TO CARRY A WEAPON?

10 A. YES, SIR.

11 Q. WHAT TYPE OF WEAPON DO YOU CARRY?

12 A. THE GUN THAT IS ISSUED BY THE STATE LAW
13 ENFORCEMENT DIVISION IS THE GLOCK .40 CALIBER
14 SEMI-AUTOMATIC PISTOL. AGENTS CAN CARRY OTHER
15 HANDGUNS IF THEY QUALIFY WITH THEM AND ARE TRAINED
16 WITH THEM.

17 Q. AS FAR AS PRESSURE -- TRIGGER PRESSURE IS
18 CONCERNED, WOULD YOU SAY THAT STATE'S EXHIBIT NUMBER
19 3, THIS WEAPON THAT YOU EXAMINED HERE, THE PRESSURE
20 TO PULL THE TRIGGER, WAS IT GREATER, THE SAME AS OR
21 MORE THAN THE PRESSURE OF THE GUN THAT YOU ARE
22 ISSUED?

23 A. THE ISSUE GUN HAS A TRIGGER PULL WHICH IS
24 WEIGHTED AT FIVE POUNDS. BY ACTUAL MEASUREMENT, IT
25 USUALLY RUNS ANYWHERE FROM SIX TO SEVEN POUNDS. SO

1 THIS TRIGGER PULL ON THIS PARTICULAR HANDGUN, THE
2 LARSON, IS COMPARABLE TO THE TRIGGER PULL THAT'S ON
3 OUR ISSUED GUNS.

4 Q. COMPARABLE TO FIVE AND A HALF?

5 A. FIVE AND A HALF TO SIX. OURS RUN ANYWHERE
6 FROM SAY FIVE AND A HALF TO SEVEN POUNDS, DEPENDING
7 ON HOW OLD THE GUN IS AND HOW MUCH WEAR HAS OCCURRED.

8 Q. AS THE GUN GETS OLDER AND WEARS, IS THE
9 TRIGGER PULL LOWER OR HIGHER?

10 A. NORMALLY, IN MY EXPERIENCE, THE OLDER THE
11 GUN, THE TRIGGER PULL GETS SLIGHTLY LESS BY JUST A
12 SMALL PERCENTAGE BECAUSE THE PARTS ARE USUALLY ROUGH
13 WHEN THE GUN IS NEW, AND AS THE GUN IS USED, THERE
14 MAY BE SOME LIGHTENING OF THE TRIGGER PULL, BUT IT'S
15 USUALLY VERY SLIGHT.

16 MR. NEWSOME: THANK YOU. NO FURTHER
17 QUESTIONS.

18 MR. BAILEY: NO REDIRECT, YOUR HONOR.

19 THE COURT: CAN THIS WITNESS NOW BE
20 EXCUSED?

21 MR. BAILEY: YES, SIR.

22 MR. NEWSOME: YES, SIR.

23 THE COURT: ALL RIGHT. THANK YOU SO MUCH.

24 THE WITNESS: THANK YOU, SIR.

25 THE COURT: YOUR LUNCH IS HERE, MR.

1 FOREMAN AND LADIES AND GENTLEMEN. I WANT YOU TO HAVE
2 YOUR LUNCH, RELAX, AND YOU LET ME KNOW WHEN THE
3 JURY'S READY TO COME BACK TO WORK. THANK YOU SO
4 MUCH.

5 (WHEREUPON, THE JURY WAS REMOVED
6 FROM THE COURTROOM AND THE
7 FOLLOWING PROCEEDINGS COMMENCED
8 IN OPEN COURT.)

9 THE COURT: COME FORWARD, PLEASE.

10 (WHEREUPON, COUNSEL APPROACHED THE BENCH FOR AN
11 OFF-THE-RECORD DISCUSSION.)

12 (WHEREUPON, A BREAK WAS TAKEN
13 FROM THE PROCEEDINGS.)

14 THE COURT: GOOD AFTERNOON, LADIES AND
15 GENTLEMEN. BE SEATED, PLEASE.

16 ALL RIGHT. AT THIS TIME, I THINK WE'RE READY TO
17 PROCEED. THOSE OTHER MATTERS WE DISCUSSED IN
18 CHAMBERS WE CAN RULE ON AT THE APPROPRIATE TIME AND
19 PROCEED. BRING THE JURY IN.

20 (WHEREUPON, THE JURY WAS
21 RETURNED TO THE COURTROOM AND
22 THE FOLLOWING PROCEEDINGS WERE
23 COMMENCED IN OPEN COURT.)

24 THE COURT: JURY'S PRESENT.

25 MR. BAILEY: YOUR HONOR, WE CALL EARL

1 RHUDY.

2 EARL D. RHUDY,
3 HAVING BEEN PREVIOUSLY SWORN BY THE CLERK OF COURT,
4 TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION (RECALLED)

6 BY MR. BAILEY:

7 Q. MR. RHUDY, I WANT TO CALL YOUR ATTENTION
8 TO APRIL 5TH, 1994, ABOUT 10:18 A.M., AND ASK WHETHER
9 OR NOT YOU HAD OCCASION TO GO TO THE HOFFMAN HOUSE IN
10 ST. MATTHEWS.

11 A. YES, I DID.

12 Q. AND WHAT WAS YOUR PURPOSE IN DOING THAT?

13 A. A PHOTOGRAPHIC LINEUP.

14 Q. ALL RIGHT, SIR. AND WOULD YOU STATE
15 WHETHER OR NOT CHRIS DOZIER WAS WITH YOU AT THAT
16 TIME?

17 A. YES, HE WAS.

18 Q. OKAY. AND WAS KELLY HOFFMAN AT HOME WHEN
19 YOU WENT OUT TO THE HOUSE?

20 A. YES, SHE WAS. I MADE A PHONE CALL AND
21 TALKED TO HER MOTHER AND MADE SURE IT WOULD BE ALL
22 RIGHT FOR US TO COME OUT THERE. SHE WAS HOME FROM
23 THE HOSPITAL, BUT SHE WAS STILL IN BED RECOVERING
24 FROM THE INJURIES.

25 Q. AND WHEN YOU TALKED TO HER, WHAT WAS HER

1 STATE OF MIND?

2 A. SHE WAS VERY ALERT AND TOLD ME SHE WAS
3 FEELING A LOT BETTER.

4 Q. ALL RIGHT, SIR. DID YOU HAVE SOME
5 PHOTOGRAPHS TO SHOW HER?

6 A. YES, I DID.

7 Q. MR. RHUDY, I'M GOING TO HAND YOU THIS,
8 WHICH IS A SERIES OF PICTURES OF FIVE YOUNG BLACK
9 MEN, AND ASK WHETHER OR NOT YOU PREPARED THOSE
10 PICTURES.

11 A. YES, I DID.

12 Q. AND WHO WAS THE FIFTH PICTURE THERE?

13 A. THE FIFTH PICTURE IS THE DEFENDANT, MR.
14 HERMAN HUGHES.

15 Q. OKAY. SEATED OUT HERE AT THE TABLE WITH
16 THE TWO PEOPLE ON THE END?

17 A. YES, SIR.

18 Q. ALL RIGHT. NOW, IS THIS EXACTLY THE WAY
19 THIS DOCUMENT WAS PREPARED WHEN YOU TOOK IT OUT TO
20 KELLY HOFFMAN'S HOUSE?

21 A. YES, IT WAS.

22 MR. BAILEY: OKAY. YOUR HONOR, I WOULD
23 OFFER THIS AT THIS TIME.

24 THE COURT: YOU'VE HAD AN OPPORTUNITY TO
25 REVIEW THAT?

1 MR. NEWSOME: I'VE REVIEWED IT, YOUR
2 HONOR, AND I THINK YOU RULED ON THAT EARLIER SUBJECT
3 TO MY PREVIOUS OBJECTION.

4 THE COURT: OKAY. IT IS ADMITTED.
5 (STATE'S EXHIBIT NUMBER 37
6 MARKED FOR IDENTIFICATION AND
7 ENTERED INTO EVIDENCE.)

8 BY MR. BAILEY:

9 Q. MR. RHUDY, I HAND YOU THIS BACK AND ASK
10 WHETHER OR NOT YOU PRESENTED THAT TO KELLY HOFFMAN.

11 A. YES, SIR, I DID.

12 Q. ALL RIGHT, SIR. AND DID YOU DO ANYTHING
13 TO SUGGEST TO HER WHICH PHOTOGRAPH TO PICK OUT?

14 A. NO, SIR. I ADVISED MS. HOFFMAN, I TOLD
15 HER I HAD THESE PHOTOGRAPHS I WANTED HER TO LOOK AT,
16 AND TO TAKE HER TIME AND SEE IF SHE RECOGNIZED
17 ANYBODY IN THE PHOTOGRAPHS, AND IF SHE RECOGNIZED --
18 POSSIBLY WOULD RECOGNIZE THE PERSON THAT SHOT HER.

19 Q. ALL RIGHT, SIR. AND DID SHE PICK OUT A
20 PICTURE AS BEING THE ONE THAT SHOT HER?

21 A. YES, SHE DID.

22 Q. AND WHICH PICTURE WAS IT?

23 A. SHE PICKED OUT NUMBER FIVE. ✓

24 Q. THAT BEING HERMAN HUGHES, THE DEFENDANT?
25 AND HOW LONG DID IT TAKE HER TO PICK THAT PICTURE

1 OUT, APPROXIMATELY?

2 A. FIVE TO EIGHT SECONDS. AND I -- AFTER SHE
3 PICKED HIM OUT, I SAID, "NOW, DID YOU LOOK AT ALL OF
4 THE PICTURES?" AND SHE STATED THAT SHE HAD. AND I
5 SAID, "ARE YOU SURE THIS IS THE ONE?" AND SHE STATED
6 THIS IS -- HE WAS THE ONE THAT HAD FIRED THE GUN THAT
7 NIGHT.

8 MR. BAILEY: THANK YOU. THAT'S ALL I
9 HAVE. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY
10 HAVE.

11 MR. NEWSOME: YOUR HONOR, I BELIEVE THAT
12 EARLIER WHEN HE TESTIFIED ABOUT THE OTHER MATTER, I
13 RESERVED THE RIGHT TO CROSS-EXAMINE HIM ON THAT, AND
14 I'M STILL MAKING THAT RIGHT, IF I COULD.

15 THE COURT: YES, SIR. YOU WANT TO
16 CROSS-EXAMINE HIM NOW?

17 MR. NEWSOME: NOT ON THIS. ON THE -- THE
18 OTHER MATTER AS FAR AS THE STATEMENT.

19 THE COURT: DO YOU WANT HIM STILL SUBJECT
20 TO RE-CALL AT A LATER TIME?

21 MR. NEWSOME: YES, SIR.

22 THE COURT: ALL RIGHT. YOU MAY COME DOWN.

23 (END OF VOLUME SIX)

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25

CERTIFICATE OF REPORTER

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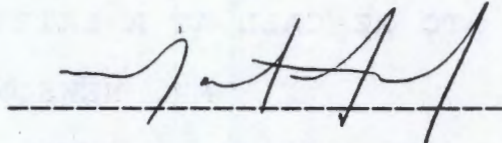
STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

I, MARK W. HAGOOD, REGISTERED PROFESSIONAL REPORTER, (RPR), COURT REPORTER FOR THE STATE OF SOUTH CAROLINA, FOURTH JUDICIAL CIRCUIT, DO HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IS A STENOGRAPHIC REPORT AND WAS TRANSCRIBED THROUGH COMPUTER-AIDED TRANSCRIPTION; THAT THE FOREGOING TRANSCRIPT CONTAINS A TRUE RECORD OF THE PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO NOR EMPLOYED BY ANY OF THE PARTIES CONNECTED TO THE ACTION, NOR AM I FINANCIALLY INTERESTED IN THE ACTION.

WITNESS MY HAND AT FLORENCE, SOUTH CAROLINA, THIS 3rd DAY OF April, 1996.



MARK W. HAGOOD, RPR

1 STATE OF SOUTH CAROLINA IN GENERAL SESSIONS COURT
 2 COUNTY OF CALHOUN

3

4 STATE OF SOUTH CAROLINA

94-GS-09-153

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94-GS-09-154

V.

94-GS-09-155

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94-GS-09-156

HERMAN LEE HUGHES, JR.

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8

VOLUME SEVEN

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THE TRIAL PROCEEDINGS HAD
IN THE ABOVE-STYLED CAUSE

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- - -

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FRIDAY, SEPTEMBER 8, 1995
ST. MATTHEWS, SOUTH CAROLINA

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BEFORE: HONORABLE EDWARD B. COTTINGHAM,
CIRCUIT COURT JUDGE

15

16

A P P E A R A N C E S

17

FOR THE STATE: WALTER M. BAILEY, JR., SOLICITOR

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FOR THE DEFENDANT: PHILLIP F. NEWSOME, ESQUIRE

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10	STATE'S	15 " " "	978	978
	STATE'S	16 " " "	978	978
11	STATE'S	17 " " "	978	978
	STATE'S	18 " " "	978	978
12	STATE'S	19 " " "	978	978
	STATE'S	20 " " "	978	978
13	STATE'S	21 CARTRIDGES	982	982
	STATE'S	22 " " "	982	982
14	STATE'S	23 " " "	982	982
	STATE'S	24 " " "	982	982
15	STATE'S	25 " " "	983	983
	STATE'S	26 " " "	983	983
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17	STATE'S	29 " " "	1040	1207
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4	STATE'S 49	FAMILY PHOTO	1381	1381
	STATE'S 50	PHOTO - CRIME SCENE	1377	1377
5	STATE'S 51	" " "	1377	1377
	STATE'S 52	" " "	1377	1377
6	STATE'S 53	" " "	1377	1377
	STATE'S 54	" " "	1377	1377
7	STATE'S 55	" " "	1377	1377
	STATE'S 56	" " "	1377	1377
8	STATE'S 57	PHOTO - FAMILY	1381	1381
	STATE'S 58	PHOTO - KEN PRESLEY	1381	1381
9	STATE'S 59	I.D. (WITHDRAWN)	1381	
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10	STATE'S 61	PHOTO - KEN PRESLEY	1381	1381
	STATE'S 62	PHOTO - FAMILY	1381	1381
11	STATE'S 63	PHOTO - KEN PRESLEY	1381	1381
	STATE'S 64	PHOTO - KEN PRESLEY	1381	1381
12	STATE'S 65	LETTER	1381	1381
	STATE'S 66	LETTER	1381	1381
13	STATE'S 67	LETTER	1381	1381
	STATE'S 68	LETTER	1381	1381
14	STATE'S 69	LETTER	1381	1381
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15	STATE'S 71	LETTER FROM NAVY	1381	1381
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2	NUMBER	DESCRIPTION	I.D.	EVD.
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4	COURT'S 2	REPORT OF FINDING OF MENTAL CAPACITY	141	
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6	COURT'S 4	CORRESPONDENCE BETWEEN ATTORNEYS	1323	
7	COURT'S 5	QUESTION FROM JURY	1293	
8	COURT'S 6	CORRESPONDENCE BETWEEN ATTORNEYS	1323	
9	COURT'S 7	FAMILY COURT ORDER - I.D. EXHIBITS FROM JACKSON V. DENNO HEARING (MARKED AFTER TRIAL)		
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1 (BEGINNING OF VOLUME SEVEN)

2 MR. BAILEY: CALL KELLY HOFFMAN.

3 THE CLERK: IF YOU WOULD, PLEASE PLACE
4 YOUR LEFT HAND ON THE BIBLE. PLEASE RAISE YOUR RIGHT
5 HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

6 THE WITNESS: KELLY HOFFMAN.

7 KELLY HOFFMAN,
8 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
9 TESTIFIED AS FOLLOWS:

10 D I R E C T E X A M I N A T I O N

11 BY MR. BAILEY:

12 Q. KELLY, I WANT YOU TO -- I KNOW YOU'RE
13 NERVOUS, BUT TALK UP REAL LOUD SO I CAN HEAR YOU AND
14 THESE JURORS DOWN ON THE END CAN HEAR YOU, OKAY? CAN
15 YOU DO THAT?

16 A. (WITNESS INDICATES.)

17 Q. KELLY, HOW OLD ARE YOU NOW?

18 A. NINETEEN.

19 Q. OKAY. AND DO YOU LIVE IN ST. MATTHEWS?

20 A. YES.

21 Q. OKAY. HOW LONG HAVE YOU LIVED IN CALHOUN
22 COUNTY?

23 A. ALL OF MY LIFE.

24 Q. OKAY. AND WHO ARE YOUR PARENTS?

25 A. BETTY AND WAYNE HOFFMAN.

1 Q. OKAY. NOW, BACK IN 1994, IN MARCH, DID
2 YOU KNOW KEN PRESLEY?

3 A. YES.

4 Q. AND WHAT WAS YOUR RELATIONSHIP WITH KEN
5 PRESLEY?

6 A. HE WAS MY BOYFRIEND.

7 Q. HOW LONG HAD YOU KNOWN HIM IN MARCH OF
8 '94?

9 A. ABOUT EIGHT YEARS.

10 Q. AND HOW OLD WERE YOU AT THAT TIME?

11 A. SEVENTEEN.

12 Q. AND HOW OLD WAS KEN?

13 A. TWENTY.

14 Q. OKAY. AND WHERE DID KEN WORK?

15 A. THE BLUE DIAMOND CASINO.

16 Q. OKAY. DID HE WORK THERE FULL TIME OR PART
17 TIME?

18 A. PART TIME.

19 Q. DID YOU EVER GO THERE WITH HIM?

20 A. YES.

21 Q. OKAY. AND WHY WOULD YOU GO THERE WITH
22 HIM?

23 A. TO KEEP HIM COMPANY BECAUSE SOMETIMES IT
24 WAS BORING. NOT MANY PEOPLE CAME IN.

25 Q. OKAY. AND DO YOU REMEMBER FRIDAY, MARCH

1 THE 18TH, 1994?

2 A. YES.

3 Q. DID YOU GO TO THE BLUE DIAMOND WITH KEN
4 THAT NIGHT?

5 A. YES.

6 Q. AND DO YOU KNOW WHY KEN WAS WORKING THAT
7 PARTICULAR NIGHT?

8 A. HE HAD BEEN CALLED IN, AND THE PERSON WHO
9 WAS SUPPOSED TO WORK COULDN'T.

10 Q. OKAY. AND DO YOU RECALL WHAT TIME Y'ALL
11 GOT THERE?

12 A. ABOUT 10 UNTIL 8:00.

13 Q. ALL RIGHT. AND HOW DID YOU GET THERE?

14 A. KEN DROVE HIS CAR.

15 Q. AND WHAT KIND OF CAR DID HE HAVE?

16 A. A GRAY MAZDA RX7.

17 Q. OKAY. AND I SHOW YOU A PICTURE OF A CAR
18 WHICH HAS BEEN MARKED STATE'S NUMBER 1. IS THAT THE
19 CAR Y'ALL DROVE?

20 A. YES.

21 Q. AND WHEN KEN PARKED THE CAR IN THE PARKING
22 LOT, DID HE CARRY THE KEYS INSIDE?

23 A. YES, HE DID.

24 Q. NOW, WHEN Y'ALL ARRIVED, WAS THERE ANYBODY
25 ELSE THERE WHEN KEN SHOWED UP?

1 A. JUDY.

2 Q. OKAY. AND THAT'S JUDY OSBORNE, THE LADY
3 THAT WORKED DURING THE DAY?

4 A. YES.

5 Q. ALL RIGHT. AND WHERE IS THE MONEY KEPT AT
6 THE BLUE DIAMOND?

7 A. IN THE UPPER LEFT-HAND DRAWER OF THE DESK.

8 Q. OKAY. AND DO YOU KNOW IF THERE WAS MONEY
9 IN THE DRAWER WHEN KEN TOOK THE SHIFT OVER FROM MS.
10 OSBORNE?

11 A. YES.

12 Q. DID Y'ALL COUNT THE MONEY?

13 A. I'M SURE HE DID, OR THEY DID TOGETHER, BUT
14 I DIDN'T LISTEN TO HOW MUCH IT WAS.

15 Q. OKAY. BUT WAS IT SEVERAL HUNDRED DOLLARS?

16 A. YEAH.

17 Q. NOW, THERE HAS BEEN SOME TESTIMONY ABOUT
18 THIS ALREADY, BUT ABOUT HOW BIG IS THE INSIDE OF THE
19 BLUE DIAMOND?

20 A. IT'S ABOUT THE SIZE OF ALL OF THIS RIGHT
21 -- AREA THAT I'M IN, OR ABOUT THE SIZE OF THAT WHERE
22 THE JURY IS.

23 Q. SIZE ABOUT WHERE THE JURY IS?

24 A. I DON'T THINK IT'S ANY BIGGER, THE SECTION
25 WE WERE IN.

1 Q. A REAL SMALL PLACE, ISN'T IT? IT'S A
2 LITTLE CONCRETE BLOCK BUILDING?

3 A. YES.

4 Q. NOW, I WANT TO SHOW YOU A SKETCH THAT ONE
5 OF THE SLED AGENTS PREPARED AND ASK YOU TO TAKE A FEW
6 MINUTES TO LOOK AT IT AND SEE IF YOU CAN FIGURE OUT
7 WHERE EVERYTHING IS THERE. DO YOU SEE THE DESK AND
8 THE FRONT DOOR AND THE STORAGE AREA?

9 A. YEAH. I SEE IT.

10 Q. WOULD YOU KIND OF TURN THAT AROUND A
11 LITTLE BIT AND POINT TO THE JURY AND SHOW WHERE YOU
12 WERE.

13 A. OKAY. THE DESK WAS HERE. (INDICATING.)

14 Q. OKAY.

15 A. THEY MIGHT HAVE MOVED IT AFTER WHAT
16 HAPPENED. BUT IT WAS HERE HORIZONTAL -- WELL,
17 PARALLEL TO THE REFRIGERATOR. AND I WAS SITTING AT
18 THE DESK RIGHT HERE, AND THE CASH DRAWER WAS RIGHT
19 HERE.

20 Q. OKAY. AND GO AHEAD AND PUT IT DOWN FOR A
21 SECOND HERE. AND HAD Y'ALL EATEN SUPPER THAT NIGHT
22 BEFORE YOU GOT THERE?

23 A. WE ATE IT WHEN WE GOT THERE.

24 Q. OKAY. WHAT DID Y'ALL HAVE?

25 A. HAMBURGERS AND FRENCH FRIES.

1 Q. ALL RIGHT. DID YOU MAKE A PHONE CALL
2 AFTER YOU GOT THERE?

3 A. YES.

4 Q. OKAY. NOW, BEFORE THAT, BEFORE YOU GOT ON
5 THE TELEPHONE, DID ANYBODY COME INTO THE BLUE
6 DIAMOND?

7 A. YES.

8 Q. OKAY. AND ABOUT WHAT -- HOW LONG AFTER
9 Y'ALL HAD GOTTEN THERE DID THIS PERSON SHOW UP?

10 A. ABOUT TEN MINUTES.

11 Q. OKAY. AND WHAT KIND OF LIGHTING IS INSIDE
12 THE BLUE DIAMOND?

13 A. IT'S BRIGHTER THAN THIS.

14 Q. OKAY. IS IT FLUORESCENT LIGHTS OR LIGHT
15 BULBS?

16 A. I BELIEVE IT'S FLUORESCENT LIGHTS. I
17 DON'T --

18 Q. OKAY. AND IT WAS LIGHTER THAN THIS
19 COURTROOM IS NOW?

20 A. IT WAS ABOUT TWICE AS BRIGHT AS THIS.

21 THE COURT: CAN YOU HEAR BACK THERE?

22 OKAY.

23 BY MR. BAILEY:

24 Q. WHEN THIS PERSON CAME IN, HOW CLOSE DID HE
25 GET TO YOU WHEN YOU WERE -- WERE YOU SITTING AT THE

- 1 DESK THEN?
- 2 A. YES.
- 3 Q. EATING YOUR HAMBURGER?
- 4 A. YES.
- 5 Q. HOW -- HOW CLOSE DID HE GET TO YOU?
- 6 A. THE FIRST TIME?
- 7 Q. YEAH.
- 8 A. ABOUT SEVEN FEET MAYBE.
- 9 Q. ALL RIGHT. AND WAS THIS PERSON BY HIMSELF
- 10 OR WITH SOMEBODY ELSE?
- 11 A. ALONE.
- 12 Q. ALL RIGHT. AND DID YOU -- DO YOU
- 13 RECOGNIZE THAT PERSON THAT CAME IN?
- 14 A. TODAY HERE?
- 15 Q. EXCUSE ME?
- 16 A. TODAY HERE?
- 17 Q. YEAH.
- 18 A. YEAH. THAT'S HIM.
- 19 Q. WOULD YOU POINT HIM OUT?
- 20 A. (WITNESS INDICATES.)
- 21 Q. AND YOU'RE POINTING TO HERMAN HUGHES, THE
- 22 YOUNG BLACK MAN IN THE MIDDLE OF THESE TWO PEOPLE
- 23 HERE?
- 24 A. YES, SIR.
- 25 Q. OKAY. ARE YOU POSITIVE THAT THAT'S THE

1 PERSON THAT CAME IN?

2 A. YES, SIR.

3 Q. ANY DOUBT IN YOUR MIND?

4 A. NO.

5 Q. DID YOU LOOK RIGHT AT HIM?

6 A. YES.

7 Q. ALL RIGHT. WHAT, IF ANYTHING, DID HE DO
8 WHEN HE WAS IN THERE?

9 A. HE ASKED HOW TO PLAY THE POKER MACHINES.

10 Q. OKAY. AND WHO WAS HE TALKING TO? WAS HE
11 TALKING TO YOU OR KEN?

12 A. KEN.

13 Q. OKAY. AND WHAT, IF ANYTHING, DID KEN DO
14 AFTER MR. HUGHES ASKED HIM HOW TO USE THE MACHINES?

15 A. HE GAVE HIM LIKE A LITTLE DEMONSTRATION OF
16 HOW TO USE THEM.

17 Q. OKAY. AND ABOUT HOW LONG DID THAT TAKE?

18 A. MAYBE A MINUTE OR TWO.

19 Q. OKAY. AND DID MR. HUGHES SAY ANYTHING
20 AFTER THAT?

21 A. HE SAID HE WAS GOING OUTSIDE TO GET SOME
22 MONEY.

23 Q. OKAY. AND DID HE LEAVE THEN?

24 A. YES.

25 Q. ALL RIGHT. HOW LONG WAS HE GONE?

1 A. ABOUT TEN MINUTES.

2 Q. OKAY. NOW, DID HE COME BACK IN AFTER TEN
3 MINUTES?

4 A. YES, SIR.

5 Q. AND WHAT WERE YOU DOING WHEN HE CAME BACK
6 IN?

7 A. I WAS SITTING BEHIND THE DESK IN THE CHAIR
8 ON THE TELEPHONE EATING SOME FRENCH FRIES.

9 Q. ALL RIGHT. WHEN HE WALKED BACK IN, DID
10 YOU NOTICE ANYTHING UNUSUAL ABOUT HIM WHEN HE FIRST
11 CAME IN?

12 A. IN RETROSPECT, HE SEEMED KIND OF PARANOID.

13 Q. OKAY.

14 A. BUT WHEN HE CAME BACK IN, I WENT TO GET
15 SOMETHING OUT OF THE DRAWER, AND HE LOOKED AT ME REAL
16 QUICK LIKE. I DON'T KNOW. MAYBE HE THOUGHT I WAS
17 GETTING SOMETHING.

18 Q. OKAY.

19 A. AND I WAS LIKE --

20 Q. ALL RIGHT. AND YOU WERE STILL ON THE
21 TELEPHONE THEN?

22 A. YES.

23 Q. OKAY. THIS SECOND TIME WHEN HE CAME BACK
24 IN, WHERE WAS KEN STANDING?

25 A. HE WAS AT ONE OF THE MACHINES.

1 Q. OKAY. LET ME HOLD THIS SKETCH UP AGAIN.
2 IF YOU WANT TO HOLD THAT UP. AND ABOUT WHERE WAS HE?

3 A. (WITNESS INDICATES.)

4 Q. OKAY. VIDEO MACHINE KIND OF ACROSS FROM
5 THE FRONT DOOR?

6 A. YES.

7 Q. CLOSE TO THE MIDDLE?

8 A. YES.

9 Q. ALL RIGHT.

10 A. (WITNESS INDICATES.) THIS ONE HERE.

11 Q. INDICATING THE SECOND ONE. WE'LL JUST
12 LEAVE THOSE THERE FOR RIGHT NOW. ALL RIGHT. LET ME
13 HAVE THAT BACK. OKAY.

14 THE SECOND TIME HE CAME IN, HOW CLOSE DID HE GET
15 TO YOU?

16 A. ABOUT FOUR FEET.

17 Q. ALL RIGHT. AND YOU WERE ON THE TELEPHONE?

18 A. YES.

19 Q. KEN WAS STANDING UP BY THE MACHINE?

20 A. YES.

21 Q. OKAY. NOW, ARE YOU POSITIVE THE SAME
22 PERSON -- THE PERSON THAT CAME IN THE FIRST TIME IS
23 THE SAME ONE THAT HAD BEEN IN FIVE MINUTES EARLIER?

24 A. ABSOLUTELY.

25 Q. POINT HIM OUT AGAIN FOR THE RECORD.

1 A. (WITNESS INDICATES.)

2 Q. THE RECORD WILL SHOW SHE'S POINTING TO THE
3 DEFENDANT, HERMAN HUGHES.

4 WHAT, IF ANYTHING, OCCURRED THEN?

5 A. HE SAID HE NEEDED CHANGE FOR A 50 DOLLAR
6 BILL.

7 Q. OKAY. AND THEN WHAT HAPPENED?

8 A. KEN WALKED AROUND BEHIND ME TO THE CASH
9 DRAWER.

10 Q. OKAY. AND AT THE TIME HERMAN HUGHES SAID
11 HE NEEDED CHANGE FOR A 50 DOLLAR BILL, DID YOU SEE
12 ANYTHING IN HIS HANDS AT THAT POINT?

13 A. NO, SIR.

14 Q. OKAY. AND WHAT HAPPENED WHEN KEN CAME
15 OVER TOWARD YOU AND THE CASH DRAWER?

16 A. HE OPENED THE DRAWER, AND I LOOKED UP, AND
17 HE HAD A GUN POINTED AT US AND SAID, "GET OFF THE
18 PHONE."

19 Q. PLEASE USE THE NAMES, NOW, WHEN YOU SAY
20 HE.

21 A. HERMAN, SITTING RIGHT THERE.

22 Q. OKAY.

23 A. HE -- HERMAN HAD A GUN POINTED AT US, AND
24 HE TOLD ME TO GET OFF THE PHONE.

25 Q. OKAY. AND DID YOU GET OFF THE PHONE?

1 A. YES.

2 Q. OKAY. WHAT HAPPENED NEXT?

3 A. THEN HE SAID, "GIVE ME THE MONEY." HERMAN
4 DID. AND KEN SAID, "OKAY. NO PROBLEM," AND STARTED
5 HANDING HIM THE MONEY OUT OF THE -- WELL, SITTING IT
6 ON THE DESK OUT OF THE DRAWER.

7 Q. ALL RIGHT. NOW, WHEN KEN WAS TAKING THE
8 MONEY OUT OF THE CASH DRAWER, WHAT WAS HERMAN HUGHES
9 DOING?

10 A. JUST STANDING THERE WITH THE GUN POINTED
11 AT US.

12 Q. AND WHERE WAS THE GUN?

13 A. POINTED AT US.

14 Q. OKAY. AND DO YOU REMEMBER WHAT COLOR THE
15 GUN WAS? WHAT'S YOUR BEST RECOLLECTION?

16 A. I CAN ONLY VAGUELY REMEMBER THAT I THOUGHT
17 IT WAS BLACK.

18 Q. A BLACK GUN IS THE BEST OF YOUR
19 RECOLLECTION. WERE YOU NERVOUS?

20 A. I'LL SAY.

21 Q. OKAY. KEN TOOK SOME MONEY OUT; IS THAT
22 RIGHT?

23 A. YES.

24 Q. DID HE TAKE IT ALL OUT?

25 A. NO.

1 Q. OKAY. AND WHAT HAPPENED AFTER HE GOT PART
2 OF THE MONEY OUT OF THE DRAWER?

3 A. KEN WAS IN THE PROCESS OF TAKING THE MONEY
4 OUT OF THE DRAWER, AND HERMAN SAID, "GIVE ME THE KEYS
5 -- THE CAR KEYS."

6 Q. ALL RIGHT. NOW, WHAT WAS KEN'S REACTION
7 WHEN HERMAN SAID, "GIVE ME THE CAR KEYS"?

8 A. HE WAS JUST AGREEING WITH EVERYTHING --
9 WELL, NOT AGREEING VERBALLY, BUT DOING WHAT HE SAID.

10 Q. ALL RIGHT. AND WAS KEN ACTING LIKE HE WAS
11 A THREAT TO HERMAN HUGHES IN ANY WAY?

12 A. NO.

13 Q. WAS KEN NERVOUS?

14 A. I THINK SO.

15 Q. AND HOW DO YOU KNOW THAT?

16 A. HIS HANDS WERE SHAKING A LITTLE BIT.

17 Q. OKAY. AND DID HE GIVE HIM THE CAR KEYS?

18 A. HE SET THEM ON THE DESK. HE DIDN'T PUT
19 THEM DIRECTLY IN HERMAN'S HAND.

20 Q. OKAY. HE LAID THE KEYS DOWN ON THE DESK;
21 RIGHT?

22 A. YES.

23 Q. ALL RIGHT. THEN WHAT HAPPENED?

24 A. THEN HE WAS REACHING BACK IN THE DRAWER TO
25 GET THE REST OF THE MONEY AND --

1 Q. WHO WAS?

2 A. KEN WAS.

3 Q. ALL RIGHT.

4 A. AND HERMAN SHOT HIM IN THE HEAD.

5 Q. ALL RIGHT. WERE YOU LOOKING STRAIGHT AT
6 HIM?

7 A. YES.

8 Q. OKAY. IS THERE ANY DOUBT IN YOUR MIND
9 THAT HERMAN HUGHES SHOT KEN IN THE HEAD?

10 A. NO.

11 Q. RIGHT OR LEFT SIDE OF THE HEAD?

12 A. I DON'T KNOW.

13 Q. OKAY. AND WHEN KEN WAS SHOT, WHAT
14 HAPPENED TO HIM?

15 A. HE FELL TO THE FLOOR ON HIS LEFT SIDE.

16 Q. OKAY. ON HIS LEFT SIDE? ALL RIGHT. WHAT
17 -- WHAT HAPPENED NEXT? WERE YOU STILL SITTING DOWN?

18 A. YES. I SAID, "OH, MY GOD," AND THEN
19 HERMAN TURNED TO ME AND SHOT ME IN THE CHEST.

20 Q. OKAY. COULD YOU -- GET UP AND SHOW THE
21 JURY WHERE -- WHERE HE SHOT YOU.

22 A. RIGHT HERE (INDICATING).

23 Q. YOU CAN COME ON DOWN HERE A LITTLE CLOSER,
24 IF YOU WOULD.

25 A. THE TOP OF THIS PART, RIGHT HERE

1 (INDICATING).

2 Q. NOW, BEFORE -- BEFORE HERMAN SHOT YOU, DID
3 YOU DO ANYTHING TO THREATEN HIM OR TRY TO RUN AWAY OR
4 RUN TOWARD HIM?

5 A. NO.

6 Q. ALL RIGHT. WHAT'S THE NEXT THING THAT
7 HAPPENED?

8 A. I JUST -- AFTER HE SHOT ME, HERMAN SHOT ME
9 IN THE CHEST, I JUST SAT THERE, AND HE KIND OF WALKED
10 MAYBE A COUPLE OF STEPS TO WHERE KEN WAS AND SHOT HIM
11 AGAIN.

12 Q. DID YOU SEE THAT?

13 A. YES.

14 Q. OKAY. WHEN HE SHOT KEN THE SECOND TIME,
15 WAS KEN ON THE FLOOR?

16 A. YES, SIR.

17 Q. OKAY. WHAT POSITION WAS HERMAN HUGHES IN?

18 A. STANDING -- NOT STANDING DIRECTLY OVER
19 HIM, BUT SINCE KEN WAS ON THE FLOOR, THEN HE WAS
20 STANDING OVER HIM.

21 Q. OKAY.

22 A. A FEW FEET AWAY.

23 Q. AFTER THAT, AFTER THE THIRD SHOT, HE SHOT
24 KEN ONCE IN THE HEAD, KEN FELL, SHOT YOU, THEN SHOT
25 KEN, WHAT HAPPENED NEXT?

1 A. I WAS -- AFTER THE SECOND SHOT TO KEN, I
2 LOOKED DOWN AT MY LAP KIND OF AND -- BUT I WAS STILL
3 LOOKING UP, BUT I JUST HAD MY HEAD LIKE THIS, AND
4 HERMAN KIND OF WALKED OVER IN MY DIRECTION A LITTLE
5 BIT, MAYBE A COUPLE OF STEPS, AND SHOT ME RIGHT HERE
6 IN THE FACE.

7 Q. OKAY. CAN YOU GO UP AGAIN AND SHOW THE
8 JURY?

9 A. IT'S RIGHT HERE (INDICATING). I HAD
10 PLASTIC SURGERY, SO YOU CAN'T SEE IT MUCH, BUT RIGHT
11 THERE. AND IT WENT IN A DOWNWARD DIRECTION THROUGH
12 MY JAW.

13 Q. DID YOU REMAIN CONSCIOUS AFTER YOU WERE
14 SHOT THE SECOND TIME?

15 A. YES.

16 Q. WHAT HAPPENED NEXT?

17 A. HE -- I WAS -- I HAD MY HEAD IN MY ARM
18 LIKE THIS, AND I WAS RESTING ON IT ON THE DESK, AND
19 MY HAIR WAS DOWN A LITTLE BIT, BUT I WAS LOOKING KIND
20 OF -- IN OTHER WORDS, I WAS STILL LOOKING UP. I JUST
21 HAD MY HEAD DOWN, AND HE JUST TURNED AND SHOT KEN
22 ONCE MORE.

23 Q. OKAY.

24 A. HERMAN DID.

25 Q. THEN WHAT HAPPENED AFTER THAT?

1 A. THEN I THOUGHT HERMAN WAS GOING TO SHOOT
2 ME AGAIN BECAUSE JUST THE WAY HE LOOKED BECAUSE I WAS
3 WATCHING HIM, AND I JUST SAT THERE HOPING MAYBE IF HE
4 THOUGHT THAT HE DIDN'T NEED ME -- NEED TO SHOOT ME
5 AGAIN, MAYBE HE WOULDN'T. AND HE STOOD THERE I GUESS
6 A FEW SECONDS, AND THEN HE JUST GATHERED UP THE
7 THINGS AND CUT THE LIGHTS OFF AND --

8 Q. GATHERED UP WHAT THINGS?

9 A. THE MONEY AND THE KEYS.

10 Q. OKAY.

11 A. AND HE SHUT THE LIGHTS OFF, TURNED THEM
12 OFF AND WENT TO THE DOOR, AND HE -- HE TURNED OFF THE
13 OUTSIDE LIGHTS, TOO. I DON'T KNOW -- I DON'T KNOW
14 HOW HE KNEW WHERE THE SWITCH WAS, BUT HE CUT OFF ALL
15 THE LIGHTS AND THEN HE LEFT.

16 Q. ALL RIGHT. NOW, WERE YOU CONSCIOUS THE
17 ENTIRE TIME FROM THE TIME HE CAME IN UNTIL THE TIME
18 HE LEFT?

19 A. YES.

20 Q. DO YOU HAVE A CLEAR RECOLLECTION OF WHAT
21 HAPPENED?

22 A. YES.

23 Q. ARE YOU POSITIVE THAT HERMAN HUGHES WAS
24 THE ONLY ONE INSIDE THE BLUE DIAMOND?

25 A. YES.

1 Q. IF SOMEBODY ELSE HAD COME IN, WOULD YOU
2 HAVE SEEN THEM?

3 A. DEFINITELY.

4 Q. OKAY. AND HAD YOU EVER SEEN HERMAN HUGHES
5 BEFORE, TO THE BEST OF YOUR KNOWLEDGE?

6 A. NO.

7 Q. HE WAS A TOTAL STRANGER TO YOU?

8 A. YES.

9 Q. OKAY. DO YOU RECALL WHILE YOU WERE IN THE
10 HOSPITAL AFTER YOU HAD YOUR SURGERY FOR YOUR -- THE
11 BLOOD VESSEL AND THE -- HAD YOUR JAW WIRED UP,
12 TALKING TO EARL RHUDY AND GIVING HIM A TAPED
13 STATEMENT?

14 A. YES, SIR.

15 Q. OKAY. WHAT WAS YOUR CONDITION AT THAT
16 TIME, YOUR PHYSICAL CONDITION AND YOUR MENTAL
17 CONDITION?

18 A. I DON'T KNOW ALL OF THE EXACT DRUGS I WAS
19 ON, BUT I DO KNOW I WAS ON MORPHINE AND ALL MY TEETH
20 WERE WIRED SHUT AND I COULDN'T OPEN MY MOUTH, AND I
21 WAS JUST -- I MEAN, I CAN REMEMBER THAT I TALKED TO
22 EARL RHUDY, BUT I DON'T REMEMBER ACTUALLY GOING IN
23 THERE AND WHAT I SAID OR ANY OF HIS QUESTIONS,
24 REALLY. I WAS KIND OF DIZZY AND EVERYTHING HURT.

25 Q. OKAY. DO YOU RECALL LISTENING TO A TAPED

KELLY HOFFMAN - DIRECT BY MR. BAILEY

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1 STATEMENT AND READING THE TRANSCRIPT THAT YOU -- OF
2 THE TAPED STATEMENT THAT YOU GAVE TO MR. RHUDY?

3 A. I READ THE TRANSCRIPT, BUT I NEVER HEARD
4 THE TAPE.

5 Q. OKAY. IN THAT TRANSCRIPT, DID YOU TELL
6 HIM THAT -- THAT YOU ONLY HEARD FOUR SHOTS AND THAT
7 -- THAT KEN WAS SHOT ONCE, THEN YOU WERE SHOT IN THE
8 FACE AND THEN THE CHEST, THEN YOU CLOSED YOUR EYES
9 AND HEARD A FOURTH SHOT? IS THAT WHAT'S IN THE
10 TRANSCRIPT?

11 A. I BELIEVE THAT'S WHAT I READ.

12 Q. OKAY. AND IS THAT -- DO YOU REMEMBER
13 SAYING THAT?

14 A. NO.

15 Q. OKAY. AND IS WHAT YOU'RE TESTIFYING TO
16 TODAY ABOUT THE NUMBER OF SHOTS AND THE SEQUENCE OF
17 THE SHOTS AND WHETHER OR NOT YOU WERE CONSCIOUS THE
18 WHOLE TIME -- YOU'RE NOT ON ANY MEDICATION NOW, ARE
19 YOU?

20 A. NO, SIR.

21 Q. AND DO YOU HAVE A CLEAR RECOLLECTION OF
22 WHAT HAPPENED THAT NIGHT?

23 A. YES, SIR.

24 Q. AND WHAT YOU'RE SAYING HERE TODAY UNDER
25 OATH IS YOUR BEST RECOLLECTION OF WHAT HAPPENED?

1 A. YES.

2 Q. AFTER HERMAN HUGHES LEFT THE BLUE DIAMOND,
3 WHAT DID YOU DO?

4 A. WELL, I SAT THERE AT FIRST MAYBE -- I
5 DON'T KNOW -- LESS THAN A MINUTE, BECAUSE I WAS
6 SCARED, AND I WAS KIND OF LISTENING FOR THE CAR TO
7 CRANK UP BECAUSE I WAS SCARED THAT IF I DID ANYTHING,
8 MAYBE HE WAS WATCHING AND WOULD COME BACK AND MAKE
9 SURE THAT I WAS DEAD.

10 Q. YOU SAID YOU HEARD THE CAR CRANK UP?

11 A. I WAS TRYING TO, BUT I NEVER COULD.

12 Q. OKAY.

13 A. SO I JUST WAITED A LITTLE WHILE BECAUSE I
14 WAS SCARED HE WOULD COME BACK IN THERE AND GET ME IF
15 HE THOUGHT I HAD TRICKED HIM THAT I WAS DEAD. AND SO
16 I WAITED LIKE LESS THAN A MINUTE, I GUESS, AND AT
17 FIRST I CALLED 411. THEN I REALIZED THAT THAT WAS
18 INFORMATION AND I WAS SUPPOSED TO DIAL 911. SO I
19 DID. AND I TOLD THEM THAT I WAS AT THE BLUE DIAMOND
20 CASINO AND TOLD THEM WHERE IT WAS AND THAT I HAD BEEN
21 SHOT, THERE WAS A ROBBERY, AND THAT KEN WAS DEAD.

22 Q. OKAY. NOW, DO YOU RECALL THE POLICE
23 SHOWING UP AND TRYING TO GET IN?

24 A. YES.

25 Q. OKAY. AND BY THE TIME THE POLICE GOT

1 THERE AND TRIED TO GET IN, COULD THEY GET IN?

2 A. NO.

3 Q. ALL RIGHT. AND DID -- EVENTUALLY, DID THE
4 LADY WHO OWNED THAT PLACE LET THEM IN?

5 A. AT THE TIME, I DIDN'T KNOW HOW THEY GOT
6 IN. I JUST KNEW THAT I RECOGNIZED CAPERS
7 WANNAMAKER'S VOICE SAYING, YOU KNOW, "KELLY, LET ME
8 IN," AND I TRIED TO TELL HIM I COULDN'T, BUT I
9 COULDN'T TALK THAT LOUD. I MEAN, I COULD TALK, BUT
10 NOT LOUD ENOUGH TO WHERE HE COULD HEAR ME OUTSIDE.
11 AND SO I JUST SAT THERE BECAUSE I COULDN'T GET UP TO
12 OPEN THE DOOR OR ANYTHING. AND THEN THE NEXT THING
13 THAT HAPPENED WAS AFTER A FEW SECONDS, THEN THEY JUST
14 STARTED COMING IN.

15 Q. ALL RIGHT.

16 A. OUT OF THE BACK.

17 Q. DO YOU RECALL SAYING ANYTHING TO THE
18 POLICE OFFICERS THAT GOT THERE?

19 A. A LITTLE BIT.

20 Q. WHAT DO YOU RECALL SAYING?

21 A. THAT I DIDN'T KNOW WHO IT WAS AND THAT IT
22 WAS ONE PERSON, I WAS SURE. AND THAT I TRIED TO
23 DESCRIBE WHAT HE LOOKED LIKE, BUT YOU KNOW -- SO I
24 DID DESCRIBE WHAT HE LOOKED LIKE, BUT I DON'T
25 REMEMBER EXACTLY WHAT I SAID. I JUST KNOW THAT I

1 TRIED MY BEST TO TELL THEM WHAT HAPPENED, AND I TOLD
2 THEM KEN'S MAMA'S PHONE NUMBER AND MY MAMA AND
3 DADDY'S PHONE NUMBER, AND WHERE I THOUGHT THEY MIGHT
4 BE IF THEY WEREN'T HOME.

5 Q. OKAY. DO YOU RECALL ANYTHING ELSE OR IS
6 THAT ABOUT IT?

7 A. I THINK THAT'S ABOUT IT.

8 Q. OKAY. DO YOU RECALL WHEN THE AMBULANCE
9 PEOPLE GOT THERE AND STARTED WORKING ON YOU?

10 A. YES.

11 Q. OKAY. AND DID THEY TAKE YOU TO THE
12 HOSPITAL?

13 A. YES.

14 Q. OKAY. AT SOME POINT, DID YOU LOSE
15 CONSCIOUSNESS?

16 A. I DON'T REMEMBER THE RIDE TO THE
17 ORANGEBURG HOSPITAL. I DON'T KNOW IF THAT'S BECAUSE
18 I JUST DON'T REMEMBER IT OR IF I WAS UNCONSCIOUS, BUT
19 I CAN -- I CAN REMEMBER -- VAGUELY I CAN REMEMBER
20 THEM PUTTING ME IN THERE -- IN THE AMBULANCE, BUT I
21 DON'T REMEMBER THE RIDE TO ORANGEBURG.

22 Q. OKAY. AND THEN YOU GOT TREATMENT IN
23 RICHLAND COUNTY; IS THAT RIGHT?

24 A. YES.

25 Q. PLASTIC SURGERY THAT DID YOUR JAW AND THEN

1 DR. RUSH THAT SEWED UP THE VESSEL --

2 A. YES.

3 Q. -- THAT WAS CUT; IS THAT RIGHT?

4 A. HE TOOK A VEIN OUT OF MY LEG. IT'S A SCAR
5 KIND OF LIKE THIS, BUT I CAN'T SHOW YOU. HE TOOK A
6 VEIN OUT OF MY LEG AND PUT IT UP HERE.

7 Q. ALL RIGHT. NOW, THE BULLET THAT HIT YOU
8 IN THE CHEST, WHERE DID THAT GO?

9 A. IT WAS -- IT WAS STUCK IN MY BACK, BUT
10 THEY CUT IT OUT.

11 Q. OKAY. CUT IT OUT FROM THE BACK?

12 A. IT WAS LIKE RIGHT HERE (INDICATING).

13 Q. CAN YOU SHOW THE JURY WHERE THE BULLET
14 WENT OUT?

15 A. I DON'T KNOW IF I CAN.

16 Q. WELL, IF YOU CAN SHOW IT -- CAN YOU?

17 A. WELL, RIGHT HERE.

18 Q. CAN YOU PULL YOUR DRESS DOWN A LITTLE BIT
19 OR IS IT TOO LOW?

20 A. I CAN'T FEEL WHERE IT'S AT.

21 Q. OKAY. BUT THE BULLET DIDN'T COME ALL THE
22 WAY THROUGH?

23 A. NO. THEY CUT IT OUT. IT DIDN'T COME ALL
24 THE WAY OUT.

25 Q. ALL RIGHT. AND WHAT ABOUT THE BULLET THAT

1 HIT YOU IN THE FACE? DO YOU KNOW WHAT PATH THAT
2 BULLET TOOK AFTER IT BROKE YOUR JAW?

3 A. YES. IT -- IT WENT DOWN THROUGH MY JAW
4 AND DOWN MY NECK, AND THERE'S A PIECE OF IT IN MY
5 NECK RIGHT NOW. YOU CAN FEEL IT. BUT THEN IT WENT
6 ON INTO MY BACK WHERE IT STUCK BY MY SHOULDER BLADE
7 STILL.

8 Q. DO YOU KNOW A GUY NAMED KELSEY PEARCE?

9 A. YES.

10 Q. OKAY. AND DID YOU SEE KELSEY PEARCE AT
11 ALL THAT DAY?

12 A. NO.

13 Q. OKAY. IF HE HAD COME INTO THE BLUE
14 DIAMOND AT ANY POINT, WOULD YOU HAVE RECOGNIZED HIM
15 FROM KNOWING HIM FROM SCHOOL OR WHEREVER?

16 A. I WOULD HAVE RECOGNIZED HIM IMMEDIATELY.

17 Q. HOW ABOUT DANIEL OWENS, DID YOU KNOW HIM?

18 A. NO.

19 Q. OKAY. KELLY, IS THERE ANY DOUBT
20 WHATSOEVER THAT THERE WAS ONE PERSON AT THE BLUE
21 DIAMOND THAT DID THAT SHOOTING?

22 A. NO.

23 Q. AND HE SHOT YOU, HE SHOT KEN PRESLEY?

24 A. YES. I SAW HERMAN SHOOT ME AND KEN.

25 Q. ALL FIVE SHOTS?

1 A. YES.

2 MR. BAILEY: ANSWER ANY QUESTIONS MR.
3 NEWSOME MAY HAVE FOR YOU.

4 (WHEREUPON, THE JURY WAS REMOVED FROM THE
5 COURTROOM FOR THE FOLLOWING PROCEEDINGS.)

6 THE COURT: WHAT IS YOUR MATTER OF LAW,
7 MR. NEWSOME?

8 MR. NEWSOME: YOUR HONOR, IT IS MY DESIRE
9 TO CROSS-EXAMINE MS. HOFFMAN BY USING THE PRIOR
10 STATEMENT THAT HE OPENED THE DOOR AND ASKED HER ABOUT
11 THAT SHE GAVE TO OFFICER RHUDY, AND I FIGURED YOU
12 WOULD WANT ME TO DO THIS IN FRONT OF YOU.

13 THE COURT: NO, SIR. YOU'RE ENTITLED TO
14 CROSS-EXAMINE HER ON ANY STATEMENT INCONSISTENT SHE
15 MAY HAVE GIVEN. I HAVE NO PROBLEM WITH THAT. YOU
16 AGREE WITH THAT, SOLICITOR?

17 MR. BAILEY: YES, SIR. I AGREE WITH THAT,
18 YOUR HONOR. JUST FOR THE COURT'S BENEFIT, HER JAW
19 WAS WIRED SHUT, AND IT IS WELL HARD TO UNDERSTAND
20 HER, AND I'VE GOT A TRANSCRIPT OF WHAT SHE SAID. BUT
21 I THINK IF HE'S GOING TO GO INTO THE STATEMENT, IN
22 ORDER FOR THE JURY TO GET THE COMPLETE PICTURE, THEY
23 WOULD NEED TO LISTEN TO THE TRANSCRIPT -- LISTEN TO
24 THE TAPE AND READ THE TRANSCRIPT AT THE SAME TIME.

25 MR. NEWSOME: NO PROBLEMS WITH THAT AT

1 ALL, YOUR HONOR.

2 MR. BAILEY: AND I'VE GOT COPIES.

3 THE COURT: YOU CAN CROSS-EXAMINATION HER
4 ON ANY INCONSISTENT STATEMENT SHE MAY HAVE GIVEN.

5 MR. NEWSOME: I JUST DIDN'T WANT YOU TO --

6 THE COURT: I UNDERSTAND. ARE WE SET UP
7 TO PLAY THE TAPE? THE TRANSCRIPT IS FINE. BUT YOU
8 THINK -- IF IT'S DONE, YOU WANT THE TAPE TO BE --

9 MR. BAILEY: YES, SIR, I THINK SO, JUST TO
10 GET THE WHOLE...

11 THE COURT: LET'S GO GET IT AND BRING IT
12 IN AND MAKE SURE IT'S LOUD ENOUGH. IS THE TAPE
13 AVAILABLE? SOMEBODY KNOW HOW TO RUN IT? I NEVER
14 TURNED ON A TAPE OR A TAPE RECORDER OR A T.V. IN MY
15 COURTROOM YET THAT WORKED TO START WITH.

16 WOULD SOMEONE GET HER A GLASS OF WATER, PLEASE?
17 I WOULD LIKE TO HAVE COPIES AVAILABLE TO THE JURY.
18 DO YOU HAVE SUFFICIENT COPIES?

19 MR. NEWSOME: YES, SIR. HE'S GETTING THEM
20 RIGHT NOW. DO YOU HAVE A STATEMENT WE CAN PUT INTO
21 EVIDENCE?

22 THE COURT: YES, SIR. I'VE GOT THE -- DO
23 YOU WANT TO DO THAT?

24 MR. NEWSOME: YES, SIR.

25 (WHEREUPON, THE JURY WAS RETURNED TO THE

1 COURTROOM FOR THE FOLLOWING PROCEEDINGS.)

2 THE COURT: LADIES AND GENTLEMEN, DURING
3 THE CROSS-EXAMINATION OF THIS WITNESS, THERE WILL BE
4 PLAYED FOR YOU A TAPE MADE OF AN INTERVIEW THAT SHE
5 GAVE ON A CERTAIN OCCASION HERE. IN ORDER TO HELP
6 YOU FOLLOW BETTER THIS TAPE RECORDING, WE HAVE
7 PREPARED FOR YOU A TRANSCRIPT OF THIS TAPE SO THAT
8 YOU CAN READ ALONG AS IT'S PLAYED. I BELIEVE THAT
9 WILL BE EASIER FOR YOU TO FOLLOW THE TAPE RECORDING.

10 NOW, YOU MAY -- DO YOU WANT TO PLAY THE TAPE NOW
11 OR HAVE CROSS-EXAMINATION FIRST?

12 MR. NEWSOME: LET'S PLAY THE TAPE FIRST.

13 THE COURT: HOWEVER YOU PREFER TO PROCEED
14 WILL BE FINE.

15 (AUDIO TAPE PLAYED.)

16 MR. NEWSOME: YOUR HONOR, THERE'S A PAUSE
17 THERE AND APPEARS TO BE A SECOND INTERVIEW, BUT THAT
18 IS ACTUALLY A CONTINUATION OF THE SECOND INTERVIEW.
19 YOU WANT TO TURN IT BACK ON?

20 (AUDIO TAPE CONTINUED.)

21 THE COURT: ALL RIGHT, SIR. DO YOU DESIRE
22 THAT THIS TAPE BE MADE INTO EVIDENCE?

23 MR. NEWSOME: YES, SIR.

24 THE COURT: AND IS IT ALL RIGHT TO PUT
25 ALSO IN EVIDENCE THE -- THE JURY WILL HAVE THAT TAPE

1 IN THE JURY ROOM. DO WE HAVE ANY PROBLEMS WITH THE
2 TRANSCRIPT IN TOO?

3 MR. NEWSOME: NO PROBLEM.

4 THE COURT: THE DEFENDANT ASKS THAT THE
5 TAPE BE MADE A PART OF THE EVIDENCE AND IS AMENABLE
6 TO HAVING A TRANSCRIPTION OF THAT TAPE WITH IT AS A
7 PART OF IT WHICH WILL GO IN THE JURY ROOM. DO YOU
8 UNDERSTAND THAT?

9 MR. BAILEY: YES, SIR.

10 THE COURT: AT THIS TIME, BAILIFF, PLEASE
11 COLLECT THOSE TRANSCRIPTIONS. WE'LL PROVIDE SEVERAL
12 COPIES OF THAT FOR YOU IN THE JURY ROOM DURING THE
13 DELIBERATIONS.

14 (DEFENDANT'S EXHIBITS NUMBERS 6
15 AND 7 MARKED FOR IDENTIFICATION
16 AND ENTERED INTO EVIDENCE.)

17 C R O S S - E X A M I N A T I O N

18 BY MR. NEWSOME:

19 Q. KELLY, I JUST HAVE A FEW QUESTIONS. IN
20 THAT TAPE, YOU DESCRIBE THAT YOU PUT YOUR HEAD DOWN,
21 AND YET YOU DON'T REMEMBER DOING THAT NOW?

22 A. I DON'T EVEN REMEMBER SAYING THAT.

23 Q. OKAY. ASSUMING YOU PUT YOUR HEAD DOWN, IN
24 THIS STATEMENT HERE, TAPED STATEMENT, YOU INDICATED
25 THAT YOU DIDN'T -- COULDN'T TELL WHEN HERMAN LEFT; IS

1 THAT RIGHT?

2 A. I COULDN'T TELL WHEN HE LEFT FROM OUTSIDE.
3 I DIDN'T KNOW IF HE WAS STANDING THERE WATCHING ME
4 SOMEHOW.

5 Q. OKAY. AND IT ALSO SAYS IN HERE THAT YOU
6 WERE SHOT IN THE FACE FIRST AND THEN THE CHEST. IS
7 THAT NOT CORRECT?

8 A. THAT'S WHAT IT SAID.

9 Q. AND NOW YOU'RE SAYING YOU WERE SHOT IN THE
10 CHEST?

11 A. YES.

12 Q. AND THEN KEN WAS SHOT, AND THEN YOU WERE
13 SHOT IN THE FACE; IS THAT YOUR TESTIMONY?

14 A. YES.

15 Q. OKAY. DO YOU RECALL OFFICER KIRKLAND
16 TALKING TO YOU THAT NIGHT?

17 A. NO.

18 Q. I'M NOT TALKING AT THE HOSPITAL. I'M
19 TALKING ABOUT THE NIGHT OF THE INCIDENT.

20 A. NO.

21 Q. DO YOU RECALL HAVING TOLD HIM THAT THERE
22 WERE TWO PEOPLE?

23 A. I REMEMBER SOMEBODY ASKING ME HOW MANY
24 PEOPLE WERE IN THERE, AND I SAID TWO, BUT I MEANT
25 TWO, ME AND KEN. I DIDN'T MEAN THAT TWO PEOPLE CAME

1 IN THERE.

2 Q. DO YOU RECALL TELLING HIM THAT AT FIRST A
3 SMALL BLACK MAN SHOT YOU? DO YOU RECALL TELLING HIM
4 THAT?

5 A. NOT THAT HE WAS SMALL. MAYBE HE WAS --

6 Q. AND THEN DO YOU RECALL TELLING HIM THAT A
7 TALL BLACK MAN WAS THERE?

8 A. NO.

9 Q. ALL RIGHT. HOW LONG HAVE YOU KNOWN KELSEY
10 PEARCE?

11 A. I DON'T REALLY KNOW HIM, BUT I WENT TO
12 SCHOOL WITH HIM A FEW YEARS.

13 Q. OKAY. AND BASICALLY, YOUR KNOWLEDGE OF
14 HIM AND YOUR KNOWLEDGE OF KEN PRESLEY, IS KELSEY
15 PEARCE ABOUT THE SAME HEIGHT AS KEN?

16 A. I DON'T REMEMBER.

17 Q. AND DO YOU KNOW HOW TALL KEN WAS?

18 A. ABOUT SIX-ONE.

19 Q. OKAY. WOULD YOU SAY HE WAS TALLER OR
20 SHORTER THAN HERMAN HUGHES?

21 A. TALLER.

22 Q. OKAY. NOW, ALL OF THIS SHOOTING, DID IT
23 TAKE PLACE REAL FAST? IT WAS OVER A PERIOD OF 10 OR
24 15 MINUTES OR --

25 A. IT WAS NOT FAST. I MEAN, IT WAS LIKE -- I

1 DON'T KNOW HOW YOU WOULD SAY, DELIBERATED. I MEAN,
2 NOT IN A HURRY, BUT NOT 10 OR 15 MINUTES.

3 Q. AND YOU DIDN'T SEE HERMAN TAKE THE MONEY
4 OUT OF THE CASH REGISTER? IS THAT YOUR TESTIMONY?

5 A. I SAW HIM. I WASN'T LOOKING DEAD AT HIM
6 BECAUSE AT THAT TIME HE HAD ALREADY SHOT US, AND I
7 DIDN'T WANT TO INDICATE THAT I WAS, YOU KNOW --

8 Q. NOW, LET ME ASK YOU SOME QUESTIONS FROM
9 THIS. OKAY? STAND UP SO YOU CAN SEE IT. YOU
10 TESTIFIED THAT THE DESK WAS ABOUT HERE; IS THAT
11 CORRECT?

12 A. YES.

13 Q. OKAY. NOW, AND YOU WERE SITTING BEHIND
14 THE DESK?

15 A. YES.

16 Q. OR STANDING?

17 A. SITTING.

18 Q. YOU WERE SITTING. AND THE CHAIR -- THE
19 SAME CHAIR YOU WERE SITTING IN WHEN THE OFFICERS CAME
20 IN AND FOUND YOU; IS THAT RIGHT?

21 A. YES. BUT THAT'S NOT -- THAT'S NOT REALLY
22 -- THAT'S DEFINITELY NOT A SCALE MODEL.

23 Q. NO ONE HAS SAID IT SO FAR THAT IT WAS A
24 SCALE MODEL. WHERE WAS KEN STANDING?

25 A. AT THE TIME HE WAS SHOT?

1 Q. YES.

2 A. THE DESK WAS HERE, AND I'M SITTING HERE,
3 AND HE'S STANDING RIGHT BESIDE ME AT THE CASH DRAWER.

4 Q. OKAY. SO WOULD HE BE AS CLOSE TO YOU AS I
5 AM NOW?

6 A. CLOSER.

7 Q. CLOSER? ALL RIGHT. WOULD YOU TELL ME
8 WHEN TO STOP?

9 A. CLOSER.

10 Q. CLOSER NOW. SO HE'S VERY CLOSE TO YOU?

11 A. THAT'S ABOUT -- ABOUT RIGHT.

12 Q. NOW, HOW FAR WOULD THE DESK HAVE EXTENDED
13 DOWN; DO YOU KNOW? IT'S HARD TO TELL ON THERE
14 WITHOUT THE SCALE.

15 A. YES.

16 Q. OKAY. I HAVE NO FURTHER QUESTIONS ABOUT
17 THAT.

18 ARE YOU SURE THE LIGHTS WERE TURNED OFF?

19 A. YES.

20 Q. OKAY. ARE YOU AS SURE ABOUT THE LIGHTS
21 BEING TURNED OFF AS YOU ARE SURE THAT YOU DIDN'T
22 BLACK OUT, IN AND OUT?

23 A. I CAN'T HARDLY HEAR YOU.

24 Q. ARE YOU AS SURE ABOUT THE LIGHTS HAVING
25 BEEN TURNED OFF WHEN HERMAN LEFT AS YOU ARE SURE

1 ABOUT YOU NOT HAVING LOST CONSCIOUSNESS?

2 A. I KNOW FOR A FACT THAT I DIDN'T LOSE
3 CONSCIOUSNESS, AT LEAST UNTIL THE POLICE GOT THERE,
4 BECAUSE I WAS AFRAID THAT IF -- I MEAN, I FELT LIKE I
5 WANTED TO, BUT I JUST FELT LIKE IF I EVEN CLOSED MY
6 EYES FOR MORE THAN A SECOND, THAT THEN I WOULD DIE.

7 Q. OKAY. DO YOU REMEMBER KELSEY PEARCE
8 COMING AND TALKING TO YOU A COUPLE OF DAYS BEFORE
9 THIS INCIDENT AT HARDEE'S?

10 A. THAT WASN'T ME. THAT WAS KEN'S SISTER,
11 AMY.

12 Q. HE TALKED TO KEN'S SISTER AMY?

13 A. YES.

14 Q. AND ASKED HER IF SHE WAS GOING TO BE
15 WORKING THAT NIGHT OR ASKED HER WHO WAS GOING TO BE
16 WORKING AT THE BLUE DIAMOND?

17 A. AS FAR AS I KNOW.

18 MR. NEWSOME: OKAY. THANK YOU. I HAVE NO
19 FURTHER QUESTIONS.

20 MR. BAILEY: A COUPLE OF REDIRECT, YOUR
21 HONOR.

22 THE COURT: ALL RIGHT.

23 R E D I R E C T E X A M I N A T I O N

24 BY MR. BAILEY:

25 Q. KELLY, WHEN HERMAN HUGHES WAS TALKING TO

1 KEN THE SECOND TIME HE CAME BACK IN THERE, COULD YOU
2 DESCRIBE HIS VOICE?

3 A. HE -- HE WAS JUST SO -- SO CALM. I MEAN,
4 A FIRM VOICE, NOT EXACTLY MEAN, BUT JUST LIKE A CALM,
5 FLAT TONE.

6 Q. HAVE YOU BEEN AROUND PEOPLE THAT HAVE BEEN
7 DRINKING BEFORE?

8 A. YES.

9 Q. COULD YOU TELL WHETHER OR NOT HERMAN
10 HUGHES HAD BEEN DRINKING THAT NIGHT?

11 A. WELL, I DON'T KNOW FOR A FACT, BUT BASED
12 ON MY OPINION, HE ACTED PERFECTLY SOBER TO ME.

13 MR. BAILEY: THANK YOU. THAT'S ALL I
14 HAVE.

15 R E C R O S S - E X A M I N A T I O N

16 BY MR. NEWSOME:

17 Q. YOU HAD NEVER MET HERMAN BEFORE, HAD YOU?

18 A. NOT THAT I CAN RECALL.

19 Q. SO YOU DON'T KNOW HOW HE WOULD BE ACTING
20 DRUNK OR SOBER, DO YOU?

21 A. NO.

22 MR. NEWSOME: THANK YOU.

23 THE COURT: YOU MAY COME DOWN. THANK YOU.

24 THE WITNESS HAS BEEN SEQUESTERED. I WILL NOW PERMIT

25 HER TO REMAIN IN THE COURTROOM.

1 MR. BAILEY: THANK YOU, YOUR HONOR. YOUR
2 HONOR, COULD I HAVE ONE MOMENT?

3 THE COURT: SIR?

4 MR. BAILEY: COULD I HAVE ONE MOMENT,
5 PLEASE?

6 THE COURT: YES, SIR. SURE.

7 MR. BAILEY: YOUR HONOR, I WANT TO CHECK
8 WITH THE COURT REPORTER TO MAKE SURE EVERYTHING I
9 HAVE MARKED FOR IDENTIFICATION HAS BEEN PUT INTO
10 EVIDENCE AND THEN I'LL REST.

11 THE COURT: ALL RIGHT, SIR. YOU'RE
12 PREPARED TO REST AFTER WE CHECK ON THAT?

13 MR. BAILEY: YES, SIR.

14 THE COURT: THEN I'LL LET THE JURORS GO TO
15 THE JURY ROOM. THE STATE HAS NOW INDICATED THAT IT
16 HAS COMPLETED ITS SIDE OF THE TESTIMONY. YOU MAY GO
17 TO THE JURY ROOM.

18 (WHEREUPON, THE JURY WAS REMOVED
19 FROM THE COURTROOM AND THE
20 FOLLOWING PROCEEDINGS COMMENCED
21 IN OPEN COURT.)

22 THE COURT: AT THIS TIME, WE'RE OUTSIDE
23 THE PRESENCE OF THE JURY. YES, SIR. WHAT I'LL DO,
24 I'LL HAVE THIS MARKED FOR IDENTIFICATION AND THEN WE
25 CAN DO THAT. THAT'S AN ADMINISTRATIVE DETAIL.

1 MR. NEWSOME: I'M REQUIRED BY LAW TO MOVE
2 FOR A DIRECTED VERDICT AT THIS TIME.

3 THE COURT: OKAY. I WOULD RESPECTFULLY
4 OVERRULE THE MOTION AS TO ALL INDICTMENTS. CLEARLY;
5 IT BECOMES A QUESTION TO THE JURY. IS THERE -- WE'LL
6 TAKE A SHORT BREAK.

7 IS THE DEFENSE NOW READY TO PROCEED?

8 MR. NEWSOME: YOUR HONOR, WE HAVE, I
9 THINK, TWO WITNESSES WE CAN CALL NOW, AND THEN I
10 WOULD NEED A RECESS TO CONSULT WITH MY CLIENT OVER
11 THE POSSIBILITY OF WHETHER HE IS TAKING THE STAND OR
12 NOT. I NEED TO CONSULT WITH HIM.

13 THE COURT: WOULD YOU LIKE FOR ME TO MAKE
14 THAT INQUIRY NOW OR AT THE TIME?

15 MR. NEWSOME: I THINK IT WOULD BE BETTER
16 AT THE TIME INSTEAD OF NOW.

17 THE COURT: LET'S TAKE A SHORT BREAK AND
18 WE'LL START WITH YOUR DEFENSE, AND I'LL TAKE ANOTHER
19 BREAK PRIOR TO YOUR MAKING THE DETERMINATION OF
20 WHETHER YOUR DEFENDANT WISHES TO TESTIFY OR NOT. AT
21 THAT TIME, WE'LL GET HIS DESIRES ON THE RECORD.

22 MR. BAILEY: YOUR HONOR, ONE OF HIS TWO
23 WITNESSES WOULD BE KELSEY PEARCE, AND I UNDERSTAND WE
24 WOULD TAKE THAT OUT OF THE PRESENCE OF THE JURY.

25 THE COURT: JUST AS WELL TAKE THAT UP NOW.

1 CALL THE WITNESS.

2 MR. NEWSOME: CAN I DO THAT AFTER THE
3 RECESS? I'M GOING TO HAVE A NUMBER OF QUESTIONS FOR
4 THE RECORD, YOUR HONOR, ANTICIPATING MY WITNESS.

5 THE COURT: NO. THERE WON'T BE A PROBLEM.
6 JUST CALL HIM ON.

7 (WHEREUPON, A BREAK WAS TAKEN
8 FROM THE PROCEEDINGS.)

9 THE COURT: YES, SIR. WE'RE OUTSIDE THE
10 PRESENCE OF THE JURY. YES, SIR.

11 MR. NEWSOME: YES, SIR. AT THIS TIME, IT
12 IS OUR INTENTION TO CALL KELSEY PEARCE TO THE STAND,
13 AND WE DO SO AND ASK YOU TO DECLARE HIM A HOSTILE
14 WITNESS TO ENABLE ME UNDER RULE 611C, WHEN A PARTY
15 CALLS A HOSTILE WITNESS, THE ADVERSE PARTY'S
16 INTERROGATION MAY BE BY LEADING QUESTIONS, AND IT IS
17 OUR DESIRE TO CROSS-EXAMINE HIM.

18 THE COURT: ALL RIGHT. ARE HIS ATTORNEYS
19 IN THE COURTROOM?

20 MR. PEARCE'S ATTORNEY: YOUR HONOR, WE'RE
21 PRESENT.

22 THE COURT: SIR?

23 MR. PEARCE'S ATTORNEY: WE'RE PRESENT.

24 THE COURT: ALL RIGHT, SIR. AS I
25 UNDERSTAND IT, HIS ATTORNEYS HAVE ADVISED ME AND YOU

1 IN CHAMBERS THAT THIS WITNESS PROPOSES TO TAKE THE
2 FIFTH AMENDMENT. IS THAT CORRECT?

3 MR. PEARCE'S ATTORNEY: THAT'S CORRECT.

4 THE COURT: THAT AMENDMENT, OF COURSE --
5 THAT CONSTITUTIONAL AMENDMENT IS PERSONAL TO HIM.

6 MR. NEWSOME: SO HE WOULD HAVE TO TAKE --

7 THE COURT: AND HE WOULD HAVE TO DO IT ON
8 THE STAND HIMSELF. CALL THE WITNESS.

9 MR. NEWSOME: CALL KELSEY PEARCE TO THE
10 STAND. YOUR HONOR, BEFORE I START MY INTERROGATION,
11 I WOULD LIKE TO TELL THE COURT THAT IT'S --

12 THE COURT: HIS ATTORNEY MAY COME AND
13 STAND BY HIM.

14 MR. NEWSOME: IT IS OUR REQUEST TO
15 CROSS-EXAMINE KELSEY PEARCE IN FRONT OF THE JURY. WE
16 THINK THAT IS A RIGHT OF OUR CLIENT IN ORDER FOR ME
17 TO EFFECTIVELY REPRESENT MY CLIENT.

18 THE COURT: IF I DETERMINE THAT
19 CROSS-EXAMINATION IS APPROPRIATE, BUT IF HE TAKES THE
20 FIFTH AMENDMENT, THAT WILL BE DONE OUTSIDE OF THE
21 PRESENCE OF THE JURY.

22 MR. NEWSOME: IT WOULD --

23 THE COURT: I WILL TELL THE JURY, IF YOU
24 DESIRE ME TO, THAT HE IS UNAVAILABLE. OUR COURTS
25 HAVE CONSISTENTLY HELD THAT WHERE ONE EXERCISES THAT

1 PRIVILEGE, HE IS INDEED UNAVAILABLE. BUT IF YOU ASK
2 ME TO, AT AN APPROPRIATE TIME, I WILL DO THAT.

3 MR. NEWSOME: YES, SIR.

4 THE COURT: I WILL NOT REQUIRE HIM TO TAKE
5 THE FIFTH OUTSIDE OF THE PRESENCE OF THE JURY. HE IS
6 UNDER INDICTMENT HIMSELF FOR MURDER AS I UNDERSTAND
7 IT.

8 MR. NEWSOME: YES, SIR.

9 MR. BAILEY: YOUR HONOR, JUST FOR THE
10 RECORD, HE IS UNDER INDICTMENT FOR MURDER, ARMED
11 ROBBERY, ASSAULT AND BATTERY WITH INTENT TO KILL,
12 GRAND LARCENY, AND THE DEATH PENALTY NOTICE HAS BEEN
13 SERVED ON HIM.

14 THE COURT: AND HIS INVOLVEMENT IS ALLEGED
15 TO BE IN THE SAME SITUATION AS THE CASE THAT WE'RE
16 NOW TRYING?

17 MR. BAILEY: IT'S NOT OUR POSITION THAT HE
18 WAS THE TRIGGER MAN, BUT THAT HE WAS AIDING AND
19 ABETTING, THE OUTSIDE LOOKOUT MAN.

20 THE COURT: ALL RIGHT. HAVE HIM COME
21 AROUND.

22 THE CLERK: PLEASE PLACE YOUR LEFT HAND ON
23 THE BIBLE AND PLEASE RAISE YOUR RIGHT HAND. PLEASE
24 STATE YOUR NAME FOR THE RECORD.

25 THE WITNESS: KELSEY PEARCE.

1 KELSEY PEARCE,
2 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
3 TESTIFIED AS FOLLOWS:

4 THE COURT: NOW, COUNSEL, AS I UNDERSTAND
5 IT, THIS WITNESS IS PREPARED TO TAKE THE FIFTH
6 AMENDMENT, WHICH IS HIS ABSOLUTE CONSTITUTIONAL
7 RIGHT. YOU, OF COURSE, ARE THERE TO ADVISE HIM. BUT
8 THE PRIVILEGE IS HIS AND HIS ALONE. YOU UNDERSTAND?

9 MR. PEARCE'S ATTORNEY: YES, SIR.

10 THE COURT: AND IF -- AND I USE THE WORD
11 ADVISEDLY -- IF HE CARES TO EXERCISE THAT PRIVILEGE,
12 HE HIMSELF WILL DO IT. AS I SAY THAT, YOU ARE
13 PERMITTED, OF COURSE, TO STAND THERE AND ADVISE HIM.

14 YOU MAY PROCEED.

15 D I R E C T E X A M I N A T I O N (PROFFERED)
16 BY MR. NEWSOME:

17 Q. IS YOUR NAME KELSEY PEARCE?

18 A. YES, SIR.

19 Q. KELSEY PEARCE, DO YOU KNOW HERMAN HUGHES?

20 A. I REFUSE TO ANSWER QUESTIONS THAT MAY
21 INCRIMINATE ME.

22 Q. KELSEY, ISN'T IT TRUE THAT YOU GOT THE GUN
23 FROM YOUR UNCLE THAT WAS USED IN THE ROBBERY AND
24 KILLING ON MARCH THE 18TH, 1994?

25 A. I REFUSE TO ANSWER QUESTIONS THAT MIGHT

1 INCRIMINATE ME.

2 Q. KELSEY, ISN'T IT TRUE THAT HERMAN WENT
3 INSIDE ONE TIME, CAME BACK OUT, AND HAD NOT BEEN ABLE
4 TO ROB THE PLACE. YOU TALKED TO HIM AND TOLD HIM TO
5 GO BACK IN THERE AND DO IT?

6 A. I REFUSE TO ANSWER QUESTIONS THAT MIGHT
7 INCRIMINATE ME.

8 Q. KELSEY, IS IT NOT TRUE THAT AFTER HERMAN
9 SHOT THE BOY AND THE GIRL TWICE, YOU CAME IN, SHE HAD
10 HER HEAD DOWN ON THE DESK, AND YOU SHOT THE BOY TWO
11 TIMES?

12 A. I REFUSE TO ANSWER QUESTIONS THAT MIGHT
13 INCRIMINATE ME.

14 Q. KELSEY, DO YOU REMEMBER TELLING YOUR UNCLE
15 THAT THE GIRL WAS LAYING DOWN WITH HER HEAD ON THE
16 DESK AND IN SORT OF A THINKING POSITION?

17 A. I REFUSE TO ANSWER QUESTIONS THAT MIGHT
18 INCRIMINATE ME.

19 Q. KELSEY, DID YOU SHOOT ANYBODY THAT NIGHT?

20 A. I REFUSE TO ANSWER QUESTIONS THAT MIGHT
21 INCRIMINATE ME.

22 MR. NEWSOME: THOSE ARE THE QUESTIONS THAT
23 I WANTED TO ASK HIM, YOUR HONOR.

24 THE COURT: THANK YOU. NOW, AS I
25 UNDERSTAND IT, COUNSEL, THAT PRIVILEGE EXTENDS NOT

1 ONLY TO THE FIRST PHASE, BUT THROUGHOUT THE TRIAL.
2 IS THAT YOUR POSITION?

3 MR. PEARCE'S ATTORNEY: YES, SIR. WE
4 WOULD ADVISE THE COURT THAT WE HAVE PRIOR TO TODAY
5 AND TODAY HAD AN EXTENDED CONFERENCE WITH OUR CLIENT.
6 WE'VE EXPLAIN TO HIM THE PERSONAL NATURE OF THIS,
7 THAT IT'S HIS DECISION TO MAKE. HE HAS MADE THE
8 DECISION TO STAND ON HIS FIFTH AMENDMENT RIGHTS
9 THROUGHOUT THE ENTIRE PROCESS IN THIS PROCEEDING
10 CONCERNING THIS DEFENDANT.

11 THE COURT: THAT IS YOUR -- IS THAT YOUR
12 UNDERSTANDING, MR. WITNESS?

13 THE WITNESS: YES, SIR.

14 THE COURT: YOU MAY COME DOWN. THANK YOU.
15 NOW, I LEAVE IT TO YOU AT AN APPROPRIATE STAGE IN THE
16 PROCEEDINGS TO REQUEST OF ME THE FACT THAT THIS
17 WITNESS IS UNAVAILABLE.

18 MR. NEWSOME: SUBJECT TO MY EXCEPTION TO
19 YOUR RULING.

20 THE COURT: I UNDERSTAND. NOW, I'M GOING
21 TO LEAVE IT TO YOU TO TELL ME IF YOU WANT ME TO DO
22 THAT AT AN APPROPRIATE TIME.

23 MR. NEWSOME: YES, SIR.

24 THE COURT: ALL RIGHT. ARE WE NOW READY
25 TO PROCEED?

1 MR. NEWSOME: YES, SIR. AND I THINK AT
2 THIS APPROPRIATE TIME I NEED TO TELL YOU THAT I AM
3 GOING TO CALL RICARDO GILFORD WHO IS PREPARED TO
4 TESTIFY THAT KELSEY PEARCE ADMITTED THE NIGHT OF THE
5 MURDER THAT HE SHOT KEN PRESLEY.

6 THE COURT: YES, SIR. WE HAD THAT MATTER
7 UP FOR -- AS A PRETRIAL MATTER. SOLICITOR, I'LL BE
8 GLAD TO HEAR FROM YOU. I'M INCLINED TO SAY THAT I'M
9 GOING TO PERMIT THAT TESTIMONY, QUITE FRANKLY,
10 BECAUSE OF THE -- GIVEN THE CHARACTER OF THE EVENTS,
11 THE PEOPLE INVOLVED, AND THE FACT THAT IT WAS DONE
12 BASICALLY SIMULTANEOUSLY WITH THE EVENT. IT SEEMS TO
13 ME THAT THAT'S SUFFICIENT CORROBORATION AT LEAST TO
14 LET THE JURY HEAR IT AND DECIDE WHETHER IT'S TRUE OR
15 NOT.

16 MR. BAILEY: YES, SIR, YOUR HONOR. I
17 WOULD LIKE FOR THE RECORD TO STATE THAT IT'S MY
18 UNDERSTANDING AND MY INTERPRETATION OF 804(B)(3) THAT
19 A DECLARATION AGAINST PENAL ANIMUS IS NOT AN
20 ADMISSIBLE EXCEPTION TO THE HEARSAY RULE UNLESS
21 THERE'S SOME INDEPENDENT CORROBORATION, WHICH I DON'T
22 FEEL THERE IS IN THIS CASE, BUT I UNDERSTAND THE
23 COURT'S RULING.

24 THE COURT: I THINK I'M GOING TO ADMIT IT
25 SINCE IT -- BECAUSE OF THE PARTIES INVOLVED, THE

1 NATURE OF THE EVENT, AND THE FACT THAT IT OCCURRED ON
2 OR ABOUT THE TIME OF THE EVENT SUCH THAT IT MIGHT
3 WELL MIGHT HAVE BEEN RES GESTAE BY ONE OF THE
4 PARTIES, AND AS I UNDERSTAND IT, IT WAS SAID IN THE
5 PRESENCE OF THE DEFENDANT. ISN'T THAT RIGHT?

6 MR. NEWSOME: YES, SIR. I THINK SO. I
7 DON'T KNOW WHETHER HE WAS PAYING ATTENTION, BUT THEY
8 WERE ALL, ACCORDING TO --

9 THE COURT: I'M GOING TO LET IT IN, FOR
10 WHAT IT'S WORTH. IS THAT WITNESS AVAILABLE?

11 MR. NEWSOME: YES, SIR.

12 MR. BAILEY: YOUR HONOR, IN THE PRESENCE
13 OF THE JURY, I WOULD LIKE TO MOVE THAT EVIDENCE IN
14 AND THEN REST.

15 THE COURT: THAT'S FINE. WE'LL DO THAT.
16 AND I'M GOING TO LET YOU CROSS-EXAMINE ON THAT ISSUE.
17 I WOULD NOT LET THAT INDIVIDUAL'S STATEMENT IN, BUT
18 BECAUSE IT'S A WITNESS, YOU CAN CROSS-EXAMINE HIM.

19 MR. BAILEY: YES, SIR.

20 (WHEREUPON, THE JURY WAS
21 RETURNED TO THE COURTROOM AND
22 THE FOLLOWING PROCEEDINGS WERE
23 COMMENCED IN OPEN COURT.)

24 THE COURT: MR. BAILEY, YOU HAVE A
25 HOUSEKEEPING MATTER?

1 MR. BAILEY: YES, SIR. YOUR HONOR, IN
2 CHECKING WITH THE COURT REPORTER, I MARKED CERTAIN
3 EXHIBITS FOR IDENTIFICATION THAT I WISH NOW TO MOVE
4 INTO EVIDENCE, AND THAT WOULD BE STATE'S 28 AND 29,
5 THE LATENT PRINTS.

6 THE COURT: THAT WAS WITHOUT OBJECTION,
7 WAS IT NOT, MR. NEWSOME?

8 MR. NEWSOME: WITHOUT OBJECTION.

9 THE COURT: ALL RIGHT.

10 MR. BAILEY: 30, 31, 32, WHICH WERE THE
11 FINGERPRINT CARDS.

12 THE COURT: WITHOUT OBJECTION.

13 MR. BAILEY: 1 AND 2, WHICH WERE
14 PHOTOGRAPHS OF THE MAZDA AUTOMOBILE.

15 THE COURT: WITHOUT OBJECTION.

16 MR. BAILEY: NUMBER 3, WHICH WAS THE GUN,
17 AND NUMBER 27, WHICH WAS THE --

18 THE COURT: GUN'S WITHOUT OBJECTION. GO
19 AHEAD.

20 MR. BAILEY: -- PAPER OUT OF THE CASH
21 REGISTER.

22 THE COURT: ALL OF THOSE WERE WITHOUT
23 OBJECTION.

24 MR. BAILEY: YES, SIR, YOUR HONOR. AND I
25 THINK THAT SHOULD BE -- EVERYTHING I MARKED FOR

1 IDENTIFICATION SHOULD BE IN EVIDENCE AT THIS POINT IN
2 TIME. IF I LEFT SOMETHING OUT, I'LL MAKE A BLANKET
3 MOTION THAT EVERYTHING BE MARKED FOR IDENTIFICATION.

4 THE COURT: EVERYTHING HERETOFORE MARKED
5 FOR IDENTIFICATION IS ADMITTED INTO EVIDENCE, THERE
6 BEING NO PRIOR OBJECTION.

7 (STATE'S EXHIBITS NUMBERS 27,
8 28, 29, 30, 31, 32 AND 3
9 ENTERED INTO EVIDENCE.)

10 THE COURT: ALL RIGHT, SIR. CALL YOUR
11 NEXT WITNESS.

12 MR. BAILEY: YOUR HONOR, THE STATE RESTS.

13 THE COURT: ALL RIGHT, SIR.

14 MR. NEWSOME: I WOULD CALL RICARDO GILFORD
15 TO THE STAND.

16 THE CLERK: IF YOU WOULD, PLEASE COME OVER
17 HERE. PLEASE PLACE YOUR LEFT HAND ON THE BIBLE.
18 PLEASE RAISE YOUR RIGHT HAND. PLEASE STATE YOUR NAME
19 FOR THE RECORD.

20 THE WITNESS: RICARDO GILFORD.

21 THE CLERK: COULD YOU SPELL THAT LAST NAME
22 FOR ME, PLEASE.

23 THE WITNESS: G-I-L-F-O-R-D.

24 RICARDO GILFORD,

25 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,

RICARDO GILFORD - DIRECT BY MR. NEWSOME

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1 TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. NEWSOME:

4 Q. WOULD YOU STATE YOUR NAME FOR THE RECORD,
5 PLEASE?

6 A. RICARDO GILFORD.

7 Q. YOU'RE GOING TO HAVE TO SPEAK REAL LOUD.

8 THE COURT: YOU'RE GOING TO HAVE TO TALK A
9 LOT LOUDER THAN THAT SO WE CAN ALL HEAR YOU OVER
10 THERE. WOULD YOU DO THAT FOR ME, PLEASE?

11 BY MR. NEWSOME:

12 Q. I'LL STAND RIGHT HERE, RICARDO, AND YOU
13 TALK LOUD ENOUGH SO YOU THINK I CAN HEAR YOU, OKAY?

14 RICARDO, HAVE YOU EVER MET ME BEFORE?

15 A. NO, SIR.

16 Q. DID YOU EVEN KNOW THAT WE WERE TRYING TO
17 REACH YOU BY PROCESS UNTIL YESTERDAY?

18 A. NO, SIR.

19 Q. ALL RIGHT. SPEAK UP LOUDER.

20 THE COURT: YOUNG MAN, I KNOW THAT YOU CAN
21 TALK LOUDER THAN THAT. NOW, YOU MAY NOT WANT TO, BUT
22 YOU'RE GOING TO HAVE TO. SEE THAT LADY IN THAT RED
23 DRESS OVER THERE? I WANT YOU TO TALK SO THAT SHE CAN
24 HEAR YOU. OKAY? I KNOW IT'S MAYBE DIFFICULT, BUT
25 YOU'RE GOING TO HAVE TO SIT UP, NOW, BECAUSE IT'S

1 IMPORTANT TO EVERYBODY IN THIS COURTROOM HERE WHAT
2 YOU HAVE TO SAY. ALL RIGHT. THANK YOU.

3 BY MR. NEWSOME:

4 Q. DO YOU REMEMBER MARCH 19TH, 1995 (SIC)?

5 A. YES, SIR.

6 Q. YOU DO? ALL RIGHT. DID YOU SEE KELSEY
7 PEARCE ON THAT DAY?

8 A. YES, I DID.

9 Q. WHERE DID YOU SEE HIM?

10 A. AT THE EBONY LOUNGE CLUB IN ORANGEBURG.

11 Q. AT THE EBONY LOUNGE CLUB IN ORANGEBURG?

12 A. YEAH.

13 Q. ALL RIGHT. ABOUT WHAT TIME WAS IT?

14 A. ABOUT 11:30.

15 Q. ALL RIGHT. SPEAK UP LOUDER, IF YOU WOULD.
16 OKAY? ABOUT 11:30?

17 A. YES.

18 Q. ALL RIGHT. DID YOU HAVE A CONVERSATION
19 WITH HIM?

20 A. YES, I DID.

21 Q. ALL RIGHT. WHAT DID HE SAY, IF ANYTHING,
22 ABOUT THE INCIDENT THAT OCCURRED AT THE BLUE DIAMOND
23 CASINO ON MARCH 18TH, 1995 (SIC)?

24 A. I GOT IN THE CAR WITH HIM. WE TOOK A RIDE
25 TO THE GAS STATION.

RICARDO GILFORD - DIRECT BY MR. NEWSOME

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1 MR. BAILEY: I CAN'T HEAR.

2 THE COURT: YOUNG MAN, YOU CAN'T TALK ANY
3 LOUDER THAN THAT?

4 THE WITNESS: I GOT IN THE CAR WITH HIM.

5 BY MR. NEWSOME:

6 Q. ALL RIGHT. LET ME ASK YOU, IS THIS THE
7 CAR YOU GOT IN WITH HIM?

8 A. YES.

9 Q. THIS MAZDA?

10 A. YES.

11 Q. REFERRING TO STATE'S EXHIBIT NUMBER 1,
12 KENNETH PRESLEY'S CAR. YOU GOT IN -- WAS ANYBODY
13 ELSE IN THE CAR WITH YOU AT THAT TIME?

14 A. NO, SIR.

15 Q. JUST YOU AND KELSEY. ALL RIGHT. WHAT DID
16 HE SAY?

17 A. ON THE WAY COMING BACK FROM THE GAS
18 STATION, HE SAID WE JUST HAD DID THIS CRIME.

19 Q. HE SAID WE HAD JUST DID THIS CRIME?

20 A. YEAH.

21 Q. WHO WAS HE REFERRING TO? HE AND HERMAN?

22 A. YES, SIR.

23 Q. ALL RIGHT. GO AHEAD.

24 A. AND THEN WHEN I GOT BACK TO THE CLUB, I
25 GOT OUT OF THE CAR, AND I GOT BACK IN MY CAR, AND I

1 LEFT.

2 Q. OKAY. ALL RIGHT. DID HE EVER MAKE ANY
3 STATEMENT AS TO WHO SHOT WHO THAT NIGHT?

4 A. YES, HE DID.

5 Q. ALL RIGHT. WHO DID HE SAY -- DID HE SAY
6 THAT HE SHOT ANYBODY?

7 A. YES, SIR.

8 Q. WHAT DID HE SAY? SAY HOW HE SAID IT TO
9 THE BEST OF YOUR MEMORY.

10 A. HE SAID HE SHOT KELLY HOFFMAN AND ANOTHER
11 GUY. I DON'T KNOW HIS NAME.

12 Q. AND WHAT ELSE DID HE SAY HE DID?

13 A. AND HE TOOK THE CAR, AND THEY WAS AT THE
14 CLUB.

15 Q. YOU SAY HE TOOK THE CAR?

16 A. YEAH.

17 Q. IN THE SAME CAR HE WAS DRIVING YOU AROUND
18 IN?

19 A. YES, SIR.

20 Q. ALL RIGHT. DID HE APPEAR TO BE DRUNK TO
21 YOU AT THAT TIME?

22 A. I DON'T REALLY KNOW.

23 Q. YOU DON'T KNOW IF HE WAS DRUNK? ALL
24 RIGHT. DID YOU GIVE THIS INFORMATION TO THE POLICE
25 ON MARCH 19TH IN THIS STATEMENT I HOLD IN MY HAND?

RICARDO GILFORD - CROSS BY MR. BAILEY

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1 A. YES, SIR.

2 MR. NEWSOME: THANK YOU. I HAVE NO
3 FURTHER QUESTIONS. PLEASE ANSWER ANY QUESTIONS MR.
4 BAILEY MIGHT HAVE.

5 C R O S S - E X A M I N A T I O N

6 BY MR. BAILEY:

7 Q. OKAY. YOU'RE RICARDO GILFORD?

8 A. YES, SIR.

9 Q. HOW OLD ARE YOU NOW?

10 A. TWENTY.

11 Q. TWENTY? OKAY. DO YOU HAVE ANY CRIMINAL
12 RECORD?

13 A. NO, SIR.

14 Q. OKAY. WHERE DO YOU LIVE?

15 A. NEW YORK CITY.

16 Q. NEW YORK CITY. AND ARE YOU RELATED TO
17 HERMAN HUGHES?

18 A. NO, SIR.

19 Q. ARE YOU A FRIEND OF HIS?

20 A. YES, SIR.

21 Q. OKAY. HOW LONG HAVE YOU KNOWN HERMAN
22 HUGHES?

23 A. A COUPLE OF YEARS.

24 Q. COUPLE OF YEARS?

25 A. YES, SIR.

- 1 Q. IN MARCH OF '94, HOW LONG HAD YOU KNOWN
2 HIM?
- 3 A. A COUPLE OF YEARS.
- 4 Q. COUPLE OF YEARS THEN?
- 5 A. YEAH.
- 6 Q. WERE Y'ALL GOOD FRIENDS?
- 7 A. YES, SIR.
- 8 Q. OKAY. WHAT TIME DID YOU GET TO THE EBONY
9 CLUB ON MARCH THE 28TH (SIC)?
- 10 A. IT WAS ABOUT 11:30 OR 11:35.
- 11 Q. OKAY. AND WHO WAS THERE WHEN YOU GOT
12 THERE?
- 13 A. KELSEY PEARCE AND HERMAN HUGHES.
- 14 Q. HERMAN HUGHES. DO YOU KNOW A GIRL NAMED
15 BARBARA JOHNSON?
- 16 A. YES, SIR.
- 17 Q. WAS SHE THERE?
- 18 A. YES, SIR.
- 19 Q. DID YOU SEE HER?
- 20 A. YES, SIR.
- 21 Q. DID YOU TALK TO HER?
- 22 A. YES, I DID.
- 23 Q. DID SHE TALK TO YOU?
- 24 A. NO. I DIDN'T TALK TO HER.
- 25 Q. BUT YOU SAW HER?

RICARDO GILFORD - CROSS BY MR. BAILEY

1204

1 A. YEAH. I SAW HER AT THE CLUB.

2 Q. AND SHE SAW YOU?

3 A. YEAH.

4 Q. OKAY. HOLD ON A SECOND. LATER ON, DID
5 YOU GO TO THE WAFFLE HOUSE?

6 A. YES, SIR.

7 Q. OKAY. AND HOW DID YOU GET THERE?

8 A. I DROVE MY CAR.

9 Q. DROVE YOUR CAR. AND DIDN'T YOU DRIVE
10 KELSEY PEARCE HOME FROM THE WAFFLE HOUSE?

11 A. YES, SIR.

12 Q. NOW, ARE YOU TELLING THIS JURY THAT YOU
13 AND KELSEY PEARCE GOT IN THE MAZDA AND DROVE TO GET
14 GAS?

15 A. YES, SIR.

16 Q. THE GAS FOR THE MAZDA?

17 A. WE DROVE TO THE GAS STATION ON 601.

18 Q. ALL RIGHT. WHAT TIME DID YOU LEAVE?

19 A. I LEFT -- I LEFT THAT CLUB AND I WENT TO
20 ANOTHER CLUB, SO IT WAS ABOUT 1:00.

21 Q. ALL RIGHT. WHEN YOU LEFT THE EBONY CLUB,
22 DID YOU LEAVE BY YOURSELF?

23 A. NO. I HAD FOUR PEOPLE IN THE CAR WITH ME.

24 Q. ALL RIGHT. WAS KELSEY ONE OF THEM?

25 A. NO. NOT AT THE TIME. THEY STILL WAS

1 THERE.

2 Q. HUH?

3 A. THEY STILL WAS THERE.

4 Q. ALL RIGHT. SO YOU LEFT THE EBONY CLUB AND
5 WENT TO ANOTHER CLUB WITH FOUR OTHER PEOPLE IN YOUR
6 CAR?

7 A. YES.

8 Q. AND THEN YOU CAME BACK TO THE EBONY CLUB?

9 A. I CAME BACK THROUGH, AND I LEFT, TOOK THEM
10 HOME, AND I CAME BACK TO ORANGEBURG. THAT'S WHEN I
11 PICKED THEM UP FROM THE WAFFLE HOUSE, DROPPED THEM
12 OFF.

13 Q. BEFORE WE GET TO THE WAFFLE HOUSE, YOU
14 TOLD US THAT YOU TOOK KELSEY PEARCE OR YOU WENT WITH
15 KELSEY PEARCE --

16 A. TO THE GAS STATION.

17 Q. IN THE MAZDA?

18 A. AND I CAME RIGHT BACK.

19 Q. WHAT TIME DID YOU LEAVE THE EBONY CLUB
20 WITH KELSEY PEARCE?

21 A. IT WAS ABOUT 15 MINUTES AFTER I GOT THERE.

22 Q. WHICH WAS WHAT TIME?

23 A. 12:00.

24 Q. ABOUT 12:00?

25 A. 12:00 OR 12:15.

1 Q. ALL RIGHT. AND HOW MUCH GAS DID KELSEY
2 PUT IN THAT MAZDA?

3 A. TEN DOLLARS' WORTH.

4 Q. TEN DOLLARS' WORTH. OKAY. AND THEN DID
5 HE DRIVE STRAIGHT BACK TO THE EBONY CLUB?

6 A. YES, SIR.

7 Q. OKAY. AND WHERE WAS HERMAN HUGHES THEN?

8 A. HE WAS AT THE CLUB.

9 Q. STILL AT THE CLUB?

10 A. YES, SIR.

11 Q. ALL RIGHT. HOW ABOUT DANIEL OWENS? DID
12 YOU SEE HIM?

13 A. NO, I DIDN'T SEE HIM.

14 Q. OKAY. WHEN YOU MEAN TO THE WAFFLE HOUSE
15 LATER ON THAT NIGHT, WAS BARBARA JOHNSON THERE?

16 A. YES, SIR.

17 Q. YOU SAW HER THERE AT THE WAFFLE HOUSE?

18 A. YES, SIR.

19 Q. OKAY. NOW, MR. GILFORD, YOU KNOW WHAT IT
20 MEANS TO TELL THE TRUTH, DON'T YOU?

21 A. YES, SIR.

22 Q. AND IS WHAT YOU'VE TOLD MR. NEWSOME HERE
23 THE ABSOLUTE, COMPLETE AND WHOLE TRUTH?

24 A. YES, SIR.

25 Q. AS FAR AS WHAT YOU SAY KELSEY PEARCE TOLD

1 YOU?

2 A. YES, SIR.

3 Q. OKAY. DO YOU RECALL MARCH 19TH, 1994,
4 GIVING A STATEMENT TO EARL RHUDY?

5 A. YES, I DID.

6 Q. AND YOU WERE GIVEN YOUR MIRANDA RIGHTS
7 BEFORE THAT STATEMENT, WEREN'T YOU?

8 A. YES, SIR.

9 Q. OKAY. WELL, TAKE A LOOK AT THIS STATEMENT
10 HERE. AND I WANT YOU TO TELL THAT JURY WHETHER OR
11 NOT --

12 MR. NEWSOME: YOUR HONOR, I DON'T SEE ANY
13 MIRANDA RIGHTS WARNING THAT HE WAS GIVEN.

14 MR. BAILEY: MR. NEWSOME'S BEEN GIVEN A
15 COPY OF IT. I'LL BE GLAD TO SHOW IT TO HIM.

16 THE COURT: HE'S NOT A DEFENDANT IN THIS
17 TRIAL.

18 THE WITNESS: I GOT THIS AFTERWARDS.
19 BY MR. BAILEY:

20 Q. OKAY. YOU DID SIGN THIS AT 4:21; RIGHT?

21 A. YES, I DID.

22 Q. ON MARCH 19TH. BUT YOU'RE SAYING YOU DID
23 THAT AFTER YOU GAVE THE STATEMENT?

24 A. YES, SIR.

25 Q. OKAY. IS THIS YOUR STATEMENT? TAKE A

RICARDO GILFORD - CROSS BY MR. BAILEY

1208

1 LOOK AT BOTH PAGES REAL CAREFULLY AND SEE IF YOU
2 SIGNED BOTH PAGES.

3 A. THAT'S MY STATEMENT.

4 Q. THAT'S YOUR STATEMENT? YOU SIGNED IT?

5 MR. BAILEY: YOUR HONOR, I WOULD MOVE TO
6 INTRODUCE THIS.

7 MR. NEWSOME: WITHOUT OBJECTION, YOUR
8 HONOR.

9 THE COURT: WITHOUT OBJECTION.

10 (STATE'S EXHIBIT NUMBER 38
11 MARKED FOR IDENTIFICATION AND
12 ENTERED INTO EVIDENCE.)

13 BY MR. BAILEY:

14 Q. NOW, DID YOU TELL ME YOU AND KELSEY DROVE
15 THE MAZDA TO THE GAS STATION AROUND 12:00?

16 A. HE DROVE THE MAZDA.

17 Q. HE DROVE IT AROUND 12:00?

18 A. YES, SIR.

19 Q. ALL RIGHT. WOULD YOU TELL ME HOW YOU
20 COULD HAVE BEEN IN THE MAZDA WITH KELSEY PEARCE AT
21 12:00 WHEN IN YOUR STATEMENT YOU DIDN'T SEE HIM UNTIL
22 1:30 IN THE MORNING?

23 A. I SAW HIM AT THE CLUB. IT WAS ABOUT 12:00
24 OR 1:30.

25 Q. READ THIS STATEMENT. DOES THAT SAY, "ON

1 3-19-94, AT APPROXIMATELY 1:30 A.M., I SAW KELSEY
2 PEARCE AT THE EBONY CLUB"?

3 A. YES, SIR.

4 Q. AND DIDN'T YOU SAY THIS STATEMENT WAS
5 TRUE?

6 A. THAT'S TRUE.

7 Q. WELL, DID YOU SEE HIM AT 12:00 OR 1:30?
8 YOU COULDN'T SEE HIM --

9 A. I WAS GUESSING AT THE TIME AT THE MOMENT.

10 Q. ARE YOU GUESSING NOW OR ARE YOU TELLING
11 WHAT YOU KNOW AS TO BE THE TRUTH?

12 A. IT'S THE TRUTH. I WAS GUESSING THE TIME.
13 I DIDN'T KNOW.

14 Q. WHAT'S YOUR BEST GUESS RIGHT NOW AS TO
15 WHEN YOU FIRST SAW KELSEY PEARCE? 12:00 OR 1:30?

16 A. I DON'T REALLY KNOW WHAT THE TIME WAS. HE
17 WAS THERE, THOUGH.

18 Q. WERE YOU DRINKING?

19 A. WAS I DRINKING?

20 Q. YES, SIR.

21 A. YES, I WAS.

22 Q. HOW MUCH?

23 A. I HAD TWO HEINEKINS.

24 Q. TWO HEINEKINS?

25 A. YEAH.

RICARDO GILFORD - CROSS BY MR. BAILEY

1210

1 Q. AT 12:00?

2 A. YEAH.

3 Q. WHAT TIME DID YOU GET THERE?

4 A. I GOT THERE -- I LEFT MY HOUSE AT 10:30,
5 SO I GOT THERE AT 11:30.

6 Q. GOT THERE WHEN?

7 A. I HAD TO PICK UP SOME OTHER FELLOWS.

8 Q. ALL RIGHT. BUT AT EITHER 12:00 OR 1:30 AT
9 THE EBONY CLUB ON FRIDAY NIGHT, YOU HAD TWO HEINEKINS
10 IS WHAT YOU'RE TELLING THIS JURY?

11 A. YES.

12 Q. SO YOU WERE SOBER; RIGHT?

13 A. SOBER.

14 Q. HOW ABOUT KELSEY? WAS HE SOBER?

15 A. I CAN'T REALLY SAY FOR HIM. I DON'T KNOW.

16 Q. YOU DON'T KNOW?

17 A. HE DIDN'T LOOK HIGH TO ME.

18 Q. COULD YOU TELL IF HE HAD BEEN DRINKING OR
19 NOT?

20 A. NO.

21 Q. YOU TALKED TO HERMAN HUGHES AT THE CLUB?

22 A. YES, I DID.

23 Q. NOW, DIDN'T YOU TELL THE JURY A FEW
24 MINUTES AGO THAT IT WAS YOU AND KELSEY PEARCE IN THE
25 MAZDA BY YOURSELVES WHEN YOU HAD THIS CONVERSATION

1 WITH KELSEY PEARCE?

2 A. YES, I DID.

3 Q. READ THE SECOND PARAGRAPH HERE. READ IT
4 OUT LOUD. OKAY? START WITH, "KELSEY WAS SITTING IN
5 THE CAR."

6 A. "KELSEY WAS SITTING IN THE CAR" --

7 Q. READ IT LOUD WHERE THE JURY CAN HEAR YOU.

8 A. "KELSEY WAS SITTING IN THE GRAY MAZDA RX7
9 WITH HERMAN. I ASKED KELSEY WHERE HE WAS GOING IN
10 THE CAR. HE SAID HE STOLE THE CAR FROM A WHITE GUY
11 IN ST. MATTHEWS, AND HE ALSO SAID THAT TWO WHITE GUYS
12 AND A GIRL JUST TOLD ME THAT I KNEW THE WHITE GIRL."

13 Q. OKAY. THAT'S THE FIRST PARAGRAPH. I
14 WANTED YOU TO READ -- LET ME READ THIS PARAGRAPH
15 AGAIN TO YOU BECAUSE I DON'T KNOW IF THE JURY HEARD
16 YOU, BUT DIDN'T YOU SAY IN THAT STATEMENT THAT ON
17 MARCH THE 19TH, KELSEY WAS SITTING IN A GRAY RX7
18 MAZDA?

19 A. THAT'S WHEN I FIRST PULLED UP.

20 Q. HUH?

21 A. WHEN I FIRST CAME IN THE CLUB AND DRIVING
22 UP, HE WAS SITTING IN THE CAR.

23 Q. BUT LET ME FINISH THE PARAGRAPH. "KELSEY
24 WAS SITTING IN A GRAY RX7 MAZDA WITH HERMAN. I ASKED
25 KELSEY WHERE HE GOT THE CAR AND HE SAID HE STOLE THE

RICARDO GILFORD - CROSS BY MR. BAILEY

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1 CAR FROM A WHITE GUY IN ST. MATTHEWS."

2 NOW, AREN'T YOU SAYING IN THIS STATEMENT THAT
3 YOU GAVE THE DAY AFTER THIS THING HAPPENED THAT
4 HERMAN HUGHES WAS WITH KELSEY WHEN KELSEY TOLD YOU
5 WHAT HE SAID HE DID?

6 A. YES. HE WAS THERE, BUT HE WALKED OFF WHEN
7 I WAS TALKING TO KELSEY. I WAS IN THE CAR TALKING TO
8 HIM.

9 Q. SO YOU'RE TELLING US NOW THAT THEY WERE
10 BOTH THERE AND THEN HERMAN WALKED OFF?

11 A. YEAH.

12 Q. AND DIDN'T YOU SAY IN THAT STATEMENT THAT
13 KELSEY SAID HE SHOT TWO WHITE GUYS AND A GIRL?

14 A. YES.

15 Q. OKAY. NOW, WHEN YOU TOLD MR. NEWSOME YOUR
16 STORY UNDER OATH THAT YOU TOLD ME WAS TRUE, YOU SAID
17 THAT KELSEY SHOT A GIRL NAMED KELLY AND A WHITE GUY
18 AND TOOK THE CAR; RIGHT?

19 A. YES.

20 Q. THAT'S TWO PEOPLE; RIGHT?

21 A. RIGHT.

22 Q. BUT THE DAY AFTER, WHEN YOU TALKED TO MR.
23 RHUDY, YOU SAID HE TOLD YOU HE SHOT THREE PEOPLE.
24 NOW, WHICH IS IT?

25 A. THAT'S WHAT HE TOLD ME.

1 Q. WHY DIDN'T YOU TELL MR. NEWSOME THAT
2 KELSEY TOLD YOU HE SHOT THREE PEOPLE INSTEAD OF TWO
3 WHEN HE ASKED YOU THE QUESTION?

4 A. I DIDN'T KNOW IF HE WAS TELLING THE TRUTH
5 OR NOT.

6 Q. YOU STILL DON'T KNOW, DO YOU?

7 A. NO.

8 Q. IS IT YOUR TESTIMONY Y'ALL WERE RIDING IN
9 THE CAR WHEN HE TOLD YOU THIS?

10 A. MY TESTIMONY?

11 Q. YEAH.

12 A. WE RODE TO THE GAS STATION AND CAME RIGHT
13 BACK.

14 Q. OKAY.

15 A. AND I GOT OUT OF THE CAR.

16 Q. AND YOU'RE SAYING KELSEY WAS DRIVING THE
17 MAZDA RX7 WHILE HE WAS TELLING YOU THIS; RIGHT?

18 A. YES.

19 Q. OKAY. IF THE CONVERSATION THAT YOU HAD
20 WITH KELSEY PEARCE WAS JUST BETWEEN THE TWO OF YOU,
21 WHY IS IT THAT YOU SAY ON THE SECOND PAGE, "I ASKED
22 HERMAN IF THIS WAS TRUE"? NOW, IF HERMAN WASN'T
23 THERE, YOU COULDN'T VERY WELL ASK IF IT WAS TRUE,
24 COULD YOU?

25 A. HE WAS SITTING IN MY CAR.

RICARDO GILFORD - CROSS BY MR. BAILEY

1214

1 Q. WHO WAS?

2 A. HERMAN.

3 Q. I THOUGHT YOU JUST SAID --

4 A. IN THIS CAR.

5 Q. I THOUGHT YOU JUST TOLD THIS JURY UNDER
6 OATH THAT WHEN YOU AND KELSEY GOT IN THAT CAR TO GET
7 GAS, HERMAN HAD BEEN THERE EARLIER AND HE GOT OUT,
8 AND AFTER HE GOT OUT, THAT'S WHEN KELSEY TOLD YOU HE
9 SHOT THESE PEOPLE.

10 A. NO. WE DROVE TO THE GAS STATION. ON THE
11 WAY COMING BACK, THAT'S WHAT I TOLD YOU.

12 Q. YOU'VE GOT ME REAL CONFUSED HERE.

13 A. I AIN'T GOT YOU CONFUSED. I'M TELLING YOU
14 WHAT I KNOW.

15 Q. LET'S START ALL OVER AGAIN. OKAY? YOU
16 ARE TELLING US THAT YOU AND HERMAN AND KELSEY GET
17 INTO THIS CAR; RIGHT?

18 A. THAT'S RIGHT.

19 Q. THIS MAZDA RX7. OKAY. THEN HERMAN GETS
20 OUT; RIGHT?

21 A. YES.

22 Q. OKAY. THEN YOU AND KELSEY DRIVE TO THE
23 GAS STATION?

24 A. THAT'S RIGHT.

25 Q. ARE YOU WITH ME SO FAR?

1 A. HE GOT OUT, WENT TO MY CAR, AND TOLD SOME
2 GUYS THAT WAS IN MY CAR.

3 Q. WHO DID? WHEN YOU SAY "HE," YOU HAVE TO
4 GIVE ME A NAME BECAUSE I DON'T KNOW WHO YOU'RE
5 TALKING ABOUT.

6 A. HERMAN HUGHES GOT OUT OF MY CAR -- I MEAN,
7 HE WAS ALREADY GETTING OUT OF THE CAR.

8 Q. ALL RIGHT, SIR.

9 A. HE WALKED TOWARDS MY CAR.

10 Q. I GOT YOU. BUT THE POINT IS, HERMAN
11 HUGHES GETS OUT OF YOUR CAR, OUT OF THE CAR?

12 A. OUT OF THE MAZDA.

13 Q. OUT OF THE MAZDA. SO THAT LEAVES YOU AND
14 KELSEY PEARCE IN THE MAZDA?

15 A. YES.

16 Q. AND IT'S DURING THAT TRIP TO THE GAS
17 STATION THAT KELSEY PEARCE TELLS YOU ABOUT SHOOTING
18 EITHER TWO OR THREE PEOPLE, DEPENDING ON WHICH
19 VERSION WE'RE LISTENING TO; RIGHT?

20 A. YES.

21 Q. SO IF THERE'S ONLY TWO OF YOU IN THE CAR,
22 WHAT I WANT YOU TO TELL ME AND THIS JURY IS HOW YOU
23 COULD HAVE ASKED HERMAN TO VERIFY THAT STORY IF
24 HERMAN WASN'T IN THE CAR.

25 A. WHEN I CAME BACK.

RICARDO GILFORD - CROSS BY MR. BAILEY

1216

1 Q. OKAY. SO YOU'RE SAYING NOW YOU CAME BACK.

2 A. I GOT OUT OF HIS CAR, THE CAR THAT HE -- I
3 GUESS HE STOLE, AND I GOT BACK IN MY CAR, AND WE WAS
4 TALKING.

5 Q. OKAY. SO NOW YOU'RE -- NOW YOU'RE BACK IN
6 YOUR CAR?

7 A. AND I LEFT THE CLUB.

8 Q. AND WHO ELSE WAS IN YOUR CAR TALKING?

9 A. LET'S SEE. I DON'T -- I DON'T REALLY KNOW
10 THEIR NAMES. WE'VE GOT NICKNAMES FOR EACH OTHER.

11 Q. GIVE ME NICKNAMES.

12 A. WELL, RONNIE.

13 Q. RONNIE GILMORE?

14 A. YES.

15 Q. WHO ELSE?

16 A. AND DUANE.

17 Q. DUANE GILMORE; RIGHT?

18 A. YES.

19 Q. WHO ELSE?

20 A. WE ALL WAS RIDING TOGETHER. WE CAME TO
21 EBONY LOUNGE ABOUT 11:30 -- IT WAS ABOUT 11:30,
22 12:00.

23 Q. WAIT A MINUTE. IT'S 11:30 AGAIN? I
24 THOUGHT WE KIND OF SETTLED ON 1:30.

25 A. I DON'T KNOW THE TIME OF THE FACT, NO,

1 SIR. I DON'T KNOW. I'M JUST SAYING WE WAS THERE AND
2 I SEEN THEM. AND I GAVE THEM A STATEMENT LIKE THAT.
3 I DON'T REALLY KNOW THE TIME.

4 Q. AFTER Y'ALL GOT BACK FROM GETTING THE GAS
5 IN THE MAZDA RX7 --

6 A. YES.

7 Q. -- DID ANYBODY LEAVE AGAIN IN THAT CAR?

8 A. NO. THAT CAR WAS STILL THERE.

9 Q. STILL THERE AT 4:30, AND WHEN Y'ALL WENT
10 TO THE WAFFLE HOUSE, IT WAS STILL THERE; RIGHT?

11 A. NO. I CAME BACK FROM ST. MATTHEWS AFTER I
12 DROPPED THE FOUR -- THE THREE GUYS I HAD IN THE CAR
13 WITH ME.

14 Q. YES.

15 A. I CAME BACK TO ORANGEBURG TO THE CLUB
16 BECAUSE I HAD TO PICK SOMEBODY ELSE UP FROM ANOTHER
17 CLUB THAT I WENT TO.

18 Q. ALL RIGHT.

19 A. AND SO I PICKED THEM UP, AND WE DROPPED
20 THEM OFF HOME, AND THEN WE WENT BACK TO COLUMBIA.

21 Q. OKAY. BUT THE ONLY TRIP THAT THAT MAZDA
22 MADE FROM THE EBONY CLUB WAS THE TRIP THAT Y'ALL TOOK
23 TO BUY GAS; RIGHT?

24 A. THAT'S THE ONLY TRIP.

25 Q. AND AT 4:30 WHEN Y'ALL LEFT, THAT MAZDA

RICARDO GILFORD - CROSS BY MR. BAILEY

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1 WAS STILL SITTING THERE IN THE PARKING LOT OF THE
2 EBONY CLUB, WASN'T IT?

3 A. YES.

4 Q. OKAY. NOW, I WANT YOU TO TELL ME WHY
5 Y'ALL WENT TO PUT 10 DOLLARS OF GAS IN A STOLEN CAR
6 AND NOBODY WAS GOING TO DRIVE IT ANYWHERE.

7 A. IT'S LIKE THIS. I DIDN'T KNOW THE CAR WAS
8 STOLEN. I WAS TALKING TO HIM BECAUSE THAT'S MY
9 COUSIN. AND WE WENT FOR A RIDE, AND WE CAME BACK,
10 AND I GOT OUT OF THE CAR AND GOT IN MY OWN CAR.

11 Q. YOU SAY YOU DIDN'T KNOW THE CAR WAS
12 STOLEN?

13 A. NO, I DIDN'T.

14 Q. ALL RIGHT. LET ME REFER TO YOUR STATEMENT
15 AGAIN.

16 MR. BAILEY: MAY I APPROACH THE WITNESS,
17 YOUR HONOR?

18 THE COURT: SURE.

19 BY MR. BAILEY:

20 Q. MR. GILFORD, DOESN'T YOUR STATEMENT THAT
21 YOU GAVE THE DAY AFTER THIS HAPPENED SAY, "KELSEY WAS
22 SITTING IN A GRAY RX7 MAZDA WITH HERMAN. I ASKED
23 KELSEY WHERE HE GOT THE CAR, AND HE SAID HE STOLE THE
24 CAR FROM A WHITE GUY IN ST. MATTHEWS, AND HE ALSO
25 SAID THAT HE SHOT TWO WHITE GUYS AND A GIRL."

11 Q. DID YOU KNOW KELLY HOFFMAN?
1250 A. YES, SIR.
13 Q. HOW WELL DID YOU KNOW KELLY HOFFMAN?
14 MR. BAILEY: OBJECTION. HOW WELL HE KNEW
15 KELLY HOFFMAN IS NOT RELEVANT, YOUR HONOR.
16 THE COURT: SUSTAINED. IT HAS NO BEARING
17 ON THE ISSUE.
18 BY MR. NEWSOME:
19 Q. HOW WELL DID YOU KNOW KELSEY PEARCE?
20 A. THAT'S MY COUSIN.
21 Q. HE'S YOUR COUSIN?
22 A. YES, SIR.
23 MR. NEWSOME: THANK YOU.
24 THE COURT: ANY FURTHER CROSS?
25 MR. BAILEY: ONE QUESTION, YOUR HONOR.

17 OKAY?

18 A. OKAY.

19 Q. DID YOU OR DID YOU NOT KNOW THAT CAR WAS
20 STOLEN?

21 A. AT THE TIME I WAS WRITING THE STATEMENT,
22 THEY GOT ME CONFUSED. THEY HAD ME ALL NERVOUS. HE
23 STOPPED -- PULLED ME OVER FOR NO REASON.

24 Q. NO REASON?

25 A. THE COP PULLED ME OVER, SAID THE SHERIFF

1 MAYBE TWO.

2 R E C R O S S - E X A M I N A T I O N

3 BY MR. BAILEY:

4 Q. MR. GILFORD, YOU SAID THAT YOU DIDN'T
5 WRITE THE STATEMENT OUT, THAT MR. RHUDY WROTE IT OUT?

6 A. I WROTE THE STATEMENTS, AND THEN HE WROTE
7 IT OVER.

8 Q. OKAY. AND THIS IS THE STATEMENT HE WROTE
9 OVER; RIGHT?

10 A. YES.

11 Q. IS THIS EXACTLY YOUR WORDS OR HIS WORDS?

12 A. I WROTE THE STATEMENT, AND HE WROTE IT
13 OVER, AND THEN I SIGNED IT.

14 Q. DID HE CHANGE IT WHEN HE WROTE IT OVER?

15 A. LIKE THE WAY THAT I SAID IT, HE CHANGED IT
16 LIKE, YOU KNOW.

17 Q. ALL RIGHT. DOWN ON THE BOTTOM HERE,
18 DOESN'T IT SAY OVER YOUR SIGNATURE, "I'VE READ EACH
19 PAGE OF THIS STATEMENT" --

20 A. YES, SIR.

21 Q. -- "CONSISTING OF TWO PAGES, EACH PAGE OF
22 WHICH BEARS MY SIGNATURE AND CORRECTIONS, IF ANY,
23 BEARS MY INITIALS, AND I CERTIFY THAT THE FACTS
24 CONTAINED HEREIN ARE TRUE AND CORRECT"; IS THAT
25 CORRECT?

1 A. YES.

2 MR. BAILEY: NOTHING FURTHER, YOUR HONOR,
3 THE COURT: YOU MAY COME DOWN.

4 MR. NEWSOME: YOUR HONOR, AT THIS TIME, WE
5 REQUEST A RECESS.

6 THE COURT: A RECESS?

7 MR. NEWSOME: YES.

8 THE COURT: SURE.

9 (WHEREUPON, THE JURY WAS REMOVED
10 FROM THE COURTROOM AND THE
11 FOLLOWING PROCEEDINGS COMMENCED
12 IN OPEN COURT.)

13 THE COURT: I UNDERSTAND YOU HAVE A MATTER
14 FOR THE COURT OUTSIDE OF THE PRESENCE OF THE JURY,
15 MR. NEWSOME.

16 MR. NEWSOME: YES, SIR, A COUPLE OF THEM.
17 YOUR HONOR, IT IS MY INTENTION THAT WE ARE GOING TO
18 REST WITH THE EVIDENCE WE'VE PRESENTED WITH THE
19 EXCEPTION THAT WE REQUEST YOU TO EXPLAIN TO THE JURY
20 ABOUT THAT KELSEY PEARCE WAS UNAVAILABLE, AND THAT'S
21 WHY THE STATE -- WHY RICARDO WAS ALLOWED TO TESTIFY.
22 THEY HAD NOT BEEN INFORMED ABOUT KELSEY PEARCE. AND
23 THEN I'D LIKE YOU TO QUESTION MY CLIENT TO MAKE SURE
24 HE UNDERSTANDS THAT HE DOES HAVE THE RIGHT TO
25 TESTIFY.

1 THE COURT: KELSEY PEARCE?

2 MR. NEWSOME: YES.

3 THE COURT: IS IT P-I-E-R-C-E?

4 MR. NEWSOME: P-E-A-R-C-E, I BELIEVE.

5 THE COURT: ALL RIGHT. IS THERE OTHER --

6 IS THERE GOING TO BE ANY MORE DEFENDANTS -- I MEAN,

7 ANY OTHER WITNESSES? EXCUSE ME.

8 MR. NEWSOME: NO, SIR. WITH THAT, WE

9 WOULD REST.

10 THE COURT: ALL RIGHT, SIR. AS I

11 UNDERSTAND IT, YOU ARE SAYING TO ME THAT THE

12 DEFENDANT, HERMAN HUGHES, DOES NOT DESIRE TO TESTIFY?

13 MR. NEWSOME: AS A MATTER OF FACT, HE'S

14 NOT TESTIFYING. IT'S MY ADVICE TO HIM NOT TO

15 TESTIFY, YES, SIR.

16 THE COURT: PARDON ME?

17 MR. NEWSOME: AS A MATTER OF FACT, HE'S

18 NOT TESTIFYING.

19 THE COURT: ALL RIGHT. MR. HUGHES, PLEASE

20 STAND. MR. HUGHES, I WANT YOU TO LISTEN TO ME VERY

21 CAREFULLY NOW.

22 THE DEFENDANT: YES, SIR.

23 THE COURT: AND IF THERE'S ANYTHING ABOUT

24 THAT WHICH I TELL YOU THAT YOU DON'T UNDERSTAND, I

25 WANT YOU TO STOP ME SO THAT I CAN EXPLAIN IT TO YOU.

1 DO YOU UNDERSTAND THAT?

2 THE DEFENDANT: YES, SIR.

3 THE COURT: WE ARE NOW IN THE STAGE OF THE
4 CASE WHERE YOUR ATTORNEYS CAN PRESENT ANY DEFENSE
5 THAT YOU MIGHT HAVE. THEY HAVE CALLED CERTAIN
6 WITNESSES ALREADY. YOU ARE ENTITLED AS YOUR RIGHT TO
7 TESTIFY AND TO GIVE YOUR SIDE OF THE STORY, IF YOU
8 CHOOSE TO. DO YOU UNDERSTAND THAT?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: NOW, WITH EQUAL IMPORTANCE,
11 YOU ARE ENTITLED TO REMAIN SILENT AND NOT TO TESTIFY.
12 DO YOU UNDERSTAND THAT?

13 THE DEFENDANT: YES, SIR.

14 THE COURT: IF IT IS YOUR DECISION NOT TO
15 TESTIFY, I WILL EXPLAIN TO THE JURY THAT YOUR SILENCE
16 CANNOT AND MUST NOT BE USED AGAINST YOU IN ANY WAY
17 WHATSOEVER, THAT I WOULD EXPLAIN TO THE JURY THAT THE
18 FACT THAT YOU FAILED TO TESTIFY MUST NOT EVEN ENTER
19 INTO THE JURY'S DELIBERATIONS IN THE JURY ROOM. DO
20 YOU UNDERSTAND THAT?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: NOW, AS TO WHETHER YOU TESTIFY
23 OR DO NOT TESTIFY, THE DECISION IS YOURS AND YOURS
24 ALONE. DO YOU UNDERSTAND THAT?

25 THE DEFENDANT: YES, SIR.

1 THE COURT: OBVIOUSLY, YOU WOULD CONFER
2 WITH YOUR ATTORNEY, BUT THE DECISION RESTS WITH YOU.
3 OKAY?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: NOW, DO YOU FULLY UNDERSTAND
6 THAT YOU HAVE THE RIGHT TO GET ON THIS WITNESS STAND
7 -- WE'VE BEEN HERE FOR TWO DAYS AND YOU'VE SEEN
8 WITNESSES TESTIFY. DO YOU FULLY UNDERSTAND THAT YOU
9 HAVE A RIGHT TO TESTIFY UNDER OATH AS TO YOUR VERSION
10 OF ANY EVENTS IN THIS INCIDENT? DO YOU UNDERSTAND
11 THAT?

12 THE DEFENDANT: YES, SIR.

13 THE COURT: DO YOU HAVE ANY QUESTIONS
14 ABOUT THAT?

15 THE DEFENDANT: NO, SIR.

16 THE COURT: DO YOU EQUALLY UNDERSTAND THAT
17 YOU HAVE THE ABSOLUTE RIGHT TO REMAIN SILENT AND NOT
18 TO TESTIFY?

19 THE DEFENDANT: YES, SIR.

20 THE COURT: DO YOU HAVE ANY QUESTIONS
21 ABOUT THAT?

22 THE DEFENDANT: NO, SIR.

23 THE COURT: IS IT YOUR DESIRE TO TESTIFY
24 OR NOT TO TESTIFY?

25 THE DEFENDANT: NO, SIR.

1 THE COURT: SIR?

2 THE DEFENDANT: YES, SIR.

3 THE COURT: DO YOU WISH TO TESTIFY OR DO
4 YOU WISH NOT TO TESTIFY?

5 THE DEFENDANT: I WISH NOT.

6 THE COURT: SIR?

7 THE DEFENDANT: I WISH NOT TO.

8 THE COURT: PARDON ME?

9 THE DEFENDANT: I WISH NOT TO.

10 THE COURT: YOU WISH NOT TO TESTIFY?

11 THE DEFENDANT: YES, SIR.

12 THE COURT: DO YOU HAVE ANY QUESTIONS
13 ABOUT ANYTHING THAT I'VE SAID?

14 THE DEFENDANT: NO, SIR.

15 THE COURT: COUNSEL FOR THE DEFENSE, IN
16 YOUR OPINION, AS HIS ATTORNEY, NOW, DOES HE FULLY
17 UNDERSTAND THAT THE DECISION TO TESTIFY OR NOT TO
18 TESTIFY ULTIMATELY RESTS WITH HIM?

19 MR. NEWSOME: YES, YOUR HONOR.

20 THE COURT: AS HIS ATTORNEY, HAVE YOU
21 FULLY ADVISED HIM, NOW, OF HIS RIGHT TO TESTIFY?

22 MR. NEWSOME: YES, SIR.

23 THE COURT: IN YOUR OPINION, DOES HE FULLY
24 UNDERSTAND IT?

25 MR. NEWSOME: YES, SIR.

1 THE COURT: HAVE YOU DISCUSSED WITH HIM
2 HIS RIGHT NOT TO TESTIFY?

3 MR. NEWSOME: YES, SIR.

4 THE COURT: IN YOUR OPINION, DOES HE FULLY
5 UNDERSTAND THAT?

6 MR. NEWSOME: YES, YOUR HONOR, I THINK HE
7 DOES.

8 THE COURT: IS IT YOUR OPINION AS HIS
9 ATTORNEY THAT HIS DECISION NOT TO TESTIFY IS HIS AND
10 HIS ALONE?

11 MR. NEWSOME: NOW, THAT, YOUR HONOR, HAS
12 BEEN WITH SOME ADVICE FROM ME, BUT I'M SURE IT'S HIS
13 DECISION ALSO, YES, SIR. IT'S BEEN IN CONJUNCTION
14 WITH HIS FAMILY. WE HAD A BIG CONFERENCE ABOUT IT,
15 AND I'M CONVINCED THAT THIS IS HIS DECISION.

16 THE COURT: I JUST WANT TO MAKE SURE THAT
17 HE UNDERSTANDS THAT HE WOULD BE GIVEN THE OPPORTUNITY
18 TO TESTIFY. EQUALLY IMPORTANT, THE COURT WOULD HONOR
19 HIS DECISION NOT TO TESTIFY.

20 MR. NEWSOME: YES, SIR.

21 THE COURT: IS THERE ANY FURTHER INQUIRY
22 THAT YOU THINK I SHOULD MAKE TO HIM ON THIS ISSUE?

23 MR. NEWSOME: NO, SIR. I'M SATISFIED.

24 THE COURT: ALL RIGHT, SIR. NOW, ARE YOU
25 PREPARED TO PROCEED?

1 MR. NEWSOME: YES, SIR.

2 THE COURT: YOU MAY BE SEATED. IS THERE
3 ANYTHING ELSE BEFORE I BRING IN THE JURY?

4 MR. NEWSOME: JUST REQUEST THAT YOU
5 INSTRUCT THE JURY ABOUT KELSEY PEARCE.

6 THE COURT: OKAY.

7 MR. NEWSOME: AND THEN WE WOULD REST.

8 THE COURT: AND THEN THERE WILL BE A SHORT
9 REPLY?

10 MR. BAILEY: ONE FINAL, YOUR HONOR. AND
11 WHILE THE JURY IS OUT, NO FORMAL WRITTEN STATEMENT
12 WAS INTRODUCED BY THE STATE INVOLVING THE DEFENDANT,
13 BUT THERE WAS TESTIMONY OF A VERBAL STATEMENT HE GAVE
14 DANNY KIRKLAND AS TO THE WHEREABOUTS OF THE GUN. SO
15 SINCE THAT VERBAL STATEMENT DID COME IN AND LED TO
16 THE RECOVERY OF THE MURDER WEAPON, THEN I WOULD ASK
17 THAT THE JURY BE CHARGED ON VOLUNTARINESS OF
18 STATEMENTS, JUST OUT OF ABUNDANCE OF PRECAUTION.

19 THE COURT: AS I HAVE TOLD YOU BEFORE IN
20 CHAMBERS, AND APPARENTLY THERE'S NO OBJECTION, I'VE
21 FOUND FROM THE LAST FEW YEARS THAT JURORS LIKE TO
22 KNOW WHAT THE LAW IS EVEN BEFORE COUNSEL ARGUES, AND
23 I'M PREPARED TO DO SOME OF THAT AT THIS TIME.
24 THERE'S NO OBJECTION TO THAT AS I UNDERSTAND IT. DO
25 YOU HAVE A VOLUNTARINESS CHARGE THERE THAT YOU HAD IN

1 MIND?

2 MR. BAILEY: JUDGE, I MAY HAVE ONE. LET
3 ME CHECK.

4 THE COURT: LET'S SEE. LET ME SEE. I'VE
5 GOT ONE SOMEWHERE. WHERE WAS THE STATEMENT THAT CAME
6 IN? THERE WAS NO ISSUE ON VOLUNTARINESS OR MIRANDA
7 RIGHTS OR ANYTHING.

8 MR. BAILEY: NO. THE ONLY THING THAT CAME
9 CLOSE WOULD BE THAT DANNY KIRKLAND SAID THAT WHEN HE
10 HAD THE DEFENDANT AT THE SHERIFF'S OFFICE SATURDAY
11 AFTERNOON, HE QUESTIONED HIM ABOUT THE WHEREABOUTS OF
12 THE MURDER WEAPON, AND BASED ON THAT INFORMATION, HE
13 FOUND OUT WHO HE SAID HE GAVE THE GUN TO, AND THEN
14 THEY ALL WENT OUT AND FOUND THE GUN.

15 THE COURT: DO YOU WISH ME TO CHARGE
16 VOLUNTARINESS OR NOT?

17 MR. NEWSOME: VOLUNTARINESS AS FAR AS --

18 THE COURT: OF THE CONFESSION OR
19 STATEMENT?

20 MR. NEWSOME: NO, SIR.

21 MR. BAILEY: I WOULD -- AS LONG AS IT'S
22 CLEAR THAT THERE'S A CONSCIOUS WAIVER BY THE
23 DEFENDANT AND HIS ATTORNEY ON THAT.

24 THE COURT: SIR?

25 MR. NEWSOME: OUT OF ABUNDANCE OF

1 PRECAUTION, CHARGE IT.

2 THE COURT: LET ME SEE YOUR CHARGE
3 BECAUSE, IF I RECALL, THERE WAS NO TESTIMONY OF THE
4 MIRANDA NOW. WAS HE UNDER ARREST AT THE TIME?

5 MR. BAILEY: NO, SIR. HE WAS NOT ARRESTED
6 UNTIL THE NEXT DAY.

7 THE COURT: WELL, IF HE'S NOT ARRESTED
8 UNTIL THE NEXT DAY, HE'S NOT ENTITLED TO BE
9 MIRANDIZED, IS HE?

10 MR. BAILEY: NOT MIRANDIZED, BUT HE'D
11 STILL HAVE TO SAY WHETHER THE STATEMENT WOULD BE
12 VOLUNTARY.

13 THE COURT: JUST VOLUNTARY. OKAY.

14 MR. NEWSOME: YOU DIDN'T INTRODUCE A
15 WRITTEN STATEMENT.

16 MR. BAILEY: IT WASN'T A WRITTEN
17 STATEMENT, BUT IT WAS A VERBAL STATEMENT WHERE HE
18 TOLD HIM WHERE THE GUN WAS.

19 MR. NEWSOME: OH, YEAH. THAT'S FINE. OH,
20 YEAH. THAT'S FINE.

21 THE COURT: YOU CONCEDE, MR. NEWSOME, THAT
22 AT THE TIME, IF HE MADE SUCH A STATEMENT, HE WAS NOT
23 UNDER ARREST AT THAT TIME?

24 MR. NEWSOME: I CONCEDE. FURTHERMORE,
25 YOUR HONOR --

1 THE COURT: AND THERE'S NO MIRANDA ISSUE.

2 MR. NEWSOME: THEY DID GIVE HIM HIS
3 MIRANDA RIGHTS PRIOR TO HIM GIVING THE GUN. I HAVE
4 TWO COPS SAYING HE GAVE FOUR STATEMENTS. I DON'T
5 KNOW WHY THEY DIDN'T USE THOSE, BUT THEY MIRANDIZED
6 HIM TWICE.

7 MR. BAILEY: WE DIDN'T INTRODUCE THEM
8 BECAUSE IT WASN'T APPROPRIATE.

9 THE COURT: SIR?

10 MR. BAILEY: YOUR HONOR, I WOULD LIKE -- I
11 HAVE ONE HERE THAT'S VERY BRIEF.

12 THE COURT: YEAH. I WILL CHARGE THEM THEY
13 MUST -- ANY STATEMENT, IF ANY, MUST HAVE BEEN FREELY
14 AND VOLUNTARILY GIVEN. YOU DON'T RAISE THE QUESTION
15 OF MIRANDA?

16 MR. NEWSOME: NO, SIR.

17 THE COURT: OKAY. ALL RIGHT. BRING THE
18 JURY IN, PLEASE.

19 (WHEREUPON, THE JURY WAS
20 RETURNED TO THE COURTROOM AND
21 THE FOLLOWING PROCEEDINGS WERE
22 COMMENCED IN OPEN COURT.)

23 THE COURT: MR. FOREMAN, LADIES AND
24 GENTLEMEN, BEFORE YOU RECESSED ON THE LAST OCCASION,
25 THERE WAS TESTIMONY BY A WITNESS PURPORTEDLY

1 TESTIFYING AS TO A STATEMENT ONE KELSEY PEARCE HAD
2 GIVEN HIM. NOW, THAT WITNESS' STATEMENT IS FOR YOU
3 TO WEIGH AND CONSIDER, JUDGING THE CREDIBILITY AND
4 THE BELIEVABILITY. AND YOU WOULD JUDGE THAT AS YOU
5 WOULD ALL OTHER WITNESSES.

6 WITH REGARDS TO THE INDIVIDUAL NAMED IN THAT
7 WITNESS' STATEMENT, ONE KELSEY PEARCE, I ADVISE YOU
8 THAT HE IS UNAVAILABLE TO TESTIFY. YOU MAY PROCEED.

9 MR. NEWSOME: YOUR HONOR, WITH THAT, THE
10 DEFENSE RESTS.

11 THE COURT: THE DEFENSE RESTS AT THIS
12 TIME. THE DEFENSE RESTS, INDICATES IT HAS NO FURTHER
13 TESTIMONY TO PRESENT. YOU MAY -- IS THERE ANYTHING
14 IN REPLY?

15 MR. BAILEY: YOUR HONOR, I HAVE ONE BRIEF
16 REPLY WITNESS.

17 THE COURT: ALL RIGHT, SIR. YOU MAY
18 PROCEED.

19 MR. BAILEY: BARBARA JOHNSON.

20 THE CLERK: IF YOU WOULD, PLEASE PLACE
21 YOUR LEFT HAND ON THE BIBLE. PLEASE RAISE YOUR RIGHT
22 HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

23 THE WITNESS: BARBARA DENISE JOHNSON.

24 BARBARA JOHNSON,
25 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,

BARBARA JOHNSON - DIRECT BY MR. BAILEY (RECALL)

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1 TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. BAILEY:

4 Q. MS. JOHNSON, YOU TESTIFIED EARLIER IN THIS
5 TRIAL; IS THAT CORRECT?

6 A. YES, SIR.

7 Q. ALL RIGHT. AND YOU TESTIFIED THAT YOU
8 WENT TO THE EBONY CLUB WITH HENRY DANIEL OWENS,
9 HERMAN HUGHES AND KELSEY PEARCE; IS THAT RIGHT?

10 A. YES, SIR.

11 Q. AND I BELIEVE YOU FURTHER TESTIFIED THAT
12 YOU WERE AT THE CLUB UNTIL Y'ALL WENT TO THE WAFFLE
13 HOUSE AROUND 4:30; IS THAT CORRECT?

14 A. YES, SIR.

15 Q. OKAY. AND DO YOU KNOW RICARDO GILFORD,
16 ALSO KNOWN AS CARL GILFORD?

17 A. YES, SIR.

18 Q. OKAY. DID YOU SEE HIM AT ALL AT THE EBONY
19 CLUB ON FRIDAY NIGHT, MARCH THE 18TH?

20 A. NO, SIR.

21 Q. OKAY. IF HE HAD BEEN THERE, WOULD YOU
22 HAVE SEEN HIM?

23 A. YES, SIR.

24 Q. OKAY. DID YOU SEE HIM LATER ON?

25 A. I SAW HIM WHEN HE PICKED KELSEY UP.

1 Q. OKAY. AND IS IT POSSIBLE HE COULD HAVE
2 BEEN AT THE EBONY CLUB INSIDE THERE WITH YOU AND YOU
3 DIDN'T SEE HIM?

4 A. HE COULD HAVE.

5 Q. BUT YOU DID NOT SEE HIM?

6 A. NO, SIR.

7 Q. HAD NO EYE CONTACT WITH HIM?

8 A. NO, SIR.

9 Q. OKAY. NOW, YOU WERE WAITING OUTSIDE WITH
10 THE SEQUESTERED WITNESSES TODAY, WERE YOU NOT?

11 A. YES, SIR.

12 Q. OKAY. AND DID YOU SEE MR. GILFORD BEFORE
13 HE TESTIFIED?

14 A. YES, SIR.

15 Q. WHERE DID YOU SEE HIM?

16 A. OUTSIDE OF THE COURTHOUSE SITTING ON THE
17 STEP.

18 Q. OKAY. AND THIS IS BEFORE HE TESTIFIED
19 HERE THIS AFTERNOON?

20 A. YES, SIR.

21 Q. OKAY. DID YOU HEAR HIM SAY ANYTHING
22 REGARDING HIS TESTIMONY TO ANYBODY ELSE?

23 A. HE WAS TALKING TO THIS GUY, AND HE WAS
24 SAYING HE HAD --

25 Q. WHO WAS -- WHO WAS SAYING? RICARDO

BARBARA JOHNSON - DIRECT BY MR. BAILEY (RECALL)

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1 GILFORD?

2 A. RICARDO WAS SAYING HE HAD TO GET HIS LIES
3 STRAIGHT BECAUSE HE DIDN'T KNOW WHAT RONNIE TOLD
4 Y'ALL.

5 MR. BAILEY: THANK YOU. THAT'S ALL I
6 HAVE.

7 THE WITNESS: YES, SIR.

8 THE COURT: YOU MAY COME DOWN.

9 MR. BAILEY: YOUR HONOR, THAT'S ALL FROM
10 THE STATE.

11 THE COURT: THE STATE NOW RESTS? I'LL LET
12 YOU GO TO THE JURY ROOM JUST A MINUTE, AND I'LL BE
13 CALLING YOU RIGHT BACK.

14 (WHEREUPON, THE JURY WAS REMOVED
15 FROM THE COURTROOM AND THE
16 FOLLOWING PROCEEDINGS COMMENCED
17 IN OPEN COURT.)

18 THE COURT: TELL THE JURY FOR ME THAT IF
19 ANY ONE OF THEM CARE TO MAKE NOTES, I HAVE NO PROBLEM
20 WITH THAT. DO YOU UNDERSTAND WHAT I'M SAYING? SOME
21 JUROR APPARENTLY WANTED TO TAKE NOTES, AND I HAVE NO
22 PROBLEMS WITH THAT.

23 THE BAILIFF: THEY CAN TAKE NOTES IF THEY
24 WANT TO?

25 THE COURT: YES, SIR. ALL RIGHT. WE HAVE

1 NOW CONCLUDED THE TESTIMONY OF THE DEFENSE. WE HAVE
2 NOW CONCLUDED THE REBUTTAL OF THE STATE, AND THAT
3 WOULD CONCLUDE THE TAKING OF ALL OF THE TESTIMONY IN
4 THE TRIAL OF THIS CASE. DO WE HAVE ANY MOTIONS?

5 MR. NEWSOME: YES, SIR. YOUR HONOR, I
6 HAVE TO RENEW MY MOTION FOR DIRECTED VERDICT AT THIS
7 TIME.

8 THE COURT: ALL RIGHT, SIR. AND I WOULD
9 RESPECTFULLY OVERRULE THAT ON THE BASIS THAT AS TO
10 EACH INDICTMENT THERE IS AMPLE EVIDENCE FOR THE JURY
11 TO CONSIDER.

12 NOW, GENTLEMEN, IN A CASE OF THIS KIND WHERE THE
13 STATE SEEKS THE SUPREME PENALTY OF DEATH, THE STATE
14 WILL OPEN AND THE DEFENDANT'S ATTORNEY WILL CLOSE.
15 DO YOU UNDERSTAND?

16 MR. BAILEY: YES, SIR. YOUR HONOR, I
17 BELIEVE THE LAW ALSO PROVIDES THE DEFENDANT HAS A
18 RIGHT TO PERSONALLY CLOSE.

19 THE COURT: AND THE DEFENDANT WILL ALSO
20 HAVE A RIGHT TO MAKE HIS OWN STATEMENT IF HE CHOOSES.

21 MR. NEWSOME: HE CHOOSES NOT TO, YOUR
22 HONOR.

23 THE COURT: HAVE HIM STAND.

24 MR. NEWSOME: STAND UP.

25 THE COURT: WE ARE IN THE FIRST PHASE OF

1 THIS TRIAL. THE LAW PROVIDES THAT YOUR -- THAT THE
2 DEFENDANT SHALL MAKE THE CLOSING ARGUMENT, WHICH WILL
3 BE GRANTED. THAT LAW ALSO PERMITS YOU TO MAKE A
4 FINAL STATEMENT IN THIS FIRST PHASE AND THE SECOND
5 PHASE, IF WE GET THERE. DO YOU UNDERSTAND THAT?

6 THE DEFENDANT: YES, SIR.

7 THE COURT: IS IT -- WOULD YOU LIKE TO
8 MAKE A FINAL STATEMENT HERE IN THIS FIRST PHASE OR
9 NOT?

10 THE DEFENDANT: NO, SIR.

11 THE COURT: MR. NEWMAN -- OR MR. NEWSOME?

12 MR. NEWSOME: YES, SIR.

13 THE COURT: HAVE YOU FULLY EXPLAINED TO
14 HIM HIS RIGHT NOW --

15 MR. NEWSOME: YES, YOUR HONOR.

16 THE COURT: -- TO MAKE A CLOSING STATEMENT
17 HIMSELF?

18 MR. NEWSOME: YES, YOUR HONOR.

19 THE COURT: NOW, EVEN THOUGH HE DECLINES
20 TO DO IT IN THIS FIRST PHASE, THAT WILL NOT PRECLUDE
21 HIM FROM HAVING THAT OPPORTUNITY IF HE CHOOSES IN THE
22 SECOND.

23 MR. NEWSOME: I'VE EXPLAINED THAT TO HIM.

24 THE COURT: THE DECISION IS HIS -- AND
25 YOUNG MAN, AGAIN THE DECISION IS YOURS AND YOURS

1 ALONE. YOU ARE TELLING ME NOW THAT YOU DO NOT DESIRE
2 TO MAKE A PERSONAL STATEMENT YOURSELF IN THIS PHASE;
3 IS THAT CORRECT?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: ALL RIGHT. THANK YOU SO MUCH.
6 BRING THE JURY IN.

7 (WHEREUPON, THE JURY WAS
8 RETURNED TO THE COURTROOM AND
9 THE FOLLOWING PROCEEDINGS WERE
10 COMMENCED IN OPEN COURT.)

11 THE COURT: LADIES AND GENTLEMEN OF THE
12 JURY, SOMEONE HAD INDICATED THAT THEY DESIRED TO TAKE
13 NOTES, AND YOU ARE CERTAINLY WELCOME TO DO THAT IN
14 THIS PHASE OF THE TRIAL OR IN ANY PHASE OF THE TRIAL
15 WITH WHICH WE MAY BE CONCERNED.

16 AS YOU ARE WELL AWARE, NOW, ALL OF THE TESTIMONY
17 IN THIS, THE FIRST PHASE OF THIS CASE, HAS NOW BEEN
18 CONCLUDED, AND WE ARE AT THAT STAGE OF THE CASE WHERE
19 COUNSEL FOR THE STATE WILL MAKE A FINAL SUMMATION
20 GIVING YOU HIS VIEW OF THE EVIDENCE. AT THE
21 CONCLUSION OF THE STATE'S FINAL SUMMATION, THE
22 DEFENSE COUNSEL WILL MAKE A SIMILAR STATEMENT GIVING
23 YOU HIS VIEW OF THE EVIDENCE.

24 NOW, WHAT THE ATTORNEYS TELL YOU IS NOT
25 EVIDENCE. IT'S THEIR VIEW OF THE EVIDENCE, BUT THE

1 EVIDENCE COMES FROM THIS WITNESS STAND AND UNDER
2 OATH.

3 NOW, ORDINARILY, WE CHARGE A JURY UPON THE LAW
4 AFTER THE ATTORNEYS HAVE GIVEN YOU THEIR FINAL
5 ARGUMENTS. JURORS IN THE LAST FEW YEARS HAVE SAID,
6 JUDGE COTTINGHAM, I WISH YOU WOULD HAVE TOLD ME WHAT
7 THE LAW WAS BEFORE THEY MADE THEIR ARGUMENTS. I
8 BELIEVE I COULD HAVE FOLLOWED THEM BETTER IN THEIR
9 TERMINOLOGY AND SO FORTH. SO IN THE LAST FEW YEARS,
10 I'VE TAKEN TO CHARGING THE JURY WITH THE ELEMENTS OF
11 THE LAW, HOPING THAT THAT WILL HELP YOU FOLLOW
12 CLEARLY WHAT THE LAWYERS ARE SAYING TO YOU.

13 IN THAT CONNECTION, THOUGH, I WOULD WANT TO TELL
14 YOU THAT EVEN AFTER THEY HAVE THEIR SUMMATION, I WILL
15 BE GIVING YOU SOME FOLLOW-UP INSTRUCTIONS OF THE LAW,
16 AND EVEN THEN, WHEN YOU ARE DELIBERATING, MR.
17 FOREMAN, IF AT ANY TIME ANYBODY WANTS TO KNOW WHAT
18 THE LAW IS ON ANY ISSUE, ALL YOU HAVE TO DO IS WRITE
19 THAT QUESTION DOWN, KNOCK ON THE DOOR, AND LET THE
20 BAILIFF KNOW, AND I'LL CALL YOU BACK OUT IMMEDIATELY
21 TO TELL YOU WHAT THE LAW IS.

22 NOW, AS I SAY THAT, I WANT TO EMPHASIZE TO YOU
23 AS STRONGLY AS I CAN THAT WHILE I AM THE INSTRUCTOR
24 IN THE LAW, MADE SO BY THE CONSTITUTION OF THIS
25 STATE, YOU 12 -- AND I EMPHASIZED THIS EARLIER AND I

1 DO AGAIN -- YOU 12 AND YOU ALONE ARE THE SOLE AND
2 ONLY FINDERS OF THE FACTS IN THIS CASE. YOU ARE THE
3 SOLE JUDGES OF THE CREDIBILITY, MEANING THE
4 BELIEVABILITY OF ALL OF THE WITNESSES WHO HAVE
5 TESTIFIED.

6 IN THAT CONNECTION, YOU MAY BELIEVE ALL OF WHAT
7 A WITNESS SAYS OR NONE. YOU MAY BELIEVE A SMALL
8 PORTION AND DISREGARD THE LARGER. YOU MAY BELIEVE
9 ONE WITNESS AGAINST THAT OF MANY OR THE OTHER WAY
10 AROUND. OBVIOUSLY, YOU WOULD NOT DETERMINE THE TRUTH
11 OR FALSITY OF A MATTER BY COUNTING UP THE NUMBER OF
12 WITNESSES WHO MAY HAVE TESTIFIED ON ONE ISSUE OR
13 ANOTHER.

14 WHEN YOU WALKED INTO THIS COURTHOUSE ON TUESDAY
15 MORNING OF THIS WEEK, YOU DID NOT LEAVE YOUR COMMON
16 SENSE ON THE STREETS OF ST. MATTHEWS, SOUTH CAROLINA.
17 AND WE KNOW FROM EXPERIENCE IN OUR LIVES THAT WHEN
18 PEOPLE TELL US SOMETHING, WE SIZE THEM UP. WE DECIDE
19 FOR OURSELVES WHETHER WE WANT TO BELIEVE ALL OF IT,
20 NONE OF IT, OR SOME OF IT. WE ASK OURSELVES WHEN
21 PEOPLE TELL US THINGS, DID THIS PERSON HAVE A REASON
22 OR A CAUSE TO TELL ME ONE WAY OR THE OTHER? IN OTHER
23 WORDS, AM I GOING TO BELIEVE IT AND, IF SO, WHY?
24 THESE ARE THE SORT OF COMMON SENSE APPROACHES THAT
25 YOU'VE USED IN YOUR EVERYDAY LIFE, BE IT AT WORK,

1 RAISING YOUR FAMILY OR WHATEVER. AND YOU BASICALLY
2 BRING THAT COMMON SENSE APPROACH INTO THIS COURTROOM
3 WHEN YOU JUDGE THE CREDIBILITY AND THE BELIEVABILITY
4 OF THE WITNESSES.

5 NOW, AS I'VE INDICATED TO YOU, I AM THE
6 INSTRUCTOR IN THE LAW, AND UNDER YOUR OATH, YOU MUST
7 ACCEPT THE LAW OF THIS CASE AS I GIVE IT TO YOU.
8 EVEN THOUGH YOU, OR I FOR THAT MATTER, MIGHT DISAGREE
9 WITH WHAT THE LAW IS OR OUGHT TO BE, FOR THE PURPOSE
10 OF THIS TRIAL, ACCEPT THE LAW AS I GIVE IT TO YOU AS
11 BEING THE CORRECT LAW, REMEMBERING THIS; YOU TAKE THE
12 FACTS AS YOU FIND THEM TO BE FROM THE TESTIMONY
13 INTRODUCED IN THE TRIAL OF THIS CASE, AND YOU TAKE
14 THOSE FACTS AND APPLY IT TO THE LAW AS I GIVE IT TO
15 YOU AND THEREAFTER REACH THAT VERDICT, THE VERDICT
16 THAT SPEAKS THE TRUTH. THAT'S WHAT YOU'RE LOOKING
17 FOR, THE TRUTH, A VERDICT THAT'S FAIR TO THE PEOPLE
18 OF SOUTH CAROLINA AND OF THIS COUNTY, TO THE VICTIMS;
19 A VERDICT THAT'S EQUALLY FAIR TO THIS DEFENDANT,
20 HERMAN HUGHES, WHO IS HERE ON TRIAL.

21 NOW, THIS DEFENDANT STANDS INDICTED FOR FOUR
22 SEPARATE OFFENSES. THEY HAVE EITHER BEEN READ TO YOU
23 OR EXPLAINED TO YOU, AND I'M SURE THE ATTORNEYS WILL
24 DO IT HEREAFTER, SO I'M NOT GOING TO READ THESE
25 INDICTMENTS TO YOU. YOU ARE FULLY AWARE OF WHAT THEY

1 ARE.

2 THE FIRST INDICTMENT CHARGES HERMAN HUGHES WITH
3 THE OFFENSE OF MURDER, AND I WILL EXPLAIN THAT TO YOU
4 AND TELL YOU WHAT THE ELEMENTS ARE, ALL OF WHICH MUST
5 BE PROVEN BEYOND A REASONABLE DOUBT.

6 THE SECOND OFFENSE IS ARMED ROBBERY, AND I WILL
7 EXPLAIN THE ELEMENTS OF THAT OFFENSE TO YOU, ALL OF
8 WHICH MUST BE PROVED BEYOND A REASONABLE DOUBT.

9 THE THIRD OFFENSE IS GRAND LARCENY OF A VEHICLE.
10 AGAIN, THOSE ELEMENTS WILL BE GIVEN TO YOU AND MUST
11 BE PROVEN BEYOND A REASONABLE DOUBT.

12 AND THE LAST INDICTMENT IS ASSAULT AND BATTERY
13 WITH INTENT TO KILL, ALL OF WHICH ELEMENTS WILL BE
14 EXPLAINED TO YOU AND ALL OF WHICH MUST BE PROVEN
15 BEYOND A REASONABLE DOUBT.

16 NOW, AS TO THESE FOUR INDICTMENTS, YOU WILL
17 CONSIDER THE EVIDENCE SEPARATE AS TO EACH INDICTMENT,
18 AND YOUR VERDICT WILL BE AS TO EACH ONE EITHER GUILTY
19 OR NOT GUILTY. NOW, THE EVIDENCE AS TO EACH
20 INDICTMENT STANDS ON ITS OWN. YOU COULD HAVE ALL NOT
21 GUILTY. YOU COULD HAVE ALL GUILTY. YOU SURE COULD
22 HAVE SOME NOT GUILTY AND SOME GUILTY. ALL DO NOT
23 HAVE TO BE THE SAME. IT JUST DEPENDS ON WHETHER OR
24 NOT THE STATE HAS PROVEN TO YOUR SATISFACTION
25 UNANIMOUSLY THAT THE DEFENDANT IS INDEED GUILTY

1 BEYOND A REASONABLE DOUBT. SO YOU WILL LET EACH
2 INDICTMENT STAND UPON ITS OWN.

3 NOW, TO THESE INDICTMENTS, THIS DEFENDANT HAS
4 PLED NOT GUILTY, WHICH PLACES THE BURDEN UPON THE
5 STATE OF PROVING THE DEFENDANT GUILTY BEYOND A
6 REASONABLE DOUBT. A PERSON CHARGED WITH COMMITTING A
7 CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER, EVER
8 REQUIRED TO PROVE HIMSELF INNOCENT. I CHARGE YOU
9 THAT IT IS A VITAL, IMPORTANT RULE OF LAW OF EVIDENCE
10 THAT A DEFENDANT IN A CRIMINAL CASE, NO MATTER HOW
11 GREAT OR SERIOUS MAY BE THE OFFENSE WITH WHICH HE'S
12 CHARGED, MUST ALWAYS BE PRESUMED INNOCENT UNTIL HIS
13 GUILT HAS BEEN ESTABLISHED TO YOUR SATISFACTION
14 BEYOND A REASONABLE DOUBT.

15 THIS PRESUMPTION THAT I REFERRED TO REMAINS WITH
16 THIS DEFENDANT AT ALL TIMES FROM THE MOMENT OF HIS
17 ARRAIGNMENT, THROUGHOUT THE TRIAL, AND UNTIL YOU THE
18 JURY UPON THE TESTIMONY AND THE EVIDENCE PRESENTED
19 HAVE REACHED A VERDICT OF GUILTY BEYOND A REASONABLE
20 DOUBT, FOR IT IS, LADIES AND GENTLEMEN, THE SOLEMN
21 DUTY OF THE JURY, IF NOT CLEARLY CONVINCED OF HIS
22 GUILT BEYOND EVERY REASONABLE DOUBT TO ACQUIT THE
23 DEFENDANT. AND SO IT IS, THE BURDEN OF PROOF IS UPON
24 THE STATE TO ESTABLISH BY EVIDENCE TO YOUR
25 SATISFACTION THE GUILT BEYOND A REASONABLE DOUBT OF

1 THIS DEFENDANT HERE ON TRIAL UPON THE FOUR
2 INDICTMENTS THAT I HAVE PREVIOUSLY ENUMERATED.

3 I'VE USED THE TERM REASONABLE DOUBT. A
4 REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD
5 CAUSE A REASONABLE PERSON TO HESITATE TO ACT. THE
6 REASONABLE DOUBT MAY ARISE FROM EVIDENCE WHICH IS IN
7 THE CASE OR FROM THE ABSENCE OF OR LACK OF EVIDENCE
8 IN THE CASE. YOU ALONE MUST DETERMINE WHETHER OR NOT
9 THERE EXISTS REASONABLE DOUBT AS TO THE GUILT OF THIS
10 DEFENDANT HERMAN HUGHES.

11 NOW, I EMPHASIZE AGAIN, AS I DO THROUGHOUT, THAT
12 YOU LADIES AND GENTLEMEN ARE THE SOLE AND ONLY
13 FINDERS OF THE FACTS IN THE CASE, AND YOU ARE THE
14 JUDGE AND THE ONLY JUDGE OF THE CREDIBILITY, MEANING
15 THE BELIEVABILITY, OF ALL OF THE WITNESSES WHO
16 TESTIFY. AS I INDICATE AGAIN TO YOU, THROUGHOUT THIS
17 TRIAL AND THE ENTIRE PROCESS, YOU LADIES AND
18 GENTLEMEN HAVE BUT ONE SINGLE OBJECTIVE, JUST ONE,
19 AND THAT IS TO SEEK THE TRUTH REGARDLESS OF FROM WHAT
20 SOURCE THAT TRUTH MAY BE DERIVED. JUST ONE, TO SEEK
21 THE TRUTH.

22 NOW, AS I'VE INDICATED TO YOU AND EMPHASIZE
23 AGAIN, PLEASE ACCEPT THE LAW AS I GIVE IT TO YOU,
24 APPLYING THE FACTS AS YOU FIND THEM TO BE TO THE LAW
25 UPON THESE VARIOUS FOUR INDICTMENTS.

1 NOW, AS YOU'RE WELL AWARE, THE STATE OF SOUTH
2 CAROLINA UPON ONE OF THESE INDICTMENTS CHARGES THE
3 DEFENDANT HERMAN HUGHES WITH THE OFFENSE AND CRIME OF
4 MURDER, SO IT BECOMES NECESSARY FOR ME TO INSTRUCT
5 YOU AS TO THE LAW OF THAT CRIME IN SOUTH CAROLINA.

6 WHAT IS MURDER BY DEFINITION? MURDER MAY BE
7 DEFINED, LADIES AND GENTLEMEN, AS THE WILLFUL,
8 FELONIOUS KILLING OF A HUMAN BEING BY A HUMAN BEING
9 WITH MALICE AFORETHOUGHT. THUS, IN ORDER TO CONVICT
10 OF MURDER, THE STATE MUST NOT ONLY PROVE THE KILLING
11 OF THE DECEASED BY THE DEFENDANT, BUT THAT IT WAS
12 DONE WITH MALICE AFORETHOUGHT, AND SUCH PROOF MUST BE
13 BEYOND A REASONABLE DOUBT.

14 NOW, LET ME DISCUSS WITH YOU THE DEFINITION OF
15 MALICE. MALICE, LADIES AND GENTLEMEN, IS A WORD
16 SUGGESTING WICKEDNESS, HATRED, A DETERMINATION TO DO
17 WHAT ONE KNOWS TO BE WRONG WITHOUT JUST CAUSE OR
18 EXCUSE OR LEGAL PROVOCATION. MALICE NEED NOT BE IN
19 THE MIND OF THE ONE DOING THE KILLING ANY PARTICULAR
20 LENGTH OF TIME BEFORE THE ACT OF KILLING TO RENDER
21 THE KILLING MURDER. IF MALICE IS PRESENT IN THE MIND
22 OF THE ONE DOING THE KILLING ANY LENGTH OF TIME
23 BEFORE THE ACT, THEN ITS PRESENCE WOULD BE SUFFICIENT
24 TO RENDER THE KILLING MURDER.

25 MALICE IS SAID TO BE EXPRESSED WHEN THERE IS

1 MANIFESTED A VIOLENT, DELIBERATE INTENTION UNLAWFULLY
2 TO TAKE AWAY THE LIFE OF ANOTHER HUMAN BEING. MALICE
3 MAY BE IMPLIED WHERE ONE INTENTIONALLY AND
4 DELIBERATELY DOES AN UNLAWFUL ACT WHICH HE OR SHE
5 THEN KNOWS TO BE WRONG AND IN VIOLATION OF HIS DUTY
6 TO ANOTHER. MALICE MAY BE IMPLIED WHERE NO EXCUSE OR
7 LEGAL PROVOCATION FOR THE KILLING APPEARS AND WHERE
8 THE CIRCUMSTANCES ATTENDING THE KILLING SHOW AN
9 ABANDONED HEART, A MALIGNANT HEART FATALLY BENT UPON
10 MISCHIEF. SUCH IMPLICATION OR INFERENCES ARE NOT
11 CONCLUSIVE, AND THE JURY, DEPENDING UPON YOUR VIEW OF
12 THE EVIDENCE, MAY ACCEPT OR REJECT THE SAME.

13 THE LAW SAYS IF ONE INTENTIONALLY KILLS ANOTHER
14 WITH A DEADLY WEAPON, THE IMPLICATION OF MALICE MAY
15 ARISE. IF FACTS ARE PROVEN BEYOND A REASONABLE DOUBT
16 SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR
17 SATISFACTION, THIS INFERENCE WOULD BE SIMPLY AN
18 EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY
19 YOU THE JURY ALONG WITH OTHER EVIDENCE IN THE CASE,
20 AND YOU LADIES AND GENTLEMEN MAY GIVE IT SUCH WEIGHT
21 AS YOU DETERMINE IT SHOULD RECEIVE.

22 IN OTHER WORDS, THE INFERENCE OF MALICE FROM THE
23 USE OF A DEADLY WEAPON IS SIMPLY AN EVIDENTIARY FACT
24 TO BE TAKEN INTO CONSIDERATION BY THE JURY ALONG WITH
25 OTHER EVIDENCE IN THE CASE AND TO BE GIVEN SUCH

1 WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE. THE
2 INFERENCE OF MALICE MAY BE DRAWN FROM PROOF OF THE
3 USE OF A DEADLY WEAPON IF THE JURY CONCLUDES SUCH IS
4 PROPER AFTER CONSIDERING ALL OF THE FACTS AND
5 CIRCUMSTANCES.

6 THE LAW SAYS IF ONE INTENTIONALLY KILLS ANOTHER
7 DURING THE COMMISSION OF A FELONY, THE IMPLICATION OF
8 MALICE MAY ARISE. IF FACTS ARE PROVEN BEYOND A
9 REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF
10 MALICE TO YOUR SATISFACTION, AGAIN, THIS INFERENCE
11 WOULD BE SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO
12 CONSIDERATION BY YOU THE JURY ALONG WITH OTHER
13 EVIDENCE IN THE CASE, AND AGAIN, YOU MAY GIVE THAT
14 SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE.

15 IF THE EVIDENCE SHOULD SHOW UNDER WHAT
16 CIRCUMSTANCES A SHOT WAS FIRED OR BLOW DELIVERED
17 WHICH TOOK THE LIFE OF ANOTHER, THEN YOU THE JURY
18 WOULD HAVE TO DETERMINE WHETHER UNDER SUCH
19 CIRCUMSTANCES THE ACT WAS MALICIOUS.

20 NOW, THIS DEFENDANT IS CHARGED WITH ASSAULT AND
21 BATTERY WITH INTENT TO KILL. AN ASSAULT IS AN OFFER
22 TO DO VIOLENCE, SUCH AS MY POINTING A FIST AT THAT
23 GENTLEMAN OR POINTING A GUN AT THAT GENTLEMAN. THE
24 BATTERY IS THE ACTUAL TOUCHING OF HIM WITH THE FIST.
25 THE BATTERY WHERE A GUN IS FIRED IS THE ACTUAL BULLET

1 STRIKING THAT INDIVIDUAL. THAT THEN IS THE ASSAULT,
2 IS AN OFFER TO DO VIOLENCE. THE BATTERY IS IN DOING
3 IT.

4 THIS DEFENDANT IS CHARGED WITH ASSAULT AND
5 BATTERY WITH INTENT TO KILL. THE ONLY DIFFERENCE IN
6 ASSAULT AND BATTERY WITH INTENT TO KILL AND MURDER IS
7 THAT IN ASSAULT AND BATTERY WITH INTENT TO KILL, THE
8 VICTIM DID NOT DIE. IN ASSAULT AND BATTERY WITH
9 INTENT TO KILL, THERE MUST BE MALICE, AS I'VE
10 INDICATED TO YOU BEFORE. THE SAME DEFINITIONS WOULD
11 APPLY IN ASSAULT AND BATTERY WITH INTENT TO KILL
12 EXCEPT THAT THE VICTIM DID NOT DIE. JUST REMEMBER
13 THAT IN ASSAULT AND BATTERY WITH INTENT TO KILL,
14 AGAIN, AS IN MURDER, THERE MUST BE MALICE
15 AFORETHOUGHT OR THERE CAN BE NO INTENT TO KILL.

16 AS I'VE INDICATED AWHILE AGO AND I DEFINE IT FOR
17 YOU AGAIN, MALICE IS ANY PLANNED DESIGN TO DO
18 MISCHIEF, WHETHER IT ARISES FROM HATEFUL ILL OR
19 OTHERWISE. IT IS STILL MALICE. AND MALICE
20 AFORETHOUGHT MEANS THAT THE MALICE MUST HAVE BEEN IN
21 THE MINDS OF THE PARTY AT THE TIME THE BLOW WAS
22 STRUCK OR THE SHOT FIRED. AGAIN, MALICE NEED NOT BE
23 IN THE MINDS OF THE PARTY WHO STRUCK THE BLOW OR
24 FIRED THE SHOT FOR ANY APPRECIABLE LENGTH OF TIME.
25 IF IT WAS IN THE MIND JUST BEFORE THE BLOW WAS STRUCK

STATE OF SOUTH CAROLINA

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In The Supreme Court

APPEAL FROM CALHOUN COUNTY
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HERMAN LEE HUGHES, JR.,

APPELLANT.

RECORD ON APPEAL

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23.	TRANSCRIPT OF TRANSFER HEARING	1983
24.	TRANSFER ORDER	1985
F.	CERTIFICATE OF COUNSEL	1989

1 OR THE SHOT WAS FIRED, THEN UNDER THE LAW, THAT IS
2 MALICE AFORETHOUGHT.

3 NOW, THE DEFENDANT IS CHARGED WITH GRAND LARCENY
4 OF A VEHICLE. LARCENY IN THE LAW IS STEALING.
5 SIMPLY STEALING. TO CONVICT ONE OF GRAND LARCENY,
6 THE STATE MUST PROVE THAT THERE WAS THE TAKING OF THE
7 PROPERTY OF ANOTHER WITH INTENT TO PERMANENTLY
8 DEPRIVE HIM THEREOF ILLEGALLY, MEANING STEALING. THE
9 STATE MUST PROVE THAT THERE WAS AN EFFORT TO STEAL
10 BEYOND A REASONABLE DOUBT. FOR GRAND LARCENY, THE
11 STATE MUST PROVE THAT THE AMOUNT WAS IN EXCESS OF
12 1,000 DOLLARS. AND THE STATE MUST PROVE THAT IT WAS
13 THIS DEFENDANT WHO COMMITTED THE LARCENY. AGAIN, THE
14 STATE MUST PROVE EACH OF THESE ELEMENTS BEYOND A
15 REASONABLE DOUBT.

16 IN LARCENY, THEY MUST PROVE THAT THERE WAS A
17 TAKING; SECOND, THERE WAS A TAKING OF THE PERSONAL
18 PROPERTY OF ANOTHER; THIRD, THAT AFTER BEING TAKEN,
19 THE PROPERTY WAS CARRIED AWAY; AND THAT IT WAS
20 CARRIED AWAY WITH THE INTENT TO STEAL. THE GRAND
21 LARCENY CHARGE RELATES TO THE ALLEGATIONS WITH REGARD
22 TO THE AUTOMOBILE.

23 NOW, IN THE OFFENSE OF ARMED ROBBERY, ARMED
24 ROBBERY IS THE STEALING OF THE PROPERTY OF ANOTHER
25 WITH FORCE AND VIOLENCE ACCOMPANIED BY A DEADLY

1 WEAPON. AGAIN, THE STATE MUST PROVE IT BEYOND A
2 REASONABLE DOUBT THAT IT WAS HERMAN HUGHES WHO STOLE.
3 SECONDLY, THEY MUST PROVE THAT THERE WAS A STEALING.
4 IN ARMED ROBBERY, THE VALUE IS NOT SIGNIFICANT. IT
5 WAS THE -- ONLY IF IT -- IT MUST PROVE THAT SOME
6 PROPERTY OF ANOTHER WAS STOLEN, AND THEY MUST PROVE
7 THAT THE CRIME OF ARMED ROBBERY HAS ALL OF THE
8 ELEMENTS OF ROBBERY, AND ADDITIONAL EVIDENCE IS
9 REQUIRED TO BE PROVEN, AND THAT IS THAT THE ROBBERY
10 MUST HAVE BEEN COMMITTED WITH A DEADLY WEAPON. THAT
11 IS, THE PERSON COMMITTING THE ROBBERY HAD AND USED
12 THE DEADLY WEAPON WITH WHICH HE PLACED THE ONE IN
13 POSSESSION OF THE PROPERTY IN FEAR IN ORDER TO OBTAIN
14 THE PROPERTY.

15 NOW, THOSE ARE THE ELEMENTS OF THE FOUR CHARGES
16 AGAINST THE DEFENDANT HERMAN HUGHES. THE STATE MUST
17 PROVE EACH OF THESE ELEMENTS TO EACH OF THESE CRIMES
18 TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT.

19 NOW, IN THE TRIAL OF THIS CASE, THERE MAY OR MAY
20 NOT HAVE BEEN FOR YOUR CONSIDERATION SOME STATEMENT
21 OF THE DEFENDANT. IF YOU FIND THAT THE DEFENDANT HAS
22 MADE SUCH A STATEMENT, YOU MUST FIRST CONCLUDE BEYOND
23 A REASONABLE DOUBT THAT THE STATEMENT, IF MADE, WAS
24 FREELY AND VOLUNTARILY GIVEN BY HIM WITHOUT HOPE,
25 THREAT, DURESS OR REWARD. IF YOU CONCLUDE THAT SUCH

1 A STATEMENT WAS MADE BY THE DEFENDANT, THEN YOU MAY
2 GIVE IT SUCH WEIGHT AS YOU IN YOUR JUDGMENT DETERMINE
3 IT SHOULD RECEIVE.

4 NOW, LADIES AND GENTLEMEN, IN THIS CASE, THE
5 DEFENDANT DID NOT TAKE THE WITNESS STAND. IN THAT
6 CONNECTION, I CHARGE YOU AS FOLLOWS. I CHARGE YOU
7 FURTHER, MR. FOREMAN AND MEMBERS OF THE JURY, THAT
8 THE FACT THAT A DEFENDANT DOES NOT TESTIFY IN HIS OWN
9 BEHALF CANNOT AND MUST NOT BE CONSIDERED AGAINST HIM
10 UNDER ANY CIRCUMSTANCES OR IN ANY MANNER WHATSOEVER.
11 THE FACT OR FAILURE OF ANY DEFENDANT TO TAKE THE
12 WITNESS STAND AND TO TESTIFY IN HIS OWN BEHALF DOES
13 NOT CREATE ANY PRESUMPTIONS AGAINST HIM. AND I TELL
14 YOU NOW, LADIES AND GENTLEMEN, THAT YOU MUST NOT
15 PERMIT THAT FACT TO WEIGH IN THE SLIGHTED DEGREE
16 AGAINST THAT DEFENDANT. AND MR. FOREMAN, THE FACT
17 THAT HE DOES NOT TESTIFY MUST NOT ENTER INTO THE
18 JURY'S DELIBERATIONS IN THE JURY ROOM.

19 NOW, LADIES AND GENTLEMEN OF THE JURY, I FURTHER
20 CHARGE YOU THAT IF TWO OR MORE COMBINE TO COMMIT AN
21 UNLAWFUL ACT AND IN THE EXECUTION OF THE CRIMINAL ACT
22 A HOMICIDE IS COMMITTED BY ONE OF THE ACTORS AS A
23 PROBABLE OR NATURAL CONSEQUENCE OF THE ACTS DONE IN
24 PURSUANCE OF THE COMMON DESIGN, ALL PRESENT
25 PARTICIPATING IN THE UNLAWFUL UNDERTAKING ARE AS

1 GUILTY AS THE ONE WHO COMMITTED THE FATAL ACT.

2 THIS, OF COURSE, AS ALL OTHER ISSUES, MUST BE
3 PROVEN BEYOND A REASONABLE DOUBT. THE COMMON PURPOSE
4 MAY NOT HAVE BEEN TO KILL AND MURDER. BUT IF THE
5 INTENDED ACT WAS UNLAWFUL AND A HOMICIDE WAS THE
6 NATURAL OR PROBABLE CONSEQUENCE OF THE PLAN, THEN ALL
7 PRESENT PARTICIPATING IN THE UNLAWFUL COMMON DESIGN
8 ARE AS GUILTY AS THE SLAYER. IF THE KILLING HAD NO
9 CONNECTION WITH THE COMMON PURPOSE AND DID NOT ENSUE
10 AS A PROBABLE RESULT OF AN ATTEMPT TO EXECUTE IT,
11 THEN THE SLAYER ALONE IS RESPONSIBLE FOR THE KILLING.

12 THE TEST IS WHETHER THE HOMICIDE IS COMMITTED IN
13 FURTHERANCE OF THE PLAN AND WAS A PROBABLE RESULT OF
14 ITS EXECUTION. WHEN SEVERAL PEOPLE PURSUE A COMMON
15 DESIGN TO COMMIT AN UNLAWFUL ACT AND EACH TAKES A
16 PART AGREED UPON OR ASSIGNED TO HIM IN AN EFFORT TO
17 ENSURE THE SUCCESS OF THE COMMON UNDERSTANDING, THE
18 ACT OF ONE IS THE ACT OF ALL, AND ALL ARE PRESUMED TO
19 BE PRESENT AND GUILTY. THESE FINDINGS, AGAIN, AS
20 WITH ALL OTHER FINDINGS, MUST BE BEYOND A REASONABLE
21 DOUBT.

22 NOW, LADIES AND GENTLEMEN, YOU 12 AND THE TWO
23 ALTERNATES HAVE BEEN SELECTED AS FAIR AND IMPARTIAL
24 JURORS SWORN TO IMPARTIALLY TRY AND DETERMINE THE
25 FACTS OF THIS CASE. AND WHEN YOU COMPLY WITH YOUR

1 OATH TO DO SO, THEN NO ONE WILL HAVE A RIGHT TO
2 CRITICIZE YOUR VERDICT, AND YOU WOULD HAVE FULLY
3 DISCHARGED YOUR DUTY AS JURORS. YOU MUST NOT BE
4 INFLUENCED BY OPINIONS OR EXPRESSIONS OF OPINIONS, IF
5 ANY, WHICH YOU MAY HAVE HEARD ON THE OUTSIDE, BUT YOU
6 ARE TO DETERMINE THIS CASE ACCORDING TO THE TESTIMONY
7 THAT YOU HAVE HEARD FROM THE LIPS OF THE SWORN
8 WITNESSES ALONG WITH OTHER EVIDENCE THAT HAS BEEN
9 INTRODUCED IN THE TRIAL OF THIS CASE.

10 AS TO EACH OF THE INDICTMENTS BEFORE ME, THERE
11 ARE ONLY TWO VERDICTS, AND YOU WILL HAVE THE ORIGINAL
12 INDICTMENTS WITH YOU. VERDICT MEANING TO SPEAK THE
13 TRUTH. THE VERDICT WILL BE EITHER NOT GUILTY OR
14 GUILTY AS TO EACH ONE OF THEM, AND THE VERDICT MUST
15 BE AS TO EACH UNANIMOUS OF ALL 12. IT CANNOT BE A
16 VERDICT OF THE MAJORITY. OBVIOUSLY, IT WOULDN'T BE A
17 VERDICT OF THE MINORITY. YOU CONSIDER EACH
18 INDICTMENT SEPARATELY, AND YOUR VERDICT OF NOT GUILTY
19 OR GUILTY MUST BE THE UNANIMOUS VERDICT OF ALL OF
20 YOU.

21 NOW, AFTER YOU HAVE DELIBERATED AND AFTER YOU
22 HAVE REACHED YOUR VERDICT UNANIMOUSLY, YOU WOULD
23 WRITE SUCH A VERDICT ON THE WORD VERDICT, SIGN YOUR
24 NAME, KNOCK ON THE DOOR, AND I WILL ACCEPT YOUR
25 VERDICT. REMEMBER, IN THIS CASE, FIRST PHASE, WE ARE

1 DEALING WITH SIMPLY THE GUILT OR THE INNOCENCE OF THE
2 PARTY INVOLVED HERE. AS I INDICATED BEFORE, THERE
3 MAY OR MAY NOT BE A SECOND PHASE, DEPENDING ON YOUR
4 VERDICT. AND I MAKE NO INFERENCE AS TO THAT. I
5 SIMPLY TELL YOU THAT THE ONLY QUESTION FOR YOUR
6 CONCERN IN THIS PHASE OF THIS CASE IS WHETHER OR NOT
7 THE STATE OF SOUTH CAROLINA HAS PROVED THIS DEFENDANT
8 GUILTY OF ANY OR ALL OF THESE CHARGES BEYOND A
9 REASONABLE DOUBT. GUILT OR INNOCENCE IS THE ONLY
10 THING THAT WE ARE CONCERNED WITH IN THIS PHASE OF THE
11 CASE.

12 NOW, I HOPE THAT BY HAVING EXPLAINED TO YOU
13 BEFOREHAND THE LAW OF THE CASE, THE ELEMENTS OF THE
14 CHARGES, AND WHAT THE STATE MUST PROVE, THAT THIS
15 WILL HELP YOU IN FOLLOWING THE COMMENTS OF SOLICITOR
16 BAILEY AND FOLLOWING THE COMMENTS OF THE ATTORNEY FOR
17 THE DEFENDANT. AT THE END OF THOSE COMMENTS, I'LL
18 HAVE SOME CLOSING INSTRUCTIONS FOR YOU, BUT I WANT
19 YOU TO REMEMBER THAT I'M HERE AT ALL TIMES UPON THE
20 BENCH TO GIVE YOU ANY FURTHER INSTRUCTIONS IN THE LAW
21 THAT YOU WOULD REQUIRE.

22 YOU MAY PROCEED.

23 MR. BAILEY: PLEASE THE COURT?

24 A JUROR: SOLICITOR, CAN YOU HAVE THAT
25 BLIND CLOSED OVER THERE?

1 MR. BAILEY: YOUR HONOR, I THINK ONE OF
2 THE JURORS WANTED THE BLINDS CLOSED OVER HERE.

3 THE COURT: YES, SIR. PLEASE DO THAT.

4 MR. BAILEY: LADIES AND GENTLEMEN, I
5 APPRECIATE YOUR ATTENTION. THROUGHOUT THE ENTIRE
6 TRIAL, YOU HAVE PAID CLOSE ATTENTION, ALL OF YOU, TO
7 THE TESTIMONY, AND I DO APPRECIATE THAT. I ASK YOU
8 TO BEAR WITH ME FOR ANOTHER 15 MINUTES.

9 THIS IS NOT AN UNDULY COMPLICATED TRIAL, BUT
10 THIS IS THE ONLY OPPORTUNITY I'LL GET TO SPEAK TO YOU
11 AT THIS PHASE OF THE TRIAL, SO I WANT TO MAKE SURE I
12 COVER WHAT I FEEL ARE THE IMPORTANT THINGS. I'M
13 GOING TO GO BY MY MEMORY OF THE EVIDENCE. IF I SAY
14 ANYTHING THAT'S DIFFERENT THAN WHAT YOU RECALL A
15 WITNESS HAS SAID, PLEASE USE YOUR OWN RECOLLECTION.
16 I'M NOT TRYING TO MISLEAD YOU, BUT I MAY MISSTATE
17 SOMETHING ACCIDENTALLY. SO FOLLOW YOUR OWN MEMORIES
18 ON WHAT YOU HEARD IN THE SWORN TESTIMONY FROM THOSE
19 WITNESSES.

20 AND AGAIN, AS I SAID IN THE OPENING STATEMENT
21 AND I THINK JUDGE COTTINGHAM SAID THIS, THE ONE
22 GUIDING FACTOR FOR A JURY IS JUST SIMPLY TO USE YOUR
23 GOOD, EVERYDAY COMMON SENSE TO JUDGE THE CREDIBILITY
24 AND BELIEVABILITY OF THE WITNESSES. JUST BECAUSE
25 SOMEBODY SAYS SOMETHING DON'T MEAN IT'S SO. LOOK AT

1 THESE PEOPLE, SIZE THEM UP AND JUDGE THEIR
2 CREDIBILITY.

3 NOW, THE EVIDENCE, LADIES AND GENTLEMEN, IN THIS
4 CASE -- MY BURDEN OF PROOF IS BEYOND A REASONABLE
5 DOUBT. BUT THE EVIDENCE IN THIS CASE IS ABSOLUTELY
6 OVERWHELMING THAT THIS MAN, HERMAN HUGHES, COMMITTED
7 ALL FOUR OF THESE OFFENSES. THERE IS JUST NO ISSUE,
8 BUT I DON'T WANT TO TRY TO SHORTCUT MY CLOSING
9 STATEMENTS TO YOU BECAUSE OF THE OVERWHELMING NATURE
10 OF THE CASE. I DO WANT TO HIT THE HIGH POINTS AND
11 KIND OF RUN OVER IT WITH YOU. SO GIVE ME ABOUT 15
12 MINUTES AND PLEASE CONTINUE TO PAY ATTENTION.

13 I WANT TO TALK TO Y'ALL, FIRST OF ALL, ABOUT
14 DANIEL OWENS. DANIEL OWENS HAS A PLEA NEGOTIATION
15 WITH THE STATE WHICH LIMITS HIS POTENTIAL PRISON
16 TIME, AS HE STATED, TO TEN YEARS BECAUSE OF HIS
17 INVOLVEMENT IN THIS THING. AND MR. NEWSOME MIGHT
18 TELL YOU THAT'S SOMETHING THAT YOU SHOULD TAKE INTO
19 CONSIDERATION WHEN YOU JUDGE HIS CREDIBILITY, AND
20 HE'S ABSOLUTELY CORRECT. YOU SHOULD. BUT WHEN YOU
21 LOOK AT DANIEL OWENS' TESTIMONY, AND HE BROUGHT OUT
22 THAT THIS PLEA AGREEMENT WAS REACHED FRIDAY, I READ
23 THE ENTIRE STATEMENT MR. OWENS GAVE TWO DAYS AFTER
24 THIS EVENT OCCURRED, AND IT WAS ESSENTIALLY THE SAME
25 THING HE TESTIFIED TO UNDER OATH A YEAR -- OVER A

1 YEAR BEFORE HE MADE THIS PLEA AGREEMENT. AND WHAT
2 MR. OWENS SAID IN THAT STATEMENT HE GAVE THE DEPUTIES
3 AND WHAT HE TOLD Y'ALL HERE UNDER OATH IS ESSENTIALLY
4 THE SAME THING, THAT HE OWNED THIS GUN, THIS .380
5 LARSON PISTOL, THAT HERMAN HUGHES WANTED THAT GUN ON
6 THE EVENING OF THE 18TH OF MARCH, 1994, AND HE SOLD
7 HIM THE GUN FOR 50 DOLLARS.

8 AND LATER ON THAT SAME NIGHT, KELSEY PEARCE AND
9 HERMAN HUGHES LEFT HIS HOUSE, CAME BACK A HALF HOUR
10 OR SO LATER, HAD SOME MONEY, AND THE THREE OF THESE
11 GUYS DIVIDED THAT MONEY UP ON THE BED. THEN THEY
12 WENT OFF TO A BEER JOINT, A LOUNGE IN ORANGEBURG.
13 AND WHILE THEY WERE AT THAT BEER JOINT, THE THREE OF
14 THEM WALKED OUTSIDE, AND HERMAN HUGHES, DANIEL OWENS,
15 KELSEY PEARCE WERE OUT THERE IN A GROUP STANDING
16 CLOSE TOGETHER, A FOOT OR TWO APART, AND PEARCE
17 STARTED TALKING ABOUT WHAT HAPPENED WITHIN EARSHOT OF
18 HERMAN HUGHES, AND KELSEY PEARCE SAID HE WAS STANDING
19 OUTSIDE OF THE BLUE DIAMOND. HE COULD LOOK IN THE
20 WINDOW, AND WE KNOW YOU COULD LOOK IN THE WINDOW
21 BECAUSE THERE WAS TESTIMONY FROM CAPERS WANNAMAKER
22 AND I THINK JAMES GREEN, TWO OF THE POLICE OFFICERS,
23 HOW THEY COULD SEE INSIDE AND SEE KELLY HOFFMAN BEING
24 SHOT. SO WE KNOW YOU CAN LOOK IN THE WINDOW. THIS
25 PAINT IS SCRATCHED OFF.

1 ANYWAY, KELSEY PEARCE IS LOOKING IN THE WINDOW.
2 HERMAN HUGHES GOES IN THERE, ASKS THE MAN HOW TO PLAY
3 THE MACHINES, COMES BACK OUT A SHORT MINUTE -- A FEW
4 MINUTES LATER, AND ASKS PEARCE TO GIVE HIM 50
5 DOLLARS, WHICH HE DOES. HE GOES BACK IN THERE WITH
6 50 DOLLARS, OBVIOUSLY TO GET THE CASH DRAWER OPEN.
7 GIVES HIM 50 DOLLARS, SAYS I WANT CHANGE. SO KEN
8 PRESLEY OPENS THE CASH DRAWER. THEN THIS MAN PULLS
9 THE GUN OUT AND STARTS SHOOTING.

10 AND ALL OF THIS TIME, HERMAN HUGHES ISN'T SAYING
11 MUCH. BUT HENRY OWENS SAYS HE'S THERE AND HE NODS
12 HIS HEADS EVERY NOW AND THEN, AND HE DOESN'T DISPUTE
13 ANYTHING. IN FACT, HE AGREES. AND AFTER KELSEY
14 PEARCE IS FINISHED TELLING THAT STORY, HERMAN HUGHES
15 SAYS, "I BUCKED HIM DOWN." AND OWENS SAID THAT MEANT
16 TO HIM THAT HE DID THE SHOOTING. AND THEN GOT IN THE
17 CAR AND DROVE -- EXCUSE ME -- PEARCE SAID THAT HE AND
18 HERMAN HUGHES THEN GOT IN THE CAR AND DROVE ON TO
19 ORANGEBURG WHERE THIS CONVERSATION TOOK PLACE.

20 AS I SAID, THAT STATEMENT IS CONSISTENT WITH
21 WHAT HE TOLD Y'ALL HERE IN COURT. IT'S CONSISTENT
22 WITH KELLY HOFFMAN'S TESTIMONY. IT'S CONSISTENT WITH
23 KIMSON AND BARBARA JOHNSON.

24 AND WE ALSO KNOW FROM OWENS' TESTIMONY THAT THAT
25 NEXT DAY, ABOUT SOMETIME IN THE AFTERNOON, HERMAN

1 HUGHES CAME BACK OUT TO THE HOUSE, PICKED THIS GUN UP
2 AND LEFT WITH IT. BEFORE THAT, HE HAD THE GUN IN THE
3 CAR, FIRED THAT GUN OUT THE WINDOW. SO WE'VE GOT
4 HERMAN HUGHES IN POSSESSION OF THAT GUN BEFORE THE
5 SHOOTING. WE'VE GOT HIM IN POSSESSION OF IT THE
6 NIGHT OF THE SHOOTING AND AFTERWARDS. WE'VE GOT HIM
7 IN POSSESSION OF IT THE NEXT DAY.

8 LET ME TALK ABOUT THE BALLISTICS TESTIMONY.
9 THERE WAS SOME CONFUSION ON THE PART OF SOME OF THESE
10 WITNESSES ABOUT THE COLOR OF THE GUN AND THE SIZE OF
11 THE GUN AND ALL OF THAT. BUT WE'VE GOT AN UNBROKEN
12 CHAIN OF CUSTODY OF THAT GUN. FIRST OF ALL, FROM
13 HENRY DANIEL OWENS TO HERMAN HUGHES. HE'S GOT THE
14 GUN AT THE BLUE DIAMOND. HE'S GOT THE GUN SHOOTING
15 OUT THE WINDOW. HE LEAVES THE GUN IN THE CAR -- IN
16 OWENS' CAR. THE NEXT DAY, OWENS FINDS OUT THE GUN IS
17 STILL IN THE CAR. HE BRINGS IT UP TO HIS HOUSE.
18 LATER ON, PHILLIP WRIGHT, WILBUR KIMSON AND HERMAN
19 HUGHES SHOW UP AT THE HOUSE, DROP HUGHES OFF. HUGHES
20 GETS THE GUN BACK, DRIVES UP TO HIS MOTHER'S HOUSE,
21 LEAVES THE GUN IN WRIGHT'S CAR. KIMSON GETS IN THE
22 CAR WITH THE GUN IN IT, OBVIOUSLY TO GET RID OF IT.
23 DRIVES TO BETTY SPAGNER'S HOUSE. SO WE'VE GOT THE
24 GUN GOING FROM HUGHES TO KIMSON TO SPAGNER.

25 THEY QUESTION HUGHES. BASED ON THE QUESTIONS

1 FROM HUGHES, THEY GET AN IDEA WHERE THE GUN IS, AND
2 THEY GET ON THE TRAIL OF IT. KIMSON HAS DROPPED THE
3 GUN OFF AT BETTY SPAGNER'S. THEY INTERCEPT KIMSON ON
4 THE WAY BACK. GO BACK TO BETTY SPAGNER'S HOUSE.
5 DANNY KIRKLAND GETS THE GUN OUT OF THE CLOSET, TURNS
6 IT OVER TO EARL RHUDY. EARL RHUDY IN TURN TURNS THAT
7 GUN OVER TO STEVE DERRICK OF SLED WHO GIVES IT TO
8 BALLISTICS. AND YOU'VE HEARD MR. PAAVEL, THE SLED
9 BALLISTICS EXPERT, TESTIFY THAT HE COMPARED THAT GUN
10 WITH THE BULLET FROM KEN PRESLEY'S BRAIN, THE FOUR
11 SPENT SHELL CASINGS FOUND AT THE SCENE, TWO BULLETS
12 AT THE SCENE. AND THOSE DEATH BULLETS WERE FIRED BY
13 THIS GUN TO THE EXCLUSION OF EVERY OTHER GUN IN THIS
14 WORLD.

15 THERE WERE FINGERPRINTS, HERMAN HUGHES'
16 FINGERPRINTS, TO THE EXCLUSION OF EVERY OTHER HUMAN
17 BEING IN THE WORLD, FOUND ON TWO PIECES OF PAPER IN
18 THAT CASH DRAWER WHERE THE MONEY WAS STOLEN FROM THAT
19 MATCHED UP TO THE KNOWN PRINTS THAT EARL RHUDY TOOK
20 OFF OF HERMAN HUGHES. FINGERPRINT TESTIMONY IS THE
21 MOST EXACT SCIENTIFIC TESTIMONY YOU CAN GET. THERE
22 IS NO QUESTION HERMAN HUGHES WAS IN THERE.

23 KELLY HOFFMAN TESTIFIED HERE UNDER OATH AT
24 LENGTH. SHE WAS SUBMITTED TO WATCHING HER BOYFRIEND
25 BE BRUTALLY MURDERED, SHOT IN THE HEAD THREE TIMES.

1 SHE WAS SHOT TWO TIMES. MIRACULOUSLY, SHE IS STILL
2 ALIVE TODAY TO TESTIFY AND POINT THIS MAN OUT AS
3 BEING THE ONLY PERSON THERE, THE ONE THAT SHOT HER,
4 THAT SHE -- SHE'S AN EYEWITNESS TO THIS.

5 LADIES AND GENTLEMEN, YOU HAVE DIRECT EYEWITNESS
6 TESTIMONY, FINGERPRINTS ON THE CASH DRAWER, A
7 BALLISTICS MATCH, AND YOU'VE GOT THIS MAN BEING
8 QUOTED BY HIS CO-DEFENDANT, HIS COHORT HERE, KELSEY
9 PEARCE, RELATING WHAT HAPPENED, AND HE BASICALLY
10 AGREES WITH WHAT HAPPENED.

11 SO I SUBMIT TO YOU, LADIES AND GENTLEMEN, THAT
12 THERE'S NO PERFECT CASE THAT'S EVER BEEN TRIED,
13 INCLUDING THIS CASE. BUT THIS CASE IS ABOUT AS CLOSE
14 TO IT AS YOU CAN GET.

15 NOW, YOU CAN GET UP HERE AND SHOOT A FEW HOLES
16 IN HERE AND SAY HERMAN HUGHES' COUSIN, MR. WRIGHT,
17 SAID, WELL, IT WASN'T A SILVER GUN LIKE THIS. IT WAS
18 A BLUE STEEL GUN OR A DARK GUN. IN FACT, KELLY
19 HOFFMAN SAID, YOU KNOW, THE GUN LOOKED DARK TO ME.
20 BUT AS I SAID, WE KNOW THIS IS THE GUN THAT DID THE
21 KILLING. WE KNOW WHERE THE GUN CAME FROM. WE KNOW
22 THE CHAIN OF CUSTODY OF THE GUN.

23 AND I SUBMIT TO YOU THAT KELLY HOFFMAN, WHAT SHE
24 WAS GOING THROUGH, SHE MADE A FEW MINOR MISTAKES WHEN
25 SHE WAS TALKING TO EARL RHUDY UNDER THE INFLUENCE OF

1 THE PAIN SHE WAS IN, THE MORPHINE SHE WAS ON. Y'ALL
2 HEARD HER TOWARDS THE END OF THAT TAPE MR. NEWSOME
3 WANTED TO PLAY ASKING FOR THE NURSE, SAYING, "I NEED
4 A PAIN PILL." SHE WAS IN PAIN. AND SURE SHE GOT A
5 LITTLE CONFUSED OF THE SEQUENCE OF THE SHOTS. SHE
6 TOLD US THE SEQUENCE WAS THAT SHE WAS -- KEN PRESLEY
7 WAS SHOT IN THE HEAD. HE FELL TO THE FLOOR. SHE WAS
8 THEN SHOT IN THE CHEST. KEN PRESLEY WAS SHOT AGAIN
9 IN THE HEAD ON THE FLOOR. SHE WAS THEN SHOT, AND KEN
10 WAS SHOT THE FINAL AND THIRD TIME. AND UNDER THE
11 INFLUENCE OF THE PAIN SHE WAS UNDER, THE MORPHINE,
12 AND HAVING HER JAW WIRED SHUT, SHE SAID KEN WAS SHOT
13 ONCE, AND THEN SHE WAS SHOT TWICE, AND SHE HEARD A
14 FOURTH SHOT. BUT WE KNOW THERE WERE FIVE SHOTS
15 FIRED. SO PLEASE DON'T HOLD THAT AGAINST HER. IF
16 THIS YOUNG MAN HADN'T SHOT HER AND PUT HER IN THE
17 SHAPE SHE WAS IN, SHE WOULDN'T HAVE BEEN CONFUSED
18 WHEN EARL RHUDY WENT TO INTERVIEW HER.

19 THE JUDGE TOLD Y'ALL THAT THE HAND OF ONE IS THE
20 HAND OF ALL. YOU HEARD RICARDO GILFORD GET UP HERE
21 AND TESTIFY. AND WHEN YOU TALK ABOUT CREDIBILITY AND
22 BELIEVABILITY OF WITNESSES, THAT'S WHAT YOU OUGHT TO
23 BE THINKING ABOUT. EVEN IF Y'ALL DID BELIEVE
24 EVERYTHING RICARDO GILFORD SAID, THIS WILD STORY
25 ABOUT THREE PEOPLE GETTING KILLED AND THAT THEY TAKE

1 THIS CAR AND GET GAS IN IT, I MEAN, DOES THAT MAKE
2 ANY SENSE IF YOU'RE GOING TO STEAL A CAR AND DRIVE
3 OUT AND PUT 10 DOLLARS' WORTH OF GAS IN A STOLEN CAR
4 AND GO BACK AND PARK IT WHERE YOU HAD IT BEFORE?
5 THAT DOESN'T MAKE ANY SENSE. NONE OF WHAT HE SAID
6 MADE ANY SENSE.

7 SO YOU CAN DISCOUNT THE TESTIMONY THAT YOU FIND
8 TOTALLY UNBELIEVABLE. BUT LADIES AND GENTLEMEN, EVEN
9 IF Y'ALL BELIEVE WHAT RICARDO GILFORD TOLD YOU, IT
10 STILL DOESN'T EXONERATE THIS MAN HERE. HE WOULD
11 STILL BE INVOLVED IN IT UP TO HIS NECK. AND THE
12 JUDGE TOLD YOU ABOUT THE HAND OF ONE IS THE HAND OF
13 ALL ACCOMPLICE LIABILITY. SO NO MATTER HOW YOU LOOK
14 AT IT, NO MATTER WHAT, THIS MAN IS AS GUILTY AS HE
15 CAN BE, NOT BECAUSE I SAY SO, BECAUSE THE EVIDENCE,
16 THE UNDISPUTED EVIDENCE OVERWHELMINGLY ESTABLISHES
17 THAT.

18 NOW, I'M NOT GOING TO SIT UP HERE AND GO THROUGH
19 EACH ELEMENT OF THESE FOUR INDICTMENTS BECAUSE THE
20 JUDGE DID THAT FOR YOU. AND LIKE HE SAID, IF YOU
21 HAVE ANY QUESTIONS OF A LEGAL NATURE DURING YOUR
22 DELIBERATIONS, YOU CAN ASK HIM. HE CAN RECHARGE YOU
23 ON THE LAW, GIVE YOU FURTHER EXPLANATION.

24 CAN THERE BE ANY QUESTION UNDER THE TESTIMONY
25 YOU'VE HEARD THAT THERE WAS A GRAND LARCENY, THAT

1 THAT AUTOMOBILE WAS STOLEN? ABSOLUTELY NOT. I MEAN,
2 THE POLICE SHOW UP THERE. THE CAR IS MISSING. IT'S
3 FOUND AT THE EBONY CLUB WITH KELSEY PEARCE'S PRINTS
4 ON IT. MS. WILLIAMSON THAT WAS THE RECORD OWNER OF
5 THE CAR FOR HER SON TESTIFIED THE VALUE WAS OVER
6 1,000 DOLLARS.

7 AS FAR AS ARMED ROBBERY, CAN THERE BE ANY
8 QUESTION THAT HERMAN HUGHES COMES IN HERE, POINTS THE
9 GUN AT THE MAN AND ASKS FOR THE MONEY AND TAKES THE
10 MONEY AT GUNPOINT AND TAKES THE MAN'S CAR KEYS AT
11 GUNPOINT AND THEN SHOOTS HIM TO DEATH AND SHOOTS THE
12 GIRL? CAN THERE BE ANY QUESTION ABOUT ARMED ROBBERY?
13 THERE'S NONE.

14 AS FAR AS MURDER, MALICE AFORETHOUGHT, TO SHOOT
15 A MAN IN THE HEAD THAT'S OFFERING NO RESISTANCE.
16 PRESLEY WASN'T TRYING TO RUN OR FIGHT OR DO ANYTHING
17 ELSE BUT COOPERATE AND HAND OVER THE MONEY AND HAND
18 OVER THE CAR KEYS AS FAST AS HE COULD HOPING THIS GUY
19 WOULD LEAVE THEN. AND HE DIDN'T DO IT. HE JUST SHOT
20 HIM DOWN IN COLD BLOOD, AND HE SHOT THAT GIRL. AND
21 SHE'S ALIVE NOT BECAUSE HE -- HE DIDN'T WANT TO KILL
22 HER. I MEAN, HE TRIED HIS VERY LEVEL BEST TO KILL
23 HER, AND THAT'S WHAT ASSAULT AND BATTERY WITH INTENT
24 TO KILL IS, WHEN YOU TRY TO KILL SOMEBODY AND FOR
25 WHATEVER REASON, YOU'RE NOT SUCCESSFUL. AND THANK

1 GOD THIS MAN WASN'T SUCCESSFUL IN KILLING THAT GIRL.
2 BUT HE ALMOST DID. THE EMS PEOPLE GET THERE.
3 SHE HAD NO BLOOD PRESSURE, NO PULSE. SHE WAS IN SUCH
4 BAD SHAPE THEY COULDN'T TREAT HER AT THE LOCAL
5 HOSPITAL. THEY HAD TO SEND HER TO RICHLAND COUNTY,
6 HAVE A VASCULAR SURGEON SEW HER UP WHERE THAT ARTERY
7 WAS SEVERED, AND SHE'S ALIVE NO THANKS TO HIS EFFORTS
8 TO KILL HER. I MEAN, THAT'S ABOUT THE CLEAREST CASE
9 OF ASSAULT AND BATTERY WITH INTENT TO KILL THAT YOU
10 CAN IMAGINE.

11 NOW, IN A MINUTE, I'M GOING TO SIT DOWN HERE,
12 AND MR. NEWSOME WILL GET A CHANCE TO GET UP HERE AND
13 GIVE HIS CLOSING STATEMENT. AND WHEN HE DOES THAT, I
14 THINK WHAT HE MAY TRY TO DO IS KIND OF SPREAD THE
15 BLAME AROUND A LITTLE BIT. HE'S GOING TO TALK TO
16 Y'ALL ABOUT KELSEY PEARCE AND DANIEL OWENS. AND I'M
17 NOT HERE AS A CHARACTER WITNESS FOR KELSEY PEARCE AND
18 DANIEL OWENS. THEY WERE INVOLVED TOO.

19 THE EVIDENCE SHOWS THIS MAN WAS THE SHOOTER, NOT
20 THE OTHER TWO. THEY WERE INVOLVED IN IT, AND THEY'LL
21 BE FACING A JUDGE AND A JURY. BUT YOU ARE HERE TO
22 SIT IN JUDGMENT, JUDGES OF THE FACTS OF THIS MAN,
23 HERMAN HUGHES. NOT KELSEY PEARCE, NOT DANIEL OWENS.
24 THAT'S FOR A DIFFERENT DAY, DIFFERENT JURY, DIFFERENT
25 JUDGE.

1 YOU KNOW, CLOSING STATEMENTS SOMETIMES ARE
2 CALLED THE CLOSING ARGUMENTS. I'M NOT HERE TO ARGUE
3 WITH YOU. I'M HERE JUST TO DISCUSS THE FACTS WITH
4 YOU, AND THE FACTS ARE REALLY STRAIGHT UP AND
5 UNDISPUTED, UNCOMPLICATED AND CLEAR. AND BOTH SIDES
6 IN THIS CASE PICKED THE 12 OF Y'ALL, 14 COUNTING THE
7 ALTERNATES, OUT OF 300 PEOPLE THAT WERE SUMMONED, AS
8 BEING FAIR, UNBIASED, IMPARTIAL JURORS THAT COULD
9 BASE THEIR DECISION ON THE FACTS, THE SWORN
10 TESTIMONY. I FEEL CONFIDENT THAT Y'ALL WILL DO THAT,
11 AND ON BEHALF OF THE STATE OF SOUTH CAROLINA, I'M
12 ASKING EACH OF Y'ALL TO LOOK AT THESE INDICTMENTS
13 SEPARATELY, BRING BACK A VERDICT OF GUILTY TO MURDER,
14 GUILTY TO ARMED ROBBERY, GUILTY OF GRAND LARCENY, AND
15 GUILTY OF ASSAULT AND BATTERY WITH INTENT TO KILL
16 KELLY HOFFMAN, NOT BECAUSE I SAY SO, BUT BECAUSE THE
17 FACTS SAY SO. THE FACTS DEMAND THAT RESULT. THANK
18 YOU VERY MUCH.

19 MR. NEWSOME: PLEASE THE COURT? MR.
20 FOREMAN, LADIES AND GENTLEMEN OF THE JURY, THE
21 SOLICITOR TOLD YOU, AND I JOTTED IT DOWN, THAT MY
22 CLIENT WAS IN THIS UP TO HIS NECK. COULDN'T AGREE
23 WITH HIM MORE. WE NEVER TOLD YOU DIFFERENT FROM THE
24 START. FROM THE START, WE TOLD YOU THE REASON WHY WE
25 PLED NOT GUILTY IS BECAUSE THIS STATE REQUIRES IN

1 ORDER FOR A JURY TO SENTENCE, AS YOU HAVE THE
2 SENTENCING RIGHT IN A DEATH PENALTY CASE, IN A CASE
3 WHERE HE SEEKS THE DEATH PENALTY, YOU HAVE THE RIGHT
4 TO NOT ONLY MAKE A DECISION ON GUILT OR INNOCENCE,
5 BUT YOU ALSO HAVE THE RIGHT TO CONSIDER PUNISHMENT.
6 AND IT'S BECAUSE OF THAT WE HAD TO PLEAD NOT GUILTY
7 TO GET TO YOU, AND THAT'S WHAT WE DID.

8 HE'S IN IT UP TO HIS NECK, AND THE THING THAT
9 DISTURBS ME MOST IS WHEN THESE FOLKS SEE SOMEONE WHO
10 IS INVOLVED AND THEY GET TUNNEL VISION TO BELIEVE
11 THAT OTHERS ARE INVOLVED ALSO.

12 LET'S LOOK AT THE EVIDENCE THAT HE PRESENTED,
13 AND YOU WILL GET A CHANCE TO DO IT. AND AGAIN, I'M
14 TELLING YOU THIS. I'M NOT SAYING MY CLIENT IS
15 INNOCENT. LET'S LOOK OVER ALL OF THE EVIDENCE.

16 START WITH KELLY'S STATEMENT. LET'S START WITH
17 THE STATEMENT THAT SHE TOOK, THAT YOU LISTENED TO.
18 YOU GOT -- YOU WILL HAVE A TRANSCRIPT MADE AVAILABLE
19 TO YOU. YOU GO BACK AND LOOK AT IT. LOOK AT THE
20 TIME. THERE WAS ALMOST AN HOUR DISTANCE AFTER THAT
21 FIRST PART WAS CUT OFF AND CUT BACK ON WHEN SHE WAS
22 ASKING FOR THE PAIN MEDICINE. SHE WAS TELLING, SHE
23 SAID SHE GOT SHOT IN THE FACE AND THE CHEST AND THAT
24 KEN PRESLEY GOT SHOT ONCE, AND SHE HAD HER HEAD DOWN.
25 I SUBMIT TO YOU WITH THE WOUNDS SHE SUFFERED, SHE WAS

1 BLACKING IN AND OUT. NOW, THOSE EMT FOLKS, AND I
2 ASKED THEM, BECAUSE MY POINT WITH THEM WAS I WANTED
3 TO KNOW COULD SHE BE BLACKING OUT, COMING TO AND
4 GOING BACK OUT, AND THAT'S APPARENTLY WHAT SHE WAS
5 DOING.

6 IF YOU COME BACK OUT HERE AND LISTEN TO THE
7 TESTIMONY OF SOME OF THOSE FOLKS, IF YOU DON'T
8 BELIEVE ME, HALF OF THOSE FOLKS SAID HER HEAD WAS
9 BOBBING. SHE WAS OUT OF IT. AND I CAN'T BLAME HER.
10 I'M NOT SAYING THIS BECAUSE I UNDERSTAND THAT SHE
11 BELIEVES THAT, BUT I'M TELLING YOU I THINK SHE'S
12 CONFUSED. AND MY THEORY IS IT'S GOING TO LET
13 SOMEBODY ELSE OFF THAT'S EQUALLY GUILTY.

14 IN THAT STATEMENT, SHE SAID THE LIGHTS WERE ON,
15 AND CLEARLY, THAT HERMAN HUGHES WHEN HE LEFT TURNED
16 THE LIGHT OFF AND LOCKED THE DOOR. YET, DANIEL OWENS
17 IN HIS STATEMENT, A STATEMENT HE SAYS IS TRUE OTHER
18 THAN THE PART HE LEFT OUT THAT HE KNEW THEY WERE
19 GOING TO ROB AND HE SHARED PART OF THE MONEY, AND YOU
20 CAN USE YOUR COMMON SENSE ABOUT WHETHER HE WAS GOING
21 TO GIVE THE GUN FREE TO A 16 YEAR OLD KID WHO HAD
22 BEEN IN HIS HOUSE. THAT DOES NOT REGISTER, LADIES
23 AND GENTLEMEN.

24 IN HIS STATEMENT, HE SAID THAT KELSEY TOLD HIM
25 HERMAN FORGOT TO CLOSE THE DOOR. HE WALKED OUT OF

1 THERE. HE SHUT IT. NOW, WHO'S LYING? IS KELSEY
2 TELLING THE TRUTH AND IS KELLY CONFUSED? I SUBMIT
3 YES. I SUBMIT THAT WHAT HAPPENED AFTER THOSE FIRST
4 THREE SHOTS THAT HAPPENED AS SHE DESCRIBED THEM,
5 KELSEY CAME IN, AND HE SHOT JUST AS HE BOASTED WHEN
6 HE WAS DRUNK. THE ONLY TIME KELSEY HAS ADMITTED TO
7 ANYTHING IS WHEN HE WAS DRUNK, AND HE BOASTED TO HIS
8 COUSIN. I KNEW THAT MAN WAS HIS COUSIN. I NEVER MET
9 HIM UNTIL TODAY, AND I ASKED HIM THAT. HAVE YOU EVER
10 MET ME BEFORE? WE MET JUST OUTSIDE THIS WALL. HE
11 MADE THE STATEMENT TO THE POLICE ON MARCH 19TH. I
12 TRIED TO GET IT IN UNDER OFFICER RHUDY. IT CAME IN
13 BY THE SOLICITOR WHEN KELSEY'S COUSIN WAS ON THE
14 STAND.

15 THEY ARRESTED KELSEY PEARCE ON MARCH 19TH, THAT
16 WAS SATURDAY, FOR THE MURDER BASED ON THE INFORMATION
17 THEY HAD. AND WHAT WAS IT? THAT STATEMENT HE HAD
18 MADE BOASTING ABOUT SHOOTING TO HIS COUSIN. WHY
19 WOULD HIS COUSIN WANT TO HELP HERMAN? RICARDO DIDN'T
20 KNOWN HERMAN. HE WENT BACK TO NEW YORK. HE CAME
21 BACK INTO TOWN AND WE FOUND HIM AND SUBPOENAED HIM TO
22 COME. WHY DIDN'T THEY PUT HIM UP? THE POLICE
23 INVESTIGATED THAT. THEY HAD THAT. BECAUSE IT
24 DOESN'T FIT THEIR TIGHT LITTLE THEORY.

25 WHY DID THE FOCUS CHANGE FROM KELSEY TO HERMAN

1 HUGHES? WHEN DANIEL OWENS GAVE THAT STATEMENT
2 SUNDAY. AND DANIEL OWENS, THE ONLY ADULT OF THE
3 THREE, THE GUY WAS TOTALLED, TOO. HE TOLD YOU HE
4 DIDN'T DRINK MUCH THAT NIGHT. THEY HAD 15 BEERS. HE
5 GAVE A 16-YEAR-OLD KID A GUN? I SUBMIT THAT HE GAVE
6 HIS COUSIN -- EXCUSE ME, HIS NEPHEW, THAT GUN.

7 AND THEY WENT DOWN TO ROB THAT, AND HE KNEW THEY
8 WERE GOING. THE SAME MAN WHO'S GOING TO GET AT MOST
9 A TEN-YEAR SENTENCE IS GOING TO BE ASKING YOU TO TAKE
10 THIS BOY'S LIFE BECAUSE YOU HAVE TO FIND YOUR VERDICT
11 ON THE EVIDENCE, AND AS -- AS HIS HONOR CHARGES YOU,
12 EVIDENCE IS THE HAND OF ONE IS THE HAND OF ALL, AND
13 IT APPLIES WHETHER HE SHOT SOMEONE OR NOT.

14 YOU'VE HEARD THE TESTIMONY. HERMAN SHOT.
15 THERE'S NO QUESTION HE SHOT. KELSEY SHOT, TOO. THE
16 HAND OF ONE IS THE HAND OF ALL, AND WHAT ABOUT
17 DANIEL? HENRY DANIEL OWENS, JUNIOR, THE ONE WHO
18 FAILED TO TELL THE POLICE -- HE WAS SO UPSET, FOR A
19 YEAR-AND-A-HALF HE STAYED IN THIS COMMUNITY AND
20 DIDN'T SHARE THE TRUTH WITH US UNTIL LAST FRIDAY WHEN
21 HE MADE THE DEAL WITH THE SOLICITOR'S OFFICE THAT HE
22 WOULDN'T HAVE TO BE FACING WHAT HERMAN'S FACING, SO
23 HE COULD COME IN HERE. THE ONLY ADULT.

24 SO HE SHARED THE MONEY. THAT WAS A CRITICAL
25 ELEMENT. HE GOT A THIRD OF THAT MONEY BECAUSE KELSEY

1 -- I ASKED HIM WHY -- WHY DID HE GIVE YOU THE MONEY
2 IF HE WASN'T PART OF IT? KELSEY SAID HE OWED HIM
3 MONEY. KELSEY DIDN'T OWE HIM ANY MONEY. KELSEY
4 DRIVES THE CAR. HE GETS THE MONEY.

5 RICARDO, I SUBMIT TO YOU, HE'S TELLING THE
6 TRUTH. YOU TAKE THAT STATEMENT AND YOU FOLLOW AND
7 UNDERSTAND IT IS TYPICAL LAW ENFORCEMENT THAT THEY
8 WRITE OUT IN THEIR OWN WORDS WHAT THE PEOPLE SAY AND
9 THEN GET THEM TO SIGN IT. AS I UNDERSTAND -- AND I
10 DIDN'T FOLLOW -- I DIDN'T EVEN ASK HIM ABOUT THE
11 STATEMENT. I PUT HIM ON THE STAND AND ASKED HIM TO
12 TELL WHAT HAPPENED. I MET HIM AFTER HE WALKED UP
13 THIS AISLE AFTER BEING INTRODUCED OUTSIDE. I DIDN'T
14 ASK HIM ABOUT THE STATEMENT. PUT HIM ON THERE IN
15 FRONT OF HIS COUSIN KELSEY PEARCE AND THIS YOUNG MAN
16 TO TELL WHAT HAPPENED THAT NIGHT. HE DIDN'T COME
17 HERE HAPPY GO LUCKY, DISRESPECTFUL. HE CAME IN HERE
18 TO TELL THE TRUTH.

19 WHEN YOU EXAMINE THE STATEMENT, GO THROUGH IT.
20 HE SAW KELSEY, KELSEY AND HERMAN INITIALLY, AND HE
21 TRIED TO EXPLAIN WHEN THE SOLICITOR KEPT CUTTING HIM
22 OFF, THEY WERE IN THE CAR, THE CAR THAT USED TO
23 BELONG TO KENNETH PRESLEY. HERMAN LEFT THAT CAR,
24 WENT OVER WITH SOME FRIENDS. HE AND KELSEY WENT TO
25 GET GAS, 10 DOLLARS' WORTH OF GAS. WHY DID HE GO GET

1 GAS? BECAUSE IN THAT STATEMENT IT ALSO SAYS -- AND
2 NOTICE HE DIDN'T READ THAT PART. HE READ PARTS OF
3 IT. THAT KELSEY WANTED TO GO TOO AND ASKED RICARDO
4 IF HE WANTED TO GO WITH HIM. WHY WOULD KELSEY WANT
5 TO GO? BECAUSE HE SHOT KENNETH PRESLEY AND ROBBED
6 THE BUSINESS, ALONG WITH HERMAN HUGHES, STOLE THE CAR
7 AND SPLIT THE MONEY UP WITH HIS COUSIN. HE KNEW HE
8 WAS GOING TO BE IN TROUBLE. AND THAT'S WHY HE WAS
9 TELLING THE TRUTH THEN.

10 THEN HE SAID THAT HE ASKED HERMAN LATER -- LOOK
11 AT THE NEXT PARAGRAPH, AND HE EXPLAINED IT TO YOU WHY
12 HE ASKED HERMAN LATER. HERMAN WENT TO THE CAR --
13 INITIALLY HERMAN WAS IN THE CAR WITH KELSEY, IN THE
14 CAR THAT WAS STOLEN. THEN HERMAN GETS OUT. RICARDO
15 GOT IN, AND THEY WENT AND BOUGHT GAS, AND THAT'S WHEN
16 THE CONVERSATION WITH THE ADMISSION ABOUT WHAT KELSEY
17 HAD DONE, ALBEIT HE EXAGGERATED. HE COMES BACK, SEES
18 HERMAN HUGHES. KELSEY TOLD YOU, "YOU DON'T BELIEVE
19 ME, GO ASK HERMAN."

20 AND THE SOLICITOR SAID, WAIT A MINUTE, WAS
21 HERMAN IN THE CAR OR NOT? IT WAS PRETTY EASY TO
22 FOLLOW IF YOU LISTEN TO HIM, BUT HE DIDN'T WANT TO
23 LISTEN. HE WANTS TO HEAR HIS VERSION BECAUSE HIS
24 VERSION DOESN'T ALLOW THE POSSIBILITY THAT KELSEY
25 PEARCE IS ALSO RESPONSIBLE FOR KENNETH PRESLEY'S

1 DEATH. AND HIS VERSION DOESN'T ALLOW FOR YOU TO
2 CONSIDER THAT HE DIDN'T NEED THAT MAN TO TESTIFY
3 AGAINST HERMAN. WE TOLD YOU FROM THE OUTSET THAT
4 HERMAN WAS GUILTY. HE DIDN'T NEED THAT MAN. HE GETS
5 A TEN-YEAR SENTENCE AT MOST, AND HE GETS TO WALK.
6 BUT IT DIDN'T FIT IN HIS NEAT PATTERN.

7 AND LADIES AND GENTLEMEN, YOU HAVE NO CHOICE.
8 YOU GO BACK IN THE JURY ROOM. THE EVIDENCE IS CLEAR.
9 WE'RE NOT ARGUING ABOUT HIS INVOLVEMENT. YOU TOOK AN
10 OATH. FOLLOW YOUR OATH AND RETURN A VERDICT. WE
11 WILL NOT ARGUE WITH YOUR VERDICT. WE JUST ASK THAT
12 YOU CONSIDER THIS EVIDENCE AND THINK ABOUT THIS IN
13 YOUR DELIBERATIONS, ABOUT THE EVIDENCE YOU HEARD IN
14 THIS TRIAL, BECAUSE WHEN WE GET TO THE NEXT PHASE, I
15 SUBMIT TO YOU THIS IS VERY CRITICAL. THANK YOU.

16 THE COURT: THANK YOU. LADIES AND
17 GENTLEMEN OF THE JURY, YOU'VE NOW HEARD THE ARGUMENTS
18 OR SUMMATION OF COUNSEL FOR THE STATE AND DEFENSE. I
19 HAVE GIVEN YOU THE APPROPRIATE INSTRUCTIONS ON THE
20 LAW AS RELATES TO THE ISSUES. REMEMBER THAT UPON
21 THESE INDICTMENTS, THIS INDICTMENT IS NOT EVIDENCE.
22 IT'S JUST ALLEGATIONS TO THESE INDICTMENTS. THE
23 DEFENDANT HAS PLED NOT GUILTY. THE STATE HAS THE
24 BURDEN OF PROVING HIM GUILTY OF EACH AND EVERY
25 ESSENTIAL ELEMENT OF EACH ONE OF THESE CHARGES BEYOND

1 A REASONABLE DOUBT.

2 NOW, UNDER OUR PROCEDURE, I'M GOING TO EXCUSE
3 YOU FOR A MINUTE TO ASCERTAIN WHETHER OR NOT THERE'S
4 ANY ADDITIONAL CHARGES THEY WOULD HAVE ME MAKE. IF
5 THERE ARE, I WILL CALL YOU RIGHT BACK OUT JUST FOR A
6 MINUTE. IF THERE ARE NOT, I'LL BE SENDING IN TO YOU
7 THE ORIGINAL INDICTMENTS ALONG WITH ALL OF THE
8 EVIDENCE, AND YOU MAY BEGIN YOUR DELIBERATIONS. DO
9 NOT BEGIN YOUR DELIBERATIONS UNTIL I HAND THE
10 INDICTMENTS IN, AND THAT WILL BE IN JUST A FEW
11 MINUTES.

12 NOW, I WANT -- THE TWO ALTERNATES WILL WAIT.
13 THE REST OF YOU GO IN.

14 (WHEREUPON, THE JURY WAS REMOVED
15 FROM THE COURTROOM AND THE
16 FOLLOWING PROCEEDINGS COMMENCED
17 IN OPEN COURT.)

18 THE COURT: FOR THE STATE, ANY ADDITION OR
19 EXCEPTIONS?

20 MR. BAILEY: NO, SIR, YOUR HONOR.

21 THE COURT: ON THE CHARGES?

22 MR. NEWSOME: NO, SIR.

23 THE COURT: THE RECORD WILL REFLECT THAT
24 THERE ARE NOT ANY.

25 NOW, MR. AND MRS. ALTERNATE, EVERYBODY, WE'VE

1 GOT THE 12 JURORS FOR THIS PHASE, SO WE WILL NOT NEED
2 YOU TWO, BUT WE MAY OR MAY NOT NEED YOU FOR THE NEXT
3 PHASE DEPENDING ON THIS VERDICT. SO I'M GOING TO ASK
4 THAT YOU FOLLOW MR. WANNAMAKER AND BE MADE
5 COMFORTABLE UNTIL WE DETERMINE THE OUTCOME OF THIS
6 JURY. IF THE VERDICT SHOULD BE NOT GUILTY, OF
7 COURSE, EVERYBODY GOES HOME. IF THE VERDICT IS
8 GUILTY, AND I SAY THAT ADVISEDLY, YOU WILL THEN
9 REJOIN THE JURY FOR THE NEXT PHASE. DO YOU
10 UNDERSTAND THAT?

11 JURY ALTERNATES: YES, SIR.

12 THE COURT: SO IF YOU WILL, PLEASE FOLLOW
13 MR. WANNAMAKER.

14 WHERE ARE THE ORIGINAL INDICTMENTS, PLEASE?
15 NOW, GENTLEMEN, LET'S GET TOGETHER AND AGREE, NOW,
16 AND MY LAW CLERK WILL HELP TAKE ALL OF THIS IN --
17 AGREE AS TO WHAT ALL IS IN EVIDENCE. I WANT TO MAKE
18 SURE.

19 MR. BAILIFF, TELL THE JURY -- HAND THESE
20 INDICTMENTS IN TO THE JURY AND TELL THEM THAT AS SOON
21 AS THE EVIDENCE COMES IN, TO BEGIN THEIR
22 DELIBERATIONS, AND WHEN THEY'VE REACHED A UNANIMOUS
23 VERDICT, KNOCK ON THE DOOR. AND THEY CAN BEGIN JUST
24 AS SOON AS THIS GOES IN.

25 (WHEREUPON, THE JURY BEGINS

1 DELIBERATIONS AT 5:45 P.M.)

2 THE COURT: WE'LL BE IN RECESS WAITING TO
3 HEAR FROM THE JURY.

4 (WHEREUPON, A BREAK WAS TAKEN
5 FROM THE PROCEEDINGS.)

6 (WHEREUPON, THE JURY WAS
7 RETURNED TO THE COURTROOM AND
8 THE FOLLOWING PROCEEDINGS WERE
9 COMMENCED IN OPEN COURT.)

10 THE COURT: I HAVE RECEIVED THE FOLLOWING
11 COMMUNICATION: WHY WAS KELSEY PEARCE NOT PRESENT?
12 IS HE IN JAIL? HAS HE PLED?

13 MR. FOREMAN, LADIES AND GENTLEMEN, AS I TOLD
14 YOU, YOU ARE TO DECIDE ALL OF THE ISSUES IN THIS CASE
15 BASED ON THE TESTIMONY AS PRESENTED. YOU ARE NOT TO
16 SPECULATE ON OTHER ISSUES. I TELL YOU THAT KELSEY
17 PEARCE IS NOT PRESENT AND AVAILABLE TO TESTIFY.
18 ACCEPT THAT ON THE FACE VALUE OF IT AND DON'T INQUIRE
19 AS TO WHY HE'S NOT HERE OR WHERE HE IS. THAT'S NOT
20 FOR YOUR CONSIDERATION. DO YOU UNDERSTAND?

21 THE FOREMAN: YES, SIR.

22 THE COURT: NOW, THIS KIND -- AND I HAVE
23 NO PROBLEM WITH YOU ASKING QUESTIONS. IT COMES UP
24 ALL OF THE TIME. I REMEMBER SEVERAL YEARS AGO WE
25 WERE TRYING A LADY IN DARLINGTON COUNTY FOR ARSON.

1 SHE HAD ALLEGEDLY BURNED DOWN A HOUSE FOR INSURANCE
2 PROCEEDS. AND SHE WAS PLEADING NOT GUILTY, AND THE
3 JURY CAME OUT AND ASKED ME THE QUESTION PLEASE TELL
4 US WHETHER SHE SMOKED OR NOT. WELL, THAT QUESTION
5 WAS NEVER ASKED. CONSEQUENTLY, IT COULD NOT BE
6 ANSWERED. IN OTHER WORDS, IT WAS NOT IN THE RECORD.
7 SO YOU ARE TO DECIDE ALL OF THE ISSUES IN THIS CASE
8 BASED ON THE RECORD IN THIS CASE.

9 THE FOREMAN: YES, SIR.

10 THE COURT: YOU MAY PROCEED. THANK YOU SO
11 MUCH. MAKE THIS A PART OF THE RECORD, AND PLEASE, IF
12 THERE ARE ANY OTHER QUESTIONS, NOW, DO EXACTLY AS YOU
13 DID IN THIS INSTANCE. THANK YOU.

14 (WHEREUPON, THEY JURY RESUMES
15 DELIBERATIONS.)

16 THE COURT: ANY ADDITION OR EXCEPTION TO
17 THAT?

18 MR. BAILEY: NO, YOUR HONOR.

19 MR. NEWSOME: NO, YOUR HONOR.

20 (WHEREUPON, A BREAK WAS TAKEN
21 FROM THE PROCEEDINGS.)

22 THE COURT: BRING THE JURY IN, PLEASE.

23 (WHEREUPON, THE JURY WAS
24 RETURNED TO THE COURTROOM AND
25 THE FOLLOWING PROCEEDINGS WERE

1 COMMENCED IN OPEN COURT.)

2 THE COURT: THE QUESTION PRESENTED BY THE
3 JURY IS ON EACH OF THESE FOUR INDICTMENTS, IS THE
4 HAND OF ONE THE HAND OF ALL? THE ANSWER IS YES, IF
5 THE PROOF IS THERE TO YOUR SATISFACTION BEYOND A
6 REASONABLE DOUBT CONSISTENT WITH THE FOLLOWING CHARGE
7 AND DEFINITION.

8 I CHARGE YOU, LADIES AND GENTLEMEN, THAT IT IS
9 THE LAW OF THIS STATE THAT IF A CRIME IS COMMITTED BY
10 TWO OR MORE PERSONS WHO ARE ACTING TOGETHER IN THE
11 COMMISSION OF AN OFFENSE, THE ACT OF ONE IS THE ACT
12 OF ALL. JUST BY WAY OF ILLUSTRATION, TWO PEOPLE CAN
13 BE GUILTY OF KILLING ANOTHER OF MURDER WHEN ONLY ONE
14 OF THE TWO HAS A PISTOL AND ONLY ONE FIRED A SHOT.
15 THE QUESTION IS, IF BOTH ARE ACTING TOGETHER IF AN
16 AGREEMENT IN THE COMMISSION OF A CRIME, IF BOTH ARE
17 ACTING TOGETHER IN THAT COMMISSION, ANY INCIDENT TO
18 THAT COMMISSION OF THAT CRIME, THE HAND OF ONE IS THE
19 HAND OF ALL. I HOPE THAT YOU UNDERSTAND THAT.

20 THE LAW SAYS THAT UNDER THESE CIRCUMSTANCES, THE
21 ACT OF ONE IS THE ACT OF ALL. AS AN EXAMPLE, I
22 CHARGE YOU THAT IF SEVERAL PERSONS AGREE OR CONSPIRE
23 TO COMMIT A CRIME, EACH OF THE PERSONS IS CRIMINALLY
24 RESPONSIBLE FOR THE ACTS OF HIS ASSOCIATES OR
25 CONFEDERATES WHICH ARE DONE IN FURTHERANCE OF AND IN

1 PROSECUTION OF THE COMMON PURPOSE FOR WHICH THEY ARE
2 COMBINED. THE COMMON PURPOSE MAY NOT HAVE INCLUDED A
3 SPECIFIC INCIDENT, BUT IF IT ARISES OUT OF THE
4 AGREEMENT TO COMMIT THAT CRIME, THE HAND OF ONE IS
5 THE HAND OF ALL IN ALL AREAS INVOLVING THE COMMISSION
6 OF THAT CRIME.

7 NOW, IF YOU'RE TALKING ABOUT THE HAND OF ONE IS
8 THE HAND OF ALL IN MURDER, I WILL CHARGE YOU AS --
9 FURTHER IN CONNECTION WITH THAT. WITH REGARDS TO A
10 CHARGE OF MURDER, I FURTHER CHARGE YOU THAT IF TWO OR
11 MORE PEOPLE COMBINE TOGETHER TO COMMIT AN UNLAWFUL
12 ACT AND IN THE EXECUTION OF A CRIMINAL ACT, A
13 HOMICIDE IS COMMITTED BY ONE OF THE ACTORS AS A
14 PROBABLE OR NATURAL CONSEQUENCE OF THE ACTS DONE IN
15 PURSUANCE OF THE COMMON DESIGN, ALL PRESENT
16 PARTICIPATING IN THE UNLAWFUL UNDERTAKING ARE AS
17 GUILTY AS THE ONE WHO COMMITTED THE FATAL ACT. THE
18 COMMON PURPOSE MAY NOT HAVE BEEN TO KILL AND MURDER,
19 BUT IF THE INTENDED ACT WAS UNLAWFUL AND A HOMICIDE
20 WAS THE NATURAL OR PROBABLE CONSEQUENCE OF THE PLAN,
21 THEN ALL PRESENT PARTICIPATING IN THE UNLAWFUL COMMON
22 DESIGN ARE AS GUILTY AS THE SLAYER. BUT IF THE
23 KILLING HAD NO CONNECTION WITH THE COMMON PURPOSE AND
24 DID NOT ENSUE AS A PROBABLE RESULT OF AN ATTEMPT TO
25 EXECUTE IT, THEN THE SLAYER ALONE IS RESPONSIBLE FOR

1 THE KILLING.

2 THE TEST IN CONNECTION WITH THAT INDICTMENT IS
3 WHETHER THE HOMICIDE IS COMMITTED IN FURTHERANCE OF
4 THE PLAN AND WAS A PROBABLE RESULT OF ITS EXECUTION.
5 WHEN SEVERAL PEOPLE PURSUE A COMMON DESIGN TO COMMIT
6 AN UNLAWFUL ACT AND EACH TAKES THE PART AGREED UPON
7 OR ASSIGNED TO HIM IN AN EFFORT TO ASSURE THE SUCCESS
8 OF THE COMMON ENTERPRISE, THE ACT OF ONE IS THE ACT
9 OF ALL.

10 I HOPE THAT NOW EXPLAINS IT TO YOU.

11 THE FOREMAN: YES, SIR.

12 THE COURT: PROCEED WITH YOUR

13 DELIBERATIONS.

14 (WHEREUPON THE JURY RESUMES
15 DELIBERATIONS.)

16 THE COURT: ANY ADDITION OR EXCEPTION TO
17 THAT?

18 MR. BAILEY: NO, SIR.

19 MR. NEWSOME: NO, SIR.

20 THE COURT: OKAY. WE WILL BE AT EASE AND
21 AWAIT THE JURY.

22 (COURT'S EXHIBIT NUMBER 5
23 MARKED FOR IDENTIFICATION.)

24 (WHEREUPON, A BREAK WAS TAKEN
25 FROM THE PROCEEDINGS.)

1 THE COURT: BE SEATED, PLEASE. NOW,
2 LADIES AND GENTLEMEN OF THE AUDIENCE, THIS IS A MOST
3 SERIOUS MATTER FOR THE FAMILY OF THE VICTIM, WHICH I
4 UNDERSTAND, AND THE FAMILY OF THE DEFENDANT. BUT
5 UNDER OUR PROCEDURE, WE PERMIT NO OUTBURSTS OF NO
6 KIND. AND IF ANYBODY FEELS CONSTRAINED THAT THEY
7 CAN'T COMPLY WITH THAT, PLEASE LEAVE AT THIS TIME. I
8 WOULD NOT WANT TO BE IN A POSITION TO HAVE TO FIND
9 ANYBODY IN CONTEMPT OF COURT, BUT WE JUST DON'T
10 PERMIT THAT IN OUR SYSTEM OF JURISPRUDENCE.

11 BRING THE JURY IN. MR. WANNAMAKER, LET ME SEE
12 THE VERDICT FORMS FIRST.

13 (WHEREUPON, THE JURY WAS
14 RETURNED TO THE COURTROOM AND
15 THE FOLLOWING PROCEEDINGS WERE
16 COMMENCED IN OPEN COURT
17 AT 7:20 P.M.)

18 THE CLERK: MR. FOREMAN, YOU'VE REACHED A
19 VERDICT?

20 THE FOREMAN: YES, SIR.

21 THE CLERK: IF YOU WOULD, PLEASE PASS IT
22 UP.

23 INDICTMENT NUMBER 94-GS-9-156, STATE VERSUS
24 HERMAN HUGHES, INDICTMENT FOR GRAND LARCENY OF A
25 VEHICLE. VERDICT, GUILTY.

1 INDICTMENT NUMBER 94-GS-9-153, STATE VERSUS
2 HERMAN HUGHES, INDICTMENT FOR ASSAULT AND BATTERY
3 WITH INTENT TO KILL. VERDICT, GUILTY.

4 INDICTMENT NUMBER 94-GS-9-155, STATE VERSUS
5 HERMAN HUGHES, INDICTMENT FOR ARMED ROBBERY.
6 VERDICT, GUILTY.

7 INDICTMENT 94-GS-9-154, STATE VERSUS HERMAN
8 HUGHES, INDICTMENT FOR MURDER. VERDICT, GUILTY.

9 ALL SIGNED, WILLIAM BARRON, FOREMAN.

10 MR. FOREMAN AND LADIES AND GENTLEMEN OF THE
11 JURY, IF THAT BE YOUR VERDICT, SO SAY YOU YES.

12 (ALL JURORS RESPOND IN THE AFFIRMATIVE.)

13 THE COURT: ALL RIGHT. LADIES AND
14 GENTLEMEN, I WILL AT THIS TIME POLL THE JURY, AND THE
15 QUESTION TO BE ASKED IS AS TO ALL FOUR INDICTMENTS,
16 IS THIS YOUR VERDICT AND IS THIS STILL YOUR VERDICT?
17 PLEASE POLL. AND YOUR ANSWER WILL BE AS TO FOUR
18 INDICTMENTS. GO AHEAD.

19 THE CLERK: MR. FOREMAN, WOULD YOU PLEASE
20 STAND. IS THIS YOUR VERDICT?

21 THE FOREMAN: YES, SIR.

22 THE CLERK: AND STILL YOUR VERDICT?

23 THE FOREMAN: YES, SIR.

24 THE CLERK: THANK YOU. YOU MAY BE SEATED
25 BRENDA WISE, IS THIS YOUR VERDICT?

1 JUROR WISE: CORRECT.

2 THE CLERK: AND STILL YOUR VERDICT?

3 JUROR WISE: CORRECT.

4 THE CLERK: ERNEST VERNON, ARE THESE YOUR
5 VERDICTS AND STILL YOUR VERDICTS?

6 JUROR VERNON: YES, SIR.

7 THE CLERK: EVERETTE ATKINS, ARE THESE
8 YOUR VERDICTS AND STILL YOUR VERDICTS?

9 JUROR ATKINS: YES, SIR.

10 THE CLERK: ANNA EDWARDS, ARE THESE YOUR
11 VERDICTS?

12 JUROR EDWARDS: YES.

13 THE CLERK: AND STILL YOUR VERDICTS?

14 JUROR EDWARDS: YES, SIR.

15 THE CLERK: CARROLL HUDSON, ARE THESE YOUR
16 VERDICTS AND STILL YOUR VERDICTS?

17 JUROR HUDSON: YES, SIR.

18 THE CLERK: TEDDY POUND.

19 JUROR POUND: YES.

20 THE CLERK: ARE THESE YOUR VERDICTS AND
21 STILL YOUR VERDICTS?

22 JUROR POUND: YES.

23 THE CLERK: MARY GUNTER, ARE THESE YOUR
24 VERDICTS AND STILL YOUR VERDICTS?

25 JUROR GUNTER: YES.

1 THE CLERK: KATHY CHEESEBORO, ARE THESE
2 YOUR VERDICTS?

3 JUROR CHEESEBORO: YES.

4 THE CLERK: AND STILL YOUR VERDICTS?

5 JUROR CHEESEBORO: YES.

6 THE CLERK: ROBIN WILLIAMS, ARE THESE YOUR
7 VERDICTS?

8 JUROR WILLIAMS: YES.

9 THE CLERK: AND STILL YOUR VERDICTS?

10 JUROR WILLIAMS: YES.

11 THE CLERK: PATRICIA WISE, ARE THESE YOUR
12 VERDICTS?

13 JUROR WISE: YES.

14 THE CLERK: AND STILL YOUR VERDICTS?

15 JUROR WISE: YES.

16 THE CLERK: NATALIE MCVICKER, ARE THESE
17 YOUR VERDICTS?

18 JUROR MCVICKER: YES.

19 THE CLERK: AND STILL YOUR VERDICTS?

20 JUROR MCVICKER: YES.

21 THE COURT: WHERE ARE THE ALTERNATES?

22 THE BAILIFF: THEY'RE RIGHT HERE.

23 THE COURT: HAVE THEM COME IN AND JOIN THE
24 JURY PANEL, PLEASE.

25 ANYTHING FURTHER FROM THE JURY PANEL AT THIS

1 TIME?

2 MR. NEWSOME: NOTHING, YOUR HONOR.

3 THE COURT: WHERE ARE THEY? OKAY. LADIES
4 AND GENTLEMEN, IN PHASE ONE, YOU HAVE NOW REACHED THE
5 UNANIMOUS VERDICT OF GUILTY OF MURDER. IN ADDITION
6 TO THAT, YOU HAVE REACHED A VERDICT OF GUILTY AS TO
7 THE OTHER CHARGES.

8 WITH REGARDS TO THE CHARGE OF MURDER, WE WILL
9 NOW GO INTO THE SECOND PHASE, WHICH IS THE SENTENCING
10 PHASE. AND IN THAT PHASE, AS I INDICATED EARLIER,
11 THERE WILL BE OFFERED FOR YOUR CONSIDERATION
12 AGGRAVATING AND MITIGATING CIRCUMSTANCES AS A BASIS
13 FOR WHATEVER DECISION YOU THE JURY DEEM IS
14 APPROPRIATE BY WAY OF PUNISHMENT.

15 NOW, WHEN WE START THAT PART OF THIS TRIAL, I
16 AGAIN WILL FULLY ADVISE YOU WITH REGARD TO YOUR
17 DUTIES. I WILL DEFINE FULLY FOR YOU AGGRAVATING
18 CIRCUMSTANCES, MITIGATING CIRCUMSTANCES, AND TELL YOU
19 THE LAW WITH REGARDS TO THAT PHASE OF THIS PROCEDURE.

20 AGAIN, MR. FOREMAN, AS YOU DID IN THE FIRST
21 PHASE, IF ANY OF THE JURORS HAVE ANY QUESTIONS ABOUT
22 IT, YOU WILL BE AFFORDED AN OPPORTUNITY TO PRESENT
23 THAT QUESTION TO ME, AND I WILL GIVE YOU THE
24 APPROPRIATE LAW.

25 NOW, UNDER OUR SYSTEM STATUTORILY, WHEN THE

1 FIRST PHASE IS COMPLETED, AS HAS BEEN DONE, THE LAW
2 MANDATES THAT THERE BE A 24-HOUR WAITING PERIOD
3 BEFORE WE CAN EVEN START THE SECOND PHASE. THAT
4 WOULD MEAN THAT WE WOULD BE UNABLE TO EVEN START
5 BEFORE 8:00 SATURDAY NIGHT, AND I WOULD NOT DO THAT.
6 I'M SIMPLY NOT GOING TO REQUIRE YOU TO HOLD COURT ON
7 SUNDAY. I'M JUST NOT GOING TO DO THAT.

8 CONSEQUENTLY, WE WILL RECONVENE HERE MONDAY
9 MORNING AT 9:30. AGAIN, I -- AND FOR YOUR
10 EDIFICATION, I WOULD ANTICIPATE THAT THAT -- THAT THE
11 SECOND PHASE OF THIS CASE WILL NOT OCCUPY MORE THAN
12 TWO DAYS.

13 NOW, UNFORTUNATELY, UNDER OUR PROCEDURE, YOU AS
14 A JURY WILL STILL HAVE TO BE SEQUESTERED IN THE MOTEL
15 AS YOU WERE. BUT I AM GOING TO INSTRUCT THESE
16 SPLENDID BAILIFFS HERE TO TAKE GOOD CARE OF YOU OVER
17 THE WEEKEND. MAYBE YOU CAN TAKE THEM TO A MOVIE OR
18 SOMETHING. ALL RIGHT, SIR. I KNOW THAT YOU WILL
19 TAKE GOOD CARE OF THEM. I'VE HAD GOOD EXPERIENCE.
20 I'VE WORKED WITH ALL OF YOU BEFORE. MAKE SURE THAT
21 THEY ARE FED GOOD. MAKE SURE THAT THEY HAVE
22 APPROPRIATE COMMUNICATION WITH THE FAMILY, BUSINESS.
23 YOU KNOW, YOU MIGHT WORK IT OUT WITH GROUPS, IF YOU
24 CAN, WITH THE STAFF TO GO TO A SHOPPING MALL OR
25 SOMETHING. YOU KNOW WHAT I'M -- I'M VERY LENIENT.

1 YES, SIR.

2 THE FOREMAN: YOUR HONOR, THE JURORS AND
3 MR. PADGETT ASKED ME IF I WOULD GET A LITTLE
4 CLARIFICATION FROM YOU ON YOUR RULING AS TO THE
5 TELEVISIONS IN THE ROOMS, IN THEIR INDIVIDUAL ROOMS.
6 IS THAT A POSSIBLE --

7 THE COURT: YES, SIR. THE LAW, WE DO NOT
8 PERMIT THAT.

9 THE FOREMAN: YES, SIR.

10 THE COURT: THAT'S WHY I'VE GOT TWO
11 CONFERENCE ROOMS, SO WE'LL HAVE TWO SEPARATE
12 TELEVISIONS. AND THE REASON IS FAIRLY OBVIOUS.

13 THE FOREMAN: YES, SIR.

14 THE COURT: YOU DON'T KNOW WHAT MIGHT OR
15 MIGHT NOT BE ON TELEVISION.

16 THE FOREMAN: YES, SIR.

17 THE COURT: AND AGAIN, IN AN ABUNDANCE OF
18 CAUTION, I WOULD NOT WANT TO PREJUDICE THIS JURY, AND
19 IT'S FOR THAT REASON UNDER OUR RULE WE DON'T HAVE ANY
20 TELEVISION, AND I ALWAYS REQUIRE YOU TO, EVEN WHEN
21 YOU'RE LISTENING TO JUST ONE, BUT EVEN THERE, THE
22 BAILIFFS ARE IN THERE SO IF A NEWS FLASH COMES ON, WE
23 CAN CUT IT OFF. IT'S NOT LIKELY. BUT I HAVE IN THE
24 PAST HAD TO PUT ASIDE AN ENTIRE PROCEDURE BECAUSE IT
25 DID HAPPEN. I KNOW THAT WE'LL HAVE ONE ROOM WITH THE

1 FOOTBALL GAME GOING ON FOR YOU GENTLEMEN. CLEMSON IS
2 ON TOMORROW NIGHT ON ESPN.

3 BUT THESE LADIES AND GENTLEMEN OF SLED, THEY ARE
4 EXPERIENCED IN DEALING WITH JURORS. THEY KNOW YOUR
5 CONCERNS. THEY KNOW YOUR PROBLEMS, AND THEY WILL --
6 AND KNOW THAT I'M AS LENIENT AS I CAN BE, AND THEY
7 WILL ADDRESS YOUR CONCERNS AND WORK WITH YOU.

8 I WANT TO THANK YOU FOR YOUR SERVICES THUS FAR,
9 AND I WANT YOU TO KNOW THAT WE WILL CONTINUE TO MOVE
10 AS EXPEDITIOUSLY AS WE CAN. SO NOW THE ALTERNATES
11 WILL REJOIN THE GROUP AND STAY WITH THEM BECAUSE, AS
12 I INDICATED BEFORE, YOU NEVER KNOW WHEN SOMEBODY
13 MIGHT GET SICK OR SOMETHING, AND WE'VE GOT TO HAVE A
14 SUFFICIENT NUMBER.

15 IS THERE ANYTHING ELSE BEFORE I DISCHARGE THE
16 JURY?

17 MR. BAILEY: NOT FROM THE STATE.

18 MR. NEWSOME: NO, YOUR HONOR.

19 A JUROR: JUDGE, HOW ABOUT -- WE
20 UNDERSTOOD WE COULD HAVE A NEWSPAPER?

21 THE COURT: YES, SIR. I'LL MAKE A
22 NEWSPAPER AVAILABLE TO YOU, MAKE THE STATE AVAILABLE
23 TO YOU, AND MAKE SURE THAT IT CONTAINS NO REFERENCE
24 TO THIS TRIAL. YES, SIR. JUST AS LONG AS IT DOESN'T
25 HAVE ANY REFERENCE TO THE TRIAL. AND THE REASON IS

1 OBVIOUS, YOU KNOW. YOU GOT SOME PEOPLE WRITING IN
2 THE NEWSPAPER THAT JUST SIMPLY DON'T KNOW WHAT
3 THEY'RE TALKING ABOUT.

4 I'VE HAD A TRIAL FOR THREE DAYS AND THEN READ
5 ABOUT IT IN THE NEWSPAPER AND WONDERED IF ME AND THEM
6 WERE AT THE SAME TRIAL. BUT MAKE THEM AVAILABLE A
7 NEWSPAPER, IF YOU WILL.

8 ANYTHING ELSE? WELL, DID THEY FEED YOU GOOD
9 LAST NIGHT?

10 JURORS: VERY GOOD.

11 THE COURT: OKAY. BECAUSE, YOU KNOW, ONE
12 GOOD THING ABOUT IT, WHEN THEY FEED YOU GOOD, THEY
13 ARE EATING GOOD THEMSELVES.

14 ALL RIGHT. THANK YOU SO MUCH, AND I -- WE'LL
15 START -- I ASSURE YOU WE'LL START FIRST THING MONDAY
16 MORNING AND WORK STRAIGHT THROUGH AS QUICK AS WE CAN.

17 (WHEREUPON, THE JURY WAS REMOVED
18 FROM THE COURTROOM AND THE
19 FOLLOWING PROCEEDINGS COMMENCED
20 IN OPEN COURT.)

21 THE COURT: ALL RIGHT. GENTLEMEN, IS
22 THERE ANYTHING ELSE?

23 MR. BAILEY: NOTHING FROM THE STATE, YOUR
24 HONOR.

25 MR. NEWSOME: NO, YOUR HONOR.

1 THE COURT: ALL RIGHT. I'LL SEE YOU ON
 2 MONDAY MORNING.

3 (WHEREUPON, THE FOREGOING
 4 PROCEEDINGS WERE ADJOURNED.)

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1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA

4 COUNTY OF FLORENCE

5
6 I, MARK W. HAGOOD, REGISTERED PROFESSIONAL
7 REPORTER, (RPR), COURT REPORTER FOR THE STATE OF
8 SOUTH CAROLINA, FOURTH JUDICIAL CIRCUIT, DO HEREBY
9 CERTIFY THAT THE FOREGOING PROCEEDINGS IS A
10 STENOGRAPHIC REPORT AND WAS TRANSCRIBED THROUGH
11 COMPUTER-AIDED TRANSCRIPTION; THAT THE FOREGOING
12 TRANSCRIPT CONTAINS A TRUE RECORD OF THE
13 PROCEEDINGS.14 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR
15 COUNSEL FOR, NOR RELATED TO NOR EMPLOYED BY ANY OF
16 THE PARTIES CONNECTED TO THE ACTION, NOR AM I
17 FINANCIALLY INTERESTED IN THE ACTION.18 WITNESS MY HAND AT FLORENCE, SOUTH CAROLINA,
19 THIS 3rd DAY OF April, 1996.20
21 
22 MARK W. HAGOOD, RPR

23

24

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1 STATE OF SOUTH CAROLINA IN GENERAL SESSIONS COURT
2 COUNTY OF CALHOUN

3
4 STATE OF SOUTH CAROLINA

5 94-GS-09-153
6 V. 94-GS-09-154
7 94-GS-09-155
8 HERMAN LEE HUGHES, JR. 94-GS-09-156

9
10 VOLUME EIGHT

11 - - -
12 THE TRIAL PROCEEDINGS HAD
13 IN THE ABOVE-STYLED CAUSE
14 - - -

15 MONDAY, SEPTEMBER 11, 1995
16 ST. MATTHEWS, SOUTH CAROLINA

17 BEFORE: HONORABLE EDWARD B. COTTINGHAM,
18 CIRCUIT COURT JUDGE

19 A P P E A R A N C E S

20 FOR THE STATE: WALTER M. BAILEY, JR., SOLICITOR

21 FOR THE DEFENDANT: PHILLIP F. NEWSOME, ESQUIRE
22
23
24
25

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9 DIRECT BY MR. BAILEY 926

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11 PAT THORNAL

12 DIRECT BY MR. BAILEY 934

13 CROSS BY MR. NEWSOME 940

14 KENNETH HASTY

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16 JAMES GREEN

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22 DAVID PHILLIPS

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30 STUART ADAMS, M.D.

31 DIRECT BY MR. BAILEY 1012

32 GREGORY SEXTON, M.D.

33 DIRECT BY MR. BAILEY 1017

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41 DIRECT BY MR. BAILEY 1036

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10	STATE'S	15 " " "	978	978
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11	STATE'S	17 " " "	978	978
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12	STATE'S	19 " " "	978	978
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13	STATE'S	21 CARTRIDGES	982	982
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1 (BEGINNING OF VOLUME EIGHT)
2 (WHEREUPON, ON MONDAY,
3 SEPTEMBER, 11, 1995, BEGINNING
4 AT 9:45 A.M., THE FOLLOWING
5 PROCEEDINGS WERE HAD.)

6 THE COURT: ALL RIGHT. PRIOR TO
7 PROCEEDING, THERE ARE SEVERAL THINGS THAT WE WANT TO
8 GET ON THE RECORD HERE.

9 LET THE RECORD REFLECT THAT THE DEFENDANT HERMAN
10 HUGHES WAS CONVICTED OF THE OFFENSE OF MURDER ON
11 SEPTEMBER THE -- ON FRIDAY, SEPTEMBER THE 8TH, AT
12 APPROXIMATELY 7:30 BY THIS JURY. AND IT IS NOW --
13 WHAT IS THE DATE -- IT IS NOW SEPTEMBER THE 11TH AT
14 10:00. MORE THAN 24 HOURS HAS NOW EXPIRED, PURSUANT
15 TO THE STATUTE, PRIOR TO THE BEGINNING OF THE SECOND
16 PHASE.

17 NOW, THE RECORD WILL FURTHER REFLECT THAT THE
18 STATE AND THE DEFENSE HAS PRESENTED TO ME THE
19 AGGRAVATING AND MITIGATING CIRCUMSTANCES UPON WHICH
20 THEY RELY, WHICH WILL BE INCORPORATED INTO THE
21 SENTENCING FORM.

22 ARE THERE ANY STIPULATIONS AT THIS TIME FOR THE
23 STATE OR THE DEFENSE?

24 MR. BAILEY: NO, SIR, YOUR HONOR. I DON'T
25 BELIEVE SO.

1 MR. NEWSOME: NO, SIR.

2 THE COURT: ALL RIGHT. PLEASE HAVE THE
3 DEFENDANT STAND.

4 MR. HUGHES, UNDER THE STATUTORY LAWS OF THE
5 STATE OF SOUTH CAROLINA, YOU HAVE A RIGHT TO MAKE A
6 FINAL STATEMENT TO THE JURY IF YOU DESIRE TO. DO YOU
7 UNDERSTAND THAT?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: AND YOU DO NOT NEED TO MAKE
10 THAT DETERMINATION AT THIS MOMENT, BUT YOU CAN BE
11 THINKING ABOUT IT. THAT IS YOUR ABSOLUTE RIGHT TO DO
12 IF YOU CHOOSE. IT IS YOUR RIGHT NOT TO DO THAT. DO
13 YOU UNDERSTAND?

14 THE DEFENDANT: YES, SIR.

15 THE COURT: ALL RIGHT. AT AN APPROPRIATE
16 TIME, I WILL INQUIRE FURTHER AS TO WHETHER YOU DESIRE
17 TO DO THAT OR NOT. OKAY.

18 NOW, GENTLEMEN, I HAVE PREVIOUSLY FORWARDED TO
19 YOU MY CHARGES AS ARE APPLICABLE IN THIS PHASE OF
20 THESE PROCEEDINGS. FOR THE STATE, WILL THERE BE ANY
21 ADDITIONAL REQUESTS TO CHARGE?

22 MR. BAILEY: YOUR HONOR, NOT AT THIS TIME.
23 DEPENDING ON WHAT THE EVIDENCE COMES OUT, I MAY HAVE
24 A REQUEST.

25 THE COURT: ALL RIGHT, SIR. AND HOW ABOUT

1 FROM THE DEFENSE?

2 MR. NEWSOME: NOT AT THIS TIME, YOUR
3 HONOR.

4 THE COURT: ALL RIGHT. AND BOTH OF YOU
5 STIPULATE -- ACKNOWLEDGE THAT I HAVE PREVIOUSLY GIVEN
6 TO YOU MY CONCLUDING INSTRUCTIONS.

7 MR. NEWSOME: YES, SIR.

8 MR. BAILEY: YES, SIR.

9 THE COURT: ALL RIGHT, SIR. WE'RE NOW
10 READY -- I UNDERSTOOD THERE MAY BE SOME MOTIONS OF
11 SOME KIND.

12 MR. NEWSOME: YOUR HONOR, IT'S MY
13 UNDERSTANDING THAT THE SOLICITOR INTENDS TO OFFER
14 EVIDENCE OF AN ALLEGED INCIDENT THAT OCCURRED IN
15 1992. IT'S MY UNDERSTANDING THERE WAS NO ARREST, BUT
16 THERE WAS INVESTIGATION ABOUT ALLEGATIONS OF POINTING
17 A FIREARM. I WOULD SPECIFICALLY OBJECT TO ANY OF
18 THAT TESTIMONY COMING IN UNDER STATE VERSUS ARTHUR,
19 THE STATE MADE A REVERSIBLE ERROR. IN THAT CASE,
20 CHARGES WERE BROUGHT AND THE CASE WAS DISMISSED FOR
21 THAT.

22 THE COURT: WHAT CASE WAS THAT? IT WASN'T
23 IN THE SENTENCING PHASE OF A DEATH PENALTY CASE, WAS
24 IT?

25 MR. NEWSOME: YES, SIR, IT WAS. THAT WAS

1 A SENTENCING PHASE ALSO, YOUR HONOR.

2 THE COURT: SIR?

3 MR. NEWSOME: THAT CASE, SPECIFICALLY A
4 DEATH SENTENCE CAME IN IN THAT CASE, BUT IT WAS
5 REVERSED.

6 THE COURT: YES, SIR, BUT IN THAT CASE,
7 DIDN'T THE JUDGE FAIL TO CHARGE THAT THEY COULD NOT
8 USE THAT EVIDENCE AS AN AGGRAVATING CIRCUMSTANCE?

9 MR. NEWSOME: I'M NOT SURE WHETHER HE DID
10 OR NOT, BUT THEY SAID JUST THE INTRODUCTION OF THE
11 EVIDENCE ON THAT WAS REVERSIBLE.

12 THE COURT: AS I UNDERSTAND IT, THE LAW IS
13 PREVIOUS OR SUBSEQUENT CRIMES NOT THE SUBJECT OF
14 CONVICTION ARE ADMISSIBLE UNDER CERTAIN
15 CIRCUMSTANCES. THESE ALLEGED OFFENSES, AND THEY ARE
16 ALLEGED OFFENSES, MAY NOT BE USED AS EVIDENCE OF ANY
17 AGGRAVATING CIRCUMSTANCE. THE CASES, AS I UNDERSTAND
18 IT, SAY THAT THE JURY, IF THEY CHOOSE, MAY CONSIDER
19 THIS AS EVIDENCE OF THE DEFENDANT'S CHARACTERISTICS
20 AS THEY BEAR LOGICAL RELEVANCE TO THE CRIME. AND
21 I'LL LOOK AT IT, BUT I'M INCLINED TO THINK THAT THEY
22 ARE ADMISSIBLE.

23 MR. NEWSOME: YOUR HONOR --

24 THE COURT: DID THIS HAPPEN BEFORE OR
25 AFTER THIS CRIME?

1 MR. BAILEY: YOUR HONOR, BEFOREHAND.

2 THE COURT: AND HOW OLD WAS HE?

3 MR. BAILEY: YOUR HONOR, THIS WAS --

4 MR. NEWSOME: '92.

5 MR. BAILEY: IT WAS ON DECEMBER 30TH,
6 1992.

7 THE COURT: HOW OLD WOULD HE HAVE BEEN AT
8 THAT TIME?

9 MR. NEWSOME: YES, SIR. 15.

10 MR. BAILEY: 14, 15.

11 THE COURT: IT DOESN'T GIVE YOU ANY
12 CONCERN THAT IT WAS DONE WHILE HE WAS A 14-YEAR-OLD
13 MINOR?

14 MR. BAILEY: YOUR HONOR, HE WAS A JUVENILE
15 WHEN HE COMMITTED THE MURDER, AND IT WASN'T THAT LONG
16 AGO.

17 MR. NEWSOME: YOUR HONOR, IT'S OUR
18 UNDERSTANDING, OUR CONTENTION HE WASN'T EVEN CHARGED
19 WITH THIS.

20 MR. BAILEY: THAT'S CORRECT.

21 MR. NEWSOME: HE WAS TAKEN DOWN TO THE
22 POLICE DEPARTMENT, INCIDENT REPORT WAS WRITTEN, AND
23 HE WAS SENT HOME.

24 THE COURT: WHAT TYPE OF EVIDENCE DO YOU
25 HAVE ON THAT THAT -- WAS HE CHARGED? DO YOU HAVE

1 SOMEBODY WHO INVESTIGATED IT?

2 MR. BAILEY: YOUR HONOR, I HAVE AN
3 EYEWITNESS TO FIRING OF THE GUN. I HAVE THE DEPUTY
4 WHO WENT OUT THERE AFTER THE REPORT WAS MADE AND TOOK
5 THE GUN AWAY FROM HIM, AND I WOULD LIKE TO
6 SPECIFICALLY BEFORE THE -- WITHOUT THE JURY BEING
7 HERE INSTRUCT HIM THAT HE IS TO TESTIFY AS TO THE
8 FACTS OF WHAT HE DID AND NOT TO GET INTO ANY KIND OF
9 A CHARGE OR POTENTIAL CHARGE OR ANYTHING ELSE. I
10 THINK THE PROHIBITION IN THE ARTHUR CASE IS THAT THEY
11 ATTEMPTED TO GET OUT THE FACT THAT THIS GUY HAD BEEN
12 CHARGED, AND THEY SUBMITTED AN AFFIDAVIT --

13 THE COURT: NO, SIR. WE WON'T GET INTO
14 THAT.

15 MR. BAILEY: -- ON BEHALF --

16 THE COURT: I WILL LET IT IN. HIS ACTIONS
17 WELL MIGHT BEAR AND HAVE SOME RELEVANCE HERE ON THE
18 CRIME WITH WHICH HE'S CHARGED AT THIS TIME. I THINK
19 THAT AS LONG AS THE JURY UNDERSTANDS IN ITS CHARGE
20 THAT IT IS IN NO SENSE EVIDENCE OF ANY AGGRAVATING
21 CIRCUMSTANCES, BUT ONLY CAN BE USED AS TO CHARACTER,
22 IT IS ADMISSIBLE. I NOTE YOUR OBJECTION FOR THE
23 RECORD.

24 MR. NEWSOME: ALL RIGHT, SIR. YOUR HONOR,
25 I WOULD LIKEWISE OFFER AN OBJECTION AT THIS TIME TO

1 THE INTRODUCTION OF THE AUTOPSY PICTURES OF KENNETH
2 PRESLEY. I UNDERSTAND THE SOLICITOR INTENDS TO
3 INTRODUCE THOSE. I THINK THE PREJUDICIAL VALUE OF
4 THOSE PICTURES FAR OUTWEIGHS THE PROBATIVE VALUE IN
5 THIS STAGE OF THE PROCEEDING.

6 THE COURT: WELL, THE PICTURES, THEY JUST
7 SHOW -- THEY DON'T SHOW -- THEY JUST SHOW THE ENTRY
8 AND EXIT WOUNDS. IS THAT ALL THEY SHOW?

9 MR. BAILEY: THAT'S CORRECT, YOUR HONOR.

10 THE COURT: THEY DON'T SHOW ANYTHING ELSE
11 INVOLVING THE AUTOPSY?

12 MR. BAILEY: NO, SIR. THESE PICTURES WERE
13 TAKEN PRIOR TO THE ACTUAL AUTOPSY.

14 THE COURT: NO, SIR. I WILL ADMIT IT IF
15 THEY ARE TAKEN PRIOR TO THE AUTOPSY ITSELF. YES,
16 SIR. THE CASES SEEM TO HOLD THAT IN THE SENTENCING
17 PHASE, THE JURY IS ENTITLED TO SEE THE PICTURES IF
18 THEY PORTRAY THE MANNER IN WHICH THE VICTIM WAS LEFT
19 BY THE DEFENDANT. I WILL -- I WILL PERMIT THAT AS
20 LONG AS IT DOESN'T SHOW ANY GRUESOMENESS. IT JUST
21 SHOWS THE ENTRY AND EXIT WOUNDS PRIOR TO THE AUTOPSY
22 BEING PERFORMED.

23 MR. NEWSOME: LIKewise, I WOULD LIKE TO
24 NOTE MY OBJECTION FOR THE RECORD. WE DID THIS, TOO,
25 SO WE WOULDN'T HAVE TO BE SENDING THE JURY IN AND

1 OUT.

2 THE COURT: I APPRECIATE THAT. THAT'S
3 FINE.

4 MR. BAILEY: YOUR HONOR, I ALSO WANT TO
5 TALK ABOUT PHOTOGRAPHS. I MENTIONED THIS IN
6 CHAMBERS. I WAS GOING TO RE-CALL STEVE DERRICK, THE
7 SLED MAN WHO TOOK THE CRIME SCENE PHOTOGRAPHS. OUT
8 OF ABUNDANCE OF PRECAUTION, I DID NOT INTRODUCE ALL
9 OF THE CRIME SCENE PHOTOGRAPHS, ALTHOUGH WE DID SHOW
10 THE SHELL CASINGS AND SO FORTH, BECAUSE THERE WAS A
11 GOOD QUANTITY OF BLOOD THERE ON THE FLOOR AND ON THE
12 DESK. I DO WANT TO GO AHEAD AND PUT THAT IN.

13 THE COURT: YES, SIR.

14 MR. BAILEY: THOSE ARE --

15 THE COURT: IT'S PERMISSIBLE IN THIS
16 STAGE.

17 MR. BAILEY: YOUR HONOR, FINALLY, IF YOUR
18 HONOR -- I WOULD LIKE -- I'VE GOT A COPY OF THE
19 CORRESPONDENCE RELATING TO DISCOVERY BACK AND FORTH
20 WHICH I WOULD LIKE TO MAKE A COURT'S EXHIBIT IN CASE
21 ANY FUTURE ISSUE COMES UP.

22 THE COURT: YES, SIR. THAT'S IMPORTANT.

23 MR. BAILEY: AND THE ONLY THING THAT I
24 THINK IS NOT REFLECTED HERE IS I GAVE MR. NEWSOME A
25 COPY OF THE INTAKE NOTES FROM THE STATE HOSPITAL THAT

1 I RECEIVED YESTERDAY. SO HE DOES HAVE THAT IN
2 ADDITION TO WHAT'S HERE.

3 THE COURT: ALL RIGHT.

4 MR. BAILEY: WE'LL MARK THEM AS COURT'S
5 EXHIBITS.

6 (COURT'S EXHIBIT NUMBERS 4 AND 6
7 MARKED FOR IDENTIFICATION.)

8 MR. BAILEY: YOUR HONOR, WILL WE BE
9 ALLOWED TO MAKE A BRIEF OPENING STATEMENT IN THIS
10 PHASE?

11 THE COURT: YES, SIR. BOTH SIDES.
12 ANYTHING FURTHER?

13 MR. NEWSOME: NO, SIR, YOUR HONOR.

14 THE COURT: BRING THE JURY IN, PLEASE.

15 (WHEREUPON, THE JURY WAS
16 RETURNED TO THE COURTROOM AND
17 THE FOLLOWING PROCEEDINGS WERE
18 COMMENCED IN OPEN COURT.)

19 THE COURT: LET THE RECORD REFLECT THAT
20 THE JURY AND THE ALTERNATES ARE PRESENT.

21 GOOD MORNING, MR. FOREMAN AND LADIES AND
22 GENTLEMEN OF THE JURY. I TRUST THAT THE ARRANGEMENTS
23 MADE FOR YOU OVER THE WEEKEND WERE SATISFACTORY. I
24 KNOW THAT YOU WOULD HAVE PREFERRED TO BE AT HOME WITH
25 YOUR FAMILY. I UNDERSTAND THAT. BUT AS, AGAIN, I

1 CONTINUE TO EMPHASIZE, THIS IS A PART OF THE CIVIC
2 DUTY THAT WE ALL PERFORM IN THIS MAGNIFICENT COUNTRY
3 OF OURS. AND SO AGAIN, I AND THE COURT AND THE
4 PARTICIPANTS HERE DEEPLY APPRECIATE THE SERVICE OF
5 YOU THE JURORS.

6 NOW, LADIES AND GENTLEMEN, THIS DEFENDANT,
7 HERMAN HUGHES, WAS CONVICTED ON FRIDAY NIGHT AT 7:30,
8 SEPTEMBER THE 8TH, OF THE OFFENSE OF MURDER AND OF
9 THE OFFENSE OF ARMED ROBBERY, ASSAULT AND BATTERY
10 WITH INTENT TO KILL, AND GRAND LARCENY OF A VEHICLE.
11 IT THEREFORE BECOMES NECESSARY FOR US TO HOLD THIS
12 ADDITIONAL PROCEEDING WHICH WILL DETERMINE THE
13 PUNISHMENT THAT THE COURT IS TO IMPOSE UPON THE
14 DEFENDANT UPON YOUR FINDING OF HIS GUILT OF MURDER
15 BEYOND A REASONABLE DOUBT.

16 SECTION 16-3-20 OF THE CODE OF LAWS AS AMENDED
17 PROVIDES IN PART, "A PERSON WHO IS CONVICTED OR
18 PLEADS GUILTY TO MURDER MUST BE PUNISHED BY DEATH OR
19 BY IMPRISONMENT FOR LIFE." THAT SECTION IS FURTHER
20 AMENDED, ALSO PROVIDES IN PART, "UPON CONVICTION OF A
21 DEFENDANT OF MURDER, THE COURT SHALL CONDUCT A
22 SEPARATE PROCEEDING, A SEPARATE SENTENCING PROCEEDING
23 TO DETERMINE WHETHER THE DEFENDANT SHOULD BE
24 SENTENCED TO DEATH OR TO LIFE IMPRISONMENT."

25 SO OUR PURPOSE THIS MORNING IN CONDUCTING THE

1 PROCEEDING IN WHICH WE ARE NOW ENGAGED IS TO
2 DETERMINE WHETHER THE DEFENDANT HERMAN HUGHES SHOULD
3 BE SENTENCED BY THE COURT TO DEATH OR TO LIFE
4 IMPRISONMENT.

5 WITH RESPECT TO YOUR PARTICULAR ROLE IN THIS
6 PROCEEDING, YOU WILL BE ASKED TO RECOMMEND TO ME
7 WHETHER IT SHOULD SENTENCE THE DEFENDANT HERMAN
8 HUGHES TO DEATH OR TO LIFE IMPRISONMENT.

9 DURING THIS SENTENCE PROCEEDING, THE STATE AND
10 THE DEFENDANT WILL HAVE AN OPPORTUNITY TO INTRODUCE
11 ADDITIONAL EVIDENCE IN EXTENUATION, MITIGATION AND/OR
12 AGGRAVATION, AND BOTH SIDES WILL HAVE AN OPPORTUNITY
13 TO PRESENT ARGUMENTS FOR AND AGAINST THE DEATH
14 PENALTY. SHOULD -- AND I USE THAT WORD ADVISEDLY --
15 SHOULD YOU RECOMMEND A SENTENCE OF LIFE OR SHOULD YOU
16 RECOMMEND A SENTENCE OF DEATH, THAT IS THE ONLY ISSUE
17 HERE INVOLVED.

18 AFTER THE LAST ARGUMENT HAS BEEN MADE TO YOU
19 CONCERNING THE PUNISHMENT THAT SHOULD BE IMPOSED UPON
20 THE DEFENDANT, I WILL GIVE YOU CERTAIN WRITTEN
21 INSTRUCTIONS, AND YOU WILL THEN RETIRE TO DETERMINE
22 WHETHER A DEATH SENTENCE OR A LIFE SENTENCE IS TO BE
23 RECOMMENDED. IN THAT REGARD, I HAVE USED THE WORD
24 RECOMMENDED. I TELL YOU IN THAT CONNECTION THAT THIS
25 COURT WILL IMPOSE THE SENTENCE, WHATEVER IT IS, THAT

1 YOU RECOMMEND.

2 NOW, I WILL DEFINE FURTHER FOR YOU AT THE
3 CONCLUSION OF THE TESTIMONY AND LAST ARGUMENTS OF
4 COUNSEL AND OF THE DEFENDANT, IF HE CARES TO TESTIFY,
5 THE DEFINITIONS OF AGGRAVATING AND MITIGATING
6 CIRCUMSTANCES. YOU WILL BE FULLY INFORMED, AND IN
7 THAT CONNECTION, I WILL GIVE YOU DETAILED WRITTEN
8 INSTRUCTIONS, AND AGAIN, MR. FOREMAN, AS I TOLD YOU
9 IN THE FIRST PROCEEDINGS, AT ALL TIMES, I WILL BE
10 AVAILABLE TO ANSWER ANY INQUIRIES THAT YOU MAY HAVE.

11 WE WILL NOW BEGIN THESE PROCEEDINGS BY AN
12 OPENING STATEMENT OF THE SOLICITOR AND OF THE
13 DEFENDANT.

14 MR. BAILEY: PLEASE THE COURT? LADIES AND
15 GENTLEMEN, AT THIS POINT HERMAN HUGHES IS GUILTY.
16 IT'S BEEN ESTABLISHED. HE SITS BEFORE YOU NOW
17 CONVICTED OF MURDER WITH MALICE AFORETHOUGHT. YOU'VE
18 FOUND HIM GUILTY OF ASSAULT AND BATTERY WITH INTENT
19 TO KILL. AND YOU FOUND HIM GUILTY OF ARMED ROBBERY
20 AND GRAND LARCENY.

21 YOU WILL NOW HEAR THE TESTIMONY REGARDING THE
22 APPROPRIATE PUNISHMENT TO BE IMPOSED FOR THE MURDER
23 CONVICTION. YOU'RE GOING TO HEAR AGGRAVATING
24 CIRCUMSTANCES FROM THE STATE OF SOUTH CAROLINA. YOU
25 WILL HEAR MITIGATING CIRCUMSTANCES FROM THE DEFENSE.

1 YOU WILL HEAR OTHER TESTIMONY WHICH YOU SHOULD
2 CONSIDER.

3 NOW, THE SIGNIFICANCE OF THE AGGRAVATING
4 CIRCUMSTANCES ARE THAT YOU CANNOT IMPOSE THE DEATH
5 PENALTY UNLESS YOU FIND AT LEAST ONE AGGRAVATING
6 CIRCUMSTANCE. I HAVE ALLEGED ON BEHALF OF THE STATE
7 OF SOUTH CAROLINA THREE AGGRAVATING CIRCUMSTANCES IN
8 THIS CASE. NUMBER ONE, THAT THE MURDER OF KENNETH
9 PRESLEY WAS COMMITTED WHILE IN THE COMMISSION OF
10 ROBBERY WHILE ARMED WITH A DEADLY WEAPON. NUMBER
11 TWO, THAT THE MURDER OF MR. PRESLEY WAS COMMITTED IN
12 THE COMMISSION OF LARCENY WITH A DEADLY WEAPON. AND
13 NUMBER THREE, THAT BY HIS ACT OF MURDER OF KENNETH
14 PRESLEY, HERMAN HUGHES KNOWINGLY CREATED A GREAT RISK
15 OF DEATH TO MORE THAN ONE PERSON IN A PUBLIC PLACE BY
16 MEANS OF A WEAPON OR DEVICE WHICH NORMALLY WOULD BE
17 HAZARDOUS TO THE LIVES OF MORE THAN ONE PERSON.

18 NOW, BESIDES THE AGGRAVATING CIRCUMSTANCES, I'M
19 GOING TO TALK ABOUT THREE OTHER THINGS. YOU WILL
20 HEAR TESTIMONY OF THREE OTHER TYPES OF THINGS. THE
21 CIRCUMSTANCES OF THE CRIMES, THE DETAILS AND FACTS OF
22 THE CRIME THAT YOU MAY NOT HAVE HEARD IN THE FIRST
23 STAGE. WE'LL BE TALKING ABOUT THE CHARACTERISTICS OF
24 HERMAN HUGHES, THE KIND OF PERSON HE IS AND WAS. YOU
25 WILL ALSO HAVE VICTIM IMPACT TESTIMONY. YOU WILL GET

1 TO KNOW KENNETH PRESLEY TO THE EXTENT THAT YOU CAN
2 KNOW SOMEONE WHO IS DEAD THROUGH PEOPLE THAT LOVED
3 HIM, FAMILY MEMBERS WHO WILL TESTIFY ABOUT THEIR
4 LOSS.

5 NOW, OBVIOUSLY, MOST OF THE AGGRAVATING
6 CIRCUMSTANCES THAT I HAVE TO PROVE IN THIS CASE WERE
7 BROUGHT OUT IN THE FIRST PHASE OF THIS TRIAL, THE
8 GUILT PHASE. IT JUST SO HAPPENS THAT IN THIS CASE,
9 THE STATUTORY AGGRAVATING CIRCUMSTANCES WERE SO TIED
10 IN TO THE MURDER ITSELF THAT ALL OF THIS CAME OUT IN
11 THE FIRST PHASE. SO RATHER THAN GOING THROUGH THAT
12 AGAIN IN THE PENALTY PHASE, THE FIRST THING I WILL DO
13 WHEN I START TO CALL WITNESSES IS MOVE TO INCORPORATE
14 THE GUILT PHASE TESTIMONY INTO THE PENALTY PHASE, SO
15 IN THAT WAY, YOU WILL BE ABLE TO CONSIDER NOT ONLY
16 WHAT YOU HEAR IN THIS PHASE OF THE TRIAL, BUT THE
17 GUILT PHASE ALSO.

18 AS JUDGE COTTINGHAM TOLD YOU, AFTER YOU'VE HEARD
19 ALL OF THE TESTIMONY FROM THIS PHASE OF THE TRIAL,
20 EACH LAWYER, MR. NEWSOME AND I, WILL HAVE ONE FINAL
21 OPPORTUNITY TO ADDRESS YOU, AND JUDGE COTTINGHAM WILL
22 GIVE YOU DETAILED INSTRUCTIONS ON THE LAW THAT
23 APPLIES TO THIS STAGE OF THE PROCEEDINGS, AND YOU
24 WILL GO BACK AND DELIBERATE AND COME BACK WITH ONE OF
25 TWO VERDICTS, LIFE IMPRISONMENT OR THE DEATH PENALTY

1 AND I ASK YOU, LADIES AND GENTLEMEN, TO PLEASE
2 CONTINUE TO PAY CLOSE ATTENTION THROUGHOUT THE REST
3 OF THIS TRIAL AS YOU HAVE IN THE FIRST STAGE. THANK
4 YOU VERY MUCH.

5 MR. NEWSOME: PLEASE THE COURT? MR.
6 FOREMAN, LADIES AND GENTLEMAN OF THE JURY, FOR THE
7 LAST NINE MONTHS, I HAVE WORKED ON THIS CASE
8 PREPARING FOR THIS TIME, WHICH I KNEW FROM THE
9 BEGINNING OF MY INVOLVEMENT OF THIS CASE WOULD COME
10 SINCE THE STATE HAD NOTIFIED US ABOUT THEIR INTENTION
11 TO SEEK THE DEATH PENALTY FOR HERMAN HUGHES SHOULD HE
12 BE CONVICTED.

13 AS I TOLD YOU FROM THE START OF THE CASE, HERMAN
14 HUGHES WAS INVOLVED. WE ADMITTED HIS INVOLVEMENT AND
15 RESPONSIBILITY. I TOLD YOU IN MY CLOSING ARGUMENT
16 THAT WE ADMITTED HIS INVOLVEMENT AND RESPONSIBILITY.
17 THE QUESTION THAT YOU HAVE TO ANSWER TODAY IS WHY
18 SHOULD THE STATE OF SOUTH CAROLINA SEEK AND YOU GRANT
19 THE EXECUTION OF HERMAN HUGHES FOR THIS MURDER. WHAT
20 IS IT ABOUT THIS CASE THAT DISTINGUISHES IT FROM
21 OTHERS? WHAT IS IT ABOUT HERMAN HUGHES THAT MAKES
22 THE STATE THINK THAT THE PUNISHMENT OF LIFE
23 IMPRISONMENT COULDN'T BE SUFFICIENT?

24 THERE ARE STATUTORY MITIGATING CIRCUMSTANCES
25 THAT WE WILL OFFER EVIDENCE OF, AND THERE ARE ALSO

1 OTHER MITIGATING CIRCUMSTANCES THAT HAVE NOT BEEN
2 INCORPORATED IN THE STATUTE, BUT HIS HONOR WILL
3 CHARGE YOU THAT YOU MAY CONSIDER THOSE ALSO.

4 LET ME GO OVER A FEW OF THOSE WITH YOU, WHAT WE
5 INTEND TO INTRODUCE EVIDENCE OF. THE DEFENDANT HAS
6 NO SIGNIFICANT HISTORY OF PRIOR CONVICTIONS INVOLVING
7 THE USE OF VIOLENCE AGAINST ANOTHER PERSON. THE
8 MURDER WAS COMMITTED WHILE THE DEFENDANT WAS UNDER
9 THE INFLUENCE OF MENTAL OR EMOTIONAL DISTURBANCE.
10 THE CAPACITY TO APPRECIATE THE CRIMINALITY OF HIS
11 CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS
12 OF LAW WAS SUBSTANTIALLY IMPAIRED. THE AGE OR
13 MENTALITY OF THE DEFENDANT AT THE TIME OF THE CRIME.
14 THESE ARE SOME OF THE CONSIDERATIONS. THAT THE
15 DEFENDANT WAS BELOW THE AGE OF 18 AT THE TIME OF THE
16 CRIME. THAT THE DEFENDANT HAD MENTAL RETARDATION AT
17 THE TIME OF THE CRIME, MENTAL RETARDATION MEANING
18 SIGNIFICANTLY SUBAVERAGE GENERAL INTELLECTUAL
19 FUNCTIONING EXISTING CONCURRENTLY WITH DEFICITS IN
20 ADAPTIVE BEHAVIOR MANIFESTED DURING THE DEVELOPMENTAL
21 PERIOD.

22 FOR THE FIRST TIME, YOU'RE GOING TO GET A CHANCE
23 TO SEE WHAT HERMAN HUGHES IS LIKE. WE CAN'T TAKE
24 AWAY HIS RESPONSIBILITY FOR THE CRIME. THERE IS
25 NOTHING I'M GOING TO SAY TO YOU NOW OR LATER. THAT'S

1 BEEN ESTABLISHED. WE TOLD YOU THAT FROM THE START.
2 WE TOLD YOU THAT AT THE END OF THE CASE. IT'S OUR
3 POSITION NOW AND HAS BEEN AND WILL FOREVER BE THAT IT
4 IS NOT NECESSARY TO TAKE THE LIFE OF HERMAN HUGHES TO
5 PUNISH HIM FOR THIS ACTION.

6 WE ASK THAT YOU LISTEN CAREFULLY TO THIS
7 EVIDENCE THAT'S SUBMITTED AND LISTEN CAREFULLY TO THE
8 OTHER EVIDENCE OF THE OTHER MITIGATING FACTORS THAT
9 WILL COME OUT. WE ASK THAT Y'ALL REMEMBER THAT HIS
10 HONOR WILL CHARGE YOU WHAT THE LAW IS ON THIS, THAT
11 YOU CAN -- YOU HAVE TO FIND BEYOND A REASONABLE DOUBT
12 THAT THEY'VE PROVED TO YOUR SATISFACTION EVIDENCE OF
13 AGGRAVATING CIRCUMSTANCES, AND YOU MAY CONSIDER THE
14 STATUTORY MITIGATING CIRCUMSTANCES. AND THERE ARE
15 REASONS WHY THAT THESE WERE PUT IN STATUTES. THERE
16 ARE REASONS WHY THE CULPABILITY OF CAPITAL PUNISHMENT
17 IS CONSIDERED AND WHY THESE WERE PUT IN THERE. AND
18 YOU MAY CONSIDER OTHER EVIDENCE IN MITIGATION,
19 EXTENUATING CIRCUMSTANCES.

20 YOU'RE GOING TO SEE THE LIFE OF HERMAN HUGHES,
21 TOO. DOES THAT MEAN THAT WE'RE ASKING YOU TO FORGIVE
22 AND FORGET HIS RESPONSIBILITY FOR THE CRIME? NO.
23 BECAUSE AT BEST, LADIES AND GENTLEMEN, HE SERVES THE
24 REST OF HIS LIFE IN PRISON. AT THE LEAST, THE VERY
25 LEAST, THAT CAN HAPPEN TO HIM.

1 YOU KNOW, THERE'S VERY FEW PEOPLE THAT GET THE
2 CHANCE OR THE OPPORTUNITY TO BE INVOLVED IN OR HAVE
3 THE BURDEN, WHICH I THINK IT IS, TO MAKE A DECISION
4 WHETHER ANOTHER HUMAN BEING LIVES OR DIES. I DON'T
5 ENVY YOUR JOB, LADIES AND GENTLEMEN.

6 THE JOB THAT MR. BAILEY PERFORMED HERE, IT'S HIS
7 JOB. HE TOOK AN OATH TO DO THAT. THE JOB THAT HIS
8 HONOR HAS DONE, IT'S HIS JOB, AND I'M AN ADVERSARY
9 FOR MY CLIENT. WE'VE ADMITTED GUILT, AND WE'RE
10 TELLING YOU LADIES AND GENTLEMEN THAT LIFE
11 IMPRISONMENT IS SUFFICIENT PUNISHMENT FOR THIS
12 OFFENSE. THANK YOU.

13 MR. BAILEY: YOUR HONOR, THE STATE CALLS
14 VIRGINIA HILL.

15 THE CLERK: IF YOU WOULD, PLEASE PLACE
16 YOUR LEFT HAND ON THE BIBLE. PLEASE RAISE YOUR RIGHT
17 HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

18 THE WITNESS: VIRGINIA HILL.

19 VIRGINIA HILL,
20 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
21 TESTIFIED AS FOLLOWS:

22 D I R E C T E X A M I N A T I O N

23 BY MR. BAILEY:

24 Q. OKAY. YOUR FULL NAME, PLEASE?

25 A. VIRGINIA HILL.

1 Q. ALL RIGHT. MS. HILL, WHERE DO YOU WORK?

2 A. JOHN FORD MIDDLE SCHOOL.

3 Q. THAT'S HERE IN CALHOUN COUNTY?

4 A. YES, SIR.

5 Q. ALL RIGHT. WHAT DO YOU DO AT JOHN FORD
6 MIDDLE SCHOOL?

7 A. ADMINISTRATIVE ASSISTANT.

8 Q. OKAY. AND AS ADMINISTRATIVE ASSISTANT,
9 WHAT ARE YOUR DUTIES?

10 A. I TAKE CARE OF ATTENDANCE, SCHOOL RECORDS,
11 THEIR PERSONNEL RECORDS, GRADES.

12 Q. OKAY.

13 A. AND ALL DISCIPLINE RECORDS.

14 Q. OKAY. YOU TAKE CARE OF DISCIPLINE
15 RECORDS, TOO?

16 A. YES, I DO.

17 Q. WHO ACTUALLY PREPARES THE DISCIPLINARY
18 RECORDS?

19 A. WHOEVER DOES THE WRITEUPS; TEACHERS, THAT
20 SORT OF THING. AND THEN IT GOES TO MR. DAVIS WHO IS
21 ASSISTANT PRINCIPAL AND DISCIPLINARY.

22 Q. ALL RIGHT. AND DO YOU HAVE ANY
23 INVOLVEMENT IN PREPARING THE COMPILATION OF THE
24 DISCIPLINARY RECORDS?

25 A. WHAT I DO IS ENTER THEM INTO THE COMPUTER

1 ONCE HE TAKES ACTION AGAINST THAT STUDENT.

2 Q. SO YOU'RE FAMILIAR WITH THE MODE OF
3 PREPARATION OF THOSE RECORDS?

4 A. YES.

5 Q. AND ARE THEY MADE SIMULTANEOUSLY WITH THE
6 EVENTS?

7 A. YES.

8 Q. ALL RIGHT. AND WOULD YOU STATE WHETHER OR
9 NOT PURSUANT TO A SUBPOENA THAT YOU PRODUCED THE
10 CERTAIN SCHOOL RECORDS THAT YOU'RE THE CUSTODIAN OF
11 INVOLVING HERMAN HUGHES STARTING FROM AUGUST 15,
12 1991, UNTIL FEBRUARY OF 1994?

13 A. I DIDN'T START DOING ANY OF THOSE UNTIL
14 '93. I TOOK THAT POSITION OVER IN '93.

15 Q. OKAY. BUT YOU HAVE ACCESS TO THE RECORDS?

16 A. YEAH.

17 Q. PRIOR TO THE TIME YOU TOOK THAT JOB?

18 A. YES.

19 Q. IS THAT CORRECT?

20 A. YES.

21 Q. AND DID YOU PRODUCE ALL OF THE RECORDS
22 FROM THE FILES THAT YOU'RE CUSTODIAN OF STARTING IN
23 AUGUST 1991 THROUGH FEBRUARY 1994?

24 A. YES.

25 Q. AND I'LL ASK WHETHER OR NOT THESE ARE

1 THOSE RECORDS.

2 A. YES, THEY ARE.

3 Q. OKAY. THOSE ARE THE ORIGINALS FROM YOUR
4 FILE?

5 A. YES, SIR.

6 MR. BAILEY: YOUR HONOR, I PREVIOUSLY
7 PROVIDED MR. NEWSOME A COPY OF THESE. I WOULD OFFER
8 THEM WITHOUT OBJECTION.

9 THE COURT: WITHOUT OBJECTION.

10 (STATE'S EXHIBIT NUMBER 39
11 MARKED FOR IDENTIFICATION AND
12 ENTERED INTO EVIDENCE.)

13 BY MR. BAILEY:

14 Q. ALL RIGHT. NOW, MS. HILL, YOU EXAMINED
15 SOME ENLARGEMENTS OF THOSE RECORDS --

16 A. YES, SIR.

17 Q. -- PREVIOUSLY?

18 A. YES, SIR.

19 Q. AND I WOULD ASK YOU TO LOOK AT THESE AND
20 TELL THE JUDGE AND JURY WHETHER OR NOT THESE ARE
21 EXACT COPIES OF THE RECORDS, SOME OF THE RECORD --
22 DISCIPLINARY RECORDS THAT YOU HAVE TALKED ABOUT.

23 A. YES, SIR. THAT WAS.

24 Q. OKAY. I'LL JUST DO THEM ONE AT A TIME
25 HERE.

1 A. YES, SIR.

2 Q. OKAY. AND YOU LOOKED AT THESE KIND OF
3 FAST, BUT YOU LOOKED AT THESE OVER THE WEEKEND; IS
4 THAT CORRECT?

5 A. YES. YES. I HAVE COPIES. YES, SIR.

6 Q. AND THAT ONE ALSO. ALL RIGHT.

7 THE COURT: LET ME GLANCE AT THOSE IN THE
8 SAME MANNER, PLEASE.

9 MR. BAILEY: YES, SIR. YOUR HONOR, I
10 WOULD OFFER THESE AT THIS TIME.

11 MR. NEWSOME: YOU'RE OFFERING THEM INTO
12 EVIDENCE?

13 MR. BAILEY: YEAH.

14 THE COURT: YES, SIR. WITHOUT OBJECTION.

15 (STATE'S EXHIBITS NUMBERS 40,
16 41, 42, 43 AND 44 MARKED FOR
17 IDENTIFICATION AND ENTERED
18 INTO EVIDENCE.)

19 THE COURT: CARE TO PUBLISH THOSE?

20 MR. BAILEY: NOT AT THIS TIME.

21 THE COURT: OKAY. THEY WILL HAVE THEM, OF
22 COURSE, IN THE JURY ROOM SINCE THEY'RE IN EVIDENCE.

23 BY MR. BAILEY:

24 Q. MS. HILL, CALLING YOUR ATTENTION TO
25 STATE'S 44, DOES THAT INDICATE THAT HERMAN HUGHES WA

1 EXPELLED FOR THE REMAINDER OF THE SCHOOL YEAR
2 FEBRUARY 2ND, 1994?

3 A. YES, IT DOES.

4 Q. SUSPENDED FOR THE REMAINDER OF THE SCHOOL
5 YEAR?

6 A. SUSPENDED AND WAS RECOMMENDED FOR
7 EXPULSION ALSO.

8 MR. BAILEY: ALL RIGHT. MS. HILL, PLEASE
9 ANSWER ANY QUESTIONS MR. NEWSOME MAY HAVE FOR YOU.

10 C R O S S - E X A M I N A T I O N
11 BY MR. NEWSOME:

12 Q. MS. HILL, YOU'RE THE CUSTODIAN OF THE
13 RECORDS FOR ALL OF THE STUDENTS FOR THE DIFFERENT
14 SCHOOLS?

15 A. YES, SIR. JUST JOHN FORD.

16 Q. JUST JOHN FORD?

17 A. JUST AT JOHN FORD.

18 Q. AT JOHN FORD, ARE THERE OTHER STUDENTS
19 THAT HAVE SIMILAR DISCIPLINARY RECORDS?

20 A. YES, SIR.

21 Q. ARE THERE OTHERS WHO HAVE WORSE
22 DISCIPLINARY RECORDS?

23 A. I CAN'T SAY WHETHER THEY ARE WORSE, BUT
24 THEY PRETTY MUCH ARE ALL ABOUT THE SAME. I MEAN, NOT
25 ALL OF THEM, BUT --

1 Q. ALL OF THE CHILDREN THERE HAVE THE SAME
2 DISCIPLINARY RECORD?

3 A. NO, NOT ALL.

4 Q. SO THERE ARE SOME THERE THAT HAVE WORSE
5 DISCIPLINARY RECORDS?

6 A. NO. I WOULDN'T SAY THEY ARE ANY WORSE.

7 Q. YOU DON'T SAY THEY ARE ANY WORSE, BUT
8 THERE ARE SEVERAL KIDS WHO ARE IN SCHOOL NOW THAT
9 HAVE SOME --

10 A. THAT HAVE SOME DISCIPLINARY PROBLEMS, YES.

11 MR. NEWSOME: OKAY. NO FURTHER QUESTIONS.

12 MR. BAILEY: NO REDIRECT, YOUR HONOR.

13 THE COURT: YOU MAY COME DOWN. THANK YOU.

14 I WILL EXCUSE THIS WITNESS.

15 MR. BAILEY: MYRTIS SALLY.

16 THE CLERK: IF YOU WOULD, PLEASE PLACE
17 YOUR LEFT HAND ON THE BIBLE. PLEASE RAISE YOUR RIGHT
18 HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

19 THE WITNESS: MYRTIS SALLY.

20 MYRTIS SALLY,

21 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
22 TESTIFIED AS FOLLOWS:

23 D I R E C T E X A M I N A T I O N

24 BY MR. BAILEY:

25 Q. YOU'RE MYRTIS SALLY?

MYRTIS SALLY - DIRECT BY MR. BAILEY

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- 1 A. YES, SIR.
- 2 Q. AND MS. SALLY, WHERE ARE YOU EMPLOYED?
- 3 A. CALHOUN COUNTY PUBLIC SCHOOLS.
- 4 Q. AND WHAT IS YOUR JOB IN THE CALHOUN COUNTY
5 PUBLIC SCHOOL SYSTEM?
- 6 A. I'M THE DIRECTOR OF SPECIAL SERVICES.
- 7 Q. OKAY. AND AS DIRECTOR OF SPECIAL
8 SERVICES, DO YOU MAINTAIN CERTAIN RECORDS? ARE YOU
9 THE CUSTODIAN OF CERTAIN RECORDS?
- 10 A. YES. SPECIAL EDUCATION RECORDS.
- 11 Q. OKAY. AND BASICALLY, WHAT DO THOSE
12 RECORDS INCLUDE?
- 13 A. DUE PROCESS INFORMATION. FOR INSTANCE,
14 PARENTAL PERMISSION TO SCREEN STUDENTS, TO TEST
15 STUDENTS' IEP'S AND PSYCHOLOGICALS.
- 16 Q. OKAY. PSYCHOLOGICAL TESTS?
- 17 A. YES.
- 18 Q. AND THE SCHOOL RECORDS THAT YOU MAINTAIN,
19 WERE THEY SUBPOENAED?
- 20 A. YES.
- 21 Q. OKAY. AND DO YOU HAVE THOSE RECORDS WITH
22 YOU?
- 23 A. YES.
- 24 Q. AND YOU'RE THE CUSTODIAN OF THOSE RECORDS?
- 25 A. RIGHT. YES.

1 Q. AND YOU'RE FAMILIAR WITH THEIR OTHER
2 PREPARATION?

3 A. YES.

4 Q. AND THEY ARE PREPARED SIMULTANEOUSLY WITH
5 THE DATES; IS THAT CORRECT?

6 A. YES.

7 Q. CERTAIN DATE, THE RECORDS WERE PREPARED ON
8 THAT DATE?

9 A. RIGHT.

10 Q. ALL RIGHT. CAN I SEE THE RECORDS THAT
11 YOU'VE GOT WITH YOU?

12 A. (WITNESS COMPLIES.)

13 Q. OKAY. MS. SALLY, I SHOW YOU TWO
14 DOCUMENTS, ONE DATED JANUARY 7, 1986, AND ONE MAY 5,
15 1991. WOULD YOU STATE WHETHER OR NOT THOSE ARE
16 PSYCHOLOGICAL EVALUATION REPORTS DONE ON HERMAN
17 HUGHES?

18 A. (WITNESS REVIEWS DOCUMENTS.) YES. BOTH
19 OF THESE ARE COMPLETE RECORDS OF THE PSYCHOLOGICAL
20 EVALUATION COMPLETED OF HERMAN HUGHES.

21 Q. ALL RIGHT. AND WERE THOSE THE ONLY ONES
22 DONE WHILE HERMAN HUGHES HAS BEEN AT THE CALHOUN
23 COUNTY --

24 A. YES, THE ONLY PSYCHOLOGICAL TESTING.
25 OTHER STATEWIDE TESTING WOULD NOT BE A PART OF THESE

1 RECORDS.

2 MR. BAILEY: THANK YOU. YOUR HONOR, I
3 WOULD OFFER THESE.

4 MR. NEWSOME: WITHOUT OBJECTION.

5 THE COURT: WITHOUT OBJECTION.

6 (STATE'S EXHIBITS NUMBERS 45 AND
7 46 MARKED FOR IDENTIFICATION AND
8 ENTERED INTO EVIDENCE.)

9 THE COURT: PROCEED.

10 MR. BAILEY: THANK YOU, MS. SALLY. THAT'S
11 ALL I HAVE. PLEASE ANSWER ANY QUESTIONS MR. NEWSOME
12 MAY HAVE FOR YOU.

13 C R O S S - E X A M I N A T I O N
14 BY MR. NEWSOME:

15 Q. THESE PSYCHO EDUCATIONAL TESTS, MS. SALLY,
16 THESE ARE DONE BY THE SCHOOL DISTRICT OR IS IT DONE
17 BY CONTRACT AGENCY?

18 A. IT'S CONTRACT.

19 Q. CONTRACT AGENCY?

20 A. UH-HUH.

21 Q. AND THE FIRST ONE THAT HE TALKED ABOUT,
22 THE ONE THAT WAS DONE IN 1986, HERMAN WAS IN THE
23 SECOND GRADE THEN? I DON'T KNOW WHERE HE PUT IT. I
24 THINK I HAVE A COMPLETE --

25 A. I THINK I HAVE A COPY OF THAT, YES.

1 Q. ALL RIGHT. CAN I HOLD YOUR FILE?

2 A. UH-HUH.

3 Q. YOU CAN -- AND THAT FOUND HIM TO BE
4 LEARNING DISABLED, DID IT NOT?

5 A. YES, THE ONE IN '86.

6 Q. AND AS A RESULT OF THAT, HERMAN WAS PLACED
7 IN LEARNING DISABILITY CLASSES?

8 A. HE WAS IN A RESOURCE ROOM, WHICH MEANS
9 THAT HE ATTENDED A SPECIAL EDUCATION CLASS FOR ONE
10 PERIOD A DAY. THE REST OF THE PERIODS WERE SPENT IN
11 THE REGULAR ED PROGRAM.

12 Q. OKAY. NOW, HOW MANY YEARS DID HE REMAIN
13 LEARNING DISABLED AS WHICH IS CLASSIFIED UNDER YOUR
14 SYSTEM?

15 A. WELL, YOU ACTUALLY HAVE THE RECORDS, BUT
16 I'VE REVIEWED THEM, SO I CAN PRETTY MUCH TELL YOU
17 THAT HE WAS PLACED ON THIS PSYCHOLOGICAL THAT WAS
18 DONE JANUARY OF '86, AND WE SERVED HIM JANUARY OF '86
19 UNTIL MAY OF '86 WHEN SCHOOL ENDED. IN AUGUST OF
20 '86, HE DID NOT RETURN TO OUR SCHOOL DISTRICT, AND HE
21 CAME BACK THE LATTER PART OF OCTOBER OF '86, AND WE
22 PICKED UP SERVICES AT THAT TIME, AND HE WAS SERVED
23 FOR THAT ENTIRE YEAR IN SPECIAL EDUCATION. AND SO
24 THAT'S WHERE THE SPECIAL EDUCATION SERVICES ENDED.

25 Q. OKAY. AND PART OF THAT EVALUATION IS HIS

- 1 I.Q., IS IT NOT?
- 2 A. YES, SIR.
- 3 Q. SO HE WAS TESTED IN 1986?
- 4 A. YES, SIR.
- 5 Q. AND 1991?
- 6 A. YES.
- 7 Q. IS THAT NOT CORRECT?
- 8 A. YES.
- 9 Q. IN YOUR RECORDS HERE, I NOTICE THERE'S
- 10 ANOTHER I.Q. TEST THAT WAS ADMINISTERED TO HERMAN.
- 11 A. IT'S CALLED THE SCHLOSSON INTELLIGENCE
- 12 SCALE, AND I JUST NEED TO EXPOUND A LITTLE ON THIS
- 13 BECAUSE WE USE THIS AS A SCHOOL'S ABILITIES TEST.
- 14 Q. SURE.
- 15 A. SORT OF A SCREENING MECHANISM TO DETERMINE
- 16 WHETHER OR NOT WE NEED TO HAVE THE CHILD TESTED BY
- 17 SOMEONE WHO IS A -- WHO IS CERTIFIED TO DO SO. BUT
- 18 THE SCHLOSSON INTELLIGENCE SCHOOL CAN BE ADMINISTERED
- 19 BY A GUIDANCE COUNSELOR OR A TEACHER.
- 20 Q. AND THE SIGNIFICANCE OF THAT TEST WOULD
- 21 BE?
- 22 A. WOULD -- WOULD INDICATE TO US WHETHER OR
- 23 NOT THE CHILD NEEDED TO BE TESTED BY A CERTIFIED
- 24 PSYCHOLOGIST -- SCHOOL PSYCHOLOGIST.
- 25 Q. AND HE WAS TESTED IN WHAT MONTH AND WHAT

1 YEAR ON THAT?

2 A. JANUARY -- EXCUSE ME, THE LAST EVALUATION
3 WAS MAY THE 9TH OF '91.

4 Q. 1991?

5 A. YES.

6 MR. NEWSOME: MOVE THAT INTO EVIDENCE,
7 YOUR HONOR.

8 THE WITNESS: EXCUSE ME. WE'RE TALKING
9 ABOUT THE SCHLOSSON?

10 BY MR. NEWSOME:

11 Q. YES.

12 A. I'M SORRY. THE SCHLOSSON WAS ADMINISTERED
13 ON FEBRUARY THE 4TH, 1991.

14 MR. NEWSOME: OKAY. WALTER, HAVE YOU SEEN
15 IT?

16 MR. BAILEY: LET ME SEE IT A SECOND. NO
17 OBJECTION.

18 (DEFENDANT'S EXHIBIT NUMBER 8
19 MARKED FOR IDENTIFICATION AND
20 ENTERED INTO EVIDENCE.)

21 BY MR. NEWSOME:

22 Q. NOW, REFERRING TO DEFENDANT'S EXHIBIT
23 NUMBER 8, AND I'LL HAND THIS TO YOU BECAUSE I HAVE A
24 COPY, HOW OLD WAS HERMAN WHEN THAT TEST WAS
25 ADMINISTERED?

1 A. WHEN THIS TEST WAS ADMINISTERED, HE WAS
2 THIRTEEN YEARS, SIX MONTHS.

3 Q. WHAT WAS HIS MENTAL AGE AT THAT TIME?

4 A. HIS MENTAL AGE WAS NINE YEARS.

5 Q. NINE YEARS MENTAL AGE WHEN HE WAS THIRTEEN
6 AND A HALF?

7 A. YES.

8 Q. WHAT WAS HIS I.Q. AT THAT TIME ACCORDING
9 TO THAT TEST?

10 A. ON THE SCHLOSSON?

11 Q. YES.

12 A. SIXTY-EIGHT.

13 MR. NEWSOME: THANK YOU. I HAVE NO
14 FURTHER QUESTIONS.

15 MR. BAILEY: REDIRECT, YOUR HONOR.

16 R E D I R E C T E X A M I N A T I O N
17 BY MR. BAILEY:

18 Q. MS. SALLY, THE SCHLOSSON TEST, AS I
19 UNDERSTAND YOUR TESTIMONY FROM MR. NEWSOME, IS A
20 SCREENING TEST?

21 A. IT'S A SCREENING TEST TO GIVE US AN
22 INDICATION OF WHETHER FURTHER TESTING NEEDS TO BE --

23 Q. WHICH IS NOT ADMINISTERED BY A
24 PSYCHOLOGIST OR PSYCHIATRIST?

25 A. IT DEPENDS ON THE OCCASION. IF IT'S A

1 CHILD WHO HAS VERY LOW INTELLIGENCE, FOR INSTANCE, IS
2 SEVERELY DISABLED, THEN YES, THAT TEST CAN BE GIVEN
3 TO THEM. BUT USUALLY IT IS NOT IN THE COMPLETE
4 BATTERY. IN OTHER WORDS, IF A PSYCHOLOGIST ACCEPTS
5 THAT TEST, THEY ARE GOING TO ADMINISTER A MORE
6 FORMALIZED TEST IN ADDITION TO --

7 Q. OKAY. NOW --

8 A. BUT IT IS NOT -- CANNOT BE USED AS AN
9 INDICATION TO ACTUALLY PLACE A CHILD IN PROGRAMS FOR
10 CHILDREN WITH DISABILITIES.

11 Q. ALL RIGHT, MA'AM. CAN YOU LOOK AT THAT
12 TEST AND TELL WHO ADMINISTERED THAT SCHLOSSON TEST?

13 A. YES, SIR. THE GUIDANCE COUNSELOR, MR.
14 JAMES MCKINNEY.

15 Q. IS HE A PSYCHOLOGIST OR PSYCHIATRIST?

16 A. HE'S A GUIDANCE COUNSELOR.

17 Q. ALL RIGHT. NOW, CALLING YOUR ATTENTION TO
18 STATE'S EXHIBIT NUMBER 45, WHICH IS THE PSYCHO
19 EDUCATIONAL EVALUATION, LOOKING AT THE SECOND PAGE,
20 DOES THAT INDICATE A FULL SCALE I.Q. OF 80?

21 A. YES.

22 Q. AND WAS THAT TEST ADMINISTERED BY A
23 PSYCHOLOGIST OR A GUIDANCE COUNSELOR?

24 A. THE TEST WAS ADMINISTERED BY A LEVEL TWO
25 SCHOOL PSYCHOLOGIST.

1 Q. ALL RIGHT. I'M CALLING YOUR ATTENTION TO
2 STATE'S EXHIBIT NUMBER 46, WHICH WAS THE EVALUATION
3 THAT OCCURRED IN 1991. DOES THAT INDICATE A FULL
4 SCALE I.Q. OF 74?

5 A. YES.

6 Q. AND WAS THAT ADMINISTERED BY A GUIDANCE
7 COUNSELOR OR A SCHOOL PSYCHOLOGIST?

8 A. LEVEL TWO SCHOOL PSYCHOLOGIST.

9 MR. BAILEY: THANK YOU, MS. SALLY. THAT'S
10 ALL I HAVE.

11 R E C R O S S - E X A M I N A T I O N
12 BY MR. NEWSOME:

13 Q. IN 1986, WHEN HE WAS IN THE SECOND GRADE,
14 HE HAD THAT FULL LEVEL I.Q. SCORE OF 80; IS THAT WHAT
15 YOU SAID?

16 A. YES.

17 Q. THAT'S THE YEAR YOU PUT HIM IN LEARNING
18 DISABLED CLASSES, WAS IT NOT?

19 A. YES, SIR.

20 MR. NEWSOME: THANK YOU.

21 MR. BAILEY: NOTHING FURTHER FROM THIS
22 WITNESS, YOUR HONOR.

23 THE COURT: YOU MAY COME DOWN.

24 MR. BAILEY: STATE CALLS KALA BYRD.

25 THE CLERK: IF YOU WOULD, PLEASE PLACE

1 YOUR LEFT HAND ON THE BIBLE. PLEASE RAISE YOUR RIGHT
2 HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

3 THE WITNESS: KALA, KALA BYRD.

4 THE CLERK: COULD YOU SPELL THAT FIRST
5 NAME?

6 THE WITNESS: K-A-L-A.

7 KALA BYRD,

8 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
9 TESTIFIED AS FOLLOWS:

10 THE COURT: PARDON ME. EXCUSE ME.

11 THE FOREMAN: IT'S AWFULLY HARD TO HEAR.
12 CAN WE TURN THE VOLUME UP ON THAT MICROPHONE?

13 THE COURT: CAN WE TURN THE AIR
14 CONDITIONING OFF FOR A MOMENT? LET'S TRY AND GET
15 ALONG WITHOUT THE AIR CONDITIONING FOR A FEW MINUTES.

16 D I R E C T E X A M I N A T I O N

17 BY MR. BAILEY:

18 Q. COULD YOU GIVE US YOUR FULL NAME, PLEASE?

19 A. KALA MICHELLE BYRD.

20 Q. OKAY. KALA, I WANT YOU TO TALK UP AS LOUD
21 AS YOU CAN SO I CAN HEAR YOU AND THIS MAN AND LADY ON
22 THE END CAN HEAR YOU. OKAY?

23 HOW OLD ARE YOU NOW?

24 A. TWELVE.

25 Q. AND WHERE DO YOU LIVE?

KALA BYRD - DIRECT BY MR. BAILEY

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- 1 A. IN THE COUNTRY.
- 2 Q. OKAY. IN THE COUNTRY AROUND ST. MATTHEWS?
- 3 A. YEAH.
- 4 Q. DO YOU GO TO SCHOOL NOW?
- 5 A. YEAH.
- 6 Q. WHAT GRADE ARE YOU IN?
- 7 A. SIXTH.
- 8 Q. SIXTH? OKAY. NOW, DO YOU KNOW THIS YOUNG
9 MAN HERE, HERMAN HUGHES?
- 10 A. (WITNESS INDICATES.)
- 11 Q. OKAY. YOU'RE NODDING YOUR HEAD, BUT
12 YOU'VE GOT TO ANSWER YES OR NO, OKAY?
- 13 A. YES.
- 14 Q. YOU KNOW HERMAN? OKAY. BACK IN DECEMBER
15 1992, DID YOU SEE HERMAN SOMEWHERE?
- 16 A. YES.
- 17 Q. WHERE DID YOU SEE HIM?
- 18 A. IN FRONT OF MY HOUSE OVER AT PETER'S HOUSE
19 ACROSS THE STREET.
- 20 Q. ACROSS THE STREET FROM YOUR HOUSE?
- 21 A. YES.
- 22 Q. ALL RIGHT. AND DO YOU RECALL WHO ELSE WAS
23 OUT THERE?
- 24 A. YES.
- 25 Q. WHO ELSE CAN YOU REMEMBER THAT WAS OUT

1 THERE BESIDES HERMAN HUGHES?

2 A. AND PETER.

3 Q. OKAY. ANYBODY ELSE?

4 A. WELL, WHERE I WAS, THERE WAS JONATHAN,
5 CLARA, JOSH AND CHARLIE.

6 Q. JOSH AND CHARLIE? OKAY. NOW, WOULD YOU
7 STATE WHETHER OR NOT YOU SAW A GUN THAT DAY?

8 A. NO, BUT I HEARD IT.

9 Q. YOU HEARD IT? OKAY. AND WHEN YOU HEARD
10 THE GUN, DID YOU LOOK OVER -- WHAT DID YOU HEAR?

11 A. THE GUNFIRE.

12 Q. OKAY. YOU HEARD A GUN FIRE? AND DID YOU
13 SEE WHERE HERMAN WAS WHEN YOU HEARD THE GUN FIRE?

14 A. UNDER PETER'S SHED.

15 Q. OKAY. AND COULD YOU TELL WHO SHOT THE
16 GUN?

17 A. NO.

18 Q. YOU COULDN'T? OKAY. DID THE POLICE COME
19 LATER ON?

20 A. YEAH.

21 Q. DID YOU EVER SEE THE GUN?

22 A. NO.

23 Q. OKAY. HAD YOU EVER SEEN HERMAN HUGHES
24 WITH A GUN BEFORE THAT?

25 A. YES.

1 Q. OKAY. HOW MANY TIMES?

2 A. ONCE OR TWICE.

3 Q. ONCE OR TWICE? AND WHERE DID HE HAVE THE
4 GUN WHEN YOU SAW HIM?

5 A. I CAN'T REMEMBER.

6 Q. WHERE?

7 A. I CAN'T REMEMBER.

8 Q. YOU CAN'T REMEMBER? BUT YOU HAVE SEEN
9 HERMAN WITH A GUN A COUPLE OF TIMES?

10 A. YEAH.

11 Q. OKAY. DID THE POLICE COME OUT THERE WHEN
12 THE GUN WENT OFF, THE TIME WE'RE TALKING ABOUT?

13 A. YEAH. LATER ON.

14 MR. BAILEY: OKAY, KALA. ALL RIGHT.

15 ANSWER ANY QUESTIONS THAT MR. NEWSOME MIGHT HAVE FOR
16 YOU.

17 C R O S S - E X A M I N A T I O N

18 BY MR. NEWSOME:

19 Q. THERE WERE A BUNCH OF PEOPLE FIGHTING OUT
20 IN THE STREET, WEREN'T THERE?

21 A. YEAH.

22 Q. OKAY. HERMAN WAS NOT IN THAT FIGHT; HE
23 WAS IN THE YARD?

24 A. NO.

25 MR. NEWSOME: OKAY. THANK YOU.

1 THE COURT: MR. FOREMAN, LADIES AND
2 GENTLEMEN, YOU'VE HEARD SOME TESTIMONY RELATIVE TO AN
3 ALLEGED INCIDENT INVOLVING POSSESSION OF A GUN BY THE
4 DEFENDANT HERMAN HUGHES. INITIALLY, LET ME SAY TO
5 YOU THAT, OF COURSE, AS TO ALL OF THAT, YOU ARE THE
6 -- AS TO THE CREDIBILITY OR BELIEVABILITY OF THE
7 WITNESSES, YOU AND YOU ALONE ARE THE FINDERS OF THE
8 FACTS.

9 IF YOU ELECT -- AND I USE THAT WORD ADVISEDLY --
10 IF YOU ELECT TO CONSIDER THAT TESTIMONY INVOLVING AN
11 ALLEGED INCIDENT WITH A GUN, YOU MAY USE IT ONLY AS
12 TO EVIDENCE OF HIS CHARACTER AND NOT AS TO ANY
13 EVIDENCE OF AN AGGRAVATING CIRCUMSTANCE. IT MAY, IF
14 YOU CHOOSE, BE USED BY YOU AS TO HIS CHARACTER AND
15 CHARACTER ONLY, BUT NOT AS TO AN AGGRAVATING
16 CIRCUMSTANCE. AND YOU MAY USE IT ONLY THEN IF YOU
17 DESIRE TO ACCEPT IT BECAUSE YOU ARE THE FINDERS OF
18 THE FACTS. AND AS TO SUCH TESTIMONY, YOU MAY GIVE IT
19 SUCH WEIGHT AS YOU DETERMINE IN YOUR JUDGMENT IT
20 SHOULD RECEIVE.

21 YOU MAY COME DOWN. THANK YOU SO MUCH.

22 MR. BAILEY: YOUR HONOR, I HAVE A BRIEF
23 MATTER OF LAW IN REGARD TO THE NEXT WITNESS.

24 THE COURT: ALL RIGHT, SIR. I'LL ASK THE
25 JURY TO BE EXCUSED JUST A MOMENT.

1 MR. BAILEY: YES, SIR.

2 THE COURT: OKAY. I'LL CALL YOU RIGHT
3 BACK. THANK YOU.

4 (WHEREUPON, THE JURY WAS REMOVED
5 FROM THE COURTROOM AND THE
6 FOLLOWING PROCEEDINGS COMMENCED
7 IN OPEN COURT.)

8 THE COURT: YES, SIR.

9 MR. BAILEY: CALL CAPERS WANNAMAKER.

10 THE COURT: YOU WANT TO TAKE THIS
11 TESTIMONY INITIALLY OUTSIDE OF THE PRESENCE OF THE
12 JURY?

13 MR. BAILEY: NO, SIR. I JUST WANTED TO
14 CAUTION HIM. I DID NOT HAVE A CHANCE TO TALK TO HIM
15 SINCE WE HAD THE DISCUSSION IN CHAMBERS REGARDING THE
16 PARAMETERS OF HIS TESTIMONY, AND I JUST WANTED TO
17 MAKE SURE THAT HE COULDN'T MENTION ANYTHING REGARDING
18 FORMAL CHARGES OR LACK OF FORMAL CHARGES, BUT HE
19 COULD JUST TESTIFY AS TO WHAT HE OBSERVED.

20 THE COURT: ALL RIGHT, SIR. PUT HIM ON
21 THE WITNESS STAND, AND WE'LL --

22 THE CLERK: IF YOU WILL, PLEASE PLACE YOUR
23 LEFT HAND ON THE BIBLE. RAISE YOUR RIGHT HAND.
24 PLEASE STATE YOUR NAME FOR THE RECORD.

25 THE WITNESS: CAPERS WANNAMAKER, JUNIOR.

1 CAPERS WANNAMAKER, JR.,
2 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
3 TESTIFIED AS FOLLOWS:

4 MR. BAILEY: YOUR HONOR, I CAN GO THROUGH
5 HIS TESTIMONY OR JUST GIVE HIM THE APPROPRIATE
6 INSTRUCTION.

7 THE COURT: JUST GIVE HIM SUCH
8 INSTRUCTIONS YOU THINK ARE APPROPRIATE.

9 MR. BAILEY: MR. WANNAMAKER, WHAT I'M
10 GOING TO ASK YOU TO DO IS RELATE CERTAIN FACTS YOU
11 OBSERVED ON OR ABOUT SEPTEMBER 30TH, 1992, REGARDING
12 TO HERMAN HUGHES, BUT I'M NOT GOING TO ASK YOU
13 ANYTHING ABOUT ANY FORMAL CHARGES OR LACK OF FORMAL
14 CHARGES OR ARRESTS OR LACK OF AN ARREST; JUST WHAT
15 YOU OBSERVED.

16 THE COURT: WHAT'S GOING TO BE THE
17 POSITION OF DEFENSE COUNSEL ON CROSS-EXAMINATION?

18 MR. BAILEY: WELL, WHATEVER HE WANTS TO
19 ASK ON CROSS-EXAMINATION I THINK IS UP TO HIM.

20 THE COURT: YES, SIR.

21 MR. BAILEY: BUT AS FAR AS MY DIRECT
22 EXAMINATION --

23 MR. NEWSOME: YOUR HONOR, I PROBABLY WOULD
24 ASK HIM IF --

25 THE COURT: YOU CAN DO IT. SO THAT YOU

1 WILL KNOW, THE STATE DOESN'T WANT TO BE IN A POSITION
2 OF MENTIONING ANY CHARGES AGAINST THE MAN BECAUSE
3 THAT WOULD BE PREJUDICIAL. YOU UNDERSTAND? IF
4 DEFENSE COUNSEL WANTS TO BRING OUT WHETHER HE WAS OR
5 WAS NOT CHARGED AND WHAT HAPPENED, YOU MAY ANSWER
6 HIM.

7 THE WITNESS: ALL RIGHT, SIR.

8 THE COURT: WE JUST DON'T WANT TO BE IN A
9 POSITION OF PREJUDICING THE YOUNG MAN FROM THE
10 STATE'S POSITION. DO YOU UNDERSTAND WHAT I'M SAYING?

11 THE WITNESS: YES, SIR.

12 THE COURT: ALL RIGHT. ALL RIGHT. ARE
13 YOU READY TO PROCEED?

14 MR. BAILEY: YES, SIR.

15 THE COURT: WAS THAT INSTRUCTION
16 SATISFACTORY TO YOU, SIR?

17 MR. NEWSOME: YES, SIR.

18 THE COURT: NOW, LET THIS INSTRUCTION BE
19 INTERPRETED BY YOU AS IN NO WAY INFRINGING UPON YOUR
20 RIGHT TO WIDE CROSS-EXAMINATION. OKAY?

21 BRING THE JURY BACK IN.

22 (WHEREUPON, THE JURY WAS
23 RETURNED TO THE COURTROOM AND
24 THE FOLLOWING PROCEEDINGS WERE
25 COMMENCED IN OPEN COURT.)

1 THE COURT: JURY'S PRESENT.

2 MR. BAILEY: CALL CAPERS WANNAMAKER.

3 THE CLERK: IF YOU WOULD PLEASE STATE YOUR
4 NAME FOR THE RECORD.

5 THE WITNESS: CAPERS WANNAMAKER, JUNIOR.

6 CAPERS WANNAMAKER, JR.,

7 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,

8 TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MR. BAILEY:

11 Q. MR. WANNAMAKER, I BELIEVE YOU TESTIFIED IN
12 THE FIRST STAGE OF THE TRIAL; IS THAT CORRECT?

13 A. YES, SIR.

14 Q. WERE YOU A DEPUTY SHERIFF IN DECEMBER '92?

15 A. YES, SIR.

16 Q. AND WOULD YOU STATE WHETHER OR NOT YOU HAD
17 OCCASION TO SEE HERMAN HUGHES THAT DAY?

18 A. YES, SIR.

19 Q. AND WHERE DID YOU SEE MR. HUGHES?

20 A. APPROXIMATELY A MILE OUT OF ST. MATTHEWS
21 ON BELLVIEW ROAD.

22 Q. OKAY.

23 A. AT HIS GRANDMOTHER'S RESIDENCE -- AT HIS
24 RESIDENCE, RATHER.

25 Q. THAT'S IN CALHOUN COUNTY?

1 A. YES, SIR.

2 Q. OKAY. AND WOULD YOU STATE WHY YOU
3 HAPPENED TO BE OUT AT THAT ADDRESS? WERE YOU
4 RESPONDING TO A REPORT OF SOME TYPE?

5 A. YES, SIR.

6 Q. AND WHAT TYPE OF REPORT WAS IT?

7 A. OH, I -- I RECEIVED A CALL FROM DISPATCH
8 THAT THEY HAD SHOTS FIRED IN THE AREA.

9 Q. SHOTS FIRED?

10 A. YES.

11 Q. WHEN YOU ARRIVED, WAS HERMAN HUGHES
12 PRESENT?

13 A. YES, SIR.

14 Q. AND DID YOU REMOVE ANYTHING FROM HERMAN
15 HUGHES?

16 A. YES, SIR.

17 Q. WHAT WAS THAT?

18 A. I GOT A PISTOL FROM HIM.

19 Q. OKAY. ALL RIGHT. DO YOU RECALL WHAT TYPE
20 PISTOL IT WAS?

21 A. I THINK IT WAS A .38.

22 MR. BAILEY: ALL RIGHT, SIR. ANSWER ANY
23 QUESTIONS MR. NEWSOME MAY HAVE FOR YOU.

24 C R O S S - E X A M I N A T I O N

25 BY MR. NEWSOME:

1 Q. MR. WANNAMAKER, DID YOU GET THAT GUN FROM
2 HERMAN OR DID HIS GRANDMOTHER GIVE IT TO YOU?

3 A. I GOT IT FROM HERMAN HUGHES AT HIS
4 GRANDMOTHER'S HOME.

5 Q. AND THERE WERE NO CHARGES MADE AT THAT
6 TIME? YOU HAD NO EVIDENCE THAT HE HAD DONE ANYTHING
7 ILLEGAL?

8 A. RESTATE THE QUESTION AGAIN.

9 Q. THERE WERE NO CHARGES MADE AS TO --

10 A. YES, SIR.

11 Q. WHAT CHARGES, SIR?

12 A. I WOULD CHARGE HIM WITH POINTING AND
13 PRESENTING A FIREARM.

14 Q. YOU CHARGED HIM WITH POINTING AND
15 PRESENTING A FIREARM?

16 A. YES.

17 Q. DO YOU HAVE ANY RECORDS TO THE COURT -- HE
18 WAS A JUVENILE AT THAT TIME, WAS HE NOT?

19 A. YES, SIR.

20 Q. AND THERE WERE NO CHARGES. DO YOU HAVE A
21 COPY OF ANY RECORDS, ANYTHING IN FAMILY COURT, WHERE
22 THIS YOUNG MAN WAS CHARGED EVER WITH ANY CRIMES?

23 A. SIR, I DID AN INCIDENT REPORT. I FOLLOWED
24 -- FOLLOWED AN INCIDENT REPORT TO THE DEPARTMENT OF
25 YOUTH SERVICES, D.Y.S.

1 Q. AND THIS YOUNG LADY, KALA, SHE WAS YOUR
2 WITNESS? KALA BYRD?

3 A. KALA BYRD WAS ONE, AND ONE I HAD -- I HAD
4 ONE MORE THAT I HAD TALKED TO. HE IS DECEASED NOW.

5 Q. DO YOU HAVE ANYBODY TO SAY THAT HERMAN
6 HUGHES POINTED THAT GUN AT ANYBODY?

7 A. DID I WHAT NOW?

8 Q. DO YOU HAVE ANY WITNESSES WHO CAN SAY --
9 DID YOU SEE HERMAN HUGHES POINT THE GUN AT ANYBODY?

10 A. NO, SIR.

11 Q. DID KALA BYRD SEE HIM POINT THE GUN AT
12 ANYBODY?

13 A. NOT THAT I REMEMBER.

14 Q. SO YOU HAD NO EVIDENCE TO CHARGE HIM WITH
15 ANYTHING, DID YOU?

16 A. DID I HAVE ANY OR DO I HAVE ANY NOW?

17 Q. DID YOU HAVE ANY THEN?

18 A. YES, SIR. I HAD A WITNESS THEN.

19 Q. YOU HAD A WITNESS THEN. WERE THE CHARGES
20 BROUGHT TO COURT, SIR?

21 A. SIR, MY POSITION IS I -- ONCE I SUBMIT MY
22 PAPER TO D.Y.S., IT'S OUT OF MY HANDS.

23 Q. THAT'S RIGHT. AND THEY INVESTIGATED IT,
24 THE SOLICITOR'S OFFICE WHO CONTROLS FAMILY COURT, DO
25 THEY NOT?

1 A. YES, SIR.

2 Q. OKAY. THERE WERE NEVER ANY CHARGES
3 BROUGHT TO COURT, WERE THERE?

4 A. NO, SIR.

5 Q. YOU NEVER TESTIFIED, DID YOU?

6 A. I NEVER TESTIFIED.

7 Q. IS IT AGAINST THE LAW FOR SOMEBODY TO WALK
8 AROUND ON THEIR PROPERTY WITH A WEAPON?

9 A. IS IT AGAINST THE LAW?

10 Q. YES, SIR.

11 A. WELL, IT'S UNLAWFUL FOR A MINOR TO BE IN
12 POSSESSION OF A PISTOL.

13 Q. DO YOU HAVE A STATUTE ON THAT? DO YOU
14 HAVE A STATUTE? IS IT AGAINST THE LAW?

15 THE COURT: I'LL CHARGE THE LAW IF THAT
16 BECOMES APPROPRIATE.

17 BY MR. NEWSOME:

18 Q. PEOPLE CAN HAVE WEAPONS ON THEIR PROPERTY,
19 CAN THEY NOT?

20 A. YES.

21 Q. AND IN THE CITY, IN CERTAIN CITIES, THERE
22 ARE RESTRICTIONS ABOUT DISCHARGING WEAPONS IN THE
23 CITY IS AGAINST THE LAW; IS THAT RIGHT?

24 A. YES, SIR.

25 Q. AND YOU WERE PATROLLING THE COUNTY, WERE

1 YOU NOT?

2 A. YES, SIR.

3 MR. NEWSOME: THANK YOU, SIR.

4 MR. BAILEY: I HAVE NOTHING FURTHER, YOUR
5 HONOR.

6 THE COURT: YOU MAY COME DOWN. THANK YOU.
7 AGAIN, REMEMBER MY INSTRUCTIONS OF A MOMENT AGO. YOU
8 ARE THE FINDERS OF THE FACTS, AND YOU CAN, IF YOU
9 CONSIDER IT APPROPRIATE, CONSIDER THAT RECENT
10 TESTIMONY WITH REFERENCE TO THE CHARACTER OF THE
11 DEFENDANT. IT CANNOT BE USED AS A BASIS FOR
12 AGGRAVATING CIRCUMSTANCES. YOU, OF COURSE, AS
13 FINDERS OF THE FACTS, MAY REJECT, ACCEPT ALL OF IT,
14 NONE OF IT OR SOME OF IT AND USE IT AS YOU DEEM
15 APPROPRIATE ON THE ISSUE OF THE DEFENDANT'S CHARACTER
16 AND CHARACTER ONLY.

17 MR. BAILEY: CALL ANTHONY BROWN.

18 THE CLERK: IF YOU WOULD, PLEASE PLACE
19 YOUR LEFT HAND ON THE BIBLE. PLEASE COME FORWARD.
20 PLEASE PLACE YOUR LEFT HAND ON THE BIBLE. PLEASE
21 RAISE YOUR RIGHT HAND. PLEASE STATE YOUR NAME FOR
22 THE RECORD.

23 THE WITNESS: ANTHONY BROWN.

24 ANTHONY BROWN,

25 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,

1 TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. BAILEY:

4 Q. SO YOU'RE ANTHONY BROWN?

5 A. YES.

6 Q. MR. BROWN, WHERE ARE YOU EMPLOYED?

7 A. ORANGEBURG COUNTY DETENTION CENTER.

8 Q. WERE YOU EMPLOYED THERE IN DECEMBER '94?

9 A. YES, I WAS.

10 Q. AND WOULD YOU STATE WHETHER OR NOT HERMAN
11 HUGHES WAS AN INMATE AT THAT TIME?

12 A. YES, HE WAS.

13 Q. OKAY. CALLING YOUR ATTENTION TO DECEMBER
14 14TH, 1994, AT ABOUT 1:35 IN THE AFTERNOON, DID YOU
15 HAVE OCCASION TO OBSERVE HERMAN HUGHES?

16 A. YES, I DID.

17 Q. AND WHERE WAS HE?

18 A. HE WAS IN POD B.

19 Q. POD B. WHAT IS POD B?

20 A. IT'S A FEDERAL -- IT'S A SECTION OF THE
21 JAIL WHERE WE HOLD MINIMUM SECURITY INMATES.

22 Q. OKAY. AND WHAT DID YOU OBSERVE HERMAN
23 HUGHES DOING, IF ANYTHING, IN POD B OF THE
24 ORANGEBURG/CALHOUN DETENTION CENTER?

25 A. HE HAD CAME TO MY SECTION OF THE JAIL TO

ANTHONY BROWN - DIRECT BY MR. BAILEY

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1 THE DOOR, AND HE TOOK A BROOM HANDLE AND WAS TAPPING
2 AND HITTING AT THE LOCK --

3 Q. OKAY.

4 A. -- THAT LEADS INTO THE CONTROL ROOM.

5 Q. ALL RIGHT. HE WAS HITTING THE LOCK WITH
6 THE BROOM HANDLE?

7 A. UH-HUH, YES.

8 Q. AND WHAT DID THAT LOCK GO TO? WHAT DOOR
9 WAS IT ON?

10 A. IT LEADS TO THE DOOR THAT COMES INTO THE
11 CONTROL AREA WHERE THE C.O. IS SITTING AT.

12 Q. OKAY. AND DO YOU KNOW ABOUT HOW MANY
13 TIMES MR. HUGHES HIT THE LOCK WITH THE BROOM HANDLE?

14 A. I WOULD SAY ABOUT TWO OR THREE.

15 Q. OKAY. DID YOU HAVE A CONVERSATION WITH
16 HIM?

17 A. YEAH.

18 Q. ABOUT WHAT HE WAS DOING HITTING ON THE
19 LOCK?

20 A. YES. I ASKED HIM TO STOP HITTING THE LOCK
21 OR WHAT WAS HE HITTING THE LOCK FOR. HE CAME DOWN TO
22 GET SOME TISSUE OR TOOTHPASTE OR SOMETHING AT THE
23 TIME. I CAN'T RECALL EXACTLY WHAT HE CAME TO GET.

24 Q. OKAY.

25 A. BUT I TOLD HIM TO STOP HITTING THE LOCK

1 AND HE TOLD ME TO -- I TOLD HIM TO STOP HITTING THE
2 LOCK OR I WAS GOING TO LOCK HIM DOWN FOR THREE DAYS,
3 AND WHEN I TOLD HIM THAT, HE TOLD ME IT WAS GOING TO
4 TAKE MORE THAN JUST ME TO PUT HIM IN HIS ROOM.

5 Q. OKAY. HERMAN HUGHES SAID IT WOULD TAKE
6 MORE THAN YOU TO LOCK HIM DOWN?

7 A. YES.

8 Q. DID YOU END UP HAVING TO LOCK HIM DOWN FOR
9 THREE DAYS?

10 A. YES, HE WAS LOCKED DOWN FOR THREE DAYS.

11 Q. AND WHAT WAS THAT FOR, TRYING TO BREAK THE
12 LOCK?

13 A. THAT AND THE STATEMENT MADE THAT HE WASN'T
14 GOING TO GO IN.

15 MR. BAILEY: ALL RIGHT, MR. BROWN. ANSWER
16 ANY QUESTIONS THAT THE DEFENSE MAY HAVE FOR YOU.

17 C R O S S - E X A M I N A T I O N

18 BY MR. NEWSOME:

19 Q. MR. BROWN?

20 A. YES.

21 Q. HOW LONG HAVE YOU BEEN EMPLOYED AT THE --

22 A. ABOUT A YEAR.

23 Q. -- DETECTION CENTER? ABOUT A YEAR?

24 A. YES, SIR.

25 Q. AND DURING THAT TIME, DID YOU HAVE A LOT

1 OF OPPORTUNITIES TO OBSERVE HERMAN HUGHES?

2 A. YES.

3 Q. WHAT WOULD BE YOUR GENERAL DESCRIPTION OF
4 HOW HE CONDUCTS HIMSELF IN THE JAIL?

5 A. FOR THE MOST PART, HE'S QUIET. HE STAYS
6 TO HIMSELF PRETTY MUCH.

7 Q. ARE YOU FAMILIAR WITH ANY INCIDENTS IN
8 WHICH HE'S BEEN ATTACKED BY OTHERS?

9 A. I'VE HEARD.

10 Q. OKAY. HOW DOES HE HANDLE THOSE
11 SITUATIONS?

12 A. FROM WHAT I WAS TOLD, HE DOES NOTHING.

13 Q. HE JUST STANDS THERE?

14 A. JUST -- YEAH, HE JUST STANDS THERE.

15 Q. OKAY. WOULD YOU DESCRIBE HIM AS A
16 DANGEROUS INMATE?

17 A. NO, HE'S NOT.

18 Q. THAT'S WHY HE'S IN MINIMUM SECURITY, IS IT
19 NOT?

20 A. YES.

21 Q. AND HE BASICALLY JUST SITS THERE TO
22 HIMSELF?

23 A. YEAH, MOSTLY TO HIMSELF. EITHER HE'S OUT
24 IN THE AREA WATCHING T.V. OR HE'S IN THE ROOM.

25 Q. AT TIMES WOULD YOU DESCRIBE HIM AS BEING

1 CHILD LIKE?

2 A. YES.

3 Q. OR MISCHIEVOUS?

4 A. YES.

5 MR. NEWSOME: OKAY. THANK YOU.

6 MR. BAILEY: NO REDIRECT, YOUR HONOR.

7 THE COURT: YOU MAY COME DOWN.

8 MR. BAILEY: J. D. MCCORD.

9 THE CLERK: IF YOU WOULD, PLEASE PLACE
10 YOUR LEFT -- COME FORWARD. PLEASE PLACE YOUR LEFT
11 HAND ON THE BIBLE. PLEASE RAISE YOUR RIGHT HAND.
12 PLEASE STATE YOUR NAME FOR THE RECORD.

13 THE WITNESS: MY NAME IS MCCORD.

14 DIRECT EXAMINATION

15 BY MR. BAILEY:

16 Q. SO YOU'RE J. D. MCCORD?

17 A. YES, SIR.

18 Q. MR. MCCORD, WHERE DO YOU WORK?

19 A. WELL, I'M CURRENTLY EMPLOYED AT THE POLICE
20 DEPARTMENT.

21 Q. OKAY. AND ON NOVEMBER THE 27TH, 1994,
22 WHERE WERE YOU WORKING?

23 A. ORANGEBURG COUNTY DETENTION CENTER IN
24 ORANGEBURG.

25 Q. WERE YOU A CORRECTIONAL OFFICER THERE?

J. D. MCCORD - DIRECT BY MR. BAILEY

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1 A. YES, SIR.

2 Q. ALL RIGHT. WAS HERMAN HUGHES AN INMATE AT
3 THE JAIL AT THAT TIME?

4 A. YES, SIR.

5 Q. AND HOW ABOUT A GUY NAMED BECKETT, DUANE
6 BECKETT? WAS HE AN INMATE?

7 A. YES, SIR.

8 Q. AND WAS THERE ANOTHER INMATE NAMED TYRUS
9 GLOVER?

10 A. YES, SIR.

11 Q. NOW, ON NOVEMBER 27TH, 1994, DID SOMETHING
12 OCCUR BETWEEN DUANE BECKETT AND TYRUS GLOVER THAT YOU
13 BECAME AWARE OF?

14 A. YES, SIR.

15 Q. WHAT HAPPENED?

16 A. HE WAS INVOLVED IN A FIGHT EARLIER THAT
17 MORNING.

18 Q. OKAY.

19 A. AND I WAS MOVING ONE -- MOVING TYRUS
20 GLOVER TO THE POD "A" SECTION WHEN -- WHEN I HAD HIS
21 DOOR SHUT THAT --

22 Q. YOU GOT WHOSE DOOR SHUT?

23 A. DUANE BECKETT'S DOOR WAS SHUT.

24 Q. THE DOOR IN HIS CELL?

25 A. YES.

1 Q. WAS IT SHUT AND LOCKED?

2 A. YES.

3 Q. OKAY.

4 A. AND WHAT HAPPENED WAS THAT -- THAT HERMAN
5 WAS --

6 Q. WHEN YOU SAY "HERMAN," ARE YOU REFERRING
7 TO THE DEFENDANT HERMAN HUGHES HERE?

8 A. YES.

9 Q. OKAY.

10 A. HE WAS UP AT THE DOOR, FUMBLING WITH THE
11 DOOR. I WAS STANDING IN THE CONTROL BOOTH. I DIDN'T
12 REALLY KNOW WHAT WAS GOING ON UNTIL I CAME OUT OF THE
13 BOOTH, AND THEN I CALLED HIM AND ASKED HIM, "HERMAN,
14 WHAT WAS YOU DOING WITH THE DOOR?" AND I TOOK HIM IN
15 THE CELL TO SEARCH HIM, AND HE HAD A TOOTHBRUSH AND
16 WAS TRYING TO OPEN THE DOOR FOR DUANE BECKETT.

17 Q. WAS TRYING TO OPEN MR. BECKETT'S LOCKED
18 DOOR IN THE JAIL CELL WITH A TOOTHBRUSH?

19 A. YES.

20 Q. DID YOU TAKE THE TOOTHBRUSH AWAY FROM HIM?

21 A. YES.

22 Q. OKAY. CAN THESE LOCKS BE OPENED WITH A
23 TOOTHBRUSH?

24 A. BEING THAT THE GUYS KICK THEM SO MUCH,
25 THEY COULD FROM THE OUTSIDE, BUT NOT THE INSIDE.

1 Q. OKAY. NOW, AS A RESULT OF THAT, WAS
2 HERMAN HUGHES LOCKED DOWN FOR FIVE DAYS?

3 A. YES, SIR. FIVE DAYS.

4 MR. BAILEY: PLEASE ANSWER ANY QUESTIONS
5 THE DEFENSE MAY HAVE FOR YOU.

6 C R O S S - E X A M I N A T I O N
7 BY MR. NEWSOME:

8 Q. WHICH POD IS POD "A"?

9 A. THAT'S THE MEDIUM SECTION -- WELL, THIS
10 HAPPENED IN POD B.

11 Q. POD B IS MINIMUM SECURITY?

12 A. IT'S MEDIUM SECURITY.

13 Q. POD "A" IS OR POD B?

14 A. IT'S FEDERAL, BUT THEY HOUSE FEDERAL
15 INMATES AND ALSO MEDIUM INMATES.

16 Q. BUT FOR STATE PURPOSES, IT'S MINIMUM, IS
17 IT NOT?

18 A. NO. IT'S MEDIUM.

19 Q. MEDIUM?

20 A. YES, SIR.

21 Q. DO YOU WORK THERE NOW?

22 A. NO, SIR.

23 Q. OKAY. HOW LONG DID YOU WORK THERE?

24 A. APPROXIMATELY TWO YEARS AND TWO MONTHS.

25 Q. TWO YEARS AND TWO MONTHS?

1 A. YES, SIR.

2 Q. AND POD "A" AT THAT TIME WAS MEDIUM
3 SECURITY?

4 A. WELL, THIS OCCURRED IN POD B.

5 Q. YES, SIR. BUT YOU MOVED INMATE -- YOU
6 MOVED ONE OF THE INMATES OVER TO POD "A"?

7 A. YES, SIR.

8 Q. DO YOU KNOW WHO STARTED THAT FIGHT?

9 A. NO, SIR.

10 Q. HAVE YOU EVER SEEN HERMAN HUGHES INITIATE
11 A FIGHT?

12 A. NO, SIR.

13 Q. DID YOU SEE HIM OFTEN DURING THOSE TIMES
14 THAT YOU WERE EMPLOYED WHEN HE WAS INCARCERATED
15 THERE?

16 A. YES.

17 Q. HOW WOULD YOU DESCRIBE HIM GENERALLY?

18 A. HE CONDUCTED HIMSELF IN A NICE MATTER.
19 THIS WAS THE ONLY ONE INCIDENT I EVER HEARD WITH
20 HERMAN.

21 Q. WOULD YOU DESCRIBE HIM AS AGGRESSIVE?

22 A. NO, SIR.

23 MR. NEWSOME: THANK YOU.

24 MR. BAILEY: NO REDIRECT, YOUR HONOR.

25 THE COURT: YOU MAY COME DOWN. THANK YOU.

STEVEN M. DERRICK - DIRECT BY MR. BAILEY

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1 MR. BAILEY: CALL STEVE DERRICK.

2 THE CLERK: IF YOU WOULD, PLEASE STATE
3 YOUR NAME FOR THE RECORD.

4 THE WITNESS: STEVEN M. DERRICK.

5 STEVEN M. DERRICK,
6 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
7 TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION
9 BY MR. BAILEY:

10 Q. MR. DERRICK, YOU TESTIFIED PREVIOUSLY IN
11 THE GUILT PHASE AS A SLED AGENT YOU WENT OUT TO THE
12 BLUE DIAMOND AND TOOK SOME PHOTOGRAPHS AND GATHERED
13 SOME EVIDENCE; IS THAT CORRECT?

14 A. YES, SIR, I DID.

15 Q. AND YOU WENT THROUGH SEVERAL CRIME SCENE
16 PHOTOGRAPHS WITH THE JURY AT THAT TIME, DID YOU NOT?

17 A. YES, SIR, I DID.

18 Q. DID YOU GO THROUGH ALL OF THE PHOTOGRAPHS?

19 A. NO, SIR.

20 Q. ALL RIGHT, SIR. I HAVE SOME ADDITIONAL
21 PHOTOGRAPHS HERE. I'LL ASK YOU TO LOOK AT THEM AND
22 TELL ME WHETHER OR NOT YOU --

23 THE COURT: LET ME REVIEW THEM FIRST,
24 PLEASE.

25 MR. BAILEY: YES, SIR.

1 THE COURT: HAVE YOU HAD AN OPPORTUNITY TO
2 SEE THESE PHOTOGRAPHS?

3 MR. NEWSOME: NO, SIR. YOUR HONOR, WE MAY
4 WANT TO SEND THE JURY OUT FOR ME TO REVIEW THEM. I
5 MAY HAVE SOME MOTIONS ABOUT THEM.

6 THE COURT: LET YOU GO TO YOUR JURY ROOM.
7 LET ME SEE THEM FIRST. I'LL CALL YOU RIGHT BACK.

8 (WHEREUPON, THE JURY WAS REMOVED
9 FROM THE COURTROOM AND THE
10 FOLLOWING PROCEEDINGS COMMENCED
11 IN OPEN COURT.)

12 THE COURT: YOU HAVE NOT SEEN THESE?

13 MR. NEWSOME: NO, SIR.

14 THE COURT: HERE'S ANOTHER ONE.

15 MR. NEWSOME: YOUR HONOR, I BELIEVE THE
16 SOLICITOR HAS SEEN THEM, BUT MAYBE NOT THE LARGE
17 ONES, THE BLOWUPS.

18 YOUR HONOR, I WOULD FOR THE RECORD RENEW MY
19 OBJECTIONS TO THOSE.

20 THE COURT: ON WHAT BASIS?

21 MR. NEWSOME: THE PREJUDICIAL NATURE, YOUR
22 HONOR, OF THE BLOWUPS OF THE SCENES OF THE BLOOD.
23 THE PROBATIVE --

24 THE COURT: LET'S ASK THIS ONE FIRST.
25 WHAT DOES THIS DEPICT?

1 THE WITNESS: YOUR HONOR, THAT DEPICTS THE
2 SIDE OF THE REFRIGERATOR THAT HAS AN INDENTION
3 CONSISTENT WITH THAT OF THE BULLET THAT WAS FOUND ON
4 THE FLOOR NEAR THE REFRIGERATOR.

5 THE COURT: THAT'S JUST THE BULLET AND
6 REFRIGERATOR?

7 THE WITNESS: YES, SIR.

8 THE COURT: NOTHING WRONG WITH THAT ONE.
9 HOW IS THAT IDENTIFIED?

10 MR. BAILEY: THEY ARE NOT YET MARKED.

11 THE COURT: WHAT DOES THIS ONE DEPICT?

12 THE WITNESS: THAT DEPICTS THE DESK, AND
13 THERE WAS BLOOD LETTING ON THE DESK AND THE TRANSFER
14 OF BLOOD. THAT WAS THE DESK THAT THE CASH DRAWER WAS
15 IN.

16 THE COURT: NOTHING WRONG WITH THAT ONE.
17 WHAT DOES THIS ONE DEPICT?

18 THE WITNESS: THAT DEPICTS THE TWO SHELL
19 CASINGS THAT I PREVIOUSLY TESTIFIED TO. I BELIEVE IT
20 WAS ITEMS ONE AND TWO ON THE DIAGRAM.

21 THE COURT: NOTHING WRONG WITH THAT ONE.
22 WHAT DOES THAT DEPICT?

23 THE WITNESS: THAT DEPICTS SOME SPATTERING
24 AND BLOOD LETTING WHICH RAN DOWN THE REFRIGERATOR
25 THAT WAS ASSOCIATED TO SOME BLOOD LETTING THAT WAS ON

1 THE CHAIR NEXT TO THE REFRIGERATOR.

2 THE COURT: WHAT IS THE SIGNIFICANCE,
3 SOLICITOR, OF INTRODUCING THIS PARTICULAR ONE?

4 MR. BAILEY: YOUR HONOR, THAT PICTURE
5 SHOWS THE CRIME SCENE. I STARTED TO INTRODUCE THESE
6 PHOTOGRAPHS IN THE GUILT PHASE, BUT DUE TO THE BLOOD
7 THERE, OUT OF ABUNDANCE OF PRECAUTION, I JUST
8 DEFERRED THEM UNTIL NOW.

9 THE COURT: I MEAN, YOU'RE DOING IT FOR
10 WHAT, TO SHOW THE LOCATION OF THE SHOOTING?

11 MR. BAILEY: TO SHOW THE LOCATION OF THE
12 SHOOTING, WHERE THE BODIES ENDED UP.

13 THE COURT: WELL, FOR THAT PURPOSE, IT IS
14 ADMISSIBLE. NOW, I KNOW BY THE STOOL HERE, THERE IS
15 SIGNIFICANT BLOOD SEEN THERE. WHAT IS THE PURPOSE IN
16 THAT ONE?

17 THE WITNESS: THAT SHOWS THE LOCATION OF
18 THE BLOOD LETTING. THERE IS ALSO THE BULLET NEXT TO
19 THAT BLOOD LETTING AREA THAT APPEARS TO HAVE BEEN THE
20 ONE THAT HIT THE REFRIGERATOR AND BOUNCED OFF ON THE
21 FLOOR. THERE WAS ALSO ANOTHER SHELL CASING.

22 THE COURT: YES, SIR. FOR THAT PURPOSE,
23 I'LL ADMIT IT. NOW, I -- I QUESTION THIS ONE, QUITE
24 CANDIDLY.

25 THE WITNESS: THAT ONE SHOWS SOME KEYS

1 THAT WERE ON THE FLOOR NEXT TO THE BAR STOOL.

2 THE COURT: AND WHAT'S THE SIGNIFICANCE OF
3 THE KEYS?

4 THE WITNESS: THAT PART, I CAN'T ANSWER.
5 I DON'T KNOW ANY OF THE FACTS.

6 MR. BAILEY: I'LL WITHDRAW THAT ONE, YOUR
7 HONOR.

8 THE COURT: THAT ONE WILL BE WITHDRAWN.
9 IT JUST HAS NO PROBATIVE VALUE THAT I CAN SEE. AND
10 THE SAME THING WITH THIS ONE. IT'S JUST SHOWING THE
11 KEYS AGAIN. THERE'S NOTHING IN THE TESTIMONY ABOUT
12 THE KEYS.

13 THE WITNESS: CORRECTION, YOUR HONOR.
14 THAT ONE -- THERE WERE TWO OF THEM.

15 THE COURT: SIR?

16 THE WITNESS: THAT ONE HAS A CLOSEUP OF
17 THE BULLET AT THE END OF MY FINGER. I APOLOGIZE,
18 YOUR HONOR.

19 THE COURT: YES. THEN THAT HAS SOME
20 REASON. YOU STILL WANT TO WITHDRAW THAT?

21 MR. BAILEY: NO, SIR, YOUR HONOR. NOT IN
22 VIEW OF THE FACT THAT IT SHOWS THE SHELL CASING.

23 THE COURT: WHAT ABOUT THAT ONE?

24 THE WITNESS: THAT'S THE ONE OF THE KEYS,
25 YOUR HONOR. I APOLOGIZE FOR THE CONFUSION.

1 THE COURT: YOU CAN WITHDRAW THAT ONE.

2 MR. BAILEY: YES, SIR.

3 THE COURT: THAT DOESN'T SHOW ANYTHING.

4 THERE'S A BASIS FOR SHOWING THIS ONE, THOUGH.

5 ALTHOUGH THERE'S CONSIDERABLE BLOOD IN IT, IT SHOWS
6 LOCATION.

7 THE WITNESS: THIS ONE, IF YOU WILL LOOK,
8 SHOWS THE SHELL CASING.

9 THE COURT: THAT'S THE SAME SHELL CASING
10 IN THE OTHER ONE, THOUGH, ISN'T IT?

11 THE WITNESS: NO, SIR. IN THIS ONE, THIS
12 IS THE BULLET THAT BOUNCED OFF -- WHAT WE FEEL
13 BOUNCED OFF THE REFRIGERATOR. THAT IS THE SHELL
14 CASING THAT WAS EJECTED OUT OF THE GUN.

15 THE COURT: THAT'S PROBATIVE INASMUCH AS
16 THE TESTIMONY IS THAT THESE SHELL CASINGS CAME FROM A
17 PARTICULAR GUN WHICH IS IN EVIDENCE. I WILL PERMIT
18 THOSE. I WILL EXCLUDE THIS ONE IF THE STATE AGREES
19 TO THAT.

20 MR. BAILEY: THANK YOU, YOUR HONOR.

21 MR. NEWSOME: HE'S GOING TO MARK THESE,
22 AND I WOULD JUST NEED TO, FOR THE PURPOSE OF THE
23 RECORD, STATE WHICH ONES I WOULD STILL OBJECT TO.

24 THE COURT: YES, SIR. YOU MAY GO THROUGH
25 AND DO THAT. MARK THEM AND THEN HE MAY OBJECT AS HE

1 CHOOSES.

2 (STATE'S EXHIBITS NUMBERS 50,
3 51, 52, 53, 54, 55 AND 56 MARKED
4 FOR IDENTIFICATION.)

5 MR. NEWSOME: YOUR HONOR, FOR THE RECORD,
6 56, 55, 54, 53, 52, 51 AND 50.

7 THE COURT: AND THOSE ARE THE ONES THAT
8 THIS WITNESS HAS TESTIFIED AS TO THE RELEVANCE AND
9 THOSE THAT I FIND HAVE THE PROBATIVE VALUE THAT WOULD
10 OUTWEIGH THE PREJUDICIAL EFFECT --

11 MR. NEWSOME: YES, SIR.

12 THE COURT: -- AND I INTRODUCED FOR A
13 SPECIFIC PURPOSE. THEY ARE ADMITTED IN THIS, THE
14 SECOND PHASE.

15 (STATE'S EXHIBITS NUMBERS 50,
16 51, 52, 53, 54, 55 AND 56
17 ENTERED INTO EVIDENCE.)

18 THE COURT: ARE WE READY FOR THE JURY?

19 MR. BAILEY: YES, YOUR HONOR.

20 (WHEREUPON, THE JURY WAS
21 RETURNED TO THE COURTROOM AND
22 THE FOLLOWING PROCEEDINGS WERE
23 COMMENCED IN OPEN COURT.)

24 BY MR. BAILEY:

25 Q. MR. DERRICK, I THINK BEFORE WE TOOK A

1 BRIEF BREAK YOU WERE GETTING READY TO TESTIFY ABOUT
2 SOME PHOTOGRAPHS THAT YOU TOOK BUT DID NOT INTRODUCE
3 IN THE GUILT PHASE; IS THAT CORRECT?

4 A. YES, SIR, IT IS.

5 Q. THESE HAVE BEEN PREMARKED BY THE COURT
6 REPORTER, AND WHAT I WOULD ASK YOU TO DO IS TO -- IF
7 YOU WANT TO STAND UP IN FRONT OF THE JURY AND EXPLAIN
8 TO THE JURY WHAT EACH ONE IS, AND AS YOU DESCRIBE THE
9 PICTURE BY NUMBER, HAND IT TO THE FOREMAN SO THAT HE
10 CAN PASS THAT AROUND TO THE JURY.

11 A. YES, SIR. STATE'S EXHIBIT NUMBER 56 IS A
12 PHOTOGRAPH OF THE SIDE OF THE REFRIGERATOR WHICH WAS
13 IN THE STORE THAT NIGHT. IN THE CENTER OF THE
14 PHOTOGRAPH, THERE IS AN INDENTION IN THE SIDE OF THE
15 REFRIGERATOR THAT IS CONSISTENT TO THAT OF A BULLET
16 MAKING CONTACT WITH THAT SURFACE AND THEN EJECTING
17 OFF OR RICOCHETING OFF, NOT MAKING PENETRATION INTO
18 THE REFRIGERATOR ITSELF.

19 STATE'S EXHIBIT NUMBER 51 IS A PHOTOGRAPH OF THE
20 FLOOR AREA THAT WAS BY THE BAR STOOL THAT WAS NEXT TO
21 THE REFRIGERATOR. AT THE END OF MY FINGER IS A LEAD
22 BULLET THAT WAS FOUND ON THE FLOOR CONSISTENT TO THE
23 AREA OF THE BULLET OR THE INDENTION MARK IN THE
24 REFRIGERATOR, THE BULLET BOUNCING OFF.

25 STATE'S EXHIBIT NUMBER 50 IS A PHOTOGRAPH OF TH

1 FLOOR AREA IN FRONT OF THAT BAR STOOL WHICH WAS
2 DEPICTED IN THE PREVIOUS PHOTOGRAPH SHOWING ONE OF
3 THE SHELL CASINGS THAT'S PRESENT ON THE FLOOR.

4 AND STATE'S EXHIBIT NUMBER 54 IS A PHOTOGRAPH OF
5 TWO OF THE SHELL CASINGS WHICH WERE ON THE FLOOR
6 WHICH I PREVIOUSLY TESTIFIED TO FROM MY DIAGRAM, I
7 BELIEVE, AS BEING ITEMS ONE AND TWO.

8 STATE'S EXHIBIT NUMBER 52 IS A GENERAL
9 PHOTOGRAPH OF THE AREA WHERE THE FIRST SHELL CASING
10 AND THE BULLET WAS FOUND IN FRONT OF THE BAR STOOL
11 NEXT TO THE REFRIGERATOR.

12 STATE'S EXHIBIT NUMBER 55 IS A PHOTOGRAPH OF THE
13 DESK. ON THE DESK, THERE IS A POOL OF BLOOD TO
14 INDICATE THAT THERE HAD BEEN AN OPEN WOUND AND THAT A
15 VICTIM HAD BEEN PRESENT AT THE DESK AT SOME POINT
16 DURING THE INCIDENT. THERE WAS ALSO SOME TRANSFERRED
17 BLOOD THAT WAS PRESENT, I BELIEVE, ON THE CALCULATOR
18 OR ADDING MACHINE ON THE DESK.

19 STATE'S EXHIBIT NUMBER 53 IS THE BASE OF THE
20 REFRIGERATOR WHERE THERE HAD BEEN SOME BLOOD LETTING
21 THAT OCCURRED ON THE FLOOR AND ALSO RUN DOWN THE
22 REFRIGERATOR TO INDICATE THAT A VICTIM HAD BEEN
23 PRESENT IN THIS AREA DURING SOME COURSE OF THE
24 INCIDENT.

25 MR. BAILEY: PLEASE ANSWER ANY QUESTIONS

1 THAT THE DEFENSE MAY HAVE FOR YOU.

2 MR. NEWSOME: I HAVE NO QUESTIONS, YOUR
3 HONOR.

4 THE COURT: YOU MAY COME DOWN. THANK YOU.

5 THE WITNESS: THANK YOU, YOUR HONOR.

6 MR. BAILEY: YOUR HONOR, DR. SEXTON
7 AUTHENTICATED SOME PHOTOGRAPHS WHEN HE TESTIFIED
8 PREVIOUSLY, AND I WOULD LIKE TO INTRODUCE THOSE AND
9 PUBLISH THEM TO THE JURY AT THIS TIME. I BELIEVE THE
10 COURT REPORTER HAS THEM.

11 THE COURT: THEY ARE ADMITTED.

12 MR. NEWSOME: SUBJECT TO MY PREVIOUS
13 OBJECTION.

14 THE COURT: YES, SIR.

15 (STATE'S EXHIBITS NUMBERS 7, 8
16 AND 9 ENTERED INTO EVIDENCE.)

17 MR. BAILEY: YOUR HONOR, FOR THE RECORD, I
18 WILL ANNOUNCE THESE BY NUMBER AND HAND THEM TO THE
19 FOREMAN SO HE CAN PASS THEM AROUND TO THE JURY.
20 STATE'S 9. STATE'S 8. STATE'S 7.

21 YOUR HONOR, I BELIEVE THOSE PICTURES HAVE BEEN
22 THROUGH THE JURY. MY REMAINING TESTIMONY WOULD
23 CONCERN VICTIM IMPACT TESTIMONY. YOUR HONOR, I
24 WONDER IF WE CAN TAKE A BRIEF BREAK PRIOR TO THAT.

25 THE COURT: YES, SIR. WE'LL DO THAT.

1 LET'S TAKE A SHORT BREAK AND GET YOU SOME REFRESHMENT
2 AND RELAX A MOMENT.

3 (WHEREUPON, THE JURY WAS REMOVED
4 FROM THE COURTROOM AND THE
5 FOLLOWING PROCEEDINGS COMMENCED
6 IN OPEN COURT.)

7 MR. BAILEY: I HAVE SOME. ALL RIGHT,
8 SIR --

9 THE COURT: SOME MATTERS WE NEED TO RULE
10 ON?

11 MR. BAILEY: NO, SIR. I'VE SHOWN THESE TO
12 MR. NEWSOME. THESE ARE WITHOUT OBJECTION.

13 THE COURT: THESE ARE WITHOUT OBJECTION?

14 MR. NEWSOME: YES, SIR.

15 THE COURT: ALL RIGHT. GO AHEAD AND MARK
16 THEM.

17 MR. BAILEY: YOUR HONOR, THE STATE IS
18 READY.

19 THE COURT: ALL RIGHT. READY, FOR THE
20 DEFENSE?

21 MR. NEWSOME: YES, SIR.

22 (STATE'S EXHIBITS NUMBERS 47,
23 48, 49, 57, 58, 59, 60, 61, 62,
24 63, 64, 65, 66, 67, 68, 69, 70,
25 71 AND 72 MARKED FOR

1 IDENTIFICATION AND ENTERED
2 INTO EVIDENCE.)

3 THE COURT: ALL RIGHT. BRING IN THE JURY.
4 (WHEREUPON, THE JURY WAS
5 RETURNED TO THE COURTROOM AND
6 THE FOLLOWING PROCEEDINGS WERE
7 COMMENCED IN OPEN COURT.)

8 THE CLERK: IF YOU WOULD, PLEASE PLACE
9 YOUR LEFT HAND ON THE BIBLE AND PLEASE RAISE YOUR
10 RIGHT HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

11 THE WITNESS: GARY PRESLEY.

12 GARY PRESLEY,
13 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
14 TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION
16 BY MR. BAILEY:

17 Q. WOULD YOU GIVE US YOUR FULL NAME, PLEASE?

18 A. GARY PRESLEY.

19 Q. ALL RIGHT. MR. PRESLEY, HOW OLD ARE YOU?

20 A. FORTY-NINE.

21 Q. ALL RIGHT, SIR. AND WHERE DO YOU LIVE?

22 A. IN OWOSSO, MICHIGAN.

23 Q. AND ARE YOU A NATIVE OF MICHIGAN?

24 A. YES, SIR.

25 Q. OKAY. AND WERE YOU FORMERLY MARRIED TO

1 LYNELL WILLIAMSON?

2 A. YES, SIR.

3 Q. AND WHEN WERE Y'ALL MARRIED?

4 A. IN OCTOBER OF 1967.

5 Q. OKAY. AND HOW MANY CHILDREN DID YOU AND
6 THE PRESENT MS. WILLIAMSON HAVE?

7 A. SIX.

8 Q. OKAY. AND COULD YOU GIVE THE JURY THEIR
9 NAMES?

10 A. JIM, DOUGLAS, LAURIE, AMY, KENNETH AND
11 DIANE.

12 Q. OKAY. AND YOU HAD TWO SONS. JIM WAS THE
13 OLDEST?

14 A. I HAD THREE SONS.

15 Q. OKAY. WHO WAS YOUR YOUNGEST SON?

16 A. KEN.

17 Q. OKAY. AND DID THERE COME A TIME WHEN YOU
18 AND YOUR WIFE DIVORCED?

19 A. YES, SIR.

20 Q. AND ABOUT HOW OLD WAS KEN AT THAT TIME?

21 A. HE WAS ABOUT FOUR YEARS OLD.

22 Q. ALL RIGHT. AND WHEN YOU AND YOUR WIFE
23 DIVORCED, WERE YOU LIVING IN MICHIGAN?

24 A. YES, SIR.

25 Q. AND WHO GOT CUSTODY OF THE CHILDREN?

1 A. MY EX-WIFE.

2 Q. ALL RIGHT. AND DID SHE MOVE TO SOUTH
3 CAROLINA --

4 A. YES, SIR.

5 Q. -- AT THAT POINT?

6 A. YES, SIR.

7 Q. ALL RIGHT, SIR. COULD YOU DESCRIBE THE
8 CONTACT THAT YOU HAD WITH YOUR CHILDREN FOLLOWING THE
9 DIVORCE, SPECIFICALLY WITH KEN?

10 A. WELL, MAYBE TWICE A YEAR I WOULD SEE HIM.
11 I WOULD TALK TO HIM ON THE PHONE A NUMBER OF TIMES
12 THROUGH THE YEARS.

13 Q. OKAY. AS HE BECAME A TEENAGER IN HIGH
14 SCHOOL, DID YOU HAVE -- DID YOUR CONTACT INCREASE?
15 DID HE STAY WITH YOU FOR EXTENDED PERIODS OF TIME?

16 A. YES, HE DID.

17 Q. OKAY. WHEN WAS THE FIRST TIME HE SPENT
18 ANY SIGNIFICANT TIME WITH YOU IN MICHIGAN?

19 A. WHEN HE WAS I BELIEVE ABOUT 13.

20 Q. OKAY. HOW MUCH TIME DID HE SPEND THEN?

21 A. ABOUT A YEAR.

22 Q. OKAY. DID HE ATTEND SCHOOL THERE?

23 A. YES.

24 Q. OKAY. DURING THAT YEAR HE WAS WITH YOU IN
25 MICHIGAN, COULD YOU TELL THE JURY JUST IN YOUR OWN

GARY PRESLEY - DIRECT BY MR. BAILEY

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1 WORDS THE KIND OF CHILD HE WAS, WHAT HE LIKED TO DO
2 AND WHAT KIND OF STUDENT HE WAS?

3 A. WELL, HE WAS -- HE WAS A GOOD STUDENT. I
4 MEAN, HE WAS -- I GUESS JUST -- HE WAS AVERAGE. I
5 MEAN, HE WAS JUST -- HE WENT TO SCHOOL EVERY DAY AND
6 HE, YOU KNOW, DID HOMEWORK. HE --

7 Q. WHAT KIND OF THINGS DID Y'ALL DO TOGETHER
8 ON WEEKENDS AND AFTER SCHOOL AND THINGS LIKE THAT?

9 A. WELL, WE WOULD JUST -- WHEREVER --
10 WHATEVER HAPPENED TO COME UP. I MEAN, WE WOULD GO TO
11 A MOVIE OR MAYBE WATCH A BALL GAME OR JUST THE NORMAL
12 THINGS, YOU KNOW.

13 Q. ALL RIGHT, SIR. AND AFTER THAT YEAR WAS
14 UP, DID HE COME BACK TO STAY WITH HIS MOTHER FOR A
15 PERIOD OF TIME?

16 A. YES, HE DID.

17 Q. AND DID HE EVER COME BACK TO LIVE WITH YOU
18 IN MICHIGAN FOR ANY EXTENDED PERIOD OF TIME AFTER HE
19 WAS 13?

20 A. YES.

21 Q. WHEN WAS THAT?

22 A. I BELIEVE HE WAS AROUND 15.

23 Q. OKAY. AND HOW LONG DID HE STAY WITH YOU
24 THAT TIME?

25 A. MAYBE SIX OR EIGHT MONTHS. MAYBE. I'M

1 NOT SURE.

2 Q. OKAY. NOW, WAS KEN IN SCHOOL THAT TIME?

3 A. YES.

4 Q. THE SECOND TIME HE CAME UP?

5 A. YES.

6 Q. AND WOULD YOU DESCRIBE YOUR RELATIONSHIP

7 WITH YOUR SON DURING THAT PERIOD OF TIME?

8 A. WELL, IT WAS A LOT -- A LOT CLOSER AS HE
9 GOT OLDER. I MEAN, WE DID A LOT MORE THINGS
10 TOGETHER. WE WATCHED BALL GAMES. WE -- PLACES I
11 WOULD GO AND THINGS I WOULD DO, HE WOULD GO WITH ME A
12 LOT BECAUSE HE WAS OLDER.

13 Q. AND HOW ARE YOU EMPLOYED? WHAT TYPE OF
14 WORK DO YOU DO?

15 A. ELECTRICIAN.

16 Q. DID KEN SHOW ANY INTEREST IN THAT?

17 A. YES. YES, SIR.

18 Q. OKAY. AND AFTER THAT PERIOD OF TIME, DID
19 KEN LIVE WITH YOU AGAIN FOR AN EXTENDED PERIOD OF
20 TIME?

21 A. I DON'T BELIEVE SO.

22 Q. ALL RIGHT. DID THERE COME A POINT WHEN
23 KEN DROPPED OUT OF SCHOOL?

24 A. YES, SIR.

25 Q. WAS HE ATTENDING SCHOOL DOWN HERE OR IN

GARY PRESLEY - DIRECT BY MR. BAILEY

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1 MICHIGAN WHEN HE DROPPED OUT?

2 A. I BELIEVE IT WAS DOWN HERE.

3 Q. OKAY. DO YOU KNOW IF HE GOT A G.E.D.?

4 A. YES, HE DID.

5 Q. AND DID THERE COME A POINT WHERE HE
6 ENLISTED IN THE NAVY?

7 A. YES.

8 Q. DID HE ENLIST UP THERE OR DOWN HERE?

9 A. IN MICHIGAN.

10 Q. OKAY. AND DO YOU KNOW HOW LONG KEN
11 DESIRED TO GO INTO THE NAVY? HOW LONG WAS IT THAT HE
12 THOUGHT ABOUT IT?

13 A. FOR YEARS.

14 Q. DID HE DISCUSS IT WITH YOU?

15 A. YES. HE ALWAYS WANTED TO BE IN THE NAVY.
16 HE WANTED TO BE A NAVY SEAL.

17 Q. OKAY. AND SO HE DID ENLIST IN THE NAVY IN
18 MICHIGAN?

19 A. YES, SIR.

20 Q. OKAY. HOW LONG WAS HE ON ACTIVE DUTY
21 BEFORE HE WAS RELEASED?

22 A. TWO YEARS.

23 Q. OKAY. AND DURING THAT TWO-YEAR PERIOD,
24 DID YOU HAVE ANY CONTACT WITH HIM?

25 A. YES, SIR.

1 Q. OKAY. HOW FREQUENTLY DID YOU SEE KEN
2 WHILE HE WAS IN THE NAVY?

3 A. I -- I ONLY SAW HIM ONE TIME WHEN HE WAS
4 IN THE NAVY.

5 Q. OKAY.

6 A. WE TALKED ON THE TELEPHONE A LOT.

7 Q. LET ME HAND YOU A PHOTOGRAPH THAT'S BEEN
8 MARKED STATE'S NUMBER 48 AND ASK WHETHER THAT'S A
9 PICTURE OF KEN WHEN HE ENLISTED.

10 A. YES, IT IS. THAT'S -- I BELIEVE THAT WAS
11 ON GRADUATION.

12 Q. FROM BOOT CAMP?

13 A. FROM BOOT CAMP, YES.

14 MR. BAILEY: YOUR HONOR, I WOULD PUBLISH
15 THIS TO THE JURY.

16 BY MR. BAILEY:

17 Q. AND I'LL SHOW YOU WHAT'S BEEN MARKED AS
18 STATE'S NUMBER 49, AND ASK IF YOU WOULD JUST IDENTIFY
19 THE PEOPLE IN THAT PHOTOGRAPH.

20 A. THAT'S KEN AND MY MOTHER, KEN'S
21 GRANDMOTHER, MY STEPFATHER AND MY DAUGHTER AMY.

22 THE COURT: LET ME SEE IT.

23 THE WITNESS: YES, SIR.

24 BY MR. BAILEY:

25 Q. WHEN WAS THAT PICTURE TAKEN? THE DATE MAY

1 BE ON THE BACK.

2 A. I BELIEVE IT WAS -- YES, 1987 CHRISTMAS.

3 Q. DID YOU NOTICE ANY CHANGE IN YOUR SON
4 AFTER HE JOINED THE NAVY?

5 A. YES, DEFINITELY.

6 Q. WHAT -- COULD YOU DESCRIBE TO THE JURY
7 WHAT TYPE OF CHANGE YOU NOTICED?

8 A. WELL, IT JUST -- HE SEEMED TO HAVE MATURED
9 A LOT. HE WAS 18 OR 19 YEARS OLD. HE WAS GROWING
10 UP. HE WAS -- HE WAS BECOMING VERY RESPONSIBLE. HE
11 WAS TRYING -- HE WAS OUTLINING HIS GOALS IN LIFE,
12 WHAT HE WANTED TO DO WHEN HE GOT OUT AND TRYING TO
13 BE...

14 Q. WHAT WERE HIS GOALS AFTER HE GOT OUT OF
15 THE NAVY?

16 A. HE WANTED TO GO TO COLLEGE, AND HE TALKED
17 ABOUT A FEW DIFFERENT THINGS. I BELIEVE THAT HE MAY
18 HAVE WANTED TO STUDY IN COLLEGE. HE WASN'T SURE OF
19 THAT EXACTLY, BUT --

20 Q. DID HE DISCUSS THOSE THINGS WITH YOU?

21 A. YES, SIR.

22 Q. ALL RIGHT, SIR. MR. PRESLEY, I'M GOING TO
23 HAND YOU STATE'S 47 AND ASK IF YOU WOULD TELL THE
24 JURY WHAT THAT IS.

25 A. THAT'S A LETTER THAT KEN LEFT UNDER MY

1 PILLOW ONE TIME WHEN HE WAS GOING BACK TO SOUTH
2 CAROLINA TO LIVE.

3 Q. ALL RIGHT. SO WAS THAT THE FIRST TIME OR
4 THE SECOND TIME? I THINK YOU SAID ONE TIME HE WAS
5 AROUND 13; LATER HE WAS AROUND 15?

6 A. I BELIEVE IT WAS THE SECOND TIME.

7 Q. ALL RIGHT, SIR. AND THAT LETTER IS IN
8 KEN'S HANDWRITING ADDRESSED TO YOU?

9 A. YES, SIR.

10 Q. WOULD YOU READ THAT TO THE JURY?

11 A. IT SAID, "DAD, I THOUGHT I SHOULD WRITE TO
12 YOU BECAUSE I WANT TO LET YOU KNOW THAT I LOVE YOU.
13 I LOVE YOU SO MUCH IT HURTS TO THINK ABOUT IT. SO
14 DON'T EVER THINK THAT I DON'T CARE ABOUT YOU. I
15 WOULD BURN IN HELL FOR ETERNITY IF IT WOULD SAVE YOUR
16 LIFE, HONEST TO GOD. ANYWAY, NOT ONLY ARE YOU
17 HURTING. I AM, TOO. SO YOU'RE NOT ALONE, DAD. I'M
18 STANDING WITH YOU NOW AND ALWAYS, AND ALWAYS WILL NO
19 MATTER WHAT. EVERYBODY HAS THEIR PROBLEMS. YOU
20 MIGHT THINK THAT YOU CAN'T SOLVE YOUR PROBLEMS, BUT
21 YOU CAN. THERE IS NO EASY WAY OUT. SEARCH, SEEK AND
22 DESTROY YOUR PROBLEMS. DON'T LET THEM DESTROY YOU.
23 LOVE, KEN." AND THEN THERE'S A P.S. THAT SAYS, "AMY
24 LOVES YOU DAD. I KNOW. DON'T GIVE UP ON HER. IF
25 AMY KNEW YOU LIKE I DO, SHE WOULD BE THE PROUDEST

1 DAUGHTER IN THE WORLD."

2 Q. MR. PRESLEY, WHEN WAS THE LAST TIME YOU
3 SAW KEN ALIVE?

4 A. IN DECEMBER OF '92.

5 Q. OKAY. WHERE WAS THAT?

6 A. IT WAS IN MICHIGAN.

7 Q. AND WHAT WAS THE OCCASION THAT YOU SAW HIM
8 THEN?

9 A. HE WAS HELPING HIS GRANDMOTHER MOVE TO
10 SOUTH CAROLINA.

11 Q. AND DO YOU RECALL WHERE YOU WERE AND HOW
12 YOU FOUND OUT THAT KEN HAD BEEN KILLED?

13 A. I WAS AT HOME.

14 Q. AND HOW DID YOU FIND OUT ABOUT IT?

15 A. MY EX-WIFE CALLED ME.

16 Q. DO YOU REMEMBER WHAT YOUR REACTION WAS TO
17 HEARING HOW HE HAD DIED?

18 A. I DON'T KNOW. IT WAS -- IT WAS A NUMBER
19 OF THINGS. IT WAS ANGER, IT WAS HURT, AND IT WAS
20 JUST A NUMBER OF THINGS ALL AT ONCE.

21 Q. ALL RIGHT, SIR. AND COULD YOU TELL THE
22 JURY HOW THE NEWS AFFECTED YOU IN THE WEEKS AND
23 MONTHS AFTER KEN'S DEATH?

24 A. IT'S MADE ME A VERY ANGRY PERSON. IT'S
25 AFFECTED THE WAY I LOOK AT THINGS. IT'S AFFECTED MY

1 MARRIAGE. IT'S AFFECTED MY JOB. JUST BEEN VERY
2 HARD.

3 Q. IS IT GETTING ANY EASIER AS TIME GOES ON?

4 A. NO. NO.

5 Q. ARE THERE CERTAIN THINGS THAT HAPPEN IN
6 YOUR LIFE THAT WOULD CAUSE YOU TO THINK OF KEN?

7 A. YEAH. EVERY DAY. THERE'S ALWAYS --
8 THERE'S ALWAYS SOMETHING.

9 Q. WHAT'S THE HARDEST PART ABOUT HIS LOSS AND
10 THE WAY THAT HE DIED?

11 A. THE HARDEST PART ABOUT IT IS THE WAY THAT
12 HE DIED. HE NEVER HAD A CHANCE TO -- TO HAVE A LIFE,
13 TO DO THE THINGS THAT HE WANTED TO DO.

14 MR. BAILEY: THANK YOU, MR. PRESLEY.
15 PLEASE ANSWER ANY QUESTIONS MR. NEWSOME MAY HAVE.

16 MR. NEWSOME: I HAVE NO QUESTIONS, YOUR
17 HONOR.

18 THE COURT: OKAY. YOU MAY COME DOWN.
19 THANK YOU.

20 MR. BAILEY: JAMES PRESLEY.

21 THE CLERK: IF YOU WOULD, PLEASE PLACE
22 YOUR LEFT HAND ON THE BIBLE. PLEASE RAISE YOUR RIGHT
23 HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

24 THE WITNESS: JAMES PRESLEY.

25 JAMES PRESLEY,

1 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
2 TESTIFIED AS FOLLOWS:

3 D I R E C T E X A M I N A T I O N

4 BY MR. BAILEY:

5 Q. MR. PRESLEY, YOU ARE JAMES PRESLEY?

6 A. YES, SIR.

7 Q. ALL RIGHT. HOW OLD ARE YOU?

8 A. TWENTY-SEVEN.

9 Q. OKAY. AND YOU ARE KEN'S OLDER BROTHER?

10 A. YES, SIR. HIS ONLY BROTHER.

11 Q. WHERE DID YOU GROW UP?

12 A. MAJORITY OF THE TIME IN MICHIGAN.

13 Q. ALL RIGHT.

14 A. FOR A SHORT WHILE, NINTH AND TENTH GRADE,
15 I WAS LIVING HERE WITH MY MOTHER.

16 Q. ALL RIGHT. SO WHEN YOUR PARENTS DIVORCED
17 SEVERAL YEARS BACK, YOUR FATHER TESTIFIED KEN WAS
18 FOUR?

19 A. YES, SIR.

20 Q. ABOUT HOW OLD WERE YOU BACK THEN?

21 A. OH, I WOULD SAY I WAS ABOUT NINE YEARS
22 OLD.

23 Q. OKAY. AND YOUR FATHER TESTIFIED THAT KEN
24 CAME TO SOUTH CAROLINA WITH HIS MOTHER?

25 A. YES, SIR.

1 Q. YOU SPENT MOST OF THE TIME WITH YOUR
2 FATHER IN MICHIGAN?

3 A. YEAH. ORIGINALLY, I CAME WITH HER TO
4 SOUTH CAROLINA.

5 Q. OKAY.

6 A. SHORTLY AFTER, I DID SPEND THE MAJORITY OF
7 THE TIME THEREAFTER IN MICHIGAN.

8 Q. ALL RIGHT.

9 A. COMING HERE ON AND OFF FOR SHORT PERIODS
10 OF TIME.

11 Q. OKAY. WITH KEN LIVING IN SOUTH CAROLINA
12 MOST OF THE TIME AND YOU LIVING IN MICHIGAN, HOW DID
13 YOUR RELATIONSHIP WITH YOUR BROTHER DEVELOP?

14 A. WELL, WE DIDN'T HAVE A LOT OF TIME
15 TOGETHER, BUT THE TIME WE HAD WAS GOOD. I WOULD SAY
16 AS HE GOT OLDER, WE BECAME MORE CLOSER, AND IT WAS
17 EASIER FOR ME TO COME HERE OR FOR HIM TO COME UP TO
18 MICHIGAN, AND JUST AS THE YEARS WENT BY, WE GOT
19 CLOSER AND CLOSER.

20 Q. OKAY. WHEN YOUR BROTHER WAS 19 OR 20,
21 WHEN HE WAS IN THE NAVY AND JUST OUT OF THE NAVY,
22 WHAT WAS YOUR RELATIONSHIP WITH HIM AT THAT TIME?

23 A. I HAD VERY LIMITED CONTACT WITH MY BROTHER
24 WHEN HE WAS IN THE SERVICE. HE SENT ME A COUPLE OF
25 POSTCARDS, HAD A -- PROBABLY TWO OR THREE

JAMES PRESLEY - DIRECT BY MR. BAILEY

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1 CONVERSATIONS WITH HIM ON THE TELEPHONE, AND I DID
2 GET TO SEE HIM GRADUATE FROM THE NAVAL ACADEMY THERE.
3 WE WERE -- WE TALKED A LOT ABOUT SPENDING TIME
4 TOGETHER WHEN HE GOT OUT, AND I WAS IN THE PROCESS OF
5 MAKING A TRIP DOWN TO SEE HIM JUST BEFORE THIS
6 HAPPENED.

7 Q. ALL RIGHT. JIM, WHAT -- WOULD YOU TELL
8 THE JURY HOW YOUR BROTHER'S LOSS HAS AFFECTED YOU?

9 A. WELL, I THOUGHT A LOT ABOUT IT LAST NIGHT,
10 AND IT'S KIND OF HARD TO PUT IT INTO WORDS. SO I
11 TRIED TO KEY ON THE IMPORTANT EVENTS SINCE THIS HAS
12 HAPPENED, BEGINNING WITH HIS BIRTHDAY, WHICH WAS SOON
13 TO FOLLOW AFTER THIS INCIDENT. YOU KNOW, LIKE I
14 SAID, I HAD MADE PLANS TO COME DOWN, AND IT WOULD
15 HAVE BEEN NICE TO SPEND A LITTLE TIME WITH HIM, AND
16 IT WOULD HAVE BEEN HIS 21ST BIRTHDAY.

17 CHRISTMAS TIME, I SENT FLOWERS TO HIS GRAVE
18 INSTEAD OF BEING ABLE TO SEE -- EXCUSE ME -- INSTEAD
19 OF BEING ABLE TO GIVE HIM A PRESENT OR SEND HIM A
20 CARD.

21 SHORTLY AFTER THAT, IN FEBRUARY, MY DAUGHTER WAS
22 BORN, AND I WOULD HAVE LIKED TO HAVE HAD HIM AROUND.
23 BUT, YOU KNOW, INSTEAD OF SENDING HIM A PICTURE OR
24 WHATEVER, I GAVE MY DAUGHTER HIS NAME.

25 I FEEL CHEATED. I FEEL ANGER, AND I JUST SORT

1 OF TRY TO STOP AND WONDER SOMETIMES, YOU KNOW, WHY IT
2 HAPPENED, BUT THERE'S NO -- THERE'S NO WORDS THAT
3 COULD REPLACE MY BROTHER. I JUST FEEL AS THOUGH THAT
4 NIGHT WHEN MR. HUGHES DID WHAT HE DID, HE NOT ONLY
5 ENDED MY BROTHER'S LIFE, BUT HE ENDED A BIG PART OF
6 MINE.

7 MR. BAILEY: THANK YOU. THAT'S ALL I
8 HAVE.

9 MR. NEWSOME: NOTHING.

10 MR. BAILEY: LYNELL WILLIAMSON.

11 THE CLERK: IF YOU WOULD, PLEASE PLACE
12 YOUR LEFT HAND ON THE BIBLE. PLEASE RAISE YOUR RIGHT
13 HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

14 THE WITNESS: LYNELL WILLIAMSON.

15 LYNELL WILLIAMSON,
16 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
17 TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MR. BAILEY:

20 Q. STATE YOUR NAME, PLEASE.

21 A. LYNELL WILLIAMSON.

22 Q. MS. WILLIAMSON, YOU ARE KEN'S MOTHER; IS
23 THAT CORRECT?

24 A. YES, SIR.

25 Q. OKAY. WHERE DO YOU LIVE NOW?

LYNELL WILLIAMSON - DIRECT BY MR. BAILEY

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1 A. I LIVE IN SWANSEA.

2 Q. AND HOW LONG HAVE YOU LIVED IN CALHOUN
3 COUNTY?

4 A. SINCE 1977, I BELIEVE.

5 Q. ALL RIGHT. AND YOU MOVED DOWN FROM
6 MICHIGAN AFTER YOUR DIVORCE FROM YOUR FIRST HUSBAND;
7 IS THAT CORRECT?

8 A. YES, SIR.

9 Q. ALL RIGHT. AND MR. PRESLEY TESTIFIED
10 Y'ALL HAD SIX CHILDREN?

11 A. WE HAD SIX CHILDREN. AFTER MY OLDEST SON
12 JIM WAS BORN, I HAD TWINS, BOY AND A GIRL, AND THEY
13 DIED. BUT THEN I HAVE A DAUGHTER -- NEXT CAME A
14 DAUGHTER DIANE, AND THEN MY OTHER DAUGHTER AMY, AND
15 THEN KEN.

16 Q. KEN'S THE YOUNGEST?

17 A. HE'S MY BABY.

18 Q. AFTER THE DIVORCE, WHEN KEN WAS FOUR YEARS
19 OLD, YOU MOVED TO SOUTH CAROLINA; IS THAT CORRECT?

20 A. YES, SIR.

21 Q. AND DID KEN COME WITH YOU?

22 A. YES, SIR, HE DID.

23 Q. OKAY. WAS HE WITH YOU CONSTANTLY EXCEPT
24 FOR THE PERIODS OF TIME THAT YOUR HUSBAND HAS
25 TESTIFIED HE WAS IN MICHIGAN WITH HIM?

1 A. YES, SIR, HE WAS.

2 Q. ALL RIGHT. WHEN KEN WAS GROWING UP, COULD
3 YOU DESCRIBE THE KIND OF CHILD HE WAS, GRADE SCHOOL
4 YEARS, JUNIOR HIGH?

5 A. HE WAS MY -- HE WAS A SWEETHEART. HE HAD
6 IT KIND OF TOUGH BEING THE ONLY BOY WITH TWO GIRLS IN
7 THE HOUSE, OLDER SISTERS, AND HE USED TO TAG AFTER
8 THEM ALL OF THE TIME. I CAN REMEMBER THERE WAS A
9 CERTAIN INCIDENT WHERE HE WOULD ALWAYS WANT TO BE
10 PLAYING WITH THEM, AND THEY WOULDN'T LET HIM, SO THEY
11 SAID, "WELL, YOU CAN PLAY WITH US IF YOU LET US DRESS
12 YOU UP IN GIRL CLOTHES." SO THEY PUT A LITTLE DRESS
13 AND A HAT ON HIM AND HE WENT OUTSIDE DRESSED UP LIKE
14 HE WAS READY FOR TRICK OR TREAT. AND THEY USED TO
15 PICK ON HIM SOME WHILE HE WAS LITTLE, BUT IT CHANGED
16 WHEN HE GOT BIGGER.

17 Q. OKAY. AND HOW DOES -- HOW DID HIS
18 RELATIONSHIP WITH THE SISTERS DEVELOP AS HE GOT TO BE
19 A TEENAGER?

20 A. THEY WERE -- THEY WERE REAL CLOSE. THEY
21 LOOKED OUT AFTER EACH OTHER, BASICALLY. MY OLDEST
22 DAUGHTER, DIANE, ALWAYS THOUGHT OF HIM AS MORE HER
23 LITTLE BOY THAN HER BROTHER, AND SHE WAS ALWAYS
24 LOOKING AFTER HIM, AND THEY WERE VERY CLOSE. WE WERE
25 -- WE WERE A VERY CLOSE FAMILY.

1 Q. WHEN KEN GOT IN HIGH SCHOOL, WHAT KIND OF
2 THINGS DID HE DO?

3 A. WELL, HE DIDN'T REALLY PARTICIPATE IN THE
4 -- IN THE SPORTS. WE LIVED SO FAR OUT IN THE
5 COUNTRY, AND I'VE ALWAYS WORKED, AND THERE WAS NO
6 EXTRA CAR FOR THE KIDS WHEN THEY WERE OF AGE TO
7 DRIVE. SO THEY DIDN'T REALLY HAVE THE OPPORTUNITY TO
8 GO BACK AND FORTH FOR AFTER-SCHOOL EVENTS. SO
9 MAINLY, HE WOULD -- HE WOULD BE HOME MOST OF THE TIME
10 LISTENING TO HIS MUSIC, WORKING IN THE YARD. HE WAS
11 ALWAYS LOOKING AND ASKING ME IS THERE ANYTHING I
12 WANTED HIM TO DO FOR ME. HE -- HE WAS ALWAYS
13 CONCERNED AND WANTED TO DO THINGS FOR PEOPLE.

14 Q. ALL RIGHT. DID THERE COME A TIME WHEN KEN
15 DROPPED OUT OF HIGH SCHOOL?

16 A. YES. HE WENT TO MICHIGAN, AND WHILE HE
17 WAS IN MICHIGAN WITH HIS DAD, HE -- HE DECIDED AT
18 THAT TIME HE WANTED TO QUIT SCHOOL. HE SAID HE WAS
19 BORED. KEN WAS WHAT YOU CALL A THINKER. HE -- HE
20 NEVER TOOK THINGS FOR FACE VALUE. HE WOULD ALWAYS
21 HAVE TO STOP -- IN FACT, HE DID TOO MUCH THINKING AT
22 TIMES. HE WOULD JUST CONTEMPLATE EVERYTHING, SAYING
23 MOM, DON'T -- YOU KNOW, TOO MANY PEOPLE JUST DON'T
24 USE COMMON SENSE. HE SAYS YOU GOT TO STOP AND THINK
25 ABOUT THINGS AND JUST NOT BELIEVE WHAT YOU -- WHAT

1 YOU HEAR, WHAT YOU READ. SO IT WAS JUST LIKE HE WAS
2 ALWAYS ON A SEARCH FOR -- THROUGHOUT HIS WHOLE LIFE.

3 Q. WHEN KEN DROPPED OUT OF HIGH SCHOOL, DID
4 HE GET HIS G.E.D.?

5 A. YES. HE -- HE GOT HIS G.E.D., AND HE
6 DECIDED HE WANTED TO GO INTO THE NAVY.

7 Q. AND WAS THAT A DREAM OF HIS FOR A WHILE TO
8 GO INTO THE NAVY?

9 A. YES, FOR THE LONGEST TIME. HE TALKED
10 ABOUT WANTING TO BE A NAVY SEAL. HE'D CONCENTRATE ON
11 WEIGHT LIFTING AND JOGGING TRYING TO GET HIMSELF INTO
12 SHAPE SO HE COULD BE ACCEPTED. THAT WAS -- THAT WAS
13 KIND OF HIS DREAM.

14 Q. DID THE FACT THAT KEN CAME FROM A BROKEN
15 HOME, THAT YOU AND YOUR HUSBAND DIVORCED WHEN HE WAS
16 A YOUNG CHILD AND HE WAS SEPARATED FROM AT LEAST ONE
17 OF HIS BROTHERS, DID THAT CAUSE HIM ANY PROBLEMS IN
18 COMING ALONG GROWING UP?

19 A. I -- I KNOW THAT IT DID. I MEAN, NO
20 DIVORCE IS EASY, ESPECIALLY ON THE CHILDREN. THEY
21 ALWAYS FEEL TORN. THEY LOVE BOTH THEIR PARENTS, AND
22 THEY WANT -- THEY WANT THEM TO BE BACK TOGETHER. IT
23 AFFECTED ALL OF MY CHILDREN, AND ALL I COULD DO WAS
24 LET THEM KNOW THAT BOTH I AND THEIR FATHER LOVED THEM
25 AND THAT THESE WERE JUST THINGS THAT HAPPEN THROUGH

1 LIFE THAT YOU HAD TO TRY TO COPE WITH AND DO THE BEST
2 YOU COULD.

3 Q. WHEN WAS IT THAT KEN DID ACTUALLY JOIN THE
4 NAVY?

5 A. WHEN HE WAS IN MICHIGAN, HE HAD SIGNED UP
6 TO GO IN. AND IT WAS FOR A -- FOR A TWO-YEAR -- IT
7 WAS THE SHORTEST TERM YOU COULD GO IN. HE SAID HE
8 WANTED TO JUST SIGN UP FOR THE TWO-YEAR LENGTH
9 BECAUSE HE WASN'T SURE IF HE WOULD WANT TO STAY IN,
10 AND AFTER TWO YEARS, HE WOULD HAVE A BETTER IDEA OF
11 WHAT HE WANTED TO DO.

12 Q. ALL RIGHT. MS. WILLIAMSON, I'M GOING TO
13 SHOW YOU SOME PHOTOGRAPHS AND ASK IF YOU WOULD JUST
14 IDENTIFY THESE. ONE SECOND. AND ASK YOU IF YOU
15 WOULD JUST TELL THE JURY WHAT EACH OF THESE PICTURES
16 ARE AND THEN I'LL HAND THEM TO THE FOREMAN.

17 A. OUR CHURCH DIRECTORY IS DONE -- WE'RE IN A
18 SMALL CHURCH AT SANDY RUN, AND THE DIRECTORY IS DONE
19 LIKE EVERY FIVE YEARS. THIS WAS 1990. WE JUST
20 RECENTLY DONE ANOTHER DIRECTORY THIS YEAR, BUT THESE
21 -- THIS PICTURE WAS TAKEN FOR THE DIRECTORY, AND HE
22 WOULD BE VERY UPSET TO KNOW THAT I'M SHOWING THE
23 WORLD THIS PICTURE BECAUSE HE HATED IT SO MUCH. BUT
24 I LIKE IT. THIS IS THE SAME -- THE SAME TIME, THIS
25 WAS OUR FAMILY PICTURE. IT SHOWS MY HUSBAND AND

1 MYSELF, KEN AND HIS TWO SISTERS, AND HIS NEW NEPHEW
2 MATTHEW.

3 Q. THAT'S YOUR GRANDDAUGHTER?

4 A. THAT'S MY GRANDSON.

5 Q. GRANDSON.

6 A. LET ME MOVE THESE AROUND A LITTLE BIT.

7 THIS -- YOU CAN'T TELL BY THIS PICTURE. THIS WAS
8 TAKEN AT CHRISTMAS TIME. THIS IS ALL OF US LINED UP
9 ON MY MOTHER-IN-LAW'S COUCH AT CHRISTMAS. THAT WAS
10 THE LAST CHRISTMAS THAT KEN WAS ABLE -- I'M SORRY.
11 THAT WAS OUR LAST CHRISTMAS. HE WAS IN --

12 THE COURT: WOULD YOU LIKE TO TAKE A SHORT
13 BREAK?

14 THE WITNESS: I'LL BE ALL RIGHT. I DIDN'T
15 MEAN TO DO THAT.

16 THE COURT: NO. THAT'S FINE. IF YOU WANT
17 TO TAKE A SHORT BREAK, I'LL BE GLAD TO DO THAT.

18 THE WITNESS: THAT'S ALL RIGHT. GOD'S NOT
19 GOING TO GIVE ME MORE THAN I CAN STAND. I KNOW THAT.

20 THAT WAS OUR LAST CHRISTMAS TOGETHER BECAUSE
21 WHEN HE WENT IN THE NAVY, WE WEREN'T ABLE TO -- HE
22 WASN'T ABLE TO BE HOME AT CHRISTMAS. HE WAS ABLE TO
23 COME HOME AFTERWARDS, BUT THAT WAS OUR LAST ACTUAL
24 CHRISTMAS TIME TOGETHER.

25 THIS PICTURE IS -- HE'S IN HIS SUMMER UNIFORM,

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1 NAVY UNIFORM. HE HAD COME HOME. IN FACT, I THINK
2 THIS WAS WHEN HE -- WHEN HE BOUGHT HIS CAR. HE HAD
3 BEEN HOME FOR JUST A WEEKEND PASS, AND I TALKED HIM
4 INTO PUTTING ON HIS UNIFORM TO WEAR TO CHURCH ON
5 SUNDAY. THAT WAS TAKEN IN OUR YARD.

6 HE'S GOT A LOOK ON HIS FACE, THIS ONE. KEN
7 HATED TO HAVE HIS PICTURE TAKEN. EVERY TIME I WOULD
8 GET OUT THE CAMERA, HE WOULD SAY, "OH, MOM, PLEASE."
9 AND WE WENT TO SEE HIM ON HIS SHIP. HE GOT BACK FROM
10 HIS SIX-MONTH TOUR IN THE MEDITERRANEAN, AND HE WAS
11 STATIONED IN NORFOLK, AND WE WERE THERE WAITING WHEN
12 HIS SHIP CAME IN. WE BOARDED HIS SHIP, AND HE WAS ON
13 DUTY AT THE TIME WORKING. HE WORKED IN THE ENGINE
14 ROOM. AND I GOT HIM -- IN FACT, THEY HAD TO GO LOOK
15 FOR HIM TO BRING HIM UP, AND I HAD HIM POSE FOR THIS
16 ON THE SHIP.

17 THIS IS ONE OF MY FAVORITE PICTURES. HE WAS --
18 HE WAS 16 WHEN THIS WAS TAKEN. IT WAS JUST BEFORE HE
19 WENT UP TO MICHIGAN, AND WE WERE AT MY DAUGHTER'S
20 HOUSE, AND MY SON-IN-LAW HAD SNAPPED OUR PICTURE, AND
21 KEN -- WHENEVER WE'RE TOGETHER, HE ALWAYS HAD HIS ARM
22 AROUND ME. AND MY DAUGHTER AMY, SHE'S UPSET ABOUT
23 THIS PICTURE BECAUSE SHE'S LOOKING UP AT HIM IN THIS
24 WAY BECAUSE IT'S LIKE, HEY, THIS IS MY MOM, YOU KNOW,
25 WHAT YOU GOT YOUR ARM AROUND HER FOR? THEY WERE

1 ALWAYS AT IT WITH EACH OTHER ABOUT WHO WAS MY
2 FAVORITE, JUST LIKE KIDS DO.

3 THIS PICTURE WE CAME ACROSS AFTER HE DIED. WHEN
4 HE WAS IN THE MEDITERRANEAN, HE HAD TAKEN A LOT OF
5 PICTURES OF EVERY PLACE HE HAD SEEN AND EVERYWHERE HE
6 HAD BEEN, SPAIN, ITALY, FRANCE. HE WENT TO ISRAEL,
7 AND HE TOOK A LOT OF NICE PICTURES. AND I'M NOT SURE
8 WHERE HE WAS WHEN THIS WAS TAKEN. I BELIEVE THAT'S
9 THE MEDITERRANEAN BEHIND HIM, BUT HE WAS WITH HIS
10 SHIPMATE, AND WE FOUND THIS SNAPSHOT. AND THIS IS MY
11 FAVORITE PICTURE. IT'S THE MOST RECENT PICTURE WE
12 HAVE OF HIM.

13 BY MR. BAILEY:

14 Q. MRS. WILLIAMSON, I'M GOING TO SHOW YOU
15 SOME LETTERS FROM KEN THAT HAVE BEEN MARKED ALREADY.
16 AND I WOULD ASK YOU, IF YOU WOULD, TO TELL THE JURY
17 WHEN THOSE LETTERS WERE WRITTEN.

18 A. OKAY.

19 Q. AND TO READ THOSE TO THE JURY.

20 A. THIS IS -- I -- I HAD SEVERAL LETTERS FROM
21 KEN. HE WROTE TO ME ALL THE TIME WHEN WE WERE APART.
22 WHEN HE WOULD GO UP TO MICHIGAN, HE WOULD ALWAYS
23 WRITE TO ME, PLUS CALL ME ON THE PHONE. AND WHEN HE
24 WAS IN THE SERVICE, I WOULD GET A LETTER EVERY WEEK
25 FROM HIM, AND I WOULD GET CALLS CONSTANTLY.

1 BUT THIS LETTER THAT WAS WRITTEN IN '84, HE
2 WASN'T VERY OLD, AND THIS WAS ONE OF THE TIMES WHERE
3 HE HAD GONE TO VISIT HIS DAD FOR THE SUMMER, AND IT'S
4 MARKED PERSONAL, BUT IT'S NO LONGER PERSONAL. "DEAR
5 MOM, I'M AT GRANDMA JESSE'S NOW. DAD IS STARTING TO
6 WORK LIKE CRAZY. JOBS ARE PILING IN ON HIM, AND HE
7 IS GETTING RIGHT TO IT. I SAW ONE OF HIS JOBS HE
8 DID. IT WAS AT SIR PIZZA. THE MAN WHO OWNS IT WAS
9 BUILDING A HALF RESTAURANT AND HALF BAR LIKE THING.
10 DAD HAS WIRED UP EVERYTHING IN THERE, AND THERE IS
11 1,000 LIGHTS AND FOUR FANS. IN FLINT, I'VE BEEN
12 WORKING FOR BETTY."

13 NOW, BETTY IS -- MY MOTHER LIVED IN FLINT,
14 MICHIGAN. IT'S A NEIGHBORING TOWN OF OWOSSO. BETTY
15 IS HER NEIGHBOR. SHE WAS A WIDOW, AND SHE LIVED
16 ALONE, AND KEN WOULD DO THINGS FOR HER.

17 "I'VE BEEN PAINTING THE FRAMES OF HER WINDOWS,
18 AND I'M GOING TO LOAD UP THE BRANCHES OF THE TREES
19 SHE GOT CUT DOWN. A FEW WEEKS AGO, WE WENT TO THE
20 KERWOOD FESTIVAL IN OWOSSO. AMY WENT TO UNCLE
21 HARRY'S TO STAY FOR A WHILE. JIM GOT TWO JOBS AT THE
22 PINES COUNTRY HOUSE" -- THAT'S HIS BROTHER -- "AND AT
23 THE YWCA. HE IS A JANITOR FOR BOTH OF THEM.

24 "I CAN'T BELIEVE WHAT DAD HAS ACCOMPLISHED.
25 HE'S SO GOOD AT BEING AN ELECTRICIAN." HERE HE'S

1 BRAGGING. "DAD IS DOING -- IS EARNING SO MUCH MONEY
2 ON HIS JOB. HE MAKES ANYWHERE FROM 200 TO 1,000
3 DOLLARS ON EACH JOB. HE'S DOING A JOB NOW ON A HOTEL
4 THAT LASTS 15 DAYS AND IS GETTING PAID BY THE HOUR.
5 HE'S GOING TO GET 3,000 AND SOMETHING DOLLARS. THE
6 BAD THING ABOUT IT IS THAT IT TAKES TIME FOR THE BILL
7 TO COME, THEN GET IT AND GIVE IT TO DAD, WHICH WOULD
8 TAKE ABOUT A MONTH. BUT THE GOOD THING ABOUT IT IS
9 THAT WHILE HE'S WAITING FOR HIS MONEY TO COME, HE'S
10 WORKING ON ANOTHER JOB AND SO ON.

11 "HE'S GOT HIS MASTER'S DEGREE LICENSE, HIS
12 SUPERVISOR LICENSE, AND HIS EMPLOYER LICENSE, SO HE
13 CAN DO ANYTHING HE WANTS TO. HE CAN START HIS OWN
14 BUSINESS. HE KNOWS EVERYTHING ABOUT ELECTRICIAN
15 STUFF. I WOULD REALLY LIKE TO SPEND THE REST OF MY
16 LIFE WITH HIM. I NEVER KNEW HE MEANT SO MUCH TO ME.
17 ONE OF THESE DAYS, THE TIME WILL COME WHEN HE ISN'T
18 AROUND ANYMORE.

19 "LAST" -- EXCUSE ME. "LAST SUMMER, I JUST
20 DIDN'T HAVE MUCH FEELINGS ABOUT HIM. HE HAS CHANGED
21 NOW AND SO HAVE I. I AM NOT WHAT I WAS BEFORE. I
22 HAVE CHANGED AND I AM GROWN UP. I'M A BIG BOY NOW.
23 LAST SUMMER, I DIDN'T CARE LIKE COMING HOME BECAUSE
24 -- BUT THIS I DO THINK ABOUT THIS. I KNOW YOU'RE
25 JUST SITTING THERE SAYING HE'S AT IT AGAIN, DOING TH

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1 SAME AS LAST SUMMER, PULLING ALL OF THIS JUNK. WELL,
2 I BETTER GO. LOVE, KEN. THINK ABOUT IT."

3 WHAT HE WAS ASKING ME WAS IF I WOULD THINK ABOUT
4 LETTING HIM LIVE WITH HIS DAD FOR A WHILE. THAT'S
5 WHAT HE WAS ASKING.

6 THIS ONE HE WROTE TO ME IN '91. I HAD GONE ON A
7 CHRISTIAN RETREAT. IT'S CALLED THE WALK TO AMAZE.
8 HE HAD GONE ON ONE THE YEAR BEFORE FOR MEN IN
9 GEORGIA, AND ON THESE RETREATS, YOU DON'T HAVE ANY
10 OUTSIDE CONTACT WITH YOUR FAMILY, AND AT THE END,
11 THEY ASK YOUR FAMILY MEMBERS AND FRIENDS TO WRITE YOU
12 A LETTER TO READ WHILE YOU ARE THERE, AND I RECEIVED
13 THIS ONE FROM HIM.

14 IT SAYS, "DE COLORES, MOM. I HOPE YOU REMEMBER
15 THIS WEEKEND FOR A VERY LONG TIME AS YOU BEGIN YOUR
16 FOURTH DAY. I BET YOU'RE SURPRISED AT ALL OF THE
17 PEOPLE HERE WHO CARE ABOUT YOU AND ESPECIALLY HOW
18 MUCH JESUS LOVES YOU. JUST REMEMBER TO KEEP YOURSELF
19 AVAILABLE TO GOD AND TO ATTEND YOUR MONTHLY
20 GATHERINGS. IT WILL HELP TO KEEP YOUR FLAME BRIGHT,
21 SO YOU DON'T WANDER OFF YOUR PATH AS YOU WALK THROUGH
22 THE ENCROACHING DARKNESS OF TODAY. I LOVE YOU
23 FOREVER. KEN."

24 I DON'T HAVE A DATE ON THIS, BUT THIS WAS
25 WRITTEN RIGHT AFTER THAT LETTER BECAUSE HE MENTIONS

1 MY WALK TO AMAZE. "DEAR MOM, I RECEIVED YOUR LETTER
2 THIS MORNING. I COULD TELL IMMEDIATELY THAT YOU
3 ENJOYED YOUR WALK TO AMAZE. I AM SO GLAD THAT YOU
4 EXPERIENCED GOD'S LOVE IN A WAY THAT I AM SURE YOU
5 NEVER HAVE. MY COMMUNICATIONS SETUP HAS BEEN CUT OFF
6 COMPLETELY FROM GOD. I NO LONGER FEEL WHAT I ONCE
7 FELT INSIDE, AND MY SENSE OF NEED TO REPAIR THIS
8 RELATIONSHIP HAS BEEN DRIFTING AWAY OR SHOULD I SAY
9 FADING AWAY AS EACH DAY PASSES. I NEED TO DO
10 SOMETHING ABOUT THIS OR EVERYTHING THAT I'VE WORKED
11 FOR AND HOPED FOR WILL NO LONGER BE. YOU CANNOT
12 IMAGINE HOW THIS MAKES ME FEEL. WHERE DID I MESS UP?

13 "ONE THING THAT I DO REALIZE IS THAT I'VE BEEN
14 DEFINITELY GOING DOWNHILL SINCE I MOVED UP HERE." HE
15 WAS IN MICHIGAN AT THAT TIME. "I HAVE TWO MONTHS
16 BEFORE I REPORT TO ACTIVE DUTY, AND I AM FAR FROM THE
17 SHAPE THAT I INTENDED TO BE IN WHEN I GO IN. MOM, I
18 STILL WANT TO BE A SEAL MORE THAN EVER, BUT YOU
19 WOULDN'T BE ABLE TO TELL BY LOOKING AT ME. I HAVE NO
20 STRENGTH TO GET OUT THERE AND PREPARE MY BODY FOR THE
21 RIGORS OF SEAL TRAINING. WHY? I REALIZE THAT I AM
22 TOTALLY IN THE WRONG PLACE TO PREPARE MYSELF" -- DO I
23 HAVE TO READ THIS WHOLE THING?

24 "I AM NOT UNDER NORMAL CIRCUMSTANCES THIS TIME.
25 I HAVE ENOUGH PRESSURE ON ME AS IT IS," AND HE HAS

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1 SEAL TRAINING, "TO HAVE TO WORRY ABOUT DOMESTIC
2 PROBLEMS. I NEED THE OPPORTUNITY TO FULLY
3 CONCENTRATE ON MY DAILY TRAINING. THIS IS NOT A
4 MATTER TO BE TAKEN LIGHTLY ANYMORE. THE CLOCK IS
5 TICKING, AND I HAVE VERY LITTLE TIME LEFT. I WISH TO
6 RETURN TO SOUTH CAROLINA UNTIL I REPORT FOR THE NAVY,
7 AND SO I'M ASKING YOU FOR A PLACE TO LAY MY HEAD FOR
8 TWO WEEKS FROM NOW UNTIL DECEMBER 7TH. I DON'T KNOW
9 HOW YOU FEEL ABOUT IT AND BECAUSE OF REASONS THIS IS
10 SOMETHING THAT I WOULD HAVE AVOIDED AT ALL COSTS, BUT
11 I HAVE -- BUT I KNOW WHAT I HAVE TO DO, AND IF I WANT
12 TO GIVE MYSELF A CHANCE TO GET SOMEWHERE IN LIFE, IF
13 YOU THINK IT WOULDN'T BE A GOOD DECISION TO DO THIS,
14 I WILL UNDERSTAND, BUT I THOUGHT THAT I WOULD ASK
15 ANYWAY. I LOVE YOU. KEN. P.S. LET ME KNOW
16 SOMETHING AS SOON AS POSSIBLE, OKAY?"

17 AND HE DID COME HOME AND STAY WITH US UNTIL IT
18 WAS TIME FOR HIM TO GO IN.

19 THIS IS ONE OF HIS MANY LETTERS HE WROTE TO ME
20 WHILE HE WAS IN THE NAVY. "DEAR MOM, I'M SENDING 50
21 DOLLARS, 20 DOLLARS FOR STEVE AND 30 FOR THE PHONE
22 BILL." STEVE IS HIS UNCLE, AND AT CHRISTMAS TIME WE
23 DRAW NAMES, AND HE HAD DRAWN STEVE'S NAME FOR A
24 CHRISTMAS GIFT, AND WE PUT A 20 DOLLAR LIMIT. SO THE
25 20 DOLLARS WAS FOR A PRESENT FOR HIS UNCLE STEVE, AND

1 THE 30 DOLLARS WAS FOR HIS PHONE BILL.

2 HE SAYS, "I APPRECIATE YOUR LETTING ME USE YOUR
3 PHONE CARD TO CALL YOU GUYS EVEN THOUGH I'VE BEEN
4 USING IT TO CALL AMY, GRANDMA, ET CETERA, WHICH MAY
5 HAVE SURPASSED YOUR LIMITS OF CALLS GRANTED TO ME,
6 WHICH IS WHY I'M SENDING 30 DOLLARS, WHICH MAY NOT BE
7 ENOUGH. BUT IT'S A STARTING POINT. AND PLEASE LET
8 ME KNOW THE DIFFERENCE I OWE. I HAVE PLENTY OF MONEY
9 TO PAY MY WAY THESE DAYS.

10 "ANYWAY, I CAN'T WAIT TO GET HOME. I MISS SOUTH
11 CAROLINA, WEASEL" -- WEASEL IS HIS DOG -- "AND THE
12 OTHER HALF OF MYSELF I FORGOT TO TAKE WITH ME WHEN I
13 LEFT. AND MOST OF ALL, I MISS YOU. I LOVE YOU
14 UNCONDITIONALLY, BUT SOMETIMES IT SEEMS THAT
15 CONDITIONS MAKE IT HARD FOR ME TO EXPRESS THAT TO
16 YOU. I KNOW THAT YOU LIKE TO KNOW HOW I'M DOING
17 OTHER THAN THE OBVIOUS FACT THAT I'M LIVING, SO I'LL
18 TRY TO LET YOU KNOW A LITTLE BIT OF WHAT'S GOING ON
19 WITH ME THESE DAYS.

20 "WELL, FIRST, I'LL TELL YOU WHAT'S DEPRESSING
21 ME. I'M SO UNSURE OF WHAT I WANT TO DO WITH MY LIFE.
22 NOTHING IS APPEALING TO ME. AT LEAST NOT RIGHT NOW.
23 IF I KEEP GOING ON THE WAY I'M GOING NOW, THEN
24 OPPORTUNITIES WILL PASS ME BY, AND I'LL BE LEFT WITH
25 NOTHING. THERE'S SO MANY OPPORTUNITIES WITHIN MY

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1 REACH, BUT I DON'T ACT ON THEM. IT'S LIKE I'M
2 PARALYZED. MAYBE IT'S BECAUSE I'M METHODICAL ABOUT
3 THESE THINGS. I CAN'T GET TO POINT "C" IF I DON'T
4 GET TO POINT "B" FIRST, AND RIGHT NOW IT SEEMS THAT
5 POINT "B" IS THE BIGGEST DECISION OF MY LIFE, AND I
6 CAN'T PROGRESS UNTIL THIS DECISION OR REVELATION IS
7 KNOWN TO ME. MY MIND IS RUNNING AROUND IN CIRCLES IN
8 A DITCH.

9 "MOM, I'M ONLY 19 YEARS OLD, AND MY MIND IS
10 GOING ON A JOURNEY INTO PERPLEXING DEPTHS OF
11 QUESTIONS. SOMETIMES I JUST WANT TO BE A SIMPLE MAN
12 AND LIVE A SIMPLE LIFE. THAT'S VERY APPEALING TO ME.
13 BUT A PART OF ME FEELS THAT DOING THAT WOULD BE
14 WASTING POWERFUL POTENTIAL THAT IS TRYING TO SURFACE,
15 IF IT EVER DOES. I'M SPLIT RIGHT DOWN THE MIDDLE,
16 STRADDLING THE CENTER, UNSURE OF WHAT I SEE, BUT
17 KNOWING A DECISION HAS TO BE MADE, AND IT'S BETTER
18 NOW THAN LATER.

19 "WELL, I HOPE YOU CAN MAKE SENSE OUT OF WHAT I
20 SAID, BUT DON'T WORRY, MOM, I HAVEN'T QUITE REACHED
21 THE FRAYED ENDS OF SANITY YET. I JUST THINK TOO
22 MUCH. WELL, I'M REALLY TIRED, SO I'LL END THIS
23 LETTER WHERE IT'S AT FOR NOW ANYWAY. I REALLY DON'T
24 LIKE TELLING YOU CERTAIN THINGS BECAUSE SOME THINGS
25 ARE BEST LEFT UNSAID, BUT YOU'RE MY MOTHER, AND I

1 LOVE YOU, AND THERE ARE TIMES WHEN I SHOULD TELL YOU
2 WHAT'S ON MY MIND. RIGHT? TELL MATT THAT I'M GOING
3 TO RIDE HIS BIGFOOT WHEN I GET HOME." THAT'S HIS
4 NEPHEW. HE BOUGHT HIM A BIGFOOT FOR CHRISTMAS. "I
5 LOVE YOU. KEN."

6 Q. MS. WILLIAMSON, I SHOW YOU ONE MORE LETTER
7 AND A POSTCARD, MARKED STATE'S 67 AND 70, AND ASK IF
8 YOU WOULD DO THE SAME WITH THOSE.

9 A. WHEN HE WAS IN PORT, A LOT OF TIMES HE
10 DIDN'T HAVE TIME OR WOULDN'T TAKE THE TIME TO WRITE
11 LETTERS, SO HE WOULD SEND ME A POSTCARD. THIS IS
12 FROM MALAYA, AND IT SAYS, "DEAR MOM, THESE FOREIGN
13 PORTS ARE EXCITING AND DIFFERENT, BUT THERE IS STILL
14 NO PLACE LIKE HOME. I CAN'T WAIT TO GET BACK TO SEE
15 YOU. I LOVE YOU. KEN."

16 THIS LETTER HE WROTE WHEN HE WAS IN BASIC
17 TRAINING. "DEAR MOM, WELL, I FINALLY FINISHED WITH
18 SERVICE WEEK. IT WASN'T AS BAD AS I THOUGHT IT WOULD
19 BE, GETTING UP AT 3:00 AND GOING TO BED AT 2230, AND
20 IN BETWEEN WORKING MY BUTT OFF. BUT ANYWAY, I ONLY
21 HAVE ONE-AND-A-HALF WEEKS UNTIL GRADUATION. I'VE
22 BEEN WANTING TO TELL YOU THAT IF YOU DON'T THINK YOU
23 CAN MAKE IT UP HERE, IT'S ALL RIGHT, REALLY. IT'S
24 NOT A BIG DEAL AT ALL TO ME. I MEAN, I'LL BE COMING
25 HOME WITHIN A FEW WEEKS AFTER GRADUATION TO VISIT FOR

1 A WEEK OR TWO.

2 "MY COMPANY COMMANDER RECOMMENDED ME AND FIVE
3 OTHER PEOPLE OUT OF 79 RECRUITS FOR AN "A" SCHOOL,
4 BUT I'M NOT SURE IF IT'S WORTH THE EXTRA TWO YEARS OF
5 ENLISTMENT. DID MY S.A.T. RESULTS EVER COME IN THE
6 MAIL? IF SO, PLEASE MAIL THEM TO ME. I HAVE TO GO
7 NOW. WE ONLY HAD A COUPLE OF MINUTES. I LOVE YOU.
8 KEN."

9 Q. I HAND YOU TWO OTHER PIECES OF PAPER, AND
10 I WON'T ASK YOU TO READ THESE, BUT JUST TELL THE JURY
11 WHAT THEY ARE, STATE'S 71 AND 72.

12 A. THIS IS A LETTER OF APPRECIATION. THIS IS
13 FROM THE -- HE WAS STATIONED ON THE U.S.S.
14 SPARTANBURG COUNTY, AND THIS IS FROM HIS COMMANDING
15 OFFICER. DID YOU SAY I CAN READ IT?

16 Q. IF YOU WOULD LIKE.

17 A. IT SAYS, "IN RECOGNITION FOR SERVICES AS
18 SET FORTH HEREIN. FOR SUPERIOR SUPPORT PERFORMANCE
19 FOR YOUR CONTRIBUTIONS DURING THE IN-SERVICE
20 EVALUATION FROM 11 JANUARY 1993 TO 15 JANUARY 1993
21 AND THE OPERATIONAL PROPULSION PLANT EXAMINATION FROM
22 THE 25 MARCH 1993 TO 27 MARCH 1993. YOUR PERFORMANCE
23 WAS INSTRUMENTAL IN THE SHIP'S MATERIAL PREPARATION
24 AND RESULTED IN A SUCCESSFUL IN-SERVICE EVALUATION.
25 YOUR DEDICATION, ENTHUSIASM, TECHNICAL SKILLS AND

1 COMPETENT PERFORMANCE AS WATCH STANDARD DIRECTLY
2 CONTRIBUTED TO THE SHIP RECEIVING A TWO-YEAR
3 CERTIFICATION AND OVERALL GRADE OF SATISFACTORY FROM
4 THE OPERATIONAL PROPULSION PLANT EXAMINATION. PLEASE
5 ACCEPT MY APPRECIATION FOR A JOB WELL DONE. P.M.
6 COMMY, COMMANDER U.S. NAVY, U.S.S. SPARTANBURG
7 COUNTY."

8 THIS IS SAILOR OF THE QUARTER NOMINATION. "F.M.
9 PRESLEY IS MOST THOROUGHLY DESERVING OF THIS AWARD.
10 HIS ACTIONS THIS QUARTER WERE WELL ABOVE THOSE
11 EXPECTED OF A FIREARM. PLAGUED BY A VARIETY OF
12 UNUSUAL PROBLEMS IN TWO E.R., F.M. PRESLEY'S TENACITY
13 AND DRIVE WERE INSTRUMENTAL IN MANY REPAIRS THAT
14 SEEMED TO BAFFLE HIS PEERS. A GO-GETTER, F.M.
15 PRESLEY WAS OFTEN FOUND TRACKING DOWN AND REPAIRING
16 DISCREPANCIES DURING HIS OFF TIME TO ENSURE HIS SPACE
17 WOULD BE READY TO MEET ALL UNDERWAY COMMITMENTS.

18 "F.M. PRESLEY'S SPECIFIC ACCOMPLISHMENTS ARE TOO
19 NUMEROUS TO LIST FOR THIS QUARTER. SOME OF THE MORE
20 NOTABLE ACHIEVEMENTS INCLUDE INSTRUMENTAL IN THE HEAD
21 CHANGEOUT ON NUMBER TWO; INSTRUMENTAL IN THE EMERGENT
22 REPAIRS TO NUMBER TWO; DIRECTLY RESPONSIBLE FOR THE
23 HIGH STATE OF READINESS OF HIS SPACE FOR E.T.G.,
24 SPECIFICALLY THE CLEANLINESS WHICH RECEIVED FAVORABLE
25 COMMENTS FROM THE INSPECTION TEAM.

1 "F.M. PRESLEY HAS DISPLAYED THE MOST DESIRABLE
2 QUALITIES THIS QUARTER. HIS DRIVE TO EXCEL AS WELL
3 AS HIS WILLINGNESS TO ASSUME GREATER RESPONSIBILITY
4 HAVE MARKED HIM AS A SUPERIOR PERFORMER. HE MOST
5 STRONGLY DESERVES TO BE THIS QUARTER'S SAILOR OF THE
6 QUARTER FOR SPARTANBURG COUNTY."

7 Q. MS. PRESLEY, AFTER KEN GOT OUT OF THE
8 NAVY, DID YOU DISCUSS HIS FUTURE PLANS WITH HIM?

9 A. EXCUSE ME?

10 Q. I MEAN WILLIAMSON. I'M SORRY.

11 A. YES. THAT'S ALL RIGHT. YES. HE WANTED
12 TO GO TO U.S.C., AND HE WAS GOING TO USE HIS MILITARY
13 GRANTS TO PAY FOR IT.

14 Q. G.I. BILL?

15 A. YES, SIR. HE WAS LOOKING FORWARD TO THAT.

16 Q. WHEN WAS IT THAT HE GOT OFF OF ACTIVE
17 DUTY?

18 A. HE GOT OFF DECEMBER 31ST, 1993, AND HE GOT
19 HOME THAT DAY. HE DROVE HOME FROM NORFOLK, AND HE
20 WAS JUST WITH US A COUPLE OF MONTHS.

21 Q. OKAY. YOU HAD HIM FROM DECEMBER UNTIL
22 MARCH THE 18TH?

23 A. YES.

24 Q. AND WHAT DID HE DO -- DID HE STAY AT HOME
25 WITH YOU DURING THAT TIME?

1 A. NO. HE MOVED IN WITH MY YOUNGEST
2 DAUGHTER'S FIANCE. THEY SHARED A HOUSE IN ST.
3 MATTHEWS. HE -- HE WORKED PART TIME FOR MY HUSBAND,
4 WHO IS IN CONSTRUCTION, AND HE ALSO WORKED PART TIME
5 AT THE BLUE DIAMOND CASINO. HE WAS JUST -- HE NEEDED
6 TO MAKE EXPENSE MONEY UNTIL HE COULD SIGN UP FOR
7 SCHOOL.

8 Q. ALL RIGHT. WHEN WAS HE PLANNING ON GOING
9 TO SCHOOL? DID HE HAVE A SPECIFIC TIME?

10 A. I BELIEVE HE WANTED TO START AFTER SUMMER,
11 WHEN THE NEW SCHOOL PROBABLY -- WHEN DOES IT START,
12 AUGUST/SEPTEMBER, IN THE NEW SCHOOL.

13 Q. HE WAS WORKING, SAVING UP MONEY IN THE
14 MEANTIME FOR SCHOOL?

15 A. YES. TO PAY FOR HIS, YOU KNOW, CAR
16 INSURANCE AND LIVING EXPENSES.

17 Q. MS. PRESLEY, WHEN WAS THE LAST TIME THAT
18 YOU SAW KEN ALIVE? MS. WILLIAMSON. I'M SORRY.

19 A. THAT'S ALL RIGHT. IT WOULD HAVE BEEN
20 ACTUALLY ALMOST THREE WEEKS. IT WAS ONE DAY THAT HE
21 HAD BEEN WORKING WITH HIS STEP-DAD, AND AFTER WORK,
22 MY HUSBAND WOULD SOMETIMES NEED TO GO TO THE
23 CHIROPRACTOR. AND HE HAD AN APPOINTMENT, AND KEN WAS
24 RIDING WITH HIM. SO HE HAD CALLED ME AT WORK AND
25 ASKED -- FROM THE DOCTOR'S OFFICE AND ASKED ME IF I

LYNELL WILLIAMSON - DIRECT BY MR. BAILEY

1407

1 WOULD MIND COMING AND PICKING HIM UP AND GIVING HIM A
2 RIDE HOME SO HE WOULDN'T HAVE TO SIT THERE. AND SO I
3 PICKED HIM UP AND -- AND TOOK HIM HOME. THAT WAS THE
4 LAST TIME I ACTUALLY SAW HIM.

5 WE TALKED ON THE PHONE A LOT. IN FACT, THE DAY
6 HE DIED, I ALWAYS CALL IT GOD'S BLESSING TO ME, HIS
7 -- HIS TENDER MERCIES HE GIVES US. FOR SOME REASON,
8 I KEPT TRYING TO GET HIM ON THE PHONE THAT EVENING.
9 I HAD THOUGHT -- AMY, MY YOUNGEST DAUGHTER, WAS
10 SCHEDULED TO WORK, AND I THOUGHT HE WAS GOING TO BE
11 HOME, AND I DID FINALLY REACH HIM. IT WAS 6:30 THAT
12 NIGHT, AND HE SAID THAT HE WAS GOING IN TO WORK, AND
13 WE TALKED FOR ABOUT 20 MINUTES.

14 HE HAD MENTIONED TO ME THAT -- I ALWAYS TELL HIM
15 TO BE CAREFUL GOING IN TO WORK BECAUSE I WAS
16 CONCERNED WITH THE TYPE OF PLACE HE WAS AT, AND I
17 KNEW IT. HE WAS AT RISK. AND WE GOT ON THE SUBJECT
18 A LITTLE BIT, AND I TOLD HIM TO BE CAREFUL. AND HE
19 SAID, "WELL, MOM," HE SAYS, "A LOT OF PEOPLE COME IN
20 THERE THAT KIND OF MAKE ME NERVOUS." HE SAID, "I'VE
21 BEEN THINKING MAYBE WE SHOULD HAVE A GUN OR SOME KIND
22 OF SAFETY PROCEDURE THERE IN CASE SOMETHING
23 HAPPENED." AND I TOLD HIM, "NO." I SAID, "YOU
24 WOULDN'T WANT A GUN THERE BECAUSE THEN YOU WOULD
25 PROBABLY GET HURT." HE SAYS, "YEAH, YOU'RE RIGHT.

1 THEY ARE GOING TO CLOSE NEXT WEEK ANYWAY."

2 MY HUSBAND HAD JUST BUILT A TREEHOUSE FOR OUR
3 GRANDSON MATT, AND I HAD BEEN STRUGGLING TRYING TO
4 PAINT IT, AND KEN HAD PROMISED TO HELP ME WITH IT,
5 AND SO WHEN WE TALKED, HE SAID -- THAT WAS FRIDAY
6 EVENING -- HE SAID, "WELL, I'LL BE OVER SATURDAY
7 MORNING TO -- TO PAINT IT FOR YOU." HE WAS -- HE WAS
8 ALWAYS DOING THINGS FOR ME. HE WAS ALWAYS THERE FOR
9 ME. BUT THE LAST THING WE SAID, AS WE ALWAYS DO, WAS
10 "I LOVE YOU." AND I -- I THANK GOD I HAD THAT --
11 THAT TIME WITH HIM.

12 Q. HOW DID YOU FIND OUT THAT KEN HAD BEEN
13 KILLED?

14 A. MY HUSBAND GOT A PHONE CALL FROM MY
15 SON-IN-LAW, AND HE DIDN'T EXACTLY TELL ME. HE TALKED
16 TO HIM, AND MIKE SAID, HE SAYS, "KEN AND KELLY ARE AT
17 ORANGEBURG HOSPITAL. WE'VE GOT TO GO. THERE'S BEEN
18 AN ACCIDENT." AND THAT WAS ALL HE WOULD SAY ABOUT
19 IT.

20 SO WE GOT READY TO LEAVE, AND MY MOTHER WAS
21 STILL LIVING WITH US AT THAT TIME, AND I TOLD HER,
22 AND THE THREE OF US GOT IN THE CAR, AND I DROVE. AND
23 I HAD MY FLASHERS ON, AND I DON'T KNOW -- I WASN'T
24 EVEN THINKING ABOUT HIM BEING AT WORK AND SOMETHING
25 HAPPENING. I -- I WAS THINKING, "OH, DEAR, THEY'VE

LYNELL WILLIAMSON - DIRECT BY MR. BAILEY

1409

1 BEEN IN A CAR ACCIDENT. I HOPE IT'S NOTHING BAD."
2 SO I DROVE TO THE HOSPITAL, AND WHEN I GOT THERE, AS
3 I GOT OUT OF THE CAR, THAT'S WHEN MY HUSBAND TOLD ME
4 THAT THEY HAD BEEN SHOT.

5 Q. AND DO YOU REMEMBER WHEN -- AT WHAT POINT
6 YOU FOUND OUT THAT KEN WAS BRAIN DEAD?

7 A. OH, YES. I WALKED INSIDE, AND I WENT UP
8 TO THE DESK, THE EMERGENCY ROOM, AND I TOLD THEM WHO
9 I WAS AND THAT I WANTED TO SEE MY SON. AND SHE SAID,
10 "JUST A MINUTE. LET ME GET THE DOCTOR." AND I SAID,
11 "WELL, CAN YOU JUST TELL ME, IS HE ALL RIGHT? WHAT'S
12 HAPPENING?" AND SHE SAID, "I'M SORRY. I NEED TO GET
13 THE DOCTOR." AND SHE MOTIONED TO THE COUNSELING ROOM
14 OFF TO THE SIDE AND SAID, "YOU NEED TO GO IN THERE."

15 Q. DO YOU NEED SOME TIME?

16 A. I'M TRYING HARD.

17 Q. JUST A COUPLE OF MORE QUESTIONS.

18 A. ANYWAY, SHE SAID, "YOU NEED TO GO INTO THE
19 COUNSELING ROOM." AND I KNEW THAT WAS BAD NEWS.
20 THEY DON'T ASK YOU TO GO IN THAT ROOM UNLESS IT'S
21 PRETTY BAD. SO WE WALKED IN AND WAITED FOR THE
22 DOCTOR TO COME IN. AND HE WALKED UP TO ME, AND HE --
23 WELL, HE SAID, "IS KEN'S MOTHER HERE?" AND I SAID,
24 "THAT'S ME." WE HAD A ROOM FULL OF PEOPLE IN THERE
25 BY THEN. AND HE SAID, "I NEED TO TELL YOU THIS.

1 YOUR SON'S BEEN SHOT IN THE HEAD, AND HE IS BRAIN
2 DEAD."

3 Q. MS. WILLIAMSON, WOULD YOU TELL THE JURY
4 JUST IN YOUR OWN WORDS HOW KEN'S LOSS HAS AFFECTED
5 YOU?

6 A. IT WILL ALWAYS AFFECT ME. FOR THE LONGEST
7 TIME, I WENT THROUGH LIKE A FOG. I WAS ABLE TO -- I
8 WENT BACK TO MY JOB AND WORKED FOR A LITTLE OVER A
9 MONTH, AND I JUST COULD NOT DO IT. I'M AN
10 ACCOUNTANT, AND I COULD NOT CONCENTRATE ON ANYTHING I
11 WAS DOING. I WOULD HEAR KEN -- KEN'S VOICE. I WAS
12 USED TO HIM CALLING ME AT WORK ON THE PHONE. "HOW
13 ARE YOU DOING, MOM?" AND I COULD NOT -- I COULDN'T
14 DO MY WORK, SO I LEFT MY JOB. I HAVEN'T GONE BACK.
15 MY MARRIAGE IS SUFFERING. I WON'T LET MY
16 HUSBAND GET CLOSE TO ME ANYMORE. IT'S LIKE HE TRIES
17 SO HARD, AND I ALWAYS PUSH HIM AWAY. MY CHILDREN ARE
18 SUFFERING, AND I SUFFER WITH THEM. I MEAN, MY
19 CHILDREN ARE MY LIFE. THEY'VE ALWAYS BEEN MY WHOLE
20 LIFE. HE WAS MY BABY.

21 MR. BAILEY: THAT'S ALL I HAVE. THANK
22 YOU.

23 MR. NEWSOME: I HAVE NO QUESTIONS, YOUR
24 HONOR.

25 THE COURT: YOU MAY COME DOWN. LET'S TAKE

1 A BREAK. I THINK LUNCH WILL BE HERE VERY SHORTLY.

2 (WHEREUPON, A BREAK WAS TAKEN
3 FROM THE PROCEEDINGS.)

4 THE COURT: READY TO PROCEED?

5 MR. BAILEY: I'M PREPARED TO REST. I JUST
6 WANT TO MAKE SURE THAT ALL OF THE EXHIBITS ARE IN
7 EVIDENCE, IF I CAN CHECK ON THAT.

8 THE COURT: ALL RIGHT. AND THEN YOU CAN
9 REST IN FRONT OF THE JURY.

10 MR. BAILEY: YES, SIR. LET ME JUST MAKE A
11 BLANKET MOTION TO MOVE EVERYTHING THAT MAY BE FOR
12 I.D. INTO EVIDENCE.

13 THE COURT: HE'S MAKING A BLANKET MOTION
14 THAT EVERYTHING HE PREVIOUSLY MARKED FOR
15 IDENTIFICATION THAT'S NOT INTRODUCED INTO EVIDENCE.

16 MR. NEWSOME: I'M NOT SURE I CAN AGREE
17 WITH THAT. YOU MEAN IN THE PENALTY PHASE?

18 MR. BAILEY: PENALTY PHASE.

19 MR. NEWSOME: PENALTY PHASE IS FINE.

20 THE COURT: WELL, YOUR MOTIONS -- STATE
21 YOUR MOTION FOR THE RECORD SO THERE WILL BE NO
22 QUESTION ABOUT IT.

23 MR. BAILEY: ANYTHING THAT MIGHT HAVE BEEN
24 MARKED FOR IDENTIFICATION BUT NOT FORMALLY INTRODUCED
25 IN THE PENALTY PHASE, I WOULD MOVE TO INTRODUCE AT

1 THIS TIME.

2 THE COURT: AND WHAT ABOUT WITH REFERENCE
3 TO THE EXHIBITS THAT YOU INTRODUCED IN THE FIRST
4 PHASE?

5 MR. BAILEY: YES, SIR. I WOULD MOVE TO
6 INTRODUCE ALL OF THAT.

7 THE COURT: IN THE SECOND PHASE?

8 MR. BAILEY: YES, SIR. AND I DON'T THINK
9 I DID IT, BUT WHEN THE JURY COMES IN, I WILL FORMALLY
10 MOVE TO INCORPORATE ALL OF THE EVIDENCE.

11 MR. NEWSOME: JUDGE, THAT PSYCHIATRIC
12 REPORT THAT WE HANDLED THROUGH A BLAIR HEARING EARLY
13 ON LAST WEEK, AND WE SPECIFICALLY AGREED THAT WOULD
14 NOT COME INTO EVIDENCE.

15 MR. BAILEY: THAT WAS A COURT'S EXHIBIT.

16 THE COURT: THAT'S A COURT EXHIBIT.

17 MR. NEWSOME: THAT'S FINE.

18 THE COURT: HE'S JUST INTRODUCING
19 EVERYTHING THAT WAS IN FROM THE FIRST PHASE INTO THIS
20 PHASE. AND THEN YOU'RE READY TO PROCEED?

21 MR. NEWSOME: YES, SIR.

22 MR. BAILEY: YES, SIR.

23 (WHEREUPON, THE JURY WAS
24 RETURNED TO THE COURTROOM AND
25 THE FOLLOWING PROCEEDINGS WERE

1 COMMENCED IN OPEN COURT.)

2 THE COURT: JURY IS PRESENT. MR. BAILEY.

3 MR. BAILEY: YOUR HONOR, THE STATE WOULD
4 NOW MOVE TO INCORPORATE ALL OF THE GUILT PHASE
5 TESTIMONY AND EXHIBITS INTO THE PENALTY PHASE AND
6 FURTHER MOVE TO INTRODUCE ANY PENALTY PHASE EXHIBITS
7 THAT MAY HAVE JUST BEEN MARKED FOR IDENTIFICATION
8 INTO EVIDENCE.

9 THE COURT: YES, SIR. AND THAT'S WITHOUT
10 OBJECTION FROM THE DEFENSE COUNSEL.

11 MR. BAILEY: THE STATE WOULD REST, YOUR
12 HONOR.

13 (END OF VOLUME EIGHT)

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CERTIFICATE OF REPORTER

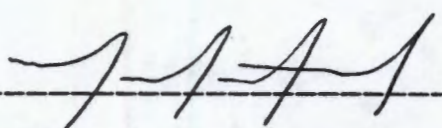
STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

I, MARK W. HAGOOD, REGISTERED PROFESSIONAL REPORTER, (RPR), COURT REPORTER FOR THE STATE OF SOUTH CAROLINA, FOURTH JUDICIAL CIRCUIT, DO HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IS A STENOGRAPHIC REPORT AND WAS TRANSCRIBED THROUGH COMPUTER-AIDED TRANSCRIPTION; THAT THE FOREGOING TRANSCRIPT CONTAINS A TRUE RECORD OF THE PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO NOR EMPLOYED BY ANY OF THE PARTIES CONNECTED TO THE ACTION, NOR AM I FINANCIALLY INTERESTED IN THE ACTION.

WITNESS MY HAND AT FLORENCE, SOUTH CAROLINA, THIS 3rd DAY OF April, 1996.


MARK W. HAGOOD, RPR

1 STATE OF SOUTH CAROLINA IN GENERAL SESSIONS COURT
 2 COUNTY OF CALHOUN

3
4 STATE OF SOUTH CAROLINA

94-GS-09-153
 94-GS-09-154
 94-GS-09-155
 94-GS-09-156

5 V.
6

HERMAN LEE HUGHES, JR.
7

8 VOLUME NINE

9 - - -
 10 THE TRIAL PROCEEDINGS HAD
 IN THE ABOVE-STYLED CAUSE
 11 - - -

12 MONDAY, SEPTEMBER 11, 1995
 ST. MATTHEWS, SOUTH CAROLINA

13
 14 BEFORE: HONORABLE EDWARD B. COTTINGHAM,
 CIRCUIT COURT JUDGE

15 A P P E A R A N C E S

16
 17 FOR THE STATE: WALTER M. BAILEY, JR., SOLICITOR

18
 19 FOR THE DEFENDANT: PHILLIP F. NEWSOME, ESQUIRE
 20
 21
 22
 23
 24
 25

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3	CROSS BY MR. NEWSOME	916
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4	DIRECT BY MR. BAILEY	917
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5	ROBERT SHIRE	
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	PAT THORNAL	
7	DIRECT BY MR. BAILEY	934
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8	KENNETH HASTY	
	DIRECT BY MR. BAILEY	942
9	JAMES GREEN	
	DIRECT BY MR. BAILEY	946
10	CROSS BY MR. NEWSOME	949
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14	DIRECT BY MR. BAILEY	966
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15	DIRECT BY MR. BAILEY	971
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19	BARBARA JOHNSON	
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	REDIRECT BY MR. BAILEY	1030
21	JAMES S. GREEN	
	DIRECT BY MR. BAILEY	1032
22	GERALD DAVID CARTER	
	DIRECT BY MR. BAILEY	1036
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4	DIRECT BY MR. BAILEY	1066
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	DIRECT BY MR. BAILEY	1070
6	THOMAS WADE FLEMING	
	DIRECT BY MR. BAILEY	1074
7	EARL RHUDY	
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10	CROSS BY MR. NEWSOME	1115
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11	DIRECT BY MR. BAILEY	1118
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12	DIRECT BY MR. BAILEY	1122
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13	REDIRECT BY MR. BAILEY	1133
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DENNIS JONES - DIRECT BY MR. NEWSOME

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14	DIRECT BY MR. BAILEY	1338
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15	REDIRECT BY MR. BAILEY	1345
	RECROSS BY MR. NEWSOME	1347
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	KALA BYRD	
17	DIRECT BY MR. BAILEY	1348
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	CAPERS WANNAMAKER	
19	DIRECT BY MR. BAILEY	1354
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	ANTHONY BROWN	
21	DIRECT BY MR. BAILEY	1362
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23	DIRECT BY MR. BAILEY	1366
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	DIRECT BY MR. NEWSOME	1518
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	ANNETTE BOETTE	
17	DIRECT BY MR. NEWSOME	1535
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18	REDIRECT BY MR. NEWSOME	1570
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21	DIRECT BY MR. BAILEY	1574
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	STATE'S	10 CRIME SCENE LIST	930	930
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10	STATE'S	15 " " "	978	978
	STATE'S	16 " " "	978	978
11	STATE'S	17 " " "	978	978
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12	STATE'S	19 " " "	978	978
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23	STATE'S	41 CHART	1336	1336
	STATE'S	42 CHART	1336	1336
24	STATE'S	43 CHART	1336	1336
	STATE'S	44 CHART	1336	1336
25	STATE'S	45 CHART - SCHOOL REPORT	1341	1341
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E X H I B I T S - CONTINUED				
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3	STATE'S 47	NOTE TO VICTIM'S FATHER	1381	1381
	STATE'S 48	FAMILY PHOTO	1381	1381
4	STATE'S 49	FAMILY PHOTO	1381	1381
	STATE'S 50	PHOTO - CRIME SCENE	1377	1377
5	STATE'S 51	" " "	1377	1377
	STATE'S 52	" " "	1377	1377
6	STATE'S 53	" " "	1377	1377
	STATE'S 54	" " "	1377	1377
7	STATE'S 55	" " "	1377	1377
	STATE'S 56	" " "	1377	1377
8	STATE'S 57	PHOTO - FAMILY	1381	1381
	STATE'S 58	PHOTO - KEN PRESLEY	1381	1381
9	STATE'S 59	I.D. (WITHDRAWN)	1381	
	STATE'S 60	PHOTO - FAMILY	1381	1381
10	STATE'S 61	PHOTO - KEN PRESLEY	1381	1381
	STATE'S 62	PHOTO - FAMILY	1381	1381
11	STATE'S 63	PHOTO - KEN PRESLEY	1381	1381
	STATE'S 64	PHOTO - KEN PRESLEY	1381	1381
12	STATE'S 65	LETTER	1381	1381
	STATE'S 66	LETTER	1381	1381
13	STATE'S 67	LETTER	1381	1381
	STATE'S 68	LETTER	1381	1381
14	STATE'S 69	LETTER	1381	1381
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15	STATE'S 71	LETTER FROM NAVY	1381	1381
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16	DEFENDANT'S EXHIBITS			
17	DEFENDANT'S 1	WARRANT	1088	
18	DEFENDANT'S 2	WARRANT	1088	
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19	DEFENDANT'S 4	WARRANT	1088	
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20	DEFENDANT'S 6	TRANSCRIPT OF INTERVIEW OF KELLY HOFFMAN	1189	1189
21	DEFENDANT'S 7	AUDIOTAPE OF INTERVIEW OF KELLY HOFFMAN	1189	1189
22	DEFENDANT'S 8	SCHLOSSON I.Q. TEST OF HERMAN HUGHES	1344	1344
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1 E X H I B I T S - CONTINUED

2	NUMBER	DESCRIPTION	I.D.	EVD.
3	COURT'S 1	JURORS EXCUSED BY CONSENT	3	
4	COURT'S 2	REPORT OF FINDING OF MENTAL CAPACITY	141	
5	COURT'S 3	EVALUATION FORM FROM S.C. DEPT. OF DISABILITIES AND SPECIAL NEEDS	761	
6	COURT'S 4	CORRESPONDENCE BETWEEN ATTORNEYS	1323	
7	COURT'S 5	QUESTION FROM JURY	1293	
8	COURT'S 6	CORRESPONDENCE BETWEEN ATTORNEYS	1323	
9	COURT'S 7	FAMILY COURT ORDER - I.D. EXHIBITS FROM JACKSON V. DENNO HEARING (MARKED AFTER TRIAL)		
10	COURT'S 8	QUESTION FROM JURY	1719	
11				
12				
13				
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DENNIS JONES - DIRECT BY MR. NEWSOME

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1 (BEGINNING OF VOLUME NINE)

2 THE COURT: THE STATE NOW RESTS. YOU MAY
3 PROCEED WITH YOUR TESTIMONY.

4 MR. NEWSOME: CALL SHERIFF JONES TO THE
5 STAND.

6 THE CLERK: IF YOU WOULD, PLEASE STATE
7 YOUR NAME FOR THE RECORD.

8 THE WITNESS: DENNIS JONES.

9 DENNIS JONES,
10 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
11 TESTIFIED AS FOLLOWS:

12 D I R E C T E X A M I N A T I O N

13 BY MR. NEWSOME:

14 Q. WOULD YOU STATE YOUR NAME FOR THE RECORD,
15 PLEASE?

16 A. DENNIS JONES.

17 Q. ALL RIGHT. AND YOU ARE SHERIFF OF CALHOUN
18 COUNTY?

19 A. YES, SIR.

20 Q. WERE YOU ACTING IN THAT CAPACITY ON MARCH
21 18TH, 1994?

22 A. YES, SIR.

23 Q. AND PURSUANT TO THE INCIDENT THAT OCCURRED
24 AT THE BLUE DIAMOND CASINO IN MARCH OF 1994, DID YOU
25 HAVE OCCASION TO TALK WITH HERMAN HUGHES ON MARCH THE

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1 20TH?

2 A. YES, SIR, I DID.

3 Q. ALL RIGHT. AND HOW DID THAT CONFERENCE
4 TAKE PLACE AND WHERE DID IT HAPPEN?

5 A. I, ALONG WITH HIS MOTHER, WENT TO COLUMBIA
6 AND PICKED MR. HUGHES UP FROM HIS COUSIN'S HOUSE AND
7 BROUGHT HIM TO THE SHERIFF'S DEPARTMENT.

8 Q. ALL RIGHT. DID HE -- WAS HE UNDER ARREST
9 AT THAT TIME?

10 A. NO, SIR.

11 Q. OKAY. WERE YOU INVOLVED WITH HIS
12 INTERVIEW ON SATURDAY AFTERNOON?

13 A. SATURDAY, I WAS NOT.

14 Q. OKAY. ALL RIGHT. DURING THAT CONFERENCE
15 YOU HAD WITH HIM ON SUNDAY, DID YOU ADVISE HIM OF HIS
16 RIGHTS?

17 A. YES, SIR, I DID.

18 Q. OKAY. WAS HIS MOTHER, MIRANDA HUGHES,
19 PRESENT AT THE TIME?

20 A. YES, SIR, SHE WAS.

21 Q. ALL RIGHT. DID HE MAKE A CONFESSION TO
22 YOU AT THAT TIME CONCERNING HIS INVOLVEMENT IN THIS
23 MATTER?

24 A. YES, SIR, HE DID.

25 Q. WOULD YOU TELL US WHAT HE SAID?

1 A. IN HIS WORDS, HE STATED THAT HE ALONG WITH
2 KELSEY PEARCE WENT TO THE BLUE DIAMOND CASINO. HE
3 WALKED INSIDE AND ASKED FOR THE MONEY. HE SHOT THE
4 WOMAN WHILE KELSEY STOOD OUTSIDE AND LOOKED. THEN HE
5 SAID WE TOOK THE CAR TO DANIEL'S HOUSE AND PUT THE
6 MONEY ON THE BED. THEY DIVIDED UP THE MONEY AT --

7 Q. OKAY.

8 A. -- MR. DANIEL'S HOUSE AND LEFT IN THE CAR
9 AND WENT TO THE EBONY LOUNGE IN ORANGEBURG.

10 Q. NOW, PURSUANT TO THAT INFORMATION YOU GOT
11 FROM HIM THAT DAY AND THE WEAPON THAT HE SURRENDERED
12 TO YOU ALL, DID YOU THEN PLACE HIM UNDER ARREST?

13 A. YES, SIR, I DID.

14 Q. OKAY. DID YOU GET ANY STATEMENTS FROM THE
15 OTHER CO-DEFENDANTS ADMITTING THEIR INVOLVEMENT?

16 A. NO, SIR. NO, SIR, I DIDN'T.

17 MR. NEWSOME: ANSWER ANY QUESTIONS THE
18 STATE WOULD HAVE.

19 C R O S S - E X A M I N A T I O N

20 BY MR. BAILEY:

21 Q. SHERIFF, MR. NEWSOME ASKED YOU IF YOU GOT
22 ANY STATEMENTS FROM THE OTHER CO-DEFENDANTS, AND YOU
23 SAID YOU DID NOT?

24 A. I DIDN'T. ANOTHER STATEMENT WAS TAKEN
25 FROM MR. OWENS.

1 Q. THAT WAS THE STATEMENT THAT WAS READ
2 PREVIOUSLY TO THE JURY; IS THAT CORRECT?

3 A. YES, SIR, TAKEN BY INVESTIGATOR RHUDY.

4 MR. BAILEY: THANK YOU. THAT'S ALL I
5 HAVE.

6 MR. NEWSOME: THAT'S ALL I HAVE OF THIS
7 WITNESS, YOUR HONOR.

8 THE COURT: YOU MAY COME DOWN.

9 MR. NEWSOME: CALL JAMES MCKINNEY TO THE
10 STAND.

11 THE CLERK: PLEASE STATE YOUR NAME FOR THE
12 RECORD.

13 THE WITNESS: JAMES MCKINNEY.

14 JAMES MCKINNEY,
15 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
16 TESTIFIED AS FOLLOWS:

17 MR. NEWSOME: PLEASE THE COURT? YOUR
18 HONOR, I NEED TO LOOK THROUGH HERE TO GET SOME OF
19 THESE STATEMENTS.

20 D I R E C T E X A M I N A T I O N
21 BY MR. NEWSOME:

22 Q. MR. MCKINNEY, WOULD YOU STATE YOUR FULL
23 NAME FOR THE RECORD?

24 A. JAMES EDWARD MCKINNEY, JR.

25 Q. WHERE ARE YOU EMPLOYED?

1 A. I'M EMPLOYED AT JOHN FORD MIDDLE SCHOOL
2 HERE IN ST. MATTHEWS.

3 Q. I'M GOING TO ASK YOU TO SPEAK JUST A
4 LITTLE LOUDER. BETWEEN THIS AIR CONDITIONER AND THE
5 ACOUSTICS IN HERE --

6 A. I'M EMPLOYED AT JOHN FORD MIDDLE SCHOOL
7 HERE IN ST. MATTHEWS.

8 Q. IN WHAT CAPACITY ARE YOU EMPLOYED THERE?

9 A. I AM A GUIDANCE COUNSELOR.

10 Q. WERE YOU SO EMPLOYED FROM 1991 TO THE
11 PRESENT?

12 A. YES.

13 Q. WHEN DID YOU FIRST BECOME EMPLOYED THERE?

14 A. I BECAME EMPLOYED THERE IN 1988.

15 Q. 1988. DO YOU RECALL A PERIOD OF TIME THAT
16 HERMAN HUGHES ATTENDED SCHOOL THERE?

17 A. YES, I DO.

18 Q. OKAY. CAN YOU TELL THE LADIES AND
19 GENTLEMEN OF THE JURY YOUR OBSERVATIONS OF MR. HUGHES
20 FROM THE TIME HE ENROLLED THERE AND THEN CONTINUING
21 GOING THROUGH THE TIME HE WAS SUSPENDED?

22 A. WHEN HERMAN STARTED SCHOOL IN THE SIXTH
23 GRADE, HE WAS ALREADY TWO YEARS BEHIND IN -- IN HIS
24 GRADE LEVEL. HE WAS COOPERATIVE. HE WAS A QUIET,
25 WELL-MANNERED STUDENT. HE WAS HAVING A LOT OF

1 PROBLEMS, THOUGH. DIFFICULTY IN HIS READING AND
2 MATHEMATICS AREAS. WE DECIDED THAT WE NEEDED TO TEST
3 HIM TO FIND OUT WHETHER OR NOT THERE WAS SOME
4 CONDITIONS THAT MAY BE HINDERING HIS LEARNING.

5 Q. LET ME STOP YOU AT THAT POINT. I'M GOING
6 TO SHOW YOU A COPY OF WHAT WOULD BE THE STATE'S
7 EXHIBIT NUMBER 44. I DON'T KNOW WHERE WE HAVE THIS
8 AT THE TIME. THIS IS A COPY OF IT. CAN YOU IDENTIFY
9 THAT?

10 A. YES. THIS IS THE SCHLOSSON INTELLIGENCE
11 TEST THAT I GAVE HIM.

12 Q. OKAY. AND THIS WAS A TEST THAT YOU ALL
13 ADMINISTERED TO ATTEMPT TO LEARN TO SEE IF THERE WAS
14 ANY SPECIAL NEEDS?

15 A. THIS IS A TEST THAT WE GIVE. THIS IS PART
16 OF THE PROTOCOL, PRELIMINARY, TO FIND OUT WHETHER OR
17 NOT THE STUDENT NEEDS TO BE FURTHER TESTED BY A
18 PSYCHOLOGIST.

19 Q. OKAY. AS A RESULT OF THAT TEST, WHAT, IF
20 ANYTHING, DID YOU REQUEST TO BE DONE ON THE BEHALF OF
21 HERMAN?

22 A. WE FOUND THAT HIS I.Q. WAS VERY LOW, SO WE
23 DETERMINED THAT HE NEEDED TO HAVE FURTHER
24 PSYCHOLOGICAL TESTING.

25 Q. ALL RIGHT. NOW, WHEN YOU TESTED HIM, HE

1 WAS HOW OLD AT THAT TIME?

2 A. HE WAS 13.

3 Q. AND HOW MANY MONTHS?

4 A. SIX MONTHS.

5 Q. AND WHAT GRADE WAS HE IN?

6 A. HE WAS IN THE SIXTH GRADE.

7 Q. SIXTH GRADE. OKAY. WOULD YOU

8 CHARACTERIZE HIM AS BEING ONE OF THE LARGER STUDENTS
9 THERE AT THAT TIME OR ONE OF THE SMALLER, OR HOW DID
10 HE FIT IN PHYSICALLY?

11 A. HE WAS OF MEDIUM BUILD AT THAT TIME.

12 Q. OKAY. WOULD YOU SUBSCRIBE HIM -- HOW
13 WOULD YOU DESCRIBE HIM AS FAR AS WHETHER -- HIS
14 BEHAVIOR?

15 A. HE WAS COOPERATIVE, AND HE TRIED VERY HARD
16 IN CLASS.

17 Q. OKAY. WAS HE AGGRESSIVE SOCIALLY?

18 A. NOT WHEN HE CAME, NO.

19 Q. NOT WHEN HE CAME. OKAY. HOW WOULD YOU
20 DESCRIBE HIM? WAS HE A LEADER OR A FOLLOWER?

21 A. MORE OR LESS AS A FOLLOWER.

22 Q. OKAY.

23 A. MORE OR LESS AS A LONER, ACTUALLY.

24 Q. AS A LONER?

25 A. YES.

1 Q. HE KEPT TO HIMSELF?

2 A. PRETTY MUCH.

3 Q. NOW, I'M GOING TO SHOW YOU STATE'S EXHIBIT
4 NUMBER 46. HAVE YOU SEEN THAT BEFORE?

5 A. NO. I'VE NEVER SEEN THIS PSYCHOLOGICAL.

6 Q. YOU NEVER SAW THE PSYCHOLOGICAL
7 EVALUATION?

8 A. NO, I HAVE NOT.

9 Q. ALL RIGHT. IN THE COURSE OF YOUR
10 EMPLOYMENT, DO YOU SEE THOSE AS THEY RELATE TO THE
11 STUDENTS?

12 A. GENERALLY, I DON'T.

13 Q. OKAY. THOSE ARE HANDLED THROUGH THE
14 SPECIAL EDUCATION FOLKS?

15 A. THAT'S CORRECT.

16 Q. ALL RIGHT. WAS HERMAN IN THE SPECIAL
17 EDUCATION PROGRAM AT YOUR SCHOOL?

18 A. NO. HE WAS REMEDIAL AND CHAPTER ONE
19 CLASS.

20 Q. WHAT IS A CHAPTER ONE CLASS?

21 A. CHAPTER ONE CLASS IS MORE OR LESS A
22 REMEDIAL CLASS FOR SIXTH GRADE STUDENTS.

23 Q. OKAY. NOW, DO YOU KNOW WHETHER OR NOT HE
24 WAS IN THOSE LEARNING DISABLED CLASSES AT HIS PRIOR
25 SCHOOL?

JAMES MCKINNEY - DIRECT BY MR. NEWSOME

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1 A. PRIOR TO COMING TO OUR SCHOOL, YES, HE HAD
2 BEEN.

3 Q. WHY WOULD HE NOT BE PLACED IN THAT UPON
4 LEAVING ELEMENTARY SCHOOL GOING TO MIDDLE SCHOOL?

5 A. THEY DO HAVE STAFFINGS. I DON'T KNOW --
6 PERIODICALLY, AND -- IT'S DETERMINED WHETHER OR NOT A
7 STUDENT SHOULD HAVE ANOTHER PSYCHOLOGICAL DONE, AND
8 HE HAD ANOTHER PSYCHOLOGICAL DONE, AND APPARENTLY HE
9 TESTED OUT OF THE PROGRAM.

10 Q. AND THAT'S THE TEST YOU'RE LOOKING AT IN
11 STATE'S EXHIBIT NUMBER 46?

12 A. I -- I'M NOT SURE. I'M --

13 Q. OKAY. THAT'S FINE. IF YOU DON'T KNOW,
14 THAT'S ALL RIGHT.

15 NOW, WAS HERMAN RETAINED IN THE SIXTH GRADE
16 AFTER THAT YEAR OR WAS HE PROMOTED?

17 A. HE WAS RETAINED.

18 Q. OKAY. GOING TO THE NEXT YEAR, YOU WERE
19 ALSO THE GUIDANCE COUNSELOR AT SCHOOL?

20 A. YES, I WAS.

21 Q. OKAY. SO HE WOULD BE THREE GRADES BEHIND
22 AT THIS POINT?

23 A. THAT IS CORRECT.

24 Q. COULD YOU DESCRIBE WHAT HIS BEHAVIOR AND
25 HOW HE ACTED DURING THAT PERIOD OF TIME?

1 A. WE DID SEE QUITE A BIT OF DIFFERENCE IN
2 HIS BEHAVIOR WHEN HE RETURNED TO SCHOOL. MORE
3 AGGRESSIVE, HOSTILE, AND DISRESPECTFUL TOWARD HIS
4 TEACHERS.

5 Q. IS IT UNUSUAL FOR A CHILD TO GO THROUGH
6 ADOLESCENCE AND HAVE BEHAVIORAL CHANGES DURING THAT
7 TIME?

8 A. YEAH -- IT'S NOT UNUSUAL.

9 Q. NOW, WAS HERMAN'S ACTING OUT ANY GREATER
10 THAN OTHERS THAT ARE STILL IN SCHOOL THERE?

11 A. NOT DURING THAT PARTICULAR YEAR.

12 Q. OKAY. ALL RIGHT. HOW DID HE DO IN HIS
13 CLASSROOM PERFORMANCE THAT YEAR?

14 A. HIS CLASSROOM PERFORMANCE THAT YEAR WAS
15 POOR.

16 Q. OKAY. AND HE WAS 14 IN THE SIXTH GRADE
17 THEN?

18 A. THAT IS CORRECT.

19 Q. OKAY. DID HE GET TEASED BY OTHER CHILDREN
20 ABOUT HIS PERFORMANCE, TO YOUR KNOWLEDGE?

21 A. NOT THAT I WAS AWARE OF, NO.

22 Q. OKAY. IS IT -- IN YOUR EXPERIENCE AS A
23 GUIDANCE COUNSELOR, IS IT UNUSUAL FOR CHILDREN IN THE
24 ADOLESCENT YEARS TO BECOME BEHAVIOR PROBLEMS?

25 A. THAT USUALLY DOES HAPPEN, YES.

1 Q. AND DURING THE PERIOD THE NEXT COUPLE OF
2 YEARS, HE WAS SUSPENDED, WAS HE NOT, A COUPLE OF
3 TIMES?

4 A. THAT IS CORRECT.

5 Q. DO YOU KNOW HOW MANY TIMES HE WAS
6 SUSPENDED?

7 A. NUMEROUS TIMES, BUT I DON'T KNOW HOW MANY
8 EXACTLY.

9 Q. BY "NUMEROUS," IS THAT TWO OR THREE OR --

10 A. MORE.

11 Q. WHAT GRADE WAS HE IN IN 1994 WHEN THIS
12 INCIDENT OCCURRED?

13 A. IN 1994?

14 Q. YES.

15 A. I BELIEVE THE EIGHTH GRADE.

16 MR. NEWSOME: OKAY. ALL RIGHT. PLEASE
17 ANSWER ANY QUESTIONS THE SOLICITOR HAS FOR YOU.

18 C R O S S - E X A M I N A T I O N

19 BY MR. BAILEY:

20 Q. DO YOU HAVE THE SCHLOSSON THING? IS THAT
21 HOW YOU PRONOUNCE IT?

22 A. SCHLOSSON.

23 Q. SCHLOSSON. ALL RIGHT, SIR.

24 MR. BAILEY: HAS THIS BEEN INTRODUCED? I
25 THOUGHT IT HAD.

1 MR. NEWSOME: THAT'S MY COPY. I COULDN'T
2 FIND THE EXHIBIT. THAT'S MY EXHIBIT THERE.

3 THE COURT: IT HAD NOT BEEN INTRODUCED UP
4 UNTIL NOW.

5 MR. NEWSOME: NO, SIR. IT WAS PUT INTO
6 EVIDENCE UNDER ONE OF THE STATE'S WITNESSES. COPY OF
7 IT. THIS IS JUST ANOTHER COPY I HAVE. IT'S EXHIBIT
8 NUMBER 44.

9 THE COURT: OKAY. THAT WAS PUT IN
10 EVIDENCE?

11 MR. NEWSOME: IT'S ALREADY IN EVIDENCE,
12 BUT THIS IS A COPY OF WHAT WAS IN EVIDENCE.

13 THE COURT: IF IT'S NOT IN, YOU WANT IT
14 IN?

15 MR. NEWSOME: IT'S IN. IT'S EXHIBIT
16 NUMBER 44.

17 MR. BAILEY: OKAY.

18 BY MR. BAILEY:

19 Q. I'LL GO AHEAD AND HAND YOU THIS SCHLOSSON
20 INTELLIGENCE TEST, AND THAT IS A ONE-PAGE FORM. IS
21 THAT THE COMPLETE TEST?

22 A. THAT IS THE COMPLETE TEST, YES.

23 Q. I BELIEVE YOU SAID THAT WAS THE SCREENING
24 TEST; IS THAT CORRECT?

25 A. THAT IS CORRECT.

1 Q. AND THAT WOULD BE A TEST THAT WOULD BE
2 ADMINISTERED BY SOME GUIDANCE COUNSELOR OR TEACHER?

3 A. THAT IS CORRECT.

4 Q. TO SEE IF SOME FURTHER TESTING WAS NEEDED;
5 IS THAT CORRECT?

6 A. CORRECT.

7 Q. SO THAT IS NOT, TO THE BEST OF YOUR
8 KNOWLEDGE, A REAL PSYCHOLOGICAL TEST THAT A
9 PSYCHOLOGIST TRAINED TO ASSESS I.Q.'S WOULD USE?

10 A. IT IS NOT. CORRECT.

11 Q. OKAY. THEY WOULD USE THE WECHSLER TEST?

12 A. THAT'S CORRECT.

13 Q. OR THE STANFORD-BINET TEST?

14 A. THAT'S CORRECT.

15 Q. OR ONE OF THOSE OTHER TESTS?

16 A. YES.

17 Q. TO GET AN ACCURATE READING OF A PERSON'S
18 I.Q.?

19 A. CORRECT.

20 Q. AND YOU ARE NOT A PSYCHOLOGIST?

21 A. NO, SIR.

22 Q. NO TRAINING IN PSYCHOLOGY?

23 A. NO, I'M NOT.

24 Q. SO IN ORDER TO ASSESS SOMEBODY'S I.Q., YOU
25 WOULD NEED TO DEFER TO THE SCHOOL PSYCHOLOGIST?

1 A. THAT IS CORRECT.

2 Q. OKAY. AND AS FAR AS MR. HUGHES BEING
3 PLACED IN SPECIAL CLASSES, YOU SAID HE WAS PLACED IN
4 A RESOURCE CLASS?

5 A. HE WAS IN REMEDIAL CLASSES.

6 Q. REMEDIAL CLASS?

7 A. THAT'S CORRECT.

8 Q. AND THAT WAS IN THE SIXTH GRADE?

9 A. THAT IS CORRECT.

10 Q. AND YOU SAID IN ORDER TO DETERMINE WHETHER
11 OR NOT SOMEBODY WOULD BE PUT INTO AN L.D. CLASS,
12 THERE WOULD BE A TEAM THAT WOULD ASSESS THAT PERSON?

13 A. THAT IS CORRECT.

14 Q. WERE YOU ON THE TEAM THAT ASSESSED MR.
15 HUGHES?

16 A. YES.

17 Q. AS FAR AS WHETHER HE SHOULD BE PLACED IN
18 THE L.D. CLASS?

19 A. I WAS ON THE TEAM TO FIND OUT WHETHER OR
20 NOT HE NEEDED FURTHER TESTING TO BE PLACED.

21 Q. OKAY. DID YOU HAVE ANY INPUT AFTER THE
22 FURTHER TESTING, WHICH I ASSUME WOULD HAVE BEEN THIS
23 PSYCHO EDUCATIONAL REPORT, STATE'S 45. DID YOU HAVE
24 ANY INPUT IN DECIDING WHETHER HE WOULD BE PUT INTO
25 THE L.D. CLASS?

1 A. AFTER THIS -- AFTER THE PART OF HIM BEING
2 TESTED, NO.

3 Q. DID YOU HAVE ANY INPUT AT ANY TIME AS TO
4 WHETHER HE WOULD BE PUT INTO AN L.D. CLASS?

5 A. ONLY AS FAR AS THE PRELIMINARIES FOR HIM
6 TO BE TESTED, BUT NO INPUT AS TO WHETHER OR NOT HE IS
7 PLACED INTO AN L.D. CLASS.

8 Q. OKAY. AND THE NUMBER OF DISCIPLINARY
9 INFRACTIONS THAT ARE SHOWN IN THE RECORDS, AND MS.
10 HILL TESTIFIED TO THESE EARLIER, STATE'S NUMBER 40,
11 41, 42, 43 AND 44, ARE YOU FAMILIAR WITH THOSE?

12 A. YES, SIR.

13 Q. ALL RIGHT, SIR. AND I ASK YOU TO TAKE A
14 LOOK AT THAT. IF YOU NEED TO TAKE A FEW MINUTES, GO
15 AHEAD AND DO THAT, PLEASE. BUT WAS NOT -- BETWEEN
16 1991 AND THE TIME THAT HERMAN HUGHES WAS EXPELLED
17 FROM SCHOOL, FEBRUARY OF 1994, HE WAS WRITTEN UP 51
18 TIMES, WAS HE NOT?

19 A. I WOULD SAY THAT WOULD BE PRETTY MUCH
20 ACCURATE, YES.

21 Q. OKAY. IS THAT A HIGHLY UNUSUAL NUMBER OF
22 INFRACTIONS?

23 A. YES, SIR.

24 Q. ALL RIGHT, SIR. AND THOSE INFRACTIONS
25 RANGED FROM DESTRUCTION OF SCHOOL PROPERTY TO

1 CURSING, DISRESPECT TO TEACHERS, FIGHTING, AND SEXUAL
2 MISCONDUCT; IS THAT TRUE?

3 A. THAT'S CORRECT.

4 Q. AND AS A RESULT OF THE CUMULATIVE EFFECT
5 OF ALL OF THAT, HE WAS FINALLY EXPELLED; IS THAT
6 RIGHT?

7 A. THAT IS CORRECT.

8 Q. AND AFTER EACH INFRACTION, EACH ONE OF
9 THOSE 51 INFRACTIONS, DOES THAT ALSO INDICATE THE
10 SCHOOL TOOK ACTION; THEY TRIED TO DEAL WITH EACH
11 INFRACTION?

12 A. YES.

13 Q. AND LETTERS WERE WRITTEN TO MR. HUGHES'
14 PARENTS BEFORE HE WAS FINALLY SUSPENDED FOR THE YEAR;
15 IS THAT CORRECT?

16 A. I BELIEVE SO. I DON'T -- I CAN'T SAY FOR
17 CERTAIN.

18 Q. THAT'S NORMAL PROCEDURE, THAT THE SCHOOL
19 CONTACTS THE PARENTS?

20 A. YES.

21 Q. AND THEY TRY EVERYTHING THEY CAN POSSIBLY
22 TRY TO KEEP A KID IN SCHOOL?

23 A. CORRECT.

24 Q. SO ONLY IF THEY JUST TOTALLY GIVE UP ON
25 THE CHILD AFTER THE 50 SOME ODD INFRACTIONS WOULD

1 THEY GO AHEAD AND EXPEL THEM FOR THE YEAR?

2 A. THAT'S CORRECT.

3 Q. AND THAT'S WHAT HAPPENED IN THE CASE OF
4 HERMAN HUGHES?

5 A. MORE OR LESS, YES, SIR.

6 MR. BAILEY: THANK YOU VERY MUCH. THAT'S
7 ALL I HAVE.

8 MR. NEWSOME: YOU CAN COME DOWN. CALL
9 KATHY LINK.

10 THE CLERK: PLEASE PLACE YOUR LEFT HAND ON
11 THE BIBLE AND PLEASE RAISE YOUR RIGHT HAND. PLEASE
12 STATE YOUR NAME FOR THE RECORD.

13 THE WITNESS: I'M KATHY LINK.

14 KATHY LINK,
15 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
16 TESTIFIED AS FOLLOWS:

17 D I R E C T E X A M I N A T I O N

18 BY MR. NEWSOME:

19 Q. MS. LINK, WOULD YOU STATE YOUR FULL NAME
20 FOR THE RECORD?

21 A. I'M KATHLEEN A. LINK.

22 Q. AND WHERE ARE YOU EMPLOYED, MA'AM?

23 A. JOHN FORD MIDDLE SCHOOL HERE IN ST.
24 MATTHEWS.

25 Q. WERE YOU EMPLOYED THERE DURING THE PERIOD

1 OF TIME HERMAN HUGHES ATTENDED THERE AS A STUDENT?

2 A. YES, I WAS.

3 Q. WERE YOU EVER HIS TEACHER?

4 A. YES, I WAS.

5 Q. WOULD YOU TELL THE LADIES AND GENTLEMEN OF
6 THE JURY ABOUT THE TIME YOU WERE HIS TEACHER AND WHAT
7 YEAR IT WAS.

8 A. I WAS HERMAN'S TEACHER WHEN HE WAS IN THE
9 SIXTH GRADE.

10 Q. THE FIRST TIME?

11 A. THE FIRST TIME.

12 Q. OKAY. DID YOU NOTICE ANYTHING ABOUT HIS
13 LEARNING ABILITIES OR DISABILITIES THAT YOU THOUGHT
14 NEEDED ANY EXAMINATIONS?

15 A. YES. I FELT THAT HERMAN HAD A DIFFICULT
16 TIME WITH MOST SCHOOL SUBJECTS. I TAUGHT ENGLISH AND
17 READING AT THE TIME, AND HE NEEDED SOME INDIVIDUAL
18 ATTENTION. SO I THOUGHT HE NEEDED TO BE TESTED.

19 Q. OKAY. AS A RESULT OF THAT, THE SCHLOSSON
20 TEST WAS ADMINISTERED TO HIM AT THE SCHOOL THAT'S
21 BEEN TESTIFIED ABOUT?

22 A. UH-HUH.

23 Q. IS THAT CORRECT?

24 A. YES. YES.

25 Q. AND THEN DID YOU RECOMMEND HIM -- WAS IT

1 YOUR RECOMMENDATION THAT HE BE CONSIDERED FOR
2 LEARNING DISABILITY?

3 A. NO. I RECOMMENDED THAT THE GUIDANCE
4 COUNSELOR TEST HIM WITH THE SCHLOSSON. THAT'S THE
5 TEST THAT I FIRST TAKE. AND THEN IT'S IN THE HANDS
6 OF THE GUIDANCE COUNSELOR.

7 Q. ALL RIGHT. IT'S OUT OF YOUR HANDS AT THAT
8 TIME?

9 A. UH-HUH.

10 Q. WOULD YOU DESCRIBE THE TYPE OF STUDENT HE
11 WAS AT THAT TIME?

12 A. HERMAN WAS VERY QUIET. HE WAS REALLY A
13 LONER. HE WAS NOT DISRESPECTFUL. HE WAS JUST A VERY
14 QUIET STUDENT.

15 Q. WOULD YOU DESCRIBE HIM AS BEING A LEADER
16 OR A FOLLOWER?

17 A. FOLLOWER.

18 Q. DID YOU HAVE A CHANCE TO SEE HERMAN AT
19 SUBSEQUENT YEARS IN THAT SCHOOL?

20 A. NOT VERY MUCH. WE REALLY KIND OF KEEP THE
21 SIXTH GRADE SEPARATE.

22 Q. OKAY. WERE YOU MADE AWARE OF HIS TEST --
23 PSYCHOLOGICAL TEST THAT WAS ADMINISTERED IN MAY OF
24 1991?

25 A. I NEVER SAW IT.

1 Q. OKAY. WERE YOU FAMILIAR WITH THE RESULTS
2 OF IT?

3 A. I WAS FAMILIAR THAT HE -- THAT THE
4 PSYCHOLOGIST FELT HE DID NOT HAVE A SPECIFIC LEARNING
5 DISABILITY.

6 Q. UH-HUH.

7 A. THAT HE WAS A SLOW LEARNER.

8 Q. THAT HE WAS A SLOW LEARNER. WERE YOU
9 SURPRISED BY THAT ASSESSMENT?

10 A. NO.

11 Q. OKAY. WERE YOU AWARE THAT HE HAD BEEN
12 CLASSIFIED AS HAVING A LEARNING DISABILITY IN HIS
13 PREVIOUS SCHOOL BY THIS SAME TESTING GROUP?

14 A. NO, I WAS NOT AWARE OF THAT.

15 Q. WOULD IT SURPRISE YOU TO KNOW THAT HE WAS
16 CLASSIFIED AS THAT?

17 A. AS WITH A LEARNING DISABILITY?

18 Q. YES, MA'AM.

19 A. TELL ME THE QUESTION AGAIN.

20 Q. WOULD IT SURPRISE YOU TO LEARN THAT HE HAD
21 BEEN CLASSIFIED AS LEARNING DISABLED WHEN HE HAD BEEN
22 PREVIOUSLY TESTED?

23 A. NO.

24 Q. OKAY. HOW DO Y'ALL DETERMINE WHO IS
25 LEARNING DISABLED?

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1 A. WELL, FIRST, WE HAVE TO SEE HOW MUCH
2 DIFFICULTY A STUDENT HAS IN VARIOUS LEARNING THAT
3 GOES ON IN THE CLASSROOM. AND THEN WE TURN IT OVER
4 TO THE GUIDANCE COUNSELOR WHO COMES TO OUR CLASSROOM
5 AND ASSESSES THE STUDENT AND GIVES THEM A SCHLOSSON
6 OR WHATEVER TEST IS AVAILABLE AT THAT TIME. AND THEN
7 ON THE GUIDANCE COUNSELOR'S RECOMMENDATION, THE
8 PSYCHOLOGIST WILL COME AND TEST THEM.

9 Q. NOW, THESE PSYCHOLOGISTS, THEY ARE NOT
10 EMPLOYED BY YOUR SCHOOL DISTRICT, ARE THEY NOT?

11 A. YES, THEY ARE. AREN'T THEY?

12 Q. THESE ARE NOT CONTRACT PSYCHOLOGISTS?

13 A. HONESTLY, I SHOULD SAY I DON'T KNOW. I
14 THOUGHT THEY WERE EMPLOYED BY -- WELL, NOT -- NO.
15 THEY ARE OUTSIDE PEOPLE THAT WE HIRE IN. RIGHT.

16 Q. OUTSIDE PEOPLE YOU HIRE IN. OKAY.

17 A. RIGHT.

18 Q. WOULD IT BE TYPICAL FOR A REQUEST TO HAVE
19 A CHILD EVALUATED FOR CONSIDERATION FOR REMEDIAL
20 EDUCATION OR FOR LEARNING DISABILITY FOR THE SCHOOL
21 OR FOR THE TESTING AGENCY TO WAIT UNTIL MAY, THE END
22 OF THE SCHOOL YEAR TO TEST THEM?

23 A. WE TRY TO DO IT SOONER THAN THAT, BUT
24 THERE'S LOTS OF STUDENTS, AND THERE'S JUST LOTS GOING
25 ON DURING THE YEAR. AND AT THE TIME, I GUESS, WE'VE

1 -- YOU KNOW, IT WASN'T SOMETHING -- HE WAS ALREADY
2 GETTING HELP IN CHAPTER ONE, AND HE HAD REMEDIAL, AND
3 HE HAD INDIVIDUAL ATTENTION IN THE CLASSROOM. SO I
4 DON'T THINK -- IT WAS JUST THE RED TAPE INVOLVED,
5 JUST DIDN'T HAPPEN.

6 Q. OKAY. HE WAS STILL UNABLE TO LEARN, WAS
7 HE NOT?

8 A. HE WAS HAVING DIFFICULTY, BUT HE WAS NOT
9 UNABLE TO LEARN.

10 MR. NEWSOME: PLEASE ANSWER ANY QUESTIONS
11 THE SOLICITOR HAS.

12 C R O S S - E X A M I N A T I O N
13 BY MR. BAILEY:

14 Q. MS. LINK, I BELIEVE YOU TESTIFIED YOU HAD
15 HERMAN HUGHES FOR ONE YEAR, THE SIXTH GRADE?

16 A. RIGHT.

17 Q. AND I BELIEVE YOU TOLD MR. NEWSOME THAT HE
18 NEEDED SOME INDIVIDUAL ATTENTION?

19 A. UH-HUH.

20 Q. AND AS HIS CLASSROOM TEACHER, DID YOU
21 OFFER INDIVIDUAL ATTENTION TO HIM?

22 A. YES.

23 Q. WERE YOU ABLE TO HELP HIM AT RECESS, AT
24 LUNCH OR AFTER SCHOOL IF HE DESIRED HELP?

25 A. I WAS AVAILABLE, BUT USUALLY IT WAS JUST

1 WITHIN THE CLASSROOM.

2 Q. AND DID YOU ATTEMPT TO GO THE EXTRA MILE
3 FOR HIM, SINCE HE APPEARED TO BE FALLING BEHIND?

4 A. YES.

5 Q. AND DID HE RESPOND TO YOUR EFFORTS TO HELP
6 HIM OUT?

7 A. YES.

8 Q. OKAY. DID HE RESPOND COMPLETELY? DID HE
9 TRY HIS BEST TO DO -- TO DO HIS SCHOOL WORK?

10 A. I FEEL AT THAT TIME IN SIXTH GRADE, HERMAN
11 TRIED.

12 Q. AND YOU DID NOT HAVE HIM IN YOUR CLASS THE
13 FOLLOWING YEAR?

14 A. NO.

15 Q. OKAY. AND I BELIEVE YOU SAID THE SCHOOL
16 PSYCHOLOGIST FELT LIKE HE DIDN'T HAVE A SPECIFIC
17 LEARNING DISABILITY, AND YOU WERE NOT SURPRISED BY
18 THAT?

19 A. I WAS NOT SURPRISED.

20 Q. ALL RIGHT. AND THE SCHOOL DID TAKE SOME
21 ACTION TO HELP HIM OUT; IS THAT CORRECT?

22 A. YES.

23 Q. YOU SAID CHAPTER ONE. WHAT IS CHAPTER
24 ONE?

25 A. REMEDIAL.

1 Q. OKAY.

2 A. IT'S NO LONGER IN SERVICE RIGHT NOW, BUT
3 IT'S A REMEDIAL PROGRAM.

4 Q. AND THAT WAS A SPECIFIC PROGRAM DESIGNED
5 TO HELP KIDS THAT WERE BEHIND GET CAUGHT UP?

6 A. UH-HUH.

7 Q. WHAT ELSE DID THE SCHOOL DO TO TRY TO HELP
8 HERMAN HUGHES?

9 A. JUST INDIVIDUALIZED ATTENTION IN THE
10 CLASSROOM.

11 Q. ALL RIGHT. BEAR WITH ME JUST ONE SECOND,
12 PLEASE.

13 WHAT YEAR WAS IT THAT HERMAN WAS IN CLASS?

14 A. I'M NOT SURE.

15 Q. WAS IT '91?

16 A. MUST HAVE BEEN --

17 Q. WAS IT BEFORE '91?

18 A. I BELIEVE SO.

19 MR. BAILEY: THAT'S ALL I HAVE. THANK YOU
20 VERY MUCH.

21 MR. NEWSOME: LUCILLE HUGHES.

22 THE CLERK: IF YOU WOULD, PLEASE PLACE
23 YOUR LEFT HAND ON THE BIBLE AND PLEASE RAISE YOUR
24 RIGHT HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

25 THE WITNESS: LUCILLE HUGHES.

1 LUCILLE HUGHES,
2 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
3 TESTIFIED AS FOLLOWS:

4 D I R E C T E X A M I N A T I O N
5 BY MR. NEWSOME:

6 Q. MS. HUGHES, WOULD YOU STATE YOUR FULL NAME
7 FOR THE RECORD, PLEASE?

8 A. LUCILLE HUGHES.

9 Q. AND ARE YOU THE GRANDMOTHER OF HERMAN
10 HUGHES?

11 A. I'M HIS GRANDMOTHER AND HIS ADOPTED
12 MOTHER.

13 Q. ALL RIGHT. YOU ARE HIS ADOPTED MOTHER?

14 A. YEAH.

15 Q. WOULD YOU TELL THE LADIES AND GENTLEMEN OF
16 THE JURY HOW THAT ADOPTION CAME TO BE AND WHEN IT
17 OCCURRED?

18 A. HE WAS GIVEN TO ME WHEN HE WAS THREE YEARS
19 OLD.

20 Q. WHEN HE WAS THREE YEARS OLD?

21 A. YEAH.

22 Q. AND YOU SAY HE WAS GIVEN TO YOU. BY WHO?

23 A. HIS MOTHER AND FATHER.

24 Q. WERE THEY UNABLE TO TAKE CARE OF HIM AT
25 THAT TIME?

1 A. YES, THEY WAS. BUT -- WELL -- WELL,
2 MIRANDA SAID SHE WAS GOING OUT OF TOWN AND SHE WANTED
3 SOMEBODY TO KEEP IT.

4 Q. OKAY. NOW, I'M GOING TO HAVE TO ASK YOU
5 TO TALK A LITTLE LOUDER.

6 A. SHE SAID SHE WAS GOING OUT OF TOWN AND SHE
7 WANTED SOMEBODY TO KEEP IT, AND I TOLD HER WHY NOT
8 ME? SO SHE AGREED, YOU KNOW, TO LET -- ADOPT IT TO
9 ME. I ADOPTED IT, AND I RAISED HIM.

10 Q. OKAY.

11 A. UP UNTIL NOW.

12 Q. ALL RIGHT. SO YOU ADOPTED HIM WHEN HE WAS
13 ABOUT FOUR YEARS OLD? IS THAT WHEN THE ADOPTION WAS
14 COMPLETED?

15 A. ABOUT THREE.

16 Q. ABOUT THREE. ALL RIGHT. NOW, SINCE THAT
17 TIME, HAS HIS MOTHER, BIOLOGICAL MOTHER AND FATHER
18 BEEN INVOLVED AT ALL WITH HIS LIFE?

19 A. YEAH.

20 Q. HOW IS THAT?

21 A. WELL, HIS MOTHER -- NOT HIS FATHER BECAUSE
22 HIS FATHER WAS OUT OF TOWN, BUT HIS MOTHER WOULD --
23 YOU KNOW, SHE WOULD PICK HIM UP AND TAKE HIM HOME
24 WITH HER SOMETIMES. EVEN UNTIL -- JUST A FEW MINUTES
25 AGO, THEY WAS TALKING ABOUT, YOU KNOW, HE WAS SLOW IN

1 SCHOOL. I HAD HIM UNDER -- I HAD HIM TAKING COUNSEL
2 -- YOU KNOW, HE WOULD GO TO COUNSEL WITH ME BECAUSE I
3 GO TO COUNSEL.

4 Q. AGAIN, YOU'RE STARTING TO TRAIL OFF. TALK
5 LOUDER SO THEY CAN HEAR YOU.

6 A. AND SHE DIDN'T WANT HIM TO GO BECAUSE SHE
7 SAID HE WASN'T CRAZY. SO HE STOPPED.

8 Q. YOU HAD HIM GOING TO COUNSELING?

9 A. YEAH.

10 Q. WHEN DID YOU HAVE HIM GOING TO COUNSELING,
11 MS. HUGHES?

12 A. THAT WAS ABOUT THREE YEARS AGO.

13 Q. ABOUT THREE YEARS AGO?

14 A. UH-HUH, IN THE SIXTH GRADE.

15 Q. AND WHERE WAS HE GOING TO GET THIS
16 COUNSELING?

17 A. RAY CHASE IN ST. MATTHEWS ON 601.

18 Q. DID HERMAN HAVE PROBLEMS LEARNING IN
19 SCHOOL?

20 A. YES.

21 Q. OKAY. PRIOR TO THE SIXTH GRADE, DID HE
22 GET IN TROUBLE AT SCHOOL MUCH?

23 A. NO, SIR.

24 Q. ALL RIGHT.

25 A. HE WASN'T A BAD BOY. HE -- YOU KNOW, HE'S

1 QUIET AND EASY. HE DON'T EVEN TALK THAT MUCH. HE
2 LIKES TO LISTEN. AND I WOULD SAY SOME OF THE PEOPLE,
3 YOU KNOW, HE LIKES TO LOOK, YOU KNOW, AND LAUGH. HE
4 AIN'T NO TALKER.

5 Q. OKAY. NOW, MS. HUGHES, WHERE DO YOU LIVE
6 IN THIS COMMUNITY?

7 A. ST. MATTHEWS ON THE CALHOUN-BELLVIEW ROAD.

8 Q. OKAY. HOW LONG HAVE YOU LIVED HERE?

9 A. 26 YEARS.

10 Q. 26 YEARS? ALL RIGHT. IS YOUR HUSBAND
11 STILL ALIVE?

12 A. YEAH.

13 Q. ALL RIGHT. WHAT IS HIS NAME?

14 A. CHARLIE HUGHES.

15 Q. OKAY. NOW, WHERE DOES -- WHERE DOES YOUR
16 HUSBAND STAY RIGHT NOW?

17 A. HE'S IN THE -- THE OLD CALHOUN HOME, YOU
18 KNOW, IN ST. MATTHEWS.

19 Q. HE'S IN A NURSING HOME?

20 A. NURSING HOME, CONVALESCENT HOME.

21 Q. DID HE HAVE ANY MEDICAL PROBLEMS THAT
22 OCCURRED SOME YEARS AGO?

23 A. YEAH.

24 Q. HOW WAS THAT PROBLEM?

25 A. HE HAD A STROKE.

1 Q. HE HAD A STROKE?

2 A. YEAH.

3 Q. WAS IT A PRETTY SEVERE STROKE?

4 A. VERY SEVERE.

5 Q. HOW OLD WAS HERMAN WHEN THAT OCCURRED?

6 A. HERMAN WAS ABOUT 12, 13. ABOUT 12.

7 Q. OKAY. WHEN -- WHEN YOUR HUSBAND FIRST HAD
8 THE STROKE, DID HE LIVE AT HOME WITH YOU?

9 A. YEAH.

10 Q. OR DID HE GO TO THE NURSING HOME?

11 A. HE STAYED HOME WITH ME TWO-AND-A-HALF
12 YEARS.

13 Q. TWO-AND-A-HALF YEARS AFTER HE HAD THE
14 STROKE?

15 A. YEAH.

16 Q. WAS HE ABLE TO GET AROUND?

17 A. NOT VERY -- NOT WELL.

18 Q. OKAY.

19 A. POKEY WOULD HELP ME GET HIM AROUND, GET
20 HIM OUT OF THE BED.

21 Q. ARE YOU TALKING ABOUT HERMAN WHEN YOU SAY
22 POKEY?

23 A. YEAH.

24 Q. WHO GAVE HIM THAT NICKNAME?

25 A. ALL OF US DID.

1 Q. ALL OF YOU?

2 A. ALL OF THE FAMILY DID.

3 Q. OKAY.

4 A. HE WAS A LITTLE FAT CHUNKY BOY, AND THEY
5 NAMED HIM PORKY PIG.

6 Q. OKAY.

7 A. SO WE CALLED HIM PORKY.

8 Q. DID HE HELP YOU TAKE CARE OF MR. HUGHES?

9 A. YES.

10 Q. HOW DID HE ACT TOWARDS YOU?

11 A. HE WAS REAL SWEET TO ME. I DIDN'T HAVE NO
12 TROUBLE OUT OF HIM WHATSOEVER, ME OR CHARLIE. WHEN I
13 ASKED HIM TO DO SOMETHING, HE WOULD DO IT.

14 Q. WAS HIS FATHER, HERMAN HUGHES, SENIOR, WAS
15 HE AROUND WHEN HERMAN WAS GROWING UP?

16 A. NOT TOO OFTEN. A COUPLE OF TIMES, ABOUT
17 THREE OR FOUR TIMES A YEAR HE WOULD COME HOME. NOT
18 VERY MUCH.

19 Q. FOR HOW LONG?

20 A. COME HOME AND STAY SOMETIMES A WEEK,
21 SOMETIMES TWO. SOMETIMES HE WOULD STAY A MONTH.

22 Q. DID HERMAN ASK QUESTIONS ABOUT WHY HIS
23 FATHER DIDN'T LIVE WITH HIM?

24 A. NO, BECAUSE HE WOULD CALL OFTEN AND TALK
25 TO HIM.

1 Q. OKAY. WHAT ABOUT HERMAN'S MOTHER?

2 A. HE WOULD SEE HER RIGHT OFTEN. SHE WOULD
3 COME AND GET HIM SOME WHEN HE CAME. HE STAYED IN
4 COLUMBIA WITH HER.

5 Q. OKAY.

6 A. AND WHEN SHE DIDN'T COME GET HIM, SHE
7 WOULD COME BY AND SEE HIM.

8 Q. DID YOU DO ANYTHING TO TRY TO STOP HIM
9 FROM SEEING HIS BIOLOGICAL MOTHER?

10 A. NO.

11 Q. DID YOU AND SHE GET ALONG DURING THAT
12 PERIOD OF TIME?

13 A. YEAH. ME AND HER GOT ALONG PRETTY GOOD.
14 BUT ME AND HER WAS HAVING SOME DIFFICULTY AFTER SHE
15 MOVED BACK DOWN THERE BECAUSE I DIDN'T WANT HIM TO
16 STAY DOWN THERE TOO MUCH. BUT YOU SEE, WHEN HE GOT
17 INTO THIS, HE WAS WITH HER.

18 Q. HE WOULD STAY PERIODS OF TIME AND LIVE
19 WITH HIS MOTHER?

20 A. UH-HUH, ON THE WEEKEND.

21 Q. ALL RIGHT. NOW, DID YOUR DISAGREEMENTS
22 WITH HER, THAT CAME INTO PLAY DURING THE COUNSELING
23 THAT YOU ASKED HIM -- THAT YOU WANTED HIM TO GET?

24 A. YES, I DID, BECAUSE I FEEL LIKE HE NEED
25 IT, AND THEN I DIDN'T THOUGHT YOU GOT TO BE CRAZY TO

1 GET COUNSELING BECAUSE I WAS GETTING COUNSELING, AND
2 I KNOW I'M NOT CRAZY. I STILL GO TO COUNSELING.

3 Q. OKAY. AND IT WAS YOUR -- WHO STARTED THE
4 COUNSELING, THE PEOPLE AT SCHOOL ASKED YOU?

5 A. NO. I DID IT MYSELF.

6 Q. OKAY. WHAT WAS HE DOING AT THAT TIME THAT
7 CAUSED YOU TO THINK HE NEEDED COUNSELING?

8 A. WELL, HE WAS SLOW IN SCHOOL, BECAUSE I
9 WOULD GO TO HIS SCHOOL QUITE OFTEN AND TALK TO THE
10 PRINCIPAL, AND THEY WOULD TELL ME HOW SLOW HE WAS IN
11 SCHOOL. SO I FIGURE IF I TAKE HIM TO COUNSELING WITH
12 ME, IT MIGHT WOULD HELP.

13 Q. OKAY.

14 A. SO I WOULD TAKE HIM.

15 Q. DID HIS FATHER TRY TO HELP WITH THESE
16 COUNSELING SESSIONS?

17 A. WELL, HE WASN'T HOME AT THE TIME WHEN I
18 STARTED TAKING HIM TO COUNSELING. AND BY THE TIME HE
19 GOT HOME, HE HAD DONE STOPPED.

20 Q. OKAY. WHO WAS HERMAN'S FATHER FIGURE
21 GROWING UP?

22 A. HERMAN'S FATHER?

23 Q. FATHER FIGURE. WHO IS THE ONE WHO TOOK
24 THE PLACE OF HIS DAD WHEN HIS REAL DAD WAS GONE?
25 WHAT MAN TOOK THAT PLACE?

1 A. WELL, REALLY, YOU KNOW, HE HAD BEEN WITH
2 ME AND CHARLIE JUST ABOUT ALL OF HIS LIFE. HE HAD --
3 HE LOVED HIS FATHER, AND HE WOULD LOVE HIS MOTHER,
4 BUT CHARLIE WAS HIS FATHER FIGURE.

5 Q. OKAY.

6 A. MY HUSBAND.

7 Q. AND THAT'S YOUR HUSBAND, HIS GRANDFATHER?

8 A. YEAH.

9 Q. DID HERMAN -- AFTER CHARLIE HAD TO BE PUT
10 IN THE NURSING HOME, DID HERMAN'S BEHAVIOR CHANGE
11 DURING THAT TIME?

12 A. NOT VERY MUCH.

13 Q. OKAY.

14 A. NOT VERY MUCH.

15 Q. OKAY. NOW, YOU'VE HEARD IT DESCRIBED THAT
16 HE STARTED GETTING INTO A LITTLE BIT MORE PROBLEMS IN
17 SCHOOL --

18 A. YEAH.

19 Q. -- AFTER THE SECOND TIME HE WAS PUT IN THE
20 SIXTH GRADE.

21 A. YEAH.

22 Q. TELL ME THE THINGS THAT YOU TRIED TO DO TO
23 HELP DURING THAT TIME.

24 A. WELL, I WOULD GO TO SCHOOL AND TALK TO THE
25 PRINCIPAL. HE WAS GETTING A LITTLE CHECK THROUGH THE

1 MAIL, AND I EVEN TOLD HIM, I SAID, "PORKY, I'LL PUT
2 YOUR CHECK IN THE BANK." I SAID, "IF YOU MAKE IT
3 THROUGH, I'LL GET YOU A LITTLE CAR." I DID
4 EVERYTHING I COULD DO BECAUSE I WAS THE REAL MOTHER.

5 Q. YOU PUT --

6 A. YEAH. I WAS THE REAL MOTHER.

7 Q. DO YOU THINK HE WAS TRYING TO LEARN IN
8 SCHOOL?

9 A. YEAH. HE DID BETTER FOR A WHILE. HE DID
10 BETTER.

11 Q. NOW, MS. HUGHES, DID YOU EVER ASK FOLKS AT
12 THE ST. MATTHEWS POLICE TO TALK TO HERMAN WHEN HE
13 STARTED RUNNING WITH SOME PEOPLE?

14 A. YES. I HAD MR. GREEN KIND OF WATCH HIM
15 FOR ME.

16 Q. SERGEANT GREEN?

17 A. YEAH.

18 Q. THE MAN WHO TESTIFIED LAST WEEK?

19 A. YEAH.

20 Q. OKAY. HOW MANY TIMES DID YOU ASK HIM TO
21 TALK WITH HERMAN?

22 A. OH, THREE OR FOUR TIMES.

23 Q. OKAY. AND THIS WAS AFTER HERMAN'S
24 GRANDFATHER WAS PUT IN THE NURSING HOME?

25 A. YEAH.

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1 Q. WAS HERMAN EVER DISRESPECTFUL OR VIOLENT
2 TOWARD YOU?

3 A. OH, LORD, NO. NO. NO, SIR. HE WASN'T.
4 HERMAN, TO ME AND WITH ME, HE WAS JUST LIKE A LITTLE
5 THREE OR FOUR-YEAR-OLD CHILD WITH ME UP UNTIL NOW, UP
6 UNTIL RIGHT NOW. AND I'D ASK HIM TO DO SOMETHING AND
7 HE'D BE RIGHT ON IT. AND I COULD TELL HIM TO SHUT
8 UP, AND HE WOULD SHUT RIGHT UP. I NEVER HAD NO
9 PROBLEM OUT OF HIM. ME NOR CHARLIE, NEITHER ONE OF
10 US.

11 Q. DID HIS BIOLOGICAL FATHER, HERMAN SENIOR,
12 DID HE HAVE PROBLEMS GETTING ALONG WITH HERMAN?

13 A. NO. THEY WERE LIKE TWO KIDS. WHEN
14 THEY'RE TOGETHER, IT'S LIKE TWO KIDS. NO PROBLEM,
15 THAT.

16 Q. MS. HUGHES, I NEED TO ASK YOU ABOUT THAT
17 INCIDENT THAT WAS TESTIFIED TO ABOUT THE TIME THE
18 POLICE CAME OUT THERE ABOUT THE GUN. DO YOU REMEMBER
19 THAT?

20 A. YEAH.

21 Q. OKAY. WOULD YOU PLEASE TELL THE LADIES
22 AND GENTLEMEN OF THE JURY WHAT HAPPENED THAT DAY?

23 A. WELL, I WENT OUT TO A FRIEND'S HOUSE THAT
24 DAY, AND ONE OF MY COUSINS WAS AT THE HOUSE, TOO,
25 EVETTE. AND HERMAN. AND LITTLE CHARLIE WAS WITH ME,

1 TOO. SO IT WAS A BIG BOY -- THIS IS NEXT DOOR. HE'S
2 A BIG OLE BOY, AND HE WAS BEATING HERMAN. HE WAS
3 BEATING LITTLE CHARLIE.

4 Q. HOW OLD IS LITTLE CHARLIE NOW?

5 A. I THINK HE'S 12, ISN'T HE?

6 Q. OKAY. HE'S 12 NOW, SO THIS WOULD HAVE
7 BEEN -- HE WOULD HAVE BEEN ABOUT 10 THEN?

8 A. NO. HE WAS ABOUT NINE THEN.

9 Q. NINE? OKAY.

10 A. AND HE WAS BEATING HIM, AND I THINK HERMAN
11 WAS SCARED OF HIM, TOO, BECAUSE HE WAS A MUCH BIGGER
12 BOY THAN ANY OF THEM, AND HE WENT IN MY HOUSE AND GOT
13 MY PISTOL.

14 Q. WHAT KIND OF PISTOL WAS IT?

15 A. A .32.

16 Q. DID HE AIM IT AT ANYBODY?

17 A. NO. HE SHOT IT STRAIGHT UP IN THE AIR.

18 Q. OKAY. AND THE POLICE CAME OUT THERE, AND
19 WHO GAVE THE POLICE THE GUN?

20 A. NO. HE DIDN'T GIVE THE POLICE THE GUN.
21 WHEN I GOT THERE, I TAKED THE GUN DOWN TO THE POLICE
22 STATION. HE CAME OUT, BUT I TOOK THE GUN DOWN THERE
23 MYSELF.

24 Q. OKAY. AND HERMAN WAS NEVER ARRESTED ON
25 THOSE CHARGES, WAS HE?

1 A. NO.

2 Q. OKAY. THE POLICE INVESTIGATED AND JUST
3 LET IT GO AT THAT?

4 A. YEAH.

5 Q. MS. HUGHES, IS THERE ANYTHING ELSE YOU
6 WOULD LIKE TO TELL THE JURY ABOUT HERMAN?

7 A. ONLY JUST MY LITTLE FELLOW AIN'T WHAT A
8 LOT OF PEOPLE THINK HE IS, AND YOU KNOW, I BELIEVE
9 EVERYTHING HE TELLS ME BECAUSE I NEVER HAD NO PROBLEM
10 OUT OF HIM LYING TO ME BECAUSE HE WOULD KNOW BETTER
11 THAN TO LIE TO ME. I RAISED SIX KIDS OF MY OWN, AND
12 I DIDN'T HAVE NO TROUBLE OUT OF NONE OF MY KIDS.
13 AIN'T MANY WHITE PEOPLE GOT KIDS IN ST. MATTHEWS THAT
14 I DIDN'T HAVE A HAND ON, AND EVERY ONE OF THEM HONOR
15 ME YET TODAY. SO HE WASN'T NO TROUBLE. BUT HE JUST
16 FOLLOWED THE WRONG CROWD, I RECKON.

17 Q. YOU'VE TAKEN CARE OF ALL OF THE CHILDREN
18 IN THIS TOWN?

19 A. JUST ABOUT EVERY -- ALL OF THESE WHITE
20 CHILDREN IN ST. MATTHEWS, I'M THEIR BLACK MOTHER.

21 Q. ALL RIGHT, MS. HUGHES.

22 A. UP UNTIL YESTERDAY.

23 MR. NEWSOME: PLEASE ANSWER THE QUESTIONS
24 MR. BAILEY HAS FOR YOU.

25 C R O S S - E X A M I N A T I O N

1 BY MR. BAILEY:

2 Q. I HAVE A FEW QUESTIONS FOR YOU. YOU WERE
3 ALWAYS THERE FOR HERMAN, WEREN'T YOU?

4 A. THAT'S RIGHT.

5 Q. AND HIS MOTHER WAS THERE TOO? EVEN THOUGH
6 HE LIVED WITH YOU AT TIMES, HIS MOTHER WAS HERE IN
7 ST. MATTHEWS; IS THAT CORRECT?

8 A. NO. HIS MOTHER WAS IN COLUMBIA.

9 Q. OKAY. WELL, HIS MOTHER WAS IN ST.
10 MATTHEWS A PORTION OF THE TIME; IS THAT RIGHT?

11 A. YEAH. SHE WOULD COME QUITE REGULAR TO SEE
12 HIM.

13 Q. AND AT THE TIME HERMAN'S FATHER WAS HERE,
14 THEY GOT ALONG WELL?

15 A. YES.

16 Q. SO HERMAN HAD PLENTY OF LOVE FROM THE
17 FAMILY, DIDN'T HE?

18 A. YEAH.

19 Q. PLENTY OF SUPPORT. AND WHEN HE WOULD GET
20 IN TROUBLE WITH THE SCHOOL SYSTEM, THE SCHOOL WOULD
21 EITHER CONTACT YOU OR HIS MOTHER?

22 A. I WOULD BE RIGHT THERE, AND SHE TOO.

23 Q. OKAY. SO THE SCHOOL TRIED TO WORK WITH
24 HIM AND YOU TRIED TO WORK WITH HIM?

25 A. THAT'S RIGHT.

1 Q. AND HIS MOTHER AND FATHER TRIED TO WORK
2 WITH HIM?

3 A. YES.

4 MR. BAILEY: THANK YOU. THAT'S ALL I
5 HAVE.

6 THE COURT: YOU MAY COME DOWN. THANK YOU,
7 MS. HUGHES.

8 MR. NEWSOME: YOUR HONOR, AT THIS TIME OUR
9 NEXT WITNESS IS NOT HERE.

10 THE COURT: WOULD YOU LIKE TO TAKE A SHORT
11 BREAK? WE'LL SEE WHERE THAT NEXT WITNESS COULD BE.
12 I'LL LET YOU GO TO YOUR JURY ROOM.

13 (WHEREUPON, THE JURY WAS REMOVED
14 FROM THE COURTROOM AND THE
15 FOLLOWING PROCEEDINGS COMMENCED
16 IN OPEN COURT.)

17 MR. HENDRICKS: MY NAME IS JOHN HENDRICKS,
18 AND I REPRESENT THE DEPARTMENT OF SOCIAL SERVICES.
19 WE'VE BEEN REQUESTED BY THE COURT TO COME DOWN, AND
20 WE'VE GOT A COURT ORDER THAT REQUIRED US TO PRESENT
21 TO THE DEFENSE SOME RECORDS INVOLVING THE MOTHER OF
22 THIS DEFENDANT. IT'S MY UNDERSTANDING THAT THE
23 DEFENSE NOR THE PROSECUTION NEEDS FOR US TO STAY ANY
24 LONGER. I JUST WANT TO MAKE SURE THAT'S THE CASE. I
25 DON'T WANT TO LEAVE IF YOU NEED ME OR IF YOU NEED US.

1 THE COURT: WELL, LET ME ASK YOU THIS.
2 HOW LONG WILL WE BE HAVING TESTIMONY ABOUT THESE
3 RECORDS?

4 MR. NEWSOME: I'M NOT SURE WE'LL HAVE ANY
5 TESTIMONY CONCERNING THE RECORDS. WE NEED TO BE ABLE
6 TO EXAMINE THOSE RECORDS, AND THAT'S IT. I'M NOT
7 SURE WE NEED IT.

8 THE COURT: WELL, IF THERE'S ANY QUESTION
9 ABOUT IT, NOW, HIS TIME IS VALUABLE. I'M PREPARED TO
10 RELEASE HIM, BUT IF YOU HAVE ANY QUESTIONS ABOUT IT,
11 I DON'T WANT SOMETHING TO COME UP AND YOU SAY WE NEED
12 HIM.

13 MR. HENDRICKS: IF YOU THINK YOU MIGHT
14 NEED US, WE'LL STAY. YOU KNOW, WHATEVER YOU NEED,
15 YOUR HONOR.

16 THE COURT: WELL, I'M NOT SURE. IT'S WHAT
17 THEY NEED.

18 MR. HENDRICKS: YES, SIR. I UNDERSTAND.

19 THE COURT: YOUR SERVICES ARE VERY
20 VALUABLE TO YOUR CLIENTS AND TO THE STATE OF SOUTH
21 CAROLINA, AND I DON'T WANT TO INJURE YOU UNDULY.

22 MR. HENDRICKS: APPRECIATE THAT.

23 MR. NEWSOME: WE CAN RELEASE HIM, YOUR
24 HONOR.

25 THE COURT: THANK YOU SO MUCH FOR YOUR

1 COOPERATION.

2 ARE YOU READY TO PROCEED?

3 MR. NEWSOME: YES, YOUR HONOR, I AM.

4 THE COURT: ARE YOUR TWO DOCTORS HERE NOW?

5 MR. NEWSOME: ONE IS HERE. THE OTHER ONE
6 IS DUE HERE AT 3:00. I'M GOING TO START WITH ONE OF
7 THE DOCTORS NOW. I THINK I CAN KEEP US GOING.

8 (WHEREUPON, THE JURY WAS
9 RETURNED TO THE COURTROOM AND
10 THE FOLLOWING PROCEEDINGS WERE
11 COMMENCED IN OPEN COURT.)

12 THE COURT: JURY'S PRESENT.

13 MR. NEWSOME: YOUR HONOR, WE CALL DR.
14 HAROLD MORGAN TO THE STAND.

15 THE CLERK: IF YOU WOULD, PLEASE STATE
16 YOUR NAME FOR THE RECORD.

17 THE WITNESS: HAROLD CLIFFORD MORGAN.

18 HAROLD CLIFFORD MORGAN, M.D.,
19 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
20 TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. NEWSOME:

23 Q. DR. MORGAN, WHERE ARE YOU EMPLOYED
24 CURRENTLY?

25 A. MY OFFICE IS AT COLUMBIA.

1 Q. OKAY. WOULD YOU TELL THE LADIES AND
2 GENTLEMEN OF THE JURY YOUR EDUCATION, YOUR TRAINING
3 AND YOUR FIELD?

4 A. SURE. I AM A MEDICAL DOCTOR. I
5 SPECIALIZE IN PSYCHIATRY. I HAD MY UNDERGRADUATE
6 COLLEGE WORK AT EMORY UNIVERSITY IN ATLANTA.
7 FINISHED THAT UP WITH A BACHELOR OF ARTS DEGREE IN
8 1958, AND FROM THERE TO THE MEDICAL COLLEGE OF
9 GEORGIA WITH A DOCTORATE OF MEDICINE DEGREE IN 1962,
10 AND THEN CAME TO COLUMBIA TO WHAT WAS THEN THE OLD
11 COLUMBIA HOSPITAL FOR AN INTERNSHIP, AND THEN SPENT
12 THREE YEARS IN TRAINING, SPECIALIZED TRAINING IN
13 PSYCHIATRY AT THE WILLIAM S. HALL PSYCHIATRIC
14 INSTITUTE, WHICH IS NOW PART OF THE UNIVERSITY OF
15 SOUTH CAROLINA SCHOOL OF MEDICINE IN THEIR DEPARTMENT
16 OF PSYCHIATRY.

17 AND THEN WHEN I FINISHED THAT UP IN 1966, WAS
18 ASKED TO STAY ON FOR ANOTHER YEAR TO TEACH AT THE
19 HALL INSTITUTE. DID THAT, AND THEN IN 1967 OPENED MY
20 OFFICE FOR THE PRACTICE OF PSYCHIATRY IN COLUMBIA,
21 AND DID THAT FOR SEVERAL YEARS. AND THEN IN 1976, I
22 TOOK SOME TIME OFF FOR ADVANCED TRAINING IN FORENSIC
23 PSYCHIATRY AT HARVARD UNIVERSITY FOR A YEAR THERE,
24 AND CAME BACK IN 1977 AND REOPENED MY OFFICE FOR THE
25 PRACTICE OF PSYCHIATRY, PARTICULARLY WITH AN INTEREST

1 IN FORENSIC PSYCHIATRY.

2 AND THAT'S BASICALLY WHAT I'VE BEEN DOING SINCE
3 1977. I'M IN PRIVATE PRACTICE AND MAINTAIN AN OFFICE
4 IN COLUMBIA SINCE 1967 WITH THE EXCEPTION OF THAT
5 YEAR IN BOSTON AT HARVARD.

6 Q. ALL RIGHT. DOCTOR, HAVE YOU TAUGHT
7 ANYWHERE IN THIS FIELD?

8 A. YES. THE YEAR AFTER I FINISHED MY
9 TRAINING, I STAYED ON TO TEACH FOR THE EXTRA YEAR, AS
10 I MENTIONED. AND THEN WHEN I WAS AT HARVARD, ONE OF
11 MY DUTIES WAS AS AN ASSISTANT OR -- I'VE FORGOTTEN
12 THE TITLE, BUT ANYWAY IT WAS TEACHING AT THE HARVARD
13 MEDICAL SCHOOL FOR THAT YEAR, AND I AM PRESENTLY A
14 CLINICAL PROFESSOR OF PSYCHIATRY AT THE SOUTH
15 CAROLINA SCHOOL OF MEDICINE.

16 Q. HOW LONG HAVE YOU BEEN EMPLOYED IN THAT
17 CAPACITY?

18 A. WELL, I'M NOT SURE. I THINK THE MEDICAL
19 SCHOOL IS PROBABLY TEN OR TWELVE YEARS OLD. THE
20 DEPARTMENT OF PSYCHIATRY, SOMETIME IN THE LAST MAYBE
21 SIX OR SEVEN OR EIGHT YEARS, DECIDED TO DEVELOP A
22 PROGRAM IN FORENSIC PSYCHIATRY AS A PART OF THEIR
23 PSYCHIATRY TRAINING PROGRAM. THEY ASKED ME TO
24 CONSULT WITH THEM ABOUT DEVELOPING THAT, SO I WOULD
25 SAY PROBABLY MAYBE SIX OR EIGHT YEARS, SOMETHING LIKE

1 THAT.

2 WHAT THAT INVOLVES, REALLY, IS NOT SO MUCH
3 TEACHING IN THE CLASSROOM AS THE YOUNG DOCTORS WHO
4 ARE -- MOST OF THEM ARE CLOSE TO FINISHING UP THEIR
5 TRAINING. THEY ARE SENT OVER TO MY OFFICE TO SPEND
6 SOME TIME DOING FORENSIC PSYCHIATRY WITH ME TO SORT
7 OF SEE WHAT IT'S LIKE WORKING IN A PRIVATE OFFICE
8 DOING FORENSIC PSYCHIATRY.

9 Q. OKAY.

10 A. SOMEWHERE ALONG THE WAY, I MAYBE SHOULD
11 ADD THAT I'M LICENSED TO PRACTICE MEDICINE IN SOUTH
12 CAROLINA AS WELL AS IN GEORGIA, AND THAT I AM
13 CERTIFIED IN GENERAL PSYCHIATRY BY THE AMERICAN BOARD
14 OF PSYCHIATRY AND NEUROLOGY, AND FORENSIC PSYCHIATRY
15 BY THE AMERICAN BOARD OF FORENSIC PSYCHIATRY.

16 Q. ARE YOU A MEMBER OF ANY PROFESSIONAL
17 ORGANIZATIONS?

18 A. YES. I'M A MEMBER OF THE COLUMBIA MEDICAL
19 SOCIETY, THE SOUTH CAROLINA MEDICAL ASSOCIATION,
20 AMERICAN PSYCHIATRIC ASSOCIATION, THE AMERICAN
21 ACADEMY OF PSYCHIATRY AND LAW, SOUTH CAROLINA
22 PSYCHIATRIC ASSOCIATION. DID I SAY THAT? THOSE ARE
23 THE MAIN ONES, I THINK.

24 Q. ARE YOU BOARD CERTIFIED IN ANY AREAS?

25 A. YES. THE TWO AREAS THAT I MENTIONED,