

18261

VOLUME 1 OF 4

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

ROBERT ANTHONY JAMES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

AMENDED APPENDIX

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Costa M. Pleicones, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KENNETH JAMES AND
ROBERT ANTHONY JAMES,

APPELLANTS.

RECORD ON APPEAL

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ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT NOS.
99-GS-40-19023, 19103, 19104, 19105,
19107, 19108, 19109, 19110, 19300,
19301, 22845, 22846, 44040

THE STATE)

-vs-)

KENNEITH JAMES)
and ROBERT JAMES)

TRANSCRIPT OF RECORD
(Trial - Volume 1)

Monday, September 20, 1999
Columbia, South Carolina

B E F O R E:

THE HONORABLE COSTA M. PLEICONES, Judge; and a jury.

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Attorneys for the State

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Robert Sneed, Assistant Public Defender
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(SW) - DENOTES STATE'S WITNESS
(DW) - DENOTES DEFENDANT'S WITNESS

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1 MONDAY, SEPTEMBER 20, 1999

2 THE COURT: MR. SHUPPER, THIS GENTLEMAN IN PRISON GARB
3 IS YOUR CLIENT, ROBERT JAMES?

4 MR. SHUPPER: YES, YOUR HONOR.

5 THE COURT: OF COURSE THAT WILL HAVE TO BE CHANGED
6 BEFORE WE GET ANYWHERE CLOSE TO A JURY.

7 MR. SHUPPER: YES, SIR. I UNDERSTAND THE PUBLIC
8 DEFENDER'S OFFICE MAY HAVE SOME CLOTHING MADE AVAILABLE TO US
9 FOR JUST SUCH PURPOSES.

10 THE COURT: OKAY. WE'VE GOT A NUMBER OF MOTIONS THAT
11 HAVE BEEN NOTICED IN THIS CASE, WHICH IS — OH. I'M SORRY.
12 IS THE OTHER DEFENDANT HERE AS WELL?

13 MR. STRICKLER: YES, SIR. THIS IS KENNETH JAMES.

14 THE COURT: OKAY. A NUMBER OF MOTIONS WHICH HAVE BEEN
15 NOTICED BY EACH SIDE, OR ALL THREE SIDES ACTUALLY. I THINK
16 PROBABLY THE ONE THAT LOGICALLY OUGHT TO BE TAKEN UP FIRST,
17 ALTHOUGH LOGICALLY MOTIONS TO DISMISS, DISPOSITIVE MOTIONS,
18 SHOULD BE TAKEN UP FIRST, I THINK THAT FROM A PRACTICAL
19 STANDPOINT WE OUGHT TO TAKE UP THE DEFENDANT ROBERT JAMES'S
20 MOTION TO SEVER IN WHICH I BELIEVE THE DEFENDANT KENNETH
21 JAMES DOES NOT JOIN. IS THAT CORRECT?

22 MR. STRICKLER: YOUR HONOR, ACTUALLY, THE DEFENDANT
23 KENNETH JAMES WOULD JOIN IN THAT MOTION.

24 THE COURT: THIS WOULD BE A DECISION OF RECENT VINTAGE
25 THEN.

1 MR. STRICKLER: THIS WOULD BE A DECISION THAT I'VE BEEN
2 DISCUSSING SINCE MEETING IN YOUR OFFICE, YOUR HONOR.

3 THE COURT: OKAY.

4 MR. STRICKLER: I HAVE NOTHING TO ADD REGARDING MR.
5 SHUPPER'S MOTION. WE'D SIMPLY LIKE TO BE THE MASTERS OF OUR
6 OWN DESTINY AS FAR AS THE TRIAL OF THE CASE GOES.

7 THE COURT: SURE. LET ME MAKE SURE THAT I UNDERSTAND
8 IT. THE BACKGROUND THAT I KNOW ABOUT IS THAT THE STATE HAD
9 AT ALL TIMES PRIOR TO JUST RECENTLY INDICATED THAT IT
10 INTENDED TO TRY THE DEFENDANTS SEPARATELY. REPRESENTATIONS
11 MADE BY COUNSEL IN CHAMBERS AS I RECALL SAID THAT THAT
12 DECISION WAS BORN OF THE PRACTICAL EXPEDIENT OF NOT ALLOWING
13 THE DEFENDANTS IN EFFECT 20 STRIKES TO BE USED IN A COMBINED
14 BASIS. IT WAS A STRATEGIC DECISION. IS THAT CORRECT, MR.
15 GASSER?

16 MR. GASSER: THAT'S CORRECT, YOUR HONOR.

17 THE COURT: ALL RIGHT. AGAINST THAT BACKDROP, AND THAT
18 IS REALLY ALL I WANTED TO GET ON THE RECORD HERE, BECAUSE
19 THERE HAD BEEN SOME HISTORY WHEREIN THE STATE WAS REQUESTING
20 SEPARATE TRIALS, OR IT INTENDED TO PROCEED SEPARATELY, MR.
21 SHUPPER, I HAVE YOUR MOTION TO SEVER, YOUR WRITTEN MOTION,
22 WHICH I ASSUME IS OF RECORD ALREADY BECAUSE IT'S BEEN FILED;
23 BUT I WOULD APPRECIATE YOUR AT THIS TIME ARGUING THAT MOTION
24 AND BRINGING BEFORE THE COURT THOSE MATTERS WHICH YOU BELIEVE
25 WOULD BE GERMANE TO THIS ISSUE.

1 MR. SHUPPER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
2 COURT. BOTH DEFENDANTS KENNETH JAMES, MR. STRICKLER'S
3 CLIENT, AND ROBERT ANTHONY JAMES, MY CLIENT, ARE BROTHERS.
4 THEY, AS YOU NOTED, HAVE BEEN INFORMED OF SEPARATE TRIALS
5 THAT WOULD BE PLANNED AND THAT SOME FACTORS IN ADDITION TO
6 THOSE THAT YOU MENTIONED WERE THAT MR. STRICKLER HAD A TRIAL
7 AT THE TIME WHEN THESE TRIALS WERE ORIGINALLY SCHEDULED. MR.
8 STRICKLER WAS SCHEDULED TO TRY -- THAT MR. KENNETH JAMES WAS
9 SCHEDULED TO BE TRIED ON AUGUST 7TH; MY CLIENT APPROXIMATELY
10 TWO WEEKS LATER.

11 THE BASIS FOR THE MOTION TO SEVER, YOUR HONOR, IS THAT
12 THERE'S A GREAT DISPARITY IN THE NATURE AND QUANTITY AND
13 QUALITY OF THE EVIDENCE AGAINST MY CLIENT AS COMPARED TO MR.
14 KENNETH JAMES.

15 THE COURT: OKAY.

16 MR. SHUPPER: THERE IS A POTENTIAL THERE THAT WOULD BE
17 -- ALTHOUGH AS FAR AS MR. KENNETH JAMES, IDENTIFICATION -- I
18 MEAN ROBERT JAMES -- IDENTIFICATION IS THE ISSUE, THE MAIN
19 ISSUE, THERE IS A CHANCE THAT THERE WOULD BE ANTAGONISTIC
20 DEFENSES PRESENTED BY MR. KENNETH JAMES, WHICH I ASSUME IS
21 WHY MR. STRICKLER JOINED WITH THIS MOTION.

22 THE GREATEST AND MOST DAMAGING EVIDENCE --

23 THE COURT: BEAR IN MIND THAT I AM LISTENING TO YOU EVEN
24 IF I LOOK DOWN FROM TIME TO TIME AT THIS COMPUTER BECAUSE I'M
25 ALSO TAKING A LOOK AT SOME CASES AS WELL. PLEASE GO AHEAD.

1 MR. SHUPPER: I UNDERSTAND, YOUR HONOR.

2 THE COURT: I DIDN'T MEAN TO INTERRUPT.

3 MR. SHUPPER: THE DNA EVIDENCE ANALYZED BY SLED AGENTS
4 INCLUDE A SWAB FROM THE MEDICAL EXAMINATION OF MS. BROWN AT
5 THE HOSPITAL FROM WHICH SEMEN AND SPERMATOZOA WERE TAKEN AND
6 COMPARED WITH DNA SAMPLES TAKEN FROM BOTH DEFENDANTS. SLED
7 ANALYSIS CONFIRMED, CLEARLY CONFIRMS, AND EXCLUDES ROBERT
8 ANTHONY JAMES AS THE DONOR OF SUCH SEMEN.

9 THE COURT: MAY I ASK, AND JUST FOR MY OWN EDIFICATION
10 AT THIS POINT, CAN SOMEBODY TELL ME IF THERE ARE OTHERS?
11 BECAUSE MY UNDERSTANDING IS THERE'S AN ALLEGATION THAT THERE
12 WERE MORE THAN TWO PARTICIPANTS IN THIS SEXUAL ASSAULT. AND
13 ARE OTHERS IDENTIFIED WITH DNA?

14 MR. GASSER: NO, SIR, YOUR HONOR. THERE WERE FIVE
15 ASSAILANTS ACCORDING TO THE STATE'S CASE, THREE OF WHICH HAVE
16 NEVER BEEN IDENTIFIED AND HAVE NEVER BEEN ARRESTED. AND THE
17 DNA IS DNA SPERM TAKEN FROM THE VAGINAL VAULT FROM THE RAPE
18 PROTOCOL MATCHES ONLY ONE AND ONLY ONE INDIVIDUAL AND THAT
19 WOULD BE —

20 THE COURT: KENNETH.

21 MR. GASSER: — KENNETH JAMES.

22 THE COURT: OKAY. THANK YOU. PLEASE, I'M SORRY, MR.
23 SHUPPER. GO AHEAD.

24 MR. SHUPPER: THE LACK OF DNA EVIDENCE OR THE FACT THAT
25 THE DNA ANALYSIS EXCLUDES MY CLIENT AND THE FACT THAT THE DNA

1 ANALYSIS MATCHES MR. STRICKLER'S CLIENT IS OF GREAT
2 DISPARITY. AND I HAVE GRAVE CONCERNS THAT THE NATURE AND
3 WEIGHT OF THAT EVIDENCE AND THE FACT THAT THESE GENTLEMEN ARE
4 BROTHERS COULD CREATE A VORTEX WHICH COULD LEAD THE JURY TO
5 ASSUME CERTAIN FACTORS AND BASED ON SOME OTHER CIRCUMSTANTIAL
6 EVIDENCE THAT WOULD BE PREJUDICIAL TO MY CLIENT.

7 THE COURT: LET ME ASK IF THE STATE INTENDS TO OFFER ANY
8 EVIDENCE FROM A GENETICIST OR WHOMEVER IS GOING TO ANALYZE
9 THIS INFORMATION, THAT SINCE THEY ARE BROTHERS IT COULD VERY
10 WELL BE ROBERT AS WELL. ANY —

11 MR. GASSER: NO, SIR, YOUR HONOR. IN FACT, THERE WOULD
12 BE COMPLETELY — THEIR TESTIMONY FROM THE SLED DNA EXPERT AND
13 THE LITERATURE AND SCIENCE WOULD BE COMPLETELY OPPOSITE; THE
14 FACT THAT THEY'RE BROTHERS IS TOTALLY IRRELEVANT.

15 MR. STRICKLER: IF I COULD, YOUR HONOR, THEY DID TEST
16 SAMPLES FROM ROBERT. HE WAS POSITIVE AND EXCLUDED HIS
17 BROTHER, JAMES.

18 THE COURT: EXCLUDED. OKAY.

19 MR. GASSER: YES, SIR.

20 THE COURT: THANK YOU. GO AHEAD.

21 MR. SHUPPER: IF I DIDN'T MAKE THAT CLEAR EARLIER, I
22 APOLOGIZE.

23 THE COURT: NO. THAT WAS MY FAULT. I SHOULD HAVE KNOWN
24 THAT. GO AHEAD.

25 MR. SHUPPER: ADDITIONAL EVIDENCE THAT IS EXPECTED TO BE

1 BROUGHT FORWARD IS THE FACT THAT SHORTLY AFTER THE INCIDENT
2 WAS REPORTED AT AN AMOCO STATION NEAR THE SCENE A CLERK
3 REPORTED THAT TWO OR THREE MEN CAME IN AND PRESENTED A ONE
4 HUNDRED DOLLAR BILL AND ATTEMPTED TO GET THAT CASHED INTO
5 LOWER DENOMINATIONS.

6 LATER ON THAT EVENING AND DURING THE COURSE OF THE
7 INVESTIGATION A POLICE OFFICER WAS NOTIFIED THAT KENNETH
8 JAMES, MR. STRICKLER'S CLIENT, WAS THE PERSON THAT ATTEMPTED
9 TO PRESENT THAT 100 DOLLAR BILL AND HE WAS QUESTIONED AND
10 GAVE HIS NAME AND ADDRESS AS BEING KENNETH JAMES AT 2528 ORR
11 STREET. OR 2825. I'M NOT SURE AT THIS POINT, YOUR HONOR.
12 BUT IT WAS NEAR THE AMOCO STATION.

13 ADDITIONALLY, THE POLICE INVESTIGATORS HAD A DOG COME TO
14 THE SCENE AND PURPORTEDLY PICK UP A TRAIL THAT LED FROM THE
15 SCENE THROUGH THE GRAVEYARD AND A NEARBY NEIGHBORHOOD TO THE
16 ORR STREET ADDRESS. IT'S MY UNDERSTANDING THAT THE ORR
17 STREET RESIDENCE WAS LEASED TO KENNETH JAMES AND THAT ROBERT
18 JAMES, ACCORDING TO MY INFORMATION, WAS LIVING EITHER WITH
19 HIS MOTHER OR SPENDING A GOOD DEAL OF TIME WITH HIS
20 GIRLFRIEND DURING THAT TIME AND WAS NOT ATTENDANT OR ATTACHED
21 TO THAT RESIDENCE IN ANY WAY.

22 THERE IS A WITNESS NAMED RHONDA HENRY WHO IS EXPECTED TO
23 TESTIFY. SHE WAS A SUSPECT IN A STOLEN AUTOMOBILE CASE THAT
24 SHE HAD BEEN WITH KENNETH JAMES, MR. STRICKLER'S CLIENT,
25 EARLIER, AT SOME EARLIER DATE, AND HAD UTTERED SOME -- SHE,

1 HE, AND/OR ONE WITH HIM, A ONE WESTON MARTIN, HAD UTTERED
2 SOME POTENTIAL THREATS AND HAD INDICATED THAT HE HAD RAPED
3 SOMEONE PREVIOUSLY.

4 THE COURT: "HE", KENNETH?

5 MR. SHUPPER: HE, KENNETH JAMES. YES, YOUR HONOR.

6 *Victim* HAD IDENTIFIED A KENNETH JAMES FROM A
7 PHOTOGRAPHIC LINE-UP PREPARED BY THE POLICE INVESTIGATORS
8 SOME APPROXIMATELY TEN HOURS AFTER THIS INCIDENT OCCURRED.
9 HOWEVER, A PHOTOGRAPHIC LINE-UP INVOLVING ROBERT ANTHONY
10 JAMES WAS NOT PRESENTED TO *victim* UNTIL ALMOST 20 DAYS
11 LATER, APPROXIMATELY 20 DAYS LATER. AS YOUR HONOR KNOWS,
12 THAT PHOTOGRAPHIC IDENTIFICATION LINE-UP IS A SUBJECT OF
13 ANOTHER MOTION, THE DEFENSE FEELING THAT IT WAS HIGHLY
14 SUGGESTIBLE AND SHOULD NOT BE ADMITTED.

15 WINFRED BULL, THE MALE VICTIM IN THIS CASE, WAS NOT ABLE
16 TO IDENTIFY ANY SUBJECTS FROM LINE-UPS PRESENTED BY THE
17 COLUMBIA POLICE DEPARTMENT INVESTIGATORS.

18 THE QUESTION OF WHETHER TO GRANT OR DENY A MOTION TO
19 SEVER IS CLEARLY UNIVERSALLY HELD TO BE WITHIN THE COURT'S
20 DISCRETION. ALTHOUGH STATE CASES AND FEDERAL CASES HAVE HELD
21 THAT THE DISPARITY OF EVIDENCE ALONE OR THAT MUTUALLY
22 ANTAGONISTIC DEFENSES ALONE WILL NOT IN AND OF THEMSELVES
23 WARRANT OR MANDATE A SEVERANCE, THESE MATTERS ARE CLEARLY FOR
24 THE COURT'S DISCRETION.

25 ROBERT ANTHONY JAMES ASSERTS THAT THE NATURE OF THE

1 SCIENTIFIC EVIDENCE BEING SO MUCH GREATER AND THE NATURE OF
2 THE CIRCUMSTANTIAL EVIDENCE LINKING HIM TO THE CRIME ARE SUCH
3 — SO DISPROPORTIONATE THAT THE JURY MIGHT BE SO OVERWHELMED
4 BY THE EVIDENCE AGAINST —

5 THE COURT: YOUR THEORY IS GUILT BY ASSOCIATION.

6 MR. SHUPPER: YES, SIR. EXACTLY, YOUR HONOR. EXACTLY.
7 THE —

8 THE COURT: THE ASSOCIATION BEING A FAMILIAL
9 RELATIONSHIP BETWEEN THE TWO.

10 MR. SHUPPER: AS WELL AS, AGAIN, IT HAS NOT BEEN
11 RESOLVED WHETHER SOME CERTIFICATE WAS REPORTEDLY FOUND IN THE
12 ORR STREET RESIDENCE THAT BELONGED — THAT BORE ROBERT
13 ANTHONY JAMES'S NAME ON IT WOULD IN FACT BE CONCLUSIVE THAT
14 HE LIVED THERE, BUT THAT AGAIN THE EVIDENCE RELATED TO MY
15 CLIENT IS SIGNIFICANTLY DIFFERENT.

16 AND I HAVE GREAT FEARS THAT A TYPICAL JUROR WILL — AND
17 OF COURSE IF THIS TRIAL WERE THE LENGTH OF THE WITNESS LIST
18 THAT THE STATE IS PREPARED TO PUT FORWARD, THAT IT WOULD BE,
19 WE'RE TALKING ABOUT JAMES, ROBERT, MR. JAMES, MR. JAMES,
20 ROBERT AND KENNETH. AND IT COULD BE DIFFICULT FOR THE JURORS
21 TO DISTINGUISH.

22 AND IN THE PRESENTATION OF ALL OF THIS EVIDENCE THAT
23 POINTS MOSTLY TO KENNETH JAMES, AGAIN, I HAVE FEARS THAT MY
24 CLIENT WOULD BE SUBJECT TO THIS VORTEX CREATED BY THE STATE'S
25 EVIDENCE AND WOULD BE DENIED A FAIR TRIAL.

1 AND I MIGHT ADD ADDITIONALLY, THE STATE HAD NOTIFIED US
2 OF SEPARATE TRIALS AND THAT NO, IN MY VIEW, COMPELLING REASON
3 HAS BEEN PRESENTED TO JUSTIFY THE JOINT TRIALS. IN FACT, I
4 FEEL THAT THE POTENTIAL PREJUDICE OUTWEIGHS THE JUDICIAL
5 ECONOMY OF THE SITUATION.

6 THE COURT: THIS IS SORT OF A SILLY QUESTION. AND I
7 DON'T THINK YOU'RE ARGUING THIS. BUT YOU'RE NOT ARGUING THAT
8 THE STATE IS SOMEHOW ESTOPPED NOW FROM TRYING BOTH OF THEM
9 TOGETHER, ARE YOU? THAT YOU'VE BEEN MISLEAD AND PREJUDICED
10 BY THEIR INITIAL DECISION TO TRY THEM SEPARATELY AND NOW THAT
11 SINCE THEY'RE BEING TRIED TOGETHER THAT SOMEHOW THAT FACTORS
12 INTO IT AS A MATTER THAT IS PREJUDICIAL TO YOU?

13 MR. SHUPPER: WELL, YOUR HONOR, I WOULD SEEK THE COURT
14 TO ANSWER THAT QUESTION AS TO WHETHER THEY ARE ESTOPPED BASED
15 ON THE CIRCUMSTANCES.

16 THE COURT: WHAT YOU'RE SAYING, IT JUST AIN'T FAIR FOR
17 THEM TO DO THAT. IS THAT RIGHT?

18 MR. SHUPPER: IT'S SORT OF, YOU KNOW, IT'S HARD TO
19 DEFINE BUT YOU KNOW IT WHEN YOU SEE IT. I THINK THE SUPREME
20 COURT TOUCHED ON THAT AS FAR AS PORNOGRAPHY. AND AS FAR AS
21 PREJUDICE, IT'S VERY DIFFICULT TO ARTICULATE UNDER THESE
22 CIRCUMSTANCES. BUT I JUST HAVE THESE GRAVE FEARS THAT THE
23 WEIGHT OF THE EVIDENCE AGAINST MR. KENNETH JAMES COULD
24 SOMEHOW ATTACH TO HIS BROTHER, ROBERT JAMES.

25 THE COURT: I APPRECIATE THAT. MR. STRICKLER, —

1 MR. SHUPPER: THANK YOU, YOUR HONOR.

2 THE COURT: — OR MR. SNEED, WOULD YOU LIKE TO ADD
3 ANYTHING?

4 MR. STRICKLER: NO, YOUR HONOR. AS TO HIS ARGUMENTS
5 REGARDING MR. ROBERT JAMES, THOSE ARE OBVIOUSLY HIS ARGUMENTS
6 OF HIS CLIENT. AS TO OUR CLIENT, AS I INFORMED THE COURT, WE
7 WOULD JOIN IN THE MOTION SIMPLY BECAUSE — AND DON'T EXPECT
8 THIS TO CARRY ANY WEIGHT WITH YOUR HONOR WHATSOEVER. WE
9 WOULD RATHER BE MASTERS OF OUR OWN DESTINY AS FAR AS
10 SELECTION OF JURY, PRESENTATION OF EVIDENCE AND/OR —

11 THE COURT: AND I UNDERSTAND THAT.

12 MR. STRICKLER: — INTERROGATION.

13 THE COURT: I'M CERTAINLY NOT GOING TO DISCOUNT THAT. I
14 MEAN, YOU KNOW, EVERYBODY WANTS TO TRY HIS OWN CASE AS
15 OPPOSED TO SOMEBODY ELSE'S. I APPRECIATE AND UNDERSTAND
16 THAT. BUT MS. FRYAR OR MR. GASSER, THE STATE'S POSITION ON
17 THE SEVERANCE MATTER, IF YOU WOULD, PLEASE, ADDRESS THOSE
18 CONCERNS THAT MR. SHUPPER HAS RAISED.

19 MR. GASSER: MAY IT PLEASE THE COURT, YOUR HONOR. FIRST
20 OF ALL, I GUESS FROM THE LAST CONCERN DEALING WITH ESTOPPEL,
21 THERE IS BASICALLY A GENERAL POLICY IN OUR OFFICE THAT IN
22 CO-DEFENDANTS' CASES YOU NORMALLY TRY THEM SEPARATELY UNLESS
23 THERE'S SOME COMPELLING REASON WHY YOU THINK THAT THE CASES
24 SHOULD BE JOINED TOGETHER.

25 AND I WOULD AGREE THAT BEFORE THE CASE WAS PREPARED AS

1 FAR AS -- I MEAN, THERE'S A LOT OF DIFFERENCE WHEN YOU JUST
2 GET THE CASE AND YOU GET THE WITNESS STATEMENTS AND YOU GET
3 COPIES OF ALL THE POLICE REPORTS IN THAN ACTUALLY SITTING
4 DOWN AND PREPARING THE CASE AS IF YOU'RE GOING TO TRIAL.
5 ONCE THAT STAGE REACHED FROM JUST THE COLLECTING OF ALL THE
6 DATA THAT YOU NEED TO KIND OF GET A GENERAL FEEL FOR
7 SPECIFICALLY PREPARING THE TRIAL OF KENNETH JAMES, IT BECAME
8 APPARENT THAT RATHER THAN PUTTING THE VICTIM AND THE POLICE
9 OFFICERS THROUGH THIS TWO TIMES THAT VIRTUALLY EVERY SINGLE
10 WITNESS WOULD TESTIFY IN THE CASE AGAINST KENNETH JAMES THAT
11 WOULD TESTIFY IN THE CASE AGAINST ROBERT JAMES EXCEPT FOR
12 THIS RHONDA HENRY PERSON THAT MR. SHUPPER REFERS TO.

13 AND JUST FOR A VERY BRIEF GENERAL OUTLINE, IN THE LIGHT
14 MOST FAVORABLE TO THE STATE, THE EVIDENCE THAT WE WOULD
15 PRESENT WOULD BE THAT SOMETIME AFTER 12, BETWEEN 12 AND 1:00
16 IN THE MORNING ON A WEDNESDAY MORNING IN MAY OF 1996, THAT
17 THE VICTIM IN THIS CASE, *Victim*, AND THE OTHER VICTIM,
18 WINFRED BULL, WERE AT T. S. MARTIN PARK, THAT ALL THE
19 SOFTBALL GAMES HAD ENDED THAT EVENING AND THEY WERE SITTING
20 AT A PARK BENCH IN A RELATIVELY WELL-LIT AREA ACCORDING TO
21 THE POLICE OFFICERS THAT RESPONDED, AND THAT TWO INDIVIDUALS
22 INITIALLY APPROACHED MR. BULL AND MS. , ONE OF THEM
23 BEING ROBERT JAMES, MR. SHUPPER'S CLIENT, AND THAT MR. ROBERT
24 JAMES PRODUCED A HANDGUN AT WHICH POINT IN TIME THREE OTHER
25 INDIVIDUALS CAME OUT OF A WOODED AREA NEAR THE CEMETERY THAT

1 PARALLELS OR ABUTS THE PARK AND THAT ONE OF THOSE THREE
2 INDIVIDUALS APPROACHED MS. *victim* AND GRABBED HER BY THE ARM,
3 AND THAT INDIVIDUAL WOULD BE KENNETH JAMES, THAT SHE HAD
4 OPPORTUNITY TO SEE BOTH OF THOSE INDIVIDUALS AT THAT TIME AT
5 THE PICNIC TABLE, THAT EVENTUALLY MR. KENNETH JAMES WAS THE
6 FIRST ONE TO SEXUALLY ASSAULT MS. *victim* WHILE THE GUN WAS
7 BEING HELD ON MR. BULL, THAT EVENTUALLY FIVE INDIVIDUALS TOOK
8 TURNS IN SEXUALLY ASSAULTING MS. *Bull*, THAT SHE WAS STRIPPED
9 NAKED, THAT MR. BULL WAS STRIPPED DOWN TO HIS UNDERSHORTS AND
10 THAT EVENTUALLY MR. BULL TOOK OFF RUNNING AND SHOTS WERE
11 FIRED. THAT'S THE A.W.I.K. CHARGE.

12 FORTUNATELY FOR MR. BULL, HE WAS NOT STRUCK. HE RAN
13 ACROSS THE CEMETERY, CRESCENT HILL CEMETERY, AND HE WAS ABLE
14 TO GET TO A HOME ON GERMANY STREET AND CALL 911. THE
15 EVIDENCE THE STATE — AGAIN, IN A LIGHT MOST FAVORABLE TO THE
16 STATE — WOULD PRESENT WAS SUBSEQUENTLY THREE OF THE
17 INDIVIDUALS TOOK OFF, WHEREUPON — TOOK OFF FROM RAPING MS.
18 *victim* MR. KENNETH JAMES AND ANOTHER INDIVIDUAL WALKED HER
19 TO A MAUSOLEUM, A BUILDING IN THE MIDDLE OF THE CEMETERY,
20 WHERE MR. KENNETH JAMES RAPED HER AGAIN.

21 THE CEMETERY WAS MORE OPEN THAN THE WOODED AREA IN THE
22 PARK THAT SHE WAS FIRST INITIALLY DRAGGED TO. THAT THEN THE
23 TWO OTHER INDIVIDUALS TOOK OFF RUNNING TOWARDS GERMANY STREET
24 AS WELL. AND THE EVIDENCE THAT THE STATE WOULD INTRODUCE
25 WOULD BE AN INDIVIDUAL BY THE NAME OF CHARLES MURRAY WHO

1 LIVED ON GERMANY STREET IN THE HOME THAT WINFRED BULL RAN TO
2 TO CALL 911 WAS STANDING OUT ON HIS PORCH AREA, AND HE
3 OBSERVED FIVE INDIVIDUALS WALK BY AND THERE'S A STREET LIGHT
4 RIGHT THERE AT THE CORNER OF GERMANY STREET AND THE STREET
5 THAT HE LIVED ON, GERMANY AND ORR, AND HE SAW THOSE FIVE
6 INDIVIDUALS WALK UP TOWARDS ORR STREET. AND THEN BECAUSE OF
7 THE LOW LEVEL LYING OF WHERE HIS FRONT STOOP IS AND A BRICK
8 WALL ON ORR STREET, HE LOST SIGHT OF THEM BUT HE RECOGNIZED
9 TWO OF THEM FROM LIVING IN THE NEIGHBORHOOD AS BEING KENNETH
10 JAMES AND ROBERT JAMES; AND THAT EVENTUALLY THE POLICE
11 DEPARIMENT WAS CALLED TO THE SCENE, SERGEANT RANDY BLACKWELL
12 WHO HAS BEEN QUALIFIED TO TESTIFY IN THIS COURT BEFORE ON DOG
13 TRACKING, THAT HE GOT HIS DOG, GATOR, WHERE THE CRIME SCENE
14 WAS, THAT GATOR WAS ABLE TO PICK UP ON A SCENT; AND THAT, NOT
15 KNOWING ANY OF THE OTHER INFORMATION THAT I JUST PRESENTED TO
16 THE COURT, THE DOG TRACKED THE SCENT THROUGH THE CEMETERY, UP
17 TO THE MAUSOLEUM, FROM THE MAUSOLEUM, THROUGH THE — INTO THE
18 BACK YARDS AREA WHERE THESE INDIVIDUALS WERE SEEN COMING OUT
19 OF WHEN THEY CROSSED GERMANY STREET UP TO ORR STREET TO 2528
20 ORR STREET; AND THAT THAT'S WHERE THE DOG STOPPED. AND
21 SERGEANT BLACKWELL TRIED TO GET THE DOG AWAY FROM THAT AREA.
22 THERE'S ALL KINDS OF HOUSES THERE, AN APARIMENT COMPLEX
23 AROUND. THE DOG KEPT GOING RIGHT BACK UP TO THE FRONT STOOP,
24 THE FRONT DOOR OF 2825 ORR STREET.

25 A SUBSEQUENT SEARCH WARRANT, YOUR HONOR, REVEALED A

1 PHONE BILL BELONGING TO KENNETH JAMES. AN SCE&G RECORDS
2 CUSTODIAN WILL TESTIFY THAT THE ELECTRIC POWER WAS IN KENNETH
3 JAMES'S NAME BETWEEN MARCH OF '96 AND JULY OF '96, WHEN IT
4 HAD BEEN CUT OFF FOR LACK OF PAYMENT.

5 IN ONE OF THE BEDROOMS WERE FOUND PAPERS BELONGING,
6 PERSONAL PAPERS BELONGING TO ROBERT JAMES, HIS BROTHER. ONE
7 OF THE ITEMS THAT WAS STOLEN FROM MR. BULL THAT HE SAID THAT
8 WAS TAKEN FROM HIS POCKET WERE SEVERAL DENOMINATIONS OF
9 BILLS, ONE OF THEM BEING A HUNDRED DOLLAR BILL. A COLUMBIA
10 POLICE WOMAN -- THIS IS ALL ON VIDEOTAPE -- GOES TO AN AMOCO
11 STATION TWO BLOCKS AWAY FROM WHERE THE JAMESES WERE AT 2528
12 ORR STREET, AND IN THE AMOCO STATION THERE'S A VIDEO THAT YOU
13 CAN SEE OFFICER CAROL TOWNSEND APPROACH THE COUNTER. AND WE
14 HAVE THE CLERK TO TESTIFY THAT OFFICER TOWNSEND HAD INDICATED
15 THAT THERE HAD BEEN A ROBBERY RECENTLY, WITHIN THE LAST HOUR,
16 AND THAT ONE OF THE THINGS THAT WAS TAKEN WAS A HUNDRED
17 DOLLAR BILL; YOU NEED TO BE ON THE LOOKOUT FOR ANYBODY COMING
18 IN HERE TO CASH A HUNDRED DOLLAR BILL; AT WHICH POINT THE
19 CLERK WOULD TESTIFY THAT SHE OBSERVED TWO INDIVIDUALS COME
20 IN, TWO BLACK MALES COME NOT TEN OR FIFTEEN MINUTES BEFORE
21 AND TRY AND CASH A HUNDRED DOLLAR BILL. THEY DIDN'T PURCHASE
22 ANYTHING, AND THEY WANTED FIVE TWENTIES, AND THAT SHE
23 INDICATED SHE COULD NOT DO THAT.

24 SO THE COLUMBIA POLICE DEPARTMENT GOT THE TAPE AND, SURE
25 ENOUGH, THEY STARTED LOOKING BACK TEN OR FIFTEEN MINUTES FROM

1 1:23 WHEN CAROL TOWNSEND WAS THERE. LO AND BEHOLD, AT 1:12
2 A.M. YOU'VE GOT ROBERT JAMES AND KENNEITH JAMES ON VIDEO
3 WALKING INTO THE COUNTER. WHEN YOU SEE THE VIDEO YOU SEE
4 THEM WALK RIGHT UP TO THE COUNTER, NOT PURCHASE ANYTHING,
5 TALK TO THE CLERK THAT WILL TESTIFY AND WALK BACK OUT AGAIN.

6 ABOUT AN HOUR AFTER THAT ANOTHER COLUMBIA POLICEMAN WAS
7 DOING HIS REGULAR ROUNDS THAT DAY, OR THAT MORNING. AND HE
8 ALWAYS STOPS IN THERE FOR COFFEE TO TALK TO THE CLERK. WHILE
9 HE'S TALKING WITH THE CLERK YOU CAN SEE HIM AT THE COUNTER
10 TALKING TO THE CLERK, THE CLERK NOTIFIES HIM THAT ONE OF THE
11 INDIVIDUALS THAT WAS PREVIOUSLY IN THE CONVENIENCE STORE
12 TRYING TO CASH THAT HUNDRED DOLLAR BILL WAS WALKING THROUGH
13 THE PARKING LOT. AND YOU SEE THE OFFICER EXIT. AND HE WILL
14 TESTIFY THAT HE STOPPED THE YOUNG MAN THAT HE HAD RECOGNIZED
15 FROM THAT AREA. AND IT WAS KENNETH JAMES. AND HE ASKED HIM
16 — HE DID AN F.I., A FIELD INTERVIEW. HE SAID HIS NAME WAS
17 KENNETH JAMES, GAVE HIM ADDRESS, 2528 ORR STREET, AND
18 INDICATED WHAT HIS DATE OF BIRTH WAS.

19 BASED ON THAT INFORMATION AND THE INFORMATION OF THE DOG
20 TRACKING, LATER ON THAT MORNING INVESTIGATOR THOMAS WITH THE
21 COLUMBIA POLICE DEPARTMENT GOT A PHOTOGRAPH OF KENNETH JAMES,
22 PUT IT IN A PHOTO LINE-UP, AND WITHIN TEN TO ELEVEN HOURS OF
23 THIS INCIDENT *(Victim)* POSITIVELY IDENTIFIED KENNETH JAMES
24 FROM THAT LINE-UP.

25 AND THEY HAD THIS INDIVIDUAL, WHICH LATER HAS BEEN

1 IDENTIFIED I WOULD SUBMIT TO YOU AS ROBERT JAMES BUT THEY
2 DIDN'T HAVE HIS NAME. THEY DIDN'T KNOW THAT IT WAS ROBERT
3 JAMES AT THE TIME. A CRIME STOPPERS TIP, A TIP CAME IN A
4 WEEK OR SO AFTER THE INCIDENT INDICATING THAT ROBERT JAMES
5 AND ANOTHER INDIVIDUAL BY THE NAME OF MICAH BROWN WERE
6 INVOLVED IN THIS AS WELL.

7 THERE WAS DIFFICULTY BETWEEN INVESTIGATOR THOMAS AND
8 *victim* GETTING TOGETHER. BUT EVENTUALLY, 19 OR 20 DAYS
9 AFTER THE INCIDENT, IN JUNE, THEY GET TOGETHER. INVESTIGATOR
10 THOMAS SHOWS *victim* A PHOTOGRAPHIC LINE-UP AND SHE
11 IDENTIFIES ROBERT JAMES.

12 OF COURSE THE RAPE PROTOCOL WAS DONE EVENTUALLY AFTER
13 THESE INDIVIDUALS WERE ARRESTED AND THE LAWYERS WERE OBTAINED
14 AND A SCHMERBER HEARING WAS DONE. WE GOT BLOOD FROM BOTH
15 DEFENDANTS AND IT WENT TO SLED. AND THE SPERM SWAB TAKEN
16 FROM THE VAGINAL VAULT OF *victim*, THE RAPE PROTOCOL,
17 POSITIVELY HAS BEEN IDENTIFIED THROUGH DNA TO KENNETH JAMES,
18 EXCLUDES ROBERT JAMES. AND THE STATE'S POSITION ON THAT,
19 YOUR HONOR, IS, EVEN IF THEY WERE SEVERED THAT INFORMATION
20 HAS TO BE EXPLAINED TO THE JURY, THAT A SEXUAL ASSAULT
21 PROTOCOL OCCURRED. AND I'M SURE THAT MR. SHUPPER WOULD WANT
22 TO GET OUT TO THAT JURY THAT IT EXCLUDES HIS CLIENT. I MEAN,
23 IN AND OF ITSELF IT'S EXCULPATORY IN THE SENSE THAT THE SPERM
24 EXCLUDES HIS CLIENT.

25 OF COURSE THE ANALYST WILL TESTIFY THAT ALL THAT SHOWS

1 IS THAT, YOU KNOW, DEPENDING ON WHETHER OR NOT THAT PERSON
2 EJACULATED, DEPENDING ON WHETHER OR NOT THAT PERSON USED A
3 CONTRACEPTIVE. THERE WERE TWO CONTRACEPTIVES FOUND AT THE
4 SCENE NONE OF WHICH MATCHES AT ALL TO ANY OF THE VICTIMS —
5 OR THE VICTIM — THE VICTIM'S VAGINAL SECRETIONS.

6 BUT THE POINT IS, THE FACT THAT THERE WAS NO SPERM ONLY
7 EXCULPATES HIM IN THE SENSE THAT WE DON'T HAVE ANY PHYSICAL
8 EVIDENCE LINKING HIM TO THE SEXUAL ASSAULT.

9 BUT VIRTUALLY EVERY WITNESS THAT THE STATE WOULD CALL TO
10 TESTIFY IN KENNETH JAMES THE STATE WOULD CALL IN THE CASE
11 AGAINST ROBERT JAMES EXCEPT FOR THE RHONDA HENRY. AND IN
12 THAT STATEMENT, IF THE COURT ALLOWS IT, SHE DOES NOT —
13 KENNETH JAMES DOES NOT TELL HER WHO WAS WITH HIM. THEREFORE,
14 THERE WOULD BE NO BRUTON PROBLEM AS FAR AS THE CONFRONTATION
15 CLAUSE PROBLEM. SO, IN THAT REGARD, EVEN IF SHE IS ALLOWED
16 TO TESTIFY AGAIN, IN ONE MANNER THAT EXCULPATES ROBERT JAMES
17 AS WELL, BECAUSE SHE'S OFFERING NO EVIDENCE AGAINST ROBERT
18 JAMES. BUT ALL THREE —

19 THE COURT: AND CERTAINLY YOU'D GET IN FRONT OF THE JURY
20 AND SAY, WELL, RHONDA HENRY'S STATEMENT TENDS TO EXCULPATE
21 ROBERT JAMES. THAT'S WHAT YOU'RE GOING TO ARGUE TO THE JURY
22 I'M SURE, TOO. RIGHT?

23 MR. GASSER: WELL, EXCULPATES HIM IN THE SENSE THAT
24 THERE ISN'T A DIRECT — THERE ISN'T ANY DIRECT CONFESSION
25 FROM HIM, BUT NOT IN THE SENSE THAT IF YOU LOOK AT ALL THE —

1 IF YOU LOOK AT ALL THE EVIDENCE AS A WHOLE, THE DOG TRACKING,
2 THE AMOCO TAPE, THE PHOTO LINE-UP, IT'S ALL THE SAME.

3 THE COURT: I UNDERSTAND.

4 MR. GASSER: AND THAT'S WHAT OUR POSITION WOULD BE.
5 THANK YOU.

6 THE COURT: ONE THING I DO WANT TO ASK YOU.

7 MR. GASSER: YES, SIR.

8 THE COURT: AND JUST BEFORE MR. SHUPPER RESPONDS, IS WHY
9 IS IT — AND THIS MAY BE AN UNFAIR QUESTION — BUT WHY IS IT
10 THE FIRST THING YOU SAID WAS THERE'S A GENERAL POLICY IN YOUR
11 OFFICE ABOUT TRYING CASES WITH CO-DEFENDANTS SEPARATELY? WHY
12 IS THAT?

13 MR. GASSER: WELL, THE — I THINK THAT WHEN TWO
14 DEFENDANTS — NORMALLY, IT'S FROM A GENERAL RULE, THAT GIVEN
15 THE FACT — I GUESS PERSONALLY SPEAKING, OBVIOUSLY I WEAR THE
16 PROSECUTOR'S HAT, I THINK IT'S UNFAIR THAT THE DEFENSE GETS
17 TWICE AS MANY STRIKES AS THE PROSECUTOR FROM THE GET-GO. I
18 THINK THAT PRESENTS AN UNFAIR BURDEN AGAINST THE STATE. AND
19 THEN WHEN YOU DOUBLE IT UP, WHEN YOU TRY TWO DEFENDANTS
20 TOGETHER GIVING THE DEFENSE ATTORNEYS 20 STRIKES, GIVEN THE
21 WIDE LATITUDE THESE DAYS THAT OUR SUPREME COURT HAS ALLOWED
22 BOTH PROSECUTORS AND DEFENSE IN BATSON ISSUES, I THINK THAT
23 THE GENERAL RULE IS THAT IF YOU CAN, IF THERE'S ANY WAY
24 POSSIBLE TO TRY THEM SEPARATELY WITHOUT DOING DAMAGE TO THE
25 CASE OR TO THE VICTIMS, THEN YOU TRY THEM SEPARATELY. BUT

1 IT'S VERY -- I THINK HISTORY WOULD SHOW THAT IT'S VERY RARE
2 THAT WE ATTEMPT TO CALL -- WE CONSOLIDATE DEFENDANTS IN THIS
3 PARTICULAR COUNTY.

4 THE COURT: OKAY.

5 MR. GASSER: BUT WHEN WE HAD AN OPPORTUNITY TO SIT DOWN
6 AND LOOK AT THE CASE, WE FEEL THAT FROM THE JUDICIAL ECONOMY
7 POINT OF VIEW AND JUST FOR THE STORY TELLING FROM THE STATE'S
8 PERSPECTIVE THAT IT'S BETTER TO CALL THE CASES TOGETHER AND
9 IT'S OUR POSITION THAT IT DOES NOT UNDULY PREJUDICE EITHER
10 DEFENDANT.

11 THE COURT: ALL RIGHT. THANK YOU. MR. SHUPPER, YES,
12 SIR.

13 MR. SHUPPER: MAY IT PLEASE THE COURT, YOUR HONOR. I
14 MADE MENTION OF THE FACT THAT BOTH ROBERT AND KENNETH JAMES
15 WERE ASSIGNED TO THE PUBLIC DEFENDER'S OFFICE WHEN THEY WERE
16 ARRESTED AND SCREENED AND QUALIFIED AS INDIGENTS FOR THE
17 PUBLIC DEFENDER SERVICES. THE ROBERT ANTHONY JAMES CASE WAS
18 CONFLICTED OUT WITH NATHANIEL ROBERSON. SOMETIME DURING THE
19 COURSE OF THAT RELATIONSHIP WITH DEFENDANT ROBERT JAMES A
20 CONFLICT AROSE AND THE CASE WAS LATER CONFLICTED AND ASSIGNED
21 TO ME.

22 I THINK MR. GASSER IN SUMMING UP THE CASE THAT HE
23 EXPECTS TO PRESENT HAS MENTIONED A NUMBER OF FACTORS THAT I
24 MENTIONED AS THE BASIS FOR A SEVERANCE IN THAT THE -- YES, I
25 WOULD LIKE TO GET THE EXCULPATORY EVIDENCE BEFORE A JURY BUT

1 NOT BEFORE THE SAME JURY THAT'S TRYING KENNETH JAMES WHERE
2 THERE'S SO MUCH GREATER EVIDENCE.

3 THE COURT: I APPRECIATE THAT, WHAT YOU'RE SAYING.

4 MR. SHUPPER: AND THAT MR. GASSER DID DO WHAT I'M AFRAID
5 IS GOING TO BE DONE THROUGHOUT THE COURSE OF THIS TRIAL, TALK
6 ABOUT "THE JAMES BROTHERS", "THE JAMES BROTHERS", AND TRY TO
7 MAKE THEM ONE PERSON IN A SENTENCE.

8 THE COURT: WELL, I WON'T LET HIM SAY "THE JAMES GANG".
9 OKAY?

10 MR. SHUPPER: OR "JESSIE JAMES" OR "LIKE JESSIE JAMES".
11 BUT, YES, YOUR HONOR. IT HIGHLIGHTS MY CONCERNS.

12 THE MATTER OF STRIKES TO THE JURY ALSO IMPACTS UPON MR.
13 ROBERT JAMES'S RIGHT TO A FAIR TRIAL AND TO DETERMINE HIS OWN
14 DESTINY, JUST LIKE MR. STRICKLER WOULD LIKE TO, AND JUST LIKE
15 THE STATE WOULD PREFER TO.

16 AND IN VIEW OF ALL THESE CIRCUMSTANCES I WOULD JUST ASK
17 THAT A — AGAIN, I'M NOT CERTAIN THAT A COMPELLING REASON HAS
18 BEEN PROVIDED TO WARRANT THE CHANGE IN POSITION. AND IF YOUR
19 HONOR FEELS — AND I WOULD — I DON'T HAVE A CITATION TO
20 CLAIM WITH RESPECT THAT THE STATE WOULD BE ESTOPPED, BUT I
21 THINK IT'S CLEAR FROM THE STATE'S OWN PRESENTATION THAT THEY
22 HAD PLANNED, AND IT WAS A POLICY, THAT THEY WOULD TRY THEM
23 SEPARATELY. AND FOR ALL OF THOSE REASONS, YOUR HONOR, I
24 WOULD RESPECTFULLY ASK THAT YOU SEVER THIS TRIAL.

25 THE COURT: I APPRECIATE THAT, MR. SHUPPER. I HAVE BEEN

1 — OBVIOUSLY I WAS FAMILIAR WITH THE LAW THAT RELATES TO
2 SEVERANCE OF CASES IN ANY EVENT AND HAVE TAKEN THE
3 OPPORTUNITY WHILE BOTH OF YOU WERE ARGUING TO EXAMINE A FEW
4 MORE.

5 I'LL SAY FROM THE BEGINNING THAT SPECIFICALLY I WOULD
6 FIND THAT THE EXISTENCE OF A POLICY ON THE PART OF THE
7 SOLICITOR'S OFFICE, GENERAL POLICY TO THE EFFECT OF TRYING
8 CASES WITH CO-DEFENDANTS SEPARATELY, DOES NOT PRECLUDE THEIR
9 SEEKING TO THEREAFTER GO AGAINST BOTH DEFENDANTS IN THE SAME
10 TRIAL.

11 RESPECTFULLY, THE CONCERNS THAT YOU'VE OUTLINED TO ME
12 PRIMARILY BOIL DOWN TO STRATEGIC CONCERNS. THE STATE CAN IN
13 FACT CALL THESE TRIALS, BRING THEM TOGETHER ABSENT SOME
14 SHOWING OF UNDUE PREJUDICE TO ONE OR BOTH OF THE DEFENDANTS.
15 AND I DON'T BELIEVE THAT THAT'S BEEN DONE IN THIS PARTICULAR
16 CASE, NOT UNDER THE CASE LAW THAT CURRENTLY EXISTS; FOR WHICH
17 REASON — AND, PARTICULARLY, I NOTE THAT THERE IS NO
18 NECESSITY FOR BRUTONIZING ANY STATEMENTS PURPORTEDLY MADE BY
19 EITHER DEFENDANT. AND THERE IS ONLY ONE STATEMENT
20 PURPORTEDLY MADE BY A DEFENDANT AS I UNDERSTAND IT. AND THAT
21 IS SUBJECT TO A MOTION TO EXCLUDE THAT TESTIMONY. IN ANY
22 EVENT, I DON'T KNOW IF IT'S GOING TO COME IN OR NOT COME IN.
23 IN ANY EVENT, IT DOES NOT IMPLICATE AS I UNDERSTAND IT,
24 ROBERT. IT IMPLICATES — IT IS SELF-INCRIMINATORY AS TO
25 KENNETH.

1 SO, RESPECTFULLY, I IN EXERCISING MY DISCRETION AM GOING
2 TO DENY YOUR MOTION TO SEVER, AND THE TRIAL WILL PROCEED
3 TOGETHER. OBVIOUSLY THERE WILL BE -- IT'S JUST LIKE CERTAIN
4 TESTIMONY THAT COMES IN WHEREIN OUR SUPREME COURT HAS SAID --
5 AND I DO NOT BELIEVE OUR SUPREME COURT WOULD REQUIRE THESE
6 CASES TO BE SEVERED -- AND WHERE THEY OFTEN SAY THAT
7 AGGRESSIVE AND EFFECTIVE CROSS EXAMINATION LAWYERING SKILLS
8 IS THE REMEDY FOR MANY OF THESE PARTICULAR ISSUES. SO,
9 RESPECTFULLY, YOUR MOTION IS DENIED AS TO EACH OF YOU. WE'LL
10 PROCEED TOGETHER WITH THE TRIAL AGAINST KENNETH AND ROBERT
11 JAMES.

12 THAT HAVING BEEN DONE, MS. SCOTT, YOU SIT THERE IN EAGER
13 ANTICIPATION. WHAT IS IT THAT -- HOW MAY I SERVE YOU, AND
14 WHAT IS IT THAT I SHOULD TELL YOU, IF ANYTHING?

15 THE CLERK: WHEN YOU'D LIKE TO PICK, YOUR HONOR.

16 THE COURT: WELL, THE POINT HERE IS THAT I NEED TO GO
17 OVER -- IS THERE ANYTHING ELSE AMONG THESE MOTIONS THAT NEEDS
18 TO BE DONE PRIOR TO OUR SELECTION OF A JURY AS OPPOSED TO
19 OPENING STATEMENTS OR SWEARING OF THE JURY OR ANYTHING LIKE
20 THAT? FROM YOUR PERSPECTIVE, MR. GASSER? BECAUSE I HAVEN'T
21 LOOKED AT ALL OF THEM. I JUST DON'T KNOW. NOW, OBVIOUSLY
22 THERE IS ONE DISPOSITIVE MOTION. I BELIEVE THAT ONE OF THE
23 DEFENDANTS HAS MOVED PRO SE TO HAVE THE CHARGES DISMISSED FOR
24 LACK OF SPEEDY TRIAL. AND THAT WOULD BE I BELIEVE MR. ROBERT
25 JAMES AS WELL.

1 MR. SHUPPER: THAT'S CORRECT, YOUR HONOR.

2 THE COURT: OTHER THAN THAT.

3 MR. SNEED: YOUR HONOR, I HAD FOUR MOTIONS TO QUASH, BUT
4 I BELIEVE THEY CAN JUST -- THEY CAN WAIT UNTIL AFTER SWEARING
5 AS LONG AS IT'S BEFORE -- I MEAN -- I'M SORRY -- PRIOR TO
6 SWEARING BUT AFTER SELECTION.

7 THE COURT: SURE. AFTER SELECTION. MR. GASSER, DOES
8 THAT COMPORT WITH YOUR OWN UNDERSTANDING?

9 MR. GASSER: YES, SIR. I BELIEVE WE DO HAVE SOME
10 SIGNIFICANT NUMBER OF IN CAMERA MATTERS BUT NOTHING THAT
11 WOULD --

12 THE COURT: WE MIGHT NOT EVEN GET TO THIS JURY EVEN IF
13 WE SELECT IT UNTIL TOMORROW MORNING.

14 MR. GASSER: THAT'S CORRECT.

15 THE COURT: OR LATE THIS AFTERNOON.

16 MR. GASSER: THAT'S POSSIBLE.

17 THE COURT: WHY DON'T WE -- MS. SCOTT, I THINK PROBABLY,
18 LET ME TAKE UP THE MOTION OF THE SPEEDY TRIAL. AND THEN IF I
19 GRANT MR. JAMES'S MOTION, THEN HE IS GONE. IN EITHER EVENT,
20 WE WILL GET A PANEL UP HERE. WHY DON'T YOU BE ASSEMBLING A
21 PANEL. BUT I DON'T WANT THEM COMING IN HERE UNTIL AFTER I
22 DISPOSE OF THIS MOTION. OKAY?

23 OKAY. LET ME SEE THIS. HE WAS ARRESTED, MR. JAMES WAS,
24 ON THE 30TH OF DECEMBER '96, NEARLY THREE YEARS AGO, THAT HE
25 HAS DEMANDED A SPEEDY TRIAL ON APRIL 26, 1999, AND THAT

1 APPOINTED COUNSEL WAS MADE AWARE OF THIS PARTICULAR MOTION OR
2 PRO SE MOTION ON 15 SEPTEMBER '99, AND COUNSEL LACKS AN
3 AWARENESS OF ANY ORDERS OF THIS COURT CONTINUING THIS CASE
4 FOR EXCEPTIONAL CIRCUMSTANCES AND THUS MOVES FOR A DISMISSAL
5 OF ALL THE INDICTMENTS AGAINST MR. JAMES FOR FAILING TO
6 COMPLY WITH THE STATUTORY AND DECISIONAL LAW OF THIS STATE.

7 OKAY. LET ME MAKE — MR. SHUPPER, YOU ARE SAYING TO ME
8 SOMETHING, AND I CAN SEE WHAT IT IS, BUT IN AID OF WHAT, IF
9 YOU WOULD, PLEASE.

10 MR. SHUPPER: IT IS TO SHOW THAT THIS CASE HAS BEEN
11 PREVIOUSLY DOCKETED IN JULY BY A ROSTER NOTICE OF GENERAL
12 SESSIONS, FILE NOTICE DATED JULY 13TH, 1998. MR. JAMES, THE
13 INDICTMENT FOR ARMED ROBBERY WAS LISTED ON THAT DOCKET.

14 THE COURT: OKAY. ALL RIGHT. AND, MR. SHUPPER, IF YOU
15 WISH ON BEHALF OF MR. JAMES TO FLESH OUT YOUR ARGUMENT WITH
16 REGARD TO THE MOTION TO DISMISS FOR WANT OF A SPEEDY TRIAL, I
17 WOULD APPRECIATE IT.

18 MR. SHUPPER: OKAY. IF YOUR HONOR PLEASE. THIS WAS
19 DEFENDANT'S PRO SE MOTION WHICH I WAS JUST RECENTLY GIVEN A
20 COPY OF. I ON BEHALF OF MR. JAMES WOULD JUST ASSERT THAT THE
21 CONSTITUTIONAL SECTION REFERENCE GIVES THE CHIEF JUSTICE THE
22 AUTHORITY TO SET THE DOCKETS. AND I MUST ADMIT THAT THERE IS
23 SEEMINGLY A GREAT DEAL OF CONFUSION AS TO WHETHER THE SPEEDY
24 TRIAL ACT, SECTION 17-23-90, IN FACT GIVES A RIGHT TO A
25 DISMISSAL. ALTHOUGH THE LANGUAGE OF THE STATUTE SEEMS TO SAY

1 THAT, THE CHIEF JUSTICE DIRECTIVE AND ORDER DATED MARCH 5TH
2 OF 1999 SEEMS TO CONFLICT WITH THAT BY CLEARLY STATING, "THIS
3 ORDER DOES NOT CREATE OR DEFINE A RIGHT OF DEFENDANT TO A
4 SPEEDY TRIAL." I'VE TRIED TO EXPLAIN THAT TO MY CLIENT.

5 THE COURT: GO FIGURE. YEAH.

6 MR. SHUPPER: AND WHAT I HAVEN'T SHOWN HIM BUT I DO HAVE
7 ATTACHED TO THE MOTION ARE THE ARTICLES REFERENCED IN THE
8 CHIEF JUSTICE'S ORDER DATED AUGUST 17TH, 1983 AND JANUARY
9 13TH, 1984 OR CC ADMIN 12 AND 13.

10 THE COURT: YEAH.

11 MR. SHUPPER: WHICH SAYS THAT THESE ARE HEREBY
12 RESCINDED. THE GIST OF IT, YOUR HONOR, IF THIS ISSUE IS
13 CONFUSING ENOUGH FOR THE SUPREME COURT, IT'S CERTAINLY
14 CONFUSING TO THE DEFENDANT AND IN FACT TO MYSELF.

15 THE COURT: AND I APPRECIATE THAT, MR. SHUPPER.

16 MR. SHUPPER: AGAIN, I HAVE TRIED TO EXPLAIN THE MEANING
17 AS I GATHER IT FROM THE CHIEF JUSTICE'S ORDER. BUT IT DOES
18 SAY THAT "THE COURT MAY CONTINUE A CRIMINAL CASE BEYOND 180
19 DAYS BY WRITTEN ORDER IF THE COURT DETERMINES EXCEPTIONAL
20 CIRCUMSTANCES EXIST." I AM NOT AWARE OF ANY SUCH ORDER.
21 NOW, I SUSPECT THAT ORDERS ARE ROUTINELY CIRCULATED AT THE
22 CLOSE OF EACH TERM OF COURT, BUT I HAVE NOT BEEN PROVIDED ANY
23 SUCH ORDER WHERE THE CHIEF ADMINISTRATIVE JUDGE WOULD ORDER
24 THE CASES TO BE CONTINUED.

25 SO, I'M LEFT WITH, "IT IS ORDERED THAT ALL CRIMINAL

1 CASES IN THE STATE OF SOUTH CAROLINA SHALL BE DISPOSED OF
2 WITHIN 180 DAYS FROM THE STATE OF THE DEFENDANT'S ARREST."
3 THAT CLEARLY HAS NOT HAPPENED, YOUR HONOR. THE DEFENDANT
4 CLEARLY HAS BEEN INCARCERATED CONTINUALLY SINCE DECEMBER OF
5 1996. AND UNDER MY VIEW FROM THE READING OF THE SPEEDY TRIAL
6 ACT, THE STATE SHOULD HAVE PROCEEDED TO TRIAL AND DISPOSED OF
7 THESE CHARGES BY VIRTUE OF THE STATUTE AND THE RULE OF THE
8 CHIEF JUSTICE'S ORDER.

9 AND MR. JAMES HAS ALSO INDICATED TO ME THAT HE FILED A
10 SPEEDY TRIAL MOTION PRO SE IN 1998, BUT BECAUSE OF THE
11 HURRICANE AND THE COURTHOUSE BEING CLOSED AND OTHER FACTORS
12 IN PREPARATION OF THIS CASE, I WAS NOT ABLE TO GET A COPY OF
13 THAT. SO I HAVE NO PHYSICAL EVIDENCE OF THAT MOTION.

14 BUT THE DEFENDANT WOULD ASK THAT THE COURT, THAT THIS
15 COURT TAKE THE MATTER UNDER CONSIDERATION AND RESPECTFULLY
16 REQUEST THAT IN A LIGHT MOST FAVORABLE TO MR. JAMES TAKE THE
17 ORDER LITERALLY AND DISMISS THE CHARGE.

18 THE COURT: THANK YOU. MR. JAMES, YOU HAD FILED THIS
19 MOTION INITIALLY PRO SE. ALTHOUGH MR. SHUPPER HAS ARGUED IT
20 FOR YOU, I WOULD ASK IF THERE'S ANYTHING YOU WOULD LIKE TO
21 ADD. YOU NEED NOT STAND BECAUSE OBVIOUSLY YOU HAVE A PROBLEM
22 WITH YOUR FOOT. ANYTHING YOU WANT TO ADD TO THAT?

23 MR. ROBERT JAMES: YES, YOUR HONOR. I HAVE BEEN
24 INCARCERATED TWO YEARS, EIGHT MONTHS AND TWENTY DAYS. WHEN I
25 -- WHEN THEY FIRST ARRESTED ME, I ASKED THEM TO PUT ME IN AN

1 ACTUAL LINE-UP AND TAKE ALL THE STUFF -- WHEN I VERY FIRST
2 GOT HERE, I ASKED THEM TO TAKE ALL OF THIS STUFF AND GET IT
3 DONE. MY LAWYER SAID THEY'D DO IT IN DUE TIME. WHEN I WENT
4 UP FOR A BOND REDUCTION, THEY ASKED ME FOR IT. I TOLD THEM
5 THEY COULD GET IT. SO THE JUDGE DENIED MY BOND REDUCTION
6 WHERE THEY CAN GET IT. THEY WAITED EIGHT MONTHS, THEN COME
7 AND ASKED ME FOR IT. AND I ASKED HIM WHY IT TOOK SO LONG, I
8 SAID, TO GET ALL OF THE MATTERS BECAUSE I DON'T TRUST YOU
9 ALL. I DON'T KNOW NOTHING ABOUT THE LAW, BUT I KNOW YOU ALL
10 CAN NORMALLY DO THINGS.

11 THE COURT: YOU TALKING ABOUT THE DNA SAMPLES?

12 MR. ROBERT JAMES: YEAH. AND THEN THEY CAME BACK
13 NEGATIVE. SO I FILED FOR A SPEEDY TRIAL AND IT NEVER WAS
14 ANSWERED. SO I FILED FOR ANOTHER ONE AGAIN. AND I ASKED MY
15 LAWYER WHEN I'D BEEN INDICTED, AND HE SAID HE BELIEVED THEY
16 DID IT LAST YEAR. BUT I COME TO FIND OUT THEY JUST DID IT
17 LAST MONTH. AND I WAS READING ONE OF THE LAW BOOKS DOWN
18 THERE, AND EVERY TIME I FILE A MOTION OR ANYTHING, IT DOESN'T
19 GET ANSWERED OR GET ADDRESSED. AND IT SEEMS LIKE AIN'T
20 NOBODY TRYING -- EVERYBODY SAID I'M INNOCENT BUT THEY'RE
21 HOLDING ME ALL THIS LONG TIME.

22 THE COURT: I CAN ASSURE YOU THAT OVER HERE THEY DON'T
23 SAY YOU'RE INNOCENT. OKAY.

24 MR. ROBERT JAMES: YEAH. WELL, THEY SAY I'M INNOCENT
25 UNTIL PROVEN GUILTY.

1 THE COURT: YES, SIR.

2 MR. ROBERT JAMES: BUT IT DON'T SEEM LIKE THAT WAY
3 BECAUSE IT SEEMS LIKE THEY'VE JUST GOT ME SITTING HERE UNTIL
4 THEY FEEL LIKE BRINGING ME TO COURT. WHICH IN THE
5 CONSTITUTION I'VE GOT A RIGHT TO A SPEEDY TRIAL. AND THEY'VE
6 VIOLATED ALL OF THAT, BECAUSE I'VE READ UP ON IT.

7 THE COURT: I UNDERSTAND. MR. SHUPPER.

8 MR. SHUPPER: AND IF I MIGHT ADD, YOUR HONOR, I BELIEVE
9 THAT THE SOLICITOR — AND WE'VE REALLY TALKED ABOUT TRYING
10 THIS CASE FOR CLOSE TO TEN MONTHS, HAVE HAD SOME DISCUSSIONS
11 ABOUT IT. IN RESPONSE TO MR. JAMES'S CONCERNS ABOUT THE DNA
12 AND THE BOND REDUCTION, WE DID HAVE A BOND REDUCTION HEARING
13 AND HIS BOND WAS REDUCED FROM \$250,000 TO \$100,000. I
14 BELIEVE THAT WAS IN APRIL OF THIS YEAR. AND AT THAT POINT WE
15 WERE AGAIN DISCUSSING ABOUT POSSIBLY HAVING TRIALS WITHIN A
16 MATTER OF 30 TO 60 DAYS. BUT FOR VARIOUS AND SUNDRY REASONS
17 WE'RE HERE TODAY.

18 THE COURT: MR. GASSER, PLEASE RESPOND. IT HAS BEEN
19 QUITE A WHILE.

20 MR. GASSER: YES, SIR. WITH REGARDS TO MR. ROBERT
21 JAMES, WHEN HE WAS FIRST ARRESTED IN DECEMBER OF 1996, IT WAS
22 FIRST ASSIGNED TO AN ASSISTANT PUBLIC DEFENDER SHORTLY AFTER
23 HIS ARREST. SOMETIME THEREAFTER, AND I'M UNAWARE OF DATES, I
24 BELIEVE IT MIGHT BE IN THE FILE WITH THE PUBLIC DEFENDER'S
25 OFFICE OR IN MR. SHUPPER'S FILE, BUT SOMETIME THEREAFTER THE

1 CASE WAS THEN CONFLICTED OUT FROM THE PUBLIC DEFENDER'S
2 OFFICE TO NATHANIEL ROBERSON WHEREUPON MR. ROBERSON HAD THE
3 CASE FOR A WHILE, WHERE SOMETIME THEREAFTER HE APPARENTLY HAD
4 A CONFLICT OR HE GOT RELIEVED. FOR WHATEVER REASON HE GOT
5 RELIEVED BY A CIRCUIT COURT JUDGE. WE MAY HAVE CONSENTED TO
6 IT. WE NORMALLY DO WITH THE PRIVATE BAR. AND THEN MR.
7 SHUPPER GOT INVOLVED. SO I KNOW HE'S GONE THROUGH THREE
8 DIFFERENT LAWYERS. AND THERE WAS DIFFICULTY IN SCHEDULING
9 THE SCHMERBER HEARINGS WITH HIM AS A RESULT OF THAT. SO THE
10 SCHMERBER HEARING WASN'T EVEN DONE UNTIL APRIL OF 1998 I
11 BELIEVE.

12 AS FAR AS MR. JAMES ALSO, ALTHOUGH HE'S ALWAYS HAD A
13 PUBLIC DEFENDER, HE HAS GONE THROUGH — MR. KENNETH JAMES HAS
14 GONE THROUGH SEVERAL ASSISTANT PUBLIC DEFENDERS I BELIEVE AS
15 A RESULT OF SOME PEOPLE COMING AND GOING WITHIN THE PUBLIC
16 DEFENDER'S OFFICE.

17 THE COURT: OKAY. WELL, I'M NOT CONCERNED ABOUT KENNETH
18 JAMES BECAUSE KENNETH JAMES, (A), DOESN'T — EXCUSE ME. YES,
19 SIR.

20 MR. STRICKLER: I'M SORRY, YOUR HONOR. PERHAPS IN THE
21 INTEREST OF ECONOMY, MR. KENNETH JAMES HAS ALSO PRO SE FILED
22 A MOTION FOR A SPEEDY TRIAL REFLECTED APRIL 27TH OF 1999.

23 THE COURT: OKAY. I WASN'T AWARE OF THAT. YOU SEE, I
24 WAS ABOUT TO TELL MR. GASSER THAT IT DOESN'T MAKE ANY
25 DIFFERENCE TO ME WHAT KENNETH JAMES'S SITUATION WAS BECAUSE

1 WE WERE ONLY DEALING WITH ROBERT'S SITUATION. BUT NOW WE'RE
2 DEALING WITH BOTH. OKAY.

3 MR. STRICKLER: THE ONLY REASON I INTERJECT AT THIS
4 POINT, YOUR HONOR, RATHER THAN HAVING TO GO THROUGH THIS
5 TWICE. MR. JAMES HAS FILED IT REQUESTING — ASSERTING HIS
6 RIGHT TO A SPEEDY TRIAL. I HAVE HIS COPY OF HIS MOTION WHICH
7 I WILL BE HAPPY TO SUPPLY YOUR HONOR AT THIS POINT. I WOULD
8 HAVE NOTHING TO ADD TO MR. SHUPPER'S —

9 THE COURT: I UNDERSTAND.

10 MR. STRICKLER: — ANALYSIS OF THE SPEEDY TRIAL RIGHT
11 IN SOUTH CAROLINA OTHER THAN TO ECHO THE FACT THAT IT
12 CONFUSES ME, TOO.

13 THE COURT: YEAH. ME, TOO.

14 MR. STRICKLER: AND IT ALWAYS HAS.

15 THE COURT: MM-HMM (AFFIRMATIVE).

16 MR. STRICKLER: I WOULD JUST LIKE THE RECORD TO REFLECT
17 — AND, YOUR HONOR, I ALSO PASS THIS UP TO YOU — THAT THIS
18 WAS FILED BY MR. JAMES IN APRIL OF THIS YEAR.

19 THE COURT: I'M SORRY. I'M SORRY, MR. GASSER. WE
20 INTERRUPTED YOU. PLEASE CONTINUE.

21 MR. GASSER: YES, SIR.

22 MR. STRICKLER: THANK YOU.

23 MR. GASSER: YOUR HONOR, I GUESS IT'S OUR POSITION THEY
24 WANTED A SPEEDY TRIAL; WE'RE READY TO GIVE THEM THEIR SPEEDY
25 TRIAL RIGHT NOW, TODAY. AND I GUESS, THEREFORE, THEY'RE

1 MAKING A MOTION TO DISMISS BECAUSE THIS SPEEDY TRIAL MOTION
2 WASN'T GRANTED ANY TIME BEFORE. OF COURSE THIS IS THE FIRST
3 TIME THAT ANY OF THE DEFENSE LAWYERS -- THAT ANY OF THE
4 DEFENSE LAWYERS HAVE NEVER INDICATED TO US THAT THEY WANTED
5 TO GO BEFORE A CIRCUIT COURT JUDGE TO HAVE THEIR TRIAL SET.

6 WE CAN'T -- WHEN A DEFENDANT HAS COUNSEL, WE ARE NOT
7 ALLOWED TO -- UNDER THE RULES, WE ARE NOT ALLOWED TO
8 COMMUNICATE WITH THE DEFENDANT. SO THESE DEFENDANTS HAVE
9 CONSISTENTLY HAS COUNSEL SINCE DECEMBER OF 1996, AND YET THIS
10 IS THE FIRST TIME WE HAVE CALLED THIS CASE. I HAVEN'T
11 FORMALLY CALLED THE CASE. I'M FORMALLY CALLING THE CASE, THE
12 STATE OF SOUTH CAROLINA VS. ROBERT ANTHONY JAMES AND KENNETH
13 JAMES.

14 AND THIS IS THE FIRST TIME THAT EITHER OF THE DEFENSE
15 ATTORNEYS OR ANY OF THE DEFENSE ATTORNEYS FOR THESE
16 DEFENDANTS HAVE REQUESTED TO ENFORCE THE SPEEDY TRIAL LAW IN
17 SOUTH CAROLINA. IN THAT REGARD, I BELIEVE THAT NEITHER SIDE
18 HAS SHOWN ANY UNDUE PREJUDICE.

19 MY UNDERSTANDING, THE ONLY WAY I KNOW IT -- I AGREE THAT
20 IT'S DIFFICULT TO INTERPRET CHIEF JUSTICE FINNEY'S WRITTEN
21 ORDER. WE ALL KNOW AS ALL OF US PRACTICING MEMBERS OF THE
22 BAR THAT CASES, THAT PROBABLY LESS THAN TEN PERCENT OF OUR
23 CASE LOAD IN RICHLAND COUNTY OR IN GREENVILLE COUNTY OR IN
24 CHARLESTON COUNTY, YOUR MAJOR COUNTIES; AND IF YOU LOOK AT
25 COURT ADMINISTRATION STATISTICS, SOME OF YOUR SMALLER

1 COUNTIES, ARE DISPOSED OF WITHIN 120 DAYS.

2 SO BASED ON MY INTERPRETATION OF THAT, IS THAT IF A
3 DEFENSE ATTORNEY MAKES A MOTION TO ENFORCE THE PROCEDURAL
4 180-DAY RULE AND THAT IF A CIRCUIT COURT JUDGE THEN SETS THE
5 TRIAL DATE, THAT IS WHEN THIS WHOLE IDEA OF A SPECIFIC
6 WRITTEN ORDER CONTINUING THE CRIMINAL CASE FOR EXCEPTIONAL
7 CIRCUMSTANCES KICKS IN. THAT'S MY ONLY WAY I CAN INTERPRET
8 THAT SINCE WE ALL KNOW AS OFFICERS OF THE COURT THAT THAT
9 180-DAY RULE IS LITERALLY VIOLATED IN 85 PERCENT OF THE
10 CRIMINAL CASES IN SOUTH CAROLINA, NOT JUST THIS CIRCUIT.

11 SO IF THEY WOULD ATTEMPT -- AND I DON'T KNOW VERY MANY
12 PRIVATE BAR OR PUBLIC DEFENDERS THAT WANT THEIR CASE TO COME
13 TO COURT WITHIN 180 DAYS.

14 THE COURT: WELL, THESE GUYS DID THOUGH. WELL, THEY
15 WANTED IT AS OF APRIL 27TH, 1999, AND PERHAPS A YEAR EARLIER
16 IN MR. ROBERT JAMES'S CASE. BUT, IN ANY EVENT, I APPRECIATE
17 WHAT YOU'RE SAYING. ANYTHING ELSE?

18 MR. GASSER: NO, SIR, YOUR HONOR.

19 THE COURT: ALL RIGHT. BEFORE I ASK YOU TO RESPOND --

20 MR. SNEED: YOUR HONOR.

21 THE COURT: -- BEFORE I ASK YOU TO RESPOND I'M GOING TO
22 HAVE MS. WILLIAMS MARK THESE AS -- THESE ARE DEFENDANT'S
23 EXHIBITS IN THIS CASE, BUT YOU'RE NOT PRESENTING EVIDENCE
24 BEFORE THE JURY OR ANYTHING LIKE THAT. LET'S NOT WORRY ABOUT
25 THAT. SO MARK ROBERT'S THE MATTER THAT'S DATED JULY 13TH,

1 1998, FROM JUDGE MANNING; THAT IS, ROBERT'S EXHIBIT 1. AND
2 THIS IS KENNETH'S EXHIBIT 1, THE MOTION FOR SPEEDY TRIAL.

3 NOW, MR. SHUPPER OR MR. STRICKLER OR ANYONE ELSE WISHES
4 TO RESPOND TO THE ARGUMENT MADE BY THE SOLICITOR.

5 MR. SHUPPER: IF YOUR HONOR PLEASE, I BELIEVE MY CLIENT
6 HAD SOMETHING TO SAY.

7 THE COURT: YES, SIR.

8 MR. ROBERT JAMES: YOUR HONOR, TO MY KNOWLEDGE THE FIRST
9 PART OF WHAT THE SOLICITOR SAID WAS INCORRECT. WHEN I FIRST
10 GOT HERE, THE FIRST 30 DAYS I WAS HERE I DIDN'T HAVE ANY
11 LAWYER. THEY CAME AND SCREENED ME BUT I DIDN'T HAVE A
12 LAWYER. THEN THEY SENT ME A LETTER SAYING WE GOT YOU A
13 LAWYER OUTSIDE THE SOLICITOR'S OFFICE. I HAD HIM FOR SIX
14 MONTHS. AND THEN THAT'S WHEN THEY SWITCHED ME AROUND TO MR.
15 SHUPPER. I HAVE NO CONTROL OVER THE WAY THEY SWITCHED THEM
16 AROUND, BUT I DIDN'T HAVE THREE LAWYERS. I ONLY HAD TWO.
17 AND THAT WAS STILL SEVEN MONTHS AFTER I HAD BEEN
18 INCARCERATED.

19 THEN HE HAD -- WHEN I FIRST GOT MR. SHUPPER, HE ASKED ME
20 TO GIVE HIM TIME TO GET FAMILIAR WITH THE CASE. THAT'S WHY I
21 AIN'T FILED THE SPEEDY MOTION FOR THE SPEEDY TRIAL THEN. BUT
22 I WAITED SEVEN TO EIGHTH MONTHS AFTER THAT, THEN FILED THE
23 FIRST ONE. THEN I FILED THE SECOND ONE.

24 THE COURT: YOU SHOULD HAVE LET HIM KNOW ABOUT IT, YOU
25 SEE. THAT WOULD BE HELPFUL. I APPRECIATE WHAT YOU'RE

1 SAYING. DOES KENNETH HAVE ANYTHING TO SAY? AND I DON'T MEAN
2 TO DISRESPECT EITHER OF YOU, BUT I'M GOING TO CALL YOU BY
3 YOUR FIRST NAMES SINCE YOU'VE GOT THE LAST NAME.

4 MR. KENNETH JAMES: YES, YOUR HONOR. WHEN I CAME TO GET
5 A BOND BACK IN '97, FRANK DRAPER HAD BROUGHT ME UP TO GET A
6 BOND, THE JUDGE WHO HAD APPOINTED ME THE BOND HAD TOLD FRANK
7 DRAPER AT THE TIME TO ADDRESS HIM TO FILE FOR MY MOTION FOR
8 SPEEDY TRIAL. AND HE HAD TOLD ME HE WAS GOING TO FILE FOR
9 IT. THE NEXT THING I KNOW FRANK DRAPER HAD LEFT THE PUBLIC
10 DEFENDER'S OFFICE AND I AIN'T KNOW IF IT WAS FILED FOR OR
11 NOT. MARY BEA MILLS CAME AND SAID SHE WOULD LOOK TO SEE WAS
12 IT FILED. THEN SHE LEFT THE PUBLIC DEFENDER'S OFFICE. AND
13 THEN I GOT DOUG STRICKLER. BY THEN THERE WAS A DUDE ALREADY
14 DOWN THERE WITH THE LAW BOOKS AND HE SHOWED ME HOW TO FILE
15 FOR IT MYSELF. THAT'S WHY MINES (SIC) WASN'T FILED UNTIL
16 THEN. BUT IT WAS SUPPOSED TO BE FILED BACK IN '97. MY
17 MOTION FOR SPEEDY TRIAL WAS SUPPOSED TO HAVE BEEN FILED THEN.

18 THE COURT: I APPRECIATE THAT, MR. JAMES. MR. SHUPPER,
19 WHAT ELSE?

20 MR. SHUPPER: YEAH, YOUR HONOR. EXCUSE ME, YOUR HONOR.
21 BUT TO CLARIFY THE MYSTERY OF THE APPOINTMENTS, THE PUBLIC
22 DEFENDER WAS APPOINTED ON THE 17TH OF FEBRUARY 1997, AND I
23 THINK MR. ROBERSON WAS APPOINTED SOMETIME THEREAFTER. I WAS
24 APPOINTED IN SEPTEMBER OF 1997.

25 THE COURT: ALL OF THAT NOTWITHSTANDING -- AND I

1 APPRECIATE THAT. AND FORGIVE ME FOR KIND OF BARKING A LITTLE
2 BIT LIKE THAT. BUT THE POINT HERE IS, IS THAT THIS IS A
3 HORRENDOUS DELAY, BUT THESE GUYS WERE JUST INDICTED WHAT?
4 LAST WEEK OR SOMETHING LIKE THAT? HUH?

5 MR. STRICKLER: YES, SIR. I WAS GOING TO — THE ONLY
6 RESPONSE I WOULD HAVE TO MR. GASSER WAS THE FACT MR. GASSER
7 INDICATED THIS WAS THE FIRST TIME ANYONE HAD INDICATED THEY
8 WISHED TO GO TO TRIAL DURING THIS THREE YEAR — ALMOST
9 THREE-YEAR PERIOD. AND AS YOUR HONOR HAS JUST NOTED,
10 MID-AUGUST OF THIS YEAR, A MONTH AGO, WAS THE EARLIEST THE
11 STATE COULD HAVE BROUGHT THEM TO TRIAL BECAUSE THAT'S WHEN
12 THEY WERE INDICTED, OR AT LEAST THAT'S WHEN THE INDICTMENTS
13 THAT WE HAVE IN OUR POSSESSION WERE RETURNED.

14 THE COURT: YEAH. WELL, YOU KNOW, I'D BE A LOT MORE
15 INCLINED HAD THIS BEEN IN FRONT OF A JUDGE AND THE JUDGE HAD
16 ORDERED A TRIAL DATE TO — I'M NOT UNSYMPATHETIC TO YOU NOW,
17 BECAUSE THIS IS A HORRENDOUS DELAY AND IT'S REALLY NOT
18 TERRIBLY WELL EXPLAINED. BUT I DON'T THINK THAT THE
19 SITUATION IN OUR STATE REQUIRES DISMISSAL OF THE CHARGES. SO
20 I'M NOT GOING TO DISMISS THE CHARGES BASED ON THE ARGUMENTS
21 THAT I'VE HEARD THUS FAR.

22 AND PARTICULARLY OWING TO THE FACT THAT I HAVE HEARD NO
23 ARGUMENT RELATING TO PREJUDICE TO THE DEFENSE IN THIS CASE.
24 SO, IN ANY EVENT, THE MOTIONS ARE DENIED. WE'LL PROCEED WITH
25 THE TRIAL.

1 NOW, WE CAN'T BRING THIS JURY UP UNTIL ROBERT JAMES HAS
2 SOME CLOTHES ON. AND SO I'M SORRY, BUT WE'RE GOING TO HAVE
3 TO TAKE A LITTLE BREAK TO LET HIM DO THAT, AND THEN WE'LL —
4 YES, SIR.

5 MR. STRICKLER: I'M SORRY, YOUR HONOR. WE'RE AT THE
6 POINT WHERE IT'S PURELY PROCEDURAL AT THIS POINT. NOW THAT
7 WE KNOW THAT WE'RE IN THIS TOGETHER, THE QUESTION BECOMES,
8 THE QUESTION ARISES AS TO MODE OF INTERROGATION, ET CETERA,
9 ET CETERA. SOMEONE'S GOT TO GO FIRST; SOMEONE'S GOT TO GO
10 SECOND. MY READING OF THE STATE'S ORDER INDICATES THEY'RE
11 CALLING 99-GS-40-19105 WHICH I KNOW REFLECTS — REFERS TO
12 KENNETH JAMES AND 99-19299, ET AL. WHICH I WOULD ASSUME
13 REFERS TO ROBERT JAMES BECAUSE I DON'T HAVE THE INDICIMENTS.

14 THE COURT: AND THEY MAY HAVE THEM LISTED THAT WAY ON
15 THE INDICIMENT — I MEAN ON THE CAPTION OF THE CASE.

16 MR. STRICKLER: YES, SIR. AND IT WOULD APPEAR THAT
17 KENNETH JAMES'S INDICIMENTS ARE LOWER IN NUMBER THAN ROBERT
18 JAMES. THE FEW TIMES I'VE BEEN CONFRONTED WITH THIS, THAT
19 HAS BEEN PRESENTED TO ME AS THE, ABSENT SOMEONE FEELING
20 TREMENDOUSLY OTHERWISE, RULE OF THUMB AS TO ORDER OF
21 INTERROGATION, IS THE ORDER OF INDICIMENT, AND I'D ASK THAT
22 WE PROCEED IN THAT FASHION SO.

23 THE COURT: SO, KENNETH —

24 MR. STRICKLER: WE'D LIKE TO GO FIRST.

25 THE COURT: — CROSS EXAMINES FIRST.

1 MR. STRICKLER: YES, SIR.

2 THE COURT: AND ROBERT CROSS-EXAMINES SECOND.

3 MR. STRICKLER: YES, SIR.

4 THE COURT: WHICH I THINK MAKES SENSE.

5 MR. SHUPPER: NO OBJECTION, YOUR HONOR. WE'LL LEAVE IT
6 IN YOUR DISCRETION.

7 THE COURT: YEAH. RIGHT. YOU ALL DON'T REALLY CARE, DO
8 YOU? OKAY. THANK YOU.

9 MR. STRICKLER: THANK YOU, SIR.

10 THE COURT: ALL RIGHT. GET ROBERT DRESSED, AND THEN
11 LET'S GET THE JURY UP HERE. HOW LONG WILL IT TAKE TO GET
12 ROBERT DRESSED?

13 MR. SHUPPER: EXCUSE ME, YOUR HONOR. YES, YOUR HONOR.
14 I'M SORRY SURE THAT THE PUBLIC DEFENDER'S OFFICE WILL BE ABLE
15 TO ACCOMMODATE US. IF A DEPUTY COULD ESCORT HIM DOWN THERE
16 FOR FITTING.

17 THE COURT: WHATEVER. WHATEVER IS CONSISTENT WITH THE
18 DICTATES OF THE SECURITY FOLKS, WE'LL THEN DO THAT. BUT I
19 WANT IT DONE AS QUICKLY AS POSSIBLE. JOE KNOWS THAT. AND
20 JUST THE QUICKEST WAY IT CAN GET DONE, JOE, CONSISTENT WITH
21 YOUR REQUIREMENTS. OKAY.

22 (PAUSE)

23 THE COURT: I'LL BE BACK HERE. LET ME KNOW AS SOON HE
24 GETS — AND GIVE ME YOUR VOIR DIRE.

25 MR. SHUPPER: YES, SIR, YOUR HONOR. MY COPIER BROKE

1 THIS MORNING, YOUR HONOR, AND MY INVESTIGATOR HAD TO GO COPY
2 THAT ON HIS.

3 THE COURT: OKAY.

4 (WHEREUPON, A BREAK IS TAKEN)

5 (COURT'S EXHIBIT NO. 1, MOTION FOR SPEEDY TRIAL FILED BY
6 KENNETH JAMES, MARKED FOR IDENTIFICATION ONLY)

7 (COURT'S EXHIBIT NO. 2, DOCKET RELATING TO ROBERT JAMES,
8 MARKED FOR IDENTIFICATION ONLY)

9 THE COURT: LET'S SUMMON THE JURY UP. WHAT WE PROPOSE
10 TO DO, MS. PENDERGRASS IS AWARE OF IT, AND I'M NOT GOING TO
11 SPEED THROUGH THIS, BUT I AM GOING TO EXPLAIN TO THE JURY
12 THAT WE HAVE A -- WE'RE UNDER SOME TIME CONSTRAINTS AND WE'RE
13 CERTAINLY GOING TO -- AT THE MOMENT THAT THEY ARE REJECTED,
14 ASSUMING THEY ARE REJECTED, THEY ARE GOING TO BE FREE TO GO
15 BACK DOWNSTAIRS TO BE IN ANOTHER PART OF THE POOL. OR,
16 JACKIE, WHAT IS THE INSTRUCTION FOR THEM? GO TO LUNCH AND
17 THEN REPORT BACK?

18 THE CLERK: AT 2:30.

19 THE COURT: AT 2:30?

20 THE CLERK: MM-HMM (AFFIRMATIVE).

21 THE COURT: OKAY. SO WE'LL GET THAT OUT OF THE WAY.
22 NOW, WHERE IS MR. KENNETH JAMES?

23 MR. STRICKLER: I IMAGINE HE'S IN THE HOLDING CELL, YOUR
24 HONOR.

25 THE COURT: YEAH. OKAY. THEY'RE GOING TO WHAT? BRING

1 THEM BOTH? CHECK ON THE STATE OF —

2 MR. STRICKLER: YOU'D LIKE THEM BOTH HERE AS SOON AS
3 THEY'RE READY?

4 THE COURT: — FASHION OF, YES, MR. ROBERT JAMES AT THIS
5 MOMENT.

6 MR. GASSER: A COUPLE OF MINUTES, YOUR HONOR.

7 THE COURT: OKAY. I'VE HEARD THAT ONE BEFORE. OR CHECK
8 IS IN THE MAIL. LET'S SEE. WHAT ELSE?

9 MR. GASSER: YOUR HONOR, I KNOW THE DEFENDANTS AREN'T
10 HERE. BUT WITH REGARDS TO VOIR DIRE, MAY WE APPROACH ON
11 THAT? I DON'T NECESSARILY THINK IT'S SOMETHING UNLESS THEY
12 HAVE AN OBJECTION TO THAT REQUIRES THE DEFENDANTS TO BE HERE.

13 THE COURT: NO. GO AHEAD AND TELL ME.

14 MR. GASSER: OKAY. JUST RATHER THAN SUBMITTING — I AM
15 FAMILIAR WITH YOUR GENERAL VOIR DIRE QUESTIONS. AND WHEN I
16 GET THE DEFENSE'S VOIR DIRE, I JUST REQUEST - I WOULD REQUEST
17 —

18 THE COURT: RECIPROCTTY?

19 MR. GASSER: — RECIPROCTTY ON NUMBER 1 OF MR.
20 STRICKLER'S, MR. KENNETH JAMES. I'D REQUEST THEM ALSO ASK
21 ABOUT THE FAMILY MEMBERS AND HAVING EVER WORKED OR CURRENTLY
22 WORKING IN A FEDERAL, STATE OR COUNTY PUBLIC DEFENDER'S
23 OFFICE.

24 THE COURT: OKAY.

25 MR. GASSER: ALSO RECIPROCTTY ON NO. 6, ABOUT WHEN HE

1 ASKS WHETHER OR NOT ANY OF THE PANEL OR ANY MEMBER OF THEIR
2 IMMEDIATE FAMILY HAS EVER BEEN THE VICTIM OF A CRIME OF
3 VIOLENCE, I WOULD ALSO ASK RECIPROCITY, HAS ANY MEMBER OF THE
4 PANEL OR ANY MEMBER OF THEIR FAMILY EVER BEEN CHARGED OR
5 ACCUSED OF A CRIME OF VIOLENCE AS WELL.

6 THE COURT: OKAY. THAT'LL STRETCH THIS OUT A LITTLE
7 BIT. BUT WE'LL DO ALL THAT. I THINK IN FAIRNESS THOSE OUGHT
8 TO BE ASKED.

9 MR. GASSER: AND IT'S NOT INCLUDED ON ANY OF THE --
10 EITHER OF THE DEFENDANTS'; BUT, AGAIN, BASED ON MY EXPERIENCE
11 WITH THIS COURT, YOU DO ASK IF ANY OF THE POTENTIAL JURORS,
12 ANY OF THEM HAVE EVER BEEN REPRESENTED BY ME OR MS. FRYAR OR
13 ANYBODY IN THE SOLICITOR'S OFFICE AS WELL AS MR. STRICKLER,
14 MR. SNEED, ANYBODY IN THE PUBLIC DEFENDER'S OFFICE AS WELL AS
15 MR. SHUPPER.

16 THE COURT: GOT YOU. OKAY. MS. PENDERGRASS.

17 THE CLERK: YES, YOUR HONOR.

18 THE COURT: I BELIEVE WE CAN CALL FOR THE JURY TO BE
19 BROUGHT UP. FOLKS, AS SOON AS EVERYONE GETS IN WE'LL BEGIN
20 CERTAIN CASE SPECIFIC QUESTIONS WITH REGARD TO THIS CASE.
21 UNTIL THEN I SIMPLY DON'T WANT TO BE REPETITIVE. AS SOON AS
22 WE HAVE 50 PEOPLE IN HERE, FOLKS, WE'LL BEGIN WITH THE
23 QUESTIONS OF YOU. WE NEED A FEW MORE FOLKS IN HERE. I THINK
24 WE NEED ABOUT FIVE MORE. YOU FOLKS, WE ARE NOT GOING TO
25 NEGLECT YOUR LUNCH. THIS IS GOING TO TAKE A LITTLE WHILE.

1 YOU'LL HAVE PLENTY OF TIME TO EAT LUNCH. IT JUST MAY BE A
2 LITTLE LATER THAN YOU'RE USED TO EATING IT. AND AS SOON AS
3 WE GET THIS JURY SELECTED -- THE REASON WE HAVE TO DO THINGS
4 THIS WAY IS WE HAVE FIVE DIFFERENT COURTS COMPETING FOR THE
5 JURORS, AND IT'S OFTEN DIFFICULT TO COORDINATE TIMING. WE
6 TRY TO DO IT AS BEST AS WE POSSIBLY CAN.

7 THE BAILIFF: THE JURY IS ALL PRESENT, YOUR HONOR.

8 THE COURT: OKAY. FOLKS, YOU'VE BEEN SUMMONED HERE AS
9 PROSPECTIVE JURORS IN A PARTICULAR CASE, THAT CASE BEING THE
10 STATE AGAINST KENNETH JAMES AND ROBERT JAMES. THIS IS A CASE
11 IN WHICH THE STATE MAKES ALLEGATIONS OF CRIMINAL ACTIVITY
12 AGAINST EACH OF THE DEFENDANTS, AND YOU AS JURORS WILL BE
13 CALLED UPON TO RESOLVE THE FACTUAL DISPUTE THAT EXISTS
14 BETWEEN THE PARTIES.

15 BEAR IN MIND THIS, THAT THE STATE AT ALL TIMES HAS THE
16 OBLIGATION, THE DUTY, THE RESPONSIBILITY OF PROVING ITS
17 CHARGES, IF IT CAN, BY COMPETENT EVIDENCE SATISFYING A
18 UNANIMOUS JURY BEYOND A REASONABLE DOUBT OF THE GUILT OF THE
19 DEFENDANTS.

20 THE DEFENDANTS OR EITHER OF THEM, AND EACH IS ENTITLED
21 TO AN INDIVIDUALIZED CONSIDERATION, NOTWITHSTANDING THAT WE
22 ARE TRYING THEM IN THE SAME TRIAL, THEY HAVE NOTHING TO
23 PROVE. EACH OF THEM IS ENTITLED TO SOMETHING KNOWN AS THE
24 PRESUMPTION OF INNOCENCE WHICH ENTITLES THEM TO THAT
25 PRESUMPTION UNLESS AND UNTIL THE STATE COMES FORWARD WITH

1 COMPETENT EVIDENCE SATISFYING A UNANIMOUS JURY BEYOND A
2 REASONABLE DOUBT OF THE GUILT OF A PARTICULAR DEFENDANT, IF
3 IT DOES THAT AT ALL.

4 KENNETH JAMES IS CHARGED IN A NUMBER OF INDICMENTS WITH
5 THE CRIMES OF KIDNAPPING, POSSESSION OF A KNIFE — A FIREARM
6 — DURING THE COMMISSION OR ATTEMPTED COMMISSION OF A
7 VIOLENCE CRIME, TWO COUNTS OF THAT. HE'S CHARGED WITH
8 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. HE'S CHARGED
9 WITH ARMED ROBBERY, TWO COUNTS. HE'S CHARGED WITH ANOTHER
10 COUNT OF KIDNAPPING AND ANOTHER COUNT OF ASSAULT WITH INTENT
11 TO KILL; A NUMBER OF CHARGES LODGED AGAINST MR. KENNETH
12 JAMES.

13 ROBERT JAMES IS CHARGED WITH KIDNAPPING, CRIMINAL SEXUAL
14 CONDUCT IN THE FIRST DEGREE, ARMED ROBBERY, ANOTHER COUNT OF
15 KIDNAPPING, POSSESSION OF A FIREARM DURING ATTEMPT OR THE
16 COMMISSION OF A VIOLENT CRIME, ANOTHER COUNT OF THE SAME
17 THING, ASSAULT WITH INTENT TO KILL, AND ARMED ROBBERY. THOSE
18 ARE THE CHARGES LODGED AGAINST EACH OF THE DEFENDANTS, EACH
19 OF WHOM AGAIN IS PRESUMED TO BE INNOCENT OF THESE CHARGES.

20 WITH PERMISSION OF COUNSEL, FIRST, MR. STRICKLER, MAY
21 MR. KENNETH JAMES PLEASE STAND?

22 (MR. KENNETH JAMES STANDS)

23 THE COURT: THANK YOU, MR. JAMES. YOU MAY BE SEATED.
24 THAT'S KENNETH JAMES, ONE OF THE DEFENDANTS IN THIS CASE.
25 THE OTHER DEFENDANT IN THIS CASE IS ROBERT JAMES. AND WITH

1 PERMISSION, MR. SHUPPER, MAY HE STAND?

2 (MR. ROBERT JAMES STANDS)

3 THE COURT: THAT'S THE DEFENDANT. OH, I'M SORRY. YOU
4 HAVE AN INJURY. PLEASE BE SEATED, SIR. THAT'S ROBERT JAMES.
5 IS THERE ANY PERSON ON THIS PANEL WHO IS RELATED BY BLOOD OR
6 BY MARRIAGE OR WHO MIGHT IN ANY WAY, SHAPE OR FORM BE
7 ACQUAINTED WITH EITHER OF THESE TWO DEFENDANTS, EITHER
8 KENNETH OR ROBERT JAMES? YOU KNOW THEM OR YOU'RE KIN TO
9 THEM. ANYBODY? IF SO, PLEASE STAND, AND WE'LL GO FROM
10 THERE.

11 OKAY. THE FOLLOWING PEOPLE ARE POTENTIAL WITNESSES IN
12 THIS CASE. I HASTEN TO USE THE TERM "POTENTIAL" BECAUSE IT
13 IS UNLIKELY THAT ALL OR EVEN THE GREAT MAJORITY OF THESE
14 PEOPLE MAY BE CALLED, ALTHOUGH THEY MAY. YOU ARE TO DRAW NO
15 INFERENCES FROM THE FAILURE OF THESE PEOPLE TO BE CALLED
16 UNLESS I TELL YOU THAT YOU MAY. IF THESE FOLKS ARE PRESENT
17 IN THE COURTROOM, AND SOME OF THEM ARE, I'M GOING TO ASK THEM
18 TO STAND AND FACE YOU SO THAT YOU CAN GET A VISUAL TAKE ON
19 THEM AS WELL.

20 *Victim* 1. THIS IS *Victim*. THANK YOU, MS.

21 *Victim* YOU MAY BE SEATED. WINFRED BULL. MR. BULL. THANK
22 YOU, MR. BULL. SANJETTA (PHONETIC) OR SANGETTA COAXUM,
23 C-O-A-X-U-M; NOT PRESENT, BUT IT'S AN UNUSUAL NAME. SANGETTA
24 COAXUM. MICHAEL MCREYNOLDS. AGAIN, IF YOU KNOW ANY OF THESE
25 PEOPLE, PLEASE RESPOND BY STANDING AT THE TIME THAT PERSON'S

1 NAME IS CALLED SO THAT I CAN EXPLORE THE NATURE OF THAT
2 RELATIONSHIP.

3 RHONDA HENRY. IS MS. HENRY PRESENT? NO. BRENDA
4 BOWMAN. NOT PRESENT. VERNETTE YEADON OR YEEDON (PHONETIC),
5 Y-E-A-D-O-N. CHARLES MURRAY, MURRAY, M-U-R-R-A-Y.
6 INVESTIGATOR TOMMY THOMAS OF THE COLUMBIA POLICE DEPARTMENT.
7 THANK YOU. INVESTIGATOR ROBERT BENSON, ROB BENSON WITH THE
8 COLUMBIA POLICE DEPARTMENT. THANK YOU. SERGEANT JOE CRONIN,
9 COLUMBIA POLICE DEPARTMENT. NOT PRESENT.

10 OFFICER RON GIBSON, FORMERLY WITH THE COLUMBIA POLICE
11 DEPARTMENT; NO LONGER WITH THEM, BUT A POTENTIAL WITNESS IN
12 THE CASE. OFFICER JOHN WALKER OF THE COLUMBIA POLICE
13 DEPARTMENT. JOHN WALKER. OFFICER TIM PICCIONE,
14 P-I-C-C-I-O-N-E, COLUMBIA POLICE DEPARTMENT. JOANNE LEWIS,
15 L-E-W-I-S, COLUMBIA POLICE DEPARTMENT. OFFICER CAROL
16 TOWNSEND, FORMERLY OF THAT DEPARTMENT. A NURSE NAMED BETSY
17 KENT AT RICHLAND MEMORIAL HOSPITAL. DR. — A PHYSICIAN NAMED
18 STACEY SMITHSON, SMITHSON, OF LEXINGTON MEDICAL CENTER.
19 AGENT DAVID BLACK OF SLED, AGENT JOHN ORTUNA (SIC) OF SLED,
20 ORTUNO. AGENT IRA JEFFCOAT OF SLED. PATTIE RUFF OR ROOF
21 (PHONETIC) OF SLED. I SKIPPED SERGEANT RANDY BLACKWELL OF
22 THE COLUMBIA POLICE DEPARTMENT. THIS IS OFFICER — MR.
23 BLACKWELL. SIR, YOUR NAME?

24 JUROR WATTS: EDWARD WATTS.

25 THE COURT: MR. WATTS, WHO AMONG THESE FOLKS DO YOU

1 KNOW, OR TO WHOM ARE YOU RELATED?

2 JUROR WATTS: I KNOW ...

3 THE COURT: MR. BLACKWELL?

4 JUROR WATTS: I THINK I DO.

5 THE COURT: OKAY. LET ME JUST ASK YOU THIS, IF I MAY.

6 AND, AGAIN, FORGIVE ME FOR ATTEMPTING TO CONTROL THE
7 CONVERSATION. LET ME GIVE YOU A FEW WORDS PERHAPS THAT MAY
8 DESCRIBE THE NATURE OF YOUR RELATIONSHIP WITH HIM. FRIEND,
9 NEIGHBOR, FORMER CO-WORKER, CLASSMATE. WHAT?

10 JUROR WATTS: FORMER CO-WORKER.

11 THE COURT: FORMER CO-WORKER. HOW LONG AGO AND WHERE?

12 JUROR WATTS: AT LEAST 15 YEARS AGO, PROBABLY LONGER
13 THAN THAT.

14 THE COURT: WHERE WAS THIS THAT YOU WERE WORKING?

15 JUROR WATTS: JACKSON CAMERA.

16 MR. BLACKWELL: THAT'S CORRECT, YOUR HONOR.

17 THE COURT: THAT WOULD BE THE SAME PERSON THEN.

18 JUROR WATTS: RIGHT.

19 THE COURT: AND I WOULD ASK YOU IF THE FACT THAT OFFICER
20 BLACKWELL MAY BE A WITNESS IN THIS CASE, WOULD THAT FORMER
21 RELATIONSHIP WITH HIM -- HAVE YOU INTERACTED IN THE ENSUING
22 YEARS?

23 JUROR WATTS: NO.

24 THE COURT: WOULD THAT PREVIOUS RELATIONSHIP IN ANY WAY
25 IMPACT ON YOUR ABILITY TO BE FAIR AND IMPARTIAL TO BOTH SIDES

1 OF THE CASE?

2 JUROR WATTS: NO, SIR.

3 THE COURT: THANK YOU VERY MUCH. YOU CAN BE SEATED.

4 SHARON WALKER OF SLED, LONNIE MCKAY OF SLED, SUSIE WILSON OF
5 SLED, DENISE MERRITT OF SLED, INVESTIGATOR WILLIAM WESLEY OF
6 THE SOLICITOR'S OFFICE. AND FINALLY A PATRICIA CURRIE,
7 C-U-R-R-Y, (SIC) WHO WORKS WITH SCANA. EXCUSE ME. I SAY
8 FINALLY. FORGIVE ME. YET SOME OTHER WITNESSES. SCOTT
9 PARKER, WHO IF HE'S PRESENT SHOULD STAND. SCOTT PARKER. NOT
10 PRESENT. TERRY WALKER. DR. THOMAS -- I'M SORRY. I CAN'T
11 READ THE LAST NAME.

12 MR. SHUPPER: ALLEY, YOUR HONOR.

13 THE COURT: ALLEN.

14 MR. SHUPPER: ALLEY.

15 THE COURT: ALLEY. I APOLOGIZE. HENRIETTA JORDAN,
16 VIOLA JAYNOR I BELIEVE IT IS. JAMES. IS THAT CORRECT?

17 MR. SHUPPER: YES, SIR.

18 THE COURT: AND BETSY KENT. THERE'S MS. JAMES BACK
19 THERE. MS. JAMES. THANK YOU, MA'AM. AND BETSY KENT. OKAY.

20 ARE YOU PRESENTLY -- EXCUSE ME, MA'AM. YOUR NAME?

21 JUROR NIXON: ELIZA NIXON.

22 THE COURT: I'M SORRY.

23 JUROR NIXON: ELIZA NIXON.

24 THE COURT: MS. NIXON, WHO DO YOU KNOW AMONG THIS GROUP
25 OF PEOPLE?

1 JUROR NIXON: I KNOW THE YOUNG LADY WHO JUST HAD TO
2 STAND.

3 THE COURT: MS. JAMES?

4 JUROR NIXON: YES.

5 THE COURT: AND IF YOU COULD, AND LET ME GIVE YOU SOME
6 SUGGESTIONS; AGAIN, THE SAME ONES THAT I GAVE TO THIS
7 GENTLEMAN HERE. THE NATURE OF YOUR RELATIONSHIP WITH MS.
8 JAMES. NEIGHBOR, FRIEND, CO-WORKER. WHAT?

9 JUROR NIXON: WELL, I JUST KNEW HER FROM GOING TO
10 DIFFERENT —

11 MS. JAMES: GOSPEL.

12 JUROR NIXON: — GOSPEL PROGRAMS.

13 THE COURT: YES, MA'AM. PLEASE, MS. JAMES, I'D ASK YOU
14 PLEASE NOT TO COMMENT. DIFFERENT GOSPEL PROGRAMS?

15 JUROR NIXON: YES.

16 THE COURT: SO A CHURCH-RELATED KIND OF SITUATION?

17 JUROR NIXON: RIGHT.

18 THE COURT: SHE MAY BE A WITNESS IN THIS CASE. WOULD
19 THAT FACT IN ANY WAY IMPACT UPON YOUR ABILITY TO BE A FAIR
20 AND IMPARTIAL JUROR TO BOTH SIDES OF THE CASE OR ALL THREE
21 SIDES OF THE CASE? BECAUSE THERE ARE THREE DIFFERENT
22 DISTINCT SIDES TO THIS CASE. DO YOU THINK THAT YOU COULD
23 STILL BE FAIR TO EVERYBODY EVEN THOUGH YOU KNOW THIS LADY?

24 JUROR NIXON: YES.

25 THE COURT: YOU DO. OKAY. IF THERE IS ANYTHING FURTHER

1 THAT YOU NEED TO DISCUSS WE CAN TAKE THAT UP LATER
2 INDIVIDUALLY. ALL RIGHT.

3 NOW, IS ANYBODY ON THIS PANEL CURRENTLY EMPLOYED BY, OR
4 HAVE YOU IN THE PAST BEEN EMPLOYED BY ANY OF THE FOLLOWING
5 ENTITIES, YOU OR A MEMBER OF YOUR IMMEDIATE FAMILY; BY ANY
6 LOCAL, STATE OR FEDERAL PROSECUTOR'S OFFICE? NOT CONFINED TO
7 THIS ONE, THE FIFTH JUDICIAL CIRCUIT SOLICITOR'S OFFICE. AND
8 THAT WOULD BE THE ATTORNEY GENERAL ALSO OR THE UNITED STATES
9 ATTORNEY'S OFFICE OR ANY PUBLIC DEFENDER AGENCY, WHETHER IN
10 THIS COUNTY OR ELSEWHERE. BEEN EMPLOYED BY ANY OF THOSE
11 PEOPLE? SIR, PLEASE STAND. YOUR NAME.

12 JUROR DEWITT: DEWITT. MIKE DEWITT.

13 THE COURT: MR. DEWITT, WHAT OF THOSE RELATES TO YOU,
14 SIR?

15 JUROR DEWITT: I WORKED FOR DHEC 22 YEARS AGO AS A
16 NARCOTICS OFFICER.

17 THE COURT: OKAY. THANK YOU. I APPRECIATE THAT. THAT
18 WOULD BE GETTING INTO THE NEXT QUESTION. YOU ANTICIPATED THE
19 NEXT QUESTION. NOBODY ELSE WORKED WITH ANY SUCH ENTITY, A
20 PROSECUTOR'S OFFICE OR A PUBLIC DEFENDER'S AGENCY? NO MATTER
21 WHERE. IT COULD BE KANAB, UTAH. OKAY. NOBODY. ALL RIGHT.

22 ANYBODY EMPLOYED BY CURRENTLY, OR IN THE PAST BEEN
23 EMPLOYED BY, ANY LOCAL, STATE OR FEDERAL LAW ENFORCEMENT
24 AGENCY AS DISTINCT FROM A PROSECUTOR'S OFFICE. YOU OR A
25 MEMBER OF YOUR NEED FAMILY. WHETHER THAT'S THE SHERIFF, THE

1 COLUMBIA POLICE DEPARTMENT, THE FBI, WHATEVER. SIR, YOUR
2 NAME.

3 JUROR SPANGLER: JAMES SPANGLER.

4 THE COURT: MR. SPANGLER?

5 JUROR SPANGLER: YES.

6 THE COURT: AND, MR. SPANGLER, WHAT IS YOUR SITUATION?

7 JUROR SPANGLER: I WAS A COMMUNICATIONS SPECIALIST FOR
8 THE DEPARTMENT OF NATURAL RESOURCES LAW ENFORCEMENT.

9 THE COURT: OKAY. AND HOW LONG AGO DID YOU WORK FOR
10 DNR?

11 JUROR SPANGLER: PROBABLY ABOUT SIX MONTHS AGO.

12 THE COURT: OKAY. THANK YOU VERY MUCH, SIR. THIS —

13 MR. STRICKLER: YOUR HONOR, EXCUSE ME.

14 THE COURT: EXCUSE ME. YES, SIR. YOUR NAME.

15 JUROR KOIVISTO: STEVE KOIVISTO.

16 THE COURT: YES, SIR.

17 JUROR KOIVISTO: AND MY BROTHER IS A POLICE OFFICER FOR
18 JACKSONVILLE, FLORIDA POLICE DEPARTMENT.

19 THE COURT: OKAY. THANK YOU VERY MUCH, SIR.

20 OKAY. THE STATE ALLEGES THAT THE OFFENSES CHARGED
21 AGAINST THE DEFENDANTS, AND EACH OF THEM, OCCURRED ON OR
22 ABOUT MAY 29TH, 1996, AT T. S. MARTIN PARK IN COLUMBIA,
23 DURING WHICH THE OFFENSES ALLEGED OCCURRED, INCLUDING THE
24 ALLEGED SEXUAL ASSAULT AND ROBBERY, ARMED ROBBERY. DO ANY OF
25 YOU RECALL HAVING BEEN EXPOSED TO ANY MEDIA ACCOUNTS OF THIS

1 ALLEGED EVENT EITHER AT THE TIME THAT IT OCCURRED OR
2 SUBSEQUENT TO THAT, INCLUDING TODAY; OR HAVE YOU HEARD OR HAD
3 DISCUSSED IN YOUR PRESENCE ANYTHING RELATING TO THE
4 ALLEGATIONS IN THIS CASE, WHICH AGAIN ARE ALLEGED TO HAVE
5 OCCURRED ON MAY 29TH, 1996, AT THE T. S. MARTIN PARK IN
6 COLUMBIA?

7 OKAY. NOW, IS THERE ANYTHING INHERENT IN THE NATURE OF
8 THESE CHARGES THAT JUST CAUSES YOU TO DOUBT YOUR ABILITY TO
9 BE FAIR AND IMPARTIAL FOR ANY REASON? AND PLEASE UNDERSTAND
10 THAT I'M GOING TO AFFORD YOU THE SAME OPPORTUNITY THAT I
11 AFFORDED YOU WHEN I WAS ASKING YOU THE QUALIFICATION
12 QUESTIONS TODAY; AND THAT WOULD BE TO COME DOWN PRIVATELY AND
13 RESPOND TO ANY OF THESE QUESTIONS TO WHICH YOU FEEL A NEED TO
14 RESPOND PRIVATELY, BECAUSE SOME OF THEM AGAIN WILL BE VERY
15 INTRUSIVE AS TO YOUR PRIVACY BUT ARE PROPERLY ASKED VOIR DIRE
16 QUESTIONS AS WE'RE CONDUCTING THIS NOW.

17 BECAUSE OF THE NATURE OF THIS CHARGE OR THESE CHARGES,
18 HAVE YOU FORMED OR EXPRESSED ANY OPINIONS CONCERNING WHAT
19 OUGHT TO BE THE OUTCOME OF THIS CASE? DO YOU HAVE ANY SUCH
20 HARD AND FAST MIND-SETS OR PRECONCEIVED NOTIONS? WHETHER YOU
21 CALL THEM BIASES OR PREJUDICES OR WHATEVER, SUCH AS WOULD
22 IMPAIR YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS
23 CASE, WE WILL NEED TO KNOW ABOUT THOSE AT THIS TIME. ALL
24 RIGHT. IF YOU WOULD, MA'AM, PLEASE STAND. TELL ME YOUR NAME
25 ONLY AT THIS TIME.

1 JUROR BROWN: MY NAME IS KYSHIA BROWN.

2 THE COURT: MS. BROWN, IF YOU WOULD, PLEASE, I'M GOING
3 TO ASK ONE LAWYER FOR EACH SIDE TO COME DOWN HERE AROUND THE
4 COURT REPORTER, AND WE WILL DISCUSS THIS WITH MS. BROWN. MS.
5 BROWN, COME ON DOWN, PLEASE, MA'AM. WHAT I'M GOING TO DO IS,
6 WHEN THE LAWYERS GET HERE, WHEN YOU GET HERE, I'M GOING TO
7 ASK YOU TO SPEAK DIRECTLY -- COME ON, PLEASE, MA'AM --
8 DIRECTLY TOWARD MS. WILLIAMS SO THAT SHE CAN OBSERVE YOUR
9 FACE AS YOU'RE TALKING TO HER. WHISPER IF YOU CAN. PLEASE
10 COME FORWARD. LET THE LAWYERS CLOSE IN BEHIND YOU.

11 (WHEREUPON, THE FOLLOWING SIDE BAR CONFERENCE IS HAD)

12 THE COURT: YES, MA'AM. THIS IS JUROR KYSHIA BROWN.
13 YES, MA'AM.

14 JUROR BROWN: HI. I'M KYSHIA BROWN. IN NEW YORK WHERE
15 I LIVED ABOUT TEN YEARS AGO I WAS INVOLVED IN A SIMILAR
16 SITUATION WHERE I WAS ABDUCTED BY A MAN THAT LOOKED KIND OF
17 LIKE THOSE GUYS.

18 THE COURT: OKAY.

19 JUROR BROWN: AND THE GUY WAS NEVER PROSECUTED. HE WAS
20 NEVER FOUND.

21 THE COURT: SO THAT YOU THINK THAT RELIVING THIS BAD
22 SITUATION WOULD CAUSE YOU SOME --

23 JUROR BROWN: SURE.

24 THE COURT: WOULD CAUSE YOU NOT TO -- PERHAPS BE
25 INCLINED TO GO ONE WAY OR THE OTHER ON THIS THING?

1 JUROR BROWN: OH, I KIND OF FEEL LIKE I KNOW WHICH WAY
2 I'D GO.

3 THE COURT: YES, MA'AM. WHAT WE'LL DO IS I'M GOING TO
4 EXCUSE YOU FOR LUNCH NOW AND YOU'LL REPORT BACK DOWNSTAIRS AT
5 2:30. OKAY?

6 JUROR BROWN: OKAY.

7 THE COURT: THANK YOU, MA'AM, MS. BROWN.

8 (WHEREUPON, THE SIDE BAR CONFERENCE IS CONCLUDED)

9 THE COURT: OKAY. MS. BROWN WILL BE EXCUSED FROM THE
10 PANEL. MS. BROWN, IF YOU WILL, PLEASE, YOU ARE EXCUSED FOR
11 LUNCH NOW. YOU MAY REPORT DOWN TO WHAT I CALL THE RECYCLING
12 BIN, THE JURY ASSEMBLY AREA DOWN THERE AT 2:30, PLEASE,
13 MA'AM. OKAY.

14 AGAIN, LET ME ASK ALL OF THESE QUESTIONS BEFORE YOU DO
15 RESPOND, BECAUSE OBVIOUSLY SOME OF THESE QUESTIONS DO NEED TO
16 BE ANSWERED PRIVATELY AND ONLY IN PRIVATE.

17 HAVE YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY EVER
18 BEEN THE VICTIM OF, I'M GOING TO CALL IT A CRIME AGAINST THE
19 PERSON OR A CRIME OF VIOLENCE. AND THAT WOULD BE A ROBBERY,
20 A KIDNAPPING, A SEXUAL ASSAULT, ANY SORT OF SHOOTING OR
21 ASSAULT CASE, ANY CRIME OF VIOLENCE. SPECIFICALLY -- AND I'M
22 GOING TO ASK YOU AGAIN, YOU'LL HAVE THE OPPORTUNITY TO COME
23 DOWN HERE PRIVATELY UNLESS YOU FEEL AS IF YOU WANT TO DISCUSS
24 IT OPENLY, THAT WOULD BE FINE WITH ME, TOO. BUT I AM
25 EXCLUDING FROM THIS -- EVERYBODY COMES HOME TO THEIR HOUSE

1 AND SEES THAT THEIR HOUSE HAS BEEN CLEANED OUT AND SAYS
2 THEY'VE BEEN ROBBED. WELL, THAT'S NOT A ROBBERY; THAT'S A
3 BURGLARY. AND IT'S NOT A CRIME AGAINST THE PERSON. IT'S A
4 CRIME AGAINST HABITATION.

5 SO WHAT I'M INTERESTED IN, TO NARROW IT DOWN FOR YOU, IS
6 AGAIN CRIMES AGAINST THE PERSON, SOMETHING ACTUALLY COMMITTED
7 ON YOU OR IN YOUR PRESENCE. AND IF YOU HAVE BEEN AND YOU
8 WISH TO DISCUSS IT NOW, THAT'S FINE WITH ME. IF YOU WOULD
9 PREFER, YOU CAN COME DOWN AT THE END IN RESPONSE TO THE
10 GENERAL OR CATCH-ALL QUESTION. OKAY. MA'AM, YOU SEEM TO
11 WANT TO STAND. YOUR NAME, PLEASE?

12 JUROR COLE: MARY COLE.

13 THE COURT: MS. COLE?

14 JUROR COLE: YES.

15 THE COURT: WHAT IS YOUR SITUATION?

16 JUROR COLE: I WAS SHOT THREE TIMES IN A DRIVE-BY
17 SHOOTING.

18 THE COURT: WHERE WAS THIS? WHERE DID THIS TAKE PLACE?

19 JUROR COLE: OKLAHOMA CITY.

20 THE COURT: OKAY. AND HOW LONG AGO?

21 JUROR COLE: IN 1977.

22 THE COURT: OKAY. YES, MA'AM, MS. COLE. THANK YOU FOR
23 — BUT DON'T ANSWER MY QUESTIONS TOO QUICKLY.

24 JUROR COLE: OKAY.

25 THE COURT: NOW, OBVIOUSLY I NEED TO ASK YOU NOW THIS AS

1 A FOLLOW-UP QUESTION. HAVING BEEN THE VICTIM OF A VIOLENT
2 CRIME, DO YOU BELIEVE THAT THAT EXPERIENCE WOULD IMPACT ON
3 YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN A CASE IN
4 WHICH TWO PRESUMED INNOCENT DEFENDANTS ARE CHARGED WITH
5 CRIMES OF VIOLENCE?

6 JUROR COLE: IT WOULD NOT IMPACT MY ABILITY.

7 THE COURT: YOU BELIEVE THAT YOU COULD BE A FAIR AND
8 IMPARTIAL JUROR —

9 JUROR COLE: YES.

10 THE COURT: — AND DECIDE THIS CASE SOLELY ON THE
11 EVIDENCE PRESENTED AND THE LAW AS I GIVE IT TO YOU?

12 JUROR COLE: YES.

13 THE COURT: THANK YOU, MS. COLE. I APPRECIATE THAT.

14 ANYONE ELSE WHO WISHES TO RESPOND AT THIS TIME? OKAY.
15 OKAY. AND ALTHOUGH I DID NOT SAY IT, I ALSO WANT TO KNOW IF
16 YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY HAS BEEN CHARGED
17 WITH SUCH A CRIME, WHETHER OR NOT THERE WAS A CONVICTION OF
18 THAT CRIME. CLEARLY, IF THERE WAS A CONVICTION YOU WOULD NOT
19 BE HERE. BUT, IN ANY EVENT, WE'LL DISCUSS THAT WITH YOU
20 PRIVATELY IF YOU CHOOSE.

21 HAVE ANY OF YOU EVER BEEN — SEPARATE AND APART FROM
22 HAVING BEEN THE VICTIM OF ANY KIND OF CRIME OF VIOLENCE —
23 HAVE YOU EVER BEEN A WITNESS FOR THE STATE OR FOR THE DEFENSE
24 IN A CRIMINAL TRIAL, A TRIAL IN WHICH SOMEONE WAS CHARGED
25 WITH A CRIME WHERE YOU'RE SUMMONED AS A WITNESS, AND DID YOU

1 TESTIFY FOR EITHER THE STATE IN ITS PROSECUTION OR FOR THE
2 DEFENSE IN ITS DEFENSE -- EXCUSE ME -- IN ITS DEFENSE OF THAT
3 CRIME? MR. DEWITT, WAS THIS IN YOUR CAPACITY AS A LAW
4 ENFORCEMENT OFFICER?

5 JUROR DEWITT: YES.

6 THE COURT: AND THAT WOULD BE NUMEROUS TIMES YOU WOULD
7 HAVE TESTIFIED. IS THAT CORRECT?

8 JUROR DEWITT: YES.

9 THE COURT: AND ALMOST EXCLUSIVELY FOR THE STATE. AM I
10 CORRECT?

11 JUROR DEWITT: YES.

12 THE COURT: NOW, LET ME JUST FOLLOW THAT UP AND ASK YOU
13 IF YOUR EXPERIENCES AS A LAW ENFORCEMENT OFFICER, AND
14 INCLUDING THAT OF TESTIFYING BEFORE TRIBUNALS, WOULD THAT IN
15 ANY WAY IMPACT IN YOUR MIND ON YOUR ABILITY TO BE A FAIR AND
16 IMPARTIAL JUROR TO ALL SIDES OF THIS CASE?

17 JUROR DEWITT: NO.

18 THE COURT: YOU BELIEVE THEN THAT YOU CAN HEAR THIS CASE
19 AND DETERMINE IT, AS JURORS MUST, SOLELY ON THE EVIDENCE
20 PRESENTED AND THE LAW AS I GIVE IT TO YOU?

21 JUROR DEWITT: YES, I COULD.

22 THE COURT: THANK YOU, MR. DEWITT. YOU MAY BE SEATED.

23 MR. STRICKLER: YOUR HONOR, EXCUSE ME.

24 THE COURT: I'M SORRY. PLEASE STAND, SIR. YOUR NAME,
25 SIR?

1 JUROR DAVIS: KEN DAVIS.

2 THE COURT: MR. DAVIS, WHAT'S YOUR SITUATION?

3 JUROR DAVIS: I WAS A WITNESS FOR THE STATE IN A
4 BURGLARY TRIAL.

5 THE COURT: BURGLARY?

6 JUROR DAVIS: YES.

7 THE COURT: OKAY, SIR. HOW LONG AGO?

8 JUROR DAVIS: TWENTY YEARS AGO.

9 THE COURT: WAS IT THIS OFFICE IN RICHLAND COUNTY?

10 JUROR DAVIS: NO. IT WAS IN MISSOURI.

11 THE COURT: OKAY. SO, WOULD THAT IMPACT ON YOUR ABILITY
12 TO BE FAIR AND IMPARTIAL IN THIS CASE?

13 JUROR DAVIS: NO. I DON'T BELIEVE SO.

14 THE COURT: HUH?

15 JUROR DAVIS: NO. I DO NOT BELIEVE SO.

16 THE COURT: OKAY. THANK YOU, MR. — OKAY. ANYBODY HERE
17 A MEMBER OF OR A CONTRIBUTOR TO, YOU OR ANY MEMBER OF YOUR
18 IMMEDIATE FAMILY, OF ANY ORGANIZATION WHICH HAS AS ONE OF ITS
19 GOALS OR MISSIONS THE PROMOTION OR ADVANCEMENT OF VICTIMS'
20 RIGHTS OR LAW ENFORCEMENT EFFORTS SUCH AS C.A.V.E., CADRE,
21 MADD, SADD, PAR, PEOPLE AGAINST RAPE, ANY OF THOSE KINDS OF
22 ORGANIZATIONS? MEMBER OF OR CONTRIBUTOR OR TO. OKAY.

23 LET ME MAKE SURE THAT — I WANT TO MAKE SURE THAT I HAVE
24 NOT — THAT I HAVE MERGED THE LIST. HAVE ANY OF YOU HAD ANY
25 PREVIOUS EXPERIENCES AS A JUROR THAT MIGHT CALL INTO QUESTION

1 IN YOUR MIND YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN
2 THIS CASE? WHETHER YES OR NO. AND, YOU KNOW, IF IT'S -- IT
3 DOESN'T MATTER IF IT CALLS IT INTO QUESTION.

4 OF COURSE I WILL NOT ASK NO. 8. THAT'S A PART OF MY
5 CHARGE.

6 DO YOU -- SEPARATE AND APART FROM THE GENTLEMAN WHOSE
7 BROTHER IS A LAW ENFORCEMENT OFFICER IN JACKSONVILLE, AND
8 EXCLUDING YOUR SITUATION WITH MR. BLACKWELL, DO YOU HAVE ANY
9 -- HAVE YOU EVER HAD ANY CLOSE RELATIONSHIPS AS A FRIEND, A
10 CO-WORKER OR WHAT YOU WOULD DEFINE AS A CLOSE RELATIONSHIP
11 WITH ANY MEMBER OF LAW ENFORCEMENT; OTHER THAN MR. DEWITT WHO
12 OBVIOUSLY HAS HAD SUCH RELATIONSHIPS? AND OTHER THAN THE
13 GENTLEMAN WHO KNEW MR. BLACKWELL AND THE GENTLEMAN WHOSE
14 BROTHER IS A JACKSONVILLE POLICE OFFICER. FRIEND OR -- YES,
15 SIR. YOUR NAME, SIR?

16 JUROR BENNETT: HENRY BENNETT, SIR. WOULD THAT INCLUDE
17 A CORRECTIONAL OFFICER FOR THE STATE?

18 THE COURT: YEAH. JUST ERRING ON THE SIDE OF CAUTION,
19 YES, SIR. YEAH. YOU KNOW A CORRECTIONAL OFFICER?

20 JUROR BENNETT: YES, SIR. WELL, FOUR YEARS AGO I WAS A
21 CORRECTIONAL OFFICER. WELL, ACTUALLY TWO YEARS AGO.

22 THE COURT: OKAY. AND WHAT INSTITUTION?

23 JUROR BENNETT: TURBEYVILLE.

24 THE COURT: OKAY. THANK YOU. I APPRECIATE THAT. I AM
25 GOING TO ASSUME THAT UNLESS YOU TELL ME THAT THIS WOULD

1 IMPACT ON YOUR ABILITY TO BE FAIR AND IMPARTIAL THAT IT WILL
2 NOT. BUT IF IT DOES -- WAIT A MINUTE NOW. KEEP STANDING.
3 IF YOU THINK IT DOES, DON'T HESITATE TO TELL ME. BECAUSE
4 THESE FOLKS, ALL OF THEM, ARE ENTITLED TO AN ABSOLUTELY FAIR
5 AND IMPARTIAL JURY. IF THERE'S SOME MIND-SET THAT CAUSES YOU
6 TO WORRY ABOUT YOUR ABILITY TO BE FAIR AND IMPARTIAL WE NEED
7 TO KNOW THAT. HOW ABOUT IT? YOU OKAY?

8 JUROR BENNETT: ME, SIR?

9 THE COURT: YES, SIR.

10 JUROR BENNETT: YES, SIR. YES, SIR. I'M FINE, SIR.

11 THE COURT: THANK YOU. ALL RIGHT. APPRECIATE IT. SIR,
12 YOUR NAME?

13 JUROR MICKENS: DARRYL MICKENS.

14 THE COURT: MR. MICKLES?

15 JUROR MICKENS: MICKENS.

16 THE COURT: MICKENS. I'M SORRY. WHAT IS YOUR
17 SITUATION?

18 JUROR MICKENS: IN '80 I WAS A CORRECTIONAL OFFICER IN
19 MANNING CORRECTIONAL INSTITUTION, AND I WAS ALSO A
20 CORRECTIONAL OFFICER AT KIRKLAND IN '84.

21 THE COURT: OKAY, SIR. THANK YOU, MR. MICKENS. SIR, IN
22 THE BACK, YOUR NAME?

23 JUROR YOUNG: GORDON YOUNG.

24 THE COURT: MR. YOUNG?

25 JUROR YOUNG: YES, SIR.

1 THE COURT: WHAT'S YOUR SITUATION?

2 JUROR YOUNG: MY BEST FRIEND IS A DEPUTY U.S. MARSHAL.

3 THE COURT: WHERE? HERE IN SOUTH CAROLINA?

4 JUROR YOUNG: IN COLUMBIA.

5 THE COURT: OKAY. WHAT'S HIS NAME OR HER NAME?

6 JUROR YOUNG: JOHNNIE GOODWIN.

7 THE COURT: OKAY. AND I THANK YOU VERY MUCH, MR. YOUNG.
8 SIR, YOUR NAME.

9 JUROR TERRELL: JAMES TERRELL. AND I KNOW ONE OF THE
10 PROSECUTORS.

11 THE COURT: OH. I DIDN'T ASK YOU THAT YET. BUT THANKS
12 FOR VOLUNTEERING. WHO WOULD THAT BE?

13 JUROR TERRELL: I CAN'T -- I KNOW HER.

14 THE COURT: MR. GASSER?

15 JUROR TERRELL: NO.

16 THE COURT: HER?

17 JUROR TERRELL: YEAH.

18 THE COURT: THAT WOULD BE MS. FRYAR.

19 JUROR TERRELL: OKAY. HER NAME WAS NEWEL. I DON'T KNOW
20 HER MARRIED NAME.

21 THE COURT: AND THE NATURE OF THAT RELATIONSHIP.

22 JUROR TERRELL: WE WERE NEIGHBORS, GREW UP TOGETHER,
23 WENT TO HIGH SCHOOL TOGETHER.

24 THE COURT: OKAY. WOULD THAT RELATIONSHIP IN ANY WAY
25 IMPACT ON YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS CASE?

1 JUROR TERRELL: I BELIEVE IT WOULD, SIR.

2 THE COURT: IT WOULD?

3 JUROR TERRELL: YEAH.

4 THE COURT: I APPRECIATE IT VERY MUCH, SIR. AND THANK
5 YOU FOR YOUR CANDOR. AND YOU ARE FREE TO GO AT THIS TIME.

6 JUROR TERRELL: ALL RIGHT.

7 THE COURT: THANK YOU. AGAIN, 2:30 DOWNSTAIRS.

8 JUROR TERRELL: RIGHT.

9 THE COURT: OKAY. I CAN'T SEE YOU. YOU'RE CAMOUFLAGED.
10 YES, MA'AM.

11 JUROR STUART: DEBORAH STUART.

12 THE COURT: MS. STUART?

13 JUROR STUART: YES. MY SISTER WORKS FOR THE DEPARTMENT
14 OF CORRECTIONS.

15 THE COURT: WHO DOES?

16 JUROR STUART: MY SISTER.

17 THE COURT: YOUR SISTER DOES. WHAT CAPACITY, MS.
18 STUART? IS SHE A CORRECTIONAL OFFICER OR —

19 JUROR STUART: WELL, I'M NOT EXACTLY SURE WHAT SHE DOES.
20 I KNOW THAT SHE WORKS IN THE ADMINISTRATION PORTION OF IT
21 WHERE THEY DO THE TRANSITION PART. WHEN THEY COME IN THEY
22 HOLD THEM UNTIL THEY PUT THEM INTO THE GENERAL POPULATION.

23 THE COURT: GOT YOU. R AND E.

24 JUROR STUART: YEAH. OKAY.

25 THE COURT: YEAH. OKAY. THANK YOU. APPRECIATE IT.

1 SIR, YOUR NAME IN THE BACK?

2 JUROR HODGE: RONALD HODGE.

3 THE COURT: YES, SIR, MR. HODGE.

4 JUROR HODGE: MY UNCLE, DECEASED, A JUDGE IN SUMTER
5 COUNTY.

6 THE COURT: OKAY. WHO WAS THAT, SIR?

7 JUROR HODGE: EARL PACKARD.

8 THE COURT: OKAY. THANK YOU. APPRECIATE IT. AGAIN, IF
9 ANY OF THESE RELATIONSHIPS IMPAIR YOUR ABILITY TO BE FAIR AND
10 IMPARTIAL I WANT YOU TO LET ME KNOW.

11 OKAY. NOW, THE STATE IS OBVIOUSLY REPRESENTED BY
12 ASSISTANT — BY SOLICITORS. REPRESENTING THE STATE IN THIS
13 CASE IS MR. JOHN GASSER AND MS. KAREN NEWELL FRYAR. THANK
14 YOU. AND REPRESENTING DEFENDANT KENNETH JAMES IS MR. DOUG
15 STRICKLER AND MR. ROB SNEED BOTH OF THE RICHLAND COUNTY
16 PUBLIC DEFENDER AGENCY. REPRESENTING DEFENDANT ROBERT JAMES
17 IS MR. JOHN SHUPPER OF THE — WHO IS PRACTICING HERE IN
18 COLUMBIA. ARE ANY OF YOU RELATED BY BLOOD OR BY MARRIAGE OR
19 ACQUAINTED WITH ANY OF THESE LAWYERS OTHER THAN HAS BEEN
20 DISCLOSED? OKAY.

21 JUROR LEMASTERS: JUST MR. SHUPPER. I'M A FRIEND OF HIS
22 WIFE'S.

23 THE COURT: YOUR NAME, SIR?

24 JUROR LEMASTERS: KIM LEMASTERS.

25 THE COURT: MR. LEMASTERS, YOU DESCRIBE YOURSELF AS A

1 FRIEND OF HIS WIFE'S?

2 JUROR LEMASTERS: RIGHT.

3 THE COURT: WOULD THAT RELATIONSHIP IMPAIR IN YOUR MIND
4 YOUR ABILITY TO BE FAIR AND IMPARTIAL TO ALL SIDES OF THIS
5 CASE?

6 JUROR LEMASTERS: NO, SIR.

7 THE COURT: YOU BELIEVE THEN YOU CAN HEAR THIS CASE, AS
8 JURORS MUST, BASED SOLELY ON THE EVIDENCE PRESENTED AND THE
9 LAW AS I GIVE IT TO YOU?

10 JUROR LEMASTERS: YES, SIR.

11 THE COURT: THANK YOU. YOU MAY BE SEATED. AND THIS IS
12 JUROR SIPES. BILL, WHO DO YOU KNOW, SIR?

13 JUROR SIPES: MRS. FRYAR HAS BEEN IN MY CLASSROOM ON
14 SEVERAL OCCASIONS.

15 THE COURT: MAKING PRESENTATIONS AND THAT SORT OF THING?

16 JUROR SIPES: YES, SIR.

17 THE COURT: WOULD THAT RELATIONSHIP IN ANY WAY IMPAIR IN
18 YOUR MIND YOUR ABILITY TO BE FAIR AND IMPARTIAL TO ALL SIDES
19 OF THIS CASE?

20 JUROR SIPES: NO.

21 THE COURT: THANK YOU VERY MUCH, SIR. MA'AM, YOUR NAME?

22 JUROR WILLIAMS: MARLA WILLIAMS.

23 THE COURT: MS. —

24 JUROR WILLIAMS: I WORK WITH MR. STRICKLAND'S (SIC)
25 WIFE.

1 THE COURT: YOU WORK WITH MR. STRICKLER'S WIFE?

2 JUROR WILLIAMS: (JUROR NODS HEAD AFFIRMATIVELY)

3 THE COURT: OKAY. AND, AGAIN, WOULD THAT RELATIONSHIP
4 IN ANY WAY IMPACT FAVORABLY OR ADVERSELY, YOU DON'T HAVE TO
5 TELL ME WHICH, UPON YOUR ABILITY TO BE FAIR AND IMPARTIAL TO
6 BOTH SIDES?

7 JUROR WILLIAMS: NO.

8 THE COURT: THANK YOU, MA'AM. YOU MAY BE SEATED.

9 OKAY. ANYONE ELSE NEEDS TO DISCLOSE ANY OF THESE
10 RELATIONSHIPS?

11 NOW, AGAIN, I BELIEVE THAT EXHAUSTS THE QUESTIONS THAT I
12 WAS REQUESTED TO ASK OF YOU. BUT THERE ARE NOW THOSE
13 QUESTIONS THAT PERHAPS YOU DIDN'T WISH TO DISCUSS IN PUBLIC.
14 ANYBODY WISH TO ADDRESS ANY OF THOSE THINGS WITH ME PRIVATELY
15 DOWN HERE? OR IS THERE ANY OTHER REASON UPON WHICH I HAVE
16 NOT YET TOUCHED THAT MIGHT IMPAIR IN ANY WAY YOUR ABILITY TO
17 BE A FAIR AND IMPARTIAL JUROR TO BOTH SIDES OF THIS CASE? IF
18 SO, PLEASE LINE UP ON THE AISLE AND I WILL DISCUSS THAT WITH
19 YOU INDIVIDUALLY. WAIT 'TIL EVERYBODY IS IN THE LINE AND
20 THEN WE WILL GET THE LAWYERS DOWN HERE AFTER THE — OKAY. IS
21 THAT IT? OKAY. MA'AM, PLEASE COME ON DOWN, AND ONE LAWYER
22 FOR EACH PARTY.

23 (WHEREUPON, THE FOLLOWING SIDE BAR CONFERENCE IS HAD)

24 THE COURT: HOW ARE YOU?

25 JUROR BROWN: FINE. HOW ARE YOU?

1 THE COURT: FINE. THANK YOU. LET ME COME UP HERE.
2 MA'AM, YOUR NAME IS...?

3 JUROR BROWN: CYNTHIA BROWN.

4 THE COURT: MS. BROWN, WHAT IS YOUR SITUATION?

5 JUROR BROWN: MY HUSBAND WAS MURDERED IN 1986.

6 THE COURT: OKAY.

7 JUROR BROWN: THERE WAS NO -- NO ONE HAS EVER BEEN
8 TRIED, OR THEY'VE NEVER GOTTEN ANYBODY. THERE WAS VIOLENCE.
9 AND I CAN'T REALLY EXPLAIN WHAT I FEEL. I DON'T LIKE WHAT I
10 FEEL.

11 THE COURT: YOU DON'T LIKE WHAT YOU FEEL?

12 JUROR BROWN: NO. BECAUSE IT'S MY FIRST TIME SINCE
13 THEN.

14 THE COURT: I APPRECIATE THAT. DID EVERYONE HEAR HER?
15 HER HUSBAND WAS MURDERED IN 1986. SHE FEELS UNCOMFORTABLE
16 WITH THAT KIND OF SITUATION. I APPRECIATE THAT. THANK YOU
17 FOR YOUR CANDOR. I'M GOING TO EXCUSE YOU FROM THIS TRIAL.
18 AND I'LL TELL THEM FROM NOW ON TO PUT YOU ON CIVIL TRIALS SO
19 THAT WE DON'T HAVE THIS REPEAT EXPERIENCE. NOW, WHAT I'M
20 GOING TO ASK YOU TO DO IS PLEASE DO NOT DISCUSS THIS WITH
21 ANYONE ELSE AT ALL. OKAY?

22 JUROR BROWN: OKAY.

23 THE COURT: THANKS.

24 JUROR BROWN: THANK YOU.

25 (WHEREUPON, THE SIDE BAR CONFERENCE IS CONCLUDED)

1 THE COURT: MS. BROWN IS FREE TO GO AT THIS TIME, MS.
2 PENDERGRASS. AND SHE WILL REPORT BACK AT 2:30 DOWNSTAIRS TO
3 THE JURY ASSEMBLY AREA. OKAY. ARE THERE ANY OTHER QUESTIONS
4 THAT EITHER SIDE WOULD LIKE TO HAVE POSED FROM THE STATE?

5 MR. GASSER: NO, SIR.

6 THE COURT: FROM EITHER DEFENDANT? MR. KENNETH JAMES.

7 MR. STRICKLER: NOTHING AS TO KENNETH JAMES, YOUR HONOR.

8 THE COURT: FROM ROBERT JAMES.

9 MR. SHUPPER: NOTHING AS TO ROBERT JAMES, YOUR HONOR.

10 THE COURT: THANK YOU VERY MUCH. MS. PENDERGRASS, IF
11 YOU WOULD. MS. PENDERGRASS WHO'S RECENTLY GOTTEN MARRIED ON
12 ME WHILE I WAS AWAY, SHE'S GOTTEN MARRIED. AND SHE USED TO
13 BE MS. JOHNSON; AND, AGAIN, I'M GOING TO RAT HER OUT. SHE'S
14 THE ONLY PERSON WHO'S EVER HAD A PERFECT SCORE HERE ON HER
15 QUALIFICATIONS TEST FOR THE COUNTY, OR APPLICATION TEST. AND
16 SHE DOESN'T LIKE ME TO SAY THAT. SHE GETS MAD AT ME EVERY
17 TIME I DO IT. BUT, YOU KNOW, I'M GOING TO DO IT ANYWAY.

18 THE CLERK: LADIES AND GENTLEMEN OF THE JURY PANEL, AS I
19 CALL YOUR NAME, PLEASE COME TO THE MICROPHONE LOCATED HERE AT
20 THE CENTER OF THE COURTROOM. AT THE MICROPHONE PLEASE STATE
21 YOUR NAME AND PLACE OF OCCUPATION.

22 THE COURT: AND WE'RE GOING STATE (INDICATES) — OKAY.

23 MR. STRICKLER: YES, SIR.

24 THE CLERK: NUMBER 319, WILLIAM WATTS.

25 (WHITE MALE)

1 JUROR WATTS: WILLIAM R. WATTS. I'M A SELF-EMPLOYED
2 SALESMAN.

3 THE CLERK: WHAT SAYS THE STATE?

4 JUROR WATTS: SOUTH CAROLINA AND GEORGIA.

5 THE CLERK: NO. I WAS ...

6 MR. GASSER: PLEASE PRESENT MR. WATTS.

7 THE CLERK: WHAT SAYS DEFENDANT KENNETH JAMES?

8 THE COURT: WHAT WE'RE GOING TO DO -- OH. GO AHEAD,
9 PLEASE.

10 MR. STRICKLER: SORRY. PLEASE SWEAR MR. WATTS.

11 THE CLERK: WHAT SAYS DEFENDANT ROBERT JAMES?

12 MR. SHUPPER: PLEASE SWEAR THE JUROR.

13 THE CLERK: PLEASE HAVE A SEAT IN THE JURY BOX.

14 THE COURT: IF YOU'RE NOT SEATED, AGAIN, YOU MAY LEAVE
15 IMMEDIATELY AFTER THAT AND GO TO LUNCH, BE BACK AT 2:30
16 DOWNSTAIRS. IF YOU'RE NOT SEATED. WELL, ACTUALLY, MAYBE
17 NOT. OKAY. CONTINUE.

18 THE CLERK: NUMBER 314, LILLIAN WALKER.

19 (BLACK FEMALE)

20 THE CLERK: PLEASE BRING ANY PERSONAL ITEMS THAT YOU MAY
21 HAVE WITH YOU.

22 JUROR WALKER: LILLIAN WALKER, ALLIED FIBERS.

23 THE CLERK: WHAT SAYS THE STATE?

24 MR. GASSER: PLEASE PRESENT MS. WALKER.

25 THE CLERK: WHAT SAYS DEFENDANT KENNETH JAMES?

1 MR. STRICKLER: PLEASE SWEAR MS. WALKER.

2 THE CLERK: WHAT SAYS DEFENDANT ROBERT JAMES?

3 MR. SHUPPER: PLEASE SEAT THE JUROR.

4 THE CLERK: PLEASE HAVE A SEAT IN THE JURY BOX. NUMBER
5 9, DEBORAH ANDERSON.

6 (BLACK FEMALE)

7 JUROR ANDERSON: MY NAME IS DEBORAH ANDERSON. I'M A
8 CUSTOMER SERVICE MANAGER AT WAL-MART SUPER CENTER.

9 THE CLERK: WHAT SAYS THE STATE?

10 MR. GASSER: PLEASE PRESENT MS. ANDERSON.

11 THE CLERK: WHAT SAYS DEFENDANT KENNETH JAMES?

12 MR. STRICKLER: PLEASE SWEAR MS. ANDERSON.

13 THE CLERK: WHAT SAYS DEFENDANT ROBERT JAMES?

14 MR. SHUPPER: PLEASE SWEAR THE JUROR.

15 THE CLERK: PLEASE HAVE A SEAT IN THE JURY BOX. NUMBER
16 203, DARRYL MICKENS.

17 (BLACK MALE)

18 JUROR MICKENS: MY NAME IS DARRYL MICKENS. I'M A
19 COUNSELOR AT AUSTIN WILKES SOCIETY.

20 THE CLERK: WHAT SAYS THE STATE?

21 MR. GASSER: PLEASE EXCUSE MR. MICKENS.

22 THE CLERK: PLEASE RETURN TO THE BACK OF THE COURTROOM.
23 NUMBER 282, ESTELLE SPIVEY.

24 (WHITE FEMALE)

25 THE COURT: MR. MICKENS, IF YOU WOULD, PLEASE, SIR, IN

1 THE BACK OF THE JURY AREA. THANK YOU VERY MUCH, SIR. NO,
2 NO, NO. MR. BARROW, I'M SORRY. I WANTED HIM OVER THERE.
3 OKAY? IN THE BACK, BACK ROW. THANKS. I'M SORRY. I DIDN'T
4 MEAN TO USURP YOUR AUTHORITY.

5 JUROR SPIVEY: ESTELLE SPIVEY. I'M A HOUSEWIFE.

6 THE CLERK: WHAT SAYS THE STATE?

7 MR. GASSER: PLEASE PRESENT MS. SPIVEY.

8 THE CLERK: WHAT SAYS DEFENDANT KENNETH JAMES?

9 MR. STRICKLER: PLEASE EXCUSE MS. SPIVEY FROM THE TRIAL
10 OF THIS CASE.

11 THE CLERK: PLEASE RETURN TO THE BACK OF THE COURTROOM.
12 NUMBER 329, MARLA WILLIAMS.

13 (BLACK FEMALE)

14 JUROR WILLIAMS: MARLA WILLIAMS, LEGAL ASSISTANT AT
15 HOWSER, NEWMAN & BESLEY.

16 THE CLERK: WHAT SAYS THE STATE?

17 MR. GASSER: PLEASE PRESENT MS. WILLIAMS FROM THE
18 SERVICE IN THIS CASE.

19 THE CLERK: WHAT SAYS DEFENDANT KENNETH JAMES?

20 MR. STRICKLER: DID YOU EXCUSE —

21 THE CLERK: OH. YOU —

22 MR. GASSER: PLEASE EXCUSE HER FROM SERVICE.

23 THE COURT: OH. I'M SORRY. I THOUGHT YOU SAID SEAT
24 HER.

25 THE CLERK: PLEASE RETURN TO THE BACK OF THE COURTROOM.

1 MR. GASSER: OH. I'M SORRY. I APOLOGIZE, YOUR HONOR.

2 THE CLERK: NUMBER 104, NELLIE GELLER. JELLER

3 (PHONETIC).

4 (WHITE FEMALE)

5 JUROR GELLER: NELLIE GELLER, INTERTYPE POLYMER GROUP.

6 THE CLERK: WHAT SAYS THE STATE?

7 COURT REPORTER: I'M SORRY, YOUR HONOR. I DIDN'T HEAR
8 HER EMPLOYMENT.

9 THE COURT: BEG YOUR PARDON?

10 COURT REPORTER: I DIDN'T HEAR HER EMPLOYMENT.

11 THE COURT: YOUR EMPLOYMENT, PLEASE, MA'AM?

12 JUROR GELLER: INTERTYPE POLYMER GROUP.

13 COURT REPORTER: THANK YOU.

14 JUROR GELLER: YOU'RE WELCOME.

15 MR. GASSER: PLEASE PRESENT MS. GELLER.

16 THE CLERK: WHAT SAYS DEFENDANT KENNETH JAMES?

17 THE COURT: YES, SIR.

18 MR. STRICKLER: PLEASE EXCUSE MS. GELLER FROM THE TRIAL
19 OF THIS CASE.

20 THE CLERK: PLEASE RETURN TO THE BACK OF THE COURTROOM.

21 NUMBER 24, MARY BENSON.

22 (BLACK FEMALE)

23 JUROR BENSON: MARY BENSON, SOUTH CAROLINA RETIREMENT
24 SYSTEM, CUSTOMER SERVICE REPRESENTATIVE.

25 THE CLERK: WHAT SAYS THE STATE?

1 MR. GASSER: PLEASE PRESENT MS. BENSON.

2 THE CLERK: WHAT SAYS DEFENDANT KENNETH JAMES?

3 MR. STRICKLER: PLEASE EXCUSE MS. BENSON FROM THE TRIAL
4 OF THIS CASE.

5 THE CLERK: PLEASE RETURN TO THE BACK OF THE COURTROOM.
6 NUMBER 344, GORDON YOUNG.

7 (BLACK MALE)

8 THE COURT: FOLKS, NOTWITHSTANDING MY PREVIOUS
9 INSTRUCTIONS — COME ON DOWN, MR. YOUNG — I'M SIMPLY GOING
10 TO MAKE SURE THAT YOU HAVE AT LEAST AN HOUR FOR LUNCH. AND
11 THAT MAY IMPACT SOME OTHER PEOPLE. BUT DON'T WORRY ABOUT IT.
12 OKAY. WE'LL GET THAT DONE. GO AHEAD, PLEASE.

13 JUROR YOUNG: GORDON YOUNG, C.C. PROGRAMMER FOR MASTER
14 INTERCESSIONS.

15 THE CLERK: WHAT SAYS THE STATE?

16 MR. GASSER: PLEASE EXCUSE MR. YOUNG FROM SERVICE IN
17 THIS CASE.

18 THE CLERK: PLEASE RETURN TO THE BACK OF THE COURTROOM.
19 NUMBER 24, VICTOR BROWN.

20 (WHITE MALE)

21 JUROR BROWN: VICTOR BROWN. I'M RETIRED.

22 THE CLERK: WHAT SAYS THE STATE?

23 MR. GASSER: PLEASE PRESENT MR. BROWN.

24 THE CLERK: WHAT SAYS DEFENDANT KENNETH JAMES?

25 MR. STRICKLER: PLEASE EXCUSE MR. BROWN FROM THE TRIAL

1 OF THIS CASE.

2 THE CLERK: PLEASE RETURN TO THE BACK OF THE COURTROOM.
3 NUMBER 140, RONALD HODGE.

4 (WHITE MALE)

5 JUROR HODGE: RONALD HODGE. GATEWAY SUPPLY, INSIDE
6 SALES.

7 THE CLERK: WHAT SAYS THE STATE?

8 MR. GASSER: PLEASE PRESENT MR. HODGE.

9 THE CLERK: WHAT SAYS DEFENDANT KENNETH JAMES?

10 MR. STRICKLER: PLEASE EXCUSE MR. HODGE FROM THE TRIAL
11 OF THIS CASE.

12 THE CLERK: PLEASE RETURN TO THE BACK OF THE COURTROOM.
13 NUMBER 169, STEPHEN KOIVISTO.

14 (WHITE MALE)

15 JUROR KOIVISTO: STEPHEN KOIVISTO. I AM THE MANAGER OF
16 THE ANNUAL ORCHESTRAL OR ORCHESTRA INSTRUMENTS REPAIR
17 DIVISION FOR AMUSEMENT ART CENTERS OF SOUTH CAROLINA.

18 THE CLERK: WHAT SAYS THE STATE?

19 MR. GASSER: PLEASE EXCUSE MR. KOIVISTO FROM SERVICE IN
20 THIS CASE.

21 THE CLERK: PLEASE RETURN TO THE BACK OF THE COURTROOM.

22 THE COURT: LET ME EXPLAIN SOMETHING TO YOU GUYS. IT'S
23 GETTING — I THINK WHAT WE NEED TO DO IS THIS. AND IF EITHER
24 COUNSEL OR ANY OF THE THREE COUNSEL WISH TO COMMENT ON THIS,
25 YOU CERTAINLY MAY. BUT I THINK IT WOULD BE APPROPRIATE AT

1 THIS TIME, THOSE WHO HAVE BEEN STRICKEN, GO TO LUNCH NOW. BE
2 BACK IN THE JURY ROOM BY QUARTER OF THREE.

3 NOW, DO NOT DISCUSS THE FACT THAT YOU HAVE BEEN STRICKEN
4 OR THIS CASE AMONG YOURSELVES NOR WITH ANYONE ELSE. YOU MUST
5 NOT DO THAT. I SINCERELY MEAN THAT. BUT IF YOU'VE BEEN
6 STRICKEN, YOU MAY STILL YET HAVE TO COME BACK TO THIS
7 COURTROOM. YOU MAY BE SENT TO ANOTHER COURTROOM. BUT RIGHT
8 NOW GO AHEAD AND GO TO LUNCH AND BE BACK IN THE JURY ROOM AT
9 QUARTER OF THREE. THANK YOU. ANYBODY GOT A PROBLEM WITH
10 THAT?

11 MR. STRICKLER: NO, SIR.

12 THE COURT: I MEAN, I DON'T MEAN TO PUT IT QUITE THAT
13 WAY.

14 THE CLERK: NUMBER 75, TRACY DAVIS.

15 (BLACK FEMALE)

16 JUROR DAVIS: I'M TRACY DAVIS. WHAT ELSE AM I SUPPOSED
17 TO SAY?

18 THE CLERK: YOUR OCCUPATION.

19 JUROR DAVIS: ADMINISTRATIVE SPECIALIST AT BLUE
20 CROSS/BLUE SHIELD.

21 THE CLERK: WHAT SAYS THE STATE?

22 MR. GASSER: PLEASE PRESENT MS. DAVIS.

23 THE CLERK: WHAT SAYS DEFENDANT KENNETH JAMES?

24 MR. STRICKLER: PLEASE SWEAR MS. DAVIS.

25 THE CLERK: WHAT SAYS DEFENDANT ROBERT JAMES?

1 MR. SHUPPER: PLEASE SWEAR MS. DAVIS.

2 THE CLERK: PLEASE HAVE A SEAT IN THE JURY BOX. NUMBER
3 27, STEPHANIE BONAPARTE.

4 (BLACK FEMALE)

5 JUROR BONAPARTE: STEPHANIE BONAPARTE, PRESCHOOL TEACHER
6 AT BENEDICT COLLEGE CHILD DEVELOPMENT CENTER.

7 THE CLERK: WHAT SAYS THE STATE?

8 MR. GASSER: PLEASE PRESENT MS. BONAPARTE.

9 THE CLERK: WHAT SAYS DEFENDANT KENNETH JAMES?

10 MR. STRICKLER: PLEASE EXCUSE MS. BONAPARTE FROM THE
11 TRIAL OF THIS CASE.

12 THE CLERK: PLEASE RETURN TO THE BACK OF THE COURTROOM.
13 NUMBER 281, ROBERT SPANN.

14 (BLACK MALE)

15 THE COURT: MS. BONAPARTE, GO AHEAD AND GO TO LUNCH. DO
16 NOT DISCUSS THIS CASE WITH ANYONE. BE BACK IN THE JURY ROOM
17 AT QUARTER OF THREE AND AWAIT FURTHER INSTRUCTIONS.

18 JUROR SPANN: I'M ROBERT SPANN, MAINTENANCE, SOUTH
19 CAROLINA ELECTRIC & GAS.

20 THE CLERK: WHAT SAYS THE STATE?

21 MR. GASSER: PLEASE PRESENT MR. SPANN.

22 THE CLERK: WHAT SAYS DEFENDANT KENNETH JAMES?

23 MR. STRICKLER: PLEASE SWEAR MR. SPANN.

24 THE CLERK: WHAT SAYS DEFENDANT ROBERT JAMES?

25 MR. SHUPPER: PLEASE SWEAR MR. SPANN.

1 THE CLERK: PLEASE HAVE A SEAT IN THE JURY BOX. NUMBER
2 196, BILLY MCLEOD.

3 (WHITE MALE)

4 JUROR MCLEOD: I'M BILL MCLEOD. I AM SELF-EMPLOYED.

5 THE CLERK: WHAT SAYS THE STATE?

6 MR. GASSER: PLEASE EXCUSE MR. MCLEOD FROM SERVICE IN
7 THIS CASE.

8 THE CLERK: PLEASE RETURN TO THE BACK OF THE COURTROOM.
9 NUMBER 318, EDWARD WATTS.

10 (WHITE MALE)

11 JUROR WATTS: EDWARD WATTS, SELF-EMPLOYED SALES.

12 THE CLERK: WHAT SAYS THE STATE?

13 MR. GASSER: PLEASE PRESENT MR. WATTS.

14 THE CLERK: WHAT SAYS DEFENDANT KENNETH JAMES?

15 MR. STRICKLER: PLEASE EXCUSE MR. WATTS FROM THE TRIAL
16 OF THIS CASE.

17 THE CLERK: PLEASE RETURN TO THE BACK OF THE COURTROOM.
18 NUMBER 244, IDA REAVES.

19 (BLACK FEMALE)

20 JUROR REAVES: IDA REAVES, QUALITY CONTROL SPECIALIST,
21 STATEMENT RECORDS, WACHOVIA BANK.

22 THE CLERK: WHAT SAYS THE STATE?

23 MR. GASSER: PLEASE PRESENT MS. REAVES.

24 THE CLERK: WHAT SAYS DEFENDANT KENNETH JAMES?

25 MR. STRICKLER: PLEASE SWEAR MS. REAVES.

1 THE CLERK: WHAT SAYS DEFENDANT ROBERT JAMES?

2 MR. SHUPPER: PLEASE SWEAR THE JUROR.

3 THE CLERK: PLEASE HAVE A SEAT IN THE JURY BOX. NUMBER
4 77, MICHAEL DEWITT.

5 (WHITE MALE)

6 JUROR DEWITT: MICHAEL DEWITT, DEFENSE DEPARIMENT.

7 THE CLERK: WHAT SAYS THE STATE?

8 MR. GASSER: PLEASE PRESENT MR. DEWITT.

9 THE CLERK: WHAT SAYS DEFENDANT KENNETH JAMES?

10 MR. STRICKLER: PLEASE EXCUSE MR. DEWITT FROM THE TRIAL
11 OF THIS CASE.

12 THE COURT: MR. DEWITT, QUARTER OF THREE DOWNSTAIRS.
13 AGAIN, DON'T DISCUSS THE CASE WITH ANYONE. NUMBER 271,
14 WILLIAM SIPES.

15 (WHITE MALE)

16 JUROR SIPES: WILLIAM SIPES, SCHOOLTEACHER.

17 THE CLERK: WHAT SAYS THE STATE?

18 MR. GASSER: PLEASE EXCUSE MR. SIPES.

19 THE CLERK: PLEASE RETURN TO THE BACK OF THE COURTROOM.

20 THE COURT: AGAIN, MR. SIPES, I'M SORRY, QUARTER OF
21 THREE, IF YOU WOULD, IN THE JURY ASSEMBLY AREA. DON'T
22 DISCUSS THE CASE. THANK YOU.

23 THE CLERK: NUMBER 230, JEFFREY NUOVO.

24 (WHITE MALE)

25 JUROR NUOVO: JEFF NUOVO. I WORK WITH DHEC,

1 ENVIRONMENTAL HEALTH MANAGER/COMPUTER PROGRAMMER.

2 THE CLERK: WHAT SAYS THE STATE?

3 MR. GASSER: PLEASE PRESENT MR. NUOVO.

4 THE CLERK: WHAT SAYS DEFENDANT KENNETH JAMES?

5 MR. STRICKLER: PLEASE SWEAR MR. NUOVO.

6 THE CLERK: WHAT SAYS DEFENDANT ROBERT JAMES?

7 MR. SHUPPER: PLEASE EXCUSE JUROR —

8 THE CLERK: PLEASE RETURN TO THE —

9 MR. SHUPPER: — NUOVO.

10 THE COURT: MR. NUOVO, PLEASE, I'M GOING TO PUSH IT UP
11 TO 3:00 NOW. BE IN THE JURY ASSEMBLY AREA AT 3:00. DON'T
12 DISCUSS THE CASE AMONG YOURSELVES.

13 THE CLERK: NUMBER 175, KIM LEMASTERS.

14 (WHITE MALE)

15 JUROR LEMASTERS: KIM LEMASTERS, OFFICE MANAGER AT
16 RETAIL SALES.

17 THE CLERK: WHAT SAYS THE STATE?

18 MR. GASSER: PLEASE EXCUSE MR. LEMASTERS.

19 THE COURT: YEAH. 3:00, MR. LEMASTERS, DOWNSTAIRS. NO
20 DISCUSSION.

21 THE CLERK: NUMBER 290, CAROL TASKE.

22 (WHITE FEMALE)

23 JUROR TASKE: CAROL TASKE. I'M THE ACCOUNTANT AT
24 CAL-CAN FOODS.

25 THE CLERK: WHAT SAYS THE STATE?

1 MR. GASSER: PLEASE PRESENT MS. TASKE.

2 THE CLERK: WHAT SAYS DEFENDANT KENNETH JAMES?

3 MR. STRICKLER: PLEASE EXCUSE MS. TASKE FROM THE TRIAL
4 OF THIS CASE.

5 THE CLERK: THE STATE HAS USED SEVEN; DEFENDANT KENNETH
6 JAMES HAS USED NINE; AND DEFENDANT ROBERT JAMES HAS USED ONE.

7 MR. STRICKLER: THANK YOU.

8 THE CLERK: NUMBER 58, JOHN CHOWANIEC.

9 (WHITE MALE)

10 JUROR CHOWANIEC: JOHN CHOWANIEC, DISTRICT MANAGER WITH
11 CANTEEN FOOD AND BEVERAGE.

12 THE CLERK: WHAT SAYS THE STATE?

13 MR. GASSER: PLEASE PRESENT MR. CHOWANIEC.

14 THE CLERK: WHAT SAYS DEFENDANT KENNETH JAMES?

15 MR. STRICKLER: PLEASE SWEAR MR. CHOWANIEC.

16 THE CLERK: WHAT SAYS DEFENDANT ROBERT JAMES?

17 MR. SHUPPER: PLEASE SWEAR MR. CHOWANIEC.

18 THE CLERK: PLEASE HAVE A SEAT IN THE JURY BOX. NUMBER
19 70, ANGELA DARGAN.

20 (WHITE FEMALE)

21 JUROR DARGAN: I'M ANGELA DARGAN, TRAINING COORDINATOR
22 WITH THE SOUTH CAROLINA CREDIT UNION LEAGUE.

23 THE CLERK: WHAT SAYS THE STATE?

24 MR. GASSER: PLEASE PRESENT MS. DARGAN.

25 THE CLERK: WHAT SAYS DEFENDANT KENNETH JAMES?

1 MR. STRICKLER: PLEASE EXCUSE MS. DARGAN FROM THE TRIAL
2 OF THIS CASE. MA'AM. OH. NEVER MIND. SORRY. PLEASE
3 EXCUSE MS. DARGAN.

4 THE COURT: I THOUGHT, OKAY, YOU DIDN'T MAKE A -- ALL
5 RIGHT.

6 MR. STRICKLER: APOLOGIZE, YOUR HONOR.

7 THE COURT: OKAY.

8 THE CLERK: NUMBER 287, DEBORAH STUART.

9 (BLACK FEMALE)

10 JUROR STUART: DEBORAH STUART, EXECUTIVE OFFICER, AND MY
11 SPECIALTY IS PERSONNEL.

12 THE COURT: I COULDN'T HEAR YOU, MS. STUART. YOUR
13 OCCUPATION AGAIN?

14 JUROR STUART: EXECUTIVE OFFICER, AND MY SPECIALTY IS
15 PERSONNEL.

16 THE COURT: YEAH. SPEAK INTO THE MICROPHONE.

17 JUROR STUART: EXECUTIVE OFFICER.

18 THE COURT: OKAY.

19 THE CLERK: WHAT SAYS THE STATE?

20 MR. GASSER: PLEASE PRESENT MS. STUART.

21 THE CLERK: DOES DEFENDANT KENNETH JAMES CHALLENGE FOR
22 CAUSE?

23 MR. STRICKLER: NO. PLEASE SWEAR MS. STUART.

24 THE CLERK: WHAT SAYS DEFENDANT ROBERT JAMES?

25 MR. SHUPPER: PLEASE EXCUSE HER.

1 THE CLERK: PLEASE RETURN TO THE BACK OF THE COURTROOM.
2 NUMBER 72, ARNOLD DAVIS.

3 (BLACK MALE)

4 JUROR DAVIS: ARNOLD DAVIS, NETWORK CONSULTANT FOR
5 COMPAQ COMPUTER CORPORATION.

6 THE CLERK: WHAT SAYS THE STATE?

7 MR. GASSER: PLEASE PRESENT MR. DAVIS.

8 THE CLERK: DOES DEFENDANT KENNETH JAMES CHALLENGE FOR
9 CAUSE?

10 MR. STRICKLER: NO. PLEASE SWEAR MR. DAVIS.

11 THE CLERK: WHAT SAYS DEFENDANT ROBERT JAMES?

12 MR. SHUPPER: PLEASE SEAT MR. DAVIS. THANK YOU.

13 THE CLERK: PLEASE HAVE A SEAT IN THE JURY BOX. NUMBER
14 233, CANDACE OWENS.

15 (BLACK FEMALE)

16 JUROR OWENS: CANDACE OWENS, MORTGAGE COLLECTOR,
17 CAROLINA FIRST BANK.

18 THE CLERK: WHAT SAYS THE STATE?

19 MR. GASSER: PLEASE PRESENT MS. OWENS.

20 THE CLERK: DOES DEFENDANT KENNETH JAMES CHALLENGE FOR
21 CAUSE?

22 MR. STRICKLER: NO. PLEASE SWEAR MS. OWENS.

23 THE CLERK: WHAT SAYS DEFENDANT ROBERT JAMES?

24 MR. SHUPPER: PLEASE EXCUSE MS. OWENS.

25 THE CLERK: NUMBER 74, KENNETH DAVIS.

1 (WHITE MALE)

2 JUROR DAVIS: KEN DAVIS, OPERATIONS MANAGER AT COLUMBIA.

3 THE CLERK: WHAT SAYS THE STATE?

4 MR. GASSER: PLEASE PRESENT MR. DAVIS.

5 THE CLERK: DOES DEFENDANT KENNETH JAMES CHALLENGE FOR
6 CAUSE?

7 MR. STRICKLER: NO. PLEASE SWEAR MR. DAVIS.

8 THE CLERK: WHAT SAYS DEFENDANT ROBERT JAMES?

9 MR. SHUPPER: PLEASE EXCUSE MR. DAVIS.

10 THE CLERK: NUMBER 63, MARY COLE.

11 (WHITE FEMALE)

12 JUROR COLE: MARY COLE, SPORTS ADVERTISING, UNIVERSITY
13 SPORTS.

14 THE CLERK: WHAT SAYS THE STATE?

15 MR. GASSER: PLEASE PRESENT MS. COLE.

16 THE CLERK: DOES DEFENDANT KENNETH JAMES CHALLENGE FOR
17 CAUSE?

18 MR. STRICKLER: NO. PLEASE SWEAR MS. COLE.

19 THE CLERK: WHAT SAYS DEFENDANT ROBERT JAMES?

20 MR. SHUPPER: PLEASE EXCUSE MS. COLE.

21 THE CLERK: YOU MAY LEAVE. NUMBER 298, JOHN THOMPSON.

22 (WHITE MALE)

23 JUROR THOMPSON: JOHN THOMPSON, EMPLOYMENT OFFICER AT
24 BB&T.

25 THE CLERK: WHAT SAYS THE STATE?

1 MR. GASSER: PLEASE PRESENT MR. THOMPSON.

2 THE CLERK: DOES DEFENDANT KENNETH JAMES CHALLENGE FOR
3 CAUSE?

4 MR. STRICKLER: NO. PLEASE SWEAR MR. THOMPSON.

5 THE CLERK: WHAT SAYS DEFENDANT ROBERT JAMES?

6 MR. SHUPPER: PLEASE EXCUSE MR. THOMPSON.

7 THE CLERK: NUMBER 227, ELIZA NIXON.

8 (BLACK FEMALE)

9 JUROR NIXON: I'M ELIZA NIXON, A HOUSEWIFE.

10 THE CLERK: WHAT SAYS THE STATE?

11 MR. GASSER: CAN WE APPROACH, YOUR HONOR?

12 THE COURT: YEP.

13 (WHEREUPON, THE FOLLOWING SIDE BAR CONFERENCE IS HAD)

14 MR. GASSER: SHE HAD INDICATED I BELIEVE TO OUR GENERAL
15 VOIR DIRE THAT SHE KNOWS THE DEFENDANT'S MOTHER.

16 MR. STRICKLER: RIGHT.

17 THE COURT: GOSPEL.

18 MR. GASSER: AND I WANTED TO WAIT AND SEE IF SHE WOULD
19 BE PICKED. BUT I WANT THE RECORD TO REFLECT THAT THE
20 DEFENDANT'S MOTHER HAS BEEN WITH THE COMMUNITY, HAS EVEN
21 WROTE US A LETTER WANTING TO KNOW WHY OUR OFFICE IS CHARGING
22 AND PROSECUTING HER TWO SONS WHO ARE OBVIOUSLY INNOCENT OF
23 THIS CRIME. AND IF SHE IS -- IF SHE -- I WOULD LIKE TO KNOW
24 IF IN ANY WAY WE CAN DELVE INTO THIS WITH THIS PARTICULAR
25 WITNESS (SIC).

1 THE COURT: ASK HER TO COME DOWN. I'LL ASK HER.

2 MR. GASSER: THE OTHER THING WOULD BE -- AGAIN, I WANTED
3 TO WAIT -- BUT I WOULD RESPECTFULLY REQUEST, I LEAVE IT IN
4 YOUR DISCRETION, THE MOTHER IS A WITNESS ON THE WITNESS LIST,
5 AND I WOULD ASK OR LEAVE IT TO YOUR DISCRETION AS TO WHETHER
6 OR NOT THIS WITNESS WOULD TAKE THE TESTIMONY OF HER FRIEND
7 OVER ANYONE ELSE.

8 THE COURT: I DON'T KNOW THAT I'LL ASK IT THAT WAY, BUT
9 I WILL ASK IT. WAIT A MINUTE. MS. NIXON, COME ON DOWN HERE,
10 PLEASE, MA'AM. MS. NIXON, YOU HAD INDICATED THAT YOU WERE
11 ACQUAINTED WITH MS. JAMES WHO IS A POTENTIAL DEFENDANT -- I
12 MEAN DEFENSE WITNESS -- IN THE CASE. IS THAT CORRECT?

13 JUROR NIXON: RIGHT.

14 THE COURT: AND MS. JAMES IS THE MOTHER OF THE TWO
15 DEFENDANTS. OKAY. DID YOU KNOW THAT?

16 JUROR NIXON: (JUROR SHAKES HEAD NEGATIVELY)

17 THE COURT: YOU DID NOT?

18 JUROR NIXON: (JUROR SHAKES HEAD NEGATIVELY)

19 THE COURT: YOU HAVE TO RESPOND VERBALLY.

20 JUROR NIXON: YEAH. I FIGURED SHE WAS ONE OF THEM.

21 THE COURT: YOU FIGURED THAT SHE WAS ONE OF THEM. OKAY.
22 IN ANY EVENT, YOUR INTERACTION WITH HER AT YOUR CHURCH
23 MEETINGS AND YOUR GOSPEL MEETINGS, AND ONLY YOU KNOW THE
24 ANSWER TO THIS AND ONLY YOU CAN IN YOUR HEART TELL ME THE
25 TRUTH OF THIS; HAVE YOU FORMED A RELATIONSHIP WITH HER SUCH

1 THAT IT WOULD BE DIFFICULT FOR YOU TO SERVE AS A JUROR ON
2 THIS CASE, OR DO YOU BELIEVE THAT YOU COULD, KNOWING THAT SHE
3 IS RELATED TO THE TWO DEFENDANTS WHO ARE BEING PROSECUTED —

4 JUROR NIXON: I MAY NOT BE THE BEST JUROR FOR THAT.

5 THE COURT: IN OTHER WORDS, YOU THINK THERE MIGHT BE
6 SOME QUESTION IN YOUR MIND ABOUT YOUR ABILITY TO BE FAIR AND
7 IMPARTIAL IN THIS CASE?

8 JUROR NIXON: RIGHT.

9 THE COURT: I APPRECIATE YOUR CANDOR. AND I'M JUST
10 GOING TO ASK YOU — YOU DON'T NEED TO DISCUSS THIS WITH
11 ANYBODY ELSE. I'M GOING TO ASK YOU JUST SIMPLY TO GO ON TO
12 LUNCH AND BE BACK AT 3:00. OKAY?

13 JUROR NIXON: OH, OKAY. THANK YOU.

14 THE COURT: WAIT A MINUTE. JUST GO ON UP.

15 MR. STRICKLER: WE'RE NOT GOING TO OBJECT.

16 THE COURT: HUH? YOU'RE NOT GOING TO OBJECT TO THAT?

17 MR. STRICKLER: NOT TO HER. NO, SIR.

18 THE COURT: THANK YOU. YOU CAN GO, MS. NIXON.

19 MR. STRICKLER: I'M SORRY. FOR US, YOUR HONOR, I'D JUST
20 LIKE TO PLACE MY OBJECTION ON THE RECORD; THE ESSENCE OF
21 WHICH IS THAT SHE WAS ASKED SUBSTANTIALLY THE SAME QUESTION
22 DURING THE GENERAL VOIR DIRE IN WHICH SHE INDICATED IN SUCH A
23 WAY — WHERE SHE INDICATED SHE COULD GO AHEAD AND SERVE.

24 THE COURT: RIGHT. AT THAT POINT IN TIME SHE WAS NOT
25 AWARE THAT IT WAS THE MOTHER OF THE TWO DEFENDANTS HOWEVER.

1 MR. STRICKLER: YES, SIR.

2 MR. SHUPPER: I JUST JOIN IN THAT, YOUR HONOR.

3 (WHEREUPON, THE SIDE BAR CONFERENCE IS CONCLUDED)

4 THE COURT: ALL RIGHT. NEXT, MS. PENDERGRASS. KEEP
5 GOING.

6 THE CLERK: NUMBER 246, DIANE REYNOLDS.

7 (WHITE FEMALE)

8 JUROR REYNOLDS: DIANE REYNOLDS, BENEFITS ADMINISTRATOR,
9 SMI STEEL, SOUTH CAROLINA.

10 THE CLERK: WHAT SAYS THE STATE?

11 MR. GASSER: PLEASE PRESENT MS. REYNOLDS.

12 THE CLERK: DOES DEFENDANT KENNETH JAMES CHALLENGE FOR
13 CAUSE?

14 MR. STRICKLER: PLEASE SWEAR MS. REYNOLDS.

15 THE CLERK: WHAT SAYS DEFENDANT ROBERT JAMES?

16 MR. SHUPPER: PLEASE EXCUSE MS. REYNOLDS.

17 THE CLERK: NUMBER 22, HERMAN BENJAMIN.

18 (BLACK MALE)

19 JUROR BENJAMIN: HERMAN BENJAMIN, RETIRED.

20 THE CLERK: WHAT SAYS THE STATE?

21 MR. GASSER: PLEASE PRESENT MR. BENJAMIN.

22 THE CLERK: DOES DEFENDANT KENNETH JAMES CHALLENGE FOR
23 CAUSE?

24 MR. STRICKLER: PLEASE SWEAR MR. BENJAMIN.

25 THE CLERK: WHAT SAYS DEFENDANT ROBERT JAMES?

1 MR. SHUPPER: PLEASE SWEAR MR. BENJAMIN.

2 THE CLERK: PLEASE HAVE A SEAT IN THE JURY BOX. NUMBER
3 250, JOSEPH RICHARDSON.

4 (BLACK MALE)

5 JUROR RICHARDSON: JOSEPH RICHARDSON, MECHANIC AT
6 HEWLETT & ROBERT, COLUMBIA, SOUTH CAROLINA.

7 THE CLERK: WHAT SAYS THE STATE?

8 MR. GASSER: PLEASE PRESENT MR. RICHARDSON.

9 THE CLERK: DOES DEFENDANT KENNETH JAMES CHALLENGE FOR
10 CAUSE?

11 MR. STRICKLER: NO, MA'AM. PLEASE SWEAR MR. RICHARDSON.

12 THE CLERK: WHAT SAYS DEFENDANT ROBERT JAMES?

13 MR. SHUPPER: PLEASE SEAT MR. RICHARDSON.

14 THE CLERK: PLEASE HAVE A SEAT IN THE JURY BOX. THE
15 JURY BOX, SIR. THE JURY BOX.

16 JUROR RICHARDSON: OH. I'M SORRY.

17 THE COURT: YEAH. THAT'S UNDER THE "NOT-SO-FAST,
18 EDDIE".

19 THE CLERK: NUMBER 236, ERNEST PATTERSON.

20 (BLACK MALE)

21 JUROR PATTERSON: ERNEST PATTERSON, PATTERSON MASONRY.

22 THE CLERK: WHAT SAYS THE STATE?

23 MR. GASSER: PLEASE EXCUSE MR. PATTERSON FROM SERVICE IN
24 THIS CASE.

25 THE CLERK: YOU MAY LEAVE.

1 THE COURT: MR. PATTERSON, YOU'RE FREE TO GO. PLEASE BE
2 BACK AT 3:00. I KIND OF CUT YOUR LUNCH SHORT. I'M SORRY TO
3 DO THAT TO YOU.

4 THE CLERK: NUMBER 69, JASON CURVIN.
5 (WHITE MALE)

6 JUROR CURVIN: JASON CURVIN. AIR TRAFFIC CONTROLLER,
7 AIR NATIONAL GUARD

8 COURT REPORTER: I'M SORRY, YOUR HONOR. I DIDN'T HEAR
9 HIM.

10 THE COURT: I DIDN'T HEAR A WORD YOU SAID, MR. CURVIN.

11 JUROR CURVIN: I'M JASON CURVIN, AIR TRAFFIC CONTROLLER,
12 AIR NATIONAL GUARD.

13 THE COURT: THANK YOU.

14 THE CLERK: WHAT SAYS THE STATE?

15 MR. GASSER: PLEASE PRESENT MR. CURVIN.

16 THE CLERK: DOES DEFENDANT KENNETH JAMES CHALLENGE FOR
17 CAUSE?

18 MR. STRICKLER: NO, MA'AM. PLEASE SWEAR MR. CURVIN.

19 THE CLERK: WHAT SAYS DEFENDANT ROBERT JAMES?

20 MR. SHUPPER: PLEASE SWEAR MR. CURVIN.

21 THE CLERK: PLEASE HAVE A SEAT IN THE JURY BOX. NUMBER
22 8, GAYLE ALLEN.

23 (WHITE FEMALE)

24 JUROR ALLEN: GAYLE ALLEN, RECENTLY RETIRED.

25 THE CLERK: WHAT SAYS THE STATE?

1 MR. GASSER: PLEASE PRESENT MS. ALLEN.

2 THE CLERK: DOES DEFENDANT KENNETH JAMES CHALLENGE FOR
3 CAUSE?

4 MR. STRICKLER: NO, MA'AM. PLEASE SWEAR MS. ALLEN.

5 THE CLERK: WHAT SAYS DEFENDANT ROBERT JAMES?

6 MR. SHUPPER: PLEASE SEAT MS. ALLEN.

7 THE CLERK: PLEASE HAVE A SEAT IN THE JURY BOX.

8 THE COURT: LET'S TRY TO GET ONE FROM THE REMAINDER.

9 THE CLERK: NUMBER 89, STEPHEN ELLISON.

10 (WHITE MALE)

11 JUROR ELLISON: I'M STEPHEN ELLISON, SALES
12 REPRESENTATIVE FOR SOUTHERN WINE & SPIRITS.

13 THE CLERK: WHAT SAYS THE STATE?

14 MR. GASSER: PLEASE PRESENT MR. ELLISON.

15 THE CLERK: WHAT SAYS DEFENDANT KENNETH JAMES?

16 MR. STRICKLER: PLEASE SWEAR MR. ELLISON.

17 THE CLERK: WHAT SAYS DEFENDANT ROBERT JAMES?

18 MR. SHUPPER: PLEASE SEAT MR. ELLISON.

19 THE CLERK: PLEASE HAVE A SEAT IN THE JURY BOX.

20 THE COURT: FOLKS, THE REMAINDER OF YOU, I APOLOGIZE TO
21 YOU FOR THIS, BUT I'M GOING TO HAVE TO CUT YOUR LUNCH SHORT.
22 BUT I'M GOING TO ASK YOU, IF YOU WOULD, PLEASE, TO REPORT
23 BACK TO THE JURY ASSEMBLY AREA AT 3:00, NOT ANY LATER THAN
24 3:00. PLEASE DON'T DISCUSS THIS MATTER AMONG YOURSELVES, THE
25 FACT YOU WERE OR WERE NOT CALLED OR WERE STRICKEN OR ANYTHING

1 ABOUT THIS CASE, BECAUSE IT MAY BE THAT WE MAY NEED TO BRING
2 YOU BACK UP HERE. BUT, IN ANY EVENT, PLEASE AGAIN DON'T
3 DISCUSS ANYTHING AMONG YOURSELVES. WE'LL SEE YOU AT 3:00
4 DOWNSTAIRS. YOU'RE FREE TO GO AT THIS TIME.

5 NOW, LET ME ASK FROM AMONG YOU, I WANT THE LAWYERS TO
6 APPROACH THE BENCH. ALL OF YOU CAN COME UP. IT DOESN'T
7 MATTER. LET ME GO OVER HERE JUST FOR A SECOND.

8 (WHEREUPON, A BENCH CONFERENCE IS HAD)

9 THE COURT: ALL RIGHT. IT APPEARS FROM A BENCH
10 CONFERENCE THAT THERE ARE NO MOTIONS TO BE MADE REGARDING THE
11 COMPOSITION OF THE JURY. SO, MS. PENDERGRASS, YOU CAN TELL
12 ALL THOSE FOLKS WHO WERE DISMISSED ON THIS JURY THAT THEY ARE
13 -- YOU CAN -- THE INSTRUCTION IS THEY ARE NOW IN ANOTHER
14 POOL, CAPABLE OF BEING UTILIZED FOR ANOTHER POOL. THEY WILL
15 BE RETURNING IN INCREMENTS BETWEEN 2:30 AND 3:00. OKAY. YOU
16 ALL CAN COME UP HERE JUST ONE MORE TIME.

17 (WHEREUPON, A BENCH CONFERENCE IS HAD)

18 THE COURT: ALL RIGHT, FOLKS. I JUST WANTED TO GET
19 SOMETHING STRAIGHT IN TERMS OF LOGISTICALLY HOW WE'RE GOING
20 TO PROCEED. WE HAVE GOT A NUMBER OF PRE-TRIAL MATTERS IN
21 THIS CASE THAT WE NEED TO TAKE UP THAT WILL OCCUPY THE REST
22 OF THE REMAINING TIME TODAY. FOR THAT REASON, I'M GOING TO
23 ASK YOU TO PLEASE GO TO LUNCH AND THEN GO HOME OR DO WHATEVER
24 IT IS YOU WANT TO DO. BUT DON'T COME BACK HERE UNTIL 9:30
25 TOMORROW MORNING.

1 BEFORE YOU GO, HOWEVER, I'M GOING TO TELL YOU THAT
2 NOTWITHSTANDING THE FACT THAT YOU HAVE NOT BEEN SWORN AS
3 JURORS, THAT SHOULD NOT IN ANY WAY BE TAKEN BY YOU AS
4 DIMINISHING THE IMPORTANCE OF THE RESPONSIBILITY WHICH YOU
5 HAVE NOW ASSUMED. IN SHORT, YOU MUST — NOTWITHSTANDING THE
6 FACT YOU HAVE NOT BEEN SWORN YET, AND THAT'S MERELY FOR
7 PROCEDURAL REASONS, TOTALLY FOR PROCEDURAL REASONS. YOU ARE
8 NOW JURORS IN THIS CASE. AND YOU WILL SHORTLY TAKE AN OATH
9 TO WELL AND TRULY TRY THIS CASE. AND YOU WILL FROM THIS
10 POINT IN TIME FOLLOW MY INSTRUCTIONS RELATING TO THE LAW,
11 BECAUSE YOU ARE THE SOLE AND EXCLUSIVE JUDGES OF THE FACTS;
12 MY ROLE IS TO BE THE JUDGE OF THE LAW.

13 THE IMPORTANT THING THAT I'M GOING TO TELL YOU RIGHT
14 NOW, AND I'M GOING TO HIGHLIGHT IT IN ISOLATION. IN SHORT,
15 I'M NOT GOING TO TELL YOU ANYTHING ELSE ABOUT THIS CASE.
16 NUMBER ONE, YOU HAVE HEARD THE LOCATION OF THIS ALLEGED
17 EVENT. YOU ALL KNOW THAT IT ALLEGEDLY OCCURRED ON OR ABOUT
18 MAY 29TH, 1996, AT A LOCATION IN THIS COUNTY CALLED T. S.
19 MARTIN PARK. YOU ARE NOT TO GO INVESTIGATING THIS CASE IN
20 ANY WAY, SHAPE OR FORM, INCLUDING GOING TO T. S. MARTIN PARK.

21 SECONDLY, EVEN THOUGH WE ALL HAVE COMPUTERS THESE DAYS,
22 THIS COMPUTER I'VE GOT RIGHT HERE CAN ACCESS THE INTERNET IN
23 A MOMENT'S NOTICE. YOU ARE NOT TO CONDUCT WHAT ARE KNOWN AS
24 — AND YOU ALL KNOW IT — PEOPLE SEARCHES ON ANYBODY WHOSE
25 NAME YOU HAVE HEARD MENTIONED.

1 IN SHORT, YOU ARE THE RECIPIENTS OF EVIDENCE IN THIS
2 CASE, NOT THE GATHERERS OF EVIDENCE. IT IS NOT YOUR JOB TO
3 DO ANYTHING EXCEPT TO LISTEN TO THE EVIDENCE, ABSORB IT, AND
4 THEN DECIDE THIS CASE BASED UPON YOUR VIEW OF THE EVIDENCE
5 AND MY CHARGE UPON THE LAW TO YOU. THAT IS THE DIFFERENCE
6 BETWEEN OUR ROLES. SO PLEASE DO NOT GO GATHER OTHER EVIDENCE
7 ON YOUR OWN. IT WOULD BE COMPLETELY IMPROPER. IT WOULD BE A
8 DISSERVICE TO ALL OF THE PARTIES WHO ARE GATHERED HERE IN
9 THIS COURTROOM. AND IT WOULD BE A VIOLATION, MOST
10 IMPORTANTLY, OF A JUROR'S DUTY.

11 FINALLY, DO NOT DISCUSS THIS CASE AMONG YOURSELVES NOR
12 WITH ANYONE ELSE. THAT WOULD INCLUDE MEMBERS OF THIS JURY.
13 IN SHORT, WHEN TWO OF YOU WALK OUT OF HERE, ANY TWO OR MORE
14 OF YOU GET TOGETHER, YOU MAY DISCUSS ANYTHING IN THE WORLD
15 EXCEPT THIS CASE OR ANY ASPECT OF IT. LET ME JUST TELL YOU
16 ANY ASPECT OF IT WOULD INCLUDE ANYTHING ABOUT THE APPEARANCE
17 OF ANY OF THE POTENTIAL WITNESSES, THE PARTIES, THE LAWYERS,
18 THE JUDGE, THE COURT REPORTER, THE CLERK OF COURT; ANYTHING
19 AT ALL ABOUT THIS CASE, INCLUDING THE PHYSICAL APPEARANCE OF
20 FOLKS IS AN ASPECT OF THIS CASE THE REASONS WHICH WILL BECOME
21 APPARENT TO YOU AT A LATER TIME.

22 BUT PLEASE UNDERSTAND -- I HOPE THAT THERE IS NOBODY
23 HERE WHO IS MINIMIZING THE IMPORTANCE OF WHAT I AM TELLING
24 YOU NOW. THE ONLY THING THAT I DO IN LIFE THAT IS OF SOME
25 IMPORTANCE IS TO INSURE THAT BOTH SIDES, OR ALL THREE SIDES

1 IN THIS PARTICULAR CASE, HAVE A FAIR AND IMPARTIAL JURY. ONE
2 OF THE WAYS I DO THAT IS BY GIVING YOU THESE INSTRUCTIONS ON
3 THE LAW. AND I TRULY MEAN WHAT I AM TELLING YOU. SO DON'T
4 DISCUSS THIS CASE AMONG YOURSELVES.

5 SHOULD YOU NEED TO COMMUNICATE WITH ME IN ANY WAY, SHAPE
6 OR FORM ABOUT ANY ASPECT OF THIS CASE, YOU WILL WRITE THE
7 REQUEST TO SEE ME ON A NOTE, GIVE IT TO MR. HOLLIS WHO WILL
8 IN TURN TURN IT OVER TO ME. EXAMPLE: A WITNESS IS CALLED.
9 YOU RECOGNIZE THAT WITNESS. YOU'VE NOT PREVIOUSLY DISCLOSED
10 A RELATIONSHIP WITH THAT WITNESS. DON'T SAY ANYTHING TO YOUR
11 FELLOW JURORS, BECAUSE YOU MIGHT HAVE THE -- THAT MIGHT HAVE
12 THE EFFECT OF TAINTING THE REMAINDER OF THE JURY PANEL
13 BECAUSE OF YOUR KNOWLEDGE OF A PARTICULAR WITNESS. SO DON'T
14 DO IT.

15 RATHER, DON'T EVEN TELL THE BAILIFF ABOUT IT. DON'T
16 TELL THE BAILIFF THE NATURE OF YOUR DESIRE TO SEE ME. WRITE
17 IT OUT. COME IN HERE. WE'LL DISCUSS IT WITH YOU, DETERMINE
18 YOUR ABILITY TO CONTINUE ON WITH THIS CASE. BUT DO NOT
19 DISCUSS IT WITH THE BAILIFFS, ANYBODY ELSE, THE CLERK OF
20 COURT, ANYBODY THAT YOU SEE.

21 THESE PEOPLE THAT YOU SEE HERE, IF YOU HAPPEN TO COME
22 UPON THEM INADVERTENTLY IN THE HALL OR WHEREVER IN THIS
23 COURTHOUSE, THEY'LL DO THEIR BEST PROBABLY TO NOT BE
24 UNPLEASANT TO YOU BUT TO AVERT THEIR EYES TO AVOID ANY KIND
25 OF EXCHANGE WITH YOU. AND IT WON'T BE BECAUSE THEY'RE

1 UNFRIENDLY. IT WILL BE BECAUSE THEY ARE FRIGHTENED TO DEATH
2 OF MY WRATH FOR HAVING ANY PARTICULAR INTERACTION WITH YOU.
3 SO DON'T TRY TO INTERACT WITH THEM. YOU SEE ME, I'LL BE
4 FRIENDLY. OKAY. WE'LL WAVE. OKAY. BUT IF YOU SEE ANY OF
5 THESE PARTICIPANTS, DON'T BE SURPRISED IF THEY WANT TO AVOID
6 YOUR GAZE.

7 SO, AGAIN, IT'S VITALLY IMPORTANT THAT YOU OBSERVE THESE
8 ADMONITIONS THAT I'VE GIVEN YOU. MR. HOLLIS WHEN HE TAKES
9 YOU OUT IS GOING TO SHOW YOU THE JURY ROOM TO WHICH YOU WILL
10 REPORT. YOU WILL REPORT TO THAT JURY ROOM TOMORROW. NOT TO
11 THIS COURTROOM. TO THE JURY ROOM THAT HE SHOWS YOU. HE WILL
12 SHOW YOU THE MEANS OF GAINING ACCESS TO THE JURY ROOM WITHOUT
13 HAVING TO COME THROUGH THIS COURTROOM, BECAUSE WE MAY STILL
14 BE IN HERE.

15 I WOULD ASK YOU TO PLEASE BE IN THE JURY ROOM NOT LATER
16 THAN — AND, AGAIN, ONE OF THE THINGS THAT I TEND TO BE
17 OBSESSIVE/COMPULSIVE ABOUT IS TIME. SO NOT LATER THAN 9:45.
18 IF YOU'RE THERE AT 9:45, PRESUMABLY, WE WILL BE READY TO GO.
19 I WILL DO MY BEST NOT TO KEEP YOU WAITING. THIS IS NOT A
20 HURRY UP AND WAIT PROPOSITION; BUT, RATHER, ONE THAT IS
21 VITALLY IMPORTANT THAT YOU OBSERVE APPROPRIATELY TIME
22 CONSTRAINTS. AND WE WILL ATTEMPT TO DO THE SAME SO AS NOT TO
23 INCONVENIENCE YOU UNDULY. BUT THERE MAY BE TIMES WHEN WE'RE
24 BOTH WAITING FOR EACH OTHER. PLEASE BE THERE AT 9:45. DON'T
25 DISCUSS THE CASE. WE'LL SEE YOU TOMORROW. HAVE A PLEASANT

1 EVENING. DON'T DISCUSS THE CASE WITH ANYBODY AT HOME EITHER.
2 (JURY OUT AT 2:22 P.M.)

3 THE COURT: OKAY. WITH THE LAWYERS AND THE DEFENDANTS,
4 UNLESS THERE IS SOME COMPELLING REASON WHY WE HAVE TO TAKE UP
5 ANY OF THESE MOTIONS RIGHT NOW, LET'S BREAK UNTIL 3:15. GO
6 GRAB SOME LUNCH AND THEN BE READY TO BE BACK IN HERE. OKAY.

7 MR. GASSER: THANK YOU, YOUR HONOR.

8 MR. STRICKLER: THANK YOU, YOUR HONOR.

9 MR. SHUPPER: THANK YOU, YOUR HONOR.

10 THE COURT: OKAY. SEE YOU.

11 (WHEREUPON, A LUNCH BREAK IS TAKEN)

12 (COURT'S EXHIBIT NO. 3, DEFENDANT KENNETH JAMES'S PARTIAL
13 LISTING OF DEFENDANT'S PRE-TRIAL MOTIONS, MARKED FOR
14 IDENTIFICATION ONLY)

15 (COURT'S EXHIBIT NO. 4, DEFENDANT KENNETH JAMES'S MEMORANDUM
16 OF LAW TO EXCLUDE IMPEACHMENT EVIDENCE OF PRIOR CONVICTIONS
17 AND ARRESTS, MARKED FOR IDENTIFICATION ONLY)

18 (COURT'S EXHIBIT NO. 5, DEFENDANT KENNETH JAMES'S MOTION IN
19 LIMINE REGARDING FINGERPRINTS, MARKED FOR IDENTIFICATION
20 ONLY)

21 (COURT'S EXHIBIT NO. 6, DEFENDANT KENNETH JAMES'S MOTION TO
22 EXCLUDE EVIDENCE OF HIS ALLEGED "WANTED" STATUS PRIOR TO HIS
23 ARREST, MARKED FOR IDENTIFICATION ONLY)

24 (COURT'S EXHIBIT NO. 7, DEFENDANT KENNETH JAMES'S MOTION TO
25 PRESENT EVIDENCE OF THE ALLEGED VICTIM'S PRIOR RAPE "CLAIM")

1 AND DRUG ABUSE, MARKED FOR IDENTIFICATION ONLY)

2 (COURT'S EXHIBIT NO. 8, DEFENDANT KENNETH JAMES'S MOTION TO
3 EXCLUDE HEARSAY STATEMENTS OF STATE'S WITNESSES, MARKED FOR
4 IDENTIFICATION ONLY)

5 (COURT'S EXHIBIT NO. 9, DEFENDANT KENNETH JAMES'S MOTION TO
6 QUASH THE INDICIMENT AND DISMISS THE CHARGE DUE TO THE
7 STATE'S FAILURE TO TIMELY ACT ON THE ARREST WARRANT, MARKED
8 FOR IDENTIFICATION ONLY)

9 (COURT'S EXHIBIT NO. 10, DEFENDANT KENNETH JAMES'S MOTION
10 REQUESTING STENOGRAPHIC RECORDATION OF PROCEEDINGS, MARKED
11 FOR IDENTIFICATION ONLY)

12 THE COURT: AGAIN, WE HAVE A NUMBER OF MOTIONS WE NEED
13 TO TAKE UP, INCLUDING IDENTIFICATION MATTERS, A SUPPRESSION
14 HEARING ON THE SEARCH WARRANT, DOG TRACKING TESTIMONY,
15 CHARACTER EVIDENCE WITH REGARD TO THE VICTIM, DEFENDANT'S
16 PRE-ARREST SILENCE, AND MATTERS RELATED TO DISCOVERY. THAT'S
17 —

18 DEPUTY: WE'RE MISSING AN ATTORNEY.

19 THE COURT: OH, I'M SORRY.

20 (PAUSE)

21 (COURT'S EXHIBIT NOS. 11 THROUGH 17, MOTIONS OF DEFENDANT
22 KENNETH JAMES, MARKED FOR IDENTIFICATION ONLY)

23 THE COURT: MR. SNEED, WHAT MOTIONS DO YOU HAVE THAT
24 RELATE ONLY TO YOUR CLIENT? JUST TELL ME. WE WON'T GET INTO
25 THEM YET. JUST SO I'LL KNOW. ARE ALL OF THESE JOINED INTO

1 BY MR. SHUPPER? OR DO YOU KNOW?

2 MR. SNEED: I THINK ALL BUT ONE THAT'S NOT ON THIS LIST
3 MR. SHUPPER IS GOING TO JOIN IN ON.

4 THE COURT: OKAY. WELL, WE'LL SIMPLY HAVE TO WAIT FOR
5 HIM.

6 MR. SNEED: YES, SIR. SIR, I DO HAVE ONE RELATED TO THE
7 INDICTMENTS, YOUR HONOR.

8 THE COURT: ONE WHAT?

9 MR. SNEED: I HAVE THREE MOTIONS RELATED TO THE
10 INDICTMENTS, TO QUASH. I DON'T KNOW IF MR. SHUPPER IS GOING
11 TO JOIN IN. THEY'RE RELATED TO THE INDICTMENTS AGAINST
12 KENNETH JAMES.

13 THE COURT: WELL, WE'RE RELATING ONLY NOW TO KENNETH
14 JAMES. SO PLEASE TELL ME WHAT YOUR MOTIONS ARE THAT RELATE
15 TO THE INDICTMENTS AGAINST KENNETH JAMES.

16 MR. SNEED: THANK YOU, SIR. YOUR HONOR, I MOVE TO QUASH
17 THE TWO ARMED ROBBERY INDICTMENTS. AND THAT'S NO. 19108
18 AGAINST MS. *Vicki* AND 19107 AGAINST WINFRED BULL. THE
19 REASON WHY IS, LOOKING AT THESE INDICTMENTS, THE AUGUST 1999,
20 IT'S CLEARLY THE NEW ARMED ROBBERY STATUTE WHICH HAS AN
21 EITHER/OR ASPECT.

22 NOW, WHEN THIS CRIME WAS COMMITTED MAY 29, '96, IT WAS
23 THE OLD ARMED ROBBERY STATUTE THAT ESSENTIALLY THE SUSPECT
24 HAD TO ACTUALLY BE ARMED. WELL, UNDER THE NEW VERSION OF THE
25 STATUTE, THE STATE GETS THE CHOICE. THE SUSPECT IS ACTUALLY

1 ARMED OR ALLEGES TO BE ARMED. AND SO, AS YOU READ THESE TWO
2 INDICIMENTS, IT'S UNDER THE NEW PRESENT FORM. THE STATUTE —
3 THAT NEW STATUTE DIDN'T APPLY ON MAY 29, '96. AND WE DON'T
4 KNOW WHICH ONE THE GRAND JURY WAS PASSING ON BECAUSE IT SAYS
5 — BECAUSE IT'S A SORT OF EITHER/OR PROBLEM. SO FOR THAT
6 REASON I MOVE TO QUASH THE TWO ARMED ROBBERY INDICIMENTS.

7 THE COURT: AND OF COURSE MR. SHUPPER WOULD JOIN IN THAT
8 MOTION FOR HIS CLIENT, TOO.

9 MR. SHUPPER: YES, YOUR HONOR.

10 THE COURT: MS. FRYAR OR MR. GASSER.

11 MR. GASSER: YOUR HONOR, UNDER — YOUR HONOR, MY
12 UNDERSTANDING OF THE PURPOSE OF THE INDICTMENT IS TO PROVIDE
13 SUFFICIENT NOTICE TO THE DEFENSE TO BE PREPARED. THEY WERE
14 SERVED WITH ARREST WARRANTS INDICATING THAT THEY WERE ROBBED.
15 THEY WERE ROBBED. THEY WERE CHARGED WITH ARMED ROBBERY. AND
16 THE INDICTMENT READS — THE FORM OF THE INDICTMENT PROVIDES
17 SUFFICIENT NOTICE TO THE DEFENDANT AND THE DEFENSE ATTORNEYS
18 AS TO WHAT HE IS CHARGED WITH.

19 AND UNDER 17 DASH — UNDER THE CASE LAW DEALING WITH
20 INDICIMENTS, I DON'T HAVE THE CASES. HOLD ON. I DO HAVE THE
21 CASES RIGHT HERE. I HAVE — THE CASES ARE CLEAR THAT THE
22 PURPOSE OF THE INDICTMENT IS TO PROVIDE SUFFICIENT NOTICE,
23 AND IT'S THE STATE'S POSITION THAT THE ELEMENTS INCLUDED IN
24 THESE INDICIMENTS INCLUDE THE ELEMENTS OF ARMED ROBBERY
25 REGARDLESS OF WHICH STATUTE INTERPRETATION THAT YOU USE.

1 THE COURT: YEAH. WELL, YOU SEE, HIS POINT IS THAT HE
2 DOESN'T KNOW WHICH PORTION THE GRAND JURY PASSED ON. IT MAY
3 HAVE BEEN PRESENTED TO THEM WHILE ARMED WITH A REPRESENTATION
4 OF A DEADLY WEAPON, AND IF THEY INDICTED HIM BASED ON THAT
5 KIND OF INFORMATION, THAT WOULD BE INAPPROPRIATE AND
6 INCORRECT. AND WHAT HE'S SAYING IS, IS THAT HE CAN'T TELL
7 WHICH ONE THE GRAND JURY PASSED ON IN RETURNING THIS
8 INDICTMENT, WHETHER HE WAS ACTUALLY ARMED, AS IT MUST BE, IN
9 ORDER FOR HIS CLIENT TO BE GUILTY OF THIS OFFENSE, OR WHETHER
10 HE WAS ARMED WITH A REPRESENTATION OR WHICH THE VICTIM
11 REASONABLY BELIEVED WAS A REPRESENTATION. THAT'S WHAT HIS
12 POINT IS. AND, YOU KNOW, IT'S A POINT, ISN'T IT?

13 MR. GASSER: WELL, I STILL DON'T SEE — UNLESS HE HAS
14 EVIDENCE TO SUGGEST THAT THEY ACTED ON THE ELEMENTS THAT HE
15 DID NOT HAVE IT.

16 THE COURT: WELL, HOW COULD HE HAVE EVIDENCE OF THAT?

17 MR. GASSER: WELL, THEN HOW IS IT THAT WE NOT KNOW THAT
18 THE GRAND JURY — I HAVE THE WITNESS WHO TESTIFIED IN FRONT
19 OF THE GRAND JURY THAT COULD BE PLACED UNDER OATH.

20 THE COURT: WE CAN'T GET INTO THAT, CAN WE? YOU KNOW.

21 MR. GASSER: I MEAN, JUST, THERE'S NOTHING —

22 THE COURT: WHAT DOES THE WARRANT SAY?

23 MR. GASSER: ARMED ROBBERY WITH KENNETH JAMES, WARRANT
24 NO. F124373, THE DEFENDANT ON 5-29-96 AT 1800 GERVAIS STREET,
25 T. S. MARTIN PARK IN THE CITY LIMITS OF COLUMBIA, SOUTH

1 CAROLINA, TAKE A PISTOL AND ROB THE VICTIM OF HER
2 CLOTHES AND POCKETBOOK.

3 THE COURT: OKAY.

4 MR. GASSER: I WOULD ALSO NOTE, YOUR HONOR, THAT THE
5 SAME GRAND JURY RETURNED -- THAT THE SAME GRAND JURY ALSO
6 RETURNED INDICTMENTS FOR POSSESSION OF A FIREARM DURING THE
7 COMMISSION OF A FELONY. AND FOR THAT GRAND JURY TO SUGGEST
8 AT THE SAME TIME IT WAS PRESENTED THAT HE POSSESS A FIREARM,
9 THE INDICTMENT FOR POSSESSION OF A FIREARM DURING THE
10 COMMISSION OF A FELONY, THEN TO SUGGEST THEY DID NOT TAKE
11 INTO CONSIDERATION THAT THEY WERE ARMED WITH A DEADLY WEAPON
12 FOR THE ARMED ROBBERY WOULD BE SOMEWHAT ILLOGICAL.

13 THE COURT: NO. IT WOULDN'T BE. BECAUSE IT COULD BE
14 FOR ONE OF THE OTHER OFFENSES AS WELL. I'M NOT TRYING TO
15 MAKE YOUR LIFE MISERABLE, MR. GASSER, BUT THIS IS THE KIND OF
16 INATTENTION TO DETAIL THAT LEADS TO PROBLEMS. IT'S NOT LIKE
17 THE MATTER OF THEY DID IT DOUBLY CORRECTLY. MR. SNEED'S GOT
18 A POINT. THE POINT HERE IS, IS, HAS COUNSEL BEEN MISLEAD
19 WITH REGARD TO THE CONDUCT AGAINST WHICH COUNSEL IS TO
20 DEFEND?

21 NOW, ARE YOU GOING TO TELL ME -- IF YOU'RE TELLING ME
22 THAT ALL OF THE INDICTMENTS -- EXCUSE ME -- ALL OF THE
23 WARRANTS SAY ARMED WITH A PISTOL AND THAT YOU ARE GOING TO
24 PROCEED SOLELY ON WHILE ARMED WITH A DEADLY WEAPON INSTEAD OF
25 THE FOUR PROVISIONS, WE'LL GO FROM THERE. YOU'RE TELLING ME

1 THAT, AREN'T YOU?

2 MR. GASSER: YES, SIR. WE WOULD MOVE — WE WOULD MARK
3 —

4 THE COURT: SO YOU MOVE TO AMEND THE INDICTMENT BY
5 REMOVING THE LANGUAGE "OR WHILE ALLEGING, EITHER BY ACTION OR
6 WORDS, THAT HE WAS ARMED WHILE USING A REPRESENTATION OF A
7 DEADLY WEAPON ON THE OBJECT WHICH THE PERSON PRESENT DURING
8 THE COMMISSION OF THE ROBBERY REASONABLY BELIEVED TO BE A
9 DEADLY WEAPON".

10 MR. GASSER: CORRECT. AND THEY ARE — AND THE DEFENSE
11 — I WOULD MOVE TO MARK IT AS COURT'S EXHIBITS, THE FOUR
12 WARRANTS CHARGING THESE TWO DEFENDANTS WITH ARMED ROBBERY.

13 THE COURT: IF YOU WOULD, PLEASE, SHOW THEM TO COUNSEL.

14 MR. SNEED: I'VE SEEN THEM BEFORE.

15 THE COURT: OKAY. SO, YEAH. HAVE THOSE MARKED AS
16 COURT'S EXHIBITS TO THIS PROCEEDING.

17 (COURT'S EXHIBIT NO. 18, FOUR WARRANTS, MARKED FOR
18 IDENTIFICATION ONLY)

19 THE COURT: MR. SNEED, THIS DOES NOT OBEVIATE YOUR
20 OBJECTION. I UNDERSTAND THAT. AM I CORRECT? YOU STILL
21 INSIST THAT THESE INDICTMENTS BE QUASHED. IS THAT CORRECT?

22 MR. SNEED: YES, SIR. IF I COULD JUST ADD ONE WORD. I
23 UNDERSTAND THE COURT'S RULING. I'M AWARE OF THE NOTICE
24 ASPECT, PUTTING THE DEFENDANT ON NOTICE. BUT AS FAR AS, THE
25 PRESENTMENT REQUIREMENTS OF THE GRAND JURY ARE THEY HAVE TO

1 PASS ON ALL OF THE ELEMENTS OF THE OFFENSE, AND THEN THERE IS
2 THE OTHER REQUIREMENT THAT AN INDICIMENT SHOULD BE IN
3 SUBSTANTIALLY THE SAME LANGUAGE. AND THAT WOULD BE OF COURSE
4 THE ESSENCE OF MY OBJECTION. I UNDERSTAND THAT IT'S RAISED,
5 TOO, DENIED, AND YOU ARE PERMITTING THE AMENDMENT.

6 YOUR HONOR, IN ADDITION, —

7 THE COURT: NO. YOU DON'T UNDERSTAND THAT AT ALL. I'M
8 SAYING MR. GASSER HAS NOW OFFERED TO AMEND IT.

9 MR. SNEED: YES, SIR.

10 THE COURT: I DIDN'T SAY I PERMITTED ANYTHING YET, DID
11 I?

12 MR. SNEED: OH, I'M SORRY.

13 THE COURT: KEEP GOING.

14 MR. SNEED: THAT'S THE ESSENCE OF MY OBJECTION, YOUR
15 HONOR, IS THAT WE DON'T KNOW IF THE GRAND JURY TRULY DID PASS
16 ON THE ELEMENTS OF THIS OFFENSE BECAUSE OF THE "OR" LANGUAGE.
17 CERTAINLY IT'S NOT IN SUBSTANTIALLY THE SAME LANGUAGE AS THE
18 STATUTE. THE INDICIMENT IS DEFICIENT IN THAT SENSE. THE
19 STATUTE IN EFFECT MAY 29. AND MR. GASSER, WHEN HE'S
20 REFERRING TO, YOU KNOW, THESE OTHER INDICIMENTS THAT WERE
21 PRESENTED AT THE SAME TIME OR HE'S SORT OF I GUESS TRYING TO
22 DO A COMMONSENSE DETERMINATION OF WHAT THE GRAND JURY
23 THOUGHT, I DON'T THINK WE CAN ENGAGE IN THAT ANALYSIS. WE DO
24 HAVE TO LOOK AT THIS INDICIMENT.

25 THE COURT: PARTICULARLY NOT WITH REGARD TO THE GRAND

1 JURY, CAN WE?

2 MR. SNEED: I DON'T THINK WE CAN.

3 THE COURT: ENGAGE IN A COMMONSENSE ANALYSIS WITH REGARD
4 TO THE GRAND JURY?

5 MR. SNEED: NO, SIR. NOT UNDER THE SYSTEM WE HAVE AS
6 OUR PRESENT SYSTEM, I DON'T THINK.

7 THE COURT: MR. SHUPPER, ANYTHING FURTHER?

8 MR. SHUPPER: I HAVE NOTHING TO ADD TO THAT, YOUR HONOR,
9 OTHER THAN THE -- AS WAS STATED, THE INDICIMENT IS A CHARGING
10 INSTRUMENT THAT PROVIDES NOTICE. IF THE INDICIMENT IS
11 DEFECTIVE IN THE FOUR CORNERS OF IT, THEN, AS HAS BEEN DONE,
12 THEN THE STATE CAN MOVE TO AMEND.

13 THE COURT: OKAY. I APPRECIATE THAT. IT'S APPARENT TO
14 ME THAT THE WARRANTS CHARGING THESE MEN WITH ARMED ROBBERY
15 INDICATE THEY WERE ARMED WITH A PISTOL. AND I WILL NOTE THAT
16 THE WARRANTS ARE TYPICALLY TAKEN TO THE GRAND JURY. I AM NOT
17 SAYING THAT MR. SNEED AND MR. SHUPPER DON'T HAVE A POINT,
18 BECAUSE THEY MAY HAVE A POINT. BUT THE POINT HERE IS, IS
19 THAT, NUMBER ONE, I DON'T BELIEVE THAT THEY HAVE BEEN MISLEAD
20 AT ALL WITH REGARD TO THE CONDUCT AGAINST WHICH THEY ARE TO
21 DEFEND.

22 THERE IS A QUESTION IN MY MIND AS TO WHETHER OR NOT THE
23 -- AS TO WHAT THE GRAND JURY MAY HAVE PASSED UPON, BUT IT
24 SEEMS VIRTUALLY IRREFUTABLE THAT THEY HAD TO PASS UPON ON
25 THIS MATTER, THAT THE DEFENDANTS WERE ARMED, ACTUALLY ARMED

1 WITH A DEADLY WEAPON AS OPPOSED TO REPRESENTATIONS THEREOF.
2 SO I'LL DENY THE MOTION TO QUASH THE INDICTMENT, ALLOW THE
3 AMENDMENT TO DELETE THE LANGUAGE "OR WHILE ALLEGING". AND I
4 WILL DO THAT IN EACH OF THE FOUR INDICTMENTS IF NOBODY
5 OBJECTS. YOU'RE NOT CONCEDED TO IT, BUT IF NOBODY OBJECTS
6 TO MY DELETING THEM IN MY OWN PEN, DOES ANYBODY HAVE A
7 PROBLEM WITH THAT?

8 MR. SNEED: NO, SIR.

9 MR. SHUPPER: NO, YOUR HONOR.

10 THE COURT: SO ALL THE LANGUAGE AFTER "WHILE ARMED WITH
11 A DEADLY WEAPON" THAT IS IN THE MAIN BODY, NOT COUNTING THAT
12 LANGUAGE "AGAINST THE PEACE AND DIGNITY AGAINST THE STATE",
13 WHICH REMAINS, IS DELETED. THAT IS AS TO THE INDICTMENTS
14 AGAINST ROBERT JAMES AND AS AGAINST KENNETH JAMES. YOU MAY
15 BE RIGHT, IN WHICH CASE YOU'VE BEEN HANDED SOMETHING.

16 MR. SNEED: THANK YOU, SIR.

17 THE COURT: ALL RIGHT. HANG ON A SECOND. I'VE GOT TO
18 DO THESE. OKAY. NOW, MR. SNEED, I WAS KIND OF LETTING YOU
19 GO BECAUSE MR. SHUPPER WAS NOT HERE. BUT LET ME JUST SEE IF
20 THE NEXT MOTION YOU SEEK TO MAKE IS THE APPROPRIATE ONE. GO
21 AHEAD, PLEASE.

22 MR. SNEED: I WOULD MOVE TO QUASH THE A.W.I.K.
23 INDICTMENT. THAT'S NO. 19109, YOUR HONOR.

24 THE COURT: OKAY. I'M SORRY. I DON'T HAVE ---

25 MR. SNEED: WELL, MY NUMBER HAS BEEN CUT OFF. IT'S ---

1 THE COURT: THE ONE I HAVE IS ASSAULT WITH INTENT TO
2 KILL, IS INDICTMENT NO. 99-22845. THAT'S ROBERT JAMES. I'M
3 SORRY. I'VE GOT TO LOOK BACK AT KENNETH. AND IT IS AS YOU
4 HAVE DESCRIBED IT, 19109. YEAH. GO AHEAD.

5 MR. SNEED: ESSENTIALLY, YOUR HONOR, MY POSITION IS THAT
6 THE LANGUAGE FOR THE MALICE IS TOO CONCLUSORY. AND I THINK
7 THE BEST ANALOGY I CAN MAKE IS THAT WHEN YOU HAVE AN ABHAN
8 INDICTMENT, THE INDICTMENT NEEDS TO STATE THE CIRCUMSTANCES
9 OF AGGRAVATION. AND FOR ASSAULT WITH INTENT TO KILL, I
10 BELIEVE THAT SIMILARLY THE STATE SHOULD HAVE TO PUT FORWARD
11 -- YOU KNOW, I'M NOT SAYING, YOUR HONOR, THEY'VE GOT TO PUT
12 THE WHOLE CRIME DOWN THERE; BUT WHY THERE IS MALICE. AND
13 THAT COULD BE THE DETAIL WOULD BE A GUN WAS USED OR SOMETHING
14 TO THAT EFFECT. BUT IT'S JUST ENTIRELY TOO CONCLUSORY, AND
15 WE'RE NOT SURE IF THE GRAND JURY REALLY DID PASS ON THIS
16 QUESTION OF MALICE. AND COULD IT PUT A DEFENDANT ON NOTICE,
17 THIS INDICTMENT RIGHT HERE, FOR HOW HE ALLEGEDLY ACTED WITH
18 MALICE? I DON'T THINK SO. AND SO, FOR THAT REASON I ARGUE
19 IT'S FACTUALLY DEFICIENT.

20 THE COURT: YOU DISAGREE.

21 MR. GASSER: YES, SIR, YOUR HONOR.

22 THE COURT: I DO, TOO. OKAY?

23 MR. SNEED: YES, SIR.

24 THE COURT: THAT MOTION IS DENIED. AND YOU WOULD JOIN
25 IN IT?

1 MR. SHUPPER: YOUR HONOR, AS FAR AS 22845 ON BEHALF OF
2 ROBERT JONES, I WOULD JOIN IN MR. SNEED'S MOTION.

3 THE COURT: YES, SIR. OKAY.

4 MR. SNEED: YOUR HONOR, I HAVE MY FINAL MOTION TO QUASH.
5 AND I HAVE A BRIEF MEMORANDUM OF LAW.

6 THE COURT: SOMETIMES KNOWN AS A BRIEF.

7 MR. SNEED: YES, SIR. I'VE GIVEN THE SOLICITOR A COPY.
8 YOUR HONOR, THIS IS SIMILAR, ALTHOUGH IT'S A DIFFERENT BASIS
9 FROM THE SPEEDY TRIAL MOTION THAT WAS MADE EARLIER. JUST, I
10 WAS, GOING TO MAKE IT EARLIER BECAUSE IT ALMOST FELL IN LINE
11 WITH IT, BUT I SENSED THE COURT WAS GOING TO PICK THE JURY.
12 AND SO THAT'S WHY I DIDN'T DO IT EARLIER. BASED ON I'M
13 SAYING THE STATE VIOLATED RULE 3 OF THE RULES OF CRIMINAL
14 PROCEDURE. AND IT'S PRETTY BLATANT. AND THAT'S MY -- THE
15 GROUNDS I'M RELYING ON. AND AFTER YOU'VE HAD A CHANCE TO
16 READ IT, I'LL ...

17 THE COURT: ESSENTIALLY YOUR ARGUMENT IS, IS THAT THEY
18 DELAYED IN TAKING ANY ACTION ON IT --

19 MR. SNEED: YES, SIR.

20 THE COURT: -- FOR AN INAPPROPRIATE PERIOD OF TIME.
21 THERE IS ONE MISSTATEMENT, AND I KNOW IT WASN'T INTENTIONAL,
22 THAT THE WARRANTS WERE SWORN AND ISSUED ON OR ABOUT MAY 29TH.
23 NOW, THAT'S TRUE AS TO YOUR FELLOW BUT NOT AS TO MR.
24 SHUPPER'S CLIENT. IS THAT CORRECT?

25 MR. SNEED: THAT'S CORRECT, YOUR HONOR.

1 THE COURT: YOUR CLIENT WAS IDENTIFIED WITHIN WHAT? TEN
2 HOURS OR SOMETHING LIKE THAT?

3 MR. SNEED: THAT'S RIGHT.

4 THE COURT: OKAY. SO THAT'S CORRECT AS TO HIM?

5 MR. SNEED: YES, SIR.

6 THE COURT: AND LET ME JUST READ IT JUST SO I CAN JUST
7 MAKE SURE I UNDERSTAND IT.

8 MR. SNEED: THANK YOU.

9 (PAUSE)

10 THE COURT: OF COURSE. AND OF COURSE MR. SHUPPER JOINS
11 IN THESE MOTIONS ON BEHALF OF HIS CLIENT AS WELL EVEN THOUGH
12 HIS CLIENT'S WARRANTS WERE NOT ISSUED UNTIL DECEMBER 30TH OR
13 THEREABOUTS, SHORTLY AROUND — ABOUT OR AROUND DECEMBER OR SO
14 OF 19 — OR WHEN WERE THEY?

15 MR. SHUPPER: WELL, YOUR HONOR, THEY VARY; BUT FROM THE
16 A.W.I.K. ON MAY 14TH OF 1997, THE ARMED ROBBERY ON AUGUST 2ND
17 OF 1996, AND ANOTHER ONE ON MAY 14TH, ARMED ROBBERY, OF 1997.

18 THE COURT: OKAY.

19 MR. SHUPPER: AND THE POSSESSION OF A FIREARM OR
20 COMMISSION — DURING THE COMMISSION OF A FELONY ARE DATED MAY
21 14TH OF 1997.

22 THE COURT: OKAY. MR. GASSER, YOUR ARGUMENT AMONG
23 OTHERS IS, IS THAT NO DEMONSTRABLE PREJUDICE HAS BEEN SHOWN
24 TO EITHER DEFENDANT?

25 MR. GASSER: YES, SIR.

1 THE COURT: AND WHATEVER ELSE YOU WANT TO -- WHAT ELSE
2 IS IT YOU WANT TO ARGUE?

3 MR. GASSER: THAT THAT WOULD BE ULTIMATELY THE
4 ARGUMENTS, CONSIDERING THE FACT THAT -- AND, AGAIN, I KNOW
5 THAT I JUST USE IT FROM A PRACTICAL POINT OF VIEW, IS THAT
6 THE OVERWHELMING MAJORITY OF CASES WE DO NOT INDICT WITHIN
7 NINETY DAYS. AND ABSENT A SHOWING OF PREJUDICE -- I WISH WE
8 COULD INDICT EVERY CASE AND HAD THE FEDERAL RULE AND HAD THE
9 RESOURCES TO DO THAT. AND I UNDERSTAND THAT THAT'S STILL A
10 VIOLATION OF THE RULE.

11 AND I WOULD JUST ARGUE THE SAME POINT WE ARGUE WHENEVER
12 THIS MOTION IS MADE, AND THAT IS THAT THERE IS -- ABSENT ANY
13 TYPE OF PREJUDICE AND ALSO THE FACT THAT THERE WAS NO --
14 THERE WAS NO -- AT THE END OF THE NINETY DAYS THERE WAS NO
15 PROACTIVE MOTION ON THE PART OF THE DEFENDANTS TO HAVE A
16 SPEEDY TRIAL OR TO HAVE THEIR CASES INDICTED OR TO GO IN
17 FRONT OF A CIRCUIT COURT JUDGE.

18 THE COURT: MR. GASSER, I KNOW THAT YOU WOULD AS A
19 PROSECUTING OFFICER LIKE TO DO WHAT YOU'VE SAID YOU WOULD
20 LIKE TO DO AND WISH THAT WE COULD ALL OPERATE THAT
21 EFFICIENTLY. MR. SNEED, ON THE OTHER HAND, YOU'RE SAYING
22 THAT RULES ARE RULES. IS THAT PRETTY MUCH IT?

23 MR. SNEED: YES, SIR.

24 THE COURT: YEAH. I MEAN, I APPRECIATE THAT. I
25 UNDERSTAND THAT. I DON'T KNOW WHAT THE ANSWER TO THIS IS.

1 BUT I DO NOT BELIEVE THAT IN THE ABSENCE OF ANY DEMONSTRATED
2 PREJUDICE, THAT GIVEN THAT THERE IS NO DEMONSTRATED PREJUDICE
3 IN THIS CASE, THAT I DON'T SEE HOW I CAN GRANT YOUR MOTION.

4 MR. SNEED: YES, SIR. JUST ONE THING TO ADD, YOUR
5 HONOR. I JUST FEEL LIKE MR. GASSER HAS HEARD ME MAKE THIS
6 MOTION MULTIPLE TIMES BEFORE.

7 THE COURT: HAVE YOU EVER APPEALED IT?

8 MR. SNEED: NO, SIR. THAT'S WHY I DO HAVE A BRIEF. I'M
9 REQUESTING THAT, MAKING ADDITIONAL COPIES IF I CAN. AS I'M
10 HANDING THEM UP TO THE COURT, I'M HANDING ALSO A COPY TO THE
11 COURT REPORTER JUST TO MAKE IT A PART OF THE RECORD. I DON'T
12 MEAN TO MAKE TOO BIG OF AN ASSUMPTION THERE. MAYBE THIS
13 COULD BE THE TIME, YOUR HONOR. I DON'T KNOW.

14 THE COURT: THIS MIGHT BE THE CASE.

15 MR. SNEED: I JUST — SO OFTEN THOUGH THE STATE IS
16 TRYING TO FORCE US TO SHOW PREJUDICE. AND I THINK THAT
17 BEFORE WE'RE REQUIRED TO DO THAT THEY SHOULD HAVE TO GIVE A
18 JUSTIFICATION FOR SUCH A VIOLATION. I MEAN, —

19 THE COURT: THAT WOULD BE ASSUMING THAT LIFE IS FAIR.

20 MR. SNEED: YES, SIR.

21 THE COURT: YEAH. AND I JUST WORK HERE, DON'T I?

22 MR. SNEED: RIGHT.

23 THE COURT: OKAY.

24 MR. SNEED: YES, SIR.

25 THE COURT: THIS IS ABOVE MY PAY GRADE, ISN'T IT? GIVEN

1 THE CURRENT STATE OF THE LAW.

2 MR. SNEED: YES, SIR.

3 THE COURT: OKAY.

4 MR. SNEED: THANK YOU, SIR.

5 THE COURT: THANK YOU.

6 MR. SNEED: YOUR HONOR, THOSE ARE ALL MY MOTIONS TO
7 QUASH.

8 THE COURT: OKAY.

9 MR. SNEED: AND I KNOW THAT MR. GASSER HAD SOME MOTIONS.
10 I HAD SEVERAL. I WOULD -- GENERALLY, WE'RE THE MOVANT FOR
11 ALL THESE MOTIONS. AND IT MIGHT BE EASIER TO LET US PUSH IT
12 ALONG. SOME OF THESE ARE PRETTY SIMPLE. MY SUGGESTION TO
13 THE COURT IS THE ONE SHEET I HANDED THE COURT ARE ALL MOTIONS
14 THAT DON'T REQUIRE ANY HEARINGS. AND I WOULD REQUEST THAT
15 MOTIONS THAT REQUIRE HEARINGS, WHICH ARE GENERALLY THE
16 SUPPRESSION ON THE I.D., THAT THAT BE PUSHED OFF LATER.
17 MAYBE WE CAN KNOCK OUT MY TEN MOTIONS HERE RATHER
18 EXPEDITIOUSLY.

19 THE COURT: WELL, MAYBE WE CAN.

20 MR. SNEED: YES, SIR. MY --

21 THE COURT: I'M NOT GOING TO RULE ON EVIDENTIARY ISSUES.
22 I'LL TELL YOU THAT RIGHT NOW. SUCH AS MOTIONS TO EXCLUDE
23 VARIOUS HEARSAY STATEMENTS. I'M NOT GOING TO RULE ON THAT,
24 BECAUSE I DON'T KNOW WHAT THEY ARE.

25 MR. SNEED: RIGHT.

1 THE COURT: DO YOU KNOW WHAT THEY ARE?

2 MR. SNEED: YES, SIR. I HAVE AN IDEA OF WHAT FORM IT'S
3 GOING TO COME IN. AND I'VE HAD A JUST VERY — A SHORT BRIEF
4 WITH THE SEVEN — AT LEAST SEVEN OUT-OF-COURT STATEMENTS I'M
5 ANTICIPATING.

6 THE COURT: SEVEN?

7 MR. SNEED: THERE'S PROBABLY GOING TO BE MORE, BUT THOSE
8 ARE THE GLARING ONES, OR AT LEAST THEY JUMPED OUT ON ME.

9 THE COURT: WELL, I DON'T KNOW. I WANT TO GET THOSE
10 MOTIONS THAT REQUIRE AN EVIDENTIARY HEARING. I WANT TO GET
11 THE LONGEST ONES OUT OF THE WAY FIRST.

12 MR. SNEED: YES, SIR.

13 THE COURT: ALL RIGHT. WE'LL TAKE UP THE OTHER ONES
14 LATER.

15 MR. SNEED: YOUR HONOR, THERE'S ONE I FEEL THAT I HAVE
16 TO MAKE NOW; AND THAT IS, I MOVE TO SEQUESTER WITNESSES FOR
17 PRE-TRIAL, CERTAINLY THE WITNESSES WHOSE TESTIMONY COULD
18 IMPACT ON ANOTHER.

19 THE COURT: WELL, NOW, HOW COULD YOU GET MR. BULL —
20 LET'S SAY, FOR INSTANCE, IMAGINE THE QUANDARY I FACE WHEN YOU
21 WANT TO GET MR. BULL OUT OF HERE AND YOU WANT TO GET MS.
22 BROWN OUT OF HERE. WHAT CAN I DO? THEY'RE BOTH VICTIMS.
23 THEY HAVE A — ALL YOU PEOPLE WHO VOTED FOR THE
24 CONSTITUTIONAL AMENDMENT, THEY HAVE A CONSTITUTIONAL RIGHT TO
25 BE HERE.

1 MR. SNEED: SURE. BUT THAT COULD STAND IN CONTRADICTION
2 TO THEIR FEDERAL CONSTITUTIONAL RIGHT, ASSUMING THAT, YOU
3 KNOW, THE STATE CONSTITUTIONAL ONE'S HARMONIOUS. BUT IT
4 COULD BE A PROBLEM WITH THE FEDERAL ONE THAT WE'RE TRYING TO
5 VINDICATE BY THE PRE-TRIAL HEARINGS. AND I WOULD SAY THE
6 FEDERAL ONE TRUMPS, WOULD BE MY FIRST RESPONSE. I DIDN'T
7 VOTE FOR THAT.

8 THE COURT: ALL RIGHT. MR. GASSER, YOU GOT ANY -- YOU
9 WANT TO BUT-THAT; IN OTHER WORDS, REQUIRE MR. BULL AND MS.
10 TO BOTH STAY IN HERE DURING ALL OF THIS TESTIMONY?

11 MR. GASSER: NO, SIR, I WOULD NOT DO THAT. I'LL KEEP
12 THE RECORD CLEAN. I HAVE NO PROBLEM WITH KEEPING THE RECORD
13 CLEAN.

14 THE COURT: OKAY. WHY DON'T WE DO THAT. YOU KNOW, WITH
15 DUE RESPECT AND DEFERENCE TO THEIR RIGHTS IN THIS MATTER,
16 INASMUCH AS THE FEDERAL CONSTITUTION RIGHT MAY BE IMPLICATED
17 ON THE PART OF THE DEFENDANTS, WHY DON'T WE ASK THEM IF THEY
18 WOULD PLEASE DEFER TO US AND HAVE ONE OUT OF THE COURTROOM
19 WHEN THE OTHER IS TESTIFYING. AND ANY OTHER FACTUAL
20 WITNESSES WHO MAY BE IN THE COURTROOM. I'M NOT SURE THAT
21 THERE ARE. ARE THERE?

22 MR. GASSER: MR. CHARLES MURRAY IS PRESENT.

23 THE COURT: MR. MURRAY. YEAH. JUST, YOU KNOW, YOU
24 HANDLE THAT.

25 MR. GASSER: YES, SIR. HE WILL BE THE FIRST WITNESS.

1 THE COURT: OKAY.

2 MR. SNEED: AND THERE IS A LEAD INVESTIGATOR. I DON'T
3 SEE THAT GENTLEMAN IN THE COURTROOM.

4 MR. GASSER: HE'S RIGHT HERE.

5 MR. SNEED: OH, I'M SORRY. HE'S GOT A COAT ON.

6 THE COURT: IS HE A FACTUAL WITNESS?

7 MR. SNEED: YES, SIR. HE WILL BE ON AT LEAST TWO OF
8 THESE, TWO OF THE HEARINGS.

9 THE COURT: OKAY.

10 MR. GASSER: SO THE COURT KNOWS, WE INTEND ON CALLING
11 ONLY FOUR WITNESSES. I FIGURE WE CAN HANDLE ALL THESE
12 MOTIONS BETWEEN THE LAWYERS. BUT WE INTEND ON CALLING FOUR
13 WITNESSES BASED ON THE MOTIONS THAT THE DEFENSE HAS INDICATED
14 TO US, WRITTEN OR ORALLY. AND THAT WOULD BE MR. CHARLES
15 MURRAY, MS. , INVESTIGATOR TOMMY THOMAS AND
16 SERGEANT BLACKWELL ON THE DOG TRACKING. AND THAT WOULD BE
17 IT.

18 THE COURT: OKAY. WELL, WHAT DOES THAT DO WITH MY
19 PROBLEM ABOUT HAVING ALL THESE PEOPLE IN HERE?

20 MR. GASSER: I WOULD AGREE -- I HAVE NO PROBLEM WITH
21 HAVING THEM SEQUESTERED, HAVING THEM WAIT OUTSIDE.

22 THE COURT: YEAH. LET'S DO THAT. IT'S EASIER. IT'S
23 EASIER THAN -- OKAY. NOW WE HAVE WHAT? IDENTIFICATION
24 ISSUES? IS THAT ONE OF THE THINGS, FIRST THINGS THAT WE NEED
25 TO GET TO?

1 MR. GASSER: YES, SIR. THE STATE WOULD BE READY TO DO A
2 NEIL V. BIGGERS IDENTIFICATION HEARING.

3 THE COURT: OKAY.

4 MR. GASSER: AND I KNOW WITH -- I'M ASSUMING CHARLES
5 MURRAY IS GOING TO MAKE AN IN-COURT IDENTIFICATION OF BOTH
6 DEFENDANTS. THERE WAS NO OUT-OF-COURT LINE-UP, NO
7 OUT-OF-COURT IDENTIFICATION PROCEDURE USED WITH MR. MURRAY,
8 OTHER THAN A PHOTO LINE-UP WAS SHOWN TO HIM IN WHICH HE
9 INDICATED TO AN OFFICER THAT HE KNEW EVERYBODY IN THE LINE-UP
10 BUT HE HAD TO GO TO WORK. SO THERE WAS NO FORMAL PICKING OUT
11 OF ANYBODY.

12 I JUST WANTED TO MAKE -- I'M ASSUMING THE DEFENSE
13 ATTORNEYS ARE GOING TO MOVE TO SUPPRESS ANY IN-COURT
14 IDENTIFICATION OF THEIR CLIENTS BASED ON THE FACT THAT
15 THEY'RE TRYING TO DO -- THEY'RE DOING THE SAME WITH

16 SO RATHER THAN SENDING THE JURY OUT WHENEVER HE CAME
17 UP TO TESTIFY, I JUST ADDED HIM TO THE NEIL V. BIGGERS LIST.

18 THE COURT: OKAY.

19 MR. GASSER: WE WOULD CALL CHARLES MURRAY AT THIS TIME.

20 CHARLES MURRAY, BEING FIRST DULY
21 SWORN, TESTIFIES AS FOLLOWS: (IN CAMERA)

22 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
23 FOR THE RECORD.

24 MR. MURRAY: CHARLES MURRAY.

25 DIRECT EXAMINATION BY MR. GASSER:

1 Q MR. MURRAY, HOW OLD ARE YOU, SIR?

2 A TWENTY-FIVE.

3 Q AND WHERE DO YOU CURRENTLY LIVE?

4 A ON BETHEL CHURCH ROAD.

5 Q I WANT TO DRAW YOUR ATTENTION BACK TO THE TUESDAY EVENING,
6 ACTUALLY EARLY MORNING HOURS OF MAY THE 29TH, 1996. DO YOU
7 RECALL THE EVENTS OF THAT NIGHT, MR. MURRAY?

8 A YES, SIR.

9 Q WHERE WERE YOUR PARENTS LIVING THEN?

10 A AT GERMANY STREET, 1726.

11 Q WHERE WERE YOU LIVING IN RELATIONS TO YOUR PARENTS?

12 A 1833 MCFADDEN STREET.

13 Q HOW FAR AWAY WAS 1833 MCFADDEN STREET FROM THE RESIDENCE ON
14 GERMANY STREET THAT YOUR PARENTS LIVED?

15 A ABOUT TWO OR THREE BLOCKS.

16 Q HOW LONG HAD YOUR PARENTS LIVED AT THE GERMANY STREET
17 RESIDENCE?

18 A ABOUT TEN YEARS OR MORE.

19 Q HAD YOU LIVED THERE AS WELL WHEN YOU WERE GROWING UP AND
20 GOING TO SCHOOL?

21 A UH-HUH (AFFIRMATIVE).

22 Q SO HOW FAMILIAR WITH THAT NEIGHBORHOOD — IN MAY OF 1996, HOW
23 FAMILIAR WERE YOU WERE WITH THAT NEIGHBORHOOD?

24 A WELL, WHEN WE MOVED TO COLUMBIA I WAS LIKE THREE YEARS OLD.
25 SO WE'VE BEEN IN THE SAME AREA. WE MIGHT HAVE LIVED IN

1 DIFFERENT HOUSES EVER SINCE.

2 Q WHAT MIDDLE SCHOOL DID YOU GO TO?

3 A W. A. PERRY.

4 Q HOW FAR AWAY WAS W. A. PERRY FROM YOUR PARENTS' HOME THERE ON
5 GERMANY STREET?

6 A ABOUT A BLOCK, A BLOCK AND A HALF.

7 Q WHAT HIGH SCHOOL DID YOU GO TO?

8 A C. A. JOHNSON.

9 Q AND HOW FAR AWAY WAS THAT FROM W. A. PERRY?

10 A ABOUT SEVEN AND A HALF -- FROM W. A. PERRY?

11 Q YES, SIR.

12 A ABOUT FOUR OR FIVE BLOCKS.

13 Q NOW, BEHIND YOUR PARENTS' HOUSE ON GERMANY STREET, WHAT IS
14 THERE BEHIND YOUR PARENTS' HOUSE?

15 A CRESCENT HILL. CRESCENT HILL GRAVEYARD.

16 Q AND THEN BEHIND THE GRAVEYARD, WHAT PARK IS THERE?

17 A T. S. MARTIN PARK.

18 Q DO YOU KNOW THE DEFENDANTS KENNY JAMES AND ROBERT JAMES?

19 A YES, SIR.

20 Q TELL THE JUDGE HOW YOU KNOW THE TWO DEFENDANTS.

21 A FROM THE NEIGHBORHOOD.

22 Q DO YOU KNOW WHAT MIDDLE SCHOOLS THEY WENT TO?

23 A I THINK IT WAS W. A. PERRY, TOO.

24 Q AND WHAT HIGH SCHOOL?

25 A C. A. JOHNSON.

1 Q AND IN MAY OF 1996, YOU WERE HOW OLD, MR. MURRAY?

2 A ABOUT 20. ABOUT 21, 22.

3 Q HOW OLD ARE YOU RIGHT NOW, SIR?

4 A TWENTY-FIVE.

5 Q WHEN WERE YOU BORN?

6 A JANUARY 24TH.

7 Q HOW LONG HAD YOU KNOWN KENNETH JAMES AND ROBERT JAMES? IN
8 MAY OF 1996, HOW LONG HAD YOU KNOWN THEM?

9 A YEARS. FOUR OR FIVE, SOMEWHERE AROUND THAT.

10 Q AND TELL THE JUDGE, HOW DID YOU KNOW THEM?

11 A JUST FROM THE NEIGHBORHOOD, JUST FACES YOU'D SEE IN THE
12 NEIGHBORHOOD EVERY DAY. WE USED TO HANG OUT LIKE IN THE SAME
13 NEIGHBORHOODS.

14 Q DID YOU KNOW THEM BY THEIR FIRST NAMES AND LAST NAMES OR JUST
15 THEIR FIRST NAMES?

16 A JUST THEIR FIRST NAMES.

17 Q DID YOU KNOW WHETHER THEY HAD A BROTHER?

18 A UH-HUH (AFFIRMATIVE).

19 Q WHAT WAS HIS NAME?

20 A SAM.

21 Q WHERE WERE THEY FIRST LIVING THERE IN THAT SAME NEIGHBORHOOD
22 AROUND CRESCENT HILL CEMETERY? WHERE WERE THEY FIRST LIVING
23 WHEN YOU FIRST CAME TO KNOW THEM?

24 A CRESCENT MANOR.

25 Q AND WHERE IS CRESCENT MANOR APARTMENTS IN RELATION TO THE

1 CEMETERY AT T. S. MARTIN PARK?

2 A RIGHT NEXT TO IT.

3 Q AND THEN, AFTER THAT, WHERE DID YOU COME TO KNOW WHERE THEY
4 WENT TO LIVE?

5 A THEY MOVED ON OGDEN STREET.

6 Q WHERE IS OGDEN STREET IN RELATIONS TO MCFADDEN WHERE YOU WERE
7 LIVING IN MAY OF 1996?

8 A AROUND THE CORNER. IT WAS LIKE A BLOCK.

9 Q AND THEN AFTER THEY MOVED TO OGDEN STREET, DO YOU REMEMBER
10 AROUND THE TIME IN MAY OF 1996 WHERE THEY WERE STAYING?

11 A ON ORR STREET.

12 Q ON ORR STREET?

13 A UH-HUH (AFFIRMATIVE).

14 Q AND WHERE IS ORR STREET IN RELATIONS TO MCFADDEN STREET AND
15 GERMANY STREET WHERE YOUR PARENTS LIVED?

16 A ORR STREET IS LIKE RIGHT ACROSS THE STREET FROM MY MOM'S
17 HOUSE, BUT FROM MY HOUSE IT'S ABOUT TWO BLOCKS.

18 Q NOW, WHEN YOU WERE LIVING ON MCFADDEN JUST A FEW BLOCKS FROM
19 YOUR PARENTS, DID YOU HAVE OCCASIONS TO GO TO YOUR PARENTS'
20 HOUSE ON GERMANY STREET AT TIMES?

21 A EVERY DAY.

22 Q WHERE WERE YOU WORKING IN MAY OF 1996?

23 A AS MCDONALD'S.

24 Q I WANT TO DRAW YOUR ATTENTION TO APPROXIMATELY 1:00 IN THE
25 MORNING THAT MORNING. WHERE WERE YOU AT APPROXIMATELY 1 A.M.

1 ON WEDNESDAY MORNING, MAY THE 29TH, 1996?

2 A AT MY MOTHER'S HOUSE.

3 Q AT YOUR MOTHER'S HOUSE?

4 A UH-HUH (AFFIRMATIVE).

5 Q WAS SHE LIVING WITH YOUR FATHER?

6 A WELL, MY FATHER WAS STAYING WITH HER, YEAH.

7 Q OKAY. AND THAT'S -- FOR THE RECORD AGAIN, THAT'S WHAT
8 STREET?

9 A GERMANY STREET.

10 Q TELL US, PLEASE, DID YOU EVENTUALLY GET READY TO LEAVE THAT
11 MORNING --

12 A YEAH.

13 Q -- YOUR PARENTS' HOUSE?

14 A UH-HUH (AFFIRMATIVE). WELL, I THINK WE WAS WATCHING SOME
15 MOVIES OR SOMETHING ON T.V., AND I WAS GOING HOME TO MCFADDEN
16 STREET.

17 Q HOW WERE YOU PLANNING ON GOING HOME?

18 A ON MY BIKE.

19 Q SO WHEN YOU WALKED OUT THE FRONT DOOR, TELL THE JUDGE WHAT
20 YOU OBSERVED. WHAT HAPPENED?

21 A WE WAS COMING OUTSIDE, ME AND MY STEPFATHER. AND SOME MAN,
22 HE RAN UP TO US. HE WAS KIND OF BLEEDING. AND HE RAN UP TO
23 US SAYING, HELP HIM AND CALL THE POLICE, SAYING --

24 Q HAD YOU EVER MET THIS PERSON BEFORE?

25 A NO, I HADN'T.

1 Q HAVE YOU SEEN HIM IN THE COURTROOM EARLIER BEFORE THEY LEFT
2 THE COURTROOM?

3 A YEAH. UH-HUH (AFFIRMATIVE).

4 Q SO IS THAT PERSON'S NAME MR. WINFRED BULL?

5 A YEAH.

6 Q HAD YOU HAD ANY IDEA WHO THAT PERSON WAS?

7 A NO, SIR.

8 Q WHEN HE CAME UP TO YOU BLEEDING, ASKING FOR HELP, WHAT DID HE
9 SAY HAPPENED?

10 A SAID THAT HE WAS JUMPED ON IN THE PARK AND BEAT UP, AND THEY
11 WAS IN THE PARK RAPING HIS WIFE OR HIS GIRLFRIEND.

12 Q SO WHAT DID YOU ALLOW HIM TO DO? WHAT DID YOU AND YOUR
13 STEPFATHER ALLOW HIM TO DO?

14 A MY MOTHER CAME TO THE DOOR THEN, AND SHE GAVE HIM THE PHONE
15 TO USE THE PHONE TO CALL THE POLICE.

16 Q DID YOU GO ON HOME AT THAT POINT IN TIME? OR WHAT DID YOU
17 DO?

18 A I STAYED AROUND JUST TO SEE WHAT WAS GOING TO HAPPEN. AND,
19 YEAH. THAT'S IT. I STAYED AROUND.

20 Q WHEN YOU SAY YOU STAYED AROUND, WAS THAT INSIDE THE HOUSE OR
21 OUTSIDE?

22 A OUTSIDE.

23 Q AND TELL US, PLEASE, WHAT YOU OBSERVED WHEN YOU WERE STANDING
24 OUTSIDE YOUR STEPMOTHER OR YOUR STEPFATHER AND YOUR MOTHER'S
25 HOME THERE ON GERMANY STREET?

1 A AFTER HE CALLED THE POLICE, WE STAYED, STOOD OUTSIDE FOR A
2 LITTLE WHILE. AND I SEEN, IT WAS A GROUP OF FELLOWS COMING
3 FROM TOWARDS THE GRAVEYARD AREA. IT WAS LIKE TWO OF THEM,
4 END AND THEN THERE WAS THREE OF THEM LIKE RIGHT BEHIND THEM.

5 Q WERE THEY ALL MEN?

6 A YES, SIR.

7 Q COULD YOU TELL WHAT COLOR THEY WERE?

8 A YES, SIR.

9 Q WHAT WAS THAT?

10 A BLACK.

11 Q ALL FIVE OF THEM?

12 A UH-HUH (AFFIRMATIVE).

13 Q NOW, DID YOU RECOGNIZE THESE INDIVIDUALS, ANY OF THESE
14 INDIVIDUALS?

15 A THREE OF THEM.

16 Q AND WHO DID YOU SEE? WHICH OF THE THREE? WHO DID YOU SEE?

17 A KENNY AND HIS BROTHER ROBERT.

18 Q WHICH ONE IS KENNY?

19 A (WITNESS POINTS)

20 Q THE GENTLEMAN IN THE WHITE SHIRT?

21 A UH-HUH (AFFIRMATIVE).

22 Q AND WHICH ONE IS ROBERT?

23 A ON THE END.

24 Q THE OTHER GENTLEMAN IN THE WHITE SHIRT?

25 A YEAH.

1 Q DID YOU ACTUALLY MAKE EYE CONTACT WITH THESE GENTLEMEN?

2 A NO, SIR.

3 Q DID YOU SPEAK WITH THEM?

4 A NO, SIR.

5 Q DID YOU FOLLOW THEM? DID YOU SEE WHERE THEY WALKED TO?

6 A THEY WALKED UP, GOING UP ORR STREET.

7 Q AT THE CORNER OF MAEBELLE COURT — I TELL YOU WHAT.

8 MR. GASSER: MAY THE JUDGE (SIC) LEAVE THE WITNESS BOX,
9 YOUR HONOR, SO THAT HE CAN DEMONSTRATE TO YOU ON THIS
10 PARTICULAR —

11 THE COURT: WELL, I WON'T LEAVE THE WITNESS BOX, BUT HE
12 CAN.

13 MR. GASSER: I MEAN, MAY THE WITNESS LEAVE THE WITNESS
14 BOX. I'M SORRY.

15 Q (BY MR. GASSER) I TELL YOU WHAT, CHARLES. WHY DON'T YOU
16 COME STAND OVER HERE. BECAUSE THIS IS THE MICROPHONE OVER
17 HERE. SO YOU STAND WHERE I AM SO THE COURT REPORTER CAN SEE
18 YOU. IF YOU NEED TO, USE THAT STICK. WE'D GO AHEAD AND MARK
19 THIS DIAGRAM AS STATE'S EXHIBIT NO. 1 FOR IDENTIFICATION
20 PURPOSES SO THE RECORD IS COMPLETE.

21 THE COURT: OKAY.

22 (STATE'S EXHIBIT NO. 1, DIAGRAM, MARKED FOR IDENTIFICATION
23 ONLY)

24 Q CHARLES, SHOWING YOU STATE'S EXHIBIT NO. 1 FOR I.D., DO YOU
25 RECOGNIZE THE GENERAL MAP, THIS DIAGRAM?

1 A YES, SIR.

2 Q I WANT YOU TO USE THE POINTER AND POINT OUT TO THE JUDGE --
3 YOU'VE PREVIOUSLY TESTIFIED ABOUT HOW YOU WERE STAYING AT
4 YOUR PARENTS' HOUSE OR YOUR STEPFATHER AND YOUR MAMA'S ON
5 GERMANY STREET. IS THAT ON STATE'S EXHIBIT 1?

6 A YES, SIR. IT'S SHOWING UP RIGHT HERE.

7 Q AND YOU TALKED ABOUT YOU WERE LIVING ON MCFADDEN STREET
8 DURING THAT TIME PERIOD, JUST VISITING YOUR PARENTS. IS
9 MCFADDEN STREET ON STATE'S EXHIBIT NO. 1?

10 A WHERE IT IS --

11 Q WOULD YOU POINT IT OUT FOR THE JUDGE?

12 A IT'S RIGHT ... (WITNESS POINTS)

13 Q NOW, YOU ALSO INDICATED THAT WHEN YOU FIRST MET ROBERT JAMES
14 AND KENNY JAMES THEY WERE LIVING IN THOSE APARTMENTS. WHERE
15 ARE THEY?

16 A CRESCENT MANOR.

17 Q CRESCENT MANOR APARTMENTS?

18 A MM-HMM (AFFIRMATIVE).

19 Q AND WHERE IS T. S. MARTIN PARK IN RELATIONS TO CRESCENT
20 MANOR?

21 A RIGHT UP HERE IN THIS AREA.

22 Q AND WHERE IS CRESCENT HILL CEMETERY?

23 A RIGHT HERE.

24 Q THEN YOU INDICATED AFTER A WHILE THAT KENNETH JAMES AND
25 ROBERT JAMES MOVED TO OGDEN STREET. SHOW THE JUDGE WHERE

1 OGDEN STREET IS.

2 A RIGHT HERE.

3 Q AND AT THE TIME OF THIS INCIDENT THEY WERE LIVING ON ORR
4 STREET. SHOW THE JUDGE WHERE ORR STREET IS.

5 A RIGHT HERE.

6 Q NOW, WHEN YOU INDICATED THAT YOU WERE WAITING ON THE POLICE
7 AFTER MR. BULL CAME UP AND YOU HAD CALLED 911 AND YOU WERE
8 WAITING ON THE POLICE, WHERE DID YOU SEE THESE FIVE
9 AFRICAN-AMERICAN MALES? WALKING FROM WHAT DIRECTION? WHERE?
10 USE STATE'S EXHIBIT NO. 1 FOR I.D.

11 A THEY WAS COMING FROM THE GRAVEYARD AREA. AND THERE'S LIKE A
12 PATH THROUGH HERE, RIGHT THERE. THAT'S WHERE THE PAVEMENT
13 ENDS RIGHT THERE. IT'S LIKE A LITTLE CUT RIGHT HERE. AND WE
14 USE IT TO COME THROUGH THE CUT AND COME ON DOWN.

15 Q SO WHAT ROAD IS THIS RIGHT HERE THAT I'M POINTING TO?

16 A THAT'S -- IT'S CONSIDERED MAEBELLE COURT, BUT IT'S LIKE PART
17 OF ORR STREET, TOO.

18 Q POINT OUT TO THE JUDGE WHERE THERE IS A STREET LIGHT NEAR
19 THAT INTERSECTION.

20 A RIGHT HERE ON THE CORNER OF MAEBELLE COURT AND GERMANY
21 STREET.

22 Q SO WHEN THESE FIVE INDIVIDUALS WERE WALKING UP THE STREET,
23 WAS THAT STREET LIGHT WORKING THAT NIGHT?

24 A YES, IT WAS.

25 Q YOU CAN TAKE YOUR SEAT, CHARLES. DID YOU HAVE ANY DIFFICULTY

1 SEEING ROBERT JAMES AND KENNETH JAMES AS THEY WALKED ON BY
2 YOU, MR. MURRAY?

3 A NO, SIR.

4 Q NOW, THE NEXT DAY, OR LATER ON, DID THE POLICE COME TO THE
5 SCENE?

6 A LATER THAT NIGHT?

7 Q YES, SIR.

8 A YES, SIR..

9 Q DID YOU HAVE A -- DID YOU TALK TO THE POLICE? DID YOU TELL
10 THE POLICE ANYTHING ABOUT WHAT YOU KNEW THAT NIGHT?

11 A NOT THAT NIGHT.

12 Q AND TWO DAYS LATER, ON FRIDAY, MAY THE 31ST, OF 1996, DO YOU
13 REMEMBER YOUR AUNT OR SOMEBODY COMING OVER TO YOUR HOUSE WITH
14 SOME POLICE OFFICERS THAT AFTERNOON?

15 A YES, SIR. ONE OF MY AUNTS. I WAS IN THE BED. NO. I HAD
16 GOT UP. YEAH. I WAS GOING TO WORK. AND SHE CAME AROUND.
17 AND SHE WAS LIKE, "THE POLICE WANT TO TALK TO YOU." I SAID,
18 "THE POLICE? ABOUT WHAT?" AND SHE SAID, "ABOUT WHAT
19 HAPPENED THE OTHER NIGHT."

20 Q SO DID YOU GET TO TALK WITH A POLICE OFFICER?

21 A NO, SIR. I WAS ON MY WAY TO WORK.

22 Q DO YOU REMEMBER INVESTIGATOR TOMMY THOMAS? HAVE YOU
23 RECOGNIZED HIM WHEN HE WAS IN THE COURTROOM?

24 A NO, SIR.

25 Q DID ANYBODY TRY TO SHOW YOU ANY KIND OF PHOTOGRAPHIC LINE-UP?

1 DO YOU REMEMBER?

2 A HE SHOWED ME SOME PICTURES AND ASKED ME DID I KNOW ANYBODY ON
3 THEM PICTURES. AND I TOLD HIM THAT I KNOW EVERYONE THAT WAS
4 ON THERE, AND I WAS IN A HURRY TO GET TO WORK BECAUSE I WAS
5 RUNNING LATE.

6 Q AND WAS THAT THE EXTENT OF WHAT YOU SAID WITH THE
7 INVESTIGATOR?

8 A YEAH.

9 Q DID YOU EVER CALL THE INVESTIGATOR BACK UP AGAIN, MR. MURRAY,
10 TO LET HIM KNOW WHAT YOU KNEW?

11 A NO, SIR.

12 Q WAS YOUR MAMA AND STEPFATHER STILL LIVING THERE ON GERMANY
13 STREET?

14 A YES, SIR.

15 Q AND FOR ALL YOU KNEW, WAS THE TWO DEFENDANTS STILL LIVING ON
16 ORR STREET?

17 A YES, SIR.

18 Q IN FACT, AFTER THIS INCIDENT, DID YOU SEE MR. KENNETH JAMES
19 AND ROBERT JAMES LATER ON THAT SUMMER?

20 A YEAH. EVERY NOW AND THEN, 'CAUSE I WOULD LIKE -- I USED TO
21 GO TO WORK A LOT. AND I WORKED LIKE THE AFTERNOON SHIFT FROM
22 SOMETIMES 12 TO 7 OR FROM 1 TO 6, SOMEWHERE AROUND THERE.

23 Q AND WHERE DID YOU SEE THEM?

24 A IN THE NEIGHBORHOOD.

25 MR. GASSER: THAT'S ALL I HAVE AT THIS TIME, YOUR HONOR,

1 FOR THIS HEARING.

2 MR. STRICKLER: MAY IT PLEASE THE COURT, SIR.

3 CROSS EXAMINATION BY MR. STRICKLER:

4 Q GOOD AFTERNOON, SIR. MY NAME IS DOUG STRICKLER, AND I
5 REPRESENT KENNETH JAMES. I'D JUST LIKE TO ASK YOU A FEW
6 QUESTIONS IF I COULD. NOW, WHEN THE POLICE CAME BY YOU WERE
7 JUST TALKING WITH MR. GASSER ABOUT, YOU LOOKED AT SOME
8 PICTURES THEY HAD?

9 A MM-HMM (AFFIRMATIVE).

10 Q HOW MANY PICTURES DID YOU LOOK AT?

11 A I COULDN'T TELL YOU. I KNOW IT WAS PROBABLY LIKE -- I THINK
12 HE OPENED UP THE BOOK. SO IT'S LIKE, YOU KNOW WHAT I'M
13 SAYING, ONE PAGE ON THIS SIDE, ONE PAGE ON THAT SIDE. THAT
14 WAS IT.

15 Q SO TWO PAGES OF PICTURES?

16 A YEAH.

17 Q AND WHAT EXACTLY DID YOU TELL THE POLICE AT THAT POINT IN
18 TIME REGARDING WHETHER YOU KNEW ANY ONE OF THEM?

19 A I TOLD HIM THAT I KNEW EVERYBODY THAT WAS ON THERE.

20 Q YOU TOLD HIM YOU KNEW EVERYONE THAT WAS ON THERE?

21 A UH-HUH (AFFIRMATIVE).

22 Q WHAT ELSE DID YOU TELL HIM?

23 A BASICALLY I HAD TO GO TO WORK.

24 Q PARDON ME? I'M SORRY?

25 A I HAD TO GO TO WORK.

1 Q THAT YOU HAD TO GO TO WORK?

2 A UH-HUH (AFFIRMATIVE).

3 Q SO YOU DIDN'T TELL HIM THAT YOU DIDN'T KNOW ANYONE?

4 A HMM-MM (NEGATIVE).

5 Q YOU DIDN'T TELL HIM ---

6 THE COURT: YOU DIDN'T TELL HIM THAT YOU WHAT?

7 Q I'M SORRY. YOU DIDN'T TELL HIM THAT YOU DIDN'T KNOW ANYONE?

8 A YES, SIR.

9 Q YOU DIDN'T TELL HIM THAT YOU WOULD NOT IDENTIFY ANYONE?

10 A YES, SIR.

11 Q I'M SORRY?

12 A I DIDN'T TELL HIM THAT I WOULDN'T IDENTIFY ANYONE

13 Q YOU DIDN'T TELL THEM THAT?

14 A HUH-UH (AFFIRMATIVE).

15 Q OKAY. YOU DIDN'T TELL THEM THAT YOU COULDN'T ADD ANYTHING TO
16 THIS CASE?

17 A WE NEVER REALLY TALKED ABOUT THE CASE. HE ASKED ME ABOUT THE
18 PICTURES, AND THAT WAS IT.

19 Q NOW, TURNING TO THE EARLY MORNING HOURS OF THE 29TH.

20 A MM-HMM (AFFIRMATIVE).

21 Q WHAT MR. GASSER WAS TALKING TO YOU ABOUT WITH THIS DIAGRAM
22 HERE, YOU WERE AT 1726 GERMANY STREET AT YOUR MOTHER'S
23 ADDRESS THAT NIGHT, RIGHT?

24 A YES, SIR.

25 Q OKAY. AND YOU SAID THERE'S A STREET SLIGHT ON THIS CORNER.

1 WE'LL CALL IT THE CORNER OF ORR AND GERMANY STREET. IS THAT
2 CORRECT?

3 A YES, SIR.

4 Q NOW, IS IT ON THE CORNER THAT'S ON THE SIDE OF THE STREET
5 WHERE YOUR MAMA'S HOUSE IS?

6 A YES, IT IS.

7 Q IT IS?

8 A UH-HUH (AFFIRMATIVE).

9 Q SO, IS IT ON THE SAME SIDE OF ORR STREET AS YOUR MOTHER'S
10 HOUSE, OR IS IT ON THE OPPOSITE CORNER?

11 A THE SAME SIDE.

12 Q THE SAME SIDE. OKAY. YOUR MAMA'S HOUSE WAS —

13 A TWO HOUSES DOWN.

14 Q THE SECOND HOUSE IN?

15 A YEAH.

16 Q IS THAT RIGHT? OKAY. NOW, YOU WERE LOCATED ON THE FRONT
17 PORCH OF YOUR MOTHER'S HOUSE AT THAT TIME?

18 A NO. IN THE YARD.

19 Q IN THE YARD? THAT'S THE FRONT YARD?

20 A YEAH.

21 Q OUT IN FRONT OF THE HOUSE?

22 A UH-HUH (AFFIRMATIVE).

23 Q OKAY. AND HOW LONG DID IT TAKE — WELL, FIRST OF ALL, YOU
24 SAW TWO GROUPS OF INDIVIDUALS. IS THAT YOUR TESTIMONY?

25 A YEAH. I GUESS YOU COULD SAY THAT.

- 1 Q WELL, —
- 2 A I MEAN, IT WAS LIKE TWO PEOPLE. THEN IT WAS LIKE THREE
- 3 PEOPLE WALKING BEHIND THEM.
- 4 Q SO YOU SAW TWO AND THEN YOU SAW THREE?
- 5 A THREE, THEN TWO.
- 6 Q WERE THEY ALL WALKING PAST YOU AT THE SAME TIME, OR DID THE
- 7 TWO GET BY YOU AND THEN THE THREE COME BY YOU?
- 8 A WELL, IT WAS TWO, AND THEN I'D SAY ABOUT I GUESS 15 FEET
- 9 BEHIND THE OTHER ONES, SOMEWHERE AROUND THERE, THE OTHER
- 10 THREE CAME.
- 11 Q OKAY. SO TWO CAME, AND THEN ABOUT 15 FEET THE OTHER THREE
- 12 CAME?
- 13 A UH-HUH (AFFIRMATIVE).
- 14 Q SO THEY WERE ALL IN YOUR FIELD OF VISION, ALL IN FRONT OF YOU
- 15 AT THE SAME TIME?
- 16 A YES, SIR.
- 17 Q IS THAT RIGHT? ALL RIGHT. NOW, YOU'VE IDENTIFIED KENNETH
- 18 JAMES AS ONE OF THESE FIVE PEOPLE THAT YOU SAW. IS THAT
- 19 RIGHT?
- 20 A YES, SIR.
- 21 Q WHICH GROUP WAS HE IN? WAS HE WITH THE GROUP WITH THE TWO OR
- 22 THE GROUP WITH THE THREE?
- 23 A I DON'T REMEMBER.
- 24 Q WELL, YOU DIDN'T HAVE ANY PROBLEM SEEING HIM, DID YOU?
- 25 A NO, SIR.

1 Q SO WHICH GROUP WAS HE IN? THE GROUP WITH THE TWO OR THE
2 GROUP WITH THE THREE?

3 A I DON'T REMEMBER.

4 Q OKAY. AND DID YOU SEE ROBERT JAMES IN THAT GROUP OF FIVE
5 PEOPLE?

6 A YES, SIR.

7 Q OKAY. AND WHICH GROUP WAS HE IN? THE GROUP WITH THE TWO OR
8 THE GROUP WITH THE THREE?

9 A I DON'T REMEMBER.

10 Q NOW, IS THERE A STREET LIGHT ON THE -- YOU'VE TESTIFIED AS TO
11 WHERE THE STREET LIGHT IS ON THE CORNER WHERE YOUR MOTHER'S
12 HOUSE IS.

13 A UH-HUH (AFFIRMATIVE).

14 Q IS THERE ANOTHER STREET LIGHT ACROSS THE STREET, OR IS THERE
15 JUST THAT ONE FOR THAT --

16 A IT'S JUST THAT ONE.

17 Q FOR THAT FULL CORNER?

18 A YEAH.

19 Q OKAY. SO, IS THERE A STREET LIGHT UP AT MAEBELLE COURT?

20 A YES, SIR.

21 Q OKAY. THAT WOULD BE BEHIND YOUR MOTHER'S HOUSE, RIGHT?

22 A UH-HUH (AFFIRMATIVE).

23 Q SO THE PEOPLE CAME THROUGH, WALKED RIGHT DOWN ORR STREET?

24 A YEAH.

25 Q OKAY. WALKING ON THE SIDEWALK OR THE STREET?

- 1 A THERE'S NO SIDEWALK. IT'S A STREET.
- 2 Q NO SIDEWALK. HOW LONG WERE THEY IN YOUR VISION FOR?
- 3 A PROBABLY 30 SECONDS.
- 4 Q HOW LONG HAD YOU BEEN OUTSIDE FOR?
- 5 A BEFORE WHAT?
- 6 Q BEFORE YOU SAW THESE INDIVIDUALS YOU'VE TESTIFIED TO.
- 7 A ABOUT 15 TO 20 MINUTES.
- 8 Q HAD YOU BEEN OUTSIDE EVER SINCE THE GENTLEMAN HAD COME TO
- 9 YOUR MOTHER'S HOUSE?
- 10 A YES, SIR. UH-HUH (AFFIRMATIVE).
- 11 Q SO WHEN HE SHOWED UP, YOU WERE GETTING READY TO LEAVE THEN,
- 12 RIGHT?
- 13 A YEAH.
- 14 Q AND ONCE HE CAME, YOU JUST STAYED OUT THERE. IS THAT RIGHT?
- 15 A YES.
- 16 Q HOW MANY SHOTS DID YOU HEAR EARLIER?
- 17 A I DIDN'T HEAR ANY SHOTS.
- 18 Q DID YOU HEAR ANY SCREAMING?
- 19 A NO, SIR.
- 20 Q AND WHEN WAS IT THAT YOU FIRST PROVIDED THIS INFORMATION THAT
- 21 YOU'VE TESTIFIED TO TO THE POLICE? AND BY "THIS" I MEAN --
- 22 I'M SORRY -- BY "THIS" I MEAN SEEING JAMES AND ROBERT JAMES
- 23 THAT EVENING.
- 24 A YESTERDAY OR THE DAY BEFORE.
- 25 Q YESTERDAY? I'M SORRY?

1 A I THINK IT WAS YESTERDAY. SUNDAY. YEAH.

2 Q HOW DID THAT COME ABOUT?

3 A MY MOTHER CALLED ME AT THE JOB, AND SHE TOLD ME THAT I HAD A
4 SUBPOENA TO GO TO COURT. AND I ASKED HER, "FOR WHAT?" AND
5 SHE TOLD ME ABOUT THIS CASE. AND SUNDAY SHE CALLED ME --
6 WELL, SHE PAGED ME SUNDAY BECAUSE I DON'T HAVE A PHONE IN MY
7 HOUSE. AND SHE PAGED ME AND TOLD ME THAT THEY WERE SUPPOSED
8 TO -- WE WERE SUPPOSED TO HAVE A MEETING WITH THEM AT THE
9 COURTHOUSE. AND I GOT TO THE HOUSE ABOUT 9 IN THE MORNING.
10 NO. IT WAS ABOUT 9:30. ABOUT 9:30. AND SHE TOLD ME --
11 WELL, SHE WAS ASLEEP. SO, I MEAN, I DIDN'T KNOW WHAT TIME IT
12 WAS. SO WHEN SHE GOT UP SHE PAGED ME AGAIN. BUT I WAS
13 ALREADY AT THE HOUSE. SHE DIDN'T SEE ME IN THE HOUSE. AND
14 SHE TOLD ME THAT THEY WAS ON THE WAY, THEY SHOULD BE HERE IN
15 ABOUT 30 MINUTES.

16 Q OKAY. SO YOU NEVER DID CONTACT THE POLICE YOURSELF WITH THIS
17 INFORMATION, RIGHT?

18 A NO, SIR.

19 Q OKAY. AND THEN WHO DID YOU SPEAK WITH? THIS WAS YESTERDAY,
20 ON SUNDAY, RIGHT?

21 A YES, SIR.

22 Q ABOUT WHAT TIME OF DAY DID YOU SPEAK WITH THEM?

23 A I'D SAY IT WAS ABOUT 12.

24 Q I DON'T NEED EXACTLY. GO AHEAD.

25 A I'D SAY AROUND 12.

- 1 Q ABOUT NOON?
- 2 A YEAH.
- 3 Q WHO DID YOU SPEAK WITH?
- 4 A MS. KAREN FRYAR AND ANOTHER OFFICER.
- 5 Q MS. FRYAR AND ANOTHER OFFICER?
- 6 A MM-HMM (AFFIRMATIVE).
- 7 Q WERE YOU SHOWN A LINE-UP AT THAT POINT IN TIME?
- 8 A NO, SIR.
- 9 Q WHAT WAS SAID TO YOU AT THAT POINT IN TIME?
- 10 A JUST WHAT WAS GOING TO HAPPEN IN COURT, THE BASIC PROCEDURES.
- 11 Q WELL, WHAT WAS SAID TO YOU ABOUT WHETHER OR NOT YOU
- 12 RECOGNIZED KENNETH JAMES?
- 13 A THEY ASKED ME DID I RECOGNIZE HIM.
- 14 Q WHO ASKED YOU THAT?
- 15 A MS. FRYAR I GUESS. SHE ASKED ME ABOUT —
- 16 Q WELL, WHO ASKED YOU THAT?
- 17 A THEY ASKED ABOUT DID I KNOW THEM FROM THE NEIGHBORHOOD OR
- 18 WHERE DID I KNOW THEM FROM.
- 19 Q EXCUSE ME. WHO ASKED YOU THAT?
- 20 A MS. FRYAR.
- 21 Q MS. FRYAR ASKED YOU THAT. ASKED YOU DID YOU KNOW FROM THE
- 22 NEIGHBORHOOD?
- 23 A SHE ASKED ME WHERE DID I KNOW THEM FROM. I TOLD THEM THE
- 24 NEIGHBORHOOD.
- 25 Q WAS THIS THE FIRST TIME YOU'VE SPOKEN WITH ANYONE SINCE THE

1 POLICE CAME BY YOUR HOUSE A COUPLE OF DAYS AFTER THIS
2 INCIDENT —

3 A YES, SIR.

4 Q — THAT YOU DIDN'T TALK WITH THEM? HOW DID THEY FIND OUT
5 THAT YOU KNEW KENNETH JAMES?

6 A MR. WHAT'S-HIS-NAME, HE TOLD THE POLICE OFFICERS THAT I KNEW
7 — THAT I KNEW THE FELLOWS THAT WAS COMING OUT OF THE
8 GRAVEYARD. THAT'S WHY THEY CAME BACK.

9 Q WHEN DID HE TELL THE POLICE THAT?

10 A I GUESS THAT NIGHT.

11 Q BUT THEN YOU TOLD THEM THAT YOU DIDN'T HAVE ANYTHING TO SAY
12 ABOUT THE CASE?

13 A MM-HMM (AFFIRMATIVE).

14 Q RIGHT?

15 A YEAH.

16 Q ALL RIGHT. HOW LONG DID YOU SPEAK WITH MS. FRYAR AND THE
17 OTHER PEOPLE FROM THE PROSECUTOR'S OFFICE YESTERDAY?

18 A I'D SAY ABOUT 30 MINUTES, A LITTLE MORE. NO MORE THAN AN
19 HOUR.

20 Q OKAY. AND THIS WAS AT YOUR HOUSE?

21 A AT MY MOTHER'S.

22 Q OR AT YOUR MOTHER'S HOUSE RATHER?

23 A YES, SIR.

24 Q OKAY. DID YOU EVER SIGN A WRITTEN STATEMENT REGARDING WHAT
25 YOU KNEW ABOUT THIS INCIDENT?

1 A NO, SIR.

2 Q YOU DIDN'T GIVE ONE BACK IN 1996, AND YOU STILL HAVEN'T GIVEN
3 ONE AS OF TODAY?

4 A NO, SIR.

5 Q THAT'S ALL I HAVE, SIR.

6 THE COURT: ALL RIGHT. MR. SHUPPER.

7 CROSS EXAMINATION BY MR. SHUPPER:

8 Q MR. MURRAY, WHEN YOU MENTIONED THAT YOU SAW A GROUP OF TWO
9 AND THEN THREE PEOPLE COMING DOWN THIS MAEBELLE COURT ABOUT
10 TWO HOUSES FROM WHERE YOU WERE AT YOUR MAMA'S HOUSE, YOU SAID
11 YOU RECOGNIZED ALL FIVE OF THEM?

12 A I SAID I RECOG —

13 Q CORRECT?

14 A I SAID I RECOGNIZED THREE OF THEM. IT WAS FIVE PEOPLE, BUT I
15 ONLY RECOGNIZED THREE OF THEM.

16 Q YOU RECOGNIZED THREE. DIDN'T YOU TESTIFY THAT YOU KNEW ALL
17 FIVE FACES WHEN THE —

18 A NO. HE SHOWED ME SOME PHOTOS. I TOLD HIM THAT I KNEW
19 EVERYBODY THAT WAS ON THE PHOTO.

20 Q AND HOW MANY PEOPLE WERE ON THE PHOTOS? DO YOU RECALL?

21 A I COULDN'T TELL YOU. I MEAN, THE PHOTOS WAS NOT JUST OF
22 THEM. IT WAS OTHER PEOPLE FROM THE NEIGHBORHOOD, TOO.

23 Q I UNDERSTAND. SO YOU SAID THERE WERE TWO PAGES OF
24 PHOTOGRAPHS. WERE THERE SIX ON ONE PAGE OR TEN?

25 A I CAN'T REMEMBER.

1 Q OR HOW MANY?

2 A I CAN'T REMEMBER.

3 Q COULD IT HAVE BEEN AS FEW AS TWO?

4 A NO, SIR. IT WAS MORE THAN THAT.

5 Q COULD IT HAVE BEEN AS MANY AS TEN?

6 A ON ONE PAGE?

7 Q YES, SIR.

8 A I COULDN'T TELL YOU. I KNOW IT WAS MORE THAN TWO.

9 Q IF I UNDERSTAND YOUR TESTIMONY, THERE WERE TWO PAGES ON THE
10 BOOK THAT HE SHOWED YOU?

11 A MM-HMM (AFFIRMATIVE).

12 Q PHOTOGRAPHS. AND YOU SAY YOU RECOGNIZED ALL THE FACES OF
13 EVERYBODY THERE. RIGHT?

14 A UH-HUH (AFFIRMATIVE).

15 Q DID THE INVESTIGATOR ASK YOU ANY NAMES? DID HE SAY, CAN YOU
16 TELL ME THE NAMES OF ANY OF THESE FOLKS?

17 A NO.

18 Q DID HE ASK YOU IF YOU SAW ANY OF THOSE PEOPLE IN THE
19 PHOTOGRAPHS THAT EVENING?

20 A NO. I TOLD HIM I HAD TO GO TO WORK, THAT I WAS READY TO GO
21 TO WORK.

22 Q HOW LONG DID YOU SPEAK TO THE INVESTIGATOR THAT NIGHT?

23 A IT WAS LIKE, KIND OF LIKE IN THE MORNING, NOT IN THE
24 AFTERNOON. PROBABLY LIKE A MINUTE OR TWO.

25 Q NOW, FROM WHERE YOU WERE RIGHT HERE AND YOU SAW THESE GROUPS

1 OF PEOPLE COMING RIGHT HERE?

2 A UH-HUH (AFFIRMATIVE).

3 Q YOU DON'T HAVE ANY IDEA WHETHER THEY WERE OVER HERE EARLIER,
4 DO YOU?

5 A NO.

6 Q AND WHEN YOU SAID THAT YOU KNEW THAT THE JAMES BROTHERS LIVED
7 IN CRESCENT MANOR PREVIOUSLY, RIGHT?

8 A UH-HUH (AFFIRMATIVE).

9 Q HOW DID YOU KNOW THAT?

10 A BECAUSE WE USED TO HANG OUT IN CRESCENT MANOR.

11 Q YOU USED TO HANG OUT IN CRESCENT MANOR?

12 A WELL, ME AND MY COUSIN.

13 Q AND WHO IS YOUR COUSIN?

14 A A FELLOW NAMED TONY.

15 Q TOMMY?

16 A TONY.

17 Q TONY. WHAT'S HIS LAST NAME?

18 A MURRAY.

19 Q MURRAY? WHEN YOU SAY YOU HANG OUT AT CRESCENT MANOR, DID YOU
20 PLAY TENNIS HERE IN THE TENNIS COURT?

21 A NO. IN THE CRESCENT MANOR APARTMENTS.

22 Q YOU MEAN VISITING WITH FRIENDS?

23 A YEAH.

24 Q AND HOW DO YOU KNOW WHAT -- DO YOU KNOW WHAT APARTMENT --

25 A NO, SIR.

1 Q — ROBERT JAMES LIVED IN?

2 A NO, SIR.

3 Q DO YOU KNOW FOR A FACT THAT HE LIVED THERE?

4 A YEAH. THEY'D GO THERE.

5 Q AND HOW DO YOU KNOW THAT?

6 A I MEAN, HIS FAMILY STAYED THERE.

7 Q ALL RIGHT. DO YOU HAVE — YOU DON'T KNOW WHETHER YOU SAW
8 WHOM YOU CLAIM TO BE ROBERT JAMES HERE WHETHER HE WAS COMING
9 FROM THE APARTMENTS OVER THERE OR FROM DOWN HERE?

10 A IN THE PARK, YEAH. I MEAN, I COULDN'T TELL YOU —

11 Q IN THE PARK?

12 A — WHICH WAY HE WAS — FROM WHERE HE WAS COMING. I JUST
13 KNOW —

14 THE COURT: I DON'T WANT TO INHIBIT YOUR EXAMINATION,
15 MR. SHUPPER, BUT THAT'S REALLY NOT GERMANE TO THIS ISSUE, IS
16 IT? IT'S WHETHER OR NOT HE IDENTIFIED HIM.

17 MR. SHUPPER: YES, YOUR HONOR.

18 THE COURT: NOT WHERE HE WAS COMING FROM, WHAT HE WAS
19 DOING, ALL THAT.

20 Q (BY MR. SHUPPER) YOU'VE SAID YOU RECOGNIZED THREE OF THE
21 FIVE PEOPLE. WHO WAS THE THIRD PERSON?

22 A I DON'T KNOW HIS NAME.

23 Q WELL, WHERE DID YOU RECOGNIZE HIM FROM?

24 A FROM THE NEIGHBORHOOD IN CRESCENT MANOR.

25 Q DO YOU HAVE ANY DIRECT KNOWLEDGE OF WHO WAS STAYING IN THIS

- 1 HOUSE ON ORR STREET?
- 2 A DO I HAVE WHAT?
- 3 Q DO YOU KNOW —
- 4 A WHO WAS STAYING IN THE HOUSEHOLD? NO.
- 5 Q ON ORR STREET.
- 6 A I MEAN, I KNEW THEY MOVED IN THE HOUSE. BUT, I MEAN, SEE, I
- 7 USED TO BE AT WORK A LOT. SO, I MEAN, I USED TO BE IN THE
- 8 NEIGHBORHOOD.
- 9 Q WHAT TIME DID YOU — WHAT TIME WAS IT WHEN MR. BULL CAME UP?
- 10 DO YOU RECALL? YOU SAID YOU WERE — I'M SORRY. DID YOU SAY
- 11 YOU HAD GONE — YOU HAD COME FROM WORK OR WERE GOING TO WORK?
- 12 A MR. BULL, THAT'S —
- 13 Q THE NIGHT OF THE INCIDENT ON THE 29TH.
- 14 A NO. I WAS AT MY MOM'S HOUSE.
- 15 Q YOU WERE AT YOUR MOM'S HOUSE?
- 16 A UH-HUH (AFFIRMATIVE).
- 17 Q YOU SAID YOU WERE GETTING READY —
- 18 A TO GO HOME.
- 19 Q — TO GET ON THE BICYCLE TO GO HOME?
- 20 A TO GO HOME. TO GO HOME.
- 21 Q OKAY. WHERE HAD YOU BEEN EARLIER?
- 22 A I WAS AT MY MOM'S HOUSE FOR A WHILE. WE WERE WATCHING T.V.
- 23 Q CAN YOU TELL US ABOUT WHAT TIME IT WAS WHEN THIS HAPPENED?
- 24 A IT WAS AFTER TEN. I KNOW THAT. 'CAUSE —
- 25 Q AFTER —

1 A — I THINK THEY HAD A BALL GAME DOWN THERE. AND THE GAME
2 USUALLY END AT ABOUT 10, 10:30. SO I KNOW IT WAS AFTER THAT.

3 Q WHAT WAS THE LIGHTING LIKE THAT NIGHT IN THE AREA WHERE YOU
4 WERE STANDING?

5 A THERE WAS A — IT'S A LIGHT FROM A POLE IN THE FRONT OF MY
6 MOM'S; WELL, RIGHT TO THE SIDE OF MY MOM'S HOUSE. AND SHE
7 USUALLY KEEPS THE PORCH LIGHT ON. AND THEN THERE'S A STREET
8 LIGHT ON THE CORNER.

9 Q ALL RIGHT. I UNDERSTAND THE STREET LIGHT ON THE CORNER.

10 A ON THE CORNER.

11 Q DO YOU KNOW IF THE PORCH LIGHT WAS ON?

12 A UH-HUH (AFFIRMATIVE) YEAH. THE PORCH LIGHT WILL BE ON IF
13 SHE IS IN THE HOUSE AND IT'S DARK. AND IF SHE OPENS THE
14 DOOR, SHE WILL CUT ALL THE LIGHTS OUT.

15 Q DID THE — YOU DIDN'T — DID YOU SEE ANY OF THE PHOTOS OF
16 ROBERT OR KENNETH JAMES THAT EVENING WHEN THE DETECTIVE
17 BROUGHT THOSE PHOTOGRAPHS TO YOU?

18 A YEAH.

19 Q DID YOU RECOGNIZE ROBERT AND KENNETH IN THOSE PHOTOS?

20 A UH-HUH (AFFIRMATIVE).

21 Q YOU'RE SURE OF THAT. YOU SAW — YOU KNOW KENNETH JAMES MR.
22 STRICKLER'S CLIENT AND MR. SNEED'S CLIENT. ROBERT JAMES IS
23 MY CLIENT. AND YOU'RE SURE YOU SAW HIS PHOTOGRAPH —

24 A YES, SIR.

25 Q — ON THAT NIGHT WHEN THE DETECTIVE SHOWED THEM TO YOU?

- 1 A YES, SIR.
- 2 Q OKAY. BUT YOU DIDN'T SAY THAT'S ROBERT JAMES?
- 3 A UH-HUH (AFFIRMATIVE).
- 4 Q AND YOU DIDN'T SAY THAT'S KENNETH JAMES, DID YOU?
- 5 A MM-HMM (AFFIRMATIVE).
- 6 Q MM-HMM (AFFIRMATIVE) MEANING YOU DIDN'T SAY IT?
- 7 A YES, SIR. YEAH. I DIDN'T SAY IT.
- 8 Q WERE YOU IN THE SAME CLASSES WITH ROBERT AND KENNETH?
- 9 A NO, SIR.
- 10 Q ARE YOU A LITTLE OLDER THAN THEM YOU THINK?
- 11 A PROBABLY ABOUT A YEAR OR TWO.
- 12 Q ALL RIGHT. DID YOU TELL THE POLICE OFFICER YOU DIDN'T WANT
- 13 TO GET INVOLVED ON THE NIGHT THAT HE CAME TO SEE YOU?
- 14 A NO, SIR.
- 15 Q DID YOU EXPECT THAT HE WOULD COME BACK TO SEE YOU AGAIN?
- 16 A YOU TALKING ABOUT THE NIGHT OF THE INCIDENT OR THE NIGHT —
- 17 Q AFTER THE NIGHT WHEN HE FIRST MET WITH YOU.
- 18 A NO. NOT REALLY.
- 19 Q NOW, THERE WAS A LOT OF TALK IN THE NEIGHBORHOOD ABOUT THIS
- 20 INCIDENT, WASN'T THERE, AFTERWARDS?
- 21 A YEAH. I GUESS.
- 22 Q IN FACT, YOU HAD HEARD SOME RUMORS, HADN'T YOU?
- 23 A YES, SIR.
- 24 Q WHAT WERE THE RUMORS YOU HEARD?
- 25 A I HEARD THAT THERE WERE SOME PURSES THAT WAS I GUESS STOLEN

1 THAT WAS FOUND IN THE HOUSE.

2 Q FOUND WHERE?

3 A IN THE HOUSE ON ORR STREET.

4 Q AND WHERE DID YOU HEAR THAT?

5 A I GUESS FROM PEOPLE TALKING IN THE NEIGHBORHOOD.

6 Q DO YOU RECALL FROM WHOM YOU HEARD THAT?

7 A NO, SIR.

8 Q DID YOU HEAR ANY OTHER RUMORS ABOUT WHO MAY HAVE BEEN
9 INVOLVED?

10 A NO, SIR.

11 Q DID YOU TELL ANYBODY YOU KNEW WHO DID IT OR YOU SAW THOSE
12 PEOPLE? EXCUSE ME. LET ME STRIKE THAT AND REPHRASE IT.

13 A I MEAN, NO, SIR. I COULDN'T TELL WHO DID IT BECAUSE I WASN'T
14 DOWN THERE.

15 Q NOT WHO DID IT. BUT DID YOU TELL ANYONE THAT YOU RECOGNIZED
16 SOME OF THE FELLOWS THAT YOU SAW IN THAT AREA, THE PEOPLE YOU
17 SAW COMING FROM THIS AREA HERE?

18 A NO, SIR.

19 Q AND HOW LONG WAS IT AFTER MR. BULL GOT THERE THAT YOU SAW
20 THESE FIVE MEN, THESE TWO GROUPS?

21 A ABOUT 15 TO 20 MINUTES.

22 MR. SHUPPER: BEG THE COURT'S INDULGENCE.

23 THE COURT: YES, SIR.

24 MR. SHUPPER: NOTHING FURTHER, YOUR HONOR.

25 THE COURT: MR. GASSER, ANYTHING FURTHER?

1 MR. GASSER: JUST ONE QUESTION, YOUR HONOR.

2 REDIRECT EXAMINATION BY MR. GASSER:

3 Q YOU'VE NOW BEEN ASKED BY THREE DIFFERENT LAWYERS THE FACT
4 THAT YOU SAW THIS GROUP OF FIVE INDIVIDUALS. YOU'VE
5 IDENTIFIED THE TWO OF THEM. IF YOU WERE STANDING WHERE YOU
6 WERE ON THAT NIGHT, I WANT YOU TO POSITION ME SO THE JUDGE
7 SEES THE DISTANCE THAT YOU WERE WHEN YOU OBSERVED ROBERT
8 JAMES AND KENNETH JAMES AND THE THREE OTHER INDIVIDUALS
9 WALKING BY YOU. DO I NEED TO COME FORWARD, OR DO I NEED TO
10 GO BACKWARDS?

11 A BACKWARDS.

12 Q TELL ME WHEN TO STOP.

13 A I'D SAY IT WAS ABOUT THAT DISTANCE.

14 Q ABOUT RIGHT HERE?

15 A YEAH.

16 Q WAS THERE ANY OBSTRUCTIONS IN YOUR LINE OF SIGHT?

17 A NO, SIR.

18 Q HOW CLOSE DID THEY COME TO WALKING UNDERNEATH THAT STREET
19 LAMP THAT YOU DESCRIBED?

20 A I MEAN, THE STREET LIGHT IS RIGHT ON THE CORNER. SO IT
21 BASICALLY LIGHTS UP THE WHOLE AREA.

22 MR. GASSER: THAT'S ALL I HAVE, YOUR HONOR.

23 THE COURT: OKAY. PLEASE STEP DOWN, MR. MURRAY. MR.
24 MURRAY, EXIT THE COURTROOM, TOO. AS I UNDERSTAND, WE'RE
25 TAKING EACH OF THESE UP INDIVIDUALLY. IS THAT CORRECT?

1 MR. GASSER: THAT'S CORRECT, YOUR HONOR.

2 THE COURT: ALL RIGHT. LET'S GET TO THE NEXT ONE, AND
3 THEN WE'LL RULE ON ALL OF THEM AT THE SAME TIME. DO YOU WANT
4 TO ARGUE THIS ONE NOW? I MEAN, YOU HAD -- DO YOU WANT TO GO
5 AHEAD AND ARGUE THIS ONE NOW?

6 MR. GASSER: WE'LL LEAVE IT TO THE COURT'S DISCRETION,
7 HOWEVER YOU WANT TO DO IT. THE NEXT WITNESS WE WERE GOING TO
8 CALL WOULD BE CARLA BROWN AND THEN TOMMY THOMAS WHO SHOWS THE
9 PHOTO LINE-UP'S.

10 THE COURT: OKAY. WELL, LET'S GET ALL THE WITNESSES
11 DONE, AND THEN WE'LL TIE THIS UP.

12 MR. GASSER: THE STATE WOULD CALL *victim* 1.

13 THE COURT: ALL RIGHT, MS. *victim*. PLEASE COME FORWARD
14 TO MR. HOLLIS DOWN HERE.

15 *victim* _____, BEING FIRST DULY
16 SWORN, TESTIFIES AS FOLLOWS: (IN CAMERA)

17 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
18 FOR THE RECORD.

19 MS. *victim* MY NAME I *victim* .

20 DIRECT EXAMINATION BY MR. GASSER:

21 Q MS. *victim* I'M GOING TO ASK YOU SEVERAL QUESTIONS. AT ANY
22 TIME IF THERE'S ANY QUESTIONS THAT YOU DON'T UNDERSTAND, JUST
23 LET ME KNOW. OKAY?

24 A OKAY.

25 Q I WANT TO DRAW YOUR ATTENTION BACK TO TUESDAY NIGHT, MAY

1 28TH, 1996, AND THEN DURING THE EARLY MORNING HOURS OF
2 WEDNESDAY, MAY THE 28TH, AND THEN WEDNESDAY, MAY THE 29TH,
3 1996. WHAT DID YOU DO THAT EVENING, MS

4 A WELL, I -- EARLY THAT EVENING I WAS WITH ONE OF MY
5 GIRLFRIENDS HANGING OUT, AND THEN LATER ON THAT EVENING I GOT
6 WITH MY FRIEND, WINFRED BULL. WE WENT TO THE PARK TO WATCH A
7 BASEBALL GAME. WE -- WE LEFT, WENT AND GOT SOMETHING TO EAT,
8 CAME BACK. WE DECIDED TO SIT IN THE PARK FOR A WHILE. LATER
9 ON THAT EVENING I WAS ATTACKED.

10 Q WHAT PARK WAS THIS, ?

11 A THE -- THE -- THE T. L. (SIC) MARTIN PARK BY W. A. PERRY
12 SCHOOL.

13 Q DID YOU KNOW THE INDIVIDUALS THAT ATTACKED YOU? DID YOU KNOW
14 THEM BEFORE THAT NIGHT?

15 A NO, I DIDN'T.

16 Q DID YOU GET TO THE PARK WITH MR. BULL WHEN THE SOFTBALL GAME
17 WAS STILL GOING ON?

18 A YES, I DID.

19 Q WHEN THE GAMES WERE OVER WITH, WHAT DID YOU AND MR. BULL DO?

20 A WELL, WE GOT -- WE WENT TO GET SOMETHING TO EAT WHILE THE
21 GAME WAS STILL GOING ON. WE CAME BACK. THE GAME WAS ENDING.
22 AND WE DECIDED TO SIT IN THE PARK. AND WE JUST SAT ON ONE OF
23 THE PARK BENCHES, AND WE WERE TALKING.

24 Q AS YOU AND MR. BULL WERE SITTING ON THAT PARK BENCH TALKING,
25 WAS THERE ANYONE ELSE -- WHAT HAD HAPPENED TO ALL THE PEOPLE

1 THAT WERE THERE FOR THE SOFTBALL GAME?

2 A EVENTUALLY EVERYONE LEFT. AT FIRST THEY -- SOME PEOPLE WERE
3 SITTING OUT IN THE PARKING LOT TALKING AND, YOU KNOW,
4 CARRYING ON CONVERSATION. AND EVENTUALLY EVERYONE DIED OFF
5 AND EVERYONE LEFT. WE WERE THE LAST TWO SITTING OUT THERE.

6 Q HOW DID YOU AND MR. BULL GET THERE?

7 A I DROVE.

8 Q WHERE DID YOU PARK YOUR CAR IN REFERENCE TO WHERE YOU WERE
9 SITTING?

10 A IN THE PARKING LOT, LIKE RIGHT IN FRONT OF THE -- THERE'S A
11 PARKING LOT AND THEN THERE'S THE BALL FIELD, AND OVER TO THE
12 SIDE IS THE PARK. SO I PARKED INSIDE THE PARKING LOT.

13 Q WHAT HAPPENED? BEFORE THAT YOU WERE AS YOU SAY ATTACKED,
14 WHAT HAPPENED TO THE LIGHTS ON THE SOFTBALL FIELD?

15 A THE LIGHTS, THEY DIMMED. BUT THERE WERE STILL LIGHTS AT THE
16 PARK. AT THE SCHOOL. EXCUSE ME. AND THERE WERE STILL SOME
17 STREET -- NOT STREET LIGHTS -- BUT LIGHTS IN THE PARKING AREA
18 THAT WAS ON.

19 Q THAT WAS MY NEXT FOLLOW-UP QUESTION. IF THE LIGHTS ON THE
20 SOFTBALL FIELD HAD DIMMED OFF, DESCRIBE FOR THE JUDGE, WHERE
21 WAS THE LIGHTING COMING FROM WHEN YOU WERE SITTING ON THAT
22 PARK BENCH?

23 A BASICALLY FROM THE SCHOOL AND THE PARKING LOT.

24 Q HOW FAR AWAY WAS THE PARKING LOT FROM THE PARK BENCH?

25 A NOT THAT FAR. I MEAN, I WOULD SAY --

1 Q IF YOU HAD TO USE THIS TABLE, IF THIS WAS THE TABLE THAT YOU
2 WERE SITTING ON, HOW CLOSE WAS THE PARKING LOT?

3 A I WOULD SAY TO THAT WALL BASICALLY..

4 Q TO THIS WALL RIGHT HERE?

5 A YEAH. BASICALLY.

6 Q AND SO WERE THE LIGHTS ON IN THIS PARKING LOT THIS CLOSE TO
7 WHERE YOU WERE SITTING?

8 A YEAH, THEY WERE ON.

9 Q WHEN YOU AND MR. BULL WERE SITTING IN THE PARKING LOT, TELL
10 THE COURT -- TELL THE COURT WHAT HAPPENED.

11 A WE WERE SITTING IN THE PARK. WE WERE TALKING. I KEPT
12 TELLING WINFRED THAT I HEARD NOISES. I WASN'T SURE. HE KEPT
13 SAYING THAT I WASN'T HEARING ANYTHING. I SAW ONE GENTLEMAN
14 ON THE BICYCLE. HE RODE DOWN; HE RODE BACK UP. AND WE
15 CONTINUED TALKING, BUT I KEPT HEARING SOMETHING. AND SOONER,
16 ABOUT I WOULD SAY TEN MINUTES LATER, THESE TWO GUYS CAME
17 WALKING THROUGH THE PARK. ONE ASKED WINFRED FOR A LIGHT. AT
18 THAT TIME HE PULLED THE GUN AND HE GRABBED HIM. AT THE SAME
19 TIME THREE OTHER GUYS CAME RUNNING OUT THE BUSHES IN FRONT OF
20 US AND GRABBED ME. AND THEY -- THEY STARTED MAKING THREATS
21 AND STUFF. WE MOVED FROM ONE SIDE OF THE PARK TO THE OTHER.
22 IT WAS LIKE A REAL QUICK THING. YOU KNOW, IT WAS A LOT OF
23 MOVEMENT. AT THAT TIME THEY STARTED STRIPPING WINFRED FOR --
24 LOOKING FOR MONEY OR WHATEVER. THEY TOOK HIS CLOTHES OFF. I
25 WAS ASSAULTED AND MY CLOTHES WAS TORN OFF OF ME. MY CAR WAS

1 -- WAS SEARCHED. ALL THIS WAS GOING ON AT ONE -- AT THE SAME
2 TIME.

3 Q HOW MANY PEOPLE WERE THERE, CARLA?

4 A THERE WERE FIVE GUYS.

5 Q AND WHAT COLOR WERE THEY?

6 A THEY WERE ALL BLACK MALES.

7 Q THE FIRST PERSON THAT APPROACHED YOU AND FIRST GRABBED ONTO
8 YOU, DID YOU HAVE AN OPPORTUNITY TO GET A LOOK AT THAT
9 PERSON'S FACE?

10 A YES, I DID.

11 Q WHERE WERE YOU SEATED AT WHEN THAT FIRST PERSON CAME UP TO
12 YOU AND ACTUALLY PHYSICALLY TOUCHED YOU? WHERE WERE YOU?

13 A I WAS ON THE TOP OF THE TABLE, ON THE TOP OF THE PICNIC TABLE
14 WITH MY FEET ON THE SEATED PART WHERE YOU WOULD NORMALLY SIT
15 AT.

16 Q THE PERSON WITH THE GUN, WAS HE STILL THERE ACROSS THE PICNIC
17 TABLE?

18 A YES.

19 Q THE FIRST PERSON TO SEXUALLY ASSAULT YOU, WHICH ONE WAS THAT?

20 A THE GENTLEMAN SITTING THERE.

21 Q YOU TOLD THE COURT THAT ONE PERSON INITIALLY CAME UP TO YOU
22 AT THE PICNIC TABLE AND GRABBED HOLD OF YOU. DO YOU REMEMBER
23 THAT?

24 A MM-HMM (AFFIRMATIVE).

25 Q HOW DID YOU DESCRIBE -- HOW WOULD YOU DESCRIBE HIS DEMEANOR,

1 AND HOW DID YOU CONTINUE TO DESCRIBE HIS DEMEANOR TO LAW
2 ENFORCEMENT OFFICIALS AND MS. FRYAR WHEN SHE HAD BEEN
3 INVESTIGATING YOU? HOW DID YOU COME TO KNOW HOW YOU
4 DESCRIBED THAT ONE PERSON FROM THE FIVE?

5 A BECAUSE HE WAS VERY AGGRESSIVE. HE WAS VERY MEAN. HE
6 BASICALLY TOOK CHARGE. I FELT LIKE THE OTHER GUYS LISTENED
7 TO WHATEVER HE SAID.

8 Q DO YOU REMEMBER DESCRIBING THE STYLE OF HIS HAIR?

9 A HE WORE BRAIDS. THEY WERE ALL HANGING. THEY WASN'T -- THEY
10 WERE LOOSE BRAIDS. AND IF I'M NOT MISTAKEN, I EVEN REMEMBER
11 WHAT HE WAS WEARING, A RED JERSEY TYPE SHIRT.

12 Q THE PERSON WITH THE GUN, DO YOU KNOW WHAT HAPPENED TO HIM
13 AFTER THE FIRST OR THE INDIVIDUAL YOU DESCRIBED AS THE
14 AGGRESSIVE TYPE, THE LEADER, AFTER THAT PERSON GRABBED HOLD
15 OF YOU, TOOK YOU AWAY, DO YOU KNOW WHERE THE PERSON WITH THE
16 GUN WENT?

17 A THEY WERE HOLDING -- HE WAS WITH WINFRED. THEY WERE HOLDING
18 WINFRED. THEY WERE SEARCHING HIM.

19 Q NOW, THIS PERSON, FIRST OF ALL, THE PERSON THAT INITIALLY
20 CAME UP WITH THE GUN THAT YOU'VE DESCRIBED AS THE GUN THAT
21 APPROACHED WINFRED AND ASKED FOR A LIGHT, WAS THAT PERSON
22 WEARING ANY KIND OF HAT OR MASK IN ANY WAY?

23 A NO.

24 Q WAS THERE ANYTHING IN ANY WAY THAT KEPT YOU FROM SEEING THAT
25 PERSON'S FACE WHEN THEY PRODUCED THE GUN?

1 A NO.

2 Q I WANT YOU TO -- THE PERSON WITH THE GUN, DO YOU RECOGNIZE
3 THE PERSON WITH THE GUN IN THIS COURTROOM?

4 A YES, I DO.

5 Q WHICH ONE WAS THE ONE WITH THE GUN?

6 A HIM SITTING OVER THERE.

7 Q TO THE FAR -- TO YOUR FAR RIGHT?

8 A YES.

9 Q AND I WANT YOU TO STOP ME WHEN I GET AS CLOSE TO YOU -- AND
10 LET THE RECORD REFLECT THAT SHE'S IDENTIFIED ROBERT JAMES. I
11 WANT YOU TO STOP ME WHEN I GET AS CLOSE TO YOU AS ROBERT
12 JAMES GOT TO YOU HOLDING THAT GUN THAT NIGHT. OKAY?

13 A OKAY. HE WAS THERE. AND ALL I HAD TO DO IS TURN AROUND AND
14 LOOK IN HIS FACE.

15 Q NOW, THE PERSON THAT YOU'VE DESCRIBED TO THIS COURT AS THE
16 AGGRESSIVE ONE WHO SEXUALLY ASSAULTED YOU FIRST, IS HE IN THE
17 COURTROOM TODAY?

18 A YES, HE IS.

19 Q WOULD YOU IDENTIFY HIM, PLEASE, ?

20 A THE GENTLEMAN SITTING HERE INBEIWEEN THOSE TWO GUYS.

21 Q THE ONE ON YOUR FAR LEFT?

22 A WITH HIS HAIR BRAIDED BACK.

23 Q LET THE RECORD REFLECT AS WELL, YOUR HONOR, THAT SHE'S
24 IDENTIFIED KENNETH JAMES. I WANT YOU TO STOP ME AS CLOSE AS
25 I GET TO YOU AS KENNETH JAMES GOT TO YOU WHEN HE INITIALLY

1 APPROACHED YOU ON THAT PICNIC TABLE. OKAY?

2 A (WITNESS NODS HEAD AFFIRMATIVELY) HE WAS THERE.

3 Q CLOSE ENOUGH TO GRAB HOLD OF YOU?

4 A MM-HMM (AFFIRMATIVE).

5 Q WAS HE WEARING ANYTHING TO COVER HIS FACE,

6 A NO.

7 Q HAD YOU BEEN DRINKING ANY ALCOHOL WITH MR. BULL THERE AT THE
8 PICNIC TABLE, SAY, AN HOUR BEFORE THIS INCIDENT OCCURRED?

9 A NO, SIR.

10 Q HAD YOU HAD ANY ALCOHOL AT ALL THAT WHOLE EVENING FROM, SAY,
11 THAT AFTERNOON OR DINNERTIME OR ANYTHING?

12 A NO.

13 Q HAD YOU AND YOUR GIRLFRIEND -- YOU MENTIONED TO THE JUDGE
14 EARLY ON IN YOUR TESTIMONY THAT YOU HAD BEEN OUT EARLIER I
15 BELIEVE FOR DINNER WITH YOUR GIRLFRIEND. HAD YOU AND YOUR
16 GIRLFRIEND SMOKED SOMETHING?

17 A WE SMOKED A JOINT, A REEFER, MARIJUANA.

18 Q HOW MANY JOINTS DID YOU AND YOUR GIRLFRIEND SMOKE?

19 A JUST ONE.

20 Q SO DID YOU SPLIT THAT?

21 A YES. I WOULD SAY.

22 Q COULD YOU ESTIMATE HOW MANY HOURS THAT YOU AND YOUR
23 GIRLFRIEND SPLITTING SMOKING THAT JOINT, HOW MANY HOURS
24 BEFORE YOU WERE ASSAULTED?

25 A THIS IS LIKE 11 OR 12 THAT AFTERNOON. IT WAS UP IN THE DAY.

1 Q NOW, , OF THE FIVE INDIVIDUALS, HOW MANY OF THE FIVE
2 INDIVIDUALS SEXUALLY ASSAULTED YOU?

3 A THEY ALL FIVE DID. RANDOMLY, YOU KNOW, REAL -- IT HAPPENED
4 REAL FAST. I CAN'T SAY WHO DID WHAT AT WHAT TIME, BUT THEY
5 ALL DID.

6 Q ULTIMATELY, WHERE WERE YOU TAKEN AND BY WHOM?

7 A I WAS TAKEN FROM THE PARK OVER INTO THE CEMETERY BY --

8 Q HOW MANY -- HOW MANY PEOPLE TOOK YOU?

9 A IT WAS LIKE TWO OF THEM. I MEAN, THEY ALL WENT OVER, BUT IT
10 WAS LIKE ONE WAS -- IT WAS TWO. THEY WERE LIKE, KIND OF LIKE
11 DRAGGING ME ALONG.

12 Q AND DO YOU REMEMBER WHO ONE OF THOSE INDIVIDUALS WAS?

13 A YES, I DO.

14 Q WHO WAS THAT?

15 A THE GENTLEMAN IN THE MIDDLE RIGHT HERE.

16 Q MR. KENNETH JAMES?

17 A YES.

18 Q AND WHERE DID MR. KENNETH JAMES TAKE YOU?

19 A HE TOOK ME OVER INTO THE CEMETERY. AND THEY DEMANDED THAT I
20 LAY DOWN ON THE GRASS. AND THEY CONTINUED TO ASSAULT ME.

21 Q WHEN THEY WERE FINISHED, CARLA, DO YOU EVEN KNOW WHICH
22 DIRECTION THEY RAN?

23 A THEY RAN OFF FROM -- WELL, I WAS TAKEN TO A LITTLE BUILDING
24 IN THE GRAVEYARD AND PUT INSIDE. THEN THEY ALL RAN OFF TO
25 THEIR LEFT, LIKE FROM THE BUILDING.

1 Q WHAT WAS THE LIGHTING LIKE IN THE GRAVEYARD —

2 A IT WAS —

3 Q — COMPARED TO WHERE THE — WHEN THEY TOOK YOU FROM THE
4 PICNIC TABLE — WHEN THEY TOOK YOU FROM THE PICNIC TABLE, DID
5 THEY TAKE YOU TO AN AREA OF THE PARK WITH TREES?

6 A YES, THEY DID. IT WASN'T A WHOLE LOT OF LIGHTING IN THE
7 GRAVEYARD AREA. JUST THE SKY.

8 Q NOW, EVENTUALLY DID THE POLICE COME ?

9 A YES.

10 Q AND WERE YOU TRANSPORTED TO RICHLAND MEMORIAL HOSPITAL?

11 A YES, I WAS.

12 Q AND SUBSEQUENTLY, LATER ON THAT SAME MORNING, SOMETIME
13 BETWEEN 11:00 IN THE MORNING AND 12:00 NOON, THAT SAME
14 MORNING, APPROXIMATELY TEN OR ELEVEN HOURS AFTER THE
15 INCIDENT, DID YOU HAVE AN OPPORTUNITY TO MEET WITH
16 INVESTIGATOR TOMMY THOMAS OF THE COLUMBIA POLICE DEPARTMENT?

17 A YES.

18 Q AND DID YOU PROVIDE INVESTIGATOR TOMMY THOMAS WITH A
19 STATEMENT?

20 A YES, I DID.

21 Q DID YOU HAVE AN OPPORTUNITY TO LOOK AT SOME PHOTOGRAPHS AT
22 THAT POINT, ?

23 A YES.

24 Q TELL THE COURT WHAT INVESTIGATOR THOMAS, HOW THAT CAME ABOUT.
25 DESCRIBE WHAT HE ASKED YOU TO DO.

1 A WELL, HE ASKED ME COULD I IDENTIFY ANYONE. AND I -- AND I
2 TOLD HIM I WOULD TRY. AND HE BROUGHT OUT PHOTOGRAPHS OF
3 DIFFERENT PEOPLE. AND HE PUT IT BEFORE ME AND ASKED ME DID I
4 RECOGNIZE ANYBODY IN THOSE PHOTOGRAPHS.

5 Q I SHOW YOU THIS PARTICULAR ITEM AND ASK YOU IF YOU RECOGNIZE
6 THAT ITEM?

7 A YES.

8 Q IS THAT THE EXACT ITEM THAT INVESTIGATOR THOMAS SHOWED YOU ON
9 THE MORNING OF MAY THE 29TH, 1996?

10 A YES.

11 MR. GASSER: WE'D GO AHEAD MARK THIS AS STATE'S EXHIBIT
12 NO. 2 FOR I.D. AT THIS TIME, YOUR HONOR.

13 THE COURT: IS IT 2 OR -- YEAH. GO AHEAD, PLEASE.
14 (STATE'S EXHIBIT NO. 2, PHOTOGRAPHIC LINE-UP, MARKED FOR
15 IDENTIFICATION ONLY)

16 Q NOW, , HAD YOU BEEN TO SLEEP AT ALL SINCE THIS INCIDENT?

17 A I COULDN'T SLEEP. I WAS UPSET. I TRIED TO REST. I MEAN, I
18 WAS TAKEN HOME TO ONE OF MY FRIEND'S HOUSE TO REST. BUT AS
19 FAR AS A WHOLE LOT OF SLEEP I DID NOT DO.

20 Q BUT DO YOU REMEMBER INVESTIGATOR THOMAS SHOWING YOU THIS
21 PHOTOGRAPHIC LINE-UP?

22 A YES.

23 Q I SHOW YOU STATE'S EXHIBIT NO. 2. WHEN INVESTIGATOR THOMAS
24 SHOWED YOU STATE'S EXHIBIT NO. 2, WHAT DID YOU TELL HIM?

25 A I LOOKED OVER THE PHOTOGRAPH. I PICKED OUT ONE OF THE

1 PICTURES ON THE PHOTOGRAPH.

2 Q OKAY. AND DO YOU REMEMBER WHICH PICTURE YOU PICKED OUT?

3 A YES.

4 Q WHICH PICTURE?

5 A NUMBER 6.

6 Q OKAY. DID INVESTIGATOR THOMAS ASK YOU TO SIGN ANYTHING
7 INDICATING THAT YOU PICKED OUT NUMBER 6 AS ONE OF THE
8 INDIVIDUALS BEING INVOLVED IN THE CRIMINAL SEXUAL ASSAULT?
9 DO YOU REMEMBER HIM ASKING YOU TO SIGN SOMETHING?

10 A YES.

11 Q AND I SHOW YOU THAT DOCUMENT. IS THAT YOUR SIGNATURE?

12 A MM-HMM (AFFIRMATIVE).

13 Q AND IS THAT THE ORIGINAL COPY?

14 A YES.

15 MR. GASSER: WE WOULD MARK THAT AS STATE'S EXHIBIT NO.
16 3, YOUR HONOR.

17 THE COURT: OKAY. LET ME SEE 2 AND 3 AFTER YOU GET THEM
18 MARKED.

19 (STATE'S EXHIBIT NO. 3, AFFIDAVIT, MARKED FOR IDENTIFICATION
20 ONLY)

21 THE COURT: UNLESS YOU NEED THEM NOW. CONTINUE YOUR
22 EXAMINATION. UNLESS THE DEFENSE HAS NOT YET SEEN THEM.
23 OKAY. GO AHEAD. OKAY.

24 Q WHEN YOU PICKED OUT NUMBER 6, WHICH ONE DID YOU DESCRIBE HIM
25 AS? WHEN YOU IDENTIFIED NUMBER 6 THAT MORNING TO

1 INVESTIGATOR THOMAS, YOU WERE IDENTIFYING NUMBER 6 AS WHICH
2 ONE?

3 A THE VERY AGGRESSIVE ONE, THE LEADER. HE WAS IN CHARGE OF
4 EVERYTHING. HE TOLD THEM WHAT TO DO.

5 Q WHO -- OF THE FIVE INDIVIDUALS, WHAT INDIVIDUAL DID YOU HAVE
6 THE BEST OPPORTUNITY TO SEE THEIR FACE AND DID YOU SPEND THE
7 MOST TIME WITH?

8 A MR. KENNETH JAMES, NUMBER 6 ON THE LINE-UP.

9 Q AND THE OTHER INDIVIDUAL, IF YOU HAD TO -- WHAT OTHER
10 INDIVIDUAL DID YOU HAVE THE SECOND BEST OR A GOOD OPPORTUNITY
11 TO SEE? WHAT OTHER INDIVIDUAL DO YOU HAVE A SPECIFIC MEMORY
12 OF SEEING?

13 A MR. ROBERT JAMES.

14 Q AND WHAT DID HE HAVE IN HIS HAND, WHAT YOU REMEMBER LOOKING
15 AT HIS FACE?

16 A THE GUN.

17 Q NOW, APPROXIMATELY THREE WEEKS LATER, ON JUNE 18TH, 1996, DO
18 YOU REMEMBER INVESTIGATOR THOMAS -- OR DID SOMEBODY CALL YOU
19 AND ASK YOU TO COME DOWN TO THE COLUMBIA POLICE DEPARTMENT?

20 A YES.

21 Q AND DID YOU HAVE AN OPPORTUNITY TO MEET WITH INVESTIGATOR
22 THOMAS AT THAT TIME?

23 A YES.

24 Q AND WHAT WAS THE PURPOSE OF THAT MEETING? DO YOU REMEMBER,
25

1 A HE WANTED ME TO LOOK AT MORE PHOTOGRAPHS TO SEE IF I -- DID I
2 RECOGNIZE ANYBODY, SEE IF I COULD IDENTIFY ANYBODY ELSE IN
3 THE CASE.

4 Q AND I SHOW YOU WHAT'S BEEN MARKED STATE'S -- OR WHAT HAS NOT
5 BEEN MARKED YET BUT SOON TO BE MARKED STATE'S EXHIBIT NO. 5 I
6 BELIEVE. WE WOULD ASK FOR IT TO BE MARKED STATE'S EXHIBIT 5.
7 DO YOU RECOGNIZE THIS PHOTO SPREAD?

8 A YES.

9 Q IS THIS THE SAME PHOTO SPREAD THAT INVESTIGATOR THOMAS SHOWED
10 YOU ON JUNE THE 18TH OF 1996?

11 A YES.

12 Q AND WHEN HE SHOWED YOU STATE'S EXHIBIT -- OR THIS PARTICULAR
13 PHOTO SPREAD, DID YOU RECOGNIZE ANYBODY?

14 A YES.

15 Q AND WHO DID YOU RECOGNIZE?

16 A NUMBER 2.

17 Q AND WHO DID YOU TELL HIM YOU RECOGNIZED NUMBER 2 AS?

18 A MR. ROBERT JAMES.

19 Q AND DID HE AT THAT TIME AGAIN ASK YOU TO VERIFY THAT,
20 MEMORIALIZE THAT BY WRITING YOUR SIGNATURE ON THIS PARTICULAR
21 DOCUMENT?

22 A YES.

23 MR. GASSER: WE'D GO AHEAD AND MARK THESE AS STATE'S
24 EXHIBIT 5, THE PHOTO SPREAD I BELIEVE.

25 THE COURT: GO AHEAD. DO THAT, PLEASE.

1 MR. GASSER: AND THE AFFIDAVIT AS 6.

2 COURT REPORTER: IT WOULD ACTUALLY BE 4 AND 5.

3 MR. GASSER: OH. I'M SORRY.

4 (STATE'S EXHIBIT NO. 4, PHOTOGRAPHIC LINE-UP, MARKED FOR
5 IDENTIFICATION ONLY)

6 (STATE'S EXHIBIT NO. 5, AFFIDAVIT, MARKED FOR IDENTIFICATION
7 ONLY)

8 THE COURT: 4 AND 5. UNLESS YOU NEED THEM, LET ME HAVE
9 THEM.

10 Q NOW , AT EITHER TIME, ON MAY THE 29TH WHEN INVESTIGATOR
11 THOMAS SHOWED YOU THOSE LINE-UP'S, THOSE PHOTOGRAPHS, OR ON
12 JUNE THE 18TH, DID HE OR DID ANYONE, ANY OTHER POLICE
13 OFFICER, ANYONE SUGGEST TO YOU WHICH PERSON TO PICK OUT?

14 A NO, SIR.

15 Q WERE THERE EVER ANY NAMES OR HEIGHTS OR WEIGHTS OR DATE OF
16 BIRTHS AROUND ANY OF THOSE?

17 A NO.

18 Q SO THE LINE-UPS THAT THE JUDGE IS LOOKING AT, ARE THEY IN THE
19 EXACT SAME CONDITION AS THEY WERE WHEN YOU WERE SHOWN THEM?

20 A YES, SIR.

21 Q WERE YOU UNDER THE INFLUENCE OF ANY ALCOHOL OR DRUGS AT THE
22 TIME THAT YOU WERE BEING SHOWN THAT PARTICULAR LINE-UP?

23 A NO, SIR.

24 Q THE HOSPITAL DIDN'T GIVE YOU ANY MIND-ALTERING DRUGS, DID
25 THEY?

1 A NO.

2 Q YOU DIDN'T TAKE ANY VALIUM OR ANYTHING LIKE ANTIDEPRESSANTS?

3 A NO.

4 Q OR ON THE 18TH, JUNE THE 18TH, WERE YOU UNDER THE INFLUENCE
5 OF ALCOHOL OR DRUGS WHEN HE SHOWED YOU THAT LINE-UP?

6 A NO.

7 Q NOW, LATER ON ON THE 18TH, DO YOU REMEMBER INVESTIGATOR
8 THOMAS SHOWING YOU A THIRD LINE-UP?

9 A YES.

10 Q WERE YOU ABLE TO IDENTIFY ANYBODY IN THAT THIRD LINE-UP?

11 A NO.

12 Q AND THEN ABOUT SEVEN TO EIGHT MONTHS LATER, IN FEBRUARY OF
13 1997, DO YOU RECALL INVESTIGATOR THOMAS SHOWING YOU A FOURTH
14 AND A FIFTH LINE-UP?

15 A YES.

16 Q WERE YOU ABLE TO IDENTIFY ANYBODY IN THOSE LINE-UP'S?

17 A NO.

18 MR. GASSER: BEG THE COURT'S INDULGENCE ONE MOMENT.

19 THE COURT: CERTAINLY.

20 MR. GASSER: THAT'S ALL WE WOULD HAVE OF THIS WITNESS AT
21 THIS TIME, YOUR HONOR.

22 THE COURT: OKAY. MR. SNEED. AND IF YOU WOULD, AGAIN
23 BE MINDFUL, AND I'M NOT TRYING TO INHIBIT YOU, BUT THE
24 PURPOSE OF THIS PARTICULAR EXAMINATION. OKAY?

25 MR. SNEED: YES, SIR. MAY IT PLEASE THE COURT.

1 THE COURT: YES, SIR. AND YOU CAN UTILIZE THESE
2 EXHIBITS SHOULD YOU NEED TO AS WELL.

3 MR. SNEED: THANK YOU, SIR.

4 CROSS EXAMINATION BY MR. SNEED:

5 Q MS. I'M ROB SNEED. I REPRESENT KENNETH JAMES. I WANT
6 TO GET AN IDEA OF THE TIME HERE FIRST. YOU TOLD MR. GASSER
7 THAT YOU WERE SMOKING MARIJUANA WITH ONE OF YOUR FEMALE
8 FRIENDS EARLIER, RIGHT?

9 A THAT'S RIGHT.

10 Q OKAY. AND WHERE WAS THAT?

11 A IT WAS IN WEST COLUMBIA AT HER APARTMENT.

12 Q OKAY. ABOUT WHAT TIME?

13 A IT WAS 11, BETWEEN 11 AND 12 THAT AFTERNOON.

14 Q OH. YOU MEAN THAT MORNING?

15 A THAT MORNING.

16 Q OKAY.

17 A YES. NOT THAT NIGHT.

18 Q OKAY. WHAT TIME DID -- DO YOU WEAR A WATCH, MA'AM?

19 A SOMETIMES. BASICALLY WHEN I'M WORKING.

20 Q WERE YOU WEARING A WATCH ON THIS NIGHT?

21 A I CAN'T RECALL.

22 Q OKAY. DO YOU KNOW IF WINFRED WAS WEARING A WATCH ON THIS
23 NIGHT?

24 A I'M NOT SURE IF HE WAS.

25 Q OKAY. ABOUT WHAT TIME DID YOU GET TO THE BALL GAME?

1 A I WOULD SAY IT WAS AROUND, I ESTIMATE AROUND 10.

2 Q OKAY.

3 A I'M NOT SURE —

4 Q OKAY.

5 A — OF THE TIMES.

6 Q HOW LONG WERE YOU ALL THERE — YOU WHERE THERE A WHILE. THEN
7 YOU WENT TO GET SOMETHING TO EAT, RIGHT?

8 A YES.

9 Q THEN YOU COME BACK. YOU WENT TO BURGER KING?

10 A YES.

11 Q OKAY. WHAT TIME DO YOU COME BACK?

12 A I MEAN, IT ONLY TOOK US TEN OR FIFTEEN MINUTES TO GO GRAB
13 SOMETHING TO EAT AND COME BACK. WE DIDN'T SIT DOWN.

14 Q OKAY. YOU'RE NOT SURE IF YOU HAD A WATCH. SO YOU DON'T KNOW
15 THE EXACT TIMES HERE, DO YOU?

16 A NO.

17 Q OKAY. ALL RIGHT. WELL, LET'S JUST — LET'S MOVE FORWARD TO
18 WHEN THE GAME WAS OVER. WERE YOU ALL ON A BENCH OR ON A
19 PICNIC TABLE?

20 A WELL, IT'S A PICNIC TABLE. I MEAN, IT'S LIKE A REGULAR
21 PICNIC TABLE.

22 Q OKAY. AND INITIALLY WERE THERE OTHER PEOPLE AROUND OTHER
23 THAN YOU AND WINFRED?

24 A YES. IT WAS.

25 Q OKAY. WHEN DID YOU FIRST HEAR WHAT YOU THOUGHT WERE FOLKS

1 SNEAKING AROUND OR WALKING AROUND IN THE WOODS?

2 A WELL, I COULDN'T SAY THAT IT WAS PEOPLE AT FIRST BECAUSE THE
3 ONLY THING I HEARD WAS NOISES. IT'S NOT THAT I SAW ANYONE.
4 I JUST HEARD NOISES.

5 Q OKAY. TWO PEOPLE APPROACHED YOU FIRST, RIGHT?

6 A TWO PEOPLE APPROACHED FIRST.

7 Q NOW, HOW LONG HAD YOU AND WINFRED BEEN SITTING THERE WHEN
8 THEY APPROACHED YOU?

9 A WE HAD BEEN SITTING THERE A WHILE BECAUSE, LIKE I SAY, THE
10 GAME HAD ENDED. EVERYONE HAD LEFT. I WOULD SAY 15 MINUTES.
11 I DON'T KNOW. I CAN'T GIVE AN EXACT TIME.

12 Q OKAY. NOW, WHICH DIRECTION DID THE TWO MEN COME FROM?

13 A THEY CAME FROM THE ROAD PART AS IF THEY WOULD HAVE CAME TO
14 COME IN THROUGH THE ENTRANCE OF THE — COMING TOWARDS THE
15 PARK. BESIDE THE CEMETERY, BETWEEN THE CEMETERY AND THE
16 SCHOOL.

17 Q OKAY. SO THAT WOULD BE OFF GERMANY STREET?

18 A I WOULD SAY SO. I'M NOT FAMILIAR WITH THE AREA. I DON'T
19 LIVE IN THAT AREA.

20 Q OKAY. HAVE YOU BEEN TO THIS PARK BEFORE?

21 A THIS IS MY FIRST TIME THERE. THAT WAS MY FIRST AND LAST
22 TIME.

23 Q OKAY. SO IF I WERE TO ASK YOU TO DO A DIAGRAM, YOU MIGHT
24 HAVE TROUBLE DOING THAT?

25 A I REMEMBER THE PARK. YES. I DO REMEMBER THE PARK AND I DO

1 REMEMBER HOW IT HAPPENED.

2 Q OKAY. I MEAN, DO YOU UNDERSTAND THE LAYOUT BETWEEN THE PARK,
3 THE CEMETERY AND THE SCHOOL?

4 A YES.

5 Q OKAY. MA'AM, IF I WERE TO ASK YOU TO JUST DRAW A SIMPLE
6 DIAGRAM ON THIS BOARD, WOULD YOU BE ABLE TO DO IT, DO YOU
7 THINK?

8 A I PROBABLY COULD, YES.

9 Q OKAY. YOUR HONOR, IF I COULD ASK THE WITNESS TO STEP DOWN TO
10 DO THAT.

11 THE COURT: PLEASE.

12 Q MA'AM, IF YOU COULD JUST PLEASE USE THE BLACK MARKER AND JUST
13 LAY OUT THE PARK, THE CEMETERY AND THE SCHOOL. YOU DON'T
14 HAVE TO GET TOO DETAILED. IN RELATION TO GERMANY STREET
15 ESPECIALLY.

16 A WELL, THIS IS THE -- I WOULD SAY THIS IS THE STREET. THIS
17 GOES TO THE SIDE. THE CEMETERY AND THE PARK SITS BEHIND OVER
18 HERE. AND THIS IS THE BALL FIELD PARKING LOT AREA.

19 Q OKAY.

20 THE COURT: MS. YOU MAY FIND IT EASIER TO DO IT
21 THAT WAY. BUT IF YOU COULD STAND ON THE OTHER SIDE AND DRAW
22 SO THAT MS. WILLIAMS CAN HEAR YOU AND YOU'RE TALKING ACROSS
23 THE EXHIBIT.

24 Q OKAY. LET ME STOP YOU RIGHT THERE, MA'AM, SO WE CAN CATCH
25 UP. IF YOU COULD JUST LABEL CEMETERY, JUST PUT A "C" FOR

1 CEMETERY, PARK, AND PUT A "P". OKAY. SCHOOL, WOULD YOU PUT
2 AN "S". PARKING LOT, WHY DON'T YOU PUT "P-L". OKAY. AND
3 FOR THE BALL FIELD, HOW ABOUT JUST "F" FOR FIELD?

4 A OKAY.

5 Q OKAY. NOW, I'M GOING TO HAND YOU A BLUE MARKER, MA'AM. IF
6 YOU COULD PLEASE INDICATE -- WELL, LET ME STEP BACK FOR A
7 MOMENT. WHEN YOU AND WINFRED WERE THERE, THEY TURNED THE
8 LIGHTS OFF TO THE FIELD, RIGHT?

9 A YEAH.

10 Q OKAY. SO WHEN YOU FIRST SAW THE TWO MEN, THE BALL FIELD
11 LIGHTS WERE OFF, RIGHT?

12 A I WOULD SAY SO, YEAH. BUT THE PARKING LOT LIGHTS WERE ON.

13 Q OKAY. COULD YOU PLEASE TRY TO PUT WHERE THE PARKING LIGHT
14 LOTS WERE? I'M SORRY. WHERE THE PARKING LOT LIGHTS WERE.

15 A I CAN'T EXACTLY PUT WHERE THE LIGHTS AT. THEY'VE GOT SEVERAL
16 DIFFERENT LIGHTS OUT THERE.

17 Q OKAY.

18 A I MEAN, YOU COULD SEE LIKE THE POLES, BUT I CAN'T SAY EXACTLY
19 WHERE THEY WAS AT AT THAT TIME.

20 Q OKAY. SO YOU'RE NOT SURE OF THE TOTAL NUMBER THEN?

21 A BASICALLY.

22 Q OKAY. YOU'RE POSITIVE THEY WERE ON?

23 A I'M POSITIVE.

24 Q OKAY. THE PICNIC TABLE YOU ALL WERE AT, COULD YOU PLEASE
25 JUST PUT AN "X" WHERE THAT IS?

1 A WELL, IF I SAY THIS IS THE PARK, AND I'M NOT A GOOD DRAWER,
2 IT'S LIKE A LITTLE SOMETHING HERE, A LITTLE BUILDING AND THE
3 LITTLE BENCH I WOULD SAY.

4 Q OKAY. MA'AM, IS THERE SOME PLAYGROUND EQUIPMENT IN THAT PARK
5 AREA?

6 A YES, IT IS.

7 Q ARE THERE ALSO SOME OTHER BENCHES?

8 A YES, IT IS.

9 Q OKAY. AND THERE'S TREES IN THAT PARK AREA?

10 A YES, IT IS.

11 Q OKAY. THE LIGHTS THAT YOU'RE TALKING ABOUT, ARE THEY IN THE
12 -- THEY'RE IN THE PARKING LOT ITSELF, RIGHT?

13 A THE SCHOOL ALSO WAS LIGHTED. THIS IS NOT -- THE SCHOOL IS
14 BIGGER THAN THIS.

15 Q OKAY.

16 A SO THE SCHOOL HAS LIGHTS ALSO.

17 Q WHAT LIGHTS ARE IN THE PARK ITSELF?

18 A THEY'RE NOT IN THE PARK. THEY'RE LIKE IN THE PARKING LOT AND
19 THEY SIT BESIDE THE PARK.

20 Q OKAY. BUT THERE'S NONE IN THE PARK AREA ITSELF?

21 A BUT IT IS -- YOU COULD SEE. IT'S LIGHTING.

22 Q THERE ARE TREES THOUGH THROUGHOUT THAT PARK, RIGHT?

23 A THERE'S TREES, YES.

24 Q OKAY. MA'AM, IF YOU COULD TAKE YOUR SEAT.

25 A OKAY.

1 Q THANK YOU. ALL RIGHT. MA'AM, THESE TWO MEN, THE FIRST TWO
2 YOU SAW, DID THEY EVER GO BEHIND THAT BUILDING YOU WERE
3 TALKING ABOUT?

4 A THEY WALKED INBETWEEN -- I WOULD SAY THEY WALKED DIAGONAL.

5 Q OKAY.

6 A TOWARDS US.

7 Q OKAY. AND WHEN THEY CAME UP, WAS IT JUST ONE MAN OR ACTUALLY
8 —

9 A THERE WAS TWO OF THEM.

10 Q BOTH WERE RIGHT THERE?

11 A THERE WAS TWO OF THEM. ONE WALKED FORWARD A LITTLE BIT. THE
12 OTHER STOPPED AND ASKED FOR THE LIGHT.

13 Q OKAY. AND THE ONE WHO ASKED FOR THE LIGHT, IS THAT THE ONE
14 THAT PRODUCED THE GUN?

15 A YES.

16 Q OKAY. AND THAT'S THE ONE THAT YOU'RE SAYING IS ROBERT?

17 A YES.

18 Q THE FELLOW ON THE RIGHT?

19 A YES.

20 Q OKAY. THE MAN WITH HIM, YOU'RE SAYING THAT'S KENNETH?

21 A NO. I DID NOT SAY THAT WAS KENNETH.

22 Q OKAY.

23 A KENNETH CAME FROM THE OTHER DIRECTION.

24 Q OKAY. SO THE FIRST TWO, YOU'RE SAYING IT'S ROBERT AND
25 SOMEBODY ELSE?

- 1 A MM-HMM (AFFIRMATIVE).
- 2 Q OKAY. AND THE THREE MEN, WHICH DIRECTION OR WHICH PART OF
- 3 THE PARK DID THEY ARRIVE FROM?
- 4 A THEY ARRIVED FROM THE ROAD PART.
- 5 Q OKAY.
- 6 A THE FIRST TWO ARRIVED FROM THE ROAD PART.
- 7 Q OKAY.
- 8 A AND THEY WALKED DIAGONAL ACROSS.
- 9 Q THAT'S WHAT THE FIRST TWO DID. DID THE THREE —
- 10 A THEN THE OTHER TWO CAME FROM I WOULD SAY OUT THE CEMETERY,
- 11 BECAUSE THAT'S — YOU KNOW, THAT'S THE LITTLE BREAK AREA.
- 12 THAT'S THE ONLY THING THROUGH THE LITTLE BUSHES THERE THROUGH
- 13 THE CEMETERY.
- 14 Q OKAY.
- 15 A I'M NOT SURE. BUT THEY CAME. WHEN I LOOKED HE WAS IN FRONT
- 16 OF ME. THAT'S THE ONLY THE THING I COULD SAY.
- 17 Q OKAY.
- 18 A HE WAS THERE.
- 19 Q ALL RIGHT. NOW, WHEN THE FIRST TWO MEN GET THERE AND ONE OF
- 20 THEM PULLS OUT A GUN, RIGHT?
- 21 A MM-HMM (AFFIRMATIVE).
- 22 Q HOW LONG DID IT TAKE FOR THE OTHER THREE MEN TO COME UP?
- 23 A I WOULDN'T SAY A HALF A SECOND.
- 24 Q OKAY.
- 25 A I MEAN, THEY ALL JUST BURST OUT.

1 Q OKAY. WHICH ONES TOOK WINFRED AWAY?

2 A I KNOW THE GUY THAT HAD THE GUN, AND THERE WAS TWO OTHER
3 GUYS, YOU KNOW, THEY GRABBED HIM. ONE WAS AT MY CAR. ONE
4 WAS —

5 Q I'M SORRY, MA'AM. I DIDN'T MEAN TO CUT YOU OFF. GO AHEAD,
6 PLEASE.

7 A OKAY. AND THE OTHER, YOUR DEFENDANT, WAS THERE WITH ME.

8 Q OKAY. SO WAS IT THREE MEN THAT TOOK ONE WINFRED AWAY OR TWO
9 MEN?

10 A THEY WERE ALL MOVING. THEY GRABBED HIM.

11 Q OKAY.

12 A THEY WERE ALL AROUND. I CAN'T SAY WHO DID WHAT AT WHAT TIME.

13 Q OKAY. WHO IS THE ONE THAT — YOU HEARD THE WORD "BIG DADDY"
14 OR SOMEONE HOLLERING "BIG DADDY"?

15 A YES. HE WAS — I WOULD SAY HE WAS THE ONE AT THE CAR BECAUSE
16 I NEVER SAW HIM.

17 Q OKAY. WHO WAS —

18 A HE WAS THERE, BUT I NEVER JUST COULD PUT HIS FACE WITH A
19 PICTURE OR ANYTHING.

20 Q OKAY. WHO WAS THE PERSON HOLLERING FOR "BIG DADDY"?

21 A I MEAN, THEY ALL WERE. BUT I WOULD SAY KENNETH TOLD HIM ONE
22 TIME TO TAKE THE KEYS TO HIM, TAKE MY CAR KEYS TO HIM.

23 Q OKAY, MA'AM. AFTER — WINFRED, HE RAN AT SOME POINT, RIGHT?

24 A YES, HE DID.

25 Q OKAY. AFTER HE RAN IS WHEN YOU WERE TAKEN TO THE CEMETERY?

1 A I WAS ALREADY THERE.

2 Q YOU WERE ALREADY THERE?

3 A I WAS TAKEN TO THE LITTLE BUILDING AFTERWARDS.

4 Q OKAY.

5 A AFTER HE RAN THEY CONTINUED TO ASSAULT ME AND MY LIFE WAS
6 THREATENED.

7 Q SURE. AFTER HE RAN HOW LONG WERE THE MEN STILL THERE WITH
8 YOU? ABOUT HOW MUCH TIME?

9 A I CAN'T SAY. THEY DIDN'T SEEM TO BE IN A BIG HURRY.

10 Q OKAY. NOW, DID YOU HEAR ANY GUNSHOTS?

11 A YES, I DID.

12 Q OKAY. AND THAT'S WHEN WINFRED LEFT?

13 A THAT'S WHEN HE RAN.

14 Q OKAY. HOW MANY GUN SHOTS?

15 A I WOULD SAY TWO TO THREE SHOTS.

16 Q OKAY.

17 A I WOULD SAY TWO OR THREE.

18 Q SO THAT'S THE TIME THAT WINFRED LEFT. YOU'RE NOT SURE HOW
19 MUCH LONGER THEY WERE THERE WITH YOU?

20 A THEY WERE WITH ME LONG ENOUGH TO CONTINUE TO ASSAULT ME, TO
21 TAKE ME TO THE LITTLE MAUSOLEUM AND ASSAULT ME AGAIN.

22 Q MA'AM, WHAT WOULD YOU SAY THE LENGTH OF TIME FOR THE WHOLE
23 ASSAULT WAS?

24 A I CANNOT GIVE A LENGTH OF TIME.

25 Q OKAY. BECAUSE YOU TOLD THE PROSECUTOR EARLY THAT SOME OF IT

1 WAS QUICK AND IT HAPPENED FAST. SO I WAS TRYING TO —

2 A I MEAN, WHAT I'M SAYING, EVERYTHING HAPPENED FAST. I JUST
3 CAN'T PUT A TIME LIMIT ON HOW LONG THEY TOOK TO ASSAULT ME.

4 Q I MEAN, IS IT 30 MINUTES, OR IS IT LESS?

5 A I'D SAY 30 MINUTES. IT WASN'T LESS. I MEAN, YOU COULD SAY
6 30 MINUTES.

7 Q OKAY. SO THE WHOLE THING TOOK 30 MINUTES?

8 A I'M NOT SAYING THAT. I MEAN, IF THAT'S WHAT YOU WANT TO SAY.
9 I CANNOT —

10 Q NO, NO. I DON'T WANT TO PUT WORDS IN YOUR MOUTH.

11 THE COURT: LET HER FINISH, PLEASE, SIR. AND THEN LET'S
12 CONTINUE.

13 A I CANNOT GIVE AN EXACT TIME HOW LONG IT TOOK.

14 Q OKAY. WELL, MA'AM, LET ME ASK IT THIS WAY. WAS IT LESS THAN
15 AN HOUR, THE WHOLE THING?

16 A I CANNOT SAY WHETHER IT WAS — IT MAY HAVE BEEN LESS THAN AN
17 HOUR. I MEAN, IF YOU'RE ATTACKING SOMEONE, BASICALLY,
18 PROBABLY SO.

19 Q OKAY. COULD IT HAVE BEEN LESS THAN A HALF HOUR?

20 A IT WAS — I WOULD SAY IT WAS AT LEAST A HALF HOUR OR MORE.

21 Q OKAY. NOW, THE SOLICITOR — WE'LL TALK ABOUT YOUR
22 DESCRIPTIONS OF THE ASSAILANTS. YOU'D NEVER SEEN ANY OF
23 THOSE FIVE MEN BEFORE THAT DAY, RIGHT?

24 A NO, I HADN'T.

25 Q OKAY. AND THE PHOTOS THAT THE OFFICER SHOWED YOU, THAT WAS

1 LATER ON THAT MORNING, RIGHT?

2 A YES.

3 Q OKAY. THAT WAS -- AND AFTER YOU LEFT THE HOSPITAL, DID YOU
4 GO HOME AND REST AT ALL?

5 A I WENT HOME, TOOK A SHOWER AND TRIED TO REST, YES.

6 Q DID YOU GET ANY SLEEP?

7 A I WOULDN'T SAY I SLEPT. IT'S HARD TO SLEEP WHEN YOU HAVE HAD
8 SOMETHING LIKE THAT DONE TO YOU.

9 Q OKAY. NOW, BEFORE YOU ACTUALLY SAW THE PHOTOS, DID YOU GIVE
10 A DESCRIPTION OF ANY OF THE FIVE MEN TO ANYBODY?

11 A NO. THEY DIDN'T ASK ME TO DESCRIBE ANYBODY.

12 Q OKAY.

13 A AS FAR AS I KNEW, THEY DIDN'T KNEW OF ANYBODY. THEY DIDN'T
14 HAVE ANY SUSPECTS AS FAR AS I KNEW.

15 Q OKAY. SO JUST TO MAKE SURE I UNDERSTAND WHERE YOU'RE AT, YOU
16 DIDN'T GIVE ANY DESCRIPTIONS THEN TO ANY MEDICAL TYPE
17 PERSONS?

18 A NO.

19 Q NO PHYSICAL DESCRIPTIONS?

20 A NO.

21 Q OKAY. AND YOU REMEMBER TWO OFFICERS, INVESTIGATORS COMING TO
22 THE HOSPITAL?

23 A YES.

24 Q WHILE YOU WERE THERE, RIGHT?

25 A YES.

1 Q YOU DIDN'T GIVE THEM ANY DESCRIPTIONS THEN?

2 A NO.

3 Q OKAY. AND THEN SO THIS WAS AT HEADQUARTERS WHEN YOU SAW THE
4 PHOTOS?

5 A YES.

6 Q OKAY. NOW, THAT WAS INVESTIGATOR THOMAS?

7 A YES.

8 Q OKAY. BEFORE YOU LOOKED AT ANY PHOTOS, DID YOU GIVE THEM A
9 DESCRIPTION? I MEAN ANYTHING?

10 A NO. I DID NOT.

11 Q SO YOU DIDN'T GIVE THEM —

12 A I DIDN'T EVEN KNOW WHY I WAS BEING CALLED DOWN.

13 Q OKAY.

14 A THEY ASKED ME TO COME DOWN AND GIVE A STATEMENT.

15 Q OKAY. AND YOU GAVE THE STATEMENT?

16 A AND I GAVE THE STATEMENT.

17 Q OKAY. AND IN YOUR STATEMENT YOU WANTED TO TELL THE POLICE
18 EVERYTHING YOU KNEW, RIGHT?

19 A I TOLD THEM EVERYTHING I KNEW.

20 Q OKAY. ALL RIGHT. WITH THE PHOTO SPREAD THAT YOU SAW, MA'AM,
21 WHO WAS PRESENT? THIS IS THE ONE ON MAY 29TH. WHO WAS
22 PRESENT OTHER THAN YOU AND MR. THOMAS?

23 A AND THE OTHER OFFICER. I CAN'T REMEMBER HIS NAME. BUT I
24 THINK HE'S HERE. BUT IT WAS TWO OFFICERS. IT WASN'T JUST
25 HIM.

1 Q INVESTIGATOR BENSON?

2 A YES.

3 Q OKAY. SO JUST THREE OF YOU?

4 A YES. AND OTHER PEOPLE COMING IN AND OUT.

5 Q OKAY. BEFORE YOU LOOKED AT THE PHOTOS, DID THE OFFICERS
6 INDICATE ANYTHING ABOUT A TRACKER DOG TO YOU?

7 A I KNEW NOTHING ABOUT THE DOG UNTIL I TALKED TO KAREN. AND
8 THAT'S WHEN I FOUND OUT THAT THEY HAD A TRACKING DOG. I KNEW
9 NOTHING ABOUT THAT.

10 Q SO YOU KNEW NOTHING ABOUT THAT WHEN YOU LOOKED AT THE PHOTOS?

11 A NO.

12 Q OKAY. DID YOU KNOW ANYTHING ABOUT A POSSIBLE SUSPECT WITH A
13 HUNDRED DOLLAR BILL BEFORE YOU LOOKED AT THE PHOTOS?

14 A NO, I DIDN'T.

15 Q OKAY. NOW, I WANT TO MAKE SURE I UNDERSTAND THE INSTRUCTIONS
16 THAT THE OFFICERS GAVE YOU BEFORE YOU LOOKED AT THE PHOTO
17 SPREAD. OKAY. MA'AM, I'M GOING TO SHOW YOU STATE'S EXHIBIT
18 3. DO YOU REMEMBER MR. GASSER ASKING YOU IF YOU HAD SIGNED
19 THAT?

20 A MM-HMM (AFFIRMATIVE).

21 Q OKAY. DO YOU KNOW IF THE POLICE GAVE YOU A COPY OF THAT THAT
22 DAY?

23 A THEY PROBABLY -- I'M NOT SURE. THEY PROBABLY DID. I DON'T
24 REMEMBER.

25 Q OKAY. NOW, MA'AM, TAKING YOU TO THE PHOTOS THEY SHOWED YOU

1 ON MAY 29TH, THIS IS LATER THAT DAY.

2 A OKAY.

3 Q NOW, I'M HANDING YOU STATE'S EXHIBIT 2. IS THAT WHAT THE
4 POLICE SHOWED YOU?

5 A YES.

6 Q OKAY. SO YOU DIDN'T SEE ACTUAL PHOTOGRAPHS THEN?

7 A NO. I SAW PHOTOGRAPHS OF THE OTHER ONE. THIS IS WHAT THEY
8 SHOWED ME.

9 Q OKAY. BUT, MA'AM, THE STATE'S EXHIBIT 2, DOES THAT SEEM TO
10 BE A PHOTOCOPY TO YOU?

11 A I DIDN'T REALLY JUDGE IT. I MEAN, ---

12 Q THAT'S --- I'M SORRY. GO AHEAD, MA'AM.

13 A THAT'S WHAT THEY GAVE ME AND THIS IS WHAT I PICKED OUT.

14 Q SO IT WASN'T ACTUAL PHOTOS. IT WAS A COPY OF PHOTOS?

15 A MM-HMM (AFFIRMATIVE).

16 Q OKAY. NOW, WERE YOU SITTING AT A TABLE WHEN THE OFFICER
17 HANDED YOU THAT?

18 A YES. I WAS SITTING.

19 Q OKAY. AND WAS OFFICER THOMAS --- WAS HE SITTING DOWN?

20 A I CAN'T RECALL WHAT THEY WERE DOING. I MEAN, THEY WERE BOTH
21 THERE.

22 Q OKAY.

23 A AND THEY JUST --- THEY PLACED IT ON THE TABLE, AND THEY ASKED
24 ME TO TAKE MY TIME AND LOOK AT THE PICTURES AND SEE IF I KNEW
25 ANYONE IN THE PHOTOGRAPH.

1 Q OKAY. DID THE OFFICER EVER SAY THE SUSPECT COULD OR COULD
2 NOT BE IN HERE?

3 A NO. THEY NEVER TOLD ME THAT. THEY JUST ASKED ME TO LOOK AT
4 THE PHOTOGRAPHS AND SEE IF THERE'S ANYBODY THAT I COULD
5 IDENTIFY OR I KNEW IN THAT.

6 Q OKAY. SO THEY NEVER SAID THE GUY MAY NOT BE IN THERE?

7 A NO. THEY NEVER TOLD ME THAT.

8 Q OKAY. NOW, WHEN THE OFFICERS HANDED YOU THE PHOTO SPREAD,
9 WHERE WAS OFFICER THOMAS, SAY? WAS HE ON THE OTHER SIDE OF
10 THE ROOM OR SITTING RIGHT NEXT TO YOU?

11 A THEY WERE BOTH THERE. I WAS SITTING AT THE TABLE. I CAN'T
12 SAY EXACTLY WHERE THEY WERE SITTING. IT SEEMED LIKE ONE OF
13 THEM MAY HAVE BEEN STANDING, I MEAN. BUT THEY WERE THERE.
14 BOTH WAS IN THE ROOM PRESENT AT THAT TIME.

15 Q OKAY. BEFORE YOU LOOKED AT THE PHOTOS, WHAT WERE YOUR
16 EXPECTATIONS? DID YOU THINK THE SUSPECT MIGHT BE IN THERE?

17 A I REALLY DIDN'T KNOW WHAT TO THINK. I MEAN, IN MY OPINION I
18 WAS HOPING SO. AND I'M GLAD THAT THEY WERE THERE.

19 Q OKAY. NOW, DID YOU LOOK AT ALL SIX PHOTOS BEFORE PICKING OUT
20 NUMBER 6?

21 A YES, I DID.

22 Q OKAY. SO YOU SCANNED ALL SIX?

23 A YES, I DID.

24 Q OKAY. HOW LONG DID IT TAKE YOU BEFORE YOU TOLD THE OFFICERS
25 NUMBER 6?

1 A IT DIDN'T MAKE ME VERY LONG.

2 Q OKAY. AND DOES THAT MEAN —

3 A FIVE MINUTES I WOULD SAY.

4 Q PARDON ME?

5 A PROBABLY ABOUT FIVE MINUTES.

6 Q OKAY. MA'AM, WHAT WERE YOUR EXACT WORDS TO THE OFFICER AS
7 BEST YOU CAN RECALL ABOUT WHEN YOU WERE LOOKING AT THE PHOTOS
8 AND YOU PICKED OUT 6?

9 A I REALLY DIDN'T SPEAK. I JUST POINTED AND I TOLD HIM THAT
10 THIS LOOKED LIKE ONE OF THE GUYS.

11 Q OKAY.

12 A I DIDN'T HAVE A WHOLE LOT TO SAY.

13 Q OKAY. BEG THE COURT'S INDULGENCE, YOUR HONOR.

14 THE COURT: YES, SIR.

15 Q JUST A FEW MORE QUESTIONS, YOUR HONOR. MA'AM, WHY DOES
16 KENNETH JAMES STICK OUT IN YOUR MIND SO MUCH? I MEAN, WHAT
17 ABOUT HIM MAKES YOU SAY, YEAH, THAT HE WAS THE AGGRESSIVE
18 ONE?

19 A BECAUSE HE WAS THE ONE THAT BASICALLY INITIALLY ATTACKED ME.
20 HE WAS THE ONE THAT ATTACKED ME REPEATEDLY, MORE THAN ONCE.

21 Q OKAY.

22 A AND I REALLY HAD THE CHANCE TO LOOK AT HIS FACE AND IN HIS
23 FACE, AND I WILL NEVER FORGET HIS FACE.

24 Q OKAY. AND WHAT STICKS OUT IN YOUR MIND ABOUT ROBERT?

25 A ROBERT HAS A SCAR ON HIS FACE IF I'M NOT MISTAKEN.

1 Q OKAY.

2 A AND I COULD SEE THAT SCAR.

3 Q OKAY. THE OTHER THREE MEN, I MEAN, THERE'S NOTHING ABOUT
4 THEM THAT STICKS OUT IN YOUR MIND? CAN YOU THINK OF ANY
5 FEATURE ON ANY OF THEM THAT STICKS OUT?

6 A NO. I REALLY COULDN'T IDENTIFY THEM.

7 Q OKAY.

8 A IT'S NOT THAT I DIDN'T TRY. I JUST COULDN'T.

9 Q SURE. I MEAN, THEY'D BEEN ASSAULTING YOU FOR MAYBE 30
10 MINUTES, GIVE OR TAKE, RIGHT?

11 A WELL, EVERYONE WAS MOVING, TOO. THEY WERE BASICALLY MOVING.

12 Q OKAY.

13 A I MEAN, THEY WERE BASICALLY TRYING TO HOLD WINFRED, TOO, TO
14 HOLD HIM DOWN.

15 MR. SNEED: NO FURTHER QUESTIONS, YOUR HONOR.

16 THE COURT: MR. SHUPPER.

17 MR. SHUPPER: MAY IT PLEASE THE COURT, YOUR HONOR.

18 THE COURT: YES, SIR.

19 CROSS EXAMINATION BY MR. SHUPPER:

20 Q MS. BROWN, I'M JOHN SHUPPER. I REPRESENT ROBERT ANTHONY
21 JAMES AND I HAVE SOME QUESTIONS FOR YOU. YOU INDICATED
22 ROBERT JAMES HAD A SCAR?

23 A YES.

24 Q ON HIS FACE?

25 A MM-HMM (AFFIRMATIVE).

1 Q CAN YOU DESCRIBE THE SCAR?

2 A IT'S JUST LIKE A LITTLE SCAR ON HIS EYE.

3 Q WHERE?

4 A UP UNDER HIS EYE.

5 Q A SCAR UNDER HIS EYE?

6 A YEAH. LIKE ON HIS -- ON HIS FACE.

7 Q IS THAT SCAR DETECTABLE ON THE PHOTOGRAPH?

8 A I THINK IT IS. BUT THAT'S NOT IT.

9 Q WHEN YOU LOOKED AT THE PHOTO SHEET OF MR. ROBERT JAMES, WAS
10 IT A PRESENTATION LIKE THIS?

11 A NO, IT WASN'T.

12 Q WAS IT PHOTOGRAPHS?

13 A YES.

14 Q OKAY. AND WHEN DID YOU SEE THAT?

15 A IT WAS SOME WEEKS LATER. IT WASN'T AT THE SAME TIME. I
16 DIDN'T SEE THEM BOTH AT THE SAME TIME. IT WAS A FEW WEEKS
17 LATER.

18 Q DIDN'T INVESTIGATOR THOMAS CONTACT YOU ABOUT A WEEK AFTER
19 THIS HAPPENED AND YOU WERE SUPPOSED TO MEET HIM?

20 A WELL, I DO HAVE -- I DID HAVE A JOB AND I WORK, AND IT JUST
21 WAS NOT TIME CONVENIENT FOR ME TO GET WITH HIM AT THAT TIME.
22 SO IT KIND OF LIKE PROLONGED BECAUSE OF THE TIMES THAT HE
23 WANTED ME TO COME I COULD NOT COME.

24 Q WHERE WERE YOU WORKING AT THE TIME?

25 A THAT'S A GOOD QUESTION. I WAS AT -- I WAS ASSISTANT MANAGER

1 AT MCDONALD'S IF I'M NOT MISTAKEN AT THAT TIME.

2 Q AND WHAT WERE THE HOURS YOU WORKED?

3 A I WORKED -- IT VARIES. BASICALLY, MOSTLY, SOME NIGHTS I
4 WOULD GO IN 12 OR 1 IN THE AFTERNOON, WORK 'TIL 12 OR 1 AT
5 NIGHT. IT VARIES. SOMETIMES I WORK THAT MORNING. IT
6 VARIES.

7 Q DID YOU WORK THAT DAY AT MCDONALD'S, THE DAY OF THE INCIDENT?

8 A DID I WORK THAT DAY? NO, I DID NOT.

9 Q DID YOU GIVE A DESCRIPTION TO THE INVESTIGATORS AT ANY TIME?
10 I BELIEVE YOU TESTIFIED EARLIER THAT YOU DIDN'T GIVE A
11 DESCRIPTION --

12 A NO, I DID NOT.

13 Q -- IMMEDIATELY AFTER WHEN YOU GOT OUT OF THE HOSPITAL AND
14 TALKED TO INVESTIGATOR THOMAS. DID THEY CONTACT YOU AND ASK
15 YOU TO DESCRIBE THE ASSAILANTS?

16 A I WAS NEVER ASKED TO DESCRIBE ANYONE.

17 Q I HAVE TWO DIAGRAMS THAT I'D LIKE TO SHOW YOU THAT DEPICT THE
18 PART -- YOU'VE SEEN THESE, HAVEN'T YOU? AND YOUR HONOR HAS A
19 COPY OF THESE.

20 THE COURT: YES, SIR.

21 Q I'D LIKE TO ASK YOU IF -- THIS IS A LITTLE -- IT'S
22 ESSENTIALLY GOT THE SAME MATERIAL AS THIS. BUT IT'S
23 SOMETHING THAT WE'D BE ABLE TO REFERENCE EASIER. THIS FIRST
24 DIAGRAM DEPICTS A SORT OF A SHORT VIEW. IF YOU'LL LOOK AT
25 THAT. AND YOU'LL SEE IT DEPICTS THE PARKING AREA AND THE

1 PLAYGROUND EQUIPMENT AND THE SHED AND THE PICNIC TABLES AND
2 THEN THIS IS WHERE THE LITTLE HILL IS THAT GOES UP INTO THE
3 CEMETERY. DO YOU RECOGNIZE THIS?

4 A IT LOOKS FAMILIAR.

5 Q WOULD YOU SAY THIS IS AN ACCURATE DEPICTION OF THIS AREA
6 WHERE THIS ALL TOOK PLACE?

7 A YEAH. IT'S SIMILAR TO IT.

8 MR. SHUPPER: OKAY. I'D LIKE TO MARK THIS AS ROBERT
9 JAMES'S EXHIBIT NO. 1 FOR IDENTIFICATION.

10 MR. SNEED: IF I COULD JUST TAKE A LOOK AT IT.

11 MR. SHUPPER: YEAH. I'M SORRY.

12 THE COURT: SURE.

13 MR. SNEED: THAT'S ALL RIGHT.

14 THE COURT: ALL RIGHT. AS YOU'RE WALKING PAST ME, MR.
15 SHUPPER, LET ME TAKE A LOOK. OKAY.

16 MR. SHUPPER: THIS IS A COPY, JUDGE.

17 THE COURT: I KNOW. I JUST WANT TO SEE WHICH ONE I'M
18 LOOKING FOR.

19 MR. SHUPPER: YES, SIR. THIS IS A SORT OF A SHORTER, A
20 NARROWER VIEW, AND THE OTHER ONE IS THE BROAD VIEW, YOUR
21 HONOR.

22 THE COURT: ALL RIGHT. THANK YOU.

23 MR. SHUPPER: WITH THE BALLPARK.

24 (DEFENDANT ROBERT JAMES'S EXHIBIT NO. 1, SKETCH, MARKED FOR
25 IDENTIFICATION ONLY)

1 Q AND, M... , I'M GOING TO SHOW YOU —

2 THE COURT: OKAY. GO AHEAD.

3 Q — ANOTHER, A BIGGER SHOT OF THE WHOLE AREA. THIS WOULD BE
4 GERMANY STREET. HERE IS THE BALL FIELDS AND THE PARKING LOT,
5 AND THEN YOU SEE THESE WIGGLY LINES. THERE IS ACTUALLY BIG
6 TREES. IN OTHER WORDS, THIS IS THE LITTLE SHED AND THE
7 PLAYGROUND EQUIPMENT AND SUCH. BUT THIS IS LIKE AN OVERVIEW.
8 IF YOU WERE LOOKING FROM A HELICOPTER LOOKING DOWN, THIS
9 WOULD BE TREE COVERING. IS THAT ACCURATE TO YOU?

10 A I CAN'T SAY THAT, BECAUSE IT DIDN'T SEEM TO BE THAT MANY
11 TREES. I MEAN. ~~MADE~~ FROM THE SKY MAYBE IT LOOKED LIKE THAT.

12 Q YES, MA'AM.

13 A BUT I DIDN'T SEE THAT VIEW.

14 Q AND THAT'S THE VIEW THAT DEPICTS IT AS AN OVERHEAD VIEW.

15 A OKAY.

16 Q ALL RIGHT. I'D LIKE TO MARK THIS AS ROBERT JAMES'S NO. 2.

17 THE COURT: WELL, YOU KNOW, I DON'T KNOW — IF YOU'RE
18 SEEKING TO PUT IT IN EVIDENCE, I DON'T KNOW IF THERE'S AN
19 OBJECTION. IF YOU'RE SEEKING TO HAVE IT MARKED FOR
20 IDENTIFICATION, THERE'S A DIFFERENT STORY. ALL RIGHT. BUT
21 GO AHEAD AND MARK IT FOR IDENTIFICATION. ALL RIGHT.
22 (DEFENDANT ROBERT JAMES'S EXHIBIT NO. 2, SKETCH, MARKED FOR
23 IDENTIFICATION ONLY)

24 Q MS. JAMES (SIC). EXCUSE ME. MS. , ON THE FIRST
25 PHOTOGRAPH (SIC), NO. 1, DO YOU RECOGNIZE THE PLAYGROUND

1 EQUIPMENT AND THE BENCH? CAN YOU SHOW ME AND SHOW THE COURT
2 REPORTER WHETHER YOU WERE — WHERE YOU WERE WHEN THE TWO
3 PEOPLE FIRST CAME UP TO YOU IN RELATION TO THE UTILITY SHED
4 AND THE —

5 A I WAS SITTING ON THE PICNIC TABLE WHICH DIDN'T SEEM TO BE
6 THAT FAR FROM THE PARKING LOT. BUT I WAS SITTING ON THE
7 PICNIC TABLE. BUT IT SEEMED TO HAVE BEEN A LITTLE OVER MORE
8 TO THE PARKING LOT THAN THAT.

9 Q THIS ISN'T TO EXACT SCALE.

10 A OKAY. WELL, I WAS SITTING ON THE PICNIC TABLE.

11 Q OKAY. AND THEN AT THE TIME YOU WERE SITTING THERE YOU HAD
12 TESTIFIED THAT THE BALL GAME WAS OVER?

13 A YES.

14 Q AND THE LIGHTS HAD GONE OUT?

15 A THEY HADN'T GONE OUT AT FIRST. THERE WERE PEOPLE OVER IN THE
16 PARKING LOT TALKING AND EVERYTHING. AND EVENTUALLY THEY WENT
17 OUT. I CAN'T SAY WHEN. BUT EVENTUALLY THEY DID.

18 Q OKAY. AND IN THE LARGER PHOTOGRAPH (SIC), THE BIGGER VIEW, I
19 THINK THIS SHOWS PROBABLY A BETTER VIEW.

20 THE COURT: YOU KEEP REFERRING TO THEM AS PHOTOGRAPHS.
21 THEY'RE NOT PHOTOGRAPHS.

22 MR. SHUPPER: I'M SORRY. SKETCH, YOUR HONOR. I'D LIKE
23 TO —

24 THE COURT: AND REFER TO THEM BY EXHIBIT NUMBER.

25 MR. SHUPPER: DEFENDANT'S EXHIBIT ROBERT JAMES NO. 2.

1 THE COURT: OKAY. GOOD.

2 Q (BY MR. SHUPPER) THE SKETCH SHOWING THE BROADER OVERVIEW
3 WHICH SHOWS THE BALL FIELDS AND THE PARKING LOT AND THE
4 TENNIS COURTS IN THE AREA WHERE THIS INCIDENT OCCURRED, AND
5 THEN DOWN HERE WHERE THE LITTLE BUILDING IS THAT YOU
6 INDICATED AND THEN ON THE WAY UP TO GERMANY STREET.

7 A OKAY.

8 Q ALL RIGHT. NOW, IF I UNDERSTAND YOU CORRECTLY, YOU ARRIVED
9 AT THE PARK WITH WINFRED. YOU ALL SAT DOWN FOR A WHILE WHILE
10 THE BALL GAME WAS GOING ON. YOU LEFT. YOU CAME BACK?

11 A MM-HMM (AFFIRMATIVE).

12 Q AND THE BALL GAME WAS BREAKING UP?

13 A MM-HMM (AFFIRMATIVE).

14 Q AND THE LIGHTS WENT OUT?

15 A I WOULDN'T SAY THEY WENT OUT AT THAT MOMENT, BECAUSE PEOPLE
16 WERE STILL OUT THERE. EVENTUALLY THEY DIED DOWN.

17 Q BUT EVENTUALLY —

18 A THE LIGHT —

19 Q — WHEN I'M TALKING ABOUT THE LIGHTS, I'M TALKING ABOUT THE
20 LIGHTS —

21 A ON THE BALL FIELD.

22 Q — ON THE BALL FIELD. I'M NOT TALKING ABOUT THIS LIGHT OVER
23 ON THE PARKING LOT LIGHTS OR THESE LIGHTS ALONG THE STREET.

24 A OKAY.

25 Q OKAY. NEAR THE SCHOOL. YOU UNDERSTAND WHAT I'M REFERRING

1 TO?

2 A YES.

3 Q ALL RIGHT. AND SO THE BALLPARK LIGHTS WENT OUT?

4 A OKAY.

5 Q AND IT WAS SOMETIME AFTER THAT THAT THE TWO MEN FIRST
6 APPROACHED YOU ON THE PICNIC TABLE AND ASKED WINFRED FOR A
7 LIGHT. IS THAT CORRECT?

8 A THEY DID APPROACH US AND ASK FOR A LIGHT SOMETIME AFTER
9 EVERYONE HAD LEFT.

10 Q OKAY. AND THE BIG LIGHTS IN THE BALLPARK WERE OUT?

11 A I'M NOT GOING TO SAY THAT BECAUSE I CAN'T SAY THAT. BUT THE
12 LIGHTS GO OUT. I'M NOT SAYING IF IT HAPPENED BEFORE OR
13 AFTER, BUT THEY DID THEN.

14 Q WHAT TIME WOULD YOU SAY THAT YOU AND WINFRED FIRST GOT TO THE
15 BALLPARK?

16 MR. GASSER: OBJECTION, YOUR HONOR. RELEVANCY.

17 THE COURT: YEAH. I'M REAL -- MR. SHUPPER, I DON'T MIND
18 LETTING YOU FELLOWS HAVE SOME LATITUDE. BUT YOU'RE TESTING
19 HER ABILITY TO IDENTIFY THE ALLEGED PERPETRATORS. AND THIS
20 IS GETTING REALLY PRETTY FAR AFIELD UNLESS YOU CAN TELL ME
21 WHY IT RELATES TO THIS.

22 MR. SHUPPER: YOUR HONOR, THE TIME SEQUENCE.

23 THE COURT: WELL, HURRY UP. IT'S EASIER TO GO AHEAD AND
24 DO IT THAN IT IS TO -- SO LET'S MOVE IT ON, PLEASE.

25 MR. SHUPPER: OKAY.

1 THE COURT: WHAT TIME DID YOU GET THERE?

2 A I'D SAY IT WAS AROUND 10 SOMETHING. IF I'M NOT MISTAKEN, IT
3 WAS AROUND 10 SOMETHING.

4 Q OKAY. AND THEN YOU LEFT AND RETURNED. AND I BELIEVE YOU
5 SAID YOU WERE GONE ABOUT 15 MINUTES?

6 A FIFTEEN MINUTES, YES.

7 Q OR MAYBE ---

8 A AROUND 15 MINUTES, WENT TO BURGER KING AND CAME BACK.

9 Q HOW LONG AFTER YOU RETURNED FROM THE BURGER KING DID YOU SEE
10 THIS FIRST GROUP OF FOLKS AND DID THIS INCIDENT BEGIN?

11 A IF I'M NOT RECALLING, I WAS NOT WEARING A WATCH. I WAS NOT
12 KEEPING UP WITH THE TIME. I WOULD SAY AFTER EVERYONE -- IT
13 COULD HAVE BEEN 10, 15 MINUTES. IT'S HARD FOR ME TO SAY. I
14 MEAN, WE WERE SITTING THERE. I DIDN'T REALLY FEEL LIKE I HAD
15 TO KEEP UP WITH TIME. I REALLY DIDN'T FEEL LIKE THIS WAS
16 GOING HAPPEN TO ME. SO I WASN'T WATCHING A WATCH AND WAITING
17 FOR SOMEONE TO COME AND ASSAULT ME.

18 Q I UNDERSTAND. I UNDERSTAND. ALL RIGHT. CAN YOU RECALL ANY
19 OTHER ITEMS OF CLOTHING OR DESCRIPTIONS OF YOUR ASSAILANTS
20 NOW? I KNOW YOU SAID YOU DIDN'T OFFER ANY AT THE TIME ---

21 THE COURT: DON'T TELL HER WHAT SHE DID OR DID NOT. ASK
22 HER THE QUESTION.

23 Q DO YOU RECALL ANY OTHER DESCRIPTIVE FEATURES OF YOUR
24 ASSAILANTS?

25 A THE ONLY THING I CAN RECALL IS SEEING THEIR FACE. I REMEMBER

1 THAT MR. KENNETH HAD ON A RED JERSEY, AND I REMEMBER THAT
2 VERY CLEARLY BECAUSE, LIKE I SAY, HE SPENT A LOT OF TIME AT
3 THAT ASSAULT TIME AROUND ME AND ASSAULTED ME. AS FAR AS
4 CLOTHING, I DID NOT DESCRIBE CLOTHING, BUT I DID SEE THESE
5 TWO MEN'S FACE, IF THAT'S WHAT YOU'RE ASKING ME. AND I HAVE
6 NO DOUBT IN MY MIND THAT I HAD -- I SAW THEIR FACES.

7 Q WHEN INVESTIGATOR THOMAS CALLED YOU ON JUNE 6TH, DID HE TELL
8 YOU WHY HE WANTED TO MEET WITH YOU?

9 A HE TOLD ME TO COME DOWN, THAT HE WANTED ME TO LOOK AT SOME
10 PHOTOGRAPHS.

11 Q DID HE SAY HE HAD SOME ADDITIONAL SUSPECTS?

12 A HE DID NOT TELL ME ANYTHING. HE JUST WANTED ME TO LOOK AT
13 SOME PHOTOGRAPHS. AND I WENT DOWN AND I LOOKED AT THE
14 PHOTOGRAPHS, AND I IDENTIFIED WHO I COULD, AND WHO I COULD
15 NOT I DIDN'T.

16 Q OKAY. AND THAT'S WHEN HE SHOWED YOU THIS COLORED PHOTO
17 SPREAD AS OPPOSED TO THE --

18 A OTHER?

19 Q -- XEROXED COPY?

20 A I DID NOT LOOK AT THAT ONE ANY MORE. I LOOKED AT THAT ONE
21 AND ANOTHER ONE.

22 Q YOU LOOKED AT THIS ONE?

23 A YES. AND I LOOKED AT THAT ONE --

24 Q AND ANOTHER ONE ON THAT DATE?

25 A ON THAT DATE. AND HE CAME OUT TO MY HOUSE AND HE BROUGHT

1 ANOTHER PHOTOGRAPH, WHICH I WAS NOT ABLE TO IDENTIFY ANYBODY.

2 Q AND THIS WAS TEN DAYS AFTER YOU WERE SUPPOSED TO MEET ON THE
3 6TH, RIGHT? THIS WAS —

4 A WHATEVER THE DATE WAS. I'M NOT SURE.

5 Q THEREAFTER. MAYBE THE 18TH. MAYBE THE 20TH. ALL RIGHT. DO
6 YOU NOTICE IN THESE PHOTOGRAPHS ANYTHING UNUSUAL FROM THE
7 QUALITY OF THESE PHOTOGRAPHS?

8 A WHAT DO YOU MEAN DO I NOTICE ANYTHING UNUSUAL?

9 Q WELL, DO YOU SEE ANY DETAILS THAT STAND OUT; FOR INSTANCE,
10 ANY LINES OR —

11 A I MEAN, THEY LOOK THE SAME.

12 Q WELL, DO YOU NOTICE THESE LINES HERE, LINES ACROSS JUST ABOUT
13 A QUARTER INCH FROM THE BOTTOM AND THE TOP OF EACH
14 PHOTOGRAPH?

15 A WHAT TYPE OF LINES? ARE YOU ASKING ME THESE?

16 Q YES, MA'AM. THIS LINE. SEE AT THE NECK LINE OF MY CLIENT,
17 THE NECK LINE OF NUMBER 1, THE CHIN AND THE NECK OF NUMBER 4,
18 THE CHIN OF NUMBER 5, THE NECK OF NUMBER 6 AND THE NECK OF
19 NUMBER 3; DO YOU NOTICE THOSE LINES?

20 A I DIDN'T REALLY LOOK AT THE LINES. I LOOKED AT THE FACES I
21 MEAN.

22 Q BUT DO YOU NOTICE THE LINES NOW?

23 A I MEAN, THEY LOOK THE SAME TO ME. THAT'S HOW HE GAVE THEM TO
24 ME.

25 Q OKAY. DOES — AS FAR AS DESCRIBING NUMBER 6, HOW WOULD YOU

1 DESCRIBE HIS NECK?

2 A I WOULD SAY AT THAT TIME —

3 THE COURT: NUMBER 6 ON WHICH EXHIBIT?

4 MR. SHUPPER: ON STATE'S EXHIBIT 4.

5 THE COURT: WHICH IS THE ONE THAT YOUR CLIENT IS NUMBER
6 2 ON?

7 MR. SHUPPER: YES, SIR.

8 THE COURT: OKAY. GO AHEAD.

9 Q (BY MR. SHUPPER) IT APPEARS THAT THAT MAN HAS VIRTUALLY NO
10 NECK, DOESN'T IT?

11 A WELL, I WOULD SAY SO. I MEAN, I'M NOT — I DIDN'T LOOK AT
12 HIS NECK.

13 Q OKAY. AND FOR NUMBER 5, IT APPEARS THAT HE HAD VIRTUALLY NO
14 NECK, DOESN'T IT?

15 A YES.

16 Q AND FOR NUMBER 4, THE SAME THING; HE HAS VIRTUALLY NO NECK,
17 DOESN'T HE?

18 A YOU COULD SAY THAT. I MEAN, —

19 Q WOULD YOU SAY THAT?

20 A I WOULDN'T SAY THAT BECAUSE THAT WAS NOT MY FIRST INITIATIVE,
21 TO LOOK AT THE NECKS. MY INITIATIVE WAS TO LOOK AT THE FACES
22 AND THEN IDENTIFY THE FACES.

23 Q I UNDERSTAND YOUR INITIATIVE.

24 A BUT I CAN NOT ANSWER THE QUESTION ABOUT THE NECKS.

25 Q BUT YOU DO NOTICE THAT THOSE THREE MEN ON THE BOTTOM ROW, 4,

1 5 AND 6, DON'T SEEM TO HAVE ANY PROMINENT NECK FEATURES?

2 A OKAY.

3 Q SHORT. AND NUMBER 3, HE HAS A LITTLE MORE THAN 4, 5 AND 6
4 BUT NOT VERY MUCH. WOULD YOU AGREE WITH THAT?

5 A I WOULD AGREE WITH IT.

6 Q AND NUMBER 1, NOW, HE'S GOT A LITTLE MORE THAN 4, 5, 6 AND 3,
7 DOESN'T HE?

8 A MM-HMM (AFFIRMATIVE).

9 Q BUT NUMBER 2, I MEAN, HE ALMOST LOOKS LIKE A GIRAFFE COMPARED
10 TO THOSE OTHER FIVE, DOESN'T HE, WITH THAT LONG NECK?

11 A YEAH. HE HAS A LONG NECK.

12 Q OKAY. SO YOU WOULD NOTE THAT THERE'S A DISTINCTIVE
13 DIFFERENCE BETWEEN THE FIVE PHOTOS YOU DIDN'T IDENTIFY AND
14 MR. JAMES?

15 A I MEAN, THEY LOOK DIFFERENT, PERIOD. THE FACES LOOK TOTALLY
16 DIFFERENT. SO THE NECK HAS NOTHING TO DO WITH IT. IT'S THE
17 FACES. NONE OF THOSE FACES LOOK THE SAME TO ME.

18 Q YES, MA'AM. BUT YOU DO ADMIT THAT THE NECKS ARE ALL
19 DIFFERENT?

20 A (NO RESPONSE)

21 Q YOU HAD NEVER -- HAD YOU EVER SEEN ROBERT JAMES BEFORE, MY
22 CLIENT?

23 A I NEVER SAW HIM BEFORE. I NEVER SAW ANY OF THEM BEFORE.

24 Q OKAY. HAVE YOU SEEN ANY OF THEM SINCE THAT TIME SINCE BEFORE
25 THE PHOTOGRAPH LINE-UP'S?

1 A NO. I REALLY WASN'T LOOKING TO.

2 MR. SHUPPER: IF THE COURT WILL —

3 THE COURT: SURE.

4 MR. SHUPPER: — GRANT ME A MOMENT, PLEASE. NOTHING
5 FURTHER, YOUR HONOR.

6 THE COURT: OKAY. MR. GASSER?

7 MR. GASSER: NO, SIR.

8 THE COURT: OKAY. ALL RIGHT. THANK YOU, MA'AM. YOU
9 CAN STEP DOWN. OKAY. WE'VE GOT ONE OTHER IDENTIFICATION
10 WITNESS. IS THAT CORRECT?

11 MR. GASSER: YES, SIR.

12 THE COURT: AND THAT WAS MR. BULL. WE'RE GOING TO TAKE
13 ABOUT FIVE MINUTES. THEN WE —

14 MR. GASSER: NO. I'M SORRY. YOUR HONOR, MR. BULL DOES
15 NOT MAKE ANY IDENTIFICATIONS. THERE WOULD BE JUST
16 INVESTIGATOR THOMAS SPECIFICALLY FOR THE LINE-UPS.

17 THE COURT: MR. THOMAS. BRING MR. THOMAS IN. LET'S GET
18 THAT DONE.

19 MR. GASSER: INVESTIGATOR TOMMY THOMAS.

20 THE COURT: MS. PENDERGRASS, WHAT WE'RE GOING TO TELL
21 THE JURY TOMORROW, BECAUSE WE'RE NOT GOING TO BE FINISHED
22 WITH THIS BY TOMORROW, WE'RE GOING TO TELL THEM WHEN THEY
23 COME IN, JUST TURN THEM BACK AROUND UNTIL ABOUT NOON. OKAY?
24 OR SUCH TIME AS I FIGURE THAT WE CAN FINISH THIS.

25 THE CLERK: YES, SIR.

1 THE COURT: BECAUSE IT'S GOING TO TAKE -- IF WE GO 'TIL
2 6 OR 6:30 TONIGHT, WE'RE STILL NOT GOING TO FINISH ALL THESE
3 THINGS.

4 THOMAS THOMAS, BEING FIRST DULY
5 SWORN, TESTIFIED AS FOLLOWS: (IN CAMERA)

6 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
7 FOR THE RECORD.

8 MR. THOMAS: MY NAME IS THOMAS THOMAS.

9 DIRECT EXAMINATION BY MR. GASSER:

10 Q FOR THE RECORD, INVESTIGATOR THOMAS, YOU ARE A MAJOR CRIMES
11 INVESTIGATOR WITH THE CITY OF COLUMBIA. IS THAT CORRECT?

12 A YES, SIR.

13 Q DID YOU HAVE AN OPPORTUNITY TO RESPOND TO T. S. MARTIN PARK
14 DURING THE EARLY MORNING HOURS OF WEDNESDAY, MAY THE 29TH,
15 1996?

16 A YES, SIR, I DID.

17 Q SUBSEQUENT TO YOUR RESPONDING THERE, RATHER THAN GETTING INTO
18 THE WHOLE DETAIL, FOR THIS OR PARTICULAR PURPOSE, WERE YOU
19 ABLE TO COME UP WITH INFORMATION FROM SEVERAL OFFICERS THAT
20 LED YOU TO A SUSPECT BY THE NAME OF KENNETH JAMES?

21 A YES, SIR, WE DID.

22 Q AND WAS THAT WITHIN SEVERAL HOURS OF THE INCIDENT?

23 A YES, SIR, IT WAS.

24 Q NOW, AS A RESULT OF RECEIVING THAT INFORMATION FROM SEVERAL
25 OFFICERS, DID YOU REQUEST THAT A PHOTOGRAPHIC LINE-UP BE MADE

1 WITH KENNETH JAMES'S PHOTOGRAPH?

2 A YES, SIR, WE DID.

3 Q I SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT NO. 2. DO YOU
4 RECOGNIZE THAT LINE-UP?

5 A YES, SIR, I DO.

6 Q NOW, I NOTICE THAT THOSE AREN'T ACTUAL PHOTOGRAPHS. IS THAT
7 CORRECT?

8 A YES, SIR. THAT'S CORRECT.

9 Q IS THAT THE LINE-UP THAT YOU SUBSEQUENTLY -- THE ACTUAL
10 LINE-UP THOUGH IN THAT FORM THAT YOU SUBSEQUENTLY WERE ABLE
11 TO SHOW MS. SOMETIME BETWEEN THE HOURS OF 11 AND
12 12 NOON ON THAT SAME DAY, MAY THE 29TH OF 1996?

13 A YES, SIR. THIS WAS A LINE-UP. IT'S A BLACK AND WHITE
14 LINE-UP OF THE ACTUAL PHOTOGRAPHS THAT THEY USED FOR US. IT
15 COMES OFF THE MACHINE LOOKING JUST LIKE THIS.

16 Q IS THERE ANY REASON WHY YOU WOULD USE A BLACK AND WHITE
17 LINE-UP RATHER THAN THE ACTUAL PHOTOGRAPHS? WHAT IS IT THAT
18 MAY BE SEEN SOMETIMES ON THE COLORED PHOTOGRAPHS IF YOU HAVE
19 A PHOTOGRAPH OF AN INDIVIDUAL THAT YOU WANT TO MAKE INTO
20 BLACK AND WHITE? DO YOU UNDERSTAND THAT QUESTION?

21 A NOT EXACTLY. I GUESS YOU WOULD HAVE -- YOU'VE GOT DIFFERENT
22 TYPE OF SKIN TONES MAYBE. YOU MAY HAVE SCARS OR SOMETHING,
23 MAYBE SOME MARKS OR SOMETHING IDENTIFIABLE IN ONE OR THE
24 OTHER.

25 Q ON THE LINE-UP THAT YOU USED FOR STATE'S EXHIBIT NO. 2, IS

1 THERE ANY WAY TO DETERMINE THE COLOR OF ANY OF THE CLOTHING
2 THAT THE SIX BLACK MALES — THERE ARE SIX BLACK MALES,
3 CORRECT?

4 A THAT'S CORRECT.

5 Q NOW, DID YOU HAVE AN OPPORTUNITY TO MEET WITH *victim* AT
6 THE COLUMBIA POLICE DEPARIMENT?

7 A YES, SIR, I DID.

8 Q AND WHO WAS WITH YOU WHEN YOU MET WITH MS. *victim*?

9 A INVESTIGATOR BENSON.

10 Q DESCRIBE FOR THE JUDGE THE CIRCUMSTANCES SURROUNDING YOU
11 SHOWING MS. *victim* STATE'S EXHIBIT NO. 2.

12 A MS. *victim* HAD COME IN THAT MORNING AND HAD GIVEN US A WRITTEN
13 STATEMENT. AND AT THAT TIME WE HAD TOLD HER THAT WE HAD SOME
14 PICTURES THAT WE WOULD LIKE FOR HER TO LOOK AT, JUST FOR HER
15 TO TAKE HER TIME, LOOK AT THE PICTURES. IF SHE SAW THE
16 INDIVIDUAL OR AN INDIVIDUAL IN THERE THAT HAD ATTACKED HER TO
17 POINT HIM OUT TO US. IF SHE DID NOT, THERE WAS A POSSIBILITY
18 THAT HE WASN'T IN THERE.

19 Q DID YOU — WERE YOU AWARE THAT SHE HAD BEEN TO RICHLAND
20 MEMORIAL HOSPITAL FOR A CRIMINAL SEXUAL ASSAULT PROTOCOL?

21 A RIGHT. YES, SIR.

22 Q AND THEN SUBSEQUENTLY WAS BROUGHT TO YOU BY A FRIEND I
23 BELIEVE. IS THAT CORRECT? AT THE COLUMBIA POLICE
24 DEPARIMENT?

25 A THAT'S RIGHT.

1 Q DID YOU HAVE ANY DIFFICULTY, INVESTIGATOR THOMAS, IN
2 UNDERSTANDING HER WHEN YOU ALL WERE COMMUNICATING DURING THE
3 TAKING OF THE STATEMENT PRIOR TO SHOWING THE PHOTO LINE-UP?

4 A NO, SIR.

5 Q HAD SHE BEEN VERY DROWSY OR SLIPPING IN AND OUT OF SLEEP,
6 WOULD YOU HAVE ATTEMPTED TO SHOW HER A PHOTOGRAPHIC LINE-UP?

7 A NO, SIR.

8 Q SO HOW WOULD YOU CHARACTERIZE HER DEemeanOR WITH REGARDS TO
9 THE EYE CONTACT YOU HAD WITH HER WHILE YOU WERE DISCUSSING
10 EITHER TAKING HER STATEMENT? HOW WOULD YOU CHARACTERIZE
11 THAT?

12 A SHE WAS CALM.

13 Q WHEN YOU GAVE HER STATE'S EXHIBIT NO. 2, TELL US, PLEASE,
14 WHAT SHE DID, IF ANYTHING?

15 A SHE LOOKED AT THE LINE-UP AND SHE IDENTIFIED THE DEFENDANT'S
16 PICTURE FROM THE LINE-UP.

17 Q AND DID YOU DO ANYTHING TO MEMORIALIZE THE FACT THAT SHE
18 IDENTIFIED -- SHOWING YOU STATE'S EXHIBIT NO. 3, DID YOU DO
19 ANYTHING TO MEMORIALIZE THE FACT THAT SHE HAD IDENTIFIED A
20 SUSPECT IN THE ASSAULT THAT HAD OCCURRED SOME 11 HOURS
21 PREVIOUSLY?

22 A YES, SIR. WE FILLED OUT THE PHOTO LINE-UP FORM.

23 Q OKAY. AND WHO DID SHE PICK OUT?

24 A SHE PICKED OUT PHOTO NUMBER 6.

25 Q AND NUMBER 6 IS WHOM?

1 A IT IS KENNETH JAMES.

2 Q HAVE YOU HAD AN OPPORTUNITY TO LOOK AT THE REAL PHOTOGRAPH OF
3 PHOTO NUMBER 6 THAT ACTUALLY HAS THE NAME, HEIGHT, WEIGHT,
4 DATE OF BIRTH OF KENNETH JAMES?

5 A YES, SIR.

6 Q OF COURSE THAT WASN'T INCLUDED ON STATE'S EXHIBIT 2 WHEN YOU
7 SHOWED HER THE LINE-UP, RIGHT?

8 A THAT'S CORRECT.

9 Q ANY DOUBT IN YOUR MIND THAT NUMBER 6 THAT *Victim* PICKED
10 OUT WAS IN FACT THE DEFENDANT KENNETH JAMES?

11 A THAT'S CORRECT.

12 Q AND THEN FOR THE RECORD, SO THE RECORD IS COMPLETE, IS HE IN
13 THE COURTROOM HERE TODAY?

14 A YES, SIR, HE IS.

15 Q AND WOULD YOU IDENTIFY HIM FOR THE RECORD?

16 A HE IS SITTING NEXT TO MR. STRICKLER.

17 Q NOW, DID YOU OR DID ANY OFFICER IN YOUR PRESENCE SUGGEST IN
18 ANY MANNER TO MS. *Victim* TO PICK OUT ANYBODY IN THIS
19 PARTICULAR LINE-UP?

20 A NO, SIR, WE DID NOT.

21 Q HAD YOU DISCUSSED WITH MS. *Victim* ANY OF THE EVIDENCE THAT THE
22 COLUMBIA POLICE DEPARTMENT WAS COLLECTING EARLIER THAT
23 MORNING; SAY, ANY OF THE RESULTS OF THE DOG TRACKING? HAD
24 YOU DISCUSSED THAT WITH HER?

25 A NO, SIR.

1 Q THE AMOCO VIDEOTAPE, HAD YOU DISCUSSED THAT WITH HER?

2 A NO, SIR.

3 Q SO WAS ANY EVIDENCE WHATSOEVER DISCUSSED WITH HER, ANY NAMES
4 GIVEN, ANYTHING AT ALL BEFORE YOU WERE SHOWING HER STATE'S
5 EXHIBIT NO. 2?

6 A NO, SIR.

7 Q NOW, APPROXIMATELY THREE WEEKS LATER, DID YOU HAVE AN
8 OPPORTUNITY TO, ON JUNE THE 18TH, TO MEET WITH MS.
9 AGAIN?

10 A YES, SIR.

11 Q OKAY. AND WHERE DID THAT MEETING TAKE PLACE?

12 A JUST A SECOND. LET ME CHECK. I THINK IT -- I THINK IT WAS
13 AT THE POLICE DEPARTMENT AGAIN.

14 Q OKAY. AND I SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT NO.
15 4. DO YOU RECOGNIZE STATE'S EXHIBIT NO. 4 AND STATE'S
16 EXHIBIT NO. 5, INVESTIGATOR THOMAS?

17 A YES, SIR, I DO. THEY ARE -- IT'S A PHOTO LINE-UP OF ROBERT
18 JAMES, AND IT'S ANOTHER PHOTO LINE-UP SHEET.

19 Q WHEN YOU PRESENTED STATE'S EXHIBIT NO. 4 TO MS. BROWN; AGAIN,
20 WHAT, IF ANYTHING, DID YOU ASK OF HER JUST PRIOR TO SHOWING
21 HER THE PHOTO SPREAD?

22 A I JUST TOLD HER TO TAKE HER TIME AND LOOK AT EACH PICTURE,
23 AND IF SHE SEES SOMEBODY IN THE PICTURE TO POINT HIM OUT TO
24 US.

25 Q AND WAS SHE ABLE TO IDENTIFY ANOTHER ONE OF HER ASSAILANTS

1 FROM THREE WEEKS BEFORE?

2 A YES, SIR, SHE DID.

3 Q WHO DID SHE IDENTIFY?

4 A PHOTO NUMBER 2 WHICH WOULD BE THE OTHER DEFENDANT.

5 Q MR. ROBERT JAMES?

6 A YES, SIR.

7 Q DID YOU GET HER ON STATE'S EXHIBIT NO. 5 TO MEMORIALIZE THE
8 FACT THAT SHE IDENTIFIED NUMBER 2?

9 A YES, SIR, WE DID.

10 Q NOW, DID YOU OR ANYONE IN YOUR PRESENCE EVER INDICATE TO HER
11 THAT THE BROTHER OF THE PERSON THAT SHE PICKED OUT ON MAY THE
12 29TH, 1996, WAS INCLUDED IN STATE'S EXHIBIT NO. 4?

13 A NO, SIR.

14 Q LATER ON THAT SAME DAY DID YOU HAVE AN OPPORTUNITY TO SHOW
15 HER WHAT YOU REFER TO AS PHOTO LINE-UP NUMBER 3, THAT SAME
16 DAY, ON JUNE THE 18TH?

17 A YES, SIR.

18 Q WAS SHE ABLE TO IDENTIFY ANYBODY IN THAT LINE-UP?

19 A NO, SIR.

20 Q WAS EITHER KENNETH JAMES OR ROBERT JAMES INCLUDED IN THAT AS
21 THE TARGET OF THAT LINE-UP?

22 A NO, SIR.

23 Q ABOUT SEVEN OR EIGHT MONTHS LATER, IN FEBRUARY OF 1997, DID
24 YOU HAVE AN OPPORTUNITY TO GO TO HER RESIDENCE AND SHOW HER
25 WHAT YOU'VE DESIGNATED LINE-UP 4 AND LINE-UP 5?

1 A YES, SIR, WE DID.

2 Q AND WAS SHE ABLE TO IDENTIFY ANYONE IN THOSE LINE-UPS?

3 A NO, SIR.

4 Q WAS THE DEFENDANTS KENNETH JAMES OR ROBERT JAMES INCLUDED IN
5 LINE-UPS 4 OR 5?

6 A NO, SIR.

7 Q AND YOU YOURSELF HAD AN OPPORTUNITY TO GO TO THE PARKING LOT
8 OF T. S. MARTIN PARK. IS THAT CORRECT?

9 A YES, SIR, I DID.

10 Q AND WHEN -- DID YOU HAVE AN OPPORTUNITY -- SHOWING YOU A
11 DIAGRAM -- DID YOU HAVE AN OPPORTUNITY TO GO TO THE PICNIC
12 TABLE AREA? I KNOW YOU WEREN'T IN THE COURTROOM. BUT DID
13 YOU GO TO A PICNIC TABLE AREA JUST OFF THE PARKING LOT OF T.
14 S. MARTIN PARK?

15 A YES, SIR.

16 Q AND WALK AROUND THE GYMNASIUMS (SIC) AND THAT SORT OF -- OR
17 THE JUNGLE GYMS AND THAT SORT OF THING?

18 A YES, SIR.

19 Q AND DID YOU HAVE -- DESCRIBE WHAT THE LIGHTING WAS LIKE
20 COMING OUT OF THE PARKING LOT OF THE SCHOOL.

21 A THE LIGHTING IS GOOD. IT'S LIKE THERE ARE STREET LIGHTS AND
22 STUFF OVER BY THE PARKING LOT, AND IT'S GOOD IN THAT
23 PARTICULAR AREA.

24 Q AS YOU GET CLOSER TO THE TREE LINE WHERE THE CEMETERY IS,
25 DOES THE LIGHTING, DOES IT GET TO BE MORE DARKER WHEN YOU

1 APPROACH THE CEMETERY AREA?

2 A YES, SIR, IT DOES.

3 Q DURING YOUR TAKING OF THE INCIDENT REPORT, WERE YOU ABLE TO

4 -- DID YOU ATTEMPT TO OBTAIN FROM WINFRED BULL AND/O *Victim*

5 THE GENERAL DESCRIPTIONS OF HEIGHT AND WEIGHT OF THE
6 FIVE INDIVIDUALS, AND DID YOU INCLUDE THAT ON YOUR INITIAL
7 INCIDENT REPORT?

8 A YES, SIR.

9 Q AND SUSPECT NO. 1 ON THAT FIRST PAGE OF YOUR INCIDENT REPORT

10 -- SUFFICE IT TO SAY ALL FIVE ASSAILANTS WERE BLACK MALES.

11 IS THAT CORRECT?

12 A YES, SIR, THEY WERE.

13 Q AND YOU INDICATED THAT SUSPECT NO. -- OR YOU -- WHO

14 DESIGNATED THEM SUSPECTS 1, 2, 3, 4 AND 5. WHO DID THAT?

15 A I THINK I DID.

16 Q AND DID YOU GET FIVE GENERAL DESCRIPTIONS OF THE FIVE BLACK
17 MALES WHO WERE THE SUSPECT ASSAILANTS?

18 A YES, SIR, WE DID.

19 Q AND JUST FOR THE RECORD, WHAT WERE THE FIVE DESCRIPTIONS?

20 A I DON'T HAVE A COPY OF IT HERE IN FRONT OF ME, BUT THEY WERE
21 ALL APPROXIMATELY THE --

22 Q LET ME ASK YOU, IS THIS A COPY OF YOUR INCIDENT REPORT?

23 A YES, SIR, IT IS.

24 Q OKAY. SO THE FIRST GENERAL DESCRIPTION YOU GAVE WAS WHAT?

25 A MALE BLACK; AGE, APPROXIMATELY 20; FIVE-TEN, 150 POUNDS.

1 Q AND THE SECOND ONE?

2 A WAS MALE BLACK; AGE 20 TO 25, FIVE-NINE, 165.

3 Q THIRD ONE?

4 A MALE BLACK AGED 22, FIVE-NINE, 180.

5 Q FOURTH ONE?

6 A MALE BLACK AGED 25, FIVE-EIGHT, 175.

7 Q AND THE FIFTH ONE?

8 A MALE BLACK, AGE 17, FIVE-TEN, 145 I THINK.

9 Q 145, OR IS THAT 165?

10 A THAT'S 165. I'M SORRY. IT WAS A LITTLE TOO CLOSE TO MY
11 FACE.

12 Q AND IN DECEMBER OF 1996, DECEMBER 15TH OF 1996, DID YOU HAVE
13 AN OPPORTUNITY TO FILL OUT THE BOOKING REPORT ON THE CRIMINAL
14 SEXUAL CONDUCT IN THE FIRST DEGREE CHARGE OF KENNETH JAMES?

15 A YES, SIR, I DID.

16 Q AND HE LISTED AS -- WHO IS GIVING YOU THIS INFORMATION?

17 A GENERALLY, WE GET THE INFORMATION FROM THE DEFENDANTS. SO
18 I'M SURE I -- I'M SURE I MUST HAVE GOTTEN IT FROM HIM.

19 Q AND WHAT AGE DID HE GIVE AT THAT TIME?

20 A AGE 20.

21 Q AND WHAT HEIGHT AND WEIGHT?

22 A FIVE-TEN, 160.

23 Q AND THEN IT KNOW THAT LATER ON ROBERT JAMES WAS ARRESTED. OR
24 WAS HE ARRESTED LATER ON IN DECEMBER OF 1996?

25 A YES, SIR, HE WAS.

1 Q AND THEN IN MAY OF 1997, WERE FURTHER -- COMING OUT OF THIS
2 CHARGE, WAS HE ARRESTED AGAIN ON A -- SERVED WITH A WARRANT
3 OUT AT THE DETENTION CENTER ON THE POSSESSION OF A FIREARM?
4 AND DID HE GIVE A HEIGHT AND WEIGHT?

5 A YES, SIR.

6 Q AND WHAT WAS THAT?

7 A THAT WOULD BE FIVE-ELEVEN, 155.

8 Q OKAY. AND YOU ARE THE ONE THAT'S TAKING THIS INFORMATION.
9 IS YOUR NAME NOT DEPICTED ON THE INVESTIGATIVE BOOKING
10 REPORTS?

11 A YES, SIR.

12 Q ROBERT JAMES AND KENNETH JAMES, WERE THOSE ONLY THE TWO
13 INDIVIDUALS THAT ~~CATCH~~ HAS BEEN ABLE TO IDENTIFY AS HER
14 ASSAILANTS DURING THE EARLY MORNING HOURS OF MAY 29TH, 1996?

15 A YES, SIR, IT WAS.

16 Q PRIOR TO MEETING WITH HER AT THE POLICE DEPARTMENT THAT
17 MORNING, DID YOU HAVE AN OPPORTUNITY TO GO TO THE HOSPITAL
18 BEFORE THE SEXUAL ASSAULT PROTOCOL ACTUALLY BEGAN?

19 A YES, SIR, I DID.

20 Q DID YOU HAVE AN OPPORTUNITY TO JUST BRIEFLY TALK WITH HER AND
21 INTERVIEW HER?

22 A YES, SIR, WE DID.

23 Q AND HAVE YOU HAD DURING ALL OF YOUR -- HOW MANY YEARS OF
24 EXPERIENCE DO YOU HAVE IN LAW ENFORCEMENT?

25 A TWENTY-FIVE.

1 Q IN YOUR 25 YEARS OF EXPERIENCE IN LAW ENFORCEMENT OR IN YOUR
2 PERSONAL LIFE, HAVE YOU HAD THE OPPORTUNITY TO COME INTO
3 CONTACT WITH INDIVIDUALS THAT APPEARED TO BE UNDER THE
4 INFLUENCE OF ALCOHOL AND/OR DRUGS?

5 A YES, SIR, I HAVE.

6 Q WHEN YOU CAME INTO CONTACT WITH HER AT THE HOSPITAL, DID SHE
7 IN ANY WAY HAVE ANY ODORS OR IN HER SPEECH, IN ANY WAY,
8 APPEAR TO BE UNDER THE INFLUENCE OF ANY ALCOHOL OR DRUGS?

9 A NO, SIR. NOT TO ME.

10 Q OR WHEN YOU SHOWED HER THESE PHOTOGRAPHIC LINE-UPS ON THE
11 29TH OF MAY OR THE 18TH OF JUNE?

12 A THAT'S RIGHT.

13 MR. GASSER: THAT'S ALL I HAVE, YOUR HONOR. THANK YOU.

14 THE COURT: MR. STRICKLER.

15 MR. STRICKLER: THANK YOU, YOUR HONOR. JUST A FEW
16 QUESTIONS, IF I COULD, PLEASE.

17 CROSS EXAMINATION BY MR. STRICKLER:

18 Q GOOD EVENING, MR. THOMAS. HOW ARE YOU, SIR?

19 A GOOD.

20 Q DO YOU STILL HAVE A COPY OF YOUR INCIDENT REPORT WITH YOU —

21 A NO, SIR.

22 Q — THAT MR. GASSER TALKED WITH YOU ABOUT?

23 A HE TOOK IT BACK.

24 Q ALL RIGHT, SIR. I'VE GOT ONE. YOU HAVE MADE REFERENCE TO
25 THESE CURSORY — AND YOU DID FILL OUT THIS INCIDENT REPORT,

1 CORRECT?

2 A YES, SIR.

3 Q OKAY. YOU HAD MADE REFERENCE TO THE CURSORY DESCRIPTIONS
4 PROVIDED IN THE SUSPECTS 1 THROUGH 5 IN THIS INCIDENT REPORT?

5 A YES, SIR.

6 Q AND THAT INFORMATION WAS OBTAINED FROM MS. THOMAS OR MR. BULL
7 OR —

8 THE COURT: MS. . . . NOT MS. THOMAS.

9 MR. STRICKLER: I'M SORRY. I . MR. BULL.

10 THE COURT: IT'S MR. THOMAS.

11 A BASICALLY, WE GOT THIS INFORMATION I BELIEVE FROM MR. WALKER,
12 OFFICER WALKER, WHO HAD BEEN INTERVIEWING MR. BULL WHEN WE
13 GOT TO THE — WHEN I GOT TO THE SCENE.

14 Q OKAY. AND YOU TOOK A STATEMENT FROM MS. *Victim*,
15 CORRECT?

16 A YES, SIR, I DID.

17 Q LATER IN THE MORNING, CORRECT?

18 A THE MORNING. YES, SIR.

19 Q NOW, THE STATEMENT THAT SHE PROVIDED YOU, THAT STATEMENT WAS
20 TAKEN PRIOR TO SHOWING HER THE LINE-UP OR SUBSEQUENT TO
21 SHOWING HER THE LINE-UP? DO YOU REMEMBER?

22 A I THINK IT WAS TAKEN BEFORE WE SHOWED HER THE LINE-UP.

23 Q BUT SHE'D COME DOWN TO THE POLICE DEPARTMENT?

24 A YES, SIR.

25 Q OKAY. SO DURING THAT SAME VISIT TO THE DEPARTMENT BUT PRIOR

1 TO SHOWING THE LINE-UP TO HER?

2 A YES, SIR. THAT WOULD BE CORRECT. YES, SIR.

3 Q NOW, IN THE WRITTEN STATEMENT TAKEN FROM MS. ON THAT
4 DATE THERE IS NO ADDITIONAL DESCRIPTION PROVIDED BY HER TO
5 YOU, CORRECT?

6 A THAT'S CORRECT.

7 Q CAN YOU IDENTIFY SUBJECTS 1, 2, 3, 4 AND 5 IN YOUR INCIDENT
8 REPORT? WHICH ONE IS KENNETH JAMES?

9 A HOLD ON JUST A SECOND. I DON'T KNOW THAT WE HAD ANY
10 PARTICULAR -- AT THE TIME THE INCIDENT REPORT WAS WRITTEN AND
11 THE INFORMATION WE RECEIVED, WE HAD NO ONE AS THE PARTICULAR
12 PERSON.

13 Q OKAY. SO YOU CAN'T -- OF THOSE FIVE, YOU CAN'T SAY WHICH
14 ONE, WHICH DESCRIPTION MATCHES KENNETH JAMES?

15 A THAT ONE. THAT'S RIGHT.

16 Q OKAY. THAT'S ALL I WANTED TO KNOW ABOUT THAT. I'D LIKE TO
17 TURN BRIEFLY -- MR. GASSER SPOKE WITH YOU ABOUT THIS LINE-UP
18 SHOWN TO (YOU ALSO ON THE 31ST WENT TO MR.
19 MURRAY'S HOUSE ALONG WITH INVESTIGATOR BENSON FROM THE POLICE
20 DEPARTMENT. IS THAT CORRECT?

21 A YES, SIR. THAT'S CORRECT.

22 Q AND AT THAT POINT IN TIME YOU ALL SHOWED HIM A LINE-UP. IS
23 THAT CORRECT?

24 A YES, SIR. I --

25 Q GO AHEAD, SIR.

1 A I CAN'T REMEMBER IF HE ACTUALLY LOOKED AT THE LINE-UP OR NOT.
2 WE WENT THERE FOR THE PURPOSE OF SHOWING HIM THE LINE-UP.

3 Q LET ME SHOW YOU -- DO YOU HAVE YOUR INVESTIGATIVE NOTES WITH
4 YOU?

5 A YES, SIR.

6 Q IF I COULD JUST DIRECT YOUR ATTENTION TO PAGE 4. I ASSUME I
7 HAVE THE SAME NOTES YOU DO.

8 A OKAY.

9 Q 12:05 ON 5-31-96.

10 A OKAY.

11 Q THOMAS AND BENSON WENT TO AN 1833 MCFADDEN?

12 A YES, SIR.

13 Q AFTER REVIEWING YOUR NOTES, DOES THAT REFLECT THAT YOU DID
14 INDEED SHOW HIM THE LINE-UP?

15 A RIGHT. YES, SIR.

16 Q AT THE MCFADDEN STREET ADDRESS?

17 A THAT'S RIGHT.

18 Q THIS IS MR. MURRAY, CORRECT?

19 A YES, SIR.

20 Q AND THE LINE-UP THAT YOU SHOWED HIM AT THAT ADDRESS WOULD BE
21 THE LINE-UP THAT'S IN STATE'S EXHIBIT NO. 2. IS THAT
22 CORRECT?

23 A YES, SIR.

24 Q INDEED, AT THAT POINT IN TIME ON THE 31ST, ON MAY 31ST OF
25 '96, THIS WAS THE ONLY LINE-UP THAT YOU HAD AT THAT POINT IN

1 TIME, CORRECT?

2 A YES, SIR. I BELIEVE SO.

3 Q YOU HADN'T DEVELOPED ROBERT JAMES AS A SUSPECT AT THAT POINT
4 IN TIME?

5 A RIGHT.

6 Q AND WHOEVER THESE PEOPLE THAT YOU CONSTRUCTED THE FURTHER
7 LINE-UPS DONE THE LINE, THAT HADN'T BEEN DONE, RIGHT?

8 A THAT'S RIGHT.

9 Q SO THIS WOULD BE THE LINE-UP THAT YOU HAD AVAILABLE TO SHOW
10 MR. MURRAY ON THE 31ST, CORRECT?

11 A THAT'S RIGHT. YES, SIR.

12 Q STATE'S 2? OKAY. AND AT THAT POINT IN TIME MR. MURRAY WOULD
13 NOT I.D. ANYONE, CORRECT?

14 A THAT'S CORRECT.

15 Q AND IT LOOKS LIKE IT SAYS "AND COULD ADD ANYTHING TO THIS
16 CASE". I TAKE THAT TO MEAN "COULDN'T ADD ANYTHING TO THIS
17 CASE"?

18 A THAT'S PROBABLY EXACTLY WHAT THAT MEANS.

19 Q OKAY. ALL RIGHT. SO THAT WAS THE EXTENT OF THE CONTACT THAT
20 YOU HAD WITH MR. MURRAY, RIGHT?

21 A THAT'S RIGHT. YES, SIR.

22 Q HE COULDN'T I.D. ANYONE AND HE COULDN'T ADD ANYTHING TO THE
23 CASE. THIS WAS ON MAY 31ST OF 1996, CORRECT?

24 A THAT'S RIGHT.

25 MR. STRICKLER: YOUR HONOR, BEG THE COURT'S INDULGENCE

1 ONE MOMENT.

2 THE COURT: SURE.

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

4 THE COURT: MR. SHUPPER.

5 CROSS EXAMINATION BY MR. SHUPPER:

6 Q INVESTIGATOR THOMAS, WHEN YOU INTERVIEWED MS. , I
7 BELIEVE YOU -- DID SHE MENTION ANY CHARACTERISTICS OF THE
8 SUSPECTS THE FIRST TIME ON THE 31ST?

9 A I -- I DON'T REMEMBER.

10 Q WOULD YOU --

11 A WHEN -- WHEN WE FIRST TALKED TO HER IN THE HOSPITAL, IT WAS
12 BEFORE THE RAPE PROTOCOL HAD STARTED AND THE NURSES WERE IN
13 AND OUT, SO WE DIDN'T HAVE A REAL GOOD CHANCE TO TALK TO HER
14 AND INTERVIEW HER. AND I PROBABLY DID NOT ASK HER ANYTHING
15 IN PARTICULAR ABOUT THEM.

16 Q AND WHAT HAPPENED ON THE 6TH? YOU DIDN'T HAVE ROBERT JAMES
17 AS A SUSPECT THEN. WHAT HAPPENED ON THE 6TH? I'M SORRY.
18 DID YOU HAVE ROBERT JAMES AS A SUSPECT THEN?

19 A ON THE 6TH?

20 Q WHEN DID YOU COMPOSE THE LINE-UP THAT SHOWS ROBERT JAMES,
21 LINE-UP NUMBER 2?

22 A IT WOULD HAVE BEEN ON JUNE THE 6TH OF 1996.

23 Q AND YOU ATTEMPTED -- DID YOU ATTEMPT TO MEET WITH MS. ?

24 A WE CALLED THE VICTIM; YES, SIR.

25 Q WHAT WAS THE PROBLEM WITH GETTING HER TO LOOK AT THE LINE-UP

1 THEN?

2 A SHE WAS GOING TO COME BY THE POLICE DEPARIMENT. AND WE -- WE
3 NEVER GOT TOGETHER. I DON'T KNOW WHETHER SHE WAS AFRAID TO
4 COME BACK DOWN. I -- I -- I DON'T KNOW. SHE WAS -- SHE TOLD
5 US THAT SHE WOULD BE THERE AROUND 5:30 IN THE AFTERNOON, AND
6 SHE DID NOT SHOW UP ON THAT PARTICULAR DAY.

7 Q DID YOU MAKE ANY ATTEMPTS TO CONTACT HER BETWEEN THEN AND THE
8 18TH WHEN YOU SHOWED HER THE LINE-UP?

9 A LET ME CHECK MY NOTES REAL QUICK. I DON'T HAVE A -- I DON'T
10 HAVE A MARK IN HERE WHERE I HAD MADE ANY NOTES ABOUT
11 CONTACTING HER. SO I DON'T -- I PRESUME WE DID NOT TRY TO
12 CONTACT HER AGAIN AFTER THAT UNTIL THE 18TH.

13 Q WHEN YOU MET WITH MR. MURRAY, HE INDICATED THAT HE'D
14 RECOGNIZE THE PEOPLE. AND I BELIEVE THAT WAS WHEN YOU SHOWED
15 HIM STATE'S EXHIBIT 2. IS THAT CORRECT? YOU SHOWED THIS TO
16 MR. MURRAY?

17 A THAT'S RIGHT.

18 Q AND HE WOULDN'T OR COULDN'T IDENTIFY ANYONE?

19 A EXACTLY.

20 Q YOU DIDN'T SHOW HIM THIS, DID YOU?

21 A THAT'S CORRECT.

22 THE COURT: "THIS" BEING WHAT NOW?

23 MR. SHUPPER: "THIS" BEING STATE'S EXHIBIT 4, YOUR
24 HONOR. I'M SORRY.

25 THE COURT: 4. OKAY.

1 Q (BY MR. SHUPPER) SO, IN FACT, IT WOULD BE IMPOSSIBLE —
2 WOULD IT BE IMPOSSIBLE FOR YOU TO HAVE SHOWN IT TO HIM AT
3 THAT POINT?

4 A THAT'S RIGHT.

5 Q NO QUESTION?

6 A RIGHT.

7 Q HOW DID YOU SELECT THE SUBJECTS WITH THIS STATE'S EXHIBIT —
8 PHOTOGRAPHS IN STATE'S EXHIBIT 4?

9 A FROM THE PHOTO IMAGE MACHINE I WILL GET A PICTURE OF THE
10 DEFENDANTS, AND THEN I WILL TRY TO FIND SIX PICTURES IN THERE
11 THAT CLOSELY RESEMBLE HIM IN SOME WAY.

12 Q IF YOU WOULD LOOK AT STATE'S EXHIBIT 4 FOR ME, INVESTIGATOR
13 THOMAS. DOESN'T IT APPEAR THAT MR. JAMES HAS A LONG AND
14 PROMINENT NECK, ESPECIALLY COMPARED TO THE OTHER SUBJECTS,
15 MR. JAMES BEING SUBJECT NUMBER 2 WHEN COMPARED TO 1, 3, 4, 5
16 AND 6?

17 A IN THIS PARTICULAR PHOTO HE HAS A LONG NECK. BUT NUMBER 1
18 SEEMS TO HAVE A PRETTY GOOD SIZED NECK AND ALSO NUMBER 3.

19 Q OKAY. BUT WOULD YOU SAY KENNETH JAMES'S IS THE LONGEST?

20 A I — YOU — I WOULD HATE TO SAY EITHER WAY BECAUSE 1, 2 AND 3
21 ALL SEEM TO HAVE ABOUT THE SAME SIZED NECKS, EXCEPT 1 AND 3
22 MAY BE A LITTLE BIT THICKER THAN HIS. BUT, YEAH, WE PROBABLY
23 — WHEN WE CUT THE PICTURES, WE PROBABLY — THEY WERE CUT
24 WHERE HIS NECK APPEARS TO BE A LITTLE BIT LONGER THAN THE
25 REST OF THEM MAYBE.

1 Q WELL, I MEAN, YOU LOOK AT HIS SHOULDERS, AT THE CHIN IN
2 RELATION TO THE SHOULDERS. I MEAN, THAT'S HOW YOU JUDGE A
3 NECK, FROM THE CHIN TO THE SHOULDERS. WOULDN'T YOU SAY THAT
4 MR. KENNETH JAMES'S IS CLEARLY LONGER THAN EVEN 1 AND 3?

5 A NO, SIR; NOT TO ME. THAT LOOKS LIKE 1 AND 3 ARE ABOUT THE
6 SAME.

7 Q ALL RIGHT. LET'S LOOK AT 4, 5 AND 6. STARTING WITH 6, IT
8 APPEARS THAT HE HAS VIRTUALLY NO NECK, DOESN'T IT?

9 A HE HAS A THICKER NECK.

10 Q THICKER?

11 A MM-HMM (AFFIRMATIVE). AND —

12 Q AND HIS CHIN IS ALMOST RESTING ON HIS SHOULDERS AS YOU LOOK
13 AT THAT ANGLE, ISN'T IT? AT THE FRONTAL PICTURE.

14 A IT'S JUST — IT'S JUST THE WAY THE PICTURE WAS CUT. ON ALL
15 — ALL FOUR OF THE ONES AT THE BOTTOM, I DON'T THINK THERE
16 ARE THAT MUCH DIFFERENCE IN THEM OTHER THAN THE WAY THEY WERE
17 CUT OUT.

18 Q WELL, THAT'S WHAT I'M CONCERNED WITH. I MEAN, IF YOU HAD NO
19 SHOULDERS SHOWING IN ANY OF THOSE PICTURES —

20 MR. GASSER: I OBJECT AT THIS TIME, YOUR HONOR. THIS IS
21 A CALL THAT YOU'RE GOING TO HAVE TO MAKE.

22 THE COURT: PRECISELY. MR. SHUPPER, WHETHER OR NOT THEY
23 APPEAR TO THIS WITNESS — NOW, HE HAS DENIED THAT THE LINE-UP
24 IS SUGGESTIVE IN ANY WAY AS DISTINCT, YOU KNOW, ON THE
25 JUDGING OF THE NECKS. AND THAT WOULD BE SOMETHING THAT IS

1 FOR SOMEBODY ELSE TO DO, NOT HIM. HE HAVING SAID THAT.
2 OKAY?

3 MR. SHUPPER: I UNDERSTAND, YOUR HONOR. JUST ONE
4 MOMENT, YOUR HONOR.

5 THE COURT: SURE. SURE.

6 Q (BY MR. SHUPPER) DO YOU HAVE YOUR NOTES WITH YOU? DO YOU
7 HAVE THE DATA SHEET ON LINE-UP NUMBER 2 DESCRIBING THE
8 SUBJECTS' CHARACTERISTICS, THE HEIGHT AND WEIGHT AND COLOR OF
9 EYES, COLOR OF HAIR?

10 A I HAVE IT IN MY CASE FOLDER, IF I COULD GET THAT.

11 MR. SHUPPER: I THOUGHT YOU HAD ONE UP HERE.

12 A OH. I'M SORRY. THEY'RE WITH THE LINE-UP'S.

13 THE COURT: WAIT A MINUTE. EXCUSE ME. OKAY. NOW, MR.
14 THOMAS, IF YOU'RE TALKING TO MR. SHUPPER PRIVATELY, MAKE SURE
15 THAT YOU'RE SPEAKING LOUD ENOUGH FOR MS. WILLIAMS TO HEAR YOU
16 AND THAT YOU'RE DIRECTING YOUR COMMENTS TO THAT. MR.
17 SHUPPER, IF YOU'RE TRYING TO FIND SOMETHING AND YOU'RE
18 TALKING TO THEM, DO IT PRIVATELY SO IT DOESN'T GET TO BE A
19 PART OF THE RECORD. OKAY?

20 MR. SHUPPER: OH, I APOLOGIZE, YOUR HONOR. I THOUGHT
21 THAT I HAD SEEN AN EXHIBIT OVER HERE THAT HAD THE COLUMBIA
22 POLICE DEPARTMENT EMBLEM ON IT. YES.

23 Q (BY MR. SHUPPER) THIS IS LINE-UP NUMBER 2 WITH THE C.P.D.
24 EMBLEM ON IT AND THE DESCRIPTIONS OF ALL OF THE SUBJECTS IN
25 LINE-UP NUMBER 2. COULD YOU CONFIRM THAT THAT REFLECTS THE

1 SUBJECTS IN THIS LINE-UP NUMBER 2, STATE'S EXHIBIT 4?

2 A YES, SIR. THAT WOULD BE CORRECT.

3 Q DID YOU COMPOSE THAT?

4 A YES, SIR, I DID.

5 Q OKAY. AT THIS TIME I'D LIKE TO MOVE THAT AS -- MARK THAT AS
6 DEFENSE NO. 3, ROBERT JAMES. I THINK IT'S NO. 3.

7 THE COURT: OKAY. MR. GASSER?

8 A IT'S NO. 2 I BELIEVE.

9 THE COURT: WHATEVER IT IS.

10 MR. SHUPPER: NO. BUT IT WILL BE --

11 A OH, I'M SORRY.

12 THE COURT: WHATEVER IT IS, HE WANTS TO INTRODUCE IT
13 INTO EVIDENCE. DO YOU OBJECT?

14 MR. SHUPPER: I FIRST WANT TO MARK IT FOR IDENTIFICATION
15 AS --

16 MR. GASSER: I'D ONLY -- YEAH. MARK IT FOR
17 IDENTIFICATION. PARTICULARLY SINCE IT SHOWS THAT HIS CLIENT
18 WAS ARRESTED ON A PREVIOUS DATE IN 1994, I THINK HE MIGHT
19 WANT TO TAKE A LOOK AT THAT TO KEEP THE RECORD CLEAN.

20 THE COURT: NO. I'M JUST TALKING ABOUT FOR PURPOSES OF
21 THIS HEARING. ANYTHING THAT'S INTRODUCED IN EVIDENCE IS JUST
22 FOR THIS HEARING RIGHT NOW.

23 MR. GASSER: THEN I HAVE NO OBJECTION, YOUR HONOR.

24 THE COURT: OKAY. SO GO AHEAD. IT MAY NOT -- ASSUMING
25 IT GETS IDENTIFIED. GO AHEAD.

1 (DEFENDANT ROBERT JAMES'S EXHIBIT NO. 3, LINE-UP INFORMATION)
2 MARKED FOR IDENTIFICATION ONLY)

3 Q (BY MR. SHUPPER) NOW, IN STATE'S EXHIBIT 4 MR. JAMES IS IN
4 THE CENTER IN POSITION NUMBER 2. IS THAT CORRECT?

5 A THAT'S CORRECT. HIS PICTURE. YES, SIR.

6 Q AND DEFENSE NO. 3, ROBERT JAMES'S LINE-UP NUMBER 2, IN WHAT
7 ORDER DOES MR. JAMES'S DESCRIPTIVE FEATURES APPEAR?

8 A WELL, IF YOU GO BY AN ORDER, IF YOU'RE LIKE LOOKING AT THAT
9 PHOTO AND GOING BY AN ORDER, HE WOULD BE NUMBER 1. BUT WHEN
10 I PUT THESE THINGS TOGETHER I DON'T NECESSARILY PUT THEM IN
11 ORDER. I JUST KEEP THE SAME SIX, THE INFORMATION ON THOSE
12 INDIVIDUALS ON A PIECE OF PAPER THAT WE CAN HAVE IN THE
13 COURTROOM SO IF YOU ALL ASK ME WHO THE OTHER PEOPLE ARE IN
14 THIS PICTURE I CAN TELL YOU WHO THEY ARE. IT'S ALL SIX. ALL
15 THE PICTURES IN THIS LINE-UP ARE ON THIS PIECE OF PAPER.

16 Q BUT IT'S SORT OF LIKE A PUZZLE, ISN'T IT, IF IT'S NOT IN THE
17 SAME SEQUENCE AND NUMBERING SYSTEM THAT IS USED IN THE PHOTO
18 SPREAD, ISN'T IT?

19 MR. GASSER: YOUR HONOR, I OBJECT TO THE RELEVANCY HERE.
20 UNLESS THIS IS RELEVANT IN SOME MANNER THAT THE VICTIM WAS
21 SHOWN THAT PARTICULAR DOCUMENT —

22 THE COURT: I'M SHOT SURE. I'M NOT SURE, MR. GASSER.
23 SO I'M GOING TO LET MR. SHUPPER HAVE HIS LATITUDE. BUT
24 PLEASE CONTINUE, MR. SHUPPER, AND GET IT DONE. ARTICULATE TO
25 MR. THOMAS WHAT YOUR QUESTION IS, AND THEREAFTER MR. THOMAS

1 ANSWERS IT OR DOESN'T ANSWER IT.

2 Q (BY MR. SHUPPER) MR. JAMES'S PHYSICAL DESCRIPTION DOESN'T
3 APPEAR IN THE SAME SEQUENCE AS THE PHOTOGRAPHS IN THE PHOTO
4 SPREAD, DOES IT?

5 A NO. NOT IF YOU'RE USING THIS AS A THING TO GO BY.

6 Q THAT'S EXACTLY WHAT I'M ASKING YOU. AND IF I MIGHT SEE THIS?

7 A SURE.

8 Q IF YOU LOOK AT THE EYE COLOR ON ALL OF THE SUBJECTS, IS IT
9 ALL THE SAME?

10 A IT'S ALL LISTED AS BROWN EXCEPT MR. RUSH, AND HIS IS LISTED
11 AS BLACK.

12 Q AND THEIR HAIR IS ALL LISTED AS THE SAME, ISN'T IT?

13 A THAT'S CORRECT. THEY WERE BORN APPROXIMATELY THE SAME TIME.

14 Q OKAY.

15 A THEIR DATES OF BIRTH ARE CLOSE.

16 Q DID YOU PRESENT A COPY OF THE STATE'S EXHIBIT 5 WHICH I'M
17 SHOWING YOU THAT REFERS TO PICTURE NUMBER 2, PRESENT IT,
18 SIGNED BY MS ON THE 18TH OF JUNE? DID YOU PRESENT HER
19 WITH A COPY OF THAT?

20 A DID I GIVE THIS TO MS ?

21 Q DID YOU GIVE HER A COPY OF THAT DOCUMENT?

22 A I -- I DON'T THINK WE DID. NO, SIR.

23 Q OKAY. I HAVE NOTHING FURTHER, YOUR HONOR.

24 THE COURT: OKAY. ANY REDIRECT, MR. GASSER?

25 MR. GASSER: VERY BRIEFLY, YOUR HONOR.

1 REDIRECT EXAMINATION BY MR. GASSER:

2 Q ON PAGE 4 OF YOUR CASE NOTES, WHEN BOTH COUNSEL, MR.
3 STRICKLER AND MR. SHUPPER, WERE ASKING YOU ABOUT YOUR MEETING
4 WITH MR. MURRAY ON MAY THE 31ST OF 1996?

5 A YES, SIR.

6 Q WHEN YOU ATTEMPTED OR WHEN YOU SHOWED HIM A PHOTO SPREAD, DID
7 HE INDICATE THAT HE WOULD NOT IDENTIFY ANYONE OR THAT HE
8 COULD NOT IDENTIFY ANYONE?

9 A I SAID THAT HE WOULD NOT IDENTIFY ANYONE.

10 Q AND THEN LATER ON YOU PUT IN YOUR NOTES THAT THEREFORE HE
11 COULD NOT ADD ANYTHING TO YOUR CASE; IS THAT CORRECT?

12 A YES, SIR.

13 Q BUT AT ANY TIME, FROM THE TIME OF THIS INCIDENT IN 1996 UNTIL
14 YOU SIT THERE BEFORE THIS JUDGE, DID EVER SHOW CHARLES MURRAY
15 A PHOTO LINE-UP AND HIM LOOK AT A GROUP OF PHOTOGRAPHS AND
16 SAY, I CAN'T IDENTIFY ANYBODY?

17 A NO, SIR.

18 MR. GASSER: THAT'S ALL I HAVE, YOUR HONOR.

19 THE COURT: OKAY. THANK YOU, MR. THOMAS. YOU CAN STEP
20 DOWN, SIR. THIS WOULD SEEM TO BE ALL THE WITNESSES ON THE
21 POINT OF IDENTIFICATION IF I'M NOT MISTAKEN. AND I APPLAUD
22 EVERYBODY'S EFFORTS AT THOROUGH EXAMINATION. I WOULD POINT
23 OUT THAT WE'VE BEEN ROUGHLY THREE HOURS NOW, AND WE HAVE JUST
24 BARELY FINISHED THE FIRST LITTLE MOTION, WHICH AGAIN CAUSES
25 ME GREAT CONCERN WITH THE ABILITY OF LAWYERS TO ESTIMATE

1 TIMES, INCLUDING THAT WHICH WAS REQUIRED FOR THE CREATION.

2 SO, I'M GOING TO HEAR YOU NOW, AND LET'S HEAR YOUR
3 ARGUMENTS ON WHY YOU THINK THERE IS A SUBSTANTIAL LIKELIHOOD
4 OF MISIDENTIFICATION FROM EITHER THE MURRAY OR THE BROWN
5 IDENTIFICATION. I'LL BEGIN WITH YOUR ARGUMENT, MR. SNEED OR
6 MR. STRICKLER.

7 MR. STRICKLER: MR. SNEED, SIR.

8 THE COURT: OKAY.

9 MR. SNEED: MAY IT PLEASE THE COURT. YOUR HONOR, I HAD
10 SEVERAL MOTIONS RELATED TO I.D. AND THE —

11 THE COURT: WAIT A MINUTE. SEVERAL MOTIONS RELATED TO
12 I.D. YOU'RE EITHER MOVING TO SUPPRESS THE I.D. —

13 MR. SNEED: YES, SIR.

14 THE COURT: — OR YOU'RE NOT.

15 MR. SNEED: YES, SIR.

16 THE COURT: RIGHT?

17 MR. SNEED: YES. YES, SIR.

18 THE COURT: YOU DON'T WANT ME TO MAKE AN IN-COURT
19 IDENTIFICATION.

20 MR. SNEED: THAT'S RIGHT.

21 THE COURT: SO WHAT IS YOUR ARGUMENT WITH REGARD TO
22 THAT? YOU COULDN'T POSSIBLY HAVE SEVERAL MOTIONS, COULD YOU?
23 OR PROBABLY PERHAPS SEVERAL BASES.

24 MR. SNEED: I MAY HAVE MISSPOKE, YOUR HONOR. I'M
25 ANTICIPATING — SHOULD THE COURT REJECT MY ARGUMENT, I HAD AN

1 ALTERNATIVE MOTION RELATED TO IDENTIFICATION. BUT I GUESS I
2 SHOULDN'T GET AHEAD OF MYSELF.

3 THE COURT: ARE YOU OKAY, MS. WILLIAMS?

4 COURT REPORTER: I THINK SO.

5 THE COURT: ALL RIGHT. PLEASE CONTINUE.

6 MR. SNEED: THANK YOU, SIR. YOUR HONOR, USING THE
7 FAMILIAR FIVE-ELEMENT TEST IN MANSON V. BRATTHEWAITE, IF I'M
8 NOT MISPRONOUNCING, IT WOULD BE THE LEADING CASE; AS FAR AS
9 N, ELEMENT NUMBER 3, THE ACCURACY OF THE DESCRIPTION
10 OF THE OFFENDER, I THINK SHE'S COMPLETELY OR MERELY
11 COMPLETELY -- IT'S -- THERE'S NO DESCRIPTION. I MEAN, WE'RE
12 NOT EVEN TALKING ACCURACY. IT'S NEXT TO NO DESCRIPTION.

13 THAT WITNESS SAID, I GAVE A DESCRIPTION. SHE HAD HAD
14 CONTACT WITH SEVERAL LAW ENFORCEMENT OFFICERS, YOU KNOW, FROM
15 THE TIME OF THE INCIDENT UNTIL SHE LOOKED AT THE PHOTO ARRAY.
16 AND I THINK THE WORDS OUT OF HER MOUTH WERE, NO DESCRIPTION.
17 MR. STRICKLER ASKED THE LEAD INVESTIGATOR IN THIS CASE, MR.
18 THOMAS, AND HE SEEMED TO SAY, YES, I GO NOT DESCRIPTION FROM
19 M SO I'D SAY THE STATE UTTERLY FAILS ON THAT
20 COMPONENT OF MANSON.

21 THE WITNESS'S DEGREE OF CERTAINTY, I'M AWARE THAT THAT'S
22 AN ELEMENT THAT THE SUPREME COURT SAYS TO CONSIDER, BUT I
23 WOULD ASSERT THAT THAT ELEMENT HAS LESS STRENGTH THAN IT USED
24 TO. I DON'T KNOW IF YOUR HONOR HAS HAD -- BEEN FAMILIAR WITH
25 EXPERT PSYCHOLOGICAL TESTIMONY IN THE PAST, BUT PSYCHOLOGISTS

1 ARE SLOWLY LEARNING THAT THERE'S NO ---

2 THE COURT: I THINK SLOWLY LEARNING IS PROBABLY A GOOD
3 THING TO APPLY TO PSYCHOLOGY.

4 MR. SNEED: YES, SIR.

5 THE COURT: YEAH.

6 MR. SNEED: THE CORRELATION BETWEEN CERTAINTY AND
7 ACCURACY ISN'T ALL THAT GREAT. I REALIZE YOU'VE HEARD NO
8 EVIDENCE ON THAT, YOUR HONOR. SO, YOU KNOW, I'M GOING TO ASK
9 YOU TO TAKE JUDICIAL NOTICE, BUT JUST THE COURT MAY BE AWARE
10 ---

11 THE COURT: THERE ISN'T ANY CROSS RACIAL IDENTIFICATION
12 PROBLEM HERE OR ANYTHING LIKE THAT, IS THERE? OBVIOUSLY NOT.

13 MR. SNEED: I CAN'T SAY THAT. NO, SIR.

14 THE COURT: ALL RIGHT.

15 MR. SNEED: THE WITNESS'S DEGREE OF ATTENTION, YOUR
16 HONOR, AGAIN, JUST AS YOU HEARD MS 'S DESCRIPTION OF
17 THE EVENT ITSELF, THE INCIDENT ITSELF; FIRST, ON ONE PART OF
18 HER TESTIMONY SHE'S NOT SURE IF IT WAS 30 MINUTES, GIVE OR
19 TAKE. THEN ANOTHER PART SHE SAYS IT HAPPENS QUICK. SHE'S
20 UNCLEAR AS TO WHICH OF THE FIVE -- OR SHE SEEMED TO ME TO BE
21 UNCLEAR WHICH OF THE FIVE MR. JAMES WAS, KENNETH JAMES, WHICH
22 OF THE FIVE ROBERT JAMES WAS. SO ---

23 THE COURT: KENNETH JAMES WAS THE ASSERTIVE OR
24 AGGRESSIVE ONE, THE LEADER. ROBERT JAMES WAS THE GUY WITH
25 THE GUN ACCORDING TO HER.

1 MR. SNEED: SURE.

2 THE COURT: SHE DID SAY THAT, DIDN'T SHE?

3 MR. SNEED: YES, SIR. I ACCEPT THAT. BUT WHEN YOU
4 BREAK DOWN THE CONDUCT OF THE FIVE ASSAILANTS, ASIDE FROM
5 THAT, SHE CAN'T REALLY SAY ANYTHING. YOU KNOW, I THINK THAT
6 GOES TO WEAKENING THE QUALITY OF HER DESCRIPTION. AND THEN
7 OF COURSE THE OPPORTUNITIES TO VIEW OFFENDERS. AND I REALIZE
8 THE TOTALITY OF THE CIRCUMSTANCES. YOU HAVE SEVERAL FACTORS
9 TO CONSIDER.

10 LIGHTING, YOUR HONOR. TWICE MS. SAYS THE BALLPARK
11 LIGHTS WERE OUT, AND THEN ANOTHER PART OF HER TESTIMONY SHE
12 SAID THEY WERE ON. I MEAN, OBVIOUSLY THREE-AND-A-HALF YEARS
13 AGO, I SUGGEST THEY'RE OFF BECAUSE THAT'S WHAT SHE HAD SAID
14 ON DIRECT.

15 DURATION OF THE EVENT, WE'RE NOT TOO CLEAR ON IT BASED
16 ON MS. BUT I WOULD SUBMIT TO YOU IT'S SHORT BECAUSE
17 SHE SAID IT'S QUICK, IT HAPPENED FAST.

18 SHE CERTAINLY FELT STRESSED. AND THERE IS VIOLENCE.
19 AND THERE IS NO DISPUTE ABOUT THAT. BUT I WOULD SUBMIT THAT
20 THAT WOULD GO TO WEAKENING HER POWERS OF RECOLLECTION AND
21 MEMORY RATHER THAN STRENGTHENING THEM.

22 SO I JUST SAY BASED ON THE TOTALITY OF THE CIRCUMSTANCES
23 THAT THERE IS A SUBSTANTIAL LIKELIHOOD OF MIS I.D.

24 THE COURT: SURE. I APPRECIATE THAT. MR. SHUPPER, LET
25 ME HEAR FROM YOU, AND THEN I'LL HEAR FROM MR. GASSER OR MS.

1 FRYAR.

2 MR. SHUPPER: JUST BRIEFLY, YOUR HONOR. I JOIN MR.
3 SNEED WITH HIS ANALYSIS OF THE FACTORS TO BE CONSIDERED AND
4 POINT OUT AS FAR AS ROBERT JAMES, I MAY HAVE BELABORED THE
5 POINT TOO MUCH, YOUR HONOR. MS. ADMITTED THAT SHE SAW
6 THE DIFFERENCE IN THE LENGTH OF THE NECKS OF THE SUBJECT.
7 YOUR HONOR HAS VIEWED THESE AND WILL HAVE AN OPPORTUNITY TO
8 VIEW IT AGAIN. AND I WOULD JUST ASK YOUR HONOR TO PAY
9 PARTICULAR ATTENTION TO THOSE FEATURES, THAT THEY'RE VERY
10 DISTINGUISHABLE.

11 THE FACT THAT MR. ROBERT JAMES'S PHOTO WAS CENTERED AND
12 YOU CAN BARELY SEE HIS SHOULDERS, AS OPPOSED TO THE OTHER
13 SUSPECTS WHO HAVE VIRTUALLY NO NECKS, I JUST THINK THAT
14 THERE'S SUCH A DISPARITY IN THE SUBJECTS THAT ONE STANDS OUT
15 AMONG THE OTHERS CREATING A QUESTION ABOUT THE RELIABILITY OR
16 THE FAIRNESS OF THE PHOTO SPREAD TO BEGIN WITH. I BELIEVE
17 IT'S UNDULY SUGGESTIVE BASED ON THE CHARACTERISTICS OF THE
18 PHOTOS, AND EVEN INVESTIGATOR THOMAS WAS TALKING ABOUT THE
19 THICKER NECKS.

20 THE PHOTOS DON'T CORRESPOND IN EVERY WAY, AND I DON'T
21 KNOW THAT THEY NEED TO. BUT THERE ARE SOME VARIANCES BETWEEN
22 THE CHARACTERISTICS AND EYES OF ONE OF THE SIX. IF YOU
23 NARROW IT DOWN, IF YOU SAY THE THREE ON THE BOTTOM ROW ALL
24 HAVE VIRTUALLY NO NECKS, THEN THAT COULD ELIMINATE THEM.

25 AND AS MR. THOMAS COMPARES SUBJECTS 1 AND 2, HE SAYS

1 THEY MAY BE THE SAME. I THINK MS. SAID THAT ONE WAS
2 THE GREATER — HAD THE LONGER NECK. I JUST THINK THAT THOSE
3 ARE VERY IMPORTANT FEATURES AND CHARACTERISTICS THAT MAKE FOR
4 A SUGGESTIVE LINE-UP AND ONE THAT IS ACTUALLY NOT FAIR.

5 I WOULD ALSO ASK THE COURT TO CONSIDER THE LENGTH OF
6 TIME BETWEEN THE EVENT AND THE IDENTIFICATION OF MR. JAMES.

7 THE COURT: ROBERT JAMES.

8 MR. SHUPPER: ROBERT JAMES. SOME 20 DAYS. AND THE FACT
9 THAT THE LIGHTING REMAINED THE MOST POWERFUL LIGHTS. AND OF
10 COURSE, YOUR HONOR, I'M FAMILIAR WITH THAT PARK FROM MY
11 EXPERIENCE WITH SOFTBALL, BUT I'M NOT QUALIFIED TO TESTIFY.
12 BUT THE —

13 THE COURT: NO, YOU'RE NOT. AND I SURE APPRECIATE YOUR
14 UNWILLINGNESS TO DO SO AT THIS TIME.

15 MR. SHUPPER: BUT THE VICTIM DID TESTIFY THAT THE LIGHTS
16 HAD GONE OUT, THE BALL GAME WAS OVER. AND THE DIAGRAMS SHOW
17 THAT THERE ARE LIGHTS FARTHER — 400 FEET AWAY FROM THE SCENE
18 IN THE PARKING LOT AND THEN IN THE AREA ON THE DRIVEWAY OUT
19 TO GERMANY STREET WHICH REALLY WOULD HAVE NO IMPACT BECAUSE
20 OF THE SHRUBBERY AND TREES IN THE AREA.

21 I WOULD JUST ASK YOUR HONOR TO CONSIDER ALL OF THOSE
22 CIRCUMSTANCES AND EXPRESS THIS AS A DEFECTIVE LINE-UP AND
23 SUGGESTIVE.

24 THE COURT: THANKS. MR. GASSER, ADDRESS THIS. AND,
25 NOW, NEITHER PERSON HAS ADDRESSED MR. MURRAY'S

1 IDENTIFICATION, BUT I'M SURE THEY WILL NOW THAT I'VE INVITED
2 THEM TO. MR. SNEED, YOU WANT TO DO THAT? AND THEN MR.
3 SHUPPER. AND WE CAN GO FROM THERE.

4 MR. SNEED: YES, SIR. MAY IT PLEASE THE COURT. YOUR
5 HONOR, MR. MURRAY IS MORE OF A UNIQUE SITUATION. IT DOESN'T
6 -- IT'S NOT -- IT DOESN'T PRESENT ITSELF AS THE TYPICAL
7 PRE-TRIAL I.D.

8 THE COURT: BECAUSE HE'S NOT A VICTIM, NUMBER ONE.

9 MR. SNEED: YES, SIR. OR A WITNESS TO THE CRIME ITSELF.
10 I JUST ASK -- THE HEART OF MY POINT IS THIS, YOUR HONOR.
11 YOU'RE THE FACT FINDER FOR THIS HEARING. YOU JUDGE THE
12 CREDIBILITY OF WITNESSES. AND MY STRONG POSITION IS YOU DO
13 OPERATE THAT ROLE. LISTENING TO MR. MURRAY --

14 THE COURT: I'M TO DETERMINE RELIABILITY. I'M NOT TO
15 DETERMINE WHETHER OR NOT THERE IS PROOF BEYOND A REASONABLE
16 DOUBT TO CONVICT EITHER MR. JAMES OF THIS EVENT. I AM TO
17 DETERMINE WHETHER OR NOT THE EVIDENCE WAS RELIABLE. IF I
18 DON'T THINK IT IS RELIABLE, THEN I CAN'T ALLOW IT TO GO
19 BEFORE A JURY. ISN'T THAT RIGHT?

20 MR. SNEED: YES, SIR.

21 THE COURT: OKAY.

22 MR. SNEED: I ALSO THINK THAT TO A LIMITED EXTENT YOU DO
23 VIEW THE CREDIBILITY OF WITNESSES HERE. I'M OBVIOUSLY NOT
24 --

25 THE COURT: AND THE THING THAT WEAKENS MR. MURRAY'S

1 TESTIMONY MOST OF ALL IS THE DISTANCE FROM WHICH HE
2 PURPORTEDLY OBSERVED THESE PEOPLE. ISN'T THAT -- WOULDN'T
3 MR. GASSER EVEN CONCEDE THAT? THERE WAS A PRETTY GREAT
4 DISTANCE?

5 MR. GASSER: YES, SIR. I WANTED TO GET -- I WANTED TO
6 MAKE SURE THAT WE KNEW THE DISTANCE. BUT THE FACT THAT THEY
7 WALKED UNDER THE PARKING LIGHT, THAT --

8 THE COURT: OH, YEAH. WELL, YOU WERE CAREFUL TO POINT
9 OUT TO HIM THAT THESE PEOPLE WERE ILLUMINATED AT THE TIME.
10 THERE WASN'T ANY QUESTION ABOUT THAT. BUT I WOULD SAY THAT
11 THERE'S ABOUT 45 FEET AWAY IS WHAT MY GUESS WAS IS THAT HE
12 INDICATED IN RESPONSE TO YOUR QUESTION. BUT, ANYWAY, KEEP
13 GOING.

14 MR. SNEED: YES, SIR. IN ADDITION TO THE DISTANCE, YOUR
15 HONOR, I'D SUGGEST THAT ON MR. MURRAY WHAT YOU ALSO HAVE IS
16 THE FAILURE TO IDENTIFY TO INVESTIGATOR THOMAS. THAT'S
17 PRETTY CLEAR. THERE MAY BE A MISMATCH ABOUT THE WORDS, BUT
18 --

19 THE COURT: THE UNWILLINGNESS. BECAUSE THAT WAS
20 MANIFEST FROM MR. MURRAY'S OWN TESTIMONY, THAT HE WASN'T
21 ABOUT -- WHAT IT WAS IS MR. MURRAY JUST DIDN'T WANT TO GET
22 INVOLVED, WASN'T IT, PRETTY MUCH?

23 MR. SNEED: BUT, YOUR HONOR, THERE IS -- I'M NOT SURE
24 THAT'S -- I ENTIRELY AGREE WITH THAT --

25 THE COURT: THAT'S NOT WHAT HE SAID, BUT THAT'S PRETTY

1 MUCH WHAT IT WAS, WASN'T IT?

2 MR. SNEED: WELL, HE WAS ALSO DIRECTLY CONTRADICTED.
3 BECAUSE MR. MURRAY SAID, HEY, THE OFFICER HAD TWO SETS OF
4 PHOTOS. AND HE SAYS THAT ON MAY 31 I DID PICK OUT KENNETH
5 AND I PICKED OUT ROBERT. WELL, YOUR HONOR, WE KNOW THAT — I
6 DON'T WANT TO USE THE WORD "LIABLE". WE KNOW THAT'S A
7 MISTAKE. BECAUSE THE LEAD INVESTIGATOR DOESN'T PREPARE
8 ROBERT'S PHOTO SPREAD FOR TWO OR THREE MORE DAYS. SO, —

9 THE COURT: I DON'T THINK HE EVER IDENTIFIED ANYBODY IN
10 MAY, DID HE?

11 MR. SNEED: NO. NO, HE DIDN'T, YOUR HONOR. BUT ON THE
12 STAND HERE HE SAYS, YES, MAY 30TH OR 29TH — I'M SORRY. MAY
13 31 THE INVESTIGATOR COMES BY. HE HAD PHOTOS. REGARDLESS OF
14 HIS COMMUNICATION WITH MR. THOMAS, HIS TESTIMONY HERE IS,
15 HEY, I SAW A PHOTO OF ROBERT THAT DAY AND A PHOTO OF KENNETH.
16 WELL, WE KNOW HE HAS TO BE MISTAKEN, YOUR HONOR, BECAUSE
17 INVESTIGATOR THOMAS DIDN'T PREPARE ANY PHOTO SPREAD OF ROBERT
18 THAT DAY. SO THAT'S THE SECOND PRETTY BIG THING UNDERCUTTING
19 MR. CHARLES MURRAY'S PRE-TRIAL I.D.

20 THE OTHER THING, YOUR HONOR, IS, ALMOST THREE-AND-A-HALF
21 YEARS ELAPSE. AND AS THE QUESTIONS THAT — OR THE RESPONSES
22 FOR SOME OF MR. STRICKLER'S QUESTIONS WERE NO CONTACT WITH
23 LAW ENFORCEMENT UNTIL YESTERDAY. AND I'D SAY BASED — I
24 COULD GO THROUGH ALL THE ELEMENTS, BUT YOU SAT HERE, YOUR
25 HONOR. SO, BASED ON THE TOTALITY OF THE CIRCUMSTANCES, FAR,

1 FAR WEAKER WITH CHARLES MURRAY THAN C *Victim*. I ASK THAT
2 YOU SUPPRESS BOTH THE PRE-TRIAL AND THE IN-COURT I.D.

3 MR. SHUPPER: YOUR HONOR, I WOULD JOIN EVERYTHING THAT
4 MR. SNEED POINTED OUT AND ADD THAT MR. MURRAY WAS VERY
5 UNCERTAIN OF HIS IDENTIFICATION AND/OR HIS WILLINGNESS TO GET
6 INVOLVED OR TO BE ABLE TO MAKE AN IDENTIFICATION. I DON'T
7 THINK WE CAN CONCLUDE THAT IT WAS JUST AN UNWILLINGNESS TO
8 GET INVOLVED, BUT HE MAY NOT HAVE BEEN ABLE CERTAINLY AT THAT
9 POINT TO POSITIVELY MAKE AN IDENTIFICATION. IT'S ONLY AFTER
10 -- AND HE ADMITTED THERE HAD BEEN RUMORS ABOUT WHAT WAS GOING
11 ON AND PURSES FOUND IN THE DEFENDANT'S HOME, AND HE HAD HEARD
12 ABOUT THAT. AND I SUGGEST THAT THOSE RUMORS MAY HAVE LED HIM
13 TO CONFIRM HIS IDENTIFICATION.

14 THE DISTANCE, THE FACT THAT HIS TESTIMONY REGARDING THE
15 IDENTIFICATION OF ROBERT JAMES FROM A PHOTO SPREAD SHOWN BY
16 INVESTIGATOR THOMAS THAT INVESTIGATOR THOMAS SAID HE DIDN'T
17 PREPARE FOR SOME TIME LATER ARE SIGNIFICANT FACTORS THAT
18 UNDERCUT THE RELIABILITY OF MR. MURRAY'S IN-COURT AND OTHER
19 IDENTIFICATION.

20 THE COURT: ALL RIGHT. MR. GASSER.

21 MR. GASSER: YOUR HONOR, WITH REGARD TO C , I
22 KNOW THIS COURT IS FAMILIAR WITH ALL THE SOUTH CAROLINA CASES
23 THAT CITE NEIL V. BIGGERS, WHICH IS 93 SUPREME COURT 375,
24 1972. RELIABILITY DEPENDS UPON SEVERAL FACTORS THAT MUST BE
25 CONSIDERED IN LIGHT OF THE TOTALITY OF THE CIRCUMSTANCES.

1 AND, THEREFORE, YOU MUST EVALUATE, YOU AS THE TRIAL JUDGE,
2 THE OPPORTUNITY OF THE WITNESS TO VIEW THE CRIMINAL AT THE
3 TIME OF THE CRIME. I THINK THE RECORD SPEAKS FOR ITSELF THAT
4 SHE HAD A VERY GOOD OPPORTUNITY TO ACTUALLY SEE THE TWO
5 PEOPLE THAT SHE'S BEEN ABLE TO IDENTIFY, THAT BEING KENNETH
6 JAMES AS THE ONE THAT WAS THE AGGRESSOR THAT ACTUALLY CAME UP
7 TO HER AND WAS LITERALLY I MEAN THIS CLOSE TO HER, BEING ABLE
8 TO GRAB HER IN THE MOST WELL-LIT AREA OF THE CRIME SCENE, THE
9 PICNIC TABLE, AND THEN DRAG HER ON AND SPEND THE MOST
10 SIGNIFICANT TIME WITH HER SEXUALLY ASSAULTING HER, ESCORTING
11 HER TO THE CEMETERY. SO IN THAT REGARD I BELIEVE THE STATE
12 HAS MET ITS BURDEN AT THIS STAGE REGARDING KENNETH JAMES.

13 ALSO, THE FIRST PERSON THAT SHE FOCUSED IN ON WAS THE
14 PERSON WITH THE GUN WHO INITIALLY APPROACHED AND ASKED FOR A
15 LIGHT. AND SHE HAS IDENTIFIED THE PERSON WITH THE GUN AS
16 ROBERT JAMES; ALSO THAT ROBERT JAMES AT SOME POINT IN TIME
17 ALSO SEXUALLY ASSAULTED HER.

18 NUMBER TWO, THE DEGREE OF THE WITNESS'S ATTENTION TO THE
19 EVENTS. YOUR HONOR, I THINK IN HER WORDS SHE INDICATED SHE
20 IS NEVER GOING TO FORGET THEIR FACES. IN STATE V. BROWN, A
21 COURT OF APPEALS CASE, JUDGE WESTBROOK WAS THE TRIAL JUDGE.
22 IT WAS FILED AT OPINION NO. 2894 FILED OCTOBER 26, 1998. IN
23 THAT CASE THE VICTIM OR THE WITNESS VIEWED A PHOTO LINE-UP
24 SOME SIX DAYS AFTER A ROBBERY. SHE TESTIFIED THAT SHE COULD
25 NOT SWEAR TO THE DEFENDANT'S IDENTIFICATION AT THAT TIME.

1 SHE TESTIFIED SHE BELIEVED THAT PICTURE NUMBER 3 WAS THE
2 ROBBER. SHE EXPLAINED HER HESITANCY THAT SHE DIDN'T WANT TO,
3 QUOTE, GET AN INNOCENT MAN IN TROUBLE IF SHE WERE MISTAKEN.

4 AND OUR COURT OF APPEALS WENT ON, AND THERE'S OTHER
5 SUPREME COURT CASES I BELIEVE THAT WOULD VERIFY THIS, VOUCH
6 FOR THIS, TO SAY THAT A WITNESS IDENTIFICATION NEED NOT BE
7 100 CERTAIN IN ORDER TO MEET THE DUE PROCESS REQUIREMENTS
8 MANDATED BY OUR UNITED STATES SUPREME COURT.

9 AND I'D SUBMIT THAT THE TESTIMONY FROM THIS WITNESS WAS
10 MUCH STRONGER THAN THE WITNESS IN THE BROWN DECISION AND THAT
11 SHE, HER ATTENTION SPAN, THIS EVENT, SHE WAS SEXUALLY
12 ASSAULTED BY FIVE DIFFERENT PEOPLE AND THE EVENT TOOK, IN HER
13 WORDS, AT LEAST 30 MINUTES, COMPARED TO MANY OF THE CASES
14 THAT THIS COURT'S FAMILIAR WITH AND ALL OF US AS OFFICERS OF
15 THE COURT WHERE SOMEBODY ONLY HAS 15 OR 20 OR 30 SECONDS IN A
16 LIQUOR STORE HOLDUP OR SOMETHING TO SEE SOMEBODY'S FACE.

17 SO I WOULD JUST SUBMIT THAT WE'VE MET OUR BURDEN, NUMBER
18 2. NUMBER 3, THE ACCURACY OF THE WITNESS'S PRIOR DESCRIPTION
19 OF THE CRIMINAL. THAT IS THE ONLY REASON WHY I ASKED --
20 THERE WERE FIVE ASSAILANTS, AND I WANTED TO PUT INTO THE
21 RECORD THAT GIVEN THE FIVE DESCRIPTIONS OF THE FIVE SUSPECTS,
22 EVEN THOUGH THEY WERE NEVER PLACED NAME-WISE SINCE THEY
23 DIDN'T HAVE THE NAMES, THE INFORMATION ON THE HEIGHT AND
24 WEIGHTS OF THE DEFENDANTS, THIS COURT BEFORE HAS HAD AN
25 OPPORTUNITY TO VIEW THE DEFENDANTS' GENERAL HEIGHT AND WEIGHT

1 AS WELL OVER THE LAST SEVERAL HOURS, AND IT FITS WITHIN THE
2 GENERAL DESCRIPTIONS OF THOSE FIVE INDIVIDUALS.

3 NUMBER FOUR, THE LEVEL OF THE CERTAINTY DEMONSTRATED BY
4 THE WITNESS AT THE TIME THE IDENTIFICATION WAS MADE. SHE
5 INDICATED SHE SPENT AS LONG AS FIVE MINUTES IN IDENTIFYING,
6 AND TOOK AS MUCH TIME AS POSSIBLE BEFORE SHE -- AND I SUBMIT
7 TO YOU THAT'S BECAUSE SHE WANTED TO BE ABSOLUTELY POSITIVE.
8 IT'S THE FIRST TIME -- EVEN THOUGH IT'S NOT IN THE RECORD, I
9 SUBMIT THE FACT THAT THERE ISN'T ANY OTHER EVIDENCE IN THE
10 RECORD THAT SHE'S EVER BEEN A SHOWN A PHOTO LINE-UP. BUT THE
11 FACT THAT SHE TOOK ENOUGH TIME TO IDENTIFY KEVIN JAMES,
12 KENNETH JAMES AND SHE ALSO WAS PROVIDED A LINE-UP SOME 18
13 DAYS LATER AND JUST SO HAPPENED TO IDENTIFY KENNETH JAMES'S
14 BROTHER ROBERT JAMES.

15 AND NUMBER 5, THE TIME ELAPSED BETWEEN THE CRIME AND THE
16 IDENTIFICATION, WITHIN TWELVE -- WITHIN TEN TO ELEVEN HOURS,
17 I DO NOT -- OBVIOUSLY THE STATE'S POSITION IS NOT A
18 SIGNIFICANT AMOUNT OF TIME. AND I DON'T BELIEVE WITHIN THREE
19 WEEKS IS A SIGNIFICANT AMOUNT OF TIME GIVEN THE FACT THAT
20 SOMETIMES MONTHS GOES BY BEFORE A PHYSICAL OR A PHOTO LINE-UP
21 IS SHOWN.

22 SO, IN THAT REGARD I WOULD LEAVE IT IN THE DISCRETION OF
23 THE COURT'S DISCRETION. CONCERNING THE TOTALITY OF THE
24 CIRCUMSTANCES, I BELIEVE WE'VE MET OUR BURDEN WITH REGARDS TO
25 , BECAUSE EVEN INVESTIGATOR THOMAS' TESTIMONY,

1 THERE'S NO EVIDENCE THAT ANY -- THAT EITHER TIME WAS THERE
2 ANY SUGGESTIVENESS ON THE PART OF THE POLICE OFFICERS DURING
3 THE LINE-UP PROCEDURES.

4 WITH REGARD TO --

5 THE COURT: MR. MURRAY.

6 MR. GASSER: -- MR. MURRAY, I WOULD AGREE THAT -- I
7 WOULD AGREE WITH MR. SNEED THAT THIS REALLY ISN'T YOUR
8 TYPICAL NEIL V. BIGGERS IDENTIFICATION HEARING IN THE SENSE
9 THAT --

10 THE COURT: AND YOU WILL AGREE THAT IT WAS YOU WHO
11 DECIDED TO DO IT AND --

12 MR. GASSER: YES, SIR. I WANTED TO MAKE THE RECORD -- I
13 COULDN'T IMAGINE US WITH THE JURY SELECTED TWO DAYS INTO THIS
14 TRIAL OR THREE DAYS INTO THIS TRIAL ME CALLING MR. MURRAY AND
15 THEM NOT WANTING TO HOLD A HEARING AT THAT PARTICULAR TIME.
16 SO I WANTED TO GO AHEAD AND GET IT OUT, GET IT ALL OUT JUST
17 SO THAT THERE WOULD BE A RECORD OF WHAT HIS TESTIMONY WOULD
18 BE.

19 SO I DON'T BELIEVE THAT THE STANDARD OF NEIL V. BIGGERS
20 NEEDS TO BE MET. I THINK ONCE THE STATE'S PRESENTED EVIDENCE
21 THAT HE'S AN INDIVIDUAL THAT KNEW THESE DEFENDANTS FOR SOME
22 FIVE, SIX OR SEVEN YEARS FROM THE NEIGHBORHOOD AT THREE
23 DIFFERENT LOCATIONS, I WOULD SUBMIT THAT IT'S UNCONTRADICTED
24 THAT THE DEFENDANT -- I CAN UNDERSTAND THE BURDEN IS ON THE
25 STATE, BUT THE DEFENSE HAD THE OPPORTUNITY TO PRESENT

1 EVIDENCE OR TESTIMONY TO NEGATE THAT TESTIMONY OF MR. MURRAY,
2 THAT HE'S KNOWN THEM FOR SIX OR SEVEN YEARS BEFORE THIS
3 INCIDENT, KNEW WHERE THEY LIVED. AND THIS COURT HAS HEARD
4 NOTHING FROM — NO EVIDENCE FROM EITHER DEFENDANT TO IMPEACH
5 OR TO CONTRADICT THE FACT THAT MR. MURRAY KNEW THESE
6 INDIVIDUALS FOR SIX OR SEVEN YEARS PRIOR TO THIS INCIDENT
7 DATE.

8 ALSO THE OPPORTUNITY THAT HE HAD, I KNEW THAT WHEN MS.
9 FRYAR WAS OUT THERE INTERVIEWING HIM, MR. SHUPPER CAME OUT
10 THERE. SO I KNEW EVENTUALLY IT WOULD GET BEFORE THIS COURT
11 OR THIS JURY THAT THAT STREET LIGHT IS ABOUT 40 FEET, 40 TO
12 50 FEET AWAY, AND THE FACT THAT THEY LITERALLY WERE
13 ILLUMINATED. THEY WERE WALKING. THEY WEREN'T RUNNING. AND
14 THEY WALKED RIGHT UNDER THE STREET LIGHT. AND HERE HE HAD
15 FROM THAT DISTANCE WITH NO DISTRACTIONS INBETWEEN, WITHOUT
16 THEM WEARING ANY HATS OR MASKS, HE HAD AN OPPORTUNITY TO SEE
17 AN INDIVIDUAL FROM HIS YARD TO THAT DISTANCE WALKING UNDER A
18 STREET LIGHT, PEOPLE THAT HE'S KNOWN FOR SIX OR SEVEN YEARS.

19 AND THERE'S NO EVIDENCE TO SUGGEST THAT HE HAS ANY
20 MOTIVE OR ANY BIASNESS. HE DOESN'T EVEN KNOW THE VICTIMS IN
21 THIS CASE. THERE'S NO EVIDENCE IN THE RECORD AT THIS TIME
22 FOR YOU TO SUGGEST THAT HE HAS ANY BAD — THERE'S ANY BAD
23 BLOOD BETWEEN HIM AND THE DEFENDANTS. AND YOU TOOK ONE OF
24 THE MAIN ARGUMENTS AWAY, GIVEN YOUR EXPERIENCE BOTH SITTING
25 UP THERE AND AT OUR TABLE, IN THE SENSE IT IS OBVIOUS WHEN

1 YOU'RE FACED WITH AN INDIVIDUAL THAT JUST DIDN'T WANT TO GET
2 INVOLVED WHEN THE OFFICER SHOWED HIM THE LINE-UP, THAT HE
3 INDICATED, YOU KNOW, THAT HE WOULD NOT PICK ANYBODY OUT, NOT
4 THAT HE COULD NOT PICK ANYBODY OUT, BUT THAT HE WOULD NOT
5 PICK ANYBODY OUT.

6 AND I SUBMIT TO YOU THAT A REASONABLE INFERENCE, WITH
7 HIS MOTHER AND STEPFATHER LIVING WITHIN A BLOCK AWAY, TO A
8 REASONABLE PERSON, OR A REASONABLE INFERENCE IS TO SUGGEST
9 THAT PEOPLE DON'T LIKE TO GET INVOLVED. AND I GUESS THAT
10 WOULD BE JUST SORT OF AN ICING ON THE CAKE ARGUMENT TO MY
11 PREVIOUS ARGUMENT, YOUR HONOR. THANK YOU, YOUR HONOR.

12 THE COURT: ALL RIGHT. ALL RIGHT, FELLOWS, REJOIN TO
13 WHAT MR. GASSER HAS SAID, IF YOU WOULD.

14 MR. SNEED: YOUR HONOR, IF DID COULD JUST BRIEFLY
15 RESPOND TO THE LATTER PART ABOUT MR. MURRAY.

16 THE COURT: IF YOU COULD BRIEFLY RESPOND I'D BE
17 THRILLED.

18 MR. SNEED: YOUR HONOR, THAT'S THE CURRENT SPIN THAT THE
19 STATE'S TRIED TO PUT ON IT. HE DIDN'T WANT TO GET INVOLVED.
20 YOU JUST LOOK AT INVESTIGATOR THOMPSON'S NOTES; YOU HAVE THE
21 EXACT OPPOSITE.

22 THE COURT: THAT WAS THE IMPRESSION THAT I GARNERED
23 INDEPENDENTLY. NOBODY ATTEMPTED TO PUT THAT SPIN ON IT. I'M
24 SITTING HERE LISTENING TO THE GUY AND THAT'S WHAT I CAME UP
25 WITH. THEY DIDN'T TELL ME THAT.

1 MR. SNEED: WELL, I WOULD SUGGEST, YOUR HONOR, THERE IS
2 -- BASED UPON THE TESTIMONY OF MR. MURRAY AND THOMAS --
3 THERE'S ANOTHER, YOU KNOW, EQUAL CONCLUSION YOU CAN GET, IS
4 THAT HE DIDN'T HAVE THAT I.D. BACK THEN AND IT WASN'T UNTIL
5 JUST TWO DAYS AGO THAT HE CAME UP WITH THAT.

6 THE COURT: I UNDERSTAND THAT. MR. SHUPPER.

7 MR. SHUPPER: YOUR HONOR, A PLAUSIBLE INFERENCE THAT
8 COULD BE DRAWN FROM MR. MURRAY'S NOT MAKING AN IDENTIFICATION
9 WAS THAT HE WASN'T CERTAIN BACK THEN WHEN HE MET WITH
10 INVESTIGATOR THOMAS. AND HIS COMMENTS ABOUT THE RUMORS AND
11 THE ATTENTION DRAWN TO THIS WHERE HE SUDDENLY BECOMES AN
12 INTEGRAL PART IN THIS INCIDENT COULD WELL BE AN EXPLANATION
13 FOR HIS CERTAINTY EXPRESSED TODAY AS OPPOSED TO THE
14 UNCERTAINTY EXPRESSED AT THE TIME WHEN IT WAS FRESH.

15 THE FACT THAT THE FIVE PEOPLE HE SAW WERE WALKING AND
16 NOT ACTING SUSPICIOUSLY OR ACTING IN ANY WAY UNNORMAL (SIC),
17 IN AN UNNORMAL WAY, AND WHERE HE CLAIMED THAT HE KNEW THEM
18 FROM THE NEIGHBORHOOD AND IT WOULDN'T BE UNUSUAL FOR THEM TO
19 BE IN THAT AREA I THINK IS A PLAUSIBLE EXPLANATION FOR HIM
20 MAKING AN ASSOCIATION BASED ON INFORMATION THAT CAME TO HIS
21 ATTENTION LATER. THESE ARE FELLOWS THAT HE CLAIMS THAT HE
22 KNEW, BUT HE DIDN'T CLAIM OR MAKE THAT IDENTIFICATION AT THE
23 TIME.

24 THE COURT: OKAY.

25 MR. SHUPPER: AND I JUST ASK YOUR HONOR TO CONSIDER

1 THOSE FACTORS.

2 THE COURT: THANK YOU. WELL, I'M GOING TO TAKE — I'M
3 READY TO RULE ON MS , AND I'LL TELL YOU WHAT I'M GOING
4 TO DO IN MS. CASE. MS IS GOING TO TESTIFY.
5 OBVIOUSLY THE TEST IS, IS THE TESTIMONY RELIABLE UNDER THE
6 TOTALITY OF THE CIRCUMSTANCES? AND MR. SNEED HAS ARGUED THE
7 — AND MR. SHUPPER HAS ARGUED THE FIVE POINTS USUALLY CITED
8 BEGINNING WITH MANSON V. BRATTHEWAITE AND STATE V. STEWART,
9 OUR STATE CASES THAT ADDRESS THIS KIND OF SITUATION.

10 I DON'T THINK THAT THE STATE NEED SHOW THAT ON EACH AND
11 EVERY ONE OF THE POINTS THAT THERE IS ABSOLUTE, YOU KNOW, 100
12 PERCENT CERTAINTY, MERELY THAT UNDER THE TOTALITY OF THE
13 CIRCUMSTANCES THAT THE IDENTIFICATION IS RELIABLE.

14 WHAT WE'RE DEALING HERE WITH IS A PRE-TRIAL
15 IDENTIFICATION AND IF THE PRE-TRIAL IDENTIFICATION PROCEDURE
16 IS SO SUGGESTIVE AS TO IMPERMISSIBLY TAINT A SUBSEQUENT
17 IN-COURT IDENTIFICATION. AND THE TEST IS, DOES IT CREATE A
18 SUBSTANTIAL LIKELIHOOD OF MISIDENTIFICATION? EVERYBODY
19 AGREES WITH THAT, THAT THAT'S WHAT THE STANDARD IS.

20 AND I DON'T BELIEVE, EVEN GIVEN THE — MR. SHUPPER, YOU
21 POINT OUT THE PROMINENT NECK. I WOULD BE A LOT MORE
22 IMPRESSED WITH THAT PARTICULAR THEORY HAD THE VICTIM OR
23 PURPORTED VICTIM DESCRIBED ONE OF HER ASSAILANTS AS HAVING A
24 PROMINENT NECK AS A PROMINENT FEATURE AND THEN THIS PERSON'S
25 PICTURE BEING IN THERE HIGHLIGHTING THE LENGTH OF HIS NECK.

1 I DON'T THINK THAT THERE'S -- YOU KNOW, LOOKING AT IT TO
2 ME, THERE'S NOT A SUBSTANTIAL -- IT DOESN'T APPEAR TO ME TO
3 BE SOME SORT OF CONTRIVED THING TO MAKE HIM STAND OUT LIKE,
4 YOU KNOW, IN THE CLASSIC SENSE OF A SUGGESTIVE LINE-UP. SO I
5 DON'T THINK THAT THIS PROCEDURE IS SO IMPERMISSIVELY
6 SUGGESTIVE AS TO -- IF IT IS SUGGESTIVE AT ALL -- AS TO TAINT
7 THE IN-COURT IDENTIFICATION. IN FACT, I THINK THE IN-COURT
8 IDENTIFICATION IS EATEN UP WITH RELIABILITY, AN INDICIA OF
9 RELIABILITY.

10 AGAIN, I'M NOT GOING TO SAY THAT MS. _____'S TESTIMONY
11 IS WORTHY OF BELIEF BEYOND A REASONABLE DOUBT. THAT'S NOT
12 WHAT I'M CALLED UPON TO DO. I'M CALLED UPON TO DETERMINE, IS
13 IT SUFFICIENTLY RELIABLE TO ALLOW IT TO GO FORWARD BEFORE
14 THIS JURY. IT IS.

15 SO, NOW I'M CONCERNED ABOUT MR. MURRAY'S TESTIMONY. AND
16 I AM CONCERNED ABOUT IT. BUT LET ME POINT OUT THAT WITH MR.
17 MURRAY'S TESTIMONY WE ARE NOT DEALING WITH A PURPORTEDLY
18 IMPERMISSIBLY SUGGESTIVE PRE-TRIAL PROCEDURE, ARE WE, MR.
19 STRICKLER?

20 MR. STRICKLER: NO, SIR. MR. SNEED AND I WERE JUST
21 DISCUSSING THAT AMONG OURSELVES EARLIER.

22 THE COURT: YEAH. AND HERE'S THE POINT WITH THAT.
23 LET'S SAY YOU'VE GOT A GUY WHO COMES IN THREE YEARS AFTER AN
24 EVENT OCCURS, AND HE SAYS, I WAS THERE, I SAW IT HAPPEN, I
25 SAW THIS THING GO DOWN OR I SAW THESE GUYS WALKING UNDER THE

1 TREE. LET'S SAY THAT THERE HAD BEEN NO CONTACT AT ALL WITH
2 MURRAY AT ALL. MURRAY COMES IN HERE AND HE TESTIFIES EXACTLY
3 AS HE'S TESTIFIED FROM THE WITNESS STAND, THAT I SAW THESE
4 TWO FELLOWS WALKING UNDER THE LIGHT AND THEN THREE OTHER
5 FELLOWS WALKING RIGHT BEHIND THEM. ONE OF THE FELLOWS IN THE
6 FIRST GROUP OF TWO WAS THIS FELLOW AND ONE OF THE GROUP OF
7 THREE WAS THE OTHER FELLOW. I SAW THEM AND THEY WERE
8 ILLUMINATED FROM ABOUT 45 FEET AWAY. I'D SEEN THEM IN THE
9 NEIGHBORHOOD BEFORE.

10 WHAT ARE YOU FACED WITH? YOU'RE NOT FACED WITH THE
11 SUPPRESSION OF AN IN-COURT IDENTIFICATION BASED UPON A
12 TAINTED PRE-TRIAL PROCEDURE, ARE YOU? YOU'RE NOT. WHAT
13 YOU'RE FACE WITH AT THAT POINT IN TIME IS A SITUATION WHERE A
14 GUY COMES IN AND YOU TRY TO BLOW HIM UP ON CROSS EXAMINATION.
15 MY GOD, IT'S BEEN THREE YEARS. ALL OF A SUDDEN YOU COME OUT
16 OF THE WOODWORK AND SAY THIS. SO YOU CAN PUT WHATEVER SPIN
17 YOU WANT TO ON IT.

18 I AM STILL CONCERNED ABOUT MURRAY'S TESTIMONY, BUT I
19 DON'T THINK RIGHT NOW THAT I WOULD, QUOTE, SUPPRESS MURRAY'S
20 TESTIMONY FOR THE SIMPLE REASON THAT THE REMEDY OR CURE FOR
21 THIS SHAKY TESTIMONY IS VIGOROUS CROSS EXAMINATION. AND, MR.
22 STRICKLER.

23 MR. STRICKLER: WELL, I HESITATE TO ADD MY TWO CENTS
24 SINCE MR. SNEED'S BEEN DOING THE ARGUMENT.

25 THE COURT: WELL, PLEASE GO AHEAD. EVERYBODY ELSE HAS.

1 MR. STRICKLER: OF COURSE INDEPENDENT OF SUPPRESSION ON
2 A CONSTITUTIONAL BASIS LIES —

3 THE COURT: RIGHT.

4 MR. STRICKLER: — THE QUESTION OF YOUR SUPERVISORY
5 ROLE AS TO RELEVANCE AND MATERIALITY —

6 THE COURT: EXACTLY.

7 MR. STRICKLER: — AND THE BALANCING OF PREJUDICE WHICH
8 YOU'RE ENTITLED TO DO IN REGARD TO HIS IDENTIFICATION.

9 THE COURT: PRECISELY RIGHT. WHICH IS WHY I SAID I'M
10 LEANING TOWARD ALLOWING MR. MURRAY TO TESTIFY, BUT I'M STILL
11 THINKING ABOUT THAT. I'D LIKE TO THINK ABOUT THAT OVERNIGHT
12 OKAY.

13 MR. STRICKLER: YES, SIR. YOUR HONOR, I JUST WANTED TO
14 ADD THAT AS A BASIS TO IT.

15 THE COURT: WELL, CLEARLY I HAVE TO DO THAT.

16 MR. STRICKLER: YES, SIR.

17 THE COURT: IF I THINK THAT SOMEBODY — YOU KNOW, WHILE
18 I AM NOT THE ARBITER AS MR. SNEED POINTS OUT OF CREDIBILITY
19 OF WITNESSES, WHILE I AM NOT THAT, I CERTAINLY HAVE A ROLE IN
20 DETERMINING WHETHER OR NOT I'M GOING TO LET TESTIMONY THAT I
21 THINK IS BAD STUFF COME IN FRONT OF THE COURT.

22 MR. STRICKLER: YES, SIR.

23 THE COURT: OR WHETHER OR NOT IT IS MERELY SHAKY AND
24 SUBJECT TO CROSS EXAMINATION. AND BY SAYING THAT I DON'T
25 INTEND TO IMPLY THAT MR. GASSER IS BY ANY MEANS ATTEMPTING TO

1 PUT ON TESTIMONY HE KNOWS TO BE UNTRUE; SIMPLY THAT THE — I
2 HAVE TO WORRY ABOUT A LITTLE BIT ABOUT MR. MURRAY'S
3 TESTIMONY.

4 MR. STRICKLER: YES, SIR.

5 THE COURT: SO I'LL WORRY ABOUT IT TONIGHT AND I'LL LET
6 YOU ALL KNOW TOMORROW.

7 MR. STRICKLER: THANK YOU, SIR.

8 THE COURT: OR AS SCARLETT O'HARA SAID, SHE'LL WORRY
9 ABOUT THAT TOMORROW. I'LL WORRY ABOUT THAT TOMORROW. OKAY.
10 I'LL WORRY ABOUT IT TONIGHT AND I'LL TELL YOU ALL WHAT I'M
11 GOING TO DO TOMORROW.

12 NOW, WE'VE GOT A WHOLE LOT OF STUFF TO DO, REAL
13 INTERESTING STUFF, INCLUDING THE POOR DOG MAN WHO'S BEEN
14 OUTSIDE ALL DAY. AND I'M NOT GOING TO SIT HERE FOR ANOTHER
15 TWO HOURS ON THE DOG GUY, ON THE SUPPRESSION OF EVIDENCE
16 FELLOW. WHAT WE'RE GOING TO DO, MS. "P", YOU AWAKE, MS.
17 PENDERGRASS?

18 THE CLERK: YES, SIR.

19 THE COURT: WHAT WE'RE GOING TO DO IS, IS WHEN THAT JURY
20 COMES IN TOMORROW, WE'RE GOING TO BE HERE AT 9:15. WE'RE
21 GOING TO START. WHEN THE JURY COMES IN AT 9:45 AND THEY'RE
22 ALL GATHERED MS. PENDERGRASS IS GOING TO ALERT ME WHEN
23 THEY'RE ALL HERE. WE'RE GOING TO BREAK. I'M GOING TO GO
24 TELL THEM, HEY, I'M SORRY. I AM A POOR TIME MANAGER. IT
25 DOESN'T LIKE WE'RE GOING TO GET YOU ALL UNTIL, WHATEVER IT

1 IS. AND THEN WE'RE GOING TO PUT THEM OFF AND WE'RE GOING TO
2 FINISH ALL THIS STUFF AND WE'RE GOING TO HEAR IT ALL.
3 ANYBODY WANT TO SUGGEST ANYTHING OTHER THAN THAT? MR.
4 GASSER?

5 MR. GASSER: NO, SIR, YOUR HONOR. WE WOULD BE WILLING
6 TO — WE CAN DO THIS OFF THE RECORD. BUT WE'D BE WILLING TO
7 — DO YOU WANT US TO MEET WITH YOU BEFOREHAND OR TELL YOU
8 KIND OF WHERE WE'RE GOING WITH THE CASE LAW? WOULD THAT BE
9 ADVISABLE? LIKE I CAN TELL YOU ONE OR TWO CASES ON THE DOG
10 TRACKING THAT WE WOULD RELY ON.

11 THE COURT: YEAH. WELL, I'VE LOOK LOOKED AT THE DOG
12 TRACKING CASES THAT EXIST IN THIS STATE, WHICH ARE VERY FEW.
13 BUT IF YOU WANT TO TELL ME WHAT THEY ARE, I'LL BE HAPPY TO
14 WRITE THEM DOWN RIGHT NOW. JUST GIVE ME THE CITE. YOU GOT
15 ANY DOG CASES, MR. SNEED? OR MORE APPROPRIATELY DOG TRACKING
16 CASES. I'M SURE YOU'VE GOT A FEW DOG CASES.

17 MR. SNEED: HERE'S WHAT I CAN DO, YOUR HONOR.

18 THE COURT: MR. SHUPPER? DOG CASES?

19 MR. SHUPPER: NO, SIR, YOUR HONOR.

20 MR. SNEED: YOUR HONOR, THIS WAS A — I JUST GAVE THE
21 SOLICITOR A COPY. IT'S ESSENTIALLY A LISTING OF THE FIVE
22 OBJECTIONS I'M HEADED TOWARD ON THE DOG ISSUE. WE MOSTLY
23 RELY ON ORAL ARGUMENT. I CAN TELL YOU, YOUR HONOR, THERE'S A
24 LEADING ANNOTATION FOR DOG TRACKING, AND I CAN GIVE YOU THE
25 CITE IF I CAN FIND IT.

1 THE COURT: HOW YOU DOING, JENNY?

2 COURT REPORTER: I'M TIRED.

3 THE COURT: EVERYTHING OKAY? YOU'LL BE FINE. JUST
4 RELAX. PURSED LIP BREATHING.

5 MR. SNEED: YOUR HONOR, DO YOU CARE FOR THE CITATION ON
6 THE A.L.R.?

7 THE COURT: I CARE FOR IT.

8 MR. SNEED: I HAVE A COPY. I DON'T HAVE A SPARE TO GIVE
9 THE SOLICITOR.

10 THE COURT: JUST GIVE ME THE CITATION. I CAN ACCESS IT
11 FROM HERE.

12 MR. SNEED: 18 A.L.R. 3RD 1221.

13 THE COURT: 1221. 1221?

14 MR. SNEED: YES, SIR.

15 THE COURT: OKAY. AND, MR. GASSER, YOU'VE GOT SOME DOG
16 CITES?

17 MR. GASSER: STATE V. CHILDS, 385 S.E.2ND 839.

18 THE COURT: 358, 839.

19 MR. GASSER: I HAVE THE SOUTH CAROLINA CITE. WOULD YOU
20 PREFER EITHER ONE ON YOUR COMPUTER?

21 THE COURT: NO. THAT'S FINE.

22 MR. GASSER: THAT'S A 1989 CASE. STATE V. BOSTICK.
23 IT'S A 1969 CASE.

24 THE COURT: BOSTICK WITH A "K" OR NO "K"?

25 MR. GASSER: WITH A "K" AT THE END.

1 THE COURT: OKAY.

2 MR. GASSER: AND THAT'S 169 S.E.2ND 608.

3 THE COURT: OKAY.

4 MR. GASSER: STATE V. JORDAN, A 1972 CASE. THAT'S 188
5 S.E.2ND 780.

6 THE COURT: OKAY. THAT'S ENOUGH.

7 MR. GASSER: YES, SIR.

8 THE COURT: I DON'T NEED ANY MORE OF THESE. OKAY. ALL
9 RIGHTY. SEE YOU ALL TOMORROW. OH. BY THE WAY, I'LL SEE YOU
10 ALL AT 9:00. WE'LL START IN HERE AT 9:15. AND WHEN WE GET
11 THE JURY IN, WE'LL DO WHAT WE NEED TO DO WITH THEM.

12 (WHEREUPON, THE PROCEEDINGS ARE CONCLUDED FOR THE DAY, TO BE
13 RECONVENED TOMORROW MORNING)

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1 TUESDAY, SEPTEMBER 21, 1999

2 THE COURT: OKAY. NOW, WHERE WERE WE? I'VE GOT SO MANY
3 PAPERS SPREAD OUT HERE. WE HAVE FINISHED THE IDENTIFICATION
4 TESTIMONY. I HAVE RULED ON THAT CONCERNING MS. BROWN. I
5 HAVE RESERVED RULING AT THIS TIME ON THAT INVOLVING MR.
6 MURRAY. AND I'M STILL MULLING THAT OVER. ALTHOUGH I WILL --
7 WHERE IS EVERYBODY? OKAY. I'M SORRY.

8 MR. GASSER: WE'RE READY. WE'RE READY.

9 THE COURT: ARE YOU READY?

10 MR. GASSER: YES, SIR.

11 THE COURT: OKAY. BECAUSE I DIDN'T KNOW IF I'D LEFT
12 SOMEBODY OUT. I HAVE TO TELL YOU, I MEAN, IN ALL CANDOR THAT
13 I AM LEANING TOWARD ALLOWING MR. MURRAY TO TESTIFY FOR THIS
14 REASON. I BELIEVE THAT HIS TESTIMONY IS NOT SO UNRELIABLE AS
15 TO REQUIRE ME TO AS A MATTER OF LAW PRECLUDE ITS ADMISSION.
16 I THINK IT'S THE KIND OF THING THAT IS SUBJECT TO VIGOROUS
17 CROSS EXAMINATION. AND, YES, THERE ARE DISCREPANCIES IN HIS
18 TESTIMONY; AND, YES, HIS TESTIMONY CAN BE WEAKENED BY CROSS
19 EXAMINATION, SUCH AS THE ASSERTION THAT HE SAW BOTH
20 PHOTOGRAPHS WHEN THOMAS SHOWED UP. WE KNOW THAT THAT'S
21 PROBABLY NOT A POSSIBILITY, COULD NOT PROBABLY HAVE HAPPENED,
22 AND ALSO THE DISTANCE FROM WHICH HE PURPORTEDLY I.D.'D THESE
23 PEOPLE. BUT THAT'S THE KIND OF THING THAT YOU CAN BRING OUT
24 ON CROSS EXAMINATION. I'VE NOT FINALLY RULING ON THAT, BUT
25 YOU NEED TO UNDERSTAND THAT THAT'S WHAT I'M THINKING AND

1 THAT'S PROBABLY GOING TO BE THE RESULT. I DON'T WANT TO
2 MISLEAD ANYBODY OR LEAD ANYBODY ON.

3 OKAY. WE NOW ARE WHERE? WHAT IS THE NEXT THING THAT
4 REQUIRES TESTIMONY? THE DOG GUY?

5 MR. SNEED: YOUR HONOR, I HAD TWO VERY QUICK MOTIONS
6 RELATING TO IDENTIFICATION. IT'S A MOTION IN LIMINE. THE
7 FIRST ONE IS TO MOVE TO PREVENT THE STATE FROM ACTUALLY, FROM
8 INTRODUCING THE ACTUAL AFFIDAVIT OF MS. . INTO EVIDENCE.

9 THE COURT: WHAT AFFIDAVIT OF MS.

10 MR. SNEED: WHEN THE OFFICER SHOWED HER THE TWO
11 LINE-UPS, IT'S TWO STATE'S EXHIBITS.

12 THE COURT: SHE SIGNED SOMETHING THAT SAYS THAT SHE
13 PICKED OUT NUMBER 6?

14 MR. SNEED: YES, SIR.

15 THE COURT: AND OF COURSE YOU DON'T WANT TO INTRODUCE
16 THAT, DO YOU? OR —

17 MR. GASSER: AS LONG AS THEY DON'T MAKE AN ISSUE OF IT.

18 THE COURT: YEAH. OKAY.

19 MR. GASSER: WE'RE GOING TO GET THE TESTIMONY IN, JUST
20 MARK IT FOR I.D., BUT WE DON'T NEED TO MARK IT INTO EVIDENCE
21 AS LONG AS THEY DON'T MAKE AN ISSUE OUT OF IT DURING CROSS
22 EXAMINATION OR CLOSING ARGUMENT.

23 THE COURT: AND THE REASON OF COURSE THAT YOU WISH TO
24 PRECLUDE THIS FROM COMING INTO EVIDENCE IS ...?

25 MR. SNEED: IT'S CUMULATIVE UNDER 403. AND THEN ALSO

1 THERE IS THREE WITNESS STATUTES THAT I'M REFERRING TO.

2 THE COURT: THREE WHAT STATUTES?

3 MR. SNEED: THERE'S THREE STATUTES. FOR LACK OF A
4 BETTER WORD, I CALL THEM WITNESS STATUTES. IT'S 8-15-50 AND
5 19-1-80 AND 19-1-90 THAT REFER TO THE MECHANICS WHEN A
6 GOVERNMENT OFFICIAL TAKES A WITNESS STATEMENT. ESSENTIALLY,
7 —

8 THE COURT: OH, OKAY. WELL, I JUST THINK IT PROBABLY IT
9 JUST UNFAIRLY BOLSTERS IN WRITING THE TESTIMONY OF A WITNESS
10 WHO'S GOING TO TESTIFY THAT SHE DID THIS ANYWAY. AND ALSO
11 YOU'VE GOT ANOTHER WITNESS WHO IS GOING TO DO IT. AND AS
12 LONG AS — AS MR. GASSER SAYS, AS LONG AS YOU ALL DON'T SEEK
13 TO EXPLOIT IT IN ANY WAY, IT'S NOT GOING TO COME IN ON THEIR
14 CASE IN CHIEF. OKAY?

15 MR. SNEED: YES, SIR.

16 THE COURT: OKAY.

17 MR. SNEED: THANK YOU.

18 THE COURT: YEAH. I THOUGHT THERE WERE TWO QUICK
19 MOTIONS ON IDENTIFICATION.

20 MR. SNEED: BEG — WILL THE COURT GIVE ME A MOMENT?

21 THE COURT: WELL, YOU SAID YOU HAD TWO. I HEARD ONE.

22 MR. SNEED: OKAY. JUST BEG THE COURT'S INDULGENCE.
23 YOUR HONOR, THAT WAS MY ONE MOTION. I WON'T HAVE A SECOND
24 ONE.

25 THE COURT: OKAY. ALL RIGHT. NOW, THE NEXT THING IS, I

1 KEEP REFERRING TO MR. BLACKWELL AS THE DOG MAN. BUT I GUESS
2 SERGEANT BLACKWELL'S TESTIMONY WITH REGARD TO THE DOG. IS
3 THAT WHAT WE NEED NEXT?

4 MR. GASSER: YES, SIR. WE'RE READY TO PROCEED ON THAT.

5 THE COURT: OKAY. GO AHEAD.

6 MR. GASSER: THE STATE CALLS SERGEANT RANDY BLACKWELL.

7 ERNEST R. BLACKWELL, BEING FIRST
8 DULY SWORN, TESTIFIES AS FOLLOWS: (IC)

9 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
10 FOR THE RECORD.

11 MR. BLACKWELL: I AM SERGEANT ERNEST RANDALL BLACKWELL.

12 DIRECT EXAMINATION BY MR. GASSER:

13 Q SERGEANT BLACKWELL, YOU FOR THE RECORD WORK FOR THE COLUMBIA
14 POLICE DEPARTMENT. IS THAT CORRECT?

15 A THAT'S CORRECT.

16 Q WOULD YOU PLEASE TELL THE COURT -- WELL, HOW MANY YEARS HAVE
17 YOU BEEN WITH THE COLUMBIA POLICE DEPARTMENT?

18 A I'VE BEEN -- MY CURRENT STINT OF EMPLOYMENT HAS BEEN TEN
19 YEARS. I WAS PREVIOUSLY EMPLOYED FOR THREE YEARS, WAS
20 INJURED WHICH REQUIRED EXTENSIVE REHABILITATION AND DURING
21 THAT TIME TOOK LEAVE FROM THE DEPARTMENT.

22 Q SO YOU HAVE 13 TOTAL YEARS?

23 A YES, SIR. FOURTEEN. OR 13.

24 Q AND WOULD YOU -- OTHER THAN YOUR ROUTINE TRAINING THAT YOU
25 HAVE RECEIVED WITH REGARD TO PATROL AND OTHER MATTERS, DO YOU

1 HAVE SPECIALIZED TRAINING IN THE AREA OF DOG TRACKING?

2 A YES, SIR, I DO.

3 Q WOULD YOU GO AHEAD AND TELL THE COURT WHAT TRAINING YOU HAVE
4 EITHER WITH THE -- OR BOTH WITH THE COLUMBIA POLICE
5 DEPARTMENT AND WITH THE UNITED STATES ARMY?

6 A I WILL. I BEGAN MY TRAINING IN THE FIELD OF LAW ENFORCEMENT,
7 CANINE TRAINING. WHILE I WAS IN THE UNITED STATES ARMY AS A
8 MILITARY POLICE OFFICER, ATTENDED EIGHT WEEKS OF -- WHICH IS
9 480 HOURS OF BASIC MILITARY WORKING DOG HANDLER COURSE, AND
10 THIS WAS IN 1981. DURING THAT TRAINING STINT I WAS --
11 RECEIVED EXTENSIVE TRAINING IN THE FIELDS OF NARCOTICS
12 DETECTION, CANINE OBEDIENCE, CANINE AGILITY, HANDLING
13 PROTECTION, APPREHENSION, BUILDING SEARCH AND SCOUTING WHICH
14 IS INCLUSIVE OF TRACKING AND AREA SEARCHES FOR AN INDIVIDUAL
15 PERSON.

16 I FINISHED THIS TRAINING, FINISHED MY TOUR OF DUTY IN
17 THE MILITARY AT THE END OF 1981, STAYED IN THE RESERVES FOR
18 FOUR ADDITIONAL YEARS AFTER THAT WHERE I MAINTAINED MY
19 POSITION AS A MILITARY POLICE OFFICER AND A CANINE HANDLER ON
20 A PART-TIME BASIS.

21 AFTER THAT, BETWEEN 1981 AND 1989, BETWEEN THAT PERIOD,
22 I WORKED WITH INDIVIDUALS, TRAINING INDIVIDUALS WITH THE
23 A.K.C. WHICH IS THE AMERICAN KENNEL CLUB DOING OBEDIENCE
24 TRAINING FOR INDIVIDUALS FOR THEIR PERSONAL DOGS AS WELL AS
25 TRACKING TRAINING AND CERTIFIED -- TRAINED DOGS AND HANDLERS

1 TO PARTICIPATE IN THE A.K.C.'S TRACKING FIELD TRIALS AND GET
2 CERTIFICATION, MAINTAIN OR ACQUIRE CERTIFICATION THROUGH THAT
3 AGENCY.

4 THE COURT: FORGIVE ME FOR INTERRUPTING THE TESTIMONY AT
5 THIS POINT. BUT, MS. PENDERGRASS.

6 THE CLERK: YES, SIR.

7 THE COURT: WHEN THE JURY ARRIVES, PLEASE NOTIFY ME AND
8 LET'S BRING THEM IN IMMEDIATELY WHEN THEY ARE ASSEMBLED SO
9 THAT I CAN DISMISS THEM UNTIL ABOUT 2:00. OKAY? THANK YOU.
10 I'M SORRY. I DIDN'T MEAN TO INTERRUPT YOU. PLEASE GO AHEAD.

11 A AND ---

12 Q YOU'RE LEADING UP TO 1989. BECAUSE, CORRECT ME IF I'M WRONG,
13 BUT IN 1989 IS WHEN YOU CREATED THE CANINE UNIT WITH THE
14 COLUMBIA POLICE DEPARTMENT. CORRECT?

15 A THAT'S CORRECT.

16 Q ARE YOU FINISHED WITH YOUR CREDENTIALS TO THE COURT LEADING
17 UP TO THAT POINT IN TIME WITH THE COLUMBIA POLICE DEPARTMENT?

18 A YES, SIR, I AM.

19 Q WOULD YOU THEN GO AHEAD AND PROVIDE THE COURT WITH HOW YOU
20 CAME ABOUT ESTABLISHING THE CANINE UNIT WITH THE COLUMBIA
21 POLICE DEPARTMENT?

22 A IN 1989, WHEN CHIEF CHARLES AUSTIN WAS HIRED AS THE -- OR
23 WHEN I WAS HIRED BACK, CHIEF CHARLES AUSTIN WAS THE DEPUTY
24 CHIEF AT THE TIME. I DID A PROPOSAL TO CHIEF AUSTIN AT HIS
25 REQUEST. HAVING SEEN MY CREDENTIALS FROM MY MILITARY

1 TRAINING WHEN I WAS RETIRED WITH THE DEPARIMENT, HE ASKED ME
2 TO DO A PROPOSAL, PUT TOGETHER A PROPOSAL FOR A CANINE UNIT.
3 AT THAT TIME I DID. I PROPOSED TO PUT TOGETHER FIRST A
4 NARCOTICS DETECTION PROGRAM WHERE I WOULD ACQUIRE AND TRAIN
5 ONE OR TWO NARCOTICS DETECTION DOGS FOR THE COLUMBIA POLICE
6 DEPARIMENT, AND UPON COMPLETION OF THIS I WOULD TRAIN, BEGIN
7 TRAINING OF -- AT THAT TIME WE WERE AUTHORIZED FOR THE TWO
8 PATROL DOGS WHOSE PRIMARY FUNCTION WOULD BE TRACKING.

9 I COMPLETED MY PROPOSAL WHICH INCLUDED A PROPOSED
10 STANDARD OPERATING PROCEDURE, AND CHIEF AUSTIN ACCEPTED MY
11 PROPOSAL. IN 1989 I ACQUIRED TWO DOGS, BEGAN TRAINING ON
12 BOTH THOSE DOGS AND TRAINED TWO HANDLERS TO WORK WITH THOSE
13 NARCOTICS DETECTION DOGS AS WELL AS MYSELF WORKING WITH THOSE
14 DOGS.

15 IN 19 -- WE WORKED FOR APPROXIMATELY A YEAR-AND-A-HALF
16 BEFORE WE WERE ABLE TO ACQUIRE A GERMAN SHEPHERD DOG FROM --
17 DONATED FROM A BREEDER IN AUGUSTA, GEORGIA, NAMED ZACK. THE
18 DOG WAS EVALUATED AND FOUND TO BE SUITABLE FOR POLICE WORK.
19 AT THAT TIME I BEGAN HIS TRAINING, WHICH IS A 12 TO 14-WEEK
20 TRAINING PROGRAM. THIS DOG SUCCESSFULLY COMPLETED THE
21 TRAINING PROGRAM AND MET THE MINIMUM REQUIREMENTS SET FORTH
22 IN OUR STANDARD OPERATING PROCEDURES AND BEGAN WORKING ON THE
23 STREET.

24 SHORTLY AFTER THIS I ACQUIRED AN ADDITIONAL DOG DONATED
25 BY TWO CITIZENS OF THE CITY OF COLUMBIA WHO HAD A DOG THAT

1 WAS A LITTLE BIT TOO MUCH FOR THEM TO HANDLE. I FOUND HIM TO
2 BE SUITABLE FOR POLICE WORK, HAD THE PROPER DRIVES AND
3 PHYSICAL HEALTH TO PERFORM THE DUTIES NECESSARY AND BEGAN
4 TRAINING ON THIS DOG. THIS DOG'S NAME WAS JAKE. AND AFTER
5 COMPLETING THE 12 TO 14-WEEK TRAINING PROGRAM THIS DOG WAS
6 ACCEPTED AND CERTIFIED IN OUR PROGRAM ALSO FOR TRACKING AND
7 PATROL WORK.

8 Q YOU HAVE HOW MANY HOURS OF BLOODHOUND TRACKING COURSE -- DID
9 YOU TAKE A BLOODHOUND TRACKING COURSE WITH THE SOUTH CAROLINA
10 CRIMINAL JUSTICE ACADEMY?

11 A I DID. THIS WAS PUT ON BY SLED, HOSS HORTON WHO IS THE
12 TRACKING EXPERT WITH THE STATE LAW ENFORCEMENT DIVISION.
13 THIS WAS I BELIEVE IN EITHER 1989 OR 1990. THAT WAS 40
14 HOURS.

15 Q AND DID YOU TAKE AN ADVANCED TRAINING SEMINAR WITH THE UNITED
16 STATES POLICE CANINE ASSOCIATION?

17 A YES, SIR, I DID. I ATTENDED -- I'VE ATTENDED MORE THAN ONE
18 ADVANCE TRACKING SEMINARS WITH THE U.S. POLICE CANINE
19 ASSOCIATION WHICH IS EQUAL TO 40 HOURS.

20 Q AND DID YOU ATTEND A SPECIFIC ADVANCE TRAINING DEALING WITH
21 INNER CITY OR URBAN TRACKING?

22 A I DID; PUT ON BY THE AMERICAN SOCIETY OF CANINE TRAINERS. I
23 ATTENDED -- I HAVE ATTENDED 40 HOURS OF ADVANCED URBAN
24 TRACKING.

25 Q NOW, HAVE YOU NOT ONLY ATTENDED BUT ALSO INSTRUCTED COURSES

1 ON CANINE TRACKING?

2 A YES, SIR, I HAVE. ON MORE THAN ONE OCCASION I HAVE
3 CO-INSTRUCTED OR BEEN A PRIMARY INSTRUCTOR IN THE FIELD OF
4 TRACKING AND SURVIVAL, CANINE SURVIVAL, AND INNER CITY
5 TRACKING.

6 Q IN FACT, DID YOU PERSONALLY CONDUCT A 32-HOUR SEMINAR WITH
7 POLICE OFFICERS WITH 30 OFFICERS FROM THE STATES OF SOUTH
8 CAROLINA, NORTH CAROLINA AND GEORGIA; YOU YOURSELF PERSONALLY
9 TRAIN THOSE OFFICERS?

10 A YES I DID.

11 Q NOW, WHAT CERTIFICATIONS DO YOU HAVE AS A CANINE TRACKER?

12 A I AM NATIONALLY CERTIFIED BY THE AMERICAN SOCIETY OF CANINE
13 TRAINERS AS A CANINE INSTRUCTOR AND MASTER TRAINER. I AM THE
14 -- I AM ALSO CURRENTLY AND HAVE BEEN SINCE 1993 THE PRESIDENT
15 OF THE SOUTH CAROLINA POLICE CANINE ASSOCIATION AND THE
16 TRAINING DIRECTOR FOR THAT AGENCY.

17 Q HOW MANY -- JUST IN THE LAST TEN YEARS, SINCE YOU STARTED --
18 SINCE YOU STARTED THE CANINE UNIT WITH THE COLUMBIA POLICE
19 DEPARTMENT, COULD YOU ESTIMATE APPROXIMATELY THE NUMBER OF
20 TRACKINGS THAT YOU'VE DONE? NOT NARCOTICS. I'M TALKING
21 ABOUT TRACKINGS OF EITHER FOOTPRINTS OR HUMAN BEINGS OR
22 SCENTS.

23 A INCLUSIVE, FOR THE PAST TEN YEARS, INCLUDING TRACKS THAT I
24 HAVE RUN WITH HANDLERS WHO I'VE TRAINED AND WERE IN TRAINING,
25 DOGS THAT I'VE -- THAT I HAVE TRAINED, I CAN COMFORTABLY SAY

1 IN EXCESS OF A THOUSAND.

2 Q HAVE YOU BEEN QUALIFIED IN GENERAL SESSIONS COURTS IN SOUTH
3 CAROLINA AS AN EXPERT IN THE AREA OF CANINE TRACKING?

4 A YES, SIR; ON MORE THAN ONE OCCASION.

5 Q IN FACT, HERE IN RICHLAND COUNTY?

6 A YES, SIR, I HAVE.

7 Q HAVE YOU BEEN QUALIFIED IN THE FEDERAL COURTS AS A CERTIFIED
8 EXPERT IN THE AREA OF CANINE TRACKING?

9 A IN CANINE -- AS A CANINE TRAINER, YES, SIR.

10 Q CANINE TRAINER?

11 A NOT SPECIFICALLY IN TRACKING, BUT AS A CANINE TRAINER, IN
12 FEDERAL COURTS.

13 Q AND HAVE YOU SPECIFICALLY TRAINED OFFICERS OF THE COLUMBIA
14 POLICE DEPARTMENT YOURSELF WHO HAVE LATER ON THEMSELVES BEEN
15 CERTIFIED AS EXPERTS IN GENERAL SESSIONS COURT AS CANINE
16 TRACKERS?

17 A I HAVE, YES, SIR.

18 Q AND HOW MANY OFFICERS HAVE YOU PERSONALLY TRAINED THAT HAVE
19 LATER BEEN CERTIFIED IN CIRCUIT COURTS IN SOUTH CAROLINA AS
20 EXPERTS AS A RESULT OR A PART OF THE RESULT OF YOUR TRAINING
21 THEM?

22 A OFFICERS THAT ARE EMPLOYED WITH THE COLUMBIA POLICE
23 DEPARTMENT, WE HAVE THREE OF OUR HANDLERS THAT HAVE BEEN
24 CERTIFIED AS EXPERT WITNESSES IN THE FIELD OF CANINE TRAINING
25 THAT I'VE PERSONALLY TRAINED AND CERTIFIED.

1 Q NOW, THE CANINE IN THIS PARTICULAR CASE, THE DOG IN THIS
2 CASE, THAT WAS GATOR. IS THAT CORRECT?

3 A THAT'S CORRECT.

4 Q IS THAT A MALE OR A FEMALE?

5 A HE'S A MALE.

6 Q AND GATOR'S -- WOULD YOU PLEASE PROVIDE FOR THE COURT GATOR'S
7 TRAINING AS A CANINE -- AS A TRACKER?

8 A YES, SIR. GATOR WAS DONATED TO THE COLUMBIA POLICE
9 DEPARTMENT IN OCTOBER OF 1992. AT THAT TIME HE WAS
10 APPROXIMATELY TEN MONTHS OLD. GATOR WAS EVALUATED AND FOUND
11 TO BE AN EXCELLENT CANDIDATE FOR POLICE WORK. HE WAS BRED
12 FOR SHOW WORK AND WAS FOUND TO BE TOO HYPER, TOO ENERGETIC
13 FOR THE SHOW RING. SO HE WAS DONATED TO THE COLUMBIA POLICE
14 DEPARTMENT AFTER SUCCESSFULLY COMPLETING THE EVALUATION.

15 I TOOK POSSESSION OF HIM IN OCTOBER. AND IMMEDIATELY
16 AFTER BEGINNING HIS TRAINING WHICH CONSISTED OF 14 WEEKS
17 TRAINING IN THE FIELDS OF OBEDIENCE, AGILITY, HANDLER
18 PROTECTION, BUILDING SEARCH, ARTICLE SEARCH, AND TRACKING, IN
19 FEBRUARY OF 1993, GATOR COMPLETED HIS TRAINING. HIS TRAINING
20 WAS COMPLETED IN FEBRUARY OF 1993 AND MET THE MINIMUM
21 REQUIREMENTS SET FORTH IN THE COLUMBIA POLICE DEPARTMENT'S
22 STANDARD OPERATING PROCEDURES FOR A TRACKING OR A PATROL DOG.

23 Q IS GATOR CERTIFIED BY THE AMERICAN SOCIETY OF CANINE TRAINERS
24 IN SPECIFIC AREAS?

25 A YES, SIR, HE IS.

1 Q WHAT AREAS DID THAT INCLUDE?

2 A INCLUDE OBEDIENCE, AGILITY, HANDLER PROTECTION AND TRACKING.

3 Q HAS GATOR BEEN FOUND TO BE CERTIFIED IN COURTS IN SOUTH -- IN
4 GENERAL SESSIONS COURTS IN SOUTH CAROLINA AS A TRACKING DOG
5 ON PREVIOUS OCCASIONS?

6 A YES, SIR, HE HAS.

7 Q DO YOU KNOW APPROXIMATELY HOW MANY TIMES?

8 A TWICE.

9 Q AND AS A RESULT OF -- OBVIOUSLY YOU KEEP TRACK OF NOT ONLY
10 YOURSELF AND YOUR EMPLOYEES BUT ALSO THE DOGS THAT YOU USE.
11 YOU KEEP TRACK OF THEIR PERFORMANCES. IS THAT CORRECT?

12 A YES, SIR, WE DO.

13 Q HAS GATOR BEEN RECOGNIZED BY CERTAIN AGENCIES AS A RESULT OF
14 HIS EXPERIENCES AS A TRAINER AND A TRACKER HERE IN COLUMBIA,
15 SOUTH CAROLINA?

16 A YES, SIR; AS WELL AS RECEIVING NUMEROUS COMMENDATIONS FROM
17 THE CITY OF COLUMBIA FOR TRACKS AND THE CAPTURES THAT HE'S
18 MADE. GATOR WAS ALSO RECOGNIZED IN 1993 WITH A SERVICE DOG
19 RECOGNITION AWARD FROM THE AUGUSTA GERMAN SHEPHERD DOG CLUB
20 WHO SCREENS AND TAKES NOMINATIONS FROM DOG BREEDERS FROM
21 GEORGIA, NORTH CAROLINA, AND SOUTH CAROLINA, AND MAKES
22 RECOMMENDATIONS AND GIVES AWARDS FOR SERVICE DOGS, WHICH
23 INCLUDE MILITARY WORKING DOGS, POLICE WORKING DOGS AND
24 SERVICE DOGS THAT ARE USED TO AID PEOPLE WHO ARE HANDICAPPED
25 AND IN NEED OF THE SERVICES OF A TRAINED CANINE.

1 Q AND IN 1997 DID HE RECEIVE THE SERVICE DOG OF THE YEAR AWARD
2 ALSO BY THE AUGUSTA GERMAN SHEPHERD DOG CLUB?

3 A YES, SIR, HE DID.

4 Q AND PART OF THE RECOGNITION, DOES THAT INCLUDE -- THE
5 INFORMATION THAT WAS PROVIDED, DOES THAT INCLUDE GATOR'S --
6 THE NUMBER OF TRACKINGS THAT HE'S DONE AND THE RESULTS OF
7 THOSE PARTICULAR TRACKINGS? IS THAT ALL PART OF THE
8 INFORMATION THAT'S PRESENTED BEFORE ANY SELECTION IS DONE?

9 A PART OF THE SELECTION WAS, YES, SIR, THE HIGH VOLUME OF
10 SUCCESSFUL TRACKS THAT GATOR AVERAGED OVER THE YEARS. YES,
11 SIR.

12 Q AND THE NUMBER -- AND JUST USING HIS FIRST YEAR ALONE, 1993,
13 AFTER HE WAS CERTIFIED, HOW MANY TRACKINGS DID YOU PERSONALLY
14 CONDUCT WITH GATOR IN 1993 ALONE?

15 A GATOR'S FIRST YEAR -- WITH GATOR ON HIS FIRST YEAR WE HAD A
16 RECORD NUMBER FOR THE DEPARTMENT OF 119 TRACKS.

17 Q AND THAT'S EVEN CONDUCTING TRACKINGS SINCE THEN, SINCE 1993?

18 A YES, SIR, HE HAS.

19 Q ON A REGULAR BASIS?

20 A YES, SIR, HE HAS.

21 Q AND HAS GATOR BEEN TRAINED IN THE AREA OF SCENT
22 DISCRIMINATION?

23 A YES, HE WAS.

24 Q WOULD YOU BRIEFLY DESCRIBE TO THE JUDGE WHAT YOU MEAN BY
25 SCENT DISCRIMINATION?

1 A HE IS TRAINED TO SPECIFICALLY RECOGNIZE CERTAIN AND IDENTIFY
2 CERTAIN TYPES OF SCENTS, INCLUDING NARCOTICS, FOUR DIFFERENT
3 NARCOTICS, HUMAN SCENT. HE HAS BEEN TRAINED AND TESTED TO
4 INSURE THAT ONCE HE IDENTIFIES A SPECIFIC SCENT ON A TRACK
5 THAT HE IS ABLE TO DISCERN THAT SCENT FROM ANY OTHER WHICH
6 MAY CROSS THAT TRACK OR MAY LEAD AWAY FROM THAT TRACK, SUCH
7 AS OTHER ANIMALS, OTHER HUMAN BEINGS, AND HAS SUCCESSFULLY
8 COMPLETED THIS TRAINING.

9 MR. GASSER: YOUR HONOR, AT THIS TIME WE WOULD -- FIRST
10 WE WOULD MARK AS A COURT'S EXHIBIT THE TWO-PAGE DOCUMENT
11 DEALING WITH NOT ONLY SERGEANT BLACKWELL BUT ALSO GATOR'S
12 TRAINING ACCOMPLISHMENTS AS A COURT'S EXHIBIT. AND WE WOULD
13 MOVE TO QUALIFY SERGEANT BLACKWELL AS AN EXPERT TRAINER AND
14 HANDLER AND TRACKER IN THE AREA OF CANINE TRACKING, AS WELL
15 AS WE WOULD MOVE TO QUALIFY GATOR IN THAT AREA AS WELL,
16 INCLUDING SPECIFICALLY IN THE AREA OF SCENT DISCRIMINATION.

17 THE COURT: ALL RIGHT. MARK THE EXHIBIT. AND GIVE IT
18 TO MS. WILLIAMS. LET'S GET THAT MARKED. YOU'RE NOT WANTING
19 THE TRACKING MAP MARKED YET, ARE YOU?

20 MR. GASSER: NO, SIR.

21 THE COURT: OKAY.

22 (COURT'S EXHIBIT NO. 19, DOG TRACKING CERTIFICATION, MARKED
23 FOR IDENTIFICATION ONLY)

24 THE COURT: AND OBVIOUSLY AT THIS POINT IN TIME MR.
25 SNEED AND/OR MR. STRICKLER AND MR. SHUPPER WILL CROSS EXAMINE

1 PRIOR TO ANY FURTHER FINDINGS ON MY PART.

2 MR. SNEED: MAY IT PLEASE THE COURT.

3 CROSS EXAMINATION BY MR. SNEED:

4 Q SERGEANT BLACKWELL, I'M ROB SNEED. I REPRESENT KENNETH
5 JAMES.

6 A GOOD MORNING.

7 Q GOOD MORNING. THE SOLICITOR WAS ASKING YOU ABOUT YOUR
8 TRAINING. I HAVE A FEW QUESTIONS FOR YOU ABOUT THAT.

9 A YES, SIR.

10 Q WHEN WAS THE LAST TIME YOU RECEIVED TRAINING IN THIS AREA?

11 A IN THE FIELD OF TRACKING?

12 Q FORMAL TRAINING ---

13 A YES, SIR.

14 Q --- IN THE FIELD OF TRACKING, YES.

15 A IN THE FIELD -- THE LAST TRAINING I HAD WOULD HAVE BEEN AS
16 RECENTLY AS 1998.

17 Q OKAY. IS IT FAIR TO SAY THAT YOU'RE THE TOP MAN IN THE
18 C.P.D. FOR DOG HANDLING, THE TOP CANINE PERSON?

19 A THAT'S MY STATUS. YES, SIR.

20 Q I MEAN, NO ONE KNOWS MORE THAN YOU DO ABOUT DOGS OVER THERE
21 AT THE C.P.D.?

22 A I LIKE TO THINK THAT MAY BE THE CASE.

23 Q WHO SUPERVISES YOU IN YOUR JOB OVER THERE?

24 A I HAVE -- MY DIRECT SUPERVISOR AT THIS POINT IS LIEUTENANT
25 STAN MCGRAW.

1 Q OKAY.

2 A THEN ABOVE HIM IS CAPTAIN DALE HAMILTON.

3 Q DO THEY HAVE THIS VAST TRAINING AND EXPERIENCE IN CANINE
4 HANDLING?

5 A NO, SIR, THEY DON'T.

6 Q OKAY. DO THOSE FOLKS, ARE THEY THE ONES THAT GIVE YOU JOB
7 EVALUATIONS, PERFORMANCE EVALUATIONS?

8 A YES, SIR, THEY DO.

9 Q OKAY. AND HOW OFTEN ARE YOU FORMALLY EVALUATED IN YOUR JOB?

10 A QUARTERLY AND ANNUALLY.

11 Q HAVE YOU EVER RECEIVED ANY NEGATIVE EVALUATIONS, AT LEAST
12 CONCERNING YOUR JOB AS A CANINE HANDLER?

13 A NO, SIR. IN MY TENURE WITH THE COLUMBIA POLICE DEPARTMENT I
14 HAVE NEVER RECEIVED A NEGATIVE EVALUATION.

15 Q OKAY. ALL RIGHT. WHAT IS GATOR'S PEDIGREE?

16 A GATOR IS A REGISTERED, FULL-BLOODED GERMAN SHEPHERD. HE
17 COMES FROM A LONG LINE OF SHOW DOGS FROM ONE SIDE, BEING HIS
18 MOTHER, CAME FROM A LINE OF SHOW DOGS. HIS FATHER CAME FROM
19 A LINE OF A COMBINATION OF SHOW DOGS AND SCHUETZEN (PHONETIC)
20 TRAINED DOGS.

21 Q DO YOU HAVE THE PAPERWORK THAT REFLECTS THAT?

22 A I -- SOMEWHERE I THINK I HAVE HIS PEDIGREE. I DON'T -- I
23 DON'T SEE IT IN THE PAPERWORK I HAVE WITH ME. I HAVE ACCESS
24 TO IT. YES, SIR.

25 Q OKAY. I MEAN, IT'S NOT ON YOUR PERSON, BUT IT MAY BE AT YOUR

1 OFFICE SOMEWHERE?

2 A I'M NOT EVEN SURE THAT I HAVE HIS PEDIGREE IN MY OFFICE, BUT
3 THE BREEDER HAS COPIES OF IT, THE BREED THAT DONATED HIM TO
4 US, WHO I HAVE FAIRLY REGULAR CONTACT WITH.

5 Q SIR, IN THE AREA OF TRACKING, HOW MANY DIFFERENT PEDIGREES
6 ARE THERE IN THE FIELD OTHER THAN GERMAN SHEPHERDS? WHAT ARE
7 THE COMMON DOGS USED?

8 A THERE ARE -- THERE ARE A NUMBER OF DIFFERENT DOGS THAT ARE
9 USED. I HAVE TRAINED AND CERTIFIED COCKER SPANIEL WITH THE
10 A.K.C. I KNOW THE PRIMARY BREEDS THAT ARE USED FOR SPORT AND
11 POLICE WORK ARE ROTTWEILERS, GERMAN SHEPHERDS, BLOODHOUNDS,
12 SEVERAL OTHER DIFFERENT TYPES OF HOUNDS THAT FALL WITHIN THE
13 BLOODHOUND CATEGORIES, THE REDBONE, BLUE TICK. THERE ARE
14 OTHER SPORTING ANIMALS SUCH AS THE BOUVIER, THE GIANT
15 SCHNAUZER. THEY'RE ALL USED IN SPORT TRACKING.

16 Q OKAY. I'M A LITTLE BIT OF A SIMPLETON IN THIS AREA. SO
17 LET'S JUST SAY YOU HAVE THREE TYPES OF DOGS. LET'S SAY
18 BLOODHOUNDS, ROTTWEILERS AND GERMAN SHEPHERDS.

19 THE COURT: THEY'RE NOT ALL HERE YET, JACKIE?

20 COURT REPORTER: SHE'S NOT HERE.

21 THE COURT: SHE'S NOT HERE? I'M SORRY. GO AHEAD.

22 Q IF YOU THINK OF THOSE THREE BREEDS, AS A GENERAL RULE, ARE
23 THEY ALL THE SAME WHEN IT COMES TO MAN HUNTING, OR ARE SOME
24 BETTER THAN OTHERS?

25 A ABSOLUTELY NOT. SOME ARE TOTALLY INCAPABLE OF DOING MAN

1 HUNTING AND SOME ARE -- EXCEL IN IT. YES, SIR.

2 Q I MEAN, ARE GERMAN SHEPHERDS BETTER THAN BLOODHOUNDS WHEN IT
3 COMES TO MAN HUNTING OR ---

4 A BY A BREED?

5 Q (NODS HEAD AFFIRMATIVELY)

6 A IT'S DIFFICULT TO SAY. I COULDN'T GIVE YOU AN ABSOLUTE
7 ANSWER ON THAT BECAUSE, LIKE I SAID, EACH BREED, IT'S -- ONE
8 IN EVERY, PROBABLY EVERY THREE OR 400 DOGS IN EACH BREED THAT
9 IS ACTUALLY CAPABLE OF DOING MAN TRACKING WITH THE EXCEPTION
10 OF BLOODHOUNDS, WHICH IS PROBABLY A MUCH HIGHER PERCENTAGE
11 RATE. SO IF YOU'RE ASKING IF ONE BY BREED IS GENERALLY FOUND
12 TO HAVE MORE IN THAT BREED THAT ARE CAPABLE, THEN I WOULD SAY
13 YES, SIR.

14 Q OKAY. THAT WOULD BE BLOODHOUNDS?

15 A YES, SIR.

16 Q OKAY. BUT WOULD THE SAME BE TRUE FOR, SAY, NARCOTICS
17 DETECTION?

18 A I'M NOT SURE EXACTLY WHAT YOU'RE ASKING ME.

19 Q WELL, IF I UNDERSTAND YOU, AS A GENERAL RULE, YOU'RE GOING TO
20 FIND BETTER TRACKING DOGS WITHIN THE BLOODHOUND BREED THAN
21 YOU WOULD GERMAN SHEPHERD OR ROTTWEILER?

22 A NO, SIR. THAT'S NOT WHAT I SAID.

23 Q OKAY. I'M SORRY. WELL, ---

24 A WHAT I SAID WAS IT'S MORE LIKELY TO FIND IN THAT SPECIFIC
25 BREED A LARGER PERCENTAGE OF THE DOGS THAT ARE IN THAT, BRED

1 OF THAT BREED THAT ARE CAPABLE OF DOING IT.

2 Q OKAY.

3 THE COURT: FORGIVE ME, MR. SNEED. MR. BLACKWELL, WHY
4 DON'T YOU STEP DOWN SO YOU WON'T BE SITTING ON THE WITNESS
5 STAND. THE JURY IS HERE. LET ME GET RID OF THEM NOW. AND
6 WE CAN PROCEED. I APOLOGIZE FOR INTERRUPTING YOUR
7 EXAMINATION.

8 MR. SNEED: YES, SIR.

9 THE COURT: OKAY. MS. PENDERGRASS OR MR. BARROW, IF
10 YOU'D BRING THE JURY IN, PLEASE, SIR. DID THEY JUST GET
11 HERE, JACKIE?

12 THE CLERK: THE LAST ONE JUST GOT HERE.

13 THE COURT: OKAY.

14 (JURY IN AT 9:55 A.M.)

15 THE COURT: FOLKS, JUST COME ON IN AND HAVE A SEAT
16 BECAUSE I NEED TO TELL YOU SOMETHING AND THEN WE'LL GO FROM
17 THERE.

18 THE BAILIFF: THE JURY IS ALL PRESENT, YOUR HONOR.

19 THE COURT: THANK YOU, MR. BARROW AND MR. HOLLIS.
20 FOLKS, I WANTED TO GET YOU IN HERE AS SOON AS YOU ALL ARRIVED
21 SIMPLY TO TELL YOU THIS, THAT OWING TO A SERIES OF
22 UNFORESEEABLE CIRCUMSTANCES, NOT INCLUDING THE INDEPENDENT
23 GROUNDS OF MY OWN ABYSMAL TIME MANAGEMENT, WE'RE NOT READY TO
24 PROCEED WITH YOU RIGHT NOW. AND I DON'T WANT TO LEAVE YOU
25 SITTING IN THAT JURY ROOM FOR EVEN A HALF HOUR OR SEVERAL

1 HOURS WHILE WE'RE IN HERE CONDUCTING MATTERS OF LAW.

2 BECAUSE, YOU KNOW, OUR FUNCTION HERE IS TO DETERMINE LEGAL
3 ISSUES AS OPPOSED TO YOUR FUNCTION FOR DETERMINING FACTUAL
4 ISSUES.

5 AGAIN, I HAVE SERIOUSLY UNDERESTIMATED THE TIME
6 NECESSARY TO DO THAT. THAT COUPLED WITH THOSE CIRCUMSTANCES
7 CAUSES ME TO TELL YOU THAT I WANT YOU TO RETURN HERE AT 2:00.
8 WE'VE GOT ANOTHER SEVERAL HOURS BEFORE WE CAN BEGIN TO
9 PRESENT THE CASE FOR YOU IN A STREAMLINED FASHION THAT WILL
10 NOT ENTAIL INNUMERABLE DELAYS. SO FOR THAT REASON AND SO AS
11 NOT TO FURTHER INCONVENIENCE YOU BY KEEPING YOU COOPED UP IN
12 A ROOM FOR FOUR HOURS, I'M GOING TO ASK YOU PLEASE TO RETURN
13 AT 2:00 TO THE JURY ROOM. HOPEFULLY WE'LL BE READY TO
14 RECEIVE YOU AT THAT TIME. THANK YOU. AGAIN, DON'T DISCUSS
15 THE CASE AMONG YOURSELVES.

16 (JURY OUT AT 9:58 A.M.)

17 THE COURT: THANK YOU. MR. BLACKWELL, SERGEANT
18 BLACKWELL, PLEASE RETAKE THE STAND.

19 CROSS EXAMINATION RESUMED BY MR. SNEED:

20 Q SERGEANT, I DON'T WANT TO BE CUTE OR PUT WORDS IN YOUR MOUTH.
21 IF I UNDERSTAND YOU, WITHIN THE BLOODHOUND BREED YOU MAY HAVE
22 A LARGER PERCENTAGE OF DOGS THAT HAVE THE ABILITY TO TRACK
23 WELL?

24 A THAT'S CORRECT.

25 Q BUT IF I HAVE A TRACKER DOG THAT'S A BLOODHOUND OR A GERMAN

1 SHEPHERD, IF IT'S A GERMAN SHEPHERD THAT HAS, YOU KNOW,
2 DEMONSTRATED ENOUGH SKILL, I MEAN, WOULD THEY BE EQUAL IN
3 THAT CASE?

4 A IT DEPENDS ON THE DOG, THE INDIVIDUAL DOG. I HAVE SEEN
5 GERMAN SHEPHERDS THAT ARE EQUAL TO THE BEST BLOODHOUNDS I'VE
6 SEEN. I'VE SEEN BLOODHOUNDS THAT COULDN'T HOLD A CANDLE TO A
7 GERMAN SHEPHERD, SO IT'S HARD TO QUALIFY THAT ANSWER.

8 Q OKAY. THE SOLICITOR WAS ASKING YOU ABOUT GATOR'S PERFORMANCE
9 OR TRACK RECORD, AS IT WERE?

10 A YES, SIR.

11 Q AND DO YOU KEEP RECORDS OF ALL OF THE TIMES THAT GATOR GOES
12 OUT THERE AND TRIES TO TRACK DOWN HUMAN BEINGS?

13 A WE -- I LOG THEM ON MY DAILY WORK SHEETS WHEN WE HAVE A CALL,
14 AS WELL AS LOGGING THEM ON A -- NOW, IN THE LAST THREE
15 MONTHS, WE'VE HAD AN EMERGENCY CALL-OUT SHEET THAT WE HAVE TO
16 LOG ON IF I'M OFF DUTY. OTHERWISE, ON AN ANNUAL BASIS WE
17 KEEP STATISTICS ON HOW MANY CALLS WE RECEIVED ON AND OFF
18 DUTY, IF THAT'S WHAT YOU'RE ASKING.

19 Q SURE. SO, NOW, IF I HEARD YOU, GATOR, I GUESS HE WAS A FULL
20 MEMBER OF THE FORCE IN THE FALL OF '93 OR THERE --

21 A IN THE SUMMER -- I MEAN, I'M SORRY. IN THE WINTER OF '93.
22 FEBRUARY OF 1993.

23 Q OKAY. SO, YOUR ESTIMATE, OF THE SIX-AND-A-HALF YEARS, HOW
24 MANY TIMES HAS THE C.P.D. TAKEN GATOR OUT TO TRY TO TRACK
25 DOWN HUMAN BEINGS?

1 A I FEEL COMFORTABLE IN SAYING MORE THAN 500.

2 Q OKAY. AND THERE MAY BE RECORDS OF THOSE 500, AT LEAST THE
3 FACT THAT HE WAS CALLED OUT, RIGHT?

4 A THERE ARE RECORDS OF -- WE KEEP -- WE MAINTAIN OUR RECORDS
5 FOR ONE YEAR. SO I HAVE -- FOR THIS YEAR I HAVE THE RECORDS
6 --

7 Q OKAY. NOW, ARE YOU ABLE TO DETERMINE IF THE DOG IS
8 SUCCESSFUL OR NOT?

9 A IN SOME INSTANCES, YES. IN SOME INSTANCES, NO.

10 Q WHAT DO YOU USE TO DETERMINE IF, YOU KNOW, THE DOG WAS
11 SUCCESSFUL WHEN YOU CALL THEM OUT ON A CASE?

12 A WELL, OBVIOUSLY A CAPTURE IF A DOG TRACKS TO A SUSPECT WHO IS
13 POSITIVELY IDENTIFIED AS BEING A SUSPECT. ANY TRACK THAT
14 LEADS ME TO A LOCATION WHERE I'M ABLE TO CORROBORATE BY
15 WHATEVER MEANS POSSIBLE THAT THE PERSON THAT WE BEGAN
16 TRACKING WENT TO THAT LOCATION WHERE THE DOG ENDED THE TRACK.

17 Q OKAY. AND FAILURE. MAYBE YOU DON'T USE THAT WORD. BUT
18 WHATEVER WORD YOU WOULD USE. I MEAN, EITHER CAPTURED. THE
19 DOG CAPTURED THE GUY RED-HANDED, SO TO SPEAK, RIGHT?

20 A YES, SIR.

21 Q OR A LOCATION TO GET CORROBORATING EVIDENCE, RIGHT?

22 A THAT'S CORRECT. YES, SIR.

23 Q OKAY. AND IF YOU DON'T GET ONE OF THOSE TWO, MAYBE YOU DON'T
24 USE THE WORD "FAILURE", WHAT WOULD YOU SAY? HOW WOULD YOU
25 DESCRIBE IT?

1 A UNKNOWN.

2 Q UNKNOWN. OKAY. ALL RIGHT. SO OF THE 500 OR SO GATOR HAS
3 BEEN OUT THERE, HOW MANY HAVE LED TO CAPTURE, WHERE THEY
4 ACTUALLY FIND -- WHERE THE DOG GETS THE SUSPECT?

5 A EACH YEAR WE HAVE MAINTAINED IN EXCESS -- EVERY YEAR WE HAVE
6 MAINTAINED IN EXCESS OF 25 PERCENT WHAT WE CALL A CAPTURE OR
7 CONFIRMATION RATE. WE COMBINE THEM TOGETHER BECAUSE IT'S GOT
8 -- A SUCCESSFUL TRACK IS A SUCCESSFUL TRACK.

9 Q OKAY. SO CONFIRMATION MAY MEAN THE DOG LEADS TO SOMEONE'S
10 HOUSE OR A LOCATION, YOU CAN USE THAT TO CORROBORATE OR
11 CONFIRM THEY'RE THERE?

12 A I DON'T USE THAT AS A -- AS -- UNLESS I'M ABLE TO SOMETHING
13 MORE THAN JUST THE FACT THAT I WENT TO A LOCATION. I HAVE TO
14 HAVE, SAY, A SUSPECT WHO'S IDENTIFIED AS -- OR I HAVE A
15 WITNESS THAT SEES THE SAME SUSPECT THAT LEFT THE SCENE WHERE
16 I BEGAN MY TRACK, PUT THEM AT THAT LOCATION. THAT'S WHAT I
17 CONSIDER CORROBORATING EVIDENCE IN A DOG TRACK.

18 Q OKAY. SO, IT'S ABOUT 25 PERCENT IF YOU COMBINE CAPTURE AND
19 CONFIRMATION?

20 A WE HAVE MAINTAINED IN EXCESS OF 25 PERCENT.

21 Q OKAY. IS THAT WITH ALL YOUR DOGS AT THE C.P.D.?

22 A YES, SIR.

23 Q WELL, HOW ABOUT WITH GATOR IN PARTICULAR?

24 A GATOR HAS BEEN AN EXCEPTIONAL DOG. AND HE -- HIS -- HIS --
25 I'VE ALWAYS COMBINED THEIR STATS. SO I HAVEN'T LOOKED TO SEE

1 SPECIFICALLY. I KNOW THAT HE HAS MAINTAINED THAT. OUR GOAL
2 HAS BEEN TO MAINTAIN A 25 PERCENT OR BETTER SUCCESS RATE.

3 Q ALL RIGHT. FOR THE OTHER 75 PERCENT FOR UNKNOWN, I GUESS
4 THERE'S A VARIETY OF EXPLANATIONS FOR WHY, FOR WHY YOU MIGHT
5 CALL SOMETHING UNKNOWN?

6 A YES, SIR.

7 Q OKAY. HAS THE DOG EVER LED YOU TO, YOU KNOW, A WRONG HOUSE
8 OR A HOUSE THAT DOESN'T LEAD TO A SUSPECT? HAS THAT EVER
9 HAPPENED?

10 A THE DOG HAS -- I HAVE ON OCCASION RUN TRACKS WHERE I WAS NOT
11 ABLE TO CONFIRM THAT THIS WAS WHERE A SUSPECT WENT.

12 Q OKAY. IN THIS CASE, HOW WOULD -- WHAT CATEGORY WOULD YOU PUT
13 THE TRACK HERE? WHAT CATEGORY WOULD YOU PUT IT IN?

14 A THE NIGHT THAT I RAN THE TRACK, I HAD AT THAT TIME -- WELL,
15 LET ME REGRESS. AT THE TIME WHEN I COMPLETED THIS TRACK ON
16 THIS CASE, I HAD NO -- NO CORROBORATING INFORMATION, NO
17 EVIDENCE OTHER THAN THE DOG'S PERFORMANCE, WHICH IS ALSO AN
18 INDICATION ON WHETHER HE'S ACTUALLY TRACKING, WHAT TYPE --
19 HOW WELL HE'S TRACKING. I HAD NO INDICATION AT THAT TIME
20 WHETHER THIS WAS A SUCCESSFUL TRACK IN TRACKING A SUSPECT OR
21 NOT. BEFORE THE NIGHT, ACTUALLY THE FOLLOWING DAY, I WAS
22 GIVEN INFORMATION THAT THERE WAS A POSSIBILITY OF INFORMATION
23 THAT LED TO THE POSSIBILITY THAT A SUSPECT FROM THIS HAD GONE
24 TO THAT RESIDENCE, WHICH GAVE ME SOME CONFIRMATION.

25 Q OKAY. NOW, GATOR, IF YOU PUT HIM ON A SCENT, HOW OLD A TRAIL

1 COULD HE REASONABLY PICK UP?

2 A IN TRAINING WE HAVE -- HE'S SUCCESSFULLY COMPLETED A 12-HOUR
3 OLD TRACK. I'VE NEVER DONE ANYTHING OLDER THAN THAT. AND WE
4 HAVE DONE FOUR-HOUR OLD TRACKS AND WHAT I REFER TO AS A LIVE
5 TRACK MEANING THAT FROM A CRIME SCENE.

6 Q OKAY.

7 A SUCCESSFULLY.

8 Q CAN THE DOG -- BASED ON WHAT THE DOG DOES, CAN YOU GET AN
9 IDEA OF HOW OLD THE TRACK IS?

10 A NO, SIR. I CANNOT.

11 Q OKAY. SO, I MEAN, HERE GATOR FOLLOWED A TRACK FROM THE PARK
12 TO THE HOUSE ON ORR STREET, CORRECT?

13 A THAT'S CORRECT.

14 Q CAN YOU MAKE ANY GUESSTIMATE AS TO HOW OLD THAT SCENT WAS?

15 A NO. ALL I CAN DO IS SAY THAT THE TRACK -- THAT GATOR HAS
16 PICKED UP A STRONG TRACK OR IT MAY BE A WEAK TRACK. AND THEN
17 THERE ARE TIMES WHEN IT'S HARD TO TELL.

18 Q SO STRONG OR WEAK DOESN'T NECESSARILY MEAN THE AGE OF THE
19 TRACK?

20 THE COURT: MR. SNEED, I DON'T WANT TO INTERRUPT YOU;
21 BUT, YOU KNOW, HERE I'M ALLOWING YOU TO VOIR DIRE AS TO HIS
22 QUALIFICATIONS AS AN EXPERT. WE'RE NOT INTO THE SUBSTANTIVE
23 PART YET, OR MR. GASSER WASN'T. I'M GIVING YOU SOME LATITUDE
24 AS IT MAY RELATE TO THE QUALIFICATION. BUT THE PENDING
25 QUESTION I GUESS IS BOTH BLACKWELL'S ABILITY TO TESTIFY AS AN

1 EXPERT AND, QUOTE, NOT TO SO MUCH TO ME THE CERTIFICATION OF
2 THE DOG, AS MR. GASSER HAS PUT IT, BUT, YOU KNOW, THE ABILITY
3 OF THE DOG TO -- HIS INTERPRETATION; THAT IS, BLACKWELL'S
4 INTERPRETATION OF WHAT THE DOG DID.

5 DO YOU WANT TO CONTEST MR. BLACKWELL'S ADMISSION AS AN
6 EXPERT AT THIS POINT IN TIME? AND IF NOT, OR IF SO, ARE YOU
7 FINISHED WITH YOUR EXAMINATION WITH REGARD TO HIS
8 QUALIFICATIONS? AND, IF SO, THEN WE CAN MOVE TO THE
9 SUBSTANTIVE PORTION IF I QUALIFY HIM AS AN EXPERT. OR DO YOU
10 THINK THAT THE TWO ARE SO INEXTRICABLY INTERTWINED THAT YOU
11 JUST SIMPLY WANT TO SIT THERE AND RAMBLE ON FOR A LITTLE
12 WHILE? AND IT DOESN'T MATTER TO ME.

13 MR. SNEED: I THINK IT'S INBETWEEN THERE, YOUR HONOR.

14 THE COURT: WELL, HURRY UP AND DO WHATEVER IT IS YOU
15 NEED TO DO. OKAY?

16 MR. SNEED: YES, SIR.

17 THE COURT: BECAUSE WE'RE RAPIDLY GETTING BEHIND THE
18 EIGHT BALL AGAIN. GO AHEAD.

19 MR. SNEED: JUST BEG THE COURT'S INDULGENCE ONE MOMENT,
20 YOUR HONOR.

21 THE COURT: OH, SURE.

22 MR. SNEED: YOUR HONOR, MAYBE I CAN EXPEDITE THIS. I AM
23 NOT GOING TO OPPOSE THE WITNESS'S, THIS WITNESS'S
24 QUALIFICATION AS AN EXPERT IN THE NARROW FIELD THAT THE
25 SOLICITOR HAS PROFFERED. BUT I DO HAVE, HOWEVER, SOME

1 QUESTIONS. I WISH TO VOIR DIRE HIM ON SCIENTIFIC
2 RELIABILITY, WHICH IS A DIFFERENT QUESTION ON THE
3 ADMISSIBILITY ISSUE.

4 THE COURT: OKAY. GO AHEAD.

5 MR. SNEED: THANK YOU, SIR.

6 THE COURT: STATE V. COUNCIL, MR. -- COUNSEL?

7 MR. STRICKLER: YES, SIR.

8 MR. SNEED: I THINK I HAVE A COPY OF IT HERE, YOUR
9 HONOR.

10 THE COURT: APRIL 5TH, 1999, MR. SNEED. OKAY.

11 MR. SNEED: YES, SIR.

12 Q (BY MR. SNEED) SERGEANT BLACKWELL, ARE YOU AWARE OF ANY
13 STUDIES RELATING TO DOGS' ABILITY TO TRACK HUMAN BEINGS?

14 A I HAVE BEEN SCHOOLED AND HAVE READ A NUMBER OF STUDIES.

15 Q SURE. CAN YOU NAME SOME OF THOSE STUDIES OR SOME --

16 A I CAN GIVE YOU THE -- I CAN -- I HAVE SEVERAL PUBLICATIONS
17 AND BOOKS AT HOME THAT CONTAIN INFORMATION ON STUDIES, BUT I
18 CAN'T NAME THEM OFF THE TOP OF MY HEAD.

19 Q OKAY. NOW, ARE THESE BOOKS FROM YOUR COURSE WORK?

20 A SOME ARE; SOME ARE NOT. SOME OF THEM ARE NOT TEXTBOOKS -- OR
21 NOT TEXTBOOKS -- BUT PUBLICATIONS THAT ARE SOLD IN THE FIELD
22 OF DOG TRAINING.

23 Q OKAY. DO YOU KNOW ANY OF THE AUTHORS OF THESE?

24 A I DO.

25 Q CAN YOU NAME SOME OF THEM?

- 1 A IF I CAN RECALL CORRECTLY, ONE OF THEM SPECIFICALLY AS IT
2 RELATES TO DOGS' CAPABILITY IS WILLIAM SYRATUCK'S.
3 S-Y-R-A-T-U-C-K I BELIEVE IS THE SPELLING. I AM NOT POSITIVE
4 IF THAT'S THE SPELLING OF THE LAST NAME OR NOT. BUT I HAVE
5 THAT BOOK IN THE CAR DOWNSTAIRS ACTUALLY.
- 6 Q OKAY. IS THAT PERSON -- DO YOU KNOW HIS BACKGROUND?
- 7 A NO, SIR, I DON'T.
- 8 Q I MEAN, WHAT I'M GETTING AT --
- 9 A IT SAYS IN THE BOOK, BUT I COULDN'T TELL YOU.
- 10 Q OKAY. SO YOU DON'T KNOW IF HE'S A LAW ENFORCEMENT --
- 11 A HE'S NOT.
- 12 Q -- TYPE --
- 13 A NO, SIR. HE WAS NOT --
- 14 Q -- FOR TRAINING?
- 15 A HE WAS NOT A LAW ENFORCEMENT OFFICER.
- 16 Q DO YOU KNOW THE NATURE -- DO YOU KNOW IF HE'S DONE ANY
17 SCIENTIFIC STUDIES CONCERNING DOG TRACKING?
- 18 A I CAN'T TESTIFY TO HIS QUALIFICATIONS; NO, SIR.
- 19 Q ARE YOU AWARE OF ANY SCIENTIFIC STUDIES CONCERNING DOG
20 TRACKING?
- 21 A I HAVE READ A NUMBER OF BOOKS WHICH QUOTE SCIENTIFIC STUDIES.
- 22 Q OKAY. DO YOU KNOW IF ANY OF THESE STUDIES YOU'RE TALKING
23 ABOUT THAT YOU CAN'T REMEMBER ARE SUBJECT TO PEER REVIEW?
- 24 A I'M SORRY?
- 25 Q DO YOU KNOW WHAT PEER REVIEW IS?

1 A YOU'RE TALKING ABOUT A REVIEW FROM OTHER SCIENTISTS IN THE
2 SAME FIELD?

3 Q RIGHT.

4 A NO, SIR, I DON'T.

5 Q OKAY. SO YOU'RE NOT SURE IF THE BOOKS THAT YOU'VE READ WERE
6 WRITTEN BY SCIENTISTS OR NOT?

7 A NO, SIR, I'M NOT.

8 Q YOU'RE NOT SURE IF THEY USED THE SCIENTIFIC METHOD WHEN
9 THEY'RE TALKING ABOUT DOG TRACKING?

10 A I DON'T KNOW WHAT SCIENTIFIC METHOD THEY MAY OR MAY NOT HAVE
11 USED; NO, SIR.

12 Q YOU'RE NOT SURE IF WHATEVER SUPPOSED STUDY THEY DID THEIR
13 PEERS CRITICIZED IT OR REVIEWED IT?

14 A I AM NOT.

15 Q OKAY. YOU'RE NOT AWARE OF THE QUALITY CONTROL, IF ANY, THESE
16 FOLKS USED WHEN THEY DID THEIR DOG TRACKING STUDIES?

17 A I AM NOT.

18 Q OKAY. YOU DON'T REALLY KNOW ABOUT ANY SCIENTIFIC LAWS OR
19 PROCEDURES THEY MAY OR MAY NOT HAVE USED —

20 A DO NOT.

21 Q — TO HAVE DONE THESE STUDIES? BEG THE COURT'S INDULGENCE,
22 YOUR HONOR.

23 THE COURT: CERTAINLY.

24 Q SERGEANT BLACKWELL, YOU THOUGHT YOU SAID YOU HAD OVER A
25 THOUSAND EXPERIENCES IN HUMAN TRACKING, RIGHT?

1 A I CAN EASILY SAY I'VE HAD OVER A THOUSAND; YES, SIR. THOSE
2 ARE ON LIVE TRACKS. YOU ASKED HOW MANY CALLS WE ACTUALLY
3 RESPOND TO. IN TRAINING, PROBABLY QUADRUPLE THAT.

4 Q DO YOU KNOW HOW, I GUESS SCIENTIFICALLY, HOW A HUMAN BEING
5 LEAVES A TRAIL THAT SOMETHING CAN FOLLOW?

6 A FROM MY EXPERIENCE AND FROM THE TRAINING THAT I'VE HAD, THERE
7 ARE THREE DIFFERENT TYPES OF SCENT THAT WE HAVE -- I
8 PERSONALLY HAVE CONFIRMED THAT A DOG CAN FOLLOW OR THAT A DOG
9 GENERALLY FOLLOWS DURING A TRACK. THAT IS, CRUSHED
10 VEGETATION, ANY GROUND DISTURBANCE CREATED OR CAUSED WHEN A
11 PERSON WALKS ACROSS VEGETATION: DIRT, GRASS, DEAD LEAVES,
12 CHANGES THE CHEMICAL MAKE-UP OF THE GROUND SCENT AT THAT
13 TIME, BRINGS FRESH DIRT TO THE TOP, CRUSHES VEGETATION,
14 OPENING BLADES OF GRASS, SUCH AS THAT.

15 THE OTHER IS TRANSFERENCE. I HAVE PERSONALLY SEEN WHERE
16 DOGS THAT ARE TRAINED TO FOLLOW CRUSHED VEGETATION TO SCENT,
17 TRAINED IN TRACKING THE SCENT OF CRUSHED VEGETATION HAVE BEEN
18 ABLE TO FOLLOW THAT SCENT WHICH IS CARRIED ON THE SHOES ONTO
19 A DIFFERENT TYPE OF SURFACE, SUCH AS PAVEMENT OR ASPHALT.
20 AND THE THIRD WOULD BE HUMAN SCENT.

21 Q OKAY. WELL, WHEN YOU SAY HUMAN SCENT, I MEAN, IF A HUMAN
22 BEING IS JUST WALKING DOWN THE PAVEMENT, LET'S SAY THE CRIME
23 STARTS ON THE PAVEMENT, THE HUMAN BEING IS WALKING THERE,
24 YOUR DOG HOPEFULLY COULD PICK UP A SCENT THAT WAY. IT'S
25 POSSIBLE, RIGHT?

1 A THAT'S CORRECT.

2 Q OKAY. SO WE DON'T HAVE ANY OF THIS VEGETATION OR DIRT
3 BUSINESS COMING INTO IT IF IT STARTS ON PAVEMENT PROBABLY,
4 RIGHT?

5 A THAT'S CORRECT.

6 Q OKAY. SO, IF IT'S ME THE DOG IS TRYING TO TRACK, WHAT PART
7 OF MY BODY IS GOING TO BE LEFT BEHIND? I MEAN, IF IT'S NOT
8 MY HAIR FALLING OUT, WHAT EXACTLY IS THE DOG PICKING UP?

9 MR. GASSER: OBJECTION.

10 THE COURT: EXCUSE ME?

11 MR. GASSER: RELEVANCE. OBJECTION TO RELEVANCY ON THIS
12 LINE OF QUESTIONING.

13 THE COURT: I'M SORRY, MR. GASSER. I'LL OVERRULE THAT
14 OBJECTION. BUT, MR. SNEED, LET'S CONTINUE MOVING. AND
15 ANSWER THAT QUESTION, IF YOU CAN. WHAT PART OF THE BODY IS
16 IT PICKING UP?

17 A THE SMELL, THE SCENT, THE ODOR.

18 Q WHAT MAKES UP THE SMELL, THE SCENT OR ODOR? DO YOU HAVE ANY
19 IDEA?

20 A I DO. FROM MY PERSONAL EXPERIENCE, I CAN SAY THAT EACH
21 INDIVIDUAL, EVERYBODY IN THIS COURTROOM, HAS AN ODOR, A SCENT
22 WHICH IS CREATED BY THEIR BODY CHEMISTRY, SUCH AS SWEAT;
23 THEIR HYGIENE, SUCH AS SHAMPOO, SOAP, DEODORANT, MOUTHWASH,
24 TOOTHPASTE, HAIR SPRAY, DETERGENT USED ON YOUR CLOTHES.

25 Q SURE. I UNDERSTAND THAT. BUT WHAT I'M GETTING AT IS, IF

1 WE'RE ALL DIFFERENT, WHAT -- HOW DOES MY SCENT GO FROM MY
2 BODY TO THE GROUND? HOW DOES THAT HAPPEN?

3 A I DON'T QUALIFY MYSELF AS AN EXPERT IN THE FIELD OF
4 DERMATOLOGY, BUT I HAD -- IT'S FROM -- MY EDUCATION, IT'S
5 FROM SKIN CELLS WHICH FALL FROM THE BODY. THE SCENT IS
6 ATTACHED TO THOSE SKIN CELLS, FALLS TO THE GROUND.

7 THE COURT: SEE, MR. SNEED, MR. GASSER'S OBJECTION THAT
8 IT'S IRRELEVANT GOES TO THE FACT THAT HE DOESN'T UNDERSTAND
9 THE UNDERLYING OLFACTORY SYSTEM OF A DOG OR THE UNDERLYING
10 ENDOCRINE SYSTEM OF A HUMAN BEING. THOSE ARE FOR MEDICAL
11 EXPERTS. BUT IF YOU'RE ASKING HIM QUESTIONS, HE'S ANSWERING
12 THEM TO THE BEST OF HIS ABILITY, PLEASE KIND OF, YOU KNOW,
13 MOVE IT ON.

14 MR. SNEED: YES, SIR. I'M ALMOST DONE.

15 Q (BY MR. SNEED) WHEN YOU'RE TALKING ABOUT THESE -- YOU SAID
16 SKIN CELLS, RIGHT?

17 A YES, SIR.

18 Q WHAT IS YOUR SCIENTIFIC BASIS FOR SAYING THAT?

19 A FROM MY 20 YEARS OR -- I'M SORRY -- 18 YEARS OF CANINE
20 TRAINING, THAT IS ONE OF THE THINGS THAT HAS BEEN CONSISTENT
21 IN EVERY SEMINAR, TEACHING AND EDUCATIONAL COURSE THAT I'VE
22 EVER ATTENDED ON TRACKING. AND I HAVE FOUND IN MY EXPERIENCE
23 THAT WHAT I HAVE SEEN WITH MY EXPERIENCE HAS BEEN CONSISTENT
24 WITH THAT INFORMATION.

25 MR. SNEED: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

1 THE COURT: OKAY. MR. SHUPPER.

2 MR. SHUPPER: JUST BRIEFLY, YOUR HONOR.

3 CROSS EXAMINATION BY MR. SHUPPER:

4 Q SERGEANT BLACKWELL, I'M JOHN SHUPPER. YOU ARRIVED AT THE
5 SCENE AT ABOUT 1:30? IS THAT CORRECT? OR 1:20?

6 A ABOUT 1:15.

7 Q 1:15? AND WILL YOU EXPLAIN WHAT ITEMS OR WHAT AREA AND WHAT
8 ITEMS LED YOU TO PUT GATOR ON THE SCENT?

9 MR. GASSER: OBJECTION, YOUR HONOR. MAYBE I AM MISTAKEN
10 AS TO THE PROCEDURE HERE, BUT MY UNDERSTANDING WAS THAT THE
11 WHOLE PURPOSE OF THIS WAS THAT I QUESTION HIM AS TO HIS
12 QUALIFICATIONS OR GATOR'S QUALIFICATIONS AND HIS
13 INTERPRETATIONS THEREOF AND THEY GET TO VOIR DIRE IN THAT
14 REGARD. AND THEN I DON'T KNOW WHETHER THEY'RE TRYING TO --
15 DEPENDING ON HOW YOU RULE ON THAT, OF COURSE IF YOU RULE --

16 THE COURT: WELL, IT'S PREMATURE AT THIS POINT TO ASK
17 HIM THAT QUESTION, MR. SHUPPER. BUT I'VE GOT TO TELL YOU,
18 FOLKS, MR. BLACKWELL IS -- NUMBER ONE, HE'S BEEN CONCEDED BY
19 MR. SNEED TO BE AN EXPERT WITNESS IN THE AREA OFFERED. AND
20 I'M ASSUMING THAT YOU'RE GOING TO CONCEDE THE SAME THING.
21 THE NEXT THING WE'RE GOING TO HAVE TO DO IS I BELIEVE HAVE A
22 PROFFER OF HIS TESTIMONY TO SEE IF IT FITS WITHIN THE PALE OF
23 THAT EXPERTISE. SO, TECHNICALLY YOU ARE CORRECT. THE
24 QUESTION IS PREMATURE. IF YOU WANT TO ASK ABOUT BACKGROUND,
25 TRAINING, EDUCATION, THAT SORT OF THING, I'M FINE WITH THAT.

1 AND THEN I'LL LET YOU CROSS EXAMINE HIM AFTER GASSER MAKES
2 THE PROFFER.

3 MR. SHUPPER: THANK YOU, YOUR HONOR.

4 THE COURT: OKAY.

5 Q YOU TESTIFIED TO THE VARIOUS TRAINING YOU HAD IN THE MILITARY
6 AND SINCE YOUR EMPLOYMENT WITH THE DEPARTMENT, THE POLICE
7 DEPARTMENT. YOU DESCRIBED VARIOUS SEGMENTS; AGILITY,
8 OBEDIENCE. CAN YOU TELL ME WHAT PART OF YOUR TRAINING HAS
9 BEEN DEVOTED TO HUMAN TRACKING?

10 A ARE YOU TALKING ABOUT FORMAL TRAINING THAT I HAVE RECEIVED OR
11 MY TRAINING PRACTICES, MY TRAINING HABITS?

12 Q WELL, LET'S START WITH YOUR FORMAL TRAINING ON TRACKING HUMAN
13 SCENT.

14 A PROBABLY -- PROBABLY -- I WOULD GUESS PROBABLY ABOUT 40, 50
15 PERCENT HAS BEEN FOCUSED IN THE LAST TEN YEARS ON MAN
16 TRACKING WITH DOGS.

17 Q BUT YOU HAVE 18 YEARS EXPERIENCE WITH DOGS. IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q HOW MUCH OF THE FIRST EIGHT YEARS IN THE MILITARY TRAINING
20 AND SUCH WAS DEVOTED TO HUMAN SCENT TRACKING?

21 A THE FIRST TWO YEARS OF MY MILITARY TRAINING, THE TRACKING
22 PORTION PROBABLY CONSISTED OF TEN TO TWENTY PERCENT OF MY
23 TRAINING.

24 Q I'M SORRY?

25 A TEN TO TWENTY PERCENT.

1 Q WAS THAT TEN TO TWENTY?

2 A TEN TO TWENTY PERCENT OF MY TRAINING.

3 Q THANK YOU. I COULDN'T HEAR YOU.

4 A WAS FOCUSED ON TRACKING.

5 Q OF GATOR'S EXPERIENCES UNDER YOUR SUPERVISION, HOW MUCH OF
6 HIS TRAINING WAS DEVOTED TO THE AREAS OTHER THAN HUMAN SCENT
7 TRACKING?

8 A INITIALLY, HIS INITIAL TRAINING DURING THAT FIRST 14 WEEKS,
9 THE TRAINING WAS PROBABLY 50 PERCENT OF THE OTHER AREAS FOR
10 WHICH HE HAD TO BE TRAINED. OBEDIENCE, AGILITY, ARTICLE
11 SEARCH, BUILDING SEARCH, SUSPECT APPREHENSION, THOSE AREAS
12 ARE VERY, VERY SIMPLE, VERY MATTER OF FACT IN TRAINING. THE
13 OTHER -- THE TRACKING ITSELF IS MORE COMPLICATED. THERE ARE
14 A LOT MORE FACTORS TO WHICH YOU HAVE TO EXPOSE THE DOG. SO I
15 WOULD SAY PROBABLY 50. THE INITIAL TRAINING IS PROBABLY 50
16 PERCENT OF TRACKING; 50 PERCENT THE OTHER AS FAR AS TIME AND
17 ENERGY GOES.

18 Q AND WHEN YOU WERE -- WE HEAR A LOT ABOUT BLOODHOUNDS. AND I
19 BELIEVE YOU TESTIFIED THAT BLOODHOUNDS ARE USED MORE
20 FREQUENTLY FOR HUMAN TRACKING?

21 A NO, SIR. THAT'S NOT WHAT I SAID. THEY'RE -- ACTUALLY GERMAN
22 SHEPHERDS ARE USED PROBABLY MORE FREQUENTLY THAN ANY OTHER
23 BREED IN THE UNITED STATES. AND IN THE LAST TEN YEARS THERE
24 HAS BEEN AN INCREASE OF BELGIUM SHEPHERDS, WHICH IS A
25 DIFFERENT BREED, PROBABLY VERY CLOSE TO GERMAN SHEPHERDS, AND

1 THEN BLOODHOUNDS.

2 Q I'M A LITTLE -- DIDN'T YOU ALSO TESTIFY THAT ABOUT ONE IN 300
3 GERMAN SHEPHERDS HAS THE SKILLS AND ABILITY TO CONDUCT HUMAN
4 TRACKING?

5 A FROM MY EXPERIENCE, YES, SIR.

6 Q AND WHAT WOULD YOU SAY IS THE PERCENTAGE OF BLOODHOUNDS THAT
7 ARE USED IN SIMILAR WORK THAT --

8 A FROM MY EXPERIENCE, PROBABLY 50 PERCENT.

9 Q WHY IS IT ONE IN 300 BLOODHOUNDS OR 50 OUT OF 100 -- I MEAN,
10 ONE IN 300 OF GERMAN SHEPHERDS AND 50 OUT OF 100 BLOODHOUNDS?

11 A BLOODHOUNDS HAVE BEEN BRED FOR HUNTING SPECIFICALLY, AND THAT
12 HAS BEEN CONTINUED THROUGHOUT THE YEARS. PEOPLE WHO OWN
13 BLOODHOUNDS CONTINUE THE BREEDING. AND THIS IS -- WORK IS --
14 THE WORKING QUALITIES IS SOMETHING THAT IT IS INHERENT,
15 WHEREAS GERMAN SHEPHERDS HAVE BEEN BRED -- THERE ARE ONLY A
16 SMALL PERCENTAGE OF THE POPULATION THAT BREED DOGS, GERMAN
17 SHEPHERDS THAT STILL BREED THEM FOR WORK AND MAINTAIN A
18 WORKING QUALITY DOG. THE REST ARE USED FOR PETS. IT'S VERY
19 SELDOM THAT YOU FIND SOMEONE WITH A BLOODHOUND AS A PET.

20 Q WHEN YOU TALK ABOUT THE CONFIRMATION OR SUCCESSFUL CAPTURE,
21 YOU'VE INDICATED ABOUT A 25 PERCENT RATE FOR GATOR AND YOUR
22 OTHER DOGS?

23 A YES, SIR.

24 Q AND YOU DETERMINE IT EITHER BY CAPTURE OR OTHER INDEPENDENT
25 CONFIRMATION. THAT'S CORRECT?

1 A THAT'S CORRECT.

2 Q HOW MANY LEAD TO ACTUAL CAPTURE? OF THE 25 PERCENT SUCCESS
3 RATE YOU HAVE, HOW MANY LEAD YOU TO ---

4 A PROBABLY FIVE TO TEN PERCENT.

5 Q WERE YOU GIVEN ANY INFORMATION AT THE SCENE OF WHAT DIRECTION
6 THE SUSPECTS WENT WHEN THEY LEFT?

7 A I WAS.

8 Q DID THAT LEAD YOU TO TAKE GATOR TO A PARTICULAR LOCATION?

9 A IT DID.

10 Q IF THERE WERE FIVE SUSPECTS AND TWO OTHER PEOPLE, VICTIMS AT
11 THAT POINT, HOW DO YOU DETERMINE, OR HOW DOES GATOR DETERMINE
12 FROM YOUR EXPERIENCE WHICH WAY TO GO?

13 A GATOR IS GOING TO -- FROM MY EXPERIENCE, GATOR IS GOING TO --
14 OR WHATEVER DOG IS BEING UTILIZED -- IS GOING TO START ON
15 EITHER THE CLOSEST OR THE STRONGEST SCENT, WHICHEVER HIS NOSE
16 -- WHEN I PRESENT THE GROUND TO HIM TO GIVE HIM THE COMMAND
17 TO SEARCH, HE IS GOING TO -- HE IS GOING TO PICK UP ON A
18 STRONG -- EITHER THE STRONGEST OR THE CLOSEST SCENT IF THERE
19 IS NOT ONE THAT'S DIFFERENT FROM THE OTHERS. AND AS FAR AS
20 STRENGTH GOES, THEN HE'S GOING TO PICK UP ON THE ONE THAT'S
21 CLOSEST TO HIS NOSE AT THAT TIME.

22 Q AND WHEN YOU -- AFTER LEFT THERE THAT EVENING, YOU FOLLOWED
23 HIM TO ORR STREET, YOU DIDN'T CONSIDER THAT A CONFIRMATION AT
24 THAT POINT, DID YOU?

25 A I DIDN'T HAVE ANY CORROBORATING EVIDENCE ON THE TRACK; NO,

1 SIR.

2 Q AND WHO PROVIDED YOU THE CORROBORATING EVIDENCE THAT —

3 A I BELIEVE —

4 Q — MADE YOU ABLE TO CALL THIS A CONFIRMATION?

5 A WELL, I DIDN'T ACTUALLY CALL IT A CONFIRMATION AND DIDN'T
6 CONSIDER IT A CONFIRMATION AS FAR AS CONFIRMING THAT GATOR
7 WAS ON THE TRACK OF A SUSPECT UNTIL ACTUALLY RECENTLY. AND
8 WHEN I WAS INFORMED OF WHAT THE CIRCUMSTANCES OF — THAT
9 THERE WERE ARRESTS MADE AND WHAT THE CIRCUMSTANCES TYING THAT
10 HOUSE IN WITH THE REST WERE.

11 BUT THE FOLLOWING DAY, I BELIEVE IT WAS — AND I'M NOT
12 POSITIVE — BUT I BELIEVE IT WAS CORPORAL CAROL TOWNSEND WHO
13 CAME TO ME AND SAID, DID YOU KNOW THAT THE HOUSE — WHAT
14 HOUSE DID YOU ALL GO TO? I TOLD HER WHAT THE ADDRESS WAS.
15 SHE SAID, "DID YOU KNOW THAT THERE WERE TWO SUBJECTS THAT
16 LIVED AT THAT HOUSE THAT MAY BE POSSIBLE SUSPECTS?" I SAID,
17 "NO, I DID NOT." BUT EVEN WITH THAT, I WAS ENCOURAGED BY IT,
18 BUT I WOULDN'T HAVE CONSIDERED OR COUNTED THAT AS BEING
19 CONFIRMATION. I DIDN'T HAVE ANY SPECIFIC INFORMATION
20 REGARDING THE INVESTIGATION OF IT.

21 Q HAD THERE BEEN TIMES WHEN YOU'VE TAKEN GATOR TO A CRIME SCENE
22 WITHIN THE TIME LIMITS WHERE HE WOULD BE ABLE TO PICK UP A
23 TRACK IN FOUR HOURS I BELIEVE YOU STATED AND HE HASN'T GOTTEN
24 ANYTHING, HE HASN'T BEEN ABLE TO ALERT AND LEAD YOU
25 SOMEWHERE?

1 A I DON'T RECALL ANY TIME WHEN I EVER TRIED TO START HIM ON A
2 SCENT THAT WE DIDN'T FIND SOME SCENT. WE HAVE CONFIRMED THAT
3 -- IN THE PAST THAT WE STARTED HIM ON A SCENT OTHER THAN --
4 WE'VE TRACKED POLICE OFFICERS WHO SHOWED UP ON THE CRIME
5 SCENE, FAILED TO PROVIDE US WITH INFORMATION THAT THEY
6 FOLLOWED A CERTAIN PATH, AND WE'VE PASSED -- WE'VE TRACKED
7 PEOPLE OTHER THAN OUR SUSPECTS IN THE PAST BECAUSE SOMEONE
8 CAME THROUGH OUR CRIME -- WAS ALLOWED TO COME THROUGH THE
9 CRIME SCENE, CONTAMINATED THE SCENT. IF THAT'S WHAT YOU'RE
10 ASKING ME. I'VE NEVER HAD -- THAT I CAN RECALL -- HAD AN
11 INSTANCE WHERE I PRESENTED AN AREA TO GATOR KNOWING THAT
12 SOMEONE HAD BEEN THERE AND HE FAILED TO PICK UP ANYTHING THAT
13 I CAN RECALL.

14 Q BUT IT'S POSSIBLE THAT HE COULD PICK UP SOMEBODY WHO CAME
15 SOMEWHERE IN THE VICINITY?

16 A IF -- IF I -- YES, SIR. THAT IS A POSSIBILITY.

17 Q BUT HE COULD HAVE PICKED UP THE SCENT OF A POLICE OFFICER
18 THAT ARRIVED THERE BEFORE YOU, COULDN'T HE?

19 A YES, SIR, HE COULD HAVE; IF A POLICE OFFICER HAD TRAVELED
20 THROUGH THAT AREA. GENERALLY, HE IS TRAINED, AND BECAUSE OF
21 HIS YEARS OF EXPERIENCE, HE HAS CONDITIONED HIMSELF TO PICK
22 UP ON WHAT I REFER TO AS FEAR SCENT. WHICH A PERSON WHO HAS
23 -- WHO IS FLEEING, SOMEONE WHO HAS DONE SOMETHING WRONG OR
24 SOMEONE WHO IS EVEN AFRAID OF A DOG PUTS OUT STRONGER SCENT,
25 AND THE DOG GENERALLY WILL PICK UP ON THE -- KEY ON THAT.

1 AND ---

2 Q THAT'S YOUR THEORY THOUGH. THERE'S NOT A SCIENTIFIC THEORY
3 THAT YOU CAN PROVIDE ANY EVIDENCE OR SUPPORT ANY OF THIS, IS
4 THERE?

5 A I CAN PROVIDE DOCUMENTATION THAT I HAVE READ BUT NOT ANY
6 FIRSTHAND EXPERIENCE IN ---

7 Q OF COURSE A POLICE OFFICER THAT'S ON THE SCENE WHERE THERE'S
8 REPORTS OF SHOOTINGS AND AN ARMED ASSAILANT MIGHT GIVE OFF
9 THAT SAME FEAR SCENT, WOULDN'T HE?

10 A HE MIGHT.

11 MR. SHUPPER: I DON'T HAVE ANYTHING FURTHER, YOUR HONOR.

12 THE COURT: ALL RIGHT. MR. GASSER, YOU SEEK TO QUALIFY
13 MR. BLACKWELL AS AN EXPERT WITNESS IN THE AREA OF DOG
14 HANDLING AND TRACKING. IS THAT CORRECT?

15 MR. GASSER: YES, SIR. AND I WOULD NOTE THIS UNDER RULE
16 702, THAT WE'RE GOING UNDER THE SPECIALIZED KNOWLEDGE.
17 DEFENSE COUNSEL SEEMS TO THINK THIS RULE IS LIMITED TO
18 SCIENCE. BUT IF YOU WANT ME TO ---

19 THE COURT: NO.

20 MR. GASSER: IF THEY'RE WANTING THE COUNCIL CASE, I
21 DON'T KNOW IF YOU WANT TO GO THAT WAY.

22 THE COURT: WELL, MR. SNEED HAS CONCEDED THAT HE'S AN
23 EXPERT IN THE AREA OFFERED. AND WHILE MR. SHUPPER HAS NOT,
24 NONEETHELESS, I'M GOING TO ALLOW HIM TO TESTIFY AS AN EXPERT
25 IN THE AREA OFFERED SUBJECT TO HEARING WHAT HIS TESTIMONY IS,

1 BECAUSE I DON'T KNOW WHAT HIS TESTIMONY IS GOING TO BE, AND I
2 NEED TO KNOW IF IT'S WITHIN THE AMBIT OF THAT RULE.

3 I WILL TELL YOU STUFF LIKE FEAR SCENT I'M A LITTLE BIT
4 CONCERNED ABOUT ALREADY. AND I'M NOT SURE THAT I'M GOING TO
5 LET ANYBODY TESTIFY AS TO THAT. BUT WHAT I'D LIKE TO KNOW
6 IS, WHAT DID THE DOG DO NOW. OKAY? YOU ALL GOT ANYTHING
7 FURTHER OVER HERE? I'M GOING TO QUALIFY HIM AS AN EXPERT.

8 MR. SNEED: YES, SIR.

9 THE COURT: I BELIEVE HE IS. I BELIEVE THAT IT'S UNDER
10 RULE 702 -- YES, SIR.

11 MR. SHUPPER: NOTHING FURTHER, YOUR HONOR.

12 THE COURT: OKAY. UNDER RULE 702 AND UNDER THE RULES IN
13 OUR STATE, I DON'T THINK COUNCIL HAS GOT A GREAT DEAL OF
14 APPLICATION TO THIS BECAUSE I DON'T THINK WE'RE TALKING ABOUT
15 PEER REVIEW ON SCIENTIFIC EVIDENCE. I THINK THIS IS
16 SOMETHING ELSE AGAIN. YES, SIR, MR. SNEED.

17 MR. SNEED: YOUR HONOR, WE'RE GOING TO TAKE UP THAT
18 ISSUE NOW THOUGH?

19 THE COURT: NO, I'M NOT GOING TO TAKE IT UP RIGHT NOW,
20 MR. SNEED. I'VE ALREADY SAID WHAT I'M GOING TO DO. WHAT IS
21 IT THAT YOU WANT TO TELL ME. TELL ME WHAT YOU WANT TO TELL
22 ME. TELL ME WHAT YOU WANT TO TELL ME.

23 MR. SNEED: THAT JONES AND ITS PROGENY APPLY TO THIS
24 TYPE OF EVIDENCE AND THAT THE QUESTION IS CAN DOGS RELIABLY
25 TRACK DOWN HUMAN BEINGS.

1 THE COURT: WELL, THE ANSWER IS I DON'T KNOW YET BECAUSE
2 I DON'T KNOW WHAT HIS TESTIMONY IS GOING TO BE, AND I'VE GOT
3 TO UNDERSTAND WHAT THE INTERPRETATION OF THAT TESTIMONY IS BY
4 THIS PARTICULAR EXPERT WITNESS. WHEN I HEAR SOME OF THAT,
5 THEN WE'LL GO TO THAT PARTICULAR POINT.

6 MR. SNEED: YES, SIR.

7 THE COURT: ALL RIGHT. GO AHEAD, MR. GASSER. MAKE A
8 PROFFER BECAUSE I WANT TO UNDERSTAND WHAT IT IS THAT MR.
9 BLACKWELL WOULD TESTIFY TO BEFORE THE JURY IF IT GETS TO THAT
10 POINT.

11 MR. GASSER: THANK YOU. YOUR HONOR, I THINK WHAT WOULD
12 BE THE EASIEST WAY TO DO IT IS JUST TO HAVE HIM COME DOWN
13 BEFORE YOU AND LET ME ASK HIM THESE QUESTIONS WITH THE
14 DIAGRAM.

15 THE COURT: SURE. THE RECORD WILL REFLECT THAT I HAVE A
16 SMALLER COPY OF THE SAME DIAGRAM, I BELIEVE.

17 MR. GASSER: AND WE MARK THAT AS A COURT'S EXHIBIT.
18 I'LL BRING THE STICKER UP TO YOU.

19 (COURT'S EXHIBIT NO. 20, DIAGRAM, MARKED FOR IDENTIFICATION
20 ONLY)

21 DIRECT EXAMINATION RESUMED BY MR. GASSER:

22 Q SERGEANT BLACKWELL, WOULD YOU EXPLAIN TO THE COURT PLEASE --
23 AND IF YOU NEED YOU -- WHATEVER NOTES THAT YOU NEED -- WOULD
24 YOU EXPLAIN TO THE COURT, WHEN YOU ARRIVED ON THE SCENE
25 DURING THE EARLY MORNING HOURS OF MAY THE 29TH, 1996, AND THE

1 AREA OF T. S. MARTIN PARK, WHAT INFORMATION YOU RECEIVED AND
2 THEN WHAT YOU DID AS A RESULT WITH GATOR AFTER RECEIVING THAT
3 INFORMATION?

4 A WHEN I ARRIVED ON THE SCENE, I WAS MET BY SEVERAL OFFICERS.
5 I HAD TO BE GUIDED IN BECAUSE I WASN'T REAL FAMILIAR WITH THE
6 AREA OF T. S. MARTIN PARK, AND I PULLED MY VEHICLE INTO AN
7 AREA OVER HERE. THIS BEING WHERE THE PLAYGROUND AREA IS IS
8 WHERE I MET THE OFFICERS. AND I CAN'T RECALL WHICH OFFICERS
9 WERE ON THE SCENE.

10 BUT I WAS ADVISED THAT TWO SUBJECTS, A MALE AND A
11 FEMALE, HAD BEEN FOUND IN THE PARK BY FOUR OR FIVE
12 INDIVIDUALS DESCRIBED TO ME AS FIVE YOUNG BLACK MALES AND
13 WERE TAKEN AT GUNPOINT AND THAT THE MALE WAS HELD AT GUNPOINT
14 UNTIL HE WAS ABLE TO ESCAPE WHILE THE FEMALE WAS TAKEN TO A
15 LOCATION BESIDE A WOODED AREA RIGHT NEXT TO THE PLAYGROUND
16 EQUIPMENT OR RIGHT ADJACENT TO THE PLAYGROUND EQUIPMENT WHICH
17 ACTUALLY BORDERS OF THE -- I BELIEVE THIS IS CRESCENT HILL
18 CEMETERY. AND I WAS TAKEN TO AN AREA JUST ACROSS THE FENCE
19 WHICH WAS PUSHED DOWN INTO THE CEMETERY AREA AND NEXT TO THE
20 WOODED AREA. AND I WAS TOLD, ADVISED THAT THIS WAS WHERE
21 THEY BELIEVED THE RAPE TO HAVE HAPPENED.

22 Q AND WHAT DID YOU DO WITH GATOR AT THAT TIME, AND HOW DID YOU
23 INTERPRET GATOR'S RESPONSES?

24 A WELL, AT THAT POINT GATOR WAS STILL IN THE CAR. I BEGAN A
25 VISUAL SEARCH OF THE AREA. I WAS -- IT WAS POINTED TO ME

1 THAT THERE WAS SOME TYPE OF UNDERGARMENT IN A LOCATION WHERE
2 THIS -- I HAVE MARKED UNDERGARMENTS HERE AND A STAR. I
3 DIDN'T WANT TO BECAUSE OF THE -- THE IDENTIFICATION
4 TECHNICIAN HAD NOT BEEN THERE, I DIDN'T WANT TO GET VERY
5 CLOSE TO THAT BECAUSE I DID NOT WANT TO CONTAMINATE ANY
6 POSSIBLE EVIDENCE THAT MAY BE IN THAT AREA, SUCH AS
7 FOOTPRINTS OR ANY OTHER AREA THAT MIGHT APPLY TO THAT TYPE OF
8 CRIME.

9 BUT I COULD SEE A LIGHT COLORED UNDERGARMENT WITH MY
10 FLASHLIGHT AND WHAT LOOKED TO BE A CONDOM LAYING NEXT TO IT.
11 AND SO I STARTED SEARCHING AROUND THAT. I WAS TOLD THAT THE
12 SUSPECTS MAY HAVE FLED THROUGH THE CEMETERY, WASN'T GIVEN A
13 SPECIFIC DIRECTION BUT JUST THROUGH THE CEMETERY. SO AS I
14 WAS SEARCHING I FOUND A LOCATION ON THE GROUND PROBABLY FOUR
15 TO SIX FEET AWAY FROM THE UNDERGARMENT WHERE IT HAD LOOKED
16 LIKE ONE OR MORE PERSONS HAD FLED THIS SCENE ON FOOT
17 INDICATED BY WHAT I REFER TO AS TOE DIGS OR HEEL MARKS IN THE
18 DIRT WHICH INDICATE A RUNNING, A POSSIBLY RUNNING FOOTPRINT.

19 Q IS THAT PART OF YOUR TRAINING THAT YOU'VE RECEIVED, TO
20 IDENTIFY AND OBSERVE THOSE TYPES OF MARKINGS?

21 A YES, SIR, IT IS.

22 Q AND WHAT WAS THE SURFACE AREA THERE? WHAT TYPE OF SURFACE
23 WAS IT?

24 A THIS WAS A-- IT WAS A COMBINATION OF GRASS AND DIRT, NOT A
25 VERY THICK GRASS, A THIN GRASS WITH A LITTLE DIRT.

1 Q AND AS A RESULT OF OBSERVING WHAT YOU'VE JUST DESCRIBED, WHAT
2 DID YOU DO?

3 A AT THAT POINT I WENT BACK TO MY VEHICLE, BROUGHT GATOR OUT OF
4 THE VEHICLE, PUT HIS TRACKING HARNESS ON HIM, BROUGHT HIM ON
5 HIS COLLAR TO THE LOCATION WHERE I HAD FOUND THOSE MARKS IN
6 THE GROUND. AND I PRESENTED THE GROUND IN THAT AREA WITH MY
7 HAND BY POINTING DOWN TO THE GROUND WITH MY HAND AND
8 COMMANDING THE DOG TO TRACK. THIS IS THE TYPICAL COMMAND
9 WHEN I'M RUNNING FROM A GROUND TRACK INSTEAD OF A PARTICLE
10 SEARCH WHERE I WOULD PRESENT AN ARTICLE TO HIM AND HE WOULD
11 LOOK FOR THAT SCENT.

12 AT THIS POINT GATOR BEGAN SNIFFING THE GROUND VIGOROUSLY
13 AND BEGAN WHAT I CONSIDERED TO BE A FAIRLY STRONG TRACK
14 HEADED SOUTH ACROSS FIRST THE GRASSY AREA LEADING TOWARDS
15 WHAT I LATER DETERMINED WAS A MAUSOLEUM IN THE MIDDLE OF THE
16 CEMETERY.

17 Q LET ME STOP YOU. ONE QUESTION. JUST USED THE WORD "FAIRLY
18 STRONG" TO THE JUDGE. HOW CAN YOU -- WHAT IS IT IN YOUR
19 TRAINING OR YOUR OBSERVATIONS OR INTERPRETATION OF GATOR'S
20 RESPONSES THAT LEADS YOU TO BELIEVE AS AN EXPERT IN THIS AREA
21 THAT IT WAS A FAIRLY STRONG TRACK?

22 A EVERY DOG IS DIFFERENT, YOUR HONOR, IN THEIR RESPONSE
23 SOMEWHAT. EVERY DOG THAT WE HAVE RESPONDS SOMEWHAT
24 DIFFERENTLY TO DIFFERENT STIMULI. GATOR WHEN HE IS ON A --
25 THE STRONGER THE TRACK IS IT HAS BEEN MY EXPERIENCE THE

1 HARDER HE PULLS ON THE LEASH AND THE STRAIGHTER HE PULLS.
2 RATHER THAN DOING WHAT I WOULD CONSIDER A SERPENTINE, A WIDE
3 SERPENTINE, IT'S A VERY, VERY TIGHT PATTERN, VERY SMALL
4 SERPENTINE, ALMOST IN A STRAIGHT LINE, INDICATING THAT HE IS
5 -- HIS HEAD IS DOWN. HE'S PULLING VIGOROUSLY, I MEAN AS IN
6 DRAGGING ME AT THIS POINT. WITHIN 15 FEET OF THE TRACK IT
7 WAS CLEAR TO ME THAT HE WAS -- HAD A SPECIFIC SCENT THAT HE
8 WAS FOLLOWING.

9 Q NOW, YOUR ABILITY TO INTERPRET GATOR'S RESPONSES IN THAT
10 REGARD THAT YOU JUST DESCRIBED, IS THAT SOMETHING THAT YOU
11 HAVE BEEN TRAINED IN DOING, INTERPRETING DOG'S RESPONSES, AND
12 SPECIFICALLY GATOR'S?

13 A YES, SIR. IN TRAINING DOGS, PERIOD, ONE OF THE FIRST THINGS
14 THAT WE'RE TAUGHT IS NOT TO EXPECT THE DOG TO RESPOND, EVERY
15 DOG TO RESPOND EXACTLY THE SAME TO THE SAME STIMULI. AND TO
16 LEARN PART OF THE TRAINING THAT I GIVE TO MY HANDLERS IS, IS
17 ONCE I HAVE TRAINED THE DOG TO TRACK, THEN I TRAIN THE
18 HANDLER TO LEARN WHAT THE DOG'S DOING UNDER CERTAIN
19 CIRCUMSTANCES. IF THE DOG GETS TO A TURN WHERE A SUSPECT HAS
20 TURNED OFF THE TRACK, HOW FAR THE DOG GOES PAST, THEY HAVE TO
21 NOTE THESE THINGS AS I HAVE DONE WITH GATOR, HOW FAR HE MAY
22 GO PAST BEFORE HE STARTS SEARCHING FOR THE TURN. THESE KIND
23 OF INDICATIONS.

24 Q AND IS THE ABILITY FOR A TRACK HANDLER, A DOG HANDLER TO
25 INTERPRET THE DOG'S SCENT AS BEING A STRONG SCENT OR A WEAKER

1 SCENT, IS THAT SOMETHING THAT IS ACCEPTED IN THE SPECIALIZED
2 TRAINING AREA OF CANINE TRAINING?

3 A WITH SOME DOGS, SOME DOGS TRACK THE SAME UNDER EVERY
4 CIRCUMSTANCE. OF ALL THE DOGS THAT WE HAVE, IT'S OBVIOUS
5 THAT IF A TRACK IS STRONGER OR WEAKER BY THE AMOUNT OF PULL
6 THAT THEY HAVE, I ENCOURAGE THEM WHEN THEY GET CLOSE TO THE
7 TRACK TO PULL HARD. AND SO -- BUT IT DEPENDS ON THE DOG, THE
8 INDIVIDUAL DOG.

9 Q CONTINUE ON WITH YOUR OBSERVATIONS OR WHAT YOUR
10 INTERPRETATIONS OF WHERE GATOR LED YOU.

11 A BECAUSE THIS WAS A GRASSY AREA, I ALLOWED GATOR TO GO AT HIS
12 OWN PACE. I HELD ONTO THE LEASH TO THE BEST OF MY ABILITY
13 WHICH IS VERY DIFFICULT WHEN HE'S ON A STRONG TRACK. HE'S
14 LITERALLY DRAGGING ME AT THIS POINT. AND I HAVE TO MAINTAIN
15 HIM AT A FAST WALK, NO FASTER, BECAUSE IF HE GOES TOO FAST,
16 THERE IS THE POTENTIAL THAT WHEN A DOG GETS TO A TURN, IF
17 IT'S A HARD ANGLE TURN, THE DOG WILL PASS THAT TURN GENERALLY
18 A FOOT OR TWO BEFORE THEY GET CLEAN AIR IN THEIR NOSE, BEFORE
19 THEY INDICATE THAT THEY HAVE LOST THE SCENT AND START
20 CIRCLING TO PICK IT UP, THE TURN. SO WE KEEP HIM AT A FAST
21 WALK SO THAT WE WON'T -- IF WE GET TO A TURN WE WON'T MISS
22 IT.

23 AND AT THIS POINT WE GOT TO A LITTLE ROADWAY THAT
24 CROSSED -- OR WE CROSSED A LITTLE ROADWAY THAT CAME THROUGH
25 THE PARK THAT CIRCLES THROUGH THE CEMETERY. I'M SORRY. NOT

1 PARK. THE CEMETERY. HE COMES THROUGH AND CIRCLES THE
2 CEMETERY HERE, CROSSED OVER THAT, CONTINUING IN A BEELINE, A
3 STRAIGHT LINE FROM THE LOCATION JUST PAST -- JUST SOUTH OF
4 THE UNDERGARMENT WHERE I FOUND THE INITIAL START TO THE -- I
5 GUESS IT WOULD BE THE SOUTHWEST CORNER OF THE -- WHAT I LATER
6 DETERMINED TO BE A MAUSOLEUM, A WHITE BUILDING THAT WAS IN
7 THE MIDDLE OF THE CEMETERY IN THIS BACK PORTION.

8 WHEN WE GOT TO THE CEMETERY, WE GOT -- I MEAN TO THE
9 MAUSOLEUM, THERE WAS AN AREA BESIDE THE MAUSOLEUM WHERE THERE
10 WAS -- THE GRASS WAS REAL SPARSE AND THERE WAS DIRT ON THE
11 GROUND INBETWEEN PATCHES OF GRASS. AT THAT POINT I STOPPED.
12 I TOLD MY DOG TO DOWN. I TOOK MY FLASHLIGHT, SHINED IT IN
13 FRONT OF HIM, LOOKED; AND I WAS ABLE TO FIND A PARTIAL OR
14 SEVERAL PARTIAL IMPRINTATIONS IN THE GROUND, NOTHING THAT I
15 COULD INTERPRET AS BEING WORTHY OF EVIDENCE OF A FOOTPRINT;
16 BUT PARTIAL SHOE PRINTS IN THE DIRT HERE, WHICH ONLY LED ME
17 TO HAVE SOME PARTIAL PATTERN. I MADE A MENTAL NOTE OF THIS
18 AT THIS POINT AND CONTINUED GATOR ON HIS -- GAVE HIM THE
19 COMMAND TO TRACK AND CONTINUED HIM ALONG THE TRACK.

20 Q NOW, YOUR ABILITY TO IDENTIFY FINGERPRINTS OR PARTIAL
21 FINGERPRINTS, IS THAT PART OF YOUR TRAINING AS -- IS THAT
22 PART OF THE TRAINING THAT YOU ACHIEVED BOTH IN THE UNITED
23 STATES MILITARY MP AS WELL AS ALSO THE TRAINING WITH THE U.S.
24 CANINE ASSOCIATION AND THE SOUTH CAROLINA CRIMINAL JUSTICE
25 ACADEMY?

1 A YES, SIR. IT IS PART OF THE TRAINING THAT WE RECEIVED IN ALL
2 OF THESE AREAS OF TRACKING.

3 Q AND HAD YOU EVEN -- BY THE TIME YOU GOT ON THE SCENE, WAS
4 *victim*, WAS SHE ALREADY TRANSPORTED TO THE HOSPITAL, AND
5 WAS SHE THERE?

6 A SHE WAS NOT AT THE SCENE. THE VICTIM HAD BEEN TAKEN TO THE
7 HOSPITAL, IS WHAT I WAS TOLD. NOW, THERE WAS A MALE SUBJECT
8 THERE. AND I DID NOT PERSONALLY INTERACT WITH THAT SUBJECT.
9 BUT THE OTHER OFFICERS THERE WERE TALKING WITH THE MALE
10 SUBJECT WHO I BELIEVED TO BE THE OTHER VICTIM IN THE CASE.

11 Q NOW, AT THE TIME OF THE TRACKING THOUGH, DID YOU HAVE -- I
12 KNOW YOU KNOW NOW. BUT AT THE TIME OF THE TRACKING, DID YOU
13 HAVE ANY IDEA THAT LATER ON *victim* PROVIDED INFORMATION
14 THAT SHE WAS TAKEN TO THIS MAUSOLEUM AND PLACED INSIDE OF IT
15 BY TWO OF THE SUSPECTS? DID YOU HAVE ANY IDEA AT THE TIME OF
16 THE TRACKING?

17 A I WAS NOT PROVIDED WITH THAT INFORMATION.

18 Q CONTINUE ON.

19 A GATOR CONTINUED IN WHAT I WOULD DESCRIBE AS A VERY STRONG
20 TRACK, PULLING VIGOROUSLY HEAD DOWN ALONG THE FRONT SIDE OF
21 THE MAUSOLEUM AND THEN BACK INTO A SOUTHWARDLY DIRECTION OR
22 SOUTHERN DIRECTION THROUGH TO A SET OF SHRUBS ALONG THAT
23 BACKED UP BEHIND A SET OF HOUSES ON MAEBELLE COURT. THIS IS
24 MAEBELLE COURT AND THESE ARE HOUSES ON MAEBELLE COURT.

25 THESE WERE FAIRLY THICK SHRUBS TO THE BEST OF MY

1 RECOLLECTION, AND THERE WAS AN OPENING WHICH WAS ALMOST
2 DIRECTLY BEHIND NUMBER 6 MAEBELLE COURT. WE CONTINUED
3 THROUGH THE OPENING, WHAT WE REFER TO AS A CUT IN THE SHRUBS,
4 AND OUT TO THE PAVEMENT BETWEEN -- WE CAME BETWEEN NUMBER 7
5 AND NUMBER 6 MAEBELLE COURT AND OUT ONTO THE PAVEMENT OF THE
6 ACTUAL STREET OF MAEBELLE COURT.

7 WHEN WE GOT TO THE STREET, GATOR CONTINUED THE SAME
8 BEHAVIOR, STILL CONSIDERING IT A PRETTY STRONG TRACK. GATOR
9 MADE A LEFT TURN WHICH WOULD HAVE BEEN EASTWARDLY IN
10 DIRECTION ALONG THE PAVEMENT CROSSING OVER THE PAVEMENT TO
11 THE RIGHT-HAND SIDE, FROM THE LEFT-HAND SIDE TO THE
12 RIGHT-HAND SIDE AT AN ANGLE AND THEN MADE A RIGHT-HAND TURN
13 AT AN ANGLE THAT WENT BETWEEN TWO HOUSES, THE CORNER HOUSE
14 HERE AND I HAVE THE -- I THINK I WROTE THE NUMBER DOWN IN MY
15 NARRATIVE, THROUGH THE BACKYARD OF NUMBER 1.

16 I WENT BETWEEN NUMBER 1 AND NUMBER 2 MAEBELLE COURT. I
17 THINK THAT'S 1 AND 2 MAEBELLE COURT. ONE OF THESE TWO IS. I
18 AM NOT SURE WHICH. I WENT BETWEEN THESE TWO RESIDENCES AT AN
19 ANGLE AND BACK OUT ONTO THE PAVEMENT WHERE MAEBELLE COURT
20 CURVED HEADED TOWARDS GERMANY STREET.

21 AS I GOT TO GERMANY STREET ON MAEBELLE COURT, WE
22 CONTINUED AT A GOOD PACE, STRONG PULL. AS WE GOT HERE THERE
23 WAS SAND ON THE ROADWAY WHICH GENERALLY PILES UP NEAR A
24 CORNER, ROADWAY CORNERS AND STUFF. I STOPPED THE DOG AT THAT
25 POINT. I DOWNED HIM. I SHINED MY FLASHLIGHT IN THE SAND AND

1 WAS ABLE TO FIND FOOTPRINTS WHICH I CONSIDERED TO BE
2 CONSISTENT WITH WHAT I HAD SEEN HERE BESIDE THE MAUSOLEUM,
3 CONSISTENT ENOUGH TO NOTE IT IN MY NARRATIVE.

4 ANYWAY, I CONTINUED. FROM THIS POINT I COMMANDED GATOR
5 TO START AGAIN. I CONTINUED SOUTH ACROSS GERMANY STREET TO
6 THE LEFT-HAND SIDE OF ORR STREET, DOWN ORR STREET TO THE
7 FOURTH HOUSE ON THE LEFT-HAND SIDE WHICH WOULD BE THE EAST
8 SIDE OF ORR STREET INTO THE YARD AND ONTO THE SMALL PORCH OF
9 ORR STREET, UP THE STEPS AND ONTO THE SMALL PORCH OF THIS
10 ADDRESS WHICH I LATER DETERMINED TO BE 2528 ORR STREET. I
11 BELIEVE THAT'S THE ADDRESS.

12 AND AT THAT POINT GATOR'S HEAD CAME UP. BEHAVIOR WAS
13 CONSISTENT. HE WENT FROM WHAT I CONSIDER TO BE A TRACKING
14 MODE WHERE HIS HEAD IS CLOSE TO THE GROUND, NOSE IS OBVIOUSLY
15 PICKING UP SCENT FROM THE GROUND TO A SEARCH MODE WHICH TO ME
16 INDICATED THAT HE -- AT TIMES INDICATED THAT THERE MAY BE A
17 POSSIBILITY THAT EITHER THE TRACK ENDED THERE OR THAT THERE
18 MAY BE A SUSPECT CLOSE BY.

19 SO I TOOK THE DOG BACK OFF OF THE PORCH. I CHECKED THE
20 GROUND WHICH WAS ALL DIRT AT THE TIME RIGHT IN FRONT OF THE
21 HOUSE, AND THERE WERE FOOTPRINTS THAT WERE CONSISTENT WITH
22 THIS LOCATION AND THIS LOCATION ALL IN THE YARD. I MEAN,
23 THERE WERE A LOT OF FOOTPRINTS IN THIS YARD AND SEVERAL THAT
24 WERE CONSISTENT WITH WHAT I HAD SEEN HERE AND HERE.

25 AT THAT POINT WE -- THE OTHER OFFICER THAT WAS WITH ME

1 AND I CHECKED AROUND THIS HOUSE. IT DIDN'T APPEAR THAT
2 ANYBODY WAS THERE. I BELIEVE WE MAY HAVE EVEN -- WE MAY HAVE
3 EVEN KNOCKED ON THE DOOR AND GOT NO RESPONSE. I CAN'T -- I'M
4 NOT POSITIVE ABOUT WHETHER I KNOCKED ON THE DOOR. I KNOW
5 SOMEONE CHECKED OR WAS TOLD TO CHECK TO SEE IF ANYONE WAS
6 HOME.

7 AT THIS POINT I BROUGHT GATOR BACK OUT AND STARTED
8 COMMANDING HIM TO TRACK IN THE YARD. I BROUGHT HIM BACK
9 AROUND THIS WAY. WE FOLLOWED THE EXACT SAME PATH BACK UP
10 ONTO THE PORCH. AND AT THAT TIME I CONSIDERED HIS BEHAVIOR
11 TO BE CONSISTENT WITH THAT OF THE ENDING OF THE TRACK.

12 WE WERE NOT ABLE TO -- HE INDICATED A LOT OF SCENT WHICH
13 CAN INDICATE EITHER THAT A SUSPECT IS CLOSE BY WHEN HE GOES
14 INTO WHAT I REFER TO AS A SEARCH MODE INSTEAD OF TRACKING.
15 IT CAN BE AN INDICATION THAT THERE IS A SUSPECT CLOSE BY OR
16 AT LEAST THAT SUSPECT'S SCENT IS HEAVY IN THAT AREA. AND HE
17 THEN BEGINS TO THINK I'M CLOSE, I'VE GOT TO LOOK FOR HIM.
18 AND THAT'S HOW HE'S TRAINED, WHEN WE GET CLOSE TO A SUSPECT
19 TO LET ME KNOW BY BRINGING HIS HEAD UP, LOOKING FOR THE
20 SUSPECT AND IF HE GETS CLOSE ENOUGH TO BARK AT THE SUSPECT.

21 Q NOW, ALTHOUGH NOT NOTED HERE, ARE THERE OTHER HOUSES UP AND
22 DOWN BOTH SIDES OF GERMANY STREET AS WELL AS BOTH SIDES OF
23 ORR STREET OTHER THAN THIS DIAGRAM?

24 A I'M NOT REAL FAMILIAR WITH THIS AREA, BUT I BELIEVE THERE
25 ARE. THERE MAY BE A HOUSE OR TWO ON GERMANY STREET. I KNOW

1 THERE ARE SOME UP THIS WAY ON GERMANY. AND I KNOW THERE ARE
2 OTHER HOUSES BETWEEN THIS HOUSE AND GERMANY STREET ON THIS
3 SIDE OF THE ROAD.

4 Q ARE YOU FAMILIAR WITH KENDALL COURT APARTMENTS ACROSS THE
5 STREET?

6 A I AM SOMEWHAT FAMILIAR; YES, SIR.

7 Q BUT GATOR'S TRACKING, WERE YOU LEADING GATOR OR WAS GATOR
8 LEADING YOU?

9 A THERE WAS NO QUESTION GATOR WAS LEADING ME.

10 Q NOW, WITH REGARDS TO THE HOURS, WITH THE HOURS, DO YOU HAVE
11 AN OPINION TO A REASONABLE DEGREE OF SPECIALIZED KNOWLEDGE IN
12 THIS PARTICULAR AREA BASED ON YOUR TRAINING, SOME OF THE
13 QUESTIONS DO YOU RECALL THAT BOTH DEFENSE COUNSEL WERE ASKING
14 YOU ABOUT HOW LONG A SCENT -- DO YOU REMEMBER THOSE LINES OF
15 QUESTIONS? HOW LONG COULD HE PICK UP ON A SCENT, WHAT THE
16 TIME WINDOW IS. DO YOU HAVE AN OPINION AS TO THE SCENT THAT
17 GATOR WAS TRACKING, THE OUTSIDE WINDOW, WHAT THAT WINDOW
18 WOULD BE, WHEN THAT SCENT WAS LEFT?

19 A I WOULDN'T VENTURE TO OFFER AN OPINION ON THE TIME. I CAN
20 ONLY SAY THAT IT'S MY PROFESSIONAL OPINION THAT THIS WAS A
21 VERY STRONG SCENT, INDICATING THAT EITHER THERE WAS A
22 SIGNIFICANT AMOUNT OF SCENT LAID DOWN OR THAT IT WAS
23 RELATIVELY FRESH.

24 Q WHAT DID YOU MEAN WHEN YOU ANSWERED -- I CAN'T RECALL WHICH
25 QUESTION FROM ONE OF THE DEFENSE ATTORNEYS -- THAT IN

1 TRAINING HE WAS ABLE TO PICK UP ON A SCENT THAT WAS 12 HOURS
2 OLD BUT THAT THAT WAS THE MAXIMUM?

3 A THAT'S THE MOST THAT I HAD EVER TRIED, I HAD EVER TRIED. AND
4 THAT WAS DURING A TRAINING SEMINAR IN VIRGINIA, ACTUALLY A
5 CERTIFICATION TRIAL. WE HAD A NUMBER OF OTHER POLICE
6 AGENCIES WHERE I WAS INSTRUCTING. AND THAT MORNING I HAD ONE
7 OF THE HANDLERS LAY DOWN A TRACK FOR GATOR. AND THEN WE
8 DIDN'T GET A CHANCE TO GET BACK TO IT UNTIL THAT NIGHT. IT
9 WAS ABOUT 12 HOURS OLD. AND I SAID, WELL, LET'S SEE HOW HE
10 DOES ON IT, SEE IF HE'S ABLE TO PICK IT UP.

11 THE CONDITIONS WERE FAIR. IT WAS A FAIRLY -- THE
12 WEATHER WAS GOOD. SO I SAID, WELL, WE'LL GIVE IT A TRY. WE
13 -- THE HANDLER LAID DOWN THIS TRACK AND PUT AN ARTICLE AT THE
14 END OF THE TRACK AS GATOR'S REWARD SHOULD HE FIND IT. AND
15 THE HANDLER RAN THE TRACK -- OR I'M SORRY. THIS HANDLER FROM
16 ANOTHER AGENCY RAN WITH ME DURING THE TRACK AND HAD ALSO
17 MAPPED OUT THE TRACK. GATOR WAS VERY PROFICIENT EVEN ON A
18 TRACK AT THAT AGE, FOLLOWED IT VERY CLOSELY, WAS VERY
19 SUCCESSFUL.

20 Q AND LASTLY FOR THIS PURPOSE, DO YOU HAVE AN OPINION, THE FACT
21 THAT THERE WERE FIVE -- ALLEGEDLY THERE WERE FIVE ASSAILANTS
22 AND TWO VICTIMS, SO A TOTAL OF SEVEN PEOPLE IN THIS AREA AT
23 THAT PARTICULAR TIME, BEING THERE EARLIER BEFORE YOU STARTED
24 YOUR TRACKING; DO YOU HAVE AN OPINION AS TO WHETHER OR NOT
25 GATOR WAS TRACKING ONE PERSON OR THREE PEOPLE OR FIVE PEOPLE

1 OR WHAT? CAN YOU EXPLAIN THAT TO THE COURT?

2 A YES, SIR. GATOR WOULD HAVE BEEN ONLY TRACKING ONE
3 INDIVIDUAL. DURING TRAINING ON A REGULAR BASIS WE DO WHAT WE
4 CALL PROOFING, AND THAT'S INSURING THAT THE DOG, IT MAINTAINS
5 THE SCENT THAT HE HAS STARTED ON AND DOES NOT PULL OFF ON
6 ANOTHER SCENT. IN TRAINING WE HAVE TAKEN AS MANY AS SIX OR
7 SEVEN PEOPLE AND LAID DOWN A SINGLE TRACK AND AT SOME POINT
8 DURING THAT TRACK HAD EACH INDIVIDUAL COME OFF OF IT. AND
9 ONLY THE TRACK LAYERS KNEW. THEN I WAS PRESENTED WITH AN
10 ARTICLE TO PRESENT TO MY DOG. ONLY THE TRACK LAYERS KNEW
11 WHICH ONE THE ARTICLE BELONGED TO.

12 AND 100 PERCENT OF THE TIME GATOR HAS BEEN SUCCESSFUL
13 SINCE COMPLETING HIS TRAINING, SUCCESSFUL IN FOLLOWING THE
14 PROPER TRACK, KNOWING THAT RATHER THAN PICKING UP WHAT WE
15 WOULD CONSIDER A LARGE AMOUNT OF SCENT THAT IS COMBINED, A
16 BUNCH OF PEOPLE THERE, THE DOG IS ABLE TO DISCRIMINATE
17 BETWEEN ONE SCENT, AND THAT WAS THE SCENT THAT HE WAS STARTED
18 ON. SO THE DOG WAS ONLY TRACKING ONE INDIVIDUAL.

19 MR. GASSER: THAT'S ALL I HAVE FOR THIS PURPOSE, YOUR
20 HONOR. I DON'T KNOW WHETHER DEFENSE COUNSEL WANTS TO --

21 THE COURT: THEY MAY.

22 MR. GASSER: -- QUESTION HIM IN FRONT OF YOU THE WAY I
23 DID OR TAKE THE WITNESS STAND.

24 THE COURT: AND I'LL LET THEM IF THEY WANT TO.

25 MR. SNEED: MAY IT PLEASE THE COURT.

1 THE COURT: YEAH. GO AHEAD, PLEASE, SIR, MR. SNEED.

2 MR. SNEED: YOUR HONOR, IF THE WITNESS CAN TAKE THE
3 WITNESS STAND, PLEASE.

4 THE COURT: OKAY. THANK YOU. PLEASE DO THAT, MR.
5 BLACKWELL.

6 MR. GASSER: MAY WE GO AHEAD AND MARK THIS AS A STATE'S
7 EXHIBIT EXHIBIT FOR I.D. YOUR HONOR, TO KEEP THE RECORD
8 STRAIGHT?

9 THE COURT: SURE.

10 MR. SNEED: SERGEANT BLACKWELL, ---

11 THE COURT: WAIT ONE SECOND.

12 MR. SNEED: OH. I'M SORRY, SIR.

13 (STATE'S EXHIBIT NO. 6, DIAGRAM, MARKED FOR IDENTIFICATION
14 ONLY)

15 MR. GASSER: NO. 6 FOR I.D.

16 THE COURT: OKAY.

17 CROSS EXAMINATION BY MR. SNEED:

18 Q YOU TOLD THE SOLICITOR SEVERAL TIMES IT WAS A STRONG SCENT,
19 RIGHT?

20 A YES, SIR.

21 Q OKAY. AND BY STRONG, IT'S NOT NECESSARILY HOW OLD IT IS,
22 RIGHT?

23 A IT CAN BE EITHER BY FRESHNESS OR MEANING BEING VERY --- LAID
24 RECENTLY.

25 Q OKAY.

1 A OR IT COULD BE WITHIN, GENERALLY WITHIN A 30 MINUTE, 45
2 MINUTE PERIOD. EVEN IF THERE IS ANOTHER RECENT, MORE RECENT
3 TRACK, IF THE SUBJECT HAS FLED WHOSE SCENT IS VERY, VERY
4 STRONG, THE DOG WILL -- COULD CONCEIVABLY PICK UP ON THE
5 STRONGER SCENT.

6 Q OKAY. NOW, EARLIER YOU SAID THAT THE DOG WILL TRACK
7 SOMETHING THREE WAYS. ONE IS VEGETATION OR DIRT BEING
8 AFFECTED, RIGHT?

9 A YES, SIR.

10 Q ANOTHER ONE IS MAYBE VEGETATION ON SOMEONE'S FOOT OR
11 INORGANIC MATTER?

12 A TRANSFERENCE.

13 Q OR A HUMAN SCENT?

14 A YES, SIR.

15 Q WHICH OF THESE THREE WAS GATOR FOLLOWING?

16 A HUMAN SCENT.

17 Q OKAY. NOW, YOU TALKED GATOR -- THIS BUSINESS ABOUT SAND ON
18 THE CORNER. OKAY?

19 A YES, SIR.

20 Q DID GATOR SLOW DOWN WHEN HE HIT THE SAND?

21 A NO, SIR. I STOPPED HIM BEFORE WE GOT TO THE SAND.

22 Q OKAY. AND WHY DID YOU DO THAT?

23 A SO THAT I COULD LOOK FOR CONFIRMATION ON MY TRACK.

24 Q WELL, I MEAN, WERE YOU AFRAID THE DOG MIGHT LOSE THE TRACK
25 FROM THE SAND AREA?

1 A NO, SIR. I WASN'T AFRAID HE WOULD LOSE THE TRACK, BUT HE IS
2 A DOG AND HE CANNOT POSITIVELY IDENTIFY A SUSPECT AT THE END
3 OF THAT TRACK AS SAYING THAT'S THE MAN THAT I'M TRACKING. SO
4 ON EVERY TRACK WE ARE TRAINED TO LOOK FOR SIGNS OR EVIDENCE
5 THAT MAY CONFIRM WHO WE'RE TRACKING OR THAT WE'RE ON THE SAME
6 TRACK THAT WE WANT TO BE ON.

7 Q OKAY. OKAY NOW. YOU TALKED ABOUT FOOTPRINTS HERE. MAKE
8 SURE I UNDERSTAND. YOU SAW FOOTPRINTS AT THE CEMETERY AREA,
9 RIGHT?

10 A ARE YOU TALK -- WHICH PART OF THE CEMETERY?

11 Q WELL, I'M JUST TRYING TO -- YOU REFERENCED FOOTPRINTS A LOT.
12 OR RATHER SHOE PRINTS MAY BE MORE PRECISE. YOU REFERENCED
13 SHOE PRINTS, RIGHT?

14 A TWICE. YES, SIR.

15 Q OKAY.

16 A THREE TIMES. I'M SORRY. THE HOUSE, THE MAUSOLEUM, AND THAT
17 CORNER IN GENERAL.

18 Q OKAY. SO THREE PLACES?

19 A YES, SIR.

20 Q NOW, YOU'VE NEVER BEEN QUALIFIED AS A SHOE PRINT EXPERT, HAVE
21 YOU?

22 A NO, SIR, I HAVE NOT.

23 Q YOU'RE NOT AN EXPERT IN SHOE PRINT ANALYSIS?

24 A NO, SIR, I AM NOT.

25 Q OKAY. BUT YOU DO KNOW THAT YOU CAN TELL AT LEAST A

1 DIFFERENCE, YOU KNOW WHAT A FOOTPRINT IS?

2 A I CAN RECOGNIZE A ZIG-ZAG PATTERN AS OPPOSED TO A CIRCLE
3 PATTERN; YES, SIR.

4 Q BUT NOT MUCH MORE THAN THAT?

5 A I'D SAY I COULD RECOGNIZE A LITTLE MORE THAN THAT. YES, SIR.

6 Q OKAY. NOW, YOU WERE TELLING THE JUDGE THAT GATOR'S TRACK IS
7 STRONG. AND SO THE SERPENTINE TRAIL, IT WAS MORE DIRECT,
8 RIGHT?

9 A YES, SIR.

10 Q THAT'S AN INDICATOR TO YOU THAT'S A STRONG TRACK?

11 A YES, SIR.

12 Q OKAY. IN ALL TIMES YOU'VE TESTIFIED IN A CRIMINAL CASE, HAS
13 THE DOG TRACK ALWAYS BEEN STRONG?

14 A NO, SIR.

15 Q OKAY. AT THE END, WHEN YOU GOT TO ORR STREET AT 2528, YOU
16 TOOK THE DOG AROUND THE WHOLE PERIMETER OF THE HOUSE?

17 A I DON'T RECALL IF I EVER WALKED ALL THE WAY AROUND THE BACK
18 SIDE OF THE HOUSE. NO, SIR.

19 Q BECAUSE, I MEAN, YOU SEE POSSIBLE SHOE PRINTS IN THE FRONT
20 YARD THERE, RIGHT?

21 A YES, SIR.

22 Q AND THE DOG STOPS THERE, RIGHT?

23 A YES, SIR.

24 Q OKAY. I MEAN, DID IT OCCUR TO YOU TO CHECK TO SEE IF THERE'S
25 ANY REAR DOORS OR ANYTHING LIKE THAT?

1 A WE DID LOOK TO SEE IF THERE WAS A BACK DOOR. BUT I DON'T
2 SPECIFICALLY RECALL GOING ALL THE WAY AROUND THE BACK SIDE OF
3 THE HOUSE.

4 Q OKAY. AND WHEN I SAY YOU, THAT'S YOU AND/OR THE DOG?

5 A THE DOG WOULD HAVE BEEN WITH ME. YES, SIR.

6 Q OKAY. WELL, JUST GETTING BACK TO THE QUESTION JUST ASKED
7 YOU. YOU SAID THAT YOU DON'T ALWAYS TESTIFY A DOG HAS A
8 STRONG TRACK, DO YOU?

9 A ONLY WHEN THE DOG HAS A STRONG TRACK.

10 Q DO YOU RECALL TESTIFYING IN WHICH CASE YOU SAID A DOG HAD A
11 WEAK TRACK?

12 A YES, SIR, I DO.

13 Q WHAT CASE WAS THAT?

14 A THIS WAS A CASE IN FAMILY COURT WHICH WAS A BURGLARY.

15 Q OKAY. THAT'S GOOD ENOUGH.

16 A OKAY.

17 MR. SNEED: BEG THE COURT'S INDULGENCE, YOUR HONOR.

18 THE COURT: OKAY.

19 MR. SNEED: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

20 THE COURT: MR. SHUPPER.

21 MR. SHUPPER: JUST BRIEFLY, YOUR HONOR.

22 CROSS EXAMINATION BY MR. SHUPPER:

23 Q SERGEANT BLACKWELL, DIDN'T YOU TESTIFY THAT WHEN YOU ARRIVED
24 AT THE AREA WHERE THE ARTICLE OF CLOTHING WAS FOUND THAT YOU
25 NOTICED TOE DIGS?

1 A YES, SIR.

2 Q AND WOULD THEY QUALIFY AS SOME FORM OF FOOTPRINT?

3 A THEY WEREN'T -- I WOULD NOT QUALIFY THEM AS A FOOTPRINT.

4 THEY WERE A MARK IN THE DIRT WHICH TO ME WAS CONSISTENT WITH

5 THE HEEL OR TOE OF A SHOE WHICH IS MADE CONSISTENTLY WHEN

6 SOMEONE --

7 Q THANK YOU. AND THAT'S WHERE THE TRACK STARTED?

8 A THAT'S THE AREA WHERE WE PRESENTED THE GROUND. YES, SIR.

9 Q AND THEN YOU WENT TO THE MAUSOLEUM AREA WHERE YOU NOTICED
10 SOME FOOTPRINTS AND YOU DISCERNED THOSE FOOTPRINTS?

11 A A PARTIAL FOOT PATTERN, A SHOE PATTERN. YES, SIR.

12 Q AND THEN YOU PROCEEDED UP TO THE CORNER WHERE YOU SAW SOME
13 MORE SHOE PRINTS AND THE FOOTPRINTS. SHOE PRINTS WOULD BE
14 MORE ACCURATE, WOULDN'T THEY?

15 A YES, SIR.

16 Q COULD YOU DESCRIBE IT AS A SNEAK EITHER OR --

17 A HONESTLY, I CAN'T RECALL, AND I DON'T HAVE IT IN MY NOTES,
18 WHAT THE PATTERN WAS.

19 Q WELL, DIDN'T YOU SAY YOU FOUND PRINTS CONSISTENT AT THE ORR
20 STREET AND AT THE INTERSECTION OF GERMANY AND ORR THAT WERE
21 CONSISTENT WITH THE FOOTPRINTS OR SHOE PRINTS AT THE
22 MAUSOLEUM?

23 A YES, SIR, I DID.

24 Q COULD YOU DESCRIBE THAT CONSISTENCY?

25 A I CAN ONLY SAY THAT I RECALL AND I NOTED THAT NIGHT THAT THEY

1 WERE -- THE PATTERN WAS CONSISTENT OR SIMILAR.

2 Q WERE YOU DRESSED THEN AS YOU ARE NOW? I MEAN, DID YOU HAVE
3 YOUR WALKIE-TALKIE AND THAT EQUIPMENT WITH YOU?

4 A YES, SIR, I DID.

5 Q DID YOU NOTIFY THE CRIME LAB, THE I.D. PEOPLE THAT ARRIVED ON
6 THE SCENE LATER TO COME TAKE PHOTOGRAPHS OF THOSE AREAS OR DO
7 CAST IMPRESSIONS?

8 A I -- I BELIEVE TO THE BEST OF MY RECOLLECTION I TOLD HIM
9 PERSONALLY THAT WE HAD FOUND SOME PARTIAL IMPRINTATIONS. WE
10 DISCUSSED THE FACT THAT WE DIDN'T FIND ANYTHING AT THE START
11 THAT WE COULD MATCH WITH THE ONES THAT I FOUND, AND WHAT I
12 HAD FOUND WAS THAT I HAD NOT FOUND A WHOLE SHOE PRINT. BUT I
13 DID DISCUSSES IT WITH SERGEANT CRONIN AT THE SCENE WHEN I GOT
14 BACK TO MY VEHICLE.

15 Q AND THAT WAS AFTER YOU HAD LEFT -- AFTER YOU HAD LEFT ORR
16 STREET?

17 A YES, SIR.

18 Q IN YOUR -- IS IT YOUR GENERAL PRACTICE WHEN YOU -- WHEN GATOR
19 ALERTS TO A SCENT AND SHOWS YOU IT'S A STRONG SCENT AND THEN
20 GETS TO -- I BELIEVE YOU SAID HE WENT FROM HIS NOSE DOWN TO
21 HIS HEAD UP, THE SEARCH MODE?

22 A YES, SIR.

23 Q WHAT IS YOUR GENERAL PRACTICE WHEN GATOR SHIFTS GEARS, SO TO
24 SPEAK?

25 A THEY GO INTO MORE OF A TACTICAL, DEFENSIVE TACTICAL POSITION;

1 STEPPING BACK, TAKING A LOOK AT MY SURROUNDINGS, CONSIDERING
2 THAT THERE MAY BE A SUSPECT CLOSE BY, CONSIDERING SAFETY
3 ISSUES.

4 Q SO GATOR HAS BEEN TRAINED TO DO THAT, ONE, FOR YOUR
5 PROTECTION; AND, TWO, BECAUSE HE'S BEEN TRAINED TO APPREHEND
6 PEOPLE AS WELL, RIGHT?

7 A THAT'S CORRECT.

8 Q AND IS IT YOUR PRACTICE WHEN HE GOES INTO THAT MODE TO BE ON
9 A HEIGHTENED ALERT?

10 A IT IS.

11 Q I THINK YOU INDICATED THAT A SUSPECT COULD BE NEARBY AT THAT
12 TIME?

13 A THAT IS -- YES, SIR. THAT IS ONE OF THE THINGS THAT I
14 CONSIDER.

15 Q IS IT YOUR GENERAL PRACTICE THAT WHEN GATOR GOES FROM
16 TRACKING TO ALERT TO SEARCH MODE TO LET HIM RUN WITH IT, SO
17 TO SPEAK? OR DO YOU SHUT DOWN OPERATIONS? DO YOU --

18 A DEPENDING ON -- DEPENDING ON WHAT TYPE OF ALERT. WHEN THE
19 DOG STARTS BARKING, INDICATES IN A SPECIFIC DIRECTION, AT
20 THAT POINT I WILL SHUT DOWN AND PUT EVERYBODY ON A HEIGHTENED
21 ALERT, MOVE THE PERIMETER, TAKE VERY SPECIFIC ACTION. IF THE
22 DOG'S HEAD COMES UP, THEN IN THE CASE OF THIS NIGHT, WHAT I
23 TRIED TO DO IS ENCOURAGE HIM AT THAT POINT TO TELL ME WHERE
24 THE SCENT IS COMING FROM, MOTIVATE HIM TO CONTINUE SEARCHING
25 UNTIL HE CAN TELL ME SPECIFICALLY WHAT HE HAS OR IN WHAT

1 DIRECTION THE SCENT IS COMING FROM.

2 Q WELL, WHAT DETERMINES WHETHER HE PAUSES AT THE DOOR OR RUNS
3 AROUND THE HOUSE OR PICKS UP THE TRACK AND GOES SOMEWHERE
4 ELSE? HOW MIGHT THAT OCCUR?

5 A WELL, THE ONLY TIME THAT I'VE HAD -- THE TIMES THAT HE HAS
6 ACTUALLY PAWED AT A DOOR, JUMPED UP ON A DOOR, WE HAVE FOUND
7 THAT THERE WAS SOMEONE, THE PERSON THAT WE WERE TRACKING TO
8 BE INSIDE. IN TRAINING, THAT'S THE WAY HE'S TRAINED TO
9 RESPOND. IF THE PERSON IS ACTUALLY THERE, PRESENT, AND THE
10 SCENT IS STRONG ENOUGH THAT HE CAN SAY THAT HE BELIEVES THAT
11 THERE IS A PERSON PRESENT. DOES THAT ANSWER YOUR QUESTION?

12 Q YES, SIR. AT THAT POINT WHEN -- HE DIDN'T DO THOSE THINGS TO
13 INDICATE THE PERSON WAS PRESENT. IS THAT CORRECT?

14 A THAT'S CORRECT.

15 Q ON THE NIGHT IN QUESTION?

16 A THAT'S CORRECT. HE DID NOT DO THOSE THINGS.

17 Q BUT I BELIEVE THAT INDICATION OF HIS SHIFTING GEARS, SO TO
18 SPEAK, AND LIFTING HIS HEAD UP AS IF THE SUSPECT COULD BE
19 NEAR HIM?

20 A YES, SIR.

21 Q DID YOU TRY TO GET HIM TO PICK UP ON SCENTS? I MEAN, IT
22 SEEMS TO ME WHAT YOU'RE SAYING IS, IS AT THAT POINT YOU
23 DIDN'T FEEL THAT THE SUSPECT WAS IN THE HOUSE BUT THE SUSPECT
24 WAS NEAR. IS THAT CORRECT?

25 A AT THAT POINT I DIDN'T FEEL LIKE GATOR HAD GIVEN ME A

1 SUFFICIENT INDICATION TO SAY POSITIVELY THAT THE SUSPECT WAS
2 IN THE HOUSE AT THE TIME. AND HIS INDICATION WAS CONSISTENT
3 WITH MORE THAN ONE THING, ONE BEING THAT THE SUSPECT COULD BE
4 CLOSE BY OR THAT THERE WAS A LARGE AMOUNT OF SCENT FROM THE
5 SUSPECT IN THAT AREA.

6 Q DID THAT LEAD YOU TO BELIEVE THAT THERE MIGHT BE AN
7 ADDITIONAL TRACK TO FOLLOW IF THE SUSPECT WASN'T IN THE
8 HOUSE?

9 A I ALWAYS KNOW THAT THERE IS A POSSIBILITY THAT IF THE
10 SUSPECT'S NOT IN THE HOUSE THERE MAY BE AN ADDITIONAL TRACK
11 TO FOLLOW. YES, SIR.

12 Q DID YOU ATTEMPT TO FOLLOW AN ADDITIONAL TRACK?

13 A I DID. I DID PULL HIM OFF OF THE PORCH AFTER WE SECURED THE
14 HOUSE AND DETERMINED THAT IT DIDN'T APPEAR THAT ANYBODY WAS
15 HOME. I DID PULL THE DOG OFF AND WORKED HIM AROUND ORR
16 STREET UP FURTHER SOUTH FROM THE HOUSE. GATOR CONSISTENTLY
17 WENT BACK TO THE PORCH. I DID WHAT I REFER TO AS SWEEPING
18 THE DOG, TRYING TO SEE IF HE PICKS UP ON A SCENT. I AM NOT
19 GOING TO — WHAT I DO IS I GIVE HIM THE COMMAND TO TRACK AND
20 WATCH HIS BEHAVIOR AND SEE IF HE PICKS UP ON THE SAME TRACK.
21 I ENCOURAGE HIM TO DO THAT. AND HE KEPT GOING BACK TO THE
22 PORCH.

23 Q SO YOU SAID WHEN HE WENT SOUTH, ACCORDING TO THIS EXHIBIT,
24 STATE'S EXHIBIT NO. 6, HE —

25 A HE DIDN'T GO SOUTH. I TOOK HIM SOUTH UP OF THE HOUSE.

1 Q THAT WOULD BE UP IN THIS DIRECTION, ABOVE IT?

2 A YES, SIR.

3 Q ALL RIGHT. SO IF HE WENT ABOVE ORR STREET -- AND WHAT DID HE
4 DO WHEN YOU TOOK HIM UP IN THAT DIRECTION?

5 A HE CAME BACK. HE CAME BACK TO THE PORCH.

6 Q NOW, HE CAME BACK TO THE PORCH?

7 A YES, SIR.

8 Q HE DIDN'T CONTINUE UP TO THE CORNER AND GO AROUND DOWN THE
9 STREET? HE --

10 A NO, HE DID NOT.

11 Q YOU KNOW, IN OTHER WORDS, IN THE DIRECTION THAT WOULD HAVE
12 INDICATED SOMETHING GOING AWAY FROM, FURTHER AWAY FROM THE
13 SCENE OF THE CRIME?

14 A NO, SIR. HE CONTINUED TO INDICATE THAT THERE WAS A STRONG
15 SCENT IN THE YARD AT THE PORCH.

16 Q WELL, HYPOTHETICALLY, IF THE SUSPECTS THAT HE WAS TRACKING
17 WENT TO THE HOUSE BRIEFLY AND THEN LEFT THE HOUSE AND WENT
18 SOUTH, SHOULDN'T GATOR HAVE BEEN ABLE TO PICK UP THIS SCENT
19 IF IT WAS IN A FEW MINUTES OF, SAY, THEIR ARRIVING AT THAT
20 HOUSE?

21 A IT'S -- I CAN'T -- I CAN'T SAY. IT'S A -- I CAN'T SAY
22 EXACTLY WHAT THE DOG WAS THINKING AT THE TIME. BUT FROM MY
23 EXPERIENCE, WHAT THE DOG WAS DOING WAS REACTING TO A LARGE
24 AMOUNT OF SCENT THAT WAS CONSISTENT WITH THE TRACK THAT HE
25 WAS FOLLOWING IN THE FRONT YARD AND FRONT PORCH OF THAT

1 HOUSE, WHICH HE CONTINUED TO -- IT CONTINUED TO PULL HIM BACK
2 TO THAT YARD RATHER THAN HIM BEING ABLE TO FOCUS ON STARTING
3 OR RESTARTING THE TRACK.

4 Q FORGIVE ME FOR BEING A LITTLE CONFUSED, SERGEANT BLACKWELL.
5 IF GATOR HAS GOT THE RIGHT SCENT FROM THE SCENE OF THE CRIME
6 AND GOES TO ORR STREET AND THE ASSAILANTS HAD LEFT ORR STREET
7 AND PROCEEDED SOUTH AND GONE AROUND THE CORNER, SHOULDN'T
8 GATOR HAVE BEEN ABLE TO PICK UP THAT SCENT SINCE HE'S ONLY
9 GOING TO PICK UP THE SCENT OF ONE OF FIVE PERSONS THAT WERE
10 ALLEGED TO HAVE BEEN THERE? WOULDNT' HE DO THAT IF HE'S ON
11 THE RIGHT TRACK?

12 A IT'S POSSIBLE THAT HE WOULD. BUT IT'S ALSO POSSIBLE AND VERY
13 LIKELY THAT HE WOULD BE WORKING OFF THE STRONGEST LOCATION OF
14 THE SCENT, WHICH IS WHAT HE KEPT INDICATING TO ME, WHICH MADE
15 ME BELIEVE THAT THERE WAS A POSSIBILITY THERE WAS A SUSPECT
16 INSIDE THE HOUSE, NOT ABSOLUTE CONFIRMATION EITHER ON HIS
17 BEHAVIOR.

18 IF I MAY EXPLAIN, IF I WERE TO TAKE -- SCENT, AS MY
19 EXPERIENCE HAS TAUGHT ME, IF I WERE TO TAKE A ROSE THAT HAD A
20 NICE SMELL TO IT, PLACE IT IN A VASE ON A KITCHEN TABLE AND
21 YET I WERE COOKING SPAGHETTI IN THAT SAME KITCHEN AND THE
22 HOUSE IS FULL, IT WOULD BE VERY DIFFICULT TO EXPECT YOU TO BE
23 ABLE TO SMELL THE ROSE OVER THE SMELL OF THE SPAGHETTI. AND
24 THOSE SCENTS ARE SO DIFFERENT, EVEN THOUGH IT'S THE SAME
25 INDIVIDUAL, THERE IS SO MUCH STRONGER -- IF I -- BECAUSE OF

1 MY PRESENCE IN THIS COURTROOM THIS MORNING, MY SCENT IS
2 SATURATED THROUGHOUT THIS -- FROM MY EXPERIENCE IN DOG
3 TRAINING, THE DOG'S BEHAVIOR WOULD INDICATE THAT THERE IS --
4 WHEN HE -- IF I WERE TO DO A BUILDING SEARCH IN THIS ROOM --
5 INDICATE THAT THERE WAS A LARGE AMOUNT OF SCENT. AS SOON AS
6 HE WALKED IN THE DOOR I WOULD EXPECT HIM TO INDICATE THAT I
7 WAS IN THIS BUILDING OR THAT SOMEONE WAS IN HERE. WHEREAS,
8 IF I HAD JUST WALKED IN HERE, IT WOULD BE A TOTALLY DIFFERENT
9 SCENT BECAUSE OF THE STRENGTH OF IT.

10 Q LET ME ASK YOU THIS. IF YOU COME IN AND GATOR TRACKS FROM
11 WHERE YOU ENTERED, LEFT THE ELEVATOR AND TRACKS YOU IN HERE
12 AND YOU HAD MOVED AROUND IN HERE AND THEN YOU WENT AND OUT
13 THAT DOOR AND DOWN THE HALLWAY, SHOULDN'T GATOR BE ABLE TO
14 PICK UP YOUR EXIT AS WELL AS YOUR --

15 A GATOR WOULD BE ABLE TO PICK UP. IT WOULD BE IF I WERE
16 DILIGENT ENOUGH TO SPEND THE TIME TO GET PAST THE CONFUSION
17 OF THIS AREA AND FIND THE LOCATION; WHICH I THINK THIS MAY
18 PROVIDE THE ANSWER YOU'RE LOOKING FOR, I DID NOT DO THAT
19 NIGHT. I DID NOT PUSH HIM PAST A CERTAIN POINT TO GO. I WAS
20 -- I WAS CONVINCED AT THAT POINT BY HIS INDICATION, BY HIS
21 TRACK THAT THE PERSON THAT HE WAS TRACKING HAD GONE TO THAT
22 ADDRESS AT ORR STREET.

23 IT WAS MY OPINION, PROFESSIONAL OPINION AT THAT POINT
24 THAT THAT'S WHERE THAT PERSON HAD GONE. AND I DID NOT KNOW
25 WHETHER THEY HAD LEFT THERE OR NOT. NOW, IN RETROSPECT, YOU

1 MIGHT HAVE INFORMATION THAT INDICATES DIFFERENTLY, BUT I DID
2 NOT HAVE THAT INDICATION THAT NIGHT OR THAT INFORMATION THAT
3 NIGHT.

4 Q BUT YOUR TRAINING IS TO GET THE GUY, RIGHT?

5 A THAT'S THE ULTIMATE GOAL; YES, SIR.

6 Q AND THAT WOULD BE BETTER CONFRONTATION, CONFIRMATION THAT THE
7 SUCCESS -- THAT THE TRACKING WAS ACCURATE THAN JUST GOING TO
8 THE HOUSE IF HE HAD ULTIMATELY LED YOU TO THE SUSPECT. ISN'T
9 THAT CORRECT?

10 A ABSOLUTELY.

11 Q AND YOU'VE BEEN TRAINED TO DO THAT, HAVEN'T YOU?

12 A ABSOLUTELY.

13 MR. SHUPPER: NOTHING FURTHER, YOUR HONOR.

14 THE COURT: OKAY. THANK YOU. ANY REDIRECT, MR. GASSER?

15 MR. GASSER: NO, SIR.

16 THE COURT: ALL RIGHT. LET'S TAKE ABOUT A FIVE-MINUTE
17 BREAK AND COME BACK AND ARGUE WHETHER OR NOT THIS TESTIMONY
18 GETS HEARD OR SUPPRESSED. AND WE'LL BE BACK SHORTLY.

19 (WHEREUPON, A BREAK IS TAKEN)

20 THE COURT: OKAY. MR. GASSER SEEKS TO INTRODUCE THIS
21 TESTIMONY IN ITS ENTIRETY. THE DEFENSE I AM ASSUMING OPPOSES
22 THE INTRODUCTION OF IT IN ITS ENTIRETY. AND IF YOU WOULD,
23 PLEASE, MR. SNEED, I'M READY TO HEAR YOUR ARGUMENT ON THAT.

24 MR. SNEED: THANK YOU. MAY IT PLEASE THE COURT.

25 THE COURT: MM-HMM (AFFIRMATIVE).

1 MR. SNEED: YOUR HONOR, MY FIRST ARGUMENT IS UNDER JONES
2 AND ITS PROGENY ANALYSIS AND THE MOST RECENT CASE FOR JONES
3 ISSUES GOING TO THE RELIABILITY OF SCIENTIFIC EVIDENCE, STATE
4 V. COUNCIL. THE COURT REFERENCED IT I BELIEVE. I'LL TRY TO
5 CUT THIS SHORT. THE FAMILIAR FOUR-ELEMENT TEST. THAT'S —

6 THE COURT: PEER REVIEW.

7 MR. SNEED: YES, SIR.

8 THE COURT: KEEP GOING.

9 MR. SNEED: I'D SAY COMPLETELY FAILS ON THAT BASIS.

10 THE COURT: YEP.

11 MR. SNEED: NUMBER TWO IS THE SCIENTIFIC BASIS FOR THE
12 EXPERT'S OPINION, THERE'S PRETTY MUCH NONE. AND, YOU KNOW,
13 WHAT JONES GOES TO, YOUR HONOR, IS TO PREVENT FACT FINDERS
14 FROM BEING MISLEAD BY THE AURA OF INFALLIBILITY THAT MAY
15 SURROUND UNPROVEN SCIENTIFIC METHODS. AND I ASSERT THAT —

16 THE COURT: AND THAT'S A 403 ANALYSIS, TOO, IS IT NOT?

17 MR. SNEED: NO, SIR. THE THRESHOLD ONE, —

18 THE COURT: WELL.

19 MR. SNEED: — IF I LOSE ON MY JONES ATTACK, THEN WE GO
20 INTO THE 403 ANALYSIS.

21 THE COURT: OKAY.

22 MR. SNEED: SO THAT'S MY FIRST BASIS. THEN I HAD SOME
23 ALTERNATING ONES DEPENDING ON THE COURT'S RULING ON THAT.

24 THE COURT: OKAY. YOU DON'T HAVE TO CUT IT SHORT.

25 MR. SNEED: YOUR HONOR, I'M NOT AWARE OF ANY STUDIES

1 WHATSOEVER. THE CASE LAW THAT HAS ADMITTED THIS EVIDENCE,
2 IT'S ALL PRE RULED, PRE 702. I'M UNCLEAR OF ANY —

3 THE COURT: THE LAST ONE WAS 1989, WASN'T IT?

4 MR. SNEED: THAT'S CHILDS. I BELIEVE THAT'S CHILDS.
5 AND THAT WENT TO THE FOUNDATION. I GUESS MY ATTACK ON THE
6 SCIENTIFIC RELIABILITY WHEN WE PERCEIVE THE FOUNDATIONAL
7 ANALYSIS IS THAT, YOU KNOW, WE'RE NOT SURE THIS DOES WHAT
8 IT'S SUPPOSED TO DO. AN ANALOGY MIGHT BE A LIE DETECTOR FOR
9 INSTANCE; A LIE DETECTOR OR SMELL DETECTOR, FOR LACK OF A
10 BETTER WORD. THAT'S THE REASON WE DON'T HAVE LIE DETECTORS
11 IN THAT THEY HAVEN'T SATISFIED THE JONES ANALYSIS. AND THE
12 SAME THING HERE. WE DON'T KNOW IF DOGS AS A GENERAL RULE CAN
13 DO IT, WHAT BREEDS CAN DO IT, WHY IT WORKS. THE OFFICER
14 DOESN'T REALLY — DIDN'T EXPLAIN — I MEAN, THE BEST HE
15 COULD.

16 THE COURT: WELL, SEE, THERE'S A PROBLEM. AND I REALLY
17 WANT TO TALK TO YOU ABOUT THIS BECAUSE THIS IS A REALLY
18 SERIOUS QUESTION. WHY IT WORKS, DOES HE HAVE TO KNOW WHY IT
19 WORKS? IN OTHER WORDS, DOES HE HAVE TO KNOW HOW-DO-IT-KNOW?

20 MR. SNEED: WELL, IF HE'S A —

21 THE COURT: DOES HE HAVE TO?

22 MR. SNEED: NO.

23 THE COURT: IN ORDER FOR THIS TESTIMONY TO BE ADMITTED?
24 MR. STRICKLER DISAGREES WITH YOU.

25 MR. SNEED: HE PERSONALLY DOES NOT HAVE TO KNOW.

1 THE COURT: OKAY.

2 MR. SNEED: BECAUSE IN THE SAME WAY YOU COULD HAVE I
3 GUESS MAYBE A DATAMASTER OPERATOR. PERHAPS THEY DON'T KNOW
4 ALL THE NUANCES OF IT, BUT THEY'RE A TECHNICIAN. THEY KNOW
5 TOUCH THIS BUTTON, DO THIS, DO THAT. BUT —

6 THE COURT: HIS TESTIMONY IS HOW THE DOG BEHAVES IN A
7 GIVEN SITUATION.

8 MR. SNEED: RIGHT.

9 THE COURT: NOW, THERE ARE, TO BE SURE, MYRIAD FACTUAL
10 QUESTIONS RELATING TO HIS TESTIMONY, SUCH AS WHAT DOES IT
11 PROVE? IT PROVES THAT -- IF BOUGHT BY A JURY OR FACT FINDER
12 IN ITS ENTIRETY, THAT SOMEONE WHO WAS PRESENT IN THAT AREA
13 WENT FROM THAT AREA TO 2825, OR WHATEVER THE NAME, 2528,
14 WHATEVER IT IS, ORR STREET THAT EVENING. IT SHOWS THAT,
15 DOESN'T IT? THAT'S WHAT IT SHOWS, RIGHT? IT DOESN'T SHOW
16 THAT IT WAS THE DEFENDANT. IT DOESN'T SHOW WHO IT WAS.
17 OBVIOUSLY YOUR PROBLEM IS, IS THAT THE DEFENDANT LIVES THERE
18 AND CAN BE CONNECTED TO THAT PARTICULAR HOUSE. IS THERE ANY
19 INDICATION IN THIS THAT THE DATA OR THE END PRODUCT WAS
20 SOMEHOW MANIPULATED; I.E., CONTROLLED, THAT BLACKWELL KNEW
21 WHERE TO GO AND WENT THERE FOR WHATEVER REASON?

22 MR. SNEED: NO, SIR.

23 THE COURT: OKAY.

24 MR. SNEED: BUT I BELIEVE THE MORE FUNDAMENTAL QUESTION
25 IS, HAVE DOGS -- IS IT RELIABLE SCIENTIFIC THEORY THAT INDEED

1 DOGS CAN TRACK SCENTS, YOU KNOW, WITH A DEGREE OF ACCURACY?
2 AND I BELIEVE THAT WOULD BE THE PRELIMINARY QUESTION BEFORE
3 WE GET INTO THOSE OTHER ONES. AND, YOU KNOW, I JUST ASSERT
4 THAT THAT'S NO. BUT ...

5 THE COURT: OKAY. MR. SHUPPER.

6 MR. SHUPPER: NOTHING MUCH TO ADD ABOVE WHAT MR. SNEED
7 HAS SAID. WE JUST HAVEN'T ESTABLISHED -- THERE'S NO STUDY TO
8 ESTABLISH THE RELIABILITY OF DOG TRACKING. IT'S THE HANDLER
9 WHO HAS TOLD US HIS BELIEFS. AND TO ADMIT IT WOULD BE
10 PREJUDICIAL AND DAMAGING. EVEN THOUGH MY CLIENT DIDN'T LIVE
11 THERE, I EXPECT THE STATE TO PRODUCE OR ATTEMPT TO PRODUCE
12 SOME EVIDENCE TYING HIM TO THAT RESIDENCE.

13 THE COURT: MR. GASSER, I MEAN, THIS IS A QUESTION OF
14 CONCERN TO ME. I'D BE HAPPY TO HEAR FROM YOU.

15 MR. GASSER: WELL, YOUR HONOR, MY UNDERSTANDING OF RULE
16 702, IT SAYS, "IF SCIENTIFIC, TECHNICAL OR OTHER SPECIALIZED
17 KNOWLEDGE WILL ASSIST THE TRIER OF FACT". AND I'M NOT
18 NECESSARILY -- YOU KNOW, I DON'T THINK IT JUST LIMITS US TO
19 SCIENCE. DNA I THINK IS AN OBVIOUS SCIENCE. BUT, YOU KNOW,
20 ARTISTS -- I MEAN, I TAKE IT UNDER THEIR THEORY, THEN WE'D
21 HAVE TO DO ONE OF THESE EVERY TIME A SKETCH ARTIST COMES. I
22 MEAN, IS SKETCH ARTISTRY SCIENCE? IS FINGERPRINTS SCIENCE?
23 IS SHOE PRINT ANALYSIS SCIENCE? IS SOMEBODY'S EXPERT OPINION
24 AS TO WHETHER OR NOT CERTAIN THINGS FOUND IN A SEARCH WARRANT
25 ARE CAPABLE OF MAKING CRACK COCAINE A SCIENCE? ALL THAT IS

1 EXPERT TESTIMONY THAT IS ROUTINELY BROUGHT IN BEFORE COURTS
2 IN THIS STATE UNDER RULE 702. AND I DON'T THINK THE RULE 702
3 DOES NOT LIMIT IT TO JUST SCIENTIFIC BUT ALSO TECHNICAL OR
4 OTHERWISE SPECIALIZED KNOWLEDGE. AND I THINK THAT'S WHERE
5 THIS TYPE OF TESTIMONY COMES IN, IS IT'S A SPECIALIZED
6 TRAINING. IT'S BEEN ACCEPTED IN COURTS IN THIS STATE AS WELL
7 AS COURTS ACROSS THIS COUNTRY.

8 IT GOES WAY BACK -- I THINK THE OLDEST CASE I FOUND WAS
9 1916 IN SOUTH CAROLINA. AND YOU MENTIONED THE CHILDS CASE
10 WHICH IS 1989. SO IT HAS BEEN ACCEPTED. HE'S TESTIFIED
11 ABOUT HIS TRAINING, HIS TRAINING BY THE SOUTH CAROLINA
12 CRIMINAL JUSTICE ACADEMY, THE UNITED STATES CANINE
13 ASSOCIATION. WHICH I SUBMIT IT ALL GOES TO THE ISSUE AS TO
14 WHETHER OR NOT IT IS ACCEPTED IN THAT SPECIALIZED FIELD.

15 AND THE FACT THAT THERE IS A UNITED STATES CANINE
16 TRAINING ASSOCIATION ENCOMPASSING I WOULD THINK ALL 50 STATES
17 SINCE IT'S ENTITLED THE UNITED STATES, THAT IS AN AREA --
18 THIS AREA OF DOG TRACKING AND SOMEBODY'S INTERPRETATION OF
19 DOG TRACKING HAS BEEN ACCEPTED AS RELIABLE IN THAT AREA OF
20 SPECIALIZED TRAINING ACROSS THIS COUNTRY AND IN THIS STATE.

21 AND SO I WOULD SUBMIT THAT THE PURPOSE OF THE RULE 702
22 HAS BEEN SATISFIED IN THAT REGARD. I MEAN, I DON'T KNOW
23 WHETHER YOU CLASSIFY IT AS SCIENCE OR -- I MEAN, I
24 CHARACTERIZE IT AS SPECIALIZED KNOWLEDGE OR A TECHNIQUE OR
25 SOMETHING TECHNICAL, NOT NECESSARILY, YOU KNOW, YOU'RE TAKING

1 SOME PIECE OF EVIDENCE AND YOU ARE PUTTING IT THROUGH SOME
2 SORT OF MACHINE OR YOU'RE ADDING CHEMICALS TO IT SUCH AS DNA
3 OR SUCH AS TOXICOLOGY ANALYSIS OR, AS THEY INDICATED, THE
4 DATAMASTER. I DON'T THINK THAT FALLS INTO THAT SAME TYPE OF
5 CATEGORY THAT COUNCIL DEALS WITH IT. I THINK IT FALLS INTO
6 MORE OF A GENERAL CATEGORY OF A SPECIALIZED FORENSIC ISSUE
7 SIMILAR TO FINGERPRINT ANALYSIS AND THAT PARTICULAR AREA.

8 THE COURT: OKAY. ANYBODY OVER HERE RESPONDING?

9 MR. SNEED: I MEAN, THIS IS A QUESTION OF FIRST
10 IMPRESSION I'M AWARE OF IN THIS STATE, BUT THERE IS NO TEST
11 THAT DOGS CAN DO THAT. AND IT'S GOING TO —

12 THE COURT: I UNDERSTAND YOUR CONCERN, MR. SNEED.

13 MR. SNEED: YES, SIR.

14 THE COURT: AND IT'S A CONCERN THAT I HAVE. I
15 UNDERSTAND AND I APPREHEND IT PRECISELY. MR. STRICKLER, YOU
16 CAN ARGUE. THERE'S NOTHING IN THE RULES THAT PROHIBIT YOU
17 FROM ARGUING.

18 MR. STRICKLER: NO. I DIDN'T WANT TO VIOLATE THE RULES.
19 MY ONLY —

20 THE COURT: YOU'RE NOT. GO AHEAD.

21 MR. STRICKLER: MY ONLY ADDITIONAL CONCERN I HAVE, YOUR
22 HONOR, GOES TO THE SCIENTIFIC BASIS HERE, BECAUSE MY CONCERN
23 IS — AND I WAS GOADING MR. SNEED A LITTLE BIT. I APOLOGIZE
24 FOR THAT DURING HIS QUESTIONING — IS AS TO THE MECHANICS OF
25 HOW THIS ACT IF IT'S ACCOMPLISHED IS ACCOMPLISHED.

1 THE COURT: THE METHODOLOGY.

2 MR. STRICKLER: THE METHODOLOGY. EXACTLY.

3 THE COURT: I UNDERSTAND THAT.

4 MR. STRICKLER: AND IN ALL CANDOR, I THINK THE WITNESS
5 WAS VERY CANDID. I MEAN, HE DOESN'T KNOW.

6 THE COURT: NO, HE DOESN'T.

7 MR. STRICKLER: AND MY CONCERN OF COURSE IS THAT THE
8 COURT DOESN'T KNOW.

9 THE COURT: AND I DON'T. BECAUSE I DON'T UNDERSTAND THE
10 OLFACTORY SYSTEM OF A DOG.

11 MR. STRICKLER: YES, SIR.

12 THE COURT: NOR DO I UNDERSTAND ENDOCRINOLOGY TO THE
13 EXTENT THAT I UNDERSTAND HOW SECRETIONS CAN COME FROM A HUMAN
14 BEING TO DO ALL THIS OTHER STUFF. BUT THE QUESTION IS, DO I
15 NEED TO IN ORDER TO ADMIT THIS PARTICULAR TESTIMONY? YOU
16 ARGUE YES.

17 MR. STRICKLER: YES, SIR. AND THE ISSUE UNDER JONES AS
18 I UNDERSTAND IT IS NOT WHETHER IT'S A CHIEF GENERAL
19 ACCEPTANCE IN THE RELEVANT SCIENTIFIC COMMUNITY OR THE
20 RELEVANT SPECIALIZED FIELD OF EXPERTISE.

21 THE COURT: WE DON'T NEED THAT. IT JUST HAS TO BE
22 RELIABLE.

23 MR. STRICKLER: WELL, DOES IT CALL ON YOU TO MAKE A LEAP
24 OF FAITH OR APPLY CONJECTURE AS TO THE RELIABILITY OF IT, OR
25 IS IT RELIABLE? AND THERE'S SOME MAGIC WORDS FROM JONES THAT

1 ESCAPE ME RIGHT AT THIS MOMENT, BUT THEY'RE TO THAT EFFECT.
2 ARE YOU ASKED TO SPECULATE OR ENGAGE IN CONJECTURE IN RELYING
3 ON ITS RELIABILITY OR NOT? AND I WOULD SUBMIT SINCE WE DON'T
4 KNOW ANYTHING ABOUT THE METHODOLOGY, I MEAN, YOU LOOK TO
5 VARIOUS AREAS TO ANSWER THE QUESTION OF WHETHER YOU'RE
6 RELYING ON SPECULATION OR CONJECTURE IN DETERMINING
7 RELIABILITY. AND WHAT MR. SNEED SAID, AND ALL I'M GOING TO
8 ECHO IS, WHEN YOU LOOK TO EVERY OBJECTIVE AREA THAT YOU COULD
9 LOOK TO, WE COME UP SHORT. AND IN THAT CASE, I'D SUBMIT THAT
10 WE NEED TO GO AHEAD AND EXCLUDE IT.

11 THE COURT: I APPRECIATE WHAT YOU'RE SAYING. AND YOU
12 MAY, YOU MAY BE RIGHT. I DON'T THINK SO. OKAY? I DON'T
13 THINK YOU ARE. BECAUSE I THINK THIS IS A QUESTION OF
14 SPECIALIZED KNOWLEDGE. I THINK THAT -- I'VE BEEN WRITING AND
15 READING AS THIS HAS BEEN GOING ON. I'VE BEEN -- IT SEEMS TO
16 ME THAT THE QUESTION OF WHETHER OR NOT THE UNDERLYING, IF YOU
17 WANT TO CALL IT SCIENCE -- I'M NOT GOING TO CALL IT SCIENCE
18 BECAUSE I DON'T THINK THAT'S WHAT WE'RE DEALING WITH HERE --
19 THE UNDERLYING METHODOLOGY OR HOW THESE DOGS DO WHAT THEY DO
20 IS RELIABLE CAN BE SATISFIED BY THE TESTIMONY OF A WITNESS
21 WHO IF FOUND TO BE CREDIBLE CAN SATISFY THAT PARTICULAR
22 PRONG.

23 I FIND THAT MR. BLACKWELL IS A CREDIBLE WITNESS. I ALSO
24 FIND THAT BY REASON OF BACKGROUND, TRAINING AND EXPERTISE HE
25 IS QUALIFIED TO ASSIST THE JURY IN THIS PARTICULAR AREA. AND

1 I WILL ALLOW HIM TO TESTIFY.

2 BUT I CAUTION MR. GASSER THAT I DON'T WANT ANYTHING
3 COMING OUT THAT RELATES TO -- THAT REQUIRES A FUNDAMENTAL
4 UNDERSTANDING OF SCIENTIFIC ISSUES, SUCH AS HOW THE DOG'S
5 SENSE OF SMELL WORKS, HOW A SECRETION IS LEFT. SPECIFICALLY
6 WHAT I'M TALKING ABOUT IS FEAR FACTOR, THAT KIND OF THING. I
7 DON'T WANT ANY OF THAT COMING OUT.

8 STRENGTH OF THE SCENT IS IN HIS EXPERIENCE IN TRACKING
9 KNOWN. YOU SEE, HERE'S ANOTHER PROBLEM WITH THIS THING.
10 EVERY OTHER THING THAT HE HAS TALKED ABOUT, WHICH I DON'T
11 THINK RENDERS HIS TESTIMONY INADMISSIBLE, HAS TO DO WITH IN
12 EFFECT ALMOST A CONTROLLED SITUATION. THERE IS A KNOWN THAT
13 YOU ARE TRACKING.

14 IN THIS PARTICULAR CASE HE IS GOING TO TESTIFY THAT
15 SCENT DISCRIMINATION AMONG THESE AT LEAST SEVEN PEOPLE WHO
16 ARE PURPORTEDLY AT THIS SCENE, THAT THIS DOG HAS ALERTED ON
17 THE MOST -- ON THE STRONGEST SCENT. HE CAN'T TESTIFY AS TO
18 WHY THAT SCENT IS THE STRONGEST SCENT. OKAY? BUT IN ANY
19 EVENT, I THINK THAT THEY CAN MAKE A LOT OF POINTS ON CROSS
20 EXAMINATION.

21 THE UNDERLYING TESTIMONY IS ADMISSIBLE. AND IF I'M
22 WRONG, THEN OBVIOUSLY I HAVE HANDED THEM AN ISSUE THAT THEY
23 SHOULD -- CAN USE ON AN APPEAL OF THE CASE. I DON'T THINK
24 I'M WRONG HOWEVER. SO HE'LL TESTIFY SUBJECT TO THOSE MINIMAL
25 CONSTRAINTS. OKAY. WHAT'S NEXT?

1 MR. SNEED: YOUR HONOR, I HAD FOUR ALTERNATING MOTIONS I
2 THINK I CAN DISPOSE OF RATHER QUICKLY RELATING TO THE DOG
3 ISSUE. ONE WAS TO EXCLUDE THE ACTUAL DOG HANDLER'S REPORT
4 FROM BEING INTRODUCED INTO EVIDENCE.

5 THE COURT: WELL, THAT'S NOT GOING TO COME IN. YOU MEAN
6 A WRITTEN REPORT?

7 MR. SNEED: YES, SIR.

8 THE COURT: CLEARLY NO. OKAY. REPEATING GATOR'S
9 HEARSAY STATEMENTS FOR NON-VERBAL COMMUNICATIONS AND
10 ASSERTIVE CONDUCT AS IT RELATES TO THE BASIS OF HIS
11 TESTIMONY; I.E., THE DOG STOPS. WHY DOES HE STOP? HOW DOES
12 HE PULL HIM BACK? YOU KNOW, I CAN'T LET YOU DO THAT. BUT
13 TELL ME IF I'VE MISSED WHATEVER YOUR POINT IS.

14 MR. SNEED: WELL, THE POINT IS, THE DOG, THE WAY I
15 UNDERSTOOD THE OFFICER, IS THE DOG IS COMMUNICATING WITH THE
16 OFFICER.

17 THE COURT: WELL, HE IS BY HIS BEHAVIOR COMMUNICATING
18 CERTAIN THINGS TO THE OFFICER.

19 MR. SNEED: YES, SIR.

20 THE COURT: THE DOG, UNLESS IT'S LIKE SON OF SAM, IS NOT
21 COMMUNICATING ANYTHING TO THE OFFICER. HIS BEHAVIOR
22 COMMUNICATES CERTAIN SIGNALS OR CLUES TO THE OFFICER.

23 MR. SNEED: BUT YOU CAN HAVE NON-VERBAL CONDUCT.
24 ASSERTIVE CONDUCT CAN BE COMMUNICATIVE. A PERSON CAN DO IT.
25 I DON'T SEE WHY A DOG, A PRETTY INVOLVED MAMMAL, COULDN'T. I

1 MEAN, THE OFFICER IS INTERPRETING IT. BUT I UNDERSTAND THE
2 COURT'S —

3 THE COURT: YEAH. AND I'M GOING TO LET HIM TESTIFY TO
4 THAT.

5 MR. SNEED: YES, SIR.

6 THE COURT: OKAY.

7 MR. SNEED: I WOULD ALSO MOVE TO EXCLUDE GATOR FROM THE
8 COURTROOM ITSELF. I THINK THE POTENTIAL FOR THE JURY —

9 THE COURT: AWE, WHAT A SWEET DOG.

10 MR. SNEED: YES, SIR.

11 THE COURT: YEAH. I UNDERSTAND. MR. GASSER?

12 MR. GASSER: THE ONLY REASON WHY I HAD HIM HERE IS IN
13 CASE THE COURT WANTED TO SEE SOME SORT OF DEMONSTRATION.

14 THE COURT: NO. OKAY.

15 MR. GASSER: WE HAD NO INTENTION OF —

16 THE COURT: I'LL EXCLUDE HIM. OKAY.

17 MR. SNEED: AND, FINALLY, YOUR HONOR, WHEN I PUT JURY
18 INSTRUCTIONS, IT'S THAT ANNOTATION I MENTIONED TO THE COURT,
19 HAD SUGGESTED THAT. I WISH I HAD ONE HERE. BUT OBVIOUSLY
20 WE'LL HAVE ONE PREPARED FOR THE FINAL JURY INSTRUCTIONS. AND
21 ONE OF THOSE CASE'S ANNOTATION HAD SUGGESTED ONE AT THE TIME
22 THE EVIDENCE WAS INTRODUCED, A CAUTIONARY INSTRUCTION.

23 THE COURT: TO WHAT EFFECT? JUST WHAT GENERAL EFFECT?
24 I'M NOT SURE I KNOW WHAT YOU'RE TALKING ABOUT. THAT THE
25 TESTIMONY IS NOT GIVEN TO MAKE YOUR MIND UP FOR YOU OR, YOU

1 KNOW, JUST GENERALLY ON EXPERT TESTIMONY?

2 MR. SNEED: JUST THE EXPERT TESTIMONY, OPINION
3 TESTIMONY.

4 THE COURT: OKAY. SURE.

5 MR. SNEED: AND, FINALLY, YOUR HONOR, IS THE WITNESS
6 HERE, OFFICER BLACKWELL, SPOKE OF SHOE PRINTS.

7 THE COURT: MM-HMM (AFFIRMATIVE).

8 MR. SNEED: AND OBVIOUSLY I CAN'T ATTACK HIS
9 OBSERVATIONS. BUT TO THE EXTENT IT GIVES AN OPINION, I WOULD
10 OPPOSE THAT. HE'S NOT QUALIFIED. AND HE CAN'T REALLY ADMIT
11 IT'S THE SAME.

12 THE COURT: WELL, YOU KNOW, HE CAN TESTIFY -- IF -- HE'S
13 NOT TESTIFYING AS AN EXPERT THERE. YOU SEE, AN OPINION OF A
14 LAY PERSON CAN COME IN IF THAT IS THE ONLY WAY TO EXPRESS IT.
15 WHAT HE SAYS IS THAT I SAW A SHOE PRINT IN A CERTAIN AREA.
16 AND THEN LATER, WHEN HE GETS TO THE SAND, YOU KNOW, HE SAW
17 SHOE PRINTS THAT APPEARED TO HIM TO BE CONSISTENT WITH THE
18 SHOE PRINTS THAT HE'D SEEN EARLIER. THEY LOOKED LIKE THE
19 SAME SHOE PRINTS. HE'S NOT SAYING THAT THEY ARE. HE SAID
20 THAT THEY LOOKED LIKE IT. SO I CAN'T KEEP HIM FROM
21 TESTIFYING TO THAT. CAN I, MR. STRICKLER? I CAN'T DO THAT,
22 CAN I?

23 MR. SNEED: IF I CAN RESPOND QUICKLY. YOUR HONOR, THERE
24 IS A BIG DISTINCTION BETWEEN CONSISTENT WITH AND INCONSISTENT
25 WITH. AND IT MOST OFTEN COMES UP IN A CASE OF BEHAVIORAL

1 SCIENCE EVIDENCE. BUT IN THIS CASE WHEN HE SAYS CONSISTENT
2 WITH, THAT TENDS ---

3 THE COURT: WELL, I DON'T LIKE THE WORDS "CONSISTENT
4 WITH". SO DO SOMETHING THAT'S TRUTHFUL THAT DOES NOT USE THE
5 TERM "CONSISTENT WITH", BECAUSE THAT SOUNDS ---

6 MR. GASSER: SIMILAR?

7 THE COURT: YEAH. LOOKED LIKE.

8 MR. GASSER: LOOKED LIKE. LOOKED LIKE IS FINE WITH ME.
9 AND I DON'T REALLY ---

10 THE COURT: IF THAT'S TRUE.

11 MR. GASSER: IF THEY WANT, I'D BE WILLING TO STIPULATE
12 --- I'M NOT TRYING TO MISLEAD THE JURY --- I'D BE WILLING TO
13 STIPULATE THAT THERE WAS NO IDENTIFIABLE FOOTPRINTS THAT WAS
14 OBTAINED AND THERE'S NO WAY THEY COULD HAVE --- THAT THERE IS
15 NO IDENTIFIABLE FOOTPRINTS AND THERE'S NO WAY FOR US TO
16 DETERMINE WHETHER OR NOT WHAT HE'S SAYING THE FOOTPRINTS HE
17 SEES AROUND THE MAUSOLEUM AND IN THE SAND AND AROUND THE
18 FRONT YARD OF 2528, THERE'S NO WAY TO DETERMINE WHETHER OR
19 NOT HE ---

20 THE COURT: WELL, OF COURSE MR. BLACKWELL CAN SAY THAT
21 WHEN HE TESTIFIES. YOU CAN'T ASSERT THAT. SO, YEAH. OKAY.
22 WHATEVER, HOWEVER YOU ALL WANT TO HANDLE IT IS FINE WITH ME.

23 MR. SNEED: WE'D BE CONTENT AT THIS POINT TO PREVENT HIM
24 FROM SAYING "CONSISTENT WITH". OTHER THAN THAT ---

25 THE COURT: OKAY. HE WON'T. OKAY. SORRY, MR. SHUPPER.

1 DID YOU HAVE ANYTHING TO ADD TO THESE —

2 MR. SHUPPER: NOTHING TO ADD TO THAT, YOUR HONOR.

3 THE COURT: — EXCHANGES?

4 MR. SHUPPER: I WOULD JOIN WITH THAT ARGUMENT.

5 THE COURT: I'M SORRY?

6 MR. SHUPPER: I WOULD JOIN WITH THE OBJECTION.

7 THE COURT: SURE. I UNDERSTAND AND APPRECIATE THAT.

8 THANK YOU. LET'S SEE. JEEZ. WHAT ELSE? SEARCH WARRANT.

9 MR. SNEED: I DON'T KNOW IF THE SOLICITOR HAS A SEARCH
10 WARRANT ISSUE.

11 THE COURT: WELL, YOU HAVE A SEARCH WARRANT ISSUE.

12 MR. SNEED: SURE. I JUST —

13 THE COURT: HE DOESN'T THINK HE HAS AN ISSUE.

14 MR. SNEED: OKAY. YOUR HONOR, I'D MOVE TO SUPPRESS THE
15 WARRANT FOR A VARIETY OF REASONS. AND I ACTUALLY HAVE SOME
16 ALTERNATE MOTIONS SHOULD YOU —

17 THE COURT: ALWAYS HAVE A BACK UP POSITION, MR. SNEED.

18 MR. SNEED: YES, SIR. AND LET ME JUST HAND SOME UP TO
19 THE COURT, ALSO TO THE SOLICITOR. ESSENTIALLY, I'VE FOUR
20 SEPARATE BASES. I'VE GOT A BRIEF FOR TWO OF MY FOUR BASES,
21 YOUR HONOR. AND I'LL HAND THE SOLICITOR A COPY.

22 THE COURT: PICK AND CHOOSE YOUR FIGHTS CAREFULLY IN THE
23 FUTURE, MR. SNEED. LET ME EXPLAIN THAT TO YOU RIGHT NOW.
24 OKAY?

25 MR. SNEED: YES, SIR.

1 THE COURT: ALL RIGHTY.

2 MR. SNEED: YOUR HONOR, MY FIRST ONE IS ON THE
3 CONSTITUTIONAL GROUND.

4 THE COURT: WELL, I DON'T KNOW. DO WE HAVE ANY
5 TESTIMONY TO OFFER WITH REGARD TO THIS SEARCH WARRANT? WHERE
6 IS THE SEARCH WARRANT? WHAT IS IT? WHAT DOES IT SAY? WHO
7 IS IT ISSUED BY? UPON WHAT TESTIMONY? I NEED TO KNOW ALL
8 THAT STUFF, DON'T I? OR SHOULDN'T I?

9 MR. SNEED: YOUR HONOR, I HAVE A COPY OF THE WARRANT.
10 IF I MAY HAVE IT MARKED AS A DEFENSE EXHIBIT —

11 THE COURT: CERTAINLY.

12 MR. SNEED: — AND HAND IT UP TO THE COURT.

13 THE COURT: GO AHEAD AND DO THAT.

14 MR. SNEED: OR RATHER A COURT'S EXHIBIT.

15 THE COURT: I DON'T CARE WHAT YOU CALL IT.

16 (COURT'S EXHIBIT NO. 21, SEARCH WARRANT AND ACCOMPANYING
17 DOCUMENTS, MARKED FOR IDENTIFICATION ONLY)

18 MR. SNEED: YOUR HONOR, I'M HANDING YOU UP COURT'S
19 EXHIBIT NO. 21 WHICH IS THE SEARCH WARRANT AND THE
20 ACCOMPANYING DOCUMENTS WITH IT.

21 THE COURT: OKAY.

22 MR. SNEED: MY CONSTITUTIONAL CHALLENGE JUST GOES TO THE
23 AFFIDAVIT, WHICH WAS POLICE OFFICER INVESTIGATOR THOMAS
24 FILLED OUT THE AFFIDAVIT. AND JUST THAT STANDING ALONE IS
25 INSUFFICIENT TO ESTABLISH PROBABLE CAUSE. WHEN YOU HAVE A

1 CHANCE TO READ IT, I'LL EXPOUND FURTHER.

2 THE COURT: THIS AFFIDAVIT IS ON THE 30TH OF MAY 1996.
3 AND THE PREMISES SOUGHT TO BE SEARCHED IS 2528 ORR STREET.
4 WELL, IT DOESN'T SAY ORR STREET. IT SAID NO. 2528. AND THE
5 SUBJECT, KENNETH JONES, IS IDENTIFIED AS THE PERSON WHO
6 ASSAULTED THE VICTIMS IN T. S. MARTIN PARK AND TOOK THE
7 ABOVE-LISTED PROPERTIES. JAMES WAS SEEN A SHORT TIME AFTER
8 -- AND HE'S NOW JAMES INSTEAD OF JONES -- WITH THE VICTIM'S
9 PROPERTY. A SHORT TIME AFTER THAT HE WAS SEEN -- AFTER HE
10 WAS SEEN, OFFICERS CHECKED THE SUBJECT, AND HE ADMITTED THAT
11 HE LIVED AT THIS ADDRESS, 2528 ORR STREET. SO GO AHEAD AND
12 TELL ME. I'VE READ IT. WHAT IS IT?

13 MR. SNEED: YES, SIR. YOUR HONOR, THE HEART AND SOUL OF
14 IT IS, THERE IS A -- CONCLUSORY STATEMENTS ARE INSUFFICIENT.
15 I'M RELYING ON STATE V. SMITH. IT'S PAGE 2 OF MY BRIEF. AND
16 THOSE STATEMENTS ARE CONCLUSORY WHEN THE AFFIANT SPOKE OF WHO
17 SAW, WHO IDENTIFIED -- RATHER, WHO IDENTIFIED MR. JAMES, WHO
18 SAW THE PROPERTY. SO IT'S COMPLETELY CONCLUSORY IN THOSE TWO
19 REGARDS, SEEING HIM WITH THE PROPERTY AND I.D.'ING HIM.

20 AND THEN THE SECOND COMPONENT IS THE CORROBORATION AND
21 VERACITY ASPECTS TO WHO THEY'RE TALKING ABOUT HERE. AND
22 OBVIOUSLY, YOUR HONOR, THERE IS A DIFFERENT REQUIREMENT,
23 WHEN YOU'RE SPEAKING OF VERACITY FOR POLICE OFFICERS, FOR
24 CONFIDENTIAL INFORMANTS, FOR LAY WITNESSES. I REALIZE IT'S A
25 DIFFERENT ANALYSIS. IT DEMANDS DIFFERENT THINGS DEPENDING ON

1 WHO WE'RE TALKING ABOUT.

2 BUT THE PROBLEM HERE IS IT DOESN'T SAY IF IT'S AN EYE
3 WITNESS OR AN INFORMANT OR AN OFFICER OR WHOMEVER. AND SO
4 THAT'S WHY IT'S DEFECTIVE. IT'S CONCLUSORY. AND THE
5 MAGISTRATE DOESN'T KNOW IF IT'S AN INFORMANT, AN OFFICER OR
6 WHAT.

7 AND SO, FOR THAT REASON A MAGISTRATE COULDN'T --
8 WOULDN'T BE ABLE TO TELL IF -- MAKE THE PROBABLE CAUSE
9 DETERMINATION UNDER CLOUDY CIRCUMSTANCES. WE DON'T KNOW WHO
10 SUPPLIED THE INFORMATION, IF THEY'RE RELIABLE OR TRUTHFUL.
11 SO THAT'S THE BIGGEST PROBLEM.

12 THE COURT: OKAY.

13 MR. SNEED: SO IT'S FACIALLY DEFECTIVE. AND I'D MOVE TO
14 SUPPRESS UNDER THE, AS I SAID, 4TH AND 14TH AMENDMENTS.

15 THE COURT: WHAT IS IT THAT WAS FOUND IN THE RESIDENCE
16 THAT IS SOUGHT TO BE INTRODUCED HERE?

17 MR. GASSER: YOUR HONOR, THE STATE INTENDS ON
18 INTRODUCING JUST A FEW OF THE ITEMS THAT WERE FOUND. THERE
19 IS A BELLSOUTH PHONE BILL IN KENNETH JAMES'S NAME WITH A
20 BELLSOUTH PHONE CARD, AS WELL AS CERTAIN PERSONAL PAPERS OF
21 ROBERT JAMES, THE PURPOSE OF WHICH WOULD GO TO SHOW TIES TO
22 THE RESIDENCY.

23 THERE IS -- ONE OF THE VICTIMS, WINFRED BULL, INDICATED
24 THAT THE GUN WAS A REVOLVER, A HANDGUN. AND DURING THE
25 SEARCH OF THE RESIDENCE, LOOKING FOR THE HANDGUN AND LOOKING

1 IN AREAS FOR THE HANDGUN, WHILE THEY WERE DOING THAT, IN
2 PLAIN VIEW THEY FOUND A GUN CLEANING KIT AS WELL AS .32 AND
3 .38 CALIBER AMMUNITION. HOWEVER, THEY NEVER FOUND THE GUN.

4 THE INFERENCE THAT -- OF COURSE THE RELEVANCY THERE THAT
5 THE STATE WOULD OFFER WOULD BE THAT INSIDE THE RESIDENCE
6 THERE WAS A GUN CLEANING KIT AND AMMUNITION FOR A GUN AND
7 THERE'S NO GUN. MOST PEOPLE THAT HAVE A GUN CLEANING KIT AND
8 HAVE AMMUNITION WOULD HAVE A GUN. AND OUR THEORY IS, IS THAT
9 THEY'VE GOTTEN RID OF THE GUN. AND THEN THERE IS A -- I
10 GUESS THAT WOULD BE THE --

11 THE COURT: BECAUSE THEY DIDN'T FIND IT, POSITIVELY
12 DIABOLICAL. YOU KNOW, BECAUSE THEY DIDN'T FIND THE GUN, THAT
13 MEANS THEY GOT RID OF IT, RIGHT?

14 MR. GASSER: I MEAN, I THINK THAT'S A LOGICAL -- IT'S A
15 STEP THAT A REASONABLE PERSON COULD TAKE. I THINK A
16 REASONABLE PERSON COULD -- I THINK IT'S RELEVANT THAT A
17 REASONABLE PERSON -- THEY MAY REJECT IT. BUT A REASONABLE
18 PERSON COULD ASSUME IF SOMEBODY OWNS .38 AND/OR .32 CALIBER
19 AMMUNITION AND A GUN CLEANING KIT THAT THEY OWN A GUN AS
20 WELL. WHAT'S THE OTHER -- I GUESS REASONABLY, WHAT OTHER
21 REASON WOULD THERE BE TO OWN A GUN CLEANING KIT AND HAVE .38
22 AND .32 CALIBER AMMUNITION IF YOU DIDN'T HAVE A GUN?

23 AND GIVEN THE FACT THAT THEY WERE TRACKED AT THE SCENE,
24 GIVEN THE FACT THAT CERTAIN ITEMS OF CARLA BROWN'S CLOTHING
25 WAS REMOVED FROM THE SCENE AND NEVER FOUND AS WELL --

1 THE COURT: YEAH. A SEARCH IS NOT TO BE JUSTIFIED OR
2 NEGATED BASED UPON WHAT IT TURNS UP OR FAILS TO TURN UP. BUT
3 THE ITEMS SOUGHT WERE -- NONE OF THE ITEMS SOUGHT WERE FOUND
4 IN THE RESIDENCE. AM I CORRECT?

5 MR. GASSER: THAT'S CORRECT.

6 THE COURT: HANDGUNS, POCKETBOOKS, UNDERWEAR. AND THE
7 AFFIDAVIT, ADDRESS THE AFFIDAVIT QUESTION. I'M NOT SURE I
8 COMPLETELY APPREHEND YOUR MOTION, MR. SNEED. BUT TELL ME
9 AGAIN WHAT IT IS THAT YOU --

10 MR. SNEED: I'M SORRY.

11 THE COURT: -- THINK IS FAULTY ABOUT THIS AFFIDAVIT.

12 MR. SNEED: THE PROBLEM WITH AN AFFIDAVIT IS IF THE
13 STATEMENTS ARE MERE CONCLUSORY STATEMENTS, WHICH THEY ARE
14 HERE, AND I ASSERT THEY'RE CONCLUSORY BECAUSE WE DON'T KNOW
15 WHO ALLEGEDLY SAW OR WHO ALLEGEDLY IDENTIFIED KENNETH JAMES.
16 WE DON'T KNOW WHO SAW HIM WITH THE VICTIM'S PROPERTY. THAT'S
17 WHY IT'S CONCLUSORY IN THAT REGARD.

18 AND THEN THE AFFIANT NEEDS TO -- WE NEED TO KNOW THE
19 VERACITY AND THE CORROBORATION REQUIREMENTS FOR WHO'S GIVING
20 THE POLICE THIS INFORMATION. AND THERE, THERE'S NO BASIS AT
21 ALL. WE DON'T KNOW IF IT'S A CONFIDENTIAL INFORMANT. IF SO,
22 IT'S A PRETTY HIGH REQUIREMENT FOR CORROBORATION OR VERACITY.
23 IF IT'S A POLICE OFFICER, IT'S MUCH, MUCH LOWER. IF IT'S AN
24 EYE WITNESS, IT MAY FALL INBETWEEN THAT SPECTRUM. BUT HERE
25 THAT AFFIDAVIT DOESN'T SAY WHO. AND SO IT'S NOT -- THERE IS

1 NO CORROBORATION, NO VERACITY. AND SO THE UNDERLYING BASIS
2 FOR WHY WE'RE SAYING IT'S MR. KENNETH JAMES IS JUST NOT
3 THERE.

4 THE COURT: OKAY. MR. GASSER, DO YOU WANT TO PUT ON ANY
5 TESTIMONY WITH REGARD TO WHAT WAS TOLD TO THE ISSUING
6 OFFICIAL?

7 MR. GASSER: YES, SIR. THE STATE WOULD CALL
8 INVESTIGATOR TOMMY THOMAS.

9 THOMAS THOMAS, BEING FIRST DULY
10 SWORN, TESTIFIES AS FOLLOWS: (IN CAMERA)

11 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME
12 FOR THE RECORD.

13 MR. THOMAS: MY NAME IS THOMAS THOMAS.

14 DIRECT EXAMINATION BY MR. GASSER:

15 Q INVESTIGATOR THOMAS, YOU PREVIOUSLY TESTIFIED YESTERDAY THAT
16 YOU WERE ASSIGNED THIS CASE DURING THE EARLY MORNING HOURS OF
17 MAY THE 29TH, 1996. IS THAT CORRECT?

18 A YES, SIR, I WAS.

19 Q ON MAY THE 30TH, THE FOLLOWING DAY, DID YOU HAVE AN
20 OPPORTUNITY TO OBTAIN A SEARCH WARRANT FROM A MINISTERIAL
21 RECORDER?

22 A YES, SIR, I DID.

23 Q I HAND YOU THIS ITEM. SEE IF YOU RECOGNIZE IT.

24 A YES, SIR. THIS IS THE SEARCH WARRANT.

25 MR. GASSER: WE'D GO AHEAD AND MARK THIS AS A COURT'S

1 EXHIBIT I GUESS AT THIS TIME, YOUR HONOR.

2 THE COURT: OKAY. GO AHEAD.

3 (COURT'S EXHIBIT NO. 22, SEARCH WARRANT, MARKED FOR
4 IDENTIFICATION ONLY)

5 Q (BY MR. GASSER) I HAND YOU WHAT'S BEEN MARKED COURT'S
6 EXHIBIT 22. DO YOU HAVE YOUR CASE NOTES WITH YOU,
7 INVESTIGATOR THOMAS?

8 A YES, SIR, I DO.

9 Q NOW, PRIOR TO OBTAINING THAT SEARCH WARRANT ON MAY THE 30TH,
10 WHAT INFORMATION DID YOU RECEIVE WHICH LED YOU — WHAT
11 INFORMATION DID YOU RECEIVE WHICH INITIATED YOUR DESIRE TO
12 ATTEMPT TO SEARCH THE RESIDENCE AT 2528 ORR STREET?

13 A I WAS GIVEN SOME INFORMATION BY SERGEANT BELCHER AT THE CRIME
14 SCENE WHO HAD INFORMED ME — WELL, WHEN I FIRST GOT THERE
15 LIEUTENANT CAPP HAD INFORMED ME THAT CORPORAL BLACKWELL WHO
16 IS A CORPORAL AND I GUESS SERGEANT BLACKWELL AND OFFICER
17 PASLOWSKI WERE OUT WORKING A DOG TRAIL. A WHILE LATER
18 SERGEANT BELCHER GAVE ME SOME INFORMATION THAT THEY HAD
19 WORKED THE DOG TRAIL TO AN ADDRESS AT 2528 ORR STREET. AND
20 HE SAID — HE TOLD ME THAT'S WHERE THE TRAIL HAD ENDED.

21 Q AND SO YOU HAD THAT INFORMATION DURING THE EARLY MORNING
22 HOURS OF MAY THE 29TH. IS THAT CORRECT?

23 A YES, SIR.

24 Q NOW, AT THAT POINT IN TIME, DID YOU HAVE ANY IDEA WHO LIVED
25 AT 2528 ORR STREET?

1 A NO, SIR, WE DID NOT.

2 Q NOW, LATER ON THAT MORNING, AFTER YOU RECEIVED THAT
3 INFORMATION FROM SERGEANT BELCHER CONCERNING WHERE THE DOG
4 SCENT TRAIL LED, DID YOU RECEIVE CERTAIN INFORMATION FROM
5 OFFICER CAROL TOWNSEND CONCERNING INDIVIDUALS ATTEMPTING TO
6 CASH A HUNDRED DOLLAR BILL A FEW BLOCKS AWAY FROM THE CRIME
7 SCENE AT AN AMOCO STATION?

8 A YES, SIR, WE DID. WE WERE TOLD THAT OFFICER TOWNSEND HAD
9 GONE BY THE AMOCO STATION THERE TO ASK THE CLERK TO BE ON THE
10 LOOKOUT FOR ANYBODY THAT MAY BRING A HUNDRED DOLLAR BILL IN
11 BECAUSE OF THE INCIDENT THAT WE WERE WORKING, THAT ONE OF THE
12 VICTIMS HAD HAD A HUNDRED DOLLAR BILL TAKEN FROM THEM. WHILE
13 SHE WAS IN THERE TALKING TO THE STORE CLERK, SANGETTA COAXUM,
14 SANGETTA COAXUM TOLD HER THAT SOME MEN HAD COME IN THE STORE
15 AND HAD ASKED IF SHE COULD BREAK THE HUNDRED DOLLAR BILL INTO
16 TWENTIES FOR THEM. SHE COULD NOT, AND THEY HAD LEFT THE
17 STORE.

18 Q NOW, LATER ON THAT MORNING, AFTER RECEIVING THAT INFORMATION,
19 NOW, YOU HAVE A DOG SCENT GOING TO 2528 ORR STREET AND
20 INFORMATION FROM OFFICER TOWNSEND THAT SOME INDIVIDUALS HAD
21 BEEN IN THE STORE TRYING TO CHANGE A HUNDRED DOLLAR BILL, DID
22 YOU RECEIVE INFORMATION FROM OFFICER GIBSON CONCERNING THAT
23 SAME AMOCO STATION?

24 A YES, SIR, WE DID.

25 Q AND TELL THE JUDGE WHAT THAT INFORMATION WAS.

1 A OFFICER GIBSON HAD BEEN IN THE STORE TALKING TO THE STORE
2 CLERK ALSO. AND WHILE HE WAS THERE, ONE OF THE INDIVIDUALS
3 WHO HAD BEEN INSIDE OF THE STORE AND ATTEMPTED TO CASH THE
4 HUNDRED DOLLAR BILL CAME BY, AND SHE POINTED HIM OUT TO
5 OFFICER GIBSON AND TOLD HIM THAT THAT MAN HAD COME IN SHORTLY
6 AFTER OUR INCIDENT AND HAD WANTED TO CHANGE A HUNDRED DOLLAR
7 BILL. OFFICER GIBSON THEN WENT OUTSIDE AND FOUND OUT THAT
8 THAT MAN WAS KENNETH JAMES AND HIS ADDRESS WAS 2528 ORR
9 STREET.

10 Q IN FACT, DID OFFICER GIBSON ACTUALLY WRITE THAT DOWN AND
11 PROVIDE YOU WITH THAT INFORMATION AND THEN YOU WRITE IT DOWN?

12 A I'M SORRY. I MISSED WHAT YOU SAID.

13 Q DID OFFICER GIBSON -- I'M SORRY -- DID HE RECORD THAT
14 INFORMATION AND LATER PROVIDE IT TO YOU THAT SAME MORNING AND
15 YOU RECORDED IT IN YOUR CASE NOTES?

16 A YES, SIR. THAT'S CORRECT.

17 Q NOW, THE INFORMATION THAT OFFICER GIBSON RECEIVED FROM
18 KENNEIH JAMES AS 2528 ORR STREET, IS THAT THE SAME ADDRESS
19 THAT THE DOG SCENT HAD GONE TO?

20 A YES, SIR. THAT'S WHAT I WAS TOLD.

21 Q NOW, LATER ON THAT MORNING THEN, YOU TESTIFIED I BELIEVE
22 YESTERDAY IN FRONT OF JUDGE PLEICONES THAT SOMETIME BETWEEN
23 11 A.M. AND 12 NOON ONE OF THE VICTIMS IN THIS CASE,
24 . POSITIVELY IDENTIFIED KENNETH JAMES FROM A SIX-PERSON
25 PHOTO LINE-UP?

1 A YES, SIR. THAT'S CORRECT.

2 Q AND WERE YOU ALSO DURING THE MORNING OF MAY THE 29TH ABLE TO
3 COME INTO CONTACT WITH THE VIDEOTAPE FROM THE AMOCO STATION
4 FROM MR. MICHAEL MCREYNOLDS WHO WAS THE MANAGER OF THE AMOCO
5 STATION ON TWO NOTCH ROAD?

6 A YES, SIR, WE WERE.

7 Q AND AFTER SHOWING *victim* THE PHOTO LINE-UP ON THE 29TH
8 AROUND LUNCHTIME, AROUND NOON, LATER ON THAT AFTERNOON DID
9 YOU HAVE AN OPPORTUNITY YOURSELF TO VIEW THE VIDEO AND TO GO
10 FROM THE POINT WHEN OFFICER TOWNSEND IS IN THERE TO MINUTES
11 BACK AND ACTUALLY OBSERVE INDIVIDUALS APPROACH THE
12 CONVENIENCE STORE CLERK?

13 A YES, SIR, WE DID.

14 Q NOW, YOU HAD A PHOTOGRAPH OF THE DEFENDANT KENNETH JAMES THAT
15 YOU USED FOR THE PHOTO LINE-UP FOR *victim* CORRECT?

16 A YES, SIR, WE DID.

17 Q AND WERE YOU ABLE TO OBSERVE -- IN YOUR OPINION, WERE YOU
18 ABLE TO OBSERVE KENNETH JAMES ACTUALLY WALK IN THERE WITH
19 ANOTHER YOUNG BLACK MALE AND APPROACH SANGETTA COAXUM?

20 A YES, SIR, WE WERE.

21 Q NOW, AFTER HAVING ALL THAT INFORMATION THEN, THE NEXT DAY, ON
22 MAY THE 30TH, DID YOU GO TO THE MINISTERIAL RECORDER IN AN
23 ATTEMPT TO OBTAIN THE SEARCH WARRANT THAT YOU HAVE IN YOUR
24 HAND?

25 A YES, SIR, I DID.

1 Q AND PRIOR TO DOING THAT, WHAT STEPS DID YOU TAKE TO GET A
2 DESCRIPTION OF THE --- OF 2528 ORR STREET IN ORDER TO USE FOR
3 THE SEARCH WARRANT?

4 A MYSELF AND INVESTIGATOR BENSON WENT TO THIS ADDRESS AND
5 COPIED DOWN A DESCRIPTION OF THE HOUSE.

6 MR. GASSER: YOUR HONOR, RATHER THAN HAVING --- UNLESS
7 THERE'S ANY OBJECTION BY THE DEFENSE, RATHER THAN HAVING HIM
8 PUBLISH IT, WE WOULD JUST ---

9 THE COURT: I'VE READ IT. I'VE READ A DESCRIPTION OF
10 THE PREMISES TO BE SEARCHED. OKAY. IT'S IN EVIDENCE ANYWAY,
11 AND IT'S COURT'S 21 TO THIS PROCEEDING.

12 Q (BY MR. GASSER) NOW, OFFICER THOMAS, WHO WAS THE AFFIANT IN
13 THIS PARTICULAR SEARCH WARRANT? IN OTHER WORDS, WHO WENT AND
14 PRESENTED THIS EVIDENCE, THIS INFORMATION?

15 A WHEN IT WAS INITIALLY TYPED UP, I DID THAT.

16 Q AND WERE YOU ACTUALLY --- DID THE MINISTERIAL RECORDER
17 ACTUALLY PUT YOU UNDER OATH?

18 A YES, SHE DID.

19 Q NOW, DID YOU JUST HAND THE MINISTERIAL RECORDER THIS
20 PARTICULAR DOCUMENT, OR DID YOU SUPPLEMENT THIS DOCUMENT?
21 DID YOU HAVE A CONVERSATION AFTER YOU WERE PLACED UNDER OATH
22 WITH THE MINISTERIAL RECORDER?

23 A I DID.

24 Q OKAY. AND TELL THE JUDGE WHAT THAT INVOLVED AS FAR AS
25 HANDING HER THE SEARCH WARRANT AND ALLOWING HER TO READ IT

1 AND THEN WHAT FURTHER EXPLANATION OR INFORMATION DID YOU
2 PROVIDE?

3 A BASICALLY, I JUST WENT THROUGH IN DETAIL WITH HER WHAT WE
4 KNEW ABOUT THIS INCIDENT.

5 Q WHICH WAS WHAT?

6 A WHICH WAS THE INCIDENT HAD HAPPENED IN THE PARK. THE VICTIM
7 WAS TAKEN INTO THE GRAVEYARD. THE SUSPECTS WERE LAST -- WERE
8 SEEN GOING ACROSS THE GRAVEYARD. THEY WERE SEEN GOING PAST A
9 HOUSE ON GERMANY STREET. THEY WERE GOING IN THE DIRECTION OF
10 THE ORR STREET ADDRESS. WE WERE -- THAT SERGEANT BLACKWELL
11 HAD WORKED A DOG TRAIL TO THAT ADDRESS AND THE FACT THAT THE
12 VICTIMS HAD THE MONEY TAKEN FROM THEM DURING THE ROBBERY OF
13 THIS INCIDENT. AND IT WAS PRESENTED TO MS. COAXUM AT THE
14 AMOCO STATION, AND THAT OFFICER GIBSON HAD ALSO IDENTIFIED
15 SOMEONE WHO SAID THEY LIVED AT THAT ADDRESS.

16 Q AND WAS ALL OF THIS INFORMATION YOU HAVE JUST PROVIDED, DID
17 YOU TELL THAT TO A MINISTERIAL RECORDER UNDER OATH ALONG WITH
18 THE INFORMATION YOU ACTUALLY TYPED ONTO THE SEARCH WARRANT?

19 A YES, SIR.

20 Q NOW, UPON EXECUTION OF THE SEARCH WARRANT, NONE OF THE ITEMS
21 IN THE -- THAT WERE THE REQUESTED PROPERTY, THE PROPERTY
22 BEING SEARCHED FOR, HAND GUNS, FEMALE POCKETBOOKS, ET CETERA,
23 THE DESCRIPTION OF THE PROPERTY TO BE SEARCHED FOR, NONE OF
24 THAT WAS FOUND. IS THAT CORRECT?

25 A THAT'S CORRECT.

1 Q BUT WHILE YOU WERE IN THERE LOOKING IN AREAS THAT COULD
2 CONCEAL OR POSSESS OR CONTAIN A HANDGUN OR A POCKETBOOK OR A
3 SET OF CAR KEYS, DID YOU COME ACROSS CERTAIN EVIDENCE IN YOUR
4 VIEW BASED ON THE INFORMATION THAT YOU HAD ABOUT THE CASE
5 THAT YOU SEIZED?

6 A YES, SIR.

7 Q TELL THE COURT WHY YOU SEIZED THE BELLSOUTH PHONE BILL OR
8 CALLING CARD WITH THE NAME KENNETH JAMES ON IT. WHAT WAS
9 YOUR PURPOSE OF SEIZING THAT WHEN YOU CAME INTO VIEW OF THAT?

10 A BECAUSE KENNETH JAMES AT THAT TIME HAD BECOME A SUSPECT IN
11 THIS CASE, AND WE WANTED TO SHOW THAT HE WAS ACTUALLY
12 RESIDING AT THIS ADDRESS.

13 Q WERE YOU CONCERNED ABOUT ALL OF THE INDIVIDUALS? DID YOU
14 KNOW THAT THERE WERE FIVE —

15 A YES, SIR.

16 Q — ALLEGED ASSAILANTS?

17 A YES, SIR, I DID.

18 Q AND DID YOU HAVE THE INFORMATION FROM WINFRED BULL AND AT
19 LEAST FROM MR. MURRAY AT THAT TIME THE DIRECTION THAT THESE
20 FIVE INDIVIDUALS HAD GONE?

21 A YES, SIR.

22 Q AND YOU INDICATED TO THE COURT THAT YOU HAD IN FACT — THERE
23 WAS A SCENT FROM SOMEONE LEADING TO THAT RESIDENCE. IS THAT
24 CORRECT?

25 A YES, SIR.

1 Q SO WHEN YOU WERE IN THE RESIDENCE, WHAT WAS YOUR PURPOSE OF
2 OBTAINING, SEIZING THE MATERIAL, THE PERSONAL ITEMS OF ROBERT
3 JAMES?

4 A BECAUSE WE KNEW THERE WERE FOUR OTHER SUSPECTS INVOLVED IN
5 THIS CASE AND WE WANTED TO SEE IF ANYBODY ELSE'S NAME CAME UP
6 IN THERE, IF ANYBODY ELSE HAD PROPERTY IN THIS HOUSE THAT
7 COULD HAVE POSSIBLY BEEN INVOLVED IN THIS INCIDENT.

8 Q OF COURSE YOU HAD NO IDEA -- OTHER THAN KENNETH JAMES, YOU
9 HAD NO IDEA WHAT ANY OTHER NAMES WERE WHEN YOU WERE GETTING
10 THE SEARCH WARRANT. IS THAT CORRECT?

11 A THAT'S CORRECT.

12 Q AND THE SEARCH WARRANT INDICATES YOU WERE LOOKING FOR A
13 HANDGUN. EXPLAIN TO THE COURT, WHILE NOT FINDING A HANDGUN,
14 WHAT WAS YOUR PURPOSE WHEN YOU OBSERVED THE GUN CLEANING
15 GREEN KIT WITH THE .38 AND THE .32 CALIBER BULLETS, WHY DID
16 YOU SEIZE THOSE AS AN INVESTIGATOR IN THIS CASE?

17 A WELL, IT WOULD JUST STAND TO REASON THAT IF YOU HAVE GUN
18 CLEANING EQUIPMENT AND YOU HAVE ROUNDS OF AMMUNITION,
19 ESPECIALLY ROUNDS THAT ONE OF THE VICTIMS HAD SAID HE THOUGHT
20 THE GUN WAS EITHER A .32 OR A .38 AND WE HAD THOSE ROUNDS, IT
21 WOULD JUST STAND TO REASON THAT MAYBE SOMEBODY HAD THAT TYPE
22 OF WEAPON.

23 Q NOW, ACCORDING TO THE WARRANT -- OR LET ME ASK THIS. WAS A
24 COPY OF THIS WARRANT LEFT AT THE SCENE?

25 A YES, SIR, IT WAS.

1 Q AND HOW DID YOU ALL GAIN ENTRANCE TO THE HOUSE?

2 A WE FORCED OPEN THEIR BACK DOOR.

3 MR. GASSER: YOUR HONOR, RATHER THAN MAKING HIM SIT
4 DOWN, I JUST HAVE A FEW MORE QUESTIONS THAT'S GOING TO GO
5 INTO AN ISSUE RIGHT AFTER THIS ISSUE, JUST TO TAKE THE TIME
6 TO ASK HIM A FEW MORE QUESTIONS.

7 THE COURT: OKAY.

8 Q (BY MR. GASSER) WHEN YOU ENTERED THE HOUSE, HOW DID THE
9 HOUSE APPEAR AS FAR AS LIVING ARRANGEMENTS?

10 A IT APPEARED THAT MORE THAN ONE PERSON LIVED IN THE HOUSE.

11 Q WELL, DID YOU SEE ANY BOXES OR SUITCASES WITH CLOTHING AND
12 PERSONAL ARTICLES BOXED UP AS IF SOMEBODY WAS GETTING READY
13 TO MOVE OUT OF THE HOUSE?

14 A THE -- THE HOUSE WAS NOT IN A GOOD HOUSEKEEPING TYPE OF
15 STANDARD. IT WAS -- THINGS WERE ALL OVER THE PLACE.

16 Q BUT DO YOU UNDERSTAND MY QUESTION? DID IT APPEAR AS IF
17 ANYONE WAS GETTING READY TO MOVE OUT OF THE HOUSE?

18 A THERE WERE THINGS THAT WERE BOXED UP; YES, SIR.

19 Q DID IT APPEAR AS IF PEOPLE WERE LIVING -- WERE USING THE
20 KITCHEN AND THE OTHER LIVING AREAS OF THE HOUSE, THE
21 BEDROOMS, THE DEN AREAS?

22 A RIGHT. YES, SIR.

23 Q AND YOU INDICATED YOU FORCED OPEN THE BACK DOOR AND THEN YOU
24 LEFT A COPY OF THE SEARCH WARRANT. IS THAT CORRECT?

25 A YES, SIR, WE DID.

1 Q AND SUBSEQUENT, LATER ON THAT DAY, DID YOU EVER RECEIVE ANY
2 PHONE CALLS FROM ANYBODY WHO INDICATED THEY LIVED AT 2528 ORR
3 STREET WANTING TO KNOW WHY THEIR BACK DOOR WAS BROKEN INTO?

4 A NO, SIR, WE DID NOT.

5 Q ANY TIME THE NEXT DAY?

6 A NO, SIR.

7 Q THAT WHOLE WEEK?

8 A NO, SIR.

9 Q THE REST OF THE MONTH OF -- THE MONTH OF JUNE?

10 A NO, SIR.

11 Q JULY?

12 A NO, SIR.

13 Q RECEIVE ANY INFORMATION AS TO WHY A LEGAL DOCUMENT, A SEARCH
14 WARRANT, WAS SITTING ON THEIR -- WHEREVER YOU LEFT IT? WHERE
15 DID YOU LEAVE IT? DO YOU REMEMBER?

16 A ON THE KITCHEN COUNTER.

17 Q DID YOU EVER RECEIVE ANY INFORMATION AS TO WHY THE COLUMBIA
18 POLICE DEPARTMENT LEFT A SEARCH WARRANT AT THAT RESIDENCE?

19 A NO, SIR.

20 Q AND HAD YOU -- WAS THE ARREST WARRANT FOR KENNETH JAMES
21 ISSUED ON EITHER THE 29TH OR THE 30TH, WHATEVER DAY? WAS AN
22 ARREST WARRANT SUBSEQUENTLY ISSUED FOR HIM?

23 A YES, SIR.

24 Q BASED ON THE DOG TRACKING, OFFICER GIBSON'S, THE AMOCO
25 STATION AND THE *victim* 'S IDENTIFICATION. IS THAT

1 CORRECT?

2 A YES, SIR.

3 Q DID THE COLUMBIA POLICE DEPARTMENT ACTIVELY LOOK FOR HIM AT
4 THAT PARTICULAR RESIDENCE THE REST OF THAT PARTICULAR WEEK?

5 A YES, SIR, WE DID.

6 Q AND WAS EFFORTS MADE RANDOMLY BY LINE OFFICERS -- AS YOU AS
7 THE CHIEF INVESTIGATING OFFICER, WERE EFFORTS RANDOMLY MADE
8 BY LINE OFFICERS OVER THE NEXT SEVERAL MONTHS TO SEARCH FOR
9 HIM AT THAT PARTICULAR RESIDENCE?

10 A YES, SIR.

11 Q THERE WAS NO 24-HOUR SURVEILLANCE KEPT ON THAT LOCATION FOR
12 WEEKS, WAS THERE?

13 A NO, SIR.

14 Q WAS THIS SEARCH WARRANT SIGNED AND RETURNED TO THE
15 MINISTERIAL RECORDER'S OFFICE?

16 A YES, SIR, IT WAS.

17 Q AND ON WHAT DAY WAS THAT DONE BY INVESTIGATOR SMITH?

18 A THAT WOULD BE THE 30TH OF MAY.

19 Q THE SAME DAY?

20 A YES, SIR.

21 MR. GASSER: THAT'S ALL WE HAVE FOR THIS PURPOSE, YOUR
22 HONOR.

23 THE COURT: ALL RIGHT. MR. SNEED.

24 MR. SNEED: JUST A FEW QUESTIONS, YOUR HONOR.

25 CROSS EXAMINATION BY MR. SNEED:

1 Q OKAY. YOU FILLED OUT THE AFFIDAVIT YOURSELF?

2 A YES, SIR.

3 Q AND WHERE DID YOU FILL THAT OUT?

4 A PROBABLY AT MY DESK IN INVESTIGATIONS.

5 Q AND WHAT TIME DID YOU FILL IT OUT?

6 A I DON'T SEE THE ACTUAL TIME THAT I SAT DOWN AND FILLED IT
7 OUT.

8 Q OKAY. YOU HAVE YOUR NOTES, RIGHT, SIR?

9 A YES, SIR.

10 Q OKAY. IT WAS AT SOME POINT ON THE 29TH OF MAY?

11 A I BELIEVE THAT I -- I BELIEVE I DID IT IN THE MORNING OF THE
12 FOLLOWING DAY, ON THE 30TH.

13 Q AT THE TIME YOU FILLED OUT THE AFFIDAVIT, THE INFORMATION YOU
14 HAD, AT LEAST CONCERNING KENNETH JAMES -- CORRECT ME IF I'M
15 WRONG -- YOU HAD INFO ABOUT THE DOG TRAIL, RIGHT?

16 A YES, SIR.

17 Q YOU HAD INFORMATION ABOUT C *victim* 'S PHOTO I.D., RIGHT?

18 A YES, SIR.

19 Q YOU HAD THIS INFORMATION ABOUT THE AMOCO, HIM BEING AT THE
20 AMOCO AND THE BILL?

21 A RIGHT.

22 Q AND HIM MAKING A STATEMENT TO OFFICER GIBSON, RIGHT?

23 A RIGHT. YES, SIR.

24 Q IS IT FAIR TO SAY THAT'S THE CRITICAL EVIDENCE YOU HAD AT
25 LEAST MAKING HIM A SUSPECT?

1 A THAT WOULD BE CORRECT. YES, SIR.

2 Q OKAY. NOW, THAT INFORMATION, OF COURSE IT WASN'T ALL BASED
3 ON YOUR PERSONAL KNOWLEDGE. IT WAS OTHER PEOPLE TOLD YOU
4 THAT?

5 A THAT'S RIGHT. YES, SIR.

6 Q IT WASN'T YOU WHO IDENTIFIED HIM FROM THE PHOTO ARRAY. IT
7 WAS THE VICTIM?

8 A THAT'S RIGHT.

9 Q AND IT WASN'T YOU WHO TALKED ABOUT HIS ADDRESS. IT WAS THE
10 POLICE OFFICER. I MEAN OFFICER GIBSON.

11 A THAT'S RIGHT.

12 Q IT WASN'T YOU WHO SAW HIM TRYING TO BREAK THE BILL. IT WAS
13 THE STORE CLERK, RIGHT?

14 A THAT'S RIGHT.

15 Q OKAY. NOW, THOSE PEOPLE WHO PROVIDED THAT INFORMATION TO
16 YOU, WHETHER IT'S MS. OR OFFICER GIBSON OR THE CLERK,
17 YOU DID NOT REFERENCE THEM IN YOUR AFFIDAVIT, DID YOU?

18 A NO, SIR.

19 Q OKAY. NOW, THE SOLICITOR WAS ASKING YOU ABOUT RECEIVING NO
20 CONTACT FROM KENNETH JAMES AFTER THE WARRANT. DO YOU RECALL
21 TESTIFYING ABOUT THAT JUST A FEW MINUTES AGO?

22 A YES, SIR.

23 Q OKAY. NOW, DURING THAT PERIOD, FROM MAY UNTIL HIS ARREST IN
24 DECEMBER OF '96, DO YOU KNOW IF ANY LAW ENFORCEMENT SPOKE TO
25 HIM AT ALL, OR ANY C.P.D. RATHER?

1 A I WOULD HAVE NO IDEA.

2 Q OKAY. I MEAN, BUT YOU CERTAINLY HAD NO CONTACT?

3 A I HAD NO CONTACT WITH HIM. WE HAD HIM PLACED IN THE N.C.I.C.
4 SYSTEM, AND WE HAD "WANTED" FLIERS OUT FOR HIM. BUT I HAD NO
5 CONTACT WITH HIM.

6 Q WAS HE PUT ON "MIDLANDS MOST WANTED"?

7 A NO, SIR, HE WAS NOT.

8 Q HOW WOULD MR. -- YOU ALL, YOU SWORE THE WARRANT OUT FOR MR.
9 KENNETH JAMES IN LATE MAY WITHIN A FEW DAYS OF THE INCIDENT,
10 RIGHT?

11 A YES, SIR.

12 Q OKAY. FROM THE TIME HE WAS ARRESTED IN DECEMBER, SIX MONTHS
13 LATER, HOW WOULD HE HAVE KNOWN THAT HE WAS A WANTED MAN? I
14 MEAN, THE POLICE WANTED HIM, RIGHT, CHARGED WITH THIS CRIME?

15 A THAT'S RIGHT.

16 Q AND YOU OR NO OTHER OFFICER TO YOUR KNOWLEDGE SPOKE TO HIM.
17 SO HOW WOULD HE KNOW HE WAS WANTED?

18 A WE LEFT A COPY OF THE SEARCH WARRANT ON HIS KITCHEN COUNTER.

19 Q OKAY.

20 MR. SNEED: BEG THE COURT'S INDULGENCE, YOUR HONOR.

21 THE COURT: SURE.

22 MR. SNEED: NO FURTHER QUESTIONS, YOUR HONOR.

23 THE COURT: MR. SHUPPER.

24 CROSS EXAMINATION BY MR. SHUPPER:

25 Q INVESTIGATOR THOMAS, DID YOU HAVE ANY REASON TO BELIEVE THAT

1 ROBERT JAMES WAS INVOLVED IN THIS INCIDENT AT THE TIME YOU
2 SOUGHT OR EXECUTED THE SEARCH WARRANT?

3 A WHEN WE EXECUTED THE SEARCH WARRANTS; NO, SIR.

4 Q YOU'VE SOUGHT NUMEROUS SEARCH WARRANTS IN YOUR CAREER AS A
5 POLICE OFFICER, HAVEN'T YOU?

6 A YES, SIR.

7 Q AND YOU'RE REQUIRED -- YOU'RE FAMILIAR WITH THE STANDARD FOR
8 JUSTIFICATION OF A SEARCH WARRANT, AREN'T YOU?

9 A YES, SIR.

10 Q IT REQUIRES PROBABLE CAUSE?

11 A RIGHT.

12 Q AND YOU MUST DEMONSTRATE PROBABLE CAUSE TO A NEUTRAL AND
13 DETACHED MAGISTRATE OR IN THE CITY A MINISTERIAL RECORDER TO
14 LEAD THAT PERSON TO DETERMINE THAT THE ITEMS SOUGHT WILL BE
15 INDICATIVE OF A CRIME AND WILL BE FOUND THERE. IS THAT
16 CORRECT?

17 A THAT'S RIGHT.

18 Q AND YOU KNOW THERE'S A REQUIREMENT FOR SOME SPECIFICITY AS TO
19 HOW YOU GAIN THE KNOWLEDGE YOU PRESENT TO THE MAGISTRATE TO
20 ESTABLISH PROBABLE CAUSE, RIGHT?

21 A YES, SIR.

22 Q WOULD YOU AGREE WITH ME THAT THE AFFIDAVIT IN THIS CASE DOES
23 NOT CONTAIN THE BASIS FOR YOUR BELIEF AND THE RELIABILITY OF
24 THE INFORMATION TO ESTABLISH PROBABLE CAUSE TO A NEUTRAL AND
25 DETACHED MAGISTRATE OR MINISTERIAL RECORDER?

1 A NO, SIR. I WOULD NOT AGREE WITH THAT.

2 THE COURT: MR. GASSER, YOU'RE NOT GOING TO OBJECT TO
3 THAT.

4 MR. GASSER: NO, SIR.

5 THE COURT: YOU'RE NOT GOING TO OBJECT TO IT BECAUSE YOU
6 KNOW WHAT HIS ANSWER IS GOING TO BE? OKAY.

7 MR. GASSER: WELL, THE OTHER REASON IS THAT, I MEAN, MY
8 UNDERSTANDING OF THE CASES, HIS SUBJECTIVE BELIEF IS NOT
9 RELEVANT TO THIS ISSUE. BUT IF HE WANTS TO MAKE A RECORD OF
10 IT, THAT'S FINE.

11 THE COURT: WELL, IT'S ALSO, IT'S A MATTER OF LAW FOR ME
12 TO DETERMINE, MR. SHUPPER. I MEAN, IN AS MUCH AS MR. THOMAS
13 I'M SURE IS A NICE FELLOW, I MEAN, I DON'T CARE WHAT HE
14 THOUGHT. ALL RIGHT? OKAY.

15 Q (BY MR. SHUPPER) WERE ANY ITEMS BEARING IDENTIFICATION OR
16 NAMES OF ANY OTHER PERSONS FOUND IN THE COURSE OF THIS
17 SEARCH?

18 A YES, SIR, THERE WERE.

19 Q AND WHAT NAMES WERE THEY?

20 A THEY WERE MR. ROBERT JAMES.

21 Q OTHER THAN MR. ROBERT JAMES?

22 A NO, SIR.

23 Q WERE YOU ABLE TO IDENTIFY THE BELONGINGS ASIDE FROM THIS
24 CERTIFICATE I BELIEVE YOU MENTIONED AS BEING ROBERT JAMES?

25 A WE WOULD NOT BE ABLE TO TELL WHOSE BELONGINGS WERE IN THE

1 HOUSE OTHER THAN THERE WAS A TELEPHONE BILL IN ONE
2 GENTLEMAN'S NAME AND PAPERWORK WITH YOUR CLIENT'S NAME ON IT.

3 Q I BELIEVE YOU FOUND A TELEPHONE BILL AND AN ELECTRIC COMPANY
4 RECEIPT MADE OUT IN KENNETH JAMES'S NAME?

5 A SOMETHING ALONG THAT LINE; YES, SIR.

6 Q CAN YOU DESCRIBE WHAT THE ITEM WAS THAT BORE ROBERT JAMES'S
7 IDENTIFICATION?

8 A YES, SIR. IF I REMEMBER RIGHT, THERE WERE -- THERE WAS A
9 DIPLOMA FROM THE JOB CORPS, AND THERE WERE FOUR OR FIVE OTHER
10 RELATED DOCUMENTS, DIPLOMAS AND THAT SORT OF THING WITH HIS
11 NAME ON THEM.

12 MR. SHUPPER: OKAY. AND, MR. GASSER, YOU'LL PROVIDE ME
13 COPIES OF THOSE DOCUMENTS?

14 MR. GASSER: YEAH. THEY'VE BEEN -- FOR THE RECORD,
15 THEY'VE BEEN AVAILABLE FOR COUNSEL TO SEE FOR AS LONG AS HE'S
16 BEEN COUNSEL, KEPT IN THE PROPERTY ROOM. BUT I HAVEN'T
17 PROVIDED YOU COPIES.

18 MR. SHUPPER: THANK YOU. I HAVE NOTHING FURTHER, YOUR
19 HONOR.

20 THE COURT: ALL RIGHT. MR. GASSER, ANYTHING?

21 MR. GASSER: NO, SIR.

22 THE COURT: OKAY. WHAT I WANT TO KNOW, THERE'S ONLY ONE
23 THING I WANT TO KNOW. YOU ALL CAN JUST TELL ME THIS. WHO
24 WAS IT THAT HAD PROVIDED THE INFORMATION -- TO WHOM HAD
25 KENNETH JAMES ADMITTED THAT HE LIVED AT THE ADDRESS PRIOR TO

1 THE OBTAINING OF THIS SEARCH WARRANT?

2 MR. SNEED: IT WAS OFFICER GIBSON AT THE NEARBY AMOCO
3 STATION.

4 THE COURT: OKAY. THAT WAS THE F.I., THE FIELD
5 IDENTIFICATION?

6 MR. SNEED: YES, SIR. AND THAT OFFICER TOLD MR. THOMAS.

7 THE COURT: OKAY. ALL RIGHT. THANK YOU. ALL RIGHTY.
8 YOU CAN STEP DOWN, MR. THOMAS. OKAY. ARGUMENT?

9 MR. SNEED: YES, SIR. YOUR HONOR, I STILL WOULD ARGUE
10 THAT THE AFFIDAVITS —

11 THE COURT: I AGREE WITH YOU THAT THE AFFIDAVIT IS
12 INSUFFICIENT. ALL RIGHT?

13 MR. SNEED: NOW THIS IS A JOHNSON HEARING. THAT'S WHAT
14 IT'S CALLED, WHERE UNDER STATE V. MCKNIGHT AND ITS PROGENY
15 THE STATE CAN ATTEMPT TO SUPPLEMENT THE AFFIDAVIT BY
16 PRESENTING WHATEVER SWORN ORAL TESTIMONY WENT BEFORE THE
17 MAGISTRATE. AND —

18 THE COURT: OKAY. LET'S ASSUME THAT I KNOW THAT.

19 MR. SNEED: OKAY.

20 THE COURT: WHERE DO WE GO FROM THERE?

21 MR. SNEED: I WOULD OPPOSE — I WOULD HAVE A NOVEL
22 ARGUMENT TO OPPOSE TAKING THAT ADDITIONAL EVIDENCE HERE. IF
23 THE COURT ACCEPTS IT, I DON'T HAVE A LEGAL ARGUMENT ON THE
24 JOHNSON HEARING TO SUPPLEMENT. BECAUSE, YOUR HONOR, I WOULD
25 CONCEDE THAT THE ADDITIONAL TESTIMONY SUPPOSEDLY GIVEN THE

1 RECORDER WOULD SATISFY, WOULD BE ENOUGH. I WOULD HAVE
2 GROUNDS TO ARGUE AGAINST HAVING THE JOHNSON HEARING TO ALLOW
3 THAT SUPPLEMENT.

4 THE COURT: WELL, TELL ME WHAT THAT WOULD BE.

5 MR. SNEED: IT WOULD BE TOO NOVEL, EXTREMELY NOVEL, I
6 CONCEDE, YOUR HONOR. ONE IS THE RIGHT OF PRIVACY UNDER THE
7 STATE CONSTITUTION. AND THE OTHER IS I WOULD ARGUE AGAINST
8 PRECEDENT. I DON'T THINK THAT MCKNIGHT WAS CORRECT IN THAT
9 REGARD. BECAUSE THE SEARCH WARRANT STATUTE SAYS "ONLY BY
10 AFFIDAVIT". I THINK IT CONTRAVENES THE INTEREST OF THE
11 GENERAL ASSEMBLY TO ALLOW THE SUPPLEMENTING OF IT. BUT
12 BEYOND THAT, YOUR HONOR, I WOULD HAVE TO CONCEDE ON THE 4TH
13 AMENDMENT GROUND.

14 THE COURT: WELL, YOU KNOW, ONE OF MY PETS IS THE 4TH
15 AMENDMENT. I WORRY ABOUT A SITUATION LIKE THIS. BUT, YOU
16 KNOW, TESTIMONY IS SUFFICIENT. IS THERE ANY OTHER BASIS? SO
17 I'LL ALLOW THE FRUITS OF THE SEARCH WARRANT TO COME IN
18 PROVIDED THERE ARE NO OTHER OBJECTIONS TO ITS ADMISSIBILITY
19 ON ANY OTHER EVIDENTIARY BASIS.

20 MR. SNEED: YES, SIR. I HAVE SOME RELATED OBJECTIONS.
21 ONE IS I WOULD ARGUE THAT IT'S ENCROACHMENT UPON THE JUDICIAL
22 BRANCH. I PASSED UP A SHORT BRIEF TO THE COURT TO ALLOW A
23 MINISTERIAL RECORDER TO MAKE THE PROBABLE CAUSE
24 DETERMINATION. THAT IS A NOVEL ISSUE. BUT I'M RELYING ON
25 SECTION 8, ARTICLE 1, SECTION 1, ARTICLE 5. AND OTHERWISE

1 I'D STAND BY MY BRIEF. THE COURT'S READ IT. I CAN EXPAND ON
2 IT IF THE COURT DESIRES.

3 THE COURT: NO. I APPRECIATE YOUR ARGUMENTS. AND THE
4 ARGUMENTS ARE MADE. MR. SNEED, I WOULD HOPE THAT YOU ARE
5 ENTERING ALL OF THESE —

6 MR. SNEED: YES, SIR.

7 THE COURT: — WRITTEN MOTIONS ON THIS RECORD AS WELL.

8 MR. SNEED: AT SOME POINT, AT A BREATHER, I MIGHT JUST
9 — I'LL TRY TO DO A QUICK INVENTORY WITH THE —

10 THE COURT: OKAY.

11 MR. SNEED: AN ADDITIONAL GROUND, YOUR HONOR.

12 THE COURT: BEAR IN MIND THAT I'VE READ YOUR MEMORANDUM
13 TO SUPPRESS EVIDENCE SEIZED PURSUANT TO A DEFECTIVE SEARCH
14 WARRANT AND ALSO A DOCUMENT MEMORANDUM TO SUPPRESS EVIDENCE
15 BECAUSE THE AUTHORIZING SEARCH WARRANT WAS VIOLATIVE OF THE
16 SEPARATION OF POWERS. I'VE READ THAT.

17 MR. SNEED: THANK YOU, SIR. YOUR HONOR, AND THEN A
18 FINAL GROUND TO SUPPRESS IS, THE LINE ON A CASE THAT RECENTLY
19 CAME OUT, IT'S CALLED STATE V. JOHNSON. I'M HANDING THE
20 SOLICITOR A BRIEF. BUT ESSENTIALLY I'M RELYING ON — I'M
21 HANDING THE COURT UP STATE V. JOHNSON. IT RELIES ON THE
22 RULES OF EVIDENCE AND TRADITIONAL MOTIONS OF UNFAIR
23 PREJUDICE. BUT BASICALLY THE COURT IN THERE SAYS THE ACTUAL
24 DOCUMENTS CANNOT COME INTO EVIDENCE, THE ACTUAL SEARCH
25 WARRANT. AND THERE IS A VARIETY OF REASONS IT SHOULD NOT BE

1 ABLE TO; IMPROPER BOLSTERING, CORROBORATION, HEARSAY,
2 CUMULATIVE, AND SO ON. IT COULD -- THE JURY MIGHT ACTUALLY
3 ALLOW THE SEARCH WARRANT INTO EVIDENCE.

4 MR. GASSER: I CAN CUT HIM OFF THERE, YOUR HONOR. I'VE
5 NEVER PUT A SEARCH WARRANT INTO EVIDENCE.

6 MR. SNEED: I'LL STOP THEN.

7 THE COURT: GOOD.

8 MR. SNEED: YOUR HONOR, NOW GOING, THEN MY NEXT GROUND
9 WOULD BE THE WARRANT RETURN IS NOT MADE TO THE ISSUING
10 OFFICIAL.

11 THE COURT: TRUE.

12 MR. SNEED: THAT WOULD BE MY NEXT BASIS TO SUPPRESS.
13 AND I DON'T HAVE A BRIEF ON THAT ONE, YOUR HONOR.

14 THE COURT: OKAY.

15 MR. SNEED: AND THEN FINALLY GOING -- ANOTHER BASIS TO
16 SUPPRESS IS THAT THE EVIDENCE FOUND EXCEEDED THE SCOPE OF THE
17 WARRANT, THE SCOPE OF THE PROPERTY SOUGHT TO BE RECEIVED.
18 AND OF COURSE THERE IS TWO TYPES OF EVIDENCE THE STATE IS
19 TRYING TO SEEK FROM THIS. YOU HAVE EVIDENCE TYING ROBERT
20 JAMES TO THE RESIDENCE. YOU HAVE EVIDENCE TYING KENNETH
21 JAMES TO THE RESIDENCE AND SOME BULLETS, .32 OR I THINK SOME
22 BULLETS AND SOME CLEANING GEAR IS WHAT MR. GASSER INDICATED.
23 THE POLICE, THEY WERE NOT TRYING TO SEEK THAT PROPERTY. THEY
24 WERE TRYING TO GET THE PROPERTY OF *CVI Cnm*

25 THE SECOND -- THERE IS A SECOND WAY THAT THE EVIDENCE

1 FOUND EXCEEDED THE SCOPE OF THE WARRANT; AND THAT IS, MR.
2 GASSER IS TRYING TO USE, WHETHER YOU WANT TO CALL IT
3 PRE-ARREST SILENCE OR FLIGHT EVIDENCE. HE'S TRYING TO SAY,
4 WELL, KENNETH JAMES LIVED THERE; THE POLICE LEFT THE WARRANT
5 THERE, AND THEY DIDN'T HEAR HIDE NOR HAIR OF KENNETH JAMES
6 FOR SIX AND A HALF MONTHS. AND HE'S GOING TO WANT TO USE
7 THAT AS FLIGHT EVIDENCE.

8 THE COURT: WELL, THAT ISSUE IS NOT RIPE IN FRONT OF ME
9 AT THIS POINT IN TIME. WE'RE STILL ON THE SEARCH WARRANT.
10 I'M NOT SURE THAT I'M GOING TO ALLOW THAT. BUT, YOU KNOW, I
11 DON'T KNOW WHY AT THIS POINT IN TIME. GO AHEAD.

12 MR. SNEED: AND THAT WOULD BE IT, YOUR HONOR. I MEAN,
13 OTHER, MY FOURTH BASIS IS THE RETURN. BEYOND THAT I WOULD
14 ARGUE AGAINST ADMITTING CERTAIN PIECES OF EVIDENCE RECOVERED
15 UNDER THE 403 ANALYSIS.

16 THE COURT: MR. SHUPPER, YOU GOT ANY OTHER —

17 MR. SHUPPER: AS FAR AS ROBERT JAMES, YOUR HONOR, I
18 WOULD JOIN WITH MR. SNEED IN ALL OBJECTIONS THAT HE'S MADE TO
19 THE INTRODUCTION OF THIS EVIDENCE. AND WHILE CLEARLY IF THEY
20 HAD HAD A SEARCH WARRANT TO GO IN AND LOOK FOR ONE ITEM AND
21 FOUND NARCOTICS, THEN THEY COULD CLEARLY ARREST IF NARCOTICS
22 WERE FOUND. BUT IN THIS CASE WHEN I VIEW THE INSUFFICIENCY
23 OF THE AFFIDAVIT FOR THE SEARCH AND THAT THEY SEIZED ITEMS
24 THAT THEY'RE TRYING TO LINK TO MY CLIENT TO BEING THERE WHERE
25 THERE'S NO OTHER INDICATION GIVEN BY THE POLICE OFFICERS OR

1 TESTIMONY THAT THEY WERE SEEKING ANYTHING THAT TIED ROBERT
2 JAMES INTO —

3 THE COURT: WELL, OF COURSE THEY DIDN'T KNOW WHO ROBERT
4 JAMES WAS AT THE TIME. AND I WANT TO ASK MR. — PLEASE
5 CONTINUE.

6 MR. SHUPPER: THAT ANY REFERENCE TO ROBERT JAMES OR ANY
7 EVIDENCE RELATED TO ROBERT JAMES, BEING THOSE CERTIFICATES
8 THEY'VE MENTIONED, NOT BE ADMITTED AS THERE WAS NOT
9 SUFFICIENT — THEY WEREN'T ITEMS RELATED TO THE OFFENSE OR
10 DESCRIBED IN THE AFFIDAVIT. NOR WERE THEY ITEMS THAT IN AND
11 OF THEMSELVES WERE INDICATIVE OF ANY SORT OF CRIMINAL
12 ACTIVITY LIKE, AS I SAID, IN THE ANALOGY IF THEY WERE LOOKING
13 FOR ONE ITEM AND THEY FOUND NARCOTICS, IT WOULD BE ILLEGAL.

14 THE COURT: OKAY. WHAT ABOUT THE HANDGUN? I MEAN,
15 EXCUSE ME. WHAT ABOUT THE AMMUNITION AND THE CLEANING KIT?

16 MR. STRICKLER: THAT'S THE ONE THING THAT I WOULD LIKE
17 TO ADDRESS, YOUR HONOR.

18 THE COURT: OKAY. GO AHEAD. DO IT.

19 MR. STRICKLER: IS THAT, YOU KNOW, GIVEN ANY
20 CONSTITUTIONAL BASIS OR STATUTORY BASIS, I DON'T THINK OTHER
21 THAN TO ECHO THE SENTIMENTS THAT IT'S BEYOND THE SCOPE THAT
22 MR. SNEED HAS ALREADY STATED. I DO ASK YOUR HONOR TO LOOK AT
23 THE ADMISSION OF THOSE PIECES OF EVIDENCE UNDER A RELEVANCE,
24 PROBATIVE VALUE, PREJUDICIAL EFFECT. MY UNDERSTANDING OF THE
25 TESTIMONY WILL BE THAT MR. BULL WILL TESTIFY THAT SOMEBODY

1 USED A REVOLVER ON HIM. HE THOUGHT IT MIGHT BE A .38. AT
2 LEAST THAT'S WHAT IT SEEMS I RECALL FROM READING HIS
3 STATEMENT ITSELF. SO WE HAVE SOME BULLETS.

4 THE COURT: THE BULLETS ARE FROM A .32?

5 MR. STRICKLER: A MIX, .32, .38 IS MY UNDERSTANDING OF
6 THE TESTIMONY, BOTH CALIBERS.

7 THE COURT: AND IT'S A CLEANING KIT.

8 MR. STRICKLER: A CLEANING KIT.

9 THE COURT: AND THEY ALREADY KNEW THAT WINFRED -- I
10 MEAN, EXCUSE ME; WINFRED. THEY ALREADY KNEW THAT KENNETH
11 JAMES LIVED AT THE ADDRESS, DIDN'T THEY? YOU'VE GOT OTHER
12 EVIDENCE THAT SHOWS THAT KENNETH JAMES LIVED AT THE ADDRESS,
13 DON'T YOU?

14 MR. STRICKLER: YES, SIR.

15 THE COURT: ALL RIGHT? DON'T YOU?

16 MR. GASSER: YES, SIR.

17 THE COURT: OKAY. BECAUSE IN THE FIELD INTERVIEW? SO
18 WHAT'S PROVED HERE, THE EVIDENCE SHOWS HERE, IS, NUMBER ONE,
19 THAT YOU'VE GOT SOMETHING THAT TIES KENNETH JAMES TO THE
20 ADDRESS. NUMBER TWO, YOU'VE GOT BULLETS IN A CLEANING KIT,
21 WHICH I'M NOT SO SURE ARE -- YOU KNOW, EVEN YOU'VE ARGUED
22 THAT THEY'RE GERMANE TO SOME ISSUE IN THE CASE AND THAT SOME
23 INFERENCE FROM YOUR SIDE CAN BE DRAWN. I'M NOT SO SURE THAT
24 THAT'S CORRECT, BUT I'M GLOSSING OVER THAT AT THIS POINT IN
25 TIME. THE SECOND THING IS, IS ADDRESSING THE STUFF, ADDRESS

1 MR. SHUPPER'S ARGUMENT ABOUT THE STUFF RELATING TO ROBERT
2 JAMES; THAT IS, THE DIPLOMA, THAT KIND OF THING. YOU KNOW,
3 —

4 MR. GASSER: FIRST —

5 THE COURT: — AND DID THEY EVEN KNOW THAT — AND WHY
6 WAS IT SEIZED AT THE TIME PURSUANT TO THE SEARCH WARRANT WHEN
7 IT WAS NOT EVEN ANYTHING — NO EVIDENCE HAD BEEN DEVELOPED AT
8 THAT TIME, EITHER PRESENTED TO THE ISSUING MAGISTRATE OR FROM
9 ANY OTHER SOURCE THAT TIED ROBERT JAMES TO THIS ALLEGED
10 EVENT. OKAY?

11 MR. GASSER: WELL, FIRST OF ALL, I ASSUME THAT HE IS
12 STIPULATING FOR THE PURPOSE OF THIS HEARING THAT HIS CLIENT
13 LIVED THERE. BECAUSE IF HE'S NOT, THEN HE HAS NO REASONABLE
14 EXPECTATION TO PRIVACY, AND IT'S MOOT.

15 THE COURT: OKAY. WELL, THAT'S ONE GOOD THING TO
16 ADDRESS. ALL RIGHT.

17 MR. GASSER: SO IF HE'S STIPULATING FOR THIS HEARING, IF
18 HE'S NOT STIPULATING —

19 THE COURT: I DON'T KNOW THAT HE OR IS NOT. HE MAY BE
20 SAYING IT'S JUST NOT RELEVANT.

21 MR. GASSER: OKAY. WELL, I'M JUST ASSUMING —

22 THE COURT: AND I DON'T KNOW THAT HE HAS TO SAY THAT HIS
23 GUY LIVES THERE IF IT'S NOT RELEVANT. IF HE HAS NO STANDING
24 TO OBJECT TO THE STUFF SOUGHT IN THE SEARCH WARRANT ON A 4TH
25 AMENDMENT BASIS, THAT DOESN'T OBLIATE HIS OBJECTION ON

1 RELEVANCE.

2 MR. GASSER: I UNDERSTAND.

3 THE COURT: OKAY.

4 MR. GASSER: I THINK THAT'S THE REASON WHY I ASKED THE
5 INVESTIGATOR AS FAR AS WHY THEY -- WHEN THEY ARE AT THE SCENE
6 THEY KNEW BASED ON THE INFORMATION FROM THE OFFICER, OFFICER
7 GIBSON, THAT THE INDIVIDUAL THAT HE STOPPED WHO INDICATED HE
8 WAS KENNETH JAMES, LIVED AT 2528 ORR STREET, AND THEY WERE
9 JUST -- THEY WERE CONFIRMING OR CORROBORATING THAT BY
10 OBTAINING THE BELL SOUTH PHONE BILL AND THE ELECTRIC BILL.
11 THAT'S THE REASON WHY THEY SEIZED THOSE ITEMS.

12 WHEN THEY -- THEY ALSO KNEW, INVESTIGATOR THOMAS KNEW
13 AND HE TESTIFIED THAT THERE WERE AT LEAST FIVE ASSAILANTS AND
14 THAT THEY WERE SEEN RUNNING UP ORR STREET AND THAT THE DOG AT
15 LEAST PICKED UP ON ONE OF THEIR SCENTS GOING INTO THEIR HOME.
16 AND, THEREFORE, THE POLICE WHEN THEY WERE SEARCHING 2528 ORR
17 STREET WHICH THEY BELIEVED KENNETH JAMES LIVED, THEY SEIZED
18 UPON PLAIN VIEW WHEN THEY CAME ACROSS ANY INFORMATION TO
19 INDICATE SOMEBODY ELSE WAS STAYING THERE, THEY SEIZED THAT
20 INFORMATION IN PLAIN VIEW IN ORDER FOR THEM AS INVESTIGATORS.
21 I THINK THAT'S GOOD POLICE WORK FOR THEM TO LOOK AT ANY OTHER
22 INFORMATION. I BELIEVE IF YOU LOOK AT THE WARRANT, IT WAS
23 FOUND IN ONE OF THE BEDROOM CLOSETS. SO THIS INFORMATION WAS
24 FOUND IN A BEDROOM CLOSET SO THEY COULD OBTAIN INFORMATION
25 POSSIBLY OF SOMEONE ELSE THAT MAY HAVE BEEN LIVING THERE THAT

1 THEY COULD THEN USE LATER ON TO IDENTIFY ANOTHER POTENTIAL
2 SUSPECT. THAT'S THE REASON WHY THEY SEIZED IT.

3 SAY THEY DIDN'T SEIZE IT. SAY THEY DIDN'T SEIZE IT AND
4 EVERYTHING WENT ALONG AS THE INVESTIGATION DID IN THIS
5 PARTICULAR CASE, BUT THEY DID OBSERVE IT. THEY SAW THE
6 INFORMATION OF ROBERT JAMES, THESE PERSONAL PAPERS OF ROBERT
7 JAMES. THEY WERE IN A BEDROOM CLOSET IN THE HOUSE.

8 THE COURT: AND THEN 11 DAYS LATER ROBERT JAMES GETS
9 IDENTIFIED.

10 MR. GASSER: IS IDENTIFIED. WOULD THEY NOT BE ALLOWED
11 TO COME INTO COURT AND TESTIFY THAT DURING THE SEARCH WARRANT
12 THEY OBSERVED PERSONAL PAPERS OF ROBERT JAMES? I MEAN, I
13 DON'T KNOW -- I MEAN, EITHER WAY --

14 THE COURT: OKAY. YOU'VE SAID ENOUGH. ALL RIGHT.
15 THANK YOU. MR. SHUPPER.

16 MR. SHUPPER: WELL, YOUR HONOR, AS FAR AS STIPULATING
17 THAT MR. JAMES, ROBERT JAMES --

18 THE COURT: GOING TO MAKE YOU WORK FOR YOUR SUPPER, MR.
19 GASSER.

20 MR. GASSER: YES, SIR. I UNDERSTAND. AND I AGREE. IT
21 IS NOT --

22 THE COURT: NO. I'M GOING TO ALLOW IT TO COME IN. NOW,
23 I'M GOING TO WAIT UNTIL I HEAR FROM WINFRED BULL AS TO THE
24 OTHER STUFF. OKAY? I'M SORRY. GO AHEAD.

25 MR. SHUPPER: DOES THAT MEAN YOU'VE JUST RULED ON THIS,

1 YOUR HONOR?

2 THE COURT: OH, YEAH.

3 MR. SHUPPER: I HAVE NO FURTHER ARGUMENT TO MAKE?

4 THE COURT: YOU CAN ARGUE IT IF IT'S BASED ON WHAT MR.
5 GASSER JUST SAID.

6 MR. SHUPPER: YES, SIR. AS FAR AS STIPULATING THAT HE
7 LIVED THERE, NO, I'M NOT WILLING TO DO THAT.

8 THE COURT: GOOD.

9 MR. SHUPPER: AND I BELIEVE UNDER MCKNIGHT, ONE
10 CONTESTING THE LEGALITY OF A SEARCH BECAUSE OF A DETECT UNDER
11 THE STATUTE, YOU NORMALLY SHOW THAT THE STATE IS ATTEMPTING
12 TO INTRODUCE EVIDENCE AGAINST HIM.

13 THE COURT: YOU'RE RIGHT.

14 MR. SHUPPER: SO I BELIEVE WE HAVE STANDING TO OBJECT
15 UNDER THE 4TH AMENDMENT.

16 THE COURT: WELL, —

17 MR. SHUPPER: AND THAT I WOULD JUST FOR THE COURT'S
18 INFORMATION NOTE THAT THESE DOCUMENTS ARE DATED 1994, AND I
19 THINK ONE IS DATED FEBRUARY OF 1995, THAT A BROTHER HAS IN
20 HIS POSSESSION SOME MAIL OF ANOTHER.

21 THE COURT: YOU SEE, I DON'T KNOW WHAT THE PROBATIVE
22 VALUE IS. I DON'T KNOW WHAT A JURY IS GOING TO SAY, YOU
23 KNOW, WHAT THE SUFFICIENCY IS. BUT, YOU SEE, THAT'S FOR
24 THEIR CALL. AND I APPRECIATE WHAT YOU'RE SAYING. I THINK
25 YOU'RE DOING A GREAT JOB FOR YOUR CLIENT. BUT I CAN'T, YOU

1 KNOW, JUST CLOSE MY EYES TO THIS SITUATION.

2 MR. SHUPPER: I WOULD SUBMIT, AS HAS BEEN BROUGHT UP,
3 THAT IT WOULD BE IRRELEVANT. BUT I RESPECT THE COURT'S
4 RULING.

5 THE COURT: ALL RIGHT. THANKS. ALL RIGHT. WHAT ELSE
6 IS LEFT?

7 MR. SNEED: JUST A FEW MINOR MOTIONS, YOUR HONOR. YOUR
8 HONOR, TO MAKE SURE ON THE WARRANT, MY OBJECTION TO THE
9 WARRANT RETURN WAS NOT MADE TO THE ISSUING OFFICIAL. DID YOU
10 DENY THAT MOTION, YOUR HONOR?

11 THE COURT: HUH?

12 MR. SNEED: WHEN I OBJECTED TO THE WARRANT BECAUSE THE
13 RETURN WAS DEFICIENT —

14 THE COURT: WELL, TELL ME WHY THAT RENDERS THE PROPERTY
15 SEIZED INADMISSIBLE.

16 MR. SNEED: BECAUSE THE STATUTE REQUIRES THAT THE
17 WARRANT BE RETURNED TO THE SAME ISSUING OFFICIAL, AND IN THIS
18 CASE THE OFFICERS DID NOT DO THAT. THEY HAD IT SWORN OUT
19 BEFORE ONE RECORDER AND THEN THEY RETURNED IT TO ANOTHER. SO
20 THE STATUTE IS VIOLATED IN THAT REGARD.

21 THE COURT: OKAY. AND THAT'S A — WHY DOESN'T THAT MAKE
22 SENSE, MR. GASSER?

23 MR. GASSER: BEG THE COURT'S INDULGENCE ONE MOMENT.

24 THE COURT: OKAY. WHY ISN'T THAT PERFECTLY SENSIBLE, IF
25 THAT'S WHAT THE STATUTE SAYS?

1 MR. GASSER: WELL, MAYBE MY BOOK IS WRONG, BUT MY
2 STATUTE SAYS THAT "SHALL BE DELIVERED TO THE JUDICIAL OFFICER
3 TO WHOM THE RETURN IS TO BE MADE."

4 THE COURT: WHAT IS THE CODE SECTION? 17 WHAT?

5 MR. GASSER: ARE YOU INDICATING THAT YOU HAVE A STATUTE
6 THAT SAYS "SHALL BE RETURNED TO THE JUDICIAL OFFICER WHO
7 INITIALLY" ---

8 MR. SNEED: NO. 17, DASH ---

9 MR. GASSER: --- "WHO INITIALLY CITED" ---

10 THE COURT: SHH, SHH, SHH, SHH, SHH. NOW, JENNY IS NOT
11 SUPER HUMAN. OKAY? SO WHAT IS IT THAT YOU ARE ASKING HIM,
12 MR. GASSER?

13 MR. GASSER: I BELIEVE WE'VE --- BASED ON 17-13-140,
14 FIRST OF ALL, I BELIEVE THE STATUTE HAS BEEN COMPLIED WITH.
15 SECONDLY, UNDER STATE V. WISE, PROCEDURAL VIOLATIONS OR
16 TECHNICAL VIOLATIONS OF THE STATUTE, ABSENT ANY PREJUDICE TO
17 THE DEFENDANT, HAVE NOT --- SHOULD NOT --- THE STATE'S POSITION
18 IS UNDER STATE V. ROGERS WHICH IS IN THE END OF --- ON PAGE
19 428 OF TITLE 16-17. I DON'T BELIEVE THERE IS A TECHNICAL
20 VIOLATION, BUT IF IT IS, IT IS MERELY THAT, JUST A TECHNICAL
21 VIOLATION. AND ---

22 THE COURT: WELL, OKAY. THANK YOU. I WANT TO READ IT,
23 AND THEN I WANT TO DETERMINE WHAT MR. SNEED'S ARGUMENT IS.
24 "IN THE CASE OF A WARRANT ISSUED BY A JUDGE OF A COURT OF
25 RECORD, IT SHALL BE RETURNABLE TO A MAGISTRATE HAVING

1 JURISDICTION OF THE AREA WHERE THE PROPERTY IS LOCATED OR THE
2 PERSON TO BE SEARCHED IS FOUND. IF ANY WARRANT IS ISSUED BY
3 ANY MUNICIPAL JUDICIAL OFFICER TO MUNICIPAL POLICE OFFICERS,
4 THE RETURN SHALL BE MADE TO THE ISSUING MUNICIPAL JUDICIAL
5 OFFICER."

6 MR. GASSER: OKAY.

7 THE COURT: "ANY WARRANT ISSUED SHALL COMMAND THE
8 OFFICER", DA-DA-DA-DA. OKAY. THAT'S WHAT YOUR ARGUMENT IS.
9 IS THAT CORRECT, MR. SNEED?

10 MR. SNEED: YES, SIR.

11 THE COURT: ALL RIGHT. MR. GASSER.

12 MR. GASSER: AND MY POINT IS THAT WHEN IT'S RETURNED TO
13 THE OFFICER WHERE THE MUNICIPAL OFFICER IS STAYING, IT IS
14 RETURNED TO THAT MUNICIPAL OFFICER INCONSTRUCTIVELY. WHAT IF
15 THAT MUNICIPAL OFFICER -- YOU KNOW, WHAT IF THAT MUNICIPAL
16 OFFICER -- I MEAN, BY RETURNING IT TO THE OFFICER WHERE THE
17 MUNICIPAL OFFICER WAS WORKING THAT SAME DAY AND MAY NOT HAVE
18 BEEN WORKING THOSE SAME HOURS, IT'S STILL RETURNED
19 CONSTRUCTIVELY TO THAT JUDICIAL OFFICER.

20 THE COURT: WELL, YOU KNOW, IT ALWAYS SEEMS THAT THE
21 STATE IS ALWAYS TELLING US THAT, YOU KNOW, THAT DOESN'T
22 REALLY SAY WHAT IT MEANS, YOU KNOW, THAT IT REALLY MEANS
23 SOMETHING ELSE OTHER THAN WHAT IT SAYS. YOU HAD ANOTHER
24 POINT THAT I MIGHT LISTEN TO. I DIDN'T LIKE THAT ONE. BUT
25 YOU HAVE ANOTHER POINT THAT I MIGHT LISTEN TO THAT RELATES TO

1 SOMETHING ABOUT YOU CITED STATE V. WISE SAYING THAT —

2 MR. GASSER: YES, SIR.

3 THE COURT: — TECHNICAL VIOLATION. TELL ME WHAT THAT
4 IS AGAIN.

5 MR. GASSER: ON PAGE 428 OF THE BOOK. "ALTHOUGH A
6 SEARCH WARRANT WAS NOT RETURNED TO THE ISSUING MAGISTRATE
7 WITHIN THE TEN-DAY PERIOD PRESCRIBED BY LAW, THE STATE'S
8 FAILURE TO FULFILL A MINISTERIAL REQUIREMENT DID NOT VOID THE
9 WARRANT WHERE THE DEFENDANT FAILED TO SHOW HE WAS
10 PREJUDICED."

11 I THINK THERE'S CASE LAW THAT INDICATES THAT A SEARCH
12 WARRANT WAS DONE AND WASN'T EXECUTED OR WASN'T RETURNED UNTIL
13 THE DAY BEFORE THE TRIAL, SOME TWO AND A HALF, THREE YEARS
14 AFTER THE FACT. AND, YOUR HONOR, I APOLOGIZE FOR THE CONDUCT
15 OF THE POLICE OFFICER. OF COURSE I'VE GOT TO PLAY WITH THE
16 CARDS THAT I'M DEALT. BUT I'M JUST TRYING TO MAKE A — AS AN
17 OFFICER OF THE COURT, TRYING TO MAKE AN ARGUMENT THAT
18 BENEFITS MY POSITION OR MY SIDE.

19 THE COURT: MR. SNEED, ADDRESS THAT. IT'S NOT SAME
20 THING. IT WAS A TIME LIMIT THERE AS OPPOSED TO THE PERSON.

21 MR. SNEED: RIGHT. I'VE BEEN TRYING TO SORT IT OUT,
22 YOUR HONOR. BECAUSE THERE'S TWO CASES. ONE IS STATE V.
23 WISE, AND THE OTHER I WANT TO SAY IS STATE V. CORNS
24 (PHONETIC), THE SAME YEAR, THE SAME THREE-JUDGE PANEL AT THE
25 COURT OF APPEALS WHERE IN ONE CASE RETURN WAS NEVER MADE.

1 AND THE COURT SAYS, FINNEY, YOU'VE GOT TO SHOW PREJUDICE.
2 AND I BELIEVE THAT'S WISE. THE OTHER CASE, CORNS, IT'S THE
3 RETURN WAS NOT TIMELY MADE, BUT THEN WHEN IT WAS MADE, IT
4 WASN'T SWORN TO, AND THERE WERE PROBLEMS WITH THE PROPERTY
5 INVENTORY. THAT ONE THEY FOUND PREJUDICE. SO HERE I WOULD
6 SAY THE PREJUDICE WOULD BE ---

7 THE COURT: SEE, PHILLIP SMITH RETURNED IT AND HE SWORE
8 TO IT ON THE RETURN, DIDN'T HE?

9 MR. SNEED: YES, SIR, HE DID.

10 THE COURT: YEAH. WELL, YOU KNOW, I DON'T LIKE THIS
11 STUFF, MR. SNEED. BUT, YOU KNOW, ---

12 MR. SNEED: BUT AT THE SAME TIME WE USED --- I GUESS ONE
13 PREJUDICE WOULD BE THAT WE HAD A JOHNSON HEARING TO
14 SUPPLEMENT A DEFECTIVE AFFIDAVIT, ASSUMING YOU AGREE WITH ME
15 THAT IT WAS FACIALLY DEFECTIVE.

16 THE COURT: I DID.

17 MR. SNEED: BUT WE DON'T COME BACK TO THE SAME PERSON.
18 YOU KNOW, THE OFFICER BRINGS IT BACK TO A DIFFERENT ISSUING
19 OFFICIAL. AND IF YOU THINK ABOUT IT, THAT WOULD BE THE
20 INTENT OF THE STATUTE. THE OFFICERS TAKE IT FROM ONE PERSON,
21 BRING IT BACK TO THE SAME. WELL, HERE'S IT'S A DIFFERENT ONE
22 THAN WHO THEY SUPPLEMENTED IT TO. THAT'S ONE PROBLEM.

23 THE OTHER PROBLEM IS THIS DEFECT WITH GOING BACK AND
24 GETTING ROBERT JAMES'S PAPERS, YOU KNOW, AND TYING HIM TO THE
25 CRIME. AND I DO HAVE STANDING TO CHALLENGE THAT. THAT'S

1 ANOTHER WAY I CAN SHOW PREJUDICE. BECAUSE SOMEHOW THEY
2 IMPLICATE ROBERT JAMES AND THEY'RE TRYING THESE GUYS TOGETHER
3 AND THEY'RE TRYING TO POINT THE FINGER AT KENNETH JAMES. SO
4 THAT'S THE SECOND WAY I SHOW PREJUDICE. AND THAT'S IT, YOUR
5 HONOR.

6 THE COURT: THAT'S A VERY GOOD ARGUMENT. AND I'M GOING
7 TO DENY THE SUPPRESSION MOTION BASED ON THAT AS WELL, BECAUSE
8 I DO NOT BELIEVE THAT THE TECHNICAL VIOLATION IN THIS CASE
9 AMOUNTS TO ANYTHING THAT IS DEMONSTRABLE PREJUDICE AGAINST
10 YOUR CLIENT OR AGAINST MR. SHUPPER'S. SO, THE STUFF COMES
11 IN, SAVING AND EXCEPTING THE BULLETS AND THE CLEANING KIT FOR
12 RIGHT NOW UNTIL I HEAR MORE ABOUT THAT. OKAY?

13 MR. SNEED: YES, SIR. YOUR HONOR, MY NEXT MOTION IS TO
14 LIMIT ONE ASPECT OF FINGERPRINT EVIDENCE BY THE STATE. I
15 ANTICIPATE ESSENTIALLY THE STATE PUTTING AN EXPERT ON THE
16 STAND SAYING, YOU KNOW, I FOUND NO LATENTS IN THIS CASE AND I
17 DON'T EXPECT TO FIND LATENTS, ONLY IN A CERTAIN PERCENTAGE OF
18 CASES. AND —

19 MR. GASSER: WE DON'T INTEND TO DO THAT, YOUR HONOR. I
20 HATE TO INTERRUPT AGAIN, BUT TO SPEED THINGS ALONG, WE DON'T
21 INTEND ON DOING THAT.

22 MR. SNEED: THAT SPEEDS IT ALONG.

23 THE COURT: OKAY.

24 MR. SNEED: MY NEXT MOTION, YOUR HONOR, RELATES —

25 THE COURT: EXCUSE ME. I WANT TO MAKE SURE I UNDERSTAND

1 THIS. YOU DON'T INTEND TO OFFER EVIDENCE TO THE EFFECT THAT

2 —

3 MR. GASSER: I DON'T INTEND TO OFFER EVIDENCE, AND I
4 WOULD NEVER ASK A FINGERPRINT, NOR HAVE I EVER ASKED A
5 FINGERPRINT EXPERT, IN WHAT PERCENTAGE OF CASES DO YOU FIND A
6 FINGERPRINT ON A TREE OR A PIECE OF CLOTHING OR A CAR.

7 THE COURT: OKAY.

8 MR. GASSER: WE DON'T INTEND ON OFFERING PERCENTAGES THE
9 WAY DEFENSE COUNSEL ASKED PERCENTAGES OF THE DOG HANDLER. WE
10 DON'T INTEND ON DOING THAT.

11 THE COURT: OR A SOCK.

12 MR. GASSER: OR A SOCK.

13 THE COURT: OKAY. MR. SNEED.

14 MR. SNEED: THAT MAKES IT EASIER, YOUR HONOR. MY NEXT
15 MOTION RELATES TO DEFENDANT'S ALLEGED WANTED STATUS PRIOR TO
16 HIS ARREST. AND I —

17 THE COURT: I HEARD SOMETHING ABOUT "MIDLANDS MOST
18 WANTED". WAS HE PLACED ON THAT LIST?

19 MR. SNEED: NO, SIR.

20 THE COURT: OKAY.

21 MR. SNEED: THERE WAS APPARENTLY I GUESS BOLO, BE ON THE
22 LOOKOUT OR CPD PUT OUT A BOLO —

23 THE COURT: BOLO.

24 MR. SNEED: BOLO. — FOR BOTH OF THESE GENTLEMEN. AND
25 I WANTED TO OBJECT TO EVIDENCE TO THE EFFECT THAT THE POLICE

1 WANTED KENNETH JAMES. THAT IS NOT RELEVANT TO WHETHER HE
2 COMMITTED THIS CRIME OR NOT.

3 THE COURT: WELL, OF COURSE THE FACT THAT THEY ISSUED A
4 COMMUNIQUE SAYING THAT THEY WANTED KENNETH JAMES ABSENT
5 SOMETHING ELSE IS CLEARLY NOT RELEVANT TO ANY ISSUE IN THE
6 CASE. AND I AGREE WITH YOU. AND YOU WOULD AGREE, TOO, DON'T
7 YOU, MR. GASSER?

8 MR. GASSER: THE FACT THAT THEY ISSUED A "WANTED"
9 POSTER?

10 THE COURT: A COMMUNIQUE. UNLESS YOU CAN TIE IT UP AND
11 SOMEHOW MAKE IT GERMANE TO SOME ISSUE IN THIS CASE, IT'S NOT
12 GERMANE TO ANY ISSUE IN THIS CASE, IS IT?

13 MR. GASSER: I AGREE THAT IT MIGHT BECOME GERMANE IF
14 THIS COURT ALLOWS RHONDA HENRY TO TESTIFY.

15 THE COURT: I DON'T KNOW. I DON'T KNOW.

16 MR. GASSER: I AGREE —

17 THE COURT: I'M NOT THERE YET. OKAY?

18 MR. GASSER: RIGHT. I AGREE WITH YOU. AND WE DIDN'T
19 INTEND ON OFFERING THAT IN ANY MANNER UNLESS THIS COURT
20 ALLOWS RHONDA HENRY TO TESTIFY.

21 THE COURT: OKAY. WELL, SEE, I WILL NOT BE THREATENED
22 OR BULLIED. YOU CAN DO THAT TO HIM.

23 MR. SNEED: BUT, YOUR HONOR, THAT ALSO TIES INTO THIS
24 POST ARREST SILENCE, THAT THE — I'M SORRY. PRE-ARREST
25 SILENCE AND THE FLIGHT EVIDENCE. I THINK THEY GO

1 HAND-IN-HAND.

2 THE COURT: YOU MEAN THAT HE DIDN'T HEAR ANYTHING FROM
3 MR. KENNETH JAMES FOR SIX MONTHS BEFORE HE GOT ARRESTED OR
4 STUFF LIKE THAT?

5 MR. SNEED: THAT'S WHERE WE'RE HEADED.

6 THE COURT: I'M TRYING TO FIGURE THAT ONE OUT. DID HE
7 CALL YOU AT ALL? YOU KNOW, —

8 MR. GASSER: WELL, MAYBE I'VE MISSED SOMETHING.
9 BECAUSE, YOU KNOW, I GUESS IF I'M SITTING AT MY HOUSE, OR IF
10 I GO HOME TONIGHT FROM WORK AND SOMEBODY HAS KICKED OPEN MY
11 BACK DOOR AND LEFT A SEARCH WARRANT ON MY KITCHEN COUNTER AND
12 I HAVE COMMITTED NO WRONGS, MY UNDERSTANDING OF THE WHOLE
13 PURPOSE OF ALLOWING FLIGHT IS TO SHOW A GUILTY KNOWLEDGE.
14 THAT'S THE REASON WHY WE ALLOW FLIGHT, TO SHOW GUILTY
15 KNOWLEDGE AND INTENT AND THE DEFENDANT SOUGHT TO AVOID
16 APPREHENSION.

17 AND I JUST THINK THAT IT'S A REASONABLE ARGUMENT THAT
18 WHEN SOMEBODY COMES HOME THAT HAS COMMITTED NO WRONG AND
19 THEIR BACK DOOR HAS BEEN KICKED IN AND THEIR WHOLE HOUSE HAS
20 BEEN SEARCHED AND THERE'S A SEARCH WARRANT ON THE KITCHEN
21 COUNTER, THAT THAT IS EVIDENCE THAT A REASONABLE PERSON MIGHT
22 TAKE TO SHOW GUILTY KNOWLEDGE. THAT'S THE REASON WHY I'M
23 OFFERING IT. AND I THINK IT JUST PARALLELS TO THE EVIDENCE
24 OF FLIGHT.

25 IN STATE V. BECKHAM, THAT CELEBRATED CASE OUT OF

1 NEWBERRY COUNTY, YOU KNOW, THEY WERE ALLOWED TO GET INTO
2 EVIDENCE THAT THE -- NOT HAVING SPECIFIC -- YOU CAN'T CUT
3 INTO THE -- JUST LIKE WE CAN'T CUT INTO KENNETH JAMES'S HEAD;
4 THEY COULDN'T CUT INTO STEVEN BECKHAM'S HEAD TO FIND OUT
5 WHETHER OR NOT, YOU KNOW, WHAT HE KNEW AND WHEN HE KNEW IT.

6 THE CRITICAL FACTOR OF THE ADMISSIBILITY OF EVIDENCE OF
7 FLIGHT IS WHETHER THE TOTALITY OF THE EVIDENCE CREATES AN
8 INFERENCE THAT THE DEFENDANT HAD KNOWLEDGE THAT HE WAS BEING
9 SOUGHT BY AUTHORITIES.

10 THE COURT: DID YOU GET ALL THAT?

11 COURT REPORTER: YES, SIR.

12 THE COURT: OKAY.

13 MR. GASSER: I APOLOGIZE.

14 COURT REPORTER: BARELY.

15 MR. GASSER: IT CITES COMMONWEALTH V. JONES. "IT IS
16 SUFFICIENT IF CIRCUMSTANCES JUSTIFY INFERENCE THAT ACCUSED'S
17 ACTIONS WERE MOTIVATED AS A RESULT OF HIS BELIEF THAT
18 OFFICERS WERE AWARE OF HIS WRONGDOING AND WERE SEEKING HIM
19 FOR THAT PURPOSE."

20 THE COURT: ALL I'M GOING TO TELL YOU, MR. GASSER, IS AT
21 THIS POINT IN TIME EVIDENCE THAT KENNETH JAMES DIDN'T
22 COMMUNICATE WITH THEM DURING THIS FIVE-MONTH PERIOD AFTER THE
23 ISSUANCE OF THE SEARCH WARRANT AND PURPORTEDLY LEAVING IT IN
24 HIS HOUSE AND HE WAS ARRESTED ON DECEMBER 30TH? IS THAT
25 RIGHT? OR WHEN?

1 MR. SNEED: THE 15TH, YOUR HONOR.

2 THE COURT: DECEMBER 15TH, SIX AND A HALF MONTHS LATER.
3 ALL I'M SAYING IS, ABSENT ANYTHING ELSE, THAT TESTIMONY IS
4 NOT GOING TO COME IN, THAT HE DIDN'T COME IN CONTACT WITH
5 THEM.

6 MR. GASSER: NOW, LET ME, SO I AM AWARE OF THE COURT --
7 I DIDN'T INTEND ON HAVING THAT TESTIMONY COME BEFORE THE
8 JURY. I AM GOING TO -- I DID -- AND THAT'S THE REASON WHY I
9 HAD -- I WANTED TO MAKE SURE I KNEW WHAT THE RULES WERE
10 BEFORE ANY ERRORS WERE MADE. I INTEND ON ASKING TOMMY THOMAS
11 WHETHER OR NOT THEY KICKED OPEN THE BACK DOOR, WHETHER OR NOT
12 IT LOOKED AS IF PEOPLE WERE ACTIVELY LIVING IN THE HOUSE,
13 WHETHER OR NOT THEY LEFT A COPY OF THE SEARCH WARRANT THERE.
14 OF COURSE IT'S GOING TO COME OUT THAT HE WAS ARRESTED IN
15 DECEMBER. AND MY UNDERSTANDING OF FLIGHT, AND I KNOW WE
16 DON'T GET A CHARGE ON IT, BUT I INTEND ON ARGUING CERTAIN
17 INFERENCES OF THAT EVIDENCE IF WE REACH THAT STAGE.

18 THE COURT: WELL, I'M NOT SURE THAT IF WE REACH THAT
19 STAGE MAYBE WE'LL APPROACH THAT AGAIN. BUT IF YOU'RE NOT
20 GOING TO TRY TO GET ANY EVIDENCE IN FROM THOMAS THAT DID
21 KENNETH JAMES EVER COME IN CONTACT WITH YOU AGAIN, THEN OUR
22 PROBLEM IS SOLVED. OKAY? ALL RIGHT.

23 MR. SNEED: LET'S SEE, YOUR HONOR. NEXT, I BELIEVE THIS
24 WAS REFERENCED IN SOME OF THE IN CHAMBERS CONFERENCE, WE
25 PRESENTED CERTAIN EVIDENCE OF THE VICTIM, SOME OF HER PRIOR,

1 QUOTE, UNQUOTE ---

2 THE COURT: OH, JEEZ. YOU KNOW, THAT'S A LENGTHY
3 INQUIRY. WE'VE GOT A LONG WAY TO GO ON SOME OF THIS STUFF.
4 LET'S KEEP GOING. COMP ON. HURRY UP.

5 MR. SNEED: YES, SIR.

6 THE COURT: NO. I TELL YOU WHAT WE'RE GOING TO DO.
7 WE'RE GOING TO LUNCH. AT LEAST I AM. AND, YOU KNOW, I'M
8 GETTING TIRED OF ALL THIS. AND NOT THAT ANYBODY HAS DONE
9 ANYTHING WRONG IN DOING IT. BUT I'M GOING TO LUNCH. I'LL BE
10 BACK AT ABOUT 20 MINUTES TO 2. AND WE'LL TRY TO GET IN WHAT
11 WE CAN GET IN AT THAT POINT IN TIME. BUT I CAN'T THINK ABOUT
12 ALL THESE THINGS RIGHT NOW AND GIVE IT ANY KIND OF, YOU KNOW,
13 THOUGHTFUL CONSIDERATION UNTIL -- GIVEN THE STUFF I'VE
14 ABSORBED ALREADY. 20 MINUTES 'TIL 2, BE HERE.

15 (WHEREUPON, A LUNCH BREAK IS TAKEN)

16 THE COURT: OKAY. I THINK WE'RE READY. WE'VE GOT
17 EVERYBODY THAT WE NEED. SO, THERE ARE A NUMBER OF MOTIONS
18 THAT ARE FROM THE DEFENDANT TO GET INTO WHAT WOULD BE 608 AND
19 404, POTENTIALLY EVIDENCE WITH REGARD TO THE ALLEGED VICTIMS
20 IN THIS CASE. AND WHY DON'T YOU -- RATHER THAN LET'S TAKING
21 TESTIMONY -- AND LET ME TELL YOU THIS. ASSUMING WE DON'T
22 FINISH THIS BEFORE THE JURY IS ALL BACK HERE, WE'RE GOING TO
23 GO AHEAD AND BEGIN, AND WE'LL CROSS THESE BRIDGES WHEN WE
24 COME TO THEM. BUT WHAT IS IT SPECIFICALLY THAT YOU ALL WOULD
25 LIKE TO GET INTO WITH REGARD TO FIRST OF ALL *victim* ?

1 MR. SNEED: YES, SIR. THE LONG AND SHORT OF IT IS, 20
2 MONTHS BEFORE THIS INCIDENT SHE FILED A FALSE RAPE CLAIM.

3 THE COURT: THREE MONTHS?

4 MR. SNEED: 20 MONTHS.

5 THE COURT: 20. I'M SORRY.

6 MR. SNEED: A FALSE RAPE CLAIM UNDER CIRCUMSTANCES WITH
7 AT LEAST A SIMILAR MOTIVE TO THE CIRCUMSTANCES OF THIS
8 INCIDENT. AND THAT WOULD BE, SEPTEMBER '94 SHE FILED A FALSE
9 RAPE CLAIM AND SHE DID IT TO — BECAUSE SHE HAD SOME — SHE
10 WAS IN FINANCIAL STRAITS AND A DRUG PROBLEM THEN. THE NEXUS
11 WITH THIS INCIDENT IS AGAIN SHE WAS IN FINANCIAL STRAITS.
12 AND THE EVIDENCE OF THIS INCIDENT WOULD BE THE DAY BEFORE THE
13 INCIDENT SHE HAD SOME FRAUDULENT CHECK CHARGES PENDING IN A
14 MAGISTRATE COURT. SHE DIDN'T GO TO THAT. SHE MISSED IT,
15 FAILURE TO APPEAR; AND THEN MAY 30TH, THE DAY AFTER THE
16 INCIDENT, SHE MISSED IT. OBVIOUSLY IT'S MORE PROBATIVE FOR
17 MAY 28TH THAN MAY 30TH, THE DAY AFTER IT, IN THAT SHE LIED
18 SEPTEMBER '94 ABOUT RAPE TO GET HERSELF OUT OF A JAM, SO TO
19 SPEAK, AND THEN SHE DID IT THIS TIME TO GET HERSELF OUT OF A
20 JAM.

21 THE COURT: OKAY. NOW, HOW DO WE DEMONSTRATE THE
22 FALSITY OF THE CLAIM? YOU KNOW, THAT WOULD OF COURSE WHAT
23 YOU NEED POSSIBLY TO DO TO DISTINGUISH IT FROM THE BOITIER
24 SITUATION, HOW TO DO WE — HOW DO YOU ESTABLISH THE FALSITY
25 OF HER CLAIM? HAS SHE ADMITTED THAT SHE FALSELY FILED THIS

1 IN ORDER TO GET OUT OF A FINANCIAL JAM?

2 MR. SNEED: NOT TO MY KNOWLEDGE, YOUR HONOR. I DON'T
3 KNOW WHAT THE SOLICITOR WOULD HAVE TO SAY, BUT I DON'T THINK
4 SHE HAS.

5 MR. GASSER: YOUR HONOR, AS AN OFFICER OF THE COURT, I
6 CAN TELL YOU THAT WHEN FACED WITH -- WHEN WE WERE MADE AWARE
7 OF THE INCIDENT IN '94, I FELT LIKE AS AN OFFICER OF THE
8 COURT, TOOK IT UPON MYSELF WITH WITNESSES TO INQUIRE ABOUT
9 THAT, BECAUSE I NEEDED TO ASK HER ABOUT THAT, AND DEPENDING
10 UPON WHAT SHE TOLD ME, I NEEDED TO PROVIDE IT TO DEFENSE
11 COUNSEL AS POTENTIALLY EXCULPATORY.

12 THE COURT: SURE.

13 MR. GASSER: AND SHE INDICATED TO ME IN THE PRESENCE OF
14 MS. FRYAR AND MS. WILLIAMSON, ONE OF OUR INVESTIGATORS, IN
15 THE PRESENCE OF ONE OF OUR VICTIM ADVOCATES THAT WHAT
16 HAPPENED TO HER IN 1994 IN FACT HAPPENED TO HER, THAT SHE --
17 SHE HAS ALWAYS ACKNOWLEDGED AND SHE HAS ALWAYS ACKNOWLEDGED
18 AND NOT TRIED TO HIDE THE FACT THAT SHE DURING THAT PERIOD OF
19 TIME IN HER LIFE WAS INVOLVED WITH DRUGS. SHE HAD A BAD DRUG
20 PROBLEM.

21 SHE SOUGHT HELP FOR IT AT THE HOSPITALS. IT WAS BOTH --
22 THERE WAS MOSTLY CRACK COCAINE AND MARIJUANA. BUT THE
23 ADDICTION INVOLVED CRACK COCAINE. AND THAT SHE PLACED
24 HERSELF IN A PRETTY BAD SITUATION IN A CIRCUMSTANCE IN 1994
25 AND THAT SHE WAS RAPED. AND THAT SHE REPORTED IT AND WAS

1 DRIVEN BY A FRIEND TO THE HOSPITAL AND WENT THROUGH THE
2 PROTOCOL.

3 AND IT WASN'T -- AND AT THAT TIME HER FAMILY OF COURSE,
4 AND SHE EVEN ACKNOWLEDGED THIS, RIGHTFULLY SO IN SOME
5 REGARDS, DIDN'T TRUST HER, AND BECAUSE SHE WAS RUNNING WITH
6 THE WRONG CROWD AND SHE WAS BEING VERY IRRESPONSIBLE, YOU
7 KNOW, IMMEDIATELY QUESTIONED THAT STORY OF HERS AND PROVIDED
8 THAT INFORMATION TO THE POLICE. AND WHEN SHE WENT DOWN TO
9 GIVE HER FORMAL STATEMENT TO THE POLICE, SHE HAD A RAPE
10 CRISIS COUNSELOR WITNESS.

11 AND SHE INDICATED WHEN SHE FELT ALL THIS PRESSURE FROM
12 HER FAMILY AND FROM THE POLICE AND THAT NOBODY BELIEVED HER,
13 THAT SHE WAS RAPED, SHE DECIDED TO DEAL WITH IT HER OWN WAY,
14 AND THAT WAS TO GET COUNSELING THROUGH VOC REHAB. BUT SHE
15 DEALT WITH IT THAT WAY. BUT SHE'S NEVER DENIED THAT IT EVER
16 HAPPENED.

17 THERE'S NO POLICE REPORT. THERE'S NO OFFICER THAT CAN
18 COME IN AND SAY THAT SHE HAS RECANTED. THERE'S NO FAMILY
19 MEMBER THAT SAYS SHE HAS RECANTED; SHE MADE THE WHOLE THING
20 UP. THERE'S NONE OF THAT AT ALL. AND I WOULD SUBMIT I WOULD
21 AGREE WITH -- AT LEAST MY INTERPRETATION WITH THE COURT'S
22 GOING UNDER THE BOITER STANDARD THAT THAT'S AT LEAST ONE OF
23 THE FIRST INITIAL OBSTACLES OR INITIAL ISSUES THAT NEEDS TO
24 BE DECIDED AS TO WHETHER OR NOT IT WAS IN FACT A FABRICATION.

25 THE COURT: WELL, HERE'S THE DEAL, MR. SNEED. LET ME

1 JUST ASK YOU THIS. THE WAY I UNDERSTAND THIS PARTICULAR AREA
2 IS, FIRST OF ALL, LET'S ASSUME THAT THERE WAS AN ACTUAL
3 SEXUAL ASSAULT, THAT SHE'D BEEN SEXUALLY ASSAULTED
4 DEMONSTRABLY IN 1994. ABSENT ANY OTHER CIRCUMSTANCE, THAT
5 COULD NOT COME INTO PLAY IN CROSS EXAMINING HER, AS ANY KIND
6 OF IMPEACHMENT TESTIMONY OR ANYTHING LIKE THAT, COULD IT?

7 MR. SNEED: I AGREE THE RAPE SHIELD STATUTE KEEPS IT
8 OUT.

9 THE COURT: OKAY. WELL, YOU KNOW, JUST COMMON SENSE
10 ALSO KEEPS IT OUT, RIGHT?

11 MR. SNEED: YES, SIR.

12 THE COURT: BECAUSE IT'S NOT PROBATIVE OF ANY ISSUE IN
13 THE CASE. VICTIMHOOD IS NOT NECESSARILY. YOU CONTEND THAT
14 SHE HAS MADE A FALSE ALLEGATION OF SEXUAL ASSAULT.

15 MR. SNEED: YES, SIR.

16 THE COURT: AND YET YOU DON'T TELL ME ANYTHING TO BACK
17 THAT UP. IF YOU CAN TELL ME WHAT YOU INTEND TO OFFER IN
18 ORDER TO BACK IT UP, I MIGHT LISTEN TO YOU.

19 MR. SNEED: SURE. WELL, IT WOULD BE CIRCUMSTANTIAL
20 EVIDENCE MOST DEFINITELY, YOUR HONOR. IT WOULD BE PRIMARILY
21 BRINGING IN THE OFFICER, RESPONDING OFFICER WHO TOOK DOWN HER
22 COMPLAINT, OKAY, AND FLESHING OUT THE DETAILS OF WHAT SHE
23 TOLD THAT OFFICER. NOW, I HAVE A -- THERE IS AN INCIDENT
24 REPORT AND SHE DID GO TO THE HOSPITAL AS MR. GASSER SAID IN
25 SEPTEMBER OF '94, AND TRY AND GET INTO -- SHE BASICALLY, SHE

1 HAD A MONETARY DISAGREEMENT WITH HER COUSIN, BORROWED HER
2 COUSIN'S CAR, DIDN'T RETURN IT IN TIME.

3 THE COURT: RIGHT. AND WROTE THE CHECK FOR \$100 INSTEAD
4 OF FOR \$85. I READ ALL OF THAT. BUT WHAT I'M TRYING TO DO
5 IS ---

6 MR. SNEED: MY PROOF, YOUR HONOR, WOULD BE AT THIS POINT
7 I ONLY HAVE THAT OFFICER. I DON'T ---

8 THE COURT: PRIOR TO CROSS EXAMINATION I WILL ALLOW YOU
9 TO MAKE A PROFFER OUTSIDE THE PRESENCE OF THE JURY.

10 MR. SNEED: YES, SIR.

11 THE COURT: WITH REGARD TO WHAT HER -- WITH REGARD TO
12 WHAT QUESTIONS YOU WOULD ASK HER ON CROSS EXAMINATION. YOU
13 SEE WHAT I'M SAYING?

14 MR. SNEED: YES, SIR.

15 THE COURT: SO WE'LL BREAK HER EXAMINATION AT THAT POINT
16 AND WE'LL TRY TO DETERMINE -- LET YOU EXAMINE HER OUTSIDE THE
17 PRESENCE OF THE JURY TO SEE IF -- NOW, WHO IS THE OFFICER?
18 AND WHO WAS THE OFFICER, AND WHAT WOULD HE OR SHE TESTIFY TO?

19 MR. SNEED: IT'S A C.P.D. OFFICER CONYERS. OBVIOUSLY
20 SHE CANNOT REPEAT ALL THE HEARSAY THAT IS CONTAINED IN HER
21 REPORT. SHE WOULD ESSENTIALLY SAY MS. COMPLAINED OF A
22 RAPE TO ME. I TOOK DOWN THE REPORT. AND MS. HER
23 SUBSEQUENT FOLLOW-UP INVESTIGATION WASN'T ENTIRELY
24 FORTHCOMING.

25 THE COURT: SO, IN OTHER WORDS, SHE FAILED TO COOPERATE

1 WITH THE POLICE IN THE PURSUANCE OF THIS PARTICULAR CSC CASE.
2 IS THAT RIGHT?

3 MR. SNEED: THAT'S RIGHT. YOU KNOW, BEYOND THAT I WOULD
4 HAVE SOME HEARSAY PROBLEMS WITH OTHER GOOD INFORMATION FOR ME
5 IN THE REPORT. I'LL CONCEDE THAT. AND I HAVEN'T LOCATED ALL
6 THE WITNESSES.

7 THE COURT: AGAIN, I'M NOT GOING TO PRECLUDE YOU FROM
8 DOING STUFF LIKE THAT. BUT IT DOESN'T SOUND LIKE TO ME THAT
9 THAT SORT OF STUFF IS ADMISSIBLE. I'M NOT GOING TO SAY THAT
10 HOWEVER IN THE ABSENCE OF ALLOWING YOU TO MAKE A PROFFER IF
11 YOU WANT TO MAKE A PROFFER AT SOME POINT IN TIME. OKAY?

12 MR. SNEED: YES, SIR. YOUR HONOR, ONE QUESTION FOR THE
13 COURT. MY UNDERSTANDING IS IT'S A DIFFERENT ANALYSIS FOR IF
14 WE'RE ON CROSS VERSUS PRESENTING EXTRINSIC EVIDENCE.

15 THE COURT: I UNDERSTAND THAT. AND 608(B) DOES NOT
16 ALLOW PROOF OF SPECIFIC ACTS OF MISCONDUCT BY THE ADMISSION
17 OF EXTRINSIC EVIDENCE, DOES IT?

18 MR. SNEED: 608(B) DOES NOT. THAT'S RIGHT. BUT I CAN
19 ASK IT ON CROSS. I'M STUCK WITH THE ANSWER.

20 THE COURT: WELL, THAT'S WHAT WE SAY. THAT'S NOT REALLY
21 WHAT THE CASE IS. I MEAN, WE SAY THAT. BUT, ANYWAY, BUT
22 THEN WHAT WOULD YOU PROPOSE TO DO AFTER THAT?

23 MR. SNEED: IF THE —

24 THE COURT: IF YOU GET STUCK WITH THE ANSWER.

25 MR. SNEED: WELL, THEN I'VE GOT TO LIVE WITH IT. IT'S

1 MY PROBLEM FOR TAKING THAT RISK AND ASKING THE WITNESS THAT.

2 THE COURT: MM-HMM (AFFIRMATIVE).

3 MR. SNEED: BUT I DO THINK THAT 608(C) ALLOWS EXTRINSIC
4 EVIDENCE.

5 THE COURT: COULD BE. COULD BE. THAT HASN'T BEEN
6 ANSWERED IN THIS STATE, HAS IT?

7 MR. SNEED: I DON'T THINK SO.

8 THE COURT: SINCE SEPTEMBER THE 3RD, 1995, WHEN THESE
9 RULES WENT INTO EFFECT.

10 MR. SNEED: BUT THE BOITER ANALYSIS, I BELIEVE THAT
11 APPLIES TO -- WHEN YOU MAKE A DETERMINATION OF FALSITY, THAT
12 GOES TO THE EXTRINSIC EVIDENCE, AND WE PRESENT EXTRINSIC
13 EVIDENCE. BUT I DON'T BELIEVE BOITER APPLIES TO 608(B) AS
14 FAR AS INQUIRY ON CROSS.

15 THE COURT: WELL, --

16 MR. SNEED: BUT DEFINITELY THERE IS, FOR 608(B), YOU DO
17 HAVE TO MAKE THAT THRESHOLD DETERMINATION OF, IS IT RELATED
18 TO TRUTHFULNESS?

19 THE COURT: YOU SEE, I THINK IT'S KIND OF LIKE THE
20 SITUATION OF PUTTING SOMEBODY ON TO TAKE THE FIFTH AMENDMENT;
21 YOU KNOW, FRAUGHT WITH DANGER. I DON'T KNOW WHAT SHE'S GOING
22 TO SAY. NEITHER DO YOU. IF SHE SAYS SOMETHING BAD IN FRONT
23 OF THE JURY, THEN YOU REALLY, REALLY LOOK BAD, DON'T YOU?

24 MR. SNEED: (NODS HEAD AFFIRMATIVELY)

25 THE COURT: OKAY. SO, AGAIN, I'LL GIVE YOU SOME

1 OPPORTUNITY TO DO THAT. I'M NOT FINALLY RULING ON ANYTHING
2 RIGHT NOW. OKAY?

3 MR. SNEED: YES, SIR.

4 THE COURT: LET'S JUST NOT BRING IT UP IN OPENING
5 STATEMENTS.

6 MR. SNEED: YOUR HONOR, JUST A FEW MORE, AND THEN I'M
7 DONE ALTOGETHER, A FEW MORE MOTIONS. THIS MAY BE PREMATURE.
8 I DID A VERY SHORT BRIEF ABOUT SETTTLING THE DEFENDANT'S
9 RECORD. WE CAN WAIT UNTIL THE RIGHT TIME.

10 THE COURT: SURE. YEAH, WE'LL WAIT. WHAT ABOUT THIS
11 MOTION TO EXCLUDE HEARSAY STATEMENTS OF STATE'S WITNESSES?

12 MR. SNEED: YOUR HONOR, I REALIZE IT WOULD BE TIME
13 CONSUMING AND IT COULD BE PREMATURE TO GO THROUGH ALL THOSE.
14 I JUST HAD A FEW HIGHLIGHTS ON THAT. AND, SPECIFICALLY, —

15 THE COURT: MR. GASSER IS NOT GOING TO DO ANYTHING THAT
16 VIOLATES THE HEARSAY RULE. OKAY?

17 MR. SNEED: THERE WE GO. FINALLY, YOUR HONOR, I HAVE A
18 RENEWAL OF MY BRADY AND DISCOVERY MOTIONS. AND,
19 SPECIFICALLY, THE — I'M INQUIRING, NUMBER ONE, ABOUT, THERE
20 IS EVIDENCE OF VICTIM, WINFRED BULL'S, ALCOHOL OR DRUG USE.
21 AND THE REASON I SAY THAT IS YESTERDAY THE STATE HANDED ME A
22 REPORT TO THE EFFECT THAT MS. *Victim* WAS NOT USING
23 ALCOHOL AT THE TIME OF THE INCIDENT, WHICH JUST, I'VE GOT A
24 QUESTION IN MY MIND, WELL, GEE, DID THEY TEST WINFRED BULL?
25 AND, IF SO, I'D BE INTERESTED IN ANY EVIDENCE THEY HAVE TO

1 THAT EFFECT. THAT WOULD BE DEFINITELY A BRADY IMPLICATION.

2 MR. GASSER: NO. WE DON'T MAKE IT A HABIT OF TESTING
3 VICTIMS OF ARMED ROBBERIES FOR ALCOHOL USE.

4 MR. SNEED: WELL, THEY DID IT IN THIS CASE, AND THEY
5 DIDN'T DO IT ON MR. BULL.

6 MR. GASSER: IT'S PART OF THE RAPE PROTOCOL KIT.

7 THE COURT: RIGHT. I UNDERSTAND.

8 MR. SNEED: YOUR HONOR, I ALSO HAVE PAGE 5 OF 6 OF THE
9 RAPE PROTOCOL. IT'S A SIX-PAGE SHEET. I DON'T HAVE PAGE 5.

10 THE COURT: OKAY. WHAT ABOUT THAT, MR. "G"?

11 MR. GASSER: WELL, WE'VE GIVEN IT TO HIM. BUT IF HE
12 MISPLACED IT, WE'LL GIVE HIM ANOTHER COPY.

13 THE COURT: SURE.

14 MR. SNEED: NO. THEY HAVE GIVEN ME SEVERAL COPIES. I
15 JUST CAN'T FIND PAGE 5.

16 THE COURT: WELL, YOU KNOW, LET'S LET THEM LOOK AND SEE
17 IF THEIR COPY HAS PAGE 5. AND IF IT DOES, THEN THEY'LL GIVE
18 IT TO YOU, AND EVERYBODY WILL BE HAPPY. AND WHILE WE HAVE
19 THE JURY FILTERING IN, BEFORE WE GET THERE, NOT THAT — YOU
20 ALL HAVE CONCLUDED YOUR DISCUSSIONS?

21 MR. STRICKLER: YES, SIR.

22 THE COURT: OKAY.

23 MR. GASSER: WE HAVE PAGES 1, 2, 3, 4 AND 6. WE HAVE NO
24 PAGE 5. SO I'M —

25 THE COURT: YES, WE HAVE NO PAGE 5. OKAY. THAT'S

1 PROBABLY WHY YOU DON'T HAVE IT. NOW, THAT DOESN'T ALTER THE
2 FACT THAT THERE MAY BE A PAGE 5. AND SO I'M GOING TO ASK YOU
3 TO GET IT.

4 MR. GASSER: YES, SIR. I'M GETTING A BLANK COPY OF A
5 SEXUAL ASSAULT PROTOCOL FORM TO SEE WHAT PAGE 5 WOULD BE.

6 THE COURT: SURE.

7 MR. GASSER: I CAN SAY ALSO THAT WE HAVE -- WE'VE GOT A
8 COPY OF WHAT THE C.P.D. HAS, A COPY OF WHAT DNA SEROLOGY HAS.
9 AND I WENT BACK AND HAD AN INVESTIGATOR GO BACK AND AGAIN GET
10 ALL OF HER RECORDS FROM THE HOSPITAL. SO I'VE GOT THREE
11 DIFFERENT SOURCES AND WE STILL DON'T HAVE THAT PAGE 5. SO
12

13 THE COURT: I'VE GOT YOU.

14 MR. SNEED: NEXT, YOUR HONOR, PAGE 1 OF THE EVIDENCE
15 INVENTORY LOG SHEETS. I'VE GOTTEN TWO PAGES. THEY'RE NOT
16 NUMBERED. BUT THE WAY I READ THE PAGE, THERE SEEMS TO ME TO
17 BE A PAGE 1, AND I DON'T HAVE A COPY OF THAT.

18 THE COURT: OKAY. I'M GOING TO ASK YOU JUST KIND OF
19 GIVE IT MR. GASSER AND MS. FRYAR. SHOW THEM WHAT YOU'VE GOT
20 AND LET THEM COMPARE IT AGAINST WHAT THEY HAVE. AND IF THERE
21 IS A MISSING SITUATION, WE'LL DELVE INTO IT.

22 MR. STRICKLER: WE CAN TAKE CARE OF THAT AT THE END OF
23 THE DAY. YES, SIR. THANK YOU.

24 THE COURT: OKAY.

25 MR. SNEED: ALMOST DONE, YOUR HONOR. NEXT I REQUEST --

1 WELL, IT'S A SIMILAR ONE RELATING TO OFFICER NOTES. SO
2 PERHAPS I'LL GET TOGETHER WITH THE STATE AT THE END OF THE
3 DAY.

4 THE COURT: WELL, WE'LL TALK ABOUT THAT KIND OF STUFF AT
5 THE APPROPRIATE TIME.

6 MR. SNEED: YES, SIR. THEN BEG THE COURT'S INDULGENCE,
7 YOUR HONOR.

8 THE COURT: SURE. I HATE TO BRING UP STUFF WHEN YOU ALL
9 APPEAR TO BE QUITTING. BUT THERE WERE OTHER THINGS THAT YOU
10 ALL WANTED TO BRING UP CONCERNING MS. *Victims* BACKGROUND,
11 DRUG USE AND STUFF LIKE THAT. I KNOW THAT MR. SHUPPER
12 SPECIFICALLY MADE THAT MOTION. AND, AGAIN, THOSE ARE THE
13 KIND OF THINGS THAT I THINK THAT WE CAN POSSIBLY ADDRESS AT
14 THE CONCLUSION OF HER TESTIMONY SO AS NOT TO FURTHER DELAY
15 THESE FOLKS HERE UNLESS IT IS IMPORTANT TO YOU ALL TO GET
16 INTO THEM RIGHT NOW. AND, YOU KNOW, I'M NOT GOING TO GET MAD
17 IF SOMEBODY WANTS TO DO THAT. OBVIOUSLY THIS IS A —

18 MR. STRICKLER: I'LL BE OPEN FOR THE DEFENSE. AS TO
19 KENNETH JAMES, I DON'T FEEL ANY NEED TO HAVE THAT INFORMATION
20 AT THIS POINT IN TIME.

21 THE COURT: OKAY. WELL, GREAT. THEN WE'LL PROCEED
22 WITHOUT IT.

23 MR. STRICKLER: WELL, I DON'T — BEG THE COURT'S
24 INDULGENCE. I DON'T CLAIM TO SPEAK FOR MR. SHUPPER IN THAT
25 REGARD.

1 THE COURT: YEAH. I UNDERSTAND THAT.

2 MR. SHUPPER: IF I UNDERSTAND THE COURT, THE COURT'S
3 RULING, YOU WILL PERMIT THIS MATTER TO BE DEALT WITH SUBJECT
4 TO MY MOTION TO BE DEALT WITH AT A LATER DATE SO AS TO ---

5 THE COURT: SURE. NOW, YOU'VE GOT A NUMBER OF THINGS.
6 AND I'M SURE THAT THE OTHER SIDE JOINS IN, THE OTHER
7 DEFENDANT JOINS IN WITH IT. BUT YOU'VE GOT A NUMBER OF
8 SPECIFIC MATTERS THAT YOU SEEK INQUIRY INTO WITH REGARD TO
9 MS. BROWN.

10 MR. SHUPPER: YES, SIR.

11 THE COURT: AND CERTAINLY I'M GOING TO ALLOW YOU AN
12 OPPORTUNITY TO BE HEARD ON THAT BEFORE WE, YOU KNOW, CONCLUDE
13 HER TESTIMONY, BEFORE WE BEGIN HER CROSS EXAMINATION. OKAY?

14 MR. SNEED: YOUR HONOR, I DID HAVE FINALLY A RULE 6
15 MOTION. THE STATE DID A BLOOD ALCOHOL TEST ON MS. ^{victim} THE
16 NIGHT OF THE INCIDENT. IT WAS NEGATIVE FOR THAT. AND IN
17 ADDITION TO A HEARSAY PROBLEM, THERE'S A RULE 6 PROBLEM. I
18 BELIEVE THEY WOULD NEED THE SLED CHEMIST TO COME IN HERE AND
19 TESTIFY. AND SO, I DIDN'T SEE THAT SLED PERSON ON THEIR
20 WITNESS LIST. NOW, GRANTED, MS. ^{victim} I CAN GET UP HERE AND
21 SAY SHE DIDN'T HAVE ALCOHOL THAT NIGHT. I AGREE WITH THAT.
22 BUT FOR THE STATE TO GET A SLED PERSON TO SAY, YES, I DID HER
23 BLOOD TEST, WELL, THAT PERSON IS NOT EVEN ON THEIR WITNESS
24 LIST. SO I'M GOING TO OBJECT TO IT.

25 THE COURT: WELL, I DON'T THINK HE WAS GOING ATTEMPT TO

1 BOLSTER THAT TESTIMONY. WERE YOU?

2 MR. GASSER: NO. OF COURSE I WOULDN'T THINK AN OFFICER
3 OF THE COURT WOULD ATTEMPT TO INFER TO THE JURY THAT THERE
4 WAS SOMETHING WRONG WITH THE REPORT EITHER. SO ...

5 THE COURT: OKAY. WELL, IMPLY. HE MAY HAVE INFERRED
6 SOMETHING FROM THE SITUATION. OKAY. ALL RIGHT. IS
7 EVERYBODY HAPPY?

8 MR. GASSER: YOUR HONOR, THE OTHER THING, WINFRED BULL
9 WILL BE TESTIFYING THIS AFTERNOON, AND ---

10 THE COURT: OH, HE'S GOT BUNCHES OF RECORD, DOESN'T HE?
11 OR DOES HE?

12 MR. GASSER: WELL, AND WE NEED TO SETTLE HIS -- HE WOULD
13 BE THE ONLY ONE I WOULD THINK -- I THINK WE HAVE THREE
14 OFFICERS AND MR. BULL, IF WE CAN EVEN GET THAT FAR, THAT
15 WOULD TESTIFY THIS AFTERNOON. AND HE WOULD BE THE ONLY ONE
16 WHOSE RECORD WE'D HAVE TO SETTLE BEFORE HIS TESTIMONY.

17 IF YOU LOOK AT HIS -- OR OUR POSITION IS THAT UNDER RULE
18 609 THAT HIS 1986 CONVICTION FOR I BELIEVE P.W.I.D. COCAINE,
19 OR CRACK COCAINE, LET ME GET HIS RECORD, WOULD BE ADMISSIBLE
20 AS WOULD A RECENT SHOPLIFTING CONVICTION. BUT UNDER RULE 609
21 THAT WOULD BE THE ONLY IMPEACHABLE MATTERS.

22 THE COURT: OKAY. MR. SHUPPER AND MR. SNEED.

23 MR. SNEED: YOUR HONOR, I AGREE WITH MR. GASSER ON HIS
24 RULE 609. HOWEVER, IF SOMEHOW THEY OPEN THE DOOR, WE CAN GET
25 INTO OTHER ASPECTS. BUT FOR 609 PURPOSES, I CONCUR WITH

1 THAT.

2 THE COURT: OKAY. GREAT.

3 MR. SNEED: I WOULD HAVE A BRADY MOTION THOUGH IN REGARD
4 TO MR. BULL. HIS RAP SHEET INDICATES SEVERAL DRUG ARRESTS
5 AND SEVERAL DISMISSALS. AND THIS IS AN —

6 THE COURT: YOU SEEM TO IMPLY —

7 MR. SNEED: THAT —

8 THE COURT: — WITH ONE OF YOUR MOTIONS THAT THERE MAY
9 HAVE BEEN A SWEETHEART DEAL WITH MR. BULL REGARDING SOME OF
10 THE CHARGES AGAINST HIM —

11 MR. SNEED: OR HE'S —

12 THE COURT: — IN RETURN FOR HIS TESTIMONY IN THIS CASE
13 OR TO KEEP HIM HAPPY IN THIS CASE.

14 MR. SNEED: OR HE'S AN EXPERIENCED C.I., EXPERIENCED
15 NARC. AND ALL THOSE ARRESTS OCCURRED PRIOR TO THIS INCIDENT,
16 SO I CAN'T SAY THERE IS A DEAL. BUT IT SEEMS TO ME HE'S A
17 NARC. AND MR. GASSER MAY KNOW THAT OR NOT.

18 THE COURT: IF MR. GASSER KNOWS IT, HE'LL TELL YOU. BUT
19 IF HE — SUBJECT PERHAPS TO SOME SORT OF PROTECTIVE ORDER.
20 IF, HOWEVER, MR. GASSER DOESN'T KNOW AND IF YOU GET REAL
21 SPECIFIC WITH THIS SITUATION AND TELL MR. GASSER WHAT IT IS
22 YOU THINK THE POLICE MAY KNOW ABOUT WINFRED BULL THAT HASN'T
23 BEEN DISCLOSED, AND IF IT'S SOMETHING GERMANE TO HIS
24 CREDIBILITY, AND MR. GASSER WILL MAKE THE APPROPRIATE
25 INQUIRY, AND IT WILL BE DISCLOSED, AND EVERYTHING WILL BE

1 JUST FINE IN THAT REGARD. OKAY?

2 MR. SNEED: YES, SIR.

3 THE COURT: WE'LL GET THAT DONE. I'M SERIOUS. OKAY.

4 WHAT ELSE? MR. GASSER, ANYTHING FROM YOU, SIR?

5 MR. GASSER: JUST SO I'M CLEAR. MS. FRYAR IS GOING TO
6 ACTUALLY BE DOING MS. IN FRONT OF THE JURY. AND IT
7 WON'T BE 'TIL TOMORROW. SO I GUESS WE CAN TAKE THIS UP
8 BEFORE. I JUST WANT TO BE CLEAR. OF COURSE DEPENDING ON HOW
9 YOU RULE, WE WOULD OBVIOUSLY, TO DIFFUSE ANYTHING, WOULD
10 EXPECT TO GET INTO CERTAIN THINGS ON DIRECT EXAMINATION.

11 THE COURT: CERTAINLY. THE RULING WOULD BE MADE BEFORE
12 SHE TESTIFIES IF AT ALL POSSIBLE. OKAY?

13 MR. GASSER: OKAY. I JUST WANTED TO MAKE SURE.

14 THE COURT: UNLESS WE — NOW THAT WE KNOW THAT SHE'S NOT
15 GOING TO TESTIFY TODAY. OKAY. ALL RIGHT. IS THE JURY ALL
16 HERE?

17 THE BAILIFF: ALL HERE, JUDGE.

18 THE COURT: THEY ARE? DOES ANYBODY OTHER THAN ME NEED A
19 TWO-MINUTE BATHROOM BREAK?

20 SOMEBODY FROM THE GALLERY: YES, SIR.

21 THE COURT: NO, MA'AM. PLEASE, I'M GOING TO ASK YOU
22 AGAIN, PLEASE, MA'AM, I KNOW YOU'RE INTERESTED IN THIS, BUT
23 I'M NOT ASKING YOU. I'M ASKING THE PARTICIPANTS. BECAUSE
24 YOU CAN LEAVE AT ANY TIME, PLEASE, MA'AM. AND IF YOU SAY
25 SOMETHING AGAIN, YOU'RE GOING TO LEAVE. OKAY? THANK YOU.

1 MR. SHUPPER: IF YOUR HONOR PLEASE. BEFORE WE ADJOURN,
2 I JUST WANT TO MAKE SURE I UNDERSTAND THE COURT'S RULING ON
3 THE MATTERS ABOUT MR. BULL'S RECORD. THAT MR. GASSER WILL
4 INQUIRE -- I MADE SOME SPECIFIC ASSERTIONS ABOUT MR. SORENSON
5 BEING THE SOLICITOR AND THE P.R. BOND ON THE SECOND OFFENSE
6 DRUG CHARGE.

7 THE COURT: WELL, LET ME PUT IT TO YOU THIS WAY. MR.
8 GASSER AND MS. FRYAR WILL LOOK AT YOUR MOTION THAT YOU'VE
9 MADE AND THEY WILL INQUIRE INTO THOSE MATTERS.

10 MR. SHUPPER: THANK YOU, YOUR HONOR.

11 THE COURT: AND I KNOW THEY WILL. SO LET'S TAKE -- I'M
12 TALKING, I'M LESS THAN FIVE MINUTES ON THAT CLOCK, AS QUICKLY
13 AS YOU CAN RUN AND GET BACK, BE BACK IN HERE, AND WE'RE GOING
14 TO BRING THE JURY IN.

15 (WHEREUPON, A BREAK IS TAKEN)

16 THE COURT: MS. PENDERGRASS, IF YOU COULD, ASK MR.
17 HOLLIS TO BRING THE JURY IN. THEY'LL HAVE TO BE SWORN, MS.
18 PENDERGRASS, FIRST THING.

19 (JURY IN AT 2:05 P.M.)

20 THE BAILLIFF: THE JURY IS ALL PRESENT, YOUR HONOR.

21 THE COURT: THANK YOU, MR. BARROW AND MR. HOLLIS. AND,
22 MS. PENDERGRASS, IF YOU WOULD, PLEASE, THANK YOU FOR YOUR
23 PATIENCE, FOLKS. MS. PENDERGRASS, WOULD YOU ADMINISTER THE
24 OATH, PLEASE, MA'AM.

25 THE CLERK: LADIES AND GENTLEMEN OF THE JURY, PLEASE

1 STAND AND RAISE YOUR RIGHT HANDS TO BE SWORN.

2 (WHEREUPON, THE JURY IS SWORN)

3 THE COURT: FOLKS, THANK YOU FOR YOUR PATIENCE. WE'RE
4 NOW READY ALMOST TO BEGIN WITH THE TRIAL OF THE CASE OF THE
5 STATE AGAINST KENNETH JAMES AND ROBERT JAMES. AGAIN, EVEN
6 THOUGH THESE TWO INDIVIDUALS ARE BEING TRIED TOGETHER, YOU
7 MUST UNDERSTAND THAT EACH IS ENTITLED TO AN INDIVIDUALIZED
8 EVALUATION OR APPRAISAL OF THE EVIDENCE THAT IS PLACED BEFORE
9 YOU.

10 YOU ARE THE SOLE AND EXCLUSIVE JUDGES OF THE FACTS. AND
11 LET ME EXPLAIN THAT TO YOU A BIT. I'M CALLED A JUDGE ONLY
12 BECAUSE I'M A JUDGE OF WHAT THE LAW OF THIS STATE IS. IT'S
13 MY FUNCTION TO RULE ON THE ADMISSIBILITY OF EVIDENCE AND THAT
14 SORT OF THING. YOU AS FINDERS OF FACTS HAVE A FAR MORE
15 SIGNIFICANT ROLE BECAUSE YOU WILL EMBODY YOUR VIEW OF WHAT
16 THE FACTS ARE IN SOMETHING KNOWN AS A VERDICT WHICH YOU WILL
17 INSCRIBE IN STONE, AND IN THIS CASE MAY HAVE TO RENDER
18 VERDICTS ON MULTIPLE COUNTS OR MULTIPLE CHARGES AGAINST EACH
19 OF THE INDIVIDUALS CHARGED.

20 YOUR ROLE, AS I SAY, IS FAR MORE SIGNIFICANT THAN MINE,
21 BECAUSE ONCE YOU PUT THAT VERDICT DOWN, IT IS IN EFFECT
22 INSCRIBED IN STONE. IT CANNOT BE ALTERED. IT CAN'T BE
23 APPEALED. AND YOU MAY BE SURPRISED TO KNOW THAT. BUT THE
24 ONLY THING THAT CAN BE APPEALED IS AN ERROR OF LAW MADE BY
25 SOMEBODY LIKE ME, A JUDGE. IN OTHER WORDS, IF YOU COME UP

1 WITH THE WRONG VERDICT, NEITHER SIDE CAN APPEAL BASED ON THE
2 FACT THAT IT IS THE WRONG VERDICT. THAT'S WHY YOU'VE IN
3 EFFECT GOT TO GET IT RIGHT THE FIRST TIME. ONLY IF I MAKE
4 SOME MISTAKE THAT AFFECTS YOUR VERDICT MAY THIS CASE BE
5 APPEALED. AND LET ME EXPLAIN TO YOU HOW THAT MAY WORK.

6 AGAIN, EVERY ONE OF YOU HAS SEEN A CIVIL TRIAL OR A
7 CRIMINAL TRIAL TELEVISED OR IN A MOVIE. DURING THE COURSE OF
8 THAT TRIAL SOMEBODY GETS UP AND SAYS, "I OBJECT", USUALLY
9 AFTER THE OPPOSING LAWYER HAS POSED A QUESTION TO A WITNESS
10 TESTIFYING ON THE WITNESS STAND. AND THAT LAWYER, SHE OR HE,
11 USUALLY FOLLOWS UP THAT "I OBJECT" WITH A WORD LIKE "HEARSAY"
12 OR "RELEVANCE", OR THEY MIGHT THROW OUT A NUMBER, 402, 803,
13 SOMETHING LIKE THAT.

14 WHAT THEY'RE SAYING IS, HEY, JUDGE, THAT QUESTION OR THE
15 RESPONSE THAT IT SEEKS IS AGAINST THE LAW FOR THIS JURY TO
16 HEAR. THAT'S WHAT THEY'RE SAYING. WHAT LAW? WELL, THIS
17 LAW, THE SOUTH CAROLINA RULES OF EVIDENCE, A FAIRLY TIGHT
18 FRAMEWORK GOVERNING THE ADMISSIBILITY OF EVIDENCE IN A CASE
19 OF THIS NATURE OR FRANKLY IN A CASE OF ANY NATURE.

20 IF I AGREE, IF I DETERMINE, FOR INSTANCE, THAT THE
21 RESPONSE SOUGHT WOULD VIOLATE THE RULE AGAINST HEARSAY OR
22 THAT IT IS NOT LEGALLY RELEVANT TO ANY ISSUE IN THE CASE,
23 I'LL SAY SUSTAINED. YOU WON'T HEAR THE RESPONSE. IF,
24 HOWEVER, I WERE TO DETERMINE THAT, WELL, NO, IT DOESN'T
25 VIOLATE THE LAW AGAINST THE ADMISSIBILITY OF EVIDENCE, I'LL

1 SAY OVERRULED. OR WE MAY EVEN TAKE A BRIEF RECESS WHILE WE
2 DISCUSS IT OUTSIDE OF YOUR PRESENCE.

3 BUT IF I SAY OVERRULED, YOU'LL HEAR THE RESPONSE. THE
4 RESPONSE MIGHT BE AS SIMPLE AS YES OR NO. WHAT YOU DO WITH
5 THAT RESPONSE, YOUR ANALYSIS OF IT, IS A QUESTION OF FACT FOR
6 A JURY. IS IT TRUE? THAT'S A QUESTION OF FACT. I DON'T
7 HAVE ANY FUNCTION FOR DETERMINING WHAT THE TRUTH OF TESTIMONY
8 IS. YOU DO. BECAUSE YOU'RE THE SOLE AND EXCLUSIVE JUDGES OF
9 THE FACTS.

10 WHILE I MIGHT HAVE RULED THAT IT'S LEGALLY RELEVANT IN
11 THE FACE OF AN OBJECTION, YOU AS JURORS MIGHT DETERMINE IN
12 YOUR FACT-FINDING FUNCTION THAT IT HAS NO WEIGHT OR NO
13 SUFFICIENCY TO PROVE SOME FACT THAT IS AT ISSUE IN THIS CASE.
14 THAT'S A CALL FOR THE JURY, THE WEIGHT AND SUFFICIENCY OF
15 TESTIMONY TO PROVE FACTS IN EVIDENCE. IT'S NOT MY CALL.
16 IT'S YOURS AND YOURS ALONE. SO THAT'S THE DIFFERENCE BETWEEN
17 OUR ROLES, YOURS AGAIN BEING FAR MORE SIGNIFICANT THAN MINE.

18 NOW, THERE ARE A NUMBER OF CHARGES IN THIS CASE, AND THE
19 ATTORNEYS ARE GOING TO FLESH THEM OUT ON OPENING STATEMENT.
20 BUT SUFFICE IT TO SAY THAT EACH DEFENDANT, KENNETH JAMES AND
21 ROBERT JAMES, HAS ENTERED A PLEA OF NOT GUILTY TO EACH OF
22 THESE CHARGES. THOSE PLEAS OF NOT GUILTY PLACE UPON THE
23 STATE OF SOUTH CAROLINA, THE PROSECUTING ENTITY, SOMETHING
24 KNOWN AS THE BURDEN OF PROOF; AND THAT IS, THE BURDEN OF
25 PROVING GUILT, IF IT CAN, BY COMPETENT EVIDENCE SATISFYING A

1 UNANIMOUS JURY OF THE GUILT OF THE ACCUSED AS TO ONE OR MORE
2 OF THESE CHARGES, THE STANDARD BEING BEYOND A REASONABLE
3 DOUBT. I'LL EXPLAIN ALL OF THESE CONCEPTS TO YOU AT A LATER
4 TIME.

5 BEAR IN MIND THE DEFENDANTS, ALL OF WHOM UNDER OUR
6 SYSTEM AND, INDEED, UNDER THE SYSTEMS OF EVERY ONE OF OUR 50
7 STATES AND OUR FEDERAL GOVERNMENT, HAVE NO BURDEN OF PROOF.
8 THEY DO NOT HAVE TO PROVE THEIR FREEDOM FROM GUILT OR ABSENCE
9 FROM GUILT, BECAUSE IN MANY CIRCUMSTANCES THAT MIGHT BE AN
10 IMPOSSIBLE THING TO DO. THUS, WE ALWAYS PLACE UPON THE
11 ENTITY MAKING THE CHARGE THE BURDEN OF PROOF.

12 INDEED, THE DEFENDANTS EACH ARE ENTITLED TO SOMETHING
13 KNOWN AS THE PRESUMPTION OF INNOCENCE WHICH ENTITLES THEM TO
14 BE PRESUMED INNOCENT THROUGHOUT THESE PROCEEDINGS AND INTO
15 YOUR JURY ROOM WHEN AND IF YOU FINALLY BEGIN DELIBERATING.
16 AND THEY WOULD BE ENTITLED TO THAT PRESUMPTION OF INNOCENCE
17 AT THE ONSET OF YOUR DELIBERATIONS, AND THAT PRESUMPTION
18 COULD NOT BE REMOVED EXCEPT UPON A UNANIMOUS AND COLLECTIVE
19 FINDING BEYOND A REASONABLE DOUBT THAT THE DEFENDANTS ARE
20 GUILTY OF ONE OR MORE OF THE CHARGES. AND AS TO THAT CHARGE
21 OR CHARGES, THE PRESUMPTION OF INNOCENCE WOULD BE REMOVED BY
22 YOU AT THAT POINT IN TIME SHOULD THE PROOF EVER RISE TO THAT
23 LEVEL. IF IT DOESN'T, YOU ENTER A FINDING OF NOT GUILTY.

24 NOW, WHAT'S YOUR FUNCTION AS JURORS? AGAIN, TO BE THE
25 DETERMINERS OF THE FACTS. I'LL GIVE YOU THE WAYS THAT YOU

1 DETERMINE THE FACTS AT A LATER TIME, BUT THE FIRST ONE IS TO
2 PAY ATTENTION TO WHAT PEOPLE ARE SAYING ON THE WITNESS STAND.
3 NOW, WE HAVE THE MECHANICAL AND PHYSICAL CAPABILITY OF
4 PLAYING BACK EVIDENCE TO YOU EVEN AFTER YOU BEGIN
5 DELIBERATING. WE DON'T LIKE TO DO THAT. OKAY. WHY?
6 BECAUSE IT TAKES A LOT OF TIME.

7 IF, HOWEVER, IN A CONSCIENTIOUS EXERCISE OF YOUR
8 DELIBERATIVE FUNCTION YOU WERE TO DETERMINE THAT YOU NEEDED
9 TO HEAR THAT TESTIMONY AGAIN, WE CAN DO THAT. WHAT I'M
10 ASKING YOU TO DO HERE IS TO PAY CAREFUL ATTENTION NOW TO THE
11 WITNESSES AS THEY TESTIFY SO WE DON'T NEED TO DO THAT AT THE
12 END. BUT IF IT'S NECESSARY, WE WILL.

13 DO NOT TAKE NOTES. THIS TRIAL WILL BE SOMEWHAT LONGER
14 THAN THE AVERAGE TRIAL, BUT IT WILL NOT EXTEND BEYOND THE
15 CONFINES OF THIS WEEK. IN SHORT, I'VE BEEN IN TRIALS THAT
16 HAVE LASTED MONTHS. THIS TRIAL WON'T LAST THAT LONG. AND IF
17 YOU'RE BENDING DOWN WRITING SOMETHING DOWN YOU MAY MISS
18 SOMETHING THAT IS CRUCIAL OR CRITICAL THAT A WITNESS IS
19 TESTIFYING TO, AND BESIDES WHICH THERE IS AN ENORMOUS OVERLAY
20 OF SECURITY THAT MUST BE MAINTAINED OVER JURORS' NOTES.

21 IN SHORT, NOBODY CAN SEE THEM EXCEPT THE JUROR, AND THEY
22 CAN'T EVEN BE SEEN OR UTILIZED BY THE JUROR UNTIL
23 DELIBERATIONS. AND WE HAVE TO KEEP THEM LOCKED UP AND AWAY
24 FROM EVERYBODY. AND THERE IS NO NECESSITY AT THIS POINT IN
25 TIME, GIVEN THE PROJECTED LENGTH OF THIS TRIAL, FOR YOU TO DO

1 THAT.

2 AVOID WHAT I CALL THE COLUMBO SYNDROME. I THINK I MAY
3 HAVE ALREADY TOLD YOU NOT TO DO THAT. DON'T GO INVESTIGATING
4 SITES, LOCALES OR PEOPLE THAT YOU MAY HEAR MENTIONED. WE
5 DISCUSSED THAT BRIEFLY YESTERDAY. DON'T DISCUSS THE CASE
6 AMONG YOURSELVES. NEITHER SHOULD YOU DISCUSS IT WITH ANYONE
7 ELSE OUTSIDE OF YOUR NUMBER. I WILL TELL YOU THAT EVERY TIME
8 YOU LEAVE HERE, AND BECAUSE IT IS SERIOUS. YOU CANNOT
9 INDULGE OR ENGAGE IN PREMATURE DELIBERATIONS.

10 PAY ATTENTION. I WILL NOT LOOK AT YOU DURING THE COURSE
11 OF THIS TRIAL. I WILL LOOK IN THE CORNER OF THIS ROOM. I
12 WILL LOOK AT MY COMPUTER. I WILL LOOK DOWN WHEN I'M SIGNING
13 ORDERS, AS I JUST SIGNED ABOUT 30 OR 40 ORDERS. I DON'T WANT
14 TO WANT TO LOOK AT YOU DURING THE COURSE OF SOMEBODY
15 TESTIFYING OR DURING THE COURSE OF A LAWYER TALKING TO YOU.
16 WHY? BECAUSE IF I'M MAINTAINING EYE CONTACT WITH ONE OF YOU
17 ALL AND I INADVERTENTLY MAKE SOME FACIAL EXPRESSION OR MAKE
18 SOME GESTURE OR EVEN UTILIZE A TONE OF VOICE IN TALKING TO
19 SOMEBODY, YOU MAY THINK THAT I'M SIGNALING YOU THAT I'VE GOT
20 AN OPINION ABOUT THIS CASE. THE REASON I DON'T LOOK AT YOU
21 IS BECAUSE I DON'T HAVE AN OPINION ABOUT THIS CASE, BECAUSE I
22 CAN'T. I AM NOT ALLOWED TO INTRUDE UPON YOUR PROVINCE, WHICH
23 IS THE FACTS.

24 NOW, THERE IS ONE THING IN THAT REGARD. EVERY ONCE IN A
25 WHILE, WHILE I MIGHT BE NOT LOOKING AT YOU, I'M GOING TO

1 SNEAK A FURTIVE LITTLE GLANCE OVER THERE JUST TO -- THE
2 REASON I'M GOING TO DO THAT IS BECAUSE WE'VE GOT A CASE THAT
3 COVERS EVERYTHING IN THIS STATE. AND ONE OF THOSE CASES IS
4 CALLED THE STATE V. HERD. IT'S CALLED THE SLEEPING JUROR
5 CASE. OKAY?

6 SO I'M SUPPOSED TO EVERY ONCE IN A WHILE KIND OF LOOK
7 OVER THERE, SEE IF EVERYBODY IS A WAKE. IF SOMEBODY IS NOT
8 AWAKE, IF I SEE SOMEBODY NODDING OFF, YOU KNOW WHAT I'VE GOT
9 TO DO UNDER THE STATE V. HERD? I'VE GOT TO CONDUCT WHAT IS
10 KNOWN AS A PROBING AND TACTFUL INQUIRY INTO WHY YOU'RE
11 SLEEPING AND WHAT IT WAS THAT YOU MIGHT HAVE MISSED.

12 I DON'T KNOW ABOUT YOU ALL; BUT I CAN'T CONDUCT AN
13 INQUIRY THAT IS PROBING AND AT THE SAME TIME TACTFUL. I
14 DON'T KNOW HOW TO DO THAT. BECAUSE IT AIN'T GOING TO BE
15 TACTFUL IF I HAVE TO CONDUCT THE INQUIRY. YOU SEE? SO PAY
16 ATTENTION. I KNOW -- AND I WILL TELL YOU SOMETHING. THIS IS
17 A SERIOUS CASE TO BOTH SIDES OF THIS CASE. THIS IS VERY
18 SERIOUS AND YOUR RESPONSIBILITY IS SERIOUS.

19 I'M NOT BEING FLIPPANT HOWEVER WHEN I TELL YOU ALSO THAT
20 THIS IS NOT ALY MCBEALE. IT IS NOT L.A. LAW. THIS IS REAL
21 LIFE. SO THE EVIDENCE IN THIS CASE MAY NOT BE AS
22 SCINTILLATING AS YOU MIGHT NORMALLY FIND IT ON THE T.V. OR
23 MOVIE PRESENTATION. AND SOMETIMES IT WILL BE HARD TO
24 CONCENTRATE. THAT'S WHY WE'RE GOING TO LET YOU OUT OF THIS
25 COURTROOM ABOUT EVERY HOUR AND A HALF OR SO FOR COMFORT

1 BREAKS AND ALSO TO MAINTAIN YOUR ATTENTION SPAN. BUT IT WILL
2 BE NECESSARY FOR YOU TO PAY CAREFUL ATTENTION. WHY? BECAUSE
3 YOU SHOULD. YOU JUST TOOK AN OATH TO WELL AND TRULY TRY THIS
4 CASE FOR THE STATE AND FOR THESE TWO DEFENDANTS OVER HERE,
5 AND YOU WILL WE KNOW ADHERE TO THAT OATH.

6 NOW, THE WAY THE TRIAL IS GOING TO BREAK DOWN IS IN A
7 MOMENT THE LAWYERS ARE GOING TO STAND BEFORE YOU IN TURN AND
8 THEY'RE GOING TO GIVE YOU OPENING STATEMENTS. EACH SIDE --
9 AND THERE ARE THREE SIDES IN THIS CASE -- WILL GIVE YOU AN
10 OPENING STATEMENT. AND THAT WILL CONCERN WHERE THEY BELIEVE
11 THE EVIDENCE WILL LEAD YOU. IT'S A BLUEPRINT OR A ROAD MAP
12 OF WHERE THE EVIDENCE WILL GO.

13 FOLLOWING THAT -- THAT'S NOT EVIDENCE FROM WHICH YOU
14 WILL DECIDE THE CASE. IT IS A TOOL THAT YOU CAN USE TO
15 EVALUATE EVIDENCE.

16 FOLLOWING THAT THERE'LL BE THE PRESENTATION OF EVIDENCE
17 FROM WHICH YOU WILL ACTUALLY DECIDE THE CASE. AND FIRST THE
18 STATE WILL GO. AND BEAR IN MIND THAT THE DEFENDANTS HAVE
19 ABSOLUTELY NO OBLIGATION TO COME FORWARD WITH ANY EVIDENCE
20 WHATSOEVER. I DON'T KNOW WHAT'S GOING TO HAPPEN IN THAT
21 REGARD. BUT BEAR THAT IN MIND. DON'T BE LOOKING FOR THAT.
22 BECAUSE THE EVIDENCE THAT IS PRESENTED, WHATEVER IT HAPPENS
23 TO BE, IS THE EVIDENCE FROM WHICH YOU WILL DECIDE THIS CASE
24 AND NOTHING ELSE.

25 AFTER THAT THE LAWYERS ARE GOING TO ARGUE IN FRONT OF

1 YOU, TRY TO PERSUADE YOU TO THEIR POINT OF VIEW. AFTER THAT
2 I'LL GIVE YOU THE LAW, AND THEN AND ONLY THEN WILL YOU BE IN
3 A POSITION TO BEGIN YOUR DELIBERATIONS.

4 SO WITH THAT I AM GOING TO KEEP QUIET NOW FOR A LITTLE
5 WHILE, TURN IT OVER TO THE LAWYERS AND LET THE LAWYERS MAKE
6 THEIR OPENING STATEMENTS WITH REGARD TO THE STATE AGAINST
7 KENNETH JAMES AND THE STATE AGAINST ROBERT JAMES. MR. GASSER
8 OR MS. FRYAR.

9 MR. GASSER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
10 COURT.

11 THE COURT: MM-HMM (AFFIRMATIVE).

12 MR. GASSER: GOOD AFTERNOON, LADIES AND GENTLEMEN. ON
13 MAY THE 29TH, 1996, THAT YOUNG LADY SEATED OVER THERE THAT
14 YOU WERE INTRODUCED TO YESTERDAY, MS. *Wichm*, BEGAN
15 LIVING A NIGHTMARE, A NIGHTMARE THAT AS I STAND BEFORE YOU 13
16 LADIES AND GENTLEMEN HAS YET TO END. BECAUSE DURING THE
17 EARLY MORNING HOURS OF THAT DAY, MAY 29TH, 1996, SHE WAS
18 SEIZED AT GUNPOINT, SHE WAS STRIPPED OF HER CLOTHES, SHE WAS
19 ROBBED, AND SHE WAS SEXUALLY ASSAULTED, NOT BY ONE PERSON OR
20 TWO OR EVEN THREE OR FOUR; BUT SHE WAS SEIZED, STRIPPED,
21 ROBBED AND SEXUALLY ASSAULTED BY FIVE YOUNG MEN. AND TWO OF
22 THOSE PEOPLE THAT DID THIS TO HER THAT MORNING ARE IN THE
23 COURTROOM HERE TODAY. AND THEY ARE KENNETH JAMES AND ROBERT
24 JAMES.

25 LADIES AND GENTLEMEN, MY NAME IS JOHNNY GASSER. I WAS

1 INTRODUCED TO YOU YESTERDAY BY JUDGE PLEICONES. I AM THE
2 DEPUTY SOLICITOR HERE IN RICHLAND COUNTY. AND OVER THE NEXT
3 SEVERAL DAYS IT WILL BE MY DUTY, AND MS. KAREN FRYAR WHO IS
4 AN ASSISTANT SOLICITOR HERE IN RICHLAND COUNTY, IT WILL BE
5 OUR DUTY AND RESPONSIBILITY TO REPRESENT THE PEOPLE OF
6 RICHLAND COUNTY IN THE CASE AGAINST MR. KENNETH JAMES AND MR.
7 ROBERT JAMES.

8 SEATED BEHIND THE STATE'S TABLE IS MS. *victim* YOU
9 WERE INTRODUCED TO HER. SEVERAL ADVOCATES IN THE FIFTH
10 CIRCUIT SOLICITOR'S OFFICE, AND MR. WINFRED BULL BECAUSE HE
11 WAS A VICTIM THAT EVENING, TOO. YOU WILL HEAR EVIDENCE AND
12 TESTIMONY THAT HE WAS STRIPPED DOWN TO HIS UNDERSHORTS, THAT
13 HE WAS ASSAULTED, BEATEN UP, THAT HE WAS ROBBED AT GUNPOINT
14 AND THAT WHEN HE TOOK OFF RUNNING TO GET HELP FOR HIM AND HIS
15 FRIEND, HE WAS SHOT AT. FORTUNATELY THEY MISSED. THAT'S
16 WINFRED BULL. AND YOU WILL HEAR FROM HIM LATER ON THIS
17 AFTERNOON.

18 YOU'VE BEEN INTRODUCED TO MR. KENNETH JAMES AND HIS TWO
19 ATTORNEYS AND MR. ROBERT JAMES AND HIS ATTORNEY. THIS IS HIS
20 FAMILY SEATED BEHIND THE DEFENSE TABLE.

21 JUDGE PLEICONES HAS TOLD YOU OR INSTRUCTED YOU THAT YOU
22 ARE TO CONSIDER THE TESTIMONY AND THE EVIDENCE AGAINST BOTH
23 MR. KENNETH JAMES AND MR. ROBERT JAMES INDIVIDUALLY. AND
24 THAT IS TRUE. THERE ARE CERTAIN RULES AND PROCEDURES THAT
25 ALLOW THE STATE TO TRY BOTH OF THEM TOGETHER. BUT YOU AS

1 JURORS AS THE FACT FINDERS MUST CONSIDER THE EVIDENCE AND THE
2 TESTIMONY INDEPENDENTLY AGAINST BOTH MR. KENNETH JAMES AND
3 MR. ROBERT JAMES.

4 HOWEVER, THEY ARE CHARGED WITH THE SAME OFFENSES. THEY
5 ARE BOTH CHARGED WITH EIGHT OFFENSES. THERE ARE EIGHT
6 INDICTMENTS AGAINST KENNETH JAMES, AND THERE ARE EIGHT
7 INDICTMENTS AGAINST ROBERT JAMES. BOTH ARE CHARGED WITH TWO
8 COUNTS OF KIDNAPPING. BOTH ARE CHARGED WITH TWO COUNTS OF
9 ARMED ROBBERY. BOTH ARE CHARGED WITH TWO COUNTS OF
10 POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT
11 CRIME. BOTH ARE CHARGED WITH CRIMINAL SEXUAL CONDUCT IN THE
12 FIRST DEGREE. AND BOTH ARE CHARGED WITH ASSAULT WITH INTENT
13 TO KILL. SO THEY'RE CHARGED WITH THE SAME OFFENSES, BUT YOU
14 MUST CONSIDER WHILE YOU'RE LISTENING TO THE TESTIMONY AND
15 SEEING THE EXHIBITS AND THE EVIDENCE, YOU MUST CONSIDER THE
16 EVIDENCE AGAINST THEM SEPARATELY AND INDEPENDENTLY.

17 I'M NOT GOING TO READ ALL 16 INDICTMENTS, BECAUSE THE
18 WORDING IN EACH INDICTMENT IS RELATIVELY THE SAME EXCEPT THAT
19 IT'S DEMONSTRABLE AGAINST EACH INDIVIDUAL DEFENDANT.

20 KIDNAPPING. THE INDICTMENTS FOR KIDNAPPING, TWO
21 INDICTMENTS AGAINST KENNETH JAMES, TWO INDICTMENTS AGAINST
22 ROBERT JAMES; ONE INDICTMENT, THE VICTIM, C. BULL, ONE
23 INDICTMENT THE VICTIM, WINFRED BULL.

24 IT INDICATES THAT KENNETH JAMES AND/OR ROBERT JAMES DID
25 IN RICHLAND COUNTY, ON OR ABOUT MAY 29TH, 1996, UNLAWFULLY

1 SEIZE, CONFINE, INVEIGLE, DECOY, KIDNAP, ABDUCT OR CARRY AWAY
2 ANY PERSON, TO WIT: ; OR ON THE OTHER INDICIMENT,
3 AGAINST WINFRED BULL, BY ANY MEANS WHATSOEVER WITHOUT
4 AUTHORITY OF LAW. THAT'S THE TECHNICAL DEFINITION OF
5 KIDNAPPING.

6 NOW, JUDGE PLEICONES AT THE END OF THIS CASE, AFTER
7 YOU'VE RECEIVED ALL THE EVIDENCE AND YOU'VE RECEIVED ALL THE
8 TESTIMONY, JUDGE PLEICONES IS GOING TO CHARGE YOU ON WHAT THE
9 LAW IS AND THE APPLICABLE LAW WITH REGARDS TO THE OFFENSES IN
10 THIS CASE. BUT SUFFICE IT TO SAY, AS YOU'RE LISTENING TO THE
11 EVIDENCE AND TESTIMONY, IT'S IMPORTANT TO KNOW THAT ALL THE
12 STATE HAS TO PROVE IN KIDNAPPING IS THAT AN INDIVIDUAL WAS
13 SEIZED AND THAT THEIR ABILITY TO GET AWAY, THEIR ABILITY TO
14 — THEIR FREEDOM OF MOVEMENT, THEIR FREEDOM OF MOVEMENT WAS
15 KEPT FROM THEM FOR WHATEVER PERIOD OF TIME WITHOUT AUTHORITY
16 OF LAW.

17 THAT'S — IN SOUTH CAROLINA THAT'S THE DEFINITION OF
18 KIDNAPPING. YOU DON'T NEED TO KIDNAP SOMEBODY AND CARRY THEM
19 TO ANOTHER LOCATION AND SEND A RANSOM NOTE OR MAKE A RANSOM
20 TELEPHONE CALL TO THEIR FAMILY MEMBERS THAT YOU SEE IN MOVIES
21 OR READ IN BOOKS. THAT ALSO WOULD BE A DEFINITION OF
22 KIDNAPPING. BUT IN SOUTH CAROLINA, WHEN YOU SEIZE SOMEONE
23 AND YOU HOLD THEM AGAINST THEIR WILL, YOU KEEP THEIR FREEDOM
24 OF MOVEMENT AWAY FROM THEM WITHOUT THE AUTHORITY OF LAW,
25 WITHOUT THE LAWFUL ABILITY TO DO SO, YOU HAVE COMMITTED A

1 KIDNAPPING.

2 ARMED ROBBERY. THE TECHNICAL INDICTMENT READS THAT
3 KENNETH JAMES, AND OF COURSE AND ROBERT JAMES ON THOSE
4 INDICTMENTS AGAINST HIM, DID IN RICHLAND COUNTY, ON OR ABOUT
5 MAY 29TH, 1996, COMMIT ARMED ROBBERY BY FELONIOUSLY TAKING
6 FROM THE PERSON OR PRESENCE OF WINFRED BULL OR
7 WITH REFERENCE TO HER INDICTMENTS, BY MEANS OF FORCE OR
8 INTIMIDATION GOODS OR MONEY OF THE VICTIM, SUCH GOODS OR
9 MONIES BEING DESCRIBED AS U.S. CURRENCY, WITH THE INTENT TO
10 DEPRIVE THE OWNER PERMANENTLY OF SUCH PROPERTY WHILE ARMED
11 WITH A DEADLY WEAPON. THEY ALSO TOOK, WITH REFERENCE TO
12 , A PURSE IN HER PRESENCE OR FROM HER PRESENCE.

13 NOW, THAT'S THE TECHNICAL READING OF ARMED ROBBERY. BUT
14 WHAT IS ARMED ROBBERY? ARMED ROBBERY IS STEALING, LADIES AND
15 GENTLEMEN. JUDGE PLEICONES AT THE END OF THIS TRIAL WILL
16 CHARGE YOU THE LAW OF LARCENY AND THE LAW OF ROBBERY AND THE
17 LAW OF ARMED ROBBERY, BECAUSE YOU AS JURORS NEED TO KNOW WHAT
18 THE LAW IN SOUTH CAROLINA IS. AND HE WILL CHARGE YOU EACH
19 AND EVERY ELEMENT OF LARCENY, ROBBERY AND ARMED ROBBERY.

20 BUT WHAT IT COMES DOWN TO IS ARMED ROBBERY IS STEALING
21 FROM A PERSON'S BODY OR FROM THEIR PRESENCE THEIR ITEMS.
22 IT'S STEALING FROM THAT PERSON IN THEIR PRESENCE BY USING
23 FORCE AND/OR INTIMIDATION WHILE ARMED WITH A DEADLY WEAPON.
24 AND A HANDGUN IN SOUTH CAROLINA IS A DEADLY WEAPON. SO
25 THAT'S WHAT ARMED ROBBERY IS. THAT'S WHAT THE STATE MUST

1 PROVE TO YOU AS YOU'RE LISTENING TO THE EVIDENCE AND HEARING
2 FROM THE WITNESSES OVER THE NEXT COUPLE OF DAYS.

3 POSSESSION — AND BOTH OF THEM, BOTH KENNETH JAMES AND
4 ROBERT JAMES ARE CHARGED WITH TWO COUNTS OF ARMED ROBBERY,
5 ONE AGAINST WINFRED BULL AND ONE AGAINST -----

6 POSSESSION OF A FIREARM DURING THE COMMISSION OF A
7 VIOLENT CRIME. THAT'S EXACTLY WHAT IT SAYS. WE JUST SIMPLY
8 HAVE TO PROVE THAT THEY WERE IN POSSESSION, EITHER ACTUAL OR
9 CONSTRUCTIVE. AND I WILL GET TO THAT, AND JUDGE PLEICONES
10 WILL ULTIMATELY INSTRUCT YOU ON WHAT THAT MEANS. POSSESSION
11 OF A FIREARM, A HANDGUN DURING THE COMMISSION OF A VIOLENT
12 CRIME. AND THE JUDGE WILL INSTRUCT YOU THAT KIDNAPPING AND
13 ARMED ROBBERY AND CRIMINAL SEXUAL ASSAULT ARE ALL VIOLENT
14 CRIMES ACCORDING TO OUR LEGISLATURE. THERE AGAIN, BOTH OF
15 THEM ARE CHARGED WITH TWO COUNTS, ONE AGAINST WINFRED BULL,
16 ONE AGAINST -----

17 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. BOTH OF
18 THEM, BOTH DEFENDANTS ARE CHARGED THAT THEY DID IN RICHLAND
19 COUNTY, ON OR ABOUT MAY 29TH, 1996, ENGAGE IN SEXUAL BATTERY,
20 TO WIT: VAGINAL AND/OR ORAL SEX UPON OR WITH THE BODY OF

21 WITHOUT HER CONSENT. SUCH SEXUAL BATTERY WAS
22 ACCOMPLISHED BY EITHER, ONE, THE USE OF AGGRAVATED FORCE, TO
23 WIT: THE DEFENDANTS USED PHYSICAL FORCE AND VIOLENCE OF A
24 HIGH AND AGGRAVATED NATURE AND/OR THREATENED THE USE OF A
25 DEADLY WEAPON, AND/OR THE VICTIM SUBMITTED TO THE SEXUAL

1 BATTERY WHERE SHE WAS ALSO THE VICTIM OF A KIDNAPPING, A
2 ROBBERY OR ANY OTHER SIMILAR OFFENSE.

3 SO WHAT CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE IS,
4 THAT THERE WAS A SEXUAL BATTERY, A NON-CONSENSUAL INTRUSION
5 INTO THE VAGINAL CAVITY OR ORAL CAVITY IN THIS CASE OF

6 AN INTRUSION NO MATTER HOW SLIGHT AGAINST HER WILL.
7 AND IT WAS ACCOMPLISHED WITH AGGRAVATED FORCE.

8 AND JUDGE PLEICONES WILL DEFINE TO YOU WHAT AGGRAVATED
9 FORCE IS. THERE IS A NUMBER OF DEFINITIONS. ALL THE STATE
10 HAS TO DO WITH THEIR EVIDENCE IS FALL INTO ONE CATEGORY. I
11 SUBMIT TO YOU YOU'RE GOING TO HEAR EVIDENCE OF MULTIPLE
12 EXAMPLES OF AGGRAVATED FORCE THAT THESE FIVE INDIVIDUALS
13 USED, PARTICULARLY THESE TWO INDIVIDUALS THAT ARE ON TRIAL,
14 WHEN THEY COMMITTED A SEXUAL ASSAULT AGAINST CARLA BROWN.

15 ASSAULT WITH INTENT TO KILL. THAT THE DEFENDANTS DID IN
16 RICHLAND COUNTY, ON OR ABOUT MAY 29TH, 1996, WITH MALICE
17 AFORETHOUGHT COMMIT AN ASSAULT UPON ONE WINFRED BULL WITH
18 INTENT TO KILL THE SAID VICTIM. ASSAULT WITH INTENT TO KILL.
19 AN ASSAULT IS THREATENING TO DO BODILY HARM TO SOMEBODY WITH
20 THE PRESENT ABILITY TO CARRY OUT THAT HARM.

21 WHAT MOST PEOPLE ARE FAMILIAR WITH, LIKE AN ASSAULT AND
22 BATTERY, IF TWO FELLOWS ARE IN A BAR AND ONE OF THEM PUNCHES
23 THE OTHER ONE IN THE FACT, THAT'S AN ASSAULT AND BATTERY.
24 AND THE ASSAULT IS THE FIST AND HOLDING THEIR HAND UP, AND
25 THE BATTERY IS ACTUALLY CARRYING OUT THAT THREAT AND

1 UNLAWFULLY TOUCHING THAT PERSON.

2 AS I INDICATED, THE EVIDENCE WILL SHOW FORTUNATELY FOR
3 MR. BULL HE WAS NOT STRUCK BY THOSE BULLS. IF HE HAD BEEN,
4 THEN IT WOULD BE ASSAULT AND BATTERY WITH INTENT TO KILL. SO
5 THAT HE WASN'T STRUCK BY THOSE BULLETS, IT IS ASSAULT WITH
6 INTENT TO KILL. SO THE STATE MUST SIMPLY HAVE TO PROVE THAT
7 THERE WAS THREATENING CONDUCT ON THE PART OF THESE DEFENDANTS
8 AGAINST MR. BULL AND THAT THEY ACTED WITH MALICE
9 AFORETHOUGHT.

10 AND THAT IS A LEGAL TERM OF ART THAT THE JUDGE WILL
11 DEFINE TO YOU. SUFFICE IT TO SAY, MALICE COMES FROM THE WORD
12 "MALICIOUS". IT SPRINGS FROM WICKEDNESS. IF SOMEBODY IS
13 ACTING MALICIOUSLY WHEN ONE IS DOING SOMETHING THEY KNOW IS
14 WRONG WITHOUT LEGAL CAUSE OR EXCUSE, IT'S SOMEBODY DOING
15 SOMETHING WITH AN EVIL HEART, WITH AN EVIL MIND KNOWING IT'S
16 WRONG AGAINST AT HUMAN BEING. SO THAT'S WHAT ASSAULT WITH
17 INTENT TO KILL IS.

18 AND I DISCUSSED WITH YOU THOSE CHARGES, THOSE PARTICULAR
19 CHARGES: KIDNAPPING, ARMED ROBBERY, POSSESSION OF A FIREARM
20 DURING A CRIME OF VIOLENCE, CRIMINAL SEXUAL CONDUCT IN THE
21 FIRST DEGREE, AND ASSAULT WITH INTENT TO KILL, SO THAT WHILE
22 YOU'RE LISTENING TO THE TESTIMONY THAT THE STATE PRESENTS,
23 THE WITNESSES THAT COME INTO THIS COURTROOM AND PUT THEIR
24 HAND ON THIS BIBLE AND SWEAR OR AFFIRM TO TELL THE TRUTH, AND
25 YOU'RE SEEING THE EVIDENCE, THAT YOU HAVE SOME SORT OF

1 UNDERSTANDING OF WHAT THE CRIMES ARE, WHAT THE ELEMENTS OF
2 THE CRIMES ARE. AND THAT'S EXACTLY HOW WE'RE GOING TO PROVE
3 THAT.

4 I'M GOING TO TAKE A FEW MINUTES AT THIS TIME, AS JUDGE
5 PLEICONES INDICATED, WHAT OPENING STATEMENTS IS ABOUT, TO
6 GIVE YOU A BLUEPRINT, A SKETCH OF WHAT THE STATE INTENDS ON
7 PROVING.

8 WE INTEND ON PROVING SEVERAL THINGS, LADIES AND
9 GENTLEMEN. WE'RE GOING TO DO THAT BY CALLING WITNESSES AND
10 INTRODUCING EVIDENCE. WHAT YOU ARE GOING TO HEAR IS THAT
11 SOMETIME BETWEEN 12 MIDNIGHT AND 1:00 IN THE MORNING ON THE
12 MORNING OF WEDNESDAY, MAY THE 29TH, 1996, THAT
13 AND WINFRED BULL WERE DOWN IN T. S. MARTIN PARK. IT'S OFF
14 TWO NOTCH ROAD BY C. A. JOHNSON HIGH SCHOOL. W. A. PERRY
15 MIDDLE SCHOOL IS RIGHT THERE. IN FACT, W. A. PERRY MIDDLE
16 SCHOOL AND T. S. MARTIN PARK SHARE THE SAME DRIVEWAY.

17 AND THEY WERE DOWN THERE WATCHING SOFTBALL GAMES. AND
18 THE SOFTBALL GAME ENDED. AND THEY WERE SITTING ON THIS PARK
19 BENCH TABLE. AND THEY WERE SITTING RIGHT NEXT TO A PARKING
20 LOT, A LIGHTED PARKING LOT, WHICH NEXT TO THE PARKING LOT IS
21 THE MIDDLE SCHOOL WHICH IS LIGHTED AS WELL.

22 AND YOU WILL HEAR EVIDENCE AND TESTIMONY THAT TWO YOUNG
23 MEN APPROACHED MR. BULL AND M AS THEY WERE SITTING ON
24 THAT PICNIC TABLE. ONE OF THOSE YOUNG MEN WAS ROBERT JAMES,
25 THE DEFENDANT SEATED FARTHEST AWAY FROM YOU, THAT HE ASKED

1 MR. BULL FOR A LIGHT, THAT WHEN MR. BULL WENT IN HIS POCKET
2 TO GET A LIGHT ROBERT JAMES PRODUCED A PISTOL. AND AFTER HE
3 PRODUCED A PISTOL THREE OTHER YOUNG MEN CAME OUT FROM THE
4 GRAVEYARD SIDE OF THE PARK, AND ONE OF THOSE YOUNG MEN
5 IMMEDIATELY SEIZE , WHILE SHE WAS SITTING AT THAT
6 PICNIC TABLE, WALKED UP TO HER, CLOSER THAN I AM TO THE FIRST
7 ROW RIGHT HERE AND SEIZED HER. AND THAT YOUNG MAN WAS
8 KENNETH JAMES SEATED RIGHT HERE CLOSEST TO YOU. AND THAT HE
9 SEIZED HER.

10 AND YOU WILL HEAR TESTIMONY HOW HE WAS THE RING LEADER.
11 AND HE BROUGHT HER OVER TO ANOTHER AREA OF THE PARK. AND
12 THAT THEY SEIZED WINFRED BULL, SOME OF THE OTHER FELLOWS;
13 PARTICULARLY THE ONE, MR. JAMES WITH THE GUN. AND THAT THEY
14 STRIPPED OF HER CLOTHING AND THAT KENNETH JAMES
15 RIGHT THERE ON THE PARK BENCH HAD HIS WAY WITH HER. AND THAT
16 THEY WENT TO HER CAR, SEVERAL OF THEM DID, AND GOT THE PURSE
17 OUT OF THE TRUNK OF HER CAR, AND THAT THEY HELD WINFRED BULL
18 AT GUNPOINT, HER FRIEND, AS THEY TOOK TURNS PENETRATING HER,
19 HER MOUTH WITH THEIR PENISES, HER VAGINA WITH THEIR PENISES.
20 AND THEY DRAGGED HER INTO THAT CEMETERY. AND THAT SOMETIME
21 DURING THE COURSE OF THIS EVENT WINFRED BULL TOOK OFF RUNNING
22 IN HIS UNDERSHORTS. AND HE RAN TO A HOUSE FOR HELP TO CALL
23 911.

24 AND THEY CONTINUED TO HAVE THEIR WAY WITH
25 AND THEY TOOK SHOTS AT WINFRED BULL WHEN HE RAN AWAY. AND

1 YOU WILL HEAR TESTIMONY HOW THEY WERE WORRIED ABOUT THE
2 POLICE GETTING CALLED AND HOW EVENTUALLY SEVERAL OF THEM LEFT
3 RUNNING THROUGH A CEMETERY AND HOW KENNETH JAMES AND ANOTHER
4 INDIVIDUAL MARCHE UP INTO A BUILDING IN THE
5 CEMETERY WHERE KENNETH JAMES WAS NOT FINISHED, AND HE
6 ASSAULTED HER AGAIN.

7 THEN YOU WILL HEAR HOW THEY THEN LEFT HER THERE,
8 THREATENED TO KILL HER IF SHE CAME OUT OF THE CEMETERY, OUT
9 OF THE BUILDING. THEN YOU'LL HEAR TESTIMONY HOW WINFRED BULL
10 MADE IT TO A HOUSE AND WAS ABLE TO CALL 911, BLEEDING FROM
11 THE PHYSICAL ASSAULT ON HIM AND HOW EVENTUALLY THE POLICE
12 RESPONDED. AND YOU'LL HEAR TESTIMONY THE HOUSE THAT HE RAN
13 TO OF AN INDIVIDUAL. YOU'LL HEAR ALL OF THAT TESTIMONY. AND
14 THE WOMAN, THE MOTHER, A LADY THAT WAS THERE WHO WILL COME IN
15 AND VERIFY MR. BULL'S STORY.

16 HOW THE POLICE EVENTUALLY RESPONDED. YOU WILL HEAR FROM
17 THE FIRST OFFICER ON THE SCENE THIS AFTERNOON HOW HE FOUND
18 MS. WANDERING BETWEEN THE CEMETERY AND W. A. PERRY
19 NAKED. SHE WAS TAKEN TO THE HOSPITAL, AND A SEXUAL ASSAULT
20 PROTOCOL, EVIDENCE WAS GATHERED FROM INSIDE OF HER BODY. HOW
21 EVENTUALLY THAT EVIDENCE WAS TRANSPORTED TO SLED, HOW THE
22 DOCTOR THERE SAW SPERM UNDER SLIDES AT THE HOSPITAL. AND
23 VAGINAL SWABS WERE TAKEN FROM HER AND PACKAGED AND SENT TO
24 SLED.

25 YOU WILL HEAR THAT A DOG TRACKING UNIT WAS BROUGHT OUT

1 THERE. AND YOU WILL HEAR EVIDENCE AND TESTIMONY THAT A
2 SPECIAL DOG USED IN TRACKING PEOPLE WAS BROUGHT TO THE SCENE,
3 THE FRESH SCENE, AND HOW THAT DOG TRACKED, GOT ON A SCENT AND
4 WENT RIGHT THROUGH THAT CEMETERY, RIGHT THROUGH WHERE THE
5 INDIVIDUALS RAN, RIGHT TWO BLOCKS AWAY FROM THE INCIDENT,
6 RIGHT UP TO THE HOUSE WHERE KENNETH JAMES, THAT YOUNG MAN,
7 WAS LIVING AT THE TIME. YOU WILL HEAR ALL THE TESTIMONY OF
8 ALL THE HOUSES AND APARTMENTS THAT ARE AROUND THERE, THAT DOG
9 TRACKED THAT SCENT RIGHT UP TO KENNETH JAMES'S HOUSE.

10 AND YOU'RE GOING TO HEAR EVIDENCE AND TESTIMONY THAT A
11 HUNDRED DOLLAR BILL WAS TAKEN FROM MR. BULL AND THAT HOW THE
12 POLICE — MR. BULL TOLD THAT TO THE POLICE IMMEDIATELY RIGHT
13 THERE AT THE SCENE, AND HOW THE POLICE IMMEDIATELY DISPATCHED
14 PEOPLE TO THE CONVENIENCE STORES ALONG TWO NOTCH ROAD THAT
15 STAY OPEN 24 HOURS A NIGHT.

16 AND YOU'LL HEAR FROM A CONVENIENCE STORE OPERATOR WHERE
17 TWO INDIVIDUALS CAME INTO THE STORE TRYING TO CHANGE A
18 HUNDRED DOLLAR BILL INTO FIVE TWENTIES, AND HOW THE POLICE
19 SEIZED THAT TAPE. AND YOU WILL SEE THE FACES OF KENNETH
20 JAMES AND ROBERT JAMES ON THAT TAPE.

21 AND YOU WILL HEAR EVIDENCE AND TESTIMONY THAT LATER ON
22 THAT MORNING, OVER AN HOUR LATER, AFTER KENNETH JAMES WAS IN
23 THAT AMOCO STATION, THAT THE SAME CLERK NOTICED HIM WALKING
24 BY AGAIN WHEN A POLICE OFFICER WAS IN THERE GETTING COFFEE.
25 AND THE OFFICER APPROACHED HIM, STOPPED HIM, ASKED HIM WHAT

1 HIS NAME WAS, GOT HIS NAME. MR. JAMES ADMITTED HE LIVED AT
2 2528 ORR STREET.

3 YOU WILL HEAR ALL THE EVIDENCE AND TESTIMONY, LADIES AND
4 GENTLEMEN. BUT YOU WILL ALSO HEAR THAT'S HOW THEY GOT HIM AS
5 A SUSPECT WITHIN TWO TO THREE HOURS AFTER THE INCIDENT. AND
6 WITHIN 11 HOURS OF THE INCIDENT, AFTER MS. I WAS TAKEN TO
7 THE HOSPITAL AND AFTER THAT SEXUAL ASSAULT EXAM WAS PERFORMED
8 AND AFTER SHE WAS TAKEN HOME TO REST, SHE WAS BROUGHT BACK TO
9 THE COLUMBIA POLICE DEPARTMENT AND SHE WAS SHOWN A RANDOM
10 SAMPLE OF PHOTOGRAPHS OF SIX YOUNG MEN. AND SHE WAS ABLE TO
11 IDENTIFY WITHIN 12 HOURS THE FACE OF THE MAN THAT HAD
12 APPROACHED HER AND GOTTEN THIS CLOSE TO HER AND SEIZED HER
13 AND WAS THE RING LEADER AND THAT HAD HIS WAY WITH HER. AND
14 THAT MAN IS KENNETH JAMES. WITHIN 12 HOURS IDENTIFYING HIM
15 OUT OF A PHOTO SPREAD.

16 AND YOU WILL HEAR EVIDENCE AND TESTIMONY, LADIES AND
17 GENTLEMEN, THAT THREE WEEKS LATER THE POLICE PUT ROBERT
18 JAMES'S PHOTOGRAPH IN A PHOTO SPREAD AND HOW SHE WAS ABLE TO
19 IDENTIFY ROBERT JAMES AS THE INDIVIDUAL WITH THE GUN.

20 AND YOU'RE GOING TO HEAR MORE EVIDENCE, LADIES AND
21 GENTLEMEN, MORE EVIDENCE, THAT AFTER ROBERT JAMES AND KENNETH
22 JAMES WAS ARRESTED THAT BLOOD SAMPLES PURSUANT TO A COURT
23 ORDER WAS TAKEN FROM THEM. AND IT WAS SENT OUT TO SLED, AND
24 THAT THEY HAD A BLOOD SAMPLE FROM (I. AND THAT A
25 SLED DNA EXPERT WITH CARLA BROWN'S KNOWN BLOOD SAMPLE AND

1 KENNETH JAMES'S KNOWN BLOOD SAMPLE AND ROBERT JAMES'S KNOWN
2 BLOOD SAMPLE WAS ABLE TO EXTRACT THEIR DNA FROM THAT BLOOD.
3 AND THAT THE VAGINAL SWAB I TALKED ABOUT, THE SWAB THAT THE
4 DOCTOR HAD WHEN HE WENT INSIDE O DURING THAT
5 PROTOCOL AND SWABBED THAT SPERM, THAT DNA WAS REMOVED,
6 EXTRACTED FROM THAT SPERM. AND YOU'RE GOING TO HEAR EVIDENCE
7 AND TESTIMONY THAT THE DNA FROM THE SPERM INSIDE OF
8 VAGINAL CAVITY MATCHES THAT OF KENNETH JAMES.

9 THAT'S THE EVIDENCE AND THE TESTIMONY YOU'RE GOING TO
10 HEAR, LADIES AND GENTLEMEN, OVER THE NEXT SEVERAL DAYS.

11 NOW, TWO OTHER QUICK LEGAL MATTERS THAT YOU NEED TO
12 UNDERSTAND THE STATE SUBMITS TO YOU WHILE YOU'RE HEARING THIS
13 TESTIMONY. FIRST, IN SOUTH CAROLINA, THE JUDGE WILL INSTRUCT
14 YOU AT THE END OF THIS CASE OF THE THEORY KNOWN AS ACCOMPLICE
15 LIABILITY. BUT YOU NEED TO UNDERSTAND WHAT THAT MEANS WHILE
16 YOU'RE HEARING THIS EVIDENCE AND TESTIMONY AND THE LAWYERS
17 ASK QUESTIONS.

18 IN SOUTH CAROLINA, WHEN TWO OR MORE PEOPLE COMBINE
19 TOGETHER TO COMMIT A CRIME, THE HAND OF ONE IS THE HAND OF
20 ALL; THE ACT OF ONE IS THE ACT OF ALL. THAT'S VERY
21 IMPORTANT. EVEN THOUGH THERE WAS ONLY ONE GUN THAT YOU HEAR
22 OF IN THIS CASE, WHEN TWO OR MORE PEOPLE COMBINE TOGETHER TO
23 COMMIT ANY CRIME, ONE PERSON'S ACT AGAINST A PERSON, IN SOUTH
24 CAROLINA, ALL ARE RESPONSIBLE. THE HAND OF ONE IS THE HAND
25 OF ALL.

1 JUDGE PLEICONES WILL INSTRUCT YOU ON THAT FURTHER, AND I
2 WILL HAVE AN OPPORTUNITY TO COME BACK AND FLUSH THAT OUT
3 LATER ON DURING THE TRIAL AS WELL. BUT IT'S IMPORTANT THAT
4 YOU UNDERSTAND THAT THEORY AS YOU'RE HEARING THE EVIDENCE AND
5 TESTIMONY AND LISTENING TO THE VICTIMS IN THIS CASE AND THE
6 QUESTIONING OF THE LAWYERS AS TO WHO DID WHAT.

7 SECONDLY, CREDIBILITY. YOU RECALL JUDGE PLEICONES
8 TELLING YOU THAT HE HAS NO OPINION BECAUSE HE IS NOT ALLOWED
9 TO HAVE AN OPINION. IF YOU RECALL THAT. BECAUSE HE'S THE
10 JUDGE. HE IS THE SOLE JUDGE OF THE LAW. AND JUST AS HE IS
11 THE SOLE JUDGE OF THE LAW AND WILL MAKE JUDICIAL RULINGS ON
12 CERTAIN EVIDENCE THAT HE EXPLAINED TO YOU, OBJECTIONS AND
13 THAT SORT OF THING, YOU LADIES AND GENTLEMEN ARE THE SOLE
14 JUDGES OF THE FACTS, AS JUDGE PLEICONES STATED TO YOU.

15 AND WITH THAT RESPONSIBILITY YOU BECOME THE SOLE JUDGES
16 OF THE CREDIBILITY OF EACH AND EVERY WITNESS, EVERY WITNESS
17 THAT TAKES THIS WITNESS STAND. AND YOU BRING WITH YOU THE
18 GREATEST TOOL EACH OF YOU POSSESS, AND THAT IS YOUR COMMON
19 SENSE. AND I ASK YOU TO REMEMBER THAT, TO REMEMBER THAT
20 TOOL, THE COMMON SENSE THAT YOU'RE USING THAT YOU HAVE WITH
21 YOU WHEN YOU'RE LISTENING TO THE QUESTIONS BUT MOST
22 IMPORTANTLY THE ANSWERS THAT THE WITNESSES ARE GIVING FROM
23 THIS WITNESS STAND.

24 LADIES AND GENTLEMEN, IN ADVANCE, ON BEHALF OF THE
25 PEOPLE OF THIS COUNTY I THANK YOU. YOU TOOK AN OATH THAT YOU

1 WOULD WELL AND TRULY TRY BETWEEN THE STATE OF SOUTH CAROLINA
2 AND THE DEFENDANTS AT BAR. BECAUSE JUST AS THIS IS KENNETH
3 AND ROBERT JAMES'S ONLY DAY IN COURT, THIS IS AND
4 WINFRED BULL'S ONLY DAY IN COURT AS WELL.

5 THE STATE SUBMITS TO YOU AFTER YOU'VE HEARD ALL OF THIS
6 EVIDENCE IN THIS CASE AND HEARD THE LAW AS APPLICABLE TO YOU
7 AND INSTRUCTED YOU BY JUDGE PLEICONES, YOUR VERDICT CAN ONLY
8 BE ONE THING, GUILTY AS CHARGED. THANK YOU.

9 THE COURT: THANK YOU, MR. GASSER. MR. STRICKLER OR MR.
10 SNEED, ON BEHALF OF KENNETH JAMES.

11 MR. STRICKLER: MAY IT PLEASE THE COURT, YOUR HONOR.

12 THE COURT: YES, SIR.

13 MR. STRICKLER: LADIES AND GENTLEMEN OF THE JURY, I'VE
14 BEEN INTRODUCED TO YOU BEFORE. MY NAME IS DOUG STRICKLER.
15 MR. SNEED AND I REPRESENT KENNETH JAMES. I'D LIKE TO TAKE
16 THIS OPPORTUNITY TO TALK WITH YOU BRIEFLY ABOUT WHAT THIS
17 CASE IS ABOUT. AND IT'S REALLY ABOUT ONE WORD AND ONE WORD
18 ALONE, AND THAT IS OPINION. OPINION.

19 YOU KNOW, THERE ARE A VARIETY OF EVIDENCE -- THERE ARE A
20 VARIETY OF TYPES OF EVIDENCE THAT YOU CAN HEAR IN COURT. BUT
21 WHAT YOU'RE GOING TO HEAR IN THIS CASE AS TO THE GUILT OF
22 KENNETH JAMES IS OPINION.

23 NOW, YOU WILL HEAR THE OPINION OF MS THAT KENNETH
24 JAMES IS THE PERSON WHO ASSAULTED HER. YOU'LL HAVE AN
25 OPPORTUNITY TO EXAMINE THE CHANCE SHE HAD TO FORM THAT

1 OPINION. YOU WILL HAVE THE OPPORTUNITY TO APPLY YOUR COMMON
2 SENSE IN EVALUATING WHETHER OR NOT SHE HAD THE OPPORTUNITY TO
3 IDENTIFY SOMEONE, OR ANYONE.

4 YOU WILL HAVE THE OPINION OF A POLICE OFFICER THAT A DOG
5 FOLLOWED A TRACK FROM THE SCENE TO A HOUSE ON ORR STREET.
6 THAT'S OPINION AGAIN. YOU WILL HAVE THE OPPORTUNITY TO
7 EVALUATE WHETHER THAT OPINION IS CORRECT OR NOT, BECAUSE
8 YOU'LL HAVE THE OPPORTUNITY TO EVALUATE WHETHER THAT DOG
9 FOLLOWED THE TRACK OR NOT.

10 YOU'LL HAVE THE OPINION OF AN EMPLOYEE AT A CONVENIENCE
11 STORE THAT THE PERSON SHE SAW IN THE MORNING HOURS WAS
12 KENNETH JAMES. AND YOU'LL HAVE SOME PHOTOGRAPHS OR VIDEOTAPE
13 FROM THAT STORE. AND YOU'LL HAVE THE OPPORTUNITY TO EVALUATE
14 WHETHER HER OPINION IS CORRECT OR NOT.

15 YOU WILL HAVE THE OPINION OF AN AGENT OF THE STATE LAW
16 ENFORCEMENT DIVISION THAT DNA FROM A SAMPLE RECOVERED FROM
17 MS. MATCHES KENNETH JAMES. YOU WILL HAVE THE
18 OPPORTUNITY TO EVALUATE HOW RELIABLE THAT OPINION IS.

19 WHAT YOU HAVE IS OPINION UPON OPINION UPON OPINION.

20 WHAT YOU WILL HEAR ON BEHALF OF KENNETH JAMES DURING THE
21 STATE'S CASE IS QUESTIONS ON OUR PART DESIGNED TO HELP YOU IN
22 ASSESSING WHETHER OR NOT THE OPINIONS YOU HEAR CAN BE RELIED
23 UPON. OF NECESSITY WE WILL HAVE TO ASK SOME QUESTIONS WHICH
24 ARE PERHAPS EMBARRASSING. THEY'RE NOT EASY TO ASK SOMETTIMES.
25 ALL THE QUESTIONS IN A CASE SUCH AS THIS ARE ASKED IN AN

1 , EFFORT TO HELP YOU ASSESS THE RELIABILITY OF THE OPINIONS
2 YOU'LL BE PRESENTED WITH.

3 SO, I DON'T STAND HERE TO MAKE LIGHT OF ANYTHING THAT
4 HAPPENED TO MS. THERE'S NOTHING I CAN DO ABOUT THAT.
5 I CERTAINLY DON'T MAKE LIGHT OF WHAT HAPPENED TO HER. WHAT I
6 AM CONCERNED WITH IS WHAT WILL HAPPEN TO KENNETH JAMES.
7 BECAUSE AT THE END OF THIS CASE THE STATE WILL ASK YOU ALL TO
8 RELY ON THE OPINIONS THAT YOU'VE HEARD TO MAKE A DECISION AS
9 TO THE GUILT OR INNOCENCE OF KENNETH JAMES.

10 THE LAW GIVES YOU SOME TOOLS TO APPLY. FIRST OF ALL,
11 THE LAW TELLS YOU THAT UNLESS YOU'RE SATISFIED -- BACK UP.
12 FIRST THE LAW TELLS YOU THAT RIGHT NOW YOU ALL PRESUME THAT
13 HE IS NOT GUILTY. THE JUDGE SAYS THAT IF YOU ARE ASKED YOUR
14 OPINION, YOUR OPINION AT THIS POINT IN TIME, YOUR OPINION
15 WOULD BE KENNETH JAMES IS NOT GUILTY, BECAUSE I PRESUME HIM
16 TO BE INNOCENT, AS HIS HONOR HAS TOLD YOU THE LAW IS.

17 SO IF THERE IS AN OPINION IN THIS GROUP AT THIS POINT IN
18 TIME, THAT OPINION SHOULD BE HE'S NOT GUILTY. I'VE HEARD NO
19 EVIDENCE TO ESTABLISH THAT. SO THE FIRST ASSISTANCE THE LAW
20 CAN GIVE YOU IN EVALUATING THE OPINIONS YOU WILL HEAR IS TO
21 PRESUME KENNETH NOT GUILTY.

22 THE SECOND ASSISTANCE THE LAW CAN GIVE YOU IN EVALUATING
23 THE OPINIONS YOU HEAR IS THAT IN ORDER FOR THE FIRST OPINION
24 TO CHANGE, THAT HE'S NOT GUILTY, THE STATE OF SOUTH CAROLINA
25 HAS TO MAKE THAT OPINION CHANGE. HIS HONOR HAS TOLD YOU THE

1 BURDEN OF PROOF IS ON THE STATE OF SOUTH CAROLINA, ON THE
2 REPRESENTATIVES OF THE PEOPLE. WELL, NOT THE REPRESENTATTIVES
3 OF ALL THE PEOPLE, BECAUSE I CAN ASSURE YOU, MR. GASSER, MS.
4 FRYAR DO NOT REPRESENT KENNETH JAMES, AND HE'S A CITIZEN OF
5 RICHLAND COUNTY.

6 SO, THE SECOND HELP THE LAW CAN BE TO YOU IN EVALUATING
7 THE OPINIONS YOU'LL BE PRESENTED IS WHETHER THE STATE HAS
8 DONE WHAT THEY CAN DO TO CHANGE YOUR FIRST OPINION, WHICH IS
9 THAT KENNETH IS NOT GUILTY.

10 THE THIRD AID THAT THE LAW CAN GIVE YOU IN THIS JOB THAT
11 YOU ALL HAVE IS TO TELL YOU THAT BEFORE THE STATE CAN CHANGE
12 THIS OPINION THEY MUST PROVE GUILT BEYOND A REASONABLE DOUBT.
13 BEYOND A REASONABLE DOUBT. THAT'S THE HIGHEST STANDARD OF
14 PROOF KNOWN IN THE LAW OF THIS COUNTRY. I'LL TALK WITH YOU
15 MORE ABOUT THAT AT THE END OF THE CASE.

16 I'LL JUST LEAVE IT AT THIS AT THIS POINT, FOLKS. I ASK
17 YOU, I BEG YOU ALL, PLEASE GIVE YOUR CLOSE ATTENTION TO THE
18 EVIDENCE IN THIS CASE. GIVE YOUR CLOSE ATTENTION TO THE
19 OPINIONS THAT YOU WILL HEAR. GIVE YOUR CLOSE ATTENTION TO
20 THE QUESTIONS THAT ARE ASKED, NOT BECAUSE THEY'RE EVIDENCE,
21 BUT FOR THE ANSWERS THAT THEY GET, BECAUSE THE QUESTIONS THAT
22 ARE ASKED OF THE STATE'S WITNESSES WILL SUPPLY THE ANSWERS AS
23 TO WHETHER YOU CAN RELY ON THE OPINIONS YOU HEAR.

24 I SUBMIT TO YOU THAT WHEN YOU HAVE A CHANCE TO DISCUSS
25 THE EVIDENCE AND APPLY THE LAW AS HIS HONOR WILL CHARGE IT TO

1 YOU AT THE END OF THIS CASE, YOUR OPINION NOW THAT KENNETH IS
2 NOT GUILTY WILL REMAIN YOUR OPINION THEN. AND I WOULD ASK
3 YOU AT THAT TIME TO RETURN VERDICTS OF NOT GUILTY AS TO EACH
4 OF THESE CHARGES. THANK YOU.

5 THE COURT: THANK YOU, MR. STRICKLER. MR. SHUPPER ON
6 BEHALF OF ROBERT JAMES.

7 MR. SHUPPER: THANK YOU, YOUR HONOR. GOOD AFTERNOON,
8 LADIES AND GENTLEMEN OF THE JURY. MY NAME IS JOHN SHUPPER,
9 AND I REPRESENT ROBERT JAMES WHO IS SITTING NEXT TO THE
10 CRUTCHES AT THE FAR TABLE. HE WOULD STAND BUT HE'S GOT A
11 HURT FOOT.

12 THE JUDGE HAS TOUCHED UPON AND MR. STRICKLER HAS
13 FOLLOWED UP ON CERTAIN PRINCIPLES OF OUR AMERICAN JUDICIAL
14 SYSTEM THAT ATTACH TO CRIMINAL PROCEEDINGS. THE PRESUMPTION
15 OF INNOCENCE. THAT MEANS ROBERT SITS THERE CLOAKED IN THE
16 PRESUMPTION OF INNOCENCE.

17 THE BURDEN OF PROOF IS ANOTHER PRINCIPLE AND
18 REQUIREMENT. THE STATE THROUGH MR. GASSER AND MS. FRYAR MUST
19 CONVINCE YOU BEYOND A REASONABLE DOUBT THAT THAT CLOAK OF
20 INNOCENCE HAS BEEN PENETRATED.

21 NOW, I CAME TO THE UNIVERSITY OF SOUTH CAROLINA IN 1966
22 TO ATTEND THE UNIVERSITY BECAUSE OF THEIR NAVY R.O.T.C.
23 PROGRAM. MY FATHER WAS A CAREER NAVAL OFFICER. MY BROTHER
24 IS A NAVY PILOT. MY FATHER GRADUATED FROM THE NAVAL ACADEMY
25 IN 1937. HE SPENT SO MANY YEARS AT SEA, I CAN HARDLY COUNT;

1 BUT MY BROTHER WAS BORN IN PEARL HARBOR. MY MOTHER WAS
2 PREGNANT WITH MY BROTHER -- WITH MY SISTER -- WHEN PEARL
3 HARBOR WAS BOMBED AND MY FATHER WAS IN THE FLEET. HE DIDN'T
4 COME HOME UNTIL 1946. HE WAS IN COMMAND OF WAR SHIPS,
5 DEFENDING THIS COUNTRY, DEFENDING THESE PRINCIPLES THAT I AM
6 BRINGING BEFORE YOU TODAY ON BEHALF OF ROBERT ANTHONY JAMES.

7 I WAS BORN IN 1948, AND MY FATHER TURNED AROUND AND WENT
8 BACK TO SEA AND SPENT THREE YEARS IN THE KOREAN WAR, AGAIN
9 DEFENDING THOSE PRINCIPLES.

10 WHEN I CAME TO THE UNIVERSITY AND WAS GOING TO COLLEGE
11 IN THE NAVY R.O.T.C. PROGRAM, MY FATHER WENT TO SEA AGAIN.
12 THIS TIME HE HAD RISEN TO THE RANK OF ADMIRAL AND HE HAD A
13 TASK FORCE. AND HE WENT TO VIETNAM TO ONCE AGAIN DEFEND
14 THOSE PRINCIPLES OF OUR JUDICIAL SYSTEM THAT MAKES AMERICANS
15 SPECIAL COMPARED TO THE REST OF THE WORLD.

16 AS I WAS VERY YOUNG, I WAS PROBABLY TEN OR ELEVEN YEARS
17 OLD, MY DAD WENT TO THE NATIONAL WAR COLLEGE. AND AS A PART
18 OF THAT HE WENT TO THE SOVIET UNION. AND HE WOULD EXPLAIN TO
19 ME THE DIFFERENCE BETWEEN THE SOVIET UNION FROM WHAT HE
20 LEARNED FROM NAZI GERMANY, COUNTRIES THAT WERE VERY, VERY
21 POWERFUL, BUT CITIZENS HAD NO FREEDOM AND THEY WERE UNDER
22 DICTATORS AND TOTALITARIANS. AND HE EXPLAINED TO ME THAT HE
23 FOUGHT FOR THIS COUNTRY. AND HE REMAINED IN THE SERVICE TO
24 DEFEND THOSE PRINCIPLES AND FREEDOMS SO I WOULD REMAIN FREE,
25 SO MY CHILD WOULD REMAIN FREE.

1 AND HE INSTILLED UPON ME THE IDEA THAT AMERICANS ARE
2 SPECIAL AND THAT WE HAVE THESE FREEDOMS, ESPECIALLY AS
3 COMPARED TO SOVIETS, THE PEOPLE THAT LIVED IN OCCUPIED
4 GERMANY AND EUROPE WHERE THE GOVERNMENT HAD STRIPPED THE
5 PEOPLE OF THEIR FREEDOMS.

6 THOSE PRINCIPLES ARE STILL INTACT TODAY. I'VE ALWAYS
7 CHERISHED THEM. AND IN MY ROLE AS AN ATTORNEY, I DEFEND THE
8 CONSTITUTION AS IT ATTACHES TO MY CLIENT, ROBERT ANTHONY
9 JAMES, JUST LIKE MY FATHER DEFENDED THE CONSTITUTION BY GOING
10 TO WAR THREE TIMES OVER THREE DECADES.

11 THE PRESUMPTION OF INNOCENCE, THE BURDEN OF PROOF,
12 REASONABLE DOUBT, AND THE UNANIMOUS VERDICT; THOSE ARE THE
13 CONCEPTS AND THE PRINCIPLES THAT YOU WILL HAVE TO BE DEALING
14 WITH AND WEIGHING DURING THE COURSE OF THIS TRIAL AND
15 ESPECIALLY IN YOUR DELIBERATIONS AT THE END.

16 I SUBMIT TO YOU THAT DURING THE COURSE OF THIS TRIAL THE
17 EVIDENCE THAT WILL BE PRESENTED, AS MR. STRICKLER SAID, IS
18 MOSTLY OPINION EVIDENCE. IDENTIFICATION IS GOING TO BE A KEY
19 ISSUE. YOU WILL BE ASKED TO JUDGE THE CIRCUMSTANCES UPON
20 WHICH THESE IDENTIFICATIONS OR OPINIONS WERE MADE AND
21 DETERMINE IF THEY ARE IN FACT ACCURATE, RELIABLE, CREDIBLE.
22 IT IS YOUR JOB TO DECIDE THOSE MATTERS.

23 I SUBMIT TO YOU THAT WHEN YOU HEAR THE POLICE OFFICERS
24 TESTIFY AND THOSE OTHERS, THERE WILL BE DIFFERENT EVIDENCES
25 AND STATEMENTS MADE AS TO WHO DID WHAT.

1 I SUBMIT THE EVIDENCE WILL AND THE TESTIMONY WILL LEAD
2 TO KENNETH JAMES. AND I ASK YOU TO KEEP IN MIND WHAT THE
3 JUDGE SAID ABOUT THESE MEN BEING INDIVIDUALS. THEY'RE TRIED
4 TOGETHER, BUT THEY'RE INDIVIDUALS. AND YOU MUST JUDGE THE
5 EVIDENCE AGAINST EACH OF THEM AS IT APPLIES TO EACH ONE. YOU
6 CAN'T JUDGE THE EVIDENCE AGAINST KENNETH JAMES AND APPLY IT
7 TO ROBERT JAMES. THE JUDGE SAID YOU MUST DETERMINE IT
8 INDIVIDUALLY AND THUS GIVE ROBERT JAMES THE BENEFIT OF YOUR
9 ATTENTION AS TO THAT EVIDENCE AND DON'T GET OFF ON THE SIDE
10 TRACK AND SAY -- CONCLUDE THAT IF IT WAS KENNETH, THEN IT
11 MUST HAVE BEEN ROBERT.

12 I ASK YOU TO PAY CAREFUL ATTENTION TO THE EVIDENCE WHICH
13 IS WHAT COMES FROM THE WITNESSES ON THIS STAND. IT'S NOT
14 WHAT MR. GASSER AND MS. FRYAR OR WHAT I SAY OR MR. STRICKLER,
15 THAT'S NOT EVIDENCE. EVIDENCE IS THE SWORN TESTIMONY
16 PRESENTED FROM THE WITNESSES.

17 YOU WILL BE THE ONES TO DETERMINE WHETHER AS AN
18 INDIVIDUAL, NOT AS THE BROTHER OF KENNETH JAMES, BUT AS AN
19 INDIVIDUAL, ROBERT ANTHONY JAMES, IF IN FACT THE WITNESSES
20 ARE CORRECT AND THE EVIDENCE LEADS TO HIM.

21 I SUBMIT YOU WILL HEAR SCIENTIFIC EVIDENCE RELATED TO
22 DNA COMPARISONS THAT WERE TAKEN FROM THE SAMPLE FROM MS.

23 AS COMPARED TO THE SAMPLE TAKEN FROM MY CLIENT ROBERT
24 ANTHONY JAMES. AND THAT EVIDENCE WILL SHOW THAT HE WAS RULED
25 OUT AND WAS NOT A CONTRIBUTOR OR DONOR OF THE SEMEN THAT WAS

1 FOUND IN MS. N.

2 AS HAS BEEN MENTIONED, THERE ARE DIFFERENT TYPES OF
3 EVIDENCE. THERE'S SCIENTIFIC EVIDENCE. THERE IS
4 CIRCUMSTANTIAL EVIDENCE AND TESTIMONIAL EVIDENCE. I ASK THAT
5 YOU GIVE YOUR FULL ATTENTION TO ALL OF THE TESTIMONY THAT
6 COMES FROM HERE AND THAT YOU'RE VIGILANT AND COGNIZANT AND TO
7 SEPARATE WHAT YOU HEAR PRESENTED HERE IN TERMS OF WHAT
8 APPLIES TO KENNETH JAMES AND WHAT APPLIES TO ROBERT ANTHONY
9 JAMES. THERE IS A DIFFERENCE. THERE IS A DISTINCTION.

10 I TRUST THAT YOU WILL GIVE FAIR CONSIDERATION TO THE
11 EVIDENCE. I WANT TO THANK YOU FOR YOUR ATTENTION TO ME. I
12 AM CONFIDENT THAT YOU WILL CONCLUDE AT THE END OF THIS CASE
13 THAT THE EVIDENCE IS INSUFFICIENT TO PIERCE THE CLOAK OF
14 INNOCENCE THAT ROBERT JAMES HAS AND THAT THAT CONCLUSION WILL
15 BE BASED ON THE DOUBTS AND BASED ON THE ISSUES THAT ARE
16 PRESENTED TO YOU BASED ON THE EVIDENCE PRESENTED TO YOU. I
17 THANK YOU AGAIN FOR YOUR ATTENTION.

18 THE COURT: THANK YOU, MR. SHUPPER. THANKS TO ALL
19 COUNSEL. MR. GASSER OR MS. FRYAR, ARE YOU PREPARED TO CALL
20 YOUR FIRST WITNESS?

21 MR. GASSER: YES, SIR.

22 THE COURT: PLEASE GO AHEAD.

23 MR. GASSER: THE STATE WOULD CALL OFFICER JOHN WALKER.

24 JOHN W. WALKER, BEING FIRST DULY

25 SWORN, TESTIFIES AS FOLLOWS:

1 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
2 FOR THE RECORD.

3 DIRECT EXAMINATION BY MR. GASSER:

4 Q OFFICER WALKER, WOULD YOU STATE YOUR FULL NAME FOR THE
5 RECORD, PLEASE, SO THE COURT REPORTER HAS IT?

6 A MY NAME IS JOHN W. WALKER.

7 Q YOU OBVIOUSLY ARE EMPLOYED BY THE COLUMBIA POLICE DEPARTMENT?

8 A YES, SIR.

9 Q HOW LONG HAVE YOU BEEN WORKING WITH THE COLUMBIA POLICE
10 DEPARTMENT?

11 A ABOUT EIGHT YEARS AND TWO MONTHS, SIR.

12 Q WHAT ARE YOUR CURRENT DUTIES AND RESPONSIBILITIES WITH THE
13 C.P.D.?

14 A I'M A MASTER PATROLMAN WITH THE COLUMBIA POLICE DEPARTMENT.

15 Q AND PRIOR TO YOUR EMPLOYMENT OVER EIGHT YEARS AGO WITH THE
16 COLUMBIA POLICE DEPARTMENT, WHERE WERE YOU EMPLOYED?

17 A I WAS EMPLOYED WITH THE UNITED STATES ARMY FOR 24 YEARS.

18 Q TWENTY-FOUR YEARS?

19 A YES, SIR.

20 Q WHAT DISTRICT ARE YOU CURRENTLY ASSIGNED TO, OFFICER WALKER?

21 A DISTRICT 3.

22 Q I WANT TO DRAW YOUR ATTENTION BACK TO TUESDAY EVENING, MAY
23 THE 28TH, OR THE EARLY MORNING HOURS OF WEDNESDAY, MAY THE
24 29TH OF 1996. WHAT DISTRICT WERE YOU ASSIGNED TO AT THAT
25 TIME?

1 A I WAS ASSIGNED TO DISTRICT 3 MIDNIGHTS.

2 Q AND WHEN YOU SAY DISTRICT 3 MIDNIGHTS, WHAT HOUR, WHAT SHIFT,
3 WHAT HOURS ENCOMPASSED THAT MIDNIGHT SHIFT?

4 A THAT'S THE THIRD SHIFT BEGINNING AT 11:00 THAT EVENING UNTIL
5 7:30 IN THE MORNING.

6 Q WOULD YOU PLEASE DESCRIBE FOR THE JURY, WHEN YOU SAY DISTRICT
7 3, WHAT AREA OF THE CITY OF COLUMBIA DOES THAT ENCOMPASS?

8 A THAT ENCOMPASSED THE METRO REGION, WHICH INCLUDES SAXON
9 HOMES, ALLEN BENEDICT COURT, TWO NOTCH ROAD FROM THE 1600
10 BLOCK ON UP TO THE 3200 BLOCK, PINEHURST AVENUE, FOREST DRIVE
11 TO THE BORDERS OF FOREST ACRES. AT THAT POINT IN TIME I
12 BELIEVE IT WAS ALSO ENCOMPASSING MILLWOOD AND ALL THE WAY UP
13 TO DEVINE STREET AND THEN THE BOUNDARY OF DEVINE AND WHERE
14 THE DEVINE STREET BOUNDARY MET.

15 Q DOES IT INCLUDE T. S. MARTIN PARK, W. A. PERRY MIDDLE SCHOOL?

16 A YES, IT DOES.

17 Q AND SO IS T. S. MARTIN PARK AND CRESCENT HILL CEMETERY, W. A.
18 PERRY MIDDLE SCHOOL, GERMANY STREET, ARE YOU FAMILIAR WITH
19 THOSE AREAS OF DISTRICT 3?

20 A YES, I AM.

21 Q AND ARE ALL THOSE AREAS IN RICHLAND COUNTY?

22 A YES, THEY ARE.

23 Q I WANT TO DRAW YOUR ATTENTION THEN TO AT APPROXIMATELY 1 A.M.
24 ON WEDNESDAY MORNING. SOMETIME AROUND 1 A.M. ON WEDNESDAY
25 MORNING, BETWEEN 12:30 AND 1 A.M., DID YOU HAVE AN

1 OPPORTUNITY TO BE DISPATCHED TO A PARTICULAR LOCATION?

2 A YES, SIR.

3 Q AND WOULD YOU PLEASE DESCRIBE FOR US HOW YOU WERE DISPATCHED
4 AND WHERE YOU WENT AS A RESULT OF THAT?

5 A I WAS DISPATCHED TO THE 1800 BLOCK OF GERMANY STREET AND
6 SURROUNDING AREAS PERTAINING TO A SHOTS FIRED CALL. WHEN I
7 ARRIVED I WAS FLAGGED DOWN BY THE VICTIM. IF I CAN RECALL, I
8 BELIEVE HIS NAME IS MR. (SIC). AND HE HAD TOLD ME THAT
9 HE HAD BEEN ROBBED. AND I ASKED HIM WAS HE HURT, DID HE NEED
10 AN AMBULANCE OR ANYTHING. AND HE SAID, WELL, NO, BUT HE WAS
11 ROBBED IN THE PARK ITSELF. RIGHT ON THE EDGE OF 1800
12 GERMANY, IF YOU GO ALL THE WAY BACK DOWN INTO THE T. S.
13 MARTIN PARK THERE'S A LITTLE PARK BY THE CRESCENT HILL
14 APARTMENTS. AND HE SAID HE MANAGED TO BREAK FREE AND RUN.

15 Q LET ME ASK YOU THIS. THIS GENTLEMAN RIGHT HERE, DO YOU
16 RECOGNIZE THIS GENTLEMAN RIGHT HERE?

17 A YES, SIR.

18 Q IS THIS THE GENTLEMAN YOU'RE TALKING ABOUT?

19 A YES, SIR.

20 Q IS IT MR. WINFRED BULL?

21 A MR. WINFRED BULL.

22 Q DO YOU KNOW MS. () AS WELL? DID YOU COME INTO
23 CONTACT WITH HER LATER ON IN THE MORNING?

24 A YES.

25 Q WHAT WAS MR. BULL'S DEMEANOR LIKE? WHEN YOU CAME INTO

1 CONTACT WITH HIM, WHAT WAS HIS EMOTIONAL STATE LIKE?

2 A HIS EMOTIONAL STATE WAS VERY EXCITED, VERY SCARED AND VERY
3 CONCERNED. HE ACTED LIKE HE JUST EXPERIENCED SOMETHING VERY
4 DEVASTATING.

5 MR. GASSER: YOUR HONOR, THE NEXT FOLLOW-UP QUESTION
6 WOULD BE WITH CONCERN TO 803, (1) AND (2).

7 THE COURT: UNLESS THERE'S AN OBJECTION, IT SEEMS THAT A
8 PROPER FOUNDATION HAS BEEN MADE. I'LL HEAR YOU ON IT IF YOU
9 WISH TO BE HEARD.

10 MR. STRICKLER: NO, SIR.

11 THE COURT: OKAY. THANK YOU. PLEASE CONTINUE.

12 MR. GASSER: THANK YOU, YOUR HONOR.

13 Q (BY MR. GASSER) AFTER CALMING MR. BULL DOWN, AGAIN, WOULD
14 YOU DESCRIBE FOR THE JURY WHAT YOUR INITIAL CONVERSATION WITH
15 HIM AND WHERE IT LED YOU?

16 A MY INITIAL CONVERSATION WAS ASKING HIM WHAT HAD HAPPENED. HE
17 TOLD ME HE HAD BEEN ROBBED AND HE HAD BEEN ROBBED IN THE PARK
18 AREA OF T. S. MARTIN PARK, WHICH IS A PLAYGROUND IN WHICH
19 THEY HAVE TWO SETS OF BENCHES AND PICNIC TABLES AND ALSO SOME
20 OBJECTS INSIDE IN WHICH KIDS PLAY ON. AND HE TOLD ME HE WAS
21 ROBBED IN THIS AREA.

22 HE ALSO TOLD ME THAT HIS GIRLFRIEND WAS BACK THERE AND
23 -- WELL, LET ME BACK UP A LITTLE BIT. HE SAID HE WAS ROBBED
24 BY FIVE BLACK SUBJECTS. HE ALSO SAID THAT HIS GIRLFRIEND WAS
25 BACK THERE BEING RAPED. I TURNED MY POLICE VEHICLE AROUND

1 AND HEADED DOWN THE ENTRANCE OF THE PARK, AND I FOUND THE
2 OTHER VICTIM, WHICH WAS MS. SHE WAS ON THE SIDE OF
3 THE ROAD COMPLETELY NUDE. AND SHE WAS IN A VERY HYSTERICAL
4 CONDITION.

5 AND SHE TOLD ME THAT SHE HAD JUST BEEN RAPED. AND RIGHT
6 THEN AND THERE, FROM HER DEMEANOR AND THE WAY THAT SHE WAS
7 ACTING, MY FIRST CONCERN WAS TO GET HER AN AMBULANCE ON THE
8 SCENE. I GOT AN AMBULANCE ON THE SCENE AFTER I HAD COVERED
9 HER UP AND PUT HER IN THE PATROL CAR AND TRIED TO CALM HER
10 DOWN.

11 ALSO MR. (SIC) HAD -- I MEAN VICTIM NUMBER 1,
12 WHICH WAS MR. WOODFORD (SIC), HAD TOLD ME THAT HE HAD BEEN
13 SHOT AT WHILE HE WAS RUNNING.

14 Q OTHER THAN MR. BULL, WHEN YOU FIRST CAME INTO CONTACT WITH
15 MR. BULL AND AFTER HEARING WHAT YOU JUST DESCRIBED TO THE
16 JURY, YOU WENT, RESPONDED TO THE PARK?

17 A YES.

18 Q LOOKING FOR HIS GIRLFRIEND?

19 A RIGHT.

20 Q DID YOU SEE ANY OTHER INDIVIDUALS IN THAT AREA AT THAT TIME,
21 OFFICER?

22 A NO, I DID NOT.

23 Q WHAT DID YOU USE TO COVER M UP WITH?

24 A WITH ONE OF THE SHEETS THAT WE CARRY INSIDE OUR TRUNK OF THE
25 VEHICLE.

1 Q AND WHEN SHE WAS IN THAT EMOTIONAL STATE THAT YOU'VE JUST
2 DESCRIBED TO THE JURY, DID SHE INDICATE THE NUMBER OF
3 SUBJECTS THAT HAD ASSAULTED HER?

4 A YES, SHE DID.

5 Q AND IT WAS -- IT WAS --

6 A FIVE SUBJECTS.

7 Q AND WAS SHE ABLE TO DETERMINE -- YOU ALREADY INDICATED -- WAS
8 SHE ABLE TO DETERMINE THE RACE AND THE SEX OF THOSE SUBJECTS?

9 A YES, SHE WAS.

10 Q AND THEY WERE ...?

11 A BLACK SUBJECTS. THEY WERE BLACK MALE SUBJECTS.

12 Q DID YOU STAY WITH MS. J UNTIL E.M.S. RESPONDED?

13 A YES, I DID.

14 Q AND WHAT HAPPENED TO M I? EVENTUALLY, AFTER E.M.S. GOT
15 THERE, IN YOUR OBSERVATIONS, WHAT HAPPENED TO HER?

16 A WELL, I TOOK HER OUT OF THE POLICE CAR TRYING TO COMFORT HER.
17 AND SHE WAS STILL HYSTERICAL, SHAKING WHILE THEY PUT HER ON
18 THE GURNEY AND TOOK HER TO THE HOSPITAL FOR A CRIMINAL SEXUAL
19 CONDUCT PROTOCOL.

20 Q NOW, DID YOU RIDE WITH HER OR FOLLOW HER? OR DID YOU HAVE
21 OTHER RESPONSIBILITIES BACK AT THE SCENE?

22 A I HAD OTHER RESPONSIBILITIES BACK THE SCENE.

23 Q AND TELL US, PLEASE, WHAT THOSE WERE. WHAT DID YOU?

24 A WELL, ONE OF THEM WAS TO SECURE THE CRIME SCENE IN WHICH WE
25 SECURED THE CRIME SCENE AND THE INVESTIGATIONS WAS CALLED.

1 ONCE INVESTIGATIONS ARRIVED AND ALSO THE CANINE UNIT, WE WENT
2 THROUGH THE AREA LOOKING FOR EVIDENCE.

3 Q SO AFTER YOU SECURED THE SCENE, JUST BRIEFLY EXPLAIN TO US
4 WHAT YOU MEAN BY SECURING THE SCENE?

5 A WE SECURE THE SCENE MAINLY SO NOBODY ELSE WOULD GO INTO THE
6 SCENE TO CONTAMINATE THE SCENE.

7 Q AND DID YOU MAKE SURE THAT WAS DONE WHEN YOU ARRIVED AT THE
8 SCENE?

9 A YES. WE HAD -- WELL, I WAS UP THERE WITH MS. BULL (SIC)
10 WHILE OTHER OFFICERS WENT DOWN AND MORE OR LESS SECURED THE
11 CRIME SCENE.

12 Q AND DID YOU MAKE SURE THAT INVESTIGATIONS WERE CALLED? I
13 BELIEVE YOU INDICATED THE CANINE UNIT. IS THAT CORRECT?

14 A YES.

15 Q AND WHAT ABOUT THE FORENSIC UNIT THAT COLLECTS THE EVIDENCE?
16 WAS THAT UNIT CALLED AS WELL?

17 A YES, THEY WERE.

18 Q NOW, YOUR INTERVIEW WITH MR. BULL AT THE SCENE, DID YOU TAKE
19 SOME FIELD NOTES OF THAT, OFFICER WALKER?

20 A YES, I DID.

21 Q I WANT TO HAND YOU -- IN CASE YOU NEED TO REFRESH YOUR
22 MEMORY, I HAND YOU YOUR PACKET. IF YOU NEED TO REFRESH YOUR
23 MEMORY WITH ANY QUESTIONING BY ANY OF THE ATTORNEYS, PLEASE
24 FEEL FREE TO DO SO, OFFICER WALKER.

25 A OKAY.

1 Q AFTER E.M.S. HAD TAKEN MS. F AWAY, DID YOU YOURSELF THEN
2 CONTINUE ON INTO THE PARK?

3 A YES, I DID.

4 Q AND WHAT DID YOU DO WHEN YOU ARRIVED IN THE PARK?

5 A ONCE I ARRIVED INSIDE THE PLAY AREA MORE OR LESS PART OF THE
6 PARK, I MET WITH THE INVESTIGATORS AND ALSO OTHER OFFICERS
7 THAT WERE DOWN THERE ON THE SCENE. WE TRIED TO DETERMINE
8 EXACTLY WHAT LOCATION THEY WERE AT AND WHAT LOCATION THE
9 SUBJECTS WERE COMING FROM. AND THEN ONCE THE CANINE UNITS
10 ARRIVED, WE WENT THROUGH TRACKING THE AREA THAT THEY LEFT,
11 THE FIVE SUBJECTS LEFT FROM THE PARK INTO THE CEMETERY.

12 Q WHEN YOU WERE INTERVIEWING BOTH MS AND MR. BULL AND
13 THE EMOTIONAL STATE THAT YOU'VE JUST DESCRIBED TO THIS COURT
14 AND TO THIS JURY, WERE YOU ABLE TO DETERMINE WHAT CERTAIN
15 ITEMS WERE TAKEN FROM THE VICTIMS?

16 A YES. FROM MS. BULL (SIC), ALL HER CLOTHES WERE TAKEN OFF OF
17 HER. SHE HAD A CAR PARKED RIGHT IN THE PARKING AREA OF THE
18 PARK ITSELF IN WHICH THEY MANAGED TO GET THE KEYS AND THEY
19 OPENED THE TRUNK AND TOOK TWO PURSES. FROM THE OTHER VICTIM,
20 THEY TOOK CASH FROM HIM, WHAT I BELIEVE WAS, IF I'M NOT
21 MISTAKEN, WAS ONE \$100 BILL, ONE \$10 BILL, ONE \$5 BILL AND
22 ONE \$1 BILL, IF I'M NOT MISTAKEN.

23 Q SO I GUESS MY FOLLOW-UP QUESTION WOULD BE, SO MR. BULL WAS
24 ABLE TO PROVIDE YOU WITH INFORMATION CONCERNING MONEY THAT
25 WAS TAKEN FROM HIM, INCLUDING A HUNDRED DOLLAR BILL. IS THAT

1 CORRECT?

2 A YES. THAT'S CORRECT.

3 Q DID YOU AS AN OFFICER RELAY THAT INFORMATION TO OTHER
4 OFFICERS AS THEY RESPONDED TO THE SCENE?

5 A YES, I DID.

6 Q DID MR. BULL ALSO INDICATE TO YOU THE TYPE OF WEAPON THAT HE
7 INDICATED THAT THEY HAD?

8 A I BELIEVE HE SAID IT WAS SOME TYPE OF HANDGUN.

9 MR. GASSER: BEG THE COURT'S INDULGENCE ONE MOMENT.

10 THE COURT: YEAH. JUST CALL ME IF YOU NEED ME.

11 MR. GASSER: YOUR HONOR, I WOULD LIKE TO MARK SOME
12 DIAGRAMS (SIC). I APPRECIATE THE TIME. I THINK WE'RE GOING
13 TO BE MOVING THE PHOTOGRAPHS IN EVIDENCE ONCE THEY'RE MARKED,
14 I BELIEVE WITHOUT OBJECTION.

15 THE COURT: WITHOUT OBJECTION FROM EITHER DEFENDANT?

16 MR. STRICKLER: THAT'S CORRECT AS TO KENNETH JAMES.

17 THE COURT: CERTAINLY AS TO IDENTIFICATION.

18 MR. SHUPPER: CORRECT AS TO ROBERT JAMES, YOUR HONOR.

19 (STATE'S EXHIBIT NOS. 7 THROUGH 12, SIX PHOTOGRAPHS, MARKED
20 FOR IDENTIFICATION ONLY)

21 THE COURT: 7 THROUGH 12 FOR I.D. AS I UNDERSTAND, THEY
22 WILL BE MOVED INTO EVIDENCE SUBJECT TO BEING IDENTIFIED.

23 MR. GASSER: WE WOULD ALSO AT THIS TIME LIKE TO MARK AS
24 A STATE'S EXHIBIT A DIAGRAM FOR I.D.

25 MR. STRICKLER: WITHOUT OBJECTION, SIR.

1 MR. SHUPPER: NO OBJECTION, YOUR HONOR.

2 (STATE'S EXHIBIT NO. 13, DIAGRAM, MARKED FOR IDENTIFICATION
3 ONLY)

4 MR. GASSER: MAY THE WITNESS LEAVES THE WITNESS BOX,
5 YOUR HONOR?

6 THE COURT: CERTAINLY. THE ONLY THING I'D ASK THAT YOU
7 DO IS, SHOULD THE WITNESS BE UTILIZING THE DIAGRAM FROM WHICH
8 TO TESTIFY, HAVE HIM TALK ACROSS THE EXHIBIT TOWARD THE COURT
9 REPORTER.

10 MR. GASSER: OKAY.

11 Q (BY MR. GASSER) OFFICER WALKER, WOULD YOU PLEASE STEP OVER
12 HERE SO THAT, ONE, THE COURT REPORTER CAN SEE YOU, AND THE
13 MICROPHONE IS CLOSEST ---

14 MR. STRICKLER: YOUR HONOR, I BELIEVE MR. GASSER INTENDS
15 TO USE STATE'S 1 FOR I.D. PREVIOUSLY MARKED IN CAMERA. WE
16 HAVE NO OBJECTION TO ITS EMPLOYMENT AS I.D. AT THIS POINT.

17 THE COURT: OKAY. MR. SHUPPER?

18 MR. SHUPPER: NO OBJECTION, YOUR HONOR.

19 THE COURT: THANK YOU.

20 Q OKAY. NOW, I THINK IF YOU TALK THIS WAY TOWARDS THIS
21 MICROPHONE, STAND WHERE I AM USING THIS POINTER, ALL OF THE
22 JURORS SHOULD BE ABLE TO SEE YOU THEN. NOW, OFFICER WALKER,
23 SHOWING YOU STATE'S EXHIBIT NO. 1 MARKED FOR IDENTIFICATION,
24 WOULD YOU PLEASE ORIENTATE THE JURY AS TO WHICH ROADS WE ARE
25 TALKING ABOUT?

1 A THIS IS TWO NOTCH ROAD WHICH BORDERS T. S. MARTIN PARK ON THE
2 WEST SIDE OF THE PARK ITSELF. YOU HAVE GERMANY STREET WHICH
3 RUNS OFF OF TWO NOTCH ROAD ON THE SOUTH SIDE OF THE PARK
4 WHICH RUNS ALL THE WAY UP TO THE 1800 BLOCK OF GERMANY STREET
5 WHICH STOPS AT W. A. PERRY MIDDLE SCHOOL. THE PARK ITSELF
6 HAVE A CUT -- WELL, NOT A CUT -- A ROAD RUNNING INTO THE PARK
7 WHICH GOES ALL THE WAY BACK GOING NORTHBOUND INTO A PARKING
8 AREA. RIGHT ON THE WEST SIDE OF THE PARK ITSELF IS A
9 PLAYGROUND AREA WHICH IS BORDERED BY WOOD AND GRASSY AREA AND
10 SOME FENCED IN AREA.

11 WHEN YOU GO INTO THE SOUTH SIDE OF THAT PLAYGROUND AREA,
12 THERE IS A LITTLE BARRIER WHERE AT NIGHT THEY USUALLY LOCK IT
13 SO VEHICLES CAN'T GO IN. AND RIGHT ON THE WEST-HAND SIDE YOU
14 HAVE CRESCENT MANOR APARIMENTS WHICH BORDERS IT ON THE OTHER
15 SIDE. WHICH THE TENNIS COURT, ONCE YOU GO BACK NORTH AND YOU
16 CUT A LITTLE BIT WEST, YOU'LL HAVE A BIG TENNIS COURT
17 BORDERING THE WEST SIDE OF THE PLAYGROUND ITSELF.

18 Q WHAT IS THIS AREA? REFERRING TO STATE'S EXHIBIT NO. 1 MARKED
19 FOR IDENTIFICATION, WHAT IS THIS AREA RIGHT HERE?

20 A THIS AREA RIGHT HERE IS CRESCENT HILL CEMETERY, THIS WHOLE
21 AREA WHICH IS BORDERED BY TWO NOTCH ROAD, T. S. MARTIN, VAN
22 HEISE STREET WHICH IS CRESCENT MANOR APARIMENTS AND THE 1800
23 BLOCK OF GERMANY STREET ON DOWN TO TWO NOTCH ROAD.

24 Q AND THIS CONVENIENCE STORE RIGHT HERE ON TWO NOTCH ROAD, WHAT
25 IS THE NAME OF THAT CONVENIENCE STORE?

1 A THAT'S THE AMOCO GAS STATION WHICH IS AT 2507 TWO NOTCH ROAD.

2 Q IF YOU WERE TO CONTINUE ON -- AGAIN REFERRING TO STATE'S
3 EXHIBIT 1, IF YOU WERE TO CONTINUE ON TWO NOTCH ROAD UP THIS
4 WAY, WHAT AREA OF RICHLAND COUNTY ARE YOU GOING TOWARDS?

5 A YOU'RE GOING NORTH ON TWO NOTCH ROAD INTO DISTRICT 3.

6 Q OKAY.

7 A ON OUT TO RICHLAND COUNTY JURISDICTION.

8 Q LIKE THE COLUMBIA MALL AREA, THAT AREA?

9 A RIGHT. THAT'S CORRECT.

10 Q AND THEN OF COURSE IF YOU'RE COMING DOWN THIS WAY TOWARDS TWO
11 NOTCH ROAD?

12 A YOU'RE COMING ALL THE WAY DOWN TO TAYLOR STREET. AT THE
13 INTERSECTION OF TWO NOTCH ROAD, THE STREET THAT INTERSECTS
14 TWO NOTCH ROAD IS FOREST DRIVE ON THE EAST SIDE AND WHICH
15 TURNS INTO TAYLOR STREET ON THE WEST SIDE.

16 Q WHERE -- USING STATE'S EXHIBIT NO. 1, IF YOU RECALL, IN WHAT
17 GENERAL VICINITY IN RELATIONSHIP TO GERMANY STREET, W. A.
18 PERRY AND THE ENTRANCEWAY TO THE PARK DID YOU COME INTO
19 CONTACT INITIALLY WITH MR. WINFRED BULL?

20 A I CAME IN CONTACT WITH MR. WINFRED BULL APPROXIMATELY RIGHT
21 -- A LITTLE -- ABOUT MAYBE 50 FEET GOING WEST ON THE 1800
22 BLOCK OF GERMANY STREET OF THE ENTRANCE OF THE PARK.

23 Q AND WHERE DID YOU COME INTO CONTACT WITH MS. BROWN?

24 A I CAME IN CONTACT WITH M ABOUT 100 -- I'D SAY 100
25 YARDS AS YOU GO INTO THE ENTRANCE OF THE PARK RIGHT ON THE

1 EAST SIDE OF THE PARK. WELL, NOT THE EAST SIDE OF THE PARK,
2 BUT THE EAST SIDE OF THAT DRIVEWAY AS YOU GO INTO T. S.
3 MARTIN PARK.

4 Q NOW, SHOWING YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 13, DO
5 YOU RECOGNIZE WHAT THIS GENERAL DIAGRAM DEPICTS?

6 A YES, I DO.

7 Q OKAY. AND GENERALLY, WHAT DOES THIS DIAGRAM DEPICT AS IT
8 APPEARED IN MAY OR MAY 29TH OF 1996?

9 A IT DEPICTS THE CRESCENT HILL CEMETERY AND ALSO T. S. MARTIN
10 PARK.

11 Q SO, STATE'S EXHIBIT 13 IS A BLOW-UP OF WHAT ON STATE'S
12 EXHIBIT 1; WHAT AREA ON STATE'S EXHIBIT 1 THAT YOU'VE JUST
13 DESCRIBED TO THE JURY?

14 A WHICH WOULD BE T. S. -- T. S. MARTIN PARK AND THE CEMETERY.

15 Q OKAY. AND DO YOU RECOGNIZE THE TENNIS COURTS HERE ON STATE'S
16 EXHIBIT 13?

17 A YES.

18 Q AND ARE THEY DEPICTED ON STATE'S EXHIBIT NO. 1?

19 A YES, THEY ARE. RIGHT HERE.

20 Q AND THIS PARKING LOT AREA RIGHT THERE, IS THAT DEPICTED ON
21 STATE'S EXHIBIT NO. 1?

22 A THE PARKING LOT RIGHT THERE. THAT'S CORRECT.

23 Q NOW, WAS THERE PLAYGROUND EQUIPMENT IN THAT PARK AREA?

24 A THERE WAS I THINK SWINGS, A COUPLE OF SWINGS AND SOME
25 CLIMBING AREAS FOR CHILDREN.

1 Q I SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT NO. 7. DO YOU
2 RECOGNIZE THAT PHOTOGRAPH, OFFICER WALKER?

3 A YES.

4 Q IS THAT A FAIR AND ACCURATE DEPICTION AS TO WHAT THE PARK
5 LOOKED LIKE DURING THE EARLY MORNING HOURS OF MAY 29TH, 1996?

6 A YES, IT IS.

7 Q IN FACT, STATE'S EXHIBIT NO. 12, DO YOU RECOGNIZE THAT
8 PHOTOGRAPH AS WELL?

9 A YES, I DO.

10 Q OKAY. STATE'S EXHIBIT 8?

11 A YES, I DO.

12 Q STATE'S EXHIBIT 10?

13 A YES, I DO.

14 Q STATE'S EXHIBIT 9?

15 A YES, I DO.

16 Q AND STATE'S EXHIBIT 11?

17 A YES.

18 Q DO ALL THESE PICTURES FAIRLY AND ACCURATELY DEPICT THE AREA
19 AS IT WAS WHEN YOU ARRIVED AT THE PARK DURING THE EARLY
20 MORNING HOURS OF MAY 29TH, 1996, AFTER WAS
21 TRANSPORTED TO THE RICHLAND MEMORIAL HOSPITAL?

22 A YES.

23 MR. GASSER: THEN WE WOULD MOVE STATE'S 7 THROUGH 12 I
24 BELIEVE.

25 THE COURT: WITHOUT OBJECTION, THEY'RE ADMITTED IN

1 EVIDENCE AT THIS TIME.

2 (STATE'S EXHIBIT NOS. 7 THROUGH 12, SIX PHOTOGRAPHS, RECEIVED
3 IN EVIDENCE)

4 Q (BY MR. GASSER) NOW, WHEN YOU GOT DOWN INTO THE PARKING LOT
5 AREA, WOULD YOU DESCRIBE FOR THE JURY, PLEASE, DID YOU HAVE
6 -- FIRST OF ALL, DID YOU HAVE THE OPPORTUNITY ALONG WITH ANY
7 OF THE FORENSIC OFFICERS TO WALK AROUND THIS AREA HERE WHERE
8 THE SHED IS DEPICTED IN DIAGRAM 13 AND ON STATE'S EXHIBIT 12?

9 A YES, I DID.

10 Q AND WOULD YOU POINT THE SHED OUT ON THE PHOTOGRAPH?

11 A RIGHT.

12 Q IS IT LOCATED ON STATE'S EXHIBIT 12 AS WELL AS THE
13 PHOTOGRAPH?

14 A YES, IT IS.

15 Q DID YOU HAVE AN OPPORTUNITY TO WALK AROUND THIS AREA, GENERAL
16 AREA, OFFICER WALKER?

17 A YES, I DID.

18 Q CAN YOU DESCRIBE FOR THE JURY WHAT THE LIGHTING WAS LIKE WHEN
19 YOU WERE DOWN THERE THAT MORNING?

20 A THE LIGHTING, THERE WAS -- THERE WAS LIGHTING FROM THE
21 PARKING LOT INSIDE THE AREA ITSELF, BUT IT WAS KIND OF LOW
22 ILLUMINATED. IN SOME AREAS, LIKE THE PICNIC TABLE AND THE
23 BENCH OVER HERE, WE HAD TO USE FLASHLIGHTS. THE MORE YOU GOT
24 UP TOWARDS THE TENNIS COURT AND THE GRAVEYARD, WE HAD TO USE
25 OUR OWN LIGHTING BECAUSE IT GOT DARKER, DARKER AND DARKER

1 BECAUSE OF THE VEGETATION THAT WAS SURROUNDING THAT AREA.

2 Q SO LET ME ASK YOU THIS AGAIN. WHEN DID YOU HAVE TO USE YOUR
3 FLASHLIGHTS? IN WHAT AREA DID YOU HAVE TO USE YOUR
4 FLASHLIGHTS?

5 A WHEN WE STARTED GOING BY THE SECOND BENCH THAT WAS LOCATED
6 CLOSE TO THE GRAVEYARD ITSELF AND WHEN WE WENT OVER TO THE
7 PICNIC TABLES ON THE NORTH PART BY THE SHED. WE HAD TO ALSO
8 USE -- WHILE LOOKING ON THE GROUND, WE HAD TO ALSO USE OUR
9 FLASHLIGHTS. BUT IN THE GENERAL AREA RIGHT HERE, IT WAS
10 FAIRLY LIGHTED.

11 Q AND THE LIGHTING WAS COMING FROM WHAT AREA?

12 A THE PARKING LOT AREA AND THE ---

13 Q WHERE WOULD THE MIDDLE SCHOOL -- W. A. PERRY MIDDLE SCHOOL,
14 WHERE WOULD THOSE LIGHTS, THAT AREA BE IN RELATION TO THE
15 PARKING LOT IN STATE'S EXHIBITS ---

16 A THE LIGHTING YOU TALKING ABOUT?

17 Q YES.

18 A RIGHT IN THIS AREA RIGHT HERE. VERY LITTLE LIGHT CAME FROM
19 W. A. PERRY.

20 Q WHAT ITEMS OF CLOTHING DID YOU OBSERVE USING STATE'S EXHIBIT
21 NO. 11? WHAT ITEMS DID YOU SEE THERE BY THE BENCH, IN
22 STATE'S EXHIBIT NO. 10 BY THE PICNIC TABLE IF YOU RECALL?

23 A CALLED A SANDAL. A SANDAL.

24 Q NOW, DID YOU ACTUALLY TAKE THESE PICTURES, OR DID THE ACTUAL
25 CRIME SCENE UNIT INVESTIGATOR?

1 A THE CRIME SCENE INVESTIGATOR TOOK THE PICTURES.

2 Q WERE YOU DOWN THERE TO ASSIST IF THEY NEEDED ANY ASSISTANCE?

3 A YES, SIR. AT CERTAIN TIMES. I WASN'T EXACTLY WITH THE CRIME
4 SCENE I.D. INVESTIGATORS THEMSELF. I WAS MORE OR LESS WITH
5 THE INVESTIGATOR AND THE CANINE UNIT.

6 Q GO AHEAD AND TAKE YOUR SEAT.

7 (WITNESS RESUMES THE STAND)

8 Q WHEN YOU FIRST -- DID THE OPPORTUNITY THAT YOU HAD TO SPEND
9 WITH MR. BULL, BOTH INITIALLY WHEN YOU WERE TALKING TO HIM
10 AND THEN LATER ON, DID YOU ALSO HAVE AN OPPORTUNITY TO TALK
11 WITH HIM DOWN IN THE PARK?

12 A YES, I DID.

13 Q OKAY. DURING THAT TIME THAT YOU WERE SPEAKING WITH MR. BULL,
14 DID YOU DETECT ANY ODORS OF ALCOHOL OR DRUGS ON THE BODY OF
15 MR. BULL?

16 A I DIDN'T DETECT ANY.

17 Q IN YOUR YEARS OF EXPERIENCE, YOUR NINE YEARS OF EXPERIENCE AS
18 A COLUMBIA POLICE OFFICER, HAVE YOU HAD THE OPPORTUNITY TO
19 COME IN CONTACT WITH INDIVIDUALS THAT MAY BE UNDER THE
20 INFLUENCE OF ALCOHOL OR DRUGS?

21 A YES, I HAVE.

22 Q AND YOU DIDN'T DETECT THAT ON MR. BULL. IS THAT CORRECT?

23 A NO, I DID NOT.

24 Q AND THE TIME THAT YOU SPENT WITH , WHEN YOU SAW
25 HER NAKED AS YOU DESCRIBED TO THE JURY IN THAT ROADWAY, THE

1 TIME THAT YOU SPENT WITH HER WRAPPING THAT SHEET AROUND HER,
2 DID YOU DETECT ANY ODORS OF ALCOHOL OR DRUGS IN ANY MANNER?

3 A NO, I DID NOT.

4 MR. GASSER: BEG THE COURT'S INDULGENCE.

5 THE COURT: YES, SIR.

6 MR. GASSER: THAT'S ALL I HAVE, YOUR HONOR. THANK YOU.

7 THE COURT: MR. STRICKLER.

8 MR. GASSER: THANK YOU, YOUR HONOR. IF IT PLEASE THE
9 COURT.

10 CROSS EXAMINATION BY MR. STRICKLER:

11 Q GOOD AFTERNOON, OFFICER WALKER.

12 A HOW YOU DOING, SIR?

13 Q FINE. THANK YOU. NAME IS DOUG STRICKLER. I REPRESENT
14 KENNETH JAMES. I'D JUST LIKE TO ASK YOU A FEW MORE
15 QUESTIONS, IF I COULD, PLEASE SIR. OKAY?

16 A OKAY, SIR.

17 Q FIRST OF ALL, YOU WERE THE FIRST OFFICER ON THE SCENE IN THIS
18 CASE, CORRECT?

19 A YES, I WAS.

20 Q YOU SAY THAT YOU SPENT EIGHT YEARS AND TWO MONTHS WITH THE
21 CITY OF COLUMBIA POLICE DEPARIMENT AT THIS POINT IN TIME?

22 A YES, SIR.

23 Q AND THIS WAS SOME 1996, ABOUT THREE YEARS AGO, RIGHT?

24 A YES, IT WAS.

25 Q SO AT THAT POINT YOU'D BEEN WITH C.P.D. FOR ABOUT FIVE YEARS,

1 CORRECT?

2 A YES, SIR.

3 Q NOW, THE POLICE DEPARTMENT, SPECIFICALLY THE CITY OF COLUMBIA
4 POLICE DEPARTMENT, AN OFFICER ARRIVING AT A CRIME SCENE SUCH
5 AS THIS, THE FIRST OFFICER ON THE SCENE HAS RESPONSIBILITIES
6 THAT HE OR SHE NEEDS TO TAKE CARE OF, RIGHT?

7 A YES.

8 Q I MEAN, IN THE CITY OF COLUMBIA POLICE DEPARTMENT
9 RESPONSIBILITIES FOR HANDLING A CASE ARE DIVIDED UP AMONG
10 DIFFERENT GROUPS OF PEOPLE, CORRECT?

11 A THAT'S CORRECT.

12 Q AND AS FIRST OFFICER ON THE SCENE OF A MAJOR CRIME -- AND
13 THIS WOULD BE A MAJOR CRIME, RIGHT?

14 A THAT'S CORRECT.

15 Q FIRST OFFICER ON THE SCENE, YOU'RE CONCERNED, ONE, WITH THE
16 STATE AND TREATMENT OF ANY VICTIMS ON THE SCENE. IS THAT
17 CORRECT?

18 A THAT IS CORRECT.

19 Q AND THEN YOU'RE ALSO CONCERNED WITH PRESERVING THE CRIME
20 SCENE YOURSELF, CORRECT?

21 A THAT'S CORRECT.

22 Q AND THEN YOU MAKE THE CALL TO AN INVESTIGATIVE UNIT, AN
23 INVESTIGATOR OR A SUPERVISOR RATHER?

24 A WELL, THE SUPERVISOR ON THE SCENE.

25 Q RIGHT. AND THAT PERSON, IF NECESSARY, WILL CONTACT

1 INVESTIGATORS TO SEND THEM OUT, RIGHT?

2 A THAT'S CORRECT.

3 Q SO YOUR JOB FIRST IS TO TAKE CARE OF THE IMMEDIATE PHYSICAL
4 CONCERNS REGARDING ANY VICTIMS IN A CASE LIKE THIS?

5 A THAT IS CORRECT.

6 Q AND THEN TO DO WHAT YOU CAN AS ONE PERSON TO PREVENT THE
7 SCENE FROM BEING TAMPERED WITH?

8 A THAT'S CORRECT.

9 Q THAT IS WHAT YOU DID IN THIS CASE?

10 A WELL, NOT EXACTLY. ALTHOUGH I WAS THE FIRST ONE ON THE
11 SCENE, RIGHT BEHIND ME WERE OTHER OFFICERS. THEY WERE
12 ARRIVING ON THE SCENE ALSO. WHAT I MANAGED TO DO IS COME IN
13 CONTACT WITH MR. BULL FIRST BECAUSE HE FLAGGED ME DOWN.

14 Q OKAY.

15 A I STOPPED AND TALKED WITH HIM. WHILE I WAS TALKING WITH HIM,
16 OTHER OFFICERS ARRIVED IN THE AREA. AND WHEN HE TOLD ME
17 ABOUT MRC BEING SEXUALLY ASSAULTED IN THE PARK ITSELF,
18 THEN I TOOK OFF. AND AS I WAS GOING DOWN THE ENTRANCE OF
19 T. S. MARTIN PARK, I SEEN M I COME OUT OF THE WOODS
20 COMPLETELY NUDE. AND I STOPPED AT THAT POINT IN TIME BECAUSE
21 OF MY CONCERNS WITH THE VICTIMS, AND OTHER OFFICERS WENT ON
22 DOWN TO T. S. MARTIN PARK.

23 Q OKAY. SO YOU WERE -- WHILE YOU WERE THE FIRST OFFICER ON THE
24 SCENE, THERE WERE OTHER OFFICERS ARRIVING RIGHT AFTER YOU IN
25 THIS CASE, RIGHT?

1 A THAT'S CORRECT.

2 Q AND IT JUST HAPPENS TO BE THAT YOU WERE THE FIRST ONE, FIRST
3 OFFICER TO HAVE CONTACT BOTH WITH MR. BULL AND WITH MS.

4 . IS THAT CORRECT?

5 A THAT'S CORRECT.

6 Q OKAY. NOW, YOU OBVIOUSLY SPOKE WITH MR. (SIC), OR
7 RATHER MR. BULL, AS YOU TESTIFIED I BELIEVE WHAT; ABOUT 50
8 FEET SHORT OF THE TURN OFF OF GERMANY STREET THAT LEADS INTO
9 THE PARK?

10 A NO. IT WAS ABOUT 100 -- I'D SAY ABOUT 100 YARDS DOWN THE
11 ENTRANCE OF T. S. MARTIN PARK.

12 Q WE'RE TOGETHER ON THIS. WE'RE JUST MIXED UP ON THE NAMES.
13 THAT'S MY FAULT. I APOLOGIZE. MR. BULL.

14 A MR. BULL, YES.

15 Q THE FIRST MAN YOU CONTACTED, THAT WAS ABOUT 50 FEET SHORT OF
16 THE ENTRANCE. IS THAT CORRECT?

17 A RIGHT. I SEEN HIM, AS YOU GO INTO THE PARK ON THE WEST-HAND
18 SIDE, IT'S THE GRAVEYARD. THEN YOU HAVE SOME APARTMENTS UP
19 IN RICHLAND COUNTY. I MET MR. BULL APPROXIMATELY 50 YARDS UP
20 FROM THE ENTRANCE OF T. S. MARTIN PARK RIGHT IN FRONT OF THE
21 GRAVEYARD ITSELF.

22 Q OKAY. AND AT THAT POINT IN TIME YOU SPOKE WITH MR. BULL,
23 CORRECT?

24 A YES, SIR.

25 Q FOR HOW LONG DID YOU SPEAK WITH HIM AT THAT POINT IN TIME?

1 A I SPOKE WITH HIM APPROXIMATELY, I BELIEVE IT WAS ABOUT THREE
2 TO FIVE MINUTES.

3 Q AND YOU'VE TESTIFIED THAT HE WAS ABLE TO PROVIDE YOU WITH A
4 DESCRIPTION OF FIVE BLACK MALES INVOLVED IN THE ROBBERY AND
5 THE ASSAULT, CORRECT?

6 A WELL, NOT THE DESCRIPTION. HE BASICALLY TOLD ME THAT THERE
7 WERE FIVE BLACK MALE SUBJECTS WHO ROBBED HIM.

8 Q OKAY.

9 A I DIDN'T GET A DESCRIPTION OF EACH INDIVIDUAL.

10 Q YOU'RE WAY AHEAD OF ME. THAT WAS MY NEXT QUESTION. SO THE
11 TOTAL DESCRIPTION THAT YOU GOT FROM MR. BULL THEN WAS THAT
12 FIVE BLACK MEN HAD BEEN INVOLVED IN ROBBING HIM?

13 A YES.

14 Q IS THAT RIGHT? DIDN'T GET HEIGHTS AND WEIGHTS, DESCRIPTION
15 OF THE HAIR, FACIAL FEATURES, ANYTHING?

16 A NO, I DIDN'T GET ANY OF THAT.

17 Q AND THAT'S WHAT YOU MEAN BY A DESCRIPTION, RIGHT?

18 A PARDON ME?

19 Q THAT'S WHAT YOU MEAN BY A DESCRIPTION? HEIGHT? WEIGHT?

20 A WEIGHT.

21 Q FACIAL HAIR?

22 A PHYSICAL FEATURES. YES, SIR.

23 Q YOU DIDN'T GET ANY OF THAT FROM MR. BULL, CORRECT?

24 A NO, SIR.

25 Q OKAY. AND THEN AS SOON AS YOU LEARNED WHAT HE HAD TO SAY

1 ABOUT THE ASSAULT ON MS , YOU OBVIOUSLY WENT UP TO SEE
2 IF YOU COULD LOCATE HER. AND, INDEED, YOU DID LOCATE HER
3 ABOUT 100 YARDS UP THE ROAD TOWARDS THE PARK, RIGHT?

4 A CORRECT.

5 Q AND SHE WAS IN THE CONDITION YOU DESCRIBED. SHE WAS NAKED
6 COMING FROM THE SIDE OF THE ROAD, RIGHT?

7 A YES, SIR.

8 Q OKAY. AND DID YOU HAVE AN OPPORTUNITY TO SPEAK WITH HER AT
9 THAT POINT IN TIME?

10 A YES, I DID.

11 Q AND I BELIEVE YOU'VE ALREADY DESCRIBED HER Demeanor AS
12 HYSTERICAL. I THINK THAT WAS THE WORD YOU USED, CORRECT?

13 A YES, SIR.

14 Q SHE WAS CRYING?

15 A CRYING.

16 Q SHE WAS OBVIOUSLY UPSET?

17 A RIGHT.

18 Q AS ONE MIGHT EXPECT. IN YOUR CONVERSATION WITH HER AT THAT
19 POINT IN TIME, WAS SHE ABLE TO PROVIDE YOU WITH ANY
20 INFORMATION ABOUT THE ASSAULT ON HER?

21 A SHE TOLD ME THAT SHE WAS RAPED.

22 Q SHE AGAIN MENTIONED FIVE INDIVIDUALS?

23 A FIVE BLACK MALE SUBJECTS.

24 Q OKAY. ANY FURTHER DESCRIPTION OF THE PEOPLE GIVEN AT THAT
25 POINT IN TIME BEYOND FIVE BLACK MALE SUBJECTS?

1 A NO. I DIDN'T GET ANY DESCRIPTION.

2 Q NOW, DID YOU HAVE CONTACT AGAIN WITH MR. BULL LATER?

3 A ME, MYSELF; NO, I DIDN'T.

4 Q DID YOU HAVE CONTACT AGAIN WITH MS. AFTER E.M.S.
5 ARRIVED?

6 A NO, I DID NOT.

7 Q OKAY. NOW, YOU RELATED DURING YOUR DIRECT TESTIMONY THAT A
8 PURSE HAD BEEN TAKEN FROM MS. 'S CAR?

9 A TRUNK OF THE VEHICLE.

10 Q TRUNK OF HER VEHICLE?

11 A TWO PURSES.

12 Q RIGHT?

13 A TWO PURSES.

14 Q TWO PURSES. THAT INFORMATION WAS SUPPLIED TO YOU BY WHOM?

15 A THAT WAS SUPPLIED TO ME BY MS. I BELIEVE IT WAS. YES.
16 MS.

17 Q SO MS. TOLD YOU THAT?

18 A MS. HAD TOLD ME THAT.

19 Q THIS WAS DURING THE TIME SHORTLY AFTER YOU FIRST MET WITH
20 HER?

21 A PARDON ME?

22 Q THIS WAS DURING THE TIME THAT YOU'D FIRST MET WITH HER?

23 A WHEN I FIRST MET HER. ALSO, WHEN I SEEN MR. BULL THE SECOND
24 TIME, HE CONFIRMED THAT, THAT THEY TOOK -- IN HER CLOTHING
25 WERE THE KEYS TO THE VEHICLE, AND WHICH THE PURSE -- ONE OF

1 THE SUBJECTS WENT TO THE CAR, OPENED THE TRUNK AND TOOK OUT
2 TWO PURSES.

3 Q OKAY. NOW, JUST BRIEFLY AS TO THESE PHOTOGRAPHS MR. GASSER
4 TALKED WITH YOU ABOUT. STATE'S 10, THIS PHOTOGRAPH OF THIS
5 PARK BENCH?

6 A YES, SIR.

7 Q THAT'S THE -- OR PICNIC TABLE THAT YOU TALKED ABOUT.

8 A THE PICNIC TABLE.

9 Q PARDON ME. PICNIC TABLE. THAT'S THE AREA THAT YOU'VE
10 DESCRIBED AS YOU HAVING TO USE YOUR FLASHLIGHTS ON, CORRECT?

11 A FLASHLIGHTS TO LOOK AROUND, YES.

12 Q OKAY. SO WHEN I SEE THIS BRIGHT AREA, THAT'S A FLASH FROM A
13 CAMERA I WOULD ASSUME, RIGHT?

14 A YES, SIR.

15 Q SO WHEN YOU SAY THAT THIS ACCURATELY DEPICTS THIS PARK BENCH
16 AREA OR PICNIC TABLE AREA, IT ACCURATELY DEPICTS IT WHEN IT'S
17 LIT UP WITH THE FLASH OF A CAMERA, RIGHT?

18 A YES, SIR.

19 Q FOR YOU TO SEE -- I BELIEVE YOU DESCRIBED SEEING AN ITEM OF
20 CLOTHING --

21 A YES, SIR.

22 Q -- IN THAT AREA. YOU HAD YOUR FLASHLIGHT OUT WHILE YOU WERE
23 LOOKING FOR THAT, RIGHT?

24 A YES, SIR.

25 Q OKAY. AND MY UNDERSTANDING IS THAT YOU NEEDED YOUR

1 FLASHLIGHT THERE AND IT GOT PROGRESSIVELY DARKER AS YOU WENT
2 TOWARDS THE CEMETERY AREA, RIGHT?

3 A CORRECT.

4 Q SO THE LIGHTS FROM THE PARKING AREA WEREN'T REAL BRIGHT THERE
5 AND IT GOT DIMMER AS YOU MOVED AWAY FROM IT?

6 A AS YOU MOVED SOUTHBOUND IN THE PARK ITSELF.

7 Q JUST AS YOU'D EXPECT. I MEAN, THE FURTHER AWAY YOU GET FROM
8 THEM, THE DIMMER IT GETS, CORRECT?

9 A CORRECT.

10 MR. STRICKLER: BEG THE COURT'S INDULGENCE.

11 THE COURT: YES, SIR.

12 MR. STRICKLER: THANK YOU. THAT'S ALL I HAVE, SIR.

13 THE COURT: THANK YOU. MR. SHUPPER.

14 MR. SHUPPER: MAY IT PLEASE THE COURT.

15 THE COURT: ON BEHALF OF ROBERT JAMES.

16 CROSS EXAMINATION BY MR. SHUPPER:

17 Q OFFICER WALKER, I'M JOHN SHUPPER. I REPRESENT ROBERT JAMES.
18 REFERRING BACK TO YOUR TESTIMONY ABOUT WHERE MR. BULL WAS AT
19 THE TIME YOU ARRIVED -- AND I'M SORRY TO HAVE TO ASK YOU THIS
20 AGAIN, BUT I COULD NOT SEE BECAUSE OF YOUR POSITION FROM MY
21 POSITION UP THERE.

22 A OKAY.

23 Q COULD YOU SHOW ME ON STATE'S EXHIBIT 1 WITH THIS POINTER
24 WHERE YOU OBSERVED MR. BULL WHEN YOU FIRST ARRIVED?

25 A IT WAS DOWN IN THIS AREA RIGHT HERE AROUND THE 1800 BLOCK OF

1 GERMANY STREET.

2 Q AND I THINK I HEARD YOU SAY AT ONE POINT 50 FEET AND AT
3 ANOTHER POINT 50 YARDS FROM THE DRIVEWAY LEADING INTO THE
4 PARK. WHICH WAS IT?

5 A I'D SAY ABOUT 50 YARDS.

6 Q ABOUT 50 YARDS?

7 A YES.

8 Q RIGHT ON GERMANY STREET?

9 A FROM THE ENTRANCE OF THE PARK.

10 Q OKAY. AND YOU'RE CERTAIN OF THAT?

11 A AS FAR AS I CAN REMEMBER.

12 Q ALL RIGHT. AND COULD YOU SHOW ME WITH THAT POINTER, PLEASE,
13 ON STATE'S EXHIBIT 1 WHERE MS. WAS WHEN YOU ---

14 A MS. WAS ON THE ENTRANCE OF THE PARK ROAD ABOUT 100
15 YARDS DOWN.

16 Q SHE WAS ABOUT 100 DOWN?

17 A THAT'S WHERE I CAME IN CONTACT WITH HER.

18 Q NOW, LET ME ASK YOU THIS. THIS IS THE DRIVEWAY TO THE PARK,
19 CORRECT?

20 A THAT IS CORRECT.

21 Q AND YOU FOUND HER NEXT TO THE DRIVEWAY ON THE PARK?

22 A RIGHT. RIGHT NEXT TO THE DRIVEWAY ON THE PARK.

23 Q AND THERE IS THIS LITTLE INDENTATION HERE. IS THAT ---

24 A THAT'S THE CEMETERY.

25 Q IS THAT AN ENTRANCE TO THE CEMETERY?

1 A ENTRANCE TO THE CEMETERY.

2 Q ISN'T THAT KIND OF ROUGHED OUT AND OVERGROWN A BIT THOUGH?

3 IS THERE REALLY A CLEAR ROAD?

4 A IT'S A CLEAR ROAD GOING INTO IT. YES, IT IS.

5 Q AND YOU FOUND MR. BULL RIGHT IN THERE?

6 A ABOUT RIGHT IN HERE.

7 Q RIGHT IN HERE. OKAY. OVER -- SO YOU FOUND MR. BULL FROM THE
8 CEMETERY ENTRANCE, NEAR THE CEMETERY ENTRANCE?

9 A RIGHT. ON THE OTHER SIDE OF THAT ROAD COMING OUT NEAR THE
10 CEMETERY.

11 Q AND YOU FOUND MS. DOWN HERE?

12 A RIGHT DOWN HERE. YES, SIR.

13 Q AND THE AREA THAT YOU POINTED TO WHERE YOU OBSERVED -- WHERE
14 YOU SAID THE -- THIS IS THE PICNIC TABLE. THAT'S THE AREA
15 YOU SAID YOU HAD TO USE YOUR FLASHLIGHT?

16 A THE PICNIC TABLE IN THIS AREA?

17 Q NO, SIR. WASN'T YOU UP HERE NEAR THE SHED, IF YOU SEE WHERE
18 THAT PINK ARROW GOES TO?

19 A RIGHT.

20 Q UP HERE.

21 A THIS WAS RIGHT HERE. WHEN YOU STARTED LOOKING AROUND THE
22 PICNIC TABLE ITSELF, YOU HAD TO USE A FLASHLIGHT TO LOOK DOWN
23 UNDERNEATH. A LITTLE BIT OUT FRONT OF IT WAS FAIRLY
24 ILLUMINATED.

25 Q DO YOU MEAN RIGHT IN HERE WHERE THAT LITTLE DRIVEWAY ON THAT

1 DIAGRAM —

2 A RIGHT AROUND IN HERE. AND WHERE THIS LITTLE OBJECT IS WHERE
3 KIDS CLIMB ON TOP OF IT AND STUFF IS FAIRLY ILLUMINATED.

4 Q FOR THE RECORD, YOUR HONOR, THE DIAGRAM THAT HE'S REFERRING
5 TO IN THIS AREA IS THIS, IT LOOKS LIKE A NORTH/SOUTH
6 INDICATOR ON STATE'S NO. 1 AND IS A PIECE OF PICNIC
7 EQUIPMENT.

8 A MM-HMM (AFFIRMATIVE).

9 Q SO THERE WAS REALLY JUST A NARROW AREA THERE THAT WAS FAIRLY
10 LIT, CORRECT?

11 A ON THE INSIDE. IN THE SURROUNDINGS AREAS THERE WAS ENOUGH
12 LIGHT FROM THE PARKING LOT AREA. THERE WOULD HAVE BEEN SOME
13 LIGHTING, VERY LITTLE LIGHTING FROM W. A. PERRY MIDDLE SCHOOL
14 WHERE YOU CAN SEE INSIDE THE SURROUNDING AREA. AND THIS PARK
15 BENCH RIGHT HERE YOU CAN SEE FAIRLY WELL. BUT IF YOU WAS TO
16 LOOK FOR ANYTHING IN THAT AREA AT ALL, YOU'D HAVE TO USE A
17 FLASHLIGHT WHILE LOOKING DOWN ON THE GROUND.

18 Q AND AS YOU GET FROM HERE WHERE IT SAYS PARK BENCH, IT'S IN
19 THAT WOODED AREA THERE. IS THAT —

20 A RIGHT. THIS IS A VEGETATED AREA, A WOODED AREA.

21 Q SO THERE'S A LOT OF VEGETATION?

22 A YES, THERE WAS.

23 Q AND DIMLY LIT. NOT MUCH LIGHT?

24 A YES, THERE WAS.

25 Q AND THAT'S AN AREA WHERE YOU HAD TO USE YOUR FLASHLIGHT TO

1 LOOK AROUND?

2 A YES, SIR.

3 Q OKAY. WHAT TIME DID YOU ARRIVE AT THE LOCATION?

4 A PARDON ME?

5 Q WHAT TIME DID YOU ARRIVE AT THE LOCATION?

6 A THE EXACT TIME AT THIS TIME I DON'T KNOW. BUT IT WAS IN OR
7 AROUND AFTER 12:00 MIDNIGHT. SO INBETWEEN 12 AND 12:30.

8 Q OKAY. DID YOUR NOTES THAT MR. GASSER SHOWED YOU FILED
9 EARLIER REFLECT THAT?

10 A I DIDN'T WRITE ON MY NOTES THE EXACT TIME THAT I ARRIVED.

11 Q DO YOU KNOW THE TIME WHEN YOU RECEIVED THE DISPATCH CALL?

12 A NOT AT THIS TIME. NO, SIR.

13 MR. SHUPPER: BEG THE COURT'S INDULGENCE, YOUR HONOR.

14 THE COURT: YES, SIR.

15 MR. SHUPPER: NOTHING FURTHER, YOUR HONOR.

16 THE COURT: REDIRECT, IF ANY, MR. GASSER?

17 MR. GASSER: NO, SIR.

18 THE COURT: THANK YOU. YOU CAN STEP DOWN, OFFICER.

19 OKAY.

20 MR. GASSER: MAY OFFICER WALKER BE EXCUSED, YOUR HONOR?

21 MR. STRICKLER: WITHOUT OBJECTION.

22 MR. SHUPPER: NO OBJECTION.

23 THE COURT: YES, SIR. THANK YOU FOR YOUR ATTENDANCE.

24 FOLKS, IT'S MY PRACTICE TO GIVE A BRIEF BREAK ABOUT EVERY

25 HOUR AND A HALF, EVERY HOUR AND TWENTY MINUTES. YOU'VE BEEN

1 IN HERE FOR THAT LENGTH OF TIME AT THIS POINT IN TIME. I'M
2 GOING TO ASK YOU TO GO TAKE A BRIEF BREAK IN THE JURY ROOM.
3 DO NOT DISCUSS THE CASE AMONGST YOURSELVES. WE'LL BE WITH
4 YOU SHORTLY. THANK YOU. EVERYBODY REMAIN SEATED WHILE THE
5 JURORS LEAVE.

6 (JURY OUT AT 3:33 P.M.)

7 THE COURT: I SIMPLY WANT TO SAY -- AND I KNOW THAT
8 NOBODY INTENDED TO DO IT -- BUT I'M SEEING A LOT OF IT OUT IN
9 THE AUDIENCE, A LOT OF DISCUSSION AND TALKING WHICH
10 APPARENTLY DIVERTS THE ATTENTION OF THE JURY FROM WHAT'S
11 GOING ON ON THE WITNESS STAND OR ON PRESENTATION OF COUNSEL
12 TO THE AUDIENCE. I'M GOING TO TELL PEOPLE NOW I DON'T WANT
13 TO SEE ANY MORE CONVERSATIONS. I DON'T WANT TO SEE ANYBODY
14 TALKING TO ANYBODY DURING THE COURSE OF SOMEBODY TESTIFYING.
15 I MAY HAVE TO JUST BAR ENTRANCE TO THE COURTROOM DURING THE
16 TESTIMONY OF A PERSON OR WHILE AN ATTORNEY IS MAKING A
17 PRESENTATION. I DON'T WANT TO HAVE TO DO THAT.

18 BUT EVERYBODY, FOLKS. I'M NOT POINTING FINGERS AT
19 ANYBODY. BUT LET'S KEEP OUR CONVERSATIONS TO OURSELVES.
20 OBVIOUSLY COUNSEL AND THE FOLKS ASSISTING COUNSEL CAN DISCUSS
21 THESE THINGS, AND ANY SECURITY CONCERN THAT NEEDS TO BE TAKEN
22 CARE OF CERTAINLY CAN BE TAKEN CARE OF. BUT, AGAIN, PLEASE
23 CEASE YOUR CONVERSATIONS WHILE THE JURY IS PRESENT. THANK
24 YOU. WE'LL TAKE ABOUT TEN MINUTES AND BE BACK IN HERE.
25 (WHEREUPON, A BREAK IS TAKEN)

1 THE COURT: OKAY.

2 MR. SNEED: YOUR HONOR, THERE IS ONE MOTION I WANT TO
3 MAKE. I MADE IT PRE-TRIAL CONCERNING SEQUESTRATION. AND YOU
4 GRANTED THAT I BELIEVE, OR THE SOLICITOR, WE ALL CONSENTED
5 FOR PRE-TRIAL. AND I WOULD MOVE TO SEQUESTER THE THREE
6 PRINCIPAL WITNESSES AT LEAST WHILE THE OTHER ONE IS
7 TESTIFYING, WHICH WOULD BE MS. CARLA BROWN, MR. WINFRED BULL
8 AND INVESTIGATOR THOMAS.

9 THE COURT: SEQUESTRATION, LET ME HEAR THE STATE'S POINT
10 OF VIEW ON IT.

11 MR. GASSER: YOUR HONOR, I WOULD BE OPPOSED TO THE
12 SEQUESTRATION OF THE VICTIMS. AND WE KEEP THE CHIEF
13 INVESTIGATOR JUST UNDER GENERAL RULES, ESPECIALLY SINCE —

14 THE COURT: GIVEN THAT OPPOSITION, I WOULD DENY, DECLINE
15 TO SEGREGATE THOSE TWO OR SEQUESTER THOSE TWO. I THINK THEY
16 HAVE A CONSTITUTIONAL RIGHT THAT OUTWEIGHS ANY DISCRETIONARY
17 RIGHT THAT I MIGHT HAVE UNDER THE RULES TO SEQUESTER
18 WITNESSES. SO, YOU MAY POINT OUT WHATEVER YOU WANT TO POINT
19 OUT IN CROSS EXAMINATION. HOWEVER, NOW, WHO IS THE OTHER
20 WITNESS? THOMAS? AND YOUR OPPOSITION THERE WOULD BE BASED
21 UPON MR. THOMAS'S STATUS AS THE CHIEF INVESTIGATING OFFICER.
22 AND YOU WANT TO HAVE HIM PRESENT WITH YOU TO ASSIST
23 THROUGHOUT THE ENTIRE CASE. IS THAT IT?

24 MR. GASSER: YES, SIR, YOUR HONOR. AND ALSO THAT
25 THERE'S NO -- ESPECIALLY WITH MR. WINFRED BULL, THERE'S NO

1 LINE-UP PROCEDURE INVOLVING INVESTIGATOR THOMAS WITH HIM.

2 THE COURT: THERE IS, HOWEVER, AN INNER RELATIONSHIP
3 BETWEEN THE PRE-TRIAL IDENTIFICATION AND MR. THOMAS'S
4 TESTIMONY AND MS. S TESTIMONY. SO TO THE EXTENT THAT
5 HE'S TESTIFYING ABOUT PRE-TRIAL IDENTIFICATION, I'M GOING TO
6 SEQUESTER HIM DURING HER TESTIMONY. OKAY?

7 MR. GASSER: THAT'S FINE. THANK YOU.

8 THE COURT: THANK YOU. ALL RIGHT. PLEASE BRING THE
9 JURY IN, MR. BARROW.

10 (JURY IN AT 4:00 P.M.)

11 THE BAILIFF: THE JURY IS ALL PRESENT, YOUR HONOR.

12 THE COURT: THANK YOU. THANK YOU VERY MUCH, SIR. THANK
13 YOU, FOLKS, FOR YOUR PATIENCE. WE'RE READY TO PROCEED. MS.
14 FRYAR, YOUR NEXT WITNESS, PLEASE, MA'AM.

15 MS. FRYAR: YES. THE STATE WOULD CALL MR. WINFRED BULL.

16 THE COURT: MR. BULL, PLEASE COME FORWARD TO MR. BARROW
17 AND THEN FOLLOW HIS INSTRUCTIONS, IF YOU WOULD, SIR.

18 WINFRED BULL, BEING FIRST DULY

19 SWORN, TESTIFIES AS FOLLOWS:

20 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
21 FOR THE RECORD.

22 THE COURT: YES, MA'AM.

23 MS. FRYAR: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
24 COURT.

25 DIRECT EXAMINATION BY MS. FRYAR:

1 Q MR. BULL, COULD YOU PLEASE TELL THE JURY WHERE YOU LIVE?

2 A 2505 HASKELL AVENUE.

3 Q OKAY. AND IS THAT HERE IN COLUMBIA?

4 A YES, IT IS.

5 Q HOW LONG HAVE YOU LIVED THERE, MR. BULL?

6 A WELL, MY MOTHER HAS BEEN THERE ABOUT 20 YEARS OR BETTER.

7 Q OKAY. AND SO YOU LIVE WITH YOUR MOM?

8 A YES. NOW BECAUSE SHE'S OLD AND I'M TRYING TO LOOK, TAKE CARE

9 OF HER, HELP TAKE CARE OF HER. 77 YEARS OLD AND TRYING TO

10 LOOK OUT FOR HER.

11 Q ALL RIGHT, SIR. AND DO YOU WORK, MR. BULL?

12 A YES, I DO.

13 Q WHERE DO YOU WORK, SIR?

14 A JAMES TAYLOR MASONRY.

15 Q ALL RIGHT, SIR. HOW LONG HAVE YOU BEEN DOING THAT?

16 A OFF AND ON WITH HIM ABOUT 18 YEARS OR BETTER.

17 Q MR. BULL, ISN'T IT TRUE THAT YOU GOT CONVICTED FOR A CHARGE

18 OF POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BACK IN 1986?

19 A YES.

20 Q AND ISN'T IT TRUE THAT YOU GOT CONVICTED OF A SHOPLIFTING IN

21 MARCH, ON MARCH THE 6TH OF 1997?

22 A YES.

23 Q ALL RIGHT, SIR.

24 THE COURT: CONVICTIONS OF CRIMES CARRYING PENALTIES OF

25 GREATER THAN ONE YEAR OR IMPORTING DISHONESTY ARE INTRODUCED

1 FOR THE SOLE PURPOSE AND MAY BE CONSIDERED BY A JURY SOLELY
2 FOR THE PURPOSE OF HOW, IF AT ALL, IT MAY AFFECT THE
3 WITNESS'S CREDIBILITY OR BELIEVABILITY. AND YOU CAN CONSIDER
4 IT FOR THAT PURPOSE AND THAT PURPOSE ALONE. THANK YOU.
5 PLEASE CONTINUE.

6 MS. FRYAR: THANK YOU, YOUR HONOR.

7 Q (BY MS. FRYAR) MR. BULL, YOU SAID, YOU TELL THIS JURY THAT
8 YOU'VE BEEN LIVING HERE BASICALLY ALL YOUR LIFE. IS THAT
9 RIGHT?

10 A I'VE BEEN HERE 48 YEARS RIGHT IN SOUTH CAROLINA.

11 Q ALL RIGHT, SIR. AND DO YOU KNOW A YOUNG LADY BY THE NAME OF
12 ?

13 A YES.

14 Q HOW LONG HAVE YOU KNOWN MS. ?

15 A ABOUT 15 YEARS.

16 Q ALL RIGHT. HOW DID YOU MEET MS. ?

17 A I MET HER THROUGH MY KIDS' MOTHER.

18 Q AND WAS SHE A FRIEND OF HERS OR —

19 A YES.

20 Q OR A FRIEND OF THE CHILDREN?

21 A YES. SHE STILL IS.

22 Q ALL RIGHT, SIR. AND SO DID YOU AND ME DEVELOP A
23 RELATIONSHIP OVER THE YEARS?

24 A YES.

25 Q OKAY. WHAT KIND OF RELATIONSHIP WAS THAT?

1 A AND I WAS PRETTY -- WE WAS CLOSE. WE'RE REAL CLOSE.

2 WE GOT CLOSER, YOU KNOW. WE'RE STILL CLOSE.

3 Q YES, SIR. ALL RIGHT. WOULD YOU CHARACTERIZE YOUR
4 RELATIONSHIP AT ANY TIME AS BEING ROMANTIC?

5 A WE HAVE BEEN ROMANTIC OCCASIONALLY.

6 Q ALL RIGHT, SIR. AND YOU HAVE THROUGHOUT THIS PERIOD OF TIME
7 REMAINED FRIENDS WITH HER. IS THAT CORRECT?

8 A YES.

9 Q ALL RIGHT, SIR. BACK IN MAY OF 1996, MR. BULL, WERE YOU
10 LIVING ON HASKELL AVENUE THEN?

11 A YES.

12 Q ALL RIGHT, SIR. AND WAS YOUR MOM LIVING THERE, TOO, THEN?

13 A YES.

14 Q I WANT TO DIRECT YOUR ATTENTION TO THE EVENING OF MAY THE
15 28TH, 1996. DO YOU REMEMBER BEING HOME ON THAT PARTICULAR
16 DAY?

17 A YES. I WAS AT HOME.

18 Q ALL RIGHT, SIR. AND DID YOU HAVE OCCASION TO SEE M

19 A YES. SHE CAME BY TO VISIT ME.

20 Q ALL RIGHT, SIR. WHEN MS. CAME BY TO VISIT YOU ON THAT
21 PARTICULAR EVENING, WAS THAT UNUSUAL?

22 A NO. COME BY ALL THE TIME. SHE RUNS ERRANDS FOR MY
23 MOTHER. SHE COMES BY ANY TIME SHE FEELS LIKE IT.

24 Q ALL RIGHT, SIR. AND WHEN SHE CAME OVER ON THAT PARTICULAR
25 NIGHT, WHO WAS THERE, IF YOU REMEMBER?

1 A I WAS THERE. MY MOTHER, SISTER, BROTHER AND A COUPLE OF MY
2 BROTHERS' KIDS WAS THERE.

3 Q OKAY. MR. BULL, HAD YOU HAD ANY KIND OF DRUGS OR ALCOHOLIC
4 BEVERAGES ON THIS DAY?

5 A I DON'T DO -- I DON'T DRINK AT ALL.

6 Q ALL RIGHT, SIR. IF YOU COULD TELL ME, WHEN YOU SAW MS.

7 , DID SHE APPEAR TO HAVE BEEN DOING ANY DRUGS OR BEEN
8 DRINKING ANY ALCOHOL?

9 A NO.

10 Q AND WHEN YOU ALL WERE THERE IN THE HOUSE WITH YOUR MOTHER AND
11 THOSE CHILDREN AND YOUR BROTHER AND YOUR SISTER, DID YOU ALL
12 ENGAGE IN DRINKING ANY KIND OF ALCOHOLIC BEVERAGES, DOING ANY
13 KIND OF DRUGS?

14 A NO, MA'AM.

15 Q ALL RIGHT, SIR. WHAT DID YOU ALL DO ON THAT PARTICULAR
16 NIGHT? DO YOU KNOW WHAT TIME IT WAS WHEN MS. ARRIVED?

17 A WHEN CAME THERE, IT WAS ABOUT JUST DARK OR GETTING
18 DARK.

19 Q ALL RIGHT, SIR.

20 A OKAY. WE SIT AROUND AND TALKED. AND SHE TALKED TO MY SISTER
21 AND MAMA. THEN I THINK WANTED A SODA OR SOMETHING, AND
22 I WANTED A CUP OF COFFEE. SO I SAID, "LET'S GO RIDE."
23 SAID SHE DIDN'T HAVE NO GAS OR SOMETHING TO BE DOING ALL THAT
24 RIDING. SO I SAID, "WELL, WE'LL FILL IT UP WITH GAS." SO WE
25 WENT TO GAS THE CAR UP, AND I THINK GOT A SODA OR

1 SOMETHING AND I GOT A CUP OF COFFEE AND A PACK OF CIGARETTES
2 OR SOMETHING.

3 Q AND MS. WAS DRIVING HER CAR AT THIS TIME?

4 A YES.

5 Q AND YOU ALL PUT GAS IN HER CAR AT THAT TIME?

6 A YES.

7 Q AND THEN WHAT HAPPENED?

8 A I THINK AFTER WE DID THAT WE CAME BACK TO THE HOUSE. NO.

9 NO. NO. I THINK AFTER WE GASSED UP WE WENT TO THE PARK.

10 Q ALL RIGHT, SIR. I KNOW IT'S BEEN A WHILE SINCE THIS
11 OCCURRED.

12 A YEAH.

13 Q BUT JUST TO THE BEST OF YOUR REMEMBRANCE, DO YOU KNOW FOR
14 SURE WHETHER OR NOT YOU WENT BACK TO THE HOUSE?

15 A NO. I THINK WE WENT TO THE PARK.

16 Q ALL RIGHT, SIR.

17 A AND WE WENT TO THE PARK. THE BALL GAME WAS GOING ON. IT WAS
18 LIGHTED UP AND EVERYBODY WAS THERE.

19 Q YES, SIR.

20 A THEN I SUGGEST LET'S GO GET A SANDWICH AND GET ME ANOTHER CUP
21 OF COFFEE SINCE WE'RE GOING TO SIT AND WATCH THE BALL GAME.
22 I THINK WE LEFT AND WENT TO BURGER KING DOWN THE STREET. I
23 GOT A SANDWICH AND A CUP OF COFFEE. I THINK THAT PARTICULAR
24 TIME DIDN'T WANT ANYTHING. AND WE CAME BACK TO THE
25 PARK.

1 Q ALL RIGHT, SIR.

2 A THE GAME WAS JUST FINISHING UP. THEY WAS -- ABOUT TWO OR
3 THREE SECONDS AFTER WE PULLED UP THERE, THEY CUT THE LIGHTS
4 OUT AND PEOPLE WAS LEAVING.

5 Q ALL RIGHT. AND WHEN YOU SAY THAT "THEY CUT THE LIGHTS OUT",
6 THEY CUT THE LIGHTS OUT TO THE BALL FIELD AREA. IS THAT
7 WHERE YOU'RE TALKING ABOUT WHERE THEY CUT THE LIGHTS OUT?

8 A ANYBODY CAN CUT THE LIGHTS OUT. THEY'VE GOT A BIG BOX. ONCE
9 THE GAME IS OVER, SOME OF THE SOFTBALL PLAYERS, THEY GO OVER
10 THERE AND SWITCH THE LIGHTS OFF.

11 Q THAT JUST CUTS THE LIGHTS OFF OF THE BALL FIELD. IS THAT
12 RIGHT?

13 A YES, SIR.

14 MS. FRYAR: YOUR HONOR, IF THE WITNESS COULD STEP DOWN
15 FROM THE STAND.

16 THE COURT: SURE.

17 Q (BY MS. FRYAR) MR. BULL, COULD YOU PLEASE STEP DOWN?

18 THE COURT: AGAIN, I WOULD ASK IF THE WITNESS IS TO
19 UTILIZE AN EXHIBIT, HAVE THE WITNESS TALK ACROSS THE EXHIBIT
20 TOWARD THE COURT REPORTER.

21 Q ALL RIGHT. MR. BULL, I WOULD LIKE FOR YOU TO TAKE A LOOK AT
22 WHAT HAS BEEN MARKED AS STATE'S EXHIBIT NO. 1 HERE. AND IF
23 YOU CAN TAKE A LOOK AT THIS AND COME AND STAND OVER HERE. IF
24 YOU COULD TELL THE JURY HOW IT IS THAT YOU GOT DOWN TO THE
25 PARK. IS THERE A ROAD THAT LEADS UP TO THE PARKWAY?

1 A MM-HMM (AFFIRMATIVE). YEAH.

2 Q OKAY. USE THIS PEN THEN, MR. BULL, AND SHOW THE JURY HOW YOU
3 GOT DOWN INTO THE PARK.

4 A OKAY. THIS IS THE ROAD RIGHT HERE.

5 Q YES, SIR.

6 A FROM THE STREET LEAD DOWN TO THE PARK.

7 Q ALL RIGHT, SIR.

8 A WE WENT DOWN THIS ROAD HERE. RIGHT OVER ON YOUR LEFT OVER
9 HERE IS AN AREA WHERE YOU PARK AT.

10 Q IS THAT RIGHT UP HERE ON OUR DIAGRAM?

11 A RIGHT, RIGHT, RIGHT. PARKING AREA RIGHT HERE.

12 Q AND SO WHEN YOU ALL WENT BACK TO THE PARK THE SECOND TIME, DO
13 YOU REMEMBER WHERE MS. BROWN PARKED THE CAR?

14 A YEAH. CLOSER TO RIGHT HERE. CLOSER TO THE PARKING AREA. WE
15 DIDN'T GO ALL THE WAY OVER. SHE PARKED RIGHT HERE BECAUSE
16 PEOPLE WAS LEAVING AND THE GAME WAS ABOUT TO BREAK UP OR WAS
17 BREAKING UP.

18 Q ALL RIGHT, SIR.

19 A SO WE PARKED RIGHT HERE CLOSE.

20 Q OKAY. WHEN YOU SAY "CLOSE", YOU'RE TALKING ABOUT CLOSE TO
21 THIS LITTLE PARK AREA OVER HERE?

22 A YES.

23 Q ALL RIGHT, SIR. AND WERE THERE ANY OTHER PEOPLE IN THE
24 PARKING LOT AT THAT TIME?

25 A YES. THERE WAS -- IT WAS THREE OTHER -- THREE OR FOUR OTHER

1 GUYS WHO PLAYED BALL WAS IN THERE DRINKING BEER, A COUPLE OF
2 BLACK DUDES AND A COUPLE OF WHITE DUDES. THEY WAS OVER THERE
3 DRINKING BEER. THEY WAS BALL PLAYERS.

4 Q ALL RIGHT, SIR.

5 A AND AFTER SOMEONE CUT THE LIGHTS OUT, THEY STILL WAS OVER
6 THERE DRINKING, YOU KNOW, BEER AND TALKING.

7 Q ALL RIGHT, SIR.

8 A AND I WAS -- WENT TO A LITTLE PARK AREA AND SIT ON A
9 BENCH. AND WE WAS SITTING THERE ON THE BENCH AND TALKING.

10 Q RIGHT. NOW, WHEN THESE FELLOWS WERE IN THE PARKING AREA,
11 WHERE WERE THEY PARKED?

12 A I THINK THEY WAS PARKED ALL THE WAY OVER HERE IN THE PARKING
13 AREA WAY BACK OVER HERE. THEY COULD SEE US AND WE COULD SEE
14 THEM.

15 Q SO WAS THIS AREA FAIRLY LIT UP?

16 A YEAH. YEAH. MM-HMM (AFFIRMATIVE).

17 Q ALL RIGHT, SIR. SO THEN YOU INDICATED THAT YOU AND MS. I
18 WENT OVER INTO THIS SIDE. NOW, WHERE EXACTLY DID YOU GO?

19 A OKAY. RIGHT UP RIGHT ALONG IN HERE IS SOME MONKEY BARS WHERE
20 THE KIDS PLAY AT, SWINGS; AND IF I'M NOT MISTAKEN, I BELIEVE
21 A SEE-SAW WITH THE LITTLE HORSE ON IT THAT GO UP AND DOWN.

22 Q OKAY. ALL RIGHT, SIR. HOLD ON A SECOND. I'D LIKE TO SHOW
23 YOU, MR. BULL, WHAT'S BEEN MARKED NOW -- IF YOU COULD COME
24 OVER HERE SO WE CAN SHOW THEM. WHAT IS THIS PICTURE OF?

25 TAKE A LOOK AT THAT AND SEE IF YOU KNOW WHAT THAT'S A DRAWING

1 OF.

2 A THAT'S THE PARK.

3 Q ALL RIGHT, SIR. AND IN LOOKING AT THIS DRAWING, THIS APPEARS
4 TO BE WHAT?

5 A PARKING AREA.

6 Q ALL RIGHT, SIR. AND THIS APPEARS TO BE WHAT?

7 A I BELIEVE THAT'S SOMETHING LIKE THAT MONUMENT THAT WAS THERE.

8 Q A LITTLE BUILDING OF SOME WHAT?

9 A YES. A LITTLE BUILDING, MONUMENT.

10 Q WHAT WAS RIGHT HERE?

11 A THAT'S WHERE THE PICNIC TABLE AT.

12 Q SO WHEN YOU AND MS. GOT THERE, WHERE DID YOU ALL GO?

13 A AFTER WE PARKED THE CAR CLOSE, RIGHT CLOSE TO THIS AREA HERE,
14 WE WALKED OVER TO THE PICNIC TABLE RIGHT HERE.

15 Q ALL RIGHT, SIR. AND WHAT WERE YOU ALL DOING OVER AT THE
16 PICNIC TABLE?

17 A I WAS SITTING ON TOP OF THE TABLE. MS. SIT DOWN RIGHT
18 HERE. I WAS DRINKING A CUP OF COFFEE. WE WERE SITTING
19 THERE. THEN THE GUYS WAS OVER HERE DRINKING, THEY LEFT.

20 Q THE ONES WHO WERE IN THE PARKING LOT?

21 A RIGHT. THE BALL PLAYERS.

22 Q ALL RIGHT, SIR.

23 A MS. KEPT TELLING ME SHE KEPT HEARING SOMETHING OVER
24 THERE IN THE BUSHES SOMEWHERE.

25 Q WHAT BUSHES WAS SHE REFERRING TO?

1 A THE GRAVEYARD.

2 Q OKAY. AND WHAT IS THIS AREA OVER HERE ON OUR MAP? DO YOU
3 KNOW?

4 A THIS LOOKS LIKE WHERE THE GRAVEYARD AT, RIGHT ALONG HERE.
5 AND THERE'S BUSHES RIGHT ALONG IN HERE.

6 Q ALL RIGHT, SIR.

7 A SHE KEPT SAYING SHE HEARD SOMETHING OVER HERE IN THE BUSHES.
8 AND I TOLD HER -- KEPT -- SHE WAS SITTING DOWN. I WAS
9 SITTING ON THE TABLE. SHE JUST KEPT HEARING SOMETHING. I
10 SAID IT MIGHT BE A CAT OR A DOG OR SOMETHING. IT'S A
11 GRAVEYARD.

12 Q OKAY. AND NOW, IF WE COULD THEN, MR. BULL, WHAT WE'RE
13 TELLING THE JURY THEN, WHAT YOU'RE TELLING THE JURY IS YOU
14 WERE SITTING ON TOP OF THE PICNIC TABLE ORIGINALLY. IS THAT
15 RIGHT?

16 A RIGHT.

17 Q MS. , WAS SHE SITTING ON TOP OF IT ORIGINALLY?

18 A NOT AT FIRST. SHE WAS SITTING DOWN.

19 Q DOWN ON THE BENCH PART OF THE PICNIC TABLE?

20 A RIGHT. FACING ME. AND I WAS FACING --

21 MR. SNEED: YOUR HONOR, I'M GOING TO OBJECT. SHE'S --

22 THE COURT: EXCUSE ME?

23 MR. SNEED: OBJECTION.

24 THE COURT: THE OBJECTION IS ...?

25 MR. SNEED: LEADING.

1 THE COURT: IF YOU'RE LEADING, MS. FRYAR, ASK WHO WAS
2 WHAT, WHEN, WHERE, WHY AND HOW. OKAY. THANK YOU.

3 MS. FRYAR: YES, SIR.

4 Q (BY MS. FRYAR) ALL RIGHT. SO WHAT HAPPENED AFTER THAT NOW?
5 SHE HEARD A NOISE?

6 A SHE KEPT HEARING -- TELLING ME SHE HEARD A NOISE. AND I TOLD
7 HER IT WAS A CAT OR DOG OR SOMETHING. AFTER ALL IT WAS A
8 GRAVEYARD. THEN SHE GOT UP FROM WHERE SHE WAS SITTING AT AND
9 WAS SITTING BESIDE ME WHERE SHE COULD FACE WHERE THE NOISE
10 WAS COMING FROM. SHE SAID IT THREE OR FOUR TIMES BUT I
11 DIDN'T PAY IT NO ATTENTION. AND AFTER A WHILE TWO BLACK
12 GENTLEMENS (SIC) CAME WALKING DOWN THE ROAD.

13 Q OKAY. LET'S GO BACK AND LOOK AT OUR OTHER DIAGRAM.

14 THE COURT: YOU'RE UTILIZING WHICH EXHIBIT NOW, MS.
15 FRYAR?

16 MS. FRYAR: YOUR HONOR, STATE'S EXHIBIT NO. 1.

17 THE COURT: OKAY. THANK YOU.

18 Q (BY MS. FRYAR) NOW, WHEN YOU SAY TWO BLACK GUYS CAME DOWN
19 THE ROAD, WHAT ROADWAY DID THEY COME DOWN, MR. BULL?

20 A THE ONE THAT WHEN YOU COME INTO THE PARK, THE END OF THE
21 PARK.

22 Q CAN YOU POINT ON THE DIAGRAM?

23 A YES. THIS ONE HERE.

24 Q YES, SIR. AND THIS IS WHAT ON OUR DIAGRAM?

25 A RIGHT. THIS IS THE ROAD THEY CAME DOWN RIGHT HERE.

- 1 Q ALL RIGHT, SIR.
- 2 A BOTH OF US STILL SITTING ON THE BENCH OVER HERE. AND THEY
- 3 CAME DOWN. ONE WENT AROUND THE LITTLE BUILDING.
- 4 Q MM-HMM (AFFIRMATIVE).
- 5 A ONE CAME TOWARDS ME.
- 6 Q OKAY.
- 7 A ASKED ME FOR A LIGHT.
- 8 Q ALL RIGHT, SIR.
- 9 A I GOT OFF THE TABLE, REACHED IN MY POCKET TO HAND HIM A
- 10 LIGHT. HE GRABBED ME, THREW A PISTOL AT MY HEAD.
- 11 Q SO THERE WERE HOW MANY OF THEM AT THAT POINT?
- 12 A TWO.
- 13 Q ALL RIGHT. AND YOU SAY THAT ONE OF THEM WENT KIND OF ONE
- 14 DIRECTION. WHAT ARE YOU TALKING ABOUT THERE NOW? TELL THE
- 15 JURY.
- 16 A THE OTHER DUDE WENT AROUND THE BUILD.
- 17 Q WHAT BUILDING IS THAT?
- 18 A THE LITTLE BUILDING THEY'VE GOT RIGHT THERE. I GUESS IT'S
- 19 RIGHT HERE.
- 20 Q ALL RIGHT, SIR. AND I'M SHOWING YOU —
- 21 THAT BUILDING RIGHT THERE.
- 22 Q — STATE'S EXHIBIT NO. 13, YOUR HONOR. ALL RIGHT, SIR. ONE
- 23 OF THEM WENT WHERE NOW?
- 24 A AROUND THIS BUILDING HERE.
- 25 Q OKAY.

1 A AND THAT'S WHERE THE PICNIC TABLE WAS, ABOUT RIGHT THERE.
2 THE BUILDING IS RIGHT HERE. ONE CAME THIS WAY TOWARDS ME.
3 THE OTHER ONE WENT AROUND THE BUILDING. THE ONE THAT WENT
4 AROUND THE BUILDING, MS. KEPT LOOKING BACK BEHIND HER
5 LOOKING FOR HIM OR SOMETHING.

6 Q AND SO WHEN THEY CAME, THEY HAD COME FROM WHAT DIRECTION, IF
7 YOU COULD SHOW THE JURY?

8 A DOWN THE ROAD. THERE WAS ONE WAY INTO THE PARK. THEY HAD TO
9 COME DOWN THE DIRT ROAD. IT'S NOT A DIRT ROAD. LIKE IT'S
10 PAVED. BUT THAT'S THE ONLY WAY IN AND OUT THE PARK IF YOU'RE
11 DRIVING. THEY WALKED DOWN THE ROAD. AND WE COULD SEE THEM
12 COMING DOWN THE ROAD BECAUSE WE'RE SITTING ON THE BENCH.

13 Q AND SO YOU SAY THAT ONE OF THEM CAME UP TO YOU. AND WHAT DID
14 HE DO NOW?

15 A HE ASKED ME FOR A LIGHT.

16 Q AND WHAT DID YOU DO?

17 A I GOT OFF THE TABLE, REACHED IN MY POCKET AND HANDED HIM THE
18 LIGHTER. THEN HE GRABBED ME, PUT A PISTOL TO MY HEAD.

19 Q OKAY.

20 A AND SAID, "YOU KNOW WHAT THIS IS. GIVE IT UP." I'M TUSSLING
21 AND STRUGGLING. AND —

22 Q NOW, SHOW ME, IF I AM YOU, I WOULD BE FACING IN THIS
23 DIRECTION. IS THAT CORRECT?

24 A MM-HMM (AFFIRMATIVE).

25 Q WHERE WOULD YOU BE IF YOU ARE THE PERSON WHO WAS ASKING FOR

1 THE LIGHT?

2 A HE WALKED UP TO US RIGHT THERE. THAT'S ME.

3 Q OKAY.

4 A HE WAS ON THE LEFT SIDE OF ME.

5 Q ALL RIGHT. DID YOU GET DOWN OFF THE PICNIC TABLE?

6 A YES. I GOT DOWN OFF THE TABLE.

7 Q AND WHAT EXACTLY DID YO DO?

8 A I REACHED IN MY POCKET AND HANDED HIM THE LIGHTER.

9 Q AND WHAT DID HE DO AT THAT TIME? IF I'M YOU AND HE'S ME. I
10 MEAN, IF I'M YOU AND YOU'RE HIM.

11 A HE DID ME LIKE THIS HERE AND HAD THE PISTOL IN MY HEAD LIKE
12 THAT.

13 Q WHAT DID HE DO NEXT AFTER THAT?

14 A I'M TUSSLING AND DRAGGING. THEN THE OTHER GUY DONE GRABBED
15 *victim* 1, AND THE REST OF THEM CAME OUT THE BUSHES.

16 Q AND SO WHEN THE GUY GRABBED YOU RIGHT HERE, WHAT DID HE DO
17 WITH YOU AFTER HE —

18 A AFTER HE GRABBED ME?

19 Q YES, SIR.

20 A HE'S PULLING ME OVER HERE AND I'M TUSSLING BACK. ANOTHER GUY
21 HAD TO COME HELP HIM.

22 Q WAS THAT THE SAME GUY THAT WAS WITH HIM WHEN THEY WERE
23 WALKING DOWN THE ROAD?

24 A YES. I THINK SO.

25 Q AND WHAT DID THEY DO?

1 A I HAD ON A PAIR OF BLACK SHORT PANTS, A PAIR OF BEDROOM
2 SLIPPERS, A PAIR OF WHITE SOCKS, A T-SHIRT AND OF COURSE MY
3 DRAWERS.

4 Q OKAY.

5 A HE PULLED MY SOCKS OFF AND SEARCHED MY SOCKS AND THREWED THEM
6 DOWN. THEN HE PULLED MY BLACK PANTS OFF WHILE THE OTHER
7 ONE'S STILL GOT ME ON THE GROUND. I'M LOOKING AT HIM. HE'S
8 GOING IN AND TAKING MY MONEY OUT, AND HE THREWED THAT DOWN.
9 AND THEN HE CAME OVER THERE AND SAID, "WHERE IS THE REST OF
10 IT", OR SOMETHING LIKE THAT. AND I'M TELLING HIM, "THERE
11 AIN'T NO MORE. WE DON'T HAVE NOTHING." THEN SOMEHOW OR
12 ANOTHER THE GUY CAME UP WITH *victim*'S KEYS.

13 Q ALL RIGHT.

14 A TWO OF THEM WENT TO THE CAR, SEARCHING THE CAR. I'M STILL ON
15 THE GROUND TUSSLING. THEY'RE PUTTING THEIR FEET ON ME. AND
16 THEY'VE STILL GOT THE PISTOL AND I'M STILL TUSSLING.

17 Q SO THEY TOOK YOU TO THE GROUND HERE?

18 A YEAH.

19 Q AND THEN WHERE DID YOU ALL GO AFTER THAT?

20 A WELL, WE'RE STILL IN THIS LITTLE AREA RIGHT HERE.

21 Q OKAY. AND YOU SAY SOME OTHER FELLOWS CAME UP. DO YOU KNOW
22 WHERE THEY CAME FROM?

23 A THEY CAME OUT THEM BUSHES OVER THERE IN THE GRAVEYARD WHERE
24 *victim* KEPT TELLING ME SHE HEARD SOMETHING.

25 Q IF YOU COULD LOOK ON OUR DRAWING, ON OUR DIAGRAM AND SHOW THE

1 JURY WHERE THEY CAME FROM?

2 A THEY CAME FROM RIGHT UP IN HERE. THIS IS THE GRAVEYARD.

3 Q YES, SIR.

4 A YOU'VE GOT BUSHES RIGHT THERE, A LITTLE FENCE THERE.

5 Q MM-HMM (AFFIRMATIVE).

6 A AND IF I HAD OF PAID ATTENTION TO CARLA, I WOULD HAVE BEEN UP
7 ON MYSELF. I THOUGHT IT WAS SOME RAT OR CAT OR SOMETHING IN
8 THE GRAVEYARD, OR A DOG. I DIDN'T HEAR NOTHING. THEY CAME
9 OUT THE GRAVEYARD.

10 Q AND WHAT DID THEY DO WITH *Victim*?

11 A THEY WAS DRAGGING HER, TEARING HER CLOTHES OFF. I'M
12 HOLLERING AT THEM, TELLING THEM TO LEAVE HER ALONE AND THIS
13 AND THAT. AND THEY STARTED HITTING ME AND DRAGGING ME, AND I
14 WAS PUTTING UP A FIGHT. THEY DRUG ME. THEY SKINNED MY LEGS
15 AND EVERYTHING. I WAS FIGHTING. I HAD DONE CAME TO THE
16 CONCLUSION I WAS GOING TO DIE ANYWAY. SO I WAS FIGHTING.
17 AND TWO OF THEM DRUG ME OVER IN THE BUSHES.

18 Q NOW, LOOKING ON OUR DIAGRAM, WHERE DID THEY TAKE YOU, MR.
19 BULL?

20 A OKAY. THEY TOOK ME RIGHT IN HERE. LIKE I SAID, THIS IS A
21 FENCE HERE. YOU'VE GOT BUSHES ALL UP IN HERE.

22 Q YES, SIR.

23 A AND GRAVES AND ALL KIND OF LITTLE I GUESS TOMBSTONES OR
24 WHATEVER. ALL THAT STUFF WAS RIGHT IN HERE.

25 Q OKAY.

1 A BUT RIGHT IN HERE, THERE'S A FENCE RIGHT HERE, THAT YOU BEND
2 DOWN.

3 Q AND DO YOU RECOGNIZE WHERE THAT MIGHT BE ANYWHERE ON OUR
4 DIAGRAM?

5 A OKAY. RIGHT IN HERE IS A LITTLE GATE.

6 Q OKAY.

7 A A LITTLE OPENING, A LITTLE LIKE THAT. BUT YOU'VE GOT THIS
8 HERE. THIS HERE IS LIKE A LITTLE OPEN.

9 Q YES, SIR.

10 A THEY DRUG ME THROUGH HERE. AT THE SAME TIME THEY'VE ALREADY
11 DONE TOOK ~~victim~~ OVER THERE. AND THEY DRUG ME. BECAUSE I'M
12 STEADY FIGHTING, THEY DRUG ME THROUGH HERE. AND THEY'VE GOT
13 ~~victim~~ ON THE GROUND RIGHT HERE. THREE OF THEM. TWO OF THEM
14 GOT ME TUSSLING WITH ME. THEN THEY DRUG ME, WHILE THEY'VE
15 GOT ~~victim~~ RIGHT HERE, THEY MUST HAVE DRUG ME ON OVER HERE.

16 Q ALL RIGHT. WAS THERE ANY POINT IN TIME WHEN YOU LOST SIGHT
17 OF MS. ~~victim~~ ?

18 A YES. WHEN THEY DRUG ME OVER HERE.

19 Q ALL RIGHT, SIR. AND WHEN YOU SAID YOU SAW THE THREE OF THEM
20 TAKING HER CLOTHES OFF, WHERE WAS THAT HAPPENING AT?

21 A THAT STARTED HAPPENING BEFORE WE EVEN GOT IN THE GATE. THAT
22 HAPPENED RIGHT AT RIGHT AROUND IN THE PICNIC AREA. THEY
23 STARTED JUST TEARING HER CLOTHES OFF AND MINES (SIC), TOO.

24 Q AND IN LOOKING AT THIS DIAGRAM IF YOU CAN PLEASE TELL THE
25 JURY WHAT THIS REPRESENTS?

1 A THAT'S ANOTHER -- THAT LOOKS LIKE A BENCH THERE. THERE WAS A
2 BENCH SITTING THERE. THERE'S A COUPLE OF BENCHES. THEY HAVE
3 A BENCH AND PICNIC TABLE AND SEVERAL LITTLE PLAY AREAS FOR
4 KIDS.

5 Q OKAY. AND SO ---

6 A AND THAT BENCH IS THE RIGHT SPOT, RIGHT TO THAT GATE THERE.

7 Q ALL RIGHT. AND THEN WHERE DID THEY TAKE YOU NOW?

8 A THEY TOOK ME BACK OVER HERE.

9 Q OKAY.

10 A I'M STEADY TUSSLING AND PUTTING UP A FIGHT. THEY DRUG ME
11 OVER HERE. WHILE THEY'VE GOT ME OVER HERE, THEY WAS BACK
12 DOWN HERE ABUSING *victim*. THEY KEPT SWITCHING. ONE HAD THE
13 GUN ON ME OVER HERE AND ANOTHER ONE WAS SITTING ON ME. SO
14 ONE WILL COME TAKE THE GUN WHILE ANOTHER ONE GOES BACK DOWN
15 THERE. THEY KEPT ROTATING IT. BECAUSE TWO STAYED ON ME ALL
16 THE TIME.

17 Q RIGHT.

18 A OKAY.

19 Q DID YOU EVER SEE ANY OF THEM GO AWAY FROM THIS AREA AND INTO
20 THE PARKING AREA, OR DID THEY ALL STAY THERE?

21 A WHAT YOU MEAN INTO THE PARKING AREA?

22 Q DID THEY GO ANYWHERE OVER HERE?

23 A NO. THEY HAD DONE WENT THROUGH THE CAR AND EVERYTHING. THEY
24 WASN'T CONCERNED ABOUT THAT NO MORE. THEY WAS AFTER ME AND
25 *victim* THEN. THEY DONE WENT THROUGH THE CAR.

1 Q WHEN DID THEY DO THAT, MR. BULL?

2 A WHILE WE STILL WAS HERE.

3 Q TELL THE JURY WHAT HAPPENED WHILE YOU ALL WERE STILL THERE.

4 A WHILE WE WAS STILL THERE, ONCE THEY GOT ME OFF FROM THE
5 PICNIC TABLE RIGHT HERE, WE'RE RIGHT ALONG IN HERE. I'M
6 STEADY TUSSLING WITH THEM.

7 Q YES, SIR.

8 A AND THEY'RE GRABBING ~~with~~ AND PULLING HER. SHE MUST HAVE
9 DROPPED HER KEYS OR WHATEVER. TWO OF THEM WENT TO THE CAR TO
10 SEARCH THE CAR, WENT IN THE TRUNK. I'M LOOKING AT ALL THIS.
11 I'M LOOKING AT THEM GOING THROUGH THE TRUNK, BECAUSE THEY
12 HADN'T TOOK ME BACK THERE YET. I'M STEADY TUSSLING AND
13 FIGHTING AND ALL OF THIS HERE AND TELLING THEM TO LEAVE HER
14 ALONE, SHE AIN'T DID NOTHING. I SAID A COUPLE OF TIMES, HEY,
15 MAN, YOU ALL GOT SISTERS AND MOMS. YOU ALL WOULDN'T WANT
16 NOBODY TO DO THAT TO YOU ALL. TAKE THE MONEY AND GO. THAT
17 WASN'T ENOUGH. AND THEY'RE STEADY HITTING ME AND PUTTING THE
18 PISTOL TO MY HEAD. I KNOW THAT IT WAS BETWEEN AN AUTOMATIC
19 AND A REVOLVER.

20 Q OKAY. I WAS GOING TO ASK YOU ABOUT THAT. WHAT KIND OF
21 PISTOL WAS IT?

22 A IT WAS A .32 OR A .38. THEY STUCK IT TO MY HEAD. I'M VERY
23 FAMILIAR WITH GUNS. SO I KNOW THE DIFFERENCE. THAT WAS A
24 .32 OR A .38 BECAUSE IT WAS ALL IN MY FACE, ALL UP IN MY
25 HEAD.

1 Q YES, SIR. ALL RIGHT. AND WAS THERE ANY POINT IN TIME WHEN
2 THEY DIDN'T HAVE THE GUN ON YOU?

3 A OH, THEY KEPT THE GUN ON ME THE WHOLE TIME. THEY ROTATED.
4 THERE'S ONE THAT WOULD GIVE THE GUN TO THE OTHER ONE WHILE
5 THEY GO DO WHAT THEY'VE GOT TO DO TO . THEN HE'LL COME
6 BACK. HOW I GOT AWAY, THE LITTLE RED DUDE HAD THE PISTOL BY
7 HIMSELF. HE DRUG ME CLOSE OVER THERE BECAUSE HE WANTED TO
8 GET CLOSE TO WHERE (WAS SO HE COULD SEE WHAT WAS GOING
9 ON.

10 Q LET'S TALK ABOUT WHERE THAT HAPPENED ON OUR MAP. LET'S SEE.
11 WHERE HAD THEY TAKEN YOU ALL?

12 A RIGHT HERE, TO THE GRAVEYARD.

13 Q I THINK THAT WE MIGHT BE SERVED BETTER BY USING EXHIBIT NO.
14 1, YOUR HONOR.

15 THE COURT: OKAY.

16 Q ALL RIGHT. IN LOOKING AT THIS, SEE IF YOU CAN LOOK UP CLOSE
17 ON THIS AND SEE WHERE THE LITTLE BEND DOWN GATEWAY OR FENCE
18 PART IS THAT YOU WERE TALKING ABOUT TO THE JURY, MR. BULL.

19 A OKAY. IT LOOKED LIKE IT'S -- THAT'S THE PARK AREA?

20 Q YES, SIR.

21 A THERE GO THE BENCH RIGHT HERE.

22 Q YES, SIR.

23 A I WAS -- WE WERE SITTING THERE.

24 Q OKAY.

25 A OKAY. THAT'S ANOTHER LITTLE OLD SOMETHING RIGHT THERE. BUT

1 THE GATEWAY LOOKS LIKE RIGHT HERE. SEE THIS HERE IS WHERE
2 THE GRAVEYARD IS RIGHT HERE WHERE THE BUSHES AT. THIS IS
3 WHERE THE LITTLE FENCE AT THAT IS BENT DOWN.

4 Q OKAY. AND DO YOU KNOW WHAT THIS IS ON OUR MAP? WHAT IS
5 THIS? DO YOU SEE WHAT THIS IS?

6 A THIS IS AN APARTMENT COMPLEX OVER HERE. CRESCENT MANOR
7 APARTMENT COMPLEX OVER THERE. I THINK IT'S CRESCENT MANOR.

8 Q OKAY. IS THAT THE APARTMENT COMPLEX?

9 A YEAH. WAY UP THERE. THAT'S IT RIGHT BEHIND WHERE WE WAS
10 RIGHT THERE.

11 Q OKAY. AND SO IN THIS AREA, LOOKING AT THE MAP, CAN YOU TELL
12 THE JURY WHERE THE CEMETERY WAS?

13 A THE CEMETERY IS RIGHT ALONG IN HERE.

14 Q ALL RIGHT, SIR.

15 A RIGHT ALONG IN HERE IS APARTMENTS WHERE I RAN TO, RIGHT IN
16 HERE.

17 Q ALL RIGHT, SIR. OKAY. NOW, BACK UP OVER HERE THEN, WHERE
18 WERE YOU BEING HELD DOWN?

19 A FIRST RIGHT ALONG HERE. THEN THEY MOVED ME BACK OVER HERE.

20 Q OKAY. DID YOU AT ANY -- AND WHERE DID THEY HAVE MS.
21 OVER THERE?

22 A RIGHT ALONG IN HERE.

23 Q OKAY. WAS SHE IN THE BUSHES, OR WAS SHE OVER -- WHERE WAS
24 SHE?

25 A AT FIRST SHE WAS OUT IN THE OPEN. AND I WAS RIGHT THERE

1 BESIDE HER AND I WAS TALKING TO HER. THEN THEY MOVED ME FROM
2 HER, TOOK AND DRAGGED ME FURTHER ON BACK.

3 Q DID YOU SEE THEM SEXUALLY ASSAULTING HER, OR NOT, MR. BULL?

4 A YEAH. I WAS THERE. YEAH. UNTIL THEY MOVED ME I SAW THEM
5 SEXUALLY ASSAULTING HER.

6 Q AND HOW MANY PEOPLE DID YOU SEE DO THAT?

7 A THERE WAS FIVE OF THEM. THEY ROTATED. LIKE I SAID, TWO WAS
8 ON ME; THREE WAS OVER THERE ON HER. WHEN THIS ONE GOT
9 THROUGH, THIS ONE CAME OVER THERE.

10 Q YES, SIR.

11 A THE LITTLE RED DUDE, HE THE ONE HAD THE PISTOL. AND THE REST
12 OF THEM WAS TRYING TO GET TO ME. HE WAS THERE ON ME BY
13 HIMSELF. SO WHEN HE'S DRAGGING ME OVER THERE SO HE CAN SEE
14 WHAT'S GOING ON, I KICKED HIM AND HE FELL BACK. AND I WENT
15 RUNNING THROUGH THE GRAVEYARD. HE SHOT AT ME THREE OR FOUR
16 TIMES. AND I WENT AND GOT SOME HELP.

17 Q ALL RIGHT, SIR.

18 A THAT'S WHERE I WENT TO, THIS HOUSE RIGHT HERE. AND WHILE I
19 WAS GOING TO THE HOUSE, THE GUY WAS COMING DOWN ON THE
20 BICYCLE. I WAS EXPLAINING TO HIM THAT I'VE BEEN ROBBED AND
21 BEATEN AND MY GIRLFRIEND IS DOWN THERE BEING RAPED AND
22 BEATEN. CALL 911.

23 Q OKAY, SIR. AND SO WHEN YOU WERE ABLE TO GET AWAY FROM THE
24 ONE THAT YOU CALLED THE LITTLE RED DUDE, WHERE DID YOU RUN IN
25 THE CEMETERY? DO YOU SEE THE —

1 A I ZIG-ZAGGED THROUGH THE CEMETERY BECAUSE HE WAS SHOOTING AT
2 ME.

3 Q I SEE. YES, SIR. OKAY. AND IS THERE A BUILDING IN THE
4 CEMETERY?

5 A YEAH. IT LOOKS LIKE A MONUMENT OR WHATEVER. THE BUILDING IS
6 RIGHT HERE ON THE RIGHT. THE REST OF THEM IS CHANGED AND
7 STUFF. IT'S A BIG BUILDING.

8 Q ALL RIGHT. CAN YOU LOOK ON THE MAP AND SEE IF YOU SEE THE
9 MONUMENT OR THE MAUSOLEUM THAT YOU'RE TALKING ABOUT LOOKING
10 ON MY MAP?

11 A I THINK THIS IS IT HERE. RIGHT HERE.

12 Q ALL RIGHT, SIR. AND IF THAT'S IT, WHERE DID YOU RUN FROM?
13 YOU HAD BEEN IN THE BUSHES. SHOW THE JURY WHERE YOU RAN FROM
14 THAT FELLOW SHOOTING AT YOU.

15 A OKAY. WE'RE RIGHT OVER HERE SOMEWHERE.

16 Q YES, SIR.

17 A THEN HE'S DRAGGING ME. THEY HAD ~~drag~~ RIGHT DOWN HERE.

18 Q YES, SIR.

19 A WHEN THEY DRUG ME, HE WAS DRAGGING ME OVER THERE SO HE CAN
20 SEE WHAT'S GOING ON BECAUSE THE REST OF THEM TAKING TOO LONG.
21 I KICKED HIM AND PUSHED HIM. HE STUMBLED. THIS IS WHEN I
22 STARTING RUNNING. I WAS RUNNING THROUGH HERE. AND I
23 ZIG-ZAGGED AND DID THAT UNTIL I GOT TO THESE APARTMENTS AND
24 THEN GOT SOME HELP.

25 Q ALL RIGHT, SIR. SO YOU ENDED UP ON WHAT STREET?

1 A THAT WAS RIGHT HERE.

2 Q OKAY.

3 A RIGHT HERE.

4 Q ALL RIGHT, SIR.

5 A I RAN THROUGH THE GRAVEYARD OUT TO THE STREET.

6 Q OKAY. AND WHAT HOUSE DID YOU GO TO?

7 A I'VE DONE FORGOT THEM PEOPLE'S NAMES. BUT THERE WAS TWO OR
8 THREE HOUSES THERE. I WENT TO THEIR HOUSE BECAUSE THEY HAD
9 THE FRONT DOOR AND THERE WAS A LIGHT. THERE WAS -- I THINK
10 IT WAS THE SON. HE WAS ON A BICYCLE. I ASKED HIM FOR SOME
11 HELP. HIS MOTHER CALLED 911. IT LOOKED LIKE IT TOOK THE
12 POLICE FOREVER TO GET THERE. THEY HADN'T COME. SHE CALLED
13 THEM A COUPLE OF TIMES.

14 Q HOLD ON. HOLD JUST A MINUTE THEN. ALL RIGHT. YOUR HONOR,
15 MAY THE WITNESS GO BACK TO THE WITNESS STAND?

16 THE COURT: CERTAINLY.

17 Q THANK YOU. IF YOU COULD. YOUR HONOR, BEG THE COURT'S
18 INDULGENCE JUST A MOMENT.

19 THE COURT: SURE.

20 Q OKAY. MR. BULL, WHEN YOU WENT TO THE HOUSE ON GERMANY
21 STREET, WHAT DID YOU ASK THOSE PEOPLE TO DO FOR YOU?

22 A I EXPLAINED MY SITUATION TO THEM, AS TO WHAT HAPPENED. I
23 ASKED THEM WOULD THEY CALL 911.

24 Q OKAY, SIR. NOW, YOU CAN'T SAY WHAT ANYBODY ELSE SAID. OKAY?

25 A MM-HMM (AFFIRMATIVE).

1 Q I'M FIXING TO ASK YOU A QUESTION, BUT YOU CAN'T SAY WHAT
2 ANYBODY ELSE SAID. BUT I WANT YOU TO TELL THE JURY WHAT YOU
3 SAW, NOT WHAT ANYBODY ELSE SAID, BUT WHAT YOU SAW WHILE YOU
4 WERE STANDING THERE AFTER YOU CALLED 911.

5 A THE FIVE FELLOWS THAT ASSAULTED MS. AND MYSELF WENT
6 WALKING ACROSS THE STREET. I TOLD THE FELLOW THAT LIVED
7 THERE, I SAID, "THERE THEY GO THERE."

8 Q ALL RIGHT. DON'T SAY ANYTHING ELSE. IF YOU COULD, COME BACK
9 DOWN. YOUR HONOR, I HATE TO BELABOR THIS, BUT IF I COULD
10 HAVE THE WITNESS BRIEFLY COME BACK DOWN, JUDGE.

11 THE COURT: SURE.

12 Q THANK YOU, YOUR HONOR. ALL RIGHT. NOW, LOOKING ON OUR MAP,
13 ALL RIGHT, IF YOU COULD, SHOW THE JURY WHERE YOU SAW THE FIVE
14 FELLOWS WALKING. I'VE GOT MY MAP. HERE WE GO. IF THIS IS
15 WHERE YOU POINTED TO BEFORE WHERE YOU WERE ON GERMANY STREET
16 USING THOSE PEOPLE'S TELEPHONE TO CALL THE POLICE, ALL RIGHT,
17 WHERE DID YOU SEE THE FELLOWS WALK WHILE YOU WERE STANDING
18 THERE?

19 A I'M STANDING OUTSIDE THE PEOPLE'S HOUSE ON GERMANY STREET IN
20 MY SHORTS WAITING ON THE POLICE. OKAY. BEHIND THESE FIVE —
21 THESE HOUSES HERE IS A ROW OF HOUSES BEHIND IT. AND THERE'S
22 A LITTLE STREET RIGHT HERE, THIS LITTLE STREET. I'M RIGHT
23 HERE WAITING ON THE POLICE. THESE FELLOWS, FIVE FELLOWS WALK
24 UP THE STREET. THEY WASN'T TOGETHER. IT WAS THREE AT ONE
25 TIME, THEN TWO; OR TWO, THEN THREE. THEY WALKED RIGHT HERE.

1 ME AND THE GUY STILL OUT HERE WAITING ON THE POLICE.

2 Q OKAY. AND WAS THERE ANY STREET LIGHT THERE WHERE YOU COULD
3 SEE?

4 A OH, YEAH. THERE'S A STREET LIGHT THERE. THERE'S SOME LIGHT
5 THERE.

6 Q DO YOU KNOW WHERE THE LIGHT IS? DO YOU KNOW WHERE IT IS, MR.
7 BULL?

8 A I CAN'T BE SURE OF THAT.

9 Q OKAY. ALL RIGHT, SIR. AND SO, WHEN THE FELLOWS WALKED BY
10 YOU, WERE YOU SURE THAT THESE WERE THE FELLOWS THAT HAD
11 ASSAULTED YOU AND MS. ?

12 A LADY, I'M SURE.

13 Q ALL RIGHT.

14 A SOMEBODY DONE PUT A PISTOL TO MY HEAD AND DRUG ME, PULLED ALL
15 MY CLOTHES OFF ME; I'M SURE.

16 Q TELL THE JURY IF YOU CAN WHERE YOU LAST SAW THEM GO, MR.
17 BULL?

18 A RIGHT HERE. THEY WENT STRAIGHT ON ACROSS THE STREET.

19 Q OKAY. WELL, HERE'S WHERE YOU HAD THEM RIGHT HERE AT THE
20 CORNER. HERE'S GERMANY STREET?

21 A MM-HMM (AFFIRMATIVE).

22 Q AND THEY HAD BEEN RIGHT HERE, IS WHERE YOU HAD INDICATED TO
23 THE JURY WHERE YOU LAST SAW THEM.

24 A RIGHT. THEN THEY WENT STRAIGHT ON ACROSS GERMANY STREET.

25 Q THEY CROSSED OVER GERMANY STREET ONTO THIS STREET?

1 A ALL FIVE OF THEM RIGHT BEHIND EACH OTHER.

2 Q AND LOOKING AT THIS DIAGRAM, DO YOU KNOW THE NAME OF THAT
3 STREET?

4 A ORR.

5 Q ORR?

6 A ORR.

7 Q ALL RIGHT. AND THEN WHEN COULD YOU NOT SEE THEM ANY MORE?

8 A AFTER THEY CROSSED THE STREET.

9 Q OKAY. WHEN YOU WERE IN THIS HOUSE OR AT THIS HOUSE ON
10 GERMANY STREET ---

11 A I WASN'T NEVER IN THE HOUSE. I WAS ON THE OUTSIDE AT ALL
12 TIMES.

13 Q ALL RIGHT, SIR. WHEN YOU WERE THERE, IS THEIR HOUSE -- HOW
14 IS THEIR YARD MADE? I MEAN, IS IT A FLAT YARD THAT GOES
15 RIGHT UP TO THEIR HOUSE, OR HOW IS THIS?

16 A YEAH. IT'S FLAT.

17 Q COULD YOU SEE PAST -- WHAT MADE YOU LOSE SIGHT OF THEM, MR.
18 BULL? DO YOU KNOW WHAT IT WAS?

19 A WELL, THEY WENT ACROSS -- SEE, IT'S A FLAT HOUSE. THEY'VE
20 GOT A FLAT YARD. AND RIGHT OVER HERE IS APARTMENTS IN FRONT
21 OF IT, AND RIGHT HERE AS YOU CROSS THE STREET THE APARIMENT
22 AND STUFF WILL KEEP YOU FROM SEEING THEM.

23 Q SO IT BLOCKED YOUR VIEW?

24 A YEAH. THEY WENT UP THE STREET.

25 Q OKAY. ALL RIGHT. NOW, I COULD ASK IF THE WITNESS COULD

1 RETURN TO THE WITNESS STAND, YOUR HONOR.

2 THE COURT: YES, SIR. YES, MA'AM.

3 Q DURING THE TIME, MR. BULL, WHEN THESE FELLOWS WERE ASSAULTING
4 YOU AND MS. , DID YOU EVER HEAR THEM REFER TO EACH OTHER
5 BY ANY KIND OF NAME?

6 A ONE OF THEM CALLED THE OTHER ONE "DOG".

7 Q CALLED HIM WHAT?

8 A "DOG".

9 Q OKAY.

10 A HE USED THE WORD "HURRY UP, DOG", OR SOMETHING.

11 Q OKAY.

12 A THAT'S THE ONLY NAME I EVER HEARD.

13 Q ALL RIGHT. AND WHEN YOU WERE OUT THERE IN THE PARKWAY, YOU
14 MENTIONED TO THIS JURY THAT THEY TOOK YOUR SHORTS. IS THAT
15 RIGHT? TOOK YOUR SHORTS OFF OF YOU?

16 A THEY TOOK MY SHORT PANTS I HAD OFF, BLACK PAIR OF SHORT
17 PANTS. I THINK THEY WAS DOCKERS, DOCKERS OR SOMETHING.

18 Q AND WAS THERE ANYTHING IN THE POCKET OF YOUR PANTS?

19 A YEAH. I HAD A HUNDRED DOLLAR BILL AND I THINK A 5 OR A 1 OR
20 10 OR SOMETHING WHEN I LEFT OUT THE GAS MONEY AND THE SODA
21 MONEY. YEAH, I THINK. YEAH.

22 Q ARE YOU SURE OF ANY DENOMINATION OF BILLS THAT YOU HAD?

23 A YEAH. I DEFINITELY HAD A HUNDRED DOLLAR BILL.

24 Q OKAY, SIR. ALL RIGHTY. WHEN YOU WERE LOOKING AT THESE
25 FELLOWS THAT NIGHT, DO YOU REMEMBER ANYTHING -- CAN YOU

1 DESCRIBE ANYTHING ABOUT THESE FELLOWS FOR THE JURY?

2 A ONE OF THEM HAD THEIR HAIR BRAIDED UP LIKE DREAD LOCKED. ONE
3 OF THEM HAD DREAD LOCKS.

4 Q ALL RIGHT, SIR. WHAT ELSE DO YOU REMEMBER?

5 A TO BE HONEST WITH YOU, I REALLY -- AIN'T BUT ONE OF THEM THAT
6 I REALLY -- THE LIGHT-SKINNED ONE. THE REST OF THEM I REALLY
7 COULDN'T IDENTIFY. SEE WHAT I'M SAYING?

8 Q YES, SIR.

9 A BUT THE LIGHT-SKINNED ONE, THE ONE THAT I GOT AWAY FROM.

10 Q YES, SIR.

11 A THE REST OF THEM I CAN'T BE SURE ABOUT.

12 Q YOU JUST CAN'T BE SURE ABOUT THAT?

13 A I CAN'T BE SURE. TO BE HONEST WITH YOU, I CAN'T BE SURE
14 ABOUT IT.

15 Q ALL RIGHT, SIR. MR. BULL, I WOULD LIKE FOR YOU TO PLEASE
16 LOOK INTO THIS BAG AND SEE IF YOU SEE WHAT THAT IS. DO YOU
17 KNOW WHAT'S IN THAT BAG?

18 A THESE ARE BLACK PANTS I HAD ON THAT NIGHT IN THAT PARK.
19 THESE ARE MY TROUSER PANTS.

20 Q ALL RIGHT, SIR.

21 MS. FRYAR: YOUR HONOR, AT THIS TIME I'D LIKE TO ENTER
22 THESE INTO EVIDENCE.

23 MR. SNEED: NO OBJECTION, YOUR HONOR.

24 THE COURT: WITHOUT OBJECTION, IT WILL BE STATE'S WHAT?

25 COURT REPORTER: NO. 14, YOUR HONOR.

1 (STATE'S EXHIBIT NO. 14, SHORTS, MARKED AND RECEIVED IN
2 EVIDENCE)

3 Q (BY MS. FRYAR) AND WHEN DID YOU LAST SEE THESE SHORT PANTS,
4 MR. BULL?

5 A THE NIGHT I HAD THEM ON IN THE PARK.

6 Q ALL RIGHT, SIR. AND TODAY IS THE FIRST TIME YOU'VE SEEN THEM
7 SINCE THAT TIME?

8 A MM-HMM (AFFIRMATIVE).

9 Q IF YOU COULD, MR. BULL, PLEASE LOOK IN THIS BAG AND SEE, CAN
10 YOU IDENTIFY THESE ITEMS?

11 A YEAH. THESE ARE MY SLIPPERS I HAD ON THAT NIGHT. THESE ARE
12 MY SOCKS I HAD ON. YEP.

13 Q ALL RIGHT, SIR.

14 A AND THIS IS THE CIGARETTE LIGHTER WHERE I GIVE HIM A LIGHT.
15 YEAH. THAT'S IT. IT'S MY STUFF.

16 MS. FRYAR: ALL RIGHT, SIR. YOUR HONOR, IF I COULD ---
17 THE COURT: WHAT WAS THE LAST THING HE SAID? HE SAID A
18 CIGARETTE LIGHTER. HE SAID SOMETHING ELSE.

19 A A CIGARETTE LIGHTER I GAVE HIM A LIGHT WITH.

20 THE COURT: ALL RIGHT. YES, MA'AM.

21 MS. FRYAR: YOUR HONOR, AT THIS TIME I'D LIKE TO ENTER
22 THESE INTO EVIDENCE.

23 MR. SNEED: NO OBJECTION, YOUR HONOR.

24 MR. SHUPPER: NO OBJECTION.

25 THE COURT: WITHOUT OBJECTION. WHY DON'T YOU MARK THE

1 BAG CONTAINING THOSE AFORESAID ITEMS. WHICH IS WHAT I WAS
2 CONCERNED ABOUT IS I THOUGHT HE SAID ANOTHER ITEM AFTER THE
3 CIGARETTE LIGHTER.

4 MS. FRYAR: HE SAID, YEAH, THIS IS MY STUFF.

5 THE COURT: OKAY. I'M SORRY. THOSE WILL BE -- IS THAT
6 OKAY WITH YOU ALL, MARK IT ONE?

7 MR. SNEED: YES, SIR.

8 MR. SHUPPER: YES, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 (STATE'S EXHIBIT NO. 15, SLIPPERS, SOCKS AND LIGHTER, MARKED
11 AND RECEIVED IN EVIDENCE)

12 Q (BY MS. FRYAR) OKAY. MR. BULL, AFTER YOU AND THE PEOPLE AT
13 THAT HOUSE HAD CALLED 911 AND YOU HAD TESTIFIED THAT THE
14 FELLOWS HAD WALKED DOWN THE STREET, WHAT HAPPENED AFTER THAT?

15 A AFTER THEY WENT ACROSS THE STREET THE POLICE FINALLY CAME.

16 Q YES, SIR.

17 A THEN I FLAGGED HIM DOWN. I WENT OUT TO THE ROAD AND FLAGGED
18 HIM DOWN.

19 Q YES, SIR.

20 A I EXPLAINED TO HIM WHAT HAPPENED. THEN WE WENT ON DOWN TO
21 THE PARK WHERE VICTIM WAS. ON THE WAY THROUGH, WE WENT DOWN
22 THE ROAD, AND VICTIM WAS SITTING THERE ON THE SIDE OF THE ROAD
23 NAKED, SHAKING.

24 Q YES, SIR.

25 A I TOLD HIM, I SAID, "THERE SHE GO RIGHT THERE." SO WE

1 STOPPED AND GOT OUT.

2 Q AND WHEN YOU GOT OUT OF THE CAR, DID YOU HAVE A CHANCE TO
3 TALK TO VICTIM?

4 A I TRIED TO TALK TO HER. SHE WAS CRYING AND SHAKING. AND
5 ORIGINALLY I WAS -- I HAD ON A T-SHIRT. AND THERE WAS BLOOD
6 AND STUFF. AND I ATTEMPTED TO TAKE THAT OFF TO COVER HER UP.
7 BUT THE OFFICER WENT IN THE CAR AND GOT A SHEET OR SOMETHING
8 AND COVERED HER UP 'TIL THE AMBULANCE GOT THERE.

9 Q OKAY.

10 MS. FRYAR: YOUR HONOR.

11 THE COURT: MM-HMM (AFFIRMATIVE).

12 MS. FRYAR: BEG THE COURT'S INDULGENCE.

13 Q (BY MS. FRYAR) AND SO WHEN YOU WENT DOWN THERE AND
14 DIDN'T HAVE ANY CLOTHES ON, DID ANYBODY GIVE HER ANYTHING TO
15 WEAR?

16 A THE OFFICER WENT IN THE CAR AND COVERED HER UP THERE WITH
17 SOMETHING. I DON'T KNOW WHAT IT WAS. TO TRY TO COVER HER UP
18 OR SOMETHING.

19 Q OKAY. AND DID SHE HAVE ANYTHING ELSE?

20 A IF I'M NOT MISTAKEN, I BELIEVE I GAVE VICTIM MY T-SHIRT BEFORE
21 THE OFFICER GAVE HER SOMETHING.

22 Q ALL RIGHT, SIR.

23 A IF I'M NOT MISTAKEN.

24 MS. FRYAR: YOUR HONOR, I'D LIKE TO HAVE THIS MARKED FOR
25 IDENTIFICATION PURPOSES AT THIS TIME.

1 THE COURT: "THIS" BEING THE BAG CONTAINING SOMETHING?

2 MS. FRYAR: YES, SIR.

3 THE COURT: OKAY. HAVE IT MARKED FOR IDENTIFICATION
4 PURPOSES AS 15 FOR I.D.?

5 COURT REPORTER: 16.

6 THE COURT: 16 FOR I.D. OKAY.

7 (STATE'S EXHIBIT NO. 16, T-SHIRT, MARKED FOR IDENTIFICATION
8 ONLY)

9 Q (BY MS. FRYAR) NOW, IF YOU COULD, LOOK IN THIS BAG AND SEE
10 IF YOU CAN IDENTIFY WHAT THIS IS?

11 A THIS IS MY SHIRT.

12 Q OKAY. AND HOW DO YOU KNOW THAT'S YOUR SHIRT?

13 A I HAD IT ON. AND IT'S A FRUIT OF THE LOOM. MY DAUGHTER
14 BOUGHT ME A SET OF THE FRUIT OF THE LOOMS. AS A MATTER OF
15 FACT, ~~MY~~ BOUGHT ME THESE T-SHIRTS, TOO. SHE BOUGHT ME
16 THREE FRUIT OF THE LOOMS AND MY DAUGHTER BOUGHT SHE SOME,
17 TOO. AND THAT PARTICULAR NIGHT WHEN THEY WAS DRAGGING ME AND
18 PULLING ME AND MY ELBOW AND STUFF WAS BLEEDING, THIS IS MY
19 T-SHIRT. IF I'M NOT MISTAKEN, I THINK I TRIED TO COVER *victim*
20 UP WITH THIS HERE OR SOMETHING. THEN THE OFFICER GAVE HER
21 SOMETHING. I ATTEMPTED TO COVER HER UP, BECAUSE I HAD IT ON
22 WHEN THEY DRAGGED ME. BUT I TOOK IT OFF TO TRY TO COVER HER
23 UP.

24 Q OKAY. SO WHEN YOU HAD GONE TO THE HOUSE ON GERMANY STREET,
25 DID YOU HAVE THIS T-SHIRT ON?

1 A I THINK I DID.

2 Q AND WHAT ELSE DID YOU HAVE ON THE BOTTOM PART?

3 A MY SHORTS.

4 Q JUST YOUR UNDERSHORTS?

5 A THAT'S ALL.

6 Q OKAY. SO WHEN YOU GOT DOWN THERE AND YOU SAW MS. *victim*, CAN
7 YOU TELL THE JURY WHAT HAPPENED AFTER THAT?

8 A WELL, BEFORE WE GOT DOWN THERE, THE OFFICER STOPPED AT THE
9 STREET UP HERE AND WANTED TO TAKE A REPORT.

10 Q YES, SIR.

11 A I'M IN A HURRY GETTING BACK DOWN THERE TO *victim*. AND HE
12 WANTS TO TAKE A REPORT HERE AND, YOU KNOW, WRITE DOWN WHAT'S
13 GOING ON BEFORE WE GO DOWN THERE.

14 Q RIGHT.

15 A AND I MUST HAVE MADE HIM HOT OR SOMETHING. I SAID, "MAN,
16 LOOK HERE. THIS WOMAN DOWN HERE. THEY DONE RAPE HER, AND
17 YOU'RE TALKING ABOUT REPORT. YOU CAN DO THIS LATER. LET'S
18 GO DOWN HERE AND SEE ABOUT *victim*."

19 Q WHAT KIND OF STATE OF MIND WERE YOU IN AT THAT TIME, MR.
20 BULL?

21 A I WAS MAD. I WAS COLD. I WAS TIRED. I HAD BEEN SCUFFLING
22 WITH THEM FIVE FELLOWS. AND I HAD NO CLOTHES ON. AND I WAS
23 CONCERNED ABOUT GETTING BACK DOWN THERE TO *victim*.

24 Q ALL RIGHT, SIR. AND SO AFTER YOU SAW CARLA AND YOU TESTIFIED
25 THAT YOU GAVE HER THE T-SHIRT, WHAT DID THEY DO TO *victim*?

1 WHAT HAPPENED WITH *victim*?

2 A *Victim* SIT THERE FOR A FEW MINUTES, AND THE AMBULANCE PEOPLE
3 CAME OR SOMETHING. AND THEY FINALLY PUT ON HER ON THE COT
4 AND TOOK HER TO A HOSPITAL.

5 Q OKAY.

6 A AND I'M ...

7 Q ALL RIGHT. AND DID YOU TELL THE POLICE WHAT YOU KNEW AT THAT
8 TIME?

9 A YEAH.

10 Q DID YOU TELL THEM WHAT HAD HAPPENED?

11 A THE OFFICER -- I'M TRYING TO GET DOWN THERE TO SHOW THE
12 OFFICER WHAT HAPPENED, AND HE KEEPS TELLING ME, "DON'T GO
13 DOWN THERE", AND THIS AND THAT. HE'S GOING TO LOCK ME UP.
14 AND I THINK I GOT IN AN ARGUMENT WITH ONE OF THEM. ONE OF
15 THEM COME THERE, AND I TOLD HIM -- I THINK ONE OF THE
16 OFFICERS SAID, WELL, HE IS THE VICTIM. I'M NOW ARGUING WITH
17 HIM. HE'S TALKING ABOUT HE'S GOING TO LOCK ME UP AND PUT
18 HANDCUFFS ON ME.

19 Q YES, SIR.

20 A AND THE OTHER ONE IS SAYING, "WELL, HE'S ONE OF THE VICTIMS"
21 OR SOMETHING LIKE THAT. BECAUSE I WAS UPSET. I WAS WORRYING
22 ABOUT *victim*.

23 Q ALL RIGHT. AND SO, WHEN DID YOU LEAVE THE PARK?

24 A AFTER THEY TOOK *victim*, I STAYED IN THE PARK ABOUT AN HOUR,
25 STILL NAKED, AIN'T GOT NO CLOTHES ON, AND IT'S COLD.

1 Q YES, SIR.

2 A I THINK THE INVESTIGATIVE OFFICER, IF I'M NOT MISTAKEN, THAT
3 OFFICER RIGHT THERE, I THINK HE TOOK ME HOME AND PUT SOME
4 CLOTHES ON. BECAUSE I WAS COLD AND HURTING.

5 Q LET THE RECORD REFLECT THAT YOU ARE POINTING TO -- ARE YOU
6 POINT TO INVESTIGATOR THOMAS HERE?

7 A YES. I THINK HE TOOK ME HOME TO GET SOME CLOTHES ON.
8 BECAUSE I AIN'T HAD NOTHING ON BUT MY SHORTS AND IT WAS COLD.

9 Q ALL RIGHT, SIR. AND AFTER YOU CHANGED YOUR CLOTHES, WHAT DID
10 YOU DO?

11 A WENT DOWN TO THE POLICE HEADQUARTERS.

12 Q OKAY. AND WHEN YOU GOT THERE, WHAT DID YOU DO?

13 A I GAVE THEM A STATEMENT THE BEST I COULD BECAUSE I STILL WAS
14 COLD AND HUNGRY AND UPSET. I WAS WORRYING ABOUT .. I
15 WANTED TO GO TO THE HOSPITAL AND SEE HER. HE TOLD ME, "DON'T
16 GO TO THE HOSPITAL. SHE'LL BE ALL RIGHT." I COULDN'T HALF
17 GIVE A STATEMENT BECAUSE I WAS WORRYING ABOUT HER. AND HE
18 SAID -- IF I'M NOT MISTAKEN, I THINK HE SAID HE'LL GO CHECK
19 ON HER AND LET ME KNOW HOW SHE'S DOING.

20 Q AND DID YOU HAVE AN OPPORTUNITY TO SEE INVESTIGATOR THOMAS
21 AGAIN A COUPLE OF DAYS LATER?

22 A IF I'M NOT MISTAKEN, I DON'T KNOW WHETHER IT WAS HIM. I SAW
23 SOMEBODY. I COULDN'T REALLY BE SURE. I SAW SOMEBODY A
24 COUPLE OF DAYS LATER.

25 Q FROM THE COLUMBIA POLICE DEPARIMENT?

1 A YEAH. MM-HMM (AFFIRMATIVE).

2 Q ALL RIGHT. WHAT DID THEY SHOW YOU? DID THEY SHOW YOU
3 ANYTHING?

4 A YEAH. HE -- SOMEONE SHOWED ME SOME PHOTOGRAPHS.

5 Q ALL RIGHT.

6 A AND LIKE I SAID, I TOLD THEM, I CAN'T BE SURE. I'M STILL NOT
7 SURE. I'M BEING HONEST WITH YOU.

8 Q YES, SIR.

9 A I JUST CAN'T BE SURE.

10 Q ALL RIGHT, SIR. BEG THE COURT'S INDULGENCE.

11 THE COURT: YES, MA'AM.

12 Q I DON'T HAVE ANY MORE QUESTIONS FOR YOU, MR. BULL. PLEASE
13 ANSWER ANY QUESTIONS THESE GENTLEMEN MAY HAVE.

14 THE COURT: MR. SNEED OR MR. STRICKLER.

15 MR. STRICKLER: MAY IT PLEASE THE COURT.

16 THE COURT: YES, SIR.

17 CROSS EXAMINATION BY MR. SNEED:

18 Q MR. BULL, MY NAME IS ROB SNEED. I REPRESENT KENNETH JAMES.

19 A MM-HMM (AFFIRMATIVE).

20 Q MR. BULL, IS IT FAIR TO SAY THAT YOU WERE SCARED THROUGHOUT
21 ALL THIS?

22 A THAT NIGHT? YES, I WAS.

23 Q OKAY. IT'S NOT LIKE SOMEONE STICKS A GUN IN YOUR FACE EVERY
24 DAY?

25 A THAT'S THE FIRST TIME THAT EVER HAPPENED TO ME.

1 Q OKAY. SO YOU WERE FRIGHTENED?

2 A YES, I WAS.

3 Q OKAY. AND MS. *victim* WAS FRIGHTENED?

4 A YES.

5 Q AND SHE WAS CRYING AND SHAKING AFTERWARDS?

6 A (WITNESS NODS HEAD AFFIRMATIVELY)

7 Q OKAY. I WANT TO GET AN IDEA OF HOW LONG ALL THIS TOOK.

8 OKAY? SO, WHAT TIME DID YOU ALL COME BACK TO THE PARK? YOU
9 SAID THE GAME WAS ENDING. ABOUT WHAT TIME WAS THAT?

10 A I COULDN'T BE SURE OF THE TIME.

11 Q OKAY.

12 A WHEN WE LEFT THE PARK THE GAME WAS GOING ON. WE LEFT TO GO
13 TO BURGER KING TO GET A SANDWICH. WHEN WE CAME BACK THE GAME
14 WAS ENDED.

15 Q ALL RIGHT. OKAY. WELL, WAS IT BEFORE MIDNIGHT? AFTER
16 MIDNIGHT?

17 A I DON'T KNOW. I CAN'T BE SURE.

18 Q OKAY. WHEN YOU ALL WERE FIRST SITTING ON THE BENCH, HOW LONG
19 WERE YOU -- OR AT THE TABLE -- HOW LONG WERE YOU THERE BEFORE
20 *victim* SAID SHE HEARD SOMETHING IN THE BUSHES?

21 A LONG ENOUGH TO DRINK THE CUP OF COFFEE I HAD PURCHASED FROM
22 THE BURGER KING. I WAS SITTING THERE DRINKING A CUP OF
23 COFFEE.

24 Q OKAY. WELL, I MEAN, IS THAT LIKE YOU ALL HAD BEEN THERE A
25 HALF HOUR BEFORE SHE HEARS SOMETHING OR YOU'RE THERE FIVE

1 MINUTES?

2 A I'M NOT SURE ABOUT THE TIME. YOU KNOW, I DON'T WANT TO GIVE
3 YOU NO TIME I'M NOT SURE ABOUT.

4 Q SURE. I MEAN, I REALIZE YOU'RE NOT LOOKING AT YOUR WATCH
5 THROUGHOUT ALL THIS.

6 A I DIDN'T HAVE A WATCH ON ME.

7 Q OKAY. AND SHE'S NOT LOOKING AT HER WATCH?

8 A RIGHT.

9 Q SO, I MEAN, I'M NOT ASKING TO PIN YOU DOWN. I'M TRYING TO
10 GET AN IDEA. SO WHEN YOU'RE SITTING THERE DRINKING YOUR
11 COFFEE, RIGHT, YOU TWO ARE SITTING THERE AT THE BENCH, RIGHT?

12 A MM-HMM (AFFIRMATIVE).

13 Q ABOUT HOW LONG IS IT BEFORE SHE SAYS, "HEY, I THINK I HEAR
14 SOMETHING"?

15 A TOLD ME THREE OR FOUR TIMES SHE HEARD SOMETHING.

16 Q OKAY.

17 A BUT I JUST DIDN'T PAY HER NO ATTENTION. I'M THINKING IT WAS
18 A RAT OR SOMETHING IN THE BUSHES.

19 Q OKAY. ABOUT HOW LONG WAS IT BEFORE YOU SAW THESE TWO MEN?

20 THE COURT: HOW LONG FROM WHEN?

21 Q FROM WHEN I SAID, "I THINK I HEAR SOMETHING IN THE
22 BUSHES", SHE TOLD YOU THREE OR FOUR TIMES, RIGHT?

23 A YEAH.

24 Q AFTER THE LAST TIME SHE TOLD YOU, HOW LONG WAS IT UNTIL YOU
25 SAW THE FIRST TWO MEN?

1 A AFTER THE GUYS IN THE PARK LEFT, THAT'S WHEN THEY CAME. BUT
2 THEM GUYS MUST HAVE BEEN WATCHING THEM GUYS PLAYING BALL OVER
3 THERE. WHEN THEM FELLOWS QUIT DRINKING THEIR BEERS AND LEFT,
4 I CAN'T -- YOU WANT A DEFINITE ANSWER. I CAN'T GIVE YOU NO
5 DEFINITE ANSWER BECAUSE I DON'T KNOW. WHEN THEM GUYS IN THAT
6 PARK LEFT, THAT'S WHEN THEM GUYS CAME OUT OF THEM BUSHES.
7 SO, IN OTHER WORDS, THEY WERE WATCHING THEM BALL PLAYERS
8 WHILE WE'RE SITTING ON THE BENCH.

9 Q OKAY. LET'S TALK ABOUT THE TIME FOR THE FIRST TWO MEN. WAS
10 IT TWO MEN APPROACHED YOU AT ONCE, OR WAS IT ONE MAN
11 APPROACHED YOU?

12 A ONE APPROACHED ME.

13 Q OKAY. AND DID HE APPROACH YOU FROM BEHIND OR FROM YOUR
14 FRONT?

15 A FACE-TO-FACE.

16 Q OKAY. AFTER HE PULLS THE GUN OUT, HOW LONG DID IT TAKE FOR
17 THAT SECOND SUSPECT TO COME UP? I MEAN, WAS IT RIGHT AWAY?

18 A THEY CAME DOWN THE STREET TOGETHER.

19 Q YEAH.

20 A THEY WAS TOGETHER.

21 Q I'M OBVIOUSLY NOT BEING CLEAR.

22 A NO, YOU AIN'T.

23 Q THE FIRST GUY COMES UP AND HE ASKS YOU FOR A LIGHT?

24 A MM-HMM (AFFIRMATIVE).

25 Q YOU GIVE HIM A LIGHT?

1 A MM-HMM (AFFIRMATIVE). I GOT DOWN OFF THE TABLE TO HAND HIM A
2 LIGHT.

3 Q HE PULLS OUT A GUN?

4 A NO, NO. HE AIN'T PULLED IT OUT. HE HAD THAT GUN IN HIS HAND
5 ALL THE TIME.

6 Q HE HAD A GUN IN HIS HAND? AND THEN ---

7 A BUT I DIDN'T SEE IT.

8 Q OKAY. BUT AFTER YOU A GAVE HIM THE LIGHT ---

9 A RIGHT.

10 Q --- THEN DID HE POINT THE GUN AT YOU?

11 A WHEN I GOT OFF THE TABLE TO HAND HIM ---

12 Q HANG ON, SIR. DO YOU NEED TO COME DOWN? WILL THAT HELP YOU?

13 THE COURT: I DON'T KNOW.

14 Q WOULD THAT HELP YOU TO GET OFF THE WITNESS STAND TO
15 DEMONSTRATE THIS?

16 A I'M TRYING TO SHOW YOU WHAT HAPPENED. WOULD IT HELP YOU?
17 I'M TRYING TO SHOW YOU THE WAY IT HAPPENED.

18 Q OKAY.

19 A THE MAN -- THE MAN ---

20 Q HANG ON, MR. BULL. HANG ON. WHY DON'T YOU JUST STAND UP
21 HERE AND DEMONSTRATE TO THE JURY HOW IT HAPPENED?

22 A I'M SITTING ON THE BENCH HERE LIKE THIS HERE ON THE BENCH.

23 IS SITTING HERE. ----- KEPT CARRYING SHE HEARS
24 SOMETHING. GOT UP FROM HERE AND SIT RIGHT HERE BESIDE
25 ME SO WE CAN FACE THE BUSHES SO SHE CAN SEE WHAT'S GOING ON.

1 TWO DUDES CAME DOWN THE ROAD. ONE CAME STRAIGHT AT ME AND
2 .. THE OTHER ONE WENT AROUND THE BUILDING. THE DUDE
3 CAME UP TO ME AND ASKED ME FOR A LIGHT. I GOT OFF THE BENCH,
4 HANDED HIM THE LIGHTER. THE DUDE DRUG ME LIKE THIS. HE PUT
5 THE PISTOL LIKE THIS. THEN THE OTHER ONE WENT BEHIND,
6 GRABBING , HERE COME THE REST OF THEM.

7 Q STOP FOR A MINUTE. YOU CAN GET BACK ON THE WITNESS STAND,
8 PLEASE. AFTER THE FIRST -- AFTER THAT GUY GRABBED YOU AND
9 HE'S GOT A GUN ON YOU, DID THE NUMBER TWO SUSPECT COME RIGHT
10 AWAY?

11 A YEAH. BECAUSE ME AND HIM WAS TUSSLING.

12 Q OKAY. SO THE SECOND ONE CAME RIGHT AWAY, RIGHT AFTER HIM.
13 RIGHT?

14 A MM-HMM (AFFIRMATIVE).

15 Q OKAY. THE OTHER THREE, THEY CAME OUT OF THE BUSHES, RIGHT?

16 A MM-HMM (AFFIRMATIVE).

17 Q AND THEY CAME RIGHT AWAY?

18 A MM-HMM (AFFIRMATIVE).

19 Q OKAY.

20 A ALL OF THAT HAPPENED WITHIN A MINUTE.

21 Q OKAY.

22 A OR LESS.

23 Q WITHIN A MINUTE OR LESS --

24 A YEAH.

25 Q -- ALL FIVE GUYS ARE RIGHT THERE?