

18261

VOLUME 2 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.

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1 A ON US, RIGHT.

2 Q OKAY. THE GUNMAN, SUSPECT ONE, HE'S GOT A GUN AND HIS ARM IS
3 AROUND YOUR NECK OR HE'S RIGHT THERE WITH YOU?

4 A MM-HMM (AFFIRMATIVE).

5 Q OKAY. SUSPECT NUMBER TWO?

6 A MM-HMM (AFFIRMATIVE).

7 Q THE GUY WHO APPARENTLY WENT BEHIND THIS BUILDING; WHEN HE RAN
8 IN, DID HE GO TO YOU, OR DID HE GO TO CARLA?

9 A I THINK HE WENT TO *victim*, IF I'M NOT MISTAKEN.

10 Q OKAY. NOW, LET'S TALK ABOUT THE OTHER THREE NOW. ALL RIGHT.
11 WHEN THEY CAME OUT OF THE BUSHES, WHICH OF THOSE WENT TO YOU
12 AND WHICH WENT TO *victim*

13 A WHEN THE OTHER THREE CAME OUT THE BUSHES, ALL OF THEM GOT ON
14 ME AND *victim* TWO OF THEM HAD ME AND THE OTHER THREE HAD
15 HER, DRAGGING HER, TEARING HER CLOTHES OFF. I DON'T KNOW
16 WHICH ONE DID WHAT.

17 Q OKAY. HOW LONG WAS IT BEFORE THREE OF THEM DRUG *victim* OVER
18 BY THE CEMETERY?

19 A YOU SAY HOW LONG? LIKE I TELL YOU, ALL OF THIS HAPPENED
20 WITHIN A MINUTE.

21 Q OKAY.

22 A A SECOND OR TWO. THEY'RE GRABBING ME. THEY'RE PULLING *victim*
23 AT THE SAME TIME.

24 Q OKAY.

25 A IN A SPLIT SECOND OR TWO.

1 Q OKAY. ABOUT HOW LONG WERE YOU THERE WITH THE FIVE GUYS
2 STRUGGLING BEFORE YOU MANAGED TO BREAK FREE?

3 A OH, MAN. WE -- A GOOD ---

4 Q I MEAN, I'M NOT TRYING TO GET YOU TO ---

5 THE COURT: HANG ON A SECOND. LET HIM ANSWER THE
6 QUESTION, AND THEN ---

7 A A GOOD 35 OR 40 MINUTES. WE SCUFFLED AND TUSSLED.

8 Q OKAY.

9 A OR LONGER. I CAN'T BE SURE. ALL I WAS CONCERNED ABOUT IS
10 TRYING TO GET ~~Victim~~ OUT OF THERE. AND I WAS FIGHTING BACK
11 AND

12 Q ALL RIGHT. SO THE TOTAL TIME IS 30 MINUTES, GIVE OR TAKE.
13 IS THAT FAIR TO SAY?

14 A OR LONGER. IT PROBABLY WAS LONGER. I CAN'T BE SURE OF THE
15 TIME.

16 Q OKAY. MR. BULL, I WANT YOU TO STEP DOWN. THIS IS STATE'S
17 EXHIBIT NO. 13. OKAY. I WANT TO MAKE SURE I UNDERSTAND WHAT
18 HAPPENED. OKAY. AND CORRECT ME WHERE I'M WRONG HERE. YOU
19 ALL ARE AT THE PICNIC TABLE INITIALLY, RIGHT?

20 A RIGHT.

21 Q OKAY. THE FIRST SUSPECT, WHERE DID HE COME FROM? WHEN HE
22 SPLIT APART, WHERE EXACTLY WAS HE COMING FROM?

23 A OKAY. THIS IS THE PARK HERE, RIGHT?

24 Q RIGHT.

25 A OKAY. THIS IS THE ROAD RIGHT HERE.

1 Q SURE.

2 A BOTH OF THEM CAME DOWN THE ROAD TOGETHER. THERE DIDN'T NO
3 ONE COME DOWN. BOTH OF THEM COME DOWN THERE TOGETHER.

4 Q I'VE GOT YOU. NOW, STOP FOR A MINUTE. AT ONE POINT ONE OF
5 THEM WENT BEHIND THE SHED?

6 A RIGHT.

7 Q WHERE DID THEY SPLIT UP? THEY CAME DOWN THE ROAD TOGETHER
8 AND THEY SPLIT UP AT SOME POINT.

9 A BOTH OF THEM CAME DOWN THE ROAD TOGETHER. ONE CAME STRAIGHT
10 TO ME. IF THIS IS THE ROAD, ONE CAME STRAIGHT TO ME; THE
11 OTHER ONE WENT AROUND THE BUILDING LIKE THEY WASN'T TOGETHER.
12 YOU UNDERSTAND? THIS IS THE BUILDING HERE. HE WENT AROUND
13 THE BUILDING. THE OTHER ONE CAME STRAIGHT TO ME ASKING ME
14 FOR A LIGHT.

15 Q OKAY. LET ME STOP YOU THERE. AFTER THE FIRST ONE PULLS A
16 GUN AND GRABS YOU, NUMBER TWO COMES FROM BEHIND?

17 A MM-HMM (AFFIRMATIVE).

18 Q HE DOESN'T GRAB YOU. HE GRABS VICTIM?

19 A IF I'M NOT MISTAKEN, I THINK HE DID.

20 Q WHICH BUSHES DID THE OTHER THREE MEN COME FROM?

21 A RIGHT HERE. THEY'RE RIGHT IN HERE, RIGHT IN FRONT OF THE
22 BUSHES.

23 Q OKAY. NOW, HANG ON. HANG ON. LET ME STOP YOU FOR A MINUTE.
24 THEY CAME FROM WHICH ---

25 A RIGHT HERE.

- 1 Q OKAY. IS THERE A BREAK IN THE FENCE OVER HERE?
- 2 A RIGHT THERE.
- 3 Q OKAY. DID THEY COME THROUGH THE BREAK IN THE FENCE?
- 4 A THE FENCE SO LOW THEY DIDN'T HAVE TO COME THROUGH. YOU COULD
- 5 STEP ACROSS IT.
- 6 Q DID THEY COME THROUGH THIS WAY OR FROM THIS SIDE?
- 7 A ALL I KNOW IS -- NO. THEY CAME FROM RIGHT HERE. ALL I KNOW,
- 8 THEY COME OUT OF THEM BUSHES.
- 9 Q OKAY. LET ME SEE THE POINTER FOR A MOMENT. RIGHT HERE THE
- 10 FENCE IS MASHED DOWN RIGHT HERE, RIGHT?
- 11 A RIGHT.
- 12 Q YOU COULD JUST STEP ACROSS IT, RIGHT?
- 13 A RIGHT.
- 14 Q BUT THE FENCE, IT'S KIND OF UPRIGHT FOR A GOOD PART OF IT.
- 15 IT'S STILL A FENCE, SO TO SPEAK, RIGHT?
- 16 A MM-HMM (AFFIRMATIVE).
- 17 Q SO, WHEN YOU SAY THEY CAME OUT OF THE BUSHES, WERE THEY ON
- 18 THE CEMETERY SIDE OF THE FENCE OR ON THE PARK SIDE OF THE
- 19 FENCE?
- 20 A IT WAS IN THE CEMETERY.
- 21 Q OKAY.
- 22 A IT WAS IN THE CEMETERY.
- 23 Q I'VE GOT YOU. SO, DID THEY JUST STEP OVER WHERE THAT LITTLE
- 24 -- WHERE THE FENCE WAS MASHED DOWN? IS THAT THE WAY THEY
- 25 CAME? OR ARE YOU TALKING ABOUT THEY COME AROUND ON THE ROAD

1 SIDE?

2 A NO, THEY DIDN'T COME AROUND ON THE ROAD SIDE. THEY CAME
3 RIGHT THROUGH HERE. THIS FENCE RIGHT HERE, ME AND HIM COULD
4 HAVE MASHED THIS FENCE DOWN BECAUSE WE WAS SCUFFLING AND
5 TUSSLING. YOU KNOW WHAT I'M SAYING?

6 Q OKAY. I'VE GOT YOU.

7 A WE PUSHED THIS FENCE DOWN HERE BECAUSE I WAS FIGHTING.

8 Q ALL RIGHT. AS SOON AS ALL FIVE MEN ARE ON THE SCENE?

9 A MM-HMM (AFFIRMATIVE).

10 Q OKAY?

11 A MM-HMM (AFFIRMATIVE).

12 Q TWO OF THEM ARE ON YOU. THREE ARE ON HER, RIGHT?

13 A MM-HMM (AFFIRMATIVE).

14 Q OKAY. THEY DRUG -- THREE OF THEM DRUG ~~victim~~ AWAY, RIGHT?

15 A RIGHT IN HERE.

16 Q OKAY. SO, DID THAT JUST HAPPEN LIKE THAT, OR RATHER LIKE
17 THAT, RIGHT AWAY?

18 A IT HAPPENED QUICK.

19 Q OKAY.

20 A TWO OF THEM, WHILE ME AND MY MAN RIGHT HERE, TWO OF THEM TO
21 THE CAR RIGHT HERE SEARCHING THE CAR. MUST HAVE GOT HER KEYS
22 BECAUSE HE SAID, "GIVE IT UP." THEY'RE UP THERE AT THE CAR.
23 AND I'M SEEING THEM AT THE CAR WHILE I'M STILL LAYING ON THE
24 GROUND WITH THE PISTOL AT MY HEAD. I'M LAYING DOWN. I'M
25 LOOKING RIGHT AT THE CAR, AND THEY'RE GOING THROUGH THE

1 POCKETBOOKS AND STUFF AND DIDN'T FIND ANYTHING. THEY COME
2 BACK MADE BECAUSE THEY COULDN'T FIND NO MORE MONEY.

3 Q I JUST WANT TO MAKE SURE. FROM WHEN ALL FIVE WERE THERE,
4 THEY PULL YOU ALL OVER THERE RIGHT AWAY?

5 A NOT RIGHT AWAY, NO. NO.

6 Q WELL, HOW LONG DID IT TAKE FOR THEM TO PULL OVER victim OVER
7 TO THE BUSHES?

8 A WHEN ME AND THIS GUY HERE, WHEN I GAVE HIM A LIGHT, WE'RE
9 HERE TUSSLING. YOU UNDERSTAND? WE'RE RIGHT HERE ON THE
10 GROUND TUSSLING. AND HE'S GOING THROUGH MY POCKETS AND MY
11 SOCKS AND ALL TRYING TO FIND MONEY. THEY'VE GOT victim ---

12 Q HANG ON. LET ME STOP YOU FOR A MINUTE. ALL FIVE GUYS ARE
13 THERE. OKAY. INITIALLY?

14 A MM-HMM (AFFIRMATIVE).

15 Q TWO ARE ON YOU. THREE ARE ON victim, RIGHT?

16 A MM-HMM (AFFIRMATIVE).

17 Q AT SOME POINT ---

18 A TWO OF THEM LEFT victim AND WENT TO THE CAR.

19 Q SURE. WHEN DID THEY TAKE , OVER HERE? IS THAT RIGHT
20 AFTER IT STARTED?

21 A NO. THEY HAD victim. RIGHT HERE FIRST. THEN THEY WAS DRAGGING
22 AND PULLING HER CLOTHES OFF HER.

23 Q WHEN DID THEY TAKE victim FROM THE PICNIC TABLE TO THAT AREA
24 YOU JUST POINTED TO? WAS IT RIGHT AWAY?

25 A THE PICNIC TABLE IN THAT AREA IS RIGHT THERE. THAT'S A

1 LITTLE SMALL AREA. YOU SEE, YOU CAN'T JUDGE BY THIS. YOU
2 NEED TO GO OUT THERE. THAT'S A SMALL AREA. ALL THAT IS
3 RIGHT THERE TOGETHER. FROM THE PICNIC TABLE RIGHT HERE WHERE
4 THE OTHER TABLE IS, AIN'T NOTHING BUT A STEP RIGHT THERE
5 ANYWAY. YOU UNDERSTAND WHAT I'M SAYING? SO THIS HERE IS ALL
6 WRONG, MAN. THAT'S WRONG.

7 Q THIS DIAGRAM DOESN'T DEPICT HOW IT IS?

8 A LET ME EXPLAIN IT TO YOU.

9 THE COURT: MR. BULL. MR. BULL.

10 A SIR?

11 THE COURT: ANSWER HIS QUESTIONS.

12 A I'M TRYING TO.

13 THE COURT: EXCUSE ME A MINUTE. ANSWER HIS QUESTION AS
14 SUCCINCTLY; THAT IS, IN AS BRIEF A MANNER AS YOU POSSIBLY
15 CAN. THEN YOU CAN EXPLAIN YOUR ANSWER. DON'T YELL BACK AT
16 ME. DON'T YELL AT HIM. THANK YOU.

17 A YOUR HONOR, I'M NOT YELLING. THEY DON'T UNDERSTAND. I'M
18 TRYING TO EXPLAIN IT TO THEM, SIR.

19 THE COURT: EXCUSE ME A MINUTE, MR. BULL. ANSWER THE
20 QUESTION. DON'T TRY TO EXPLAIN ANYTHING TO ME. KEEP GOING.

21 Q MR. BULL, DOES THE DIAGRAM ACCURATELY DEPICT WHAT THE PARK
22 AREA LOOKED LIKE IN MAY OF '96?

23 A IT'S CLOSE.

24 Q OKAY. BUT THERE ARE SOME MISTAKES IN IT?

25 A YES. A LOT OF MISTAKES.

1 Q A LOT OF MISTAKES. SOME INACCURACIES IN IT?

2 A SOME INACCURACIES.

3 Q TO MAKE SURE I UNDERSTAND THESE INACCURACIES, LET ME JUST TRY
4 TO GO SLOW. THIS IS FOR ME. NOT FOR YOU, SIR. THE PICNIC
5 TABLE HERE WHERE I'M POINTING TO IS WHERE YOU ALL STARTED AT.
6 RIGHT?

7 A RIGHT.

8 Q OKAY. OVER HERE WHERE IT'S LABELED BENCH, ~~victim~~ WAS TAKEN TO
9 A BUSH BEHIND THAT BENCH, RIGHT?

10 A (WITNESS NODS HEAD AFFIRMATIVELY)

11 Q OKAY. THE DISTANCE FROM THE PICNIC TABLE TO THE BENCH IS NOT
12 THAT FAR?

13 A RIGHT.

14 Q OKAY. IT'S NOT -- I MEAN, WHEN YOU SAID EARLIER ALL OF THIS
15 IS IN THE SAME AREA, IT MAY BE 10 OR 20 FEET AWAY FROM THE
16 TABLE TO THE BENCH. IS THAT FAIR TO SAY? TWENTY FEET OR
17 TEN?

18 A CLOSER THAN THAT.

19 Q CLOSER THAN THAT? OKAY. SO THESE ARE RIGHT NEXT TO EACH
20 OTHER ALMOST?

21 A RIGHT.

22 Q OKAY. IF YOU COULD GET BACK ON THE WITNESS STAND, PLEASE,
23 SIR.

24 (WITNESS RESUMES THE STAND)

25 Q MR. BULL, I WANT TO TALK ABOUT YOUR CONTACT WITH LAW

1 ENFORCEMENT BRIEFLY. NOW, YOU TESTIFIED THAT YOU FLAGGED
2 THAT OFFICER DOWN ON THE SCENE OR ON THE STREET OUT THERE,
3 RIGHT? THAT'S WHEN YOU FIRST TALKED TO LAW ENFORCEMENT?

4 A MM-HMM (AFFIRMATIVE).

5 Q OKAY. THAT WAS THAT OFFICER WALKER THAT TESTIFIED EARLIER?

6 A I BELIEVE IT WAS.

7 Q OKAY. AND YOU DESCRIBED HOW YOU GAVE HIM A REPORT BUT HE --
8 YOU AND HE DIDN'T SEE EYE TO EYE ON EVERYTHING AT THAT POINT?

9 A RIGHT.

10 Q OKAY. THE NEXT TIME YOU TALKED TO LAW ENFORCEMENT WAS A
11 COUPLE OF HOURS LATER WITH INVESTIGATOR THOMAS, RIGHT? AT
12 HEADQUARTERS?

13 A HUH-UH (AFFIRMATIVE).

14 THE COURT: MAY I SEE ALL COUNSEL AT THE TABLE FOR JUST
15 A MINUTE, PLEASE, SINCE WE WANT TO DO IT AROUND THE ...

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

17 THE COURT: OKAY. MR. SNEED, I'M NOT TRYING TO TELL YOU
18 HOW TO EXAMINE THIS WITNESS.

19 MR. SNEED: YES, SIR.

20 THE COURT: BUT I WILL TELL YOU THIS, THAT THIS WITNESS
21 -- I DO NOT KNOW WHAT YOU ARE DOING. I'LL JUST ASK YOU, WHAT
22 ARE YOU DOING? I MEAN, WHAT IS IT THAT THIS WITNESS HAS SAID
23 THAT YOU ARE NOW TESTING THROUGH THIS MEANS OF EXAMINATION?

24 MR. SNEED: WELL, I WAS TESTING TIME. AND HE --

25 THE COURT: OKAY.

1 MR. SNEED: THANK YOU, YOUR HONOR. I'M DONE WITH TIME.
2 HE DIDN'T DO SO WELL THERE. SO I MOVED TO ANOTHER TIME.

3 THE COURT: SHH. MOVE TO ANOTHER TOPIC. I'M NOT
4 SUGGESTING ANYTHING TO YOU, HOW YOU OUGHT TO DO THINGS. I'M
5 JUST WONDERING. YOU GO AHEAD AND DO IT HOWEVER YOU WANT TO
6 DO IT. THANK YOU.

7 (WHEREUPON, THE SIDE BAR CONFERENCE IS CONCLUDED)

8 THE COURT: OKAY. LET'S CONTINUE. EXCUSE ME FOR
9 INTERRUPTING.

10 Q (BY MR. SNEED) OKAY. SO MR. BULL, YOU TALKED TO OFFICER
11 WALKER WHEN YOU FLAGGED HIM DOWN AFTER CALLING 911, RIGHT?

12 A RIGHT.

13 Q THAT WAS RIGHT AFTER THE INCIDENT?

14 A RIGHT.

15 Q OKAY. AND I BELIEVE YOU TOLD THE SOLICITOR THAT YOU WERE
16 COLD AND ANGRY AND SO ON WHEN YOU TALKED TO HIM AT THAT
17 POINT?

18 A RIGHT.

19 Q OKAY. LATER ON THAT MORNING YOU TALKED TO INVESTIGATOR
20 THOMAS, RIGHT?

21 A I BELIEVE SO.

22 Q OKAY. WAS THAT DOWN AT HEADQUARTERS OR THE POLICE STATION?

23 A YES.

24 Q OKAY. AND THAT'S WHEN YOU GAVE THE WRITTEN STATEMENT?

25 A I THINK SO.

1 Q OKAY.

2 A I MIGHT HAVE TALKED TO HIM IN THE PARK, IF I'M NOT MISTAKEN,
3 OR DOWN AT HEADQUARTERS. I THINK HE TOOK ME TO HOME TO
4 CHANGE CLOTHES, IF I'M NOT MISTAKEN.

5 Q OKAY. AND THEN AFTER YOU WENT TO YOUR HOME, THEN YOU WENT TO
6 THE POLICE STATION?

7 A RIGHT.

8 Q AND YOU WERE FULLY DRESSED AT THIS POINT? OR YOU HAD CLOTHES
9 ON?

10 A WHERE? AT THE POLICE STATION?

11 Q YES, SIR.

12 A YEAH. I STILL WAS COLD AND HURT. I EXPLAINED IT TO HIM.
13 BECAUSE THE AMBULANCE DIDN'T DO NOTHING FOR ME. HE SAID
14 THERE WASN'T NOTHING THE MATTER BUT SCRATCHES. AND I'M
15 HURTING AND SORE AND COLD.

16 Q SO YOU NEVER WENT TO THE HOSPITAL THAT NIGHT?

17 A NO. HE SAID I DIDN'T NEED TO GO.

18 Q OKAY. LET ME TALK ABOUT THE STATEMENT YOU GAVE TO THE
19 INVESTIGATORS. WHEN YOU GAVE THAT STATEMENT YOU WANTED TO BE
20 HELPFUL, RIGHT?

21 A WANTED TO BE HELPFUL?

22 Q YOU WANTED TO TELL THEM AS MUCH INFORMATION AS YOU COULD?

23 A RIGHT, RIGHT.

24 Q AND YOU WANTED TO BE COMPLETE WITH THEM, AS MUCH AS POSSIBLE?

25 A YEAH, YEAH. I TRIED.

1 Q AND ACCURATE?

2 A RIGHT.

3 Q AND AFTER THE STATEMENT WAS WRITTEN OUT, THE OFFICER GAVE YOU
4 A CHANCE TO READ OVER IT?

5 A MM-HMM (AFFIRMATIVE).

6 Q OKAY. AND THEN YOU SIGNED IT, YOUR STATEMENT?

7 A YEAH. I GUESS I DID.

8 Q OKAY.

9 A AS FAR AS I CAN REMEMBER.

10 (DEFENDANT KENNETH JAMES EXHIBIT NO. 1, STATEMENT OF MR.
11 BULL, MARKED FOR IDENTIFICATION ONLY)

12 Q MR. BULL, I'M GOING TO HAND YOU DEFENSE EXHIBIT NO. 1. TAKE
13 AS MUCH TIME AS YOU NEED. BUT IF YOU COULD JUST TELL THE
14 JURY WHAT THAT IS?

15 A I GUESS THIS IS THE STATEMENT I GAVE THE OFFICER.

16 Q AND DOES THIS INDICATE ---

17 A I DIDN'T WRITE THIS, YOU KNOW. THE OFFICER WROTE IT AND I
18 SIGNED IT.

19 Q OKAY. THAT IS YOUR SIGNATURE AT THE BOTTOM OF PAGE 1?

20 A MM-HMM (AFFIRMATIVE).

21 Q YOUR SIGNATURE AT THE BOTTOM OF PAGE 2?

22 A YEAH.

23 Q AND AT THE BOTTOM OF PAGE 3?

24 A YEAH.

25 Q OKAY. AND THE DATE ON THIS IS 2-30?

1 A YEAH. NO.

2 Q OKAY.

3 A NO. THE DATE?

4 Q I'M SORRY.

5 A THE TIME IS 2:30.

6 Q THANK YOU.

7 A 2:31.

8 Q IF I CAN HAVE IT BACK, PLEASE. SO THIS IS WITHIN A COUPLE OF
9 HOURS OF THE INCIDENT?

10 A MM-HMM (AFFIRMATIVE).

11 Q OKAY. AND IT'S FAIR TO SAY THAT YOUR MEMORY OF THE INCIDENT
12 MAY HAVE BEEN FRESHER TWO HOURS LATER THAN THREE AND A HALF
13 YEARS LATER. IS THAT FAIR TO SAY?

14 A I GUESS. AT THE TIME I RECKON YOU COULD SAY THAT. LIKE I
15 SAY, I WAS MAD AND COLD AND EVERYTHING. BUT I GUESS IT WAS
16 FRESHER THEN THAN IT IS NOW.

17 Q I MEAN, PEOPLE'S MEMORIES DON'T GENERALLY IMPROVE OVER TIME,
18 DO THEY?

19 A I WOULDN'T KNOW.

20 Q OKAY. FINE. AND OFFICER THOMAS OR INVESTIGATOR THOMAS SPOKE
21 WITH YOU AGAIN A FEW DAYS LATER, RIGHT, WITH SOME PHOTOS?

22 A (WITNESS NODS HEAD AFFIRMATIVELY)

23 Q YOU SHOOK YOUR HEAD?

24 A I THINK I SO.

25 Q AND YOU HAD A CHANCE THEN TO TALK TO INVESTIGATOR THOMAS

1 ABOUT THE INCIDENT, RIGHT?

2 A I BELIEVE SO.

3 Q OKAY. I MEAN, HE NEVER TOLD YOU THOUGH I WANT YOU TO
4 WITHHOLD INFORMATION FROM ME, DID HE?

5 A NO, NO. NO, NO.

6 Q AND HE ALWAYS GAVE YOU A SPIRIT OF WANTING TO HELP. I MEAN,
7 YOU DID WANT TO HELP HIM GET INFORMATION FROM YOU?

8 A OH, HE ALWAYS BEEN THERE FOR ME AND STRAIGHT UP.

9 Q OKAY. NOW, YOU MENTIONED ONE OF THE GUYS. YOU SAID RED. DO
10 YOU RECALL THAT TO THIS JURY A FEW MINUTES AGO?

11 A MM-HMM (AFFIRMATIVE). A LIGHT-SKINNED DUDE.

12 Q WHEN WE'RE TALKING ABOUT THE DESCRIPTION OF THE FIVE MEN?

13 A MM-HMM (AFFIRMATIVE).

14 Q OKAY. YOU NEVER TOLD ANY OFFICER RED BEFORE, DID YOU?

15 A WHAT YOU MEAN RED?

16 Q RED. WELL, YOU SAID RED TO THIS JURY. WHAT DID YOU MEAN BY
17 RED?

18 A LIGHT-SKINNED. RED. I SAID ONE OF THE DUDES WAS
19 LIGHT-SKINNED. I SAID RED, BUT I MEANT, YOU KNOW, LIGHT
20 SKINNED.

21 Q LIGHT SKINNED?

22 A YEAH. THAT'S WHAT I MEANT.

23 Q OKAY. ALL RIGHT. YOU NEVER SAID ANYTHING TO THE POLICE
24 BEFORE ABOUT ANY CLOTHING DESCRIPTIONS, RIGHT?

25 A I DON'T KNOW.

- 1 Q OKAY. YOU DON'T KNOW?
- 2 A YOU TALKING ABOUT WHEN HE TOOK THE STATEMENT FROM ME?
- 3 Q YES, SIR.
- 4 A I CAN'T REMEMBER ---
- 5 Q OKAY.
- 6 A --- WHETHER I DID OR NOT.
- 7 Q YOU DON'T REMEMBER ANY OF THE CLOTHING ANY OF THE FIVE MEN
- 8 HAD ON, DO YOU?
- 9 A THE CLOTHING?
- 10 Q YES, SIR.
- 11 A I CAN'T SAY.
- 12 Q YOU COULDN'T SAY?
- 13 A COULDN'T SAY.
- 14 Q ALL RIGHT. AND, SIR, WHEN YOU WERE TALKING ABOUT THIS, YOU
- 15 REMEMBER THE HAIRSTYLE OF ONE OF THESE MEN?
- 16 A DEFINITELY.
- 17 Q OKAY. AND THE WORD YOU USED, WAS IT BRAIDED OR DREAD LOCKED?
- 18 I CAN'T ---
- 19 A DREAD LOCKED.
- 20 Q DREAD LOCKS.
- 21 A DREAD LOCKED. THAT'S WHAT IT WAS.
- 22 Q SIR, I'M HANDING YOU DEFENSE EXHIBIT NO. 1. THIS IS YOUR
- 23 STATEMENT TO MR. THOMAS JUST A FEW HOURS AFTER THE INCIDENT.
- 24 CAN YOU SHOW ME IN YOUR STATEMENT WHERE YOU MENTIONED DREAD
- 25 LOCKS OR ANY SORT OF HAIR DESCRIPTION?

1 A I DON'T SEE NOTHING ABOUT DREAD LOCKS.

2 Q SO AT LEAST TWO HOURS AFTER THE INCIDENT YOU DIDN'T SAY
3 ANYTHING TO THE OFFICER ABOUT DREAD LOCKS, RIGHT?

4 A I DON'T THINK SO. BUT I CAN'T BE SURE.

5 Q SURE.

6 MR. SNEED: BEG THE COURT'S INDULGENCE, YOUR HONOR.

7 THE COURT: YES, SIR.

8 MR. SNEED: NO FURTHER QUESTIONS, YOUR HONOR.

9 THE COURT: MR. SHUPPER.

10 MR. SHUPPER: MAY IT PLEASE THE COURT, YOUR HONOR.

11 THE COURT: YES, SIR.

12 CROSS EXAMINATION BY MR. SHUPPER:

13 Q MR. BULL, WHEN YOU WENT TO THE HOUSE ON GERMANY STREET AND
14 CALLED THE POLICE, I BELIEVE YOU INDICATED YOU WERE THERE
15 ABOUT FIVE MINUTES?

16 A FIVE MINUTES AT THE HOUSE?

17 Q YES, SIR.

18 A NO, SIR. I WAS THERE LONGER THAN FIVE MINUTES.

19 Q HOW LONG WERE YOU AT THE HOUSE ON GERMANY STREET BEFORE THE
20 POLICE ARRIVED?

21 A OH, THE LADY HAD CALLED THE POLICE TWICE. AND IT LOOKED LIKE
22 IT TOOK FOREVER TO GET THEM THERE. I MUST BE WAS AT THE
23 HOUSE A GOOD 35 OR 40 MINUTES.

24 Q WHERE WERE YOU WHEN THE POLICE OFFICER ARRIVED?

25 A OUTSIDE. I WAS STANDING OUTSIDE THE WHOLE TIME. I FLAGGED

1 THE POLICE DOWN.

2 Q AND YOU WERE STANDING RIGHT IN FRONT OF THAT HOUSE WITH THE
3 BOY ON THE BICYCLE?

4 A YES.

5 Q AND THE LADY?

6 A I NEVER WENT IN THE HOUSE. I WAS STANDING OUTSIDE ALL THE
7 TIME, COLD AND SHAKY.

8 Q AND WHEN THE POLICE ARRIVED, YOU WERE RIGHT IN FRONT OF THAT
9 HOUSE?

10 A YES, SIR.

11 Q YOU DIDN'T GO BACK TO THE PARK TO TRY TO RESCUE victim?

12 A I SUGGESTED, "LET'S GO DOWN THERE." THE GUY ON THE BICYCLE
13 AND THE STEPDADDY SAID, "NO. WAIT ON THE POLICE." I
14 SUGGESTED THEM COME GO DOWN THERE WITH ME TO SEE ABOUT
15 THEY SAID, "NO. WAIT ON THE POLICE."

16 Q YOU MEAN THE MAN ON THE BICYCLE?

17 A YES. I SUGGESTED IT. YES, SIR. BUT HE SAID, "NO. LET'S
18 WAIT ON THE POLICE."

19 Q FROM THE TIME YOU GOT UP TO THE HOUSE AND CALLED FOR THE
20 POLICE AND THEY ARRIVED, YOU SAID IT WAS 35, 40 MINUTES?

21 A IT TOOK THE POLICE FOR THE LONGEST TO GET THERE.

22 Q OKAY. COULD YOU PUT SOME TIMEFRAME OTHER THAN "THE LONGEST"?
23 CAN YOU SAY? I BELIEVE YOU SAID A MINUTE AGO 35 TO 40 —

24 A IT SEEMED LIKE THAT. I CAN'T BE SURE ABOUT THE TIME. IT
25 JUST SEEMED IT WAS THAT LONG BECAUSE IT TOOK THEM A LONG TIME

1 TO GET THERE. I CAN'T BE SURE ABOUT THE TIME. BUT IT TOOK
2 THEM A LONG TIME TO GET THERE. I DON'T KNOW WHAT TIME IT
3 WAS.

4 Q AND WHAT HAPPENED WHEN THE POLICE OFFICER ARRIVED? I THINK
5 YOU SAID THAT HE WANTED TO TAKE A REPORT AND YOU EXPRESSED
6 YOUR CONCERN ---

7 A RIGHT.

8 Q --- FOR VICTIM ?

9 A YEAH. HE WANTED TO WRITE DOWN WHAT HAPPENED AND FOR ME TO
10 GIVE HIM DETAILS, AND I'M TRYING TO TELL HIM "LET'S GO DOWN
11 HERE AND SEE ABOUT VICTIM "

12 Q SO YOU DID YOU CONVINCED HIM TO GO DOWN THERE AND SEE HER?

13 A AFTER HE HAD BACK-UP COMING. HE WASN'T GOING DOWN THERE BY
14 HISSELF (SIC). HE WAITED FOR THE REST OF THEM, MORE CARS TO
15 COME. THEN HE WENT DOWN THERE.

16 Q DID YOU GET IN THE POLICE CAR WITH HIM AND DRIVE DOWN TO THE
17 SCENE AND COME UPON VICTIM ?

18 A YES, I DID.

19 Q IN YOUR EARLIER TESTIMONY YOU MENTIONED A LIGHT-SKINNED DUDE
20 OR A RED LOOKING SUSPECT?

21 A MM-HMM (AFFIRMATIVE).

22 Q DID YOU MENTION THAT TO THE POLICE THAT EVENING?

23 A I MIGHT HAVE DID IT. LIKE I SAY, I CAN'T BE SURE. I THINK I
24 MIGHT HAVE SAID SOMETHING LIKE THAT AT THE POLICE STATION. I
25 SAID A LIGHT-SKINNED DUDE OR A RED DUDE.

1 Q AND YOU GAVE A STATEMENT AT THE POLICE STATION, CORRECT?

2 A I GUESS. YEAH, I GUESS YOU CAN CALL IT THAT. YEAH. THE
3 OFFICER WHERE IT DOWN, WHATEVER I WAS TELLING HIM, AND I
4 SIGNED IT.

5 Q YOU'VE LOOKED AT THAT STATEMENT JUST NOW, CORRECT?

6 A YEAH. I GLANCED OVER IT.

7 MR. SHUPPER: BEG THE COURT'S INDULGENCE.

8 THE COURT: CERTAINLY.

9 Q (BY MR. SHUPPER) ONE LAST AREA I WANT TO ASK YOU ABOUT OF
10 YOUR PRIOR TESTIMONY. WHEN YOU TALKED ABOUT STANDING IN
11 FRONT OF THE HOUSE ON GERMANY STREET WITH THE YOUNG MAN AND
12 SEEING THE GROUP OF PEOPLE COME UP, CAN YOU REMEMBER WHEN
13 THEY'D WALKED ACROSS THE STREET AT WHAT POINT YOU LOST SIGHT
14 OF THEM?

15 A AFTER THEY CROSSED THE STREET.

16 Q AS YOU SAW THEM AS THEY CAME INTO YOUR VIEW, HOW LONG WERE
17 THEY IN YOUR VIEW?

18 A I GUESS ABOUT THREE SECONDS. IT WOULD TAKE ABOUT THREE
19 SECONDS FOR THEM TO WALK ACROSS THE STREET.

20 Q AND AT THAT POINT, WHEN YOU MENTIONED THAT, WHEN YOU SAW
21 THEM, YOU INDICATED THEY WERE THE SAME FELLOWS THAT WERE
22 INVOLVED EARLIER?

23 A RIGHT.

24 Q AND DID YOU KEEP YOUR EYE ON THEM UNTIL THEY WENT OUT OF
25 SIGHT?

1 A OH, DEFINITELY.

2 Q AND IT WAS ONLY A FEW SECONDS?

3 A YEAH. THEY WENT UP ACROSS THE STREET IN A HURRY. THEY WAS
4 MOVING FAST BECAUSE ...

5 Q AND AT WHAT POINT DID YOU LOSE TRACK OF THEM? WAS THERE
6 ANYTHING TO OBSTRUCT YOU AT SOME POINT WHERE THEY WENT OUT OF
7 SIGHT?

8 MR. STRICKLER: OBJECTION. COMPOUND QUESTION.

9 THE COURT: YES, SIR. PLEASE CONTINUE THOUGH, MR.
10 SHUPPER, IF YOU WOULD, PLEASE. JUST ASK ONE QUESTION AT A
11 TIME.

12 Q AT WHAT POINT DID YOU LOSE SIGHT OF THE MEN AS THEY WENT
13 ACROSS?

14 A AFTER THEY CROSSED THE STREET.

15 Q OKAY. SO YOU ONLY HAD THEM IN YOUR VIEW FOR A FEW SECONDS AS
16 THEY CROSSED THE STREET, ABOUT THREE SECONDS AS YOU SAID?

17 A YES, SIR. SOMETHING LIKE THAT.

18 MR. SHUPPER: I HAVE NOTHING FURTHER, YOUR HONOR.

19 THE COURT: MR. GASSER. I MEAN, EXCUSE ME. MS. FRYAR,
20 ANY REDIRECT?

21 MS. FRYAR: NO, YOUR HONOR.

22 THE COURT: THANK YOU. THANK YOU, MR. BULL. YOU MAY
23 STEP DOWN, SIR. HAD YOU PROPOSED TO HAVE ANOTHER WITNESS
24 WHOSE TESTIMONY MIGHT BE BRIEF THIS EVENING, OR WOULD THE
25 NEXT WITNESS'S TESTIMONY BE LENGTHY?

1 MR. GASSER: MAY WE APPROACH, YOUR HONOR?

2 THE COURT: SURE. CERTAINLY.

3 MR. GASSER: WHAT'S YOUR DEFINITION OF "BRIEF"?

4 THE COURT: WELL, SHORTER THAN MR. BULL'S TESTIMONY.

5 (WHEREUPON, A BENCH CONFERENCE IS HAD)

6 THE COURT: FOLKS, WHAT WE TYPICALLY LIKE TO DO IS TO
7 START AROUND 9:30, QUIT AROUND 5:30, EXCEPT WHEN WE'RE
8 PERHAPS IN DELIBERATIONS OR WHEN WE NEED TO HAVE THE EXTRA
9 TIME TO PRESS FORWARD. ONE OF THE REASONS IS, IS WE LIKE TO
10 INCONVENIENCE YOU AS LITTLE AS POSSIBLE. AND, SECONDLY,
11 PREPARING A CASE FOR TRIAL IS, IF YOU'VE NEVER DONE IT, IS
12 AMONG THE HARDEST THINGS IN THE WORLD TO DO, AND YOU GET
13 EXHAUSTED AND YOU NEED TO GET READY FOR THE NEXT DAY.

14 AND SO, TO GIVE THESE FOLKS SOME TIME TO DO THAT, AND
15 SINCE THE NEXT WITNESS'S TESTIMONY MAY BE OF SOME LENGTH,
16 WE'RE GOING TO CALL IT A NIGHT FOR THE NIGHT, LET YOU REST,
17 LET THEM REST.

18 PLEASE AGAIN DON'T DISCUSS THE CASE AMONG YOURSELVES NOR
19 WITH ANYONE ELSE. IF YOU WOULD, PLEASE, REPORT TO THE JURY
20 ROOM AT 9:30 TOMORROW MORNING. WE'LL BEGIN PROMPTLY AT 9:30
21 BECAUSE I CAN'T THINK OF ANYTHING ELSE THAT WE HAVE TO TAKE
22 UP PRIOR TO THAT.

23 I WOULD ASK YOU TO DO THIS. WHEN YOU ARRIVE, YOU HAVE
24 NOT YET -- I HAVE NOT YET APPOINTED A PRESIDING JUROR. THAT
25 ROLE HAS FORMALLY BEEN CALLED THE FOREMAN OR FOREPERSON.

1 IT'S MY PRACTICE TO ALLOW THE JURY TO DESIGNATE ITS OWN
2 PRESIDING JUROR. THAT PERSON WOULD PERFORM THE FUNCTION
3 TRADITIONALLY RESERVED FOR THE FOREMAN. AND THAT WOULD BE
4 QUITE FRANKLY TO PRESIDE OVER YOUR DELIBERATIONS SHOULD
5 MODERATION OF THOSE DELIBERATIONS BE NECESSARY, TO
6 COMMUNICATE WITH ME USUALLY DURING DELIBERATIONS SHOULD THAT
7 BE NECESSARY.

8 IN SHORT, THAT PERSON'S ROLE IS NO MORE IMPORTANT THAN
9 ANY OTHER JUROR'S ROLE IN TERMS OF THE DECISIONAL PROCESS.
10 BUT THAT PERSON WOULD AGAIN COMMUNICATE WITH ME SHOULD IT BE
11 NECESSARY. TO THAT END, I WOULD ASK YOU TO ELECT SOMEONE IN
12 WHOSE JUDGMENT AND MATURITY YOU MIGHT REPOSE SOME CONFIDENCE.
13 OTHER THAN THAT, IT CAN BE ANY ONE OF YOU ON THE MAIN JURY.
14 IT CANNOT BE OUR ALTERNATE.

15 SO WHOMEVER YOU SELECT, SHE OR HE WOULD OCCUPY THE SEAT
16 CURRENTLY OCCUPIED BY THE LADY IN THE NAVY BLOUSE OR DRESS,
17 AND THE OTHER REMAINING JURORS WOULD SIT WHEREVER A SEAT IS
18 AVAILABLE, EXCLUDING OF COURSE OUR ALTERNATE WHO WOULD AT ALL
19 TIMES OCCUPY THAT SEAT.

20 BUT PLEASE ARRIVE IN TIME TOMORROW TO ELECT A PRESIDING
21 JUROR. AND NOTIFY MR. HOLLIS OR MR. BARROW OF THE NAME OF
22 THAT PERSON SO THAT THEY CAN DISCLOSE IT TO ME PRIOR TO YOUR
23 ENTRY INTO THE COURTROOM. THANK YOU. I HOPE YOU HAVE A
24 PLEASANT EVENING. WE'LL SEE YOU TOMORROW AT 9:30. THANK
25 YOU.

1 (JURY OUT AT 5:20 P.M.)

2 THE COURT: OKAY. IS THERE ANYTHING PRIOR TO OUR
3 BREAKING FOR THE EVENING FROM THE STATE?

4 MR. GASSER: NO, SIR.

5 THE COURT: FROM DEFENDANT KENNETH JAMES?

6 MR. STRICKLER: NO, SIR.

7 THE COURT: FROM DEFENDANT ROBERT JAMES?

8 MR. SHUPPER: YES, SIR, YOUR HONOR. I HAVE DR. ALLEY
9 WHOM I EXPECT TO PRESENT. AND HE WILL BE AVAILABLE TOMORROW
10 BUT NOT THURSDAY. AND ---

11 THE COURT: WOW. WELL, I DON'T KNOW WHAT TO DO.

12 MR. SHUPPER: I'VE HAD SOME DISCUSSIONS WITH MS. FRYAR.
13 I HAD INDICATED PERHAPS HE COULD BE CALLED OUT OF ORDER.

14 THE COURT: WELL, THAT'S FINE WITH ME IF NOBODY HAS A
15 PROBLEM WITH THAT. AND I APPRECIATE THAT SPIRIT OF
16 COOPERATION. MR. GASSER, MS. FRYAR.

17 MR. GASSER: I KNOW THAT WHEN DISCUSSIONS WERE MADE, I
18 DON'T THINK MS. FRYAR ANTICIPATED THE LENGTH OF TIME THAT IT
19 WOULD TAKE FOR US TO GET THROUGH SOME OF THE I.D. WITNESSES.
20 AND WE WERE NOT IN -- I MEAN, IF HE CAN'T TESTIFY THURSDAY, I
21 CAN'T IMAGINE WHY HE -- CAN HE TESTIFY FRIDAY?

22 MR. SHUPPER: WELL, IN MY DISCUSSIONS WITH HIM, WE
23 HADN'T GOT THAT FAR. WHEN WE TALKED ---

24 THE COURT: SEE IF HE CAN DO IT FRIDAY. IF NOT, WE'LL
25 ACCOMMODATE THAT INTEREST. I'M GOING TO ALLOW YOU TO BE --

1 I'M NOT GOING TO DEPRIVE YOU OF THE OPPORTUNITY TO CALL A
2 WITNESS WHOM YOU DEEM ESSENTIAL TO YOUR DEFENSE. OKAY?

3 MR. SHUPPER: THANK YOU, YOUR HONOR.

4 THE COURT: SO LET'S TRY TO GET IT ACCOMMODATED FOR
5 EVERYBODY'S POINT OF VIEW, INCLUDING THE PROSECUTION. AND IF
6 IT CAN'T BE RECONCILED, THEN I'LL TRY TO DO IT. I'LL DO IT
7 MYSELF. OKAY?

8 MR. SHUPPER: THANK YOU, YOUR HONOR.

9 THE COURT: OKAY. THANK YOU ALL. AND I'LL SEE YOU
10 TOMORROW. AGAIN, I WILL BE HERE AS EARLY AS 9:00 SHOULD
11 THERE BE ANYTHING YOU ALL NEED OF ME. I'M NOT REQUIRING YOU
12 ALL TO BE HERE.

13 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED FOR THE DAY, TO BE
14 RECONVENED TOMORROW MORNING)

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WEDNESDAY, SEPTEMBER 22, 1999

THE COURT: I'M ADVISED BY MS. PENDERGRASS THAT TRACY DAVIS HAS BEEN NAMED AS THE PRESIDING JUROR OF THIS JURY. I DON'T KNOW WHO THAT IS, WHETHER IT'S A MALE OR A FEMALE. BUT IN ANY EVENT, WE'LL BE BRINGING THEM IN SHORTLY.

I WOULD -- AS WE ALL KNOW, SETTLEMENTS OR RESOLUTIONS SHORT OF TRIAL ARE ENCOURAGED BY THE LAW. AND I CANNOT CERTAINLY ENCOURAGE ANYBODY TO GIVE UP A CONSCIENTIOUSLY HELD POSITION RELATIVE TO GUILT OR INNOCENCE, BUT IT'S MY UNDERSTANDING THAT PLEA NEGOTIATIONS HAVE TAKEN PLACE WHICH OF COURSE WILL NOT BE COMING FORWARD BEFORE THIS JURY IN ANY WAY, SHAPE OR FORM AND WILL NOT IN ANY WAY, SHAPE OR FORM PREJUDICE EITHER DEFENDANT.

BUT IT'S MY UNDERSTANDING THAT MR. KENNETH JAMES HAS
BEEN OFFERED A PLEA TO THESE CHARGES IN RETURN FOR A
RECOMMENDED SENTENCE OF 20 YEARS I BELIEVE. IS THAT CORRECT?

MR. STRICKLER: THAT'S CORRECT, SIR.

MR. GASSER: CORRECT, YOUR HONOR.

THE COURT: AND THAT MR. ROBERT JAMES HAS BEEN OFFERED A PLEA TO THESE CHARGES, INCLUDING AS I UNDERSTAND IT A PLEA OF NO CONTEST TO THE SEXUAL ASSAULT CHARGE, IF I'M NOT MISTAKEN, IN RETURN FOR A RECOMMENDED SENTENCE OF 15 YEARS. IS THAT CORRECT?

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

THE COURT: AND I WOULD ADVISE BOTH PARTIES, IT'S MY

1 UNDERSTANDING, MR. GASSER, THAT THIS HAS BEEN DONE WITH THE
2 VICTIM'S INPUT. IS THAT CORRECT?

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

4 THE COURT: OKAY. AND THE VICTIM ADVOCATE, THAT IS
5 CORRECT FROM YOUR POINT OF VIEW AS WELL?

6 VICTIM ADVOCATE: YES, SIR.

7 THE COURT: *victim*, IS THAT CORRECT, YOUR
8 UNDERSTANDING?

9 *victim* : (NODS HEAD AFFIRMATIVELY)

10 THE COURT: I WILL TELL YOU NOW THAT I AM PREPARED TO
11 ACCEPT THAT PLEA NEGOTIATION IF EITHER DEFENDANT OR BOTH
12 DEFENDANTS WISH TO OFFER PLEAS. IT'S MY UNDERSTANDING ALSO
13 THAT THE PLEA BARGAIN IS IN EFFECT TAKEN OFF THE TABLE, THAT,
14 IN OTHER WORDS, IT'S NO GOOD AFTER *victim* BEGINS TO
15 TESTIFY. SO ONCE SHE OPENS HER MOUTH AND SWEARS TO TELL THE
16 TRUTH, IT'S MY UNDERSTANDING THAT THE PLEA OFFER IS
17 WITHDRAWN. IS THAT CORRECT, MR. GASSER?

18 MR. GASSER: THAT'S CORRECT, YOUR HONOR. SHE WILL BE
19 THE SECOND WITNESS CALLED THIS MORNING. ONCE SHE IS CALLED
20 TO TESTIFY, ALL PLEA OFFERS ARE WITHDRAWN.

21 THE COURT: NOW, I CANNOT CERTAINLY ADVISE THESE
22 GENTLEMEN, MR. STRICKLER, MR. SNEED, MR. SHUPPER. I CAN'T
23 ADVISE THEM AS TO WHETHER OR NOT THEY SHOULD TAKE THESE PLEA
24 NEGOTIATIONS, BUT I AM CERTAIN THAT YOU HAVE GIVEN THEM YOUR
25 BEST ADVICE WITH REGARD TO WHETHER OR NOT THEY SHOULD AND

1 WHAT PROSPECTS THAT PRESENTS FOR THEM. DO YOU UNDERSTAND THE
2 OFFER, MR. KENNETH JAMES? NO. YOU CAN SIT DOWN. YOU
3 UNDERSTAND THAT?

4 MR. KENNETH JAMES: YES, SIR.

5 THE COURT: OKAY. WHAT ABOUT YOU, MR. ROBERT JAMES? DO
6 YOU UNDERSTAND THAT?

7 MR. ROBERT JAMES: YES, SIR.

8 THE COURT: OKAY. AND DO YOU UNDERSTAND THAT IT'S NOT
9 ANY GOOD ONCE SHE BEGINS TESTIFYING?

10 MR. KENNETH JAMES: YES, SIR.

11 MR. ROBERT JAMES: YES, SIR.

12 THE COURT: OKAY. WITH THAT, IN CASE YOU ALL WANT TO DO
13 ANYTHING, LET ME KNOW. BUT WITH THAT, I THINK WE'RE READY
14 FOR THE JURY, ARE WE NOT?

15 MR. SNEED: YOUR HONOR, COULD I JUST HAVE TWO MINUTES
16 JUST TO CLARIFY FOR ME SOME OF THE COURT'S RULINGS. I HAD
17 SUBMITTED SOME BRIEFS IN THE RECORD. I'LL BE REAL QUICK.

18 THE COURT: OKAY. WHAT DOES IT HAVE TO DO WITH CRONIN'S
19 TESTIMONY?

20 MR. SNEED: IT HAS NOTHING TO DO WITH THAT.

21 THE COURT: OKAY. WHAT IS IT YOU WANT TO KNOW? I DON'T
22 MEAN TO BE HARSH, MR. SNEED, BUT WHAT IS IT YOU WANT TO KNOW?

23 MR. SNEED: YOUR HONOR, I SUBMITTED SOME BRIEFS AND SOME
24 MOTIONS. AND THERE'S COURT'S EXHIBITS 13, 9, 7, 14 AND 15.

25 THE COURT: WHATEVER IT WAS, I'VE READ THEM. BUT —

1 MR. SNEED: AND YOU'VE DENIED MY MOTIONS THEREIN.

2 THE COURT: YEAH.

3 MR. SNEED: I JUST NEEDED A RULING FOR THE RECORD ON
4 SOME OF MY VARIOUS MOTIONS.

5 THE COURT: I DON'T KNOW. I DON'T KNOW -- YOU'RE USING
6 THEM THAT WAY, SAYING THEM THAT WAY -- WHETHER THAT'S CORRECT
7 OR NOT. BUT WHATEVER RULINGS I'VE MADE I'VE MADE AND I MADE
8 ON THE RECORD. OKAY?

9 MR. SNEED: YES, SIR. THANK YOU.

10 THE COURT: THANKS. MR. BARROW, ASK THE JURY TO COME
11 IN, PLEASE.

12 (JURY IN AT 9:42 A.M.)

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

14 THE COURT: THANKS, MR. BARROW AND MR. HOLLIS. MS.
15 DAVIS, HOW ACCOMMODATING OF YOUR FELLOW JURORS TO RESPECT
16 YOUR PREVIOUS SEATING ASSIGNMENT. I UNDERSTAND YOU'VE BEEN
17 ELECTED AS THE PRESIDING JUROR. IS THAT CORRECT?

18 JUROR DAVIS: (NODS HEAD AFFIRMATIVELY)

19 THE COURT: YOU AT ALL TIMES WILL OCCUPY THAT SEAT, AND
20 AGAIN OUR ALTERNATE WILL AT ALL TIMES OCCUPY THE SEAT HE
21 CURRENTLY OCCUPIES. THE REMAINING 11 JURORS MAY SIT WHEREVER
22 A SEAT IS AVAILABLE. WE'RE READY NOW TO RESUME WITH THE
23 TRIAL. MR. GASSER, PLEASE CALL YOUR NEXT WITNESS.

24 MR. GASSER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
25 COURT. AT THIS TIME THE STATE WOULD CALL SERGEANT JOE

1 CRONIN.

2 JOSEPH CRONIN, BEING FIRST DULY

3 SWORN, TESTIFIES AS FOLLOWS:

4 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
5 FOR THE RECORD.

6 MR. CRONIN: MY NAME IS JOSEPH CRONIN, C-R-O-N-I-N.

7 DIRECT EXAMINATION BY MR. GASSER:

8 Q SERGEANT CRONIN, YOU OBVIOUSLY ARE EMPLOYED BY THE COLUMBIA
9 POLICE DEPARTMENT. IS THAT CORRECT?

10 A THAT IS CORRECT.

11 Q HOW LONG HAVE YOU BEEN WITH THE COLUMBIA POLICE DEPARTMENT?

12 A THIRTY YEARS IN AUGUST.

13 Q WHAT ARE YOUR CURRENT DUTIES AND RESPONSIBILITIES WITH THE
14 POLICE DEPARTMENT?

15 A FOR THE LAST 12 YEARS I'VE BEEN IN CHARGE OF THE CRIME SCENE
16 INVESTIGATIONS LAB.

17 Q AND WHEN -- UPON ARRIVAL AT A CRIME SCENE, WHAT
18 RESPONSIBILITIES DO YOU AND OTHER OFFICERS WITH THE COLUMBIA
19 CRIME SCENE LAB HAVE?

20 A MAINLY TO MAKE SURE THE SCENE IS SECURE AND THEN TO CHECK IN
21 WITH THE INVESTIGATING OFFICER WHO IS ON THE SCENE, FIND OUT
22 WHAT EXACTLY HAS HAPPENED AND COLLECT ANY PERTINENT EVIDENCE
23 IN REGARDS TO THAT CRIME.

24 Q I WANT TO DRAW YOUR ATTENTION BACK TO THE EARLY MORNING HOURS
25 OF WEDNESDAY, MAY THE 29TH, 1996. DID YOU HAVE AN

1 OPPORTUNITY TO GO TO T. S. MARTIN PARK EARLY THAT MORNING?

2 A THAT IS CORRECT.

3 Q NOW, WERE YOU ON DUTY, OR HOW DID YOU GET CALLED TO THAT
4 PARTICULAR LOCATION?

5 A I WAS OFF DUTY ON CALL. I WAS CALLED AT HOME TO COME OUT.

6 Q AND DID YOU -- WHAT -- DO YOU HAVE TO GET A SPECIAL UNIT OR
7 SPECIAL ITEMS BEFORE GOING TO A PARTICULAR CRIME SCENE?

8 A NO. NORMALLY I HAVE EVERYTHING IN MY CAR. I'M ASSIGNED A
9 VEHICLE AND JUST DRIVE RIGHT TO THE CRIME SCENE FROM MY
10 HOUSE.

11 Q DO YOU RECALL APPROXIMATELY WHAT TIME YOU ARRIVED AT T. S.
12 MARTIN PARK?

13 A SOMEWHERE AFTER THE HOURS OF 1:00.

14 Q WHEN YOU ARRIVED AT THE SCENE, WHAT DID YOU OBSERVE, SERGEANT
15 CRONIN?

16 A THERE WERE SEVERAL OFFICERS ON THE SCENE. THEY HAD THE PARK
17 AREA -- THEY STOPPED ME RIGHT IN THE PARKING LOT, TOLD ME
18 WHAT HAD OCCURRED. THEN WE DID A WALK-THROUGH TO SHOW ME
19 DIFFERENT ITEMS OF EVIDENCE THAT WERE LAYING AROUND THAT HAD
20 BEEN OBSERVED. I WENT BACK TO MY VEHICLE AND PHOTOGRAPHED
21 THE SCENE AND COLLECTED THE EVIDENCE.

22 Q SO WHEN YOU ARRIVED ON THE SCENE, YOU USED THE WORD
23 "SECURED". IN YOUR OPINION -- THAT'S FOR ON OUTSIDE SCENE,
24 NOT A HOME OR A BUILDING. IN YOUR OPINION, WAS THE SCENE AS
25 SECURE AS IT POSSIBLY COULD BE AT THAT POINT IN TIME?

1 A AT THAT TIME IT WAS. THEY HAD OFFICERS STOPPING ANY FLOW,
2 MAKING SURE THAT WE DIDN'T JUST WALK INTO IT.

3 Q NOW, YOU INDICATED THAT YOU WENT BACK TO GET YOUR CAMERA.
4 WHY DO YOU -- WHAT IS IT ABOUT -- AS A CRIME SCENE
5 TECHNICIAN, WHAT'S ONE OF THE FIRST THINGS THAT YOU WANT TO
6 DO TO PRESERVE THE SCENE?

7 A YOU PHOTOGRAPH IT AS IT STANDS AS SOON AS YOU ARRIVE THERE SO
8 THAT EVIDENCE THAT MAY BREAK DOWN OR GET BLOWN AWAY GETS
9 PHOTOGRAPHED EXACTLY WHERE IT WAS AS SOON AS POSSIBLE.

10 Q DID YOU DO THAT IN THIS CASE?

11 A I DID.

12 Q AFTER THE SCENE IS PHOTOGRAPHED AND EVIDENCE IS IDENTIFIED,
13 WHOSE RESPONSIBILITY IS IT TO ACTUALLY COLLECT THAT EVIDENCE
14 AND TAKE IT BACK TO THE COLUMBIA POLICE DEPARIMENT PROPERTY
15 ROOM?

16 A THAT WOULD BE MINE.

17 Q AND DID YOU DO THAT IN THIS CASE?

18 A I DID.

19 THE COURT: MR. SHUPPER, YEAH. WHY DON'T YOU JOIN MR.
20 STRICKLER IN LOOKING AT THOSE ITEMS.

21 MR. GASSER: YOUR HONOR, WE HAVE SEVEN PHOTOGRAPHS WE'D
22 LIKE TO IDENTIFY AND MARK AS EXHIBITS.

23 THE COURT: WHICH SHOULD BE WHAT? 17 BEGINNING WITH
24 WHAT? 17?

25 MR. GASSER: 17 THROUGH 23.

1 THE COURT: IS THERE GOING TO BE OBJECTIONS TO THEIR
2 INTRODUCTION?

3 MR. STRICKLER: AS TO KENNETH JAMES; NO, SIR, ASSUMING
4 THE FOUND ADDITION IS LAID.

5 MR. SHUPPER: NO, SIR, YOUR HONOR.

6 THE COURT: THANK YOU.

7 (STATE'S EXHIBIT NOS. 17 THROUGH 23, SEVEN PHOTOGRAPHS,
8 MARKED FOR IDENTIFICATION ONLY)

9 MR. GASSER: MAY THE WITNESS LEAVE THE WITNESS BOX AT
10 THIS TIME?

11 THE COURT: CERTAINLY. YES, SIR.

12 Q (BY MR. GASSER) SERGEANT CRONIN, YOU WANT TO COME ON DOWN?

13 THE COURT: ALLOW MR. SHUPPER TO POSITION HIMSELF, TOO,
14 SHOULD HE NEED TO, PRIOR TO THE BEGINNING OF EXAMINATION.

15 Q SERGEANT CRONIN, WHY DON'T YOU STAND OVER ON THIS SIDE SO THE
16 COURT REPORTER CAN SEE YOU. AND USE THIS POINTER. FIRST I'M
17 REFERRING TO STATE'S EXHIBIT NO. 1 MARKED FOR IDENTIFICATION.
18 DO YOU RECOGNIZE THIS MAPPED DIAGRAM, SERGEANT CRONIN?

19 A YES.

20 Q AND WHERE IS THE PARK THAT YOU'VE PREVIOUSLY INDICATED TO THE
21 JURY THAT YOU PROCESSED AT THE SCENE?

22 A UP IN THIS AREA.

23 Q NOW, SHOWING YOU STATE'S EXHIBIT 13 MARKED FOR
24 IDENTIFICATION. DO YOU RECOGNIZE THIS MAPPED DIAGRAM?

25 A THIS IS JUST A PRINT OF THE OTHER ONE. IT'S JUST THE PARK

1 ITSELF.

2 Q NOW, THIS IS NOT TO SCALE. IS THAT CORRECT?

3 A THAT'S CORRECT.

4 Q BUT DOES IT FAIRLY AND ACCURATELY DEPICT THE MAIN AREAS OF
5 THE PARK ITSELF, SOME OF THE BUILDINGS AND THE BENCHES AND
6 THE PLAYGROUND ITEMS AND THAT SORT OF THING?

7 A IT DOES.

8 Q STATE'S EXHIBIT NO. 17 MARKED FOR IDENTIFICATION AT THIS TIME
9 AND STATE'S EXHIBIT NO. 7, WHICH IS IN EVIDENCE, DO YOU
10 RECOGNIZE THOSE TWO PHOTOGRAPHS?

11 A THIS IS THE SWING SET AND THE SEE-SAW, SLIDE IN THE
12 BACKGROUND, THE CABLE SHED, PIECES.

13 Q WHO TOOK THESE PHOTOGRAPHS?

14 A I DID.

15 Q IN FACT, ALL THESE PHOTOGRAPHS, WHO TOOK THEM?

16 A THAT'S CORRECT.

17 Q YOU TOOK THEM?

18 A YES, SIR.

19 Q DO THEY FAIRLY AND ACCURATELY -- ALL THE PHOTOGRAPHS, 17
20 THROUGH 20, YOU'VE HAD AN OPPORTUNITY TO LOOK AT THESE
21 PHOTOGRAPHS PRIOR TO COMING INTO THE COURTROOM. IS THAT
22 CORRECT?

23 A YES.

24 Q DO PHOTOGRAPHS 17 THROUGH 23 FAIRLY AND ACTUALLY DEPICT THE
25 SCENE AS IT EXISTED WHEN YOU PHOTOGRAPHED IT ON THE MORNING

1 OF MAY THE 29TH, 1996?

2 A YES.

3 MR. GASSER: WE'D THEN OFFER THEM IN EVIDENCE AT THIS
4 TIME, YOUR HONOR.

5 THE COURT: WITHOUT OBJECTION AS I UNDERSTAND IT.

6 MR. STRICKLER: YES, SIR.

7 MR. SHUPPER: YES, SIR.

8 (STATE'S EXHIBIT NOS. 17 THROUGH 23, SEVEN PHOTOGRAPHS,
9 RECEIVED IN EVIDENCE)

10 Q (BY MR. GASSER) NOW, TAKING STATE'S EXHIBIT NO. 7 AND THEN
11 TAKING STATE'S EXHIBIT 17, IF THEY WERE TO BE PLACED TOGETHER
12 SUCH AS THAT, DOES THAT PROVIDE THE JURY WITH A PANORAMIC
13 VIEW OF THE PARK?

14 A YES. IT BRINGS THE CONNECTION BEING THE SEE-SAW, IT THEN
15 BRINGS IT INTO -- BEING YOU HAVE SLIDES, SWINGS, SEE-SAW, AND
16 A BENCH, PICNIC TABLE AND THE SHED WHICH WOULD BE THIS AREA
17 COMING ACROSS HERE, IF I'M NOT MISTAKEN.

18 MR. GASSER: I BELIEVE, YOUR HONOR, I DISCUSSED WITH THE
19 DEFENSE COUNSEL OVER NO OBJECTION, I WAS JUST GOING TO TAPE
20 THESE TWO PHOTOGRAPHS TOGETHER FOR PURPOSES OF HIS TESTIMONY.

21 THE COURT: OKAY.

22 MR. STRICKLER: NO OBJECTION TO THAT, SIR.

23 MR. SHUPPER: NO OBJECTION.

24 THE COURT: THANK YOU, FELLOWS.

25 A I WOULD PUT THE TAPE ON THE BACK TO SAVE THE PICTURE.

1 Q SO USING STATE'S EXHIBIT 13 WHERE WERE YOU STANDING, THIS
2 SHED IS WHERE ON STATE'S EXHIBIT 13?

3 A THE SHED IS THIS HERE.

4 Q OKAY.

5 A PICNIC TABLE BACK HERE. THIS OTHER BENCH WOULD BE HERE. THE
6 SWING SET IS HERE, THE SLIDES.

7 Q SO YOU WOULD HAVE BEEN STANDING OVER IN THIS AREA?

8 A SOMEWHERE IN THIS AREA RIGHT HERE.

9 MR. STRICKLER: YOUR HONOR, I HAVE TO OBJECT TO THE
10 SOLICITOR ENTERING THE JURY BOX.

11 THE COURT: YES, SIR. MR. GASSER, PLEASE DON'T GET THAT
12 CLOSE TO THE JURY, IF YOU WOULD, PLEASE. JUST STAY OUTSIDE
13 THE CONFINES OF THE JURY BOX. I APPRECIATE IT. YOU CAN
14 PUBLISH IT AND LET THEM PASS IT AMONG THEMSELVES.

15 MR. GASSER: OKAY. LET THE RECORD REFLECT I'M HANDING
16 THE FORELADY STATE'S EXHIBIT 7 AND STATE'S EXHIBIT 17.

17 THE COURT: THANK YOU.

18 Q (BY MR. GASSER) NOW, WHERE WAS THE -- WHEN YOU WERE THERE
19 THAT EVENING, WHERE WAS THE LIGHTING COMING FROM? WHAT AREA
20 WAS THE LIGHTING COMING FROM, SERGEANT CRONIN?

21 A THE TRUE LIGHTING WAS OUT HERE IN THE PARKING AREA. I'M NOT
22 SURE EXACTLY WHAT WAS BEHIND US, BUT IT THREW A LITTLE BIT OF
23 ILLUMINATION ON THE FIRST PART OF THE PARK. BUT AS YOU GOT
24 DEEPER INTO IT, THERE WAS NONE, NO LIGHTS IN THE PARK ITSELF.

25 Q NOW, WHEN YOU TALK ABOUT -- WHAT ABOUT OVER HERE BY THE

1 CEMETERY?

2 A THERE WAS NO LIGHTS AT ALL.

3 Q NOW, YOU INDICATED THAT PART OF YOUR -- AFTER YOU
4 PHOTOGRAPHED THE EVIDENCE YOU'D BEEN COLLECTING OR AFTER YOU
5 PHOTOGRAPHED THE SCENE YOU BEGAN COLLECTING EVIDENCE. IS
6 THAT CORRECT?

7 A THAT'S CORRECT.

8 Q STATE'S EXHIBIT NO. 10, WHAT DOES THAT DEPICT?

9 A IT SHOWS A SLIPPER IN FRONT OF THE PICNIC TABLE.

10 Q AND IS THAT DEPICTED ON STATE'S EXHIBIT 13?

11 A YES.

12 Q STATE'S EXHIBIT NO. 9, WHAT DOES THAT DEPICT?

13 A THAT'S THIS -- IT SHOWS THIS MONKEY BAR EXHIBIT, THIS BENCH,
14 AND THERE'S SOME BLACK SHORTS BACK NEAR THE FENCE, THIS FENCE
15 RUNNING ALONG THIS BACK AREA HERE, THE BENCH RUNNING ALONG
16 THIS BACK AREA. IT SHOWS THIS MONKEY BARS AND THE BENCH.

17 Q SO WITH STATE'S EXHIBIT ---

18 A I BELIEVE THERE'S A SLIPPER BACK THERE.

19 Q NO. 9. YOU CAN'T YOU SEE THAT SLIPPER FROM FAR AWAY, BUT CAN
20 YOU POINT IT OUT TO THE JURY?

21 A RIGHT THERE.

22 Q OKAY. AND CAN YOU SEE THE BLACK PANTS THAT YOU TALKED ABOUT
23 UP AGAINST THE FENCE?

24 A RIGHT THERE.

25 Q OKAY. SO STATE'S EXHIBIT NO. 8 THEN WOULD BE WHAT?

1 A BLACK PANTS UP IN THIS AREA.

2 Q JUST A CLOSER UP VIEW OF THE BLACK PANTS?

3 A YES, SIR.

4 Q AND STATE'S EXHIBIT NO. 11 WOULD BE WHAT?

5 A THE SLIPPER BY THE BENCH.

6 Q AND I SHOW YOU STATE'S EXHIBIT NO. 14 I BELIEVE THAT ARE
7 ALREADY IN EVIDENCE. DO YOU RECOGNIZE THOSE?

8 A YES.

9 Q THESE ARE THE BLACK PANTS YOU JUST DESCRIBED?

10 A THE PANTS FOUND OVER THERE.

11 Q NOW, STATE'S EXHIBIT NO. 18, WHAT IS THAT A PICTURE OF,
12 SERGEANT CRONIN? WHERE ARE YOU STANDING, AND WHAT DIRECTION
13 IS IT FACING?

14 A THIS IS THE BREAK IN THE FENCE. I'M PROBABLY STANDING RIGHT
15 IN HERE JUST SHOWING THE BREAKING OF THE FENCE HERE.

16 Q SO WHAT ITEMS OF EVIDENCE WERE COLLECTED ON THIS SIDE,
17 PLAYGROUND SIDE OF THE FENCE?

18 A THE SLIPPERS, SHORTS.

19 Q AND DO YOU RECOGNIZE THE ITEMS CONTAINED IN STATE'S EXHIBIT
20 15?

21 A THESE ARE THE SLIPPERS AND SOCKS.

22 Q AND DID YOU YOURSELF COLLECT THOSE ITEMS AND BAG THEM AND
23 TAKE THEM BACK TO THE COLUMBIA PROPERTY ROOM?

24 A I DID.

25 Q NOW, AS YOU CROSSED OVER INTO THE CEMETERY, WERE YOU ABLE TO

1 OBSERVE OTHER ITEMS OF POTENTIAL EVIDENCE AT THAT TIME?

2 A THERE WAS OTHER ARTICLES OF CLOTHING AND SOME CONDOMS, CONDOM
3 PACKAGES.

4 Q I SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT NO. 12. DO YOU
5 RECOGNIZE THAT?

6 A YES, SIR. THAT'S A BRA AND CONDOM.

7 Q AND STATE'S EXHIBIT NO. 20?

8 A THAT'S A CLOSE-UP OF THE SAME ITEM.

9 Q AND, FINALLY, STATE'S EXHIBIT NOS. 21, 22 AND 23, WHAT DO
10 THEY DEPICT?

11 A ANOTHER CONDOM AND CONDOM PACKAGE, A CONDOM PACKAGE, AGAIN
12 CONDOM PACKAGES.

13 Q SO DID YOU PHOTOGRAPH THE EVIDENCE PRIOR TO ACTUALLY
14 PHYSICALLY COLLECTING IT?

15 A YES.

16 Q AND DID YOU DO THAT IN THIS CASE?

17 A I DID.

18 Q DO YOU RECOGNIZE THIS ITEM, SERGEANT CRONIN?

19 A LADY'S BRASSIERE. YES.

20 Q THAT SAME BRA THAT'S DEPICTED IN THE PHOTOGRAPHS?

21 A YES, IT WAS.

22 Q AND DID YOU ACTUALLY COLLECT THAT FROM THE CEMETERY SIDE OF
23 THE FENCE THAT MORNING?

24 A I DID.

25 Q I WANT YOU TO -- USING THESE ITEMS, THESE STICKERS, STATE'S

1 EXHIBIT NO. 13 WHICH IS NOT IN EVIDENCE, JUST MARKED FOR
2 IDENTIFICATION, WOULD YOU PLACE THEM RELATIVELY IN THE AREA
3 ON THE DIAGRAM ON WHICH FENCE SIDE THAT YOU FOUND THE ITEMS?
4 (WITNESS COMPLIES)

5 A I PUT THESE IN JUST ASSORTED ---

6 COURT REPORTER: I'M SORRY. I COULDN'T HEAR.

7 THE COURT: YEAH. MR. ---

8 A I SAID I PUT THESE IN JUST ASSORTED LOCATIONS IN THE
9 BACKGROUND. BUT ALL OF THEM WERE ON THE CEMETERY SIDE OF THE
10 FENCE.

11 Q WERE THE TWO USED CONDOMS COLLECTED AT THE SCENE, SERGEANT
12 CRONIN?

13 A THEY WERE.

14 Q AND LATER WERE THEY TRANSPORTED TO THE COLUMBIA POLICE
15 DEPARIMENT?

16 A THEY WERE.

17 Q AND TO YOUR KNOWLEDGE LATER TRANSPORTED TO SLED FOR ANALYSIS?

18 A TO SLED FOR ANALYSIS.

19 Q SO WOULD THESE BE THE TWO USED CONDOMS?

20 A WELL, IN SEPARATE CONTAINERS.

21 Q OKAY. AND NOW, AT FIRST I BELIEVE YOU INDICATED THAT THERE
22 WERE THREE ---

23 A THAT IS CORRECT.

24 Q --- WRAPPERS? NOW, ONCE IT GOT BACK TO THE COLUMBIA POLICE
25 DEPARIMENT, WHAT WERE YOU ABLE TO DETERMINE OR WHAT WAS ABLE

1 TO BE DETERMINED?

2 A ABLE TO DETERMINE THAT THERE WERE FOUR. WHEN I FIRST
3 COLLECTED THEM, I THOUGHT THERE WAS ONE TORN IN HALF, BUT IT
4 WAS TWO SEPARATE, WHICH WOULD BE FOUR WRAPPERS.

5 Q AND THIS MATERIAL THAT YOU'VE DESCRIBED ON THE DIAGRAM,
6 STATE'S EXHIBIT 13, AND IN THE PHOTOGRAPHS BEING PASSED
7 AROUND TO THE JURY, WERE THEY COLLECTED BY YOU AT THE SCENE
8 AND TAKEN TO THE COLUMBIA PROPERTY ROOM?

9 A THEY WERE.

10 Q OKAY. HAVE A SEAT.

11 (WITNESS RESUMES THE STAND)

12 MR. GASSER: YOUR HONOR, AT THIS TIME WE WOULD MOVE THE
13 ITEM THAT HE HAS IDENTIFIED TO BE A BRA HE RETRIEVED FROM THE
14 CRIME SCENE, THE TWO USED -- WELL, THE BRA WE WOULD MOVE INTO
15 EVIDENCE, YOUR HONOR. THE TWO USED CONDOMS AND THE FOUR
16 PACKAGES WE WOULD MARK FOR IDENTIFICATION AT THIS TIME.

17 MR. STRICKLER: ALL WITHOUT OBJECTION AS TO KENNETH.

18 MR. SHUPPER: NO OBJECTION AS TO ROBERT JAMES.

19 THE COURT: THANK YOU. PLEASE MARK THEM, MS. WILLIAMS.

20 (STATE'S EXHIBIT NO. 24, BRA, MARKED AND RECEIVED IN
21 EVIDENCE)

22 (STATE'S EXHIBIT NO. 25, TWO CONDOMS, MARKED FOR
23 IDENTIFICATION ONLY)

24 (STATE'S EXHIBIT NO. 26, FOUR CONDOM WRAPPERS, MARKED FOR
25 IDENTIFICATION ONLY)

1 Q (BY MR. GASSER) SERGEANT CRONIN, WHEN YOU WERE AT THE SCENE,
2 DID SERGEANT RANDY BLACKWELL ARRIVE ON THE SCENE?

3 A I BELIEVE HE WAS ALREADY THERE WHEN I ARRIVED.

4 Q WHO IS SERGEANT BLACKWELL? WHAT ARE HIS DUTIES AND
5 RESPONSIBILITIES AT THE SCENE?

6 A HE HAS A TRACKING DOG THAT HE USES TO ...

7 Q AND WHEN YOU WERE EITHER THERE AT THE CRIME, LATER ON DID YOU
8 HAVE AN OPPORTUNITY TO GO INTO THE CEMETERY TO ATTEMPT TO
9 PROCESS A PARTICULAR ITEM FOR EVIDENCE?

10 A I DID.

11 Q WAS THAT THAT SAME MORNING?

12 A THE SAME MORNING.

13 Q AND WHERE DID YOU PARTICULARLY GO? SHOWING YOU STATE'S
14 EXHIBIT NO. 1, I DON'T NEED TO BRING YOU BACK DOWN HERE
15 AGAIN, BUT WOULD YOU JUST SHOW EXACTLY WHERE YOU WENT INTO
16 THE CEMETERY?

17 A I WENT INTO THE MAUSOLEUM FROM THE WOODS. THIS IS THE CUT
18 THROUGH THE THING. WE WENT OUT HERE TO THE MAUSOLEUM.

19 Q AND DID YOU OBSERVE ANY EVIDENCE, OR WAS ANY EVIDENCE
20 COLLECTED FROM THAT MAUSOLEUM?

21 A THERE WAS NO EVIDENCE THAT COULD BE COLLECTED FROM THE
22 MAUSOLEUM.

23 Q DID THERE COME A TIME WHEN YOU WERE ABLE TO DISCUSS WITH
24 SERGEANT BLACKWELL, OR DID YOU OBSERVE YOURSELF WHAT APPEARED
25 TO BE JUST STANDARD PRINT, FOOTPRINTS LIKE SHOE PRINTS IN ANY

1 OF THE AREAS AROUND THE CEMETERY?

2 A THERE WERE SEVERAL PARTIAL INDENTATIONS LEADING THROUGH THE
3 CEMETERY OUT TO THE STREET.

4 Q AND ARE YOU TRAINED -- PART OF YOUR TRAINING AS A CRIME SCENE
5 ANALYST, ARE YOU TRAINED IN THE AREA OF ATTEMPTING TO TAKE
6 CASTS AND/OR PHOTOGRAPHING FOOTPRINTS?

7 A I AM.

8 Q WAS THAT DONE IN THIS PARTICULAR CASE?

9 A NO.

10 Q AND CAN YOU TELL US WHY THAT WAS NOT DONE?

11 A THERE WASN'T ANYTHING OF EVIDENTIAL VALUE THERE OTHER THAN AN
12 IMPRESSION THAT SOMETHING -- YOU KNOW, SOMEONE HAD WALKED
13 THERE. THERE WERE NO -- NO DEPTH TO IT. THERE WAS NO RIDGE
14 DETAIL OF TREAD FROM THE SHOES. SO THERE WASN'T ENOUGH THERE
15 FOR EVIDENTIAL USE.

16 Q THERE WAS A VEHICLE. DID YOU OBSERVE A VEHICLE IN THE
17 PARKING LOT?

18 A THERE WAS A VEHICLE IN THE PARKING LOT.

19 Q DOWN AT THE PARK IS WHAT I'M TALKING ABOUT NOW.

20 A IN THE PARKING LOT. YES, SIR.

21 Q AND WAS THE TRUNK AREA OF A PARTICULAR VEHICLE, WAS THAT IN
22 ANY WAY PROCESSED FOR FINGERPRINTS?

23 A IT WAS EXAMINED BUT COULD NOT BE PROCESSED DUE TO THE AMOUNT
24 OF MOISTURE FROM THE DEW THAT HAD SET ON IT DURING THE NIGHT.

25 Q AND DID YOU AT LEAST ATTEMPT TO LOOK AT THE AREA TO DETERMINE

1 WHETHER OR NOT A FINGERPRINT EXAMINATION COULD BE DONE ON THE
2 TRUNK?

3 A THAT'S WHAT I SAID. WE -- I VISUALLY EXAMINED IT AND COULD
4 NOT PROCESS IT DUE TO THE MOISTURE FROM THE DEW.

5 Q NOW, THE CONDOM WRAPPERS THAT YOU'VE DESCRIBED TO THE JURY
6 THAT ARE MARKED FOR IDENTIFICATION, WAS AN ATTEMPT MADE BY
7 ANOTHER ANALYST TO -- AN ATTEMPT MADE TO OBTAIN FINGERPRINTS
8 FROM THOSE CONDOM WRAPPERS THAT YOU KNOW OF?

9 A BY VIEWING THEM, I CAN SEE WHERE SOMEONE APPARENTLY HAS
10 PROCESSED THEM. MY OFFICE DID NOT DO IT.

11 Q NOW, SLED, DO YOU KNOW AS A POLICE OFFICER FROM THE COLUMBIA
12 POLICE DEPARIMENT, DOES SLED HAVE FINGERPRINT ANALYSTS AS
13 WELL?

14 A THEY DO.

15 Q BUT YOU YOURSELF OR NO ONE UNDER YOUR DIRECTION PROCESSED
16 THOSE CONDOM WRAPPERS FOR FINGERPRINTS?

17 A THAT'S CORRECT.

18 Q DID YOU FIND ANY WEAPONS AT THE SCENE, ANY HANDGUNS AT THE
19 SCENE OF THE PARK?

20 A NO.

21 Q DID YOU FIND ANY BULLETS, LIVE ROUNDS AT THE SCENE OF THE
22 PARK?

23 A NO.

24 Q OR ANY SPENT SHELL CASINGS?

25 A NO.

1 Q AND WOULD YOU TELL US, JUST THOSE JURORS THAT MAY NOT BE
2 FAMILIAR WITH FIREARMS, WHAT IS A SPENT SHELL CASING?

3 A A SPENT SHELL CASING WOULD BE WHAT'S LEFT EITHER IN THE GUN
4 IF IT'S A REVOLVER AFTER THE LEAD HAS BEEN EXPELLED. IF IT'S
5 AN AUTOMATIC, EVEN THE BRASS CASING WOULD BE EJECTED FROM THE
6 WEAPON.

7 Q AS PART OF YOUR DUTIES AND RESPONSIBILITIES AS A POLICE
8 OFFICER OVER THE LAST 30 YEARS, OR JUST YOUR PERSONAL
9 EXPERIENCES, ARE YOU TRAINED IN THE USE OF HANDGUNS?

10 A YES.

11 Q ARE YOU FAMILIAR WITH THE DIFFERENCE BETWEEN A REVOLVER AND A
12 SEMI-AUTOMATIC PISTOL?

13 A YES.

14 Q AGAIN, I DON'T WANT TO GO INTO GREAT DETAIL, BUT IF A
15 SEMI-AUTOMATIC PISTOL -- ARE YOU FAMILIAR WITH THE TERM
16 "MAGAZINE"?

17 A YES.

18 Q WHAT DOES A MAGAZINE HAVE TO WITH A SEMI-AUTOMATIC PISTOL?

19 A MAY I SHOW THE JURY ONE?

20 Q WELL, WHY DON'T WE JUST -- YOU HAVE A SEMI-AUTOMATIC SIDE ARM
21 ON YOU NOW?

22 A YES. A MAGAZINE HOLDS THE AMMUNITION.

23 Q SO IF YOUR GUN IS -- IF A SEMI-AUTOMATIC HANDGUN IS OPERATING
24 PROPERLY AND IT IS DISCHARGED AND IT'S OPERATING PROPERLY,
25 WHAT HAPPENS TO THE SPENT SHELL CASING?

1 A THE SHELL CASING IS EJECTED FROM IT AND THE NEXT BULLET IS
2 LOADED INTO THE CHAMBER.

3 Q AND IF ONE WERE FIRING A SEMI-AUTOMATIC HANDGUN, SAY, IN AN
4 OPEN AREA AND DID NOT RETRIEVE THE SPENT SHELL CASING IF IT
5 WAS A SEMI-AUTOMATIC GUN, COULD YOU AT TIMES -- HAVE YOU BEEN
6 TO CRIME SCENES WHERE YOU'VE RETRIEVED SPENT SHELL CASINGS?

7 A YES, SIR.

8 Q NOW, WITH A REVOLVER, WHAT'S THE DIFFERENCE -- IF A REVOLVER
9 IS ACTING -- A REVOLVER HANDGUN AND IT IS ACTING PROPERLY,
10 WHEN IT IS FIRED ONCE OR TWICE OR THREE TIMES, DO THOSE SPENT
11 SHELL CASINGS GET EJECTED FROM A REVOLVER?

12 A NO. THEY JUST STAY, REMAIN IN THE REVOLVER'S CHAMBER ROTATE
13 OUT OF THE WAY.

14 Q SO IF ONE WERE USING A REVOLVER AND FIRED IT, SAY, IN A PARK
15 OR IN A CEMETERY AND CARRIED THAT GUN AWAY FROM THEM WITHOUT
16 EMPTYING THE GUN, WOULD YOU EXPECT TO FIND SPENT SHELL
17 CASINGS?

18 A NO.

19 Q AND YOU DIDN'T FIND ANY IN THIS CASE. IS THAT CORRECT?

20 A THAT IS CORRECT.

21 MR. GASSER: BEG THE COURT'S INDULGENCE.

22 THE COURT: YES, SIR.

23 MR. GASSER: THAT'S ALL I HAVE. THANK YOU, YOUR HONOR.

24 THE COURT: OKAY, MR. STRICKLER.

25 MR. STRICKLER: YES, SIR. MAY IT PLEASE THE COURT.

1 THANK YOU.

2 CROSS EXAMINATION BY MR. STRICKLER:

3 Q GOOD MORNING, SIR.

4 A GOOD MORNING.

5 Q HOW ARE YOU? JUST A FEW THINGS, IF I COULD. I BELIEVE YOU
6 INDICATED YOU RESPONDED TO THE SCENE SOMETIME AFTER 1 A.M.?

7 A THAT IS CORRECT.

8 Q ON THE 29TH? CAN YOU TELL US WHAT THE TEMPERATURE WAS LIKE
9 THAT MORNING? IF YOU CAN'T, THAT'S FINE.

10 A AS TO WHAT IT ACTUALLY WAS?

11 Q YES, SIR.

12 A NO. IT WAS NOT COLD ENOUGH TO BE WEARING A COAT FOR ME. NO.

13 Q SO NOT COLD ENOUGH TO WEAR A COAT?

14 A FOR ME.

15 Q I'VE GOT YOU. CAN YOU REMEMBER WHETHER THE SKY WAS CLEAR OR
16 OVERCAST?

17 A I WANT TO SAY THERE WERE SOME CLOUDS.

18 Q SOME CLOUDS? I TAKE IT IT WAS NOT RAINING?

19 A IT WAS NOT RAINING.

20 Q AND CAN YOU REMEMBER WHAT PHASE THE MOON WAS IN?

21 A NO.

22 Q NOW, AS I UNDERSTAND YOUR TESTIMONY WITH MR. GASSER ON
23 DIRECT, THE ONLY LIGHTING THAT YOU OBSERVED, REFERRING TO
24 STATE'S 13, IS OFF THIS DIAGRAM IN THE PARKING AREA. IS THAT
25 CORRECT?

1 A THAT IS CORRECT.

2 Q AND THAT THERE WAS SOME PLAY FROM THE LIGHT IN THIS AREA OF
3 THE DIAGRAM?

4 A MM-HMM (AFFIRMATIVE).

5 Q IT GOT PROGRESSIVELY DARKER?

6 A AS YOU WENT IN.

7 Q AS YOU WENT IN? NO LIGHTS IN THE CEMETERY, CORRECT?

8 A THAT'S CORRECT.

9 Q CAN YOU TELL US, AGAIN REFERRING TO STATE'S 13, HOW FAR THE
10 LIGHTS IN THE PARKING AREA WERE FROM, LET'S SAY THIS CUT IN
11 THE CEMETERY?

12 A NO.

13 Q YOU DIDN'T TAKE ANY MEASUREMENTS OF THAT, CORRECT?

14 A NO. I DIDN'T PAY ANY ATTENTION TO THE LIGHTING. THAT HAD
15 NOTHING TO DO WITH THINGS ON THE SCENE OTHER THAN THAT WE
16 NEEDED A FLASHLIGHT ONCE WE ENTERED.

17 Q YOU NEEDED A FLASHLIGHT ONCE YOU ENTERED. AND I WON'T GO
18 THROUGH EACH OF THESE WITH YOU. A NUMBER OF THE PHOTOGRAPHS
19 SHOW A BRIGHTLY -- I'LL JUST REFER TO STATE'S EXHIBIT 12 FOR
20 EXAMPLE -- A BRIGHTLY LIT AREA. YOU'RE USING A FLASH ON THE
21 CAMERA?

22 A THAT IS TRUE.

23 Q CORRECT? AND EVERY ONE OF THESE PHOTOGRAPHS WILL REFLECT THE
24 FACT THAT YOU USED A FLASH TO GO AHEAD AND PHOTOGRAPH WHAT
25 YOU WERE TAKING PICTURES OF?

1 A YES, SIR.

2 Q OKAY. YOU TALKED BRIEFLY WITH MR. GASSER REGARDING AFTER
3 YOU'D ENTERED THE CEMETERY AREA FINDING A COUPLE OF AREAS
4 WHERE EVIDENTLY SOMEONE HAD WALKED BUT DIDN'T FIND ANY
5 FOOTPRINT THAT YOU COULD CAST OR LIFT. IS THAT CORRECT?

6 A THAT IS CORRECT.

7 Q I MEAN, THE REASON YOU WOULD DO THAT, IF YOU HAD -- I BELIEVE
8 YOU REFERRED TO RIDGE DETAIL WHICH IS USED WITH FINGERPRINTS,
9 BUT THE SAME SORT OF THINGS APPLIES WITH THE FOOTPRINT,
10 RIGHT?

11 A THAT'S CORRECT. TREAD.

12 Q TREAD DETAIL?

13 A MY SHOES THAT I'M WEARING NOW HAVE LITTLE RIDGES IN THEM. SO
14 IT'S TREAD DETAIL ON A SHOE, AND DIFFERENT SHOES WILL HAVE
15 DIFFERENT ---

16 Q DIFFERENT PATTERN TYPES?

17 A THAT'S CORRECT.

18 Q WHICH IF YOU GET THE RIGHT IMPRESSION YOU'D BE ABLE TO GO
19 AHEAD AND LIFT, RIGHT?

20 A THAT'S CORRECT.

21 Q AND THE WEAR ON A PARTICULAR SHOE, EACH SOLE, EVEN SHOES THAT
22 HAVE THE SAME SOLES WILL BE DIFFERENT BECAUSE OF THE WEAR ON
23 THE INDIVIDUAL SHOE WHILE IT'S BEING USED, RIGHT?

24 A THAT IS CORRECT.

25 Q BUT YOU DIDN'T FIND ANYTHING IN THIS CASE THAT YOU COULD USE

1 IN THAT REGARD, RIGHT?

2 A THAT IS CORRECT.

3 Q AND IF YOU COULD, IF YOU COULD LIFT A SHOE WITH SUFFICIENT
4 WEAR ON IT, IDENTIFYING CHARACTERISTICS ON THE SOLE AND LATER
5 GOT A SHOE BELONGING TO SOMEONE THAT WAS THE SAME, YOU COULD
6 SAY THIS SHOE MADE THIS PRINT, RIGHT?

7 A THAT IS CORRECT.

8 Q BUT YOU GOT NOTHING TO MAKE THAT SORT OF COMPARISON WITH,
9 RIGHT?

10 A RIGHT. THAT IS CORRECT.

11 Q AND, SIMPLY, WHEN YOU CHECKED THE CAR IN THE PARKING LOT AND
12 THE TRUNK AREA OF THE CAR, YOU INDICATED THAT THERE WAS DEW
13 PRESENT AND YOU COULDN'T GO AHEAD AND PROCESS THE CAR FOR
14 PRINTS, CORRECT?

15 A THAT IS CORRECT.

16 Q AND THAT'S BECAUSE, YOU KNOW, DEW AFFECTS THE SURFACE WHERE
17 PRINTS MIGHT BE LEFT AND RENDERERS IT ---

18 A WE USE A POWDER ---

19 Q MM-HMM (AFFIRMATIVE).

20 A --- TO PROCESS IT. AND IF ANYTHING IS WET, THE POWDER JUST
21 STICKS TO EVERYTHING.

22 Q IN FACT, THAT'S REFLECTED -- WHEN YOU SAID YOU COULD TELL
23 THAT THE WRAPPERS WHICH ARE CONTAINED IN STATE'S 20 FOR I.D.
24 HAVE BEEN PROCESSED, THAT'S THE BLACK SUBSTANCE THAT YOU
25 COULD SEE ON THE WRAPPERS, RIGHT?

1 A YES.

2 Q YOU KNEW YOU HADN'T PROCESSED THEM YOURSELF, BUT COULD TELL
3 THAT SOMEONE ELSE HAD DONE SOMETHING?

4 A SOMEONE ELSE HAD.

5 Q THAT'S A PROCEDURE THAT ARE ACQUAINTED WITH, RIGHT? OKAY.
6 WHEN YOU ENTERED THE CEMETERY AREA AND WENT TO, REFERRING TO
7 STATE'S 1, THE MAUSOLEUM THAT YOU'VE IDENTIFIED ---

8 A YES.

9 Q --- OF THE CEMETERY, DID YOU ENTER INTO THE MAUSOLEUM ITSELF?

10 A I DID WALK IN THE MAUSOLEUM, YES.

11 Q OKAY. IS THERE ONE ENTRANCE TO IT OR SEVERAL?

12 A JUST ONE.

13 Q JUST ONE? OKAY. AND WHERE IN -- IS THAT LOCATED ON THE LONG
14 SIDE OF THE MAUSOLEUM OR THE SHORT SIDE?

15 A THE NARROW. THE NARROW SIDE.

16 Q THE NARROW SIDE?

17 A HAD A DOOR IN FRONT OF IT.

18 Q THAT DOOR WASN'T SECURED I TAKE IT?

19 A NO.

20 Q AND WHILE YOU WERE IN THERE YOU FOUND NOTHING OF EVIDENTIARY
21 VALUE IN THERE?

22 A THAT IS CORRECT.

23 Q NO FOOTPRINTS, NO FINGERPRINTS, NO OTHER ARTICLES OF
24 CLOTHING?

25 A NO.

1 Q NO OTHER CONDOM WRAPPERS, ANYTHING LIKE THAT?

2 A NONE THAT I SAW.

3 Q OKAY. WERE YOU ASKED TO PROCESS OR COLLECT ANY OTHER ITEMS
4 ASSOCIATED WITH THIS CASE AT A LATER TIME?

5 A NO.

6 Q SO THIS IS YOUR FULL INVOLVEMENT WITH THE CASE?

7 A RIGHT. JUST THAT NIGHT AT THE SCENE.

8 Q THANK YOU, SIR. THAT'S ALL.

9 THE COURT: MR. SHUPPER.

10 MR. SHUPPER: NOTHING FROM ROBERT JAMES, YOUR HONOR.

11 THE COURT: OKAY. THANK YOU. MR. GASSER, ANY REDIRECT?

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

13 THE COURT: OKAY. THANK YOU, SERGEANT CRONIN. YOU CAN
14 BE SEATED. DOES THE STATE WISH OF SERGEANT CRONIN EXCUSED?

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

16 MR. STRICKLER: WITHOUT OBJECTION.

17 MR. SHUPPER: WITHOUT OBJECTION, YOUR HONOR.

18 THE COURT: THANK YOU. THANK YOU FOR YOUR ATTENDANCE.

19 YOU'RE FREE TO GO AT THIS TIME. PRIOR TO CALLING THE NEXT
20 WITNESS, LET ME JUST -- LET'S SEND THE JURY TO THE JURY ROOM
21 JUST BRIEFLY. FOLKS, GO TO YOUR JURY ROOM AND DO NOT DISCUSS
22 THE CASE AMONG YOURSELVES. WE'LL BE WITH YOU VERY SHORTLY.
23 THANK YOU.

24 (JURY OUT AT 10:17 A.M.)

25 THE COURT: OKAY. PRIOR TO *victim* TAKING THE WITNESS

1 STAND, I THINK IN FAIRNESS TO EVERYBODY THAT WE NEED TO KNOW
2 WHAT I'M GOING TO ALLOW YOU TO DO IN TERMS OF GETTING INTO
3 CERTAIN MATTERS RELATED TO HER BACKGROUND FOR IMPEACHMENT
4 PURPOSES. MY UNDERSTANDING IS, IS THAT THERE ARE TWO
5 CONVICTIONS FOR FRAUDULENT CHECKS, ONE IN 1990 AND ONE IN
6 1996. IS THAT CORRECT, MS. FRYAR?

7 MS. FRYAR: NO, YOUR HONOR. THAT'S NOT CORRECT. WHAT
8 HAS HAPPENED IS WE HAVE GATHERED INFORMATION ABOUT FRAUDULENT
9 CHECK CONVICTIONS AS WELL AS THE DEFENSE. I'VE PERSONALLY
10 GONE THROUGH ALL OF THESE PAPERS, AND IT APPEARS TO ME THAT
11 THERE HAVE BEEN IN TOTAL 14 FRAUDULENT CHECK CONVICTIONS. I
12 HAVE LAID THAT OUT FOR THE DEFENSE AND PROVIDED IT TO THEM
13 BEFORE WE STARTED TRYING THIS CASE. AND THE STATE WOULD
14 SUBMIT THAT SHE WAS CONVICTED FOR A FRAUDULENT CHECK ON
15 FEBRUARY THE 7TH OF 1991, AND ANOTHER ONE ON APRIL THE 10TH,
16 1996, ANOTHER ONE ON MAY THE 28TH, 1996. SHE WAS CONVICTED
17 OF NINE COUNTS OF FRAUDULENT CHECK ON AUGUST THE 23RD OF
18 1996, AND TWO COUNTS ON SEPTEMBER 13TH, 1996. SO IN
19 TOTALITY, YOUR HONOR, THERE ARE 14 FRAUDULENT CHECKS THAT THE
20 STATE BELIEVES HAS OCCURRED.

21 THE COURT: BEING THE BASIS OF FIVE SEPARATE
22 CONVICTIONS. I MEAN, THERE WERE FIVE SEPARATE DISPOSITIONS.
23 IS THAT ESSENTIALLY RIGHT?

24 MS. FRYAR: THAT'S CORRECT, YOUR HONOR.

25 THE COURT: AND YOUR POSITION WITH REGARD TO THE

1 ADMISSIBILITY OF THOSE?

2 MR. SNEED: OH. I'M SORRY, YOUR HONOR. IT'S 609(B). I
3 THINK THERE'S A RECENT -- IT'S PERMISSIBLE ON CROSS
4 EXAMINATION.

5 THE COURT: OKAY. AND SO, THAT'S FINE. THOSE
6 CONVICTIONS CAN BE USED.

7 NOW, THE OTHER THING IS, IS THAT I'M NOT SURE I
8 UNDERSTAND, AND PERHAPS IT'S MY -- I'M SURE IT'S MY FAULT --
9 EXACTLY WHAT IT IS THAT YOU NEED TO GET INTO OR WISH TO GET
10 INTO WITH REGARD TO PRIOR ALLEGED DRUG USAGE ON victim's
11 PART. AM I TO UNDERSTAND THAT THE DRUG SCREEN -- IS THIS A
12 MISPRINT OR IS THIS CORRECT, THAT THE -- IT SAYS BAPTIST
13 HOSPITAL DRUG SCREEN RELATING TO victim's SEPTEMBER
14 22ND, 1996 EXAMINATION?

15 MR. SHUPPER: I BELIEVE THAT'S SEPTEMBER 22ND, 1994,
16 YOUR HONOR.

17 THE COURT: WELL, IT SAYS SEPTEMBER 22ND, 1996, ON PAGE
18 2, ITEM "H" OF YOUR AMENDED MOTION TO ---

19 MR. SHUPPER: I BELIEVE THAT'S A TYPOGRAPHICAL ERROR
20 THEN.

21 THE COURT: OKAY.

22 MR. SHUPPER: I BELIEVE THE PRIOR RAPE REPORT WAS
23 SEPTEMBER OF '94, AND THAT THOSE RECORDS THAT WERE ATTACHED
24 WITH THE EXHIBITS I GAVE THE COURT RELATE TO SEPTEMBER 22ND,
25 THE POSITIVE DRUG SCREEN ON THE COCAINE AND THE MARIJUANA.

1 THE COURT: AND YOU WOULD SEEK TO UTILIZE THAT
2 INFORMATION IN THIS CASE TO WHAT END AND UNDER WHAT RULE OF
3 EVIDENCE?

4 MR. SHUPPER: WELL, YOUR HONOR, THE PRIOR ACT, THE FACT
5 THAT -- WE'VE GONE INTO THE PRIOR REPORT, AND I DON'T KNOW
6 THAT WE CAN SHOW THE FALSITY OF IT. AND IF I UNDERSTAND THE
7 COURT'S PRIOR RULING, WE WOULD HAVE TO SHOW THE FALSITY OF IT
8 IN ORDER FOR IT TO BE ---

9 THE COURT: WELL, THAT WOULD SEEM TO BE A REQUIREMENT OF
10 OUR SUPREME COURT FROM THE BOITER CASE. I TOLD YOU I'D LET
11 YOU DO A PROFFER IN THAT REGARD AND CERTAINLY WELCOME THE
12 OPPORTUNITY TO DO THAT. THAT'S NOT WHAT I'M TALKING ABOUT.
13 I'M TALKING ABOUT PRIOR DRUG USAGE. THERE IS SOME EVIDENCE
14 THAT THERE WAS SOME DRUG USAGE ON THIS DAY; THAT IS, MAY
15 29TH, 1996, THE DATE THAT THIS INCIDENT ALLEGEDLY OCCURRED.
16 I BELIEVE I'M CORRECT IN STATING THAT. THAT MAY HAVE
17 OCCURRED IN THE MORNING, ABOUT 11:00 IN THE MORNING OF THAT
18 DAY. IS THAT CORRECT? HAVE I MISSED THAT?

19 MR. SNEED: THAT'S MY UNDERSTANDING, YOUR HONOR.

20 MR. SHUPPER: THEN THAT WAS WHAT MR. GASSER HAD
21 INDICATED OF victim EARLIER, THAT IT WAS IN THE MORNING
22 SHE SMOKED A MARIJUANA JOINT WITH A FRIEND AT ABOUT 11 A.M.
23 HOWEVER, THE RECORDS FROM THE HOSPITAL FLOW CHART FROM MAY
24 29TH SAY THAT SHE ADMITS TO SMOKING MARIJUANA TONIGHT.

25 THE COURT: WELL, ...

1 MR. SHUPPER: THE SIGNIFICANCE WOULD BE ON HER ABILITY
2 TO PERCEIVE ---

3 THE COURT: WELL, OF COURSE IT WOULD.

4 MR. SHUPPER: --- AND RECALL.

5 THE COURT: I UNDERSTAND.

6 MR. SHUPPER: AS FAR AS THAT PARTICULAR INCIDENT AND
7 DOCUMENT WHICH WAS PART OF THE MEDICAL REPORT FROM ---

8 THE COURT: WELL, ARE THERE ANY TOXICOLOGY REPORTS THAT
9 EVENING OR ANY REPORTS THAT INDICATE DRUG USAGE FROM ANY KIND
10 OF BLOOD WORK ON victim ?

11 MR. GASSER: NOT ON THAT DAY. I CHECKED WITH -- DR.
12 STACEY SMITHSON IS THE SEXUAL ASSAULT PROTOCOL EXAMINER THAT
13 WOULD BE TESTIFYING FOR THE STATE.

14 THE COURT: YES, SIR.

15 MR. GASSER: AND OF COURSE WHEN HE QUESTIONED HER HIS
16 SPECIFIC QUESTIONS DEALT WITH DRUG USE OR ALCOHOL DURING THE
17 SEXUAL ASSAULT, WHICH SHE RESPONDED IN THE NEGATIVE. THE
18 NURSE HAS NO MEMORY OF THIS EVENT AT ALL. SHE LOOKS AT THE
19 NOTES. SHE SAYS, "I WROTE DOWN WHAT I WROTE DOWN", BUT SHE
20 HAS NO MEMORY OF THIS EVENT WHATSOEVER.

21 BUT I ASKED DR. SMITHSON -- I WAS LOOKING FOR THE
22 TOXICOLOGY REPORTS FROM RICHLAND MEMORIAL. HE SAID OF COURSE
23 HE HAS A SPECIFIC MEMORY OF THIS CASE, REMEMBERS victim
24 BECAUSE OF THE FACTS AND CIRCUMSTANCES OF THE CASE. AND HE
25 WILL INDICATE UNDER OATH THAT, YOU KNOW, HE SPENT A

1 SIGNIFICANT AMOUNT OF TIME WITH VICTIM QUESTIONING HER,
2 HER DEMEANOR, HER APPEARANCE, HER ODOR, THAT SORT OF THING,
3 AND THERE WAS NO DOUBT IN HIS MIND, ESPECIALLY AFTER SEEING
4 MANY PEOPLE UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS, THAT
5 SHE WAS NOT; AND, THEREFORE, HE DIDN'T EVEN ORDER A
6 TOXICOLOGY. THAT'S WHAT HE WOULD TESTIFY TO.

7 THE COURT: ALL RIGHT. WELL, WHAT'S YOUR POSITION AS TO
8 WHETHER OR NOT THEY CAN GET INTO THE DRUG USAGE ON THE DAY OF
9 THE INCIDENT?

10 MR. GASSER: I BELIEVE THEY CAN GET INTO IT. WE'RE
11 GOING TO GET INTO IT.

12 THE COURT: GOOD. WELL, THEN WE DON'T NEED TO ARGUE.

13 MR. SHUPPER: I'M SORRY. DID HE SAY WE WOULD, WE CAN?

14 THE COURT: YES, SIR.

15 MR. SHUPPER: THAT SATISFIES ME AS FAR AS MAY 29TH, YOUR
16 HONOR.

17 THE COURT: OKAY. NOW, I'LL CERTAINLY LET YOU MAKE ANY
18 PROFFER YOU WANT TO NOW OR AFTER SHE TESTIFIES. FRANKLY,
19 AFTER SHE TESTIFIES WOULD PROBABLY BE THE MORE APPROPRIATE
20 TIME AS TO THE PRIOR REPORTED RAPE. WHAT ELSE DO YOU ALL
21 WANT TO GET INTO ON THE 608 STUFF?

22 MR. SHUPPER: YOUR HONOR, 14 CONVICTIONS, I MEAN, 14
23 SEPARATE INSTANCES; I JUST ASK THE COURT TO TAKE NOTE OF THE
24 FACT THAT THESE CHARGES, THE WARRANTS RELATED TO THE
25 CONVICTIONS REFLECT A FRAUDULENT CHECK WRITTEN IN THE AMOUNT

1 OF 37.01 TO PIGGLY WIGGLY ON 5-28, MARKED ACCOUNT CLOSED ON
2 5-27.

3 THE COURT: I'M SORRY. WHY ARE WE TALKING ABOUT THIS?
4 YOU'RE GOING TO BE ABLE TO UTILIZE THOSE.

5 MR. SHUPPER: I WOULD JUST ASK THE COURT TO CLARIFY FOR
6 ME, WOULD I BE ABLE TO ASK ABOUT EACH INDIVIDUAL CHECK AND
7 DATE THAT IT WAS DONE?

8 THE COURT: YOU CAN ASK HER IF SHE WAS CONVICTED ON ONE
9 DAY OF ONE COUNT ALLEGEDLY HAVING OCCURRED ON SUCH-AND-SUCH A
10 DATE, WAS SHE CONVICTED ON ANOTHER DATE OF ANOTHER COUNT, WAS
11 SHE CONVICTED ON ONE DAY OF NINE COUNTS OVER A PERIOD OF
12 TIME. IF SHE SAYS YES, YOU KNOW, THEN FINE. THEN YOU CAN
13 ASK HER IF SHE WAS CONVICTED OF I THINK THREE COUNTS ON
14 ANOTHER, TWO COUNTS ON ANOTHER DATE.

15 MR. SHUPPER: AND FAILING TO APPEAR ON THE ---

16 THE COURT: WELL, WHAT'S FAILING TO APPEAR HAVE TO DO
17 WITH ANYTHING?

18 MR. SHUPPER: MAY I ASK HER IF SHE FAILED TO APPEAR IN
19 COURT ON THE 28TH?

20 THE COURT: I DON'T THINK SO. BUT, I MEAN, I HAVEN'T
21 HEARD IF THE STATE OPPOSES THAT. I DON'T KNOW TO WHAT END
22 YOU WOULD BE ASKING HER THAT. IF YOU CAN TELL ME, I'D BE
23 HAPPY TO LISTEN TO YOU. WHAT DOES IT PROVE, AND WHY IS IT
24 ADMISSIBLE?

25 MR. SHUPPER: YOUR HONOR, I THINK IN OUR MOTION, BOTH

1 MR. SNEED'S AND MY OWN, WE HAVE OUTLINED THE POSSIBILITY THAT
2 THIS WOULD SERVE AS A PATTERN AND A MOTIVE. AND, AGAIN, I'M
3 NOT GETTING -- I DON'T WANT TO SAY THAT WHAT THE OFFICERS
4 FOUND ON THE SCENE, THAT THE CONDITION OF THE VICTIMS DID NOT
5 OCCUR. WE'RE NOT CONTESTING THE FINDINGS OF THE OFFICERS OR
6 AS FAR AS THAT RESPECT.

7 BUT THERE IS AN INFERENCE THAT COULD BE DRAWN THAT THERE
8 WAS SOMETHING ELSE GOING ON PRIOR TO THE OFFICERS ARRIVAL ON
9 THE SCENE AND COLLECTING INFORMATION AND FINDING THE VICTIMS
10 IN THIS CONDITION AND TAKING THEIR REPORTS AND THAT IN
11 RELATION TO THE DOCUMENT AND THE HOSPITAL RECORDS RELATING TO
12 TREATMENT FOR CRACK COCAINE, HISTORY OF ---

13 THE COURT: FROM THAT YOU EXTRAPOLATE THAT THERE IS A
14 POSSIBILITY THAT A PERSON, A REASONABLE PERSON COULD INFER
15 THAT THERE WAS SOME DRUG DEAL GOING ON THAT NIGHT AND THAT
16 THEY DIDN'T PAY HER FOR SEX OR SOMETHING LIKE THAT AND -- IS
17 THAT IT? I DON'T THINK YOU -- I RESPECTFULLY THINK THAT'S
18 TOO MUCH OF A STRETCH.

19 MR. SNEED: THANK YOU, YOUR HONOR. AND THAT'S WHAT I
20 WAS LOOKING FOR, YOUR RULING ON THAT.

21 THE COURT: YEAH. MR. SNEED?

22 MR. SNEED: I'M SORRY. I DIDN'T MEAN TO CUT OFF THE ---

23 THE COURT: THAT'S OKAY.

24 MR. SNEED: YOUR HONOR, I STAND BY THE BRIEF I'D
25 SUBMITTED CONCERNING THE ALLEGATIONS OF HER PRIOR BAD ACTS.

1 THE COURT: CERTAINLY.

2 MR. SNEED: MY UNDERSTANDING IS THERE IS A DIFFERENT
3 ANALYSIS FOR EQUITY ON CROSS VERSUS DEFENSE AFFIRMATIVELY
4 PRESENTING EXTRINSIC EVIDENCE.

5 THE COURT: WELL, I MEAN, YOU TRY TO GET EXTRINSIC
6 EVIDENCE IN ON 608(C), WHICH IS BIAS, MOTIVE, ET CETERA, ET
7 CETERA, ET CETERA. IF YOU CAN TELL ME WHAT YOU'RE TALKING
8 ABOUT, I'M GLAD TO LISTEN TO ANYTHING, YOU KNOW.

9 MR. SNEED: I THINK 608(C), WE ALSO HAVE A
10 CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE UNDER THE 5TH, 6TH
11 AND 10TH AMENDMENTS.

12 THE COURT: YEAH. ALL THOSE APPLY IN THIS STATE?

13 MR. SNEED: YES, SIR. YOUR HONOR, I DON'T KNOW IF WE'RE
14 TALKING ABOUT EXTRINSIC EVIDENCE NOW OR QUESTIONS ON CROSS.

15 THE COURT: I DON'T EITHER. TELL ME WHAT WE'RE TALKING
16 ABOUT.

17 MR. SNEED: WHAT I'D LIKE TO ASK THE WITNESS ON CROSS
18 CONCERNING THE SEPTEMBER 1994 —

19 THE COURT: OKAY.

20 MR. SNEED: OKAY. I'D LIKE TO ASK HER IF SHE FILED SUCH
21 A CLAIM OF SEXUAL ASSAULT, ASK HER ABOUT HER PECUNIARY, HER
22 FINANCIAL CONDITION AT THAT TIME AND HER DRUG USE AT THAT
23 TIME.

24 THE COURT: MM-HMM (AFFIRMATIVE).

25 MR. SNEED: THEN THE NEXUS BETWEEN THAT AND NOW IS FOR

1 THE MAY INCIDENT. I WOULD ASK HER ABOUT HER FINANCIAL
2 STRAITS AND HER DRUG USE. THE INFERENCE WOULD BE IN
3 SEPTEMBER ---

4 THE COURT: SO IT BECOMES SORT OF A 404(B) KIND OF
5 SITUATION AS WELL?

6 MR. SNEED: ALMOST. EXCEPT 404(B) IS THE ACTUAL
7 PRESENTATION OF EVIDENCE, AND HERE I JUST WANTED TO ASK HER
8 ON CROSS, WHICH I THINK IS A MUCH LOWER THRESHOLD FOR THE
9 COURT TO PERMIT IT.

10 THE COURT: WELL, CERTAINLY THE LOWER THRESHOLD BEING
11 YOU'VE GOT OF A GOOD FAITH BASIS FOR ASKING THE QUESTION,
12 DON'T YOU?

13 MR. SNEED: I DO BELIEVE I HAVE A GOOD FAITH BASIS AT
14 LEAST FROM THE ---

15 THE COURT: HERE'S WHAT WE'LL DO.

16 MR. SNEED: YES, SIR.

17 THE COURT: I'LL ALLOW YOU TO MAKE WHATEVER PROFFER YOU
18 CHOOSE AFTER SHE FINISHES HER DIRECT EXAMINATION AND WE'LL
19 SEND THE JURY BACK OUT. YOU CAN QUERY HER TO YOUR HEART'S
20 CONTENT OUTSIDE THE PRESENCE OF THE JURY, AND THEN WE'LL
21 DETERMINE IF THAT EVIDENCE CAN COME IN. OKAY?

22 MR. SNEED: THANK YOU, SIR.

23 THE COURT: IS THAT OKAY?

24 MR. SNEED: YES, SIR.

25 THE COURT: ALL RIGHT. LET'S SEE.

1 MR. SNEED: I'M SORRY. A RELATED ISSUE. ON THE -- SHE
2 FAILED TO APPEAR IN MAGISTRATE'S COURT FOR A BAD CHECK THE
3 DAY BEFORE THIS INCIDENT.

4 THE COURT: RIGHT.

5 MR. SNEED: AND I BELIEVE THAT FAILURE TO APPEAR WOULD
6 BE PERMISSIBLE UNDER 608(B), AT LEAST INQUIRY ON CROSS. AND
7 THAT WOULD BE A SPECIFIC INCIDENT OF CONDUCT RELATING TO
8 TRUTHFULNESS. SHE KNEW SHE HAD GO TO COURT, SHE DIDN'T DO
9 IT, AND THE COURT ISSUED A BENCH WARRANT. THAT IS A BAD ACT.
10 AND SHE'S SUPPOSED TO GO TO COURT, AND SHE DIDN'T GO, AND
11 THAT'S THE BAD ACT.

12 MR. SHUPPER: AND I HAVE COPIES OF THE BOND FORMS, YOUR
13 HONOR.

14 THE COURT: YEAH. I MEAN, I DON'T DOUBT THAT, YOU KNOW,
15 ALL THIS EXISTS. AND SUBSEQUENTLY SHE WAS CONVICTED OF THOSE
16 THINGS IN HER ABSENCE I WOULD ASSUME ON THAT DATE. THAT'S
17 THE SUBJECT OF AT LEAST TWO OF THE CONVICTIONS. IS THAT
18 RIGHT?

19 MS. FRYAR: NO, YOUR HONOR. SHE WAS CONVICTED IN HER
20 ABSENCE ON MAY THE 28TH OF 1996, TRIED IN HER ABSENCE, GIVEN
21 30 DAYS, AND A BENCH WARRANT WAS ISSUED. THAT BENCH WARRANT
22 WAS EXECUTED ON JUNE THE 26TH OF 1996. SHE WAS PICKED UP ON
23 AUGUST THE 15TH OF '96.

24 THE COURT: WELL, LET ME SIMPLIFY THIS MAYBE. I DON'T
25 KNOW. WHAT'S THE STATE'S POSITION WITH REGARD TO THE FAILURE

1 TO APPEAR?

2 MR. GASSER: I DON'T THINK IT'S RELEVANT, YOUR HONOR. I
3 JUST DON'T THINK IT'S RELEVANT. I CAN IMAGINE IF I WAS
4 MAKING THIS ARGUMENT WHEN THEY WERE GETTING READY TO PUT
5 THEIR DEFENDANTS UP, BECAUSE ONCE THE DEFENDANTS TAKE THE
6 STAND THEY BECOME LIKE EVERY OTHER WITNESS AND THE RULES
7 APPLY EQUALLY.

8 THE COURT: THEY SAY IT AFFECTS HER TRUSTWORTHINESS,
9 HAVING MADE A PROMISE TO THE COURT; I.E., A PROMISE TO APPEAR
10 FOR TRIAL, THAT SHE IN BREACHING THAT PROMISE, IT SOMEHOW
11 AFFECTS HER TRUSTWORTHINESS. THAT'S WHAT I BELIEVE THEIR
12 ARGUMENT TO BE. AM I CORRECT?

13 MR. SNEED: YES, SIR.

14 MR. SHUPPER: YES, YOUR HONOR.

15 MR. GASSER: I JUST DON'T BELIEVE THAT THAT'S WHAT THE
16 PURPOSE OF THAT PARTICULAR RULE IS FOR. I DON'T THINK IT'S
17 FOR -- I THINK IT GOES TO TRUSTWORTHINESS AS TO TAKING AN
18 OATH AND TESTIFYING AS TO A MATTER OF FACT.

19 THE COURT: YEAH. WELL, YOU KNOW, I DON'T KNOW YET. I
20 MEAN, I JUST DON'T KNOW. I'M GOING TO HAVE TO THINK ABOUT
21 THAT ONE, BECAUSE, YOU KNOW, THE ARGUMENT THAT THEY MAKE IS
22 NOT REALLY FRIVOLOUS. I THINK IT HAS -- YOU KNOW, MAKES SOME
23 SENSE. I DON'T KNOW THAT I'M GOING TO ALLOW IT, BUT I'LL
24 NEED TO THINK ABOUT IT. AGAIN, WE WON'T NEED TO GET INTO IT
25 UNTIL -- AND IF -- AND I PROMISE YOU THIS. THAT IF I ALLOW

1 IT, YOU KNOW, I MAY ALLOW THE STATE TO RESUME DIRECT
2 EXAMINATION IN ORDER THE REMOVE THE STING TACTICALLY IF
3 THAT'S WHAT YOU WANT TO DO. SO, YOU KNOW, WE'LL GO FROM
4 THERE.

5 LET'S TAKE ABOUT A FIVE-MINUTE BREAK. I WOULD STRONGLY
6 SUGGEST THAT YOU EXPLORE THAT LAST SITUATION THAT WE TALKED
7 ABOUT. I NOTICE THAT MR. JAMES, THE JAMES BROTHERS MOTHER
8 WAS A MOMENT AGO IN THE COURTROOM. AND YOU MIGHT WANT TO
9 TAKE A FEW MINUTES TO SEE IF THAT CAN COME TO FRUITTION. IF
10 NOT, WE'LL PROCEED. LET'S TAKE ABOUT TEN MINUTES ON THIS.
11 (WHEREUPON, A BREAK IS TAKEN)

12 THE COURT: ARE YOU READY TO PROCEED?

13 MS. FRYAR: YES, YOUR HONOR.

14 THE COURT: OKAY. LET'S CALL THE JURY BACK IN, MR.
15 BARROW. RUBICON HAS BEEN CROSSED.

16 MR. STRICKLER: YES, SIR.

17 THE COURT: OKAY.

18 MR. SHUPPER: YES, SIR, YOUR HONOR. CONFIRMATION ON
19 THAT, YOUR HONOR.

20 THE COURT: OKAY. R-U-B-I-C-O-N. IT'S A RIVER FROM
21 ITALY. AND IT'S A METAPHOR HERE TODAY. ALIA IACTA EST.

22 MR. SHUPPER: ALIA EST IN BINESPA (PHONETIC).

23 (JURY IN AT 10:50 A.M.)

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

25 THE COURT: THANKS, MR. BARROW. THANK YOU, MR. HOLLIS.

1 AND THANK YOU, FOLKS, FOR YOUR PATIENCE WITH ME. WE'RE READY
2 NOW TO RESUME, MS. FRYAR.

3 MS. FRYAR: THANK YOU, YOUR HONOR. THE STATE WOULD CALL
4 Victim.

5 THE COURT: Victim. PLEASE COME FORWARD TO MR. BARROW
6 AND THEN FOLLOW THE INSTRUCTIONS, IF YOU WOULD.

7 Victim, BEING FIRST DULY SWORN,
8 TESTIFIES AS FOLLOWS:

9 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
10 FOR THE RECORD.

11 Victim: MY NAME IS Victim.

12 DIRECT EXAMINATION BY MS. FRYAR:

13 Q Victim, COULD YOU PLEASE TELL THE JURY WHERE YOU LIVE,
14 JUST THE AREA IF YOU LIKE?

15 A I LIVE IN AREA.

16 Q OKAY, MA'AM. AND WHO DO YOU LIVE WITH?

17 A I LIVE WITH MY MOTHER AND MY THREE CHILDREN.

18 Q OKAY. AND IS THE LADY THAT YOU LIVE WITH, IS SHE TRULY YOUR
19 MOTHER?

20 A NO. MY REAL MOTHER IS DECEASED.

21 Q AND WHO IS THIS LADY THAT YOU LIVE WITH?

22 A SHE IS MY AUNT. SHE HAS RAISED ME SINCE I WAS SIX MONTHS
23 OLD.

24 Q OKAY. AND ABOUT YOUR CHILDREN, HOW OLD ARE THEY, MS. BROWN?

25 A MY SON IS 15. I HAVE A DAUGHTER THAT'S 11 AND ONE THAT'S 7.

1 Q ALL RIGHT. IF YOU COULD, TELL THE JURY, ARE YOU WORKING AT
2 THIS TIME?

3 A YES, I AM.

4 Q WHERE ARE YOU WORKING?

5 A I WORK AT A LOCAL CONVENIENCE STORE AS A HEAD CASHIER.

6 Q OKAY. I WANT TO ASK YOU ABOUT SOME MATTERS NOW. victim,
7 IS IT TRUE THAT YOU WERE CONVICTED OF A FRAUDULENT CHECK BACK
8 IN FEBRUARY, FEBRUARY THE 7TH OF 1991?

9 A YES, MA'AM.

10 Q AND DID YOU ALSO THEN PLEAD TO A FRAUDULENT CHECK ON APRIL
11 THE 10TH, 1996?

12 A YES, MA'AM.

13 Q AND DID YOU ALSO GET CONVICTED FOR A FRAUDULENT CHECK ON MAY
14 THE 28TH OF 1996?

15 A YES.

16 Q AND DID YOU PLEAD TO NINE COUNTS OF FRAUDULENT CHECK ON
17 AUGUST THE 23RD, 1996?

18 A YES, I DID.

19 Q AND DID YOU PLEAD TO TWO COUNTS OF FRAUDULENT CHECK ON
20 SEPTEMBER THE 13TH, 1996?

21 A YES, I DID.

22 Q OKAY. AND SO, HAVE YOU BEEN CONVICTED OF ANY FRAUDULENT
23 CHECKS SINCE SEPTEMBER OF 1996?

24 A NO, I HAVEN'T.

25 Q OKAY.

1 THE COURT: FOLKS, AGAIN, CONVICTIONS OF CRIMES
2 IMPORTING DISHONESTY MAY BE UTILIZED BY A JURY, IF AT ALL, AS
3 IT MAY AFFECT THE CREDIBILITY; THAT IS, THE BELIEVABILITY, OF
4 A GIVEN WITNESS AND FOR NO OTHER PURPOSE. THANK YOU. PLEASE
5 CONTINUE, MS. FRYAR.

6 MS. FRYAR: THANK YOU.

7 Q (BY MS. FRYAR) victim, BACK IN 1996, WHERE WERE YOU
8 LIVING?

9 A I WAS LIVING AT THE SAME ADDRESS.

10 Q OKAY. AND WERE YOU MARRIED OR DIVORCED AT THAT TIME?

11 A I WAS DIVORCED.

12 Q ALL RIGHT. AND HOW MANY CHILDREN DO YOU HAVE, DID YOU HAVE?

13 A AT THAT TIME I HAD ALL THREE.

14 Q YOU HAD ALL THREE. OKAY. DID YOU KNOW A MAN BACK THEN BY
15 THE NAME OF WINFRED BULL?

16 A YES, I DID.

17 Q OKAY. COULD YOU PLEASE DESCRIBE YOUR RELATIONSHIP TO MR.
18 BULL, WITH MR. BULL TO THE JURY?

19 A WE WERE VERY GOOD FRIENDS. WE REMAIN FRIENDS TO THIS DAY.
20 HE'S ALWAYS BEEN THERE FOR ME. HE ALWAYS HELPED ME OUT WHEN
21 I NEED IT.

22 Q I WANT TO DRAW YOUR ATTENTION NOW BACK TO A TIME IN 1996, MAY
23 THE 28TH, THE EVENING OF MAY THE 28TH OF 1996. OKAY. ON
24 THAT EVENING DID YOU HAVE AN OPPORTUNITY TO SEE MR. WINFRED
25 BULL?

1 A YES, I DID.

2 Q OKAY. PLEASE TELL THE JURY HOW YOU CAME TO SEE MR. BULL.

3 A WELL, I WENT BY. I NORMALLY GO BY QUITE OFTEN TO CHECK, TALK
4 TO HIM, CHECK WITH HIM, SEE IF THERE'S ANYTHING HE NEEDS TO
5 HAVE DONE BECAUSE HE DOESN'T DRIVE. WE WERE SITTING DOWN
6 TALKING. AND WE DECIDED THAT WE'D GO RIDE A LITTLE BIT.

7 Q WHAT TIME DO YOU THINK IT WAS WHEN YOU SAW MR. BULL?

8 A I'M NOT SURE OF THE TIME. I'D SAY AROUND -- PROBABLY AROUND
9 9. I'M NOT SURE.

10 Q ALL RIGHT. AND WHERE DID YOU SEE MR. BULL AT?

11 A AT HIS HOUSE ON HASKELL AVENUE.

12 Q ON THIS DAY BEFORE YOU WENT TO MR. BULL'S HOME, HAD YOU BEEN
13 DRINKING ANY ALCOHOL OR USING ANY DRUGS?

14 A YES, I HAD.

15 Q OKAY. COULD YOU PLEASE TELL THE JURY WHAT DRUGS OR ALCOHOL
16 YOU USED ON THAT DAY?

17 A ON THAT DAY ME AND ONE OF MY GIRLFRIENDS GOT TOGETHER. WE
18 SMOKED A JOINT OF REEFER TOGETHER. AND THAT WAS IT. IT WAS
19 AROUND 11 THAT AFTERNOON, 11 OR 12.

20 Q ALL RIGHT.

21 A IT WAS EARLY THAT DAY.

22 Q ALL RIGHT. AND DID YOU USE ANY OTHER -- OR DID YOU SMOKE ANY
23 MARIJUANA AFTER THAT TIME?

24 A NO, I DIDN'T.

25 Q DID YOU DRINK ANY ALCOHOL ON THAT DAY AT ALL?

1 A NO.

2 Q ALL RIGHT. BY THE TIME YOU WENT TO MR. WINFRED BULL'S HOUSE,
3 WERE YOU STILL FEELING ANY OF THE EFFECTS OF THE MARIJUANA?

4 A NO.

5 Q OKAY. AND SO YOU FEEL LIKE YOU SPLIT THIS MARIJUANA
6 CIGARETTE WITH YOUR FRIEND AROUND 11 OR 12. IS THAT CORRECT?

7 A YES. MM-HMM (AFFIRMATIVE).

8 Q WHERE WERE YOU THEN?

9 A WE WERE IN WEST COLUMBIA TO HER APARTMENT.

10 Q OKAY. AND AFTER THAT, HOW LONG WAS IT AFTER THAT THAT YOU
11 WENT TO MR. BULL'S DO YOU THINK AS FAR AS HOURS ARE
12 CONCERNED?

13 A I DIDN'T GO TO HIM UNTIL LATE THAT EVENING, AROUND 9. SO
14 WE'RE LOOKING AT ABOUT SIX OR SEVEN HOURS.

15 Q OKAY. SO IF IT WAS 12 TO 9, LOOKING AT ABOUT NINE HOURS?

16 A YES.

17 Q OKAY. WHEN YOU WENT OVER TO MR. BULL'S HOUSE, DID YOU ALL
18 HAVE ANYTHING TO DRINK WHILE YOU ALL WERE THERE?

19 A NO. WINFRED DOESN'T DRINK.

20 Q DID YOU HAVE ANY DRUGS OF ANY KIND?

21 A NO. NO. I DON'T DRINK OR DO ANYTHING AROUND HIM BECAUSE HE
22 DOESN'T DO THAT.

23 Q ALL RIGHT. AND SO WHEN YOU MET UP WITH HIM, DO YOU RECALL
24 WHO WAS AT HIS HOUSE?

25 A HIS MOTHER, HIS STEPFATHER, HIS SISTER. I THINK TWO OF HIS

1 SISTERS WERE THERE. HIS BROTHERS' KIDS. I MEAN, IT WAS A
2 LOT OF THEM THERE.

3 Q OKAY. DO YOU REMEMBER WHAT MR. BULL WAS WEARING THAT
4 EVENING?

5 A WELL, HE NORMALLY HAS ON HIS WHITE T-SHIRT ANY TIME YOU GO
6 THERE, HIS SHORTS PANTS, HIS SOCKS AND HIS HOUSE SLIPPERS.
7 THAT'S HIM WHEN HE'S AROUND THE HOUSE.

8 Q THAT'S WHAT HE NORMALLY WEARS?

9 A MM-HMM (AFFIRMATIVE).

10 Q AND TO THE BEST OF YOUR RECOLLECTION, IS THAT WHAT HE HAD ON
11 THAT EVENING?

12 A YES.

13 Q OKAY. AND SO WHEN YOU WENT OVER TO MR. BULL'S HOUSE, WHAT
14 DID YOU ALL DO WHEN YOU FIRST GOT THERE?

15 A WE SAT DOWN AND TALKED. HE LIKED COFFEE OF COURSE, SO WE
16 ENDED UP -- THAT'S HOW WE DECIDED THAT WE WERE GOING OUT
17 BECAUSE HE WANTED COFFEE. AND WE -- I'D SAY WE MUST HAVE
18 TALKED ABOUT 15 OR 20 MINUTES. THEN WE GOT UP AND WENT AND
19 GOT SOME COFFEE. HE WANTED TO RIDE. HE LIKES TO RIDE. AND
20 I TOLD HIM THAT WE COULD RIDE, THAT, YOU KNOW, WE JUST HAD TO
21 GET GAS OR WHATEVER.

22 Q OKAY. AND SO --

23 A SO --

24 Q GO AHEAD.

25 A THAT'S WHAT WE DID.

1 Q YOU ALL GOT SOME GAS?

2 A MM-HMM (AFFIRMATIVE).

3 Q DID YOU AT ANY TIME SEE ANY MONEY THAT MR. BULL HAD?

4 A WELL, HE ALWAYS, WHEN WE GO OUT, HE LIKES TO HAVE MONEY
5 BECAUSE HE IS LIKE, WELL, IF THERE'S SOMETHING I WANT HE
6 WANTS TO BE ABLE TO GIVE TO IT ME. SO HE NORMALLY KEEPS
7 MONEY WHEN WE'RE TOGETHER.

8 Q DO YOU REMEMBER SEEING ANY SPECIFIC MONEY ON HIM THIS
9 PARTICULAR EVENING?

10 A WELL, HE WENT UPSTAIRS AND GOT MONEY AND HE ASKED -- IF I'M
11 NOT MISTAKEN, HE ASKED ME, HE TOLD ME HE HAD LIKE 100
12 SOMETHING DOLLARS; WOULD THAT BE ENOUGH. I SAID, "YEAH.
13 WE'RE NOT REALLY GOING ANYWHERE." I REALLY DIDN'T FEEL WE
14 NEEDED THAT, BUT HE ALWAYS LIKES TO BE SURE.

15 Q DID YOU ALL GO SOMEWHERE AFTER THAT?

16 A WENT TO THE PARK.

17 Q WHEN YOU SAY YOU WENT TO THE PARK, WHAT PARK DID YOU GO TO?

18 A IT WAS THE T. L. MARTIN, MARTIN PARK. T. S.

19 Q HAD YOU EVER BEEN TO THAT PARK BEFORE?

20 A NO. I'D NEVER BEEN OVER THERE BEFORE.

21 Q OKAY. AND WHEN YOU ALL FIRST CAME UP TO PARK, WHAT WAS GOING
22 ON?

23 A THEY WERE HAVING A SOFTBALL GAME.

24 Q OKAY. AND SO DID YOU ALL STAY AND WATCH THE SOFTBALL GAME?

25 A WE WATCHED SOME. THEN WE LEFT. HE WANTED -- YOU KNOW, HE

1 WANTED SOMETHING TO EAT OR WHATNOT. SO WE WENT TO BURGER
2 KING.

3 Q OKAY.

4 A SO WE LEFT, WENT OUT AND GOT SOMETHING TO EAT. THEN WE CAME
5 BACK.

6 Q OKAY. AND WHEN YOU CAME BACK, WHAT WAS GOING ON WITH THE
7 BALL GAME?

8 A THE GAME WAS ENDING.

9 Q OKAY.

10 A AND, YOU KNOW, HE WAS LIKE -- WELL, WE STILL SAT DOWN AND
11 TALKED OR WHATEVER. SO WE GOT OUT THE CAR AND WENT OVER TO
12 THE BENCHES. AT THAT TIME WE WAS NOT THERE ALONE. THERE WAS
13 SOME OTHER PEOPLE. I'M NOT SURE EXACTLY WHAT WAS GOING ON.
14 THEY WERE TALKING, WHATNOT. THEY WERE STANDING ON THE OTHER
15 SIDE OF THE PARKING LOT. WE PROCEEDED TO GO AND SIT DOWN ON
16 THE PICNIC BENCH AND TALK.

17 Q ALL RIGHT.

18 A AND ---

19 Q HOLD ON JUST A MOMENT FOR ME, victim. YOUR HONOR, MAY
20 victim STEP DOWN FROM THE WITNESS STAND?

21 THE COURT: CERTAINLY. IF IT'S NECESSARY TO DEVELOP HER
22 TESTIMONY.

23 Q I WANT YOU TO STAND OVER HERE FOR ME. OKAY, victim. I'M
24 SHOWING YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT NO. 1 FOR
25 IDENTIFICATION. IF YOU COULD, COULD YOU PLEASE DESCRIBE THIS

1 AREA FOR THE JURY?

2 A OKAY. WELL, I'M NOT REAL FAMILIAR WITH THE AREA.

3 Q OKAY.

4 A BUT ---

5 Q WELL, LET ME DRAW YOUR ATTENTION TO THIS SPECIFIC PART OF THE
6 DIAGRAM. IF YOU COULD THEN SHOW THE JURY WHERE YOU'RE
7 TALKING ABOUT WHERE YOU ALL WENT TO THE PARK?

8 A OKAY. WE CAME IN I AND PARKED ---

9 THE COURT: victim, IF YOU COULD, PLEASE, MA'AM, HELP
10 ME AND THE JURY AND MS. WILLIAMS. PLEASE KEEP YOUR VOICE UP
11 SO THAT MS. WILLIAMS CAN HEAR EVERYTHING YOU SAY. THANK YOU.

12 A OKAY. WE CAME INTO THE PARK AND WE PARKED CLOSER TO THE PARK
13 IN THIS AREA. WE GOT OUT. THERE WERE SOME PEOPLE OVER IN
14 THIS AREA. WE GOT OUT AND WE PROCEEDED OVER HERE TO THE
15 PICNIC TABLE. WE SAT HERE.

16 Q WHEN YOU ALL FIRST GOT THERE, YOU INDICATED THAT THE OTHER
17 PEOPLE WHO WERE IN THE PARKING LOT WERE STILL THERE. IS THAT
18 RIGHT?

19 A MM-HMM (AFFIRMATIVE).

20 Q WAS THE GAME STILL GOING ON?

21 A THE GAME HAD ENDED.

22 Q OKAY. ALL RIGHT. AND SO WHEN YOU WENT OVER TO THE PICNIC
23 AREA, THE PICNIC TABLE HERE, IS THAT WHAT THIS IS?

24 A YES.

25 Q OKAY. I WANT TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S

1 EXHIBIT NO. 13. ALL RIGHT. LOOKING AT THIS PICTURE,
2 victim, CAN YOU PLEASE POINT OUT WHAT THESE VARIOUS THINGS ARE
3 TO THE JURY? WHAT IS THIS A PICTURE OF?

4 A IT'S A PICTURE OF THE PARK.

5 Q OKAY. ALL RIGHT. AND WHAT IS THIS AREA HERE?

6 A THIS IS THE ROAD INTO THE PARKING LOT BESIDE THE PARK.

7 Q AND IN THIS AREA OF THE PARKING LOT, IS THAT WHERE YOUR CAR
8 WAS PARKED?

9 A YES.

10 Q THIS SIDE. EXCUSE ME. ALL RIGHT. AND SO, PLEASE SHOW THE
11 JURORS WHERE YOU AND MR. BULL WENT TO WHEN YOU FIRST GOT
12 THERE.

13 A WE GOT OUT THE CAR. WE PROCEEDED OVER HERE TO THE PICNIC
14 TABLE.

15 Q OKAY. AND HOW DID YOU ALL SIT AT THE PICNIC TABLE?

16 A WELL, AT FIRST HE WAS HERE. I WAS HERE. WE WERE TALKING.

17 Q OKAY. AND SO WHEN YOU -- WAS HE SITTING ON THE TABLE OR ON
18 THE BENCH?

19 A HE WAS SITTING ON THE TABLE.

20 Q WERE YOU SITTING ON THE TABLE OR ON THE BENCH?

21 A I WAS SITTING ON THE BENCH AT THAT TIME.

22 Q OKAY. WERE YOU FACING TOWARD THE BALL FIELDS OR TOWARDS THE
23 GRAVEYARD AT THAT TIME?

24 A I WAS FACING TOWARDS THE BALL FIELD.

25 Q OKAY. THEN WHAT HAPPENED?

1 A THEN I STARTED HEARING NOISES BEHIND ME AND I KEPT TELLING
2 WINFRED THAT I WAS HEARING NOISES. AND HE KEPT TELLING ME
3 THAT I WASN'T HEARING ANYTHING, YOU KNOW, THAT IT WAS AN
4 ANIMAL OR SOMETHING. AND IF I'M IN THE MISTAKEN, HE WAS
5 NAMING ALL KIND OF CRAZY ANIMALS. SO I GOT UP BECAUSE I KEPT
6 HEARING THE NOISE AND I SAT BESIDE HIM UP HERE ON THE TABLE.

7 Q DO YOU KNOW WHERE THE NOISE WAS COMING FROM?

8 A I WOULD SAY IT WAS COMING FROM THIS AREA WHERE THE SHRUBBERY
9 IS. BECAUSE I COULDN'T SEE OVER IN THAT AREA BUT I KEPT
10 HEARING THE NOISE.

11 Q WHAT HAPPENED AFTER THAT?

12 A AFTER THAT WE SAW A GENTLEMAN UP ON THE BICYCLE. HE CAME IN
13 THE PARKING LOT. HE TURNED AROUND. HE WENT BACK OUT.

14 Q OKAY.

15 A SO WE SAT THERE. WE WERE STILL TALKING. I'M STILL KIND OF
16 NERVOUS BECAUSE I KNOW I'M HEARING NOISE. WINFRED IS TALKING
17 BECAUSE HE LIKES TO TALK. AND AT THAT TIME, I'D GIVE IT — I
18 CAN'T REALLY SAY HOW LONG, BUT SHORTLY AFTER, WE OBSERVED TWO
19 GUYS COMING FROM THE ROAD THROUGH THE PARK AREA AND THEY CUT
20 ACROSS.

21 Q OKAY. AND WHERE DID THEY COME TO?

22 A THEY WALKED IN THE DIRECTION TOWARDS US.

23 Q OKAY. AND COULD YOU SEE THEM?

24 A I COULD SEE THEM BECAUSE I'M A VERY OBSERVANT PERSON. I JUST
25 THOUGHT THEY WERE GOING TO WALK THROUGH THE PARK OR WHATEVER

1 AND KEEP GOING. SO THEY WALKED THROUGH THE PARK. ONE WAS --
2 THEY WASN'T LIKE -- AT FIRST THEY WERE SIDE-BY-SIDE. THEN
3 THEY KIND OF EASED APART OR SOMETHING. ONE GENTLEMAN
4 STOPPED, AND HE WAS LIKE, "HEY, MAN, COULD I GET A LIGHT?"
5 AT THIS TIME WINFRED GOT UP. HE WENT IN HIS POCKET TO GET A
6 LIGHT.

7 Q MM-HMM (AFFIRMATIVE).

8 A AND THAT'S WHEN HE PULLED THE GUN. HE PULLED THE GUN OUT.
9 AND THE OTHER GUY CAME AROUND AND HE GRABBED WINFRED. THE
10 OTHER THREE GUYS CAME RUNNING OUT, AND ONE GRABBED ME. AND
11 THEY ALL -- AT THAT TIME THERE WAS A LOT OF TUSSLING AND
12 MOVING, AND I WAS AFRAID AND WHATNOT. AND THEY KEPT ASKING
13 ABOUT MONEY AND THEY WERE SAYING ALL KIND OF THINGS. AND --

14 Q victim, PLEASE TAKE YOUR SEAT BACK, MA'AM.

15 (WITNESS RESUMES THE STAND)

16 Q NOW, WHILE YOU ALL WERE SITTING AT THAT PICNIC TABLE, YOU
17 TOLD THE JURY THAT TWO GUYS CAME UP TO YOU ALL?

18 A YES.

19 Q WAS THERE ANY LIGHTING IN THE AREA?

20 A THERE WAS LIGHT COMING FROM THE PARKING LOT.

21 Q OKAY. AND WAS THERE LIGHT COMING FROM ANYWHERE ELSE?

22 A WELL, THE SCHOOL AND THE LIGHTS ON THE BASEBALL FIELD, THEY
23 HAD ALREADY DIMMED THOSE.

24 Q OKAY.

25 A BUT FROM THE PARKING LOT AND MAINLY FROM THE SCHOOL.

- 1 Q OKAY. ALL RIGHT. AND SO TWO PEOPLE APPROACHED YOU AND MR.
2 BULL AT FIRST AS YOU ALL WERE SITTING ON THE PICNIC TABLE.
3 IS THAT RIGHT?
- 4 A YES.
- 5 Q OKAY. TELL THE JURY EXACTLY WHAT THESE TWO PEOPLE DID.
6 A THEY WALKED UP. ONE OF THE GENTLEMANS (SIC) ASKED FOR A
7 LIGHT. WINFRED WENT IN HIS POCKET TO GET THE LIGHT, AND THE
8 GUY PULLED A GUN.
- 9 Q OKAY. AND DID YOU SEE THE GUN?
- 10 A I SAW THE GUN AND I SAW THE -- AT THAT TIME I SAW THE GUN AND
11 I JUST TURNED AROUND AND I LOOKED.
- 12 Q OKAY. AND DID YOU LOOK INTO THE FACE OF THE PERSON WHO HAD
13 THE GUN?
- 14 A YES, I DID.
- 15 Q COULD YOU SEE THE FACE OF THE PERSON WHO HAD THE GUN?
- 16 A YES, I DID.
- 17 Q I'M GOING TO START WALKING UP TO YOU, AND I WANT YOU TO STOP
18 ME WHEN I GET AS CLOSE TO YOU AS THE PERSON WAS WITH THE GUN.
19 OKAY?
- 20 A OKAY. HE WAS THERE.
- 21 Q OKAY.
- 22 A AND ALL I HAD TO DO IS TURN AROUND AND LOOK IN HIS FACE.
- 23 Q AND WHEN YOU LOOKED INTO HIS FACE, COULD YOU SEE IT CLEARLY?
- 24 A I COULD SEE IT CLEARLY.
- 25 Q AND DO YOU SEE THE PERSON WHO HAD THE GUN THAT NIGHT IN THE

1 COURTROOM?

2 A YES, I DO.

3 Q WOULD YOU PLEASE POINT THAT PERSON OUT FOR THE JURORS?

4 A THIS GENTLEMAN OVER HERE ON THE FAR SIDE.

5 MS. FRYAR: PLEASE LET THE RECORD REFLECT THAT victim
6 HAS POINTED TO MR. ROBERT JAMES.

7 THE COURT: ALL RIGHT. CONTINUE, PLEASE.

8 MS. FRYAR: THANK YOU, YOUR HONOR.

9 Q (BY MS. FRYAR) AFTER THAT, victim, WHAT HAPPENED AFTER THAT?

10 A AFTER THAT THEY GRABBED WINFRED AND WAS TUSSLING WITH HIM.

11 THEY WERE ASKING HIM ABOUT HIS MONEY AND EVERYTHING. IN THE
12 PROCESS THE OTHER THREE GUYS RAN OUT THE WOODED AREA.

13 Q OKAY.

14 A ONE OF THE GENTLEMANS (SIC) RAN UP AND HE GOT RIGHT THERE AND
15 HE GRABBED ME.

16 Q OKAY. THE FIRST TWO THAT HAD COME UP, THE ONE THAT YOU'VE
17 IDENTIFIED AS MR. ROBERT JAMES AND ANOTHER PERSON?

18 A MM-HMM (AFFIRMATIVE).

19 Q WHAT WERE THEY DOING?

20 A THEY WERE -- THEY GRABBED WINFRED AND WAS HOLDING HIM.

21 Q OKAY. AND WHICH ONE HAD THE GUN?

22 A HE DID.

23 Q OKAY. AND WHAT DID THEY DO? WHAT DID HE DO WITH THE GUN?

24 A HE PUT IT TO WINFRED'S HEAD.

25 Q OKAY. AND DO YOU REMEMBER WHAT HE SAID?

1 A HE WAS TELLING HIM TO GIVE UP THE MONEY, YOU KNOW, WHERE IS
2 THE MONEY, YOU KNOW, THEY WANTED THE MONEY. AND HE WAS LIKE,
3 "WE DON'T HAVE ANYTHING", YOU KNOW. THAT'S WHAT HE WAS
4 TRYING TO TELL THEM. AND HE KEPT ASKING THEM WHAT THEY WAS
5 DOING. YOU KNOW, HE WAS QUESTIONING THEM.

6 Q OKAY.

7 A AND, YOU KNOW, AT THAT TIME ALL FIVE GUYS WAS OUT AND THERE
8 WAS A LOT OF MOVEMENT. AND HE WAS TRYING TO TUSSLE AND GET
9 AWAY FROM THEM WHICH WAS DIFFICULT BECAUSE THEY HAD A GUN TO
10 HIS HEAD.

11 Q ALL RIGHT. AND YOU MENTIONED TO THE JURY THEN THAT THREE
12 OTHER GUYS CAME OUT?

13 A MM-HMM (AFFIRMATIVE).

14 Q WHERE DID THEY COME FROM?

15 A I WOULD SAY FROM THE CEMETERY AREA BECAUSE THAT'S WHERE THE
16 WOODED AREA WAS AND THAT'S WHERE I KEPT HEARING THE NOISE
17 FROM.

18 Q AND WHERE DID THESE GUYS COME TO?

19 A THEY CAME TO ME.

20 Q WERE YOU STILL IN THE PLACE WHERE YOU HAD ORIGINALLY BEEN
21 WHEN THEY CAME UP?

22 A YES. I COULDN'T MOVE. I WAS SCARED AND I REALLY DIDN'T
23 MOVE.

24 Q OKAY. AND DID ONE PERSON IN PARTICULAR COME UP TO YOU AT
25 FIRST, OR DID THEY ALL COME UP AT THE SAME EXACT TIME?

1 A ONE CAME DIRECTLY UP TO ME.

2 Q OKAY.

3 A AND HE GRABBED ME AND HE STARTED CALLING ME ALL KIND OF
4 NAMES.

5 Q OKAY. AND COULD YOU SEE THIS PERSON'S FACE?

6 A YES, I COULD.

7 Q OKAY. WHAT KIND OF LIGHT WERE YOU IN AT THAT TIME?

8 A AT THAT TIME I WAS STILL IN THE SAME SPOT ON THE PICNIC
9 TABLE.

10 Q OKAY. ALL RIGHT. I WANT YOU TO STOP ME WHEN I GET AS CLOSE
11 TO YOU AS HE GOT TO YOU RIGHT THERE IN THE LIGHT THERE.
12 OKAY?

13 A OKAY.

14 Q DID HE TOUCH YOU?

15 A YES.

16 Q WHERE DID HE GRAB YOU?

17 A HE GRABBED ME BY MY ARMS.

18 Q RIGHT LIKE THIS?

19 A YES.

20 Q BOTH ARMS?

21 A MM-HMM (AFFIRMATIVE).

22 Q OKAY. AND DID YOU HAVE AN OPPORTUNITY TO LOOK INTO HIS FACE
23 AT THAT TIME?

24 A YES, I DID.

25 Q OKAY. DO YOU REMEMBER WHAT HE LOOKS LIKE?

1 A MM-HMM (AFFIRMATIVE).

2 Q ALL RIGHT. DO YOU SEE THAT PERSON IN THE COURTROOM?

3 A YES, I DO.

4 Q OKAY. COULD YOU PLEASE TELL THE JURY WHERE HE IS?

5 A HE'S THERE BETWEEN THE TWO MENS (SIC).

6 MS. FRYAR: PLEASE LET THE RECORD REFLECT, YOUR HONOR,
7 THAT SHE JUST POINTED OUT MR. KENNETH JAMES.

8 THE COURT: THANK YOU. PLEASE CONTINUE.

9 Q (BY MS. FRYAR) ALL RIGHT. AFTER MR. KENNETH JAMES GRABBED
10 YOU, WHAT HAPPENED AFTER THAT?

11 A WELL, THEY STARTED STRIPPING WINFRED OF HIS CLOTHES AND
12 WHATNOT. AND THEY STARTED PULLING ON ME AND PULLING ON MY
13 CLOTHES. WE MOVED FROM ONE AREA OF THE PARK TO OVER BY THE
14 BENCH. THAT'S WHERE THEY PROCEEDED TO TEAR ALL MY CLOTHES
15 OFF ME.

16 Q OKAY. AND WERE THE TWO THAT ORIGINALLY CAME UP ON YOU, WERE
17 THEY WITH YOU AT THAT TIME, OR WERE THEY WITH WINFRED?

18 A THE TWO THAT HAD WINFRED, THEY HAD TAKEN HIM OVER TO THE
19 OTHER -- LIKE BY SOME OF THE PLAY AREA THINGS. AND MR.
20 JAMES, KENNETH JAMES, WAS HOLDING ME. AT THAT TIME THEY
21 WANTED TO GET IN MY CAR. I HAD TAKEN MY KEYS AND TUCKED DOWN
22 INSIDE MY DRESS.

23 Q WHAT DID YOU HAVE ON THAT NIGHT, victim?

24 A I HAD ON A LONG FLOWERDY SKIRT AND A BLOUSE, JUST A REGULAR
25 WHITE BLOUSE IF I'M NOT MISTAKEN. I THINK IT WAS WHITE.

1 Q ALL RIGHT. AND SO WHAT HAPPENED WITH THE KEYS NOW?

2 A I HAD THE KEYS TUCKED DOWN INSIDE MY SKIRT. SO WHEN THEY
3 TORE MY CLOTHES OFF, MY KEYS FELL. AND HE GOT THE KEYS AND
4 HE GAVE THEM TO ONE OF THE OTHER GUYS AND HE TOLD HIM TO GIVE
5 THE KEYS TO "BIG DADDY".

6 Q WHO SAID THAT?

7 A MR. JAMES, KENNETH JAMES.

8 Q OKAY. DID YOU KNOW THEIR NAMES AT THIS TIME, AT THAT TIME?

9 A NO, I DID NOT KNOW THEIR NAMES.

10 Q BUT IT'S THE FELLOW THAT'S SITTING RIGHT THERE THAT SAID
11 THAT, RIGHT?

12 A MM-HMM (AFFIRMATIVE).

13 Q OKAY. AND SO THEN WHAT HAPPENED AFTER THAT?

14 A SO —

15 Q WHAT DID THE FELLOWS DO WITH YOUR KEYS, victim?

16 A THEY WENT TO THE CAR. TWO OF THEM WAS GOING THROUGH MY CAR.
17 TWO WAS AT WINFRED AND WHATNOT. AT THAT TIME I THINK THEY
18 HAD TAKEN EVERYTHING OFF OF HIM AND ME AT THAT TIME.

19 Q OKAY. WHEN YOU SAY TAKEN EVERYTHING OFF OF HIM —

20 A AS FAR AS OUR CLOTHING.

21 Q OKAY. DID HE HAVE ANY CLOTHES ON? MR. BULL?

22 A HIS CLOTHES THAT HE HAD ON, THEY HAD TAKEN EVERYTHING OFF
23 EXCEPT HIS UNDERWEAR, IF I'M NOT MISTAKEN.

24 Q OKAY. ALL RIGHT. COULD YOU SEE HIM CLEARLY?

25 A I COULD SEE HIM. I COULD SEE HIM MOVING AND WHATNOT. BUT I

1 WAS AFRAID. AND...

2 Q ALL RIGHT. SO WHEN YOU SAY THEY WERE TAKING OFF YOUR
3 CLOTHES, victim, WHO WAS DOING THAT?

4 A MR. JAMES.

5 Q WHICH ONE?

6 A RIGHT HERE.

7 Q KENNETH JAMES?

8 A (WITNESS NODS HEAD AFFIRMATIVELY)

9 MS. FRYAR: LET THE RECORD REFLECT SHE NODDED IN THE
10 AFFIRMATIVE.

11 Q (BY MS. FRYAR) AND WAS SOMEONE WITH HIM HELPING HIM DO THAT?

12 A BASICALLY HE TORE MOST OF MY CLOTHES OFF OF ME.

13 Q OKAY.

14 A IF I'M NOT MISTAKEN, ONE OF THE OTHER GUYS HELPED HIM OUT.

15 Q ALL RIGHT. I'M JUST GOING TO TRY TO HOLD THIS UP. ALL

16 RIGHT. victim, I WANT YOU TO LOOK AT WHAT'S BEEN MARKED

17 AS STATE'S EXHIBIT NO. 13. WHERE IS OUR POINTER? HERE YOU

18 GO. ALL RIGHT. LOOK AT THIS DIAGRAM FOR US, victim

19 OKAY. PLEASE POINT FOR THE JURY WHERE THEY FIRST CAME UP TO
20 YOU AGAIN.

21 (WITNESS COMPLIES)

22 Q OKAY. WHERE WAS IT THAT THE PERSON YOU'VE IDENTIFIED AS MR.
23 KENNETH JAMES, WHERE DID HE TAKE YOU TO?

24 (WITNESS POINTS)

25 Q OKAY. WHAT IS IN OUR PICTURE THERE? WHAT IS THAT? WHAT IS

1 THAT RIGHT THERE?

2 A IT'S LIKE A BENCH, JUST A SIT DOWN BENCH.

3 Q A SIT DOWN BENCH? IS THAT WHAT YOU SAID?

4 A MM-HMM (AFFIRMATIVE). WITH A BACK ON IT.

5 Q OKAY. AND WHERE HAD HE REMOVED YOUR CLOTHES, HE AND THE
6 OTHER FELLOW? THE OTHER FELLOW WHO WAS WITH HIM, WHERE HAD
7 THEY REMOVED YOUR CLOTHES?

8 A HERE BEHIND THE BENCH.

9 Q OKAY. ALL RIGHT. IF YOU COULD, TELL THE JURY WHAT HAPPENED
10 RIGHT THERE AT THAT BENCH?

11 A AFTER HE TOOK MY CLOTHES OFF HE BEGAN TO RAPE ME.

12 Q OKAY.

13 A HE TOLD WINFRED TO WATCH HIM AT THE BENCH. AND THEN THEY
14 TOOK ME OVER HERE.

15 Q victim I'M SORRY. Victim, IF YOU COULD, WHEN YOU SAY THAT
16 HE RAPED YOU, WHAT EXACTLY DID HE DO RIGHT THERE, victim ?

17 A HE MADE ME -- HE PUSHED ME OVER THE SIDE OF THE -- OVER THE
18 BACK OF THE CHAIR AND HE STARTED HAVING SEX WITH ME.

19 Q OKAY.

20 A FROM BEHIND.

21 Q OKAY. AND THE PERSON WHO DID THAT, WAS THAT MR. KENNETH
22 JAMES, THE FELLOW SITTING RIGHT THERE?

23 A YES.

24 Q OKAY. THEN WHAT HAPPENED AFTER THAT, victim ? DID YOU
25 HAVE ON ANY CLOTHES AT ALL AT THAT TIME?

1 A IF I'M NOT MISTAKEN, I THINK I HAD LIKE AT THAT TIME JUST MY
2 BRA.

3 Q AND THEN WHAT? WHAT HAPPENED NEXT, victim?

4 A THEN THEY DRAGGED ME FROM THERE, HIM AND ANOTHER GUY OVER
5 HERE.

6 Q NOW, WHAT IS THIS AREA RIGHT HERE, victim?

7 A IT'S A BROKEN DOWN FENCE WITH SOME SHRUBS, LIKE LITTLE PIECES
8 OF SCRUB.

9 Q OKAY. AND WHERE DID THEY TAKE YOU EXACTLY?

10 A IN THIS -- THEY -- THEY TOOK ME ACROSS THE FENCE AND THERE'S
11 LIKE A WOODED AREA HERE.

12 Q MM-HMM (AFFIRMATIVE).

13 A I WAS HERE AND THEY ---

14 Q WERE YOU IN THE WOODED AREA?

15 A I WASN'T IN THE WOODED AREA. I WAS LIKE BASICALLY RIGHT
16 HERE. THEY LAID ME ON THE GROUND.

17 Q OKAY. ALL RIGHT THEN. RIGHT IN HERE IS WHERE ALL THIS IS
18 HAPPENING. IS THAT RIGHT?

19 A YES.

20 Q OKAY. ALL RIGHT. WHERE WAS WINFRED DURING THIS PERIOD OF
21 TIME?

22 A HE WAS STILL ON THE OTHER SIDE OF THE FENCE.

23 Q OKAY. AND DID THEY BRING HIM ACROSS THE FENCE AT ANY TIME?

24 A YES, THEY DID.

25 Q WHEN DID THEY DO THAT?

1 A IT WAS SHORTLY AFTER THEY -- THEY PICKED HIM UP AND DRAGGED
2 HIM ACROSS THE OTHER SIDE OF THE FENCE.

3 Q OKAY.

4 A AND THEY HAD HIM FACE DOWN ON THE GROUND.

5 Q OKAY. ALL RIGHT. WHAT HAPPENED AFTER MR. KENNETH JAMES OR
6 THE PERSON YOU'VE IDENTIFIED AS MR. KENNETH JAMES CAME OVER
7 ACROSS THE FENCE? WHAT HAPPENED AFTER HE RAPED YOU AS YOU
8 SAY THERE AT THAT BENCH? WHAT HAPPENED RIGHT AFTER THAT WITH
9 YOU?

10 A HE CONTINUED TO DO IT. THEN THEY STARTED TAKING TURNS.

11 Q OKAY. WHERE WAS THAT HAPPENING AT, victim?

12 A THAT WAS OVER IN THE GRAVEYARD.

13 Q OKAY. AND IF YOU CAN REMEMBER, TO THE BEST OF YOUR
14 REMEMBRANCE NOW, WHAT WAS THE NEXT THING THAT HAPPENED AFTER
15 HE ASSAULTED YOU THERE AT THE BENCH?

16 A THEY TOOK ME ACROSS THE FENCE AND THEY ASSAULTED ME SOME
17 MORE.

18 Q OKAY.

19 A THEY TOOK TURNS, ONE FROM THE OTHER.

20 Q OKAY.

21 A UNTIL -- UNTIL WINFRED GOT AWAY, UNTIL HE RAN.

22 Q OKAY. DID MR. KENNETH JAMES PERFORM ANY OTHER SEX ACT ON YOU
23 AT THAT TIME?

24 A THEY -- THEY PERFORMED ORAL SEX WITH ME.

25 Q OKAY. IS THAT THAT THEY MADE YOU PERFORM ORAL SEX OR --

1 A THEY MADE ME.

2 Q OKAY. AND, *victim*, IF YOU CAN REMEMBER THE POSITION THAT
3 THEY HAD YOU IN, WERE YOU LAYING ON YOUR BACK AT ANY OF THIS
4 TIME?

5 A I WAS ON MY BACK. I WAS ON MY BACK THE WHOLE TIME.

6 Q OKAY. OVER IN THAT WOODED AREA?

7 A (WITNESS NODS HEAD AFFIRMATIVELY)

8 Q ALL RIGHT. AND DID YOU -- SO YOU WERE FACING UP INTO THE
9 FACE OF YOUR ASSAILANTS OVER THERE?

10 A YES.

11 Q OKAY. DO YOU -- ARE YOU CERTAIN THAT ALL FIVE OF THE YOUNG
12 PEOPLE OR THE YOUNG MEN SEXUALLY ASSAULTED YOU?

13 A I KNOW AT LEAST FOUR. ONE OF THEM, I THINK HE WAS SCARED AND
14 HE COULD NEVER GET HISSELF (SIC) RIGHT TO PERFORM, PERFORM
15 WITH ME. SO HE DIDN'T.

16 Q BUT HE ATTEMPTED TO?

17 A HE ATTEMPTED TO.

18 Q OKAY. DO YOU REMEMBER WHETHER OR NOT JUST IF YOU -- DO YOU
19 REMEMBER WHETHER OR NOT MR. ROBERT JAMES, THE PERSON YOU'VE
20 POINTED OUT AS MR. ROBERT JAMES, SEXUALLY ASSAULTED YOU?

21 A YES, HE DID.

22 Q OKAY. DO YOU REMEMBER WHICH PERSON HE WAS TO SEXUALLY
23 ASSAULT YOU?

24 A I WANT TO SAY HE WAS THE SECOND ONE.

25 Q ALL RIGHT. AFTER THEY -- OR WHILE THEY WERE SEXUALLY

1 ASSAULTING YOU, WHAT WAS GOING ON WITH WINFRED?

2 A THEY WERE -- THEY WERE GOING BACK AND FORTH HOLDING HIM DOWN.

3 HE KEPT TELLING THEM TO LEAVE ME ALONE AND LET ME GO.

4 KENNETH KEPT TELLING HIM TO WATCH, YOU KNOW, LOOK WHAT WE'RE

5 DOING, JUST WATCH. THEY KEPT COVERING UP MY FACE AND KEPT

6 TELLING ME NOT TO LOOK IN THEIR FACE.

7 Q WHO WAS SAYING THAT?

8 A KENNETH. LIKE, "DON'T LOOK AT ME, BITCH. STOP LOOKING IN MY
9 FACE."

10 Q OKAY. AND THE SECOND PERSON, WHO DO YOU BELIEVE THAT PERSON
11 TO BE?

12 A ROBERT JAMES.

13 Q WAS MR. KENNETH JAMES THERE WHEN HE WAS HAVING SEX WITH YOU
14 OR RAPING YOU?

15 A YES. HE WAS RIGHT THERE. HE REALLY NEVER LEFT MY SIDE. HE
16 WAS THERE THE WHOLE TIME.

17 Q WHO WAS?

18 A KENNETH.

19 Q OKAY. AND WHILE MR. ROBERT JAMES WAS ASSAULTING YOU OR THE
20 PERSON THAT YOU'VE SAID IS MR. ROBERT JAMES WAS ASSAULTING
21 YOU, WHAT DO YOU THINK MR. KENNETH JAMES SAID -- OR WHO YOU
22 SAY IS MR. KENNETH JAMES, WHAT DID HE SAY ABOUT LOOKING AT
23 HIM?

24 A HE TOLD ME TO STOP LOOKING IN THEIR FACE, TO TURN MY HEAD,
25 STOP LOOKING AT THEM.

1 Q OKAY. AND SO THEN, WHAT WAS GOING ON -- WHAT FINALLY
2 HAPPENED IF YOU KNOW WITH MR. BULL?

3 A HE RAN.

4 Q OKAY. DID YOU SEE HIM RUN?

5 A THE ONLY THING I SAW IS HIM TAKE OFF.

6 Q OKAY. AND WHAT HAPPENED RIGHT AFTER HE LEFT?

7 A KENNETH TOLD HIM TO SHOOT HIM AND THEY SHOT AT HIM ABOUT
8 THREE TIMES. AND I DIDN'T KNOW WHETHER THEY HAD SHOT HIM OR
9 NOT. THEN HE TOLD ME HE WAS GOING TO KILL ME BECAUSE BULL
10 HAD LEFT ME THERE. AND HE WAS LIKE, "BITCH, I'M GOING TO
11 KILL YOU BECAUSE YOUR MAN LEFT YOU."

12 Q OKAY. THAT'S WHAT HE SAID? "I'M GOING TO KILL YOU BECAUSE
13 YOUR MAN LEFT YOU"?

14 A AND HE PUT THE GUN TO MY HEAD.

15 Q OKAY.

16 MR. STRICKLER: YOUR HONOR, I'D ASK TO TAKE A BREAK.

17 THE COURT: CERTAINLY WE WILL DO THAT. FOLKS, GO TO
18 YOUR JURY ROOM. DON'T DISCUSS THE CASE AMONG YOURSELVES.
19 WE'LL BE WITH YOU SHORTLY.

20 (JURY OUT AT 11:21 A.M.)

21 MR. SNEED: NOTHING, YOUR HONOR. I'M JUST STRETCHING.

22 THE COURT: victim, I KNOW IT'S DIFFICULT FOR YOU,
23 BUT TAKE SOME TIME TO COMPOSE YOURSELF AND WE'LL BRING THE
24 JURY BACK IN. UNTIL THEN LET'S TAKE ABOUT FIVE MINUTES AND
25 SEE WHAT WE CAN DO.

1 MR. STRICKLER: THANK YOU, SIR.

2 (WHEREUPON, A BREAK IS TAKEN)

3 THE COURT: YES, MA'AM. IF YOU WOULD, PLEASE,
4 victim RETAKE THE WITNESS STAND. YOU READY TO PROCEED, MS.
5 FRYAR?

6 MS. FRYAR: YES, YOUR HONOR.

7 THE COURT: MR. STRICKLER, MR. SNEED?

8 MR. STRICKLER: YES, SIR.

9 THE COURT: MR. SHUPPER?

10 MR. SHUPPER: YES, YOUR HONOR.

11 THE COURT: OKAY. THANK YOU. PLEASE ASK THE JURY TO
12 COME IN.

13 (JURY IN AT 11:30 A.M.)

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

15 THE COURT: THANK YOU, MR. BARROW. THANK YOU, MR.

16 HOLLIS. THANK YOU, FOLKS, FOR YOUR PATIENCE. WE'RE READY TO
17 CONTINUE. PLEASE, MS. FRYAR.

18 MS. FRYAR: THANK YOU, YOUR HONOR.

19 DIRECT EXAMINATION RESUMED BY MS. FRYAR:

20 Q ALL RIGHT. victim, WE WERE TELLING THE JURY -- YOU WERE
21 TELLING THE JURY ABOUT WHAT THEY WERE SAYING OVER THERE WITH
22 YOU WHILE THEY WERE SEXUALLY ASSAULTING YOU. OKAY. AND YOU
23 AT ONE POINT INDICATED THAT KENNETH JAMES SAID, "WATCH US
24 RAPE YOUR BITCH." IS THAT RIGHT?

25 A MM-HMM (AFFIRMATIVE).

1 Q IS "RAPE" THE WORD HE USED THERE, OR WAS IT ANOTHER WORD THAT
2 WAS AN UGLY WORD?

3 A IT WAS AN UGLY WORD.

4 Q AND WHAT ELSE WERE THEY SAYING? WERE THEY CALLING YOU NAMES
5 AND STUFF DURING THAT PERIOD OF TIME?

6 A YEAH.

7 Q AND "BITCH" WAS ONE OF THOSE NAMES?

8 A MM-HMM (AFFIRMATIVE).

9 Q WERE THERE OTHER NAMES?

10 A THEY WERE SAYING ALL KIND OF THINGS.

11 Q OKAY. AND DID THEY IN FACT BRING WINFRED OVER THERE AT ANY
12 POINT IN TIME?

13 A MM-HMM (AFFIRMATIVE). THEY TURNED HIM AROUND. HE COULD
14 WATCH.

15 Q ALL RIGHT NOW. YOU SAID TO US THAT THEY WERE ALL SEXUALLY
16 ASSAULTING YOU. DO YOU KNOW WHETHER OR NOT ANY OF THEM HAD
17 ANY CONDOMS?

18 A THEY HAD CONDOMS BECAUSE ONE OF THEM PUT IT IN MY MOUTH WITH
19 A CONDOM ON.

20 Q ALL RIGHT. WHAT DID THEY DO WITH YOU AFTER THAT, victim?

21 A WELL, AFTER WINFRED GOT AWAY AND HE KEPT THREATENING ME, I
22 WAS BEGGING FOR MY LIFE. AND I ASKED HIM PLEASE DON'T KILL
23 ME BECAUSE I HAD CHILDREN AND JUST LET ME GO. AND AT THAT
24 TIME THEY DRAGGED ME TO A PLACE IN THE CEMETERY.

25 Q DID YOU GET ANY RESPONSE WHEN YOU SAID, "PLEASE DON'T KILL

1 ME. I HAVE CHILDREN"?

2 A THEY REALLY WASN'T PAYING ATTENTION TO ME. I DIDN'T KNOW
3 WHAT THEY WAS GOING TO DO WITH ME HONESTLY. I JUST THOUGHT
4 THAT I WAS GOING TO DIE, THAT I WASN'T GOING TO SEE MY FAMILY
5 NO MORE.

6 Q ALL RIGHT. SO, WHERE DID THEY TAKE YOU TO, Victim? LET
7 ME ASK YOU, HOW LONG AFTER WINFRED LEFT, AFTER HE WAS SHOT
8 AT, DID THEY STAY WITH YOU AND CONTINUE TO ASSAULT YOU?

9 A THEY DID FOR -- YOU KNOW, A FEW MINUTES THEY DID. AND THEN
10 THAT'S WHEN THEY MOVED ME FROM THERE TO THE BUILDING.

11 Q WHEN THEY -- OKAY. WHEN THEY SHOT AT WINFRED, WHEN ONE OF
12 THEM SHOT AT WINFRED, DO YOU KNOW WHICH ONE SHOT AT WINFRED?

13 A I'M NOT SURE. NO.

14 Q OKAY. DID HE SAY ANYTHING, THE ONE WHO HAD SHOT AT WINFRED?

15 A HE JUST SAID THAT HE DIDN'T GET HIM, THAT HE TRIED TO GET
16 HIM. HE CAME BACK.

17 Q AND SO YOU'RE GOING TO TELL THE JURY WHERE THEY TOOK YOU
18 AFTER THAT?

19 A THEY TOOK ME TO THE -- A LITTLE BUILDING IN THE GRAVEYARD.

20 Q OKAY.

21 A AT THAT TIME IT WAS ---

22 Q IS IT A -- WHAT KIND OF BUILDING IS IT? DO YOU KNOW WHAT IT
23 IS?

24 A IT HAS FLOWERS. A -- A MAUCHERELLI (PHONETIC) OR SOMETHING
25 THEY CALLED IT.

1 Q ALL RIGHT. AND SO, WHEN YOU SAY THEY TOOK YOU OVER THERE,
2 DID EVERYBODY TAKE YOU OVER THERE?

3 A NO. NO, MA'AM.

4 Q OKAY. WHO LEFT FIRST? HOW MANY LEFT FIRST?

5 A AT FIRST THREE OF THEM, THEY RAN. THEY LEFT. I GUESS THEY
6 GOT SCARED AND THEY LEFT. AT THAT TIME IT WAS JUST MR.
7 KENNETH JAMES LEFT WITH ME, AND HIS BROTHER.

8 Q DO YOU THINK IT WAS HIS BROTHER? OR DO YOU KNOW?

9 A I'M NOT SURE, BUT I'M PRETTY SURE IT WAS HIS BROTHER, BECAUSE
10 HE WAS TRYING TO PERSUADE HIM TO LEAVE ME ALONE, TO COME ON
11 AND LEAVE.

12 Q WHOEVER WAS WITH MR. KENNETH JAMES, ARE YOU SURE THAT THIS
13 PERSON IS MR. KENNETH JAMES?

14 A YES.

15 Q LET ME ASK YOU THIS. DID MR. KENNETH JAMES EVER LEAVE YOU
16 DURING THIS WHOLE ASSAULT?

17 A BASICALLY, NO.

18 Q OKAY. ALL RIGHT. WHEN YOU WENT OVER, WHEN YOU WERE BEING
19 TAKEN OVER TO THE MAUSOLEUM, YOU HAVE SAID THAT THE PEOPLE
20 TAKING YOU OVER THERE WAS MR. KENNETH JAMES AND ANOTHER
21 PERSON. IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q AND THAT OTHER PERSON MAY OR MAY NOT HAVE BEEN MR. ROBERT
24 JAMES?

25 A MM-HMM (AFFIRMATIVE).

1 Q THIS PERSON RIGHT HERE. IS THAT CORRECT?

2 A YES.

3 Q WHEN THEY -- HOW DID THEY GET YOU TO THE MAUSOLEUM,

4 victim?

5 A THEY WERE PULLING ME, DRAGGING ME. I WASN'T GOING,

6 COOPERATING. THEY WERE PULLING ME.

7 Q DID YOU KNOW WHERE THEY WERE TAKING YOU?

8 A NO.

9 Q AND WHEN YOU GOT UP TO THE MAUSOLEUM, DID THEY TAKE YOU --

10 CAN YOU DESCRIBE FOR THE JURY WHAT IT LOOKED LIKE?

11 A IT'S A LONG, WHITE BUILDING WITH FLOWERS AND PLAQUES ON IT.

12 Q OKAY. AND WHERE DID THEY TAKE YOU THERE?

13 A TO THE FRONT PART OF THE BUILDING.

14 Q OKAY. AND THEN DID YOU STAY OUTSIDE THE BUILDING OR GO INTO

15 THE BUILDING?

16 A WE WENT INSIDE. THERE WAS NO DOORKNOBS. ALL THEY HAD TO DO

17 WAS OPEN THE DOOR. AND HE TOOK ME INSIDE THERE.

18 Q AND WHAT, IF ANYTHING, HAPPENED IN THERE?

19 A HE RAPED ME AGAIN.

20 Q OKAY?

21 A HE HAD SEX WITH ME AGAIN.

22 Q OKAY. AND WHEN YOU SAY "HE", DO YOU SEE THE PERSON IN THE

23 COURTROOM WHO DID THAT?

24 A (WITNESS NODS HEAD AFFIRMATIVELY)

25 Q WHO DID THAT, victim?

1 A THAT ONE RIGHT HERE.

2 MS. FRYAR: PLEASE LET THE RECORD REFLECT THAT SHE'S
3 POINTED OUT MR. KENNETH JAMES.

4 THE COURT: OKAY.

5 Q (BY MS. FRYAR) ALL RIGHT, victim. AFTER YOU WERE ASSAULTED
6 IN THE MAUSOLEUM, WHAT DID YOU DO?

7 A I WAS SCARED. HE TOLD ME IF I CAME OUT THAT THEY WOULD KILL
8 ME.

9 Q OKAY. WHERE WERE YOUR CLOTHES?

10 A I DON'T KNOW.

11 Q OKAY. victim, I WANT TO SHOW YOU SOMETHING THAT'S BEEN
12 MARKED INTO EVIDENCE, STATE'S EXHIBIT NO. 24. DO YOU KNOW
13 WHAT THIS IS, victim?

14 A YES.

15 Q WHAT'S THAT, victim?

16 A THAT'S MY BRA.

17 Q AND SO WHEN YOU WERE IN THE MAUSOLEUM, WHAT CLOTHES DID YOU
18 HAVE ON THEN?

19 A I HAD ON NONE.

20 Q WHAT DID YOU DO NEXT?

21 A I SAT THERE FOR A FEW MINUTES. I ---

22 Q WHY DIDN'T YOU LEAVE?

23 A I WAS SCARED TO COME OUT. AND THEN I SAW THEM RUN, BECAUSE I
24 COULD LOOK THROUGH THE HOLE WHERE THE KNOB'S SUPPOSED TO BE.
25 AND I WATCHED UNTIL THEY WERE OUT OF SIGHT AND THEN I CAME

1 OUT.

2 Q HAD THEY SAID ANYTHING TO YOU ABOUT STAYING IN THE MAUSOLEUM?

3 A THEY TOLD ME TO STAY IN, IF I CAME OUT THEY WOULD KILL ME.

4 Q ALL RIGHT. SO AFTER YOU LOOKED THROUGH THE HOLE, THE PEEP
5 HOLE AND THEY HAD GONE, WHAT DID YOU DO THEN?

6 A I EASED OUT AND LOOKED AROUND.

7 Q OKAY.

8 A AND I DIDN'T SEE ANYONE. SO I WAS TRYING TO MAKE IT BACK TO
9 MY CAR.

10 Q YES, MA'AM. OKAY.

11 A AND I WAS SCARED.

12 Q OKAY. SO WHAT DID YOU DO?

13 A I WALKED CLOSE TO THE CEMETERY IN THE DIRECTION -- I WASN'T
14 SURE THAT I THOUGHT I COULD GET TO MY CAR WHERE IT WAS CLEAR,
15 AND I DIDN'T HAVE TO GO BACK THROUGH THE BUSHES. AND I TRIED
16 TO GO BACK. AT THAT TIME THE POLICE CAME. I HAD MADE IT TO
17 THE SIDE OF THE ROAD.

18 Q OKAY. AND WHEN THE POLICE ARRIVED, WHAT HAPPENED?

19 A HE GOT OUT. THEY SAW ME. THEY GOT OUT. WINFRED WAS WITH
20 HIM.

21 Q YOU SAY "THEY". OKAY.

22 A HE IMMEDIATELY TRIED TO COVER ME UP. THE POLICE WENT TO HIS
23 CAR TO GET SOMETHING TO COVER ME UP. HE THEN TOOK ME AND SAT
24 ME IN HIS PATROL CAR.

25 Q OKAY. DO YOU REMEMBER WHETHER OR NOT ANYBODY GAVE YOU ANY

1 ARTICLE OF CLOTHING?

2 A WINFRED GAVE ME A T-SHIRT.

3 Q OKAY. ALL RIGHT. DO YOU REMEMBER ANY OTHER ARTICLE OF
4 CLOTHING?

5 A NOT AT THAT TIME. I THINK I WAS REAL SCARED AND SHOOKENED
6 (SIC) UP. I WAS NERVOUS.

7 Q ALL RIGHT. AND SO WHAT DID THEY DO WITH YOU NEXT, MA'AM?

8 A THEY CALLED THE AMBULANCE AND THEY TOOK ME TO THE HOSPITAL.

9 Q OKAY. THE AMBULANCE CAME?

10 A YES.

11 Q ALL RIGHT. AND WHAT HOSPITAL DID YOU GO TO?

12 A RICHLAND MEMORIAL.

13 Q OKAY. DO YOU REMEMBER GOING INTO RICHLAND MEMORIAL HOSPITAL?

14 A THAT -- WELL, THAT'S -- I REMEMBER LEAVING IT.

15 Q OKAY. YES, MA'AM. OKAY.

16 A BECAUSE I WAS SCARED.

17 Q WHEN YOU GOT THERE, HOW DID YOU GET IN THE HOSPITAL DOOR?

18 WERE YOU ON A ---

19 A STRETCHER.

20 Q YOU WERE ON A STRETCHER?

21 A MM-HMM (AFFIRMATIVE).

22 Q WHEN YOU FIRST GOT THERE, DO YOU HAVE ANY IDEA WHAT TIME IT
23 IS OR ANYTHING LIKE THAT AT THIS TIME?

24 A I HAVE NO IDEA OF THE TIME.

25 Q OKAY. ALL RIGHT. SO WHEN YOU FIRST GOT THERE, DO YOU

1 REMEMBER WHAT THEY DID WITH YOU AT FIRST?

2 A WELL, THEY STARTED EXAMINING ME. THEY ASKED ME SOME
3 QUESTIONS.

4 Q OKAY.

5 A COULD THEY CALL ANYONE FOR ME ---

6 Q OKAY.

7 A --- TO COME.

8 Q AND DID YOU HAVE THEM CALL SOME FRIENDS OF YOURS?

9 A YES, I DID.

10 Q ALL RIGHT. AND THEN WHAT DID THEY DO?

11 A THEY STARTED RUNNING ALL KIND OF TESTS.

12 Q OKAY.

13 A AND TAKING BLOOD. THEY DID A LOT OF STUFF. THEY EXAMINED
14 ME.

15 Q WHEN YOU SAY THEY EXAMINED YOU, WHAT EXACTLY DID THEY DO?

16 A THE DOCTOR CAME IN.

17 Q WAS THIS YOUR DOCTOR?

18 A NO.

19 Q THIS WAS A DOCTOR YOU DIDN'T KNOW?

20 A NO.

21 Q WHAT DID HE DO NOW? WAS IT A MAN OR A WOMAN? DO YOU
22 REMEMBER?

23 A IT WAS A MAN.

24 Q OKAY. HE CAME IN. DID YOU TALK WITH HIM?

25 A I TALKED WITH HIM. HE CAME IN. HE SAT DOWN AND TALKED WITH

1 ME AT FIRST. AND I TRIED TO EXPLAIN TO HIM WHAT HAD
2 HAPPENED. AND AFTERWARDS HE CAME BACK IN. HE DID THE
3 EXAMINATION.

4 Q WHAT KIND OF EXAMINATION WAS THAT, *victim* ?

5 A WELL, HE -- WELL, WHEN I GO TO THE DOCTOR, IT'S LIKE A PAP
6 SMEAR. BUT, YOU KNOW, I'M PRETTY SURE THEY DID MORE THAN
7 THAT.

8 Q ARE YOU TALKING ABOUT A PELVIC EXAM?

9 A YES.

10 Q OKAY. ALL RIGHT. DO YOU HAVE ANY IDEA HOW LONG YOU STAYED
11 AT THE HOSPITAL?

12 A IT WAS A WHILE.

13 Q OKAY. MORE THAN ONE HOUR?

14 A YES.

15 Q MORE THAN THREE HOURS?

16 A YES.

17 Q OKAY. DO YOU REMEMBER ANYBODY FROM THE POLICE DEPARTMENT
18 COMING TO THE HOSPITAL AND TALKING WITH YOU?

19 A THE INVESTIGATOR CAME.

20 Q OKAY.

21 A TWO OF THEM.

22 Q OKAY. AND SO, WHEN THE INVESTIGATORS CAME, DID YOU MAKE
23 ARRANGEMENTS TO SEE THEM AGAIN?

24 A THEY WANTED TO TALK TO ME AT THAT TIME BUT I WAS REAL UPSET.
25 SO THEY SAID THEY WOULD SET UP SOMETHING FOR ME TO COME IN

1 LATER. AND THAT'S WHAT THEY DID.

2 Q AND SO DO YOU KNOW WHEN YOU IN FACT DID MEET WITH THEM?

3 A THE FOLLOWING MORNING.

4 Q WAS IT THAT SAME MORNING THAT WE'RE TALKING, ALL THE SAME
5 MORNING HERE?

6 A MM-HMM (AFFIRMATIVE).

7 Q THIS WOULD BE THE MORNING OF MAY THE 29TH, 1996. IS THAT
8 RIGHT?

9 A THAT'S CORRECT.

10 Q OKAY. AND WHEN YOU WENT TO SEE THEM, WHAT DID THEY WANT YOU
11 TO DO?

12 A THEY ASKED ME TO GIVE THEM A STATEMENT AS TO WHAT HAPPENED.

13 Q ALL RIGHT.

14 A AND I GAVE MY STATEMENT.

15 Q ALL RIGHT. AND WHAT ELSE DID THEY WANT YOU TO DO?

16 A THEY WANTED ME TO LOOK AT SOME PHOTOGRAPHS.

17 MS. FRYAR: BEG THE COURT'S INDULGENCE, YOUR HONOR.

18 THE COURT: OKAY.

19 Q (BY MS. FRYAR) WHEN YOU MET WITH THE INVESTIGATORS, YOU GAVE
20 THEM A STATEMENT AND THEY ASKED YOU TO DO SOMETHING ELSE. IS
21 THAT RIGHT?

22 A THAT'S CORRECT.

23 Q ALL RIGHT. WHAT ELSE DID THEY ASK YOU TO DO?

24 A HE ASKED ME TO LOOK AT SOME PHOTOGRAPHS.

25 Q OKAY. AND WHEN HE ASKED YOU TO LOOK AT THE PHOTOGRAPHS, WHAT

1 DID HE SAY ABOUT THAT?

2 A HE TOLD ME THAT THEY HAD SOME PHOTOGRAPHS, THAT IF I COULD
3 LOOK AT THEM, SEE IF ANYBODY IN THE PHOTOGRAPH THAT I
4 RECOGNIZE, YOU KNOW, FROM MY INCIDENT.

5 Q OKAY.

6 A HE DIDN'T REALLY GIVE ME A WHOLE LOT DETAILS WHETHER OR NOT,
7 YOU KNOW, HE HAD SOMEONE. HE JUST ASKED ME DID I RECOGNIZE
8 SOMEONE. AT THAT TIME I DIDN'T KNOW WHY HE ASKED ME AND I
9 REALLY DIDN'T QUESTION HIM WHY HE ASKED ME.

10 Q DID HE TELL YOU ANYTHING ABOUT THE CASE, ABOUT WHAT THEY HAD
11 FOUND OUT AND ALL THE EVIDENCE THEY HAD OR ANYTHING LIKE
12 THAT?

13 A NO.

14 Q SO WERE YOU SITTING DOWN OR STANDING UP WHEN YOU WERE LOOKING
15 AT THESE PHOTOGRAPHS?

16 A I WAS SITTING DOWN.

17 Q OKAY. AND DO YOU REMEMBER IF THE PHOTOGRAPHS YOU LOOKED AT
18 WERE IN BLACK AND WHITE OR COLOR?

19 A I REMEMBER THE FIRST ONES BEING IN BLACK AND WHITE.

20 Q OKAY. I WANT YOU TO LOOK AT THIS AND TELL ME, DO YOU KNOW
21 WHAT THIS IS?

22 A THESE ARE THE PHOTOGRAPHS THAT THEY SHOWED ME ON THAT DAY.

23 Q ALL RIGHT.

24 MS. FRYAR: AT THIS TIME, YOUR HONOR, I'D LIKE TO —

25 THE COURT: I'M SORRY. I DID NOT HEAR THE LAST

1 RESPONSE.

2 A THESE ARE THE PHOTOGRAPHS THAT HE SHOWED ME ON THAT DAY, THE
3 INVESTIGATOR.

4 THE COURT: ALL RIGHT. THANK YOU. PLEASE. YES, MA'AM.

5 MS. FRYAR: AT THIS TIME I'D LIKE TO ENTER THEM IN
6 EVIDENCE.

7 THE COURT: SUBJECT ONLY TO PREVIOUS OBJECTIONS?

8 MR. STRICKLER: THAT'S CORRECT, SIR.

9 THE COURT: ALL RIGHT. BOTH SIDES UNDER OBJECTIONS
10 PREVIOUSLY URGED, SUBJECT TO THOSE, THE ITEMS ARE -- THE
11 DOCUMENT WILL BE ADMITTED. AND IT IS 20?

12 COURT REPORTER: NO. 2, YOUR HONOR.

13 THE COURT: NO. 2, I'M SORRY. PREVIOUSLY MARKED.

14 (STATE'S EXHIBIT NO. 2, PHOTOGRAPHIC LINE-UP, RECEIVED IN
15 EVIDENCE)

16 Q (BY MS. FRYAR) ALL RIGHT. victim, WHEN HE SHOWED YOU
17 THESE PHOTOGRAPHS OR THIS PHOTOGRAPH, SERIES OF PHOTOGRAPHS,
18 WHAT DID HE ASK YOU TO DO?

19 A HE ASKED ME TO TAKE MY TIME AND LOOK OVER THE PICTURES AND
20 SEE IF THERE WAS ANYBODY IN THE PHOTOGRAPH THAT I RECOGNIZED
21 FROM THAT NIGHT.

22 Q OKAY. AND SO DID YOU LOOK AT THE PHOTOGRAPHS?

23 A YES, I DID.

24 Q HOW LONG DID YOU LOOK AT THE PHOTOGRAPHS?

25 A I'D SAY ABOUT FIVE -- BETWEEN FIVE AND TEN MINUTES.

1 Q ALL RIGHT. OKAY. ALL RIGHT. DID YOU RECOGNIZE ANYBODY IN
2 THERE?

3 A YES, I DID.

4 Q OKAY. AND DID YOU INDICATE TO HIM THAT THERE WAS SOMEBODY --
5 WHAT DID YOU INDICATE TO HIM?

6 A I TOLD HIM THAT NUMBER 6 LOOKED LIKE THE GUY THAT HAD
7 ASSAULTED ME, THAT HAD ASSAULTED ME THAT NIGHT.

8 Q AND DID HE ASK YOU TO SIGN A PIECE OF PAPER? I NEED TO SHOW
9 YOU THIS.

10 MS. FRYAR: YOUR HONOR, I WOULD LIKE TO SHOW THIS,
11 WHAT'S BEEN MARKED AS STATE'S EXHIBIT NO. 3 TO THE WITNESS.
12 I DON'T KNOW IF IT'S BEEN MARKED FOR IDENTIFICATION. IT'S
13 BEEN MARKED FOR IDENTIFICATION, YOUR HONOR. I APOLOGIZE.

14 THE COURT: YES, MA'AM.

15 Q (BY MS. FRYAR) DO YOU KNOW WHAT THAT IS?

16 A YES. HE HAD ME SIGN THIS AFTERWARDS.

17 Q OKAY.

18 A SAYING THAT I HAD PICKED OUT NUMBER 6.

19 THE COURT: YOU UNDERSTAND THAT THAT IS NOT TO COME INTO
20 EVIDENCE, MS. FRYAR?

21 MS. FRYAR: RIGHT, SIR. NO, SIR.

22 THE COURT: OKAY. THANK YOU.

23 Q (BY MS. FRYAR) NOW, WHEN WAS IT THAT YOU PICKED OUT NUMBER 6
24 IN THIS SERIES OF PICTURES?

25 A IT WAS LIKE LATER ON THAT MORNING AFTER I HAD LEFT THE

1 HOSPITAL AND WENT HOME AND SHOWERED AND CHANGED CLOTHES AND
2 TRIED TO GET MYSELF TOGETHER.

3 Q BEG THE COURT'S INDULGENCE. ALL RIGHT. SO AFTER THAT,
4 victim, WHAT DID YOU DO AFTER YOU PICKED OUT THIS MAN? WERE
5 YOU FREE TO LEAVE?

6 A I WAS FREE TO LEAVE.

7 Q OKAY. DID YOU HEAR FROM INVESTIGATORS FROM THE COLUMBIA
8 POLICE DEPARTMENT, INVESTIGATOR THOMAS OR INVESTIGATOR
9 BENSON, LATER IN THE MONTH OF JUNE?

10 A YES, I DID.

11 Q OKAY. AND DID YOU MEET WITH THEM ON JUNE THE 18TH?

12 A YES.

13 Q ALL RIGHT. AND WHEN YOU MET WITH THEM ON JUNE THE 18TH, WHAT
14 DID THEY ASK YOU TO DO?

15 A THEY SAID THAT THEY HAD SOME MORE PHOTOGRAPHS THAT THEY WOULD
16 LIKE FOR ME TO LOOK AT.

17 Q OKAY.

18 A I WENT IN AND I LOOKED AT THE PHOTOGRAPHS.

19 Q OKAY.

20 A THEY SHOWED ME AT THAT TIME I THINK ABOUT TWO OR THREE
21 DIFFERENT PHOTOGRAPHS.

22 Q SERIES OF PHOTOGRAPHS?

23 A YES.

24 Q OKAY. I ASK YOU TO LOOK AT THIS SERIES OF PHOTOGRAPHS AND
25 SEE IF YOU CAN RECOGNIZE THAT?

1 A YES, I DO.

2 Q AND WHAT IS THAT?

3 A THIS IS THE PHOTOGRAPHS WHERE I PICKED OUT THE SECOND PERSON.

4 Q OKAY. AND SO WHEN YOU LOOKED AT THIS SERIES OF PICTURES,
5 WHAT DID INVESTIGATOR THOMAS OR INVESTIGATOR BENSON ASK YOU
6 TO DO?

7 A THEY ASKED ME TO TAKE MY TIME AGAIN, LOOK OVER THE
8 PHOTOGRAPHS, SEE IF THERE WAS ANYBODY IN THE PHOTOGRAPHS THAT
9 I RECOGNIZED FROM THAT NIGHT.

10 Q OKAY.

11 A AND OF COURSE I DID.

12 Q OKAY. AND SO DID YOU INDICATE TO THE INVESTIGATORS THAT YOU
13 KNEW SOMEBODY FROM THAT NIGHT IN THESE PICTURES?

14 A YES, I DID.

15 Q OKAY. AND WHAT WAS THE NUMBER OF THE PHOTOGRAPH THAT YOU
16 INDICATED TO INVESTIGATORS?

17 A HE WAS NUMBER 2 ON THE LINE-UP.

18 MS. FRYAR: OKAY. AT THIS TIME, YOUR HONOR, I'D LIKE TO
19 ENTER THIS INTO EVIDENCE.

20 THE COURT: SUBJECT TO MR. SHUPPER'S PREVIOUS OBJECTION.

21 MR. SHUPPER: THANK YOU, YOUR HONOR.

22 THE COURT: AS WELL AS THE OBJECTION OF THE DEFENDANT
23 KENNETH JAMES. IT'S ADMITTED.

24 (STATE'S EXHIBIT NO. 4, PHOTOGRAPHIC LINE-UP, RECEIVED IN
25 EVIDENCE)

1 Q (BY MS. FRYAR) AND AFTER YOU PICKED OUT THAT PICTURE OF THAT
2 PHOTO SPREAD OF PICTURE NUMBER 2, I'LL HAND YOU THIS AND ASK
3 YOU, CAN YOU RECOGNIZE THIS?

4 A YES.

5 Q WHAT'S THAT?

6 A IT'S THE SAME PAPER THAT I HAD TO SIGN THE FIRST TIME I
7 SIGNED ANOTHER ONE.

8 Q OKAY. AND WAS THIS -- THIS IS STATE'S EXHIBIT NO. 5. WAS
9 THIS FOR IDENTIFICATION PURPOSES ONLY. WHAT DID YOU INDICATE
10 IN THAT PAPER?

11 A I INDICATED THAT I HAD PICKED OUT NUMBER 2 ON THAT
12 PHOTOGRAPHIC LINE-UP.

13 Q OKAY. AS HAVING BEEN ONE OF THE PERSONS WHO ---

14 A HAD ASSAULTED ME.

15 Q ALL RIGHT. ALL RIGHT, victim, YOU MENTIONED TO THE JURY
16 EARLIER THAT SOME OF THESE PEOPLE DURING THE ASSAULT HAD GONE
17 TO YOUR CAR. IS THAT RIGHT?

18 A YES.

19 Q OKAY. WHAT, IF ANYTHING, DID THEY TAKE FROM YOUR CAR?

20 A I HAD PURSES IN THE BACK OF MY CAR. SOMETIME I HAVE MORE
21 THAN ONE BECAUSE I CHANGE A LOT. IT DEPENDS ON WHAT I'M
22 WEARING. AND I THINK I HAD AT THAT TIME TWO PURSES IN THE
23 BACK OF MY CAR. THEY TOOK THE PURSES. THEY TOOK LIKE ALL MY
24 IDENTIFICATION FOR ME AND MY KIDS, BASICALLY EVERYTHING THAT
25 WAS IN THERE.

1 Q OKAY.

2 A AMONGST THOSE TWO PURSES.

3 Q ALL RIGHT. AND DID YOU EVER GET ANY PURSES BACK?

4 A THEY -- I WENT DOWN TO THE POLICE DEPARIMENT AND THEY GAVE
5 THEM BACK TO ME BECAUSE I HAD TO HAVE MY KIDS' BIRTH
6 CERTIFICATES AND STUFF LIKE THAT. SO THEY DID RELEASE THE
7 POCKETBOOKS TO ME.

8 Q OKAY. SO THE PURSES, WHERE WERE THESE PURSES IN YOUR
9 VEHICLE?

10 A IN THE TRUNK.

11 Q OKAY. THE PURSES THAT WERE IN YOUR VEHICLE, YOU HAVE
12 RECEIVED POSSESSION OF THEM BACK. IS THAT CORRECT?

13 A THAT'S CORRECT.

14 Q WHAT DID THEY LOOK LIKE?

15 A ONE WAS BLACK, A SMALLER TYPE PURSE, BLACK HANDBAG. AND THE
16 OTHER ONE WAS A GOLD METALLIC PURSE THAT I REALLY DIDN'T
17 CARRY THAT OFTEN UNLESS I HAD THE SHOES ON TO MATCH IT WITH.
18 I THINK I HAD IT IN THERE BECAUSE I WENT TO CHURCH THAT
19 SUNDAY BEFORE OR SOMETHING LIKE THAT. AND THAT'S THE REASON
20 IT WAS IN MY CAR. AND I JUST SWITCHED OVER.

21 Q OKAY. AND WHERE WERE YOUR IDENTIFICATION AND THE CHILDREN'S
22 BIRTH CERTIFICATES AND THINGS?

23 A THEY WERE IN THE BLACK PURSE, IF I'M NOT MISTAKEN. I JUST
24 HAD PAPERS AND STUFF IN THE OTHER ONE.

25 Q COULD THEY HAVE BEEN IN THE GOLD PURSE?

1 A THEY COULD HAVE. EITHER OR. BUT I THINK I HAD MOVED
2 EVERYTHING BACK.

3 Q OKAY. DO YOU HAVE THESE PURSES STILL, victim?

4 A NO.

5 Q NOW, victim, I WANT YOU TO BE SURE ABOUT THIS.

6 A MM-HMM (AFFIRMATIVE).

7 Q ARE TWO OF THE FIVE PEOPLE WHO ASSAULTED YOU THAT NIGHT
8 SITTING IN THE COURTROOM?

9 A YES.

10 MR. STRICKLER: ASKED AND ANSWERED, YOUR HONOR.

11 OBJECTION. I'M SORRY.

12 THE COURT: THANK YOU. ALL RIGHT. PLEASE CONTINUE.

13 MR. SHUPPER: THE SAME OBJECTION ON BEHALF OF MR. ROBERT
14 JAMES.

15 THE COURT: JUST DO IT THIS TIME, MS. FRYAR. DON'T DO
16 IT AGAIN.

17 MS. FRYAR: YES, SIR.

18 Q (BY MS. FRYAR) DO YOU SEE THEM, victim?

19 A YES, I DO.

20 Q WHERE ARE THEY?

21 A SITTING THERE AND THERE.

22 Q HOSE SURE ARE YOU OF THAT?

23 A I'M VERY SURE, BECAUSE I'LL NEVER FORGET THAT NIGHT AND I'LL
24 NEVER FORGET MR. KENNETH JAMES IN HIS RED JERSEY SHIRT
25 TEARING MY CLOTHES OFF OF ME AND RAPING ME.

1 Q THANK YOU, victim.

2 MS. FRYAR: I DON'T HAVE ANY FURTHER QUESTIONS, YOUR
3 HONOR.

4 THE COURT: ALL RIGHT. MR. STRICKLER OR MR. SNEED.

5 MR. STRICKLER: YES, SIR. THANK YOU. MAY IT PLEASE THE
6 COURT.

7 CROSS EXAMINATION BY MR. STRICKLER:

8 Q GOOD MORNING, victim.

9 A GOOD MORNING.

10 Q I JUST HAVE A FEW QUESTIONS FOR YOU, IF I COULD, PLEASE.

11 FIRST OF ALL, YOU'VE TESTIFIED HERE ON DIRECT THAT MR. BULL
12 AND YOU WERE CLOSE FRIENDS AT THE TIME OF THIS INCIDENT?

13 A YES.

14 Q AND REMAINED CLOSE FRIENDS?

15 A YES.

16 Q AND THAT'S TRUE. CORRECT?

17 A THAT IS TRUE.

18 Q YOU ALL WERE CLOSER THAN CLOSE FRIENDS AT THE TIME OF THE
19 INCIDENT, RIGHT?

20 A I WOULD SAY SO. WE'RE CLOSE NOW.

21 Q RIGHT. YOU WERE INTIMATELY INVOLVED ON OCCASIONS WITH MR.
22 BULL AT THE TIME OF THE INCIDENT, CORRECT?

23 A YES.

24 Q OKAY. AND THAT'S FINE. THAT'S WHAT YOU MEAN BY CLOSE
25 FRIENDS. I'M JUST TRYING TO FLESH THAT OUT. RIGHT?

1 A OKAY.

2 Q OKAY. AND THAT'S FINE. YOU INDICATED THAT YOU HAD SMOKED
3 MARIJUANA ON THE DATE OF THE INCIDENT. I BELIEVE YOU SAID
4 AROUND 11 OR 12:00 THAT MORNING?

5 A YES, I DID.

6 Q WITH A GIRLFRIEND OF YOURS OVER IN WEST COLUMBIA?

7 A YES.

8 Q WHO WOULD THAT BE?

9 A WHO WOULD IT BE?

10 Q YEAH. WHAT'S HER NAME, PLEASE?

11 A HER NAME IS GAIL.

12 Q GAIL?

13 A I HAVEN'T SEEN HER IN YEARS. SHE DOESN'T LIVE HERE. I CAN'T
14 RECALL HER LAST NAME. WE DON'T COMMUNICATE ANY MORE.

15 Q OKAY. SO YOU DON'T KNOW THE LAST NAME OF THE PERSON THAT YOU
16 WENT TO WEST COLUMBIA WITH THAT MORNING AND SMOKED MARIJUANA
17 WITH. IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q OKAY. THAT'S FINE. NOW, SUBSEQUENT TO THE ASSAULT THAT
20 YOU'VE DESCRIBED FOR THIS JURY ---

21 A MM-HMM (AFFIRMATIVE).

22 Q --- YOU WERE -- I BELIEVE YOU TESTIFIED THAT YOU WERE TAKEN
23 OR PICKED UP BY E.M.S. AND CARRIED TO RICHLAND MEMORIAL
24 HOSPITAL, RIGHT?

25 A THAT'S CORRECT.

1 Q OKAY. AND YOU TALKED WITH THE ATTENDANTS IN THE E.M.S.
2 VEHICLE ON THE WAY TO THE HOSPITAL, CORRECT?

3 A THEY DIDN'T REALLY TALK TO ME. THEY WERE EXAMINING ME. THE
4 PEOPLE IN THE AMBULANCE REALLY DIDN'T TALK TO ME. THE
5 TALKING OCCURRED ONCE I GOT TO THE HOSPITAL. THEY STARTED
6 QUESTIONING ME.

7 Q OKAY. I BELIEVE YOU INDICATED YOU TALKED WITH THE DOCTOR AT
8 THE HOSPITAL?

9 A THE DOCTOR, YES.

10 Q RIGHT. AND YOU WERE AT THAT POINT IN TIME UNDERSTANDABLY
11 TRAUMATIZED. YOU WERE STILL UPSET AT THAT POINT IN TIME?

12 A YES, I WAS.

13 Q AND THAT'S UNDERSTANDABLE. AND THEN I BELIEVE YOU INDICATED
14 THAT AT THE HOSPITAL A COUPLE OF INVESTIGATORS FROM THE CITY
15 OF COLUMBIA POLICE DEPARTMENT SHOWED UP AT THAT POINT IN
16 TIME. BUT, AGAIN, YOU WERE PRETTY UPSET AT THAT POINT IN
17 TIME?

18 A YES.

19 Q SO YOU MADE ARRANGEMENTS. THEY WANTED TO TALK WITH YOU AT
20 THAT POINT IN TIME?

21 A YES.

22 Q BUT THEY MADE ARRANGEMENTS TO MEET WITH YOU LATER IN THE DAY
23 AFTER YOU'D HAD A CHANCE TO GO HOME AND SETTLE DOWN A LITTLE
24 BIT, RIGHT?

25 A YES.

1 Q OKAY. AND THEN YOU MET WITH THESE INVESTIGATORS YOU
2 DESCRIBED AT THE CITY OF COLUMBIA POLICE DEPARTMENT?

3 A YES.

4 Q LATER THAT MORNING WHERE YOU DID THIS IDENTIFICATION THAT YOU
5 TALKED ABOUT?

6 A YES.

7 Q RIGHT? OKAY. AND AT THAT POINT IN TIME YOU GAVE A STATEMENT
8 TO THE POLICE REGARDING THIS INCIDENT, RIGHT?

9 A YES, I DID.

10 Q OKAY. AND THEN AGAIN YOU SAW INVESTIGATORS FROM THE CITY OF
11 COLUMBIA POLICE DEPARTMENT ON WE'LL SAY JUNE 18TH WHEN YOU
12 LOOKED AT THESE OTHER SETS OF PICTURES THAT YOU'VE TALKED
13 ABOUT?

14 A YES.

15 Q AND DID THE SECOND IDENTIFICATION, CORRECT?

16 A YES.

17 Q OKAY. AND I'M SORRY. I DIDN'T HEAR THIS. AND I'M NOT SURE
18 WHEN YOU MET WITH -- WHEN THE INITIAL OFFICER CAME ON THE
19 SCENE, THE ONE THAT GAVE YOU THE BLANKET OR WHATEVER, SHEET
20 TO COVER YOURSELF UP?

21 A MM-HMM (AFFIRMATIVE).

22 Q DID YOU SPEAK WITH HIM AT ALL ABOUT THE INCIDENT?

23 A HE TRIED TALKING TO ME, BUT, I MEAN, THERE WASN'T A WHOLE LOT
24 AT THAT TIME I COULD SAY. BUT HE DID TRY TALKING TO ME AND
25 ASKED ME WHAT HAPPENED.

1 Q BUT YOU CAN'T REMEMBER WHETHER YOU TOLD HIM ANYTHING OR NOT?

2 A I CAN'T BE SURE EXACTLY WHAT I SAID TO HIM AT THAT POINT IN
3 TIME.

4 Q AND THAT'S BECAUSE YOU WERE VERY UPSET AT THAT POINT IN TIME,
5 CORRECT?

6 A THAT'S CORRECT.

7 Q AS YOU WELL SHOULD BE. I UNDERSTAND THAT. OKAY. ISN'T IT
8 TRUE THAT TO THAT OFFICER, TO THE E.M.S. ATTENDANTS, THE
9 DOCTOR, TO THE OFFICERS WHEN THEY CAME TO RICHLAND MEMORIAL
10 HOSPITAL, TO THE OFFICERS AT THE TIME OF THE PHOTO
11 IDENTIFICATION, TO THE OFFICERS AT THE TIME YOU GAVE THE
12 STATEMENT TO THEM, TO THE OFFICERS AT THE TIME OF THE SECOND
13 PHOTO IDENTIFICATION; IN NONE OF THOSE INSTANCES DID YOU EVER
14 MENTION A RED JERSEY SHIRT IN REFERENCE TO KENNETH JAMES?

15 A NO, I DIDN'T. BUT I DIDN'T FORGET ABOUT IT EITHER. IT MAY
16 BE SOMETHING THAT I OVERLOOKED. BUT I REMEMBER HIM AND I
17 REMEMBER WHAT HE HAD ON.

18 Q ISN'T IT TRUE THAT ON NONE OF THOSE OCCASIONS YOU MENTIONED
19 BRAIDED HAIR IN REFERENCE TO KENNETH JAMES?

20 A I THINK I DID TELL THEM THAT HE HAD BRAIDS IN HIS HAIR.

21 Q YOU THINK YOU DID?

22 A I'M NOT SURE, BUT I'M PRETTY SURE THAT I DID. IT WASN'T
23 BRAIDED THE WAY IT IS NOW. HE HAD STRAIGHT BRAIDS, LIKE CORN
24 ROWS ALL OVER HIS HEAD, NOT BRAIDS LIKE THAT.

25 Q MM-HMM (AFFIRMATIVE). YOU THINK YOU MENTIONED THAT TO THEM?

- 1 A I'M PRETTY SURE THAT I DID.
- 2 Q OKAY. WHO DID YOU MENTION THAT TO?
- 3 A I CAN'T SAY WHICH ONE, BUT I'M PRETTY SURE THAT I DID.
- 4 Q PRETTY SURE YOU DID OR DIDN'T?
- 5 A I DID. I CAN ABSOLUTELY SAY I DID. THAT WAS ONE OF THE
- 6 REASONS I WAS ABLE TO IDENTIFY, HIM, TOO. I REMEMBER HIS
- 7 BRAIDED HAIR.
- 8 Q OKAY. I'M SORRY. OKAY. BEAR WITH ME. NOW, IF I UNDERSTAND
- 9 YOU CORRECTLY, AT THE TIME THAT YOU AND MR. BULL ARRIVED AT
- 10 THE PARK, IT WAS ROUGHLY WHEN?
- 11 A IT WAS IN THE EVENING. I CANNOT GIVE YOU A TIME BECAUSE I
- 12 WAS NOT SURE OF THE TIME. I WAS NOT WEARING A WATCH.
- 13 Q AND I UNDERSTAND THAT.
- 14 A SO I CAN'T GIVE YOU A TIME. BUT IT WAS THAT AFTERNOON. IT
- 15 HAD ALREADY GOTTEN DARK BECAUSE THERE WAS A SOFTBALL GAME
- 16 GOING ON.
- 17 Q OKAY. AND YOU ARRIVED, LEFT AND CAME BACK. AND WHEN YOU
- 18 CAME BACK, THE SOFTBALL GAME WAS JUST BREAKING UP AT THAT
- 19 POINT IN TIME?
- 20 A YES, SIR.
- 21 Q IF I UNDERSTAND YOUR TESTIMONY CORRECTLY, IT WAS BREAKING UP.
- 22 AND THEY TURNED THE LIGHTS OFF TO THE SOFTBALL FIELD. AND
- 23 YOU'VE GOT LIGHTS ON IN THE PARKING LOT AND SOME LIGHTS ON
- 24 OVER AT THE W. A. PERRY SCHOOL. IS THAT RIGHT?
- 25 A YES, SIR.

1 Q OKAY. AND AFTER YOU RETURNED TO THE PARK WITH MR. BULL AND
2 SEATED YOURSELF ON THIS BENCH, THE TWO OF YOU ALL SEATED
3 YOURSELVES ON THIS BENCH, YOU DESCRIBED TWO PEOPLE COMING UP
4 TOWARDS YOU, RIGHT?

5 A WELL, FIRST I DESCRIBED A GENTLEMAN ON THE BICYCLE CAME,
6 COMING DOWN IN THE PARKING LOT, TURNED AROUND. THEN I
7 DESCRIBED THE TWO GENTLEMEN WALKING UP.

8 Q OKAY. I SKIPPED SOME PARTS. BUT THAT'S FINE. YOU
9 EVENTUALLY GET TO THE POINT WHERE YOU DESCRIBE TWO PEOPLE
10 COMING UP TO YOU. MY QUESTION TO YOU, MA'AM, IS, ROUGHLY,
11 ROUGHLY, BECAUSE I KNOW YOU DON'T HAVE A WATCH ON. OKAY.
12 HOW LONG WERE YOU ON THE BENCH WITH MR. BULL BEFORE YOU SAW
13 THE TWO PEOPLE COMING UP, ROUGHLY?

14 A I'M NOT GOING TO ANSWER THAT BECAUSE I CAN'T SAY. IT WAS A
15 FEW MINUTES AFTER. I'LL GIVE OR TAKE A FEW MINUTES AFTER THE
16 GUY ON THE BICYCLE CAME DOWN.

17 Q AND WAS THAT A SHORT PERIOD OF TIME AFTER YOU ARRIVED AT THE
18 PARK OR A LONG PERIOD OF TIME AFTER YOU ARRIVED AT THE PARK
19 ON THIS SECOND OCCASION?

20 A IT WAS A WHILE BECAUSE WE HAD HAD A PRETTY GOOD CONVERSATION.
21 SO IT HAD BEEN A WHILE.

22 Q OKAY. A MATTER OF SEVERAL MINUTES ANYWAY, RIGHT?

23 A IF THAT'S WHAT YOU WANT TO SAY.

24 Q WELL, IT'S SEVERAL MINUTES AFTER YOU ---

25 A I'M NOT GOING TO PUT A TIME ON IT, SIR. I MEAN NO HARM, BUT

1 I'M NOT GOING TO PUT A TIME ON IT BECAUSE YOU ASKED ME
2 WHETHER IT TOOK FIVE MINUTES OR TEN MINUTES WHEN I CAN'T
3 HONESTLY SAY THAT.

4 Q VERY WELL, MA'AM. THESE INDIVIDUALS APPROACHED. OKAY. MY
5 UNDERSTANDING IS THAT ONE ASKED FOR A LIGHT?

6 A YES.

7 Q MR. BULL PRODUCED A LIGHTER AND THE OTHER INDIVIDUAL PRODUCED
8 A GUN THAT HE PLACED TO HIS HEAD, RIGHT?

9 A THAT'S CORRECT.

10 Q YOU ALL ARE AT THE PARK BENCH AT THIS POINT IN TIME, CORRECT?

11 A YES.

12 Q YOU'RE SEATED NEXT TO MR. BULL AT THIS POINT IN TIME,
13 CORRECT?

14 A THAT'S CORRECT.

15 Q OKAY. NOW, WHEN THE GUN WAS PLACED TO MR. BULL'S HEAD, WAS
16 THE PERSON WHO PLACED THE GUN TO HIS HEAD -- AND YOU AS I
17 UNDERSTAND IT ARE SEATED TO MR. BULL'S RIGHT. IS THAT
18 CORRECT?

19 A THAT'S CORRECT.

20 Q OKAY. THE PERSON WHO PUTS THE GUN TO HIS HEAD IS LOCATED TO
21 HIS, MR. BULL'S RIGHT OR HIS LEFT? IN OTHER WORDS, IS HE
22 BETWEEN YOU AND MR. BULL, OR IS HE ON THE OTHER SIDE OF MR.
23 BULL FROM YOU?

24 A I WOULD SAY HE WAS DIRECTLY IN FRONT. WELL, ONCE HE STOOD
25 UP, HE WAS -- IT WAS LIKE THIS. THEY WERE LIKE THIS.

1 Q THEY WERE FACING EACH OTHER?

2 A AND HE CAME AROUND THE TABLE OR AROUND THE LEFT SIDE OF THE
3 TABLE, AND THE OTHER GUY ALSO CAME AROUND THE LEFT SIDE OF
4 THE TABLE.

5 Q OKAY. SO WAS THE PERSON WHEN HE PLACED THE GUN TO MR. BULL'S
6 HEAD ON THE OPPOSITE SIDE OF MR. BULL FROM YOU OR BETWEEN YOU
7 AND MR. BULL?

8 A HE WOULD HAVE BEEN ON MY LEFT SIDE BECAUSE I TURNED AND
9 LOOKED IN HIS FACE.

10 Q AND MY QUESTION, WAS HE LOCATED BETWEEN YOU AND MR. BULL OR
11 ON THE OPPOSITE SIDE OF MR. BULL?

12 A WHAT I'M TELLING YOU IS THAT MR. BULL AT THIS TIME WAS
13 STANDING UP AND HE WAS DIRECTLY IN FRONT OF HIM. SO HE WAS
14 JUST TO MY LEFT SIDE.

15 Q OKAY.

16 A THEY WERE DIRECTLY IN FRONT OF EACH OTHER.

17 Q VERY WELL. SO THEN I TAKE IT THAT HE POINTED THE GUN AT MR.
18 BULL'S FOREHEAD. IS THAT CORRECT? RIGHT HERE. WAS HE
19 STANDING DIRECTLY IN FRONT OF HIM?

20 A HE STUCK IT TO HIS HEAD AND GRABBED HIM. SO I CAN'T SAY
21 EXACTLY WHERE IT WAS. BUT THEY STUCK THE GUN TO HIS HEAD.

22 Q OKAY. NOW, I TAKE IT THAT THIS EXCHANGE BETWEEN THE PERSON
23 WHO PUT THE GUN TO MR. BULL'S HEAD AND MR. BULL, THIS
24 CONVERSATION REGARDING THE LIGHT DIDN'T TAKE VERY LONG,
25 RIGHT? I'M NOT ASKING FOR MINUTES.

1 A NO, IT DID NOT.

2 Q IT DIDN'T TAKE VERY LONG?

3 A NO.

4 Q GOT A LIGHT, OFF THE BENCH, GOT A GUN?

5 A RIGHT.

6 Q FAIR TO SAY IT DIDN'T TAKE MUCH LONGER THAN THAT?

7 A THAT'S CORRECT.

8 Q THAT'S A MATTER -- WITHOUT TAKING A TIME ON IT -- THAT'S A
9 MATTER OF SEVERAL SECONDS. THAT'S ABOUT IT, RIGHT?

10 A OKAY.

11 Q NOW, MA'AM, IS IT FAIR TO SAY THAT SEEING A FIREARM PRODUCED
12 AND PUT TO THE HEAD OF SOMEONE THAT'S VERY CLOSE TO YOU WAS A
13 SHOCKING EVENT?

14 A YES.

15 Q THAT'S FAIR, RIGHT?

16 A YES.

17 Q UNDERSTANDABLY. OKAY. NOW, AT THE SAME TIME OR RIGHT AS
18 THAT'S HAPPENING, MY UNDERSTANDING OF YOUR TESTIMONY IS THE
19 SECOND OF THESE INDIVIDUALS CAME YOU?

20 A THE SECOND GROUP OF THE GUYS CAME UP.

21 Q OKAY. THE SECOND GUY, OKAY, THE SECOND INDIVIDUAL, DID HE
22 COME UP FROM BEHIND OR FROM IN FRONT OF YOU ALL?

23 A I MEAN, WHAT ARE YOU ASKING ME? THE SECOND GROUP OF GUYS?

24 Q NO. I'M SORRY. I'M TALKING ABOUT THE SECOND INDIVIDUAL.
25 THESE TWO GUYS ---

1 A OH. AT THAT TIME THEY BOTH HAD WINFRED. HE DIDN'T LEAVE.
2 HE JUST WALKED UP A LITTLE BIT LIKE HE WAS STROLLING ALONG
3 AND HE DOUBLED BACK AND GRABBED HIM ---

4 Q SO THE SECOND ---

5 A --- THAT WAY. HE NEVER REALLY WALKED OFF.

6 Q THAT'S FINE. ALL I'M SAYING IS THAT AT APPROXIMATELY THE
7 SAME TIME THAT THE PERSON PUT THE GUN ON MR. BULL ---

8 A HE WAS THERE.

9 Q THE SECOND INDIVIDUAL WAS THERE?

10 A WAS THERE.

11 Q THE TWO GRABBED HIM?

12 A HE WAS WHERE HE WAS SUPPOSED TO BE, YES.

13 Q HE TOO GRABBED MR. BULL, CORRECT?

14 A THAT'S CORRECT.

15 Q AND YOU'RE SITTING THERE NEXT TO MR. BULL?

16 A I WAS SITTING THERE.

17 Q WELL, HE'S NO LONGER SEATED?

18 A HE'S NOT SEATED. I'M SITTING.

19 Q SO YOU'VE GOT THIS GROUP OF THREE PEOPLE, MR. BULL AND THE
20 TWO PEOPLE THAT ARE GRABBING HIM ---

21 A AT THIS TIME WE HAVE ALL SEVEN PEOPLE OUT. IT'S NOT LIKE
22 THEY WAITED TWO OR THREE MINUTES AND CAME OUT. THEY ALL CAME
23 OUT AT ONE TIME.

24 Q YES, MA'AM. IF I CAN COMPLETE MY QUESTION.

25 THE COURT: YEAH. LET HIM FINISH HIS QUESTION, PLEASE,

1 victim , AND THEN ANSWER HIS QUESTIONS AS BRIEFLY AS YOU
2 CAN. THEREAFTER YOU CAN EXPLAIN YOUR ANSWER. BUT WAIT 'TIL
3 HE FINISHES HIS QUESTION. PLEASE CONTINUE, MR. STRICKLER.

4 MR. STRICKLER: THANKS.

5 Q (BY MR. STRICKLER) NOW, MY UNDERSTANDING OF YOUR TESTIMONY
6 ON DIRECT WAS THAT THE TWO INDIVIDUALS GOT INVOLVED IN
7 GRABBING MR. BULL, AND RIGHT AT THAT TIME THREE OTHERS CAME
8 OUT OF THE BUSHES, RIGHT?

9 A THAT'S CORRECT.

10 Q OKAY. SO YOU HAVE A VERY BRIEF INCIDENT WHEN THE TWO PEOPLE
11 HAVE GRABBED MR. BULL, AND RIGHT AS THAT'S HAPPENING YOU'VE
12 GOT THREE PEOPLE COMING FROM THE BUSHES, RIGHT?

13 A YES.

14 Q AND THEY ARE COMING TOWARDS YOU. IS THAT CORRECT?

15 A THAT'S CORRECT.

16 Q AND MY UNDERSTANDING OF YOUR TESTIMONY ON DIRECT IS THAT
17 THERE WAS A -- AT THAT POINT IN TIME THERE WAS A LOT OF
18 TUSSLING GOING ON, RIGHT?

19 A MM-HMM (AFFIRMATIVE).

20 Q A LOT OF MOVING GOING ON?

21 A YES, SIR.

22 Q A LOT OF THINGS BEING SAID?

23 A YES, SIR.

24 Q RIGHT? DEMANDING MONEY, THIS AND THAT, RIGHT?

25 A YES, SIR.

1 Q THIS IS TAKING PLACE RIGHT THERE AT THE BENCH?

2 A YES, SIR.

3 Q WHEN IT FIRST STARTS?

4 A YES, SIR.

5 Q WE'RE JUST GOING THROUGH ONE STEP AT A TIME. OKAY. WHEN IT
6 FIRST STARTS IS RIGHT THERE AT THE BENCH, RIGHT?

7 A YES, SIR.

8 Q OKAY. AND THE PERSON THAT GRABBED YOU WAS KENNETH JAMES?

9 A THAT'S CORRECT.

10 Q OKAY. AND THE OTHER TWO PEOPLE WITH HIM, HE'S ONE OF THE
11 PEOPLE THAT CAME OUT OF THE BUSHES, RIGHT?

12 A THAT'S CORRECT.

13 Q ARE YOU SURE ABOUT THAT?

14 A I'M POSITIVE.

15 Q AND THE OTHER TWO PEOPLE WITH HIM ALSO GRABBED YOU?

16 A THEY WEREN'T UP. BUT, I MEAN, YOU LOOK AT ME. I'M NOT QUITE
17 AS BIG AS I AM NOW. SO IT DIDN'T TAKE A LOT TO HOLD ME. HE
18 COULD HOLD ME BY HIMSELF.

19 Q SO I TAKE IT THE ANSWER, YOUR ANSWER IS, NO, THE OTHER TWO
20 PEOPLE ---

21 A THEY GRABBED ME.

22 Q I'M SORRY, MA'AM. YOUR ANSWER IS, NO, THE OTHER PEOPLE ---

23 A HE GRABBED ME. THEN THEY ---

24 THE COURT: EXCUSE ME A SECOND. Victim, I KNOW YOU
25 WANT TO ANSWER THESE QUESTIONS. BUT WAIT UNTIL MR. STRICKLER

1 FINISHES HIS QUESTION. THEN YOU MAY ANSWER THE QUESTION.
2 BUT WAIT 'TIL HE FINISHES HIS QUESTION. DO NOT ANSWER HIS
3 QUESTION OR INTERRUPT HIM. I WILL NOT ALLOW HIM TO INTERRUPT
4 YOU. PLEASE CONTINUE, MR. STRICKLER.

5 MR. STRICKLER: THANK YOU, SIR.

6 Q (BY MR. STRICKLER) MY QUESTION, MA'AM, IS SIMPLY THIS.
7 YOU'VE TESTIFIED THAT KENNETH JAMES GRABBED YOU. DID THE
8 OTHER TWO PEOPLE GRAB YOU ALSO AT THAT TIME?
9 A THEY GRABBED ME ONCE IT CAME TIME THAT THEY MOVED ME, IF THAT
10 WILL HELP.
11 Q NOW, SO, AS I UNDERSTAND IT, THE SERIES OF EVENTS IS THESE
12 TWO GUYS COME UP. ONE OF THEM APPROACHES MR. BULL. "YOU GOT
13 A LIGHT?" MR. BULL GETS UP, GETS OUT THE LIGHTER; GUN TO
14 HIM. ANOTHER GUY SHOWS. IMMEDIATELY THREE MORE PEOPLE SHOW,
15 ONE OF WHOM IS KENNETH JAMES, GRABS YOU AT THAT POINT IN
16 TIME. THERE'S TUSSLING GOING ON. IS THAT CORRECT?

17 A THAT'S CORRECT.

18 Q THERE'S A LOT OF THINGS BEING SAID, CORRECT?

19 A THAT'S CORRECT.

20 Q DEMANDS FOR MONEY, RIGHT?

21 A THAT'S CORRECT.

22 Q WE CAN ASSUME THREATS, RIGHT?

23 A (WITNESS NODS HEAD AFFIRMATIVELY)

24 Q OKAY. AND YOU'RE NOT WEARING A WATCH, RIGHT?

25 A NO, I WASN'T.

1 Q OKAY. AND, UNDERSTANDABLY, YOU'RE NOT CONCERNED WITH KEEPING
2 TRACK OF EXACTLY HOW LONG THINGS TAKE. I UNDERSTAND THAT.
3 WAS THERE A BRIEF STRUGGLE BEFORE YOU WERE DRAGGED OFF, OR
4 WAS IT A LENGTHY STRUGGLE BEFORE YOU WERE DRAGGED OFF?

5 A I WOULD SAY IT WAS BRIEF, SIR.

6 Q BRIEF. I MEAN, IS THAT A FAIR WORD TO USE?

7 A THAT'S FAIR. BRIEF.

8 Q OKAY. AND MY UNDERSTANDING THEN IS THAT AFTER THIS STRUGGLE
9 AT THAT PICNIC TABLE THAT'S WHEN YOU WERE DRAGGED OVER TO THE
10 AREA WHERE THE ASSAULT BEGINS. IS THAT CORRECT?

11 A THAT'S CORRECT.

12 Q OKAY. AND IS "DRAGGED" A FAIR WORD TO USE IN DESCRIBING HOW
13 YOU WERE MOVED FROM ONE PLACE TO THE OTHER?

14 A YOU COULD SAY DRAGGED. YOU COULD SAY PULLED. HOWEVER YOU
15 WANT TO PUT IT. THEY FORCED ME TO MOVE.

16 Q UNDERSTANDABLY. THAT'S A GOOD POINT. YOU DID NOT COOPERATE
17 WITH THEM CERTAINLY AFTER THAT?

18 A NO, I WASN'T.

19 Q YOU WERE FORCIBLY MOVED?

20 A MM-HMM (AFFIRMATIVE).

21 Q AND "DRAGGING" IS A FAIR WORD TO DESCRIBE. "PULLING" IS A
22 FAIR WORD TO DESCRIBE?

23 A MM-HMM (AFFIRMATIVE).

24 Q THIS WAS BEING DONE BY HOW MANY INDIVIDUALS? ONE OR MORE
25 THAN ONE?

1 A MORE THAN ONE.

2 Q OKAY. AND ONE OF WHOM WAS MR. KENNETH JAMES THE WHOLE TIME?

3 A THAT'S CORRECT, SIR.

4 Q KENNETH JAMES NEVER LEFT YOUR SIGHT AT ALL TIMES?

5 A THAT'S CORRECT, SIR.

6 Q IS THAT YOUR TESTIMONY HERE TODAY?

7 A THAT'S MY TESTIMONY FOR LIFE.

8 Q PARDON ME?

9 A THAT'S MY TESTIMONY FOR LIFE. I WILL TAKE THAT TO MY GRAVE.

10 Q YES, MA'AM. AND YOU TOLD THIS TO THE OFFICERS WHEN YOU GAVE
11 THEM THIS STATEMENT REGARDING THIS INCIDENT WITHIN HOURS OF
12 IT HAPPENING. IS THAT CORRECT? THAT KENNETH JAMES NEVER
13 LEFT YOUR SIGHT DURING THIS TIME?

14 A I CAN'T EXACTLY SAY HOW I SAID IT, BUT I TOLD THEM THAT HE
15 WAS THERE AND I TOLD HIM THAT HE WAS THE PUSHY ONE. HE WAS
16 THE ONE THAT BASICALLY CONTROLLED EVERYTHING THAT WENT ON AT
17 THAT TIME. AND HE WAS THE ONE THAT INITIATED THE ASSAULT ON
18 ME.

19 Q DID THEY PUT ---

20 A SO BASICALLY HE WAS THERE THE WHOLE TIME.

21 Q AND YOU MADE SURE THAT THEY RECORDED THAT IN THE STATEMENT
22 THAT YOU GAVE AT THE TIME THAT YOU MADE THIS IDENTIFICATION,
23 CORRECT?

24 A I'M PRETTY SURE THEY DID.

25 Q MA'AM, I'D LIKE TO PRESENT YOU WITH A DOCUMENT THREE PAGES IN

1 LENGTH AND ASK IF YOU CAN RECOGNIZE THAT DOCUMENT?

2 A THIS IS MY STATEMENT, SIR.

3 Q I'D ASK THAT YOU TAKE AS MUCH TIME AS YOU FEEL NECESSARY TO
4 REFRESH YOUR RECOLLECTION, OKAY, BY REFERRING TO THE
5 STATEMENT. HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE
6 STATEMENT, MA'AM?

7 A MM-HMM (AFFIRMATIVE).

8 Q OKAY. BECAUSE I'D LIKE TO ASK A COUPLE OF QUESTIONS, IF I
9 COULD.

10 A OKAY.

11 Q NOWHERE IN THAT STATEMENT IS ANY MENTION OF A RED JERSEY
12 SHIRT. IS THAT OR IS THAT NOT TRUE?

13 A YEAH. I THINK I ANSWERED THAT FOR YOU BEFORE. I DID NOT
14 TELL THEM THAT ON THIS STATEMENT, BUT I DID LET IT BE KNOWN.

15 Q NOWHERE IN THAT STATEMENT IS THERE ANY MENTION OF THE NAME
16 KENNETH JAMES. IS THAT OR IS THAT NOT TRUE?

17 A THAT IS CORRECT, BECAUSE I DIDN'T KNOW HIS NAME.

18 Q NOW, THAT STATEMENT WAS GIVEN, THERE'S A DATE AND TIME I
19 BELIEVE ON THE FIRST PAGE OF THE STATEMENT?

20 A MM-HMM (AFFIRMATIVE). TIME: 11:20.

21 Q 11:20. AND THAT WAS GIVEN AT THE SAME TIME THAT YOU WENT
22 DOWN TO THE CITY OF COLUMBIA POLICE DEPARTMENT AND CONDUCTED
23 THIS PHOTO IDENTIFICATION PROCEDURE THAT'S REFLECTED IN
24 WHAT'S LABELED STATE'S EXHIBIT NO. 2. CORRECT?

25 A THAT'S CORRECT.

1 Q THE ONE IN WHICH YOU PICKED OUT KENNETH JAMES AS THE PERSON
2 —

3 A THAT'S CORRECT.

4 Q — PERSON INVOLVED IN THE ATTACK? NOW, ANY PLACE IN THAT
5 STATEMENT INDICATE THAT KENNETH JAMES WAS WITH YOU FROM THE
6 BEGINNING OF THE INCIDENT THROUGH THE END?

7 A NO, IT DOESN'T. I THINK I WENT MORE INTO DETAIL AS TO WHAT
8 HAPPENED.

9 Q SO THE ANSWER IS NO, CORRECT?

10 A NOT THAT I CAN SEE, NOT READING OVER IT.

11 Q WELL, OKAY. I DON'T WANT TO PUT WORDS IN YOUR MOUTH. I
12 DON'T WANT YOU TO COMMENT ON SOMETHING THAT YOU'RE NOT SURE
13 ABOUT. IF YOU NEED TO LOOK AT THAT STATEMENT LONGER, PLEASE
14 DO, MA'AM.

15 A I DON'T FEEL LIKE I HAVE TO LOOK AT THIS STATEMENT. I FEEL
16 LIKE MY WORD IS GOOD ENOUGH AND I KNOW WHAT HAPPENED.

17 Q YES, MA'AM. AND MY QUESTION HOWEVER IS, NO PLACE IN THAT
18 STATEMENT DOES IT STATE KENNETH JAMES WAS WITH ME FROM THE
19 BEGINNING OF THIS INCIDENT THROUGH THE END OF THE INCIDENT,
20 CORRECT?

21 A THAT IS CORRECT, SIR.

22 Q OKAY. NO PLACE IN THAT STATEMENT DOES IT SAY KENNETH JAMES
23 WAS —

24 MS. FRYAR: YOUR HONOR, I OBJECT.

25 THE COURT: EXCUSE ME. THE OBJECTION IS WHAT, MS.

1 FRYAR?

2 MS. FRYAR: HE'S INFERRING FACTS THAT AREN'T IN THE
3 RECORD.

4 THE COURT: I'M SORRY?

5 MS. FRYAR: HE'S INFERRING FACTS THAT ARE NOT IN THE
6 RECORD. SHE DIDN'T KNOW WHAT HIS NAME WAS. THERE'S NOTHING
7 THAT'S COME OUT IN THE RECORD THAT SHE KNEW ---

8 THE COURT: NO. I'M SORRY. THIS IS A STATEMENT GIVEN
9 AT THE TIME THAT THE PHOTO IDENTIFICATION WAS MADE. IS THAT
10 CORRECT? IS THAT CORRECT? THAT'S WHAT YOU'RE QUESTIONING
11 HER ABOUT?

12 MR. STRICKLER: YES, SIR. THAT'S MY UNDERSTANDING.

13 THE COURT: AND IT WAS SUBSEQUENT TO OR PRIOR TO THE
14 VIEWING OF THE LINE-UP?

15 MR. STRICKLER: MY UNDERSTANDING IS THAT IT'S SUBSEQUENT
16 TO.

17 THE COURT: OKAY. THEN ---

18 MR. GASSER: MAY WE APPROACH, YOUR HONOR, SO WE DON'T
19 HAVE TO SEND THE JURY OUT?

20 THE COURT: OKAY.

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

22 THE COURT: NOW, OKAY. I KNOW WHAT YOU'RE GOING TO SAY.
23 SHE SAID THAT SHE DIDN'T KNOW HIS NAME AT THAT TIME. THAT'S
24 ONE THING SHE'S ALREADY SAID. AND, I MEAN, WHY IS THIS THE
25 SUBJECT OF A ---

1 MR. GASSER: OBJECTION? BECAUSE HE'S MISLEADING THE
2 JURY. ON THE ONE HAND, --

3 THE COURT: LET ME EXPLAIN SOMETHING TO YOU. HE IS
4 ASKING HER -- AND I'M NOT GOING TO MAKE HIS POINT FOR HIM --
5 BUT HE IS ASKING HER IF THIS STATEMENT WAS MADE SUBSEQUENT TO
6 THE PHOTO IDENTIFICATION. IF IT WAS, MAYBE, MAYBE THESE
7 PEOPLE TOLD HER HIS NAME AT THAT TIME. I DON'T KNOW. BUT,
8 YOU KNOW, TO OBTAIN ANY PROBLEMS LIKE THIS -- WHICH YOU CAN
9 CURE ON YOUR REDIRECT IN ANY EVENT, KAREN.

10 MS. FRYAR: YES, SIR.

11 THE COURT: TO OBTAIN ANY PROBLEMS WITH THAT, YOU MAY
12 WANT TO ASK HER. OTHERWISE, HE'S PROBABLY RIGHT.

13 MR. GASSER: THAT'S THE ONLY POINT WE'RE TRYING TO MAKE.

14 MR. STRICKLER: OKAY. MY POINT IS I'VE REVIEWED
15 INVESTIGATOR THOMAS'S NOTES WHICH INDICATE THE PROCEDURE
16 BEGAN AT 11:10 AND IT COMPLETED AT 1300. HE'S DOING
17 SOMETHING ELSE. WE GET A PHOTO I.D. MADE AT 11:20.

18 THE COURT: OKAY.

19 MR. STRICKLER: OKAY. EXCUSE ME. THE STATEMENT AT
20 11:20.

21 THE COURT: PHOTO I.D. IS WHEN?

22 MR. STRICKLER: IT'S AT 11:00 ACCORDING TO HIS NOTES.

23 THE COURT: WELL, YOU KNOW, I HAVE SOME OBLIGATION TO
24 PROTECT THE WITNESS. BUT THE WITNESS CAN PROTECT HERSELF.
25 YOU KNOW, I APPRECIATE ALL THAT YOU ALL ARE SAYING, BUT, YOU

1 KNOW, KAREN CAN GET UP AND REPAIR ON REDIRECT. I'M NOT GOING
2 TO STOP HIM.

3 MR. GASSER: THE ONLY POINT I WAS TRYING TO MAKE IS THAT
4 I THINK HE CAN ASK THOSE QUESTIONS THAT HE WAS ASKING IF HE
5 ASKS THE PREFACED QUESTIONS WHICH HE HASN'T ASKED YET.

6 THE COURT: MAYBE HE CHOOSES TO CONDUCT HIS EXAMINATION
7 IN A DIFFERENT FASHION. AND, YOU KNOW, IF I FIND THAT HE IS
8 IN FACT CONSCIOUSLY MISLEADING THE JURY, THEN THAT'S ONE
9 THING. BUT, YOU KNOW, IF IT'S TACTICAL, I'M GOING TO LET HIM
10 DO IT. OKAY.

11 (WHEREUPON, THE SIDE BAR CONFERENCE IS CONCLUDED)

12 THE COURT: OKAY. PLEASE CONTINUE.

13 MR. STRICKLER: THANK YOU, SIR.

14 Q (BY MR. STRICKLER) MA'AM, AS I UNDERSTAND YOUR DESCRIPTION
15 OF WHAT HAPPENED TO YOU ---

16 A YES, SIR.

17 Q --- WE'VE BEEN TALKING ABOUT FOR A FEW MINUTES, INDIVIDUALS
18 APPROACHED YOU. TWO INDIVIDUALS APPROACHED. THERE IS ALMOST
19 IMMEDIATELY UPON THEIR ARRIVAL, JUST AS LONG AS IT TAKES TO
20 GO AHEAD AND ASK FOR THE LIGHT, THE BEGINNING OF THE ASSAULT,
21 RIGHT?

22 A YES, SIR.

23 Q TWO BECOME FIVE ALMOST IMMEDIATELY, RIGHT?

24 A (WITNESS NODS HEAD AFFIRMATIVELY)

25 Q THERE IS A BRIEF TUSSLE, STRUGGLE AT THE BENCH, AND AT THAT

1 POINT IN TIME YOU'RE DRAGGED AWAY AND THE ASSAULT BEGINS?

2 A YES, SIR.

3 Q AND THE ACTUAL SEXUAL ASSAULTS BEGIN, CORRECT?

4 A YEAH. YES, SIR.

5 Q IT'S FAIR TO SAY THAT THAT IS A -- WAS A AND CONTINUES TO BE
6 A TRAUMATIC EXPERIENCE FOR YOU, RIGHT?

7 A YES, SIR.

8 Q UNDERSTANDABLY SO. YOUR TESTIMONY IS THAT THE ASSAULT
9 CONTINUED ACROSS THE FENCE IN THE AREA OF THE CEMETERY. IS
10 THAT RIGHT?

11 A (WITNESS NODS HEAD AFFIRMATIVELY)

12 Q OKAY. AND HOW MANY PEOPLE WERE INVOLVED AT ANY ONE TIME IN
13 THE ASSAULT ON YOU IN THAT LOCATION?

14 A THEY ALL WERE. THEY ALL FIVE WAS INVOLVED IN THE ASSAULT ON
15 ME.

16 Q OKAY. AT ANY ONE GIVEN TIME. WERE ALL FIVE INVOLVED AT THE
17 SAME TIME?

18 A WELL, NO.

19 Q THE POINT IS -- I'M SORRY. I'M NOT TRYING TO BE THE CUTE.
20 THE POINT IS, A COUPLE OF THEM WERE AT LEAST FOR A PERIOD OF
21 TIME INVOLVED WITH CONTAINING MR. BULL?

22 A THAT'S CORRECT, SIR.

23 Q RIGHT? OKAY. UNTIL SUCH TIME AS HE RAN OFF. IS THAT RIGHT?

24 A THAT'S CORRECT.

25 Q OKAY. NOW, I BELIEVE YOUR TESTIMONY IS THAT DURING THE

1 ASSAULT IN THE CEMETERY THE ENTIRE ASSAULT TOOK PLACE WHILE
2 YOU WERE ON YOUR BACK. IS THAT RIGHT?

3 A THAT IS CORRECT.

4 Q AND AM I TO UNDERSTAND YOU THAT WHILE YOU WERE ON YOUR BACK
5 IN THE CEMETERY YOU HAD YOUR EYES OPEN?

6 A AT SOME POINTS, YES.

7 Q AT SOME POINT IN TIME AS I UNDERSTAND IT YOU HEARD SHOTS
8 FIRED?

9 A THAT'S CORRECT.

10 Q OKAY. I TAKE IT FROM YOUR TESTIMONY AND FROM THE
11 RELATIONSHIP OF THE VARIOUS, THE TWO GROUPS OF PEOPLE, THAT
12 YOU DIDN'T SEE THE SHOTS FIRED YOURSELF. CORRECT?

13 A I HEARD THEM.

14 Q YOU HEARD THEM. OKAY. WHAT? THREE? SOMETHING? THREE OR
15 FOUR? SOMETHING LIKE THAT?

16 A MM-HMM (AFFIRMATIVE).

17 Q AND I BELIEVE YOUR TESTIMONY WAS YOU DON'T KNOW WHO FIRED THE
18 SHOTS, RIGHT?

19 A THAT'S CORRECT, SIR.

20 Q WE CAN TAKE IT THAT HOWEVER SINCE KENNETH JAMES NEVER LEFT
21 YOUR SIDE DURING THE COURSE OF THIS ENTIRE ORDEAL THAT HE WAS
22 NOT THE PERSON WHO FIRED THE SHOTS?

23 A HE WAS NOT THE PERSON THAT FIRED THE SHOTS.

24 Q ONCE AGAIN, YOU INDICATED THAT DURING THE COURSE OF THIS
25 ASSAULT ALL KIND OF THINGS WERE BEING SAID TO YOU, RIGHT?

1 A THAT'S CORRECT.

2 Q YOU SPECIFICALLY SAID THAT KENNETH JAMES THREATENED TO KILL
3 YOU?

4 A THAT'S CORRECT, SIR.

5 Q THIS IS PRIOR TO BEING TAKEN TO THE MAUSOLEUM AND TOLD NOT TO
6 COME OUT?

7 A THAT'S CORRECT.

8 Q RIGHT?

9 A MM-HMM (AFFIRMATIVE). YES, SIR.

10 Q PLEASE LOOK AT YOUR STATEMENT GIVEN A FEW HOURS AFTER THIS
11 INCIDENT AND TELL ME OR DIRECT MY ATTENTION, IF YOU COULD,
12 PLEASE, TO THE PORTION OF THAT STATEMENT THAT INDICATES THAT
13 SOMEONE THREATENED TO KILL YOU PRIOR TO THE MAUSOLEUM TIME?

14 A WHAT DO YOU WANT ME TO DO NOW?

15 Q FIND A PLACE IN YOUR STATEMENT WHERE YOU SAY SOMEONE
16 THREATENED TO KILL YOU.

17 A IT'S AT THE END I SEE IT.

18 Q AT THE END, THE TIME YOU'RE IN THE MAUSOLEUM, "DON'T COME OUT
19 OR WE'LL KILL YOU." SOMETHING LIKE THAT?

20 A MM-HMM (AFFIRMATIVE).

21 Q I UNDERSTAND THAT. I'M TALKING ABOUT THE EARLIER INCIDENTS
22 THAT YOU'VE TESTIFIED ---

23 A IT'S NOT IN HERE.

24 Q IT'S NOT IN THERE?

25 A OKAY.

1 Q AND OBVIOUSLY NO ONE WOULD EXPECT YOU TO BE KEEPING TRACK OF
2 THE TIME OF THE ASSAULTS IN THE GRAVEYARD. I'M SURE IT FELT
3 LIKE IT WAS FOREVER. WE UNDERSTAND THAT. OKAY. IT TOOK A
4 WHILE. PEOPLE COMING AND GOING, CORRECT?

5 A MM-HMM (AFFIRMATIVE).

6 Q EXCEPT FOR KENNETH JAMES WHO WAS ALWAYS THERE?

7 A THAT'S CORRECT.

8 Q AND YOU'VE HEARD THE TESTIMONY IN THIS -- YOU'VE BEEN HERE
9 THROUGHOUT THIS TRIAL SO FAR, CORRECT?

10 A WELL, IN AND OUT.

11 Q IN AND OUT?

12 A (WITNESS NODS HEAD AFFIRMATIVELY)

13 Q OKAY. YOU WOULD AGREE THAT THERE IS NO LIGHTING IN THE
14 GRAVEYARD, RIGHT?

15 A I HONESTLY AGREE WITH THAT, YES.

16 Q AND AS FAR AS THE AREA -- AND I'LL REFER TO WHAT'S MARKED
17 STATE'S 13. OKAY. AS FAR AS THIS AREA IN THIS PARK, THESE
18 LITTLE THINGS THAT ARE TREES, THERE ARE ACTUALLY A BUNCH OF
19 TREES AROUND IN THIS PARK AREA, AREN'T THERE?

20 A YEAH. THERE WAS QUITE A FEW.

21 Q QUITE A FEW. SO THIS IS NOT TO SCALE. IT'S NOT A PICTURE OR
22 ANYTHING, BUT MORE TREES THAN EVEN WHAT ARE SHOWN IN THIS
23 PARK AREA, CORRECT?

24 A THAT'S CORRECT.

25 Q AND REGARDLESS OF THE EXACT TIME -- ARE YOU ALL RIGHT, MA'AM?

1 A (WITNESS NODS HEAD AFFIRMATIVELY)

2 Q IF NOT, JUST LET ME KNOW.

3 A I'M OKAY.

4 Q OKAY. REGARDLESS OF THE EXACT TIME THAT YOU RETURNED TO THE
5 PARK THE SECOND TIME, IT'S CLEAR THAT IT WAS AFTER DARK WHEN
6 YOU RETURNED THE SECOND TIME, CORRECT?

7 A BOTH TIMES IT WAS DARK.

8 Q IT WAS DARK THE FIRST TIME?

9 A MM-HMM (AFFIRMATIVE).

10 Q LEFT AND GOT SOME FOOD AND CAME BACK?

11 A MM-HMM (AFFIRMATIVE).

12 Q IT WAS LATER IN THE EVENING THEN. THE LIGHTS ON THE BALL
13 FIELD WERE TURNED OUT ABOUT THE TIME YOU GOT BACK THE SECOND
14 TIME? SHORTLY AFTER?

15 A SHORTLY AFTER.

16 Q BEFORE THE TWO PEOPLE CAME UP?

17 A MM-HMM (AFFIRMATIVE).

18 Q OKAY. THAT THE ONLY LIGHTING AVAILABLE IN THAT PARK YOU
19 WOULD AGREE WOULD BE LIGHTS FROM THE PARKING AREA, PARKING
20 LOT AREA?

21 A MM-HMM (AFFIRMATIVE).

22 Q AND WHATEVER LIGHT THERE MIGHT HAVE BEEN COMING FROM W. A.
23 PERRY SCHOOL WHICH IS ON STATE'S 1 THIS AREA HERE?

24 A OKAY.

25 Q AND WHICH IS -- YOU KNOW, MAY BE FURTHER AWAY FROM THE PARK

1 THAN THE PARKING AREA LIGHTS, RIGHT?

2 A MM-HMM (AFFIRMATIVE).

3 Q HOW MANY LIGHTS WERE THERE IN THE PARKING AREA? DO YOU KNOW?

4 A NO, I DO NOT.

5 Q OKAY. SO WE CAN AGREE THAT THE ONLY LIGHTING IN THE PARK
6 AREA WAS THAT THAT CAME FROM THE PARKING LOT AND WHATEVER
7 LIGHT THERE MAY HAVE BEEN FROM THE W. A. PERRY LIGHT,
8 CORRECT?

9 A YES, SIR.

10 Q AND WE CAN AGREE THAT THE LENGTH OF TIME BETWEEN THE FIRST
11 INDIVIDUAL ASKING FOR A LIGHT, OKAY, AND SUDDENLY THERE BEING
12 FIVE PEOPLE ON THE TWO OF YOU ALL WAS A VERY SHORT PERIOD OF
13 TIME, CORRECT?

14 A THAT'S CORRECT.

15 Q OKAY. VERY SHORT. I MEAN, I THINK TWO WERE ON YOU
16 INSTANTLY, AND AS THEY WERE ON YOU THE OTHER THREE ARE
17 RUNNING UP?

18 A THAT'S CORRECT.

19 Q HOWEVER LONG IT TAKES TO RUN FROM THE BUSHES UP TO YOU?

20 A THAT'S CORRECT.

21 Q A MATTER OF SECONDS, CORRECT?

22 A MM-HMM (AFFIRMATIVE).

23 Q AND THAT AT THAT POINT IN TIME THERE WERE FIVE PEOPLE
24 INVOLVED IN GRABBING YOU AND GRABBING MR. BULL, SHOUTING AT
25 YOU, RIGHT? MAKING DEMANDS FROM YOU ALL, RIGHT?

1 A THAT'S CORRECT.

2 Q PULLING ON YOU, TERRORIZING YOU, RIGHT?

3 A (WITNESS NODS HEAD AFFIRMATIVELY)

4 Q OKAY. AND I THINK WE CAN AGREE THAT THE PERIOD OF TIME THAT
5 THAT WENT ON AT THE BENCH WAS A SHORT PERIOD OF TIME,
6 CORRECT? I THINK YOU'VE TESTIFIED TO THAT EARLIER ON CROSS?

7 A THAT'S CORRECT, SIR.

8 Q VERY SHORTLY AFTER THIS STARTED YOU ALL ARE DRAGGED OFF?

9 A MM-HMM (AFFIRMATIVE).

10 Q RIGHT? AND THAT AS YOU'RE BEING DRAGGED OFF -- BY "YOU" I
11 MEAN YOU AND MR. BULL -- AS YOU ALL ARE BEING DRAGGED FROM
12 THIS BENCH YOU'RE BEING DRAGGED TOWARDS THIS AREA, CORRECT?

13 A THAT'S CORRECT.

14 Q AND IT'S NOT GETTING BRIGHTER AS YOU'RE BEING DRAGGED TOWARDS
15 THE CEMETERY WHERE THERE'S NO LIGHTS, RIGHT?

16 A WE WERE BEING DRAGGED IN THE DARK WHERE NO ONE COULD SEE.

17 Q IN THE DARK. SO YOU'RE BEING DRAGGED FROM AN AREA THAT'S AS
18 WELL LIT AS HOWEVER LIT IT WAS TO AN AREA THAT HAS ABSOLUTELY
19 NO LIGHTING AT ALL?

20 A THAT IS CORRECT.

21 Q AND YOU'RE STRUGGLING DURING THE COURSE OF BEING DRAGGED,
22 CORRECT?

23 A THAT'S CORRECT.

24 Q AND I'M SURE THE TERM "UPSET" DOESN'T ADEQUATELY DESCRIBE HOW
25 YOU FELT AT THAT TIME. TERRORIZED MIGHT BE HOW YOU FELT. IS

1 THAT CORRECT?

2 A (WITNESS NODS HEAD AFFIRMATIVELY)

3 Q AND YOU WERE CONTENDING WITH FROM ONE TO THREE INDIVIDUALS
4 WHO WERE DRAGGING YOU, WERE PULLING YOU. IS THAT RIGHT?

5 A THAT'S CORRECT, SIR.

6 Q AND YOU WERE STRUGGLING?

7 A YES.

8 Q LET ME ASK YOU THIS. YOU NEVER MET KENNETH JAMES BEFORE?

9 A NO. I DON'T KNOW HIM.

10 MR. STRICKLER: BEG THE COURT'S INDULGENCE.

11 THE COURT: YES, SIR.

12 MR. STRICKLER: THANK YOU, YOUR HONOR. THAT'S ALL I
13 HAVE.

14 THE COURT: THANK YOU. MR. SHUPPER, CROSS?

15 MR. SHUPPER: YOUR HONOR, MAY WE APPROACH?

16 THE COURT: OKAY.

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

18 THE COURT: YES, SIR.

19 MR. SHUPPER: JUST TO MAKE SURE OF YOUR RULING, THAT I
20 WOULD BE ABLE TO ASK HER ABOUT THE WARRANTS; IF SHE CANNOT
21 REMEMBER A DATE, THAT I HAVE PERMISSION TO SHOW COPIES OF THE
22 WARRANTS TO HER TO REFRESH HER MEMORY.

23 THE COURT: WELL, YOU KNOW, YOU CAN'T INQUIRE INTO THE
24 DETAILS OF THE THING. YOU CAN ASK HER -- NOW, MS. FRYAR
25 ALREADY ASKED HER ABOUT THOSE PREVIOUS CONVICTIONS, SO

1 THEY'RE OF RECORD. BUT I'LL LET YOU ASK HER ON CROSS
2 EXAMINATION IF SHE WAS CONVICTED OF THEM ON THOSE DATES AND
3 OF HOW MANY COUNTS. BUT DON'T -- YOU KNOW, YOU CAN'T GO INTO
4 ANY DETAILS ABOUT THAT. OKAY. THE FACT THEY'RE A CONVICTION
5 IS ALL CAN YOU GO INTO. YOU UNDERSTAND THAT?

6 MR. SHUPPER: YES, SIR.

7 THE COURT: OKAY. SURE. OKAY.

8 (WHEREUPON, THE SIDE BAR CONFERENCE IS CONCLUDED)

9 MR. STRICKLER: EXCUSE ME, YOUR HONOR. I LEFT A PIECE
10 OF EVIDENCE OR A DOCUMENT UP WITH THE WITNESS.

11 THE COURT: OKAY. SURE.

12 MR. STRICKLER: THANK YOU, MA'AM.

13 THE COURT: OKAY. YES, SIR, MR. SHUPPER.

14 MR. SHUPPER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
15 COURT.

16 THE COURT: YES, SIR.

17 CROSS EXAMINATION BY MR. SHUPPER:

18 Q GOOD AFTERNOON, victim. YOU'VE TESTIFIED ABOUT THE
19 DETAILS OF THIS HORRIBLE EVENT, AND I'M NOT GOING TO BELABOR
20 ALL OF THE DETAILS OF WHAT MUST HAVE BEEN A VERY TERRORIZING
21 AND FRIGHTENING EXPERIENCE IN THE PARK THAT EVENING. I DO
22 HAVE SOME QUESTIONS FOR YOU REGARDING YOUR IDENTIFICATION OF
23 MR. JAMES, MR. ROBERT JAMES, MY CLIENT. IS IT CORRECT THAT
24 YOU DIDN'T HAVE ANY PRIOR KNOWLEDGE OF MR. JAMES? YOU HADN'T
25 MET HIM OR KNEW HIM BEFORE THIS INCIDENT?

1 A NO, SIR. I DO NOT KNOW THEM. I NEVER MET THEM BEFORE.

2 Q AND OF COURSE YOU'VE TESTIFIED AS TO THE LACK OF LIGHTING IN
3 THE AREA AND THAT THIS WAS A FRIGHTENING EVENT. WHEN YOU MET
4 WITH THE INVESTIGATORS TO MAKE THE -- TO REVIEW THE
5 PHOTOGRAPHS THAT THEY SHOWED YOU ON THE 18TH OF JUNE, --

6 A MM-HMM (AFFIRMATIVE).

7 Q -- HAD THEY NOT TRIED TO MEET WITH YOU EARLIER?

8 A YES, SIR.

9 Q AND WOULD IT HAVE BEEN ON THE 6TH OF JUNE?

10 A IT COULD HAVE BEEN, YES. I'M NOT SURE OF THE DATES.

11 Q YOU WEREN'T ABLE TO MEET WITH THEM THAT DAY?

12 A THAT'S CORRECT.

13 Q THE EARLIER DATE. WHAT WAS THE PROBLEM WITH MEETING WITH THE
14 INVESTIGATOR ON THAT DATE?

15 A IT WAS THE PROBLEM THAT I DID HAVE A JOB AND I HAD A LIFE
16 OUTSIDE OF HAVING TO RIDE AROUND TO THE POLICE DEPARTMENT.
17 SO I TOLD HIM AS SOON I WAS ABLE AND GOT A DAY OFF THAT I
18 WOULD COME DOWN WHEN I WAS ABLE. WHEN I WAS ABLE TO MEET
19 WITH THEM, I WENT DOWN AND I MET WITH THEM.

20 Q WHERE WERE YOU WORKING AT THAT TIME?

21 A I THINK, IF I WAS CORRECT, MCDONALD'S. I WAS ASSISTANT
22 MANAGER.

23 Q YOU WERE AN ASSISTANT MANAGER AT MCDONALD'S?

24 A MM-HMM (AFFIRMATIVE).

25 Q NOT ONLY AT THE TIME OF THE INCIDENT BUT A WEEK OR TEN DAYS

1 LATER OR ACTUALLY 20 DAYS LATER?

2 A THAT'S CORRECT. THAT'S CORRECT.

3 Q SO YOU HAD TO MAKE ARRANGEMENTS WITH YOUR WORK IN ORDER TO
4 MEET WITH THE INVESTIGATORS TO REVIEW THE LINE-UP?

5 A THAT'S BASICALLY -- I WENT WHEN I WAS OFF AND HAD THE TIME TO
6 DO IT.

7 Q OKAY. IS IT FAIR TO SAY WHEN YOU WORK AT MCDONALD'S YOU COME
8 INTO CONTACT WITH PEOPLE'S FACES ALL THE TIME THAT YOU DON'T
9 KNOW BUT SOMETIMES YOU MAY SEE SOMEBODY THAT STRIKES YOU AND
10 GET A RECOLLECTION OF THEM?

11 A NO. I WOULDN'T SAY THAT. BECAUSE I DON'T LOOK AT PEOPLE
12 LIKE THAT. I MEAN, IF YOU COME IN, I WORK IN THE CONVENIENCE
13 STORE NOW, I MAY REMEMBER YOU; I MAY NOT. YOU MAY WALK IN
14 RIGHT NOW AND I MAY REMEMBER YOUR FACE THE NEXT TIME YOU COME
15 BACK AND I MAY NOT. SO I WOULDN'T SAY THAT.

16 Q HAVE YOU EVER HAD AN EXPERIENCE WHERE YOU RUN INTO SOMEONE IN
17 A PARK OR A KROGER OR SOME PLACE AND YOU LOOK AT THEM, YOU'RE
18 STANDING IN LINE AT THE GROCERY STORE AND YOU SEE SOMEONE AND
19 THEY MAY STRIKE YOU AS FAMILIAR AND YOU CAN'T REMEMBER
20 EXACTLY WHERE BUT YOU MAY HAVE SEEN THEM BEFORE?

21 A NO. I TRY NOT TO STARE AT PEOPLE, SIR, UNLESS I REALLY HAVE
22 TO. BUT I DON'T MAKE IT A HABIT OF STANDING IN A GROCERY
23 LINE AND STARING AT HER OR WHATEVER. I DON'T DO THAT. I DO
24 MY JOB AND THAT'S IT.

25 Q Victim , I'M NOT ACCUSING YOU OF INVADING PRIVACY OR

1 STARING AT ANYONE. I'M JUST ASKING IF YOU'VE HAD ANY
2 EXPERIENCES WHERE YOU MAY HAVE SEEN SOMEONE AND SOMEHOW YOU
3 GET THAT THOUGHT, I'VE SEEN THIS PERSON BEFORE?

4 A NO. NOT UNLESS I HAVE SEEN THEM BEFORE. YES. IF IT'S
5 SOMEONE I KNOW, MAYBE. IF I'M NOT SURE OF THE NAME, MAYBE.
6 BUT JUST A STRANGER, NO.

7 Q WHERE HAD YOU WORKED BESIDES MCDONALD'S? I THINK YOU
8 MENTIONED MCDONALD'S AND WORKING IN THE CONVENIENCE STORE
9 NOW. WHAT OTHER KINDS OF EMPLOYMENT HAVE YOU HAD IN RECENT
10 YEARS?

11 A MOST OF MY JOBS HAVE BEEN IN MANAGEMENT. I HAVE BEEN A -- I
12 WORKED FOR THE SCHOOL DISTRICT FOR LIKE FIVE YEARS.

13 Q AND DID YOU WORK WITH OTHER FAST FOOD OR CONVENIENCE STORE OR
14 BUSINESSES WHERE YOU WOULD HAVE COME IN CONTACT WITH THE
15 PUBLIC?

16 A ANY OF MY JOBS PERTAINING AS FAR AS GETTING IN CONTACT WITH
17 THE PUBLIC, YES. I ALWAYS DEALT WITH THE PUBLIC.

18 Q OKAY. WOULD IT BE POSSIBLE THAT YOU COULD HAVE SEEN -- WHAT
19 OTHER JOB WITH THE PUBLIC BESIDES THE MCDONALD'S AND ---

20 A DIFFERENT STORES, SIR. I CANNOT SAY THE DIFFERENT STORES.

21 Q IT WAS OTHER STORES? COULD YOU NAME SOME?

22 A WAL-MART.

23 Q OKAY.

24 A CATO'S.

25 Q CATO'S?

1 A MM-HMM (AFFIRMATIVE). CLOTHING STORE.

2 Q OKAY. AND IN YOUR EXPERIENCES OF WORKING IN THESE OTHER
3 STORES, HAD YOU EVER MAYBE SEEN A CUSTOMER IN ONE STORE THAT
4 YOU KNEW FROM ANOTHER STORE LATER ON, LIKE A ---

5 A IF THEY WERE A REGULAR CUSTOMER, YES.

6 Q SO YOU MAY HAVE RECOGNIZED SOMEONE THAT WAS A CUSTOMER IN ONE
7 BUSINESS AND THEN SEEN THEM LATER AND RECALLED SEEING THEM AT
8 THAT TIME. IS THAT FAIR TO SAY?

9 A IF THEY MAKE IT KNOWN TO ME, YES. AND A LOT OF TIMES IF
10 YOU'RE WORKING IN STUFF LIKE THAT PEOPLE MAY SAY, WELL,
11 DIDN'T YOU USED TO WORK DOWN THE STREET? YES. NOT SAYING
12 THAT I ACTUALLY REMEMBERED THEM; BUT, YES, I USED TO WORK
13 THERE, AND THAT'S WHERE YOU REMEMBER THEM FROM.

14 Q OKAY. AND WHEN YOU MET WITH INVESTIGATOR THOMAS ON THE 18TH
15 OF JUNE, YOU REVIEWED THOSE PHOTOS. IS THAT CORRECT?

16 A MM-HMM (AFFIRMATIVE).

17 Q AND YOU TOOK YOUR TIME. AND YOU SELECTED WHICH PERSON?

18 A NUMBER 2.

19 Q OKAY. AND HOW LONG WAS THAT AFTER THIS INCIDENT THAT TOOK
20 PLACE IN THE DARK PARK?

21 A WHAT? TWO WEEKS.

22 Q WELL, IF IT WAS ON ---

23 A I'M NOT SURE. TWO WEEKS. I'M NOT SURE OF THE WEEKS. IT'S
24 BEEN -- IT HAD BEEN A COUPLE OF WEEKS.

25 Q WELL, IF IT WAS ON THE 18TH OF JUNE AND THIS TOOK -- THE

1 INCIDENT TOOK PLACE?

2 A THE 28TH.

3 Q YEAH. IT'S MORE LIKE THREE WEEKS, WOULDN'T IT?

4 A OKAY. THAT'S CORRECT.

5 Q HAVE YOU EVER WORKED FOR BOJANGLE'S?

6 A I DID WHILE I WAS IN SCHOOL. I WENT BACK TO SCHOOL FOR A
7 WHILE AND I WORKED THERE PART TIME.

8 Q AND WHEN YOU WORKED FOR BOJANGLE'S, DID YOU FILL OUT AN
9 EMPLOYMENT APPLICATION?

10 A OF COURSE.

11 Q AND ON YOUR EMPLOYMENT APPLICATION, DID YOU LIST YOUR PRIOR
12 EMPLOYMENT?

13 A I'M PRETTY SURE I DID.

14 Q AND DID YOU MENTION THAT YOU HAD WORKED AT MCDONALD'S ON THAT
15 EMPLOYMENT APPLICATION?

16 A I LEFT THERE, IF I'M NOT MISTAKEN, AND EVENTUALLY WENT TO --
17 NO. I DID NOT LEAVE THERE AND GO TO MCDONALD'S. I DON'T
18 REMEMBER HOW I -- I WAS IN SCHOOL AT THAT TIME. I WENT BACK
19 TO SCHOOL TO FURTHER MY EDUCATION, AND I WORKED THERE PART
20 TIME.

21 Q WHEN DID YOU WORK AT BOJANGLE'S?

22 A IT'S BEEN --

23 MS. FRYAR: YOUR HONOR, I OBJECT.

24 THE COURT: YES, MA'AM.

25 MS. FRYAR: TO THE RELEVANCE.

1 THE COURT: WHAT'S THE OBJECTION? I DON'T KNOW IF IT IS
2 OR IS NOT AT THIS POINT IN TIME.

3 MS. FRYAR: ALL RIGHT, SIR.

4 THE COURT: BUT I APPRECIATE IT. MR. SHUPPER, IF THIS
5 IS GERMANE TO SOME ISSUE IN THE CASE, PLEASE GET TO THE
6 POINT.

7 Q (BY MR. SHUPPER) ALL RIGHT. WOULD IT BE -- IF YOU HAD FILLED
8 OUT AN APPLICATION ON THE 10TH OF SEPTEMBER OF 1997 FOR
9 BOJANGLE'S, WOULD YOU RECOGNIZE IT?

10 A I PROBABLY WOULD HAVE BECAUSE IT'S MY HANDWRITING.

11 MS. FRYAR: YOUR HONOR, I HAVE AN OBJECTION AS TO
12 RELEVANCY.

13 THE COURT: SURE. WHY DON'T WE SEND THE JURY OUT.
14 FOLKS, THE MORE DISCERNING AMONG YOU BY NOW HAVE FIGURED OUT
15 THAT THE REASON I SEND YOU OUT SO OFTEN IS BECAUSE THE CHIEF
16 JUSTICE'S PHYSICAL FITNESS PROGRAM REQUIRES THAT I GIVE YOU
17 SIX SPRINTS ACROSS THE HALL EACH DAY. AND THAT'S WHY WE'RE
18 DOING IT, NO OTHER REASON. GO TO THE JURY ROOM. DON'T
19 DISCUSS THE CASE AMONG YOURSELVES. WE'LL BE WITH YOU
20 SHORTLY. THANK YOU.

21 (JURY OUT AT 12:44 P.M.)

22 THE COURT: OKAY. I HAVE TO CONFESS HERE, MR. SHUPPER,
23 THAT I WAS HAVING DIFFICULTY DETERMINING WHERE THIS WAS
24 GOING. I'M ASSUMING THAT YOU'RE TRYING TO IMPEACH HER IN
25 SOME WAY BY SAYING THAT ON A WAL-MART APPLICATION THAT SHE

1 FAILED TO DISCLOSE SOMETHING. AND I DON'T KNOW WHAT IT IS.

2 TELL US WHAT IT IS YOU'RE SEEKING TO ELICIT.

3 MR. SHUPPER: YOUR HONOR, I HAVE A CERTIFIED COPY OF HER
4 EMPLOYMENT APPLICATION FOR BOJANGLE'S WHERE SHE LISTED HER
5 EMPLOYMENT WITH MCDONALD'S FROM FEBRUARY '95 UNTIL MARCH OF
6 '96. SHE'S TESTIFIED -- AND HER CREDIBILITY AND HER ABILITY
7 TO RECALL IS ESSENTIAL IN THIS CASE. AND SHE'S TESTIFIED
8 THAT SHE WAS WORKING AT MCDONALD'S AT THE TIME OF THE
9 INCIDENT AND SHE COULDN'T MEET WITH THE INVESTIGATORS ON THE
10 6TH BECAUSE SHE WAS WORKING, HAD PROBLEMS WITH HER
11 EMPLOYMENT. AND THIS SHOWS THAT SHE DIDN'T. THERE'S A
12 VERIFICATION ON THE APPLICATION ---

13 THE COURT: OKAY, OKAY, OKAY.

14 MR. SHUPPER: --- APPLICATION THING.

15 THE COURT: ALL RIGHT. MS. FRYAR?

16 MS. FRYAR: MR. GASSER WANTS TO HANDLE THIS, YOUR HONOR.

17 MR. GASSER: I GUESS THIS IS THE FIRST OF MANY OR
18 POSSIBLY MANY, I DON'T KNOW. BUT I STILL DON'T SEE WHAT THE
19 RELEVANCY IS AS TO, THEY'RE CLAIMING -- BOTH -- I DIDN'T USE
20 THIS WORD. BOTH DEFENSE LAWYERS USED THE WORD "TERRORIZED".
21 THAT WAS THEIR WORD. I AGREE THAT THEY CAN CROSS EXAMINE
22 HER. THEY SHOULD BE ALLOWED TO CROSS EXAMINE HER AS TO HER
23 ABILITY TO RECALL HER MEMORY.

24 THE COURT: SURE.

25 MR. GASSER: BUT I DON'T SEE A WORK APPLICATION HAS

1 ANYTHING TO DO WITH ---

2 THE COURT: HERE'S WHAT IT HAS TO DO WITH IT. THIS IS A
3 STRATEGIC CALL. I DON'T MAKE STRATEGIC CALLS FOR LAWYERS.
4 WHAT HE'S SAYING IS THAT THE WITNESS HAS INDICATED THAT SHE
5 COULD NOT MEET WITH INVESTIGATORS ON A CERTAIN DATE BECAUSE
6 OF A CONFLICT WITH HER EMPLOYMENT OR THAT SHE WAS EMPLOYED AT
7 MCDONALD'S ON THAT DATE. HE HAS EVIDENCE TO INDICATE -- THAT
8 INDICATES THAT SHE WAS NOT EMPLOYED AT MCDONALD'S ON THAT
9 DATE. SO HE'S TESTING HER RECALL, HER ABILITY TO RECALL,
10 REMEMBER THINGS. AND, YOU KNOW, I DON'T KNOW THAT IT'S A BIG
11 SCORE, BUT IT'S SOMETHING THAT HE CAN DO. AND I DON'T KNOW
12 WHY HE CAN'T DO IT, YOU SEE.

13 MR. GASSER: CONSIDERING I FILED A RECIPROCAL RULE 5, I
14 WAS WONDERING IF THERE'S ANY OTHER MATERIALS THAT HE INTENDS
15 ON USING.

16 THE COURT: I DON'T KNOW. I MEAN, ASK HIM.

17 MR. SHUPPER: THIS IS FOR IMPEACHMENT PURPOSES, YOUR
18 HONOR. AND I DID ---

19 THE COURT: WELL, YOU KNOW, YOU CAN SHOW HER THESE ITEMS
20 AND ASK HER IF, YOU KNOW, SHE'S INDICATED -- USE THEM
21 APPROPRIATELY IS ALL I'M GOING TO SAY.

22 MR. SHUPPER: YOUR HONOR, I'M JUST GOING TO SAY THAT --
23 I WOULD JUST ASK HER IF I COULD SHOW HER THE DOCUMENT AND ASK
24 HER IF SHE WAS MISTAKEN.

25 THE COURT: OKAY.

1 MR. SHUPPER: AND IF THE DOCUMENT HAS A VERIFICATION
2 THAT EVERYTHING IS TRUE AND THAT SHE WAS MISTAKEN ABOUT THAT,
3 IF THE COURT WOULD PERMIT THAT.

4 THE COURT: MR. SHUPPER, ALL I CAN TELL YOU IS THAT I
5 WILL ALLOW YOU TO ASK QUESTIONS THAT RELATE TO THE WITNESS'S
6 ABILITY TO RECALL AND TO TEST HER MEMORY AND RECOLLECTION OF
7 EVENTS. AND ALL I CAN TELL YOU IS I'LL ALLOW TO YOU USE
8 THEM, BUT ONLY APPROPRIATELY. IF YOU GET INTO USING THEM
9 INAPPROPRIATELY, THEN I'LL CALL YOU DOWN UPON A PROPER
10 OBJECTION. BUT I DON'T WANT TO SIT HERE IN FRONT OF THE
11 WITNESS PARTICULARLY AND TELL HOW TO UTILIZE THEM BECAUSE I
12 THINK IT'S UNFAIR TO YOU AND TO THE WITNESS IN THAT REGARD.
13 SO, OKAY? OKAY. AND WE'RE PROBABLY NOT GOING TO FINISH THE
14 EXAMINATION OF *victim* BEFORE LUNCH I DON'T THINK. SO WHY
15 DON'T YOU BRING THE JURY BACK, GO UNTIL ABOUT 1:00. THEN
16 WE'LL INTERRUPT IT AND GO TO LUNCH. OKAY?

17 MR. SHUPPER: YOUR HONOR, I DON'T BELIEVE I WOULD HAVE
18 MUCH MORE.

19 THE COURT: OKAY.

20 MR. SHUPPER: IF I MIGHT HAVE A MOMENT.

21 THE COURT: YEAH. BUT, SEE, MS. FRYAR MIGHT HAVE SOME
22 MORE OR MR. STRICKLER MIGHT HAVE SOME MORE.

23 MS. FRYAR: WE MAY BE ABLE TO ACTUALLY GET FINISHED WITH
24 THIS WITNESS BEFORE LUNCH.

25 THE COURT: WE PROBABLY WILL BE, ASSUMING WE CAN GET OUT

1 OF THIS PARTICULAR MODE THAT WE'RE IN RIGHT NOW. AND, MR.
2 BARROW, WOULD YOU STRAIGHTEN JUDGE GRIMBALL'S PICTURE A BIT?
3 IT'S DRIVING ME NUTS. THE PICTURE. CAN YOU -- THAT'S OKAY.
4 DON'T WORRY ABOUT IT. I'LL GET IT LATER. THANK YOU, MR.
5 BARROW.

6 THE BAILIFF: OKAY.

7 THE COURT: OKAY. WHEN YOU GET A CHANCE.

8 THE BAILIFF: NOW I UNDERSTAND.

9 THE COURT: OKAY. ARE WE READY?

10 MR. SHUPPER: YES, SIR, YOUR HONOR.

11 THE COURT: OKAY. ASK THE JURY TO COME IN, PLEASE, SIR.

12 (JURY IN AT 12:48 P.M.)

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

14 THE COURT: THANKS, MR. BARROW. THANKS, MR. HOLLIS.

15 AND THANK YOU, FOLKS, FOR YOU'RE INDULGENCE WITH ME. WE'RE
16 READY TO CONTINUE. PLEASE, IF YOU WOULD, PLEASE, MR.
17 SHUPPER.

18 CROSS EXAMINATION RESUMED BY MR. SHUPPER:

19 Q victim .

20 A MM-HMM (AFFIRMATIVE).

21 Q DO YOU RECALL FILLING OUT AN APPLICATION FOR BOJANGLE'S?

22 A YES, SIR.

23 Q IF I MIGHT SHOW IT TO YOU TO REFRESH YOUR ---

24 THE COURT: HOW ABOUT THIS? IF YOU'RE TESTING HER
25 RECOLLECTION -- AND I'M SORRY I DIDN'T CLARIFY THIS WHILE WE

1 WERE OUT. SHOW HER THIS DOCUMENT, ASK HER THE PREVIOUS
2 QUESTION, AND ASK HER IF THAT REFRESHES HER RECOLLECTION AS
3 IT RELATES TO THE QUESTION THAT YOU'RE SEEKING. OKAY. WE'LL
4 DO IT THAT WAY.

5 A YES, SIR.

6 Q DOES THAT REFRESH YOUR RECOLLECTION?

7 A MM-HMM (AFFIRMATIVE).

8 Q AND ON THAT DOCUMENT, THAT BEARS YOUR SIGNATURE?

9 A YES, SIR.

10 Q AND THE DATE I THINK IS SEPTEMBER OF 1997?

11 A YES, SIR.

12 Q AND IT LISTS YOUR PRIOR EMPLOYMENT?

13 A MM-HMM (AFFIRMATIVE).

14 Q AND AS FAR AS MCDONALD'S, COULD YOU TELL ME WHAT THE DATES OF
15 YOUR EMPLOYMENT WERE?

16 A WELL, SIR, I ACTUALLY WAS EMPLOYED AT THE MCDONALD'S ON
17 ASSEMBLY STREET UP UNTIL 3 OF '96. THEY OPENED A NEW STORE
18 OUT ON FOREST DRIVE AND I DID GO IN TO HELP THEM OPEN THAT
19 STORE. I DID NOT LIST THAT. THAT'S WHY IN MY TESTIMONY I
20 WAS SAYING THAT I WAS STILL AT MCDONALD'S. I WENT IN TO HELP
21 THEM OPEN THAT STORE, AND I MANAGED THAT STORE FOR A COUPLE
22 OF MONTHS JUST TO GET STARTED. AND I DID LEAVE. BUT I DID
23 NOT LEAVE THE EMPLOYMENT AS FAR AS ON FOREST DRIVE WITH
24 MCDONALD'S.

25 Q AT ---

1 A THIS IS WHERE I SPENT THE MOST OF MY TIME, IS TO THE ONE ON
2 ASSEMBLY STREET.

3 Q AND AT THE BOTTOM OF THAT APPLICATION, IS THERE NOT A
4 VERIFICATION?

5 A WHAT TYPE OF VERIFICATION?

6 Q THE PARAGRAPH WHERE IT -- ABOVE WHERE YOU SIGNED. COULD YOU
7 READ WHAT THAT SAYS?

8 A SAYING THAT THEY CAN VERIFY MY EMPLOYMENT; YES, SIR.

9 Q WELL, MAY I SEE THE DOCUMENT, PLEASE?

10 MR. SHUPPER: AT THIS TIME I'D LIKE TO MARK THIS FOR
11 IDENTIFICATION, YOUR HONOR.

12 THE COURT: YOU CAN MARK IT FOR IDENTIFICATION, BUT
13 THAT'S ALL. OKAY. THANK YOU.

14 (DEFENDANT ROBERT JAMES'S EXHIBIT NO. 4, EMPLOYMENT
15 APPLICATION, MARKED FOR IDENTIFICATION ONLY)

16 Q (BY MR. SHUPPER) OKAY. COULD YOU READ JUST THE BIGGER PRINT
17 HERE AND THEN THAT FIRST SENTENCE?

18 A WHAT DO YOU -- "PLEASE READ THE FOLLOWING BEFORE SIGNING THIS
19 APPLICATION."

20 Q AND THE NEXT SENTENCE, PLEASE?

21 A "I VERIFY THAT THE INFORMATION PROVIDED ON THIS APPLICATION
22 IS TRUE AND COMPLETE."

23 Q OKAY.

24 A "AND ACCURATE."

25 Q IN FACT, THE INFORMATION ON THERE IS NOT TRUE AND ACCURATE,

1 IS IT?

2 A IT'S TRUE.

3 Q WELL, IF IT SAYS THAT YOU WORKED AT MCDONALD'S UNTIL MARCH OF
4 '96 ---

5 A I LEFT AND THEY ASKED ME TO COME BACK AND TO HELP THEM OPEN
6 UP A STORE. I DID LEAVE MCDONALD'S IN MARCH. THEN I WAS
7 ASKED TO COME BACK TO HELP OPEN THE STORE UP. I REALLY DID
8 NOT STAY LONG. IF YOU HAVE TO SAY THAT I WAS EMPLOYED BY
9 THEM AGAIN, I ONLY WENT IN I WOULD SAY A MONTH, HELPED THEM
10 GOT THE STORE OPENED AND RAN THE STORE. I DID NOT ADD THIS
11 INTO MY EMPLOYMENT APPLICATION AT THAT TIME BECAUSE IT WAS
12 ONLY FOR LIKE A MONTH.

13 Q OKAY. BUT YOU ---

14 THE COURT: YOU CAN MOVE ON TO SOMETHING ELSE NOW,
15 PLEASE.

16 MR. SHUPPER: THAT'S ALL I HAVE. AT THIS TIME I'D LIKE
17 TO MOVE IT INTO EVIDENCE.

18 MS. FRYAR: NO OBJECTION, YOUR HONOR.

19 THE COURT: AND YOU WOULD OBJECT. AND THE GROUNDS OF
20 THE OBJECTION BEING APPARENTLY -- THE OBJECTION IS SUSTAINED.

21 MR. SHUPPER: SHE SAID NO OBJECTION, YOUR HONOR.

22 THE COURT: YOU DON'T HAVE AN OBJECTION? OKAY. WITHOUT
23 OBJECTION THEN. IT'S IN. OKAY.

24 (DEFENDANT ROBERT JAMES'S EXHIBIT NO. 4, EMPLOYMENT
25 APPLICATION, RECEIVED IN EVIDENCE)

1 THE COURT: MS. WILLIAMS, YOU CAN MARK THE I.D. OFF.

2 OKAY?

3 COURT REPORTER: YES, SIR.

4 MR. SHUPPER: victim, I HAVE NO FURTHER QUESTIONS.

5 THE COURT: MS. FRYAR, ANY REDIRECT, MA'AM?

6 MS. FRYAR: JUST VERY BRIEF, YOUR HONOR.

7 REDIRECT EXAMINATION BY MS. FRYAR:

8 Q victim, IF YOU COULD, WHEN YOU GAVE YOUR STATEMENT TO
9 INVESTIGATOR THOMAS AT THE POLICE DEPARTMENT, DID YOU KNOW
10 THAT ONE OF THE PEOPLE WHO ATTACKED YOU THAT NIGHT WAS NAMED
11 KENNETH JAMES?

12 A I KNEW NO NAMES. ACTUALLY I DID NOT EVEN KNOW THAT THEY EVEN
13 HAD SUSPECTS. THE ONLY THING I WAS ASKED TO DO WAS LOOK AT
14 PICTURES. I DIDN'T KNOW THAT THEY HAD SUSPECTS IN THE CASE
15 OR ANYTHING. I KNEW NOBODY'S NAME. I KNEW NOTHING.

16 Q OKAY.

17 A ALL I WAS ASKED TO DO WAS TO COME IN, GIVE A STATEMENT AND
18 LOOK AT SOME PHOTOGRAPHS.

19 Q AND WHEN YOU LOOKED AT THE PHOTOS, DID THEY HAVE NAMES AT THE
20 BOTTOM OF THE -- NAMES, ANYBODY'S NAME ANYWHERE ON THIS PHOTO
21 LINE-UP?

22 A NO, SIR.

23 MR. STRICKLER: COMPOUND QUESTION.

24 THE COURT: EXCUSE ME A SECOND. IT IS A COMPOUND
25 QUESTION. ASK ONE.

1 MS. FRYAR: YES, SIR.

2 A NO, MA'AM.

3 Q (BY MS. FRYAR) WAS THERE ANYBODY'S NAME ANYWHERE ON HERE, ON
4 THIS PHOTOGRAPHIC SPREAD THAT YOU SAW?

5 A NO, MA'AM.

6 Q OF KENNETH JAMES?

7 A NO, SIR.

8 Q WAS THERE ONE IN JUNE WHEN YOU SAW IT ON ROBERT JAMES?

9 A NO, SIR. NO, MA'AM. I ONLY LEARNED NAMES AFTER IT GOT TO
10 THIS POINT. I KNEW NO ONE'S NAMES.

11 Q DID YOU KNOW THEY WERE BROTHERS?

12 A NO.

13 MS. FRYAR: I DON'T HAVE ANY FURTHER QUESTIONS.

14 THE COURT: OKAY. THANK YOU. YOU CAN STEP DOWN,
15 PLEASE, MA'AM. OKAY. FOLKS, AT THIS POINT IN TIME IT WOULD
16 SEEM TO BE AN APPROPRIATE TIME FOR US TO TAKE A BREAK FOR
17 LUNCH. I'M GOING TO ASK YOU TO PLEASE GO TO LUNCH AT THIS
18 TIME AND THEREAFTER REPORT BACK TO THE JURY ROOM AT 2:30.
19 WHEN YOU COME BACK AT 2:30, WE'LL BEGIN PROMPTLY AT THAT TIME
20 AND RESUME THE CASE. BUT PLEASE DON'T DISCUSS THE CASE AMONG
21 YOURSELVES NOR WITH ANYONE ELSE DURING THAT PERIOD. THANK
22 YOU.

23 (JURY OUT AT 12:55 P.M.)

24 THE COURT: I WANT THE LAWYERS, YOU ALL STAY HERE FOR
25 JUST A SECOND. THIS IS A BIT PREMATURE OBVIOUSLY BECAUSE WE

1 HAVEN'T EVEN GOTTEN TO THE POINT OF CONSIDERING MOTIONS FOR
2 DIRECTED VERDICTS AND THAT SORT OF THING. BUT WHAT I WAS
3 THINKING ABOUT DOING, I WANTED YOU ALL TO BE THINKING ABOUT,
4 IS, WHEN AND THIS IF THIS CASE GETS SUBMITTED TO THE JURY,
5 THAT I WAS THINKING ABOUT GIVING THE NUMBER OF CHARGES
6 AGAINST THEM, SUBMITTING TO THE JURY IN WRITING CERTAIN
7 CHARGES RELATING TO THE ELEMENTS OF EACH OF THESE OFFENSES:
8 THE ELEMENTS OF ARMED ROBBERY, THE ELEMENTS OF KIDNAPPING,
9 THE ELEMENTS OF THE OTHER ALLEGED CRIMES, SO AS TO AVOID ANY
10 KIND OF CONFUSION ON THEIR PART. I WANT YOU ALL TO BE -- I
11 DON'T WANT ANY COMMENTS NOW, BUT JUST BE CONSIDERING THAT.
12 AND, CLEARLY, I WOULD SHOW YOU THE PROPOSED WRITING BEFORE WE
13 DID THAT TO HEAR IF THERE WERE ANY OBJECTIONS TO THAT
14 PROCEDURE. OKAY?

15 MR. GASSER: YOUR HONOR, ONE POINT TO ADDRESS TO THE
16 COURT. I WANTED TO APOLOGIZE FOR EARLIER ON. I MEANT NO
17 DISRESPECT TO THE PROVINCE OF THE JURY AND THIS COURT. I
18 KNOW I HAVE AND I'VE SEEN --

19 THE COURT: MR. GASSER, I HAVE NEVER TAKEN ANYTHING YOU
20 HAVE SAID TO ME AS DISRESPECTFUL, ONLY ZEALOUS. OKAY?

21 MR. GASSER: I'M TALKING ABOUT WHEN I WAS GOING TO SHOW
22 THE JURORS AND WALK AROUND --

23 THE COURT: OH.

24 MR. GASSER: I'VE DONE THAT, AND I KNOW MANY
25 PROSECUTORS, MR. STRICKLER, MANY DEFENSE LAWYERS HAVE DONE

1 THAT ON PHOTOGRAPHS FOR THE LAST 12 YEARS. IF I WOULD HAVE
2 THOUGHT THAT THERE WAS SOME PROBLEM WITH THAT, I NEVER WOULD
3 HAVE DONE THAT IN YOUR COURTROOM. I APOLOGIZE.

4 THE COURT: THIS IS ARGUABLY A -- IT DIDN'T BOTHER ME.
5 BUT IN THE FACE OF AN OBJECTION, SINCE THERE'S ARGUABLY A
6 RULE THAT WOULD PRECLUDE THAT, I SUSTAINED THE OBJECTION.
7 OKAY. ANYTHING ELSE?

8 MR. SHUPPER: NO, YOUR HONOR. YOU WERE STANDING. I WAS
9 JUST STANDING.

10 THE COURT: YEAH. OKAY. SEE YOU ALL AT 2:30.

11 (WHEREUPON, A LUNCH BREAK IS TAKEN)

12 (COURT'S EXHIBIT NOS. 23 THROUGH 27, MOTIONS ON BEHALF OF
13 ROBERT JAMES, MARKED FOR IDENTIFICATION ONLY)

14 THE COURT: OKAY. WHAT HAVE WE GOT?

15 MR. STRICKLER: IF I COULD QUICKLY, YOUR HONOR.

16 THE COURT: WHAT CAN YOU DO QUICKLY, MR. STRICKLER?

17 MR. STRICKLER: I'M GOING TO ATTEMPT TO SHOW YOU, SIR,
18 IF I COULD. MR. SNEED FILED A SERIES OF MOTIONS WITH YOUR
19 HONOR ON PRETRIAL MATTERS. I WOULD JUST LIKE THE RECORD TO
20 REFLECT --

21 THE COURT: I VAGUELY REMEMBER THAT.

22 MR. STRICKLER: YES, SIR. I'M SURE YOU DO. I'D JUST
23 LIKE THE RECORD TO REFLECT THAT THEY'VE BEEN MARKED. COURT'S
24 EXHIBIT 13 IS A LISTING OF MOTIONS CONCERNING THE SEARCH
25 WARRANT.

1 THE COURT: I BELIEVE THAT SAYS PARTIAL LISTING.

2 MR. STRICKLER: PARTIAL LISTING. IT SAYS LISTING
3 ACTUALLY. BUT I WOULD STIPULATE THAT IT'S UNDOUBTEDLY A
4 PARTIAL LISTING OF THOSE WE DISCUSSED. 9, YOUR HONOR, IS
5 DEFENDANT'S MOTION TO QUASH INDICTMENT AND DISMISS DUE -- IT
6 CHARGES THE STATE'S FAILURE TO TIMELY ACT ON THE ARREST
7 WARRANT. I'D JUST LIKE THE RECORD TO REFLECT THAT YOUR HONOR
8 WAS SUPPLIED THAT AND CONSIDERED THE ARGUMENTS IN THAT DURING
9 THE COURSE OF YOUR DISCUSSION WITH MR. SNEED.

10 THE COURT: SURE ENOUGH.

11 MR. STRICKLER: THANK YOU, SIR. 7 IS DEFENDANT'S MOTION
12 TO PRESENT EVIDENCE OF THE ALLEGED VICTIM'S PRIOR RAPE CLAIM
13 AND DRUG ABUSE. I'D LIKE THE RECORD TO REFLECT THAT YOUR
14 HONOR WAS SUPPLIED THAT MOTION AND CONSIDERED THAT DURING THE
15 COURSE OF YOUR DISCUSSIONS WITH MR. SNEED IN THAT REGARD.

16 THE COURT: MM-HMM (AFFIRMATIVE).

17 MR. STRICKLER: 14 IS DEFENDANT'S MEMORANDUM OF LAW TO
18 SUPPRESS EVIDENCE SEIZED PURSUANT TO DEFECTIVE SEARCH
19 WARRANT. AGAIN, I'D JUST LIKE THE RECORD TO REFLECT THAT
20 YOUR HONOR CONSIDERED ---

21 THE COURT: ALL OF THAT IS TRUE. AND THE ONLY THING I
22 HAVEN'T RULED ON IS THE -- ON THE SEARCH WARRANT IS THE
23 BULLETS AND THE CLEANING KIT.

24 MR. STRICKLER: YES, SIR. AND, LASTLY, YOUR HONOR, 15
25 IS DEFENDANT'S MEMORANDUM OF LAW TO SUPPRESS EVIDENCE BECAUSE

1 THE AUTHORIZING SEARCH WARRANT WAS VIOLATIVE OF THE
2 SEPARATION OF POWERS. AND I'D JUST LIKE THE RECORD TO
3 REFLECT THAT ALL THOSE WERE CONSIDERED BY YOUR HONOR. AND,
4 THANK YOU, YOUR HONOR. THAT'S ALL I HAVE.

5 THE COURT: OKAY. MR. SHUPPER.

6 MR. SHUPPER: YOUR HONOR I HAVE A SIMILAR HOUSEKEEPING
7 MATTER.

8 THE COURT: AND IT WOULD BE WHAT? OKAY.

9 MR. SHUPPER: THAT I HAVE PRESENTED TO THE COURT
10 REPORTER COPIES OF THE MOTIONS THAT I MADE PREVIOUSLY.

11 THE COURT: AND THEY WOULD BE -- JUST GIVE ME THE
12 EXHIBIT NO. AND YOU NEED NOT TELL ME WHAT THEY ARE BECAUSE
13 THEY SPEAK FOR THEMSELVES ON THE RECORD.

14 MR. SNEED: COURT'S NO. 23, COURT'S NO. 24, COURT'S
15 EXHIBIT NO. 25, COURT'S EXHIBIT NO. 26, AND COURT'S EXHIBIT
16 NO. 27.

17 THE COURT: OKAY. THANK YOU. AND THOSE HAVE ALL BEEN
18 DEALT WITH AND RULED UPON.

19 MR. SHUPPER: YES, YOUR HONOR. COURT'S NO. 27 WAS A
20 MOTION TO --

21 COURT REPORTER: SHH. QUIET, PLEASE.

22 THE COURT: YEAH. YOU ALL KEEP QUIET, PLEASE.

23 MR. SHUPPER: MOTION RELATED TO THE BOND HEARING. AND
24 IT HAD SOME DATA ON THE DEFENDANT'S -- I MEAN, MR. BULL'S
25 PRIOR RECORD AND WAS RELATED TO THE OTHER MOTION PRESENTED.

1 THERE WAS SOME DISCUSSION ON THAT MATTER, YOUR HONOR.

2 THE COURT: OKAY. GREAT. THANK YOU.

3 MR. SHUPPER: THANK YOU, YOUR HONOR.

4 THE COURT: ALL RIGHT. AND HOW MUCH LONGER IS THIS
5 TRIAL GOING TO GO ON? ANYBODY GOT ANY IDEA? I MEAN, ARE WE
6 GOING INTO NEXT WEEK? BECAUSE I REALLY THINK I NEED TO TELL
7 THESE JURORS.

8 MR. GASSER: I THINK WE'LL BE ABLE TO -- THE TWO LONGEST
9 LAY WITNESSES HAVE TESTIFIED. AND I THINK WE'RE GOING TO
10 MAKE SUBSTANTIAL GAIN HERE THIS AFTERNOON. I SEE NO REASON
11 WHY WE COULDN'T BE ABLE TO REST BY 5:30 TOMORROW NIGHT.

12 THE COURT: TOMORROW?

13 MR. GASSER: THURSDAY.

14 THE COURT: OKAY. HMM. OKAY.

15 MR. GASSER: AND I'M NOT SURE WHAT THE DEFENSE HAS. I
16 KNOW THEY HAVE ONE I.D. EXPERT. MR. SHUPPER. BUT I'M NOT
17 SURE WHAT OF ANY LENGTH OF WITNESSES. I ANTICIPATED POSSIBLY
18 —

19 THE COURT: YEAH. WELL, MY GUESS IS WE WILL BE HERE --
20 CERTAINLY WE AIN'T GOING TO BE HERE SATURDAY, BUT WE'RE GOING
21 TO BE HERE NEXT WEEK. THAT'S WHAT IT SOUNDS LIKE TO ME SO
22 FAR.

23 MR. GASSER: SO THAT THE COURT KNOWS, WE'RE NOT SENDING
24 THE JURY BACK AND FORTH, WE HAVE -- THE WITNESSES THAT WE
25 HAVE, WE HAVE ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN -- WE

1 HAVE EIGHT WITNESSES THAT ARE HERE TO TESTIFY THIS AFTERNOON.
2 SO THERE'S GOING TO BE NO DOWN TIME AS FAR AS THAT'S
3 CONCERNED.

4 THE COURT: OKAY. GREAT.

5 MR. GASSER: THE NEXT WITNESS WE INTEND ON CALLING WOULD
6 BE CHARLES MURRAY.

7 THE COURT: OKAY. AND I NEED TO RULE ON MR. MURRAY'S
8 TESTIMONY, WHETHER OR NOT HE CAN TESTIFY. AND I BELIEVE THAT
9 I HAD INDICATED TO YOU ALL THAT I WAS LEANING TOWARD ALLOWING
10 MR. MURRAY TO TESTIFY. AND OF COURSE I THINK THE REMEDY FOR
11 ANY DEFECTS IN HIS TESTIMONY, I AM NOT PREPARED TO SAY AS A
12 MATTER OF LAW THAT HIS TESTIMONY SHOULD BE PRECLUDED, AND
13 THAT THE REMEDY FOR ANY INCONSISTENCIES OR DISCREPANCIES IN
14 HIS TESTIMONY IS OF COURSE VIGOROUS CROSS EXAMINATION. SO
15 CALL HIM. OKAY.

16 MR. GASSER: IN THAT REGARD, WITH MR. MURRAY, AS THE
17 COURT KNOWS, SOMETIMES YOU -- YOU KNOW, YOU CAN ONLY CALL ONE
18 WITNESS AT A TIME. AND SO SOMETIMES I'VE GOT TO MARK
19 EXHIBITS FOR IDENTIFICATION PURPOSES AND HAVE WITNESSES
20 TESTIFY TO SOMETHING AND HAVE OTHER WITNESSES COMING IN AND
21 MAKE SURE THAT THE OBJECT OR THE ITEM HAS BEEN VERIFIED AS
22 TRUE AND ACCURATE OR ELSE DEFENSE IS GRANTED A MISTRIAL.

23 IN THAT REGARD I WANTED TO MARK THREE PHOTOGRAPHS FROM
24 THE VIDEOTAPE. DEFENSE HAS ALL SEEN THE AMOCO VIDEOTAPE.
25 THESE ARE JUST -- THE VIDEOTAPE KEEPS GOING, AND WE HAVE THE

1 CAPABILITY OF READING IT AT SLED AND THEN TAKING PHOTOGRAPHS
2 AND BLOWING UP A SECTION OF THAT PHOTOGRAPH. AND I WAS GOING
3 TO MARK THOSE FOR IDENTIFICATION PURPOSES BECAUSE SEVERAL
4 WITNESSES -- I WAS GOING TO USE THIS WITH SEVERAL WITNESSES
5 TODAY.

6 AND I HAVE THIS AFTERNOON THE MANAGER OF THE AMOCO STORE
7 THAT TOOK POSSESSION OF THE AMOCO TAPE OR OF THE TAPE AND HAS
8 VIEWED IT, VIEWED AND IT AND CAN TESTIFY THAT IT'S IN THE
9 SAME CONDITION AS IT WAS WHEN HE GAVE IT TO THE POLICE. OF
10 COURSE INVESTIGATOR TOMMY THOMAS IS ONE OF THE LAST WITNESSES
11 WHO WILL SAY HE'S HAD OPPORTUNITY TO VIEW IT BEFORE COMING
12 INTO COURT AND IT'S IN THE SAME EXACT CONDITION AS IT WAS
13 WHEN HE RECEIVED IT.

14 AND THAT'S WHY I PUT INVESTIGATOR WILLIAM WESLEY OF THE
15 SOLICITOR'S OFFICE -- HE WAS THERE AT SLED WHEN THEY WERE
16 BLOWN UP HERE A WEEK OR TWO AGO. AND HE'D BE ABLE TO TESTIFY
17 THAT HE WAS PRESENT WHEN THAT WAS DONE.

18 SO AS AN OFFICER OF THE COURT, I'M TELLING YOU I HAVE
19 ALL OF THE WITNESSES AND THEN SOME TO VERIFY WHAT THESE ARE
20 AND THAT NOTHING WAS DONE TO THEM. BUT I CAN'T CALL THEM ALL
21 AT THE SAME TIME. SO, I DON'T KNOW HOW WE WANT TO HANDLE
22 THAT.

23 THE COURT: WELL, I DON'T EITHER.

24 MR. GASSER: I INTEND ON CALLING MR. MURRAY, SHOWING HIM
25 THESE PHOTOGRAPHS AND ASKING HIM IF HE RECOGNIZES ANYONE IN

1 THE PHOTOGRAPHS.

2 THE COURT: WELL, WE'LL JUST SEE WHAT HAPPENS. YOU
3 KNOW, I DON'T KNOW HOW THESE GUYS, WHAT THEY'RE GOING TO DO,
4 IF THEY'RE GOING TO OBJECT. IF YOU DON'T HAVE THEM
5 INTRODUCED INTO EVIDENCE, THEN THEY SIMPLY CAN'T BE SHOWN TO
6 THE JURY. BUT I DON'T KNOW THAT THEY CAN'T BE UTILIZED FOR
7 OTHER PURPOSES.

8 MR. GASSER: THANK YOU, YOUR HONOR. DO YOU WANT ME TO
9 MARK THEM FOR I.D. IN FRONT OF THE JURY, OR CAN I DO THAT
10 NOW?

11 THE COURT: I THINK YOU'D BETTER GO AHEAD AND DO IT NOW.
12 LET'S GET IT DONE, GET IT OUT OF THE WAY.

13 (STATE'S EXHIBIT NOS. 27 THROUGH 29, VIDEO PHOTOGRAPHS,
14 MARKED FOR IDENTIFICATION ONLY)

15 THE COURT: OKAY. ANYTHING ELSE BEFORE WE ---

16 MR. GASSER: THE ONLY OTHER WITNESS THAT MAY REQUIRE TO
17 --- THAT WOULD REQUIRE POSSIBLY SOME TIME DURING A BREAK ---
18 MAYBE WE CAN TAKE IT UP DURING THE AFTERNOON BREAK --- THAT
19 WOULD REQUIRE ANY KIND OF POTENTIAL TESTIMONY OR RULING BY
20 THE COURT; IF YOU RECALL, WE INDICATED THAT ON OUR WITNESS
21 LIST WAS A WOMAN BY THE NAME OF RHONDA HENRY WHO WAS A FRIEND
22 OF KENNETH JAMES. SHE IS PRESENT IN THE COURTROOM. WE FLEW
23 HER IN FROM JACKSONVILLE, FLORIDA, THIS MORNING. OR SHE'S
24 PRESENT IN THE COURTHOUSE. AND THE STATE WOULD OFFER HER AS
25 A WITNESS INDICATING THAT MR. KENNETH JAMES HAD ADMITTED TO

1 HER THAT HE HAD RAPED A WOMAN AND WAS UPSET ABOUT IT AND FELT
2 BAD ABOUT IT AND ---

3 THE COURT: OKAY. WELL, YOU KNOW, WHEN WE GET AROUND TO
4 HER TESTIMONY, WE'LL -- I APPRECIATE YOU GIVING ME THE HEADS
5 UP.

6 MR. GASSER: I JUST WANTED TO LET YOU KNOW THAT WAS
7 COMING THIS AFTERNOON AS WELL.

8 THE COURT: OKAY. ALL RIGHT. MR. BARROW, LET'S BRING
9 THE JURY IN, PLEASE, SIR.

10 (JURY IN AT 2:46 P.M.)

11 THE BAILLIFF: THE JURY IS ALL PRESENT, YOUR HONOR.

12 THE COURT: FOLKS, THANK YOU FOR YOUR PATIENCE. I
13 SOMETIMES HAVE OTHER THINGS TO DO OTHER THAN THESE TRIALS,
14 AND I APOLOGIZE FOR KEEPING YOU WAITING. WE'RE READY TO
15 PROCEED WITH THE CASE. MR. GASSER OR MS. FRYAR.

16 MR. GASSER: THANK YOU, YOUR HONOR. AT THIS TIME THE
17 STATE WOULD CALL MR. CHARLES MURRAY.

18 THE COURT: OKAY. MR. MURRAY, PLEASE COME FORWARD TO
19 THIS GENTLEMAN HERE, MR. BARROW, IN THE YELLOW COAT.

20 CHARLES MURRAY, BEING FIRST DULY
21 SWORN, TESTIFIES AS FOLLOWS:

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

24 THE COURT: LET ME JUST SEE YOU ALL OF YOU ALL UP HERE
25 JUST BRIEFLY FOR A SECOND.

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

2 THE COURT: WE'RE NOT CALLING ATTENTION TO IT IN FRONT
3 OF THE JURY. THE RECORD SHOULD REFLECT THAT MR. MURRAY IS
4 BEING CALLED OVER OBJECTION TO HIS COMPETENCE AS A WITNESS BY
5 BOTH DEFENDANTS. BOTH DEFENDANTS HAVE OBJECTED TO HIS
6 COMPETENCE AS A WITNESS, AND SO THEY MUST GET THAT ON THE
7 RECORD PRIOR TO HIS TESTIMONY FOR WHAT REASON I AM NOTING IT
8 AND REFER BACK TO THEIR PREVIOUS ARGUMENTS CONCERNING HIS
9 TESTIMONY. OKAY.

10 MR. STRICKLER: THANK YOU, SIR.

11 (WHEREUPON, THE SIDE BAR CONFERENCE IS CONCLUDED)

12 THE COURT: OKAY. THANK YOU. EXCUSE ME.

13 MR. GASSER: THANK YOU, YOUR HONOR.

14 DIRECT EXAMINATION BY MR. GASSER:

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

16 A TWENTY-FIVE.

17 Q AND IF YOU NEED TO SCOOT UP JUST A LITTLE BIT SO THAT --
18 YOU'RE SOFT-SPOKEN.

19 THE COURT: AS CLOSE TO A MICROPHONE AS YOU CAN, MR.
20 MURRAY, SO THAT EVERYONE CAN HEAR YOU. THANK YOU.

21 Q AND WHERE DO YOU CURRENTLY LIVE, MR. MURRAY?

22 A BETHEL CHURCH ROAD.

23 Q WHO DO YOU LIVE THERE WITH?

24 A ME AND MY GIRLFRIEND AND HER KIDS.

25 Q DO YOU WORK?

1 A YES, SIR.

2 Q AND WHAT DO YOU DO FOR A LIVING?

3 A I'M A COLLECTOR AT RENT-WAY.

4 Q WHERE WERE YOU BORN AND RAISED?

5 A I WAS BORN IN CROSS, SOUTH CAROLINA, AND RAISED IN COLUMBIA,
6 SOUTH CAROLINA.

7 Q AND WHO RAISED YOU HERE IN COLUMBIA?

8 A MY MOTHER.

9 Q WHERE DID YOU LIVE WHEN YOUR MOTHER WAS RAISING YOU?

10 A IN ORR COURT. IT'S PRESENTLY KNOWN NOW AS MAEBELLE COURT.

11 Q AND DID THERE EVER COME A TIME WHEN YOUR MOTHER LIVED ON
12 GERMANY STREET?

13 A YES. IT'S THE SAME. YEAH.

14 Q THAT'S THE SAME THING?

15 A YEAH.

16 Q WHAT SCHOOLS DID YOU GO TO?

17 A ELEMENTARY SCHOOL, VIRGINIA PADDOCK, W. A. PERRY MIDDLE
18 SCHOOL AND C. A. JOHNSON HIGH SCHOOL.

19 Q AND WHAT GRADE DID YOU GET THROUGH AT C. A. JOHNSON?

20 A ELEVENTH.

21 Q ELEVENTH GRADE?

22 A YEAH.

23 Q DO YOU KNOW THE DEFENDANT KENNETH JAMES?

24 A YES, SIR.

25 Q AND HOW DO YOU KNOW KENNETH JAMES?

1 A FROM THE NEIGHBORHOOD AND SCHOOL.

2 Q DO YOU KNOW THE DEFENDANT ROBERT JAMES?

3 A YES, SIR.

4 Q AND HOW DO YOU KNOW ROBERT JAMES?

5 A FROM THE NEIGHBORHOOD AND SCHOOL.

6 Q AND HOW OLD ARE YOU NOW, MR. MURRAY?

7 A TWENTY-FIVE.

8 Q AND BACK IN MAY OF 1996, HOW OLD WERE YOU?

9 A TWENTY-TWO.

10 Q AND HOW MUCH OLDER ARE YOU THAN KENNETH AND ROBERT JAMES? DO
11 YOU KNOW?

12 A MAYBE A YEAR OR TWO.

13 Q YOU'RE OLDER THAN ONE OF THEM, TWO YEARS OLDER THAN THE
14 OTHER?

15 A YES, SIR.

16 Q I WANT TO DRAW YOUR ATTENTION, MR. MURRAY, BACK TO TUESDAY
17 EVENING, MAY THE 28TH, 1996, AND THEN THE EARLY MORNING HOURS
18 OF WEDNESDAY, MAY THE 29TH. WHERE WERE YOU LIVING THEN, MR.
19 MURRAY?

20 A AT 1833 MCFADDEN STREET.

21 Q AND WHERE WAS YOUR MOTHER LIVING?

22 A 1726 GERMANY STREET.

23 Q WAS THAT THE HOUSE THAT YOU MOSTLY WAS RAISED IN?

24 A MOSTLY, YEAH.

25 Q HOW FAR AWAY FROM THE MCFADDEN -- WERE YOU LIVING IN AN

1 APARTMENT OR ANOTHER HOUSE THERE ON MCFADDEN?

2 A IT'S A DUPLEX.

3 Q DUPLEX?

4 A YES, SIR.

5 Q HOW FAR AWAY WAS YOUR DUPLEX ON MCFADDEN FROM WHERE YOUR MAMA
6 LIVED ON GERMANY STREET?

7 A ABOUT THREE BLOCKS.

8 Q THREE BLOCKS?

9 A THREE OR FOUR BLOCKS, YEAH.

10 Q WHO DID SHE LIVE THERE WITH?

11 A MY LITTLE SISTER AND HER HUSBAND.

12 Q OKAY. YOUR LITTLE SISTER'S HUSBAND OR YOUR MAMA'S HUSBAND?

13 A MY MAMA'S HUSBAND.

14 Q WHERE WERE YOU WORKING IN MAY OF 1996?

15 A AT MCDONALD'S ON TWO NOTCH.

16 Q NOW, DO YOU KNOW THIS LADY RIGHT HERE, *victim ?*

17 A NO.

18 Q HAVE YOU EVER MET HER BEFORE?

19 A NOT UNTIL A COUPLE OF DAYS AGO.

20 Q DO YOU KNOW THIS GENTLEMAN BACK HERE, MR. WINFRED BULL?

21 A NO, SIR.

22 Q NOW, YOU MET HIM BACK ON MAY THE 29TH, DIDN'T YOU?

23 A YEAH. UH-HUH (AFFIRMATIVE).

24 Q BUT PRIOR TO MAY THE 29TH DID YOU KNOW MR. BULL?

25 A I DIDN'T KNOW HIM. NO, SIR.

1 Q HAVE YOU ASSOCIATED WITH HIM OR DONE THINGS TOGETHER WITH HIM
2 SINCE THEN?

3 A NO, SIR.

4 Q BACK IN MAY OF 1996, WOULD YOU FREQUENT OR WOULD YOU EVER GO
5 VISIT YOUR MOTHER AND YOUR SISTER?

6 A PRACTICALLY EVERY DAY.

7 Q AND THAT TUESDAY EVENING, DID YOU HAVE AN OPPORTUNITY TO GO
8 OVER TO YOUR MAMA'S HOUSE TO VISIT?

9 A YES, SIR.

10 Q AND HOW DID YOU GET THERE FROM YOUR DUPLEX ON MCFADDEN
11 STREET?

12 A ON MY BIKE.

13 Q WERE YOU BY YOURSELF?

14 A GOING OVER THERE, YEAH.

15 Q WHEN YOU GOT DOWN TO YOUR MAMA'S HOUSE, WHAT DID YOU ALL DO
16 THAT NIGHT?

17 A WATCH T.V.

18 Q DID YOU STAY INSIDE?

19 A YEAH.

20 Q UP UNTIL THE TIME YOU WERE GETTING READY TO LEAVE?

21 A YES, SIR.

22 Q DID YOU HAVE THE T.V. ON THAT WHOLE TIME?

23 A YES, SIR.

24 Q AND DID YOU YOURSELF -- WHILE YOU WERE INSIDE WITH THE T.V.
25 ON, DID YOU YOURSELF HEAR ANY GUNSHOTS?

1 A NO, I DIDN'T.

2 Q AND SOMETIME DURING THE EARLY MORNING HOURS OF MAY THE 29TH
3 OF 1996, THAT WEDNESDAY MORNING, AFTER THAT TUESDAY NIGHT,
4 DID YOU HAVE AN OPPORTUNITY TO COME INTO CONTACT WITH MR.
5 WINFRED BULL, THE GENTLEMAN I JUST POINTED OUT FOR YOU?

6 A YES, SIR.

7 Q TELL US, PLEASE, TELL US, PLEASE, MR. MURRAY, HOW YOU CAME
8 INTO CONTACT WITH MR. BULL?

9 A ME AND MY STEPFATHER WAS COMING OUT OF MY MOTHER'S HOUSE, AND
10 HE RAN UP TO US ASKING US TO HELP AND TO CALL THE POLICE.

11 Q WHO RAN UP TO YOU?

12 A MR. WINFRED.

13 Q YOU'VE PREVIOUSLY INDICATED YOU'D NEVER MET HIM BEFORE THAT
14 EVENING?

15 A NO, SIR.

16 Q CAN YOU DESCRIBE MR. BULL'S DEMEANOR WHEN HE CAME UP TO YOU
17 AND YOUR STEPFATHER?

18 A HE WAS KIND OF SCARED. HE WAS BLOODY AND PARANOID I GUESS,
19 ASKING US TO JUST -- FOR SOME HELP, SAYS HIS WIFE OR FIANCEE,
20 GIRLFRIEND WAS BEING RAPED IN THE PARK.

21 Q DO YOU REMEMBER WHAT HE WAS WEARING? DID HE HAVE ANY PANTS
22 ON?

23 A I COULDN'T REMEMBER THAT.

24 Q WHEN THIS PERSON CAME RUNNING UP TO YOU IN THE STATE OF MIND
25 AS YOU JUST DESCRIBED, WHAT DID YOU DO?

1 A ACTUALLY I STEPPED BACK AND I TOLD MY MOM THAT HE WANTED TO
2 USE THE PHONE TO CALL THE POLICE, AND SHE GAVE HIM THE PHONE
3 THE CALL.

4 Q SO YOUR MOTHER WAS THERE?

5 A YES, SIR.

6 Q AND WHAT'S HER NAME?

7 A VERNETTE YEADON.

8 COURT REPORTER: YATES?

9 A YEADON, Y-E-A-D-O-N.

10 Q WAS THE POLICE CALLED?

11 A YES, SIR.

12 Q WHAT DID YOU DO WHILE MR. BULL OR YOUR MAMA OR WHOEVER WAS
13 CALLING THE POLICE?

14 A ME AND MY STEPFATHER WAS STANDING OUT IN THE YARD TALKING.

15 MR. GASSER: MAY THE WITNESS LEAVE THE STAND, YOUR
16 HONOR?

17 THE COURT: SURE.

18 Q (BY MR. GASSER) CHARLES, I WANT YOU TO COME STEP OVER HERE
19 WHERE I'M STANDING RIGHT NOW SO THAT THIS MICROPHONE RIGHT
20 HERE IS THE ONE YOU NEED TO BE ADDRESSING. WHY DON'T YOU
21 STAND BACK OVER HERE SO ALL THE JURORS CAN SEE YOU. NOW USE
22 THAT POINTER. REFERRING TO STATE'S EXHIBIT NO. 1 FOR THE
23 RECORD, DO YOU RECOGNIZE THIS DIAGRAM, THIS MAP DIAGRAM,
24 CHARLES?

25 A YES, SIR.

1 Q AND DO YOU RECOGNIZE WHERE GERMANY STREET AND TWO NOTCH ROAD
2 INTERSECT?

3 A YES, SIR.

4 Q WHERE IS YOUR — IN MAY OF 1996, THE HOUSE THAT YOU'VE SAID
5 THAT YOU SPENT MOST OF YOUR LIFE IN, WHERE IS THAT LOCATED?

6 A RIGHT THERE.

7 Q AND THAT'S 1726 GERMANY STREET?

8 A YES, SIR.

9 Q NOW, IF THIS IS THE HOUSE WHERE WERE YOU, THE TESTIMONY YOU
10 JUST PROVIDED TO THE JURY, THE FIRST TIME YOU EVER CAME INTO
11 CONTACT WITH MR. BULL, WHAT HOUSE WERE YOU AT?

12 A AT THE 1726 GERMANY STREET HOUSE.

13 THE COURT: KEEP YOUR VOICE UP, PLEASE, MR. MURRAY.

14 A YES, SIR.

15 Q WERE YOU ACTUALLY INSIDE THE HOUSE WHEN YOU FIRST CAME INTO
16 CONTACT WITH HIM?

17 A I WAS ON THE PORCH COMING OUTSIDE.

18 Q NOW, HAD YOU BEEN USING ANY ALCOHOLIC BEVERAGES PRIOR TO THIS
19 THAT EVENING?

20 A NO, SIR.

21 Q OR USING ANY NARCOTICS OR ILLEGAL DRUGS?

22 A NO, SIR.

23 Q NOW, WHERE IS THE PARK IN RELATIONSHIP TO THIS HOUSE THAT YOU
24 JUST DESCRIBED AT 1726 GERMANY STREET? POINT OUT WHERE THE
25 PARK IS TO THE JURY.

1 (WITNESS POINTS)

2 Q AND W. A. PERRY MIDDLE SCHOOL, THE MIDDLE SCHOOL YOU WENT TO?

3 A RIGHT HERE.

4 Q AND CRESCENT HILL CEMETERY, THE CEMETERY?

5 A RIGHT THERE.

6 Q WHAT DIRECTION DID MR. BULL COME FROM?

7 A HE CAME FROM -- FROM DOWN THE GERMANY STREET AREA SOMEWHERE
8 AROUND HERE.

9 Q DID YOU SEE ANYONE ELSE BEHIND MR. BULL OR WITH MR. BULL AT
10 THAT TIME?

11 A NO, SIR.

12 Q NOW, DID THE POLICE IMMEDIATELY GET THERE, OR DID IT TAKE
13 SOME TIME FOR THEM TO ARRIVE?

14 A IT TOOK SOME TIME FOR THEM TO ARRIVE.

15 Q WHILE YOU WERE WAITING ON THE POLICE, WHERE WERE YOU WHEN YOU
16 WERE WAITING ON THE POLICE?

17 A IN THE FRONT YARD.

18 Q AND THEN WHO WAS STILL WITH YOU?

19 A MY STEPFATHER.

20 Q WHERE WAS MR. BULL? DO YOU REMEMBER?

21 A HE WAS STANDING CLOSE TO THE PORCH WITH MY MOTHER BECAUSE SHE
22 WAS STANDING ON THE PORCH.

23 Q WHAT IS THERE RIGHT THERE AT THE INTERSECTION OF ORR STREET
24 —

25 MR. STRICKLER: OBJECTION, YOUR HONOR. LEADING.

1 THE COURT: YOU MEAN "WHAT IS THERE"?

2 MR. STRICKLER: YES, SIR.

3 THE COURT: WELL, YOU KNOW, LET ME LET HIM FINISH THE
4 QUESTION AND THEN I'LL DETERMINE WHETHER IT'S LEADING. DON'T
5 ANSWER IT, MR. MURRAY, UNTIL I'VE RULED ON THE QUESTION. SO
6 ASK THE QUESTION AGAIN AS YOU'RE GOING TO ASK IT.

7 MR. GASSER: YES, SIR.

8 Q (BY MR. GASSER) ARE THERE STREET LIGHTS ON GERMANY STREET?

9 A YES, IT IS.

10 Q WOULD YOU PLEASE POINT OUT TO THE JURY ---

11 THE COURT: WELL, DID YOU NOT WANT TO OBJECT TO THAT?

12 MR. STRICKLER: NO, SIR.

13 THE COURT: THAT WAS A LEADING QUESTION.

14 MR. STRICKLER: YES, SIR. I UNDERSTAND.

15 THE COURT: SO IT WOULD BE SUSTAINED. BUT SINCE IT'S
16 BEEN DONE, NO PROBLEM. GO AHEAD.

17 A IT'S RIGHT ON THAT CORNER RIGHT THERE.

18 THE COURT: WAIT A MINUTE. WAIT A MINUTE. YOU CAN'T
19 WHISPER, MR. MURRAY. TALK UP.

20 A IT'S ON THE CORNER OF GERMANY STREET AND MAEBELLE COURT.

21 THE COURT: OKAY. THANK YOU. FORGIVE ME FOR YELLING,
22 BUT I'VE GOT TO INTERJECT WHEN I HEAR THAT STUFF GOING ON.
23 OKAY.

24 Q HOW MANY HOUSES BETWEEN YOUR HOUSE ON GERMANY STREET AND THE
25 INTERSECTION OF MAEBELLE COURT AND GERMANY STREET WHERE YOU

1 JUST INDICATED THE STREET LIGHT WAS AT?

2 A ONE HOUSE.

3 Q NOW, ACROSS FROM GERMANY STREET, ACROSS FROM MAEBELLE COURT,
4 WHAT'S THE NAME OF THAT STREET?

5 A ORR STREET.

6 Q NOW, WHEN YOU WERE STANDING OUT -- TELL US WHAT HAPPENED WHEN
7 YOU WERE STANDING OUTSIDE WITH YOUR STEPFATHER OF THE
8 RESIDENCE AT 1726 GERMANY STREET? WHAT DID YOU OBSERVE?

9 A THAT THERE'S A PATHWAY RIGHT HERE TO ENTER MAEBELLE COURT,
10 AND SOME FELLOWS CAME DOWN. THERE WAS LIKE FIVE OF THEM IN
11 TWO DIFFERENT GROUPS. THERE WAS TWO; THEN THERE WAS THREE
12 CAME. AND THEY WALKED COMING UP ORR STREET.

13 Q WHERE WERE THEY WHEN YOU FIRST SAW THEM?

14 A COMING UNDER THE STREET LIGHT AT THE CORNER OF MAEBELLE AND
15 GERMANY.

16 Q SO USE THE POINTER AND SHOW THE JURY ON STATE'S EXHIBIT NO. 1
17 WHAT DIRECTION THEY WALKED UP?

18 A THIS WAY.

19 Q NOW, HOW FAR UP ORR STREET COULD YOU SEE THEM WALK?

20 A THERE IS A FENCE RIGHT HERE. AND THIS IS LIKE THE HIGH PART
21 OF THE FENCE AND IT GETS LOWER RIGHT HERE. AND AFTER LIKE IN
22 THE MIDDLE IT TURNS TO LIKE AN ALL BRICK WALL AND YOU CAN'T
23 SEE PAST THAT.

24 Q NOW, YOU SAID THERE WERE HOW MANY INDIVIDUALS?

25 A FIVE.

1 Q COULD YOU TELL WHAT SEX THEY WERE?

2 A YEAH.

3 Q AND THEY WERE ...?

4 A ALL MALES.

5 Q COULD YOU TELL WHAT RACE THEY WERE?

6 A YES, SIR.

7 Q WHAT WAS THAT?

8 A BLACK.

9 Q AND DID YOU RECOGNIZE ANY OF THE FIVE INDIVIDUALS?

10 A YES, SIR.

11 Q HOW MANY OF THE FIVE DID YOU RECOGNIZE?

12 A THREE.

13 Q AND HOW DID YOU KNOW THEM? WHO WERE THEY?

14 A KENNY, ROBERT AND ANOTHER ONE, ANOTHER FELLOW.

15 Q YOU CAN TAKE THE STAND. WHEN YOU SAY KENNY, ROBERT AND
16 ANOTHER FELLOW, ARE ANY OF THOSE THREE INDIVIDUALS THAT
17 YOU'VE SAID, KENNY, ROBERT AND ANOTHER FELLOW, IN THE
18 COURTROOM HERE TODAY?

19 A YES, SIR.

20 Q AND WOULD YOU POINT OUT THE PERSON YOU KNOW AS KENNY?

21 (WITNESS POINTS)

22 Q WOULD YOU POINT OUT THE PERSON YOU KNOW AS ROBERT YOU SAW
23 THAT NIGHT WALKING UP ORR STREET?

24 A ON THE END.

25 Q NOW, THE OTHER PERSON, YOU SAY YOU KNOW HIM, DO YOU KNOW HIS

1 NAME?

2 A I CAN'T REMEMBER IT AT THE TIME.

3 Q DID YOU KNOW KENNY AND ROBERT'S LAST NAME?

4 A NO, SIR.

5 Q IN MAY OF 1996, YOU'VE PREVIOUSLY TOLD THIS JURY THAT YOU
6 KNEW THEM FROM THE NEIGHBORHOOD AND FROM W. A. PERRY MIDDLE
7 SCHOOL. IS THAT CORRECT?

8 A YES, SIR.

9 Q AND C. A. JOHNSON?

10 A YES, SIR.

11 Q HOW LONG FROM MAY OF 1996 HAD YOU KNOWN KENNY AND ROBERT
12 JAMES? HOW LONG HAD YOU KNOWN THEM PRIOR TO MAY OF 1996?

13 A ABOUT FOUR TO SIX YEARS.

14 Q AND WHEN YOU SAY YOU KNEW THEM FROM THE NEIGHBORHOOD, WHAT DO
15 YOU MEAN BY THAT? DID YOU KNOW WHERE THEY WERE LIVING?

16 A YES, SIR.

17 Q IN MAY OF 1996, WHEN YOU SAW THEM WALKING UP ORR STREET,
18 WHERE DID YOU THINK THEY LIVED AT THAT TIME?

19 A AT THAT TIME IT WAS ON ORR STREET.

20 Q OKAY. AND HAD THEY LIVED IN OTHER PLACES IN THAT SAME
21 NEIGHBORHOOD?

22 A YES, SIR.

23 Q WHERE DID YOU KNOW THEM TO LIVE PRIOR TO THAT IN MAY OF 1996?

24 A ON OGDEN STREET.

25 Q OKAY. AND SHOWING YOU STATE'S EXHIBIT NO. 1 -- AND AGAIN

1 SPEAK UP. IF YOU HAVE TO STAND UP, YOU NEED TO SPEAK UP
2 BECAUSE YOUR MOUTH WILL BE GETTING AWAY FROM THAT MICROPHONE.
3 WHERE IS OGDEN STREET ON STATE'S EXHIBIT NO. 1 IN RELATIONS
4 TO ORR STREET?

5 (WITNESS POINTS)

6 Q OKAY. AND WHERE IS MCFADDEN STREET WHERE IN MAY OF 1996 YOU
7 WERE LIVING IN THE DUPLEX? WHERE IS THAT WHERE YOU BICYCLED
8 TO YOUR MAMA'S?

9 A IT WAS -- IT'S A SECTION OF MCFADDEN STREET THAT RUNS DOWN
10 BONNEVILLE ROAD. THAT'S THE SECTION I STAYED ON RIGHT HERE.

11 Q A SECTION ON MCFADDEN STREET DEPICTED ON STATE'S EXHIBIT NO.
12 1?

13 A YES, SIR.

14 Q WOULD YOU POINT THAT OUT FOR THE JURY?

15 (WITNESS POINTS)

16 Q WHAT APARTMENTS ARE THOSE BACK THERE BEHIND THE T. S. MARTIN
17 PARK? BEHIND CRESCENT HILL CEMETERY, WHAT APARTMENTS ARE
18 THOSE?

19 A CRESCENT MANOR.

20 Q AND WHAT DO YOU KNOW ABOUT CRESCENT MANOR?

21 A JUST THE FACT THAT THEY LIVED THERE BEFORE THEY MOVED TO THE
22 HOUSE ON OGDEN STREET.

23 Q SO HOW MANY DIFFERENT PLACES THEN IN THE YEARS BEFORE MAY OF
24 1996 DID YOU KNOW KENNY AND ROBERT JAMES WHERE THEY LIVED?

25 A TWO.

1 Q AND THEY WOULD BE WHERE?

2 A ON OGDEN STREET AND CRESCENT MANOR APARTMENTS.

3 Q AND SO THEN IN MAY OF 1996, YOU HAD JUST INDICATED THEY WERE
4 LIVING ON WHAT STREET?

5 A ON ORR STREET.

6 Q NOW, WHEN THE POLICE ARRIVED, DID YOU TALK WITH THE POLICE AT
7 THAT TIME, MR. MURRAY?

8 A NO, SIR.

9 Q DO YOU EVER REMEMBER MEETING AT THAT TIME WITH ANY POLICE
10 OFFICERS THAT HAD A DOG WITH THEM? DO YOU REMEMBER ANY OF
11 THAT?

12 A NO, SIR.

13 Q DID THAT EVEN HAPPEN?

14 A NO, SIR.

15 Q SO DID YOU GIVE ANY STATEMENT AT ALL TO THE POLICE THEN THAT
16 EVENING?

17 A NO, SIR.

18 Q DID YOU TELL ANYONE WHERE YOU HAD SEEN THESE PEOPLE WALKING
19 UP, WHAT STREET YOU SAW THEM WALKING UP? DID YOU TELL
20 ANYBODY THAT NIGHT?

21 A NO, SIR.

22 Q AND WHY NOT, CHARLES?

23 A NO ONE ASKED.

24 Q WHERE DID YOU GO AFTER THE POLICE ARRIVED?

25 A I STAYED AT MY MOTHER'S FOR A WHILE AND THEN I WENT HOME ON

1 MCFADDEN STREET.

2 Q I'M GOING TO SHOW YOU PHOTOGRAPHS. FIRST OF ALL, I SHOW YOU
3 WHAT'S BEEN MARKED STATE'S EXHIBIT NO. 27. I TELL YOU WHAT.
4 LET ME DO IT THIS WAY. STATE'S EXHIBIT NO. 27 MARKED FOR
5 IDENTIFICATION, STATE'S EXHIBIT NO. 28 MARKED FOR
6 IDENTIFICATION, STATE'S EXHIBIT NO. 29 MARKED FOR
7 IDENTIFICATION; DO YOU RECOGNIZE ANYBODY IN THESE
8 PHOTOGRAPHS?

9 A YES, SIR.

10 Q WHO DO YOU RECOGNIZE IN THESE PHOTOGRAPHS?

11 A ROBERT IN 27 AND KENNY IN 28.

12 Q AND ANYBODY IN 29?

13 A KENNY AND ROBERT.

14 Q A COUPLE OF DAYS AFTER THIS INCIDENT, CHARLES, DO YOU
15 REMEMBER YOUR AUNT BRINGING THE POLICE UP TO YOUR HOUSE?

16 A YES, SIR.

17 Q AND TELL US ABOUT THAT.

18 A SHE KNOCKED ON THE DOOR AND I OPENED THE DOOR AND SHE TOLD ME
19 THAT THE POLICE WANTED TO SPEAK TO ME. AND HE SHOWED ME SOME
20 PHOTOS AND ASKED ME DID I KNOW ANYONE ON THE PHOTOS, AND I
21 TOLD HIM THAT I KNEW EVERYONE THAT HE SHOWED ME AND THAT I
22 WAS IN A HURRY, THAT I HAD TO GO TO WORK.

23 Q DID YOU TELL HIM AT THAT TIME, CHARLES, WHAT YOU HAVE TOLD US
24 TODAY?

25 A NO, SIR.

1 Q AND WHY NOT? WHERE WAS YOUR MOTHER LIVING AT THAT TIME,
2 CHARLES?

3 A ON GERMANY STREET.

4 Q DID SHE CONTINUE TO LIVE THERE ON GERMANY STREET?

5 A YES, SIR.

6 Q AND HOW FAR AWAY?

7 THE COURT: SUSTAINED.

8 MR. STRICKLER: THANK YOU, SIR.

9 THE COURT: OKAY. THANK YOU. MR. GASSER, I THINK THAT
10 WE NEED TO GET INTO -- IF WE'RE GOING TO TALK ABOUT THIS, WE
11 NEED TO HAVE A CHAT. OKAY. THANK YOU. AND WE'LL SEND THE
12 JURY TO THE JURY ROOM. PLEASE GO TO THE JURY ROOM. DON'T
13 DISCUSS THE CASE AMONG YOURSELVES.

14 (JURY OUT AT 3:08 P.M.)

15 THE COURT: OKAY. I WOULD ASK SOMEONE TO TAKE MR.
16 MURRAY OUT IN THE HALL SO THAT WHEN WE'RE TALKING IT DOESN'T
17 UNFAIRLY IMPINGE UPON WHAT HE HAS TO SAY. NO. NOT SOMEBODY
18 FROM THE SOLICITOR'S OFFICE. MR. BARROW, YOU STEP OUTSIDE
19 WITH THIS YOUNG MAN.

20 THE BAILIFF: YES, SIR.

21 THE COURT: AND JUST -- OKAY. THE SOLICITOR SEEKS TO
22 BOLSTER THE TESTIMONY OF MR. -- IN EFFECT, BOLSTER THE
23 TESTIMONY OF MR. MURRAY BY SHOWING THAT HIS MOTIVATION IN NOT
24 TELLING THE POLICE ANYTHING ABOUT THIS INCIDENT EARLIER IS
25 SOME UNSPECIFIED FEAR THAT HIS MOTHER MIGHT BE IN DANGER FROM

1 THESE FOLKS BECAUSE THEY LIVED IN THE NEIGHBORHOOD. HAVE I
2 CORRECTLY PICKED UP ON THE SIGNAL?

3 MR. STRICKLER: YES, YOUR HONOR. PRECISELY.

4 THE COURT: AND, MR. GASSER, PLEASE TELL ME WHY THAT
5 WOULD BE AT THIS STAGE APPROPRIATE.

6 MR. GASSER: OKAY. IF YOU WANT ME TO WAIT UNTIL
7 REDIRECT AFTER HE IMPEACHES HIM, I'LL WAIT TO DO THAT.

8 THE COURT: I THINK THAT AT THAT POINT IN TIME IT MAY
9 BECOME GERMANE TO GET INTO THAT. BUT RIGHT NOW IT'S NOT.
10 AND ---

11 MR. GASSER: AND, CLEARLY, I DON'T THINK - ARE YOU DONE?
12 I'M SORRY. I DIDN'T WANT TO INTERRUPT.

13 THE COURT: YEAH. GO AHEAD.

14 MR. GASSER: CLEARLY, I DON'T THINK MR. STRICKLER IS
15 GOING TO SAY HE CAN ASK QUESTIONS OF THIS WITNESS AND IMPEACH
16 HIM, TRY TO INFER CREDIBILITY AND THEN I WOULD NOT BE ABLE TO
17 COME REHABILITATE HIM?

18 THE COURT: YOU KNOW, GUYS, I DON'T GIVE ADVISORY
19 OPINIONS. I SAID AT THAT TIME, JUST LIKE I JUST SAID, IT MAY
20 BECOME GERMANE FOR YOU TO ASK SUCH QUESTIONS. MR. STRICKLER,
21 NOW, WHAT ARE YOU GETTING ALL PUFFED UP ABOUT?

22 MR. STRICKLER: YOUR HONOR, I JUST ---

23 THE COURT: ISN'T HE RIGHT?

24 MR. STRICKLER: OF COURSE HE'S NOT RIGHT, YOUR HONOR,
25 WITH ALL DUE RESPECT. I MEAN, TO IMPLY ABSENT SOME PROOF

1 THAT THERE IS SOME THREAT ON THE PART OF MY CLIENT TO HIS
2 MOTHER AS A REASON FOR HIM BEING -- FOR HIS SILENCE IS TO
3 IMPLY SOMETHING, ABSENT SOME PROOF ---

4 THE COURT: I AGREE WITH THAT.

5 MR. STRICKLER: --- THAT SIMPLY IS NOT TRUE.

6 THE COURT: HERE IS THE DEAL, MR. STRICKLER.

7 MR. STRICKLER: YES, SIR.

8 THE COURT: IF YOU IMPEACH THE MAN AND INQUIRE INTO HIS
9 MOTIVATION FOR NOT TELLING THE POLICE CERTAIN THINGS AT A
10 CERTAIN SOMETIME, ISN'T IT FAIR FOR MR. GASSER TO GET INTO
11 HIS MOTIVATION IF INDEED HIS MOTIVATION, WHETHER
12 APPROPRIATELY PERCEIVED OR NOT IS, HEY, MY MOTHER'S GOT TO
13 LIVE IN THAT NEIGHBORHOOD? I MEAN, IS THAT -- AM I BEING
14 STUPID? HUH?

15 MR. STRICKLER: CERTAINLY NOT, SIR.

16 THE COURT: I'M JUST WRONG. IS THAT ---

17 MR. STRICKLER: WELL, WITH ALL DUE RESPECT, YOUR HONOR,
18 CERTAINLY.

19 THE COURT: YOU SEE, YOU'RE RIGHT. HE CAN'T GET INTO
20 THE FACT THAT THIS FELLOW, MURRAY, IS AFRAID OF THESE GUYS
21 AND AFRAID OF HIS MOM LIVING IN THIS NEIGHBORHOOD. YOU'RE
22 ABSOLUTELY RIGHT. THAT WOULD BE WRONG TO ALLOW HIM TO DO
23 THAT BECAUSE THERE IS NO THREAT THAT CAN BE -- I DON'T THINK
24 -- THAT CAN BE PROVED AT THIS POINT IN TIME. AND I MAY EVEN
25 GIVE A CAUTIONARY INSTRUCTION SHOULD THIS THING COME UP AGAIN

1 THAT THERE IS NO EVIDENCE OF THAT AND, YOU KNOW, -- BUT I'LL
2 TELL YOU, I CAN'T KEEP PEOPLE FROM GETTING INTO THEIR
3 MOTIVATION FOR NOT DOING THINGS, PARTICULARLY IF YOU INQUIRE
4 INTO IT ON CROSS EXAMINATION, AS YOU MAY WELL DO. WHAT CAN I
5 DO? I MEAN, WE'VE GOT RULES, RIGHT?

6 MR. STRICKLER: I UNDERSTAND, YOUR HONOR. WE'LL SEE
7 WHETHER I INQUIRE INTO HIS MOTIVATION OF NOT DOING IT AS
8 OPPOSED TO THE MERE FACT THAT HE DID NOT DO IT, WHICH IS A
9 SEPARATE MATTER ENTIRELY.

10 THE COURT: OKAY.

11 MR. STRICKLER: I WOULD SUBMIT ---

12 THE COURT: ALL RIGHT.

13 MR. STRICKLER: THANK YOU VERY MUCH.

14 THE COURT: MR. GASSER, DO YOU WANT TO SAY ANYTHING
15 BEFORE WE BRING THEM BACK IN?

16 MR. GASSER: NO, SIR. AND I UNDERSTAND YOUR RULING.

17 MR. SHUPPER: YOUR HONOR, I WOULD JUST JOIN IN THE
18 OBJECTION TO THAT LINE OF QUESTIONING.

19 THE COURT: SURE. AND, YOU KNOW, I JUST THINK IT'S A
20 BIT PREMATURE AT THIS JUNCTURE AND MAYBE PREMATURE FOR ALL
21 TIME. I DON'T KNOW.

22 MR. STRICKLER: YES, SIR. THANK YOU.

23 THE COURT: WE'LL JUST HAVE TO SEE. OKAY. BRING THE
24 JURY BACK. OH. BRING MR. MURRAY BACK IN AND THEN WE'LL
25 BRING THE JURY BACK IN. MURRAY; THEN THE JURY. THANK YOU.

1 MR. MURRAY, PLEASE COME BACK UP HERE, SIR, AND RE-POSITION
2 YOURSELF ON THE WITNESS STAND. OKAY. THANKS. MR. BARROW,
3 NOW IF YOU WOULD ASK THE JURY TO COME BACK IN, PLEASE, SIR.
4 (JURY IN AT 3:15 P.M.)

5 THE BAILLIFF: THE JURY IS ALL PRESENT, YOUR HONOR.

6 THE COURT: THANK YOU, MR. BARROW. AND THANK YOU,
7 FOLKS. THANK YOU, MR. GASSER. PLEASE CONTINUE, SIR.

8 DIRECT EXAMINATION RESUMED BY MR. GASSER:

9 Q CHARLES, AFTER YOU SAW MR. KENNY JAMES AND ROBERT JAMES AND
10 THIS OTHER FELLOW THAT YOU DON'T KNOW HIS NAME AND TWO OTHER
11 PEOPLE WALK UP ORR STREET, DID YOU SEE ANY OF THEM AT ALL THE
12 REST OF THE EVENING?

13 A NO, SIR.

14 Q DID YOU HAVE A CONVERSATION WITH ANY OF THEM?

15 A NO, SIR.

16 Q DID YOU MAKE EYE CONTACT WITH ANY OF THEM?

17 A NO, SIR.

18 MR. GASSER: THAT'S ALL I HAVE, YOUR HONOR. THANK YOU.

19 THE COURT: OKAY. THANKS. MR. STRICKLER.

20 MR. STRICKLER: THANK YOU, YOUR HONOR. MAY IT PLEASE
21 THE COURT.

22 CROSS EXAMINATION BY MR. STRICKLER:

23 Q GOOD AFTERNOON, MR. MURRAY.

24 A HOW YOU DOING?

25 Q I JUST HAVE A VERY FEW QUESTIONS FOR YOU, IF I COULD, PLEASE.

1 AS I UNDERSTAND IT, YOU INDICATE THAT YOU KNOW KENNETH JAMES
2 FROM THE NEIGHBORHOOD AND FROM SCHOOL?

3 A YES, SIR.

4 Q IS THAT CORRECT? WHAT SCHOOL DID YOU ATTEND OR SCHOOLS DID
5 YOU ATTEND WITH KENNETH JAMES?

6 A W. A. PERRY AND C. A. JOHNSON.

7 Q YOU WENT TO W. A. PERRY WITH HIM AND YOU WENT TO C. A.
8 JOHNSON WITH HIM. IS THAT CORRECT?

9 A I THINK WE WENT TO THE SAME SCHOOLS. IT MIGHT NOT BE AT THE
10 SAME TIME.

11 Q OKAY. SO, I'M SORRY. MY UNDERSTANDING WAS THAT YOU HAD GONE
12 TO SCHOOL WITH HIM. IS THAT INCORRECT NOW?

13 A I COULDN'T TELL YOU. I LEFT SCHOOL IN '92. I DON'T KNOW IF
14 WE WAS THERE AT THE SAME TIME.

15 Q IS IT YOUR TESTIMONY THAT KENNETH JAMES WENT TO W. A. PERRY.

16 (NO RESPONSE)

17 Q IS IT YOUR TESTIMONY THAT KENNETH JAMES WENT TO W. A. PERRY?

18 A YES, SIR.

19 Q IS IT YOUR TESTIMONY THAT KENNETH JAMES WENT TO C. A.
20 JOHNSON?

21 A YES, SIR.

22 Q NOW, LET'S SEE IF WE CAN DO THIS WITHOUT GETTING YOU DOWN OFF
23 THE STAND. OKAY. I'M GOING TO REFER TO STATE'S EXHIBIT NO.
24 1, THIS DIAGRAM HERE. YOU IDENTIFIED WITH MR. GASSER WHERE
25 THE HOUSE WAS, YOUR MAMA'S HOUSE?

1 A GERMANY STREET.

2 Q AND YOU TALKED ABOUT A CUT. NOW, MY UNDERSTANDING IS YOU
3 DIDN'T SEE ANYONE COMING FROM THE CUT, RIGHT?

4 A NO, SIR.

5 Q THE FIRST TIME YOU SAW ANY PEOPLE -- WELL, THE FIRST TIME YOU
6 SAW THESE GROUPS OF PEOPLE THAT YOU DESCRIBED WAS WHEN THEY
7 WERE UNDER THE STREET LIGHT HERE AT THE CORNER. IS THAT
8 CORRECT?

9 A YES, SIR.

10 Q SO WHETHER THEY CAME FROM THE CUT OR FROM SOME PLACE ELSE OR
11 FROM "JUMP" STREET, YOU'VE GOT NO IDEA, RIGHT?

12 A WELL, THEY WAS COMING FROM TOWARDS THE CUT.

13 Q THEY WERE COMING DOWN ORR STREET AT THE TIME YOU SAW THEM?

14 A THEY WAS COMING FROM MAEBELLE COURT.

15 Q MAEBELLE COURT?

16 A YEAH.

17 Q OKAY. WHICH LEADS RIGHT INTO ORR STREET, RIGHT?

18 A ORR STREET, RIGHT.

19 Q YOU SAW THEM AT THIS INTERSECTION OF GERMANY AND ORR OR
20 MAEBELLE, WHATEVER YOU WANT TO CALL THAT INTERSECTION, RIGHT?

21 A YES, SIR.

22 Q OKAY. SO WHERE THEY WERE BEFORE THAT TIME YOU HAVE NO
23 KNOWLEDGE, CORRECT?

24 A YES, SIR.

25 Q OKAY. NOW, YOU SAW TWO GROUPS OF PEOPLE?

1 A YES, SIR.

2 Q OKAY. HOW MANY PEOPLE IN THE FIRST GROUP?

3 A TWO.

4 Q AND HOW MANY IN THE SECOND?

5 A THREE.

6 Q AND THESE GROUPS OF PEOPLE WERE FAIRLY CLOSE TOGETHER?

7 A I'D SAY ABOUT 15 FEET APART.

8 Q ABOUT 15 FEET APART?

9 A YES, SIR.

10 Q ABOUT AS FAR AS YOU AND I ARE NOW. IS THAT CORRECT?

11 A ABOUT.

12 Q YOU WERE IN FRONT OF YOUR MOTHER'S HOUSE AND SHE WAS ON THE
13 PORCH WITH THE MAN THAT HAD COME TO YOUR HOUSE?

14 A YES, SIR.

15 Q IS THAT CORRECT?

16 A UH-HUH (AFFIRMATIVE).

17 Q SO FROM WHERE YOU WERE IN FRONT OF YOUR MOTHER'S HOUSE TO
18 WHERE THE PEOPLE WERE THAT CAME UNDER THIS STREET LIGHT, HOW
19 FAR AWAY WAS IT? THIS FAR OR A LITTLE FURTHER?

20 A A LITTLE FURTHER.

21 Q A LITTLE FURTHER?

22 A A LITTLE FURTHER.

23 Q A LITTLE FURTHER?

24 A ABOUT RIGHT THERE.

25 Q ABOUT RIGHT HERE?

1 A YES, SIR.

2 Q FROM YOU TO THE GROUPS OF PEOPLE YOU SAW PASS UNDER THE
3 STREET LAMPS AT THE CORNER THERE?

4 A YES, SIR.

5 Q OKAY. AND I TAKE IT FROM YOUR DESCRIPTION THAT THESE TWO
6 GROUPS OF PEOPLE ARE JUST WALKING DOWN THE STREET. IS THAT
7 CORRECT?

8 A YES, SIR.

9 Q THEY DIDN'T STAND OR HAVE SOME SORT OF CONVERSATION IN THE
10 MIDDLE OF THE STREET, RIGHT?

11 A YES, SIR.

12 Q SO THEY STEADY WALKED THROUGH THE CORNER THERE, RIGHT?

13 (NO RESPONSE)

14 Q SO HOWEVER LONG IT TAKES FOR A GROUP TO -- AND YOU FIRST
15 CAUGHT SIGHT OF THEM WHEN THEY HIT THAT INTERSECTION THERE,
16 RIGHT?

17 A RIGHT..

18 Q BECAUSE THE HOUSE ON THE CORNER ---

19 A THAT'S RIGHT.

20 Q --- WOULD BLOCK YOUR VIEW OF THEM BEFORE YOU GOT THERE?

21 A NO. NOT BEFORE THEY GET TO THE INTERSECTION. YOU COULD SEE
22 THEM COMING FROM BACK TOWARDS BEHIND THE HOUSE.

23 Q STANDING IN FRONT OF THIS HOUSE YOU COULD SEE THEM BEFORE
24 THEY GOT TO THIS INTERSECTION?

25 A YES, SIR.

1 Q AND YOU WERE LOOKING ---

2 A I MEAN, THE HOUSE IS SET BACK OFF THE ROAD.

3 Q BUT THE FIRST PLACE YOU SAW THEM WAS IN THE INTERSECTION?

4 A NO, SIR. BEFORE WHEN THEY WAS COMING UNDER THE LIGHT.

5 Q OKAY. WHERE IS THE LIGHT? RIGHT HERE?

6 A NO, SIR. IT'S ON THE OTHER CORNER.

7 Q RIGHT HERE?

8 A OTHER SIDE.

9 Q RIGHT HERE?

10 A YES, SIR.

11 Q RIGHT HERE?

12 A YES, SIR.

13 Q OKAY. SO YOU SAW THEM RIGHT THERE AT THE CORNER THERE?

14 A YES, SIR.

15 Q ALL RIGHT. THAT'S FINE. AND YOU SAW THEM FOR HOWEVER LONG

16 IT TAKES A GROUP OF PEOPLE WALKING AT NORMAL SPEED TO WALK

17 ACROSS THE STREET AND WALK A LITTLE WAYS DOWN ORR STREET

18 WHERE THAT WALL BLOCKS YOUR VISION, RIGHT?

19 A YES, SIR.

20 Q ALL RIGHT. AND YOU'VE TESTIFIED HERE TODAY THAT AMONG THOSE

21 PEOPLE WERE KENNETH JAMES AND ROBERT JAMES, CORRECT?

22 A YES, SIR.

23 Q OKAY. NOW, IN WHICH GROUP DID YOU SEE -- WELL, FIRST OF ALL,

24 WERE KENNETH AND ROBERT IN THE SAME GROUP, TALKING ABOUT A

25 GROUP OF TWO AND A GROUP OF THREE?

1 A I COULDN'T TELL YOU. I DON'T REMEMBER.

2 Q WHICH GROUP WAS KENNETH IN?

3 A I DON'T REMEMBER.

4 Q YOU DON'T REMEMBER WHICH GROUP ROBERT IS IN?

5 A NO, SIR.

6 Q YOU DON'T REMEMBER IF THEY WERE WALKING TOGETHER, CORRECT?

7 A NO, SIR.

8 Q YOU'RE JUST HERE TO TESTIFY TODAY THAT THEY WERE AMONG THESE
9 FIVE PEOPLE THAT CAME BY YOUR HOUSE THAT EVENING?

10 A YES, SIR.

11 Q OR EARLY MORNING HOURS. ALL RIGHT. AND YOU TESTIFIED THAT
12 THAT EVENING WHEN THE POLICE OFFICER CAME IN RESPONSE TO THE
13 PHONE CALL THAT YOU DIDN'T HAVE A CHANCE TO TALK WITH THE
14 POLICE OFFICER, NO ONE ASKED YOU ANYTHING AT THAT POINT IN
15 TIME, RIGHT?

16 A YES, SIR.

17 Q AND THEN A COUPLE OF DAYS LATER, I BELIEVE YOU TOLD MR.
18 GASSER POLICE OFFICERS WERE BROUGHT BY YOUR MOTHER TO YOUR
19 HOUSE, NOT HER HOUSE. RIGHT?

20 A I THINK THEY CAME TO MY MOTHER'S HOUSE AND MY AUNT BROUGHT
21 THEM AROUND TO MY HOUSE.

22 Q OKAY. I'M SORRY. THAT'S FINE. YOUR AUNT BROUGHT THEM TO
23 YOUR HOUSE. AND AT THAT POINT IN TIME THEY SHOWED YOU SOME
24 PICTURES, RIGHT?

25 A YES, SIR.

1 Q OKAY. AND THEY SHOWED YOU A COUPLE OF SETS OF PICTURES,
2 DIDN'T THEY?

3 A YES, SIR.

4 Q OKAY. LET ME SEE. THEY SHOWED YOU WHAT'S BEEN MARKED AS
5 STATE'S EXHIBIT NO. 2, CORRECT?

6 A I GUESS THAT WOULD BE ONE OF THEM.

7 Q I'M SORRY. YOU NEED TO SPEAK UP.

8 THE COURT: KEEP IT UP.

9 A I GUESS THAT COULD BE ONE OF THE PICTURES.

10 Q YOU GUESS IT COULD BE ONE OF THE PICTURES?

11 A (WITNESS NODS HEAD AFFIRMATIVELY)

12 Q AND THEN THEY SHOWED YOU WHAT'S MARKED AS STATE'S EXHIBIT 4?

13 A I GUESS.

14 Q YOU NEED TO SPEAK UP.

15 A I GUESS THAT COULD BE ONE OF THE PICTURES.

16 Q YOU GUESS IT COULD BE ONE OF THE PICTURES. BUT WHEN YOU SAY
17 THEY SHOWED YOU PICTURES, IT WAS PICTURES LIKE THIS?

18 A YES, SIR.

19 Q ONE SET WITH A GROUP OF PHOTOGRAPHS IN IT, RIGHT?

20 A YES, SIR.

21 Q AND THEN ANOTHER SET OF PICTURES WITH A GROUP OF PHOTOGRAPHS
22 IN IT, RIGHT?

23 A YES, SIR.

24 Q OKAY. AND YOU TOLD THE POLICE AT THAT TIME THAT YOU KNEW
25 EVERYONE IN THE PHOTOGRAPHS?

1 A YES, SIR.

2 Q OR MEANING THAT YOU KNEW ALL THE PICTURES THAT WERE BEING
3 SHOWN TO YOU, RIGHT?

4 A YES, SIR.

5 Q OKAY. AND AT THAT TIME YOU TOLD THE POLICE THAT -- LET ME
6 MAKE SURE -- YOUR HONOR, I BEG THE COURT'S INDULGENCE ONE
7 MOMENT, SIR.

8 THE COURT: SURE. JUDGES HAVE TO HAVE A HIGH CAPACITY
9 FOR INDULGENCE BECAUSE WE'RE ALWAYS BEING ASKED FOR OUR
10 INDULGENCE. AND WE ALSO HAVE TO HAVE A HIGH CAPACITY FOR
11 CONTRITION BECAUSE WE'RE ALWAYS APOLOGIZING TO JURORS FOR
12 KEEPING THEM WAITING, WHICH IS USUALLY MY FAULT. THANKS.
13 YOU READY TO CONTINUE?

14 MR. STRICKLER: YES, SIR. THANK YOU.

15 THE COURT: OKAY.

16 Q (BY MR. STRICKLER) AT THE TIME YOU WERE SHOWN THE
17 PHOTOGRAPHS THAT YOU WERE SHOWN A COUPLE OF DAYS AFTER THIS
18 INCIDENT, OKAY, YOU DID NOT IDENTIFY ANYONE IN THOSE
19 PHOTOGRAPHS TO THE POLICE, CORRECT?

20 A THAT'S CORRECT.

21 Q YOU SAID YOU KNEW EVERYONE IN THOSE GROUPS?

22 A YES, SIR.

23 Q RIGHT? SO, IF INDEED STATE'S EXHIBIT NO. 2 IS ONE OF THE
24 GROUPS OF PHOTOGRAPHS YOU WERE SHOWN AND PICTURE NUMBER 6 IS
25 A PICTURE OF KENNETH JAMES?

1 A YES, SIR.

2 Q YOU DID NOT ON A COUPLE OF DAYS AFTER THE 29TH PICK OUT
3 KENNETH JAMES'S PICTURE. YOU JUST TOLD HIM YOU KNEW EVERYONE
4 IN THE GROUP?

5 A YES, SIR.

6 Q THE SAME FOR THE OTHER ONES?

7 A YES, SIR.

8 Q ROBERT JAMES'S PICTURE IS IN THAT ONE, RIGHT?

9 A YES, SIR.

10 Q IF THAT WAS ONE OF THE THINGS THAT YOU WERE SHOWN, YOU DIDN'T
11 PICK OUT HIS PICTURE IN PARTICULAR; YOU JUST SAID YOU KNEW
12 EVERYONE IN THE PHOTOGRAPHS. IS THAT RIGHT?

13 A THAT'S CORRECT. YES, SIR.

14 Q NOW, SUNDAY PASSED THREE DAYS AGO?

15 A YES, SIR.

16 Q FOUR DAYS AGO. WHATEVER IT WAS. THAT'S WHEN YOU TOLD MS.
17 FRYAR FROM THE PROSECUTOR'S OFFICE THAT YOU HAD RECOGNIZED
18 KENNETH AND ROBERT?

19 A YES, SIR.

20 Q IN THOSE GROUPS. IS THAT CORRECT?

21 A YES, SIR.

22 Q OKAY. PRIOR TO THAT TIME YOU HAD NOT TOLD THE POLICE THAT
23 YOU'D RECOGNIZED THEM, RIGHT?

24 A YES, SIR.

25 Q "YES, SIR" MEANS CORRECT, YOU HAD NOT?

1 A (WITNESS NODS HEAD AFFIRMATIVELY)

2 Q SO SUNDAY, JUST A FEW DAYS AGO, WAS THE FIRST TIME YOU TOLD
3 SOMEONE WITH THE PROSECUTION THAT YOU HAD RECOGNIZED KENNETH
4 AND ROBERT IN THOSE GROUPS?

5 A YES, SIR.

6 Q THAT IS CORRECT?

7 A YES, SIR.

8 Q OKAY. AND THAT CAME ABOUT BECAUSE THEY CAME BY YOUR HOUSE TO
9 TALK WITH YOU, CORRECT?

10 A YES, SIR.

11 Q OR SET UP A MEETING. I'M NOT SURE WHETHER IT WAS YOUR HOUSE
12 OR ANOTHER PERSON'S HOUSE.

13 A YES, SIR.

14 Q IS THAT CORRECT? THAT'S ALL I HAVE, SIR. THANK YOU.

15 THE COURT: ALL RIGHT. MR. SHUPPER.

16 MR. SHUPPER: BRIEFLY, YOUR HONOR. THANK YOU.

17 THE COURT: OKAY.

18 CROSS EXAMINATION BY MR. SHUPPER:

19 Q GOOD AFTERNOON, MR. MURRAY. MR. MURRAY, HAD YOU INDICATED
20 THAT WHEN MR. BULL CAME TO THE HOUSE YOU GAVE HIM ASSISTANCE
21 BY HELPING HIM CALL THE POLICE, CORRECT?

22 A THAT'S CORRECT.

23 Q AND HOW LONG DID IT TAKE -- CAN YOU ESTIMATE HOW LONG IT TOOK
24 FOR THE POLICE TO ARRIVE?

25 A IT WAS MORE THAN 30 MINUTES.

1 Q MORE THAN 30 MINUTES?

2 A YES, SIR.

3 Q AND HOW LONG FROM THE TIME MR. BULL ARRIVED TO THE TIME THAT
4 YOU SAW THESE TWO GROUPS OF MEN WALKING DOWN THE STREET?

5 A FIFTEEN TO TWENTY MINUTES.

6 Q AND WERE THEY DOING ANYTHING SUSPICIOUS TO DRAW YOUR
7 ATTENTION, ANYTHING OUT OF THE ORDINARY TO DRAW YOUR
8 ATTENTION TO THEM?

9 A NO, SIR.

10 Q CAN YOU DESCRIBE HOW THEY WERE PROCEEDING?

11 A THEY WERE JUST WALKING AND TALKING.

12 Q JUST WALKING AND TALKING?

13 A YES, SIR.

14 Q LIKE A REGULAR STROLL?

15 A YES, SIR.

16 Q IN THE EVENING?

17 A (WITNESS NODS HEAD AFFIRMATIVELY)

18 Q OKAY. AND YOU DON'T KNOW WHERE THEY CAME FROM OTHER THAN THE
19 BRIEF TIME THEY WERE IN YOUR FIELD OF VISION RIGHT THERE BY
20 THE CORNER. IS THAT CORRECT?

21 A YES, SIR.

22 Q WAS MR. MURRAY (SIC) STANDING THERE WITH YOU WHEN THE POLICE
23 ARRIVED?

24 A I'M SORRY?

25 Q I'M SORRY, MR. MURRAY. WAS MR. BULL STANDING THERE WITH YOU

1 WHEN THE POLICE ARRIVED?

2 A HE WAS IN THE YARD. HE WAS BY -- YEAH. HE WAS CLOSER TO THE
3 PORCH THAN I WAS.

4 Q OKAY. AND YOU WERE INTERVIEWED BY THE POLICE A FEW DAYS
5 AFTER THIS, CORRECT?

6 A YES.

7 Q AND THE DETECTIVE SHOWED YOU SOME PHOTOGRAPHS?

8 A YES, SIR.

9 Q DO YOU RECALL HOW MANY PHOTOGRAPHS HE SHOWED YOU?

10 A NO, SIR.

11 Q BUT JUST TO MAKE SURE, YOU JUST TESTIFIED HE SHOWED YOU
12 SOMETHING LIKE PAGES OF PICTURES?

13 A YES, SIR.

14 Q RIGHT? HE DIDN'T SHOW YOU INDIVIDUAL PICTURES?

15 A NO, SIR.

16 Q AND YOU INDICATED YOU KNEW ALL THE PEOPLE ON STATE'S EXHIBIT
17 2?

18 A YES, SIR.

19 Q AND YOU KNEW ALL THE PEOPLE ON STATE'S EXHIBIT 4?

20 A YES, SIR.

21 Q AND THAT WAS WITHIN TWO DAYS OF THE INCIDENT?

22 A YES, SIR.

23 Q OKAY. THANK YOU. JUST ONE MOMENT, PLEASE. DO YOU KNOW FOR
24 A FACT WHERE MR. ROBERT JAMES LIVED IN MAY, OR ARE YOU JUST
25 GUESSING?

1 A YOU TALKING ABOUT THE HOUSE ON ORR STREET?

2 Q YES, SIR.

3 A YEAH.

4 Q YOU GUESSING?

5 A NO. HE LIVED THERE.

6 Q AND HOW CAN YOU STATE THAT WITH CERTAINTY?

7 A WELL, WE USED TO HANG ON THE CORNER OF MCALLISTER AND ORR
8 STREET, AND WE USED TO BE INBETWEEN LIKE ---

9 Q WHEN YOU SAY WE ---

10 MR. GASSER: OBJECTION.

11 THE COURT: EXCUSE ME A MINUTE. I'M SORRY. WHAT IS THE
12 OBJECTION?

13 MR. GASSER: HE'S NOT ALLOWING HIM TO FINISH HIS ANSWER,
14 YOUR HONOR.

15 THE COURT: OH, MY GOODNESS. ANYWAY, LET HIM FINISH IT.
16 IF YOU WEREN'T FINISHED WITH YOUR ANSWER, FINISH YOUR ANSWER.
17 OKAY.

18 A WE JUST HUNG OUT ON THE ORR STREET BLOCK AND IN THE CRESCENT
19 MANOR AREA.

20 THE COURT: AND YOUR NEXT QUESTION WAS, "WHEN YOU SAY
21 WE"?

22 Q WHO DO YOU MEAN WHEN YOU SAY "WE"?

23 A PEOPLE FROM THE NEIGHBORHOOD AND RELATIVES.

24 Q WELL, NOW, YOU'RE SAYING -- I THINK WHAT YOU'RE SAYING IS YOU
25 HANG OUT WITH YOUR FRIENDS ON ORR STREET, RIGHT?

1 A (WITNESS NODS HEAD AFFIRMATIVELY)

2 Q BUT ORR STREET IS ONLY A COUPLE OF HOUSES? RIGHT? WHAT ARE
3 YOU DOING THERE?

4 A HANGING OUT.

5 Q DIDN'T YOU ALSO -- DON'T YOU ALSO HANG OUT IN THE APARTMENTS
6 OVER AT CRESCENT MANOR?

7 A YES, SIR.

8 Q WEREN'T YOU HANGING OUT THERE AT THE TIME?

9 A YES, SIR.

10 Q AND DIDN'T YOU -- YOU SAID YOU'VE KNOWN KENNY AND ROBERT FOR
11 YEARS. DIDN'T YOU KNOW THEM TO HAVE LIVED OVER IN THAT AREA
12 BEFORE?

13 A YES, SIR.

14 Q AND YOU'VE KNOWN THEM TO LIVE IN THE NEIGHBORHOOD?

15 A YES, SIR.

16 Q ALL RIGHT. BUT HOW CAN YOU STATE WITH CERTAINTY THAT YOU
17 KNOW THAT KENNY LIVED IN THAT HOUSE? YOU CAN'T -- HAVE YOU
18 EVER SEEN THE LEASE?

19 A NO, SIR.

20 Q YOU RECOGNIZED HIM FROM -- KENNY AND ROBERT -- FROM YOUR
21 ASSOCIATION AT SCHOOL?

22 A AND THE NEIGHBORHOOD.

23 Q AND THE NEIGHBORHOOD. WHAT ARE THE HOURS THAT YOU WERE
24 WORKING AT THE TIME OF THIS INCIDENT?

25 A MAYBE FROM 12 TO 7 OR 1 TO 6.

1 Q 12 TO 7?

2 A P.M.

3 Q YOU MEAN FROM NOON TO 7?

4 A YES, SIR.

5 Q AND FROM -- WHAT ARE THE OTHER HOURS YOU MENTIONED?

6 A 1 TO 6.

7 Q FROM 1 P.M. UNTIL 6 P.M.?

8 A YES, SIR.

9 Q OKAY. AND WHEN YOU TALK ABOUT HANGING OUT, ARE YOU TALKING
10 ABOUT STANDING ON THE STREET CORNER?

11 A YES, SIR.

12 Q HAVE YOU EVER BEEN INSIDE 2528 ORR STREET?

13 A NO, SIR.

14 Q SO YOU'VE NEVER BEEN INSIDE THERE WITH ROBERT JAMES, HAVE
15 YOU?

16 A NO, SIR.

17 Q HAVE YOU EVER BEEN IN HIS APARTMENT OR WHERE YOU BELIEVED HE
18 LIVED BEFORE CRESCENT MANOR?

19 A NO, SIR.

20 Q HAVE YOU EVER BEEN INSIDE ANY RESIDENCE WHERE ROBERT JAMES
21 LIVED?

22 A NOT AT THE TIME WHERE HE WAS LIVING AT.

23 Q OKAY. SO IS IT FAIR TO SAY THAT YOU'RE GUESSING WHEN YOU SAY
24 SOMEONE LIVED THERE IF YOU'VE NEVER BEEN IN THERE AND HAD
25 FIRSTHAND KNOWLEDGE OF WHO LIVES THERE?

1 A YES, SIR.

2 Q YOU'RE GUESSING THAT ROBERT JAMES LIVED THERE, AREN'T YOU, ON
3 ORR STREET?

4 A NO, SIR.

5 Q YOU'VE NEVER BEEN IN THE HOUSE WITH HIM?

6 A YOU DON'T HAVE TO BE IN A HOUSE TO KNOW SOMEBODY LIVES THERE.

7 Q WELL, YOU'RE AT WORK DURING THE DAYTIME, AREN'T YOU?

8 A WELL, SEE, I WAS WORKING AT MCDONALD'S. SO MY SHIFT VARIED.

9 SOMETIMES I WORKED EARLY MORNING. SOMETIMES I WORKED LATE
10 AFTERNOON. SOMETIMES I WORKED NIGHTS.

11 Q OKAY. AND ISN'T THAT SOMETHING LIKE SAYING THAT BECAUSE YOU
12 GO INTO YOUR MAMA'S HOUSE ON GERMANY STREET THAT YOU LIVE
13 THERE?

14 A WELL, I MEAN, I HAVE LIVED THERE.

15 Q BUT WERE YOU LIVING THERE AT THE TIME, AT THIS TIME?

16 A NO, SIR.

17 Q WHERE DID YOU LIVE AT THAT TIME?

18 A ON MCFADDEN STREET.

19 Q OKAY. AND MCFADDEN STREET'S A FEW BLOCKS AWAY, ISN'T IT?

20 A YES, SIR.

21 Q NOW, YOU VISIT YOUR MAMA, DON'T YOU?

22 A EVERY DAY.

23 Q OKAY. SO YOU MAY HAVE SEEN ROBERT JAMES IN THE NEIGHBORHOOD.
24 IS THAT CORRECT?

25 A YES, SIR.

1 Q AND YOU MAY HAVE BELIEVED THAT HE LIVED THERE, CORRECT?

2 A YES, SIR.

3 Q BUT YOU'VE NEVER BEEN IN THE HOUSE WITH HIM, CORRECT?

4 A YES, SIR.

5 Q YOU DON'T KNOW WHO'S ON THE LEASE, DO YOU?

6 A NO, SIR.

7 Q OKAY. AND YOU HAD KNOWN HIM FROM -- BELIEVED THAT YOU KNEW
8 THAT HE LIVED IN SOME OTHER AREA THERE IN THAT NEIGHBORHOOD,
9 CORRECT?

10 A YES, SIR.

11 Q OKAY. AND SO YOU HAVE KNOWN HIS FACE FROM GOING TO SCHOOL,
12 CORRECT?

13 A YES, SIR.

14 Q NOW, WAS THERE A LOT OF TALK IN THE NEIGHBORHOOD AFTER THIS
15 INCIDENT?

16 A NO, SIR. NOT REALLY. JUST -- THERE WASN'T A LOT OF TALK.
17 THERE WAS SOME CONVERSATION ABOUT IT.

18 Q SOME CONVERSATIONS?

19 A YES, SIR.

20 Q LIKE CONVERSATIONS WITH ---

21 MR. STRICKLER: OBJECTION TO CONVERSATIONS ON THE
22 STREETS.

23 THE COURT: SUSTAINED, MR. SHUPPER, TO THE EXTENT THAT
24 IT MAY SEEK TO ELICIT HEARSAY RESPONSES. I THINK WE'RE
25 WALKING IN AN AREA THAT IS FRAUGHT WITH DANGER. SO I WOULD

1 APPRECIATE YOU NOT MOVING INTO THAT AREA. THANK YOU VERY
2 MUCH, SIR. I WILL ALLOW YOU TO COME UP HERE AND TELL ME WHY
3 ON THE RECORD, WHY IT IS YOU WISH TO EXPLORE THIS PARTICULAR
4 AREA IF YOU FEEL THE NECESSITY TO DO SO. BE HAPPY TO DO
5 THAT.

6 MR. SHUPPER: IF I MAY, YOUR HONOR.

7 THE COURT: THEN LET'S COME UP.

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

9 THE COURT: WAIT UNTIL MR. GASSER GETS HERE. OKAY.
10 WHAT ARE YOU DOING TO DO? YOU DON'T KNOW WHAT THIS GUY IS
11 GOING TO SAY, DO YOU?

12 MR. SHUPPER: YOUR HONOR, HE HAD TESTIFIED AT THE
13 HEARING THE OTHER DAY THAT HE HAD HEARD RUMORS ABOUT WHAT HAD
14 HAPPENED AND ---

15 THE COURT: MY GOD. WHY DO YOU WANT TO SAY THAT?

16 MR. SHUPPER: THAT THERE WAS A SUGGESTION, YOUR HONOR.
17 BUT I WILL NOT GO THERE.

18 THE COURT: OKAY. JOHNNY, MR. GASSER, LET ME SEE YOU.
19 AT THIS POINT IN TIME, MR. GASSER, FROM AN ABUNDANCE OF
20 CAUTION, I WILL NOT ALLOW YOU TO REDIRECT THIS WITNESS, OR
21 WHOEVER IS DOING IT, ON ANY MOTIVATION FOR NOT HAVING
22 IDENTIFIED THESE PICTURES AT THE TIME THAT THEY BROUGHT THE
23 PHOTOGRAPHS BY.

24 LET ME TELL YOU WHY. BECAUSE I DON'T KNOW WHAT
25 INFERENCES THE DEFENDANTS ARE GOING TO SEEK TO ARGUE FROM

1 THAT PARTICULAR THING. IF, HOWEVER, THEY ARGUE INFERENCES
2 THAT ARE COMPATIBLE WITH SOME MOTIVE TO CONCEAL, I WOULD
3 ALLOW IT. AND I THINK IT WOULD BE A REASONABLE INFERENCE TO
4 BE WRONG THAT SINCE YOU'VE ALREADY ELICITED THAT THIS
5 WITNESS'S MOTHER LIVED IN THE GERMANY STREET AREA THAT THAT
6 IS JUST AS REASONABLE AN INFERENCE. SO I WOULD CAUTION LET'S
7 JUST NOT GET INTO IT ON REDIRECT.

8 MR. GASSER: JUST SO I WON'T HAVE TO COME UP HERE, THE
9 LAST QUESTION I WAS GOING TO ASK HIM ON REDIRECT WAS WHY
10 DIDN'T YOU TELL KAREN FRYAR AND MR. SHUPPER. BECAUSE HE WAS
11 THERE. WHY DIDN'T YOU TELL THEM WHAT YOU'RE TELLING THIS
12 JURY? DO YOU NOT WANT ME TO ASK THAT QUESTION?

13 THE COURT: I DON'T KNOW WHAT THE ANSWER IS. IF THE
14 ANSWER HAS SOMETHING TO DO WITH SOME UNSPECIFIED FEAR OF
15 RETALIATION, THEN I'D BE CONCERNED WITH IT. BECAUSE I THINK
16 IT MIGHT BE PREJUDICIAL IN AN OTHERWISE RELATIVELY CLEAN
17 RECORD. SEE? I MEAN, YOU KNOW, ASK IT -- YOU KNOW, THAT'S
18 DIFFERENT FROM, "WHY DIDN'T YOU TELL THEM EARLIER". I MEAN,
19 THAT IS A DIFFERENT QUESTION, "WHY DIDN'T YOU TELL THEM
20 EARLIER". I DON'T KNOW WHAT THE ANSWER IS GOING TO BE. IF
21 YOU KNOW WHAT THE ANSWER IS GOING TO BE, FROM WHAT YOU'RE
22 TELLING ME NOW, IF THE ANSWER IS, I WAS NO LONGER SCARED OF
23 THESE GUYS BECAUSE THEY WERE IN JAIL, THEN THAT -- AND MY
24 MOTHER WAS SAFE, THEN THAT COULD BE A PROBLEM. DO YOU SEE
25 WHAT I'M SAYING?

1 MR. GASSER: YEAH. I SEE WHAT YOU'RE SAYING.

2 THE COURT: I THINK JUST BE CAREFUL. OKAY. THANKS.

3 (WHEREUPON, THE SIDE BAR CONFERENCE IS CONCLUDED)

4 THE COURT: WE WERE CHATTING ABOUT THE BRAVES/METS
5 SERIES; AGAIN, NOTHING TO DO WITH THE CASE. THANKS FOR YOUR
6 PATIENCE WITH US, FOLKS. PLEASE CONTINUE, MR. SHUPPER.

7 CROSS EXAMINATION RESUMED BY MR. SHUPPER:

8 Q DID YOU EVER ASK ROBERT JAMES IF HE LIVED THERE?

9 A NO, SIR.

10 MR. SHUPPER: I HAVE NOTHING FURTHER, YOUR HONOR.

11 THE COURT: THANK YOU. REDIRECT, MR. GASSER, IF ANY,
12 SIR?

13 MR. GASSER: VERY BRIEFLY, YOUR HONOR.

14 THE COURT: YES, SIR.

15 REDIRECT EXAMINATION BY MR. GASSER:

16 Q CHARLES, MR. STRICKLER ASKED YOU ABOUT THIS PAST SUNDAY,
17 THREE DAYS AGO, WHEN YOU MET WITH MS. KAREN FRYAR. IS THAT
18 CORRECT?

19 A YES, SIR.

20 Q AND WHERE DID YOU MEET WITH MS. FRYAR?

21 A AT GERMANY STREET AT MY MOTHER'S HOUSE.

22 Q SO WAS MS. FRYAR ALSO MEETING WITH YOUR MOTHER AT THE SAME
23 TIME?

24 A YES, SIR.

25 Q AND MR. SHUPPER I BELIEVE WAS PRESENT, CAME AROUND AS WELL,

1 MR. ROBERT JAMES'S LAWYER, DID HE NOT?

2 A YES, SIR.

3 Q AND DID YOU FREELY TALK TO MR. SHUPPER AS WELL?

4 A YES, SIR.

5 Q DID YOU HAVE ANY PROBLEMS WITH TALKING WITH BOTH MS. FRYAR OF
6 THE SOLICITOR'S OFFICE AND MR. SHUPPER, ROBERT JAMES'S
7 ATTORNEY?

8 A NO, SIR.

9 Q AND DID YOU TELL THEM WHAT YOU TOLD THIS JURY TODAY?

10 A YES, SIR.

11 Q DID ANYONE SHOW YOU ANY PHOTOGRAPHS ON SUNDAY?

12 A NO, SIR.

13 Q WHEN MR. STRICKLER ASKED YOU, I BELIEVE MR. STRICKLER ASKED
14 YOU THE QUESTION, SHE ASKED YOU WHO THESE PEOPLE WERE. DO
15 YOU REMEMBER MR. STRICKLER ASKING YOU THAT QUESTION?

16 A NO, SIR.

17 Q WHEN MS. FRYAR WAS OVER THERE?

18 A OH. YES, SIR.

19 Q DID MS. FRYAR ASK YOU WHO THESE PEOPLE WERE? DO YOU REMEMBER
20 MR. STRICKLER ASKING YOU THAT?

21 A UH-HUH (AFFIRMATIVE).

22 Q AND DID MS. FRYAR ASK YOU IF YOU KNEW WHO THESE PEOPLE WERE
23 THAT WALKED UNDER THE STREET LIGHT?

24 A YES, SIR.

25 MR. GASSER: THAT'S ALL I HAVE, YOUR HONOR. THANK YOU.

1 THE COURT: THANK YOU. THANK YOU, MR. MURRAY. YOU CAN
2 STEP DOWN, SIR. OKAY. MR. GASSER OR MS. FRYAR, YOUR NEXT
3 WITNESS, PLEASE.

4 MS. FRYAR: YOUR HONOR, OUR NEXT WITNESS IS MS. VERNETTE
5 YEADON.

6 THE COURT: I'M SORRY. I DIDN'T HEAR THE NAME. THE
7 NAME WAS...?

8 MS. FRYAR: VERNETTE YEADON.

9 THE COURT: OKAY. IF THAT PERSON IS PRESENT, PLEASE
10 COME ON DOWN. HERE SHE COMES.

11 MR. GASSER: MAY MR. MURRAY BE EXCUSED, YOUR HONOR?

12 MR. STRICKLER: WITHOUT OBJECTION. SURE.

13 MR. SHUPPER: NO OBJECTION, YOUR HONOR.

14 THE COURT: THANK YOU FOR YOUR ATTENDANCE, MR. MURRAY.
15 YOU'RE FREE TO GO, SIR. MA'AM, IF YOU WOULD APPROACH THIS
16 GENTLEMAN IN THE YELLOW JACKET AND THEN PLEASE FOLLOW HIS
17 INSTRUCTIONS.

18 VERNETTE YEADON, 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: MA'AM, WHEN YOU DO STATE YOUR NAME FOR THE
23 RECORD, IF YOU WOULD PLEASE SPELL IT FOR THE COURT REPORTER.
24 THANK YOU.

25 MS. YEADON: OKAY. MY NAME IS VERNETTE YEADON.

1 V-E-R-N-E-T-T-E. LAST NAME, Y-E-A-D-O-N.

2 THE COURT: THANK YOU.

3 MS. FRYAR: MAY IT PLEASE THE COURT, YOUR HONOR.

4 THE COURT: YES, MA'AM.

5 DIRECT EXAMINATION BY MS. FRYAR:

6 Q MS. YEADON, WHERE DO YOU LIVE?

7 A 1726 GERMANY STREET.

8 Q OKAY. AND THAT'S HERE IN COLUMBIA. IS THAT RIGHT?

9 A RIGHT.

10 Q OKAY. HOW LONG HAVE YOU LIVED THERE?

11 A SINCE '86.

12 Q OKAY. AND DO YOU HAVE ANY CHILDREN?

13 A YES.

14 Q HOW MANY CHILDREN?

15 A THREE.

16 Q OKAY. AND COULD YOU PLEASE TELL THE JURY WHO, THEIR NAMES
17 AND HOW OLD THEY ARE?

18 A CHARLES MURRAY, 27, LISA MCCLARY, 25, AND JOLINE YEADON, 18.

19 Q ALL RIGHT. AND BACK IN 1996, IF I CAN TAKE YOU BACK TO 1996,
20 WHERE WAS YOUR SON, CHARLES MURRAY, LIVING?

21 A HE WAS LIVING ON MCFADDEN.

22 Q OKAY. AND DID YOU SEE MUCH OF HIM?

23 A YES.

24 Q ALL RIGHT. WHERE WOULD YOU SEE CHARLES?

25 A HE WOULD COME TO MY HOUSE.

1 Q WITH WHAT FREQUENCY WOULD HE COME TO YOUR HOUSE?

2 A EVERY DAY.

3 Q OKAY. SO WAS HE LIVING WITH YOU IN 1986 WHEN YOU ALL MOVED
4 TO THAT HOUSE ON GERMANY STREET?

5 A IN '96. NO. HE WASN'T LIVING WITH ME.

6 Q NO. IN '86 WHEN YOU FIRST MOVED TO THE HOUSE ON GERMANY
7 STREET.

8 A OH, YES. YES.

9 Q APPROXIMATELY HOW OLD WAS CHARLES WHEN YOU ALL MOVED THERE?

10 A HE BORN IN '74. SO HE PROBABLY WAS 12.

11 Q ABOUT 12 YEARS OLD?

12 A MM-HMM (AFFIRMATIVE).

13 Q ALL RIGHT, SIR. MA'AM. EXCUSE ME.

14 A MM-HMM (AFFIRMATIVE).

15 Q DID SOMETHING UNUSUAL HAPPEN ON MAY THE 28TH, THE EVENING OF
16 MAY THE 28TH, 1996, AND THE EARLY MORNING HOURS OF MAY THE
17 29TH, 1996?

18 A WHEN THE MAN CAME RUNNING UP TO THE HOUSE?

19 Q YES, MA'AM.

20 A YEAH.

21 Q DO YOU REMEMBER THE DATE, THE EVENING OF MAY THE 28TH, 1996,
22 AND THE EARLY MORNING HOURS OF MAY THE 29TH, 1996?

23 A I REMEMBER THE EPISODE HAPPENED, BUT THE DATE I DON'T
24 REMEMBER EXACTLY DATE.

25 Q ALL RIGHT.

1 A BUT I REMEMBER THE EPISODE.

2 Q YOU REMEMBER THE EPISODE HAPPENING WHEN A MAN CAME UP TO YOUR
3 HOUSE. IS THAT CORRECT?

4 A YES. YES.

5 Q CAN YOU TELL THE JURY WHAT YOU WERE DOING AT THE HOUSE
6 EARLIER THIS EVENING?

7 A WHAT I WAS DOING?

8 Q YES, MA'AM.

9 A BEFORE THE MAN CAME EVER TO THE HOUSE?

10 Q YES, MA'AM.

11 A WE WERE SITTING DOWN TALKING. BUT WE WERE GOING TO THE DOOR
12 BECAUSE I WAS WALKING MY SON TO THE DOOR. AND AS THEY
13 STEPPED OUT THE DOOR, THAT'S WHEN THE MAN CAME UP.

14 Q SO CHARLES HAD BEEN OVER TO YOUR HOUSE. IS THAT WHAT YOU'RE
15 SAYING?

16 A YES.

17 THE COURT: EXCUSE ME, MR. STRICKLER. YOU'RE ABOUT TO
18 STAND, SIR.

19 MR. STRICKLER: YES. JUST IN GENERAL AS TO THE
20 RELEVANCE AT THIS POINT, YOUR HONOR, AS TO WHAT'S GOING ON
21 EARLIER IN THE EVENING.

22 THE COURT: WELL, I'M GOING TO GIVE MS. FRYAR SOME
23 LATITUDE.

24 MR. STRICKLER: YES, SIR.

25 THE COURT: WE'LL DETERMINE WHETHER OR NOT IT'S GERMANE

1 TO ANY ISSUE IN THE CASE. AND IF NOT, STATE YOUR OBJECTION
2 AGAIN. THANK YOU. BUT PLEASE CONTINUE, MS. FRYAR.

3 MR. STRICKLER: THANK YOU.

4 Q (BY MS. FRYAR) WHO ELSE WAS IN THE HOUSE BESIDES YOU AND
5 CHARLES ON THAT EVENING?

6 A IT WAS ME, CHARLES AND MY HUSBAND. AND MY DAUGHTER WAS THERE
7 IN THERE, BUT SHE WAS IN THE BED.

8 Q ALL RIGHT. AND DO YOU KNOW WHAT TIME ABOUT THE MAN CAME TO
9 YOUR DOOR?

10 A IT WAS SOMEWHERE BETWEEN -- IT WAS AFTER 11 BUT IT WAS BEFORE
11 1. SO IT WAS SOMEWHERE BETWEEN 11:30 AND 12, SOMETHING LIKE
12 THAT.

13 Q WHAT WERE YOU AND YOUR FAMILY DOING RIGHT BEFORE THE MAN CAME
14 TO THE DOOR?

15 A LOOKING AT T.V.

16 Q OKAY. WERE YOU ALL -- YOU ALL WERE ALL WATCHING T.V. THERE
17 TOGETHER?

18 A YES.

19 Q ALL RIGHT. AND WHAT HAPPENED AFTER THAT?

20 A WHEN THEY WAS LEAVING, I WAS WALKING THEM TO THE DOOR. HE
21 CAMED (SIC) UP. AND HE SAID --

22 THE COURT: MS. YEADON, IF YOU COULD, PLEASE, MA'AM,
23 IT'S DIFFICULT FOR ME TO HEAR YOU. THAT'S BECAUSE I'M OLD.
24 BUT THE LADY RIGHT THERE HAS GOT TO HEAR YOU. SO PLEASE
25 SPEAK AS LOUDLY AS YOU CAN SO THESE FOLKS OVER HERE CAN HEAR

1 YOU, TOO. THANKS.

2 A AS THEY WAS GOING OUT THE DOOR, HE WAS APPROACHING THE PORCH,
3 AND HE WAS SAYING SOMETHING ---

4 MS. FRYAR: OKAY, YOUR HONOR. EXCUSE ME, MS. YEADON.
5 WE ARE PROCEEDING UNDER 801. EXCUSE ME. RULE 803 (1) AND
6 (2) NOW.

7 Q (BY MS. FRYAR) AND WHAT DID HE SAY?

8 A HE SAID, "COULD YOU PLEASE CALL THE POLICE?"

9 Q OKAY. AND SO, WHAT DID YOU ALL DO?

10 A BECAUSE HE CAME UP IN THE YARD, THEY WAS GOING TO BRING HIM
11 IN THE HOUSE, BUT BECAUSE HE WAS IN HIS UNDERWEAR AND HIS
12 T-SHIRT, I BROUGHT THE PHONE OUTSIDE TO HIM SO HE COULD CALL
13 THE POLICE.

14 Q OKAY. ALL RIGHT. AND SO WHEN HE CAME UP, WHEN HE FIRST CAME
15 UP, WERE YOU OUTSIDE?

16 A NO, SIR.

17 Q OKAY. WHO WAS OUTSIDE?

18 A MY SON AND MY HUSBAND. THEY HAD JUST STEPPED OUT THE DOOR ON
19 THE PORCH.

20 Q OKAY. AND DID YOU SEE THE MAN WHEN HE CAME UP?

21 A YEAH.

22 Q OKAY. WHERE WERE YOU STANDING?

23 A I WAS COMING BEHIND THEM. ALL THREE OF US WAS LIKE RIGHT
24 BEHIND EACH OTHER COMING OUT THE DOOR.

25 Q AND WHAT DID HE SAY?

1 A HE SAID, "COULD YOU PLEASE CALL THE POLICE?" AND HE SAID
2 THAT SOMEBODY WAS -- THEY WAS RAPING HIS GIRLFRIEND AND THEY
3 ROBBED HIM.

4 Q OKAY. AND SO YOU HAD MENTIONED THAT YOU GOT THE TELEPHONE
5 FOR HIM. IS THAT RIGHT?

6 A YEAH. BECAUSE I -- THEY WAS GOING TO BRING HIM -- THEY WAS
7 GOING TO LET HIM COME IN THE HOUSE TO USE THE PHONE. BUT I
8 TOOK THE CORDLESS PHONE TO HIM.

9 Q OKAY.

10 A AND TOLD HIM TO CALL THE POLICE.

11 Q WHAT DID THE MAN LOOK LIKE?

12 A HE WAS AVERAGE HEIGHT, A LITTLE -- I MEAN, A PETITE SIZED
13 MAN.

14 Q OKAY. DO YOU REMEMBER WHAT CLOTHES HE HAD ON NOW?

15 A THE ONLY THING I KNOW, HE HAD ON BOXERS AND A T-SHIRT.

16 Q AND WHAT COLOR T-SHIRT WAS IT, IF YOU REMEMBER?

17 A I THINK IT WAS WHITE.

18 Q ALL RIGHT. AND DID HE HAVE ANY KIND OF MARKS ON HIM?

19 A HE HAD BRUISES ON HIS KNEES AND WAS BLEEDING, BLEEDING ON HIS
20 KNEES.

21 Q OKAY. CAN YOU REMEMBER WHAT HIS SHIRT LOOKED LIKE?

22 A HE LOOKED LIKE HIS SHIRT -- I THINK IT HAD LIKE SPOTS ON IT
23 LIKE HE WAS IN SOMETHING, LIKE GRASS OR WATER, SOMETHING LIKE
24 THAT.

25 Q ALL RIGHT.

1 A BUT IT HAD SPOTS ON IT LIKE.

2 Q AND WHAT WAS HIS GENERAL APPEARANCE LIKE, MS. YEADON? HOW
3 WAS HE ACTING?

4 A LIKE HE WAS AFRAID.

5 Q OKAY. ALL RIGHT. SO YOU ALL HANDED THE PHONE TO HIM?

6 A MM-HMM (AFFIRMATIVE).

7 Q AND CALLED THE POLICE. IS THAT RIGHT?

8 A YES.

9 Q ALL RIGHT. AND SO HOW LONG DID YOU WAIT THERE WITH THE
10 GENTLEMAN OUTSIDE YOUR HOUSE?

11 A YOU MEAN FROM THE TIME HE CALLED UNTIL THE POLICE GOT THERE?

12 Q YES, MA'AM.

13 A IT WAS LIKE ONCE HE MADE THE CALL IT TOOK ABOUT 45 MINUTES OR
14 35 TO 45 MINUTES BEFORE THE POLICE CAME, ALMOST AN HOUR. I
15 WOULD THINK IT WOULD BE AN HOUR.

16 Q OKAY. AND DID ANYTHING HAPPEN WHILE YOU ALL WERE STANDING
17 OUTSIDE?

18 A YEAH. WHILE WE WERE STANDING ON THE PORCH WE SAW SOME YOUNG
19 MENS (SIC) COME WALKING PAST. AND HE SAID, "THERE THEY GO.
20 THERE THEY GO NOW."

21 Q HE SAID WHAT?

22 A "THERE THEY GO NOW."

23 Q AND THAT'S WHAT THE MAN SAID TO YOU?

24 A YES.

25 Q AND WHEN HE SAID, "THERE THEY GO NOW", WHAT WAS HE LOOKING

1 AT? WHO WAS WALKING WHERE?

2 A THERE WERE SOME GUYS WALKING THROUGH. IT'S A PATH CALLED --
3 IT'S CALLED MAEBELLE COURT.

4 Q YES, MA'AM.

5 A AND THEY WAS WALKING THROUGH, GOING UP TOWARDS ORR STREET.

6 Q OKAY. AND HOW MANY PEOPLE WERE THEY?

7 A IT WAS A SET OF TWO. THEN IT WAS THREE AFTERWARDS.

8 Q OKAY.

9 A SO IT WAS LIKE FIVE.

10 Q WHAT DID THOSE PEOPLE LOOK LIKE, MS. YEADON?

11 A THE ONLY THING I KNOW WAS FIVE YOUNG MEN.

12 Q WERE THEY CAUCASIAN MEN OR SPANISH AMERICAN OR
13 AFRICAN-AMERICAN MEN?

14 A YES. AFRICAN-AMERICANS.

15 Q ALL RIGHT. AND DID YOU KNOW ANY OF THEM BY NAME?

16 A NO.

17 Q ALL RIGHT. AND ONCE MR. BULL SAID, "THERE THEY GO NOW",
18 WHERE DID THE MEN GO TO?

19 A THEY WENT UP TOWARDS ORR STREET.

20 MS. FRYAR: OKAY. IF THE WITNESS COULD STEP DOWN, YOUR
21 HONOR.

22 THE COURT: YES, MA'AM. IF IT'S NECESSARY.

23 Q (BY MS. FRYAR) IF YOU COULD STEP DOWN, MS. YEADON.

24 A DO I NEED TO TAKE THIS WITH US?

25 Q YES, MA'AM.

1 THE COURT: MS. YEADON, WHEN YOU'RE TESTIFYING YOU'RE
2 GOING TO BE AWAY FROM THAT MICROPHONE. SO I'M GOING TO ASK
3 YOU, PLEASE, TO KEEP YOUR VOICE UP AND TALK AS LOUD AS YOU
4 CAN SO THIS LADY CAN HEAR YOU. THANK YOU, MA'AM.

5 Q ALL RIGHT. IF YOU WOULD, HAVE YOU SEEN THIS BEFORE, MS.
6 YEADON?

7 A NO.

8 THE COURT: MS. YEADON, YOU JUST ---

9 A OH. OKAY.

10 THE COURT: YOU MIGHT WANT TO SWITCH PLACES WITH MS.
11 FRYAR, TOO.

12 Q STAND RIGHT HERE. NOW, I'M SHOWING YOU, MS. YEADON, WHAT'S
13 BEEN MARKED AS STATE'S EXHIBIT NO. 1. I WANT YOU TO TAKE A
14 LOOK AT IT FOR A FEW MINUTES.

15 A OKAY.

16 Q OKAY?

17 A OKAY.

18 Q NOW, CAN YOU FIND YOUR HOUSE ON THIS DRAWING?

19 A THIS MY HOUSE RIGHT HERE.

20 Q OKAY. AND WHEN YOU AND THE MAN WHO CAME TO YOUR HOUSE, YOUR
21 SON AND YOUR HUSBAND HAD BEEN OUT IN THE YARD OF THAT HOME,
22 WHERE WOULD YOU HAVE BEEN ON OUR MAP? WHERE WOULD YOU HAVE
23 BEEN? POINT TO WHERE YOU WOULD BE STANDING.

24 A RIGHT IN MY FRONT DOOR, PROBABLY MIDDLE WAY.

25 Q OKAY. AND WHEN THE MEN CAME BY, WHAT WERE THE SETS AGAIN

1 NOW?

2 A IT WAS SETS OF TWO. THEN IT WAS A SET OF THREE.

3 Q OKAY. AND WHEN THEY CAME BY, WHAT WERE THEY DOING?

4 MR. STRICKLER: ASKED AND ANSWERED, YOUR HONOR.

5 OBJECTION.

6 THE COURT: YEAH. IF IT HAS BEEN. BUT, MS. FRYAR,
7 PLEASE DON'T REPEAT YOURSELF, IF YOU COULD, PLEASE, MA'AM.

8 MS. FRYAR: ALL RIGHT. I'M SORRY.

9 Q (BY MS. FRYAR) IF YOU COULD, WERE THEY RUNNING OR ---

10 MR. STRICKLER: OBJECTION. LEADING.

11 THE COURT: YEAH. IT IS LEADING. WHAT WERE THEY DOING?
12 AND THEN DON'T ASK THAT QUESTION AGAIN.

13 MS. FRYAR: YES, SIR. I APOLOGIZE.

14 Q (BY MS. FRYAR) WHAT WERE THEY DOING NOW?

15 A THEY WAS WALKING.

16 Q OKAY. AND WHERE WERE THEY AT ON THE MAP, ON THE DRAWING?

17 A THEY WAS WALKING, COMING THROUGH BY MAEBELLE COURT GOING UP
18 TO ORR STREET.

19 Q OKAY. AND CAN YOU TELL THE JURY WHAT THE LIGHTING IS LIKE
20 THERE ON YOUR STREET?

21 A IT'S A LIGHT RIGHT ON THE CORNER OF MAEBELLE COURT AND
22 GERMANY STREET.

23 Q OKAY. HOW WELL COULD YOU SEE THESE PEOPLE?

24 A WELL, I -- I SAW THE GUYS; BUT, I MEAN, I COULDN'T SEE THEM
25 TO IDENTIFY THEM. BUT I SAW IT WAS THE YOUNG MEN.

1 Q OKAY. COULD YOU -- WHERE WERE YOU STANDING AT YOUR HOUSE
2 WHEN THEY WALKED BY?

3 A ON MY PORCH.

4 Q WHERE WAS CHARLES? DO YOU KNOW?

5 A HE WAS IN THE YARD.

6 Q OKAY. SO WHERE WOULD HE BE ON OUR DRAWING?

7 A OKAY. IT'S A DRIVEWAY RIGHT HERE BY MY HOUSE, AND HE WAS --
8 MY PORCH IS RIGHT HERE AND THE DRIVEWAY IS HERE. SO HE WAS
9 OUT BETWEEN THE DRIVEWAY AND MY PORCH.

10 Q SO WAS HE CLOSER TO THE ROAD?

11 A CLOSER TO THE ROAD, TO GERMANY STREET.

12 Q YEAH. AND SO WHEN THE GENTLEMEN WALKED BY, WHERE DID YOU
13 LAST SEE THEM WHEN THE PEOPLE WALKED BY?

14 A BECAUSE OF THIS WALL RIGHT HERE ON ORR STREET, YOU CAN SEE
15 THEM UP ORR STREET MAYBE ABOUT A QUARTER OF THE WAY, BUT AS
16 YOU GO ALONG THE WALK GETS HIGHER AND HIGHER. SO YOU CAN SEE
17 THEM LIKE THE FIRST THREE WALLS. YOU CAN JUST SEE THEIR
18 HEAD.

19 Q YOU COULD JUST SEE THEIR HEAD?

20 A UH-HUH (AFFIRMATIVE).

21 Q SO WHAT IS THIS RIGHT HERE THEN, IF YOU COULD EXPLAIN?

22 A THIS IS A BRICK WALL AND THIS -- THIS PART IS BRICK AND WOOD,
23 AND THIS PART IS ALL BRICK.

24 Q OKAY. SO WHEN YOU SAY YOU COULD SEE THE TOP, WAS IT THE TOPS
25 OF THEIR HEAD THAT YOU FINALLY SAW?

1 A YOU KNOW, AS THEY WAS GOING FURTHER UP, YOU COULD SEE AT THE
2 BEGINNING THEM, AND THEN ACTUALLY WENT UP ALMOST TO THE HEAD
3 PART.

4 Q ALL RIGHT. AND COULD YOU PLEASE POINT OUT AGAIN -- I'M SORRY
5 -- WHERE YOU TOTALLY LOST SIGHT OF THEM?

6 A PROBABLY AROUND ABOUT ONE -- ONE-THIRD OF THE WAY.

7 Q ONE-THIRD OF THE WAY?

8 A YEAH.

9 Q ALL RIGHT, MA'AM. I APPRECIATE IT. PLEASE TAKE YOUR SEAT.
10 (WITNESS RESUMES THE STAND)

11 Q MS. YEADON, I DON'T HAVE ANY MORE FOR QUESTIONS FOR YOU. BUT
12 WAIT JUST A MINUTE.

13 THE COURT: NOT SO FAST, MS. YEADON. ALL RIGHT. MR.
14 STRICKLER.

15 MR. STRICKLER: THANK YOU, YOUR HONOR. IF IT PLEASE THE
16 COURT.

17 CROSS EXAMINATION BY MR. STRICKLER:

18 Q MS. YEADON, I JUST HAVE A COUPLE OF QUESTIONS. MY NAME IS
19 DOUG STRICKLER. ALL RIGHT? OKAY?

20 A OKAY.

21 Q JUST A COUPLE OF QUESTIONS FOR YOU. WHEN MR. BULL CAME TO
22 THE HOUSE, YOU GAVE THE PHONE TO HIM OUTSIDE OF THE HOUSE.
23 IS THAT CORRECT?

24 A YES.

25 Q OKAY. NOW, AT THE TIME HE CAME UP, WERE YOU INSIDE THE HOUSE

1 OR OUTSIDE THE HOUSE? YOU PERSONALLY?

2 A I WAS AT THE SCREEN DOOR.

3 Q AT THE SCREEN DOOR?

4 A YES.

5 Q AND YOUR HUSBAND AND CHARLES WERE OUTSIDE THE HOUSE?

6 A ON THE PORCH.

7 Q ON THE PORCH?

8 A MM-HMM (AFFIRMATIVE).

9 Q SO, IF I UNDERSTAND YOU CORRECTLY, CHARLES WASN'T ON HIS
10 BICYCLE?

11 A HE RODE THE BICYCLE UP THERE. HE WAS GOING TO HIS BICYCLE
12 BECAUSE THE BICYCLE IS RIGHT BESIDE THE PORCH.

13 Q NOW, WAS HE ON HIS BICYCLE WHEN THE MAN CAME UP, OR WAS HE ON
14 THE PORCH?

15 A I THINK HE WAS JUST STEPPING OUT OF THE HOUSE WHEN THE MAN
16 CAME UP.

17 Q YOU THINK HE WAS JUST STEPPING OUT OF THE HOUSE WHEN THE MAN
18 CAME UP?

19 A YEAH.

20 Q HE'D RIDDEN HIS BICYCLE FROM HIS HOUSE TO YOUR PLACE. THAT'S
21 WHAT YOU'RE SAYING, RIGHT?

22 A YES, SIR.

23 Q SO HE HAD NOT GOTTEN BACK ON HIS BICYCLE TO RIDE OFF WHEN THE
24 MAN CAME UP. HE WAS ON THE PORCH AT THAT POINT IN TIME?

25 A HE WAS GOING OFF THE PORCH, GOING OUT OF THE HOUSE.

1 Q GETTING READY TO GO OFF?

2 A GETTING READY TO GO OFF.

3 Q OFF THE PORCH. IS THAT WHAT YOU'RE ---

4 A NO. COMING OUT OF THE HOUSE ON THE PORCH.

5 Q OH, OKAY. ALL RIGHT. AND HIS BICYCLE WAS DOWN WHERE? IN
6 THE YARD?

7 A ON THE SIDE OF THE PORCH.

8 Q THANK YOU. THAT'S ALL I HAVE.

9 THE COURT: OKAY. MR. SHUPPER.

10 CROSS EXAMINATION BY MR. SHUPPER:

11 Q MS. YEADON, HOW LONG AFTER MR. BULL CAME TO YOUR PORCH AND
12 YOU CALLED THE POLICE WAS IT BEFORE YOU SAW THE FIVE MEN, TWO
13 GROUPS?

14 A BETWEEN 15 TO 20 MINUTES.

15 Q OKAY. MR. BULL DIDN'T RUN OFF AND GO LOOK FOR MS. BROWN AT
16 THAT POINT, DID HE?

17 A NO.

18 Q THANK YOU. I HAVE NOTHING FURTHER.

19 THE COURT: ANY DIRECT, IF ANY, MS. FRYAR?

20 MS. FRYAR: NO, YOUR HONOR.

21 THE COURT: THANK YOU. THANK YOU, MS. YEADON, FOR YOUR
22 ATTENDANCE. MAY MS. YEADON BE FREE TO GO AT THIS TIME?

23 MR. STRICKLER: WITHOUT OBJECTION, SIR.

24 THE COURT: THANK YOU. THANK YOU, MA'AM. OKAY. YES,
25 SIR.

1 MR. GASSER: CALL THE NEXT WITNESS?

2 THE COURT: YEAH. IF YOU'VE GOT ONE WHOSE TESTIMONY
3 WILL BE RELATIVELY BRIEF. IF IT'S LIKE AN HOUR AND A HALF
4 WITNESS, WE MIGHT OUGHT TO TAKE A BRIEF ---

5 MR. GASSER: VERY BRIEF. THE STATE WOULD CALL MICHAEL
6 MCREYNOLDS.

7 THE COURT: MCREYNOLDS. MR. MCREYNOLDS, IF YOU'LL COME
8 DOWN TO THIS GENTLEMAN IN THE YELLOW JACKET, PLEASE. FOLLOW
9 HIS INSTRUCTIONS, SIR.

10 MICHAEL A. MCREYNOLDS, BEING FIRST
11 DULY SWORN, TESTIFIES AS FOLLOWS:

12 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
13 FOR THE RECORD.

14 MR. MCREYNOLDS: OKAY. MY NAME IS MICHAEL ALON
15 MCREYNOLDS.

16 DIRECT EXAMINATION BY MR. GASSER:

17 Q MR. MCREYNOLDS, WHERE ARE YOU EMPLOYED, SIR?

18 A PARDON ME?

19 Q WHERE ARE YOU EMPLOYED, SIR?

20 A WITH AMOCO.

21 Q HOW LONG HAVE YOU BEEN WITH AMOCO?

22 A FOR NINE YEARS.

23 Q WHAT ARE YOUR CURRENT DUTIES AND RESPONSIBILITIES WITH THE
24 AMOCO?

25 A I'M A MANAGER FOR THE STORE.

1 Q WHAT STORE DO YOU CURRENTLY MANAGE, MR. MCREYNOLDS?

2 A I CURRENTLY MANAGE THE ONE ON FOREST DRIVE.

3 Q I WANT TO DRAW YOUR ATTENTION BACK TO MAY OF 1996,
4 SPECIFICALLY ON THE EVENING OF TUESDAY, MAY THE 28TH, OR
5 WEDNESDAY MORNING, MAY THE 29TH. WHERE WERE YOU EMPLOYED
6 WITH THE AMOCO BUSINESS?

7 A I WAS MANAGER FOR THE AMOCO STATION ON TWO NOTCH ROAD.

8 Q AND WHERE ON TWO NOTCH ROAD WAS THAT?

9 A THAT WOULD BE AT 2507 TWO NOTCH ROAD.

10 Q SHOWING YOU STATE'S EXHIBIT NO. 1, MR. MCREYNOLDS, ARE YOU
11 FAMILIAR WITH THE INTERSECTION OF COVENANT ROAD GOING ONE
12 WAY, GERMANY STREET GOING THE OTHER AND TWO NOTCH ROAD?

13 A SOMEWHAT.

14 Q OKAY. AND DO YOU RECOGNIZE WHERE THE AMOCO STATION IS ON TWO
15 NOTCH ROAD ON STATE'S EXHIBIT NO. 1?

16 A OKAY. IT'S RIGHT HERE.

17 Q NOW, WERE YOU ACTUALLY WORKING THAT TUESDAY EVENING OR EARLY
18 WEDNESDAY MORNING HOURS? WERE YOU YOURSELF WORKING, OR WAS
19 SOMEONE ELSE WORKING?

20 A SOMEONE ELSE WAS WORKING.

21 Q DO YOU KNOW A GIRL BY THE NAME OF SANGETTA COAXUM?

22 A YES. THAT WAS ONE OF MY EMPLOYEES AT THE TIME.

23 Q DO YOU KNOW WHAT HOURS SHE WAS WORKING THAT EVENING?

24 A ELEVEN TO SEVEN.

25 Q TO ELEVEN AT NIGHT?

1 A 11 AT NIGHT 'TIL 7 IN THE MORNING. THIRD SHIFT.

2 Q DID THAT STORE -- IN MAY OF 1996, DID IT HAVE A VIDEO
3 SURVEILLANCE OR A VIDEO SECURITY SYSTEM SET UP IN THAT STORE?

4 A YES, SIR.

5 Q AND COULD YOU EXPLAIN TO THE JURY HOW -- AND ARE YOU -- OR
6 WERE YOU AS THE ASSISTANT MANAGER FAMILIAR WITH THE OPERATION
7 OF THAT PARTICULAR SYSTEM, MR. MCREYNOLDS?

8 A YES, SIR.

9 Q AND WOULD YOU BRIEFLY EXPLAIN HOW THAT SYSTEM WORKED?

10 A EVERY DAY AT 7 IN THE MORNING WE CHANGED VIDEOTAPES. WHEN WE
11 COME IN IN THE MORNING, WE JUST CHANGE VIDEOTAPES. IT RUNS
12 FOR 24 HOURS 'TIL THE NEXT MORNING.

13 Q HOW MANY -- DO YOU REMEMBER HOW MANY CAMERAS AND THEREFORE
14 CAMERA ANGLES WERE INVOLVED AT THAT POINT IN TIME?

15 A IF I'M NOT MISTAKEN, THERE'S FOUR.

16 Q ON THE MORNING OF MAY THE 29TH, SOMETIME AFTER THE 7:00 TAPE
17 SHIFTED OVER, DID YOU HAVE AN OPPORTUNITY TO MEET WITH AN
18 INVESTIGATOR, INVESTIGATOR BOB BENSON OF THE COLUMBIA POLICE
19 DEPARIMENT?

20 A YES, SIR.

21 Q AND WHERE DID YOU MEET WITH INVESTIGATOR BENSON? WHERE DID
22 HE COME TO?

23 A HE CAME RIGHT IN THE BACK TO MY OFFICE.

24 Q OF WHAT? YOUR OFFICE WHERE?

25 A IN THE BACK OF THE STORE.

1 Q WHAT STORE?

2 A THE AMOCO STATION ON TWO NOTCH ROAD.

3 Q AND DID HE IDENTIFY HIMSELF AS A POLICE OFFICER AT THAT TIME?

4 A YES, SIR.

5 Q AND WHAT DID YOU PROVIDE INVESTIGATOR BENSON DURING THE
6 MORNING HOURS OF TUESDAY -- I'M SORRY -- WEDNESDAY, MAY THE
7 29TH, 1996? WHAT DID YOU GIVE HIM?

8 A HE ASKED ME FOR A VIDEOTAPE THAT WAS -- MIGHT BE POSSIBLE
9 EVIDENCE IN A CRIMINAL CASE.

10 Q SO WHAT DID YOU PROVIDE HIM, MR. MCREYNOLDS?

11 A I GAVE HIM THE VIDEOTAPE.

12 Q AND THE VIDEOTAPE ENCOMPASSED WHAT HOURS?

13 A PARDON ME?

14 Q WHAT HOURS OF THE VIDEOTAPE AND WHAT DATES?

15 A FROM THE 28TH TO THE 29TH.

16 Q WHAT TIME IN THE MORNING?

17 A FROM 7 A.M. ON THE 28TH 'TIL 7 A.M. ON THE 29TH.

18 Q AND WHERE DID YOU RECEIVE THAT TAPE FROM?

19 A FROM THE VIDEO CASING.

20 Q I SHOW YOU THIS ITEM AND ASK YOU, DO YOU RECOGNIZE THAT, MR.
21 MCREYNOLDS?

22 A YES, SIR.

23 Q AND WHAT IS THAT?

24 A THAT'S THE VIDEOTAPE FROM A PARTICULAR DAY.

25 Q OKAY. NOW, HAVE YOU HAD AN OPPORTUNITY TO OBSERVE THIS

1 VIDEOTAPE ON A VIDEO MACHINE SINCE THAT TIME?

2 A YES, SIR.

3 Q AND DOES THE TAPE APPEAR TO BE IN THE SAME CONDITION AS IT
4 WAS WHEN YOU HANDED IT OVER TO INVESTIGATOR BENSON?

5 A YES, SIR.

6 MR. GASSER: YOUR HONOR, AT THIS TIME WE'D LIKE TO MOVE
7 THE TAPE INTO EVIDENCE.

8 THE COURT: MR. STRICKLER FIRST AND THEN MR. SHUPPER.

9 MR. STRICKLER: NO, SIR. NO OBJECTION.

10 THE COURT: OKAY.

11 MR. SHUPPER: NO OBJECTION, YOUR HONOR.

12 THE COURT: OKAY. AS I UNDERSTAND IT, I MEAN, I
13 APPRECIATE WHAT YOU'RE SAYING OVER HERE. BUT THIS WILL
14 CONTAIN OTHER MATTERS OTHER THAN THAT WHICH MAY BE GERMANE TO
15 THESE CASE. SO THERE'S NO OBJECTION AS TO THOSE MATTERS
16 WHICH THE STATE WILL POSIT AS IT RELATES TO THIS CASE. IS
17 THAT CORRECT?

18 MR. STRICKLER: YES, SIR.

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

20 THE COURT: THANKS. GO AHEAD, PLEASE, MR. GASSER.

21 MR. GASSER: THANK YOU, YOUR HONOR.

22 (STATE'S EXHIBIT NO. 30, VIDEOTAPE, MARKED AND RECEIVED IN
23 EVIDENCE)

24 MR. GASSER: THAT'S ALL WE HAVE OF THIS WITNESS, YOUR
25 HONOR.

1 THE COURT: THANK YOU VERY MUCH, SIR. MR. STRICKLER.

2 MR. STRICKLER: JUST A COUPLE OF THINGS, IF I COULD,
3 PLEASE.

4 CROSS EXAMINATION BY MR. STRICKLER:

5 Q JUST VERY BRIEFLY. YOU KNOW THIS IS THE SAME TAPE BECAUSE OF
6 THE WRITING ON THE TAPE?

7 A RIGHT, SIR.

8 Q THAT'S YOUR WRITING RIGHT THERE?

9 A YEAH. AND THE NUMBERS ON THE TAPE.

10 Q VERY GOOD. AND BEFORE YOU TURNED IT OVER TO THE POLICE, YOU
11 SAT DOWN AND REVIEWED IT WITH THEM?

12 A NO. I DIDN'T REVIEW IT AT THE TIME.

13 Q OKAY. SO YOU VIEWED IT BEFORE YOU CAME IN HERE?

14 A RIGHT.

15 Q TO TESTIFY? SO YOUR TESTIMONY THAT IT IS THE SAME NOW AS IT
16 WAS AT THE TIME, I MEAN, YOU NEVER VIEWED IT AT THE TIME, DID
17 YOU?

18 A CORRECT.

19 Q OKAY. THAT'S ALL I HAVE. THANK YOU.

20 THE COURT: MR. SHUPPER.

21 MR. SHUPPER: I HAVE NO QUESTIONS OF THIS WITNESS.
22 THANK YOU.

23 THE COURT: THANK YOU. MR. MCREYNOLDS IS FREE TO GO
24 UNLESS SOMEONE WISHES HIM RETAINED ON SUBPOENA.

25 MR. STRICKLER: NO, SIR.

1 THE COURT: THANK YOU. YOU'RE FREE TO GO. THANK YOU
2 FOR YOUR ATTENDANCE, SIR. YES, MA'AM OR SIR.

3 MR. GASSER: YOUR HONOR, THE NEXT WITNESS WOULD NOT BE
4 QUITE AS SHORT AS THAT WITNESS. PLUS WE NEED TO BE SETTING
5 UP VIDEO EQUIPMENT AS WELL.

6 THE COURT: OKAY. WELL, LET'S TAKE A BREAK AND DO A --
7 TAKE ABOUT TEN MINUTES AND GET ALL THAT SET UP. THANK YOU.
8 FOLKS, GO TO YOUR JURY ROOM. DON'T DISCUSS THE CASE AMONG
9 YOURSELVES.

10 (JURY OUT AT 4:07 P.M.)

11 THE COURT: OKAY. SEE YOU ALL IN ABOUT TEN OR SO.
12 (WHEREUPON, A BREAK IS TAKEN)

13 THE COURT: THE QUESTION BECOMES NOW A SATURDAY OR
14 MONDAY. AND MS. WILLIAMS IS OPTING FOR MONDAY. WE JUST
15 DON'T KNOW. OKAY. WE READY?

16 MR. GASSER: THE STATE'S READY, YOUR HONOR.

17 MR. STRICKLER: THE DEFENSE IS READY, SIR.

18 MR. SHUPPER: READY, YOUR HONOR.

19 THE COURT: WHILE MR. GASSER IS GOING OUT, YOU CAN ASK
20 THE JURY TO BEGIN FILING BACK IN.

21 (JURY IN AT 4:25 P.M.)

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

23 THE COURT: THANKS, MR. BARROW AND MR. HOLLIS. AND
24 THANK YOU, FOLKS, FOR YOUR PATIENCE. WE'RE READY TO RESUME.
25 MS. FRYAR OR MR. GASSER?

1 MS. FRYAR: THANK YOU, YOUR HONOR. THE STATE WOULD CALL
2 MS. BETTY (SIC) BOWMAN.

3 THE COURT: MS. BOWMAN, IF YOU WOULD PLEASE COME DOWN TO
4 THIS GENTLEMAN IN THE YELLOW JACKET AND THEN FOLLOW HIS
5 INSTRUCTIONS.

6 MS. FRYAR: EXCUSE ME. ACTUALLY IT'S MS. BRENDA BOWMAN.
7 I APOLOGIZE.

8 THE COURT: IF BRENDA BOWMAN WILL COME DOWN, ANYBODY
9 NAMED BOWMAN.

10 BRENDA BOWMAN, BEING FIRST DULY
11 SWORN, TESTIFIES AS FOLLOWS:

12 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
13 FOR THE RECORD.

14 MS. FRYAR: MAY IT PLEASE THE COURT.

15 THE COURT: YES, MA'AM.

16 MS. FRYAR: THANK YOU, SIR.

17 DIRECT EXAMINATION BY MS. FRYAR:

18 Q MS. BOWMAN, WOULD YOU PLEASE TELL THE JURORS HERE WHAT COUNTY
19 YOU LIVE IN NOW?

20 A LEXINGTON.

21 Q OKAY. BACK IN MAY OF 1996, WHERE DID YOU LIVE?

22 A RICHLAND COUNTY.

23 Q OKAY. AND DURING THE MONTHS OF MAY 1996 AND JUNE 1996, WHERE
24 WERE YOU LIVING?

25 A 1634-A OGDEN STREET.

1 Q ALL RIGHT. AND WHO WAS LIVING WITH YOU THEN?

2 A MY DAUGHTER.

3 MS. FRYAR: OKAY. MAY THE WITNESS STEP DOWN, YOUR
4 HONOR?

5 THE COURT: YES, MA'AM.

6 Q (BY MS. FRYAR) MS. BOWMAN, IF YOU WOULD JUST STEP DOWN
7 PLEASE. ALL RIGHT. MS. BOWMAN, IF YOU WOULD STAND OVER
8 THERE. STAND OVER HERE, MS. BOWMAN. NOW, I WOULD LIKE FOR
9 YOU TO LOOK AT THIS DRAWING FOR US, WHAT'S BEEN MARKED AS
10 STATE'S EXHIBIT NO. 1. DO YOU RECOGNIZE WHAT THIS IS A
11 PICTURE OF?

12 A YES.

13 Q OKAY. NOW, WHERE WERE YOU STAYING BACK IN THE MAY, JUNE
14 TIMEFRAME IN 1996?

15 A 1634 OGDEN STREET.

16 Q ALL RIGHT.

17 A WHICH IS RIGHT HERE.

18 Q OKAY. DO YOU RECALL THE DAY OF MAY THE 30TH, 1996?

19 A YES.

20 Q OKAY. PLEASE USING YOUR POINTER SHOW THE JURY WHAT YOU DID
21 THAT MORNING.

22 A MY DAUGHTER AND I USUALLY LEFT IN THE MORNING AND WENT
23 TOWARDS -- CAME OUT OF THE HOUSE, WENT DOWN THE STEPS AND
24 WENT TOWARDS THIS AREA WHICH IS TWO NOTCH ROAD. I GOT ON A
25 BUS. MY DAUGHTER WOULD CONTINUE ONTO COVENANT ROAD ACROSS

1 THE STREET TO SCHOOL. SO WE WOULD WALK IN THAT AREA.

2 Q OKAY. SO ON THAT MORNING DID YOU AND YOUR DAUGHTER, WHAT'S
3 HER NAME?

4 A ASHLEY.

5 Q DID YOU AND ASHLEY WALK DOWN OGDEN STREET?

6 A YES.

7 Q AND WHICH DIRECTION WERE YOU GOING IN?

8 A TOWARDS COVENANT ROAD.

9 Q ALL RIGHT, MA'AM. AND THEN YOU MENTIONED THAT ASHLEY HAD TO
10 COME IN THE DIRECTION TO GO TO SCHOOL. WHAT SCHOOL WAS SHE
11 GOING TO?

12 A W. A. KEENAN ELEMENTARY SCHOOL.

13 Q AND WHAT WERE YOU DOING?

14 A WORKING.

15 Q SO HOW WOULD YOU HAVE GOTTEN TO WORK ON THAT DAY?

16 A ON THE BUS.

17 Q AND SO, THEN YOU WORKED ALL DAY I ASSUME?

18 A YES.

19 Q AND AT THE END OF THE DAY, WHAT DID YOU DO?

20 A I WOULD COME HOME FROM WORK, GO AND GET ASHLEY AND GO BACK TO
21 THE HOUSE.

22 Q OKAY. AND WHERE WAS ASHLEY AFTER SCHOOL?

23 A ASHLEY WAS IN AN AFTER-SCHOOL PROGRAM DOWN WAITES ROAD.

24 Q OKAY. COULD YOU SHOW THE JURY ON OUR MAP WHERE WAITES ROAD
25 IS?

1 A THIS IS WAITES ROAD.

2 Q OKAY. AND ON DOWN, WHERE WAS ASHLEY'S SCHOOL AFTER SCHOOL?

3 A AFTER-SCHOOL PROGRAM WAS DOWN IN THE -- IT WOULD HAVE BEEN
4 DOWN IN THIS AREA, FURTHER DOWN THIS ROAD.

5 Q OKAY. AND SO WHEN YOU AND ASHLEY WERE GOING HOME THAT
6 EVENING, WERE YOU WALKING HOME?

7 A YES.

8 Q ALL RIGHT. IF YOU COULD SHOW THE JURORS THE DIRECTION THAT
9 YOU WERE WALKING IN WITH ASHLEY ON MAY THE 30TH?

10 A WE WOULD HAVE COME OFF WAITES ROAD AND COME IN OGDEN THE
11 OPPOSITE DIRECTION.

12 Q OKAY. NOW, WHEN YOU APPROACHED YOUR HOUSE WITH ASHLEY THERE,
13 DID YOU SEE ANYTHING UNUSUAL?

14 A WE SAW SOME, IT WAS LIKE, OH, A PHOTO I.D. CARD, SOME
15 BUSINESS CARDS, SOME CHILDREN'S SOCIAL SECURITY CARDS OR
16 BIRTH CERTIFICATE. IT WAS CHILDREN'S INFORMATION AND A
17 WOMAN'S BELONGINGS.

18 Q OKAY. WHERE WERE THE ITEMS AT?

19 A THEY WERE IN THE DIRT.

20 Q OKAY.

21 A ON THE SIDE OF MY HOUSE. THERE WAS A HERBIE-CURBIE PARKED
22 THERE. AND THIS IS ALL DIRT IN FRONT. MY STEPS CAME AROUND
23 THIS WAY. THEY WERE KIND OF IN THE DIRT NEAR THE
24 HERBIE-CURBIE.

25 Q OKAY. AND SO THE HERBIE-CURBIE WAS ON WHAT SIDE OF YOUR

1 HOME?

2 A FACING THE HOUSE, IT'S THE LEFT SIDE.

3 Q OKAY. SO IT WOULD BE ON -- SHOW THE JURORS, PLEASE, MS.
4 BOWMAN.

5 A IT WOULD HAVE BEEN ON THIS SIDE OF THE HOUSE, THIS SIDE.

6 Q OKAY. AND IF YOU COULD, TELL THE JURORS WHAT YOU FOUND, WHAT
7 THESE ITEMS LOOKED LIKE, THE PURSES?

8 A THERE WAS -- I REMEMBER ONE OF THE PURSES WAS LARGE AND IT
9 WAS METALLIC. IT WAS EITHER GOLD, BROWN, SILVER. BUT I
10 REMEMBER IT WAS METALLIC.

11 Q OKAY.

12 A AND THERE WAS ANOTHER SMALLER BAG THAT I THINK WAS LIKE A
13 COSMETIC BAG OR A LITTLE WALLET OR SOMETHING.

14 Q WHAT COLOR WAS IT?

15 A BLACK.

16 Q OKAY.

17 A AND I.D.'S. THERE WAS A LIPSTICK IN THE DIRT. THERE WAS --
18 I REMEMBER BIRTH CERTIFICATES, KIDS' BIRTH CERTIFICATES, AND
19 THERE WAS A PHOTO I.D. OF A LADY. I BELIEVE IT WAS FROM
20 SAM'S CLUB. I'M NOT SURE.

21 Q OKAY.

22 A I'M PRETTY SURE IT WAS SAM'S CLUB.

23 Q OKAY. YOU CAN GET BACK ON THE STAND, MS. BOWMAN.

24 (WITNESS RESUMES THE STAND)

25 Q MS. BOWMAN, WHEN YOU FOUND THESE ITEMS, WHAT DID YOU DO WITH

1 THEM?

2 A I CALLED THE POLICE.

3 Q OKAY. AND DID A POLICE OFFICER COME TO YOUR HOUSE?

4 A YES, MA'AM.

5 Q OKAY. AND WHAT DID HE DO WITH THESE PURSES?

6 A HE ASKED ME, YOU KNOW, WHERE THEY COME FROM. I EXPLAINED I
7 FOUND THEM AND THINGS LIKE THAT. AND HE PUT THEM IN SOME
8 TYPE OF BAG AND TOOK MY NAME AND TOOK THEM, JUST LEFT.

9 Q HAD YOU TOUCHED THEM WITH A BAG OF ANY KIND?

10 A SEE, THE PURSES WERE IN THE TRASHCAN. SO I REACHED INTO THE
11 TRASHCAN WITH THEM, A PIECE OF PLASTIC, NOT TO PUT MY HAND IN
12 THE TRASHCAN.

13 Q SO WAS THAT -- OR COULD THAT HAVE BEEN A PLASTIC BAG THAT YOU
14 GRABBED THEM OUT WITH?

15 A YEAH. YEAH.

16 Q OKAY. ALL RIGHT. AND ON JUNE -- EXCUSE ME -- MAY THE 29TH,
17 THE DAY BEFORE MAY THE 30TH, WHEN YOU FOUND THE PURSES, WERE
18 THE PURSES AT YOUR HOUSE?

19 A I DON'T THINK SO.

20 Q OKAY. DO YOU KNOW WHETHER THEY WERE OR NOT?

21 A I WOULD SAY NO.

22 Q OKAY. DID YOU ALWAYS GO THIS ROUTE, WAITES ROAD?

23 A YES.

24 Q DID YOU ALWAYS CATCH THE BUS AND DO WHAT YOU DID ON THIS DAY?

25 A NO. SOMETIMES I GOT A RIDE. SOMETIMES I CAUGHT THE BUS.

1 Q OKAY. COULD YOU HAVE CAUGHT A RIDE THE DAY BEFORE?

2 A I WOULD HAVE HAD TO USE MY TRASHCAN, AND I'M SURE I WOULD
3 HAVE SEEN THEM IF THEY WERE THERE THE DAY BEFORE.

4 Q OKAY. THANK YOU. PLEASE ANSWER ANY QUESTIONS THAT THESE
5 FOLKS HAVE.

6 THE COURT: MR. STRICKLER.

7 MR. STRICKLER: BEG THE COURT'S INDULGENCE ONE MOMENT,
8 SIR.

9 THE COURT: YES, SIR.

10 MR. STRICKLER: JUST A COUPLE OF THINGS.

11 CROSS EXAMINATION BY MR. STRICKLER:

12 Q GOOD AFTERNOON, MS. BOWMAN.

13 A GOOD AFTERNOON.

14 Q MY NAME IS DOUG STRICKLER. DID YOU FIND A BLACK PLASTIC BAG
15 AT YOUR DUMPSTER OR A PLASTIC BAG? I'M NOT SURE ABOUT THE
16 COLOR.

17 A I'M NOT CLEAR ON THE BLACK PLASTIC BAG. I BELIEVE THE BLACK
18 PLASTIC IS SOMETHING THAT I GRABBED TO REACH INTO THE
19 TRASHCAN TO PICK THE PURSES UP.

20 Q OKAY.

21 A IT MAY HAVE COME OUT OF THE TRASHCAN ITSELF, BUT I'M REALLY
22 NOT CLEAR ON THAT.

23 Q SO YOUR TESTIMONY TODAY IS NOT THE EFFECT THAT YOU FOUND A
24 PLASTIC BAG ON TOP OF YOUR DUMPSTER?

25 A NO.

1 Q OKAY. AND YOUR TESTIMONY IS THAT THE BAG ITSELF DIDN'T HAVE
2 A BLACK PURSE, A GOLD PURSE AND A BLACK BACK BRACE IN IT?

3 A THERE WAS A BACK BRACE, YES.

4 Q OKAY.

5 A IN ---

6 Q WHERE WAS THAT?

7 A IN THE TRASHCAN. YES, SIR.

8 Q IT WAS IN THE TRASHCAN ITSELF?

9 A YES, SIR. ALL OF THAT WAS.

10 Q THE PURSE, A BLACK PURSE, A GOLD PURSE AND BLACK BACK BRACE?

11 A YES, SIR.

12 Q OKAY. AND THE OTHER I,D.'S THAT YOU DESCRIBED, WHERE WERE
13 THEY OUTSIDE?

14 A RIGHT IN FRONT OF THE TRASHCAN.

15 Q ALL RIGHT. THANK YOU, MA'AM.

16 MR. SHUPPER: I HAVE NO QUESTIONS OF THIS WITNESS, YOUR
17 HONOR.

18 THE COURT: THANK YOU. THANK YOU, MA'AM. YOU CAN STEP
19 DOWN, MS. BOWMAN. APPRECIATE YOUR ATTENDANCE. YOU'RE FREE
20 TO GO UNLESS SOMEONE WISHES TO RETAIN YOU.

21 MS. FRYAR: THANK YOU, YOUR HONOR.

22 THE COURT: THANK YOU, MA'AM. YES, MA'AM.

23 MS. FRYAR: THE STATE WOULD CALL OFFICER JEFF PICCIONE.

24 THE COURT: OKAY. OKAY, OFFICER. IF YOU WOULD PLEASE
25 COME FORWARD TO THE GENTLEMAN IN THE YELLOW JACKET AND THEN

1 FOLLOW HIS INSTRUCTIONS.

2 JEFFREY S. PICCIONE, BEING FIRST
3 DULY SWORN, TESTIFIES AS FOLLOWS:

4 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
5 FOR THE RECORD.

6 MR. PICCIONE: JEFFREY SCOTT PICCIONE.

7 COURT REPORTER: WOULD YOU SPELL YOUR LAST NAME?

8 MR. PICCIONE: P-I-C-C-I-O-N-E.

9 MS. FRYAR: MAY IT PLEASE THE COURT, YOUR HONOR.

10 DIRECT EXAMINATION BY MS. FRYAR:

11 Q OFFICER PICCIONE, WHERE ARE YOU CURRENTLY EMPLOYED?

12 A THE CITY OF COLUMBIA POLICE DEPARTMENT.

13 Q ALL RIGHT, SIR. HOW LONG HAVE YOU BEEN EMPLOYED WITH THE
14 CITY OF COLUMBIA POLICE DEPARTMENT?

15 A A LITTLE OVER FOUR YEARS.

16 Q ALL RIGHT, SIR. AND SO YOU WERE A POLICE OFFICER BACK IN MAY
17 OF 1996. IS THAT RIGHT?

18 A YES, MA'AM.

19 Q ALL RIGHT. DID YOU HAVE OCCASION TO GO TO THE HOME OF MS.
20 BRENDA BOWMAN ON MAY THE 30TH, 1996?

21 A I DID.

22 Q COULD YOU PLEASE TELL THE JURY WHY YOU WENT THERE?

23 A I RESPONDED TO A FOUND PROPERTY CALL WHERE I BELIEVE IT WAS
24 1634 OGDEN STREET. AND SHE HAD FOUND SOME PURSES.

25 Q ALL RIGHT, SIR. AND WHEN YOU GOT THERE, WHAT DID YOU DO?

1 A I TOOK CONTROL OF THE PROPERTY WHICH WAS -- I BELIEVE IT WAS
2 A PLASTIC BAG THAT CONTAINED TWO PURSES AND A BACK BRACE.
3 AND INSIDE ONE OF PURSES, WHICH WAS A GOLD PURSE, THERE WAS
4 SOME I.D. CARD, AN I.D. CARD AND I THINK A SOCIAL SECURITY
5 CARD, A COUPLE OF SOCIAL SECURITY CARDS AND WITH THE VICTIM'S
6 NAME ON IT.

7 Q WHO WAS THAT PERSON'S NAME ON THE CARDS?

8 A victim

9 Q ALL RIGHT, SIR. AND SO WHEN YOU RECEIVED THESE ITEMS, WHAT
10 DID YOU DO?

11 A I TAGGED THEM INTO THE PROPERTY ROOM. I TOOK CONTROL OF THEM
12 AND TAGGED THEM INTO A LOCKER AT THE FRONT DESK.

13 Q OKAY.

14 A THAT WE LOCK.

15 Q ALL RIGHT. AND WHAT DID YOU DO AS FAR AS victim IS
16 CONCERNED?

17 A I ATTEMPTED TO CONTACT HER AT HER HOME BUT THERE WAS NO
18 ANSWER. I BELIEVE AN ANSWERING MACHINE PICKED UP, AND I LEFT
19 A MESSAGE STATING THAT HER PROPERTY HAD BEEN FOUND.

20 Q ALL RIGHT, SIR. I DON'T HAVE ANY FURTHER QUESTIONS. THANK
21 YOU.

22 THE COURT: MR. STRICKLER?

23 MR. STRICKLER: THANK YOU, SIR. JUST VERY BRIEFLY.

24 CROSS EXAMINATION BY MR. STRICKLER:

25 Q OFFICER PICCIONE, MY NAME IS DOUG STRICKLER. YOU TOOK

1 POSSESSION OF THE PROPERTY AND LOGGED IT INTO THE PROPERTY
2 ROOM OR THE EVIDENCE ROOM AT THE C.P.D. IS THAT CORRECT?

3 A YES, SIR. WE HAVE A LOCKER THAT -- INDIVIDUAL LOCKERS THAT
4 AFTER HOURS WE PUT THEM IN THERE AND PUT A LOCK ON THEM. AND
5 THE PROPERTY CLERK TAKES CONTROL OF THEM IN THE MORNING.

6 Q SO ONCE THEY LEAVE YOUR POSSESSION, YOU'VE PUT THEM IN THE
7 LOCKER, THE PERSON, THE EVIDENCE CUSTODIAN OR THE PROPERTY
8 CUSTODIAN REMOVES THEM FROM THAT LOCKER, MAKES NOTATIONS ON
9 THEM, KEEPS TRACK OF THEM AFTER THAT. IS THAT RIGHT?

10 A YES, SIR.

11 Q SO YOU HAVE NO KNOWLEDGE WHAT HAPPENED TO THESE ITEMS AFTER
12 YOU PUT THEM IN THE EVIDENCE LOCKER?

13 A NO, SIR.

14 Q CORRECT? YOU DON'T KNOW WHETHER THEY WERE THEN PROCESSED,
15 FOR EXAMPLE, BY EITHER THE CITY OF COLUMBIA POLICE DEPARIMENT
16 OR SOME OTHER AGENCY FOR THE PRESENCE OF FINGERPRINTS?

17 A NO, SIR.

18 Q OKAY. YOU DON'T KNOW WHETHER ANYTHING INDEED WAS DONE WITH
19 THEM AT ALL?

20 A I DON'T KNOW.

21 Q VERY GOOD. THANK YOU, SIR.

22 THE COURT: MR. SHUPPER.

23 MR. SHUPPER: I HAVE NO QUESTIONS OF THIS WITNESS, YOUR
24 HONOR.

25 THE COURT: THANK YOU. THANK YOU, MR. PICCIONE. UNLESS

1 THERE'S ANY REASON TO RETAIN MR. PICCIONE, YOU'RE FREE TO GO.

2 MR. PICCIONE: THANK YOU, YOUR HONOR.

3 MR. SHUPPER: NO OBJECTION.

4 THE COURT: THANK YOU, SIR.

5 MS. FRYAR: THE STATE WOULD CALL MS. SANGETTA COAXUM,
6 YOUR HONOR.

7 THE COURT: ALL RIGHT. IF MS. COAXUM IS PRESENT IN THE
8 COURTROOM, COME FORWARD. DO YOU HAVE SOMEONE GETTING HER?

9 MS. FRYAR: YES, SIR. I BELIEVE SO. SHE WAS JUST OUT
10 THERE A MOMENT AGO.

11 THE COURT: ALL RIGHT, MA'AM. IF YOU'D PLEASE COME DOWN
12 TO THE GENTLEMAN IN THE YELLOW COAT.

13 THE BAILIFF: COME FORWARD, PLEASE.

14 SANGETTA COAXUM, BEING FIRST DULY
15 SWORN, TESTIFIES AS FOLLOWS:

16 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
17 FOR THE RECORD.

18 DIRECT EXAMINATION BY MS. FRYAR:

19 Q MS. COAXUM, WHERE DO YOU LIVE, MA'AM? WHAT CITY DO YOU LIVE
20 IN?

21 A I LIVE IN COLUMBIA.

22 Q ALL RIGHT, MA'AM. HOW LONG HAVE YOU LIVED HERE?

23 A I'VE BEEN LIVING HERE FOR 26 YEARS.

24 Q ALL RIGHT, MA'AM. AND IF YOU COULD TELL THE JURORS, WHERE DO
25 YOU CURRENTLY WORK?

1 A I'M CURRENTLY EMPLOYED AT SAM'S WHOLESALE.

2 Q OKAY. AND BACK IN MAY OF 1996, WHERE WERE YOU EMPLOYED?

3 A AT THE AMOCO GAS STATION ON TWO NOTCH ROAD.

4 Q OKAY. WHAT WAS YOUR JOB THERE?

5 A I WAS A CASHIER AND I WORKED LATE NIGHTS.

6 Q DO YOU REMEMBER THE EVENING OF MAY THE 28TH, 1996, AND THE
7 EARLY MORNING HOURS OF MAY THE 29TH, 1996, DURING THAT PERIOD
8 OF TIME? DO YOU KNOW WHAT SHIFT YOU WERE WORKING ON?

9 A YES. I WAS WORKING FROM 11 TO 7.

10 Q ALL RIGHT, MA'AM. AND DURING THAT PERIOD OF TIME, DID ANY
11 POLICE OFFICERS COME INTO THE STORE TO ASK ANYTHING OF YOU?

12 A AT THE BEGINNING OF THE SHIFT OR ---

13 Q YES, MA'AM.

14 A --- WHEN I FIRST STARTED THE SHIFT?

15 Q WHEN YOU FIRST STARTED THE SHIFT, DID ANYBODY COME?

16 A NO.

17 Q WHEN WAS IT THAT THE FIRST POLICE OFFICER THAT YOU REMEMBER
18 CAME INTO THE STORE? DO YOU KNOW?

19 A THAT HAD TO HAVE BEEN ABOUT 1 OR 1:30, SOMETHING LIKE THAT.

20 Q CAN YOU DESCRIBE THAT POLICE OFFICER?

21 A YEAH. SHE WAS A WHITE FEMALE.

22 Q OKAY.

23 A PROBABLY ABOUT OVER 200 POUNDS.

24 Q OKAY. AND WHAT DID SHE WANT TO INQUIRE ABOUT?

25 A SHE WANTED TO INQUIRE ABOUT SOME GUYS HAD SUPPOSEDLY RAPED A

1 WOMAN AND WANTED TO KNOW DID ANYONE COME IN THE STORE WANTING
2 TO CASH A ONE HUNDRED DOLLAR BILL.

3 Q AND HAD ANYONE COME INTO THE STORE WANTING TO CASH A ONE
4 HUNDRED DOLLAR BILL?

5 A YES, MA'AM.

6 Q HOW MUCH BEFORE THAT TIME WHEN SHE WAS IN THERE HAD THOSE
7 FOLKS BEEN IN THERE?

8 A PROBABLY ABOUT TEN OR FIFTEEN MINUTES.

9 Q ALL RIGHT. IF YOU COULD TELL THE JURORS ABOUT THE PEOPLE WHO
10 CAME INTO THE STORE AND WHAT EXACTLY THEY DID?

11 A OKAY. TWO MALES ENTERED THE STORE, ASKED ME COULD I CHANGE A
12 ONE HUNDRED DOLLAR BILL. I TOLD THEM I DON'T GIVE OUT CHANGE
13 THAT TIME OF NIGHT.

14 Q IS THAT JUST YOU DIDN'T WANT TO DO IT FOR THEM, OR IS THAT
15 STORE POLICY?

16 A NO. THAT'S STORE POLICY.

17 Q OKAY. AND SO DURING THIS PERIOD OF TIME, DO YOU ALL HAVE A
18 SECURITY CAMERA IN THE STORE?

19 A YES.

20 Q OKAY.

21 A IT'S UNDER SURVEILLANCE.

22 Q SO WHEN THE LADY, WHITE LADY OFFICER CAME IN AND ASKED YOU
23 ABOUT HAD ANYONE TRIED TO CASH OR CHANGE A ONE HUNDRED DOLLAR
24 BILL, WHAT DID YOU TELL HER?

25 A I SAID, YEAH. THAT WAS A COINCIDENCE WHERE SOMEONE JUST CAME

1 IN THE STORE AND PRIOR TO HER COMING IN THERE WANTING TO CASH
2 A ONE HUNDRED DOLLAR BILL.

3 Q THAT WAS ABOUT TEN OR FIFTEEN MINUTES BEFORE SHE WAS THERE?

4 A THAT'S TRUE.

5 Q AND SO LATER ON THAT NIGHT DID ANOTHER OFFICER COME INTO THE
6 STORE?

7 A YES.

8 Q AND DID YOU KNOW THAT OFFICER?

9 A YES, I DID.

10 Q OKAY. WHAT'S HIS NAME?

11 A OFFICER GIBSON.

12 Q OKAY. HOW DID YOU KNOW OFFICER GIBSON?

13 A HE MAKE (SIC) ROUTINE CHECKS AT NIGHTTIME, CHECK UP ON US IN
14 THE STORE.

15 Q OKAY. AND WHEN HE CAME INTO THE STORE, DID YOU DISCUSS WHAT
16 YOU AND OFFICER TOWNSEND HAD TALKED ABOUT EARLIER AND WHAT
17 HAD GONE ON?

18 A YEAH. I DID DISCUSS WHAT WAS GOING ON AND WHAT HAD HAPPENED.

19 Q SO YOU DO RECALL TALKING WITH HIM ON THAT EVENING, TOO?

20 A YES.

21 Q YOU ALL HAVE A SECURITY SYSTEM I THINK YOU I INDICATED TO THE

22 —

23 A YES.

24 Q — TO THE JURY?

25 MS. FRYAR: AT THIS TIME, YOUR HONOR, I WOULD LIKE TO

1 TRY TO SET UP THIS VIDEOTAPE THAT'S BEEN MARKED AS STATE'S
2 EXHIBIT NO. 30.

3 THE COURT: ALL RIGHT. I HOPE YOU SUCCESSFULLY ARE ABLE
4 TO DO THAT.

5 MS. FRYAR: I COULD LET MS. COAXUM COME DOWN, SIR.

6 THE COURT: YES, MA'AM. AND COUNSEL MAY POSITION
7 THEMSELVES SHOULD YOU FIND THE DESIRE TO DO SO AT THIS TIME.

8 Q (BY MS. FRYAR) OKAY. MS. COAXUM, IF YOU WOULD, LOOK AT
9 WHAT'S BEEN MARKED AS STATE'S EXHIBIT NO. 30 AND SEE IF YOU
10 CAN TELL THE JURY WHAT IS GOING ON IN THIS VIDEOTAPE. OKAY.
11 DO YOU SEE ANYBODY YOU RECOGNIZE IN THIS VIDEOTAPE?

12 A YES. ME.

13 Q OKAY. WHERE ARE YOU?

14 A I'M RIGHT HERE.

15 COURT REPORTER: I CAN'T HEAR HER.

16 Q WHAT ARE ALL THESE PICTURES OF?

17 THE COURT: EXCUSE ME A MINUTE. MS. WILLIAMS CANNOT
18 HEAR THE WITNESS.

19 Q ALL RIGHT, MS. COAXUM. WHAT ARE ALL THESE PICTURES OF? WHAT
20 IS THIS A PICTURE OF?

21 A OKAY. THAT IS -- THAT'S A PICTURE OF ME. THIS IS BEHIND THE
22 COUNTER. IT HAS A LITTLE WOODEN WINDOW RIGHT THERE. OKAY.
23 SECTION 4, THAT'S A PICTURE OF THE DOOR OF THE STORE.

24 Q OKAY.

25 A SECTION 1, THAT IS THE COUNTER. AND SECTION 2, THAT IS --

1 AND THAT IS THE DOOR LEADING TO THE STORE.

2 Q OKAY. SO WHEN YOU FIRST WALK INTO THE STORE ---

3 A MM-HMM (AFFIRMATIVE).

4 Q --- WHAT CAMERA CATCHES THE PEOPLE WALKING IN THE STORE?
5 WHAT FRAME?

6 A THIS ONE RIGHT -- WELL, THIS ONE AND THEN THE DOOR.

7 Q OKAY. AND WHY DO YOU SAY THIS ONE? WHAT CAN YOU SEE OUT OF
8 FRAME NO. 1?

9 A YOU CAN SEE THE -- THE -- EXCUSE ME. YOU CAN SEE THE PEOPLE
10 OR THE PERSON WALKING BY.

11 Q OKAY. AND IF THEY WALKED IN THIS DIRECTION, ---

12 A MM-HMM (AFFIRMATIVE).

13 Q --- WHERE WOULD THEY GO TO ENTER THE STORE?

14 A IF THEY'RE WALKING -- IF THEY'RE WALKING THIS WAY, THEN
15 YOU'LL SEE AN "X" HERE.

16 Q SO IF SOMEONE WOULD WALK THIS WAY HERE, THEN YOU WOULD NEXT
17 COME INTO FRAME 2. IS THAT CORRECT?

18 A THAT'S RIGHT.

19 Q WHEN THEY ARE WALKING BY THIS WAY -- AND I KNOW THAT YOU ARE
20 HERE -- WHERE WOULD YOU BE LOOKING TOWARDS TO SEE THEM WHEN
21 THEY WALK IN THE DOOR?

22 A IF I WAS STANDING THERE, I COULD SEE THEM RIGHT THERE. IT'S
23 A WINDOW THERE, TOO, BUT YOU CAN'T SEE IT. RIGHT THERE.

24 Q OKAY. SO, IF YOU COULD -- AND THEN WHAT IS FRAME 4, MS.
25 COAXUM?

1 A THAT IS THE DOOR OF THE STORE.

2 Q OKAY.

3 A LEADING FROM THE DOOR COMING THROUGH THE STORE LOOKING OUT.

4 Q IS THIS A REAL LARGE STORE?

5 A NO.

6 Q OKAY. JUST DESCRIBE THE STORE BRIEFLY IF YOU CAN FOR THE
7 JURY. IS IT SHAPED LIKE A BOX, OR HOW IS IT SHAPED?

8 A YEAH. IT'S JUST -- IT'S JUST LONG. IT'S NOT TOO BIG. IT'S
9 JUST LONG.

10 Q SO IT'S LONG AND SHAPED LIKE A BOX?

11 A YEAH. CORRECT. CORRECT.

12 Q ALL RIGHT.. AND IS THIS -- WHAT IS THIS HERE?

13 A AS IN WHAT'S GOING ON BEHIND HERE? WHAT AM I DOING?

14 Q NO. WHAT IS THIS?

15 THE COURT: YOU'RE LETTING YOUR VOICE DRIFT, PLEASE,
16 MA'AM.

17 A I'M SORRY.

18 THE COURT: OKAY.

19 Q GO AHEAD AND SAY.

20 A THIS IS THE CASH REGISTER.

21 Q OKAY. ALL RIGHT. AND WHAT DO THESE NUMBERS REFLECT ON THIS
22 TAPE?

23 A THAT'S SHOWING THE TIME AND DATE.

24 Q OKAY. AND SO AS WE LOOK AT THIS FRAME, WHAT IS THE TIME?

25 A 1:08.

1 Q OKAY. AND WHAT IS THE DATE?

2 A IT'S MAY 29TH, 1996.

3 Q ALL RIGHT, MA'AM. ALL RIGHT. I'D LIKE TO GO THROUGH THIS
4 TAPE WITH YOU, AND I WOULD LIKE FOR YOU TO TELL ME IF YOU SEE
5 THE PEOPLE WHO COME IN AT ANY TIME AND WHAT THEY'RE DOING.
6 IF YOU COULD JUST TELL THE JURY WHAT'S GOING ON IN THE TAPE?

7 A OKAY.

8 Q NOW, IF SOMEBODY COMES IN THE STORE, WHAT FRAME SHOULD WE BE
9 LOOKING AT NOW?

10 A THEY'D BE ENTERING FROM THIS ANGLE.

11 Q OKAY.

12 MR. STRICKLER: I'M SORRY. I DIDN'T HEAR.

13 THE COURT: WHAT FRAME? OKAY. THE RESPONSE I DIDN'T
14 HEAR EITHER.

15 MS. FRYAR: SHE SAID THEY WOULD BE ENTERING FROM OVER
16 HERE, YOUR HONOR.

17 MR. STRICKLER: THANK YOU.

18 A OKAY. NOW WE HAVE SOMEONE ENTERING IN THE STORE.

19 Q OKAY.

20 A ALL RIGHT. AND ---

21 Q LET'S TRY TO GET THAT FOR THEM. OKAY.

22 MR. GASSER: I APOLOGIZE, YOUR HONOR.

23 THE COURT: YES, SIR.

24 MR. GASSER: MY WIFE DOES ALL MY VIDEOS.

25 A SLOW IT DOWN.

1 Q OKAY. NOW, WHEN YOU SEE THE PEOPLE WHO CAME IN TO ATTEMPT TO
2 CHANGE THE ONE HUNDRED DOLLAR BILL, WOULD YOU PLEASE SHOW THE
3 JURORS WHERE YOU ARE?

4 A YES. SLOW DOWN. OKAY. THIS IS THE FIRST GUY THAT CAME IN
5 AND HE WAS WITH SOMEONE ELSE.

6 Q WHO IS THIS GUY?

7 A I DON'T KNOW. HE DIDN'T COME INSIDE THE STORE.

8 Q OKAY. AND WHO IS THIS GUY?

9 A THAT'S THE SECOND GUY THAT CAME INSIDE THE STORE.

10 Q OKAY.

11 A THEY'RE ENTERING THE DOOR. THEN THEY WENT UP TO THE
12 REGISTER. AT THIS TIME THIS GUY ASKED ME COULD I CHANGE ONE
13 HUNDRED -- HUNDRED DOLLAR BILLS.

14 Q OKAY. AND DO YOU RECALL WHAT YOU SAID?

15 A NO. I CAN'T CHANGE A ONE HUNDRED DOLLAR BILL THAT TIME OF
16 NIGHT.

17 Q OKAY. DID THESE FELLOWS BUY ANYTHING IN THE STORE?

18 A NO. THEY DIDN'T PURCHASE ANYTHING.

19 Q OKAY. AND SO AFTER YOU TOLD THEM THAT, WHAT DID THEY DO?

20 A THEY LEAVE.

21 Q AND WHAT TIME APPROXIMATELY WAS THIS GOING ON, IF YOU COULD
22 LOOK AT YOUR ---

23 A 1:13.

24 Q THAT'S WHAT TIME ---

25 A A.M.

1 Q --- THEY WERE EXITING YOUR STORE?

2 A THAT'S CORRECT.

3 Q AND THE AMOUNT OF TIME THAT THEY SPENT IN THE STORE WAS
4 APPROXIMATELY HOW LONG?

5 A I REMEMBER LESS THAN A MINUTE.

6 Q ALL RIGHT. NOW I'M GOING TO FAST FORWARD IT, OR MR. GASSER
7 IS GOING TO FAST FORWARD IT. AND I WANT YOU TO TELL US IF
8 YOU -- THE NEXT THING THAT YOU SEE HAPPENING HERE ON THIS
9 VIDEOTAPE.

10 A AT THIS TIME IT'S -- ME AND MY SISTER WERE TALKING.

11 Q OKAY. DOES SHE WORK AT THE STORE?

12 A YES. SHE WAS IN THE STORE ALSO AT THAT TIME. OKAY. NOW THE
13 OFFICER IS RIGHT BEHIND THIS COUPLE RIGHT HERE.

14 Q OKAY. AND WHAT IS SHE DOING HERE, MS. COAXUM?

15 A WHEN SHE WALKED UP TO THE COUNTER SHE WAS THEN INQUIRING
16 ABOUT DID ANYONE COME IN TO TRY TO CASH A ONE HUNDRED DOLLAR
17 BILL.

18 Q OKAY, MA'AM. AND SO SHE CAME IN AT APPROXIMATELY WHAT TIME?

19 A TEN MINUTES AFTER THEY WERE EXITING THE STORE.

20 Q OKAY. AND THAT WAS WHAT TIME?

21 A THAT'S 1:23 A.M.

22 Q OKAY. AND ARE YOU TELLING HER THERE ABOUT WHAT HAD HAPPENED
23 EARLIER?

24 A YEAH. ME AND MY SISTER, BECAUSE MY SISTER WAS IN THERE, TOO.

25 Q SO SHE -- AND YOU TOLD THE OFFICER ABOUT THAT?

1 A (WITNESS NODS HEAD AFFIRMATIVELY)

2 Q ALL RIGHT. IF YOU CAN TELL US, WHO IS THIS PERSON THAT CAME
3 INTO THE STORE?

4 A THIS PERSON IS OFFICER GIBSON. HE USUALLY COMES IN TO CHECK
5 ON US AT NIGHTTIME.

6 Q AND ABOUT WHAT TIME WAS IT THAT HE CAME IN ON THIS PARTICULAR
7 NIGHT?

8 A WELL, ABOUT 2:22, 2:23.

9 Q AND IS THAT THIS NUMBER THAT IS REGISTERED HERE ON THE TAPE?

10 A THAT'S CORRECT.

11 Q AND THAT WOULD BE THE TIME, 2:23 THERE?

12 A THAT'S CORRECT.

13 Q AND WHAT, IF ANYTHING, DID YOU DISCUSS WITH OFFICER GIBSON ON
14 THIS NIGHT?

15 A TELLING HIM ABOUT WHAT HAD HAPPENED EARLIER, ABOUT THE
16 OFFICER HAD CAME IN ASKING ABOUT THE HUNDRED DOLLAR BILL AND
17 TOLD HER THERE WAS A COINCIDENCE THAT THE GUYS CAME IN THERE.

18 Q DO YOU REMEMBER WHAT DENOMINATIONS THEY TRIED TO CASH IT IN?

19 A THEY WANTED CHANGE, FIVE TWENTIES.

20 Q SO OFFICER GIBSON CAME IN THERE THE WHOLE TIME, WAS IN THERE
21 FOR A FAIRLY LONG TIME. IS THAT CORRECT?

22 A PROBABLY ABOUT TEN MINUTES. WELL, ALMOST TEN MINUTES. IT
23 LOOKS LIKE PROBABLY ABOUT SIX OR SEVEN MINUTES.

24 Q ALL RIGHT. DO YOU REMEMBER EVERYTHING THAT YOU AND OFFICER
25 GIBSON TALKED ABOUT DURING THAT SIX AND SEVEN MINUTES?

1 A JUST ABOUT WHAT WAS GOING ON. YOU KNOW, WE WERE JUST
2 TALKING, SAYING HELLO, YOU KNOW, ABOUT WHAT HAD HAPPENED
3 EARLIER.

4 Q YOU'RE TALKING ABOUT THE INCIDENT IN THE PARK?

5 A THE EVENTS, YEAH.

6 Q AND THE HUNDRED DOLLAR BILL. IS THAT CORRECT?

7 A THAT'S CORRECT.

8 Q ALL RIGHT. PLEASE TAKE YOUR SEAT, MS. COAXUM.

9 (WITNESS RESUMES THE STAND)

10 MS. FRYAR: BEG THE COURT'S INDULGENCE.

11 THE COURT: YES, MA'AM.

12 Q (BY MS. FRYAR: MS. COAXUM, I AM GOING TO SHOW YOU WHAT'S
13 BEEN MARKED AS STATE'S EXHIBIT NO. 27, 28 AND 29. IF YOU
14 COULD, TELL THE JURY WHAT THAT IS?

15 A STATE'S EXHIBIT 27 IS SHOWING THE GUY ENTERING INSIDE THE
16 STORE.

17 Q WHICH GUY IS THAT? DESCRIBE HIM, PLEASE.

18 A OH. I'M SORRY. EXCUSE ME. HE'S A BLACK MALE. HE'S ABOUT
19 175, 180 WITH A SAFARI HAT ON, JERSEY. STATE'S EXHIBIT 28 IS
20 SHOWING A BLACK MALE WITH CORN ROWS IN HIS HAIR, SPOTTED
21 SHIRT ENTERING INSIDE THE STORE AT 1:12. AND STATE'S EXHIBIT
22 29 IS SHOWING THEM BOTH AT AN ANGLE AT 1:12.

23 Q OKAY.

24 A INSIDE THE STORE.

25 Q ALL RIGHT. AND DO THESE PHOTOGRAPHS ACCURATELY DEPICT, JUST

1 PICTURES THAT HAVE BEEN TAKEN OFF THAT VIDEOTAPE WE JUST
2 WATCHED?

3 A THAT'S CORRECT.

4 Q ALL RIGHT. THANK YOU, MA'AM.

5 A YOU'RE WELCOME.

6 MS. FRYAR: JUST BRIEFLY, YOUR HONOR. YOUR HONOR, AT
7 THIS TIME I'D LIKE TO MOVE THESE INTO EVIDENCE.

8 THE COURT: WHICH IS THIS? THE ---

9 MS. FRYAR: THESE ARE ---

10 THE COURT: 27, 28 AND 29?

11 MS. FRYAR: YES, YOUR HONOR.

12 THE COURT: MR. STRICKLER OR MR. SHUPPER.

13 MR. STRICKLER: YOUR HONOR, AT THIS POINT, RELEVANCE.

14 THE COURT: RELEVANCE?

15 MR. STRICKLER: YES, SIR.

16 THE COURT: OKAY. IF THAT'S THE OBJECTION, THE
17 OBJECTION WOULD BE OVERRULED.

18 MR. STRICKLER: THANK YOU.

19 THE COURT: MR. SHUPPER.

20 MR. SHUPPER: YOUR HONOR, IF I MIGHT HAVE A MOMENT.

21 THE COURT: SURE.

22 MR. SHUPPER: YOUR HONOR, THERE HASN'T BEEN ANY QUESTION
23 OF THE AUTHENTICITY. THERE HASN'T BEEN ANY QUESTION AS TO
24 HOW THESE PHOTOS WERE CREATED.

25 THE COURT: I APPRECIATE THAT. I BELIEVE THEY HAVE BEEN

1 PROPERLY -- AN APPROPRIATE FOUNDATION HAS BEEN LAID, AND I
2 WOULD ALLOW THEM TO COME INTO EVIDENCE AT THIS TIME.

3 MS. FRYAR: THANK YOU, YOUR HONOR.

4 (STATE'S EXHIBIT NOS. 27 THROUGH 29, VIDEO PHOTOGRAPHS,
5 RECEIVED IN EVIDENCE)

6 MS. FRYAR: YOUR HONOR, AT THIS TIME I'D LIKE TO PUBLISH
7 THEM TO THE JURY.

8 THE COURT: CERTAINLY. BEARING IN MIND THAT YOU'LL HAVE
9 AN OPPORTUNITY TO OBSERVE THOSE AT LEISURE DURING
10 DELIBERATIONS, LADIES AND GENTLEMEN. I SAY THAT BY WAY OF
11 SAYING DON'T TAKE AN INORDINATE AMOUNT OF TIME LOOKING AT
12 THEM NOW. EXCUSE ME. GO AHEAD.

13 MS. FRYAR: THAT'S ALL RIGHT. YOUR HONOR, THANK YOU.
14 WE WOULDN'T HAVE ANY FURTHER QUESTIONS OF MS. COAXUM.

15 THE COURT: CERTAINLY. MR. STRICKLER.

16 MR. STRICKLER: NOTHING, SIR. THANK YOU.

17 THE COURT: MR. SHUPPER?

18 MR. SHUPPER: NO QUESTIONS, YOUR HONOR.

19 THE COURT: THANK YOU. THANK YOU, MS. COAXUM. YOU CAN
20 STEP DOWN, PLEASE, MA'AM.

21 MS. FRYAR: YOUR HONOR, MAY MS. COAXUM LEAVE?

22 MR. STRICKLER: WITHOUT OBJECTION, SIR.

23 THE COURT: MR. SHUPPER?

24 MR. SHUPPER: NO OBJECTION, SIR.

25 THE COURT: THANK YOU, MA'AM, FOR YOUR ATTENDANCE.

1 YOU'RE FREE TO GO.

2 MR. GASSER: THE STATE WOULD CALL OFFICER GIBSON, YOUR
3 HONOR.

4 THE COURT: OKAY.

5 MR. GASSER: HE'LL BE RIGHT HERE, YOUR HONOR. THANK
6 YOU.

7 THE COURT: OKAY. WITNESSES IN CRIMINAL CASES ARE
8 TYPICALLY SEQUESTERED, MEANING THAT IT SOMETIMES TAKES A
9 WHILE TO RETRIEVE THEM. WE'RE SORRY FOR THE INCONVENIENCE IT
10 CAUSES.

11 MR. GASSER: HE'S COMING THROUGH THE DOOR, YOUR HONOR.

12 THE COURT: SIR?

13 MR. GASSER: HE'S COMING THROUGH THE DOOR.

14 THE COURT: OKAY.

15 RON GIBSON, BEING FIRST DULY SWORN,
16 TESTIFIES AS FOLLOWS:

17 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
18 FOR THE RECORD.

19 MR. GIBSON: MY NAME IS RON GIBSON.

20 DIRECT EXAMINATION BY MR. GASSER:

21 Q MR. GIBSON, YOU ARE FORMERLY OFFICER GIBSON. IS THAT
22 CORRECT?

23 A YES, SIR.

24 Q WHERE DO YOU CURRENTLY LIVE?

25 A CHARLESTON, SOUTH CAROLINA.

1 Q WHAT ARE YOU CURRENTLY DOING FOR A LIVING?

2 A I'M A PARALEGAL INVESTIGATOR FOR NESS, MOTLEY LAWFIRM.

3 Q PRIOR TO BECOMING AN INVESTIGATOR FOR THE NESS, MOTLEY
4 LAWFIRM IN CHARLESTON, WHAT WAS YOUR EMPLOYMENT?

5 A I WAS A COLUMBIA POLICE OFFICER FOR THE CITY OF COLUMBIA.

6 Q HOW LONG WERE YOU A POLICE OFFICER HERE IN COLUMBIA?

7 A SEVEN YEARS.

8 Q I WANT TO DRAW YOUR ATTENTION, MR. GIBSON, BACK TO TUESDAY
9 EVENING, MAY THE 28TH OF 1996, EARLY MORNING HOURS OF
10 WEDNESDAY, MAY THE 29TH. WERE YOU WORKING WITH THE COLUMBIA
11 POLICE DEPARTMENT AT THAT TIME?

12 A YES, SIR, I WAS.

13 Q AND WHAT SHIFT WERE YOU WORKING THAT EVENING OR EARLY MORNING
14 HOURS?

15 A I WAS WORKING THE MIDNIGHT SHIFT.

16 Q AND IN WHAT DISTRICT?

17 A DISTRICT 3.

18 Q DOES THAT INCLUDE PORTIONS OF THE TWO NOTCH ROAD AREA?

19 A YES, SIR, IT DOES.

20 Q TELL US, PLEASE, MR. GIBSON, HOW YOU BECAME INVOLVED IN THIS
21 PARTICULAR MATTER?

22 A ON THAT NIGHT THERE WAS A CALL OF -- THERE WAS A RADIO CALL.
23 I'M NOT SURE WHAT THE EXACT RADIO CALL WAS THAT WENT OUT.
24 BUT THERE WAS SOME RADIO CALL AT THAT THE T. S. MARTIN PARK,
25 AND I WENT, RESPONDED TO THE CALL THERE AND WAITED THERE.

1 AND OFFICER BLACKWELL CAME. AND APPARENTLY THERE WAS SOME
2 KIND OF AN ASSAULT THAT TOOK PLACE. AND OFFICER BLACKWELL
3 CAME IN WITH THE DOGS, AND THEY STARTED OFF WITH THE DOGS.
4 AND THEN AT THAT TIME WE WERE INSTRUCTED THEN TO START
5 PATROLLING THE AREA.

6 Q WHEN YOU RESPONDED, DID YOU ACTUALLY RESPOND YOURSELF WITH
7 YOUR MARKED UNIT TO T. S. MARTIN PARK?

8 A WELL, I WAS DRIVING THE PADDY WAGON THAT NIGHT, AND I DID
9 DRIVE MY MARKED UNIT TO THE SCENE, YES.

10 Q WHEN YOU SAY PADDY WAGON, WHAT DO YOU MEAN BY THAT?

11 A THAT'S THE TRANSPORT VEHICLE THAT WE TAKE PRISONERS TO THE
12 JAIL WITH.

13 Q WERE YOU IN UNIFORM?

14 A YES, I WAS.

15 Q UPON YOUR RIVAL AT THE SCENE, WERE THERE OTHER COLUMBIA
16 POLICE OFFICERS ALREADY THERE WORKING ON THE SCENE?

17 A YES.

18 Q AND WHO DID YOU PROVIDE ASSISTANCE TO?

19 A INITIALLY, LIKE I SAID, I PROVIDED ASSISTANCE TO OFFICER
20 BLACKWELL WITH THE DOG. BUT THERE WAS ANOTHER OFFICER THERE
21 AND HE DIDN'T WANT TOO MANY OF US WALKING AROUND THE CRIME
22 SCENE. SO THAT OFFICER STAYED WITH HIM, AND THEN I WENT BACK
23 TO RESUME PATROLLING THE AREAS FOR SUSPECTS.

24 Q HAD YOU LEARNED ANYTHING ABOUT THE ASSAILANTS OR THE POSSIBLE
25 SUSPECTS WHEN YOU WERE ON THE SCENE FROM EITHER MR. BULL OR

1 FROM ANY OF THE OFFICERS THAT WERE THERE ON THE SCENE FOR YOU
2 LATER TO HAVE IN YOUR MEMORY OR MIND AS YOU WERE PATROLLING
3 TWO NOTCH ROAD?

4 MR. SNEED: OBJECTION, YOUR HONOR.

5 THE COURT: AND THE OBJECTION WOULD BE EXACTLY WHAT?

6 MR. SNEED: HEARSAY. IT CALLS FOR HEARSAY. AND IT'S A
7 COMPOUND QUESTION, TOO.

8 THE COURT: INSOFAR AS IT RELATES -- THE WAY IT WAS
9 PHRASED, YOU'RE PROBABLY RIGHT. BUT, MR. GASSER, YOU'RE
10 ASKING HIM WHAT INFORMATION HAD BEEN CONVEYED TO HIM RELATIVE
11 TO DESCRIPTIONS? IS THAT WHAT YOU'RE ASKING HIM?

12 MR. GASSER: IN A VERY GENERAL SENSE; YES, SIR.

13 THE COURT: OKAY. YOU DON'T HAVE AN OBJECTION TO THAT,
14 DO YOU? OR DO YOU?

15 MR. SNEED: FROM THE OFFICERS, IT WOULD BE HEARSAY. AND
16 FROM -- BECAUSE MR. GASSER ASKED THE WITNESS IF HE LEARNED IT
17 FROM OTHER FELLOW OFFICERS. THAT WOULD BE HEARSAY. BUT MR.
18 BULL PERHAPS WOULD BE A DIFFERENT RESULT --

19 THE COURT: OKAY. WELL, I DON'T THINK IT'S OFFERED FOR
20 THE TRUTH OF THE MATTER ASSERTED. SO I DON'T THINK IT'S
21 HEARSAY.

22 MR. SNEED: YES, SIR.

23 THE COURT: OKAY. AND IT WILL BE ACCEPTED AS SUCH.
24 IT'S NOT OFFERED FOR TRUTH OF THE MATTER ASSERTED; I.E., THAT
25 THE SUSPECTS LOOKED A PARTICULAR WAY, LADIES AND GENTLEMEN,

1 BUT ONLY WHAT IMPACT OR EFFECT, IF ANY, IT HAD ON THIS
2 OFFICER. SO PLEASE CONTINUE.

3 MR. GASSER: THANK YOU, YOUR HONOR.

4 Q (BY MR. GASSER) OFFICER GIBSON, DID YOU LEARN -- FOR
5 INSTANCE, DID YOU LEARN THE NUMBER OF SUSPECTS?

6 A YES.

7 Q OKAY. AND WHAT NUMBER WERE YOU GIVEN?

8 A TWO.

9 Q OKAY. AND DID YOU LEARN WHETHER OR NOT THEY WERE MALE OR
10 FEMALE?

11 A YES.

12 Q AND WHAT DID YOU LEARN?

13 A MALE.

14 Q AND YOU LEARNED THE RACE OF THE SUSPECTS?

15 A YES.

16 Q AND WHAT WERE THEY?

17 A BLACK.

18 Q NOW, DID YOU EVENTUALLY LEAVE THE T. S. MARTIN PARK AREA AND
19 THE CRIME SCENE TO GO ABOUT YOUR BUSINESS, YOUR PATROL
20 BUSINESS?

21 A YES, I DID.

22 Q NOW, ARE YOU FAMILIAR WITH THE AMOCO STATION THERE ON TWO
23 NOTCH ROAD CLOSE TO THE INTERSECTION OF GERMANY STREET AND
24 TWO NOTCH?

25 A YES, I AM.

1 Q AND HOW ARE YOU FAMILIAR WITH THAT PARTICULAR AMOCO
2 CONVENIENCE STORE?

3 A THAT CONVENIENCE STORE WAS IN MY PATROL AREA. AND WHEN I
4 WORKED ON MIDNIGHT SHIFT I FREQUENTLY WENT IN THERE TO CHECK
5 ON THE CLERKS OR THE EMPLOYEES OF THAT PLACE.

6 Q AND AT APPROXIMATELY OR RIGHT AT 2:23 A.M., DID YOU HAVE AN
7 OPPORTUNITY TO GO TO A PARTICULAR LOCATION?

8 A YES, I DID.

9 Q AND WHERE WAS THAT?

10 A THE AMOCO STORE ON TWO NOTCH ROAD.

11 Q NOW, OFFICER GIBSON, I'M NOT GOING TO REPLAY THIS VIDEOTAPE
12 FOR THE JURY. I KNOW YOU WERE OUT OF THE COURTROOM. BUT
13 HAVE YOU HAD AN OPPORTUNITY TO LOOK AT THE VIDEO FROM THE
14 SECURITY CAMERAS AT THE AMOCO STATION TAKEN DURING THE EARLY
15 MORNING HOURS OF WEDNESDAY, MAY 29TH, 1996?

16 A YES, I HAVE.

17 Q AT APPROXIMATELY 2:23 DID YOU LOOK AT PORTIONS OF THE TAPE
18 FROM 2:23 TO ABOUT 2:30 THAT MORNING?

19 A YES, I HAVE.

20 Q WHO IS DEPICTED IN THE TAPE?

21 A I AM IN THERE GETTING A DRINK.

22 Q AND WHO ELSE? WHO WERE YOU SPEAKING WITH THERE?

23 A SPEAKING WITH SANDY, THE CLERK THAT WORKS THERE.

24 Q AS A RESULT OF YOUR CONVERSATION WITH HER —

25 MR. SNEED: OBJECTION, YOUR HONOR.

1 THE COURT: EXCUSE ME A SECOND. OBJECTION. AND THE
2 OBJECTION IS WHAT?

3 MR. SNEED: IT'S ---

4 THE COURT: OKAY. HANG ON. LET'S SEND THE JURY OUT AND
5 MAYBE WE'LL DETERMINE THIS. BECAUSE I DON'T KNOW WHAT THE
6 ANSWER IS GOING TO BE. I DON'T KNOW WHAT THE QUESTION IS
7 GOING TO BE. FOLKS, GO TO THE JURY ROOM. DON'T DISCUSS THE
8 CASE AMONG YOURSELVES. WE'LL BE WITH YOU SHORTLY.

9 (JURY OUT AT 5:13 P.M.)

10 THE COURT: FORGIVE ME, MR. SNEED. I DIDN'T MEAN TO
11 SNAP AT YOU. NOW, WHAT WAS THE QUESTION GOING TO BE? WHAT'S
12 THE QUESTION, MR. GASSER?

13 MR. GASSER: YOUR HONOR, IN AN ANTICIPATING -- I DIDN'T
14 WANT TO ENTER HEARSAY. SO I SAID, "AS A RESULT OF YOUR
15 CONVERSATION".

16 THE COURT: AS A RESULT OF YOUR CONVERSATION YOU HAD
17 WITH WHO? MS. SANGETTA COAXUM?

18 MR. GASSER: WITH SANGETTA COAXUM. WHAT DID YOU DO
19 AFTER YOU LEFT THE STORE? AND RATHER THAN GETTING HIM TO SAY
20 WHAT MS. COAXUM SAID, BECAUSE I ANTICIPATED THE HEARSAY
21 OBJECTION, THAT'S WHY I PHRASED IT THE WAY I DID.

22 THE COURT: OKAY.

23 MR. SNEED: YOUR HONOR, THAT IS BYPASSING THE HEARSAY
24 RULE. IT'S HEARSAY IN ALL BUT NAME NO MATTER HOW MUCH WE
25 DISGUISE IT. THE STATE, THEY JUST HAD MS. COAXUM ON THE

1 STAND. SHE TESTIFIED ABOUT HER CONVERSATIONS WITH THIS MAN,
2 BUT SHE DIDN'T DISCUSS APPARENTLY THE STATEMENT THAT THE
3 SOLICITOR IS TRYING TO ---

4 THE COURT: YOU KNOW, I SORT OF TEND TO AGREE WITH YOU,
5 MR. SNEED. WE DO THIS ALL THE TIME THOUGH. AS A RESULT OF A
6 CONVERSATION, WHAT DID YOU DO, WHICH THEN OF COURSE GETS IN
7 INDIRECTLY WHATEVER IT WAS THAT WAS SAID. ANOTHER WAY TO DO
8 THAT HOWEVER IS, WHEN YOU LEFT THE STORE, WHAT DID YOU DO?

9 MR. GASSER: I'LL DO IT THAT WAY. I DIDN'T THINK IT WAS
10 THAT BIG OF A DEAL. I'M SORRY.

11 THE COURT: ALL RIGHT. SO, I MEAN, YOU KNOW, THERE'S
12 MORE THAN -- THERE'S AN ADDITIONAL WAY TO SKIN THE CAT. I
13 MEAN, THE QUESTION IS PROPER. WHAT DID YOU DO WHEN YOU LEFT
14 THE STORE? YOU KNOW. AND IF YOU WANT TO ASK HIM WHY HE DID
15 THAT, THEN ---

16 MR. SNEED: BUT IF THE SOLICITOR ASKED HIM WHY HE DID
17 THAT, THEN STILL WE'RE GETTING AROUND THE HEARSAY, UNDERLYING
18 HEARSAY PROBLEM.

19 THE COURT: THE SOLICITOR IS NOT GOING TO ASK HIM. THE
20 SOLICITOR IS GOING TO SAY, "WHAT DID YOU DO?" OKAY?

21 MR. GASSER: SINCE THE JURY IS OUT, OFFICER GIBSON, DO
22 YOU UNDERSTAND THAT I'M JUST GOING TO ASK YOU WHAT DID DO YOU
23 WHEN YOU LEFT THE STORE, AND YOU CAN'T MENTION WHAT MS.
24 COAXUM SAID TO YOU, JUST WHAT YOU DID WHEN YOU LEFT THE
25 STORE?

1 MR. COAXUM: I UNDERSTAND.

2 THE COURT: OKAY. MR. BARROW, ASK THE JURY TO COME BACK
3 IN.

4 (JURY IN AT 5:15 P.M.)

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

6 THE COURT: THANK YOU. THANK YOU, FOLKS. PLEASE
7 CONTINUE, MR. GASSER.

8 MR. GASSER: THANK YOU, YOUR HONOR.

9 DIRECT EXAMINATION RESUMED BY MR. GASSER:

10 Q MR. GIBSON, WHEN YOU LEFT -- DID THERE COME A TIME THAT YOU
11 LEFT THE AMOCO STORE?

12 A YES.

13 Q AND IS THAT DEPICTED ON THE TAPE AS WELL THAT YOU HAVE SEEN?

14 A YES.

15 Q WHEN YOU LEFT THE AMOCO STATION, TELL US, PLEASE, WHAT YOU
16 DID?

17 A I LEFT THE STORE AND GOT IN MY VAN AND WENT SOUTH IN THE
18 PARKING LOT AND SAW A GUY STANDING ON THE SIDE OF THE STORE
19 AND SAW HIM START WALKING AWAY. I JUST STOPPED THE VAN,
20 ASKED HIM TO STOP, AND HE STOPPED. AND I TALKED TO HIM FOR A
21 FEW MINUTES. WHICH IS NORMAL TO DO AT THAT TIME OF NIGHT
22 WHEN YOU SEE SOMEBODY OUT ON THE STREET, ESPECIALLY THERE;
23 AND GOT THIS INFORMATION, TURNED HIM LOOSE, AND THEN I LEFT.

24 Q SO WHAT INFORMATION DID YOU GET FROM THIS GENTLEMAN?

25 A JUST HIS BASIC INFORMATION: NAME, ADDRESS, HIS DATE OF

1 BIRTH.

2 Q DO YOU SEE THIS GENTLEMAN HERE IN THE COURTROOM TODAY?

3 A YES, I DO.

4 Q WOULD YOU POINT HIM OUT FOR THE JURY?

5 A THE GENTLEMAN SITTING OUT THERE AT THE TABLE RIGHT THERE WITH
6 THE WHITE SHIRT ON AND THE BRAIDS.

7 Q YOU SAID YOU GOT HIS INFORMATION. WHAT INFORMATION DID YOU
8 GET FROM HIM, MR. GIBSON?

9 A WELL, LIKE I SAID, I JUST -- USUALLY WHEN PEOPLE ARE OUT AT
10 THAT TIME OF NIGHT, WE STOP THEM AND DO WHAT WE CALL A FIELD
11 INTERROGATION. AND IT DOESN'T MEAN THAT THEY'VE NECESSARILY
12 DONE ANYTHING, BUT HE'S OUT THERE THAT TIME OF NIGHT. I
13 STOPPED HIM, ASKED HIM HIS NAME, ASKED HIM, YOU KNOW, WHAT HE
14 WAS DOING OUT THERE AND HIS DATE OF BIRTH. I ASKED HIM FOR
15 SOME IDENTIFICATION. HE DIDN'T HAVE ANY. HE JUST TOLD ME
16 WHAT HIS NAME WAS, TOLD ME WHAT HIS ADDRESS WAS AND TOLD ME
17 WHAT HIS DATE OF BIRTH WAS.

18 Q AND DID YOU RECORD THIS INFORMATION IN ANY MANNER?

19 A YES, I DID.

20 Q OKAY. SO, AGAIN, WHAT INFORMATION DID YOU RECORD? I DON'T
21 WANT TO PUT WORDS IN YOUR MOUTH. WHAT INFORMATION DID YOU
22 RECORD AND HOW DID YOU RECORD IT?

23 A ON MY FIELD NOTEBOOK I RECORDED HIS NAME.

24 Q HIS NAME?

25 A HIS DATE OF BIRTH.

1 Q HIS DATE OF BIRTH?

2 A I THINK I PUT HIS RACE AND HIS SEX AND HIS ADDRESS.

3 Q OKAY. AND WHO PROVIDED YOU THAT INFORMATION?

4 A HE DID.

5 Q MR. KENNETH JAMES?

6 A YES.

7 Q NOW, HE WASN'T UNDER ARREST AT THAT TIME. IS THAT CORRECT?

8 A NO. NO.

9 Q NOW, LATER ON THAT MORNING DID YOU HAVE AN OPPORTUNITY TO GO
10 BACK EITHER TO HEADQUARTERS OR BACK TO THE CRIME SCENE TO
11 COME INTO CONTACT WITH INVESTIGATOR TOMMY THOMAS? DID YOU
12 COME INTO CONTACT WITH HIM LATER ON?

13 A I DID COME INTO CONTACT WITH HIM LATER ON.

14 Q WHEN YOU CAME INTO CONTACT WITH INVESTIGATOR THOMAS, WHAT
15 INFORMATION, IF ANY, DID YOU RELAY TO HIM?

16 A I TOLD HIM THAT I HAD STOPPED THE GUY ON -- AND I DON'T
17 RECALL THE NAME OF THAT STREET. BUT I TOLD HIM THAT I HAD
18 STOPPED SOMEBODY, AND HE CAME BY. AND WE MET ACTUALLY ON THE
19 STREET THAT I STOPPED THE GUY ON. AND I GAVE HIM THE PIECE
20 OF PAPER WITH THE INFORMATION ON IT.

21 Q AND I HAND YOU THIS DOCUMENT, JUST ASK YOU TO TAKE A LOOK AT
22 IT AND SEE IF IT REFRESHES YOUR MEMORY.

23 MR. SNEED: I'M GOING TO OBJECT, YOUR HONOR.

24 THE COURT: THE OBJECTION IS WHAT?

25 MR. SNEED: IMPROPER FOUNDATION?

1 THE COURT: RIGHT. HIS MEMORY HASN'T FAILED YET. I
2 DON'T KNOW. WHAT IS IT THAT YOU WANT TO ASK HIM, MR. GASSER?
3 YOU SHOULD GIVE HIM SOMETHING TO REFRESH HIS MEMORY IF HIS
4 MEMORY HAS FAILED ON SOMETHING. IT HASN'T FAILED YET, HAS
5 IT?

6 Q (BY MR. GASSER) MR. GIBSON, DO YOU HAVE AN INDEPENDENT
7 MEMORY THREE YEARS AGO EXACTLY WHAT ADDRESS AND WHAT DATE OF
8 BIRTH MR. KENNETH JAMES PROVIDED TO YOU?

9 A OH, NO. NO, I DON'T.

10 Q PRIOR TO COMING INTO COURT TODAY, DID YOU HAVE AN OPPORTUNITY
11 TO LOOK AT SOME COLUMBIA POLICE DEPARTMENT CASE NOTES?

12 A YES.

13 Q IN ORDER TO BE COMPLETELY TRUTHFUL, FOR YOUR MEMORY TO
14 PROVIDE ACCURATE INFORMATION, WOULD IT ASSIST YOU IN LOOKING
15 AT THOSE NOTES AGAIN?

16 A YES.

17 THE COURT: OKAY. MR. SNEED, IS THERE AN OBJECTION?
18 IT'S A RECORDED RECOLLECTION, IS IT NOT?

19 MR. SNEED: YES, SIR. THE THING IS, YOUR HONOR, IT'S
20 NOT THIS MAN'S RECORDED RECOLLECTION. IT'S A TOTALLY
21 SEPARATE WITNESS'S. IT'S NOT THIS OFFICER'S.

22 THE COURT: EXCUSE ME A MINUTE. COME UP HERE,
23 EVERYBODY. I THINK MAYBE I'M MISUNDERSTANDING SOMETHING.
24 (WHEREUPON, THE FOLLOWING SIDE BAR CONFERENCE IS HAD)

25 MR. SNEED: MY OBJECTION IS —

1 THE COURT: WAIT A MINUTE. DON'T SAY ANYTHING. NOW,
2 IT'S MY UNDERSTANDING THAT HE'S THE GUY THAT WROTE THIS STUFF
3 DOWN, ISN'T HE?

4 MR. GASSER: HE WROTE IT DOWN ON A PIECE OF PAPER. HE
5 PROVIDED THE PIECE OF PAPER TO TOMMY THOMAS. TOMMY THOMAS
6 RECORDED IT INTO HIS NOTES. SO TOMMY THOMAS —

7 THE COURT: OH, OKAY. SO THIS IS SOMETHING THAT THOMAS
8 WROTE? WELL, IT DOESN'T HAVE TO BE HIM HAVING DONE IT. BUT
9 NOW IT IS FOR PURPOSES OF REFRESHING HIS RECOLLECTION. SO, I
10 MEAN, HE CAN DO IT EITHER WAY. I MEAN, I APPRECIATE YOUR
11 HYPER-TECHNICAL OBJECTION, BUT, YOU KNOW, IT WORKS. I'M
12 SORRY. OKAY.

13 MR. GASSER: THANK YOU, YOUR HONOR.

14 THE COURT: OKAY. THANKS.

15 (WHEREUPON, THE SIDE BAR CONFERENCE IS CONCLUDED)

16 THE COURT: FORGIVE ME, GENTLEMEN. I SOMETIMES DON'T
17 QUITE COMPLETELY APPREHEND WHAT'S GOING ON. PLEASE CONTINUE.

18 Q (BY MR. GASSER) THAT INFORMATION THAT'S RECORDED ON — WHOSE
19 NOTES ARE THOSE? DO YOU KNOW WHOSE NOTES ARE THOSE?

20 A NO. I DON'T ACTUALLY.

21 Q DO YOU RECOGNIZE THE INFORMATION THAT'S CONTAINED IN THOSE
22 NOTES?

23 A YES, I DO.

24 Q AND WHAT IS THAT INFORMATION?

25 A THE INFORMATION THAT I GAVE TO INVESTIGATOR THOMAS.

1 Q AND THAT INFORMATION IS WHAT?

2 A MR. JAMES'S NAME, SEX, DATE OF BIRTH, RACE, AND HIS ADDRESS.

3 Q AND HIS ADDRESS IS WHAT THAT HE GAVE YOU THAT MORNING?

4 A 2528 ORR STREET.

5 Q OKAY. JUST A COUPLE MORE QUESTIONS, MR. GIBSON. THANK YOU.
6 WHEN YOU STOPPED MR. JAMES AT APPROXIMATELY 2:30 IN THE
7 MORNING ON MAY THE 29TH, 1996, WHERE YOU SAID YOU STOPPED
8 HIM, I GUESS JUST ANSWER THIS QUESTION YES OR NO. DID YOU
9 HAVE YOURSELF ANY INFORMATION FROM OFFICER RANDY BLACKWELL?
10 HAD YOU HAD THAT INFORMATION AT THAT TIME, YOURSELF?

11 MR. SNEED: OBJECTION.

12 THE COURT: WAIT A MINUTE. WAIT A MINUTE. WAIT A
13 MINUTE. HE ASKED HIM TO ANSWER THE QUESTION YES OR NO. I
14 DON'T KNOW WHAT THE ANSWER IS GOING TO BE. I DON'T KNOW IF
15 THE OBJECTION IS OBJECTIONABLE.

16 MR. SNEED: HEARSAY.

17 THE COURT: IT'S NOT APPARENT TO ME. THE GROUNDS OF THE
18 OBJECTION ARE NOT APPARENT.

19 MR. SNEED: HEARSAY, YOUR HONOR.

20 THE COURT: OKAY. WELL, I JUST DON'T KNOW.

21 MR. GASSER: YOUR HONOR, I KNOW THE RULES, AND THAT'S
22 WHY I ASKED HIM TO ANSWER IT YES OR NO.

23 THE COURT: WELL, YOU KNOW, I KNOW THE RULES, TOO. I
24 JUST DON'T KNOW -- THE UNFAIR ADVANTAGE YOU HAVE AT THIS
25 POINT IN TIME IS YOU KNOW THE ANSWER AND I DON'T. SO LET'S

1 GO AHEAD AND LET'S ---

2 MR. GASSER: THAT'S WHY I JUST PROFFERED IT.

3 Q (BY MR. GASSER) JUST ANSWER THIS QUESTION YES OR NO, MR.
4 GIBSON. WHEN YOU STOPPED KENNETH JAMES, THE INDIVIDUAL YOU
5 IDENTIFIED AS KENNETH JAMES, AND HE GAVE YOU THIS
6 INFORMATION, INCLUDING HIS ADDRESS, 2528 ORR STREET?

7 MR. SNEED: OBJECTION, YOUR HONOR. THE SOLICITOR IS NOW
8 TESTIFYING. HE DID NOT -- THIS WITNESS DID NOT GIVE THE
9 ADDRESS. NOW THE SOLICITOR IS GIVING IT.

10 THE COURT: HE JUST GAVE IT A MINUTE AGO, MR. SNEED.
11 EXCUSE ME. GO AHEAD, PLEASE.

12 MR. GASSER: THANK YOU.

13 Q (BY MR. GASSER) WHEN HE GAVE YOU THAT INFORMATION, MR.
14 GIBSON, DID YOU KNOW ABOUT ANYTHING, WHAT YOUR PRIOR OFFICERS
15 WERE DOING AND WHAT INFORMATION THEY HAD COME UP WITH ONCE
16 YOU LEFT THE CRIME SCENE?

17 A NO, I DID NOT.

18 Q AND ---

19 THE COURT: SO, NO HEARSAY WAS ELICITED. THANK YOU.
20 PLEASE CONTINUE.

21 MR. GASSER: THANK YOU, YOUR HONOR. THAT'S ALL I HAVE.
22 THANK YOU, YOUR HONOR.

23 THE COURT: ALL RIGHT. MR. STRICKLER OR MR. SNEED?

24 MR. SNEED: NO QUESTIONS, YOUR HONOR.

25 MR. SHUPPER: ROBERT JAMES HAS NO QUESTIONS, YOUR HONOR.

1 THE COURT: OKAY. THANK YOU. YOU CAN STEP DOWN, SIR.

2 MR. GASSER: MAY WE APPROACH BRIEFLY, YOUR HONOR, TALK
3 ABOUT —

4 THE COURT: MM-HMM (AFFIRMATIVE).

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

6 THE COURT: THE NEXT WITNESS THAT WE WOULD HAVE WOULD BE
7 MS. RHONDA HENRY. WE'RE PREPARED TO GO FORWARD. I DON'T
8 KNOW HOW MUCH FURTHER YOU WANT TO GO.

9 THE COURT: HELP ME RHONDA. OKAY. WELL, LET'S SEND THE
10 JURY OUT. LET'S TRY TO FIGURE OUT WHAT WE'RE GOING TO DO
11 HERE. OKAY?

12 MR. GASSER: OKAY.

13 (WHEREUPON, THE SIDE BAR CONFERENCE IS CONCLUDED)

14 THE COURT: FOLKS, GO TO THE JURY ROOM NOW. DON'T
15 DISCUSS THE CASE AMONG YOURSELVES. WE MAY BE WITH YOU
16 SHORTLY. WE MAY BE BREAKING FOR THE DAY. I DON'T KNOW.
17 DON'T DISCUSS THE CASE. WE'LL BE WITH YOU SHORTLY.

18 (JURY OUT AT 5:25 P.M.)

19 THE COURT: OKAY, MR. GASSER, THANKS FOR ADVISING ME AS
20 YOU DID THAT THE NEXT WITNESS THAT YOU SEEK TO CALL WOULD BE
21 RHONDA HENRY WHOSE TESTIMONY IS THE SUBJECT OF SOME
22 CONTROVERSY AT THIS POINT IN TIME. AND I CAN'T RECALL
23 EXACTLY WHAT IT WAS OTHER THAN I DO REMEMBER THAT MS. HENRY
24 IS A PERSON TO WHOM STATEMENTS WERE MADE; I.E., ADMISSIONS
25 WERE MADE BY KENNETH JAMES PURPORTEDLY TO THE EFFECT THAT HE

1 HAD RAPED A WOMAN AND FELT BAD ABOUT IT. IS THAT PRETTY MUCH
2 IT?

3 MR. GASSER: YES, SIR.

4 MR. STRICKLER: YES, SIR.

5 THE COURT: OKAY. AND THE OBJECTION TO THIS TESTIMONY
6 IS EXACTLY WHAT?

7 MR. STRICKLER: WELL, IT'S EXACTLY 402, IRRELEVANT; 403,
8 PREJUDICE, CONFUSION, WASTE OF TIME; 404.

9 THE COURT: WELL, WAIT A MINUTE. GO AHEAD.

10 MR. STRICKLER: 404(B), BECAUSE ARGUABLY IT DOES NOT
11 RELATE TO THE INCIDENT BEFORE THIS JURY.

12 THE COURT: DON'T KNOW.

13 MR. STRICKLER: WHICH IS AGAIN THE PREJUDICE, CONFUSION,
14 WASTE OF TIME AND ET CETERA. THEY'RE KIND OF INTERIWINED.

15 THE COURT: SURE. AND I'M GOING TO HEAR THE PROFFER
16 FROM MS. HENRY AND LET YOU DEVELOP YOUR THESIS FULLY. AND
17 WE'LL GO FROM THERE. SO PLEASE BRING HER IN. WE'LL DO THAT.

18 MR. GASSER: RHONDA HENRY.

19 THE COURT: BECAUSE, YOU KNOW, YOU MAYBE RIGHT. I DON'T
20 KNOW YET.

21 MR. STRICKLER: YES, SIR. I WAS JUST CHECKING WITH MY
22 RULE SOURCE TO MAKE SURE I CITED THE RIGHT ONES, YOUR HONOR.

23 RHONDA HENRY, BEING FIRST DULY
24 SWORN, TESTIFIES AS FOLLOWS: (IN CAMERA)

25 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME

1 FOR THE RECORD.

2 MS. FRYAR: MAY IT PLEASE THE COURT.

3 THE COURT: YES, MA'AM.

4 DIRECT EXAMINATION BY MS. FRYAR:

5 Q MS. HENRY, IF YOU COULD PLEASE TELL THE JUDGE, DO YOU KNOW
6 KENNETH JAMES?

7 A YES, MA'AM.

8 Q HOW DO YOU KNOW KENNETH JAMES?

9 A I KNOW HIM BECAUSE HE IS -- I'VE KNOWN HIM FOR SEVERAL YEARS
10 BECAUSE HE'S BEEN A FRIEND OF MINE.

11 Q OKAY, MA'AM.

12 MR. STRICKLER: I'M SORRY. I COULDN'T ---

13 THE COURT: I COULDN'T HEAR.

14 Q I'VE KNOWN HIM FOR SEVEN YEARS I THOUGHT YOU SAID?

15 A SEVERAL YEARS.

16 THE COURT: OKAY. IF YOU COULD, MS. HENRY, HELP US OUT
17 BY SPEAKING AS LOUDLY AS YOU CAN. TRY TO USE THAT
18 MICROPHONE, TOO. PUSH UP IN YOUR CHAIR SO YOU CAN -- ALL
19 RIGHT. AND PUSH THAT MICROPHONE DOWN. PULL IT TOWARDS YOU.
20 CURVE IT UP SO THAT YOU'RE NOT LOOKING DOWN ON IT. OKAY.
21 THERE YOU GO. THAT'S GOOD. NOW, GO AHEAD.

22 Q OKAY. AND HOW DID YOU KNOW MR. JAMES?

23 A BECAUSE I USED TO BE DOWN IN THE AREA WHERE HE HUNG OUT AT.

24 Q WHERE HE WAS?

25 A WHERE HE WAS, WHERE HE LIVED AT ACTUALLY.

1 Q AND DO YOU SEE HIM IN THE COURTROOM?

2 A YES, MA'AM.

3 Q ALL RIGHT. MS. HENRY, DID YOU GET IN TROUBLE FOR STEALING A
4 CAR OR BEING IN POSSESSION OF A STOLEN VEHICLE BACK IN JULY
5 OF 1996?

6 A YES, MA'AM.

7 Q AND AT THAT TIME DID YOU GET CALLED DOWN TO THE COLUMBIA
8 POLICE DEPARTMENT?

9 A YES, MA'AM.

10 Q ALL RIGHT. AND WHEN YOU WENT DOWN TO THE POLICE DEPARTMENT,
11 DID YOU GET INTERVIEWED?

12 A YES, MA'AM.

13 Q AND WHO INTERVIEWED YOU?

14 A ROBBIE TYLER.

15 Q IS THAT AN INVESTIGATOR WITH THE COLUMBIA POLICE DEPARTMENT?

16 A YES, MA'AM.

17 Q AND WHEN SHE INTERVIEWED YOU, WHAT WAS THE INITIAL REASON
18 THAT SHE WANTED TO INTERVIEW YOU?

19 A BECAUSE SHE WANTED TO INTERVIEW ME ON A CHARGE OF POSSESSION
20 OF A STOLEN VEHICLE AND SHE WANTED ME TO IDENTIFY TWO FELLOWS
21 THAT WERE IN THE VEHICLE WITH ME.

22 Q OKAY. AND SO THAT WAS YOUR PURPOSE IN GOING DOWN THERE?

23 A YES, MA'AM.

24 Q AND WHEN YOU WENT DOWN THERE, AFTER YOU FINISHED GIVING A
25 STATEMENT TO MS. TYLER REGARDING THAT -- AND DID YOU INDEED

1 GIVE MS. TYLER A WRITTEN STATEMENT REGARDING THAT?

2 A YES, MA'AM.

3 Q ALL RIGHT. AND THEN WHEN YOU WERE LEAVING, WHAT HAPPENED?

4 WHO WAS -- FIRST LET -- I WITHDRAW THE QUESTION, YOUR HONOR.

5 WHO WAS WITH YOU, MA'AM?

6 A MY FRIEND, YOLANDA ANDERSON, WAS WITH ME AT THE TIME IN THE
7 POLICE STATION.

8 THE COURT: LONNIE ANDERSON?

9 Q YOLANDA.

10 A YOLANDA.

11 Q ANDERSON.

12 THE COURT: OH. YOLANDA ANDERSON. OKAY.

13 MS. FRYAR: YES, SIR.

14 Q (BY MS. FRYAR) AND WHEN YOU WERE LEAVING THE POLICE STATION,
15 WHEN YOU WERE LEAVING THE AREA, DID YOU SEE ANYTHING?

16 A YEAH. I SAW THE POSTER OF KENNY SITTING ON THE BULLETIN
17 BOARD, THE WARRANT BULLETIN BOARD.

18 Q OKAY. AND WAS YOLANDA THE FIRST PERSON TO POINT THAT OUT TO
19 YOU?

20 A YES, MA'AM.

21 Q DID SHE KNOW KENNY, TOO?

22 A YES, MA'AM.

23 Q AND SO WERE YOU ALL STANDING THERE TALKING ABOUT KENNY?

24 A SHE SAID, "RHONDA, YOU KNOW HIM." AND I TOLD HER YEAH. AND
25 WE WERE ACTUALLY STANDING THERE TALKING ABOUT KENNY. YES,

1 MA'AM.

2 Q YOU'RE LOOKING AT THIS -- WHAT IS IT YOU'RE LOOKING AT?

3 A IT'S A WARRANT PICTURE.

4 Q AND WHERE IS IT?

5 A IT'S ON THE BULLETIN BOARD IN THE INVESTIGATOR -- WHERE I --
6 IN THE OFFICE THAT I WAS IN, THAT'S WHERE IT WAS ON THE
7 BULLETIN BOARD.

8 MS. FRYAR: I'D LIKE TO MARK THIS FOR IDENTIFICATION,
9 YOUR HONOR.

10 THE COURT: YES, MA'AM.

11 (STATE'S EXHIBIT NO. 31, "WANTED" POSTER, MARKED FOR
12 IDENTIFICATION ONLY)

13 Q (BY MS. FRYAR) MS. HENRY, I'M SHOWING YOU WHAT'S BEEN MARKED
14 AS STATE'S EXHIBIT NO. 31. DO YOU RECOGNIZE THIS?

15 A YES, MA'AM.

16 Q WHAT IS THAT?

17 A THAT'S A WARRANT POSTER OF KENNY JAMES.

18 Q IS THIS THE COPY OF OR THE SIMILAR POSTER THAT YOU SAW ON THE
19 BULLETIN BOARD DOWN THERE?

20 A THAT'S THE COPY OF IT. THE OTHER ONE HAD THE ACTUAL PICTURE
21 ON IT.

22 Q ALL RIGHT. AND SO DID INVESTIGATOR TYLER SEE YOU AND YOLANDA
23 DISCUSSING THIS BULLETIN THAT WAS ON THE BULLETIN BOARD?

24 A YES, MA'AM.

25 Q AND WHAT DID SHE DO AS A RESULT OF THAT?

1 A SHE SAID -- SHE TOOK -- SHE ASKED ME, SHE SAID, "COME BACK
2 HERE. DO YOU KNOW ANYTHING ABOUT THIS CASE?" AND AT FIRST I
3 TOLD HER, I SAID, "YEAH, BUT I DON'T WANT NOTHING TO DO WITH
4 THIS."

5 Q AND SO WHAT DID YOU TELL INVESTIGATOR TYLER AT THAT TIME?

6 A SHE -- I TOLD HER I DIDN'T WANT NOTHING TO DO WITH IT. BUT
7 SHE SAID -- SHE ASKED ME DID I KNOW ANYTHING ABOUT IT, AND I
8 SAID, "YES." SHE SAID, "NOW WOULD YOU PLEASE GIVE ME A
9 WRITTEN STATEMENT ON THIS CASE?" AND SO I TOLD HER -- AT
10 THIS TIME I GAVE HER A WRITTEN STATEMENT ON WHAT WAS TOLD TO
11 ME.

12 Q OKAY. AND WHAT YOU WROTE DOWN ON THIS STATEMENT, WHERE DID
13 YOU PUT IT? DID YOU PUT IT AT THE BOTTOM OF WHERE YOU HAD
14 GIVEN YOUR PREVIOUS STATEMENT BEFORE YOU'D GOTTEN UP AND LEFT
15 HER ORIGINALLY?

16 A YES, MA'AM.

17 Q ALL RIGHT. AND WHAT WAS IT THAT YOU TOLD HER?

18 A SHE ASKED ME, SHE SAID, "WHAT DID KENNY JAMES TELL YOU?" AND
19 I TOLD HER, I SAID, "HE TOLD ME, HE WAS LIKE 'SOMETHING IS
20 BOTHERING ME." AND I WAS LIKE, "WHAT?" AND HE WAS LIKE, "I"

21 —

22 THE COURT: I'M SORRY. I CAN'T BARELY -- PLEASE KIND OF
23 TRY TO KEEP YOUR VOICE UP AND ALSO SPEAK A LITTLE SLOWLY.
24 YES, MA'AM. GO AHEAD.

25 Q OKAY. EXCUSE ME. WHAT HAD YOU TOLD KENNETH JAMES? I MEAN,

1 EXCUSE ME. WHAT HAD KENNETH JAMES TOLD YOU, MS. HENRY?

2 A HE TOLD ME, HE SAID THAT HE WAS SITTING OUT THERE AND THE
3 GIRL WAS OVER THERE MESSING WITH HIM.

4 Q OKAY.

5 A AND SHE WAS LIKE -- HE SAID HE HAD TO SHOW HER WHERE A NIGGER
6 WAS FROM. SO ME AND MY BOYS DID THE JOB. HE SLAPPED HER.

7 THE COURT: I DIDN'T HEAR A WORD -- I CAN'T UNDERSTAND A
8 WORD SHE'S SAYING, NOT ONE WORD.

9 A HE TOLD ME --

10 Q GO VERY SLOWLY, MS. HENRY. OKAY?

11 A OKAY.

12 Q FIRST OF ALL, WHERE WERE YOU WHEN HE TOLD YOU THIS?

13 A I WAS IN WEST COLUMBIA AT NORTH STREET APARTMENTS.

14 Q ALL RIGHT. WERE YOU OUTSIDE OF THE APARTMENT AREA?

15 A YES, MA'AM.

16 Q ALL RIGHT. AND WERE YOU SITTING DOWN ON SOMETHING?

17 A YES, MA'AM.

18 Q AND WHAT WAS THAT?

19 A I WAS SITTING -- AT FIRST I WAS SITTING ON A BRICK WALL.

20 THEN I MOVED TO SITTING ON A CAR.

21 Q AND DID MR. JAMES COME UP TO YOU?

22 A HE WAS ALREADY OUT THERE, AND HE CALLED ME OVER TOWARDS HIM.

23 Q OKAY. AND WHAT DID HE TELL YOU?

24 A HE TOLD ME, HE SAID THAT -- HE WAS LIKE, "I'VE GOT SOMETHING
25 TO SAY." AND I WAS LIKE, "WHAT?" AND HE JUST WAS LIKE, HE

1 SAID ABOUT SOMETHING THAT I DONE DID. I DONE DID SOME DIRT.
2 AND I WAS LIKE, "WHAT ARE YOU TALKING ABOUT?" SO THEN HE
3 SAID THAT THIS GIRL CAME OVER THERE. HE NEVER SAID ---

4 Q GO VERY SLOWLY, MS. HENRY.

5 A HE NEVER SAID HER NAME. I NEVER KNEW THE FEMALE'S NAME UNTIL
6 THIS COURT DATE. BUT HE WAS LIKE, "THE GIRL CAME OVER THERE
7 AND SHE WAS MESSING WITH ME." AND THEN I SAID HE SAID HE HAD
8 TO SHOW HER WHERE A NIGGER WAS FROM.

9 THE COURT: HAD TO SHOW HER WHAT?

10 A HAD TO SHOW HER WHERE A NIGGER WAS FROM.

11 Q WHERE A NIGGER WAS FROM.

12 THE COURT: OKAY.

13 Q AND SO WHAT DID HE SAY THAT HE HAD DONE?

14 A AND HE SAID --- HE WAS LIKE, HE SAID HE HAD SLAPPED HER AND
15 THAT HIM AND HIS BOYS DID A JOB.

16 Q OKAY. AND WHAT SPECIFICALLY DID HE SAY HE HAD DONE?

17 A HE DIDN'T SPECIFICALLY -- HE DIDN'T TELL ME NO VERY EXPLICIT
18 DETAILS. HE JUST WAS SAYING WHAT -- HE JUST SAID THAT HE
19 SLAPPED HER AND THEY ENDED UP RAPING HER. THAT WAS THE ONLY
20 THING HE SAID. HE DIDN'T TELL ME EXPLICITLY EXACTLY WHAT HE
21 DID TO HER.

22 Q SO HE TOLD YOU THAT HIM AND HIS BOYS RAPED HER. IS THAT
23 CORRECT?

24 A YES, MA'AM.

25 THE COURT: I THOUGHT SHE SAID "DID A JOB".

1 MS. FRYAR: OH, SHE SAID RAPED, YOUR HONOR, JUST SECONDS
2 AGO.

3 THE COURT: OKAY. ALL RIGHT.

4 Q DID HE SAY THAT?

5 A YES, MA'AM.

6 THE BAILIFF: SPEAK UP.

7 Q NOW, WHEN THE INVESTIGATOR WAS -- WHEN INVESTIGATOR TYLER WAS
8 TALKING WITH YOU ON THIS DAY AT THE POLICE STATION, THAT DAY
9 WAS AUGUST THE 8TH, 1996. IS THAT RIGHT?

10 A YES, MA'AM.

11 Q ALL RIGHT. WHEN HAD YOU HAD THIS CONVERSATION WITH KENNETH
12 JAMES?

13 A ROUGHLY, ABOUT TWO WEEKS BEFORE THEN.

14 Q OKAY. AND WHAT WAS MR. JAMES'S DEemeanOR LIKE, KENNETH
15 JAMES'S DEemeanOR LIKE? WHAT WAS HE ACTING LIKE WHEN HE WAS
16 TELLING YOU THIS?

17 A HE -- HE ACTED LIKE SOMETHING WAS BOTHERING HIM, BUT HE HAD
18 LIKE KIND OF A DEVILISH SMIRK ON HIS FACE LIKE HE KNEW HE DID
19 IT AND IT DIDN'T REALLY BOTHER -- IT BOTHERED HIM BUT IT
20 DIDN'T BOTHER HIM TOO MUCH.

21 MS. FRYAR: I DON'T HAVE ANYTHING MORE.

22 THE COURT: OKAY. MR. STRICKLER.

23 MR. STRICKLER: THANK YOU, SIR.

24 CROSS EXAMINATION BY MR. STRICKLER:

25 Q MS. HENRY, MY NAME IS DOUG STRICKLER.

1 A MM-HMM (AFFIRMATIVE).

2 Q I REPRESENT KENNETH JAMES. I'M ONE OF THE ATTORNEYS
3 REPRESENTING HIM.

4 A YES, SIR.

5 Q HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE STATEMENT THAT YOU
6 GAVE ON THE 8TH?

7 A YES, SIR.

8 Q DO YOU HAVE A COPY WITH YOU?

9 A NO, SIR.

10 Q ALL RIGHT. LET ME PRESENT THESE THREE PAGES TO YOU AND ASK
11 YOU, MA'AM, IF YOU RECOGNIZE THE DOCUMENT?

12 A YES, SIR.

13 Q OKAY. THAT'S THE STATEMENT YOU GAVE ON AUGUST 8TH, THE ONE
14 MS. FRYAR WAS TALKING WITH YOU ABOUT?

15 A YES, SIR.

16 Q OKAY. WELL, TURN TO THE THIRD PAGE. OKAY. I BELIEVE MS.
17 FRYAR EVEN HAS THAT SECTION HIGHLIGHTED?

18 A YES, SIR.

19 Q LET ME ASK YOU IF THIS IS THE STATEMENT THAT YOU MADE. "WHAT
20 DO YOU KNOW ABOUT KENNY JAMES?"

21 A YES, SIR.

22 Q AND WAS YOUR ANSWER -- LET ME MAKE SURE THIS IS RIGHT --
23 "KENNY TOLD ME" --

24 A YOU CAN'T READ HER WRITING?

25 Q -- "TOLD ME HE RAPED A WOMAN."

1 A MM-HMM (AFFIRMATIVE).

2 Q "WHEN I ASKED HIM WHY HE DID IT" ---

3 A "HE SAID" ---

4 Q --- "HE SAID, 'THE BITCH CAME AROUND HERE FUCKING WITH ME AND
5 I HAD TO LET HER KNOW WHERE A NIGGER WAS FROM. SHE STARTED
6 SCREAMING. I SLAPPED HER. SHE HIT THE GROUND. AND ME AND
7 MY BOYS DID THE JOB.' WHEN I ASKED WHAT OTHER BOYS WERE WITH
8 HIM, AND HE WOULDN'T TELL ME." IS THAT WHAT YOUR STATEMENT
9 WAS?

10 A YES, SIR.

11 Q OKAY. NOW, THE REST OF THIS STATEMENT, THE EARLIER PAGES,
12 OFFICER TYLER, INVESTIGATOR TYLER IS ASKING YOU ABOUT
13 LINE-UP'S. IF YOU'D TURN TO THE FIRST PAGE.

14 A YES, SIR.

15 Q OKAY. THE FIRST QUESTION, "DO YOU SEE ANYONE IN THE LINE-UP
16 WHO WAS IN THE CAR?" AND THIS IS THAT STOLEN CAR THAT YOU
17 WENT DOWN THERE ABOUT, RIGHT?

18 A YES, SIR.

19 Q "DO YOU SEE ANYONE IN THE LINE-UP WHO WAS IN THE CAR FROM
20 LINEUP NUMBER 1?" AND YOUR ANSWER IS -- I CAN'T REALLY READ
21 HER WRITING.

22 A KENYARDA.

23 Q PARDON ME?

24 A KENYARDA. THAT'S WHO IT WERE.

25 Q HE'S NUMBER 6?

1 A YES.

2 Q WELL, WHICH LINE-UP ARE YOU TALKING ABOUT THERE?

3 A THIS -- THE -- WHAT YOU'RE READING ABOUT NOW IS A LINE-UP
4 ABOUT I HAD TO IDENTIFY TWO FELLOWS THAT WERE IN THE LINE-UP
5 AS FAR AS THE STOLEN CAR CHARGES THAT I HAD GOES.

6 Q IT'S NOT THIS LINE-UP WITH NUMBER 6 IN IT THAT'S --

7 A NO.

8 Q THAT'S A DIFFERENT LINE-UP?

9 A YES, SIR.

10 Q IT JUST HAPPENS TO BE THE SAME NUMBER?

11 A YES, SIR.

12 Q IS THAT RIGHT?

13 A YES, SIR.

14 Q AND THEN YOU HAVE ANOTHER LINE-UP THAT'S CALLED LINE-UP
15 NUMBER 2. AND THEY ASK YOU ABOUT SOMEONE ELSE THAT WAS IN
16 THE CAR, AND YOU SAY WHO?

17 A NUMBER 2.

18 Q MM-HMM (AFFIRMATIVE). I MEAN, DID YOU GIVE A NAME?

19 A WESTON.

20 Q NOW, HE HAPPENS TO BE NUMBER 2 IN THE NUMBER 2 LINE-UP, BUT
21 THAT'S NOT THIS LINE-UP YOU'RE TALKING ABOUT. THAT'S A
22 COMPLETELY SEPARATE LINE-UP?

23 A YES, SIR.

24 Q IT JUST HAPPENS THAT THE PEOPLE YOU IDENTIFY IN THE STOLEN
25 VEHICLE CASE ARE NUMBER 6 IN LINE-UP NUMBER 1 AND NUMBER 2 IN

1 LINE-UP NUMBER 2. THAT'S CORRECT?

2 A YES, SIR.

3 Q VERY GOOD, MA'AM. AND IT JUST HAPPENED THAT AFTER YOU'D
4 FINISHED GIVING THIS STATEMENT YOU WENT OUT AND SAW THIS
5 "WANTED" POSTER OF KENNY?

6 A YES.

7 Q RIGHT? AND SO YOU CAME BACK, AND YOU JUST ADDED ON WHAT YOU
8 HAD TO ADD ON AT THE END OF THE STATEMENT YOU'D ALREADY
9 GIVEN?

10 A AFTER SHE'D ASKED ME ---

11 Q IS THAT RIGHT?

12 A --- WHAT DID I KNOW, YES.

13 Q OKAY. SO YOU HAD ALREADY FINISHED GIVING THE STATEMENT?

14 A YES, SIR.

15 Q ALL RIGHT. YOUR HONOR, -- I'D ASK YOU TAKE A LOOK AT THIS,
16 IF YOU WOULD, PLEASE, MA'AM, AND SEE IF THAT AGREES WITH THE
17 STATEMENT THAT YOU HAVE IN FRONT OF YOU. OKAY? SEE IF THE
18 PAGES ARE THE SAME. MAKE SURE I HAVE THE CORRECT COPY.

19 A YES. THEY'RE THE SAME.

20 Q SO WHAT I HAVE HERE IS A CORRECT COPY OF THE STATEMENT THAT
21 YOU'VE BEEN DISCUSSING THAT YOU GAVE AUGUST 8TH, 1996?

22 A YES, SIR.

23 MR. STRICKLER: YOUR HONOR, I'D LIKE TO HAVE THIS ---

24 THE COURT: NO. GO AHEAD AND MARK IT.

25 MR. STRICKLER: --- HAVE THIS MARKED FOR PURPOSES OF

1 THIS HEARING ANYWAY, SIR.

2 THE COURT: MARK IT AND THEN GIVE IT TO ME IF YOU THINK
3 I NEED TO SEE IT.

4 MR. STRICKLER: YES, SIR.

5 THE COURT: IF YOU NEED TO CALL MY ATTENTION TO
6 ANYTHING.

7 (DEFENDANT KENNETH JAMES'S EXHIBIT NO. 2, STATEMENT OF RHONDA
8 HENRY, MARKED FOR IDENTIFICATION ONLY)

9 THE COURT: OKAY.

10 Q (BY MR. STRICKLER) OKAY, MA'AM. AS TO THE STATEMENT, IF
11 YOU'LL TURN TO THAT LAST PAGE, OKAY, THE PART THAT YOU'VE
12 HIGHLIGHTED, THAT'S THE LAST ---

13 A THAT'S THE LAST PART OF THE STATEMENT.

14 Q THE LAST QUESTION YOU ANSWERED, RIGHT?

15 A YES, SIR.

16 Q OKAY. DO YOU SEE THAT LINE DRAWN ACROSS THE BOTTOM OF THE
17 LAST PAGE?

18 A YES, SIR.

19 Q OKAY. THAT'S DRAWN AT THE END OF THE STATEMENT. IS THAT
20 RIGHT?

21 A YES, SIR.

22 Q THERE IS NO LINE ABOVE THE FIRST OR UNDERNEATH THE FIRST
23 THREE LINES ON THAT STATEMENT WHERE YOU FINISH TALKING ABOUT
24 THE STOLEN VEHICLE, RIGHT?

25 A NO, SIR.

1 Q OKAY. THAT'S WHERE YOU FINISHED GIVING THE STATEMENT THAT
2 YOU'D COME DOWN THERE TO GIVE, RIGHT?

3 A YES, SIR.

4 Q THERE'S NO LINE UNDERNEATH THAT, RIGHT?

5 A NO, SIR.

6 Q OKAY. NOW, YOU WEREN'T TOLD WHERE THIS HAPPENED, RIGHT?

7 A NO, SIR.

8 Q YOU WEREN'T TOLD WHEN THIS HAPPENED, RIGHT?

9 A NO, SIR.

10 Q YOU WEREN'T TOLD ANYTHING ABOUT ROBBING ANYONE, RIGHT?

11 A NO, SIR.

12 Q YOU WEREN'T TOLD ANYTHING ABOUT A MAN BEING THERE WITH A
13 WOMAN AND GUNSHOTS BEING MADE AT HIM, RIGHT?

14 A NO, SIR.

15 Q ALL YOU WERE TOLD IS WHAT YOU PUT DOWN ON THE STATEMENT THAT
16 YOU'VE READ HERE IN COURT ---

17 A YES, SIR.

18 Q --- AND IT'S WRITTEN DOWN THERE? OKAY. THANK YOU. THAT'S
19 ALL I HAVE.

20 THE COURT: ALL RIGHT, MR. SHUPPER?

21 MR. SHUPPER: I HAVE NOTHING OF THIS WITNESS, YOUR
22 HONOR.

23 MR. GASSER: YOUR HONOR, MAY I -- EVEN THOUGH MS. FRYAR
24 -- I THINK WE MIGHT BE ABLE TO RESOLVE THIS WITHOUT EVEN YOU
25 MAKING A RULING ON IT. SOME INFORMATION JUST CAME TO MY

1 ATTENTION THAT WAS PROVIDED A MEMBER OF OUR OFFICE. AND AS A
2 RESULT, IF YOU'LL GIVE ME A COUPLE OF MINUTES, OR NOT EVEN A
3 MINUTE, TO ASK HER A COUPLE OF QUESTIONS?

4 REDIRECT EXAMINATION BY MR. GASSER:

5 Q MS. HENRY, IN THAT STATEMENT YOU GAVE YOU NEVER INDICATED
6 THAT MR. KENNETH JAMES HAD IMPLICATED HIS BROTHER OR ANYBODY
7 ELSE IN THE WRITTEN STATEMENT. IS THAT CORRECT?

8 A NO, SIR.

9 Q NOW, ISN'T IT TRUE THAT A FEW -- THAT EARLIER THIS AFTERNOON
10 THAT YOU INDICATED THAT HE HAD TOLD YOU THAT HIS BROTHER GOT
11 HIMSELF A PIECE AS WELL? DO YOU REMEMBER SAYING THAT TO
12 SOMEBODY IN THE SOLICITOR'S OFFICE?

13 A I WAS -- I BELIEVE HIS LAST NAME IS OFFICER ACE WILSON OR
14 SOMETHING LIKE THAT.

15 COURT REPORTER: I DIDN'T GET THAT.

16 Q DID YOU MAKE THAT STATEMENT?

17 A YES, SIR, I DID.

18 MR. GASSER: YOUR HONOR, AT THIS TIME WE WOULD WITHDRAW
19 THIS WITNESS BECAUSE THAT WOULD CREATE BRUTON PROBLEMS WHICH
20 WOULD CREATE PROBLEMS WITH THE CASE. SO WE WOULD WITHDRAW
21 THIS WITNESS FROM THIS WITNESS LIST.

22 THE COURT: OKAY. GOOD. THANKS. I APPRECIATE YOUR
23 CANDOR IN DEALING WITH THE COURT, MR. GASSER. AND THANK YOU.
24 AND THIS IS MARKED FOR IDENTIFICATION ONLY. AND THANK YOU,
25 MA'AM, MS. HENRY. YOU CAN STEP DOWN, PLEASE, MA'AM. I WOULD

1 LIKE TO KNOW WHERE A PERSON IS FROM. WHAT DOES THAT PHRASE
2 MEAN? I HAD TO LET HER KNOW WHERE A BLANK WAS FROM.

3 MR. STRICKLER: WHAT I'M ALL ABOUT, WHO YOU'RE DEALING
4 WITH, WHERE I'M COMING FROM.

5 THE COURT: ALL RIGHT.

6 MR. GASSER: YOUR HONOR, JUST SO THAT THIS COURT KNOWS,
7 THIS INFORMATION OF COURSE WAS IN THE CASE FILE. WE NEVER
8 HAD AN OPPORTUNITY TO GET AHOLD OF MS. HENRY. WE FOUND MS.
9 HENRY THROUGH HER MOTHER. WE NEVER HAD AN OPPORTUNITY TO
10 INTERVIEW MS. HENRY UNTIL SHE CAME UP HERE ON A FLIGHT FROM
11 JACKSONVILLE, FLORIDA, TODAY. I DON'T WANT YOU TO THINK THAT
12 THIS INFORMATION WAS PROVIDED TO ME OR MS. FRYAR OR ANYBODY.
13 WE HAD AN OPPORTUNITY TO INTERVIEW HER ---

14 THE COURT: I APPRECIATE IT. NOBODY THINKS ANYTHING BAD
15 ABOUT ANYBODY.

16 MR. GASSER: WELL, NO. I JUST WANTED THE RECORD TO
17 REFLECT THAT I WOULD NOT PUT A WITNESS ON THE WITNESS STAND
18 LIKE THAT IF I WOULD HAVE KNOWN THAT SHE WAS GOING TO ---

19 THE COURT: I UNDERSTAND.

20 MR. GASSER: --- TESTIFY IN THAT MANNER.

21 THE COURT: OKAY. DO WE HAVE A WITNESS WHOSE TESTIMONY
22 WILL BE BRIEF ENOUGH SO WE CAN SAVE A LITTLE TIME TOMORROW,
23 OR ARE WE AT A JUNCTURE WHERE WE HAVE TO CLOSE FOR THE
24 EVENING?

25 MR. GASSER: WELL, YOUR HONOR, I KNOW YOU HAD INDICATED

1 THAT WE ALWAYS LAST A LOT LONGER THAN -- OR WE TAKE MORE TIME
2 THAN WE SAY WE ARE GOING TO. WE HAD SCHEDULED TEN WITNESSES
3 FOR THIS EVENING. AT THE LUNCH BREAK I DIDN'T THINK WE'D GET
4 THROUGH THEM, AND WE'VE GOTTEN THROUGH THEM. SO WE ARE ON
5 SCHEDULE TO REST BY TOMORROW AFTERNOON.

6 THE COURT: NOW, I WANT TO HELP MR. SHUPPER IN HIS
7 SITUATION. MR. SHUPPER, YOU HAVE A WITNESS THAT YOU NOW CAN
8 CALL ON FRIDAY. IS THAT CORRECT?

9 MR. SHUPPER: YES, YOUR HONOR.

10 THE COURT: LET ME ASK. AND YOU DON'T HAVE TO TELL ME.

11 MR. STRICKLER: I ANTICIPATED IT; YES, SIR.

12 THE COURT: WHAT DO YOU ANTICIPATE IN TERMS OF LENGTH OF
13 THE TRIAL, LET'S SAY AFTER THE DEFENDANT'S -- I MEAN, AFTER
14 THE STATE CLOSES? YOU DON'T HAVE TO TELL ME IF YOU DON'T
15 FEEL LIKE DOING IT. JUST -- YOU'D RATHER NOT SAY?

16 MR. STRICKLER: AT MOST, A VERY FEW WITNESSES.

17 THE COURT: OKAY. SURE.

18 MR. STRICKLER: POSSIBLY FAR LESS THAN THAT.

19 THE COURT: OKAY. I APPRECIATE IT. AND THANK YOU. AND
20 LET'S CALL THE JURY IN AND ASK THEM TO -- AND DISMISS THEM
21 FOR THE EVENING THEN.

22 (JURY IN AT 5:47 P.M.)

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

24 THE COURT: THANK YOU, MR. BARROW AND MR. HOLLIS. THANK
25 YOU, FOLKS, FOR YOUR PATIENCE. I WANTED TO TELL THE PERSON

1 WHO WROTE THE NOTE ABOUT HAVING TO PICK YOUR CHILD UP AT
2 6:30, YOU'RE IN GOOD LUCK TODAY. WE CAN ACCOMMODATE THAT
3 BECAUSE WE'RE GOING TO LEAVE FOR THE EVENING.

4 I WOULD TELL YOU, HOWEVER, THAT IT MAY WELL BE THAT AT
5 SOME POINT IN TIME YOU MAY BE HERE AFTER THAT HOUR. AND THAT
6 MAYBE TOMORROW. IT MAY BE FRIDAY. I SIMPLY DON'T KNOW. SO
7 YOU MIGHT -- IF WE UNDERSTAND THAT WE'RE GOING TO BE LATE ON
8 ANY GIVEN DAY, I'LL TRY TO GIVE YOU A HEADS UP EARLY IN THE
9 DAY AND LET YOU KNOW SO YOU CAN MAKE ARRANGEMENTS.

10 BUT WE'RE READY TO GO FOR THE EVENING. AND I WOULD ASK
11 YOU AGAIN PLEASE NOT TO DISCUSS THE CASE AMONG YOURSELVES NOR
12 WITH ANYONE ELSE. WE WILL PICK UP TOMORROW. LET'S TRY -- I
13 DON'T ANTICIPATE ANYTHING THAT WE HAVE TO DO TOMORROW THAT
14 WILL CAUSE US ANY DELAYS. SO WHY DON'T WE SAY ABOUT 9:15.
15 TRY TO BE HERE AT THAT TIME. WE'LL BEGIN RIGHT AT THAT TIME.
16 THANK YOU. AND WE'LL SEE YOU TOMORROW. 9:15.

17 (JURY OUT AT 5:48 P.M.)

18 (COURT'S EXHIBIT NO. 28, NOTE FROM JUROR, MARKED FOR
19 IDENTIFICATION ONLY)

20 THE COURT: OKAY. WHAT HAS BEEN MARKED AS COURT'S
21 EXHIBIT 28 IS SIMPLY THE NOTE FROM THE JUROR, TRACY DAVIS.
22 "I JUST WANTED TO LET YOU KNOW THAT I HAVE TO PICK UP MY
23 FOUR-YEAR-OLD DAUGHTER BEFORE 6:30. SHE'S ON THE OTHER SIDE
24 OF TOWN ON CLEMSON ROAD." IT'S TRACY DAVIS WHO IS THE
25 PRESIDING JUROR. SO THAT INTEREST IS ACCOMMODATED. OKAY.

1 WE'VE GOT SCIENTIFIC EVIDENCE TOMORROW.

2 MR. GASSER: YES, SIR. I'VE GOT NO PROBLEM TELLING YOU
3 WHAT WE'VE GOT TOMORROW SO THAT THE DEFENSE CAN BE PREPARED.

4 THE COURT: SURE.

5 MR. GASSER: WE'VE GOT SERGEANT BLACKWELL TOMORROW
6 MORNING WITH THE GATOR TESTIMONY. DR. SMITHSON, THE
7 PROTOCOL. HE IS COMING IN AT 11:30 TOMORROW MORNING. SO
8 WE'LL GET TO HIM AS SOON AS -- HE'LL BE THE LAST WITNESS
9 PROBABLY BEFORE LUNCH. WE'VE GOT DAVID BLACK. I'M TRYING TO
10 WORK ON A STIPULATION. BOTH SIDES AGREE THAT DAVID BLACK IS
11 SIMPLY THE FINGERPRINT PERSON AT SLED THAT ATTEMPTED TO LIFT
12 THE PRINTS OFF OF THE FOUR CONDOM PACKAGES AND WAS UNABLE TO
13 DO SO. BUT ALL SIDES AGREE THAT WE WOULD STIPULATE. IT'S
14 JUST A MATTER OF TRYING TO GET THAT VERBIAGE. BUT EVEN IF WE
15 CAN'T AGREE TO THAT, I CAN'T IMAGINE HIS TESTIMONY TAKING
16 VERY LONG.

17 THE COURT: WHAT A GREAT JOB HE'S GOT.

18 MR. GASSER: AGENT ---

19 THE COURT: I BELIEVE I'D JUST SAY I WAS UNABLE TO LIFT
20 PRINTS WHETHER I WAS OR NOT.

21 MR. GASSER: NOT NEARLY THE JOB THAT PATTIE RUFF HAS IN
22 THIS CASE. BUT AGENT ORIUNO IS THE TRACE ANALYST FROM SLED.
23 HE WOULD TESTIFY THAT THEY DID THE STANDARD PUBIC HAIR
24 COMBINGS FROM MS. BROWN DURING THE RAPE PROTOCOL, AND KNOWN
25 PUBIC HAIRS, AND THEY WERE CONSISTENT WITH HER. WE DIDN'T

1 GET ANY -- BASED ON THAT INFORMATION, WE DIDN'T GET ANY HAIR
2 FROM THE DEFENDANTS. SO THERE'S GOING TO BE NO -- AGAIN, I
3 DON'T ANTICIPATE OTHER THAN CROSS EXAMINATION FROM THE
4 DEFENSE ON THAT PARTICULAR MATTER.

5 INVESTIGATOR THOMAS IS THE INVESTIGATOR. YOU'VE SEEN
6 HIS TESTIMONY. INVESTIGATOR BENSON IS MERELY A CHAIN
7 WITNESS. JOANNE LEWIS IS MERELY A CHAIN WITNESS. PATRICIA
8 CURRIE IS MERELY A 30-SECOND WITNESS TO SAY THAT SCE&G POWER
9 WAS IN KENNETH JAMES'S NAME AT 2528. AND IRA JEFFCOAT, DNA.
10 SO OTHER THAN RANDY BLACKWELL AND INVESTIGATOR THOMAS AND IRA
11 JEFFCOAT, I DON'T ANTICIPATE ANY OF THE OTHER WITNESSES FROM
12 A DIRECT EXAMINATION POINT OF VIEW BEING LENGTHY AT ALL.

13 THE COURT: OKAY. MR. STRICKLER OR MR. SNEED OR MR.
14 SHUPPER.

15 MR. STRICKLER: YOUR HONOR, I WOULD JUST NOTE AT THIS
16 POINT IN TIME THAT IF MR. JEFFCOAT IS THE LAST WITNESS OF THE
17 DAY, I JUST -- I'VE TRIED MANY CASES WITH THE FIFTH CIRCUIT
18 SOLICITOR'S OFFICE. IT WOULD NOT SURPRISE ME IF HE ENDED HIS
19 DIRECT TESTIMONY SOMETIME AROUND 5:30 AT NIGHT.

20 NOW, THIS IS THE PERSON WHO'S GOING TO SAY ONE CHANCE IN
21 15 MILLION OF A RANDOM MATCH BY SOMEONE ELSE WITH THE SAMPLE
22 FOUND HERE. I WILL OBJECT NOW IN ANTICIPATION OF RENEWING
23 THE OBJECTION THEN THAT BEING FORCED TO CROSS EXAMINE HIM AT
24 THE END OF A LENGTHY DAY ON THE MOST IMPORTANT WITNESS FROM
25 MY STANDPOINT IN THIS CASE ---

1 THE COURT: WELL, I MIGHT NOT MAKE YOU DO THAT.

2 MR. STRICKLER: WELL, I JUST -- IT'S AN ANTICIPATORY
3 MATTER. IT'S JUST -- IT'S HAPPENED TO ME BEFORE.

4 THE COURT: I MIGHT NOT MAKE YOU DO IT. WE'LL JUST SEE
5 WHERE WE ARE.

6 MR. SNEED: YOUR HONOR, JUST ON THE DOG TESTIMONY, YOUR
7 HONOR, AS FAR AS THE JONES DALBERT, THE PRE-TRIAL MOTION,
8 THAT'S THE FINAL RULING ON THAT?

9 THE COURT: OH, YEAH.

10 MR. SNEED: YES, SIR.

11 THE COURT: BLACKWELL IS GOING TO TESTIFY ABOUT WHAT THE
12 DOG DID. YES, SIR. OKAY. MR. SHUPPER?

13 MR. SHUPPER: I HAVE NOTHING TO ADD, YOUR HONOR.

14 THE COURT: OKAY. THANKS. GOOD. OKAY. SEE YOU ALL
15 TOMORROW AT 9:15 THEN INSTEAD OF 9:30.

16 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED FOR THE DAY, TO BE
17 RECONVENED TOMORROW MORNING)

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THURSDAY, SEPTEMBER 23, 1999

THE COURT: I'M THINKING IF THIS CASE GOES OVER, THIS CASE GOES OVER INTO SATURDAY, NOT MONDAY. OKAY? BECAUSE I'VE GOT PCR'S NEXT WEEK. AND SO I'M SORRY ABOUT YOUR WEEKEND PLANS. OKAY. "DEADLINES AND COMMITMENTS" I BELIEVE WAS THE LATE, GREAT BOB SEGAR, WAS IT NOT, MS. WILLIAMS?

COURT REPORTER: "WHAT TO LEAVE IN; WHAT TO LEAVE OUT."

THE COURT: "WHAT TO LEAVE IN; WHAT TO LEAVE OUT." NOW,
THINK ABOUT THAT.

(OFF THE RECORD)

THE COURT: ALRIGHTY. EVERYBODY IN? ALL THE JURORS
HERE, MR. "B"?

THE BAILIFF: WE'VE GOT EVERYBODY.

THE COURT: OKAY. BRING THEM ON IN, PLEASE, SIR.

(JURY IN AT 9:22 A.M.)

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

THE COURT: THANK YOU, MR. BARROW AND MR. HOLLIS. AND
THANK YOU, FOLKS, FOR YOUR PATIENCE AND FOR YOUR PROMPTNESS.
WE'RE READY TO RESUME WITH THE TRIAL. MS. FRYAR OR MR.
GASSER.

MR. GASSER: THANK YOU, YOUR HONOR. AT THIS TIME THE STATE WOULD CALL AGENT DAVID BLACK.

THE COURT: AGENT BLACK, PLEASE COME FORWARD TO MR. BARROW AND THEN FOLLOW HIS INSTRUCTIONS, PLEASE, SIR.

DAVID L. BLACK, BEING FIRST DULY

1 SWORN, TESTIFIES AS FOLLOWS:

2 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
3 FOR THE RECORD.

4 MR. BLACK: MY NAME IS DAVID LAURIN BLACK. THE LAST
5 NAME IS SPELLED B-L-A-C-K.

6 DIRECT EXAMINATION BY MR. GASSER:

7 Q AGENT BLACK, WHERE ARE YOU EMPLOYED, SIR?

8 A I AM EMPLOYED WITH THE SOUTH CAROLINA LAW ENFORCEMENT
9 DIVISION, BETTER KNOWN AS SLED.

10 Q HOW LONG HAVE YOU BEEN WITH SLED?

11 A I'VE BEEN WITH SLED FOR APPROXIMATELY EIGHT YEARS.

12 Q AND PRIOR TO YOUR EMPLOYMENT WITH SLED, WHERE DID YOU WORK?

13 A PRIOR TO SLED I WAS EMPLOYED WITH THE RICHLAND COUNTY
14 SHERIFF'S DEPARTMENT FOR APPROXIMATELY SEVEN YEARS.

15 Q WHAT ARE YOUR CURRENT DUTIES AND RESPONSIBILITIES WITH SLED?

16 A WITH SLED I'M A SENIOR AGENT ASSIGNED TO THE LATENT PRINT AND
17 CRIME SCENE DEPARTMENT AS A LATENT PRINT EXAMINER. I WILL
18 EVALUATE, EXAMINE AND COMPARE LATENT PRINTS TO KNOWN INKED
19 IMPRESSIONS. THE LATENT PRINTS MAY COME IN THE FORM OF A
20 LATENT LIFT BACKER, A PHOTOGRAPH OR A PHOTOGRAPHIC NEGATIVE.

21 ALSO I WILL IDENTIFY MISSING PERSONS OR DECEASED
22 INDIVIDUALS. ALSO I WILL RECEIVE EVIDENCE FROM OUTSIDE
23 AGENCIES, SUCH AS POLICE DEPARTMENTS, SHERIFF'S DEPARTMENTS
24 OR CORONER'S OFFICES AND PROCESS THAT EVIDENCE FOR LATENT
25 PRINTS. ALSO AS A LATENT PRINT EXAMINER I MAY PROCESS

1 EVIDENCE FROM CRIME SCENES THAT I'M ASKED TO PROCESS.

2 UPON THE CONCLUSION OF MY EXAMINATIONS I'LL ISSUE A
3 REPORT FOR COURT PURPOSES, AND IF SUBPOENAED I WILL TESTIFY
4 TO THOSE RESULTS.

5 Q HOW LONG HAVE YOU BEEN A -- WHEN YOU SAY LATENT PRINT, DOES
6 THAT DEAL WITH THE COMMON -- OF NON-LAW ENFORCEMENT PERSONS,
7 I.D. FINGERPRINTS? DOES THAT INCLUDE FINGERPRINTS?

8 A YES, SIR. A LATENT PRINT IS JUST A GENERAL TERM.

9 MR. STRICKLER: EXCUSE ME FOR INTERRUPTING. IF HE WANTS
10 TO OFFER HIM AS AN EXPERT IN THE AREA OF LATENT FINGERPRINTS,
11 I'LL BE HAPPY TO STIPULATE AS TO KENNETH JAMES.

12 MR. SHUPPER: AND AS TO ROBERT JAMES, YOUR HONOR.

13 THE COURT: IS THAT ACCEPTABLE TO YOU, MR. GASSER?

14 MR. GASSER: YES, SIR.

15 THE COURT: AGENT BLACK WILL TESTIFY BEFORE YOU AS AN
16 EXPERT IN THE AREA OFFERED, WHICH IS IN FINGERPRINT DETECTION
17 AND ANALYSIS. AN EXPERT WITNESS IS A PERSON WHO BY REASON OF
18 BACKGROUND, TRAINING, EDUCATION OR EXPERTISE IS QUALIFIED TO
19 GIVE YOU ASSISTANCE IN AN AREA, TECHNICAL, SCIENTIFIC OR
20 OTHERWISE IN WHICH YOU MAY NEED ASSISTANCE. YOU ARE TO
21 ASSESS THE TESTIMONY OF AN EXPERT WITNESS IN THE SAME FASHION
22 AS THAT OF ANY ORDINARY WITNESS. AND I WILL TELL YOU HOW TO
23 DO THAT AT THE END OF TRIAL. WITH THAT, PLEASE PROCEED, MR.
24 GASSER.

25 MR. GASSER: THANK YOU, YOUR HONOR.

1 Q (BY MR. GASSER) AGENT BLACK, I HAND YOU THESE FOUR ITEMS
2 CONTAINED IN THIS ENVELOPE AND ASK YOU IF YOU RECOGNIZE THOSE
3 PARTICULAR ITEMS?

4 A YES, SIR, I DO.

5 Q DID YOU HAVE AN OPPORTUNITY TO RECEIVE THOSE ITEMS FROM THE
6 COLUMBIA POLICE DEPARTMENT AND AFTER -- AND PERFORM CERTAIN
7 TESTING ON THOSE ITEMS?

8 A YES, SIR, I DID. I RECEIVED FOUR CONDOM PACKS FROM
9 INVESTIGATOR THOMAS OF THE COLUMBIA POLICE DEPARTMENT ON MAY
10 THE 12TH, 1997, AT THE SLED FORENSIC LABORATORY.

11 Q AND WHAT WAS REQUESTED OF YOU AS IN A EXPERT IN THE AREA OF
12 FINGERPRINT IDENTIFICATION AND ANALYSIS?

13 A PER REQUEST OF THE SUBMITTING AGENCY I WAS REQUESTED TO
14 PROCESS THE FOUR CONDOM PACKS FOR LATENT PRINTS TO DETERMINE
15 IF THERE WERE ANY LATENT PRINTS ON THE ITEMS AND, IF SO, WERE
16 THEY SUITABLE FOR IDENTIFICATION.

17 Q SO TELL US, PLEASE, TELL THE JURY, PLEASE, WHAT YOU DID IN AN
18 ATTEMPT TO DETERMINE WHETHER OR NOT THERE WERE FINGERPRINTS
19 ON THOSE PACKAGES?

20 A I FIRST CONDUCT A VISUAL EXAMINATION OF THE FOUR CONDOM
21 PACKS. DURING THIS VISUAL EXAMINATION I'M ONLY USING THE
22 AMBIVALENT LIGHT THAT'S PRESENT, SUCH AS LIGHT THAT YOU HAVE
23 COME FROM LIGHT BULBS AS HERE IN THE COURTROOM. BUT ALSO I
24 AM USING SOMETHING KNOWN AS AN ALTERNATE LIGHT SOURCE. THIS
25 IS A -- BETTER TERM, IT'S KIND OF LIKE A LASER WHERE YOU HAVE

1 DRIVEN WAVELENGTHS OF LIGHT THAT CAN BE SHOWN TO THE SURFACE.
2 AND JUST HOW THE FINGERPRINT IS MADE UP WITH THE SWEAT AND
3 WITH SOME OF THE GREASES AND OILS THAT ARE IN OUR BODIES, IT
4 MAY CAUSE THAT PRINT TO FLUORESCENCE.

5 IN THIS CASE, THROUGH THE VISUAL EXAM AND THROUGH THE
6 USE OF THE ALTERNATE LIGHT SOURCE, THERE WERE NO PRINTS
7 VISIBLE.

8 I THEN SUPERGLUED THE ITEMS. IF YOU'VE EVER WATCHED A
9 MOVIE "BEVERLY HILLS COP", EDDIE MURPHY SUPERGLUED AN ITEM IN
10 THAT MOVIE. HE USED AN AQUARIUM LIKE A FISH TANK. HE TOOK
11 THE ITEM, PLACED IT IN THE AQUARIUM. HE USED A COFFEE CUP
12 WARMER ALONG WITH A CUP OF WARM WATER AND PUT SOME SUPERGLUE
13 INTO A DISH. AND BY SEALING THE CONTAINER, THE WARM WATER
14 CREATES THE VAPOR, THE HUMIDITY. AND FROM THE HEAT ON THE
15 GLUE, IT CREATES A VAPOR AND ADHERES TO ANY CONTAMINANTS THAT
16 MAY BE PRESENT ON THE ITEM. THE SAME PRINCIPLE THAT WE USE
17 IN THE LABORATORY.

18 AND IN THIS CASE, AFTER I DID THE SUPERGLUE FUMING, OR
19 KNOWN AS CYANOACRYLATE FUMING, THERE WAS SOME RIDGE DETAIL
20 DEVELOPED ON THE ITEM. HOWEVER, THE RIDGE DETAIL DEVELOPED
21 WAS INSUFFICIENT FOR IDENTIFICATION. IT HAD NO VALUE.

22 I THEN CONDUCTED ANOTHER EXAMINATION USING THE ALTERNATE
23 LIGHT SOURCE TO SEE IF IT WOULD ENHANCE THE RIDGE DETAIL. IT
24 DID NOT. I APPLIED BLACK FINGERPRINT POWDER TO THE ITEM TO
25 SEE IF IT WOULD ENHANCE THE DEVELOPED RIDGE DETAIL. IT DID

1 NOT. THE BASIS OF MY EXAMINATION ANALYSIS WAS THE RIDGE
2 DETAIL DEVELOPED IS INSUFFICIENT FOR IDENTIFICATION. IT HAS
3 NO VALUE. IT CAN BE ONLY THAT THE ITEM WAS TOUCHED. I CAN'T
4 TELL YOU BY WHOM.

5 Q DID YOU DO THAT WITH ALL FOUR CONDOM PACKAGES THAT YOU
6 RECEIVED, AGENT BLACK?

7 A YES, SIR, I DID.

8 Q AND WERE YOUR RESULTS THE SAME?

9 A YES, SIR, THEY WERE.

10 Q NOW, THE FACT THAT AS AN EXPERT IN THE AREA OF FINGERPRINT
11 ANALYSIS, THE FACT THAT A PERSON MIGHT TOUCH AN OBJECT SUCH
12 AS A WATER PITCHER OR A CUP OR ANY OBJECT, DOES THAT
13 AUTOMATICALLY MEAN A FINGERPRINT IDENTIFICATION EXPERT CAN
14 FIND THAT PERSON'S FINGERPRINTS ON THAT OBJECT EACH AND EVERY
15 TIME?

16 A NO, SIR. THAT IS NOT THE CASE. THE REASON FOR THIS,
17 WHENEVER YOU TOUCH AN OBJECT, IT IS A RANDOM TOUCH. IF YOU
18 JUST TAKE A MINUTE AND LOOK AT YOUR HANDS, FROM THE TIPS OF
19 YOUR FINGERS TO THE BASE OF YOUR PALMS YOU HAVE RAISED
20 PORTIONS OF SKIN. THESE RAISED PORTIONS OF SKIN ARE KNOWN AS
21 FRICTION RIDGE SKIN. BETWEEN THESE RIDGES OF SKIN ARE
22 FURROWS OR VALLEYS. IT REMINDS YOU OF A MOUNTAIN AND A
23 VALLEY THAT YOU MAY SEE IN A PICTURE OR IF YOU GO VISIT THE
24 MOUNTAINS ON VACATION.

25 IT'S ON THESE RIDGES, THE MOUNTAINS, THAT YOU HAVE

1 MINUTE SWEAT PORES THAT ARE CONSTANTLY EXUDING PERSPIRATION
2 OR SWEAT. 99 PERCENT OF SWEAT IS WATER. TWO-THIRDS OF ONE
3 PERCENT IS AMINO ACIDS, AND ONE THIRD ONE PERCENT IS SALT.
4 WHEN THE CONTAMINANTS FROM THE RIDGES TOUCH AN OBJECT THEY
5 MAY TRANSFER THE RIDGES OR THE RIDGE CHARACTERISTICS ONTO
6 THAT OBJECT. HERE I SAY MAY TRANSFER. IT'S A CASE WHERE THE
7 TOUCHING IS RANDOM AND THE TOUCHING IS ACCIDENTAL. AND IN A
8 CASE, NOT ONLY DO YOU CONSIDER THE CONDITION OF THE HANDS;
9 YOU'D ALSO CONSIDER THE CONDITION OF THE SURFACE BEING
10 TOUCHED.

11 Q SO, AGAIN, JUST TO BE THOROUGH, WERE YOU ABLE TO IDENTIFY ANY
12 UNKNOWN FINGERPRINTS SO THAT YOU COULD LATER ON COMPARE IT TO
13 ANY SUSPECTS IN THIS PARTICULAR CASE?

14 A NO, SIR.

15 MR. GASSER: THAT'S ALL I HAVE, YOUR HONOR. THANK YOU.

16 THE COURT: ANY CROSS EXAMINATION?

17 MR. STRICKLER: JUST ONE, YOUR HONOR.

18 CROSS EXAMINATION BY MR. STRICKLER:

19 Q AGENT BLACK, GOOD MORNING.

20 A GOOD MORNING.

21 Q IN SHORT, YOU DEVELOPED NOTHING IN YOUR WORK TO LINK THE
22 CONDOM PACKAGES TO THIS CASE IN ANY SHAPE OR FASHION,
23 CORRECT?

24 A THAT IS CORRECT.

25 MR. STRICKLER: ALL RIGHT. THANK YOU.

1 THE COURT: MR. SHUPPER.

2 MR. SHUPPER: NO QUESTIONS FOR MR. ROBERT JAMES, YOUR
3 HONOR.

4 THE COURT: OKAY. THANK YOU, AGENT BLACK. YOU ARE FREE
5 TO GO UNLESS SOMEONE WISHES TO RETAIN YOUR PRESENCE.

6 MR. STRICKLER: NO, SIR.

7 MR. SHUPPER: NO OBJECTION.

8 THE COURT: THANK YOU.

9 MR. GASSER: AT THIS TIME THE STATE WOULD CALL AGENT
10 JOHN ORTUNO.

11 THE COURT: LET ME SEE COUPLE HERE AT THE TABLE JUST A
12 MOMENT, PLEASE.

13 (WHEREUPON, A BENCH CONFERENCE IS HAD)

14 THE COURT: GO AHEAD AND LET'S HAVE MR. ORTUNO SWORN IN,
15 PLEASE. GO AHEAD, PLEASE, MS. PENDERGRASS.

16 MANUEL J. ORTUNO, BEING FIRST DULY
17 SWORN, TESTIFIES AS FOLLOWS:

18 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
19 FOR THE RECORD.

20 MR. ORTUNO: MANUEL JOHN ORTUNO, O-R-T-U-N-O.

21 DIRECT EXAMINATION BY MR. GASSER:

22 Q AGENT ORTUNO, WHERE ARE YOU EMPLOYED, SIR?

23 A THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION, COMMONLY
24 REFERRED TO AS SLED.

25 Q AND WHAT ARE YOUR DUTIES AND RESPONSIBILITIES WITH SLED?

1 A CURRENTLY I AM A FORENSIC DNA ANALYST. HOWEVER, WHEN
2 EVIDENCE FOR THIS CASE WAS SUBMITTED I WAS EMPLOYED IN THE
3 TRACE EVIDENCE DEPARTMENT.

4 Q AND WHEN YOU SAY TRACE EVIDENCE, WHAT IS TRACE EVIDENCE?

5 A WE DO HAIR AND FIBER ANALYSIS, GUNSHOT RESIDUE, GUNPOWDER,
6 PAINT ANALYSIS AND EXPLOSIVES.

7 Q AND HOW LONG WERE YOU WORKING IN THE TRACE EVIDENCE ANALYSIS
8 DEPARTMENT AT SLED?

9 A APPROXIMATELY —

10 Q PRIOR TO — I'M SORRY. PRIOR TO YOUR CURRENT DUTIES AND
11 RESPONSIBILITIES.

12 A APPROXIMATELY EIGHT YEARS.

13 MR. GASSER: YOUR HONOR, AT THIS TIME I'D ASK IS THERE'S
14 ANY OBJECTION, WE WOULD BE MOVING TO OFFER HIM AS AN EXPERT
15 IN THE AREA OF TRACE EVIDENCE ANALYSIS.

16 THE COURT: DOES EITHER DEFENDANT WISH TO VOIR DIRE AS
17 TO QUALIFICATIONS.

18 MR. STRICKLER: NO, YOUR HONOR.

19 MR. SHUPPER: NO, YOUR HONOR.

20 THE COURT: THANK YOU. OKAY. TRACE ANALYSIS IS THE
21 AREA IN WHICH THIS WITNESS IS OFFERED. AND, AGAIN, HE'S AN
22 EXPERT WITNESS TESTIFYING AS I PREVIOUSLY TOLD YOU. PLEASE
23 CONTINUE, MR. GASSER.

24 MR. GASSER: THANK YOU, YOUR HONOR.

25 Q (BY MR. GASSER) AGENT ORTUNO, WHEN YOU WORKING IN THE TRACE

1 EVIDENCE ANALYSIS DEPARTMENT AT SLED, DID PART OF YOUR DUTIES
2 AND RESPONSIBILITIES INCLUDE PERFORMING TESTS ON EVIDENCE
3 SUBMITTED IN A CRIMINAL SEXUAL ASSAULT KIT?

4 A YES, SIR.

5 Q AND DID YOU DO THAT IN THIS CASE INVOLVING *victim* ?

6 A YES, I DID.

7 Q THE EVIDENCE THAT'S CONTAINED -- THAT YOU -- THE EVIDENCE
8 THAT YOU'RE LIMITED TO OR THAT YOU WERE DEALING WITH IN THIS
9 CASE WAS WHAT TYPE OF EVIDENCE?

10 A WOULD BE HAIR EVIDENCE.

11 Q SO WHAT EVIDENCE DID YOU RECEIVE FROM THE SEXUAL ASSAULT KIT
12 OF *victim* IN THIS PARTICULAR CASE?

13 A I RECEIVED THREE ENVELOPES CONTAINING KNOWN HEAD HAIRS, PUBIC
14 HAIRS AND PUBIC HAIR COMBINGS FROM THE VICTIM. AND THAT WAS
15 IT.

16 Q SO THE ENVELOPE ENTITLED "KNOWN HEAD HAIRS", THOSE WOULD HAVE
17 BEEN THE KNOWN HEAD HAIRS OF WHOM?

18 A OF THE VICTIM, *victim*.

19 Q AND KNOWN PUBIC HAIRS WOULD HAVE BEEN THE KNOWN PUBIC HAIRS
20 OF WHOM?

21 A *victim*.

22 Q AND THEN THE PUBIC HAIR COMBINGS WOULD HAVE BEEN THE PUBIC
23 HAIR COMBINGS OF WHOM?

24 A *victim*.

25 Q AND ARE YOU FAMILIAR WITH WHAT THAT TERM "PUBIC HAIR

1 COMBINGS" MEANS, WHAT IS DONE IN A SEXUAL PROTOCOL EXAM?

2 A YES, SIR, I AM.

3 Q AND WHAT IS DONE DURING A PROTOCOL?

4 A WHAT WE DO IS WE HAVE HAIR COLLECTED FROM THE INDIVIDUAL, ANY
5 HAIR THAT WOULD BE EITHER USED AS A STANDARD, A KNOWN SAMPLE
6 OF HAIR. THIS WOULD BE HEAD HAIR AS WELL AS PUBIC HAIR. AND
7 THEN THERE IS A PROCEDURE IN WHICH A COMB IS USED TO COLLECT
8 ANY FOREIGN HAIR THAT MIGHT BE FOUND IN THE PUBIC REGION.
9 AND THAT WOULD BE PLACED IN THE ENVELOPE LABELED "PUBIC HAIR
10 COMBINGS".

11 Q AFTER RECEIVING THESE ITEMS FROM THE SEXUAL ASSAULT KIT
12 RELATED TO *victim* THAT YOU'VE JUST DESCRIBED, TELL US,
13 PLEASE, WHAT YOU DID AS A TRACE ANALYST?

14 A WHAT WE DO IS WE EXAMINE THESE ENVELOPES FIRST LOOKING AT THE
15 KNOWN HAIRS, BOTH HEAD HAIRS AND PUBIC HAIRS, TO ARRIVE AT A
16 CONCLUSION AS TO THE GENERAL CHARACTERISTICS OF THOSE HAIRS,
17 BOTH HEAD HAIRS AND PUBIC HAIRS. THEN WE LOOK AT ANY OTHER
18 ENVELOPES THAT ARE SUBMITTED IN THE KIT THAT MAY CONTAIN
19 FOREIGN HAIRS. WE OBSERVE THEM WITH THE NAKED EYE AND
20 ELIMINATE THOSE THAT CLEARLY ARE CONSISTENT WITH THE KNOWN
21 HAIRS THAT WE HAVE.

22 ANY HAIRS THAT ARE IN QUESTION AT THAT POINT ARE MOUNTED
23 ON A SLIDE AND EXAMINED USING THE COMPARISON MICROSCOPE. A
24 COMPARISON MICROSCOPE IS A MICROSCOPE MADE UP OF TWO STAGES.
25 WE PLACE THE KNOWN HAIR ON ONE STAGE AND THE UNKNOWN HAIR ON

1 THE OTHER STAGE. WE CAN EXAMINE THIS HAIR FROM THE ROOT,
2 THROUGH THE SHAFT, AND TO THE TIP MICROSCOPICALLY.

3 ONCE YOU PROJECT LIGHT THROUGH THE SLIDE, WE SEE A HAIR
4 IN ITS THREE-DIMENSIONAL STRUCTURE. WE CAN EXAMINE ALL THE
5 CHARACTERISTICS OF THE HAIR. WE LOOK AT TYPICALLY 26
6 DIFFERENT CHARACTERISTICS AND THEN ARRIVE AT A CONCLUSION AS
7 TO WHETHER THIS HAIR ORIGINATED FROM THE INDIVIDUAL IN
8 QUESTION FROM WHICH IT WAS COLLECTED OR IN FACT IT COULD BE
9 POTENTIALLY A FOREIGN HAIR.

10 Q AND IN THIS PARTICULAR CASE HOW MANY HAIR FRAGMENTS -- WHEN
11 YOU ANALYZED THE PUBIC HAIR COMBINGS SUBMITTED TO YOU, HOW
12 MANY HAIR FRAGMENTS DID YOU FIND?

13 A THERE WERE THREE NEGROID HAIR FRAGMENTS THAT WERE IDENTIFIED.

14 Q AND WHAT DID YOU DO WITH THOSE THREE HAIR FRAGMENTS YOU JUST
15 DESCRIBED FROM THE PUBIC HAIR COMBINGS IN RELATIONSHIP TO THE
16 KNOWN PUBIC HAIRS TAKEN FROM VICTIM ?

17 A THEY WERE EXAMINED MICROSCOPICALLY AS I MENTIONED EARLIER,
18 AND UPON EXAMINATION IT WAS DETERMINED THAT THESE HAIRS ARE
19 CONSISTENT WITH THE VICTIM; IN OTHER WORDS, THAT THEY
20 ORIGINATED FROM THE VICTIM'S PUBIC REGION.

21 Q NOW, ARE THERE TIMES IN YOUR ANALYSIS IN THE AREA OF TRACE
22 EVIDENCE AS AN EXPERT WHERE THERE MAY BE IN A CASE OF A
23 SEXUAL ASSAULT, WHERE THE MALE PERPETRATOR MIGHT TRANSFER HIS
24 PUBIC HAIR INTO THE PUBIC REGION OF THE FEMALE? IS THAT PART
25 OF WHY YOU'RE DOING THIS?

1 A EXACTLY. THAT'S A POSSIBILITY, AND THAT'S WHY WE IN FACT
2 EXAMINE THE PUBIC REGION THROUGH COMBING.

3 Q NOW, YOU USED THE WORD "POSSIBILITY". WHY DID YOU USE THE
4 WORD "POSSIBILITY" AND NOT SOME OTHER STRONGER WORD?

5 A WELL, IT'S NOT THAT EASY FOR -- EVEN ON CONTACT WITH TWO
6 INDIVIDUALS, IT'S NOT THAT COMMON FOR HAIR TO IN FACT REMAIN
7 IN THAT REGION. IT'S SOMETHING THAT, EVEN IF THERE IS
8 CONTACT WITH TWO INDIVIDUALS, IT'S VERY POSSIBLE THAT HAIR
9 WILL EITHER NOT REMAIN THERE OR IT CAN IN FACT FALL, DISPLACE
10 ITSELF. TYPICALLY WE DO NOT FIND FOREIGN HAIR IN THE PUBIC
11 COMBING REGION.

12 Q BUT IN THIS CASE DID YOU ATTEMPT TO -- DID YOU ATTEMPT --
13 WELL, DID SLED ATTEMPT TO LOCATE FOREIGN PUBIC HAIRS FROM THE
14 PUBIC HAIR COMBINGS OF *victim* ?

15 A YES. THAT'S PRECISELY WHY IT'S COLLECTED.

16 Q AND THE PUBIC HAIR COMBINGS WERE ALL CONSISTENT WITH *victim*
17 AND NO ONE ELSE?

18 A THAT'S CORRECT.

19 MR. GASSER: THAT'S ALL, YOUR HONOR.

20 THE COURT: ANY CROSS EXAMINATION ON BEHALF OF KENNETH
21 JAMES?

22 MR. STRICKLER: YES, SIR. JUST A COUPLE OF THINGS.

23 CROSS EXAMINATION BY MR. STRICKLER:

24 Q GOOD MORNING, AGENT ORTUNO.

25 A GOOD MORNING.

1 Q MY NAME IS DOUG STRICKLER. YOU SAID THE HAIRS ARE CONSISTENT
2 WITH victim?

3 A CONSISTENT MICROSCOPICALLY.

4 Q AND CONSISTENT DOESN'T MEAN THEY BELONG TO HER, CORRECT?

5 A THAT MEANS THAT UPON EXAMINATION, USING A COMPARISON
6 MICROSCOPE, ALL OF THE CHARACTERISTICS THAT ARE PRESENT IN
7 THOSE HAIR FRAGMENTS ARE CONSISTENT WITH THE CHARACTERISTICS
8 FOUND IN THE KNOWN HAIRS FROM THE VICTIM. SO, TO THE BEST OF
9 MY KNOWLEDGE, THEY DID ORIGINATE FROM THE VICTIM.

10 Q OKAY. JUST A COUPLE OF THINGS. NOW, IN DOING HAIR ANALYSIS
11 AS OPPOSED TO, SAY, FINGERPRINT ANALYSIS, THERE ARE HOW MANY
12 FINDINGS THAT YOU CAN RENDER? YOU'VE GOT CONSISTENT WITH.
13 THAT'S ONE FINDING, CONCLUSION, RIGHT?

14 A YES, SIR.

15 Q OKAY. WHAT'S THE NEXT LEVEL OF CONCLUSION?

16 A WELL, INCONSISTENT.

17 Q IS THERE A THIRD?

18 A WELL, THERE ARE DEGREES OF CONSISTENCY. THAT MIGHT BE WHAT
19 YOU'RE ASKING.

20 Q OKAY.

21 A IN OTHER WORDS, FOR EXAMPLE, ONE OF THE POSSIBLE OUTCOMES IS
22 THAT THIS INDIVIDUAL CANNOT BE EXCLUDED AS A POSSIBLE DONOR.
23 THAT'S WEAKER THAN CONSISTENT.

24 Q ALL RIGHT. AND WHEN YOU SAY SOMETHING IS CONSISTENT WITH AN
25 INDIVIDUAL'S HAIR, OKAY, THAT DOES NOT MEAN THAT IT'S NOT

1 CONSISTENT WITH ANOTHER INDIVIDUAL'S HAIR. CORRECT?

2 A I SHOULD POINT OUT -- YES, SIR. I SHOULD POINT OUT THAT HAIR
3 ANALYSIS IS A CLASS IDENTIFICATION; BY THAT MEANING THAT WHAT
4 WE DO IS WE EITHER INCLUDE OR EXCLUDE THIS HAIR AS BEING --
5 POSSIBLY ORIGINATING FROM AN INDIVIDUAL. THERE ARE IN FACT
6 -- THERE CAN BE MORE THAN ONE INDIVIDUAL HAVING THE SAME
7 CHARACTERISTICS.

8 Q OKAY. SO, PUT ANOTHER WAY, THE FACT THAT THE HAIR IS
9 CONSISTENT WITH *victim* DOES NOT MEAN THAT IT'S -- IT
10 COULD ALSO BE CONSISTENT WITH SOMEONE ELSE'S, CORRECT?

11 A THAT'S CORRECT. THAT'S ALSO POSSIBLE.

12 Q NOW, IF YOU ARE INTERESTED IN SEEING WHETHER IT'S CONSISTENT
13 WITH SOMEONE ELSE'S, YOU WOULD NEED A SAMPLE OF HAIR FROM
14 SOMEONE ELSE, CORRECT?

15 A THAT WOULD BE CORRECT.

16 Q TO COMPARE IT TO?

17 A THAT WOULD BE CORRECT.

18 Q FOR EXAMPLE, IF YOU WANTED TO SEE WHETHER THE HAIR WAS
19 CONSISTENT WITH *victim* AND, FOR EXAMPLE, KENNETH JAMES,
20 YOU WOULD NEED A SAMPLE OF HAIR FROM KENNETH JAMES TO COMPARE
21 IT TO, CORRECT?

22 A YES, SIR.

23 Q OKAY. AND THAT'S DONE IN SOME CASES, RIGHT?

24 A YES. THAT IS ROUTINE IN FACT.

25 Q FAIRLY ROUTINE?

1 A YES, SIR.

2 Q A COURT ORDER IS OBTAINED, HAIR IS COLLECTED FROM A PERSON,
3 AND IT'S SUBMITTED TO YOU FOR EXAMINATION, CORRECT?

4 A BECAUSE IT IS A CLASS IDENTIFICATION, IT IS IMPORTANT TO HAVE
5 ALL THE POSSIBLE DONORS OF THAT HAIR. YES, SIR.

6 Q IN THIS PARTICULAR CASE YOU INDEED HAD NO HAIR FROM KENNETH
7 JAMES SUBMITTED TO YOU, CORRECT?

8 A THAT IS CORRECT.

9 Q SO YOU NEVER WERE ASKED TO DO A COMPARISON OF THE HAIR FOUND
10 ON *victim* WITH KNOWN SAMPLES FROM KENNETH JAMES,
11 CORRECT?

12 A THE SAMPLES WERE NOT SUBMITTED. THEREFORE, IT WAS NOT
13 PERFORMED.

14 Q I'M THROUGH.

15 THE COURT: MR. SHUPPER, ON BEHALF OF ROBERT JAMES?

16 MR. SHUPPER: I HAVE NO QUESTIONS OF THIS WITNESS, YOUR
17 HONOR.

18 THE COURT: OKAY. THANK YOU. ANY REDIRECT, MR. GASSER?

19 MR. GASSER: NO, SIR.

20 THE COURT: THANK YOU, SIR. YOU'RE FREE TO GO UNLESS
21 SOMEONE WISHES TO RETAIN MR. ORTUNO.

22 MR. ORTUNO: THANK YOU, YOUR HONOR.

23 THE COURT: THANK YOU FOR YOUR ATTENDANCE.

24 MR. GASSER: THE STATE WOULD CALL INVESTIGATOR BOB
25 BENSON.

1 ROBERT J. BENSON, BEING FIRST DULY
2 SWORN, TESTIFIES AS FOLLOWS:

3 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
4 FOR THE RECORD.

5 MR. BENSON: MY NAME IS ROBERT JAMES BENSON,
6 B-E-N-S-O-N.

7 DIRECT EXAMINATION BY MR. GASSER:

8 Q INVESTIGATOR BENSON, YOU ARE EMPLOYED BY THE COLUMBIA POLICE
9 DEPARTMENT?

10 A YES, I AM.

11 Q AND HOW LONG HAVE YOU BEEN WITH THE POLICE DEPARTMENT?

12 A NOVEMBER WILL BE 21 YEARS.

13 Q AND WHAT UNIT ARE YOU ASSIGNED TO CURRENTLY?

14 A MAJOR CRIME UNIT.

15 Q HOW LONG HAVE YOU BEEN WITH THE MAJOR CRIMES UNIT?

16 A SINCE 1992.

17 Q I WANT TO DRAW YOUR ATTENTION BACK TO THE EARLY MORNING HOURS
18 OF MAY 29TH, 1996. DID YOU HAVE AN OPPORTUNITY TO RESPOND TO
19 THE SCENE OF T. S. MARTIN PARK THAT EARLY MORNING HOURS?

20 A YES. ALONG WITH INVESTIGATOR THOMAS.

21 Q NOW, ARE YOU ON A PARTICULAR TEAM THAT INCLUDES INVESTIGATOR
22 THOMAS AND SEVERAL OTHER INVESTIGATORS?

23 A YES, I AM.

24 Q WHO WAS DESIGNATED AS THE CHIEF INVESTIGATING OFFICER HOWEVER
25 IN THIS PARTICULAR CASE?

1 A INVESTIGATOR THOMAS.

2 Q DID YOU HAVE AN OPPORTUNITY TO ASSIST HIM IN DOING CERTAIN OR
3 IN CONDUCTING CERTAIN INTERVIEWS AS WELL AS OTHER MATTERS
4 RELATIVE TO THIS PARTICULAR CASE?

5 A YES, I DID.

6 Q AND IN PARTICULAR, DO YOU RECALL COMING INTO CONTACT WITH A
7 MR. WINFRED BULL THERE OUT AT THE SCENE?

8 A YES, I DID.

9 Q AND SUBSEQUENTLY WAS MR. BULL TRANSPORTED TO THE COLUMBIA
10 POLICE DEPARTMENT WHERE HE GAVE A STATEMENT IN THIS CASE?

11 A YES, HE WAS.

12 Q OFFICER CAROL TOWNSEND, WAS SHE EMPLOYED BY THE COLUMBIA
13 POLICE DEPARTMENT AT THAT TIME IN MAY OF 1996?

14 A YES, SHE WAS, AT THAT TIME.

15 Q NOW, AFTER RECEIVING CERTAIN INFORMATION FROM -- WITHOUT
16 SAYING WHAT THE INFORMATION IS -- BUT AFTER RECEIVING CERTAIN
17 INFORMATION -- OR AS INFORMATION WAS COMING INTO YOU AND
18 INVESTIGATOR THOMAS THAT MORNING, DID YOU HAVE AN OPPORTUNITY
19 AFTER RECEIVING CERTAIN INFORMATION TO GO TO THE AMOCO
20 STATION ON TWO NOTCH ROAD; SPECIFICALLY SHOWING YOU STATE'S
21 EXHIBIT 1, THE AMOCO STATION AT OGDEN AND MCFADDEN AND TWO
22 NOTCH?

23 A YES, I DID.

24 Q AND DID YOU COME INTO CONTACT WITH A GENTLEMAN BY THE NAME OF
25 MICHAEL MCREYNOLDS?

1 A YES. I BELIEVE HE IS THE MANAGER.

2 Q AND I HAND YOU STATE'S EXHIBIT NO. 30 AS WELL AS THIS
3 ENVELOPE AND ASK YOU TO TAKE A LOOK AT THOSE, PLEASE,
4 INVESTIGATOR BENSON?

5 A YES. THIS IS A VIDEOTAPE THAT I RECEIVED FROM HIM. THIS IS
6 A VIDEOTAPE THAT WAS IN THE STORE SUPPOSEDLY THE MORNING OF
7 THIS INCIDENT THAT I RECEIVED FROM HIM THAT I REQUESTED.

8 Q AND WHEN YOU PHYSICALLY RECEIVED THAT PARTICULAR TAPE, WHAT
9 DID YOU DO WITH IT, INVESTIGATOR BENSON?

10 A I TOOK IT BACK DOWN TO OUR UNIT. AND LATER ON THAT DAY IT
11 WAS -- I -- MYSELF AND INVESTIGATOR THOMAS VIEWED THE TAPE
12 LATER ON IN THE DAY.

13 Q AND THIS TAPE STAYED IN THE POSSESSION OF THE COLUMBIA POLICE
14 DEPARIMENT RELATIVE TO THIS CASE?

15 A YES. I -- AFTER THE TAPE WAS VIEWED, I LOGGED IT IN AND PUT
16 IT IN THIS JACKET, I GUESS IF YOU WILL, AND TURNED IT INTO
17 THE PROPERTY ROOM.

18 Q AND PRIOR TO THE TRIAL BEGINNING ON MONDAY, DID YOU HAVE AN
19 OPPORTUNITY -- YOU AND INVESTIGATOR THOMAS -- HAVE AN
20 OPPORTUNITY TO REVIEW THAT PARTICULAR TAPE AGAIN PRIOR TO
21 THIS PARTICULAR TRIAL?

22 A YES, WE DID.

23 Q AND IS THE TAPE AS YOU VIEWED IT PRIOR TO COMING INTO TRIAL,
24 WAS IT IN THE SAME CONDITION AS IT WAS WHEN YOU VIEWED IT ON
25 THE AFTERNOON OF MONDAY, MAY THE 29TH, 1996?

1 A YES, IT WAS.

2 Q AND, IN FACT, DID YOU AND INVESTIGATOR THOMAS -- DID YOU HAVE
3 AN OPPORTUNITY TO OBTAIN SOME STILL PHOTOS FROM THAT
4 PARTICULAR TAPE BACK IN MAY OF 1996?

5 A SOME STILL PHOTOS WERE MADE FROM THAT TAPE. THAT'S CORRECT.

6 Q NOW, INVESTIGATOR BENSON, PURSUANT TO A COURT ORDER SIGNED BY
7 A CIRCUIT COURT JUDGE, DID YOU HAVE AN OPPORTUNITY ON APRIL
8 24TH, 1998, TO BE PRESENT WHEN BLOOD WAS DRAWN FROM THE
9 DEFENDANT KENNETH JAMES?

10 A YES, I WAS.

11 Q ALSO PURSUANT TO A COURT ORDER, DID YOU HAVE -- WERE YOU
12 PRESENT ON THAT SAME DAY WHEN BLOOD WAS DRAWN FROM THE
13 DEFENDANT ROBERT JAMES?

14 A YES, I WAS PRESENT.

15 Q AND WHERE WAS THAT DONE, INVESTIGATOR BENSON?

16 A THAT WAS DONE AT THE MEDICAL UNIT AT THE RICHLAND COUNTY
17 DETENTION CENTER OFF OF BLUFF ROAD.

18 Q AND WHO ACTUALLY DREW THE BLOOD?

19 A A MEDICAL TECHNICIAN BY THE NAME OF WALLY CARLOS WHO IS
20 EMPLOYED BY THE RICHLAND COUNTY DETENTION CENTER AS AN M.T.
21 OR MEDICAL TECHNICIAN.

22 Q AND WAS THAT DONE IN YOUR PRESENCE?

23 A YES, IT WAS.

24 Q WHERE DID THE BLOOD GO? WHERE WAS IT TAKEN WHEN IT WAS
25 REMOVED FROM THE BODIES OF KENNETH JAMES AND ROBERT JAMES?

1 WHERE WAS IT PLACED INTO?

2 A WHEN I WENT THERE WITH THE ORDERS, I ALSO TOOK WITH ME TWO,
3 WHAT THEY CALL TWO SUSPECT KITS. AND THEY ARE CONTAINERS.
4 AND WITHIN THE KIT ITSELF THERE ARE CERTAIN VIALS, VIALS OF
5 CONTAINERS FOR BLOOD. AND ONCE THE BLOOD IS DRAWN OR PLACED
6 IN THOSE TUBES, IF YOU WILL, AND THEN HE PLACES THEM IN A
7 KIT, BACK INTO THE KIT THEMSELVES.

8 Q WHO TOOK POSSESSION OF THE BLOOD VIALS OF KENNETH JAMES AND
9 THE BLOOD VIALS OF ROBERT JAMES?

10 A AFTER THE KITS WERE COMPLETED AND SEALED BY WALLY CARLOS, I
11 TOOK POSSESSION OF THOSE AND TOOK THOSE ON OUT TO THE SOUTH
12 CAROLINA LAW ENFORCEMENT DIVISION, SLED.

13 Q NOW, DID THE SAME PERSON DRAW THE BLOOD FROM MR. KENNETH
14 JAMES AND MR. ROBERT JAMES?

15 A YES, HE DID.

16 Q AND WAS BOTH INSTANCES DONE IN YOUR PRESENCE?

17 A YES, THEY WERE.

18 Q AND HOW WERE THEY LABELED?

19 A THE KIT ITSELF HAS SPECIFIC -- FOR THE NAMES AND ALL ALONG
20 WITH THE TUBES. AND THEY LABELED THAT INFORMATION ON THOSE.

21 Q NOW, DID YOU INSURE -- WHEN THE BLOOD WAS DRAWN FROM KENNETH
22 JAMES, DID YOU INSURE YOURSELF, MAKE SURE YOURSELF SINCE
23 THERE WERE TWO PEOPLE THAT THE LABEL OF KENNETH JAMES'S NAME
24 WAS GOING ON THE BLOOD VIAL THAT WAS DRAWN OUT OF HIS BODY?

25 A YES. THE -- WHEN I WAS PRESENT, IT WAS JUST MYSELF AND WALLY

1 CARLOS. AND WE ASKED FOR THE FIRST ONE TO COME INTO THE
2 ROOM. I INTRODUCED MYSELF, ASKED HIM HIS NAME. THAT KIT IS
3 THEN COMPLETED AND SEALED BEFORE THE SECOND ONE CAME IN. AND
4 YOU JUST GO THROUGH THE SAME PROCESS, AND THEN IT'S
5 COMPLETED.

6 Q NOW, WHEN YOU TRANSPORTED YOURSELF THE VIALS OF BLOOD TO
7 SLED, DID YOU DO THAT ON THE SAME DAY, THE SAME DAY, THE SAME
8 AFTERNOON?

9 A YES, I DID.

10 Q AND WHEN YOU GET TO THE -- TELL -- DESCRIBE TO THE JURY, WHEN
11 YOU SUBMIT EVIDENCE IN ANY CASE TO SLED'S EVIDENCE ROOM -- OR
12 PARTICULARLY IN THIS CASE, WHAT DO YOU DO? WHAT IS THE
13 PROCESS?

14 A WELL, IN THIS CASE YOU HAD TWO KITS. AND YOU TAKE THOSE TO
15 SLED. AND WHEN YOU ARRIVE THERE IS AN EVIDENCE COLLECTION
16 POINT. I THINK THERE'S THREE OR FOUR LADIES THAT WORKED
17 THERE AT THAT TIME. AND YOU ARE SEATED AT A DESK. AND THEY
18 LOG WHAT THEY CALL LOG-IN PROPERTY, AND THEY TAKE ONE KIT.
19 AND THEY WILL TAKE THE KIT DOWN AND SEPARATE IT FOR SEROLOGY
20 AND PRINTS OR WHATEVER YOU HAVE. AND ONCE THE KIT ITSELF,
21 THE EVIDENCE IS BROKEN DOWN AND SEPARATED INTO WHERE IT'S
22 GOING, THEN SOMETIMES YOU ARE REQUIRED TO PLACE THOSE
23 EVIDENCE IN CERTAIN CONTAINERS. IN THIS CASE I PLACED THE
24 BLOOD IN CONTAINER FOR DNA AND I ALSO PLACED THE SALIVA
25 SAMPLE FOR THE SEROLOGY IN A LOCKED CONTAINER AT SLED.

1 Q AND DID YOU INSURE AGAIN EACH AND EVERY STEP OF THE PROCESS
2 THAT THESE CONTAINERS WERE SEALED AND PROPERLY LABELED
3 KENNETH JAMES AND ROBERT JAMES?

4 A THAT'S CORRECT.

5 MR. GASSER: BEG THE COURT'S INDULGENCE.

6 THE COURT: YES, SIR.

7 MR. GASSER: THAT'S ALL I HAVE, YOUR HONOR. THANK YOU.

8 THE COURT: MR. STRICKLER.

9 MR. STRICKLER: THANKS. PLEASE.

10 CROSS EXAMINATION BY MR. STRICKLER:

11 Q GOOD MORNING, MR. BENSON.

12 A GOOD MORNING.

13 Q ACTUALLY, JUST ONE THING. YOU TOOK THE BLOOD AND SALIVA
14 SAMPLES YOU'VE TESTIFIED ABOUT ON WHAT DATE? I'M SORRY. OR
15 YOU WERE PRESENT WHEN THEY WERE TAKEN ON WHAT DATE?

16 A ON APRIL THE 24TH OF 1998, AT APPROXIMATELY 1:00 IN THE
17 AFTERNOON IS WHEN I ARRIVED AT THE RICHLAND COUNTY DETENTION
18 CENTER.

19 Q OKAY. AND YOU WERE NOT -- OR YOU DID NOT HAVE ANY HAIR
20 SAMPLES TAKEN AT THAT POINT IN TIME, CORRECT?

21 A NO. THE ONLY -- I THINK ACCORDING TO MY NOTES OF WHICH THE
22 ONLY THING DRAWN WAS THE BLOOD AND THE SALIVA SAMPLES AND NO
23 HAIR SAMPLES.

24 Q IN FACT, THE STATE DID NOT REQUEST HAIR SAMPLES IN THIS CASE,
25 DID THEY?

1 A WHEN READING THE SCHMERBER ORDER THAT I DID PRIOR TO THE
2 EXAMINATION, I DON'T RECALL ANYTHING IN THE SCHMERBER ORDER
3 REFERRING TO HAIR SAMPLES.

4 Q OKAY. THANK YOU, SIR. I HAVE NOTHING FURTHER.

5 MR. STRICKLER: I BELIEVE WE HAVE A STIPULATION IN THIS
6 REGARD.

7 MR. GASSER: YEAH. YOUR HONOR, WE'D STIPULATE THAT THE
8 ONLY SAMPLES THAT WE REQUESTED FROM A CIRCUIT COURT JUDGE WAS
9 FROM BOTH DEFENDANTS BLOOD AND SALIVA.

10 MR. STRICKLER: THANK YOU, YOUR HONOR.

11 THE COURT: YOU EXCEPT THAT STIPULATION ON BEHALF OF
12 ROBERT JAMES?

13 MR. SHUPPER: YES, YOUR HONOR.

14 THE COURT: OKAY. THANK YOU. ANY EXAMINATION ON BEHALF
15 OF ROBERT JAMES?

16 MR. SHUPPER: ONE THING.

17 CROSS EXAMINATION BY MR. SHUPPER:

18 Q INVESTIGATOR BENSON, YOUR ROLE AS FAR AS THE HAIR AND --
19 EXCUSE ME -- AS FAR AS THE BLOOD SAMPLES WAS TO OBSERVE THE
20 PROCEDURE AND DELIVER IT TO SLED WHERE IT WOULD BE ANALYZED.
21 IS THAT CORRECT?

22 A THAT'S CORRECT.

23 MR. SHUPPER: I HAVE NOTHING FURTHER.

24 THE COURT: THANK YOU. ANY REASON WHY MR. BENSON NEEDS
25 TO BE RETAINED?

1 MR. STRICKLER: EXCUSED WITHOUT OBJECTION AS TO KENNETH
2 JAMES.

3 MR. SHUPPER: NO OBJECTION, YOUR HONOR.

4 THE COURT: OKAY. THANK YOU. THANK YOU FOR YOUR
5 ATTENDANCE.

6 MR. BENSON: THANK YOU, YOUR HONOR.

7 MR. GASSER: WOULD THE COURT INDULGE ME ONE MOMENT?

8 THE COURT: CERTAINLY.

9 MR. GASSER: THANK YOU, YOUR HONOR. AT THIS TIME THE
10 STATE WOULD CALL AGENT TOMMY THOMAS.

11 THE COURT: MR. THOMAS, PLEASE REPORT TO MR. BARROW.

12 THOMAS THOMAS, BEING FIRST DULY
13 SWORN, TESTIFIES AS FOLLOWS:

14 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
15 FOR THE RECORD.

16 MR. THOMAS: MY NAME IS THOMAS THOMAS.

17 DIRECT EXAMINATION BY MR. GASSER:

18 Q INVESTIGATOR THOMAS, HOW LONG HAVE YOU BEEN EMPLOYED BY THE
19 COLUMBIA POLICE DEPARTMENT?

20 A TWENTY-FIVE YEARS.

21 Q AND WHAT ARE YOUR CURRENT DUTIES AND RESPONSIBILITIES WITH
22 THE POLICE DEPARTMENT?

23 A I AM AN INVESTIGATOR ASSIGNED TO THE MAJOR CRIME UNIT.

24 Q HOW LONG HAVE YOU BEEN A MAJOR CRIMES INVESTIGATOR?

25 A ABOUT EIGHT OR NINE YEARS.

1 Q I WANT TO DRAW YOUR ATTENTION BACK TO -- AS WELL BACK TO THE
2 EARLY MORNING HOURS OF WEDNESDAY, MAY THE 29TH, 1996. TELL
3 US, PLEASE, HOW YOU BECAME AWARE OF THIS PARTICULAR CASE AND
4 WHERE YOU WENT?

5 A OKAY. I WAS AT HOME. I WAS ONE OF THE -- ONE OF THE ON-CALL
6 INVESTIGATORS, AND I RECEIVED A PHONE CALL FROM SERGEANT
7 FARROW AND HE DIRECTED ME THAT THEY HAD HAD A SEXUAL ASSAULT
8 IN ONE OF THE CITY PARKS, T. S. MARTIN PARK, AND TOLD ME THAT
9 I NEEDED TO RESPOND OUT THERE.

10 Q AND DO YOU KNOW APPROXIMATELY WHAT TIME YOU ARRIVED ON THE
11 SCENE?

12 A SOMEWHERE AROUND 1 A.M., SOMETHING LIKE THAT.

13 Q AND UPON YOUR ARRIVAL AT THE SCENE, WERE THERE OTHER OFFICERS
14 THERE?

15 A YES, SIR. THERE WERE. THERE WERE SEVERAL OFFICERS THERE.

16 Q AND WITHOUT SAYING WHAT WAS TOLD TO YOU, WHO WERE YOU BRIEFED
17 BY?

18 A LIEUTENANT MIKE CAPP.

19 Q WAS HE THE ACTING SUPERVISOR ON THE SCENE?

20 A HE WAS.

21 Q NOW, ARE YOU FAMILIAR WITH SERGEANT JOE CRONIN THAT TESTIFIED
22 BEFORE THE JURY YESTERDAY?

23 A YES, SIR, I AM.

24 Q AND WHOSE RESPONSIBILITY IS IT TO ACTUALLY PHOTOGRAPH THE
25 SCENE AND COLLECT THE EVIDENCE?

1 A IT WOULD HAVE BEEN SERGEANT CRONIN'S.

2 Q AND WHY IS THAT?

3 A HE IS WITH THE IDENTIFICATION AND CRIME SCENE COLLECTION UNIT
4 WITH THE COLUMBIA POLICE DEPARTMENT.

5 Q DID YOU HAVE THE OPPORTUNITY AT THAT POINT IN TIME TO COME
6 INTO CONTACT WITH *victim* .? OR WAS SHE EVEN AT THE SCENE?

7 A SHE WAS NOT. WHEN I ARRIVED I WAS TOLD THAT SHE HAD ALREADY
8 BEEN TRANSPORTED TO THE HOSPITAL. AND MR. BULL WAS SITTING
9 IN ONE OF THE POLICE CARS.

10 Q AND HOW WAS HE CLOTHED?

11 A HE WAS WEARING A PAIR OF BOXER SHORTS.

12 Q SO WHAT WAS ONE OF THE THINGS THAT YOU WANTED TO MAKE SURE
13 YOU DID FOR MR. BULL?

14 A WE COULD GET HIM SOME CLOTHES AND GET HIM COMFORTABLE.

15 Q THE INFORMATION THAT WAS GATHERED FROM MR. BULL BY OFFICER
16 WALKER -- I KNOW THEY TESTIFIED FIRST ACTUALLY BEFORE THE
17 JURY A COUPLE OF DAYS AGO -- WERE YOU THEN PROVIDED WITH THAT
18 INFORMATION?

19 A I WAS; YES, SIR.

20 Q IN FACT, IF THERE'S A CRIME SCENE UNIT, THE CRIME SCENE UNIT
21 INDIVIDUAL YOU INDICATED WAS JOE CRONIN, CORRECT?

22 A YES, SIR.

23 Q THE FIRST OFFICERS ON THE SCENE WERE STILL PRESENT AT THE
24 SCENE. IS THAT CORRECT?

25 A YES, SIR.

1 Q AS PART OF THE ARRIVING CHIEF INVESTIGATOR, DO YOU BECOME THE
2 RECIPIENT OF ALL INFORMATION?

3 A YES, SIR, I DO.

4 Q AND AS THE POLICE OFFICERS LEFT THE SCENE AND WENT ABOUT
5 THEIR BUSINESS, OFFICER CAROL TOWNSEND, MR. RON GIBSON WHO
6 TESTIFIED, EVENTUALLY DID YOU RECEIVE INFORMATION COMING BACK
7 FROM THEM?

8 A YES, SIR, I DID.

9 Q ARE YOU FAMILIAR WITH SERGEANT RANDY BLACKWELL?

10 A YES, SIR, I AM.

11 Q AND WHO IS HE?

12 A HE IS ONE OF THE DOG HANDLERS. AND, IN FACT, HE'S THE
13 SUPERVISOR OVER THE DOG HANDLERS.

14 Q NOW, WAS HE AND ONE OF HIS DOGS AT THE SCENE WHEN YOU
15 ARRIVED?

16 A THEY WERE. I DID NOT HAVE CONTACT WITH HIM OR SEE HIM AT
17 THAT TIME. WHEN I ARRIVED I WAS TOLD -- WELL, HIS TRUCK WAS
18 PARKED IN THE PARKING LOT. BUT I WAS TOLD THAT HE AND
19 ANOTHER OFFICER WERE WORKING A DOG TRAIL.

20 Q NOW, WHY IS IT AS A CHIEF INVESTIGATOR WITH THE NINE YEARS
21 EXPERIENCE OF MAJOR CRIMES, WHY WOULD A DOG TRACKING TEAM BE
22 CALLED INTO AN AREA SUCH AS THIS?

23 A THEY WOULD -- TO SEE IF THEY COULD FOLLOW A POSSIBLE SUSPECT,
24 FOOTPRINTS -- WELL, PRINT. HOWEVER THE DOG FOLLOWS THE TRAIL
25 OF THE SUSPECTS.

1 Q SO WAS THAT SOMETHING UNIQUE TO THIS CASE?

2 A NO, SIR.

3 Q OR IS IT DONE IN OTHER CASES?

4 A IT'S DONE IN A LOT OF CASES.

5 Q NOW, DID YOU LEARN, INVESTIGATOR THOMAS -- OR WHAT DID YOU
6 LEARN ABOUT ONE OF DENOMINATIONS OF -- ONE OF THE BILLS THAT
7 WAS TAKEN FROM MR. BULL WAS WHAT?

8 A IT WAS A ONE HUNDRED DOLLAR BILL.

9 Q AND, AGAIN, I'M NOT GOING TO PLAY -- ARE YOU FAMILIAR WITH
10 THE TAPE, STATE'S EXHIBIT NO. 30, THAT WAS RECEIVED FROM THE
11 AMOCO STATION THAT AFTERNOON?

12 A YES, SIR, I AM.

13 Q AND DID YOU HAVE AN OPPORTUNITY ALONG WITH INVESTIGATOR
14 BENSON LATER ON IN THE AFTERNOON OF MAY THE 29TH, 1996, TO
15 VIEW THIS TAPE?

16 A YES, SIR, I DID.

17 Q OKAY. WHEN THIS TAPE WAS PLAYED TO THE JURY YESTERDAY
18 AFTERNOON, THE WHITE FEMALE POLICE OFFICER THAT ENTERED AT
19 1:23, WHO IS SHE?

20 A THAT WOULD HAVE BEEN CAROL TOWNSEND.

21 Q IS SHE CURRENTLY EMPLOYED BY THE COLUMBIA POLICE DEPARTMENT?

22 A SHE JUST LEFT THE COLUMBIA POLICE DEPARTMENT, MOVED BACK TO
23 VIRGINIA.

24 Q WITHOUT SAYING WHAT WAS SAID, DID YOU RECEIVE CERTAIN
25 INFORMATION FROM CAROL TOWNSEND THAT YOU RECORDED IN YOUR

1 CASE NOTES?

2 A YES, SIR, I DID.

3 Q AND RECEIVED CERTAIN INFORMATION FROM SANGETTA COAXUM THAT
4 TESTIFIED IN FRONT OF THIS JURY?

5 A YES, SIR.

6 Q AND DID YOU RECEIVE THE INFORMATION FROM MR. RON GIBSON THAT
7 TESTIFIED LATE YESTERDAY AFTERNOON IN FRONT OF THIS JURY?

8 A YES, SIR, I DID.

9 Q AND, AGAIN, WITHOUT SAYING WHAT THE INFORMATION WAS, DID YOU
10 RECEIVE THE INFORMATION ABOUT SERGEANT RANDY BLACKWELL, THE
11 DOG HANDLER, WHAT THE RESULT -- AGAIN, WITHOUT SAYING WHAT
12 THEY WERE -- WHAT THE RESULTS WERE OF HIM RUNNING HIS DOG?
13 DID YOU RECEIVE THAT INFORMATION?

14 A YES, SIR, I DID.

15 Q DID YOU HAVE AN OPPORTUNITY EARLY THAT MORNING AFTER YOU LEFT
16 THE CRIME SCENE TO VISIT Victim AT THE RICHLAND MEMORIAL
17 HOSPITAL?

18 A YES, SIR, I DID.

19 Q NOW, WHEN YOU MET WITH HER AT THAT TIME, HAD THE SEXUAL
20 ASSAULT PROTOCOL BEEN DONE ON HER OR BEEN COMPLETED WITH HER?

21 A NO, SIR. IT HAD NOT BEEN COMPLETED.

22 Q DID YOU WANT TO IMMEDIATELY TAKE A WRITTEN STATEMENT FROM HER
23 THERE IN THE HOSPITAL ROOM?

24 A NO, SIR.

25 Q AND WHY IS THAT?

1 A THERE ARE SEVERAL REASONS. ONE IS THAT WE WOULD LIKE FOR HER
2 TO COME DOWN TO OUR OFFICE WHERE SHE CAN RELAX. PEOPLE
3 AREN'T COMING IN AND OUT OF THE ROOM LIKE NURSES AND
4 DIFFERENT PEOPLE AT THE HOSPITAL. AND JUST GIVE HER AN
5 OVERALL CHANCE TO CALM DOWN.

6 Q DID YOU HAVE AN OPPORTUNITY TO HAVE AN ORAL CONVERSATION WITH
7 HER THOUGH, JUST A BRIEF GENERAL CONVERSATION WITH HER?

8 A YES, SIR, I DID.

9 Q AND AS A RESULT OF THAT, SHOWING YOU STATE'S EXHIBIT NO. 1,
10 WHERE DID YOU AND INVESTIGATOR BENSON AND SERGEANT CRONIN GO?

11 A AT THAT TIME WHEN WE LEFT THE HOSPITAL WE WENT BACK TO
12 CRESCENT HILL CEMETERY AND ---

13 Q I WANT YOU TO USE THIS POINTER AND TELL THE JURY WHERE YOU
14 WENT BACK TO THE CRESCENT HILL CEMETERY, FOR WHAT PURPOSE?

15 A WE WENT BACK TO CRESCENT HILL CEMETERY BECAUSE WE WERE
16 INFORMED BY THE VICTIM THAT SHE WAS TAKEN FROM THE PARK TO
17 THE MAUSOLEUM IN THE CEMETERY WHICH WOULD BE THIS AREA RIGHT
18 HERE WHERE SHE WAS DRUG INTO THIS MAUSOLEUM AREA. IT'S A
19 LONG OBLONG THING SURROUNDED BY DEAD PEOPLE.

20 Q OKAY. ON THE OUTSIDE. YOU SAY OBLONG. LET'S SAY IF I JUST
21 HAD ONE OF THESE TABLES RIGHT HERE. OKAY?

22 A YES, SIR.

23 Q ON THE OUTSIDE, ON EITHER SIDE OF THIS MAUSOLEUM, WHAT IS ON
24 EITHER SIDE? WHAT CAN BE PLACED ON EITHER SIDE?

25 A DEAD PEOPLE. TOMBS.

1 Q YOU CALL THEM ---

2 A TOMBS.

3 Q TOMBS?

4 A TOMBS.

5 Q NOW, IS THERE AN ENTRANCEWAY?

6 A YES, SIR.

7 Q SO WHERE IS IT? WHERE IS THE SPACE THEN IN THIS PARTICULAR
8 BUILDING?

9 A WHEN YOU GO THROUGH THE DOOR YOU GO IN AND YOU'RE ACTUALLY
10 INSIDE OF THE MAUSOLEUM AND YOU'RE SURROUNDED BY DEAD PEOPLE.

11 Q AND WHAT IS IN THERE? WHAT KIND OF SURFACE IS IT?

12 A IT'S -- INSIDE OF IT IS JUST A GRASSY SURFACE.

13 Q WAS THERE A KNOB ON THE DOOR?

14 A YES, SIR.

15 Q AND COULD YOU FREELY WALK INTO THAT PARTICULAR AREA?

16 A YES, SIR, YOU COULD.

17 Q NOW, YOU INDICATED SERGEANT CRONIN WAS WITH YOU. IS THAT
18 CORRECT?

19 A YES, SIR. WELL, WE CALLED HIM AND HAD HIM MEET US BACK AT
20 THE CRESCENT HILL CEMETERY.

21 Q NOW, DID YOU HAVE AN OPPORTUNITY TO RECORD IN YOUR CASE NOTES
22 INFORMATION THAT WAS PROVIDED TO YOU BY MR. RON GIBSON THAT
23 TESTIFIED BEFORE THIS JURY YESTERDAY AFTERNOON?

24 A YES, SIR, I WAS.

25 Q AND THE INFORMATION THAT YOU RECORDED WAS WHAT?

1 A THAT THE INFORMATION I WAS GIVEN WAS ---

2 Q WELL, JUST TELL ME, DID HE HAVE AN OPPORTUNITY TO -- DID HE
3 INDICATE TO YOU THAT HE HAD STOPPED AN INDIVIDUAL?

4 A YES, HE DID.

5 Q AND WHAT PERSONAL INFORMATION DID HE RECEIVE FROM THAT
6 INDIVIDUAL?

7 A HIS NAME, ADDRESS AND DATE OF BIRTH.

8 Q AND DID YOU RECORD THAT THEN IN YOUR NOTES?

9 A YES, SIR, I DID. THAT WAS KENNETH JAMES. HIS DATE OF BIRTH
10 WAS RECORDED ALONG WITH HIS ADDRESS. AND THE ADDRESS I WAS
11 GIVEN WAS 2528 ORR STREET.

12 Q LATER ON THAT MORNING DID YOU HAVE AN OPPORTUNITY TO GO TO
13 RICHLAND MEMORIAL HOSPITAL AGAIN, INVESTIGATOR THOMAS?

14 A YES, SIR, WE DID.

15 Q AND DID YOU RECEIVE A CERTAIN ITEM?

16 A YES, SIR, WE DID.

17 Q AND I HAND YOU THIS BOX AND JUST ASK YOU IF YOU CAN IDENTIFY
18 IT?

19 A YES, SIR, I CAN.

20 Q AND WHAT IS THAT?

21 A THIS IS THE BOX THAT WOULD CONTAIN THE RAPE PROTOCOL KIT THAT
22 RICHLAND MEMORIAL HOSPITAL DID FOR US, THE COLLECTION OF
23 EVIDENCE.

24 Q ON WHO?

25 A ON VICTIM .

1 Q AND WHEN YOU RECEIVED THIS BOX, HOW WAS IT PACKAGED AND
2 SEALED?

3 A IT WAS -- IT WAS GIVEN TO US -- THE NURSE SEALS IT UP WITH
4 THIS RED EVIDENCE TAPE SO THAT IT CANNOT BE OPENED AGAIN.

5 Q SO DID YOU OPEN IT UP AT ALL?

6 A NO, SIR.

7 MR. GASSER: WE'D GO AHEAD AND MARK THIS FOR
8 IDENTIFICATION AT THIS TIME, YOUR HONOR.

9 (STATE'S EXHIBIT NO. 32, CRIMINAL SEXUAL CONDUCT KIT, MARKED
10 FOR IDENTIFICATION ONLY)

11 Q (BY MR. GASSER) THE BOX THAT YOU'VE IDENTIFIED AS STATE'S
12 EXHIBIT NO. 32, THAT YOU INDICATED WAS SEALED, WHAT DID YOU
13 PHYSICALLY DO THIS WITH THIS, INVESTIGATOR THOMAS?

14 A IT WAS PLACED IN THE EVIDENCE REFRIGERATOR IN OUR OFFICE.

15 Q WHERE DID YOU GO AFTER RICHLAND MEMORIAL HOSPITAL?

16 A THE SECOND TIME?

17 Q THE SECOND TIME. YEAH. AFTER YOU RECEIVED THE SEXUAL
18 ASSAULT PROTOCOL KIT.

19 A I THINK WE WENT BACK TO THE POLICE DEPARTMENT AT THAT TIME.

20 Q OKAY. NOW, THEN THAT MORNING, APPROXIMATELY 8:00 THAT
21 MORNING, DID YOU HAVE AN OPPORTUNITY TO REVIEW YOUR NOTES AS
22 TO THE INFORMATION THAT YOU HAD RECEIVED FROM SEVERAL
23 OFFICERS RELATIVE TO THIS CASE?

24 A YES, SIR, I DID.

25 Q DID THAT INCLUDE THE INFORMATION FROM OFFICER CAROL TOWNSEND?

1 A YES, SIR, IT DID.

2 Q SANGETTA COAXUM?

3 A YES, SIR.

4 Q RON GIBSON?

5 A YES, SIR.

6 Q AND RANDY BLACKWELL'S DOG TRACKING INFORMATION?

7 A YES, SIR.

8 Q ARMED WITH THOSE FOUR PIECES OF INFORMATION, DID YOU REQUEST
9 A PHOTO SPREAD IN THIS CASE AT THAT TIME?

10 A YES, SIR, WE DID.

11 Q AND WHOSE PICTURE DID YOU REQUEST TO MAKE SURE WAS IN THE
12 PHOTO SPREAD? WHOSE PICTURE?

13 A KENNETH JAMES.

14 Q I HAND YOU STATE'S EXHIBIT NO. 2. DO YOU RECOGNIZE THAT
15 PARTICULAR DOCUMENT, INVESTIGATOR THOMAS?

16 A YES, SIR.

17 Q AND WHAT IS THAT?

18 A THIS WAS THE PHOTO SPREAD THAT WAS GIVEN TO US.

19 Q AND IS THIS THE EXACT SPREAD THAT YOU HAD?

20 A YES, SIR.

21 Q AND YOU OBTAINED POSSESSION OF THIS WHAT DATE AND WHAT TIME
22 APPROXIMATELY?

23 A AROUND 8 OR 9:00 THAT MORNING ON THE 29TH.

24 Q OKAY. THE SAME DAY. IS THAT CORRECT?

25 A YES, SIR.

1 Q NOW, IS THIS IN THE SAME CONDITION AS IT WAS WHEN YOU
2 RECEIVED IT?

3 A YES, SIR.

4 Q AND LATER ON THAT MORNING DID YOU HAVE AN OPPORTUNITY TO COME
5 INTO CONTACT WITH MS. *victim*?

6 A YES, SIR, WE DID.

7 Q AND WHERE DID YOU COME INTO CONTACT WITH HER?

8 A SHE CAME TO THE COLUMBIA POLICE DEPARTMENT.

9 Q AND WHAT WAS THE PURPOSE OF *victim* COMING TO THE POLICE
10 DEPARTMENT?

11 A SO WE COULD GET A FORMAL STATEMENT FROM HER.

12 Q NOW, AT THAT TIME, INVESTIGATOR THOMAS, TELL US, PLEASE, WHAT
13 INFORMATION DID YOU RELAY TO HER ABOUT THE INVESTIGATION UP
14 TO THAT POINT?

15 A I DON'T EVEN RELATE ANY INFORMATION TO HER. WE WERE TRYING
16 TO GET INFORMATION FROM HER, BUT WE DIDN'T GIVE HER ANY
17 INFORMATION.

18 Q AND WHY IS THAT? WHY DON'T YOU TELL A PARTICULAR WITNESS OR
19 A VICTIM OF CRIME ALL THE INFORMATION THAT YOU HAVE GATHERED
20 AT THAT POINT?

21 A WE JUST -- WE JUST DON'T DO THAT. WE DON'T -- JUST DON'T IT.

22 Q AND DID YOU TAKE A STATEMENT FROM HER?

23 A YES, SIR, I DID.

24 Q DID YOU ALSO HAVE AN OPPORTUNITY TO SHOW HER STATE'S EXHIBIT
25 NO. 2?

1 A YES, SIR.

2 Q AND TELL US, PLEASE, EXPLAIN TO THE JURY HOW THAT WENT ABOUT,
3 WHAT PROCEDURE YOU USED TO DO A PHOTO LINE-UP WITH *victim*
4 ?

5 A AFTER WE OBTAINED HER STATEMENT AND SHE WAS DONE, I BELIEVE
6 WE TOLD HER THAT WE HAD SOMETHING THAT WE WANTED HER TO LOOK
7 AT AND JUST TOLD HER TO JUST RELAX AND ASKED HER TO LOOK AT
8 THIS PHOTO SPREAD.

9 Q DID YOU TELL HER YOU HAD A SUSPECT AT THAT TIME?

10 A NO, SIR, WE DID NOT.

11 Q DID YOU GIVE HER ANY NAMES?

12 A NO, SIR.

13 Q AND WHY DON'T YOU DO -- WHY AS AN INVESTIGATOR, TRAINED
14 INVESTIGATOR, WHY DON'T YOU DO THAT? WHY DO YOU NOT DO THAT?

15 A BECAUSE THE SUSPECT MAY NOT BE IN THAT PARTICULAR PHOTO
16 SPREAD.

17 Q NOW, STATE'S EXHIBIT NO. 2 WHICH IS IN EVIDENCE, I NOTICE
18 THAT THERE'S NO NAMES, HEIGHT, WEIGHT, DATE OF BIRTH. IS
19 THAT CORRECT?

20 A THAT'S CORRECT.

21 Q WERE THERE ANY NAMES, HEIGHTS, WEIGHTS, DATES OF BIRTH ON
22 STATE'S EXHIBIT 2 WHEN IT WAS SHOWN TO *victim* THE
23 MORNING OF MAY THE 29TH, 1996?

24 A NO, SIR.

25 Q IS THIS PHOTO SPREAD, AS I HOLD IT BEFORE THIS JURY, IS IT IN

1 EXACTLY THE SAME CONDITION AS IT WAS WHEN *victim* LOOKED
2 AT IT ON THE MORNING OF MAY 29TH, 1996?

3 A YES, SIR, IT IS.

4 Q DID YOU GIVE HER AS MUCH TIME AS POSSIBLE?

5 A YES, SIR.

6 Q AND THIS WAS WITHIN HOW MANY HOURS APPROXIMATELY OF THE
7 INCIDENT?

8 A THIS WAS AROUND 11:00, 12:00. AND SO WE'RE TALKING PROBABLY
9 11 OR 12 HOURS AFTER THE INCIDENT.

10 Q AND AFTER YOU GAVE HER AS MUCH TIME TO LOOK AT IT AS
11 POSSIBLE, DID SHE IDENTIFY ONE OF HER ASSAILANTS?

12 A YES, SIR, SHE DID.

13 Q WHO DID SHE PICK OUT?

14 A SHE PICKED OUT PHOTO NUMBER 6.

15 Q TELL THE JURY WHO PHOTOGRAPH NUMBER 6 IS?

16 A THAT IS KENNETH JAMES.

17 Q IS THE PERSON AS YOU IDENTIFIED AS KENNETH JAMES IN PHOTO
18 NUMBER 6 IN THE COURTROOM HERE TODAY?

19 A YES, SIR, HE IS.

20 Q AND WOULD YOU IDENTIFY HIM, PLEASE?

21 A HE'S SITTING AT THE MIDDLE TABLE NEXT TO MR. STRICKLER AND
22 MR. SNEED.

23 Q TO MEMORIALIZE THAT, DID YOU HAVE HER SIGN AN AFFIDAVIT?

24 A YES, SIR, WE DID.

25 Q THAT AFTERNOON, ARMED WITH THE INFORMATION FROM SANGETTA

1 COAXUM AND OFFICER TOWNSEND, DID YOU SPECIFICALLY GO LOOK AT
2 THIS TAPE BETWEEN THE HOURS OF 1:00 AND 1:23? DID YOU GO
3 LOOK TO LOOK AT THAT TIME, HOURS OF 1:00 TO 1:23 ON THIS
4 TAPE?

5 A ON THE TAPE?

6 Q YES, SIR.

7 A YES, SIR.

8 MR. GASSER: OKAY. WE'D LIKE TO MARK SOME PHOTOGRAPHS
9 FOR IDENTIFICATION PURPOSES ONLY AT THIS TIME.

10 THE COURT: ALL RIGHT, SIR.

11 (STATE'S EXHIBIT NO. 33, THREE PHOTOGRAPHS, MARKED FOR
12 IDENTIFICATION ONLY)

13 COURT REPORTER: STATE'S EXHIBIT 33.

14 THE COURT: 33 ONLY. OKAY.

15 Q (BY MR. GASSER) AS A RESULT OF LOOKING AT STATE'S EXHIBIT
16 NO. 30 ON THE AFTERNOON OF MAY THE 29TH, 1996, AND I SHOW YOU
17 WHAT'S BEEN MARKED STATE'S EXHIBIT NO. 33, DID YOU TAKE THAT
18 TAPE TO THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION TO GET
19 PHOTOGRAPHS OF SPECIFIC SHOTS ON THE VIDEO?

20 A YES, SIR, WE DID.

21 Q AND DOES STATE'S EXHIBIT 33 THAT'S MARKED FOR IDENTIFICATION,
22 IS STATE'S EXHIBIT 20 -- THOSE ARE THE ONES THAT YOU GOT BACK
23 IN 1996. IS THAT CORRECT?

24 A YES, SIR.

25 Q STATE'S EXHIBITS 27, 28 AND 29, ARE THESE JUST BLOW-UPS OF

1 STATE'S EXHIBIT 33?

2 A YES, SIR, THEY ARE.

3 Q NOW, KENNETH JAMES, AT THAT TIME ON MAY THE 29TH, WAS THAT
4 THE ONLY NAME THAT YOU HAD, INVESTIGATOR THOMAS?

5 A YES, SIR.

6 Q LATER ON THAT AFTERNOON, WHERE DID YOU GO AND WHAT ADDRESS
7 AND WHAT RESIDENCE DID YOU GO TO AND FOR WHAT PURPOSE LATER
8 ON THAT AFTERNOON ON MAY THE 29TH?

9 A WE WENT TO MR. JAMES'S ADDRESS ON ORR STREET, 2528, AND WE
10 WENT THERE FOR THE PURPOSE OF GETTING A DESCRIPTION OF THE
11 HOUSE FOR OUR SEARCH WARRANT.

12 Q AND DID YOU ACTUALLY TAKE A DETAILED DESCRIPTION OF THE HOUSE
13 AT 2528 ORR STREET?

14 A YES, SIR, WE DID.

15 Q NOW, THE NEXT MORNING, ON MAY THE 30TH, WHICH WOULD HAVE BEEN
16 THURSDAY MORNING, THAT MORNING DID YOU OBTAIN A SEARCH
17 WARRANT FOR THE RESIDENCE OF 2528 ORR STREET FROM A
18 MINISTERIAL RECORDER?

19 A YES, SIR, WE DID.

20 Q AND LATER ON THAT MORNING DID YOU HAVE AN OPPORTUNITY TO
21 EXECUTE THAT SEARCH WARRANT?

22 THE COURT: YES, SIR.

23 MR. STRICKLER: MAY WE APPROACH? EXCUSE ME.

24 THE COURT: CERTAINLY.

25 MR. STRICKLER: I HATE TO INTERRUPT.

1 THE COURT: THAT'S OKAY.

2 (WHEREUPON, A BENCH CONFERENCE IS HAD)

3 THE COURT: ALL RIGHT, FOLKS. I'M GOING TO ASK YOU,
4 PLEASE, THIS IS -- FROM TIME TO TIME THESE LAWYERS CALL TO MY
5 ATTENTION CERTAIN FAILINGS ON MY PART. AND YET ANOTHER OF
6 THOSE HAS LED TO SOMETHING THAT I HAVE TO SEND YOU OUT OF THE
7 COURTROOM. BRIEFLY GO TO THE JURY ROOM. DON'T DISCUSS THE
8 CASE AMONG YOURSELVES AND WE'LL BE WITH YOU SHORTLY.

9 (JURY OUT AT 10:20 A.M.)

10 THE COURT: MR. STRICKLER, THANKS FOR CALLING THAT TO MY
11 ATTENTION. YOU HAD CORRECTLY POINTED OUT AT THE BENCH
12 CONFERENCE THAT I HAVE NOT YET RULED AS TO THE ADMISSIBILITY
13 OF THE BULLETS AND THE CLEANING KIT FOUND AT THE RESIDENCE AT
14 2528 ORR STREET. AND I HAVE CONCLUDED THAT I WILL NOT ALLOW
15 THOSE TO COME IN OWING TO WHAT I FEEL TO BE A RATHER TENUOUS
16 NEXUS BETWEEN THE REVOLVER PURPORTEDLY HELD BY ONE OF THE
17 ASSAILANTS; I.E., ROBERT JAMES, AND THOSE ITEMS FOUND IN THE
18 HOUSE. I NOTE THAT THEY WERE BOTH .38 AND .32 PROJECTILES.
19 AND I'M SIMPLY NOT COMFORTABLE WITH ALLOWING IT IN.

20 THE OTHER ITEMS THAT WERE FOUND THERE; I.E., THE ROBERT
21 JAMES ITEMS AND THE KENNETH JAMES ITEMS, THE BILL OF COURSE
22 WILL COME IN. AND THOSE ARE THE ONLY OTHER THINGS SOUGHT TO
23 BE INTRODUCED. DOES ANYBODY NEED A LITTLE BIT OF A BREAK
24 RIGHT NOW, OR ARE YOU READY TO CONTINUE?

25 MR. GASSER: JUST SO I'M CLEAR ON THIS. I'M ASSUMING

1 THAT BASED ON YOUR RULING BOTH COUNSEL WOULD BE BARRED IN
2 CLOSING ARGUMENT FROM MENTIONING THE FACT THAT THE STATE DID
3 NOT — THEY SAID THERE WAS A GUN THAT WAS USED AND THEY RAN
4 BACK TO THE HOUSE AND THEY FOUND NO EVIDENCE OF ANY — OF
5 COURSE WE DIDN'T FIND THE GUN. I'M GOING TO GET THAT OUT,
6 THAT NO GUN WAS FOUND, BUT THAT WE DIDN'T FIND ANY EVIDENCE
7 OF AMMUNITION OR THAT SORT OF THING. I'M AT —

8 THE COURT: I WOULDN'T THINK THEY'D WANT TO TOUCH THAT.
9 OBVIOUSLY THEY'RE GOING TO SAY, WELL, YOU DIDN'T FIND A GUN.

10 MR. GASSER: RIGHT.

11 THE COURT: BUT I DON'T KNOW. FELLOWS, WHAT DO YOU
12 THINK? I WOULDN'T THINK YOU WANT TO TOUCH THAT.

13 MR. STRICKLER: I THINK THAT I WILL NOT TOUCH THAT
14 MYSELF.

15 MR. SHUPPER: WE'RE NOT GOING TO SAY ANYTHING ABOUT
16 BULLETS, YOUR HONOR.

17 THE COURT: I DON'T WANT TO MAKE YOUR STRATEGY FOR YOU,
18 BUT I THINK THAT'S FAIRLY BASIC. OKAY. ALL RIGHT. WE GOT
19 ANYTHING ELSE WE NEED TO MARK OR ANYTHING BEFORE THEY COME
20 BACK IN?

21 MR. GASSER: WE CAN DO THAT RIGHT NOW.

22 THE COURT: WHY DON'T YOU DO THAT. LET'S TAKE A MINUTE
23 OR TWO. I'LL BE BACK IN IN ABOUT TWO OR THREE MINUTES.
24 WE'LL GO FROM THERE.

25 (WHEREUPON, A BREAK WAS TAKEN)

1 (STATE'S EXHIBIT NO. 34, CALLING CARD, MARKED FOR
2 IDENTIFICATION ONLY)

3 (STATE'S EXHIBIT NO. 35, PHONE BILL, MARKED FOR
4 IDENTIFICATION ONLY)

5 (STATE'S EXHIBIT NO. 36, PAPERS BELONGING TO ROBERT JAMES,
6 MARKED FOR IDENTIFICATION ONLY)

7 THE COURT: YOU GOT EVERYTHING MARKED?

8 COURT REPORTER: YES, SIR. I THINK SO.

9 THE COURT: OKAY. PLEASE BRING THE JURY IN, MR. BARROW.
10 (JURY IN AT 10:35 A.M.)

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

12 THE COURT: THANK YOU, MR. BARROW. AND, THANK YOU,
13 FOLKS, FOR YOUR PATIENCE. WE'RE READY TO RESUME. IF YOU
14 WOULD, PLEASE, MR. GASSER.

15 MR. GASSER: THANK YOU, YOUR HONOR.

16 DIRECT EXAMINATION RESUMED BY MR. GASSER:

17 Q I BELIEVE WHEN WE LEFT OFF PRIOR TO OUR BREAK, INVESTIGATOR
18 THOMAS, THAT SOMETIME APPROXIMATELY 11:00 IN THE MORNING ON
19 THURSDAY MAY THE 30TH YOU AND SEVERAL OFFICERS HAD AN
20 OPPORTUNITY TO EXECUTE THE SEARCH WARRANT AT 2528 ORR STREET.
21 IS THAT CORRECT?

22 A YES, SIR, WE DID.

23 Q NOW, WAS ANYONE HOME WHEN YOU EXECUTED THAT SEARCH WARRANT?

24 A NO, SIR, THEY WERE NOT.

25 Q AND SO HOW DID YOU -- ONCE ARMED WITH THAT COURT ORDER, HOW

1 DID YOU AFFECT ENTRY?

2 A WE BROKE IN THE BACK DOOR.

3 Q AND IS THAT PROTOCOL BY GOING IN ONCE YOU'RE ARMED WITH A
4 COURT ORDER, IS THAT SOMETHING THAT YOU DO ON A ROUTINE
5 BASIS?

6 A YES, SIR.

7 Q AND WAS ONE OF THE THINGS THAT YOU WERE LOOKING FOR A
8 REVOLVER?

9 A YES, SIR, IT WAS.

10 Q AND DID YOU FIND A REVOLVER ANYWHERE OR A HANDGUN ANYWHERE IN
11 THE RESIDENCE OF 2528 ORR STREET?

12 A NO, SIR, WE DID NOT.

13 Q I SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT NO. 34 AND
14 STATE'S EXHIBIT NO. 35 AND ASK YOU IF YOU RECOGNIZE THOSE
15 ITEMS?

16 A YES, SIR, I DO.

17 Q UPON SEARCHING ONE OF THE BEDROOMS IN THE RESIDENCE OF 2528
18 ORR STREET, DID YOU COME ACROSS THOSE ITEMS?

19 A YES, SIR, WE DID.

20 Q AND YOU WERE PRESENT; IS THAT CORRECT, DURING THE SEARCH?

21 A YES, SIR, I WAS.

22 MR. GASSER: YOUR HONOR, WE'D MOVE STATE'S EXHIBITS 34
23 AND 35 INTO EVIDENCE AT THIS TIME.

24 THE COURT: SUBJECT ONLY TO PREVIOUS OBJECTIONS RAISED
25 BY EACH DEFENDANT, THOSE ITEMS WILL BE RECEIVED IN EVIDENCE.

1 AND THEY ARE 34 AND 35.

2 MR. GASSER: YES, SIR.

3 (STATE'S EXHIBIT NO. 34, CALLING CARD, RECEIVED IN EVIDENCE)

4 (STATE'S EXHIBIT NO. 35, PHONE BILL, RECEIVED IN EVIDENCE)

5 Q (BY MR. GASSER) WHAT IS STATE'S EXHIBIT NO. 34, INVESTIGATOR
6 THOMAS?

7 A IT'S IS A BELLSOUTH CALLING CARD UNDER THE NAME OF KENNETH
8 JAMES.

9 Q WHAT IS STATE'S EXHIBIT 35?

10 A IT IS A TELEPHONE BILL TO 2528 ORR STREET IN THE NAME OF
11 KENNETH JAMES.

12 Q SO THE BILL WAS SENT TO KENNETH JAMES AT 2528 ORR STREET,
13 FOREST ACRES, SOUTH CAROLINA. IS THAT CORRECT?

14 A YES, SIR.

15 Q AND THE DATE OF THE PHONE BILL?

16 A IT WOULD HAVE BEEN MAY 11TH OF 1996.

17 Q NOW, DID YOU JUST SEARCH THAT ONE ROOM, OR DID YOU SEARCH
18 EVERY ROOM IN THE HOUSE?

19 A WE SEARCHED THE WHOLE HOUSE.

20 Q OKAY. AND WAS THERE MORE THAN ONE BEDROOM?

21 A YES, SIR, THERE WERE.

22 Q UPON GOING INTO THE OTHER BEDROOM, I SHOW YOU WHAT'S BEEN
23 MARKED STATE'S EXHIBIT 36. DO YOU RECOGNIZE THOSE DOCUMENTS?

24 A YES, SIR, I DO.

25 Q GO AHEAD AND YOU CAN LOOK IN THE ENVELOPE AND MAKE SURE.

1 A YES, SIR.

2 Q WERE THESE SEIZED AT THAT TIME?

3 A YES, SIR. THEY WERE ALSO SEIZED.

4 Q KEPT IN THE PROPERTY OF THE COLUMBIA POLICE DEPARTMENT?

5 A YES, SIR.

6 MR. GASSER: YOUR HONOR, WE WOULD MOVE AT THIS TIME
7 STATE'S EXHIBIT NO. 36 INTO EVIDENCE.

8 THE COURT: AGAIN, SUBJECT TO THE PREVIOUS OBJECTIONS
9 URGED.

10 (STATE'S EXHIBIT NO. 36, PAPERS BELONGING TO ROBERT JAMES,
11 RECEIVED IN EVIDENCE)

12 THE COURT: AND LET ME EXPLAIN SOMETHING TO YOU, FOLKS.
13 WHEN I TALK ABOUT PREVIOUS OBJECTIONS, YOU ALL AREN'T TO
14 INFER ANYTHING FROM THAT OTHER THAN WE'RE TALKING ABOUT
15 SOMETHING WITHIN THE FRAMEWORK OF THE RULES. IN OTHER WORDS,
16 THE FACT THAT SOMEBODY OBJECTS TO SOMETHING SHOULD NOT BE
17 TAKEN BY YOU AS CREATING OTHER THAN THAT IT IS THAT PERSON'S
18 JUDGMENT THAT IT IS AGAINST THE RULES. OKAY. AND THAT'S ALL
19 IT IS. SO I'VE ALLOWED THESE TO COME IN IN MY FUNCTION AS
20 THE FINAL AUTHORITY OF THE LAW IN THIS CASE. SO PLEASE
21 CONTINUE, MR. GASSER.

22 MR. GASSER: THANK YOU, YOUR HONOR.

23 Q (BY MR. GASSER) STATE'S EXHIBIT 36 ARE PAPERS BELONGING TO
24 HIM, OR AT LEAST ADDRESSED TO WHOM?

25 A ROBERT JAMES

1 Q DID YOU LEAVE A COPY OF THAT SEARCH WARRANT PURSUANT TO THE
2 LAW, INVESTIGATOR THOMAS?

3 A YES, SIR, WE DID.

4 Q AND WHERE DID YOU LEAVE A COPY OF THAT SEARCH WARRANT?

5 A ON THE KITCHEN COUNTER.

6 Q THE NEXT MORNING, ON MAY THE 31ST, 1996, DID YOU ATTEMPT OR
7 DID YOU HAVE AN OPPORTUNITY TO SHOW STATE'S EXHIBIT NO. 2, A
8 PHOTO LINE-UP -- YOU'VE DESCRIBED THE ONE THAT YOU SHOWED
9 *victim* ON MORNING OF MAY THE 29TH -- DID YOU HAVE AN
10 OPPORTUNITY TO SHOW THIS SAME LINE-UP TO MR. BULL?

11 A YES, SIR, WE DID.

12 Q AND WAS HE ABLE TO IDENTIFY ANYONE?

13 A NO, SIR, HE WAS NOT.

14 Q DID YOU RECORD THAT IN YOUR NOTES AS WELL?

15 A YES, SIR, WE DID.

16 Q AND LATER ON THAT DAY, ON MAY THE 31ST, 1996, DID YOU HAVE AN
17 OPPORTUNITY TO RECEIVE THE INFORMATION FROM OFFICER PICCIONE
18 WHO TESTIFIED YESTERDAY AFTERNOON IN FRONT OF THIS JURY AND
19 MS. BOWMAN CONCERNING THE PURSES? DID YOU RECEIVE THAT
20 INFORMATION?

21 A YES, SIR, WE DID.

22 Q AND AFTER RECEIVING THAT INFORMATION, WHERE DID YOU GO AND
23 WHAT WERE YOU LOOKING FOR TO LOCATE?

24 A WE WENT TO THE PROPERTY ROOM OF THE COLUMBIA POLICE
25 DEPARTMENT.

1 Q AND WHAT DID YOU FIND THERE?

2 A THE PURSES BELONGING TO victim .

3 Q AND DID YOU HAVE AN OPPORTUNITY TO THEN SHOW THOSE PURSES TO
4 victim ?

5 A YES, SIR, WE DID.

6 Q AND DID SHE IDENTIFY THEM?

7 A YES, SIR.

8 Q AND WERE THEY AT THAT POINT IN TIME OF ANY EVIDENTIARY VALUE
9 IN THIS CASE?

10 A NO, SIR.

11 Q SO WHAT DID YOU DO WITH THEM?

12 A WE RELEASED THEM.

13 Q TO WHOM?

14 A TO victim .

15 Q AND, FINALLY, LATE THAT AFTERNOON ON MAY THE 31ST, WHICH
16 WOULD HAVE BEEN FRIDAY I BELIEVE, DID YOU HAVE AN OPPORTUNITY
17 TO TAKE STATE'S EXHIBIT NO. 32 SOMEWHERE AND THE CONTENTS OF
18 STATE'S EXHIBIT 32 SOMEWHERE?

19 A YES, SIR.

20 Q AND TELL THE JURY WHERE YOU TOOK THAT PARTICULAR ITEM, THAT
21 BOX?

22 A THAT BOX WAS TAKEN TO SLED HEADQUARTERS TO BE LOGGED INTO
23 THEIR EVIDENCE.

24 Q NOW, IN YOUR NINE YEARS AS A MAJOR CRIMES INVESTIGATOR, ARE
25 YOU FAMILIAR WITH THE PRACTICE AND PROCEDURES THAT SLED

1 REQUIRES OF MAJOR CRIME INVESTIGATORS WHEN BRINGING A
2 CRIMINAL SEXUAL ASSAULT PROTOCOL KIT TO SLED?

3 A YES, SIR.

4 Q IS THIS THE FIRST TIME THAT YOU'VE EVER HAD TO DO THAT IN
5 THIS CASE?

6 A NO.

7 Q SO ON MAY THE 31ST, 1996, WHEN YOU TOOK SOME CONTENTS OF
8 STATE'S EXHIBIT 32 TO SLED, WHERE IN SLED -- WHERE IN SLED
9 DID YOU GO?

10 A WE GO INTO THE BOTTOM FLOOR. THERE'S THE INTAKE AREA THERE
11 FOR INCOMING EVIDENCE.

12 Q WAS THAT BOX STILL SEALED, THE EVIDENCE SEALS ON THEM?

13 A YES, SIR, IT WAS.

14 Q AND WHO ACTUALLY BREAKS THE SEAL AT THAT TIME?

15 A ONE OF THE LADIES THAT WORK IN THE RECEIVING EVIDENCE AT
16 SLED.

17 Q AND ARE YOU PRESENT WHEN THAT OCCURS?

18 A YES, SIR.

19 Q SO WHEN THE LADY BROKE THE EVIDENCE SEAL, STATE'S EXHIBIT 32,
20 THE BOX WAS OPENED, WHAT DID YOU DO PERSONALLY? WHAT DO YOU
21 DO WITH THE VAGINAL SWABS, THE VAGINAL SMEARS, THE KNOWN
22 BLOOD OF *victim* AND THE FINGERNAIL SCRAPINGS? WHAT DID
23 YOU DO WITH THOSE ITEMS, INVESTIGATOR THOMAS, IN THE PRESENCE
24 OF THIS EVIDENCE CUSTODIAN AT SLED?

25 A WE TAKE THAT EVIDENCE AND PLACE IT IN A LOCKED REFRIGERATOR

1 UNIT FOR THEIR LAB PURPOSES.

2 Q DO YOU PLACE IT IN SOMETHING ELSE?

3 A IT'S PLACED IN A PLASTIC BAG THAT'S HEAT SEALED.

4 Q IS THAT DONE IN YOUR PRESENCE?

5 A YES, SIR.

6 Q IS IT LABELED *victim* ?

7 A IT IS LABELED WITH HER NAME AND IT'S LABELED I BELIEVE WITH
8 THEIR INCOMING CASE NUMBER ALONG WITH OUR CASE NUMBER. AND
9 WE HAVE TO INITIAL IT AND DATE IT ON THE PART THAT IS SEALED
10 WITH THE HEAT.

11 Q NOW, THIS WAS ON MAY 31ST, 1996. IS THAT CORRECT?

12 A YES, SIR.

13 Q NOW, ARE YOU FAMILIAR WITH SLED'S POLICY THAT WITHOUT
14 RECEIVING A SUSPECT SAMPLE, IN THIS CASE BLOOD, THAT THE
15 EVIDENCE IS THEN RETURNED TO THE SUBMITTING AGENCY? ARE YOU
16 FAMILIAR WITH THAT POLICY?

17 A YES, SIR.

18 Q NOW, ARE YOU AWARE THAT KENNETH JAMES AND ROBERT JAMES WERE
19 NOT ARRESTED UNTIL DECEMBER OF 1996? IS THAT CORRECT?

20 A YES, SIR.

21 Q AND ARE YOU AWARE THAT THE LEGAL PROCEDURE THAT IS REQUIRED
22 BEFORE THE STATE CAN OBTAIN BLOOD SAMPLES FROM DEFENDANTS —
23 ARE YOU AWARE THAT'S PURSUANT TO A CIRCUIT COURT JUDGE'S
24 ORDER?

25 A YES, SIR.

1 Q SO WAS THE ITEMS -- BASED ON YOUR REVIEW OF THE FILE, WERE
2 THE ITEMS RETURNED BACK TO THE COLUMBIA POLICE DEPARTMENT?

3 A YES, SIR, THEY WERE.

4 Q AND THEN DID YOU ON MAY THE 13TH, 1997, HAVE AN OPPORTUNITY
5 TO GO TO THE COLUMBIA POLICE DEPARTMENT'S PROPERTY ROOM AND
6 RETURN THE VAGINAL SWABS, SMEARS, FINGERNAIL SCRAPINGS AND
7 victim's BLOOD? DID YOU SEIZE THOSE AND TAKE THEM BACK
8 TO SLED?

9 A YES, SIR, WE DID.

10 Q WERE THEY STILL SEALED?

11 A YES, SIR.

12 Q AND WHEN YOU RETURNED THEM TO SLED WERE THEY GIVEN A NEW
13 NUMBER?

14 A THEY ARE GIVEN A NEW INCOMING NUMBER FROM SLED. IT'S OLD
15 EVIDENCE BUT IT'S GOT A NEW NUMBER ALONG WITH AN OLD NUMBER.

16 Q AND AT ANY TIME YOU WERE HANDLING THIS EVIDENCE, WERE THE
17 SEALS EVER BROKEN? OR DID THE IDENTIFICATION OF THIS CASE
18 AND victim's INFORMATION, WAS IT ALWAYS MAINTAINED?

19 A YES, SIR, IT WAS.

20 Q ALSO ON MAY THE 12TH OF 1997, DID YOU HAVE AN OPPORTUNITY TO
21 TAKE FOR THE FIRST TIME WHAT'S BEEN MARKED STATE'S EXHIBIT
22 NO. 25, THE TWO -- WHAT'S BEEN IDENTIFIED AS THE TWO USED
23 CONDOMS FROM THE CRIME SCENE, DID YOU TAKE THOSE OUT TO SLED
24 AS WELL?

25 A YES, SIR, I DID.

1 Q DID YOU GO THROUGH THE SAME HEAT-SEALED AND LABEL AND
2 IDENTIFICATION PROCEDURE THAT DO YOU HAVE DESCRIBED TO THIS
3 JURY?

4 A YES, SIR.

5 Q NOW, ON JUNE THE 18TH OF 1996, APPROXIMATELY THREE WEEKS
6 AFTER THIS INCIDENT, DID YOU HAVE AN OPPORTUNITY AGAIN TO
7 MEET WITH *victim* ?

8 A YES, SIR, WE DID.

9 Q DID SHE COME DOWN TO THE POLICE DEPARTMENT AT YOUR REQUEST
10 THAT DAY?

11 A YES, SIR.

12 Q AND I SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT NO. 4 IN
13 EVIDENCE. DO YOU RECOGNIZE THAT PHOTO SPREAD, INVESTIGATOR
14 THOMAS?

15 A YES, SIR, I DO.

16 Q AND TELL US, PLEASE, WHAT YOU DID WITH THAT PARTICULAR
17 EXHIBIT IN RELATIONSHIP TO *victim* THAT DAY?

18 A BASICALLY THE SAME THING AS THE FIRST ONE. WE HAD *victim*
19 SIT DOWN AND I TOLD HER I HAD SOMETHING I WANTED HER TO LOOK
20 AT AND I GAVE HER THE FOLDER AND SHE WENT THROUGH THE SAME
21 PROCESS AS BEFORE.

22 Q AND I SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT NO. 5 FOR
23 IDENTIFICATION. DO YOU RECOGNIZE THAT DOCUMENT?

24 A YES, SIR, I DO.

25 Q DID YOU HAVE HER SIGN AN AFFIDAVIT AFTER THIS PROCESS WAS

1 DONE?

2 A YES, SIR, I DID.

3 Q WHEN YOU SHOWED HER THIS LINE-UP, STATE'S EXHIBIT NO. 4 ON
4 JUNE THE 18TH, DID YOU GIVE HER AS MUCH TIME AGAIN TO LOOK AT
5 IT SINCE IT'S BEEN THREE WEEKS SINCE THE INCIDENT?

6 A YES, SIR.

7 Q WERE YOU PRESENT WHEN SHE WAS LOOKING AT THIS PHOTO SPREAD?

8 A YES, SIR.

9 Q AND WAS SHE ABLE TO IDENTIFY ANYONE?

10 A YES, SIR, SHE WAS. SHE IDENTIFIED PHOTO NUMBER 2 WHICH WAS
11 ROBERT JAMES.

12 Q THIS PHOTOGRAPH RIGHT HERE?

13 A YES, SIR.

14 Q AND THAT PHOTOGRAPH NUMBER 2 IS A PICTURE OF WHOM?

15 A OF ROBERT JAMES.

16 Q AND THE SAME ROBERT JAMES THAT'S SEATED AT THE FAR END OF THE
17 TABLE?

18 A YES, SIR, IT IS.

19 Q NOW, THIS STATE'S EXHIBIT NO. 4, IS THIS IN THE EXACT SAME
20 CONDITION AS IT WAS, INVESTIGATOR THOMAS, WHEN YOU SHOWED IT
21 TO *victim* ON JUNE 18TH, 1996?

22 A YES, SIR, IT IS.

23 Q SO WERE THERE ANY NAMES OR HEIGHTS OR ADDRESSES OR WEIGHTS OR
24 AGES?

25 A NO, SIR.

1 Q DID YOU TELL HER ANY OF THE NAMES OF THE INDIVIDUALS HERE?

2 A NO, SIR.

3 Q DID YOU SAY -- WHAT, IF ANYTHING -- DID YOU SAY THAT ONE OF
4 THE PEOPLE IN HERE WAS THE BROTHER OF THE PERSON THAT SHE
5 PICKED OUT BEFORE? DID YOU EVER MENTION ANY OF THAT?

6 A NO, SIR.

7 Q SO DID YOU OR DID ANYONE IN YOUR PRESENCE SUGGEST ANYBODY TO
8 PICK OUT TO victim?

9 A NO, SIR.

10 Q WHEN YOU SHOWED HER STATE'S EXHIBIT NO. 2 ON MAY THE 29TH,
11 WAS ANY SUGGESTIONS MADE TO HER AT THAT TIME AS TO WHO TO
12 PICK OUT?

13 A NO, SIR.

14 Q SO BETWEEN MAY THE 29TH, 1996, AND JUNE 18TH, 1996, HOW MANY
15 PHOTOGRAPHS WERE SHOWN? HOW MANY PICTURES WERE SHOWN TO
16 victim? A TOTAL OF HOW MANY?

17 A TWELVE.

18 Q AND WHY -- IN STATE'S EXHIBIT NO. 2, WHY IS THE HAIRSTYLE OF
19 ALL SIX GENTLEMEN -- WHY IS IT THE WAY THEY WERE -- IN OTHER
20 WORDS, WHY DIDN'T YOU PUT SOMEBODY IN THERE WITH A SHAVED
21 HEAD?

22 A BECAUSE WHEN A LINE-UP IS COMPOSED YOU TRY TO GET PEOPLE OF
23 APPROXIMATELY THE SAME AGE, SAME HAIRSTYLE, AS CLOSE AS WE
24 CAN ON PHYSICAL FEATURES.

25 Q WAS THAT DONE IN BOTH STATE'S EXHIBIT NO. 2 AND STATE'S

1 EXHIBIT NO. 4?

2 A YES, SIR, IT WAS.

3 Q WAS A THIRD PHOTO LINE-UP SHOWN TO HER, THE SECOND THAT DAY,
4 BUT THE TOTAL -- AFTER STATE'S EXHIBIT 2 ON THE 29TH OF MAY
5 AND AFTER STATE'S EXHIBIT 4 ON THE 18TH OF JUNE, DID YOU SHOW
6 HER ANOTHER PHOTO LINE-UP ON THE 18TH OF JUNE?

7 A YES, SIR.

8 Q OKAY. WAS SHE ABLE TO IDENTIFY ANYONE IN THAT PHOTO LINE-UP?

9 A NO, SIR, SHE WAS NOT.

10 Q NOW, WAS KENNETH JAMES OR ROBERT JAMES, THEIR PICTURES, THEY
11 WEREN'T IN THAT THIRD PHOTO LINE-UP, WERE THEY?

12 A NO, SIR.

13 Q AND THEN SOME SEVEN MONTHS LATER, IN FEBRUARY OF 1997, DID
14 YOU HAVE AN OPPORTUNITY TO GO TO HER HOME AND SHOW HER TWO
15 MORE PHOTO LINEUPS?

16 A YES, SIR, I DID.

17 Q WAS SHE ABLE TO IDENTIFY ANY SUSPECTS IN THOSE TWO OTHER
18 PHOTO LINEUPS?

19 A NO, SIR, SHE WAS NOT.

20 Q AND WAS KENNETH JAMES'S OR ROBERT JAMES'S PHOTOGRAPH IN
21 EITHER OF THOSE TWO PHOTO LINEUPS?

22 A NO, SIR, IT WAS NOT.

23 Q INVESTIGATOR THOMAS, AS PART OF THE -- HOW LONG DID YOU
24 INDICATE THAT YOU WERE WITH THE COLUMBIA POLICE DEPARTMENT?

25 A TWENTY-FIVE YEARS.

1 Q AND ARE YOU FAMILIAR WITH THE COMPUTERIZED RECORDS SYSTEM OF
2 THE COLUMBIA POLICE DEPARTMENT?

3 A YES, SIR, I AM.

4 Q IS THAT A TOOL THAT IS USED BY THE MAJOR CRIMES INVESTIGATORS
5 OR BY POLICE OFFICERS IN GENERAL TO ASSIST YOU IN FINDING OUT
6 INFORMATION ABOUT CITIZENS IN THE CITY OF COLUMBIA OR
7 RICHLAND COUNTY?

8 A YES, SIR.

9 Q OKAY. AND WHEN PEOPLE'S NAMES ARE ON, SAY, PHOTOGRAPHIC
10 REPORTS OR ANY NAMES ON ANY KIND OF -- BEING WITNESSES OR
11 COMPLAINTS OR ANYTHING, DO ALL THE NAMES AND ADDRESSES OF
12 WHERE THAT PERSON LIVES AND DATES OF BIRTH, DOES THAT GO INTO
13 A MAINFRAME COMPUTER AT THE COLUMBIA POLICE DEPARTMENT?

14 A YES, SIR, IT DOES.

15 Q SO ARE THE NAMES AND ADDRESSES OF LITERALLY THOUSANDS AND
16 THOUSANDS OF CITIZENS IN RICHLAND COUNTY AND COLUMBIA
17 CONTAINED IN THIS MAINFRAME COMPUTER?

18 A YES, SIR.

19 Q FOR INSTANCE, IF I WERE TO -- IF SOMEBODY -- MY NEIGHBOR WAS
20 HAVING A PARTY AND THE NOISE WAS REAL LOUD AND I WAS TO CALL
21 UP AND THEY WERE TO SEND A UNIT TO MY HOUSE, WOULD MY NAME GO
22 ON SOME REPORT AND IT EVENTUALLY GO INTO THIS COMPUTER?

23 A IF THE RESPONDING OFFICER WROTE A REPORT, THEN IT WOULD GO
24 INTO THIS COMPUTER; YES, SIR.

25 Q OKAY. NOW, DID YOU -- AS A PART OF YOUR -- AND IN THIS CASE,

1 AS ROUTINE IN MOST CASES, WHEN YOU GOT KENNETH JAMES AS A
2 SUSPECT AFTER *victim* IDENTIFIED HIM, WERE YOU ABLE TO
3 OBTAIN A LIST OF ADDRESSES WHERE MR. KENNETH JAMES WITH HIS
4 DATE OF BIRTH HAS LIVED AT OVER THE LAST SEVERAL YEARS?

5 A YES, SIR, WE WERE.

6 Q AND IS THIS INFORMATION KEPT IN THE ORDINARY COURSE OF
7 BUSINESS OF THE COLUMBIA POLICE DEPARTMENT?

8 A YES, SIR.

9 THE COURT: MR. STRICKLER, ANYTHING?

10 MR. STRICKLER: NO, SIR. I DON'T BELIEVE HE'S ENTERING
11 IT AT THIS POINT.

12 THE COURT: OKAY. THANK YOU.

13 MR. STRICKLER: THANKS.

14 Q (BY MR. GASSER) INVESTIGATOR THOMAS, DO YOU HAVE WITH YOU A
15 COPY OF A PRINTOUT THAT I SHOWED YOU? DO YOU HAVE YOUR OWN
16 COPY, OR DO YOU NEED TO LOOK AT THIS COPY?

17 A I HAVE ONE.

18 Q OKAY. WHEN MR. KENNETH JAMES WAS ARRESTED ON DECEMBER 15TH,
19 1996, AND CHARGED WITH THESE, IS A BOOKING REPORT DONE ON
20 EVERYBODY THAT'S ARRESTED FOR WHATEVER REASON?

21 A YES, SIR.

22 Q AND, IN FACT, DID YOU TAKE THIS BOOKING REPORT, THE
23 INFORMATION FROM MR. KENNETH JAMES ON THE 15TH OF DECEMBER
24 1996?

25 A YES, SIR, I DID.

1 Q AND DOES HE HAVE -- WHAT DID HE GIVE AS HIS DATE OF BIRTH?

2 A 3-5-76.

3 Q OKAY. AND HIS HEIGHT AND WEIGHT?

4 A HIS HEIGHT IS FIVE-TEN. HIS WEIGHT WAS 160.

5 Q AND AT THAT TIME HE WAS 20 YEARS OLD, CORRECT?

6 A YES, SIR.

7 Q NOW, THE COMPUTERIZED RECORDS THAT ARE KEPT AT THE COLUMBIA
8 POLICE DEPARTMENT, ON APRIL THE 13TH, 1994, DO THE RECORDS OF
9 THE COLUMBIA POLICE DEPARTMENT SHOW THAT MR. JAMES'S NAME WAS
10 TAKEN ON SOME SORT OF REPORT BY A COLUMBIA POLICE OFFICER AND
11 INDICATE HIS NAME AND WHERE HE WAS LIVING ON APRIL 13TH,
12 1994?

13 A YES, SIR.

14 Q AND WHERE WAS THAT?

15 A 1717 OGDEN STREET.

16 Q SHOWING YOU STATE'S EXHIBIT NO. 1, IS THERE MORE THAN ONE
17 OGDEN STREET IN THE CITY OF COLUMBIA THAT YOU'RE AWARE OF?

18 A NO, SIR.

19 Q AND IN RELATIONS TO OGDEN STREET, WHAT STREET IS THIS RIGHT
20 HERE?

21 A THAT IS ORR STREET.

22 Q AND MR. CHARLES MURRAY, HIS MAMA LIVED ON WHAT STREET?

23 A ON GERMANY STREET.

24 Q SO, ACCORDING TO THE COLUMBIA POLICE RECORDS IN APRIL OF
25 1994, MR. KENNETH JAMES WITH A DATE OF BIRTH OF 3-5-76 WAS

1 LIVING AT 1717 OGDEN STREET, CORRECT?

2 A YES, SIR.

3 Q AND IN FEBRUARY OF 1992, WHEN MR. JAMES WAS 15 YEARS OLD, DID
4 IT INDICATE AN ADDRESS WHERE HE WAS LIVING AT IN THE COLUMBIA
5 AREA?

6 A YES, SIR, IT DOES.

7 Q AND WHAT ADDRESS IS THAT?

8 A 1722 VAN HEISE STREET.

9 Q SHOWING YOU STATE'S EXHIBIT NO. 1, TELL THIS JURY, 1722 VAN
10 HEISE STREET, IS THAT AN APARTMENT COMPLEX?

11 A YES, SIR. IT SHOULD BE CRESCENT MANOR APARTMENTS.

12 Q SHOW THAT TO THE JURY, WHERE THAT IS?

13 A IT WOULD BE THESE APARTMENTS RIGHT HERE ON VAN HEISE STREET.

14 Q AND THEN IN FEBRUARY OF '96 AND IN JULY OF 1995, DOES YOUR
15 RECORDS SHOW THAT HE WAS LIVING AT ANOTHER ADDRESS IN THE
16 COLUMBIA AREA?

17 A YES, SIR, IT DOES.

18 Q AND WHERE WAS THAT?

19 A 2801 COVENANT ROAD.

20 Q AND WHERE IS COVENANT ROAD IN RELATIONS TO STATE'S EXHIBIT
21 NO. 1?

22 A IT WOULD BE RIGHT HERE. IT RUNS RIGHT BESIDE MIDLANDS
23 SHOPPING CENTER.

24 MR. GASSER: BEG THE COURT'S INDULGENCE, ONE MOMENT.

25 THE COURT: YES, SIR.

1 Q (BY MR. GASSER) DID YOU AT ANY TIME, INVESTIGATOR THOMAS,
2 DURING THIS ENTIRE INVESTIGATION BACK IN MAY, JUNE, JULY OF
3 1996, DID YOU EVER SHARE WITH *victim*, WINFRED BULL,
4 CHARLES MURRAY THE RESULTS OF RANDY BLACKWELL'S DOG TRACKING?
5 DID YOU EVER SHARE THAT INFORMATION WITH ANY OF THOSE
6 INDIVIDUALS?

7 A NO, SIR.

8 Q THE TAPE OF THE AMOCO STATION, DID YOU EVER SHARE THAT WITH
9 ANY OF THOSE INDIVIDUALS?

10 A NO, SIR.

11 Q THE INFORMATION THAT MR. RON GIBSON PROVIDED THIS JURY ABOUT
12 KENNETH JAMES, DID YOU SHARE THAT INFORMATION WITH ANY OF
13 THESE INDIVIDUALS?

14 A NO, SIR.

15 MR. GASSER: THANK YOU, YOUR HONOR. THAT'S ALL I HAVE.

16 THE COURT: OKAY. THANK YOU.

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

18 THE COURT: YES, SIR.

19 CROSS EXAMINATION BY MR. STRICKLER:

20 Q GOOD MORNING, MR. THOMAS.

21 A GOOD MORNING, MR. STRICKLER.

22 Q I HAVE A NUMBER OF THINGS I NEED TO DISCUSS WITH YOU, IF I
23 COULD, PLEASE. YOU WERE ASSIGNED AS I UNDERSTAND IT AS THE
24 CHIEF INVESTIGATING OFFICER IN THIS CASE, CORRECT?

25 A YES, SIR.

1 Q OKAY. AND IN THAT CAPACITY YOU NOT ONLY PARTICIPATE IN
2 ASPECTS OF THE INVESTIGATION YOURSELF, BUT YOU'RE THE
3 CLEARING HOUSE, AS IT WERE, FOR INFORMATION DEVELOPED BY
4 OTHER PEOPLE INVOLVED IN INVESTIGATIONS. IS THAT CORRECT?

5 A THAT'S RIGHT. YES, SIR.

6 Q OKAY. SO YOU MAY BE CONDUCTING ASPECTS OF IT YOURSELF, BUT
7 IT'S ALSO YOUR RESPONSIBILITY TO STAY AS UP AS POSSIBLE ON
8 THE OTHER INFORMATION BEING DEVELOPED BY OTHER PEOPLE?

9 A YES, SIR.

10 Q CORRECT? OKAY. AND I THINK YOU TESTIFIED ON DIRECT JUST
11 DOING EXACTLY THAT IN SEVERAL INSTANCES. IN YOUR CAPACITY AS
12 CHIEF INVESTIGATOR YOU EITHER INTERVIEWED AND TOOK STATEMENTS
13 FROM WINFRED BULL, *victim*, OR WERE AWARE OF THE
14 STATEMENTS GIVEN BY THEM, CORRECT?

15 A YES, SIR.

16 Q OKAY. AND IN YOUR CAPACITY AS CHIEF INVESTIGATOR, WELL, YOU
17 PARTICIPATED IN SHOWING THE LINE-UP TO MR. MURRAY, CORRECT?

18 A YES, SIR.

19 Q AND TALKING WITH HIM AT THAT POINT IN TIME?

20 A YES, SIR.

21 Q CORRECT? AND YOU PARTICIPATED IN THE PROCESS OF OBTAINING
22 THE SEARCH WARRANT THAT YOU DISCUSSED EXECUTING AT THE ORR
23 STREET ADDRESS, RIGHT?

24 A YES, SIR.

25 Q AND YOU INDEED PARTICIPATED IN THE SEARCH YOURSELF, CORRECT?

1 A YES, SIR.

2 Q OKAY. SEVERAL SPECIFICS. IN RELATION TO THIS CASE, YOUR
3 KNOWLEDGE OF THE INFORMATION DEVELOPED WOULD REVEAL THAT THE
4 NAME "BIG DADDY", THE NICKNAME "BIG DADDY", CAME UP DURING
5 THE COURSE OF THIS INVESTIGATION. IS THAT CORRECT?

6 A YES, SIR, IT DID.

7 Q A STATEMENT FROM I BELIEVE *victim* PERHAPS AS TO SOME
8 THINGS SHE HEARD DURING THE COURSE OF THE INCIDENT?

9 A YES, SIR.

10 Q AND, INDEED, IN RELATION TO THAT, MR. GASSER TALKED WITH YOU
11 ABOUT COMPUTERS AND CHECKING NAMES ON COMPUTERS DURING THE
12 COURSE OF THE INVESTIGATION. YOU CHECKED NICKNAMES ON
13 COMPUTERS, RIGHT?

14 A YES, SIR.

15 Q AND YOU INDEED, OR SOMEONE AT YOUR BEHEST, CHECKED THE
16 NICKNAME "BIG DADDY", CORRECT?

17 A YES, SIR.

18 Q LOOKING FOR POSSIBLE SUSPECTS IN THE CASE, RIGHT?

19 A YES, SIR.

20 Q NOW, THIS NICKNAME DID NOT COME BACK ASSOCIATED WITH KENNETH
21 JAMES, CORRECT?

22 A NO, SIR.

23 Q NOW, IN YOUR NOTES, IS THERE ANY REFERENCE BY *victim* TO AN
24 INDIVIDUAL NAMED "DOG" OR A VARIETY OF "DOG", A VARIETY OF
25 THE NAME "DOG" RATHER?

1 A IN MY PARTICULAR NOTES?

2 Q YES, SIR.

3 A NO, SIR. I DON'T BELIEVE SO.

4 Q AND YOU HAVE YOUR NOTES BEFORE YOU?

5 A YES, SIR.

6 Q IF I COULD, PLEASE, JUST MAKE SURE WE'RE TALKING ABOUT THE
7 SAME THING; CAN I TAKE A LOOK AT WHAT YOU'RE REVIEWING,
8 PLEASE?

9 A SURE.

10 Q THANK YOU, SIR.

11 A YES, SIR.

12 Q *victim* NEVER MENTIONED TO YOU THE NAME "DOG" OR SOME
13 VARIANT ON THE NAME "DOG", CORRECT?

14 A AS FAR AS I CAN REMEMBER; NO, SIR.

15 Q OKAY. YOU WERE ACQUAINTED WITH THE STATEMENT TAKEN FROM MR.
16 BULL?

17 A YES, SIR.

18 Q THERE IS NO MENTION OF ANY INDIVIDUAL BY THE NAME OF "DOG" OR
19 VARIANT ON THAT NICKNAME IN MR. BULL'S STATEMENT, CORRECT?

20 A THAT'S CORRECT.

21 Q YOU DID NOT RUN OR TO YOUR KNOWLEDGE AS CHIEF INVESTIGATOR IN
22 THIS CASE A CHECK ON THE NICKNAME, STREET NAME "DOG"? OR
23 SOME VARIANT ON THAT WAS NOT RUN IN RELATION TO THIS CASE,
24 WAS IT?

25 A NO, SIR.

1 Q OKAY. HAD THAT BEEN GIVEN TO YOU AS POTENTIAL STREET NAME
2 FOR SOMEONE INVOLVED IN THIS CASE, YOU COULD HAVE DONE AND
3 WOULD HAVE DONE AS THOROUGH POLICE WORK A CHECK TO SEE IF IT
4 WAS ASSOCIATED WITH ANY INDIVIDUALS, RIGHT?

5 A YES, SIR.

6 Q AS YOU DID WITH THE NAME "BIG DADDY"?

7 A YES, SIR.

8 Q RIGHT? OKAY. THAT WAS NOT DONE IN THIS CASE, CORRECT?

9 A THAT'S CORRECT.

10 Q AND IF YOU RUN THAT, THAT DOESN'T NECESSARILY MEAN ANYONE'S
11 INVOLVED IN THAT; IT'S JUST A NAME YOU CAN DO FURTHER
12 CHECKING ON, RIGHT?

13 A THAT'S CORRECT.

14 Q NOW, WE HEARD A COUPLE OF PEOPLE TESTIFY REGARDING THE FIRST
15 UNIT RESPONDING TO THE CALL IN THIS CASE, THE UNIT THAT
16 RESPONDS TO THE ADDRESS THAT MR. MURRAY WAS AT ON THE MORNING
17 OF THE 29TH?

18 A YES, SIR.

19 Q OR MR. BULL WAS. AND WE'VE HEARD I THINK ESTIMATES OF 30 TO
20 45 MINUTES AS FAR AS RESPONSE TIME?

21 A YES, SIR.

22 Q ON THAT CALL. DO YOU KNOW ANYTHING ABOUT RESPONSE TIME ON
23 THE UNIT IN THIS CASE ON THE FIRST CALL?

24 A NO, SIR. I WAS — WHEN I RECEIVED THE CALL I WAS ASLEEP AT
25 HOME, AND WHEN I ARRIVED EVERYONE WAS ALREADY THERE.

1 Q ONE OF THE BENEFITS OF BEING THE SENIOR INVESTIGATOR IS YOU
2 GET TO GET OUT OF BED AND RESPOND TO A SCENE LIKE THIS,
3 RIGHT?

4 A YES, SIR.

5 Q OKAY. NOW, THE NATURE OF THE CALL, ARE YOU ACQUAINTED WITH
6 THE PRIORITIES ESTABLISHED BY C.P.D. IN RESPONDING TO VARIOUS
7 TYPES OF ALLEGED CRIMES?

8 A YES, SIR.

9 Q OKAY. WOULD THE NATURE OF THE CRIME IN THIS PARTICULAR CASE
10 BE TERMED MAJOR?

11 A YES, SIR.

12 Q IS A CALL RELATING TO AN ALLEGED ARMED ROBBERY AND RAPE
13 ROUTINELY PUT AT THE REAR OF THE LINE FOR RESPONDING UNITS?

14 A NO, SIR.

15 Q IS THAT GIVEN SOME DEGREE OF PRIORITY IN RESPONSE?

16 A ALMOST ALL 911 CALLS COME IN ON A PRIORITY BASIS.

17 Q YOUR UNDERSTANDING IS THIS WAS A 911 CALL HERE THAT'S BEEN
18 TESTIFIED TO, RIGHT?

19 A YES, SIR.

20 Q NOW, ON PRIORITY BASIS, WOULD YOU EXPECT THE RESPONSE TIME TO
21 BE 30 TO 45 MINUTES IN YOUR EXPERIENCE?

22 A NO, SIR, WE WOULD HOPE NOT. BUT IT COULD BE. BUT I WOULD
23 HOPE NOT.

24 Q OKAY. YOU CAN'T HELP IF IT'S OUT THERE. YOU JUST DON'T
25 KNOW?

1 A THAT'S CORRECT.

2 Q WHEN WAS IT THAT YOU ARRIVED ON THE SCENE, INVESTIGATOR
3 THOMAS?

4 A SOMEWHERE AROUND SHORTLY AFTER 1:00.

5 Q I DON'T WANT TO KNOW YOUR HOME ADDRESS AT THAT PARTICULAR
6 POINT IN TIME. WAS IT DIRECTLY ADJACENT TO THE SCENE ITSELF,
7 OR DID YOU LIVE AT SOME DISTANCE FROM THE AREA THAT YOU HAD
8 RESPONDED TO?

9 A I LIVE NOT A GREAT DISTANCE FROM THE AREA.

10 Q YOU WERE ABLE TO GET CALLED AT HOME, DRAG YOURSELF OUT OF
11 BED, GET UP, GET DRESSED, DRIVE TO THE SCENE AND BE THERE BY
12 AROUND 1:00 IN THE MORNING?

13 A OR SHORTLY THEREAFTER SOMETIME; YES, SIR.

14 Q YOU TESTIFIED ABOUT EXECUTING THIS SEARCH WARRANT AND WHAT
15 YOU FOUND. WHEN YOU APPLIED FOR THE SEARCH WARRANT -- AND
16 YOU WERE THE PERSON THAT APPLIED TO THE JUDGE FOR PERMISSION
17 TO SEARCH THE HOUSE, RIGHT?

18 A YES, SIR.

19 Q OKAY. YOU LIST ITEMS THAT YOU WANT THE AUTHORITIES TO
20 COLLECT IF THEY FIND, RIGHT?

21 A YES, SIR.

22 Q AMONG THOSE ITEMS, THERE WAS NOT LISTED A RED JERSEY SHIRT?
23 DO YOU NEED A COPY OF THE WARRANT TO TAKE A LOOK AT IT?

24 A YES, SIR. IF YOU HAVE ONE.

25 Q I CAN FIND ONE.

1 A NO, SIR. THERE'S NOT.

2 Q IN FACT, THERE IS -- AMONG THE ITEMS THAT YOU WERE INTERESTED
3 IN FINDING, THERE IS NO LISTING FOR ANY CLOTHING ASSOCIATED
4 WITH KENNETH JAMES OR ANYONE ELSE SUPPOSEDLY INVOLVED IN
5 PERPETRATING THIS ASSAULT, CORRECT?

6 A THAT IS CORRECT. THERE'S NO CLOTHING LISTED.

7 Q AND SPECIFICALLY NO RED JERSEY SHIRT. YOU'VE BEEN WITH
8 C.P.D. FOR 25 YEARS, AND YOU'VE BEEN INVOLVED AS AN
9 INVESTIGATOR FOR ROUGHLY HOW LONG?

10 A EIGHT, NINE YEARS.

11 Q AND OF THAT TIME AS AN INVESTIGATOR, ROUGHLY HOW LONG HAVE
12 YOU BEEN INVOLVED IN MAJOR CRIMES INVESTIGATIONS?

13 A THE ENTIRE TIME.

14 Q THE ENTIRE TIME?

15 A YES, SIR.

16 Q WE'RE TALKING ABOUT A MAJOR CRIME HERE, CORRECT?

17 A YES, SIR.

18 Q NOW, IN A MAJOR CRIME WHERE THE IDENTITY OF THE ASSAILANT IS
19 NOT KNOWN, YOU WOULD AGREE WITH ME I TAKE IT THAT A
20 DESCRIPTION OF THE PERSON IS VALUABLE?

21 A YES, SIR.

22 Q PHYSICAL DESCRIPTION. I'M TALKING ABOUT HEIGHT, WEIGHT,
23 RACE, SEX, FACIAL FEATURES, ET CETERA?

24 A YES, SIR.

25 Q AND CLOTHING DESCRIPTIONS CAN BE VALUABLE, CORRECT?

1 A ANY INFORMATION WE CAN RECEIVE ABOUT ANYBODY WOULD BE A GREAT
2 HELP SOMETIMES.

3 Q IN FACT, NOT JUST IN MAJOR CRIMES BUT IN ANY INCIDENT WITH
4 FURTHER INVESTIGATION, ANY INCIDENT, PERIOD; THE COLUMBIA
5 POLICE DEPARTMENT; INDEED, EVERY POLICE DEPARTMENT IN THE
6 STATE, GENERATES WHAT'S CALLED AN INCIDENT REPORT, CORRECT?

7 A YES, SIR.

8 Q OKAY. AND THIS PRETTY MUCH, IT'S DONE ON A UNIFORM FORM,
9 RIGHT?

10 A THAT'S CORRECT. YES, SIR.

11 Q WHICH HAS BLOCKS TO ENTER PERTINENT PIECES OF INFORMATION ON,
12 RIGHT?

13 A THAT'S CORRECT.

14 Q OKAY. AND THAT'S I SUPPOSE DEVELOPED OVER TIME, INFORMATION
15 YOU NEED TO KNOW, EITHER AS TO IDENTITY OR AS TO
16 CIRCUMSTANCES OF THE EVENT, ANYTHING THAT YOU CAN USE TO HELP
17 IN SOLVING A PARTICULAR CRIME, RIGHT?

18 A YES, SIR.

19 Q AND AN INCIDENT REPORT WAS GENERATED IN THIS PARTICULAR CASE,
20 CORRECT?

21 A YES, SIR.

22 Q IN FACT, THAT WAS -- YOU FILLED OUT THE INCIDENT REPORT IN
23 THIS CASE, RIGHT?

24 A YES, SIR, I DID.

25 Q DO YOU HAVE A COPY OF THAT WITH YOU?

1 A YES, SIR, I DO.

2 Q OKAY. WELL, I'LL KEEP MINE, LET YOU LOOK AT YOUR OWN.

3 A THANK YOU.

4 Q AND AMONG THE INFORMATION THAT YOU -- THE SPECIFIC SPACES ON
5 THIS INCIDENT REPORT, IS AN AREA DEALING WITH SUSPECTS,
6 CORRECT?

7 A YES, SIR.

8 Q OKAY. IF YOU GOT A NAME AT THE TIME THE REPORT'S DONE,
9 THERE'S A PLACE FOR THE NAME, RIGHT?

10 A YES, SIR.

11 Q THE SAME FOR ADDRESS. THERE IS A SPECIFIC PLACE FOR RACE AND
12 SEX AND AGE, CORRECT?

13 A YES, SIR.

14 Q OKAY. IF YOU'VE GOT A DATE OF BIRTH, THERE'S A PLACE FOR
15 THAT; HEIGHT, WEIGHT, COLOR OF HAIR, COLOR OF EYES, RIGHT?

16 A YES, SIR.

17 Q AND AN AREA IN WHICH YOU CAN NOTE SPECIFICS REGARDING FACIAL
18 HAIR, TATTOOS, ANYTHING ELSE IN GENERAL REGARDING THE
19 PHYSICAL DESCRIPTION OF THE INDIVIDUAL, RIGHT?

20 A YES, SIR.

21 Q OKAY. NOW, IN REFERRING TO YOUR REPORT, YOUR BEST ESTIMATE
22 AS TO THE TIME THAT THIS INCIDENT TOOK PLACE WAS
23 APPROXIMATELY 12:15 AT NIGHT?

24 A YES, SIR.

25 Q AND AT THE TIME YOU INITIALLY ENTERED INFORMATION REGARDING

1 THIS INCIDENT -- AND I'M SORRY. I'LL STOP THERE. YOU
2 GENERATE AN INCIDENT REPORT. AND THEN AS ADDITIONAL
3 INFORMATION DEVELOPS, YOU FILE SUPPLEMENTAL REPORTS THAT ARE
4 ATTACHED TO IT THAT ANSWER PERHAPS SOME OF THE QUESTIONS THAT
5 ARISE DURING THE COURSE OF THE INVESTIGATION, RIGHT?

6 A YES, SIR, YOU CAN.

7 Q SO THE INITIAL INFORMATION YOU HAD RELATIVE TO SUSPECTS IN
8 THIS CASE AS REFLECTED IN YOUR REPORT WOULD INDICATE THAT
9 SUSPECT 1 WAS APPROXIMATELY FIVE-TEN, 150 WITH BLACK HAIR AND
10 BLACK EYES?

11 A YES, SIR.

12 Q AND SUSPECT 2 -- I'M SORRY -- WAS A BLACK MALE ALSO. SUSPECT
13 2, BLACK MALE, 20 TO 25, FIVE-NINE, 165, BLACK HAIR, BLACK
14 EYES. RIGHT?

15 A YES, SIR.

16 Q YOU HAVE INFORMATION ON ALL FIVE SUSPECTS IN THIS CASE,
17 CORRECT?

18 A YES, SIR.

19 Q OKAY. INCLUDING SUSPECT 4, ABOUT 25, FIVE-EIGHT, 175 WITH
20 BROWN HAIR AND BROWN EYES, CORRECT?

21 A YES, SIR.

22 Q AND SUSPECT 5: 17, FIVE-TEN, 165, BROWN HAIR AND BROWN EYES,
23 RIGHT?

24 A YES, SIR. THAT'S CORRECT.

25 Q AND A SUSPECT -- I WON'T GO THROUGH ALL OF THEM. SUSPECT 3,

1 22, FIVE-NINE, 180, BLACK HAIR AND BLACK EYES, CORRECT?

2 A YES, SIR.

3 Q THIS INFORMATION REFLECTS THAT ALL FIVE SUSPECTS WORE BLACK
4 PANTS, CORRECT?

5 A YES, SIR, IT DOES.

6 Q OKAY. NOW, DOES -- FIRST OF ALL, WHEN YOU FILLED OUT THIS
7 INITIAL REPORT, FROM WHOM DID YOU HAVE INFORMATION?

8 A MR. BULL.

9 Q MR. BULL?

10 A YES, SIR.

11 Q OKAY. THIS IS BASED ON INFORMATION PROVIDED BY MR. BULL?

12 A YES, SIR.

13 Q CORRECT?

14 A YES, SIR, IT IS.

15 Q BECAUSE THAT'S PRIOR TO *victim's* AT THE HOSPITAL. THIS IS
16 PRIOR TO GETTING HER TO HEADQUARTERS AND HAVING A CHANCE TO
17 SIT DOWN AND TALK WITH HER, RIGHT?

18 A YES, SIR.

19 Q SO THIS IS THE INFORMATION FROM MR. BULL EITHER DIRECTLY TO
20 YOU OR AS CONVEYED TO YOU FROM ONE OF THE OTHER OFFICERS THAT
21 SPOKE WITH HIM. IS THAT CORRECT?

22 A YES, SIR.

23 Q NOW, IN THE INFORMATION CONVEYED TO YOU BY MR. BULL, IS THERE
24 ANY DESCRIPTION OF ANY CLOTHING ON THE PART OF ANY OF THE
25 INDIVIDUALS INVOLVED IN THIS ASSAULT?

1 A NO, SIR.

2 Q IS THERE ANY DESCRIPTION OF ANY DISTINGUISHING FACIAL
3 FEATURES OF ANY INDIVIDUAL INVOLVED IN THESE INCIDENTS?

4 A NO, SIR.

5 Q FACIAL HAIR? ANYTHING AT ALL?

6 A NO, SIR.

7 Q THERE IS NO MENTION OF THE NAME, STREET NAME OR NICKNAME
8 "DOG" OR ANY VARIANT ON THE NAME "DOG", CORRECT?

9 A THAT IS CORRECT. YES, SIR.

10 Q HOWEVER, INDEED, REFLECTED IN THIS REPORT IS A NICKNAME OF
11 "BIG DADDY", CORRECT?

12 A YES, SIR.

13 Q OKAY. JUST AS WE DISCUSSED EARLIER, RIGHT?

14 A YES, SIR.

15 Q OKAY. NOW, IS SPECIFICALLY ANYWHERE IN THE INFORMATION
16 PROVIDED YOU BY MR. BULL ANY REFERENCE TO AN INDIVIDUAL WITH
17 DREAD LOCKS?

18 A NOT ON PHYSICAL DESCRIPTIONS. NO, SIR.

19 Q OKAY. A DESCRIPTION OF AN INDIVIDUAL, THIS IS ON THE PART OF
20 MR. BULL AT THIS POINT IN TIME, WITH BRAIDS?

21 A NO, SIR.

22 Q BECAUSE THERE'S A DIFFERENCE BETWEEN DREAD LOCKS AND BRAIDS
23 FROM YOUR UNDERSTANDING OF THE COMMON LANGUAGE, ISN'T THERE?

24 A SURE.

25 Q OKAY. NOW, MOVING FROM MR. BULL TO VICTIM. OKAY. PRIOR

1 TO VIEWING THE LINE-UP THAT YOU'VE TESTIFIED ABOUT, DO YOUR
2 NOTES REFLECT HER PROVIDING YOU A DESCRIPTION OF ANYONE WITH
3 BRAIDS?

4 A NO, SIR; NOT IN MY NOTES. NO, SIR.

5 Q I TAKE IT THEY DON'T PROVIDE -- INDICATE HER PROVIDING A
6 DESCRIPTION OF ANYONE WITH DREAD LOCKS EITHER, CORRECT?

7 A NO, SIR.

8 Q AND THEY DON'T INDICATE ANYTHING REGARDING A RED JERSEY
9 SHIRT, CORRECT?

10 A NO, SIR. WHEN I FIRST TOOK *victim's* STATEMENT, WE HAD
11 ALREADY WRITTEN THIS INCIDENT REPORT.

12 Q I UNDERSTAND THAT. ALL RIGHT. OKAY. WELL, LET ME MAKE IT A
13 LITTLE BROADER, BECAUSE YOU'VE GOT YOUR INCIDENT REPORT AND
14 WE ALSO HAVE THE CASE NOTES THAT YOU JUST LET ME TAKE A LOOK
15 AT. CORRECT?

16 A RIGHT, SIR.

17 Q I DON'T WANT TO RESTRICT IT TO YOUR INCIDENT REPORT. DO YOUR
18 CASE NOTES REFLECT A RED JERSEY SHIRT AS PART OF THE
19 DESCRIPTION OF *victim*?

20 A NO, SIR.

21 Q BRAIDS AS TO AN ASSAILANT PROVIDED AS PART OF A DESCRIPTION
22 BY *victim*?

23 A NO, SIR.

24 Q DREAD LOCKS PROVIDED AS A PART OF A DESCRIPTION BY *victim*?

25 A NO, SIR.

1 Q I'D LIKE TO TURN, IF I COULD, PLEASE, TO THE STATEMENT AND
2 THIS LINE-UP REFLECTED IN STATE'S 4.

3 A YES, SIR.

4 Q OKAY. THAT YOU'VE TESTIFIED ABOUT. NOW, YOU HAVE YOUR NOTES
5 BEFORE YOU. LET ME ASK YOU THIS. YOU HAVE DURING YOUR
6 PERIOD OF TIME AS A POLICE OFFICER AND PARTICULARLY DURING
7 THE PERIOD OF TIME AS AN INVESTIGATOR ON MAJOR CRIMES TAKEN
8 MANY, MANY STATEMENTS. IS THAT FAIR TO SAY?

9 A YES, SIR.

10 Q AND THAT'S ONE OF THE JOBS THAT YOU DO ON A ROUTINE BASIS AS
11 PART OF YOUR JOB, CORRECT?

12 A YES, SIR.

13 Q WOULD IT BE FAIR TO SAY THAT TAKING STATEMENTS IS SOMETHING
14 OF AN ART FORM? THERE'S NOT A SET WAY TO DO IT?

15 A NO. I GUESS YOU COULD SAY THAT. YES, SIR.

16 Q THERE ARE MANY, MANY WAYS THAT IT CAN BE DONE. FOR EXAMPLE,
17 YOU CAN SIT THE PERSON DOWN AND HAVE THEM JUST WRITE OUT WHAT
18 THEY HAVE TO SAY, RIGHT?

19 A THAT'S RIGHT.

20 Q YOU COULD SIT THEM DOWN, HAVE THEM TALK AND WRITE IT DOWN
21 YOURSELF WORD-FOR-WORD AS THEY TALK, RIGHT?

22 A YES, SIR.

23 Q YOU COULD SIT DOWN AND DISCUSS VERBALLY WITH THE PERSON WHAT
24 THEY HAD TO SAY, ASK THEM SCENARIOS, GET THE THING KIND OF
25 LINED UP YOURSELF AND THEN SAY, OKAY, NOW THAT WE'VE TALKED

1 ABOUT IT LET'S REDUCE IT TO WRITING, RIGHT?

2 A THAT'S CORRECT. YES, SIR.

3 Q OKAY. I SUPPOSE THERE ARE ANY ONE OF A NUMBER OF OTHER WAYS
4 THAT THAT CAN BE DONE. THE QUESTION FOR YOU IS, AS TO
5 *victim*, HOW DID YOU APPROACH TAKING THE STATEMENT FROM HER?
6 WHAT APPROACH DID YOU TAKE?

7 A I BELIEVE THAT I SAT DOWN WITH HER AND JUST ASKED HER TO
8 DESCRIBE TO ME WHAT HAD TAKEN PLACE, AND I WROTE THE
9 STATEMENT AS SHE TOLD ME WHAT HAD HAPPENED.

10 Q OKAY. AND IF YOU COULD PLEASE TURN TO YOUR CASE NOTES, IF
11 YOU WOULD. AND I BELIEVE IT'S 11:00, 1:00 ON THE 29TH
12 RATHER, WHEN YOU HAVE CONTACT WITH *victim* AGAIN. WHAT
13 TIME IS IT?

14 A SHE CAME IN AT 11:00. YES, SIR.

15 Q 11:00. OKAY. AND YOUR TESTIMONY IS YOU SAT DOWN, TOOK THE
16 STATEMENT FROM HER AND THEN SHE VIEWED THE LINE-UP?

17 A YES, SIR.

18 Q AND SHE VIEWED THE LINE-UP AND TYPED OUT -- WELL, LET ME ASK
19 YOU THIS. YOU SAID YOU PRESENTED HER WITH THE LINE-UP THAT'S
20 REFLECTED IN STATE'S 2, CORRECT?

21 A YES, SIR.

22 Q AND SHE LOOKED AT IT FOR AS LONG AS SHE WANTED TO?

23 A THAT'S CORRECT.

24 Q ROUGHLY HOW LONG WAS THAT?

25 A I WOULD SAY PROBABLY MAYBE A FEW MINUTES, JUST FIVE MINUTES

1 AT THE MOST, SOMETHING LIKE THAT.

2 Q I MEAN, SOMETIMES YOU HAVE SOMEONE GO, BOOM, LIKE THAT?

3 A THAT'S RIGHT.

4 Q I TAKE IT THAT WASN'T THE SITUATION?

5 A THAT WAS NOT.

6 Q SHE TOOK SOME TIME AND LOOKED AT IT?

7 A SHE TOOK ---

8 Q MAYBE FIVE MINUTES?

9 A THAT'S RIGHT. SHE TOOK SOME TIME AND LOOKED AT IT.

10 Q AND THEN YOU -- THEN SHE SIGNED THE AFFIDAVIT AT THAT POINT
11 IN TIME REGARDING THE LINE-UP, RIGHT?

12 A YES, SIR.

13 Q AND SHE CAME IN AT 11:00 AND CONDUCTED THAT PROCEDURE?

14 A YES, SIR.

15 Q AND THEN YOU TOOK THE STATEMENT FROM HER?

16 A RIGHT. WHEN SHE CAME IN WE TOOK HER STATEMENT AND THEN
17 SHOWED HER THE LINE-UP.

18 Q SO IT WAS STATEMENT FIRST AND THEN THE LINE-UP?

19 A I BELIEVE THAT'S THE WAY IT WAS. YES, SIR.

20 Q AND ARE YOU SURE?

21 A IT'S BEEN A VERY LONG TIME. BUT AS FAR AS I CAN REMEMBER,
22 THAT WE TOOK HER STATEMENT FIRST AND THEN SHOWED HER THE
23 LINE-UP AFTERWARDS.

24 Q OKAY. DO YOU HAVE YOUR NOTES RIGHT IN FRONT OF YOU?

25 A YES, SIR.

1 Q IF I COULD TAKE ONE QUICK LOOK?

2 A SURE.

3 Q OKAY. IT'S RIGHT AT THE TOP OF THIS PAGE 3. THAT NOTE
4 REFLECTS 11:00 AS THE TIME THAT SHE CAME IN AND VIEWED THE
5 LINE-UP, CORRECT?

6 A WELL, THAT'S THE WAY IT'S PRESENTED IN THESE NOTES. BUT SHE
7 — IN OTHER WORDS, WHEN I DO CASE NOTES, I DON'T VERBATIM
8 WRITE DOWN EVERY SINGLE THING. I TRY TO HIGHLIGHT IT AND
9 MAKE THE NOTES AS I GO.

10 Q YES, SIR. THE FACT, HOWEVER, IS THAT YOUR NOTE REGARDING
11 11:00 ON THE 29TH REFLECTS THAT *victim* CAME IN TO REVIEW
12 THE LINE-UP, RIGHT?

13 A WELL, TO VIEW THE LINE-UP AND FOR US TO GET A STATEMENT FROM
14 HER.

15 Q OKAY. AND YOU THEN INDEED TOOK THE STATEMENT FROM *victim*,
16 CORRECT?

17 A YES, SIR.

18 Q DID YOU TAKE IT — ARE YOU REALLY SURE, MR. THOMAS, WHETHER
19 YOU TOOK IT FIRST OR DID THE LINE-UP FIRST?

20 A NO, SIR. I TOLD YOU IT'S BEEN A LONG TIME AGO.

21 Q I UNDERSTAND. I UNDERSTAND.

22 A IF I REMEMBER RIGHT, I THOUGHT WE TOOK HER STATEMENT AND THEN
23 SHE LOOKED AT THE LINE-UP.

24 Q I JUST ASK YOU TO TAKE A LOOK AT THIS DOCUMENT AND ASK IF YOU
25 RECOGNIZE THAT?

1 A YES, SIR. THIS IS A COPY OF THE STATEMENT THAT I GOT FROM
2 victim.

3 Q OKAY. AND IN THAT STATEMENT, AS IN ANY STATEMENT, THAT'S
4 DONE ON A FORM, RIGHT?

5 A YES, SIR.

6 Q OKAY. AND ON PART OF THE FORM IS A SPACE TO WRITE WHEN YOU
7 TOOK THE STATEMENT AND THE TIME FOR IT, CORRECT?

8 A YES, SIR.

9 Q OKAY. IS THAT A BEGINNING TIME OR AN ENDING TIME?

10 A THIS IS THE BEGINNING TIME WHEN I ACTUALLY START WRITING THE
11 STATEMENT.

12 Q AND YOU BEGAN TAKING THE STATEMENT FROM victim AT WHAT
13 TIME?

14 A AT 11:20.

15 Q OKAY. NOW, I'D LIKE TO TURN NEXT TO ANOTHER LINE-UP THAT YOU
16 CONDUCTED A COUPLE OF DAYS LATER. I BELIEVE YOU WENT BY MR.
17 MURRAY'S HOUSE?

18 A YES, SIR.

19 Q OKAY. AND SHOWED HIM WHAT'S MARKED AS STATE'S EXHIBIT 2.
20 THIS IS THE SAME LINE-UP RELATING TO MR. JAMES?

21 A YES, SIR.

22 Q KENNETH JAMES. AT THAT POINT IN TIME HE DID NOT PICK OUT
23 ANYONE, CORRECT?

24 A THAT IS CORRECT. YES, SIR.

25 Q WHAT WAS THE SECOND LINE-UP YOU SHOWED TO HIM AT THAT POINT

1 IN TIME?

2 A I -- I DON'T REMEMBER SHOWING HIM A SECOND LINE-UP. IT'S --
3 ALL I REMEMBER IS SHOWING HIM A LINE-UP WITH KENNETH JAMES'S
4 PICTURE IN IT.

5 Q THAT'S WHAT YOUR NOTES REFLECT, RIGHT?

6 A I'D HAVE TO GO BACK AND CHECK, BUT I BELIEVE WE JUST SHOWED
7 HIM ONE LINE-UP. IT SAYS WE SHOWED HIM THE LINE-UP, AND I
8 PRESUME WE JUST HAD ONE LINE-UP.

9 Q THE LINE-UP SINGULAR; NOT THE LINE-UPS, CORRECT?

10 A YES, SIR.

11 Q AND THAT WOULD JIBE WITH YOUR MEMORY BECAUSE AT THAT POINT IN
12 TIME, IF I UNDERSTAND YOUR TESTIMONY CORRECTLY, THAT'S THE
13 ONLY PERSON THAT YOU HAD DEVELOPED AS A SUSPECT, RIGHT?

14 A THAT IS CORRECT. YES, SIR.

15 Q THIS LINE-UP DID NOT EVEN EXIST AT THAT POINT IN TIME,
16 CORRECT?

17 A YES, SIR.

18 Q AND BY "THIS LINE-UP" I'M REFERRING TO WHAT'S MARKED AS
19 STATE'S EXHIBIT 4. SO, TO THE BEST OF YOUR KNOWLEDGE, THE
20 BEST OF YOUR KNOWLEDGE AS REFRESHED BY YOUR NOTES, THAT YOU
21 SHOWED MR. MURRAY ON THE 31ST ONE LINE-UP, NOT TWO, CORRECT?

22 A THAT IS CORRECT.

23 Q THAT INDEED YOU ONLY HAD ONE LINE-UP IN EXISTENCE AT THAT
24 POINT IN TIME, CORRECT?

25 A OBVIOUSLY, SIR.

1 Q IT WOULD HAVE BEEN KIND OF IMPOSSIBLE TO HAVE SHOWN HIM MORE
2 THAN ONE, RIGHT?

3 A YES, SIR.

4 Q NOW, IN GENERATING THE PHOTOGRAPHIC ARRAY THAT YOU USED FOR
5 THIS LINE-UP REGARDING -- THE LINE-UP THAT YOU SHOWED
6 REGARDING KENNETH JAMES, YOU TRIED TO GET AS RECENT A
7 PHOTOGRAPH I TAKE IT AS POSSIBLE TO USE IN THAT REGARD,
8 RIGHT?

9 A YES, SIR. THAT'S WHAT WE TRY TO DO, SIR.

10 Q PEOPLE'S FEATURES CHANGE SOMEWHAT OVER TIME, SO THE MORE
11 RECENT THE BETTER, RIGHT?

12 A SURE.

13 Q AND, INDEED, THE PHOTOGRAPH USED IN THAT LINE-UP WAS FROM
14 JUST A FEW MONTHS EARLIER, CORRECT?

15 A I BELIEVE SO.

16 Q IT WAS FROM 1996, WASN'T IT?

17 A AS FAR AS I KNOW. I DIDN'T -- THAT PARTICULAR LINE-UP, I DID
18 NOT PUT THAT PARTICULAR LINE-UP TOGETHER.

19 Q OKAY.

20 A I'M SURE THEY USED THE MOST RECENT PHOTOGRAPH THAT THEY HAD.

21 MR. STRICKLER: YOUR HONOR, I BELIEVE THE STATE WOULD
22 STIPULATE THAT THE PHOTOGRAPH USED WAS FROM FEBRUARY OF 1996.

23 THE COURT: FEBRUARY 1996. STIPULATE MEANS THEY AGREE.
24 SO YOU CAN TAKE THAT AS A FACT: THAT IS NOT A FACT THAT YOU
25 NEED TO DETERMINE. IN SHORT, THE PHOTOGRAPH SHOWN WAS TAKEN

1 IN FEBRUARY OF 1996, BY AGREEMENT OF THE PARTIES.

2 MR. STRICKLER: THANK YOU, YOUR HONOR.

3 THE COURT: THANK YOU.

4 Q (BY MR. STRICKLER) YOU TESTIFIED ABOUT ON THE 31ST ALSO
5 AFTER YOU RECEIVED INFORMATION FROM SPEAKING WITH OFFICER
6 PICCIONE AND GOING AND LOOKING AT THE PURSES THAT WERE
7 RECOVERED, RIGHT?

8 A YES, SIR.

9 Q OKAY. THEY WERE RETURNED TO *victim*. THOSE PURSES WERE
10 NOT TAKEN TO THE EVIDENCE PROCESSING DEPARTMENT FOR THE CITY
11 OF COLUMBIA POLICE DEPARTMENT?

12 A YES, SIR, THEY WERE.

13 Q THEY WERE?

14 A YES, SIR.

15 Q WHAT EVIDENCE TECHNICIAN AT THAT TIME?

16 A IT WOULD HAVE BEEN SERGEANT CRONIN. SERGEANT CRONIN LOOKED
17 AT THEM AND TOLD ME THAT THERE WAS NOTHING THAT HE COULD GET
18 OFF THOSE PURSES.

19 Q ALL RIGHT. NOW, YOU TESTIFIED REGARDING PUTTING ONCE AGAIN
20 THIS LINE-UP REGARDING KENNETH JAMES, PUTTING PEOPLE WITH
21 SIMILAR HAIR STYLES IN THE LINE-UP, CORRECT?

22 A YES, SIR.

23 Q BECAUSE YOU WANT THEM TO BEAR AS REASONABLE RESEMBLANCE AS
24 YOU COULD, RIGHT?

25 A YES, SIR.

1 Q AND THE HAIRSTYLE THAT YOU SELECTED, THE INFORMATION YOU HAD
2 REGARDING HAIRSTYLE, WAS FROM THE VIDEOTAPE THAT YOU VIEWED
3 -- AND I FORGET THE NUMBER ON IT -- FROM THE STORE THAT
4 YOU'VE -- WE'VE GOT STATE'S 27, 28 AND 29, THESE BLOW-UPS
5 FROM THE STORE?

6 A RIGHT.

7 Q IS THAT RIGHT? OKAY. SO, ONE, YOU HAD THE INFORMATION
8 REGARDING THE OTHER INFORMATION. YOU'D HAD THE INFORMATION
9 FROM OFFICER GIBSON REGARDING THE ADDRESS FOR KENNETH JAMES,
10 RIGHT?

11 A YES, SIR.

12 Q OKAY. AND THEN YOU HAD AN -- WHAT'S REFLECTED IN STATE'S 28
13 -- INDIVIDUAL WITH SOME TYPE OF BRAIDS IN HIS HAIR, CORRECT?

14 A YES, SIR.

15 Q AND YOU PUT INDIVIDUALS WITH BRAIDS IN THEIR HAIR IN THE SAME
16 LINE-UP WITH KENNETH JAMES. HE ALSO HAS BRAIDS IN HIS HAIR
17 IN THAT LINE-UP, RIGHT?

18 A YES, SIR.

19 Q IT WAS NOT BASED ON INFORMATION PROVIDED YOU BY EITHER
20 VICTIM OR MR. BULL AS TO THE HAIRSTYLE OF THE INDIVIDUAL
21 INVOLVED IN THIS CASE, WAS IT?

22 A NO. THE LINE-UP IS CONDUCTED FROM THE MOST RECENT
23 PHOTOGRAPH.

24 Q NOW, RETURNING TO THE INFORMATION THAT'S SUPPLIED YOU AS TO
25 PHYSICAL DESCRIPTION. WELL, AT WHAT POINT IN TIME DID MR.

1 BULL REFER TO ANY INDIVIDUAL INVOLVED IN THIS WHOLE ASSAULT
2 AS RED IN DESCRIBING SKIN COLOR?

3 A IT -- THAT WAS -- THAT INFORMATION WAS NOT GIVEN TO ME.

4 Q AND AS I UNDERSTAND IT, MR. BULL WHEN YOU SHOWED HIM STATE'S
5 2, THIS LINE-UP, DID NOT PICK OUT KENNETH JAMES, CORRECT?

6 A THAT IS CORRECT.

7 Q AND, INDEED, WHEN YOU SHOWED HIM THE LINE-UP ON ROBERT JAMES,
8 DID HE PICK HIM OUT?

9 A NO, SIR.

10 Q OKAY. SO, ON THE 29TH, AND INDEED ON THE 31ST, YOU HAD NO
11 INFORMATION PROVIDED YOU, OR RATHER YOU HAD NO INFORMATION
12 FROM CHARLES MURRAY THAT THESE GROUPS OF PEOPLE WERE WALKING
13 DOWN THE STREET, CORRECT?

14 A DID WE HAVE ANY INFORMATION FROM CHARLES MURRAY?

15 Q RIGHT.

16 A NO, SIR.

17 Q MR. BULL HAD TOLD YOU ABOUT IT?

18 A YES, SIR.

19 Q MR. MURRAY HAD NOT?

20 A THAT'S CORRECT.

21 Q MR. BULL WHO DID NOT IDENTIFY KENNETH JAMES OR ROBERT JAMES
22 AS BEING INVOLVED IN THE ATTACK, CORRECT?

23 A THAT'S CORRECT.

24 Q OKAY. AND MR. MURRAY WHEN YOU TALKED WITH HIM ON THE 31ST
25 DIDN'T PROVIDE YOU ANY INFORMATION REGARDING THE IDENTITIES

1 OF KENNETH JAMES OR ROBERT JAMES AS BEING IN THESE TWO GROUPS
2 OF PEOPLE HE SAW WALKING DOWN THE STREET, CORRECT?

3 A THAT IS CORRECT. MR. MURRAY DID NOT WANT TO TALK TO US AT
4 ALL.

5 MR. STRICKLER: YOUR HONOR, I ASK THE COURT'S INDULGENCE
6 FOR A MOMENT.

7 THE COURT: SURE. FOLKS, I NOTICE THAT -- MAYBE I'M
8 WRONG -- BUT LOOKING OVER THERE, I SEE SOME BODY LANGUAGE
9 THAT INDICATES TO ME THAT SOMEBODY MIGHT BE COLD. ARE YOU
10 ALL COLD, OTHER THAN OUR PRESIDING JUROR? OKAY. WE'LL TRY
11 TO SEE WHAT WE CAN DO ABOUT THAT. OKAY. GO AHEAD.
12 CONTINUE, PLEASE.

13 MR. STRICKLER: THAT'S ALL I HAVE FOR MR. THOMAS. THANK
14 YOU.

15 THE COURT: MR. SHUPPER ON BEHALF OF ROBERT JAMES.

16 MR. SHUPPER: IF IT PLEASE THE COURT, YOUR HONOR.

17 THE COURT: YES, SIR.

18 CROSS EXAMINATION BY MR. SHUPPER:

19 Q INVESTIGATOR THOMAS, I AM JOHN SHUPPER REPRESENTING ROBERT
20 ANTHONY JAMES. YOU HAVE DESCRIBED HOW YOU'VE HAD THE
21 PLEASURE OF BEING A LEAD INVESTIGATOR AND GETTING CALLED OUT
22 OF BED AT ABOUT SOMETIME AFTER MIDNIGHT TO COME TO THE SCENE
23 AND THAT THE OTHER COLUMBIA POLICE DEPARTMENT OFFICERS WERE
24 PRESENT. AND IS IT FAIR TO SAY THAT IN THAT ROLE THAT ALL
25 INTELLIGENCE OR INFORMATION GATHERED BY YOUR OTHER OFFICERS

1 ON THE SCENE WOULD FLOW TO YOU AND YOUR CASE FILE JACKET?

2 A WE HOPE SO. IT DOESN'T ALWAYS GET TO US, BUT WE LIKE FOR IT
3 TO GET TO US.

4 Q AND WOULD THAT JACKET REMAIN IN YOUR FILE? IN OTHER WORDS,
5 IF SOMETHING HAPPENED RELATED TO THIS CASE LATER ON AFTER THE
6 INITIAL DATE OF THE INCIDENT, WOULDN'T THAT INFORMATION COME
7 TO YOU?

8 A I GUESS IT WOULD DEPEND ON WHAT.

9 Q FOR INSTANCE, A SUPPLEMENTAL INCIDENT REPORT THAT RELATES TO
10 THE CASE FILE, TO THE CASE NOTES?

11 A NOT NECESSARILY. IT MAY NOT COME DIRECTLY -- IF I DIDN'T
12 WRITE IT AND SOMEBODY ELSE WROTE IT, SOMETIMES THEY DO NOT
13 COME TO US. THEY'LL GO TO THE INITIAL RECORDS ROOM, AND FOR
14 WHATEVER REASON WE MAY NOT GET A COPY OF IT.

15 Q WELL, WOULD YOUR DEPARTMENT HAVE A POLICY THAT DIRECTS YOUR
16 OFFICERS TO SEND FOLLOW-UP REPORTS TO THE FILE?

17 A WHEN THEY TAKE A FOLLOW-UP REPORT THEY GIVE THEM TO THE THEIR
18 SUPERVISOR. HE APPROVES IT, SIGNS OFF, AND HE TAKES IT TO
19 THE FRONT DESK. THEY IN TURN TAKE IT THERE AND IT'S GIVEN TO
20 THE RECORDS ROOM AT THE POLICE DEPARTMENT.

21 Q OKAY. IN YOUR CASE FILE, DO YOU NOT HAVE SUPPLEMENTAL
22 REPORTS THAT RELATE TO THIS CASE THAT FLOW TO YOU AS A RESULT
23 OF THIS CASE, THIS INCIDENT? COULD I SEE YOUR INCIDENT
24 REPORT FILE? I MEAN, LOOK AT YOUR FILE, SIR, AND --

25 A I HAVE A COPY OF THE ORIGINAL INCIDENT REPORT HERE. BUT I'LL

1 HAVE TO STEP DOWN AND GET THE ORIGINAL CASE FOLDER OFF MY
2 DESK.

3 MR. SHUPPER: WOULD YOUR HONOR PERMIT THAT?

4 THE COURT: CERTAINLY. DO THAT IF YOU NEED TO. OR IT
5 CAN BE HANDED UP TO HIM BY MR. GASSER.

6 Q (BY MR. SHUPPER) YOU'VE BEEN TESTIFYING REGARDING YOUR CASE
7 SUMMARY. IS IT FAIR TO SAY THAT YOUR CASE SUMMARY ARE THE
8 NOTES THAT YOU MAINTAIN RELATED TO YOUR INVOLVEMENT IN THIS
9 INVESTIGATION?

10 A I'VE BEEN USING CASE NOTES THAT I JOT DOWN WHEN THINGS ARE
11 GENERATED TO ME AND WHEN THINGS HAPPEN ON THE SCENE AND THAT
12 SORT OF THING.

13 Q AND THAT'S WHAT I'VE BEEN GETTING AT, THAT IN YOUR ROLE AS
14 THE LEAD INVESTIGATOR YOU KEEP A CASE SUMMARY, AND YOUR CASE
15 SUMMARY REFLECTS INFORMATION THAT CAME TO YOU FROM OTHER
16 PEOPLE ON THE SCENE, LIKE OFFICER GIBSON AND SERGEANT --
17 OFFICER TOWNSEND AND SERGEANT MICHAEL?

18 A YES, SIR. SOMETIMES. YES, SIR.

19 Q AND YOUR CASE NOTES REFLECTS THAT?

20 A WELL, I HAVE SOME CASE NOTES WITH INFORMATION THAT WAS
21 GENERATED TO ME. I DON'T THINK WE DID AN ACTUAL CASE SUMMARY
22 IN THIS PARTICULAR CASE. BUT I'VE BEEN USING MY CASE NOTES.

23 Q OKAY. DO YOU HAVE INFORMATION AS TO THE ARREST DATE OF
24 KENNETH JAMES?

25 A I HAVE A BOOKING REPORT HERE. YES, SIR.

1 Q AND DO YOUR NOTES, NOW THAT YOU'VE HAD A CHANCE TO LOOK
2 THROUGH YOUR FILE, REFLECT THE DATE OF MR. KENNETH JAMES'S
3 ARREST?

4 A DO MY CASE NOTES REFLECT THAT? NO, SIR. MY CASE NOTES DO
5 NOT.

6 Q IS THERE ANYTHING IN YOUR FILE THAT DOES?

7 A THE BOOKING REPORT HAS THE DATE THAT HE WAS ARRESTED.

8 Q OKAY. AND WHAT'S THAT DATE?

9 A THAT WOULD BE DECEMBER 15TH, 1996.

10 Q ARE YOU AWARE OF THE DATE OF MR. ROBERT JAMES'S ARREST?

11 A SOMEWHERE I HAVE A SUPPLEMENT WITH THAT INFORMATION ON IT. I
12 DO NOT SEE THE ACTUAL SUPPLEMENT THAT WAS WRITTEN, BUT —

13 Q MR. GASSER HAS ASSISTED US. IF YOU COULD LOOK AT THAT AND —
14 YOUR HONOR.

15 MR. GASSER: YOUR HONOR, WE STIPULATE THAT ROBERT JAMES
16 WAS ARRESTED ON DECEMBER THE 30TH, 1996.

17 THE COURT: GOOD. DECEMBER 30TH, 1996. THAT IS THE
18 DATE HE WAS ARRESTED. DO YOU AGREE WITH THAT, MR. SHUPPER?

19 MR. SHUPPER: YES, SIR, YOUR HONOR. AND THAT'S OVER TWO
20 WEEKS FROM —

21 THE COURT: DECEMBER 15TH.

22 MR. SHUPPER: — FROM THE DATE OF MR. KENNETH JAMES'S
23 ARREST.

24 THE COURT: RIGHT, SIR. PLEASE CONTINUE.

25 Q (BY MR. SHUPPER) IN REVIEWING THE DESCRIPTION GIVEN BY MR.

1 BULL, DID HE NOT MENTION ONE SUSPECT AS BEING THIN?

2 A BY MY STANDARDS THERE ARE A COUPLE OF THEM THAT ARE THIN.

3 I'M A LITTLE BIT HEAVIER THAN MR. BULL.

4 Q AND WHEN YOU COMPILED THE PHOTOGRAPHS FOR THE LINE-UP OF MR.
5 ROBERT JAMES?

6 A YES, SIR, I DID.

7 Q AND WHEN YOU COMPILE A LINE-UP, IS IT PREFERABLE TO HAVE
8 PEOPLE WITH THE SIMILAR FEATURES THAT CORRESPOND WITH
9 DESCRIPTIONS GIVEN BY YOUR -- DEPENDING ON WHAT KIND OF CASE
10 THAT WOULD MATCH AS A SUSPECT?

11 A THAT WOULD BE -- THAT WOULD BE CORRECT. RIGHT.

12 Q AND WHEN YOU COMPILED THIS GROUP OF PHOTOGRAPHS, REFERRING TO
13 STATE'S EXHIBIT 4, DID YOU SEEK TO GET PEOPLE WITH SIMILAR
14 FEATURES?

15 A YES, SIR, WE DID.

16 Q AND ISN'T THE PURPOSE OF THAT SO NO ONE STANDS OUT MORE SO
17 THAN ANOTHER TO GIVE THE -- AS YOU'VE TESTIFIED EARLIER, THAT
18 YOU DON'T MAKE SUGGESTIONS AND YOU -- IN THIS CASE YOU'VE
19 SAID YOU'VE HAD NO DISCUSSIONS OR RELAYED NO INFORMATION TO
20 THE VICTIMS PRIOR TO SHOWING THEM THE LINE-UPS. IS THAT
21 CORRECT?

22 A THAT'S CORRECT.

23 Q AND THAT'S WHAT YOU DID IN THIS CASE WITH THIS PHOTOGRAPHIC
24 LINE-UP?

25 A I'M NOT SURE I UNDERSTAND WHAT YOU'RE ASKING ME.

1 Q I MEAN, YOU COMPILED PHOTOGRAPHS AND YOU DIDN'T DISCUSS THAT
2 YOU HAD A PARTICULAR SUSPECT?

3 A THAT'S CORRECT.

4 Q BEFORE YOU SHOWED IT TO THEM?

5 A THAT'S CORRECT. YES, SIR.

6 Q YOU JUST -- I BELIEVE YOUR EARLIER TESTIMONY WAS YOU'D
7 GATHERED THE PHOTOGRAPHS, PUT THEM TOGETHER, SHOWED THEM TO
8 THE VICTIMS AND THEN LET THEM TAKE THEIR TIME TO SEE IF THEY
9 COULD SELECT SOMEONE?

10 A THAT IS CORRECT.

11 Q OKAY. NOW, THE VICTIMS, BOTH *victim* (SIC) -- I MEAN
12 *victim* AND WINFRED BULL -- FAILED TO MENTION ANYTHING
13 ABOUT CLOTHING OF THEIR ASSAILANTS, DIDN'T THEY?

14 A WELL, TO BE PERFECTLY HONEST WITH YOU, I DON'T THINK WE EVER
15 ASKED *victim* A DESCRIPTION ON THEM AT ALL.

16 Q OKAY. ALL RIGHT. DID YOU ASK MR. BULL?

17 A THE DESCRIPTION THAT I GOT OFFICER WALKER HAD OBTAINED FROM
18 MR. BULL, AND HE GAVE THEM TO ME.

19 Q DID HE SAY ANYTHING ABOUT HAIRSTYLE?

20 A NO, SIR.

21 Q DID HE SAY ANYTHING ABOUT TYPE OF CLOTHING THEY HAD ON?

22 A NO, SIR.

23 Q ANYTHING LIKE STOCKING CAPS OR HATS?

24 A NO, SIR. THERE'S NO CLOTHING DESCRIPTION.

25 Q BUT THERE WAS SOME DESCRIPTION BY MR. BULL OF SUSPECTS BEING

1 THIN?

2 THE COURT: FORGIVE ME. I BELIEVE HE'S ANSWERED THAT IN
3 THAT SOME OF THE DESCRIPTIONS GIVEN TO HIM WERE OF THIN
4 PEOPLE, HE BEING PERHAPS MORE CORPULENT THAN SOME OF THESE
5 OTHER FOLKS. BUT, YEAH. THAT'S BEEN ASKED AND ANSWERED.
6 LET'S GET GOING.

7 MR. SHUPPER: THANK YOU, YOUR HONOR.

8 Q (BY MR. SHUPPER) OKAY. IF YOU LOOK AT THIS, THE SPREAD OF
9 PHOTOGRAPHS IN STATE'S NO. 4, TELL ME WHERE MR. ROBERT JAMES
10 IS LOCATED?

11 A HE'S LOCATED IN PHOTOGRAPH NUMBER 2.

12 Q AND WHEN YOU LOOK AT THE SUSPECTS IN THE TOP ROW COMPARED TO
13 THOSE IN THE BOTTOM ROW, BEING 1, 2 AND 3 VERSUS 4, 5 AND 6,
14 DOES IT NOT SEEM THAT THE SUSPECTS ON THE LOWER ROW HAVE
15 SHORTER OR THICKER NECKS?

16 A NOT TO ME. THEY ARE ALL -- IT'S ALL GENERALLY THE SAME
17 DESCRIPTION. AND I CAN TELL YOU HOW I PERSONALLY GO ABOUT
18 DOING IT WHEN I DO A LINE-UP LIKE THIS.

19 Q WELL, I'M JUST ASKING ABOUT YOUR OBSERVATION OF THIS
20 PARTICULAR LINE-UP.

21 A TO ME IT LOOKS LIKE A REALLY GOOD LINE-UP. IF IT WASN'T, I
22 WOULDN'T HAVE PUT SOMEONE'S PICTURE IN THERE THAT I DIDN'T
23 THINK WAS CLOSE.

24 Q OKAY. AND THAT LINE-UP THAT YOU COMPOSED DIDN'T EXIST WHEN
25 YOU WENT TO SEE MR. CHARLES MURRAY ON THE 31ST, DID IT?

1 A THAT'S CORRECT.

2 Q AND YOU HAVEN'T MET WITH MR. CHARLES MURRAY SINCE THAT DATE,
3 HAVE YOU?

4 A NO, SIR. I TALKED TO HIM THAT ONE PARTICULAR DAY, AND MR.
5 MURRAY REALLY DIDN'T WANT TO TALK TO US.

6 MR. SHUPPER: BEG THE COURT'S INDULGENCE.

7 THE COURT: YES, SIR. CERTAINLY.

8 MR. SHUPPER: I HAVE NOTHING FURTHER OF THIS WITNESS.
9 THANK YOU.

10 THE COURT: ANY REDIRECT, MR. GASSER?

11 MR. GASSER: YES, SIR, YOUR HONOR. VERY BRIEFLY.

12 THE COURT: ALL RIGHT.

13 REDIRECT EXAMINATION BY MR. GASSER:

14 Q INVESTIGATOR THOMAS, BOTH MR. SHUPPER AND MR. STRICKLER ASKED
15 YOU ABOUT VISITING MR. MURRAY. I WANT TO BE SURE I'VE WROTE
16 DOWN WHAT YOUR RESPONSE TO THEIR QUESTIONS WERE. WHEN YOU
17 SHOWED HIM THE LINE-UP CONTAINING KENNETH JAMES, DID HE
18 INDICATE TO YOU THAT HE COULD NOT PICK ANYONE OUT OR THAT HE
19 WOULD NOT PICK ANYONE OUT?

20 A THAT HE WOULD NOT PICK ANYONE OUT.

21 Q I BELIEVE IT WAS YOUR TESTIMONY THAT HE DIDN'T WANT TO SPEAK
22 WITH YOU ALL AT ALL? THAT'S CHARLES MURRAY?

23 A THAT IS CORRECT.

24 Q WHEN MR. STRICKLER WAS ASKING YOU QUESTIONS ABOUT WHETHER OR
25 NOT YOU TOOK *victim's* WRITTEN STATEMENT FIRST OR DID THE PHOTO

1 LINE-UP FIRST, YOU REMEMBER HIM ASKING YOU THOSE QUESTIONS?

2 A YES, SIR.

3 Q AND YOUR TESTIMONY I BELIEVE WAS YOU CAN'T RECALL EXACTLY
4 WHICH PROCEDURE YOU DID FIRST. IS THAT CORRECT?

5 A YES, SIR.

6 Q IS IT -- DID YOU IN THIS CASE -- OR IS IT YOUR PRACTICE WHEN
7 AN INDIVIDUAL, A WITNESS OR A VICTIM IDENTIFIES SOMEBODY OUT
8 OF A PHOTO LINE-UP THAT HAS NO NAMES OR ANY IDENTIFYING
9 REMARKS ABOUT THAT PERSON, DO YOU IMMEDIATELY TELL THAT
10 PERSON WHO THEY JUST PICKED OUT?

11 A NO, SIR.

12 Q DID YOU -- DO YOU EVEN REMEMBER -- I MEAN, WERE YOU THE ONE
13 THAT EVENTUALLY EVER TOLD *victim* WHO THE PERSON WAS SHE
14 PICKED OUT, OR WAS THAT LEFT UP TO SOMEBODY ELSE?

15 MR. STRICKLER: I'LL OBJECT, YOUR HONOR, AS IMPROPER
16 REDIRECT. HE WENT INTO IT AND I WENT INTO THAT IT AND HE'S
17 GOING INTO IT AGAIN.

18 THE COURT: WELL, YOU KNOW, YOU BOTH DID TALK ABOUT THE
19 PROCEDURE IN THE LINE-UP. HE SIMPLY ASKED WAS HE THE PERSON
20 WHO INFORMED AT ANY TIME *victim* THAT SHE PICKED OUT WHO
21 THEY FELT WAS THE SUSPECT. AND I'LL LET HIM ASK THAT
22 QUESTION.

23 MR. STRICKLER: THANK YOU, SIR.

24 MR. GASSER: THANK YOU, YOUR HONOR.

25 A I -- I DON'T BELIEVE I EVER TOLD HER.

1 THE COURT: BUT THAT'S THE ONLY QUESTION I'M GOING TO
2 LET HIM ASK IN THAT REGARD.

3 MR. GASSER: AND I UNDERSTAND AND WOULD BE —

4 THE COURT: THANK YOU. GOOD.

5 Q (BY MR. GASSER) DO YOU REMEMBER WHEN MR. STRICKLER AND MR.
6 SHUPPER WERE ASKING YOU QUESTIONS ABOUT THE HAIR STYLES OF
7 THE ASSAILANTS? DO YOU REMEMBER THEM ASKING YOU THOSE TYPES
8 OF QUESTIONS?

9 A YES, SIR.

10 Q NOW, I BELIEVE IT WAS YOUR TESTIMONY THAT NEITHER MR. BULL
11 NOR *victim* DESCRIBED THAT HAIR STYLES AS BEING BRAIDED OR
12 DREAD LOCKS. IS THAT CORRECT?

13 A THAT'S CORRECT.

14 Q NOW, DID THEY GIVE ANY DESCRIPTION OF HAIR STYLES AT ALL?

15 A NO, SIR.

16 Q SO ANYWHERE IN YOUR NOTES DOES IT INDICATE THAT ALL THE
17 ASSAILANTS HAD SHAVED HEADS?

18 A NO, SIR.

19 Q HAD LOW CUTS?

20 A NO, SIR.

21 MR. STRICKLER: OBJECTION TO THE LEADING, YOUR HONOR.

22 THE COURT: SUSTAINED. DON'T DO THAT. THANK YOU.

23 Q SO THE FACT OF THE MATTER IS, IS THERE ANYWHERE, ARE THERE
24 ANY DESCRIPTIONS OF ANY HAIR STYLES OF ANY OF THE ASSAILANTS?

25 MR. STRICKLER: ASKED AND ANSWERED, YOUR HONOR.

1 THE COURT: SUSTAINED. AND, YEAH. IT'S A LEADING
2 QUESTION AS WELL. THANK YOU. OKAY.

3 Q DO YOU REMEMBER HIM ASKING YOU THE QUESTION — YOUR HONOR, WE
4 NEED TO APPROACH.

5 THE COURT: OKAY.

6 (WHEREUPON, A BENCH CONFERENCE IS HAD)

7 Q REGARDING CLOTHING DESCRIPTIONS, AS THE SAME WITH HAIR
8 DESCRIPTIONS, DID YOU EVER — OR WHAT, IF ANYTHING, DID ANY
9 OF THESE WITNESSES DESCRIBE REGARDING CLOTHING ITEMS?

10 A I — I DON'T THINK WE ASKED THEM.

11 Q DO YOU REMEMBER MR. STRICKLER ASKING YOU IF YOU LOOKED FOR A
12 RED JERSEY IN THE SEARCH WARRANT WHEN YOU EXECUTED THE SEARCH
13 WARRANT AT KENNETH JAMES'S RESIDENCE? DO YOU REMEMBER HIM
14 ASKING YOU THOSE QUESTIONS?

15 A YES, SIR.

16 Q DID YOU EVEN HAVE ANY INFORMATION REGARDING POTENTIAL COLORS
17 OF CLOTHES WHEN YOU WERE EXECUTING THAT SEARCH WARRANT?

18 A NO, SIR.

19 Q AND AS YOU SIT HERE OVER THREE YEARS LATER, CAN YOU SIT HERE
20 AND TELL THIS JURY THE EXACT DIFFERENT NUMBER OF
21 COLOR-COORDINATED CLOTHING THAT MIGHT HAVE BEEN IN KENNETH
22 JAMES'S OR ROBERT JAMES'S HOME WHEN YOU WERE IN THERE OVER
23 THREE YEARS AGO?

24 A NO, SIR.

25 Q DO YOU RECALL AT THE BEGINNING OF MR. STRICKLER'S QUESTIONING

1 HE ASKED YOU ABOUT "BIG DADDY" AND CERTAIN NICKNAMES AND YOUR
2 ABILITY TO RECORD NICKNAMES? DO YOU REMEMBER THAT LINE OF
3 QUESTIONING?

4 A YES, SIR.

5 Q AND SHOWING YOU THIS DOCUMENT, SHOWING YOU THIS DOCUMENT; I
6 BELIEVE YOU REFERRED TO THAT PARTICULAR DOCUMENT I BELIEVE
7 BOTH DURING MY DIRECT EXAMINATION AND MR. STRICKLER'S CROSS
8 EXAMINATION. IS THAT CORRECT?

9 A YES, SIR.

10 Q AND THAT IS WHAT DOCUMENT AGAIN?

11 A THIS IS A BOOKING REPORT.

12 Q NOW. AND IS THIS BOOKING REPORT KEPT IN THE ORDINARY COURSE
13 OF BUSINESS AT THE COLUMBIA POLICE DEPARTMENT?

14 A YES, SIR, IT IS.

15 Q THAT IS WHOSE BOOKING REPORT?

16 A THIS WOULD HAVE BEEN KENNETH JAMES'S.

17 Q AND YOU INDICATED THAT -- WHAT DATE WAS HE ARRESTED, ON WHAT
18 CHARGE?

19 A DECEMBER 15TH, 1996, FOR CRIMINAL SEXUAL CONDUCT FIRST
20 DEGREE.

21 Q NOW, WAS HE ACTUALLY ARRESTED ON THE KIDNAPPING CHARGE IN
22 THIS CASE -- AND I HAND YOU THIS DOCUMENT -- THE KIDNAPPING
23 CHARGE ON THIS CASE ON THE DAY BEFORE, ON DECEMBER THE 14TH?

24 A YES, SIR.

25 Q AND IS THAT A DOCUMENT THAT'S ALSO KEPT IN THE ORDINARY

1 COURSE OF BUSINESS OF THE COLUMBIA POLICE DEPARTMENT?

2 A YES, SIR, IT IS.

3 Q AND DOES MR. JAMES PROVIDE A NICKNAME FOR HIMSELF?

4 A YES, SIR, HE DOES.

5 Q AND IT IS WHAT?

6 A "K-DOG".

7 Q "K-DOG". NOW, THIS BOOKING REPORT THAT YOU JUST DESCRIBED
8 FROM DECEMBER THE 14TH, 1996, ON KENNETH JAMES WHEN HE WAS
9 ARRESTED FOR KIDNAPPING OF *victim* PROVIDES THE NICKNAME
10 YOU JUST INDICATED TO THE JURY, DID YOU EVER SHARE THIS
11 INFORMATION WITH ANY OF THE WITNESSES INVOLVED IN THIS CASE?

12 A NO, SIR, I DID NOT.

13 Q IN FACT, WHEN IS THE FIRST TIME -- SINCE DECEMBER OF 1996,
14 WHEN IS THE FIRST TIME YOU EVEN AS THE CHIEF INVESTIGATING
15 OFFICER HAD AN OPPORTUNITY TO GO BACK AND EVEN LOOK AT THIS
16 PARTICULAR DOCUMENT?

17 A I BELIEVE RIGHT NOW IS THE FIRST TIME I'VE EVER SEEN THAT
18 PARTICULAR DOCUMENT.

19 MR. GASSER: THAT'S ALL I HAVE, YOUR HONOR.

20 THE COURT: THANK YOU. DO YOU HAVE ANYTHING BASED ON
21 THOSE QUESTIONS?

22 MR. STRICKLER: VERY BRIEFLY BASED ON THEM, YOUR HONOR,
23 BASED ON THE LAST.

24 THE COURT: RECROSS. I'LL GIVE YOU ONE OR TWO QUESTIONS
25 ON RECROSS.

RECROSS EXAMINATION BY MR. STRICKLER:

Q OF COURSE, MR. THOMAS, YOU HAVE NO KNOWLEDGE OF WHAT ANY WITNESS IN THIS CASE MAY HAVE BEEN PICKING UP ON HIS OWN OUT AND ABOUT COLUMBIA IN THE THREE YEARS SINCE THIS INCIDENT?

A I WOULD NOT.

Q SPECIFICALLY PICKING UP REGARDING NICKNAMES OR ANYTHING LIKE THAT?

A THAT WOULD BE CORRECT.

Q RIGHT?

A YES, SIR.

Q OKAY. THANK YOU.

THE COURT: OKAY. MR. SHUPPER, I'LL GIVE YOU -- DO YOU REALLY WANT TO ASK A QUESTION? I DON'T MEAN TO IMPLY THAT YOU SHOULDN'T. BUT WHAT I'M SAYING IS, IS THAT I ALLOWED MR. STRICKLER THAT QUESTION BASED ON THE REDIRECT EXAMINATION. BUT IF YOU WISH TO ASK A QUESTION, I'LL LET YOU. BUT MAKE IT VERY BRIEF. OKAY?

RECROSS EXAMINATION BY MR. SHUPPER:

Q INVESTIGATOR THOMAS, DO YOU HAVE THE INVESTIGATIVE REPORT THAT REFLECTS THE ARREST OF ROBERT JAMES ON ---

THE COURT: DECEMBER 30TH.

Q CORRECT. DECEMBER 30TH? WELL, ACTUALLY, LISTING -- THIS IS A DOCUMENT, CASE NO. 96-30124 DETAILING THAT ROBERT JAMES HAD BEEN ARRESTED AND WARRANTS HAD BEEN ISSUED AGAINST HIM.

A I HAVE -- THAT NUMBER THAT YOU'VE JUST READ OFF I BELIEVE WAS

1 THE -- IS THE CASE NUMBER INVOLVED WITH THIS INCIDENT.

2 Q AND DOES THAT REFLECT ROBERT JAMES'S ADDRESS ON IT? ARE YOU
3 LOOKING AT IT?

4 A I AM.

5 THE COURT: WHY DON'T YOU SHOW IT TO HIM, MR. SHUPPER.

6 Q HERE IT IS.

7 A I'M NOT SURE I HAVE THE OTHER ONE. YEAH. THIS IS A
8 SUPPLEMENTAL INCIDENT REPORT. THIS IS NOT THE BOOKING
9 REPORT.

10 Q RIGHT. A SUPPLEMENTAL REPORT?

11 A RIGHT.

12 Q AND DOES THAT REFLECT ROBERT JAMES'S ARREST -- I MEAN
13 ADDRESS?

14 A YES, SIR.

15 Q AT THE TIME HE WAS ARRESTED?

16 A IT SAYS ON HERE THAT IT IS 2111 GORDON STREET.

17 Q THANK YOU.

18 MR. SHUPPER: NO FURTHER QUESTIONS, YOUR HONOR.

19 THE COURT: THANK YOU. OKAY. MR. THOMAS, YOU CAN STEP
20 DOWN, PLEASE, SIR.

21 MR. GASSER: AT THIS TIME THE STATE WOULD CALL SANDY
22 KAMMER.

23 THE COURT: YOU ALL COME HERE A SECOND. LET ME TALK TO
24 YOU ALL.

25 (WHEREUPON, A BENCH CONFERENCE IS HAD)

1 THE COURT: WHERE IS MS. KAMMER? OKAY.

2 SANDY L. KAMMER, BEING FIRST DULY
3 SWORN, TESTIFIES AS FOLLOWS:

4 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
5 FOR THE RECORD.

6 MS. KAMMER: MY NAME IS SANDY LYNN KAMMER.

7 DIRECT EXAMINATION BY MR. GASSER:

8 Q MS. KAMMER, WHERE ARE YOU EMPLOYED, MA'AM?

9 A EXCUSE ME?

10 Q WHERE ARE YOU EMPLOYED?

11 A I'M EMPLOYED WITH AS A PARALEGAL FOR THE SCANA CORPORATION.
12 IT'S THE PARENT COMPANY OF SOUTH CAROLINA ELECTRIC & GAS
13 COMPANY.

14 Q ARE YOU FAMILIAR WITH HOW SCE&G THROUGH THE RECORDS, HOW
15 RECORDS ARE KEPT OF SCE&G REGARDING UTILITIES AT INDIVIDUAL
16 RESIDENCES?

17 A YES, SIR.

18 Q AND PURSUANT TO A REQUEST, DID YOU BRING WITH YOU CERTAIN
19 RECORDS FOR THE RESIDENCE OF 2528 ORR STREET HERE IN
20 COLUMBIA?

21 A YES, SIR.

22 Q AND WHAT INFORMATION DOES THE RECORDS FOR SCE&G INDICATE IS
23 — IN WHOSE NAME BETWEEN MARCH OF 1996 AND JULY OF 1996,
24 WHOSE NAME WAS THE UTILITY BILL, THE SCE&G BILL IN AT THAT
25 ADDRESS?

1 A AT 2528 ORR STREET HERE IN COLUMBIA BETWEEN MARCH OF '96 AND
2 JULY OF '96, WE PROVIDED SERVICE IN THE NAME OF KENNETH L.
3 JAMES.

4 Q SO IT STARTED IN MR. KENNETH JAMES'S NAME, THE SERVICE BEGAN,
5 WAS TURNED ON AT 2528 ORR STREET ON WHAT DATE?

6 A MARCH 14TH, 1996.

7 Q AND YOUR SCE&G'S ELECTRICAL SERVICE TO THAT RESIDENCE
8 TERMINATED ON WHAT DATE?

9 A WE HAVE A FINAL DATE ON THAT ACCOUNT OF JULY 11TH, 1996.

10 MR. GASSER: THAT'S ALL I HAVE, YOUR HONOR.

11 THE COURT: OKAY. MR. STRICKLER? MR. SNEED?

12 MR. STRICKLER: I HAVE NO QUESTIONS FOR HER, YOUR HONOR.

13 MR. SHUPPER: NO QUESTIONS, YOUR HONOR.

14 THE COURT: THANK YOU. THANK YOU, MS. KAMMER. YOU'RE
15 FREE TO GO.

16 MR. GASSER: AT THIS TIME THE STATE WOULD CALL DR.
17 STACEY SMITHSON.

18 DR. STACEY SMITHSON, BEING FIRST
19 DULY SWORN, TESTIFIES AS FOLLOWS:

20 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
21 FOR THE RECORD.

22 THE COURT: WILL THERE BE VOIR DIRE AS TO
23 QUALIFICATIONS?

24 MR. STRICKLER: NO, SIR. OH. NO QUESTIONS ON BEHALF OF
25 MR. KENNETH JAMES.

1 MR. SHUPPER: NO, YOUR HONOR, ON BEHALF OF ROBERT JAMES.

2 THE COURT: OKAY.

3 MR. GASSER: YOUR HONOR, WE WOULD MOVE TO QUALIFY HIM AS
4 AN EXPERT IN THE AREA OF OBSTETRICS AND GYNECOLOGY WITH A
5 SUBSPECIALTY IN CRIMINAL SEXUAL ASSAULT PROTOCOLS.

6 THE COURT: ALL RIGHT. THE WITNESS IS A PHYSICIAN WHO
7 IS BEING OFFERED AS AN EXPERT WITNESS IN THE AREAS JUST
8 MENTIONED BY THE SOLICITOR WITHOUT OBJECTION BY EITHER
9 DEFENDANT; IN OTHER WORDS, AS TO HIS QUALIFICATIONS AS AN
10 EXPERT. YOU MUST UNDERSTAND THAT THAT IS WHAT THEIR
11 AGREEMENT IS, IS THEY SAY HE'S AN EXPERT.

12 AGAIN, EXPERT TESTIMONY IS SUBJECT TO CERTAIN TERMS AND
13 CONDITIONS ABOUT WHICH I WILL ADVISE YOU AT A LATER TIME.
14 BUT UNDERSTAND NOW THAT THIS PHYSICIAN IS OFFERED AS AN
15 EXPERT WITNESS. PLEASE CONTINUE, MR. GASSER.

16 MR. STRICKLER: IF WE COULD BRIEFLY BEFORE WE GET
17 STARTED. MAY WE APPROACH, YOUR HONOR?

18 THE COURT: I'M SORRY. I'M SORRY. YES, SIR.

19 (WHEREUPON, A BENCH CONFERENCE IS HAD)

20 DIRECT EXAMINATION BY MR. GASSER:

21 Q GOOD AFTERNOON, DR. SMITHSON.

22 A GOOD MORNING. AFTERNOON. SORRY.

23 THE COURT: JUST BARELY.

24 Q I KNOW YOU'VE BEEN QUALIFIED AS AN EXPERT, DR. SMITHSON. BUT
25 JUST BRIEFLY, WHAT DO YOU DO FOR A LIVING, SIR?

1 A I AM AN OBSTETRICIAN/GYNECOLOGIST AT THE PRESENT TIME IN
2 LEXINGTON COUNTY.

3 Q DO YOU BOTH HAVE A PRIVATE PRACTICE AS WELL AS WORK IN
4 AFFILIATION WITH THE LEXINGTON MEMORIAL OR MEDICAL CENTER?
5 I'M NOT SURE WHAT THE TITLE OF THAT HOSPITAL IS.

6 A YES, SIR.

7 Q BACK IN MAY OF 1996, WHERE WERE YOU EMPLOYED, DR. SMITHSON?

8 A I WAS EMPLOYED AS A THIRD YEAR RESIDENT AT RICHLAND MEMORIAL
9 HOSPITAL.

10 Q ARE YOU FAMILIAR WITH -- ARE YOU FAMILIAR -- SHOWING YOU
11 STATE'S EXHIBIT NO. 32 -- WITH CRIMINAL SEXUAL ASSAULT
12 EVIDENCE COLLECTION KITS?

13 A YES, SIR. VERY MUCH SO.

14 Q HOW ARE YOU FAMILIAR WITH SUCH KITS?

15 A I DURING THE COURSE OF THE RESIDENCY WAS CALLED TO THE
16 EMERGENCY DEPARTMENT FOR CASES OF SUSPECTED SEXUAL ASSAULT
17 OVER 40 TIMES AND HAVE TESTIFIED FOR THESE CASES PRIOR TO
18 THIS CASE.

19 Q I WANT TO DRAW YOUR ATTENTION TO THE MORNING OF MAY THE 29TH,
20 WEDNESDAY MORNING, MAY THE 29TH, 1996. DID YOU HAVE AN
21 OPPORTUNITY TO COME INTO CONTACT WITH A YOUNG LADY BY THE
22 NAME OF *victim*?

23 A YES, I DID.

24 Q WOULD YOU DESCRIBE FOR THE JURY HOW YOU CAME INTO CONTACT
25 WITH HER?

1 A I WAS CALLED TO THE EMERGENCY DEPARTMENT I THINK AT
2 APPROXIMATELY 3 A.M. IN REGARDS TO A SUSPECTED SEXUAL
3 ASSAULT. THE WAY THESE CASES ARE HANDLED IN THE EMERGENCY
4 DEPARIMENT IS, IS THE PATIENT PRESENTS AND IS TAKEN IN BY A
5 NURSE THAT STAYS WITH THAT PATIENT THE ENTIRE TIME. SOON
6 AFTER THEY'RE CHECKED IN AND APPROPRIATE HAIR SAMPLES,
7 CLOTHING SAMPLES, THESE SORTS OF THINGS, ARE OBTAINED, THE
8 PHYSICIAN IS THEN CALLED IN FOR THE ACTUAL PHYSICAL EXAM
9 PORTION OF THE EXAMINATION.

10 AT THAT TIME I WAS CALLED IN AT APPROXIMATELY 3 A.M. I
11 MET *victim* AT THAT POINT IN TIME. PEOPLE THAT WERE
12 PRESENT IN THE ROOM DURING MY EXAMINATION WERE MYSELF, A
13 NURSE THAT ASSISTED ME WITH THE EXAMINATION, THE RAPE CRISIS
14 COUNSELOR AND *victim* HERSELF.

15 AT THE TIME OF INITIAL PRESENTATION SHE WAS VERY
16 APPROPRIATE BUT TEARFUL AND CRYING AND SEEMED LIKE SHE HAD
17 BEEN THROUGH QUITE A BIT IN THE PREVIOUS FEW HOURS. AND WE
18 THEN COMMENCED TO GO FORWARD WITH THE FULL PHYSICAL
19 EXAMINATION AS WELL AS OBTAINING HER SIDE OF THE STORY AT
20 THAT TIME.

21 Q NOW, AS PART OF NOT ONLY THE -- OR SPECIFICALLY AS PART OF
22 THE SEXUAL ASSAULT KIT, DOES IT COME WITH A FORM THAT NEEDS
23 TO BE FILLED OUT BY THE EXAMINING PHYSICIAN?

24 A YES. AS WELL AS WE DICTATE A NOTE FOR THAT EXAMINATION, AS
25 WELL AS --

1 Q WELL, THAT WAS MY NEXT QUESTION. DOES THE HOSPITAL ALSO HAVE
2 A PROTOCOL WHERE YOU KEEP MEDICAL RECORDS AS WELL?

3 A YES.

4 Q HAVE YOU HAD AN OPPORTUNITY TO REVIEW YOUR DICTATED -- THE
5 HOSPITAL RECORDS OF THIS PARTICULAR EXAMINATION AS WELL AS
6 THE SEXUAL ASSAULT PROTOCOL FORM THAT YOU FILLED OUT OVER
7 THREE YEARS AGO?

8 A YES, SIR, I HAVE.

9 Q BUT DO YOU ALSO HAVE AN INDEPENDENT MEMORY OF *victim's*
10 CASE?

11 A I DO.

12 Q WHAT TIME ACCORDING TO -- WHAT TIME WAS SHE ADMITTED TO THE
13 HOSPITAL APPROXIMATELY?

14 A I BELIEVE AROUND 2 A.M., 1:30, 2 A.M. I BELIEVE.

15 Q WHAT TIME WAS IT WHEN YOU ACTUALLY HAD BEGUN TO BEGIN YOUR
16 PROTOCOL EXAM?

17 A A LITTLE AFTER 3:00.

18 Q NOW, ARE YOU -- AS A PHYSICIAN, ARE YOU REQUIRED TO ASK HER
19 SPECIFIC QUESTIONS FOR PURPOSES OF MEDICAL DIAGNOSIS AND
20 TREATMENT THAT YOU'RE ABOUT READY TO PERFORM?

21 A REQUIRED, NO. BUT FROM THE STANDPOINT OF EVALUATING THE
22 PATIENT IN A NON BIASED MANNER AS MUCH AS I CAN, I TEND TO --
23 WELL, I DEMAND FROM THE EMERGENCY DEPARTMENT THAT I DON'T
24 KNOW ANYTHING ABOUT THE PATIENT BEFORE I WALK IN THERE AND
25 MEET HER EXCEPT HER NAME. AND, THEREFORE, I AT THE TIME OF

1 THE EXAMINATION TRY TO GET HER STORY AGAIN AND POTENTIALLY
2 PUT THAT IN MY RECORD OF THE EVENT AND THE EXAMINATION.

3 Q AND SO PRIOR TO PERFORMING ANY TYPE OF MEDICAL PROCEDURE OR
4 MEDICAL EXAM, DID YOU HAVE AN OPPORTUNITY TO ASK *victim*
5 ABOUT THE EVENTS EARLIER THAT MORNING OR THAT EVENING?

6 A YES. YES, I DID.

7 Q AND DID YOU NOTE HER RESPONSES IN THAT REGARD?

8 A YES, I DID. I WALKED IN, INTRODUCED MYSELF AND AS WELL AS
9 WITH THE RAPE CRISIS COUNSELOR WHO WAS ALREADY IN THE ROOM.
10 AND I ASKED HER ESSENTIALLY WHAT HAPPENED. AND SHE GAVE ME
11 HER STORY, WHICH WAS THAT SHE AND A FRIEND BY THE NAME OF
12 WINFRED WERE PRESENT AT -- IN PERRY PARK I BELIEVE AT
13 SOFTBALL GAMES. AND AT APPROXIMATELY 11:30 P.M. THAT EVENING
14 THEY WERE APPROACHED BY FIVE GENTLEMEN. THEY THEN THREATENED
15 HER WITH A GUN. AFTER THEY HAD ASKED THEM FOR A LIGHT. THEY
16 HAD THEN THREATENED HER WITH A GUN AND WITH PHYSICAL
17 VIOLENCE, AS WELL AS HER PARTNER, THIS WINFRED FELLOW.

18 AT THAT POINT IN TIME THEY WERE TAKEN DOWN FROM THE
19 STANDS WHERE THEY WERE SITTING AND DRUG OVER TO A WOODED AREA
20 THAT WAS NEARBY. THEY WERE STRIP SEARCHED AT THAT POINT IN
21 TIME AND APPARENTLY TO BE LOOKING FOR THE CAR KEYS FOR THIS
22 COUPLE. AFTER THEY WERE STRIP SEARCHED WINFRED WAS ABLE TO
23 RUN AWAY AND ESCAPE. THEY DIDN'T FIND THE CAR KEYS. AT THAT
24 POINT IN TIME ONE OF THE ASSAILANTS MADE THE COMMENT TO TAKE
25 THE CAR KEYS TO A FELLOW BY THE NAME OF QUOTE, "BIG DADDY",

1 UNQUOTE.

2 Q LET ME ASK YOU THIS. DO YOU REMEMBER victim, AND DID YOU
3 SPECIFICALLY MAKE A NOTE OF HER DESCRIBING ONE OF THE
4 INDIVIDUALS AS THE PUSHY ONE?

5 A YES.

6 Q IS THAT NOTATED IN YOUR RECORDS?

7 A YES.

8 Q FROM MAY 29TH, 1996?

9 A YEAH. AFTER SHE FOUND THE CAR KEYS, SHE DESCRIBED THE
10 ASSAILANT THAT HAD THE CAR KEYS AS THE QUOTE, "COCKY, PUSHY"
11 ONE.

12 Q AND SHE DESCRIBED THE HAIR?

13 A YES.

14 Q AS WHAT?

15 A AS BEING —

16 THE COURT: THE RECORD WILL REFLECT THAT THIS TESTIMONY
17 IS SUBJECT TO A MOTION IN LIMINE TO EXCLUDE IT AS WELL AS A
18 CONTEMPORANEOUS OBJECTION NOW NOTED. BUT PLEASE CONTINUE.

19 MR. STRICKLER: THANK YOU, SIR.

20 MR. GASSER: THANK YOU, YOUR HONOR.

21 A HE HAD —

22 Q (BY MR. GASSER) LET ME ASK YOU THIS. DO YOU HAVE PAGE 1 OF
23 YOUR PROTOCOL?

24 A YES, I DO.

25 Q YOU SEE WHERE IT HAS "BIG DADDY" WHERE YOU PUT IT IN QUOTES?

1 A YES.

2 Q AND PUSHY ONE?

3 A YES. BRAIDED HAIR. THAT'S RIGHT. HAD BRAIDED HAIR AS WELL.

4 Q AND JUST TO BE ACCURATE, THE ONE THAT SHE INDICATED THAT HAD
5 THE BRAIDED HAIR WAS THE PUSHY ONE, CORRECT?

6 A YES.

7 Q NOW, FOR THE MEDICAL EXAMINATION AND THE SWABS AND THE SMEARS
8 WHICH WE'LL GET TO THAT YOU HAVE TO DO IN THIS PROTOCOL, DO
9 YOU HAVE TO ASK HER WHERE THERE WAS PENETRATION ON HER BODY?

10 A YES, I DO.

11 Q AND DID DO YOU THAT IN THIS CASE?

12 A YES, I DID. SHE REPORTED THAT THEY BOTH HAD PENETRATION OF
13 THE VULVA RESULTING IN SEXUAL INTERCOURSE AS WELL AS
14 PENETRATION OF THE MOUTH, OTHERWISE KNOWN AS FELLATIO.

15 Q NOW, AT THIS POINT IN TIME YOU INDICATED THAT THERE WAS A
16 PERIOD OF TIME BEFORE YOU ACTUALLY CAME INTO CONTACT WITH
17 VICTIM. AND WHAT WAS HER DEMEANOR LIKE WHEN YOU CAME INTO
18 CONTACT WITH HER?

19 A I STATED THAT SHE WAS CRYING AND FRIGHTENED BUT SHE WAS VERY
20 COHERENT AND VERY COOPERATIVE WITH THE EXAMINATION AND VERY
21 CONVERSIVE AND DESCRIPTIVE ABOUT THE EVENT THAT SHE HAD JUST
22 UNDERWENT.

23 Q NOW, WAS THIS THE FIRST SEXUAL ASSAULT PROTOCOL THAT YOU HAD
24 TO DO, YOU HAD TO PERFORM DURING YOUR SERVICES AT RICHLAND
25 MEMORIAL HOSPITAL?

1 A NO. BY THIS TIME I HAD PERFORMED OVER 30 I'M SURE.

2 Q AND HAVE YOU PERFORMED CRIMINAL SEXUAL ASSAULT PROTOCOLS
3 SINCE THEN?

4 A YES, I HAVE.

5 Q SO HAVE YOU HAD AN OPPORTUNITY TO COME INTO CONTACT AT ANY
6 TIME DURING YOUR PROFESSIONAL ACTIVITIES AT THE E.R. IN THE
7 HOSPITAL WITH INDIVIDUALS THAT APPEAR TO BE UNDER THE
8 INFLUENCE OF ALCOHOL OR DRUGS OR A COMBINATION OF BOTH? HAVE
9 YOU HAD THAT EXPERIENCE AS A PHYSICIAN?

10 A YES, I HAVE.

11 Q IN YOUR EXPERIENCE, DID YOU EVENTUALLY ORDER A TOX SCREEN FOR
12 VICTIM IN THIS CASE?

13 A I DID NOT, BECAUSE AT THE TIME SHE WAS SO COHERENT AND WITH
14 IT THERE DIDN'T APPEAR TO ME TO BE ANY KIND OF INTOXICATION
15 OR ANY ILLEGAL SUBSTANCE INFLUENCING HER BEHAVIOR OR
16 CONVERSATION.

17 Q HAD YOU NOTICED THAT, WHAT WOULD YOU HAVE DONE AS A
18 PHYSICIAN?

19 A I WOULD HAVE ORDERED A TOXICOLOGY SCREEN.

20 Q AND DID YOU SMELL ANY ODORS OF ALCOHOL OR MARIJUANA OR ANY
21 ODORS OF THAT TYPE ON OR ABOUT THE BODY OF VICTIM ?

22 A NO, I DID NOT.

23 Q WOULD YOU PLEASE TELL US THEN, DR. SMITHSON, WHAT TYPE OF
24 EXAMINATION DID YOU PERFORM ON VICTIM ?

25 A I DO A FULL PHYSICAL EXAMINATION AS WELL AS -- WHICH INCLUDES

1 I GET A PELVIC EXAMINATION AND COLLECTION OF NUMEROUS SAMPLES
2 FROM DIFFERENT AREAS OF THE BODY. OF COURSE A FULL PHYSICAL
3 EXAMINATION IS FROM HEAD TO TOE. I NOTE ANY AREAS OF TRAUMA
4 OR RECENT BRUISING OR ANYTHING LIKE THAT THAT MIGHT INDICATE
5 A STRUGGLE. AND THEN WE PROCEED TO A PELVIC EXAMINATION
6 WHERE WE PLACE A SPECULUM INTO THE VAGINA AND WE OBTAIN
7 SAMPLES OF THE VAGINAL SECRETIONS AND/OR FLUIDS PRESENT IN
8 THE VAGINA, AS WELL AS I OBTAIN WHAT'S CALLED A WET PREP
9 WHICH IS WHERE I VIEW THE SECRETIONS UNDERNEATH A MICROSCOPE
10 AND MAKE DIAGNOSES BASED UPON THAT.

11 Q WELL, LET'S START OUT WITH THE EXAMINATION OF THE -- YOUR
12 PELVIC EXAMINATION. DO YOUR RECORDS INDICATE, DID YOU HAVE
13 AN OPPORTUNITY TO PHYSICALLY VIEW DURING THE PELVIC
14 EXAMINATION THE VAGINAL REGION; AND, IF SO, WHAT DID YOU
15 NOTE?

16 A WELL, DURING THE PELVIC EXAMINATION, OF COURSE YOU FIRST NOTE
17 THE EXTERNAL PORTION OF THE VULVA, THE OUTSIDE OF THE VAGINA.
18 AND ON *victim* I NOTED THAT THE POSTERIOR ASPECT OF THE
19 VAGINA WAS SLIGHTLY REDDENED AND DID HAVE SOME SMALL, MILD
20 ABRASIONS WHICH I CONSIDERED TO BE CONSISTENT WITH RECENT
21 SEXUAL INTERCOURSE. IN ADDITION TO THAT, THE VAGINA WAS PINK
22 AND MOIST, BUT THERE WAS A THIN FROTHY DISCHARGE THAT WAS
23 PRESENT AS WELL TO, WHICH I WAS ABLE TO OBTAIN A SAMPLE OF
24 THAT DISCHARGE AND LOOK AT IT UNDER THE MICROSCOPE.
25 OTHERWISE THE CERVIX AND OTHER PORTIONS OF THE EXAMINATION

1 WERE ESSENTIALLY NORMAL.

2 Q DID YOU OBSERVE ANY TEARING OR WHAT IS DESCRIBED AS TEARING
3 IN YOUR LINE OF WORK?

4 A YES. I NOTED SOME ABRASIONS OF THE POSTERIOR ASPECT OF THE
5 VAGINA. THESE ARE MOSTLY CONSISTENT WITH RECENT INTERCOURSE.
6 HOWEVER, IT'S NOT ALWAYS SEEN WITH INTERCOURSE, BUT IT'S MOST
7 LIKELY SEEN WITH INTERCOURSE WHERE A PERSON HASN'T HAD TIME
8 TO BUILD UP ENOUGH LUBRICATION AND IS OFTENTIMES SEEN IN
9 SEXUAL ASSAULT CASES.

10 Q DID YOU OBTAIN -- AS PART OF YOUR KIT, DID YOU OBTAIN KNOWN
11 HEAD HAIR FROM victim?

12 A YES, WE DO.

13 Q AND KNOWN PUBIC HAIR FROM THE PUBIC REGION?

14 A YES.

15 Q EXPLAIN, DO YOU COMB THE PUBIC REGION AS WELL TO COLLECT ANY
16 LOOSE HAIRS?

17 A YES, WE DO.

18 Q WAS THAT DONE IN THIS CASE?

19 A YES.

20 Q AND ALL THIS EVIDENCE THAT YOU'RE DESCRIBING TO THE JURY,
21 WHERE ARE YOU PUTTING IT? WHAT TYPE OF SECURITY DO YOU HAVE?
22 WHAT ARE YOU PUTTING IT INTO?

23 A WELL, IT'S IMMEDIATELY SEALED AND PLACED INTO THIS BOX. AND
24 THE BOX IS EITHER HANDLED BY ME OR THE NURSE THAT IS WITH ME
25 DURING THE TIME OF THE EXAMINATION AND IS THEN TAKEN FROM THE

1 ROOM AND HANDED IMMEDIATELY TO US AND AN OFFICER. AND THERE
2 IS A LINE OF EVIDENCE THAT WE SIGN ALONG THE WAY THAT
3 DESCRIBES EACH PERSON THAT COMES IN CONTACT WITH THAT BOX.
4 IT IS THEN TAKEN BY THAT OFFICER TO THE DHEC (SIC)
5 HEADQUARTER I DO BELIEVE OR THE SLED HEADQUARTER — I CAN'T
6 REMEMBER WHICH ONE — WHERE THE LABORATORY THERE IS ABLE TO
7 EVALUATE THE SAMPLES.

8 Q AND THAT WAS ALL DONE IN THIS PARTICULAR CASE?

9 A YES, SIR, IT WAS.

10 Q ALSO KNOWN BLOOD. IS A BLOOD SAMPLE DONE AND ALSO PART OF
11 THE SEXUAL ASSAULT KIT SENT TO SLED?

12 A RIGHT. AND WE ALSO DO VARIOUS LAB TESTS ON ALL RAPE AND
13 SEXUAL ASSAULT VICTIMS. WE DO HIV SCREENING. WE DO
14 HEPATITIS SCREENING. WE DO SYPHILIS SCREENING, ET CETERA, ET
15 CETERA, IN ORDER TO MAKE SURE THAT THEY DON'T HAVE ANYTHING
16 LIKE THAT BEFORE AND HOPEFULLY NOT AFTER A SEXUAL ASSAULT
17 CASE.

18 IN ADDITION TO THAT, DURING THE PELVIC EXAMINATION WE DO
19 A GONORRHEA AND CHLAMYDIA CULTURE OF THE CERVIX TO SEE IF
20 THAT MAYBE WAS TRANSMITTED AT THE TIME OF SEXUAL ASSAULT. IN
21 FACT, AFTER THESE ARE ALL DONE, WHILE THE RESULTS ARE
22 PENDING, ONE OF THE THINGS THAT WE DO IS, IS WE
23 PROPHYLACTICALLY TREAT EACH SUSPECTED SEXUAL ASSAULT CASE
24 WITH ANTIBIOTICS IN AN EFFORT TO AVOID THAT FROM BECOMING A
25 PROBLEM OR AN ISSUE LATER ON.

1 Q BY THE WAY, I LEFT OUT, DID YOU ALSO DO FINGERNAIL SCRAPINGS
2 IN THIS -- DO YOU DO FINGERNAIL SCRAPINGS?

3 A WE DO DO FINGERNAIL SCRAPINGS AS WELL.

4 Q NOW, JUST A FEW MORE QUESTIONS. YOU HAD MENTIONED -- YOU
5 MENTIONED TO THE JURY PREVIOUSLY THAT ONE OF THE THINGS YOU
6 DO DURING YOUR PELVIC EXAMINATION IS A WET PREP. DO YOU
7 RECALL TESTIFYING TO THAT IN FRONT OF THE JURY?

8 A YES, I DO.

9 Q WILL YOU EXPLAIN THAT TO THE JURY?

10 A SURE. A WET PREP IS ESSENTIALLY WHERE I TAKE A DRY Q-TIP AND
11 OBTAIN A SAMPLE OF THE FLUID THAT IS PRESENT WITHIN THE
12 VAGINA. WE DO IT FROM ALL AREAS OF THE VAGINA. AND THERE'S
13 NUMEROUS THINGS THAT YOU CAN SEE UNDERNEATH A WET REP. AND I
14 TAKE THAT, PUT IT IN A DROP OF SALINE AND LOOK AT IT UNDER A
15 MICROSCOPE. I'M LOOKING REALLY FOR EVIDENCE OF INFECTION
16 WHICH YOU CAN SEE IN THE FORM OF A LARGE NUMBER OF WHITE
17 CELLS. YOU LOOK FOR A SEXUALLY TRANSMITTED DISEASE CALLED
18 TRICHOMONAS.

19 AND YOU ALSO LOOK FOR THINGS IN A SEXUAL ASSAULT CASE
20 LIKE WHAT WE CALL MOTILE SPERM, SPERM THAT ARE MOVING, AND/OR
21 DEAD SPERM. SOMETIMES YOU EVEN SEE THAT AS WELL. IN
22 VICTIM'S CASE WE DID SEE TRICHOMONAS PRESENT ON THE WET PREP
23 AS WELL AS SPERM THAT WERE ALIVE AND MOVING.

24 Q NOW, WHEN YOU SAY SPERM THAT WERE ALIVE AND MOVING, WHAT
25 DEVICE DO YOU USE? IS IT A Q-TIP OF SOME SORT?

1 A IT'S JUST A Q-TIP, A STERILE Q-TIP.

2 Q AND WHEN YOU'RE LOOKING AT IT UNDER THE MICROSCOPE, HOW LONG
3 AFTER FROM THE TIME THAT YOU SWABBED THAT PORTION DURING THE
4 PELVIC EXAM ARE YOU LOOKING AT IT UNDER A MICROSCOPE?

5 A WITHIN FIVE MINUTES.

6 Q WHAT DOES THAT TELL YOU AS A PHYSICIAN? AS AN EXPERT IN THE
7 AREA OF OBSTETRICS AND GYNECOLOGY AND THESE SEXUAL ASSAULT
8 KITS, WHAT CAN THAT TELL YOU FROM A TIME LIMIT POINT OF VIEW?

9 A WELL, BECAUSE OF THE ENVIRONMENT OF THE VAGINA, SPERM CANNOT
10 STAY ALIVE FOR MORE THAN 12 TO 24 HOURS. IT IS TOO ACIDIC
11 FOR SPERM TO STAY ALONE. AND SO, THEREFORE, IF I FIND MOTILE
12 SPERM IN THIS PATIENT OR IN ANY PATIENT, THAT TELLS ME THAT
13 SEXUAL INTERCOURSE HAS OCCURRED WITHIN THE LAST 12 TO 24
14 HOURS.

15 Q SO AS A RESULT OF THAT, WHEN YOU SEE THAT AS A MEDICAL
16 PHYSICIAN AND FOR MEDICAL PURPOSES, DO YOU THEN INQUIRE FROM
17 THE VICTIM, IN THIS CASE *victim*, WHEN WAS THE LAST TIME
18 SHE HAD CONSENSUAL SEXUAL INTERCOURSE?

19 A I DID.

20 Q AND DID YOU DO THAT IN THIS CASE?

21 A I DID.

22 Q AND HER RESPONSE WAS WHAT?

23 A SHE HAD HAD SEXUAL INTERCOURSE ABOUT 96 HOURS PRIOR TO THE
24 SEXUAL ASSAULT.

25 Q AND SHE INDICATED IT WAS WITH HER BOYFRIEND, WINFRED?

1 A YES, SIR.

2 Q SO BASED ON YOUR EXPERIENCE, THAT WOULD HAVE BEEN 96 HOURS,
3 IS HOW MANY DAYS?

4 A FOUR DAYS.

5 Q SO TO A REASONABLE DEGREE OF MEDICAL CERTAINTY, WITH ALL OF
6 YOUR EXPERIENCE IN THIS AREA, CAN SPERM STAY ALIVE FOR FOUR
7 DAYS INSIDE OF A VAGINA?

8 A NO.

9 Q NOW, WHAT IS DONE THEN WITH THAT WET PREP, THAT SLIDE AND THE
10 Q-TIP ITSELF?

11 A THE RESULTS ARE NOTED AND THEN IT'S TOSSED AWAY IN A
12 MEDICALLY RESPONSIBLE MANNER.

13 Q NOW, WHAT ELSE IS THEN -- SPECIFICALLY WITHIN THE VAGINAL
14 VAULT, WHAT DO YOU DO WITHIN THE VAGINAL VAULT WITH REGARDS
15 TO DETERMINE VAGINAL SWABS OR VAGINAL SMEARS, WHAT DID YOU DO
16 RELATIVE TO STATE'S EXHIBIT 32?

17 A WELL, WE -- LIKE I SAID, THE BOX IS OPENED AT THE TIME THAT
18 WE ENTER THE ROOM. EACH Q-TIP AND EACH SAMPLE SWAB THAT WE
19 HAVE IS SEPARATED, IS SEPARATE AND IN A CONTAINER THAT IS
20 STERILIZED IN AND OF ITSELF. WE THEN BREAK THOSE OPEN AND WE
21 TAKE SAMPLES FROM THE VAGINAL REGION AND THE CERVICAL REGION
22 WITHIN THE VAGINA AND IMMEDIATELY PUT THOSE BACK INTO THE
23 SEALABLE CONTAINER AND PUT THEM BACK IN THE BOX.

24 Q SO IF I UNDERSTAND YOU CORRECTLY, HOW MANY DIFFERENT -- YOU
25 ARE OBTAINING SAMPLES FOR HOW MANY DIFFERENT PURPOSES WITHIN

1 THE VAGINAL CAVITY?

2 A I DO A GONORRHEA AND CHLAMYDIAL CULTURE. I DO THE WET PREP.
3 I DO I THINK IT IS THREE SWABS THAT WE DO FROM THE VAGINA AND
4 PLACE BACK INTO THE EVIDENCE BOX AND SEAL IT UP.

5 Q AND THAT WAS MY LAST QUESTION. ALL THE STUFF THAT YOU -- ALL
6 THE ITEMS YOU JUST DESCRIBED TO THE JURY THAT IS RECEIVED
7 FROM VICTIM ..., IS IT ACTUALLY -- WHEN THIS ACTUALLY IS
8 COMPLETED, IS IT ACTUALLY SEALED?

9 A YES.

10 Q THANK YOU, DR. SMITHSON.

11 MR. GASSER: THAT'S ALL I HAVE, YOUR HONOR.

12 THE COURT: MR. STRICKLER.

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

14 CROSS EXAMINATION BY MR. STRICKLER:

15 Q GOOD AFTERNOON, DOCTOR.

16 A GOOD AFTERNOON.

17 Q MY NAME IS DOUG STRICKLER. I JUST HAVE A FEW QUESTIONS, IF I
18 COULD, FOR YOU. FIRST OF ALL, YOU HAVE THE RAPE PROTOCOL
19 FORM THAT YOU FILLED OUT WITH YOU?

20 A YES, I DO.

21 Q DO YOU HAVE YOUR CODE 40 PROTOCOL FROM RICHLAND MEMORIAL
22 HOSPITAL OR YOUR TRANSCRIBED NOTES?

23 A YES, I DO.

24 Q OKAY. FIRST OF ALL, I'D LIKE TO ASK YOU, MY UNDERSTANDING IS
25 THAT YOUR EXAMINATION INCLUDES A PELVIC EXAM WHICH YOU'VE

1 DESCRIBED IN SOME DETAIL TO MR. GASSER. IT ALSO INCLUDES A
2 GENERAL PHYSICAL EXAMINATION, CORRECT?

3 A YES, SIR.

4 Q BECAUSE UNFORTUNATELY OFTEN ASSOCIATED WITH SEXUAL ASSAULTS
5 THERE IS INJURY DONE TO OTHER AREAS OF THE BODY THAT WILL BE
6 REFLECTED IN A GENERAL PHYSICAL EXAMINATION, CORRECT?

7 A IT CAN HAPPEN.

8 Q AND, INDEED, IN THIS CASE YOU CONDUCTED A GENERAL PHYSICAL
9 EXAM, RIGHT?

10 A YES, I DID.

11 Q OKAY. AND INCLUDED IN THE STANDARD FORM THAT YOU FILL OUT IN
12 WHAT'S CALLED THE RAPE PROTOCOL FORM, THERE IS A GENERALIZED
13 DIAGRAM OF THE HUMAN ANATOMY, THE FEMALE ANATOMY, IN WHICH
14 YOU CAN MAKE NOTATIONS OF ANY AREAS OF INJURY THAT YOU FIND
15 THAT ARE APPARENT ON THE GROSS PHYSICAL EXAM, CORRECT?

16 A YES, SIR. CORRECT.

17 Q AND THAT'S -- YOUR JOB AT THE TIME YOU'RE DOING THE EXAM,
18 OTHER THAN THE WELFARE OF THE PATIENT, YOUR JOB AS IT RELATES
19 TO CRIMINAL SEXUAL OR THE SEXUAL ASSAULT PROTOCOL IS TO
20 COLLECT INFORMATION, RIGHT?

21 A YES.

22 Q I MEAN, WELFARE OF THE PATIENT CERTAINLY, BUT THIS ASPECT OF
23 IT IS COLLECTING INFORMATION, RIGHT?

24 A (WITNESS NODS HEAD AFFIRMATIVELY)

25 Q AND SO IT WOULD BE IMPORTANT FOR YOU TO NOTE ANY SIGNIFICANT

1 TRAUMA THAT YOU FOUND IN A GENERAL CONTEXT?

2 A YES.

3 Q NOT JUST AS TO THE PELVIC EXAM, CORRECT?

4 A YES.

5 Q OKAY. AND, INDEED, IN THIS CASE YOUR NOTATION REGARDING THE
6 GENERAL PHYSICAL EXAMINATION WAS THAT THERE IS NO OBVIOUS
7 SIGN OF TRAUMA, IF I'M READING THE HANDWRITING CORRECTLY?

8 A CORRECT.

9 Q AND, INDEED, THE DIAGRAMS ASSOCIATED WITH THE GENERAL
10 PHYSICAL EXAMINATION DON'T REFLECT ANY AREAS OF TRAUMA TO
11 victim's BODY IN GENERAL, CORRECT?

12 A CORRECT.

13 Q OKAY. AND THAT WILL BE NO CONTUSIONS, RIGHT?

14 A I SAW NO CONTUSIONS.

15 Q THAT WOULD BE BRUISES, RIGHT?

16 A RIGHT.

17 Q NO ABRASIONS, RIGHT?

18 A CORRECT.

19 Q THAT WOULD BE SCRAPES, RIGHT?

20 A MM-HMM (AFFIRMATIVE).

21 Q NO LACERATIONS, RIGHT?

22 A CORRECT.

23 Q AND THAT WOULD BE CUTS OR TEARS, CORRECT?

24 A THAT NEEDED REPAIR OUTSIDE OF THE PELVIC EXAM, YES.

25 Q THOSE ARE THE CORRECT COMMON TERMS ASSOCIATED WITH THOSE

1 MEDICAL TERMS?

2 A YES.

3 Q IS THAT CORRECT? SO, NO OBVIOUS SIGNS OF TRAUMA TO HER BODY
4 IN GENERAL?

5 A NO.

6 Q CORRECT? SPECIFICALLY, YOU DIDN'T NOTE ANY TRAUMA TO HER
7 BACK?

8 A I DID NOT.

9 Q NOW, YOU MADE REFERENCE TO YOUR GENERAL UNDERSTANDING OF THE
10 INCIDENT AS CONVEYED TO YOU IN YOUR CONVERSATION WITH
11 victim, AND YOU INDICATED THAT THERE WAS A THREAT WITH A GUN.
12 AS A MATTER OF FACT, YOUR CODE 40 PROTOCOL INDICATES THAT,
13 QUOTE, "THEY PRESENTED FIREARMS". IS THAT CORRECT?

14 A YES.

15 Q OKAY. SO IT WOULD BE GUNS, PLURAL; NOT GUN, SINGULAR,
16 CORRECT?

17 A WELL, ON THE CODE 40 PROTOCOL I CHECKED A SPOT THAT SAYS GUN.

18 Q OKAY. I'M REFERRING TO YOUR TYPED ---

19 A OKAY.

20 Q --- NOTES, DICTATED NOTES RELATING TO THIS.

21 A OKAY.

22 Q DICTATED ON MAY 29TH, 1996.

23 A YES.

24 Q 2, 4, 6, 7TH LINE DOWN. "WHEN WINFRED HANDED THE PERSON THE
25 LIGHT, THEY PRESENTED FIREARMS." IS THAT CORRECT?

1 A RIGHT.

2 Q OKAY. NOW, IF YOU WILL, I'M STILL DEALING WITH THIS TYPED
3 REPORT ON YOUR PART. I'LL TURN TO THE SECOND PAGE OF IT.
4 WELL, ONE SECOND. THE FIRST PAGE CONTAINS FURTHER DOWN A
5 DESCRIPTION OF ASSAILANT DESCRIBED AS THE COCKY, PUSHY ONE BY
6 THE VICTIM, SAID TO TAKE THE KEYS TO "BIG DADDY", CORRECT?

7 A CORRECT.

8 Q I THINK YOU'VE TESTIFIED TO THAT. IF YOU'D TURN TO THE
9 SECOND PAGE, PLEASE; THE END OF THE PARAGRAPH IMMEDIATELY
10 BEFORE "PAST MEDICAL HISTORY". AGAIN, GETTING TO YOU
11 RENDERED PART OF THE DESCRIPTION SHE GAVE?

12 A RIGHT.

13 Q OKAY. REPORTS ALL FIVE ASSAILANTS ARE IN THE 20 YEAR OLD
14 RANGE, RIGHT?

15 A CORRECT.

16 Q ALL AFRICAN-AMERICAN?

17 A CORRECT.

18 Q SHE DESCRIBES ONE AS HAVING THE NAME OF "BIG DADDY" AS WELL
19 AS ONE AS THE PUSHY ONE, CORRECT?

20 A CORRECT.

21 Q AND HERE YOU NOTE THE PUSHY ONE WAS NOTED TO HAVE BRAIDED
22 HAIR, RIGHT?

23 A CORRECT.

24 Q THAT WAS BROWNISH IN NATURE, CORRECT?

25 A THAT WAS THE DESCRIPTION THAT SHE USED.

1 Q NOT BLACK. BROWNISH IN NATURE, CORRECT?

2 A I STATED BROWNISH IN NATURE.

3 Q AND THAT ALL FIVE OF THE ASSAILANTS WERE STRANGERS TO HER,
4 CORRECT?

5 A MM-HMM (AFFIRMATIVE).

6 Q OKAY. NOW, WHAT I'D LIKE TO TALK WITH YOU ABOUT JUST ONE
7 MOMENT IS YOUR DESCRIPTION THAT GETS BACK TO ONE OF THESE
8 TERMS WE USED. PERHAPS I MISUNDERSTOOD. MR. GASSER ASKED
9 YOU WHETHER THERE WAS ANY EVIDENCE OF TEARING IN THE PELVIC
10 EXAM. AND YOU WENT ON TO DESCRIBE ABRASIONS THAT WERE
11 CONSISTENT WITH RECENT INTERCOURSE. AND AS I UNDERSTAND YOUR
12 DESCRIPTION, THE ABRASIONS ARE CONSISTENT WITH RECENT
13 INTERCOURSE. WHETHER OR NOT THAT INTERCOURSE IS CONSENSUAL
14 OR NON-CONSENSUAL IS NOT ENTIRELY DETERMINED BY THE PRESENCE
15 OF ABRASIONS. THE ABRASIONS ARE INDICATIVE OF THE LUBRICATED
16 STATE OF THE VAGINA, RIGHT?

17 A THE LACK THEREOF, YES.

18 Q OR LACK THEREOF. WHICH COULD BE CONSENSUAL, COULD BE
19 NON-CONSENSUAL?

20 A POTENTIALLY, YEAH.

21 Q RIGHT. OKAY. THE QUESTION I HAVE IS, THIS WAS IN RESPONSE
22 TO A QUESTION ON THE PART OF MR. GASSER REGARDING TEARING.
23 NOW, MY UNDERSTANDING OF ABRASIONS IS NOT CONSISTENT WITH
24 TEARING. TEARING, THE TERM WE LAY PEOPLE USE, IS DESCRIBED
25 AS A LACERATION BY A MEDICAL PERSON, CORRECT?

1 A NO.

2 Q NO. A TEAR ISN'T ---

3 A A LACERATION IS MORE OF A CUT.

4 Q AN ABRASION IS A TEAR, SIR?

5 A AN ABRASION COMES FROM STRESS ON TISSUE IN ONE WAY OR ANOTHER
6 THAT IN TURN CAN CAUSE STRETCHING, CRACKING OF THE SKIN,
7 THOSE SORTS OF THINGS. THAT IS CONSIDERED AN ABRASION. OR
8 AN ABRASION WHERE THERE IS FRICTION AGAINST SKIN, THAT IS AN
9 ABRASION. A LACERATION IS MORE OF A CUT.

10 Q SO YOU'RE TELLING ME THAT AN ABRASION IS A TEAR?

11 A AN ABRASION CAN BE A TEAR, YES.

12 Q AN ABRASION IS A TEAR. AN ABRASION IS A MEDICAL TERM,
13 CORRECT?

14 A ABRASION IS A MEDICAL TERM.

15 Q AND LACERATION IS A MEDICAL TERM, CORRECT?

16 A YES, SIR. YES.

17 Q AND A LACERATION IS NOT A TEAR; IT'S A CUT?

18 A MOST OF THE TIME IT'S USED AS DESCRIBING A CUT.

19 Q AND AN ABRASION IS A TEAR, NOT A SCRAPE, NOT A REDDENING OF
20 AN AREA?

21 A THE SAME THING. IT HAS TO DO WITH THE METHOD OF THE INJURY
22 WHICH IS FRICTION OR STRESS ON A TISSUE.

23 Q ALL RIGHT.

24 A THAT IS AN ABRASION.

25 Q ALL RIGHT. WHAT SURGICAL PROCEDURE WAS REQUIRED TO REPAIR

1 THIS TEAR TO victim's vagina ? OR WHERE WAS THE ABRASION?

2 A WELL, IT WASN'T A TEAR. IT WAS AN ABRASION.

3 Q WELL, THIS GETS BACK TO MY ORIGINAL QUESTION. MR. GASSER
4 ASKED YOU WHETHER YOU FOUND THE PRESENCE OF ANY TEARS?

5 A OR ABRASIONS.

6 Q WELL, HIS QUESTION WAS TEARS, SIR.

7 A WELL, ALL I CAN SAY IS WHAT I DICTATED. I REPORTED ABRASIONS
8 IN THE POSTERIOR ASPECT OF THE ENTRANCE OF THE VAGINA.

9 Q OKAY.

10 A THAT IS CONSISTENT WITH FRICTION AND STRESS TO THAT AREA
11 WHICH IS CONSISTENT WITH SEXUAL INTERCOURSE.

12 Q OKAY. SO YOU DIDN'T FIND ANY TEARING OF THE VAGINA?

13 A NO. I DID NOT HAVE TO REPAIR ANY TEARS OR LACERATIONS.

14 Q YOU FOUND AN AREA THAT HAD BEEN -- THAT WAS REDDENED IN
15 COLOR?

16 A REDDENED AND, AS YOU PUT IT, SCRAPPED.

17 Q ALL RIGHT. THAT'S ALL I HAVE. THANK YOU.

18 THE COURT: MR. SHUPPER.

19 MR. SHUPPER: NO QUESTIONS OF THIS WITNESS ON BEHALF OF
20 ROBERT JAMES.

21 THE COURT: MR. GASSER, ANY REDIRECT?

22 MR. GASSER: NO, SIR. NO REDIRECT.

23 THE COURT: THANK YOU, DR. SMITHSON, FOR YOUR ATTENTION
24 -- ATTENDANCE. IS THERE ANY REASON WHY DR. SMITHSON NEEDS TO
25 BE RETAINED BY ANYONE?

1 MR. STRICKLER: WITHOUT OBJECTION.

2 MR. SHUPPER: NO OBJECTION, YOUR HONOR.

3 THE COURT: THANK YOU. THANK YOU AGAIN FOR YOUR
4 ATTENDANCE. YOU'RE FREE TO GO. MR. GASSER, DO YOU HAVE
5 WITNESSES WHOSE TESTIMONY WILL BE BRIEF, OR IS THIS AN
6 APPROPRIATE TIME FOR US TO BREAK FOR LUNCH?

7 MR. GASSER: I BELIEVE THIS IS AN APPROPRIATE TIME FOR
8 US TO BREAK FOR LUNCH.

9 THE COURT: ALL RIGHT. FOLKS, WHY DON'T WE DO THAT.
10 LET'S GO TO LUNCH. LET'S BE BACK BY THAT CLOCK, TRY TO SET
11 YOUR WATCHES BY THAT PARTICULAR CLOCK WHICH NOW SAYS 25 OF 1.
12 PLEASE BE BACK IN HERE AT QUARTER OF TWO, AN HOUR AND TEN
13 MINUTES. PLEASE BE BACK IN THE JURY ROOM, AND WE WILL BEGIN
14 AT THAT TIME. THANK YOU. EVERYONE REMAIN SEATED WHILE THE
15 JURORS LEAVE.

16 (JURY OUT AT 12:35 P.M.)

17 THE COURT: THE RECORD WILL REFLECT THAT AT A BENCH
18 CONFERENCE IMMEDIATELY PRIOR TO THE ONSET OF DR. SMITHSON'S
19 TESTIMONY COUNSEL FOR KENNETH JAMES INDICATED THAT HE HAD
20 OBJECTED AGAIN TO ANY DESCRIPTION BEING GIVEN BY THIS
21 WITNESS; THAT IS, DR. SMITHSON, CONCERNING MATTERS RELATED TO
22 THE PHYSICAL APPEARANCE OF ANY PURPORTED ASSAILANT BY
23 Victim AT THE TIME OF THE EXAMINATION. I OVERRULED -- I MEAN,
24 I SUS -- I OVERRULED THE OBJECTION, AND THE DOCTOR OF COURSE
25 DID TESTIFY.

1 MR. STRICKLER: THANK YOU, SIR.

2 THE COURT: OKAY. THANK YOU. ANYTHING BEFORE WE BREAK?

3 MR. GASSER: YOUR HONOR, WE INTEND ON CALLING, JUST SO
4 YOU KNOW, WE INTEND ON CALLING -- THE DEFENSE KNOWS -- RANDY
5 BLACKWELL, JOANNE LEWIS WHO IS JUST THE PROPERTY ROOM
6 CUSTODIAN.

7 THE COURT: WHEN DO YOU INTEND ON CALLING THIS DNA GUY?

8 MR. GASSER: AND THEN IRA JEFFCOAT. THOSE WOULD BE OUR
9 WITNESSES. WE HAVE POSSIBLY THE DEFENDANT'S ARM, MR. KENNETH
10 JAMES, DEPENDING ON WHAT -- MR. STRICKLER AND I WILL DISCUSS
11 THAT. AND BASED ON MR. STRICKLER'S CROSS EXAMINATION
12 YESTERDAY OF MR. MURRAY, WE SUBPOENAED THE SCHOOL DISTRICT
13 RECORDS OF BOTH DEFENDANTS. AND WE WILL PRESENT THAT. WELL,
14 WE MAY BE ABLE TO WORK INTO A STIPULATION WITH DEFENSE
15 COUNSEL ON THAT. OR WE'VE GIVEN THEM THE SCHOOL RECORDS WE
16 RECEIVED THAT INDICATE THAT BOTH THE STATE AND THE DEFENSE
17 ARE CORRECT IN REGARDS TO KENNETH JAMES. HE NEVER WENT TO C.
18 A. JOHNSON HIGH SCHOOL. HE DID GO TO W. A. PERRY MIDDLE
19 SCHOOL. AND ROBERT JAMES WENT BOTH TO C. A. -- ROBERT JAMES
20 WENT TO C. A. JOHNSON HIGH SCHOOL AND W. A. PERRY MIDDLE
21 SCHOOL.

22 THE COURT: OKAY.

23 MR. GASSER: SO...

24 THE COURT: ALL RIGHTY. WELL, LET'S TAKE A LITTLE
25 BREAK. AND I'LL SEE YOU ALL BACK HERE SHORTLY BEFORE QUARTER

1 OFFENSES BACK TO THE JURY IN WRITTEN FORM.

2 MR. SHUPPER: NEITHER DOES ROBERT JAMES.

3 THE COURT: OKAY. GOOD.

4 MR. GASSER: NEITHER DOES THE STATE.

5 THE COURT: ARE THERE GOING TO BE -- WELL, WE'LL TALK
6 ABOUT THAT LATER.

7 (WHEREUPON, A BENCH CONFERENCE IS HAD)

8 THE COURT: OKAY. ALL THE JURORS ARE HERE. THE PARTIES
9 HAVE I UNDERSTAND -- CORRECT ME IF I'M WRONG -- ARRIVED AT A
10 STIPULATION WITH REGARD TO SCHOOL ATTENDANCE. IS THAT
11 CORRECT, MR. STRICKLER?

12 MR. STRICKLER: THAT'S MY UNDERSTANDING.

13 THE COURT: AND COULD YOU ARTICULATE THAT INTO THE
14 RECORD, OR WILL SOMEONE ELSE BE DOING THAT?

15 MR. STRICKLER: JOHNNY, DO YOU HAVE ANY CHANGE?

16 MR. SHUPPER: WE CROSSED OUT NO. 1.

17 MR. STRICKLER: ALL RIGHT.

18 MR. SHUPPER: I DIDN'T GET A COPY OF THAT.

19 MR. STRICKLER: WELL, THE SOLICITOR HAS THE COMPLETE
20 VERSION. I'D LET THEM GO AHEAD AND TELL YOU.

21 THE COURT: OKAY. MR. GASSER.

22 MR. GASSER: YES, SIR, YOUR HONOR. I BELIEVE BOTH THE
23 STATE AND THE COUNSEL FOR KENNETH JAMES AND COUNSEL FOR
24 ROBERT JAMES WOULD STIPULATE THAT ROBERT ANTHONY JAMES
25 ATTENDED W. A. PERRY MIDDLE SCHOOL IN THE SEVENTH GRADE IN

1 THE 1988/89 SCHOOL YEAR; IN EIGHTH GRADE FOR THE 89/90 SCHOOL
2 YEAR. NO. 2, THAT ROBERT ANTHONY JAMES WAS ENROLLED AT C. A.
3 JOHNSON HIGH SCHOOL FOR THE 1990/91 SCHOOL YEAR AND 91/92
4 SCHOOL YEAR. NUMBER 3, KENNETH JAMES ATTENDED SIXTH GRADE
5 1988/1989 AND SEVENTH GRADE, 89/90 AT W. A. PERRY MIDDLE
6 SCHOOL. AND NO. 4, KENNETH JAMES HAS NEVER ATTENDED C. A.
7 JOHNSON HIGH SCHOOL.

8 THE COURT: OKAY. ALL RIGHT. YOU'LL READ THAT TO THE
9 JURY AT SOME APPROPRIATE TIME. MR. BARROW, IF YOU'D BRING
10 THE JURY IN, PLEASE, SIR.

11 MR. GASSER: JUST ONE MOMENT.

12 THE COURT: MR. BARROW, ONE SECOND. YES, SIR.

13 MR. GASSER: OUR NEXT WITNESS IS JOANNE LEWIS. AND
14 BASED ON THE SEQUESTRATION, DOES EITHER COUNSEL WANT THE SLED
15 AGENTS THAT ARE GOING TO BE RIGHT AFTER JOANNE LEWIS TO LEAVE
16 THE COURTROOM?

17 MR. STRICKLER: COUNSEL FOR KENNETH JAMES DOES NOT, YOUR
18 HONOR.

19 MR. SHUPPER: NO, YOUR HONOR.

20 THE COURT: OKAY.

21 MR. GASSER: THANK YOU, YOUR HONOR.

22 THE COURT: YES, SIR.

23 (JURY IN AT 1:53 P.M.)

24 THE BAILLIFF: THE JURY IS ALL PRESENT, YOUR HONOR.

25 THE COURT: THANK YOU, MR. BARROW, MR. HOLLIS. AND

1 THANK YOU, FOLKS, FOR YOUR PATIENCE. WE'RE NOW READY TO
2 RESUME WITH THE TRIAL. IF YOU WOULD, PLEASE, MR. GASSER OR
3 MS. FRYAR, CALL YOUR NEXT WITNESS.

4 MR. GASSER: MAY IT PLEASE THE COURT, YOUR HONOR. THE
5 STATE WOULD CALL JOANNE LEWIS.

6 JOANNE LEWIS, BEING FIRST DULY
7 SWORN, TESTIFIES AS FOLLOWS:

8 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
9 FOR THE RECORD.

10 MS. LEWIS: JOANNE LEWIS.

11 DIRECT EXAMINATION BY MR. GASSER:

12 Q MS. LEWIS, WHERE ARE YOU EMPLOYED, MA'AM?

13 A CITY POLICE DEPARTMENT.

14 Q AND WHAT ARE YOUR CURRENT DUTIES AND RESPONSIBILITIES WITH
15 THE CITY POLICE DEPARTMENT?

16 A SUPERVISE THE EVIDENCE ROOM, MAINTAIN CHAIN OF CUSTODY THERE,
17 SUPERVISE THREE EMPLOYEES AS WELL, MAINTAIN SECURITY AND
18 STORAGE OF EVIDENCE.

19 Q HOW LONG HAVE YOU BEEN DOING THOSE DUTIES AND
20 RESPONSIBILITIES WITH C.P.D.?

21 A I HAVE BEEN IN THE EVIDENCE ROOM APPROXIMATELY TEN YEARS.

22 Q NOW, WOULD YOU BRIEFLY EXPLAIN WHAT YOU MEAN BY THE STORING
23 OF EVIDENCE AND THE LABELING OR NUMBERING OF EVIDENCE? WHAT
24 DO YOU MEAN BY THAT?

25 A ONCE WE RECEIVE EVIDENCE ON A CASE, IT'S TURNED INTO THE

1 PROPERTY ROOM. THAT EVIDENCE IS THEN LABELED WITH THE
2 EVIDENCE NUMBER, AS WELL AS GIVEN THE SUBJECT'S NAME,
3 VICTIM'S NAME, AS V-1, CASE NUMBER, INVESTIGATOR ASSIGNED.
4 BASICALLY WE'RE RESPONSIBLE FOR LABELING ALL THE INFORMATION
5 AND MAKING SURE THAT IT'S MAINTAINED THE SAME WAY AS WE
6 RECEIVED IT. SECURE IT, MAKE SURE IT'S LOCKED, KEPT FROM ANY
7 — AWAY FROM ANYONE TRYING TO TAMPER WITH IT. JUST TO
8 MAINTAIN EVIDENCE AND MAKE SURE IT'S SECURED IN THE EVIDENCE
9 ROOM.

10 Q AND DOES THE COLUMBIA POLICE DEPARTMENT KEEP THEIR OWN RECORD
11 KEEPING BOOKS IN THAT REGARD?

12 A YES, WE DO.

13 Q AND IS THAT KEPT IN THE ORDINARY COURSE OF BUSINESS OF THE
14 COLUMBIA POLICE DEPARTMENT?

15 A YES, IT IS.

16 Q I WANT TO DRAW YOUR ATTENTION BACK TO MARCH OF 1997. NOW, IN
17 MAY OF 1996, OR JUNE OF 1996, YOU DIDN'T HAVE ANYTHING TO DO
18 WITH STATE'S EXHIBIT 32. IS THAT CORRECT, MS. LEWIS?

19 A THAT'S CORRECT.

20 Q OKAY. IS THERE A REFRIGERATOR IN THE INVESTIGATIVE UNIT
21 WHICH INVESTIGATORS KEEP THEMSELVES KEEP SLED SEXUAL ASSAULT
22 OR SEXUAL ASSAULT EVIDENCE KITS AND TRANSPORT THEM THEMSELVES
23 OUT TO SLED?

24 A YES, THERE IS.

25 Q SO IS THAT SEPARATE FROM YOUR UNIT?

1 A YES.

2 Q BUT DOES THERE COME A TIME WHENEVER YOU MAKE ROUTINE TRIPS
3 OUT TO SLED AS A RESULT OF YOUR DUTIES AND RESPONSIBILITIES
4 WITH THE COLUMBIA POLICE DEPARTMENT TO COLLECT EVIDENCE?

5 A YES..

6 Q NOW, DO YOUR RECORDS INDICATE THAT ON MARCH THE 4TH OF 1997,
7 YOU HAD -- YOU WENT OUT TO SLED THAT PARTICULAR DAY TO
8 COLLECT SOME EVIDENCE?

9 A THAT'S CORRECT.

10 Q NOW, HOW OFTEN DO YOU DRIVE OUT OR TRANSPORT OUT -- OR ANY OF
11 THE THREE INDIVIDUALS UNDER YOUR SUPERVISION -- DRIVE OUT TO
12 SLED ON BROAD RIVER ROAD AND COLLECT EVIDENCE AND RETURN IT
13 TO THE COLUMBIA POLICE DEPARTMENT? HOW OFTEN IS THAT DONE?

14 A THAT'S DONE ABOUT ONCE EVERY TWO OR THREE MONTHS.

15 Q AND TO INSURE THAT THE EVIDENCE IS CONNECTED TO A PARTICULAR
16 CASE, WHAT KIND OF LABELING IS ON THE EVIDENCE, AND HOW IS IT
17 SENT? ARE THEY SEALED OR UNSEALED?

18 A ANY EVIDENCE THAT I RECEIVE FROM SLED TO TRANSPORT BACK TO
19 THE EVIDENCE ROOM WILL BE SEALED. THE LABEL WILL HAVE THE
20 SUBJECT/VICTIM'S NAME, CASE NUMBER, INVESTIGATOR, THE SAME
21 INFORMATION THAT WE REQUIRE AS TO LOGGING IN EVIDENCE.

22 Q AND IF THE EVIDENCE WAS NOT SEALED IN ENVELOPES OR IN
23 PACKAGING AND LABELED PROPERLY, WOULD YOU EVEN ACCEPT IT BACK
24 FROM SLED?

25 A NO, WE DON'T.

1 Q SO ON MARCH THE 4TH OF 1997, DID YOU HAVE AN OPPORTUNITY, MS.
2 LEWIS, TO GO TO SLED AND RECEIVE SOME BLOOD TYPE PRE DNA
3 SALIVA AND SEMEN SAMPLES RELATIVE TO THE *Victim's* CASE?

4 A YES, I DID.

5 Q AND WERE THOSE ITEMS IN A HEAT-SEALED PACKAGE?

6 A YES.

7 Q AND WHAT DID YOU DO WITH THOSE ITEM WHEN YOU BROUGHT THEM
8 BACK TO THE COLUMBIA POLICE DEPARTMENT?

9 A WE BROUGHT THEM BACK TO THE EVIDENCE AT THE POLICE
10 DEPARTMENT. WE STAMP DATE IT AS FAR AS THE DATE RECEIVED.
11 IT'S ASSIGNED AN EVIDENCE NUMBER, PROPERTY TAG. AND IT'S
12 SECURED THEN ALONG WITH ANY OTHER EVIDENCE THAT WE MAY HAVE
13 IN THE PROPERTY ROOM.

14 Q AND THEN DID YOU YOURSELF, DID YOU BREAK ANY SEALS ON THAT
15 PARTICULAR EVIDENCE?

16 A NO, I DIDN'T.

17 Q THEN YOUR RECORDS INDICATE THEN IN MAY OF 1997, DID
18 INVESTIGATOR TOMMY THOMAS WHO HAS PREVIOUSLY TESTIFIED TO
19 THIS JURY, TAKE THAT EVIDENCE, THAT EVIDENCE, THAT PRE —
20 BLOOD TYPE PRE DNA SALIVA AND SEMEN SAMPLES OR SEMEN SWABS
21 FROM THE PROPERTY ROOM AT THE COLUMBIA POLICE DEPARTMENT AND
22 TRANSPORT IT SOMEWHERE?

23 A YES.

24 Q THEN, SOMETIME IN 1999, AFTER SLED WAS FINISHED WITH THOSE
25 ITEMS, EVENTUALLY DOES THE ITEMS RETURN BACK TO THE COLUMBIA

1 OF ONE (SIC). LET ME JUST SEE THE LAWYERS OUT HERE JUST FOR
2 A SECOND BEFORE YOU LEAVE.

3 (WHEREUPON, A LUNCH BREAK IS TAKEN)

4 THE COURT: ALL THE JURORS ARE NOT HERE. I JUST THOUGHT
5 IF THERE WAS ANYTHING WE NEED TO DO, WE NEED TO DO IT. THE
6 DEFENDANTS WILL BE HERE IN A MINUTE. ARE THEY ALL HERE NOW?

7 THE CLERK: (NODS HEAD AFFIRMATIVELY)

8 THE COURT: OKAY. IS THIS SOMETHING THAT NEEDS THE
9 PRESENCE OF THE DEFENDANTS?

10 MR. STRICKLER: JUST, WE HAVE ARRIVED AT STIPULATIONS.
11 I WAS JUST GOING TO GO AHEAD AND INFORM THE COURT.

12 THE COURT: YEAH. THOSE WILL BE ANNOUNCED ONLY IN THE
13 PRESENCE OF THE DEFENDANTS THOUGH.

14 MR. STRICKLER: OKAY. YES, SIR.

15 THE COURT: YOU ALL BEEN THINKING ANY MORE ABOUT MY
16 SUGGESTION, IF YOU CAN CALL IT THAT, OF SENDING ELEMENTS BACK
17 TO THE JURY?

18 MR. STRICKLER: AS TO KENNETH JAMES, SENDING ELEMENTS OF
19 THE OFFENSES BACK TO THE JURY, I HAVE NO OBJECTION TO IT.

20 THE COURT: ALL RIGHT. MR. GASSER?

21 MR. GASSER: I WOULD HAVE ---

22 THE COURT: THIS IS THE FORMAT THAT I'M TALKING ABOUT.
23 MR. STRICKLER, MR. SHUPPER, YOU ALL NEED TO...

24 MR. GASSER: AS LONG AS IT'S THOROUGHLY EXPLAINED BY THE
25 COURT TO THEM ABOUT THE THEORY OF ACCOMPLICE LIABILITY.

1 THE COURT: OH, WELL, SURE. YEAH.

2 MR. GASSER: BECAUSE I DON'T WANT THEM TO THINK THAT IF
3 ONLY -- YOU KNOW, I DON'T TAKE FOR GRANTED THAT THE JURORS
4 ARE ALL AS UP-TO-SPEED AS WE ARE. I DON'T WANT THEM TO THINK
5 THAT WE HAVE TO PROVE AT ANY TIME THAT EITHER ONE OF THESE
6 GUYS HAD TO HAVE THE GUN TO BE CONVICTED OF ARMED ROBBERY.

7 MR. STRICKLER: MY UNDERSTANDING WAS HE WAS ONLY GOING
8 TO SEND THE ELEMENTS BACK.

9 THE COURT: ELEMENTS.

10 MR. STRICKLER: I DIDN'T THINK THAT WAS GOING TO REPLACE
11 YOUR CHARGE IN TOTO.

12 THE COURT: YEAH. DON'T GET EXCITED, JOHNNY. YOU'LL
13 GET THAT CHARGE.

14 MR. STRICKLER: AND YOU ONLY WANT TO DO IT AS TO ARMED
15 ROBBERY AND KIDNAPPING?

16 THE COURT: NO, NO. I WAS GOING TO DO THE OTHER ONES,
17 TOO. YEAH.

18 MR. STRICKLER: THAT'S GOING TO BE FINE WITH ME.

19 MR. SHUPPER: I HAVE NO PROBLEM, YOUR HONOR.

20 THE COURT: AND THE OTHER ONES ARE ASSAULT WITH INTENT
21 TO KILL, POSSESSION OF A FIREARM AND COMMISSION OF A FELONY.
22 THERE WAS ONE OTHER ONE. CSC. I HAVEN'T DONE THAT. OKAY.
23 YEAH. OKAY.

24 MR. STRICKLER: FOR PURPOSES OF THE RECORD, KENNETH
25 JAMES HAS NO OBJECTION TO SENDING THE ELEMENTS OF THE

1 BACKGROUND AFTER HIGH SCHOOL?

2 A YES. I HAVE A DEGREE FROM THE MEDICAL UNIVERSITY IN
3 CHARLESTON, SOUTH CAROLINA, A DEGREE IN MEDICAL TECHNOLOGY IN
4 1973. I AM A BOARD CERTIFIED MEDICAL TECHNOLOGIST.

5 Q WHAT TRAINING DO YOU HAVE IN THE AREA OF FORENSIC SEROLOGY
6 AND THEN ALSO DNA AS A DNA ANALYST?

7 A WELL, IN SEROLOGY, I BASICALLY TRAINED AT SLED UNDER THE
8 EXPERT SEROLOGIST THAT WAS ALREADY EMPLOYED AT SLED IN 1984.
9 I PARTICIPATED IN THE TRAINING PROGRAM AVAILABLE AT SLED AND
10 COMPLETED THAT. IT TOOK ME ABOUT A YEAR. IN ADDITION TO
11 THAT, I ATTENDED THE FBI, THE FEDERAL BUREAU OF
12 INVESTIGATION. THEY OFFER A BASIC SEROLOGY TRAINING PROGRAM.
13 I ATTENDED THAT IN 1985 I THINK.

14 FOR DNA, I WAS GIVEN THE RESPONSIBILITY IN 19 -- I THINK
15 IT WAS '88 OR '89 -- TO HELP SET UP THE DNA LABORATORY AT
16 SLED. TO AID IN MY, IN THIS PARTICULAR JOB, I WENT BACK TO
17 THE UNIVERSITY HERE IN COLUMBIA, THE UNIVERSITY OF SOUTH
18 CAROLINA, HAVE TAKEN TWO ADDITIONAL COURSES THERE IN
19 MOLECULAR BIOLOGY AND GENETICS TO HELP PREPARE FOR THAT, FOR
20 THE DNA LAB. I'VE ALSO TAKEN COURSE WORK AT THE UNIVERSITY
21 OF VIRGINIA IN VIRGINIA THROUGH THE FBI ACADEMY IN
22 WASHINGTON, D. C. I'VE TAKEN COURSES IN BASIC DNA, FORENSIC
23 DNA TESTING THERE AS WELL.

24 SO THOSE THREE COURSES HELPED PREPARE ME TO HELP DEVELOP
25 THE DNA LAB, WHICH WE DID. IT TOOK ABOUT TWO AND A HALF

1 YEARS TO GET ON LINE. WE WENT ON LINE WITH DNA TESTING IN
2 LATE 1991.

3 Q CAN YOU ESTIMATE, HOW MANY SEMINARS HAVE YOU EITHER ATTENDED
4 YOURSELF AS A STUDENT, IF YOU WILL, FIRST OF ALL; AND THEN A
5 FOLLOW-UP QUESTION AS TO WHAT YOU'VE PUT ON YOURSELF.

6 A THAT I'VE ATTENDED SINCE 1984? I'M GOING TO ESTIMATE 30 TO
7 50. IT'S BEEN QUITE A FEW.

8 Q AND IS THIS IN THE AREA OF BOTH FORENSIC SEROLOGY AND DNA?

9 A FORENSIC SEROLOGY AND DNA AND ALSO CRIME SCENE PROCESSING.
10 I'VE ATTENDED SEVERAL SEMINARS IN REGARDS TO THAT.

11 Q AND HAVE YOU HAD THE OPPORTUNITY TO ACTUALLY MAKE
12 PRESENTATIONS YOURSELF ON DNA ANALYSIS?

13 A YES, I HAVE.

14 Q APPROXIMATELY HOW MANY TIMES?

15 A OH, I'VE NEVER TRIED TO COUNT. PROBABLY 15 OR 20.

16 Q HAVE YOU BEEN QUALIFIED AS AN EXPERT IN THE AREA OF FORENSIC
17 SEROLOGY AND FORENSIC DNA ANALYSIS IN COURTS IN SOUTH
18 CAROLINA?

19 A YES, I HAVE.

20 Q APPROXIMATELY HOW MANY TIMES HAVE YOU BEEN QUALIFIED AS AN
21 EXPERT IN THE AREA OF FORENSIC SEROLOGY AND FORENSIC DNA
22 ANALYSIS?

23 A SEROLOGY, PROBABLY 75 TO 100 TIMES. IN FORENSIC DNA TESTING,
24 PROBABLY 30, 30 TO 40, SOMEWHERE IN THAT BALLPARK.

25 MR. GASSER: YOUR HONOR, AT THIS TIME WE WOULD MOVE TO

1 POLICE DEPARIMENT?

2 A THAT'S CORRECT.

3 Q AND YOUR RECORDS INDICATE THAT INFORMATION AS WELL?

4 A YES.

5 MR. GASSER: THAT'S ALL I HAVE, YOUR HONOR.

6 THE COURT: THANK YOU. MR. STRICKLER.

7 MR. STRICKLER: I HAVE NO QUESTIONS FOR HER, YOUR HONOR.

8 THANK YOU.

9 MR. SHUPPER: NO QUESTIONS ON BEHALF OF ROBERT JAMES,
10 YOUR HONOR.

11 THE COURT: ALL RIGHT. THANK YOU. THANK YOU, MA'AM.
12 YOU MAY STEP DOWN.

13 MR. GASSER: MAY SHE BE EXCUSED, YOUR HONOR?

14 THE COURT: CERTAINLY.

15 MR. STRICKLER: CERTAINLY.

16 MR. SHUPPER: WITHOUT OBJECTION.

17 THE COURT: BEEPER FREE ZONE. REMEMBER.

18 MR. GASSER: BATTERY. I APOLOGIZE, YOUR HONOR.

19 THE COURT: YOUR BATTERY OR THE BEEPER? OKAY.

20 MR. GASSER: THE STATE WOULD CALL IRA JEFFCOAT.

21 IRA W. JEFFCOAT, BEING FIRST DULY

22 SWORN, TESTIFIES AS FOLLOWS:

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

25 MR. JEFFCOAT: IRA W. JEFFCOAT, J-E-F-F-C-O-A-T.

1 DIRECT EXAMINATION BY MR. GASSER:

2 Q MR. JEFFCOAT, WHERE ARE YOU EMPLOYED, SIR?

3 A I'M EMPLOYED WITH THE SOUTH CAROLINA LAW ENFORCEMENT
4 DIVISION, OTHERWISE KNOWN AS SLED.

5 Q AND WHAT IS YOUR RANK AT SLED?

6 A I'M A LIEUTENANT WITH SLED. I SUPERVISE THE DNA LABORATORY
7 AT SLED.

8 Q HOW LONG HAVE YOU BEEN WORKING AT SLED?

9 A FIFTEEN YEARS.

10 Q HOW LONG HAVE YOU BEEN SUPERVISOR OF THE DNA LAB AT SLED?

11 A SINCE 1993. IT WILL BE SIX YEARS.

12 Q AND PRIOR TO BEING THE SUPERVISOR OF THE DNA LAB FOR THE LAST
13 SIX YEARS, WHERE WERE YOU -- WHAT WERE YOUR DUTIES AND
14 RESPONSIBILITIES?

15 A WELL, IN 1984, WHEN I BECAME EMPLOYED AT SLED, I WAS A
16 FORENSIC SEROLOGIST FROM '84 UNTIL '89 OR '90. AND THEN IN
17 89/90, I WAS TRANSFERRED TO THE DNA LABORATORY TO HELP SET
18 THE DNA LABORATORY UP AT SLED. AND I'VE BEEN AT THE DNA LAB
19 SINCE 1989 AS A DNA ANALYST UNTIL 1993 WHEN I BECAME THE
20 SUPERVISOR.

21 Q YOU MENTIONED THE WORD "FORENSIC SEROLOGY". WHAT IS FORENSIC
22 SEROLOGY?

23 A SEROLOGY IS SIMPLY THE STUDY OF BODY FLUIDS, IDENTIFYING
24 BLOOD, SEMEN, SALIVA, ANY BIOLOGICAL SECRETIONS.

25 Q WOULD YOU BRIEFLY STATE TO US, PLEASE, YOUR EDUCATIONAL

1 HAVE AGENT JEFFCOAT QUALIFIED AS AN EXPERT IN THE AREA OF
2 FORENSIC SEROLOGY AS WELL AS AN EXPERT IN THE AREA OF
3 FORENSIC DNA ANALYSIS.

4 THE COURT: DOES EITHER DEFENDANT WISH TO VOIR DIRE AS
5 QUALIFICATIONS AT THIS TIME?

6 MR. STRICKLER: NOT KENNETH JAMES, YOUR HONOR.

7 MR. SHUPPER: NO, YOUR HONOR; NOT FOR ROBERT JAMES.

8 THE COURT: THANK YOU. MR. JEFFCOAT WILL TESTIFY AS AN
9 EXPERT IN THE AREA OFFERED SUBJECT TO MY INSTRUCTIONS ON THE
10 TESTIMONY OF EXPERTS. PLEASE CONTINUE.

11 MR. GASSER: THANK YOU, YOUR HONOR.

12 Q (BY MR. GASSER) AGO JEFFCOAT, YOU MENTIONED THE PHRASE WHEN
13 SLED WENT ON LINE WITH REGARDS TO DNA ANALYSIS. EXPLAIN WHAT
14 YOU MEAN BY THAT.

15 A WHAT I MEAN BY THAT IS WE HAD TO -- BEFORE WE COULD OFFER THE
16 DNA TEST AS A -- ON CASE WORK FOR ANALYZING EVIDENCE, WE HAD
17 TO DEVELOP A LABORATORY AND PROVE THAT THE LABORATORY COULD
18 PROVIDE RELIABLE AND QUALITY RESULTS. AND THAT TOOK SEVERAL
19 YEARS TO GET THAT DONE. ONCE WE HAD DONE ALL THAT AND HAD
20 SATISFIED ALL OF THE REQUIREMENTS THAT WE HAD PLACED UPON
21 OURSELVES THAT WE WOULD HAVE A QUALITY LAB THAT WE COULD
22 PRODUCE RESULTS FROM, AT THAT PARTICULAR POINT IN TIME WE
23 BEGAN TO ACCEPT CASES FOR ANALYSIS, ACCEPT EVIDENCE FROM
24 LOCAL AGENCIES TO ANALYZE FOR THE PURPOSE OF DOING DNA
25 TESTING.

1 Q NOW, IS SLED, SOUTH CAROLINA LAW ENFORCEMENT, ARE THEY
2 ACCREDITED? ARE THEY ACCREDITED IN THE AREA OF DNA ANALYSIS?

3 A YES. THE FORENSIC LAB AT SLED, THE LABORATORY AT SLED IS A
4 FULLY ACCREDITED LABORATORY WHICH INCLUDES ACCREDITATION IN
5 THE FORENSIC DNA LABORATORY.

6 Q AND WHAT DOES THAT MEAN? WHEN I ASK YOU THAT QUESTION AND
7 WHEN YOU RESPOND IT'S A FULLY ACCREDITED LABORATORY, WHAT
8 DOES THAT MEAN IN RELATIONS TO OTHER STATE LAW ENFORCEMENT
9 DIVISIONS?

10 A WHEN I SAY "FULLY" I MEAN THE LABORATORY AT SLED PROBABLY
11 INCLUDES SOMEWHERE CLOSE TO TEN OR TWELVE DIFFERENT
12 LABORATORIES; NOT JUST DNA TESTING, BUT SEVERAL OTHER
13 LABORATORIES. EACH LABORATORY AT SLED, TO BECOME ACCREDITED,
14 WE HAD TO PASS A -- WE HAD TO SATISFY A SET OF STANDARDS THAT
15 WERE DEVELOPED BY OTHER LABORATORIES AS A WHOLE. IT'S A
16 NATIONAL ACCREDITATION AGENCY THAT HAD DEVELOPED STANDARDS,
17 QUALITY STANDARDS FOR ALL LABORATORIES TO ADHERE TO. IT'S A
18 BOOKLET. IT'S PROBABLY WELL OVER 150 STANDARDS YOU HAVE TO
19 ADDRESS.

20 AND FOR US TO BECOME ACCREDITED WE HAVE TO BE INSPECTED
21 FOR COMPLIANCE TO THESE PARTICULAR STANDARDS. AND WE SOUGHT
22 THIS ACCREDITATION IN 1995, BECAME ACCREDITED -- OR I THINK
23 1994; EXCUSE ME -- IN 1994 AND BECAME AN ACCREDITED
24 LABORATORY IN 1994. AND WE WERE JUST RECENTLY, THIS SUMMER,
25 REINSPECTED OR UP FOR REACCREDITATION AGAIN AS WELL.

1 Q DO YOU KNOW OF YOUR OWN PERSONAL KNOWLEDGE HOW MANY STATE LAW
2 ENFORCEMENT DIVISIONS ACROSS THIS COUNTRY HAVE AN ACCREDITED
3 LABORATORY SYSTEM?

4 A WE'RE ONE OF THE FEW. I DON'T KNOW THE NUMBER. BUT IT'S
5 GREATLY GAINING IN POPULARITY TO BECOME AN ACCREDITED
6 LABORATORY. BUT RIGHT NOW WE'RE ONE OF THE -- PROBABLY 50
7 PERCENT OF THE LABS ARE ACCREDITED. WE'RE ONE OF THE FEW
8 THAT ARE.

9 Q HOW MANY -- FIRST OF ALL, IN THE AREA OF SEROLOGY THAT YOU'VE
10 DESCRIBED TO THE JURY, THE EXAMINATION OF BODILY FLUIDS, HOW
11 MANY -- IF YOU HAD TO ESTIMATE IN ALL OF YOUR YEARS AS A
12 FORENSIC SEROLOGIST AT SLED, COULD YOU EVEN ESTIMATE THE
13 NUMBER OF CASES THAT YOU'VE WORKED ON, THAT YOU'VE DONE
14 EXAMINATIONS ON IN THE AREA OF BLOOD, SEMEN, SPERM ANALYSIS,
15 THOSE TYPE OF BODILY FLUIDS?

16 A IN 15 YEARS, IT'S HUNDREDS OF CASES IN 15 YEARS.

17 Q AND A SMALLER GROUP AS FAR AS THE DNA ANALYSIS SINCE DNA HAS
18 ONLY BEEN ABOUT OR HAS ONLY BEEN USED IN FORENSIC CRIMINAL
19 CASES SINCE WHEN?

20 A IN OUR LABS SINCE I THINK 1991 IN OUR LABORATORY.

21 Q AND COULD YOU ESTIMATE THE NUMBER OF CASES THAT YOU'VE DONE
22 FORENSIC DNA ANALYSIS ON AGENT JEFFCOAT?

23 A IT'S BEEN SEVERAL HUNDRED. IT'S WELL OVER TWO OR THREE
24 HUNDRED CASES.

25 Q YOU SAID YOU WERE THE SUPERVISOR. HOW MANY DNA ANALYSTS ARE

1 THERE AT SLED?

2 A WE CURRENTLY HAVE 11 DNA ANALYSTS EITHER IN TRAINING OR ON
3 LINE.

4 Q NOW, WHAT DO YOU MEAN BY IN TRAINING?

5 A WELL, WE HAVE TURN-OVER LIKE ANY OTHER WORKPLACE WOULD HAVE,
6 AND PEOPLE LEAVE AND WE HAVE TO HIRE NEW DNA ANALYSTS. AFTER
7 UNDERGOING ABOUT A YEAR AND A HALF TRAINING PROGRAM, WE HAVE
8 THREE ANALYSTS THAT ARE CURRENTLY IN THAT TRAINING PROGRAM.

9 Q NOW, BEFORE I ASK YOU SPECIFIC QUESTIONS ABOUT THIS
10 PARTICULAR CASE, WE USE THE -- WE'RE USING THE PHRASE DNA.
11 WHAT EXACTLY -- WHAT DOES DNA ACTUALLY STAND FOR? WHAT IS
12 DNA?

13 A WELL, THE LONG WORD IS -- I'LL SAY IT; THEN I'LL SPELL IT --
14 IS DEOXYRIBONUCLEIC ACID. THAT'S
15 D-E-O-X-Y-R-I-B-O-N-U-C-L-E-I-C, ACID, A-C-I-D. IT'S A SHORT
16 TERM FOR A LONG WORD. AND IT ACTUALLY -- IT REFERS TO THE
17 GENETIC MATERIAL THAT'S CONTAINED IN THE CELLS OF THE BODY.
18 IT'S MATERIAL THAT'S RESPONSIBLE FOR A PERSON'S APPEARANCE.
19 DNA IS AN INHERITED MOLECULE. WE'RE ALL BLENDED BY PARENTS.
20 WE GET HALF OF OUR DNA FROM OUR MOTHER AND HALF FROM OUR
21 FATHER. OUR KIDS ARE A BLEND OF THE PARENTS. AND IT'S JUST
22 THE MATERIAL THAT'S RESPONSIBLE FOR HUMAN LIFE.

23 Q NOW, WOULD IT ASSIST YOU DURING YOUR TESTIMONY -- WITH
24 REGARDS TO THE EXAMINATION OF EVIDENCE AND THE EXPLANATION OF
25 THAT EXAMINATION RELATIVE TO THE *victim* CASE, WOULD IT

1 ASSIST YOU IN YOUR EXPLANATIONS TO THE JURY TO HAVE A
2 PRESENTATION ABOUT DNA TO THE JURY? WOULD THAT ASSIST YOU IN
3 YOUR TESTIMONY?

4 A YES. WE HAVE A SHORT PRESENTATION THAT HELPS DESCRIBE DNA
5 TESTING AND ACTUALLY HELPS DESCRIBE THE DNA MOLECULE.

6 MR. GASSER: YOUR HONOR, AT THIS TIME WE WOULD LIKE TO
7 PRESENT THAT TO THE JURY WITH THE ASSISTANCE OF AGENT LAMBERT
8 AT SLED, ALTHOUGH HE'S NOT GOING TO BE PROVIDING ANY
9 TESTIMONY.

10 THE COURT: OKAY. MR. STRICKLER, MR. SHUPPER, ANY
11 PROBLEM WITH THIS?

12 MR. STRICKLER: NO, SIR; FROM KENNETH JAMES.

13 THE COURT: YOU GOING TO DO IT ON THIS SCREEN HERE?

14 MR. GASSER: I DON'T BELIEVE IT WILL FIT, THERE, YOUR
15 HONOR. BUT WE'VE ARRANGED -- OR THEY'VE ARRANGED SOMETHING
16 -- THAT SHOULD BE SUFFICIENT.

17 THE COURT: OKAY. FINE.

18 MR. SNEED: NO OBJECTIONS, YOUR HONOR.

19 THE COURT: THANK YOU, MR. SHUPPER.

20 MR. GASSER: YOUR HONOR, COULD YOU PLEASE INQUIRE OF THE
21 JURY IF THEY COULD ALL SEE WHAT IS ON THE -- I DON'T WANT TO
22 --

23 THE COURT: SURE. THANK YOU. CAN YOU IN FACT -- IN
24 RESPONSE TO MR. GASSER'S QUESTION, CAN EVERYONE SEE? OKAY.
25 THANK YOU. DO YOU NEED ANY OF THESE LIGHTS ATTENDED TO?

1 MR. GASSER: I THINK IT WOULD HELP. YES, YOUR HONOR.

2 THE COURT: ALL RIGHT. OKAY. YOU CAN DO THAT. I THINK
3 RIGHT THERE. JUST DON'T GET THE ONES OVER MY HEAD. I THINK
4 THAT'S OUT IN THE COURTROOM. THERE YOU GO. NO. THAT'S
5 FINE. PUT THE OTHER ONES DOWN. GO AHEAD. THAT'S FINE. I
6 DON'T REALLY CARE. FORGET IT. THERE YOU GO.

7 A OKAY. THE ATTEMPT HERE IS NOT TO TRY TO MAKE EVERYONE DNA
8 ANALYSTS. IT'S EVIDENTLY TO HELP YOU BETTER UNDERSTAND WHAT
9 I'M GOING TO BE TALKING ABOUT HERE IN A FEW MINUTES.

10 BUT YOU SEE AT THE TOP THERE THE TERM DNA AND UNDER THAT
11 YOU SEE THE ACTUAL LONGER WORD DEOXYRIBONUCLEIC ACID. AND TO
12 THE RIGHT IS A DIAGRAMMATICAL REPRESENTATION OF WHAT DNA
13 MIGHT LOOK LIKE IN THE CELLS. AND IT'S A LONG CHAIN
14 MOLECULE. WE THINK OF IT LIKE A CHAIN, LIKE A COMPUTER TAPE
15 OR A PIECE OF MATERIAL, A LONG CHAIN MOLECULE THAT CONTAINS
16 THE GENETIC INFORMATION THAT CODES FOR A HUMAN BEING. AND
17 IT'S IN ALL THE CELLS OF THE BODY.

18 AN EXAMPLE OF THAT WOULD BE IN YOUR BLOOD, YOUR WHITE
19 BLOOD CELLS THAT ARE IN YOUR BLOOD ALL CONTAIN DNA. IN A
20 MALE'S SEMEN, THE SPERM CELLS ALL CONTAIN DNA. IN A FEMALE,
21 THE EGG THAT'S FERTILIZED FOR IMPREGNATION, THAT EGG CONTAINS
22 THE DNA. HAIR CELLS CONTAIN DNA. THE HAIR ROOT CONTAINS
23 DNA. SKIN CELLS CONTAIN DNA. EPITHELIAL CELLS THAT LINE THE
24 MOUTH CONTAIN DNA. ANY CELL DIVIDED AND HAS WHAT WE CALL A
25 NUCLEUS OR A YOKE CONTAINS DNA.

1 IN THIS PARTICULAR CASE WE USED BLOOD CELLS FOR SOME OF
2 THE TESTS AND SPERM CELLS FOR SOME OF THE OTHER TESTS. SO WE
3 USED THOSE TWO BODY FLUIDS IN THIS PARTICULAR CASE. AND AS I
4 SAID EARLIER, ONE HALF COMES FROM THE MOTHER; ONE FROM THE
5 FATHER. DNA IS GENETICALLY INHERITED. THE SPERM CELL
6 CONTAINS HALF OF THE DNA; THE "X" CELL THE OTHER HALF. WHEN
7 THE EGG AND THE SPERM COMBINE TO FORM A FETUS, THEN YOU WOULD
8 HAVE THE COMBINED DNA FROM THE MOTHER AND THE FATHER; HALF
9 FROM THE MOTHER, HALF FROM THE FATHER.

10 AND, LIKE I SAY, NO TWO PEOPLE WILL HAVE THE SAME DNA
11 MOLECULE EXCEPT FOR IDENTICAL TWINS. TWO BROTHERS HAVE
12 SIMILAR DNA BECAUSE THEY HAVE SIMILAR PARENTS, BUT THEIR DNA
13 WILL NOT BE THE SAME. IT WILL BE SIMILAR BUT DIFFERENT. A
14 MOTHER AND A FATHER -- A MOTHER AND A DAUGHTER HAVE SIMILAR
15 DNA BUT IT'S DIFFERENT. TWINS, IDENTICAL TWINS WILL HAVE THE
16 IDENTICAL DNA IN THEIR CELLS.

17 IF YOU'LL REMEMBER THE TERM, YOU'VE GOT IDENTICAL TWINS
18 VERSUS PATERNAL TWINS. PATERNAL TWINS WOULD NOT HAVE THE
19 SAME DNA. PATERNAL TWINS DON'T LOOK ALIKE. PATERNAL TWINS
20 ARE WHEN TWO DIFFERENT EGGS ARE FERTILIZED BY TWO SEPARATE
21 SPERMATOZOA. IDENTICAL TWINS OCCUR WHEN ONE EGG IS
22 FERTILIZED BY ONE SPERM AND THAT EGG SPLITS AGAIN. SO THE
23 ONLY EXCEPTION TO THE RULE OF PEOPLE HAVING THE SAME DNA --
24 NOT HAVING THE SAME DNA -- IS IDENTICAL TWINS. IN THIS
25 PARTICULAR CASE WE HAVE TWO BROTHERS. BUT TWO BROTHERS HAVE

1 SIMILAR DNA BUT NOT THE SAME DNA.

2 IF I GO TOO FAST -- I MEANT TO DO THIS ONE AT A TIME.
3 THIS JUST BRIEFLY WALKS YOU THROUGH THE PROCEDURE THAT WE DO
4 IN THE LABORATORY. AT THE UPPER LEFT YOU SEE AN ENVELOPE
5 WITH SOME SWABS THERE. IN A CASE LIKE THIS CASE, YOU HAVE A
6 RAPE CASE, WHEN THE VICTIM GOES TO THE HOSPITAL FOR A RAPE
7 EXAM, ONE OF THE THINGS THAT'S DONE AT THE HOSPITAL IS THE
8 PHYSICIAN THERE WILL COLLECT VAGINAL SWABS FROM THE FEMALE.
9 HE WILL ACTUALLY COLLECT SWABBINGS FROM THE VAGINAL AREA OF
10 THE FEMALE FOR THE PURPOSE OF TRYING TO IDENTIFY SEMEN.

11 THOSE SWABS, ONCE AGAIN THEY'RE COLLECTED AT THE
12 HOSPITAL AND LABELED AT THE HOSPITAL, DRIED OUT AT THE
13 HOSPITAL AND THEN SUBMITTED TO US FOR TESTING. AND WE WILL
14 TAKE THOSE SWABS, AND THE FIRST THING WE WOULD DO IS WE WOULD
15 IDENTIFY, ATTEMPT TO IDENTIFY SEMEN. IF THERE'S NO SEMEN ON
16 THOSE PARTICULAR SWABS, THERE'S REALLY NOT MUCH WE CAN DO.
17 BUT IF WE IDENTIFY SEMEN ON THE SWABS, THEN OUR NEXT STEP
18 WOULD BE TO TRY TO DEVELOP THE DNA PRINT FROM THAT SEMEN
19 STAIN TO DETERMINE WHOSE SEMEN IT MIGHT BE.

20 WE ALSO DO THE SAME THING ON BLOOD SAMPLES. YOU CAN
21 KIND OF BARELY MAKE OUT IN THE TOP, RIGHT ABOVE THAT ENVELOPE
22 THERE'S WHAT WE CALL A LIQUID TUBE OF BLOOD THERE. YEAH,
23 THAT. THAT'S A CONTAINER THAT BLOOD PUT IS IN WHEN YOU HAVE
24 TO DRAW A KNOWN SAMPLE FROM THE VICTIM OR FROM A SUBJECT.

25 FOR US TO MAKE A COMPARISON WE HAVE TO HAVE A SAMPLE OF

1 THE VICTIM'S BLOOD AND THE SUBJECT'S BLOOD. ONE THING I WILL
2 TAKE A LITTLE TIME TO DEFINE RIGHT HERE, I MENTIONED THE
3 VAGINAL SWAB, IF YOU CAN THINK ABOUT THIS, IT MAKES A LOT OF
4 SENSE. THE VAGINAL SWAB IS A SWABBING OF SECRETIONS FROM THE
5 VAGINA OF THE VICTIM. ON THAT SWAB WE'RE GOING TO HAVE SOME
6 OF THE VAGINAL SECRETIONS FROM THE FEMALE. WE'RE GOING TO
7 HAVE HER DONATIONS THERE AS WELL. ALSO ON THAT SWAB, IF
8 THERE IS ANY SEMEN, THEY WILL HAVE SEMEN. SO THAT SWAB
9 REPRESENTS WHAT WE CALL A MIXED BODY FLUID STAIN. IT COULD
10 POTENTIALLY HAVE HER SECRETIONS AND HIS SECRETIONS. HER
11 SECRETION WOULD CONTAIN HER DNA. HIS SECRETIONS CONTAIN HIS
12 DNA.

13 SO WE WOULD NEED TO HAVE A SAMPLE OF EACH ONE OF THOSE,
14 BLOOD, A KNOWN SAMPLE OF EACH ONE OF THOSE SO WE WOULD
15 DETERMINE WHAT THE PRINT, THE DNA PRINT LOOKED LIKE FROM THE
16 VICTIM SO WE COULD SUBTRACT HER OUT AND ALSO THAT WE COULD
17 KNOW THE DNA PRINT OF THE SUBJECT TO MAKE A COMPARISON THERE
18 AS WELL.

19 BUT THE NEXT STEP BRIEFLY IS WE JUST PURIFY THE DNA.
20 THE NEXT STEP IS TO TAKE THAT DNA FROM THAT SWAB, GET A TEST
21 TUBE, CLEAN IT UP AND MAKE SURE WE HAVE WHAT WE CALL GOOD,
22 HIGH QUALITY DNA OF SUFFICIENT QUANTITY AS WELL.

23 THE NEXT STEP IS A PRINCIPLE WE CALL DIGESTION STEP. WE
24 JUST TAKE THAT LONG, LINEAR DNA AND WE CUT IT IN SMALL
25 PIECES. WE CALL IT DNA DIGESTION.

1 WE TAKE THAT DIGESTED DNA AND WE SEPARATE THAT DNA
2 ACCORDING TO SIZE. WHAT YOU SEE THERE, THAT LITTLE THICK
3 WHITE THING IS ACTUALLY A PIECE OF JELLO, IT'S JUST A
4 JELLO-LIKE SUBSTANCE CALLED A GEL. WE PUT THE DNA IN THAT
5 PARTICULAR GEL, SUBJECT THE DNA TO AN ELLIPTICAL CHARGE, AND
6 WE SEPARATE THE DNA ACCORDING TO SIZE. LONGER PIECES TRAVEL
7 SLOWER THEN SMALLER PIECES.

8 THE NEXT STEP SHOULD SHOW YOU THAT THE -- YOU SEE THE
9 DNA, THE LITTLE BANDS THAT REPRESENT FRAGMENTS OF DNA FROM
10 TOP TO BOTTOM. THE PIECES AT THE BOTTOM OR SHORTER PIECES,
11 THEY TRAVEL FASTER THROUGH THE GEL THAN PIECES AT THE TOP,
12 THE LONGER PIECES OF DNA.

13 AND THEN WE TAKE THAT DNA OUT OF THAT GEL, WHICH IS LIKE
14 A PIECE OF JELLO, AND WE TRANSFER IT TO A PIECE OF NYLON
15 MEMBRANE, LIKE A LITTLE STRONG TYPE PAPER. THE GEL HAS A
16 DEFICIENCY, THAT THE GEL, IT'S JUST LIKE A -- IT WILL BREAK
17 REAL EASY. WE HAVE TO GET IT OFF OF THAT GEL ONTO A
18 SUBSTANCE WE CAN PICK UP EASILY.

19 AND THAT JUST SHOWS TRANSFERRING IT, THE GEL TO THE
20 MEMBRANE OR A PIECE OF REAL STRONG PAPER.

21 AND THEN NEXT WE DEVELOP THE PROBING. WE ACTUALLY TEST
22 THE UNKNOWN DNA AGAINST KNOWN DNA TO DEVELOP A PRINT. THOSE
23 LITTLE RED MARKS REPRESENT FRAGMENTS OF DNA THAT ARE SPECIFIC
24 FOR THIS PARTICULAR INDIVIDUAL AT THAT SPECIFIC LOCATION.

25 AND THEN THE LAST FINAL STEP IS WE -- THE FINAL PRODUCT

1 OF DNA TESTING IS A PIECE OF X-RAY FILM. IT'S A PIECE OF
2 FILM THAT HAS A PRINT ON IT. THAT JUST SHOWS THE MEMBRANE
3 BEING PLACED AGAINST A PIECE OF X-RAY FILM AND THE X-RAY FILM
4 BEING DEVELOPED. THAT'S ACTUALLY THE FINAL, THE DNA PRINT ON
5 X-RAY FILM THERE.

6 AND THEN ONCE WE GET THE FILM DEVELOPED WE DO A VISUAL
7 INTERPRETATION, AND THEN WE ALSO GO TO THE COMPUTER TO HELP
8 US MEASURE SOME OF THE BANDS TO CONFIRM THE MATCHES. AND
9 THAT'S IT.

10 (WITNESS RESUMES THE STAND)

11 Q THE USE OF DNA OR THE SCIENCE OF DNA, IS IT ONLY APPLIED IN
12 FORENSIC CRIMINAL CASES IN THIS COUNTRY?

13 A NO. IT'S A WIDELY USED PROCEDURE. IT WAS USED IN A LOT OF
14 INSTANCES BEFORE DNA BECAME A -- BEFORE FORENSIC DNA WAS
15 USED. AND IT WAS USED IN A LOT OF RESEARCH CASES, A LOT OF
16 PATERNITY CASES TO ESTABLISH PATERNITY IN A CONFLICT BETWEEN
17 TWO INDIVIDUALS WHOSE CHILD IS -- WHO IS THE FATHER OF THE
18 CHILD. PATERNITY TESTING RELIES HEAVILY ON DNA TESTING.

19 Q DOES THE UNITED STATES ARMED FORCES AND ARMED FORCES FROM
20 OTHER COUNTRIES USE DNA TO IDENTIFY THE REMAINS OF SERVICE
21 MEN AND SERVICE WOMEN?

22 A YES. IT'S A POLICY NOW WITHIN THE ARMED FORCES THAT EVERY
23 INDIVIDUAL, EVIDENCE OFFICER, EVERY SOLDIER I GUESS FOR LACK
24 OF A BETTER TERM, IS REQUIRED TO HAVE SOME OF THEIR DNA TAKEN
25 AND A DNA PRINT DEVELOPED FROM THEIR BLOOD AND STORED FOR THE

1 UNTHINKABLE THING THAT MAY HAPPEN IF THEY WERE IN WAR AND
2 THEY WERE KILLED AND THE REMAINS WERE LOST. THEY USE COULD
3 USE THAT DNA PRINT FROM THE SOLDIER THAT'S ON FILE TO COMPARE
4 AGAINST DNA PRINTS THAT ARE FROM REMAINS TO MAKE SURE THEY
5 COULD IDENTIFY THE REMAINS OF THE SOLDIERS.

6 Q AS WELL AS, DO YOU KNOW IN YOUR AREA OF EXPERTISE THAT -- DO
7 MEDICAL EXAMINERS AROUND THIS COUNTRY AND IN OTHER COUNTRIES
8 IN CASE OF DISASTERS, SUCH AS OKLAHOMA CITY BOMBING OR A
9 PLANE THAT GOES DOWN, DO STATEWIDE MEDICAL EXAMINERS USE DNA
10 IN AN ATTEMPT TO IDENTIFY BODY PARTS AND BODY REMAINS?

11 A THEY DO A -- YES. THEY DO A PATERNITY TYPE TESTING. THEY'LL
12 HAVE REMAINS, A PART, A BODY PART WHICH MAYBE THEY FOUND IN
13 AN EARTHQUAKE, AND THEY CAN TAKE THE BODY PART, DEVELOP THE
14 DNA PRINT FROM THE BODY PART AND THEN GET BLOOD SAMPLES FROM
15 THE MISSING PERSON'S PARENTS. AND THROUGH THE PARENTS THEY
16 CAN DETERMINE THAT THE BODY PART BELONGS TO A CHILD OF THE
17 PARENTS.

18 Q NOW, IN THE CRIMINAL AREA, IN THE FORENSIC CRIMINAL SCIENCE,
19 IS DNA USED, AND CAN DNA BE USED TO IDENTIFY OR TO INCULPATE
20 AN INDIVIDUAL AS TO LEAVING A SPERM OR A SEMEN SAMPLE?

21 A YES. THE INTENTION OF DNA TESTING IS TO MAKE A COMPARISON.
22 YOU HAVE AN UNKNOWN STAIN WHICH COULD BE A VAGINAL, A SEMEN
23 STAIN IN A CASE LIKE THIS. AND WE COMPARE THE DONOR OF THE
24 SEMEN STAIN. WE COMPARE THE DNA FROM THE SEMEN STAIN TO A
25 SUSPECT'S.

1 Q AND HAS IT ALSO BEEN USED, AND IS IT USED BY THE STATE LAW
2 ENFORCEMENT DIVISION IN OTHER CRIMINAL LABORATORIES TO
3 EXCLUDE, TO EXCULPATE AN INDIVIDUAL AS POSSIBLY BEING A DONOR
4 OF THAT SEMEN OR SPERM SAMPLE?

5 A THAT'S CORRECT. WE'VE HAD QUITE A FEW CASES WHERE THE DNA
6 PRINT FROM THE SEMEN STANDARD OR THE BLOOD STANDARD DID NOT
7 MATCH THE SUSPECT THAT WAS SUBMITTED.

8 Q NOW, DOES SLED KEEP AN INTERNAL CHAIN OF CUSTODY PAPER TRAIL
9 AND COMPUTER TRAIL ON ALL ITEMS OF EVIDENCE SUBMITTED BY ALL
10 CRIMINAL AGENCIES IN 46 COUNTIES IN SOUTH CAROLINA?

11 A YES. WE TRACK EVERY BIT OF EVIDENCE THAT COMES INTO OUR
12 LABORATORY ON PAPER AND IN A COMPUTER PROGRAM AS WELL.

13 Q AND WAS THAT DONE IN THIS PARTICULAR CASE?

14 A YES. IT'S DONE IN EVERY CASE.

15 Q NOW, ON MAY THE 31ST OF 1996 -- I KNOW YOU HAVEN'T BEEN IN
16 THE COURTROOM WHEN OTHER WITNESSES HAVE BEEN TESTIFYING. BUT
17 ON MAY THE 31ST OF 1996, WHEN STATE'S EXHIBIT, THE ITEMS IN
18 STATE'S EXHIBIT NO. 32 WERE BROUGHT TO SLED BY INVESTIGATOR
19 TOMMY THOMAS AND SEPARATED OUT, CAN YOU EXPLAIN TO THE JURY
20 THE EVIDENCE LABORATORY ROOM THERE ON THE FIRST FLOOR OF SLED
21 AND WHAT ITS PURPOSE IS?

22 A YES, I CAN. AND MY RECORDS DO INDICATE THAT THAT RAPE KIT
23 DID COME TO SLED ON MAY 31ST, 1996. RIGHT? '96. YEAH. THE
24 EVIDENCE IS INITIALLY BROUGHT TO WHAT WE CALL THE EVIDENCE
25 LOG-IN AREA AT SLED. IT'S A CENTRAL AREA ON THE FIRST FLOOR

1 OF THE BUILDING WHERE EVERY PIECE OF EVIDENCE THAT'S
2 SUBMITTED FOR ANALYSIS IS BROUGHT TO THAT ROOM. AND THE
3 SUBMITTING AGENCY, IN THIS CASE MR. T. M. THOMAS OF THE
4 COLUMBIA P.D. BRINGS THE EVIDENCE IN, COMPLETES THE PAPERWORK
5 WITH THE EVIDENCE. WHICH WE HAVE PAPERWORK THAT NEEDS TO BE
6 COMPLETED THAT LIKELY TELLS US THE VICTIM'S NAME, THE
7 SUBJECT'S NAME, THE CASE NUMBER, THE INVESTIGATING OFFICER,
8 WHAT TYPE CRIME IT IS AND WHAT EVIDENCE IS BEING BROUGHT IN.
9 ALL THAT IS TAKEN AND PUT ON THE PAPERWORK.

10 AND THEN FROM THE PAPERWORK IT'S LOADED INTO THE
11 COMPUTER SO WE CAN TRACK IT THROUGH THE COMPUTER AS WELL.
12 AND ONCE ALL THE TRACKING IS DONE AND ALL THE INFORMATION IS
13 GATHERED, THE NEXT STEP WOULD BE FOR MR. THOMAS WITH THE AID
14 OF THE EVIDENCE CUSTODIAN TO SEAL THAT EVIDENCE THAT HE
15 BROUGHT IN, PUT IT IN A SLED EVIDENCE ENVELOPE, IT'S A
16 PLASTIC ENVELOPE, AND SEAL IT SO WE CAN MAKE SURE THAT THE
17 EVIDENCE ONCE WE RECEIVE IT IS SEALED AND CANNOT BE TAMPERED
18 WITH.

19 MR. GASSER: YOUR HONOR, I'D LIKE TO MARK THREE ITEMS
20 FOR IDENTIFICATION PURPOSES ONLY.

21 THE COURT: YES, SIR.

22 (STATE'S EXHIBIT NOS. 37 THROUGH 39, THREE EVIDENCE BAGS,
23 MARKED FOR IDENTIFICATION ONLY)

24 Q JUST FOR DEMONSTRATION PURPOSES ONLY, AGENT JEFFCOAT, SHOWING
25 YOU STATE'S EXHIBIT NO. 37, WHAT DO YOU MEAN BY HEAT-SEALED

1 ENVELOPES AND IDENTIFICATION MARKS AND THAT SORT OF THING?

2 A YEAH. WELL, THIS IS JUST A SIMPLE PLASTIC BAG WITH A LABEL
3 ON THE FRONT THAT HAS SLED EVIDENCE ON IT. BY SEALING WE
4 MEAN THAT WE'VE GOT A HEAT, A PRESSURE, A HEAT -- A PIECE OF
5 EQUIPMENT THAT USES HEAT TO SEAL THESE PLASTIC BAGS.

6 AND IF YOU CAN SEE AT THE TOP HERE, YOU'VE GOT A SEAL UP
7 AT THE TOP THAT'S GOT THE INITIALS T.N.T. WHICH IS MR.
8 THOMAS. MR. THOMAS MADE THIS SEAL HIMSELF. HE INITIALED THE
9 SEAL AND PUT THE DATE HE MADE THE SEAL. AND THIS IS THE DATE
10 THAT HE BROUGHT IT IN. HE PUT IT IN THE ENVELOPE AND HE
11 SEALED IT SO THAT WHEN HE LEFT WE HAD A RECORD INDICATING
12 THAT HE HAD BROUGHT IT IN AND IT WAS SEALED AT THAT
13 PARTICULAR POINT IN TIME AND IT COULD NOT BE OPENED.

14 OTHER SEALS ON THE SIDE, YOU'LL SEE THESE ARE MY
15 INITIALS ON THE SIDE HERE. THIS INDICATES I.J. ON THE DATE
16 THAT I OPENED THE EVIDENCE WHEN IT GOT TO ME IN THE
17 DEPARIMENT, WHEN I GOT IT FROM THE LAB AND I WAS TO ANALYZE
18 IT. THIS SHOWS THAT I CUT THE SEAL, GOT THE EVIDENCE OUT AND
19 THEN RESEALED IT BACK WHEN I GOT THROUGH WITH IT.

20 ON THE FRONT YOU SEE CASE NUMBER. THIS IS THE CASE
21 THAT'S ASSIGNED TO IT BY SLED. IT'S GOT ON HERE THE DNA LAB.
22 AND IT'S GOT THE VICTIM AND THE SUBJECT'S NAME AS WELL, AS
23 WELL AS MR. THOMAS, THE INVESTIGATOR ON THE PARTICULAR CASE.

24 ON THE BACK WE HAVE A -- WELL, IT'S NOT IN HERE NOW.
25 BUT WE HAVE A -- ON THE BACK WE KEEP A CHAIN OF CUSTODY, A

1 PIECE OF PAPER THAT'S SIGNED BY MR. THOMAS SAYING THAT HE
2 BROUGHT THIS TO SLED AND SIGNED IT OVER TO THE EVIDENCE
3 CUSTODIAN AT SLED.

4 Q NOW, THE EVIDENCE THAT -- I KNOW YOU WEREN'T IN HERE ALSO
5 EARLIER THIS MORNING -- BUT WHEN DR. SMITHSON, THE SEXUAL
6 ASSAULT PROTOCOL DOCTOR, THE DRIED, THE SWABS, THE VAGINAL
7 SWABS, THE ORAL SWABS THAT IS COLLECTED AS WELL AS THE PUBIC
8 HAIR COMBINGS; DOES ALL THAT EVIDENCE OUT OF THE COLLECTION
9 KIT GO TO THE SAME DEPARTMENT LABORATORY, OR IS IT SEPARATED
10 OUT?

11 A IT'S SEPARATED BY DEPARTMENT. CERTAIN DEPARTMENTS DO CERTAIN
12 ANALYSES. AND IN MY DEPARTMENT WE DO ALL THE BIOLOGICAL
13 FLUID ANALYSIS, SEROLOGY ANALYSIS. SO THE VAGINAL SWABS, THE
14 ORAL SWABS, BLOOD SAMPLE, FINGERNAIL SCRAPINGS, THOSE TYPE
15 THINGS WOULD COME TO MY DEPARTMENT.

16 Q AND, IN FACT, DID THEY GO TO YOUR DEPARTMENT -- PHYSICALLY,
17 WERE THEY TRANSPORTED TO YOUR DEPARTMENT ON JUNE THE 3RD OF
18 1996?

19 A THAT'S CORRECT.

20 Q AND BETWEEN MAY THE 31ST OF '96, WHEN THEY WERE PLACED BY
21 AGENT THOMAS IN THE DNA LABORATORY REFRIGERATION BOX, IS THAT
22 A SECURE FACILITY?

23 A YES. THAT'S A REFRIGERATOR, LOOKS KIND OF LIKE A MAILBOX
24 THAT'S GOT A DROP-IN AREA. YOU CAN DROP SAMPLES INTO IT.
25 YOU CAN'T OPEN THE DOOR WITHOUT A KEY. BUT IT'S THERE. YOU

1 CAN DROP EVIDENCE INTO. AND IT'S SECURED. AND ONLY THE
2 PEOPLE WITH KEYS ARE PEOPLE IN THE DEPARTMENT THAT I
3 SUPERVISE THAT CAN GET TO THE EVIDENCE.

4 Q NOW, AFTER IT WAS RECEIVED, WHAT FLOOR IS THE DNA, YOUR DNA
5 LABORATORY ON ON THE FORENSIC UNIT AT SLED?

6 A WELL, IT'S BETWEEN THIRD AND FOURTH. WE HAVE AREAS ON THIRD
7 AND FOURTH FLOOR. OUR LAB IS SPREAD BETWEEN TWO FLOORS.

8 Q NOW, DID YOU HAVE AN OPPORTUNITY AFTER JUNE THE 3RD OF 1996
9 -- WHEN THE PACKAGES WERE PHYSICALLY BROUGHT TO YOUR
10 LABORATORY, DID YOU HAVE AN OPPORTUNITY AT THAT TIME TO BREAK
11 THE SEAL OF THE BLOOD THAT CONTAINED THE BLOOD SAMPLE OF
12 *victim* AND DO SOMETHING WITH THAT?

13 A YES. AT SOME POINT IN TIME WE DID HAVE TO TAKE THE BLOOD
14 SAMPLE FROM *victim*. IT WAS A LIQUID TUBE. IT WAS A
15 LIQUID SAMPLE. IT WAS A SAMPLE. JUST LIKE YOU GO TO THE
16 HOSPITAL NOW AND HAVE A LAB TEST DONE, THEY DRAW A SAMPLE
17 FROM YOUR ARM AND PUT IT IN A TUBE; THAT'S THE SAME WAY HER
18 TUBE OF HER BLOOD ARRIVED AT THE LABORATORY. BLOOD IN THE
19 LIQUID FORM DOESN'T HAVE A VERY LONG SHELF LIFE, DOESN'T LAST
20 VERY LONG. SO WE LIKE TO TAKE THAT LIQUID TUBE OF BLOOD AND
21 AS QUICK AS WE CAN DRY IT OUT TO A PIECE OF CLOTH, DRY IT ON
22 A PIECE OF CLOTH. IT PRESERVES IT BETTER ON CLOTH. SO THE
23 FIRST THING I DID WAS TAKE THE LIQUID SAMPLE OF BLOOD AND
24 CONVERT IT TO A DRIED SAMPLE.

25 Q AND THEN WHAT IS DONE WITH THAT DRIED OUT SAMPLE AT THAT

1 POINT IN TIME?

2 A WELL, THE DRIED SAMPLE IS THEN -- IT'S KEPT WITH EVERYTHING
3 ELSE, WITH THE REST OF THE EVIDENCE, PUT BACK WITH THE
4 VAGINAL SWABS AND ORAL SWABS, AND ALL OF THAT IS ALL KEPT
5 TOGETHER.

6 Q IS IT RESEALED THEN AT THAT PARTICULAR TIME?

7 A RESEALED AND KEPT IN A SECURE REFRIGERATOR IN THE DNA LAB.

8 Q NOW, FROM JUNE OF 1996, ONCE THAT PROCEDURE IS DONE THAT YOU
9 JUST EXPLAINED TO THE JURY, IF THE SUBMITTING AGENCY, IN THIS
10 CASE THE COLUMBIA POLICE DEPARTMENT, IF SUSPECT SAMPLES ARE
11 NOT SUBMITTED TO SLED, WHAT IS SLED'S POLICY WITH RETURNING
12 THE SAMPLES LIKE IN THIS CASE THAT WERE BROUGHT IN IN MAY OF
13 1996?

14 A SLED'S POLICY IS THAT WE'LL -- IN A CASE LIKE THIS WHERE WE
15 GET THE RAPE EVIDENCE WITHOUT A SAMPLE FROM A SUSPECT IS THAT
16 WE PRESERVE THE EVIDENCE BY FREEZING IT. WE SEND A LETTER TO
17 THE AGENCY REQUESTING THAT THEY SEND US A SAMPLE OF THE
18 SUSPECT'S BLOOD. AND IF WE HAVEN'T GOTTEN A SAMPLE WITHIN
19 SIX MONTHS, WE JUST RETURN THE EVIDENCE TO THE AGENCY AND ASK
20 THEM TO RETURN IT TO US WHENEVER THEY GET A SUSPECT SAMPLE.

21 Q AND DO THE RECORDS INDICATE THAT -- I KNOW YOU WERE IN HERE
22 DURING THE LAST WITNESS -- THAT IN MARCH OF 1997, THAT JOANNE
23 LEWIS FROM THE COLUMBIA POLICE DEPARTMENT CAME AND PICKED UP
24 THE SEALED PACKAGES OF THE DNA AND THE SEROLOGY?

25 A THE RAPE EVIDENCE; YES, SIR.

1 Q THE SEXUAL ASSAULT KIT?

2 A THAT'S CORRECT. WE HAD RETURNED THAT TO THE AGENCY, AND SHE
3 HAD TO BRING IT BACK TO US SO WE COULD ANALYZE IT.

4 Q NOW, WAS IT AGAIN THEN RESUBMITTED BY INVESTIGATOR THOMAS IN
5 MAY OF 1997?

6 A THAT'S CORRECT.

7 Q AND DID YOU THEN HAVE AN OPPORTUNITY ON MAY THE 15TH OF 1997,
8 TO RETRIEVE THE VAGINAL SWABS AND SMEARS, THE ORAL SWABS AND
9 SMEARS, FINGERNAIL SCRAPINGS AND THE DRIED OUT BLOOD SAMPLE
10 THAT YOU HAD DONE PREVIOUSLY FROM CARLA BROWN?

11 A THAT'S CORRECT. I BEGAN MY ANALYSIS ON THAT DATE, MAY THE
12 15TH.

13 Q OF WHAT YEAR?

14 A 1997.

15 Q NOW, ALSO IN MAY OF 1997, ON MAY THE 12TH I BELIEVE,
16 INVESTIGATOR THOMAS ALSO SUBMITTED TWO USED CONDOMS, CORRECT?

17 A THAT'S CORRECT.

18 Q STATE'S EXHIBIT 25?

19 A THAT'S CORRECT. MY INITIALS ARE HERE ON THE BAG. THAT'S
20 CORRECT.

21 Q ONCE YOU RECEIVED -- DID YOU YOURSELF HAVE AN OPPORTUNITY TO
22 COME INTO POSSESSION WITH THE TWO USED CONDOMS AS WELL AS THE
23 EVIDENCE FROM THE SEXUAL ASSAULT KIT FROM *victim* ?

24 A YES. THEY WERE ALL SUBMITTED TO MY LABORATORY, AND I TOOK
25 CUSTODY OF ALL THOSE ITEMS.

1 Q NOW, AGENT JEFFCOAT, THE FACT THAT THESE ITEMS WERE BROUGHT
2 -- WERE REFRIGERATED ORIGINALLY BY INVESTIGATOR THOMAS IN THE
3 SEXUAL ASSAULT KIT AND BROUGHT TO SLED IN A CAR AND PRESENTED
4 TO THE SLED EVIDENCE LAB, KEPT IN THE REFRIGERATOR, FROZEN
5 FOR A PERIOD OF TIME, TAKEN BACK TO THE COLUMBIA POLICE
6 DEPARTMENT, KEPT AT ROOM TEMPERATURE; WHAT, IF ANYTHING, DOES
7 THAT HAVE TO DO WITH THE POSSIBILITY OF CONTAMINATION OR
8 DEGRADATION OF THE SAMPLES?

9 A IT HAD -- IT SHOULD NOT LEAD TO ANY CONTAMINATION OR
10 DEGRADATION. WE GO TO GREAT PAINS AT SLED TO MAKE SURE THAT
11 WE PRESERVE THE INTEGRITY OF THE EVIDENCE. THAT'S WHY WE
12 SEAL IT IN ENVELOPES LIKE WE DO HERE. THAT'S WHY WE KEEP IT
13 REFRIGERATED. THAT'S WHY WE KEEP IT IN AN ENVIRONMENTALLY
14 CONTROLLED TEMPERATURE. DNA IS AN EXTREMELY STABLE MOLECULE.
15 MR. GASSER HAD MADE EXAMPLES EARLIER OF HUMAN REMAINS THAT
16 HAVE BEEN BURIED FOR A WHILE THAT HAVE BEEN TESTED. DNA IS A
17 VERY, VERY STABLE MOLECULE IF IT'S PRESERVED PROPERLY UP
18 FRONT.

19 ONE THING I DID THAT HELPED WITH THE EVIDENCE IS WHEN I
20 DRIED THAT SAMPLE OUT, THAT WAS A VERY IMPORTANT STEP TO
21 PRESERVING THE DNA IN THAT LIQUID BLOOD SAMPLE. THE VAGINAL
22 SWABS THAT ARE REFLECTED BY THE HOSPITAL, WE GO TO GREAT
23 PAINS TO TRAIN THE MEDICAL PERSONNEL THAT WHEN THEY COLLECT
24 THESE SWABS THE FIRST THING THEY DO IS THEY DRY THEM OUT, GET
25 THEM DRY. IF THEY DON'T DRY THEM, THAT'S WHEN THE DAMAGE

1 COMES. IF YOU DON'T DRY THE SAMPLE, IT'S JUST LIKE A MOLDY
2 TOWEL LEFT IN A CORNER; IF YOU DON'T DRY IT, IT WILL WE BEGIN
3 TO DEVELOP MOLD AND MILDEW AND BREAKS DOWN AND BEGINS TO
4 SMELL.

5 BUT IF YOU COLLECT THESE SAMPLES PROPERLY, DRY THEM OUT
6 PROPERLY, PACKAGE THEM PROPERLY AND THEN STORE THEM PROPERLY,
7 DNA WILL REMAIN VIABLE FOR YEARS AND YEARS AND YEARS.

8 THERE'S VERY LITTLE YOU CAN DO TO DAMAGE THE DNA. AND IN
9 THIS PARTICULAR CASE, THERE WAS NOTHING THAT WE DID THAT
10 WOULD HAVE ALTERED OR DAMAGED OR CONTAMINATED THE DNA AT ALL.

11 Q AND YOU'VE CHECKED THE SEXUAL ASSAULT PROTOCOL REPORT BY THE
12 DOCTOR WHERE IT'S CHECKED OFF THAT THE SAMPLE HAD BEEN DRIED
13 OUT?

14 A YES. HE DID A CHECKLIST ON THE PROTOCOL AND HE CHECKED THAT
15 HE HAD DONE IT PROPERLY.

16 Q AND EVEN IF THE CHECK MARK WAS WRONG, IS THERE WAY YOU CAN
17 TELL WHEN YOU'RE DOING THE ANALYSIS AS TO WHETHER OR NOT THE
18 SAMPLE IS A GOOD SAMPLE?

19 A WELL, THERE'S TWO THINGS. WE CAN A LOT OF TIMES TELL WHEN
20 YOU FIRST OPEN THE EVIDENCE. IF YOU OPEN IT AND IT'S GOT A
21 TREMENDOUS SMELL, YOU KNOW THAT THERE'S A PROBLEM; IT'S BEEN
22 PACKAGED WET. BUT THAT WAS NOT THE CASE IN THIS PARTICULAR
23 INSTANCE HERE.

24 THE SECOND THING IS THE DNA TESTING. IF YOU SAW THE
25 VIDEO, ONE OF THE -- THE SECOND STEP THAT WE DID, THE

1 EXTRACTION STEP, THAT EXTRACTION STEP WHICH IS THE FIRST STEP
2 IN THE PROCESS ACTUALLY, THAT STEP IS DONE EXPLICITLY TO TELL
3 US WHETHER WE HAVE GOOD, HIGH QUALITY AND HIGH QUANTITY DNA.
4 IF WE HAD A SAMPLE THAT WAS OF AN INFERIOR QUALITY, WE WOULD
5 KNOW IT RIGHT UP FRONT THAT THERE'S A PROBLEM WITH THAT
6 PARTICULAR SAMPLE AND WOULD PROBABLY IN MOST CASES
7 DISCONTINUE ANALYSIS AT THAT PARTICULAR TIME.

8 Q SO THE FACT THAT THERE MIGHT HAVE BEEN -- THAT THE
9 TEMPERATURES MAY HAVE BEEN CHANGED FROM FROZEN STAGE TO
10 UNFROZEN STAGE TO ROOM TEMPERATURE, DOES THAT HAVE ANYTHING
11 TO DO WITH EXTRACTING DNA AND DOING AN ANALYSIS?

12 A NOT IF THOSE SAMPLES WERE PACKAGED AND STORED PROPERLY WITH
13 BEING DRIED.

14 Q AND WHEN YOU USE THE WORD "STORED PROPERLY", WHAT TEMPERATURE
15 IT'S STORED PROPERLY, DOES THAT GO INTO THE EQUATION OF YOUR
16 IDEA OF BEING STORED PROPERLY?

17 A STORED PROPERLY MEANS THAT IN AN ENVIRONMENTALLY CONTROLLED
18 ENVIRONMENT. I DON'T NECESSARILY MEAN IT HAS TO BE STORED
19 REFRIGERATED OR FROZEN. IT HAS TO BE STORED IN AN AREA WE
20 CAN CONTROL THE TEMPERATURE. YOU REALLY DON'T WANT TO LEAVE
21 DNA FOR LONG PERIODS OF TIME IN YOUR TRUNK IN A SUMMER LIKE
22 WE HAD THIS PAST SUMMER. THAT OVER A PERIOD OF TIME WILL OF
23 COURSE HAVE SOME EFFECT ON THE DNA. AS LONG AS IT'S IN AN
24 ENVIRONMENTALLY CONTROLLED AREA, YOU'RE NOT GOING TO HAVE ANY
25 PROBLEM WITH THAT SAMPLE, AND NO ONE CAN GET TO THE SAMPLE

1 AND POUR THINGS ON IT OR SPIT ON IT; YOU KNOW, AS LONG AS
2 IT'S IN A SEALED CONTAINER THAT NO ONE CAN GET TO THAT IS
3 ENVIRONMENTALLY CONTROLLED, YOU'RE NOT GOING TO HAVE A
4 PROBLEM WITH DEGRADATION OR BREAK DOWN OR ANY KIND OF
5 CONTAMINATION.

6 Q AND IN YOUR EXPERIENCE AS A DNA ANALYST, EVEN IF A SOURCE, IF
7 A SAMPLE IS CONTAMINATED, CAN CONTAMINATION LEAD TO A FALSE
8 IDENTIFICATION?

9 A NOT AT ALL. CONTAMINATION WON'T NECESSARILY CHANGE SOMEONE'S
10 DNA PRINT. IT WON'T MAKE ME LOOK LIKE YOU. WHAT
11 CONTAMINATION WILL DO, WE MAY SEE TWO PRINTS. WE MAY SEE THE
12 PRINT FROM THE BLOOD STANDARD, AND WE ALSO MAY SEE AN
13 ADDITIONAL OR SECOND PRINT IN THERE FROM A CONTAMINANT. OR
14 IN SOME CASES IT COULD COMPLETELY BREAK THE DNA DOWN AND WE
15 DON'T GET ANY KIND OF PRINT AT ALL. BUT WHAT IT WON'T DO IS
16 IT WON'T CHANGE SOMEONE'S DNA PRINT. IT WON'T MAKE MY DNA
17 PRINT ALL OF A SUDDEN LOOK LIKE SOMEBODY ELSE. IT WILL
18 EITHER BREAK IT DOWN OR IT WILL CAUSE A SECOND PRINT TO COME
19 UP AT THE SAME TIME, WHICH WE CAN READILY IDENTIFY.

20 Q AND IN THIS PARTICULAR CASE THE SAMPLES, DEALING SPECIFICALLY
21 WITH THE VAGINAL SWABS FROM VICTIM AND THE BLOOD
22 STANDARDS FROM KENNETH JAMES AND ROBERT JAMES; IN YOUR
23 EXPERIENCE AND IN YOUR EXPERT OPINION AS A DNA ANALYST, DID
24 YOU SEE ANY PROBLEMS OR ANY CONTAMINATION WITH ANY OF THE
25 SAMPLES?

1 A I SAW NO EVIDENCE OF CONTAMINATION THAT WOULD RESULT IN A
2 FALSE IDENTIFICATION. NO. NOT AT ALL.

3 Q NOW, TELL US, PLEASE, WHAT YOU DID IN MAY OF 1997? IF YOU
4 NEED YOUR FIELD NOTES, WHAT YOU DID IN MAY OF 1997, WITH
5 REGARDS TO THE KNOWN BLOOD SAMPLE, 1.4 ON YOUR IDENTIFIED
6 NOTES, THE KNOWN BLOOD SAMPLE OF *victim*, THE VAGINAL AND
7 ORAL SMEARS, THE VAGINAL SWABS AND THE ORAL SWABS AND THE
8 FINGERNAIL SCRAPINGS? WHAT DID DO YOU WITH THOSE PIECES OF
9 EVIDENCE?

10 A YES. I BEGAN MY ANALYSIS ON THE EVIDENCE AT THAT PARTICULAR
11 POINT IN TIME. AND THE FIRST THING THAT I WOULD HAVE DONE
12 WOULD HAVE BEEN THE SEROLOGY WORK UP TO DETERMINE WHAT BODY
13 FLUIDS WERE PRESENT. AND I DID THAT AT THAT PARTICULAR POINT
14 IN TIME. AND I ISSUED A REPORT IN JUNE OF 1997, REFLECTING
15 MY RESULTS OF THAT ANALYSIS.

16 Q AND DO YOU HAVE A COPY OF THAT REPORT?

17 A YES, I DO.

18 Q NOW, WHEN YOU RE-RECEIVED THE ITEMS YOU'VE JUST DESCRIBED IN
19 MAY OF 1997, BACK FROM INVESTIGATOR THOMAS, WERE YOU MADE
20 AWARE THAT AT THAT TIME THERE WERE TWO SUSPECTS AND
21 EVENTUALLY TWO SUSPECT STANDARDS WERE GOING TO BE COMING TO
22 SLED?

23 A I WAS MADE AWARE THERE WOULD BE SUSPECT SAMPLES ARRIVING. I
24 WASN'T SURE HOW MANY, BUT I KNEW THERE WOULD BE SUSPECT
25 SAMPLES ARRIVING AT SOME POINT IN TIME.

1 Q SO WHY DID YOU GO AHEAD AND TO THE PREP WORK? IF YOU HADN'T
2 RECEIVED THOSE SUSPECT SAMPLES YET, WHY DID YOU GO AHEAD AND
3 DO THE PREP WORK ON THE SEXUAL ASSAULT KIT OF victim AT
4 THAT TIME?

5 A WELL, I WANTED TO BE ABLE TO IDENTIFY SEMEN, SEE IF THERE WAS
6 ANY SEMEN IN THE RAPE KIT FIRST SO WE COULD HAVE SOMETHING TO
7 COMPARE IT TO. IF THERE WERE NO SEMEN ON THE SWABS, THERE
8 WOULD BE NOTHING TO MAKE A COMPARISON AGAINST.

9 Q WELL, YOU JUST ANTICIPATED MY NEXT QUESTION. IF THERE WOULD
10 HAVE BEEN NO SEMEN IDENTIFIED ON THE SWABS, WOULD YOU HAVE
11 EVEN NEEDED KNOWN BLOOD SAMPLES OF EITHER KENNETH JAMES OR
12 ROBERT JAMES?

13 A WE WOULD NOT HAVE.

14 Q SO YOUR REPORT IN JUNE OF 1997, TELL US, PLEASE, WHAT THE
15 RESULTS OF YOUR EXAMINATION OF THE EVIDENCE FROM THE SEXUAL
16 ASSAULT KIT FROM victim, WHAT WERE THE RESULTS OF YOUR
17 EXAMINATION?

18 A WELL, A SYNOPSIS OF THE RESULTS WERE THAT I FOUND --
19 IDENTIFIED SEMEN ON THE VAGINAL SWABS. THESE WERE SWABS
20 COLLECTED FROM THE VICTIM IN THIS CASE, victim. I
21 ALSO HAD AN ORAL SWAB TO TEST, AND WE FOUND NO SEMEN ON THE
22 ORAL SWAB. WE HAD FINGERNAIL SCRAPINGS TO TEST, AND I FOUND
23 NOTHING ON THE FINGERNAIL SCRAPINGS THAT WOULD -- NO
24 BIOLOGICAL FLUIDS ON THE FINGERNAIL SCRAPINGS. IN ADDITION,
25 I WAS SUBMITTED SOME SWABBINGS FROM THE TWO CONDOMS THAT MR.

1 GASSER REFERRED TO EARLIER. AND ON BOTH OF THE CONDOMS -- ON
2 NEITHER OF THE CONDOMS, I DIDN'T FIND ANY SEMEN ON THE
3 CONDOMS. THE CONDOMS WERE NEGATIVE FOR SEMEN AS WELL. WELL,
4 ALSO I RECEIVED A SAMPLE OF BLOOD FROM THE VICTIM, victim .

5 Q NOW, WITH REGARDS TO THE SEMEN YOU IDENTIFIED ON THE VAGINAL
6 SWABS AND/OR THE SPERM THAT WAS IDENTIFIED ON THE VAGINAL
7 SMEAR, COULD YOU MAKE ANY DETERMINATION AS TO A TIME WINDOW
8 FROM WHEN THAT SEMEN OR SPERM MAY HAVE BEEN DEPOSITED AS TO
9 FROM WHEN THE SWAB WAS DONE AT THE SEXUAL ASSAULT PROTOCOL?

10 A I COULDN'T REALLY MAKE A TIME WINDOW. THE ONE THING I DID
11 NOTE IN MY NOTES WERE THAT WE LOOK FOR SPERMATOZOA.
12 SPERMATAZOA ACTUALLY IS A MICROORGANISM CONTAINED IN THE MALE
13 SEMEN THAT ACTUALLY CAUSES IMPREGNATION. AND WE ACTUALLY
14 LOOK AND TRY TO VISUALIZE THESE SPERMATOZOA. IN THIS
15 PARTICULAR CASE I WAS ABLE TO VISUALLY -- I DID FIND SOME
16 SPERMATOZOA, AND SOME OF THEM WERE WHAT WE CALL INTACT
17 SPERMATOZOA. A SPERM IS LIKE A TADPOLE KIND OF. IT HAS A
18 HEAD AND A TAIL ON IT. AND AFTER SPERM HAS BEEN IN THE
19 VAGINAL TRACT FOR A WHILE, SOMETIMES THE TAILS BEGIN TO
20 DEGRADE AND BREAK OFF. AND IN THIS PARTICULAR CASE I FOUND
21 SPERM THAT STILL HAD SOME TAILS INTACT, WHICH USUALLY MEANS
22 IT'S A FAIRLY RECENT SEXUAL ENCOUNTER.

23 Q NOW, ONCE YOU WERE DONE WITH THAT PREP WORK AND INITIATED
24 YOUR REPORT IN JUNE OF 1997, WHAT DID YOU DO WITH THESE ITEMS
25 OF EVIDENCE?

1 A WELL, THEY REMAINED STORED IN MY REFRIGERATOR AT SLED UNTIL I
2 RECEIVED THE BLOOD SAMPLES FROM THE SUSPECTS.

3 Q ON JUNE THE 24TH OF 1998, THEN, YOUR RECORDS INDICATE THAT
4 INVESTIGATOR BOB BENSON WHOM THE JURY HEARD FROM EARLIER
5 TRANSPORTED KNOWN BLOOD SAMPLES OF KENNETH JAMES AND ROBERT
6 JAMES TO THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION?

7 A THAT'S CORRECT.

8 Q AND WHEN DID YOU COME INTO CONTACT WITH THE KNOWN BLOOD
9 SAMPLES, THE VIALS OF BLOOD OF KENNETH JAMES AND ROBERT
10 JAMES?

11 A LET ME LOOK AT MY NOTES HERE REAL QUICKLY. I THINK I GOT
12 THOSE SAMPLES SOMEWHERE AROUND MAY THE 14TH OF 1998.

13 Q AND WHAT CONDITION WERE THEY IN, WERE THE VIALS OF BLOOD IN
14 WHEN YOU RECEIVED THEM?

15 A THEY WERE SEALED IN AN ENVELOPE JUST LIKE THIS. THEY WERE IN
16 LIQUID FORM IN AN ACTUAL TUBE OF BLOOD. AND I -- ONCE AGAIN,
17 I CONVERTED THE LIQUID SAMPLE TO A DRIED SAMPLE.

18 Q NOW, AFTER YOU HAD THE -- AFTER THE CONVERSION THAT YOU JUST
19 DESCRIBED TO THE JURY, WHEN YOU CONVERTED A LIQUID SAMPLE OF
20 KENNETH JAMES'S BLOOD TO A DRIED SAMPLE --

21 A RIGHT.

22 Q -- AND THEN A LIQUID SAMPLE OF ROBERT JAMES'S KNOWN BLOOD
23 INTO A DRIED SAMPLE?

24 A THAT'S CORRECT.

25 Q WHAT DID YOU DO WITH THOSE TWO ITEMS OF EVIDENCE AS WELL AS

1 THE CONVERTED DRY SAMPLE OF *victim's* BLOOD AND THE
2 SPERMS THAT YOU IDENTIFIED FROM THE VAGINAL SWAB? EXPLAIN TO
3 US WHAT YOU DID WITH THOSE FOUR SAMPLES.

4 A AT THAT POINT I BEGAN MY DNA ANALYSIS. I'VE ALREADY DONE THE
5 SEROLOGY, ISSUED THE REPORT. I BEGAN MY DNA TESTING AT THAT
6 PARTICULAR POINT IN TIME. I HAD EVERYTHING THAT I WOULD
7 NEED. I HAD ALL THE STANDARDS THAT I WOULD NEED FROM THE
8 SUSPECTS AND THE VICTIM AND I HAD THE EVIDENCE STAINS. SO I
9 BEGAN THE DNA TESTING OF THE VAGINAL SWABS WHICH CONTAINED
10 THE SPERM CELLS. I ALSO BEGAN THE DNA TESTING ON THE KNOWN
11 SAMPLES FROM *victim* TO DEVELOP HER DNA PRINT. I ALSO
12 DEVELOPED THE DNA PRINT AND BEGAN THE ANALYSIS TO DEVELOP THE
13 DNA PRINT FROM THE TWO SUSPECTS, MR. KENNETH JAMES AND MR.
14 ROBERT JAMES AT THAT PARTICULAR POINT IN TIME. I BEGAN MY
15 DNA TESTING.

16 Q AND I BELIEVE YOU USED THE WORD, OR AT LEAST IT WAS PART OF
17 THIS IN THE PRESENTATION YOU GAVE THE JURY, THE PHRASE
18 "EXTRACTION". DO YOU RECALL THAT?

19 A YES.

20 Q AND WHAT IS THAT EXACTLY?

21 A WELL, THAT'S JUST WHEN YOU GET THE DNA OUT OF THE CELL. THE
22 SPERM CELL THAT CONTAINS THE DNA, YOU BREAK THE SPERM CELL
23 AND HOPEFULLY GET THE DNA OUT, CLEAN IT UP, PURIFY IT, GET IT
24 TO A FORM THAT WE CAN USE TO TEST. YOU DO THE SAME THING
25 WITH THE BLOOD SAMPLES; GET THE DNA OUT OF THE BLOOD SAMPLES,

1 PURIFY THEM AND GET THEM INTO A FORM SUITABLE FOR TESTING.

2 Q SO AFTER THE SAMPLES ARE EXTRACTED, I BELIEVE YOU INDICATED
3 YOU GO INTO THE PURIFICATION STAGE. IS THAT CORRECT?

4 A THAT'S CORRECT.

5 Q AND WHAT DO YOU -- BRIEFLY, CAN YOU EXPLAIN WHAT THAT MEANS,
6 THE PURIFICATION STAGE?

7 A THAT JUST SIMPLY MEANS WE CLEAN IT UP. WE HAVE CHEMICALS
8 THAT WE HAVE IN THE LAB THAT HELP US CLEAN UP THE SAMPLE, GET
9 RID OF ALL THE DEBRIS THAT WE DON'T NEED, GET RID OF THAT
10 SPERM MEMBRANE AND GET IT OUT OF THE WAY. AND WHEN WE GET
11 THROUGH WE HAVE JUST PURIFIED DNA LEFT IN THE TEST TUBE. AND
12 OUR NEXT TEST IS TO DETERMINE ON THAT PURIFIED DNA, DO A TEST
13 TO DETERMINE THE QUALITY OF THE SAMPLE. IS IT A GOOD SAMPLE?
14 IS IT DEGRADED? IS IT BROKEN DOWN, OR IS IT A GOOD PURE
15 SAMPLE? AND THE QUANTITY; HOW MUCH DNA IS RECOVERED. IS IT
16 ENOUGH THAT WE CAN EXPECT TO GET A RESULT FROM?

17 Q THESE PROCEDURES THAT YOU'RE JUST DESCRIBING TO THE JURY,
18 WHERE IS THAT BEING DONE?

19 A IN THE LAB. IN THE LAB HERE AT SLED. OR THERE AT SLED.

20 Q AND IS THERE A SPECIFIC FORM AND A SPECIFIC STEP-BY-STEP
21 PROCEDURE AND THAT YOU AND ALL THE DNA ANALYSTS HAVE TO
22 FOLLOW?

23 A YES. WE HAVE A PROCEDURE THAT WE DEVELOPED BACK IN 1991,
24 WHEN WE WENT ON LINE OR WE BEGAN DNA TESTING. AND THAT
25 PROCEDURE IS THE SAME ONE WE'RE USING TODAY.

1 Q AND DID YOU FOLLOW THAT SAME PROCEDURE IN THIS PARTICULAR
2 CASE?

3 A YES. WE FOLLOWED IT STEP-BY-STEP. THAT'S CORRECT.

4 Q NOW, AFTER — WERE YOU ABLE TO DETERMINE WHETHER OR NOT YOU
5 FELT YOU HAD A GOOD OR HIGH QUALITY SAMPLE AT THAT PARTICULAR
6 TIME WITH *victim's* KNOWN BLOOD, KENNETH JAMES'S KNOWN
7 BLOOD, ROBERT JAMES'S KNOWN BLOOD AND THE VAGINAL SWABS?

8 A YES. I RECOVERED DNA FROM THE VAGINAL SWABS AND ALSO FROM
9 THE OTHER THREE STANDARDS AND WAS ABLE TO PROCEED WITH MY DNA
10 TESTING.

11 Q NOW, I BELIEVE WHEN YOU PROVIDED THE PRESENTATION TO THE
12 JURY, AFTER THAT DETERMINATION OF GOOD QUALITY OR HIGH
13 QUALITY THAT YOU JUST DESCRIBED, THE NEXT STEP DEALT WITH
14 CUTTING THE DNA. DO YOU RECALL THAT?

15 A YES. THAT'S PART OF THE PROCEDURE. WE HAVE TO ACTUALLY —
16 DNA IS A LINEAR MOLECULE. TO TEST IT WE CUT IT INTO SMALL
17 PIECES TO FACILITATE OUR TESTING. AND THAT'S THE NEXT STEP,
18 IS TO CUT IT INTO SMALL PIECES.

19 Q AND WAS THAT DONE IN THIS PARTICULAR CASE?

20 A YES, THAT WAS DONE.

21 Q NOW, AFTER THAT STEP IN THE PROCEDURE, I BELIEVE WHAT'S THE
22 NEXT STEP? I BELIEVE YOU INDICATED SOMETHING DEALING WITH
23 PROBES. WHAT DOES THAT MEAN?

24 A YEAH. WE JUST CONTINUE TO TEST THE DNA BY GETTING — WE
25 SEPARATE THE DNA DOWN INTO SMALL PIECES, DIFFERENT FRAGMENTS

1 OF DIFFERENT LENGTHS. AND OUR NEXT STEP IS TO SEPARATE THE
2 DNA ACCORDING TO SIZE. WE DO, AS I MENTIONED, THE GEL,
3 JELLO-LIKE SUBSTANCE WHERE WE PUT THE DNA IN THE JELLO-LIKE
4 SUBSTANCE, ATTACH AN ELECTRICAL CHARGE TO THE JELLO, TO THE
5 JELLO-LIKE SUBSTANCE. AND IT SEPARATES THE DNA ACCORDING TO
6 SIZE. AND SMALLER PIECES TRAVEL FASTER. SO THEY'RE AT THE
7 BOTTOM OF THE GEL. AND THE LONGER PIECES ARE AT THE TOP.
8 AND THEN INBETWEEN THERE ARE THE PIECES INBETWEEN THE LONG
9 AND THE SMALL ONES.

10 AND ONCE WE SEPARATE IT, THEN WE TRANSFER IT FROM THE
11 GEL-LIKE SUBSTANCE TO A PIECE OF NYLON MEMBRANE WHICH IS LIKE
12 A REAL STRONG PIECE OF PAPER. AND ON THAT PAPER THEN WE
13 ACTUALLY DEVELOP A PRINT BY ATTACHING KNOWN DNA TO THE
14 UNKNOWN DNA AND DEVELOPING PRINTS FROM THAT. AND THEN TO
15 VISUALIZE A PRINT, WE HAVE TO DEVELOP A FILM BY TAKING A
16 PIECE OF X-RAY FILM, PUTTING IT AGAINST THE MEMBRANE AND
17 DEVELOPING THE ACTUAL DNA PRINT THAT WE CAN ACTUALLY BRING TO
18 COURT AND ACTUALLY MAKE A DETERMINATION FROM.

19 Q AND HOW MANY PROBES DO YOU USE?

20 A WELL, "PROBE" IS A NEW TERM. WE ACTUALLY DO SEVEN DIFFERENT
21 TESTS. DNA PROCEDURE IS REALLY A COMBINATION OF SEVEN
22 DIFFERENT TESTS. WE DO SEVEN DIFFERENT, YOU USE THE TERM
23 PROBES OR SEVEN DIFFERENT CHROMOSOMES WITHIN THE DNA
24 MOLECULE. SO IT'S A TOTAL OF SEVEN DIFFERENT TESTS THAT HAVE
25 TO BE DONE IN ORDER FOR US TO DEVELOP A MATCH.

1 Q NOW, UPON THE COMPLETION OF YOUR DNA ANALYSIS WITH REGARDS TO
2 THE FOUR SAMPLES THAT WE'VE BEEN DISCUSSING, WOULD YOU TELL
3 US, PLEASE, WHAT YOUR RESULTS WERE?

4 A YES. I FOUND THE DNA MATCH. THE DNA -- I TESTED THE SEMEN
5 ON THE VAGINAL SWAB FROM THE VICTIM, *victim*. THE
6 DNA FROM THE SEMEN FROM THE VAGINAL SWAB FROM MS. *victim*
7 MATCHED THE DNA OF MR. KENNETH JAMES. AND IT DID NOT MATCH
8 THE DNA OF MR. ROBERT JAMES. SO THE SEMEN DONOR IN THIS
9 PARTICULAR CASE IS CONSISTENT WITH MR. KENNETH JAMES.

10 Q NOW, FIRST WITH MR. ROBERT JAMES, AFTER YOU COMPLETED ALL OF
11 THE TESTING THAT YOU HAVE JUST DESCRIBED TO THE JURY, WHEN
12 YOUR -- YOUR CONCLUSION OR YOUR RESULTS INDICATE THAT IT DID
13 NOT MATCH ROBERT JAMES. IS THAT CORRECT?

14 A THAT'S CORRECT.

15 Q SO YOUR ANALYSIS EXCLUDES ROBERT JAMES AS THE DONOR OF THE
16 SPERM OR SEMEN FROM THE SWAB, VAGINAL SWAB OF *victim*
17 TAKEN AT THE CRIMINAL ASSAULT PROTOCOL?

18 A THAT'S CORRECT.

19 Q AND THE RESULTS INCLUDE KENNETH JAMES. IS THAT CORRECT?

20 A THE DNA PRINT THAT WE DEVELOPED FROM THE SEMEN MATCHED THE
21 DNA PRINT THAT WE DEVELOPED FROM MR. KENNETH JAMES. THAT'S
22 CORRECT.

23 Q NOW, WHAT KIND OF STATISTICAL DATA DO YOU USE TO ASSIST YOU
24 IN MAKING YOUR REPORTS AS FAR AS THE ODDS THAT THE PRINT THAT
25 YOU FOUND, KENNETH JAMES'S KNOWN DNA EXTRACTED FROM HIS BLOOD

1 AND THE SPERM FROM THE VAGINAL VAULT OF *victim* COULD
2 POSSIBLY BE ANYBODY ELSE'S? WHAT KIND OF STATISTICAL
3 ANALYSIS AND DATA DID YOU USE?

4 A YEAH. OUR ANALYSIS, IT'S LIKE A TWO-STEP PROCESS. STEP ONE
5 IS TO DETERMINE DO THE TWO SAMPLES MATCH EACH OTHER. IN THIS
6 CASE THE SAMPLE FROM THE VAGINAL SWAB, SEMEN ON THE VAGINAL
7 SWAB, DID MATCH MR. KENNETH JAMES. THE NEXT STEP IS TO
8 ATTACH SOME TYPE OF FREQUENCY TO HOW FREQUENT OR INFREQUENT
9 THIS PARTICULAR STAIN THAT WE IDENTIFIED. IN THIS PARTICULAR
10 CASE I DID THE STATISTICS BASED ON THE DATABASE THAT WE HAVE
11 AT SLED. AND I'M GOING TO READ DIRECTLY FROM MY REPORT HERE.
12 "THE PROBABILITY OF SELECTING AN UNRELATED INDIVIDUAL AT
13 RANDOM FROM THE POPULATION HAVING A DNA PROFILE MATCHING ITEM
14 1.7," -- 1.7 BEING THE VAGINAL SWAB -- "IS APPROXIMATELY 1 IN
15 15 MILLION BLACKS AND 1 IN 90 MILLION CAUCASIANS.

16 Q THAT IS THE PROBABILITY OF IT BEING A MATCH OTHER THAN
17 KENNETH JAMES. IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q 1 IN 15 MILLION BLACKS AND 1 IN 90 MILLION CAUCASIANS?

20 A THAT'S CORRECT, SIR.

21 Q AND DO YOU KNOW APPROXIMATELY, THE ENTIRE STATE OF SOUTH
22 CAROLINA, HOW MANY PEOPLE ARE IN THE ENTIRE STATE OF SOUTH
23 CAROLINA APPROXIMATELY?

24 A SLIGHTLY BELOW 4 MILLION.

25 Q A LITTLE OVER 4 MILLION?

1 A SLIGHTLY BELOW 4 MILLION, NOT OVER 4 MILLION.

2 Q OH. THERE ARE BELOW 4 MILLION?

3 A YEAH. I THINK ABOUT 3.8, 3.9 MILLION.

4 Q AND, STATISTICALLY, DO YOU KNOW APPROXIMATELY THE BREAK DOWN
5 BETWEEN AFRICAN-AMERICANS AND CAUCASIANS IN THE STATE OF
6 SOUTH CAROLINA?

7 A IT'S APPROXIMATELY 70 PERCENT CAUCASIAN AND 30 PERCENT
8 AFRICAN-AMERICANS. APPROXIMATELY.

9 Q WHAT STEPS DOES SLED TAKE, AGENT JEFFCOAT, WHAT INTERNAL
10 STEPS ARE TAKEN TO INSURE THAT YOUR RESULTS, YOUR CONCLUSIONS
11 THAT ROBERT JAMES COULD NOT -- IT'S NOT A MATCH WITH ROBERT
12 JAMES BUT IT IS A MATCH WITH KENNETH JAMES ARE ACCURATE?
13 TELL THE JURY WHAT STEPS ARE TAKEN INTERNALLY TO INSURE THAT?

14 A THERE'S QUITE A FEW STEPS TAKEN. I MENTIONED EARLIER THE
15 ASCLAD ACCREDITATION. ACCREDITATION REQUIRES THAT WE USE
16 CERTAIN -- WE ADHERE TO CERTAIN MINIMAL STANDARDS. ONE OF
17 THE THINGS THAT WE DO, WE'VE ALWAYS DONE IRREGARDLESS (SIC)
18 OF ACCREDITATION, IS THAT WE RUN CONTROLS ON EVERY CASE THAT
19 WE RUN. WE RUN KNOWN SAMPLES WITH EVERY CASE THAT WE RUN; A
20 KNOWN BLOOD SAMPLE FROM A FEMALE, A KNOWN BLOOD SAMPLE FROM A
21 MALE. AND IF WE DON'T GET THE CORRECT RESULTS WITH THOSE
22 CONTROL SAMPLES, THEN THAT TELLS US SOMETHING'S WRONG WITH
23 THE PROCEDURE AND WE CAN'T TRUST THE RESULTS. IN THIS CASE
24 PARTICULAR CASE THOSE CONTROLS WERE RUN AND FOUND TO BE VERY
25 ACCURATE. SO THE TEST ITSELF WAS AN ACCURATE TEST BECAUSE OF

1 THE CONTROL SAMPLES.

2 ONE THING WE DO IN ADDITION TO THAT THAT WE DO ONCE THE
3 RESULTS HAVE BEEN OBTAINED, IT'S A REQUIREMENT IN OUR
4 LABORATORY THAT EVERY CASE BEFORE IT'S REPORTED HAS TO BE
5 REVIEWED BY TWO ADDITIONAL INDIVIDUALS. YOU HAVE TO DO WHAT
6 WE CALL A COMPLETE -- WE CALL IT A COMPLETE TECHNICAL REVIEW,
7 WHICH MEANS A SECOND EXAMINER OTHER THAN MYSELF TAKES MY CASE
8 FILE AND RE-EXAMINES EVERYTHING IN MY CASE FILE TO CONFIRM
9 THAT HE OR SHE AGREED WITH THE CONCLUSION THAT I REACHED.
10 THAT'S THE FIRST REVIEW. AND THAT REVIEW HAS TO BE DONE. IT
11 HAS TO BE SIGNED OFF ON BY THE SECOND REVIEWER BEFORE WE CAN
12 REPORT THE RESULTS.

13 THE SECOND REVIEW IS BEFORE THAT REPORT GOES OUT, THE
14 FINAL WRITTEN REPORT HAS TO BE REVIEWED BY THE SUPERVISOR IN
15 THE CASE. AND THE SUPERVISOR HAS TO REVIEW THE RESULTS,
16 REVIEW THE CASE FILE AND ALSO CONFIRM THE MATCH IN THIS CASE.
17 I REVIEW EVERY DNA CASE AS THE SUPERVISOR BEFORE IT GOES OUT.
18 IN THIS CASE PARTICULAR CASE OF COURSE I COULDN'T REVIEW ANY
19 OWN RESULTS. SO WHAT WE DO IN CASES WHEN I'M THE ANALYST IS
20 ANOTHER EXAMINER REVIEWS IT IN MY BEHALF. AND THIS
21 PARTICULAR CASE WAS REVIEWED BY TWO OTHER EXAMINERS,
22 SEPARATELY BY TWO OTHER EXAMINERS, BEFORE THE RESULTS WERE
23 ALLOWED TO BE REPORTED. AND THEY CONCURRED WITH MY RESULT IN
24 BOTH CASES.

25 Q LASTLY, AGENT JEFFCOAT, OTHER THAN THE FACT THAT BASED ON THE

1 DOCUMENTS THAT YOU RECEIVED, THAT YOU KNEW THAT *victim*
2 WAS THE VICTIM AND THAT KENNETH JAMES AND ROBERT JAMES WERE
3 TWO SUSPECTS, OTHER THAN FACTS THAT YOU GLEANED FROM THE --
4 THAT YOU OBSERVED FROM THE DOCUMENTATION, DID YOU KNOW
5 ANYTHING ABOUT ANY OF THE OTHER EVIDENCE IN THIS CASE WHEN
6 YOU WERE PERFORMING YOUR TESTING?

7 A NO. ALL I KNEW IS WHAT WAS SUBMITTED TO ME TO BE ANALYZED.

8 MR. GASSER: THAT'S ALL I HAVE, YOUR HONOR.

9 THE COURT: MR. STRICKLER.

10 MR. STRICKLER: THANK YOU, SIR. BEG THE COURT'S
11 INDULGENCE ONE MOMENT.

12 THE COURT: SURE.

13 MR. STRICKLER: THANK YOU, SIR.

14 THE COURT: YES, SIR.

15 CROSS EXAMINATION BY MR. STRICKLER:

16 Q GOOD AFTERNOON, LIEUTENANT JEFFCOAT.

17 A GOOD AFTERNOON.

18 Q I'M DOUG STRICKLER. I HAVE A FEW QUESTIONS FOR YOU, IF I
19 COULD, PLEASE. FIRST OF ALL, JUST PROCEDURALLY, YOU
20 TESTIFIED ABOUT HOW YOU HANDLED THE -- YOUR LAB HANDLED THE
21 SAMPLES IN THIS PARTICULAR CASE. IT WAS KIND OF BACK AND
22 FORTH ON THIS AND THAT. THE ONE THING THAT I DID FOLLOW WAS
23 THE SAMPLE YOU GOT INITIALLY IN THE CASE BACK IN '96 HAD A
24 BLOOD SAMPLE FROM *victim* TAKEN DURING THE RAPE PROTOCOL?

25 A THAT'S CORRECT.

1 Q YOU TESTIFIED ABOUT THAT SAMPLE BEING TRANSFERRED, BLOOD
2 TAKEN FROM THE TUBE THAT YOU SHOWED ON THIS — LIKE WHAT YOU
3 SHOWED ON THE SCREEN AND TRANSFERRED TO A CLOTH AND AIR
4 DRIED?

5 A THAT'S CORRECT, SIR.

6 Q WHEN WAS THAT DONE?

7 A EXACTLY WHAT DAY IT WAS DONE?

8 Q YES, SIR.

9 A I CAN TELL YOU APPROXIMATELY. I WOULD HAVE TO HAVE THE PAPER
10 — THE ACTUAL ENVELOPE TO TELL YOU EXACTLY WHAT DAY. BUT I
11 CAN GIVE YOU AN APPROXIMATION.

12 Q WELL, I'M SORRY. WHAT ENVELOPE DO YOU NEED, SIR?

13 A THE ACTUAL ONE THAT THE BLOOD WAS STORED IN. IT WOULD HAVE
14 THE DATE ON IT THAT IT WAS ACTUALLY PUT IN THE ENVELOPE.
15 THAT WOULD BE THE DAY THAT IT WAS DRIED OUT.

16 Q IS THAT HERE SOMEWHERE IN COURT?

17 A I HAVEN'T SEEN IT, BUT I'M SURE SOMEONE MAY HAVE IT. IT WAS
18 SOMEWHERE SHORTLY AFTER IT CAME IN IN JUNE OF 1996. NO, IT
19 WOULDN'T BE THAT ONE. NO, IT'S NOT. LET ME SEE IF THIS IS
20 IT RIGHT HERE IN FRONT OF ME HERE. THIS COULD BE IT RIGHT
21 HERE IN FRONT OF ME HERE. I'D HAVE TO OPEN THE ENVELOPE TO
22 FIND IT. I THINK THIS IS IT RIGHT HERE. I BELIEVE THIS IS
23 THE ONE THAT'S GOT THE RAPE EVIDENCE IN IT.

24 Q OKAY.

25 A I'D HAVE TO HAVE A PAIR OF SCISSORS AND SOMETHING. I DON'T

1 HAVE A KNIFE TO OPEN. I'D HAVE TO HAVE SOME WAY TO OPEN IT
2 TO GET IT OUT TO TELL YOU THE EXACT DATE.

3 Q LET ME ASK YOU THIS.

4 A YES.

5 Q DO YOU AS PART OF THE PROCEDURES ESTABLISHED IN YOUR LAB HAVE
6 CASE NOTES RELATING TO THE WORK THAT YOU DO IN A PARTICULAR
7 CASE?

8 A YES. WE KEEP NOTES ON CERTAIN ASPECTS OF THE TESTING.
9 THAT'S CORRECT.

10 Q AND DO YOU HAVE YOUR NOTES WITH YOU?

11 A YES. I'M NOT SURE THAT WOULD BE ON MY NOTES. BUT I -- I
12 HAVE MY NOTES. YES.

13 Q YOUR NOTES WOULD NOT REFLECT WHEN YOU INITIALLY CONDUCTED THE
14 FIRST PART OF THIS PROCEDURE THAT YOU'VE RELATED TO THIS
15 JURY?

16 A MY NOTES PROBABLY WOULD NOT INCLUDE WHEN ACTUALLY THAT SAMPLE
17 WAS PUT TO CLOTH. NO, SIR. THAT'S CORRECT. I WOULDN'T
18 NORMALLY PUT THAT ON MY NOTE SHEETS. MY NOTES USUALLY BEGIN
19 WHEN I BEGIN THE ANALYSIS OF THE SAMPLES, NOT WHEN I PUT THE
20 BLOOD ON THE CLOTH.

21 Q SO YOU TESTIFIED AS TO WHEN YOU RECEIVED THE SAMPLES. WE'RE
22 TALKING ABOUT MAYBE MAY OR JUNE OF 1996?

23 A THAT'S CORRECT.

24 Q YOU TESTIFIED ABOUT WHEN THE SAMPLES WERE RETURNED TO THE
25 CITY OF COLUMBIA POLICE DEPARTMENT PURSUANT TO THIS NOT

1 HOLDING IT LONGER THAN SIX MONTHS POLICY?

2 A THAT'S CORRECT.

3 Q RIGHT?

4 A YES.

5 Q SO WHAT YOU CAN TELL US AS YOU SIT THERE NOW IS THAT THE
6 LIQUID BLOOD WAS TRANSFERRED TO CLOTH SOMETIME BETWEEN THOSE
7 TWO DATES FOR SURE?

8 A FOR SURE. IT WAS VERY SOON AFTER WE RECEIVED IT. IT CAME
9 FROM THE DNA BOX. WE MENTIONED THE TERMINOLOGY WHERE
10 SOMEBODY DROPPED IT IN THE DROP BOX IN THE EVIDENCE LOG-IN
11 AREA OR THE MAILBOX TYPE THING WHERE THEY DROP THE SAMPLE IN.
12 WE GOT IT OUT OF THAT BOX IN JUNE OF 1996. AND SHORTLY AFTER
13 THAT, WITHIN A FEW DAYS, WOULD HAVE BEEN THE TIME IT WOULD
14 HAVE BEEN PUT ON CLOTH.

15 Q YOU DON'T HAVE THAT TIME BEFORE YOU THOUGH?

16 A IF YOU CAN FIND ME A KNIFE, I CAN LOOK IN HERE RIGHT NOW AND
17 I CAN TELL YOU PROBABLY EXACTLY THE DAY. IT'S INSIDE THIS
18 ENVELOPE SOMEWHERE. I NEED SOMETHING TO GET THE ENVELOPE
19 OPEN WITH.

20 Q I'M NOT SURE THE ENVELOPE IS IN EVIDENCE. SO I'M NOT GOING
21 TO ASK THAT YOU DO THAT, SIR.

22 A OKAY.

23 Q THE PROCEDURE THAT YOU HAVE DESCRIBED FOR THIS JURY FOR DNA
24 ANALYSIS AND FOR SEROLOGICAL TESTING IN GENERAL IS GOVERNED
25 BY A SET OF RULES, PROCEDURES THAT YOUR LABORATORY HAS

1 ESTABLISHED, CORRECT?

2 A WE HAVE A WRITTEN PROTOCOL. THAT'S CORRECT, SIR.

3 Q THAT'S THE NEXT THING. COMMONLY REFERRED TO AS A PROTOCOL,
4 CORRECT?

5 A THAT'S CORRECT.

6 Q ALL RIGHT. AND YOU INDICATED IN YOUR DIRECT TESTIMONY THAT
7 THE PROCEDURE FOR DNA ANALYSIS WAS DEVELOPED IN 1991, AND
8 IT'S THE SAME PROCEDURE THAT YOU ALL USE TODAY?

9 A THAT'S CORRECT, SIR.

10 Q OKAY. NOW, IN LOOKING AT -- AND THE PROTOCOL IS A FAIRLY
11 EXTENSIVE DOCUMENT, RIGHT?

12 A YES. IT'S PROBABLY 75 OR 100 PAGES. YES, SIR.

13 Q RIGHT. AND IT COVERS SAFETY, CHEMICALS AND REAGENTS, GENERAL
14 APPARATUS, CALIBRATION, QUALITY CONTROL, ABO TYPING OF LIQUID
15 BLOOD AND ON AND ON AND ON AND ON?

16 A THAT'S CORRECT.

17 Q DOWN THROUGH OPERATION OF THE LUMILIGHT?

18 A THAT'S CORRECT, SIR.

19 Q AND BEYOND. OKAY. AND IT SETS FORTH IN DETAIL WHAT YOU DO
20 AT EACH OF THESE STEPS TO CONDUCT THE TESTING THAT YOU'RE
21 INVOLVED WITH, RIGHT?

22 A THAT'S CORRECT. THAT'S CORRECT.

23 Q WHETHER IT'S TESTING FOR BLOOD TYPE, THE OLD KIND OF TEST
24 THAT USED TO BE DONE, OR DNA TESTING. RIGHT?

25 A THEY'RE ALL IN THAT PROCEDURE MANUAL. THAT'S CORRECT.

1 Q ALL RIGHT. AND I UNDERSTAND THAT YOU'VE BEEN HERE TESTIFYING
2 ABOUT A TYPE OF DNA TESTING WHICH WOULD BE SHORTLY DESCRIBED
3 AS R.F.L.P. OR RESTRICTION FRAGMENT LENGTH POLYMORPHISM DNA
4 TESTING, CORRECT?

5 A YEAH. THAT DESCRIBES THE TYPE DNA TESTS THAT WE DO IN OUR
6 LABORATORY. THAT'S CORRECT, SIR.

7 Q IT'S MY UNDERSTANDING THAT HOPEFULLY WITHIN A COUPLE OF
8 MONTHS YOU ALL WILL BEGIN TO BE ENGAGED IN POLYMERASE CHAIN
9 REACTION DNA TESTING, RIGHT?

10 A MORE LIKE A COUPLE OF DAYS. BUT YOU'RE CORRECT.

11 Q VERY GOOD. THAT'S BEEN ACTUALLY PENDING FOR SEVERAL YEARS
12 NOW?

13 A THAT'S CORRECT.

14 Q RIGHT? OKAY. BUT THE PROCEDURE THAT YOU USE NOW IS THE SAME
15 AS THAT YOU USED IN 1991, IS YOUR TESTIMONY?

16 A WE'VE MADE CHANGES TO IT, MINOR CHANGES TO IT OVER THE YEARS,
17 BUT NOTHING SUBSTANTIAL.

18 Q RIGHT. I MEAN, IF I LOOK AT SECTION -- I'VE GOT 4.0.1. OUT
19 OF 2 FOR THIS TABLE OF CONTENTS. I SEE VERSION 11.081598. I
20 WOULD TAKE IT -- NOW, I WON'T GET INTO THE 081598, BUT WHEN I
21 SEE VERSION 11, I WOULD ASSUME -- AND I KNOW THAT CAN BE
22 DANGEROUS -- BUT I WOULD ASSUME THAT THERE HAVE BEEN SOME
23 CHANGES MADE IN YOUR PROCEDURE OVER THE YEARS?

24 A THAT'S CORRECT, SIR.

25 Q IS THAT CORRECT?

1 A WE'VE MADE REVISIONS TO THE PROTOCOL ALL ALONG. THAT'S
2 CORRECT.

3 Q OKAY. SO IT'S NOT COMPLETELY ACCURATE TO DESCRIBE THE
4 PROCEDURE THAT YOU USE TODAY AS THE SAME AS THAT WHICH WAS
5 USED IN 1991?

6 A WE'VE MADE REVISIONS TO THE PROTOCOL, BUT IT'S ESSENTIALLY
7 THE SAME R.F.L.P. PROCEDURE THAT WE -- WE GENERATE THE SAME
8 TYPE RESULT TODAY AS WE DID IN 1991.

9 Q WELL, JUST AS AN EXAMPLE, EARLIER ON IN DNA TESTING, WASN'T
10 IT THE POSITION OF THE STATE LAW ENFORCEMENT DIVISION THAT A
11 PHENOMENA SOMETIMES REFERRED TO AS BAND SHIFTING DID OCCUR?

12 A THAT'S ALWAYS BEEN THE POSITION OF DNA TESTING, THAT BAND
13 SHIFTING IS A PHENOMENA THAT CAN OCCUR.

14 Q CAN OCCUR?

15 A YES. IT CAN OCCUR.

16 Q BAND SHIFTING AS A RESULT OF EXPOSURE TO A CHEMICAL NAMED
17 ETHIDIUM BROMIDE?

18 A THAT'S ONE SOURCE OF IT. YES, SIR. YOU'RE EXACTLY RIGHT.

19 Q SO THE POSITION IN THE EARLY YEARS OF SLED AND AS THEY ECHOED
20 THE FBI THAT THAT WAS NOT A SOURCE OF BAND SHIFTING?

21 A SAY THAT AGAIN NOW? I DIDN'T FOLLOW YOU.

22 Q HASN'T YOUR DEPARTMENT TESTIFIED IN THE EARLY YEARS OF DNA
23 TESTING THAT USE OF ETHIDIUM BROMIDE WHICH IS A CHEMICAL --

24 A YES.

25 Q -- USED IN THIS PROCESS?

1 A THAT'S CORRECT, SIR.

2 Q OKAY. DID NOT CAUSE BAND SHIFTING?

3 A NOT IN OUR LAB, BECAUSE WE DON'T USE ETHIDIUM BROMIDE IN THE
4 SAME WAY THE FBI USED ETHIDIUM BROMIDE. IT'S NOT IN OUR LAB.
5 IT'S NOT A PROBLEM.

6 Q THAT'S NOT MY QUESTION, SIR. MY QUESTION IS, THAT WASN'T IT
7 THE POSITION OF YOUR LABORATORY AT ONE POINT IN TIME THAT
8 ETHIDIUM BROMIDE DID NOT CAUSE BAND SHIFTING?

9 A DID NOT CAUSE BAND SHIFTING?

10 Q YES, SIR.

11 A IT CAN CAUSE BAND SHIFTING IF USED IN THE IMPROPER PLACE IN
12 THE PROTOCOL. BUT THE WAY WE USE IT IN OUR PROTOCOL, IT
13 CANNOT CAUSE BAND SHIFTING.

14 Q ALL RIGHT, SIR. AND I UNDERSTAND THAT YOU'RE ANSWERING THE
15 QUESTION. BUT MY QUESTION TO YOU IS WHETHER IT WAS THE
16 POSITION OF SLED AT ONE POINT IN TIME THAT IT COULD NOT CAUSE
17 BAND SHIFTING AT ALL, PERIOD?

18 A AT ALL, PERIOD? I'M NOT SURE I UNDERSTAND YOUR -- I
19 UNDERSTAND YOUR QUESTION. I'M NOT SURE YOU UNDERSTAND WHAT
20 YOU'RE ASKING ME. BECAUSE ETHIDIUM BROMIDE CAN CAUSE BAND
21 SHIFTING IF USED IMPROPERLY. OUR POSITION IN OUR LAB IS
22 BECAUSE WE DON'T USE IT IMPROPERLY IT DOES NOT CAUSE A
23 PROBLEM WITH BAND SHIFTING IN OUR LABORATORY.

24 THE COURT: EXCUSE ME. THAT'S NOT WHAT HE ASKED YOU.
25 ASK HIM THE QUESTION ONE MORE TIME. PLEASE ANSWER IT AS

1 DIRECTLY AS YOU CAN. THEN YOU CAN EXPLAIN YOUR ANSWER.

2 MR. STRICKLER: THANK YOU, SIR.

3 Q (BY MR. STRICKLER) IS IT YOUR POSITION THAT SLED HAS NEVER
4 TAKEN THE POSITION THE USE OF ETHIDIUM BROMIDE IN YOUR
5 TESTING DID NOT CAUSE BAND SHIFTING?

6 THE COURT: THAT'S NOT THE QUESTION YOU ASKED HIM.

7 MR. STRICKLER: I'M SORRY, YOUR HONOR. I APOLOGIZE.

8 THE COURT: THAT IS NOT THE QUESTION YOU ASKED HIM. ASK
9 HIM THE QUESTION YOU ASKED HIM.

10 MR. STRICKLER: I'M NOT SURE IF I CAN REMEMBER AT THIS
11 POINT, YOUR HONOR. HOW ABOUT THIS? I'LL JUST MOVE ON.

12 THE COURT: ALL RIGHT. GOOD. OKAY.

13 Q (BY MR. STRICKLER) SO YOU DON'T USE THE SAME PROTOCOL THAT
14 YOU USED IN 1991. CORRECT, SIR?

15 A NOT WORD-FOR-WORD. NO. WE'VE REVISED IT SEVERAL TIMES OVER
16 THE YEARS.

17 Q IT'S BEEN REVISED AND MODIFIED A GREAT DEAL OVER THE YEARS,
18 HASN'T IT, SIR?

19 A THAT'S CORRECT, SIR.

20 Q YES, SIR. JUST AS YOU HAVE USED THE TERM CALLED DATABASE.
21 ALL RIGHT? WHICH WE'LL GET BACK TO. THAT DATABASE HAS BEEN
22 REVISED OVER THE YEARS, HASN'T IT, SIR?

23 A NOT OUR DATABASE. WE'VE USED THE SAME SAMPLES IN OUR
24 DATABASE THAT WE HAVE USED SINCE DAY ONE.

25 Q OKAY. INCLUDING THE DOUBLE ENTRIES THAT YOU HAD IN YOUR

1 DATABASE AT ONE POINT IN TIME?

2 A ALL THAT OCCURRED WELL BEFORE WE WENT ON LINE WITH OUR
3 DATABASE.

4 Q OKAY. SO YOU ---

5 A NO REVISIONS SINCE WE'VE BEGAN USING OUR DATABASE IN
6 GENERATING STATISTICS.

7 Q OKAY. SO THE MISTAKES IN YOUR DATABASE WERE REMOVED BEFORE
8 YOU ALL EVER DID ANY KIND OF ---

9 A THEY WERE -- WELL, WE ELIMINATED ANY DOUBLE ENTRIES. THAT'S
10 CORRECT.

11 Q ALL RIGHT. VERY GOOD, SIR. NOW, IN THIS PARTICULAR CASE YOU
12 TESTIFIED THAT YOU RAN SEVEN PROBES, OR IN YOUR WORDS DID
13 SEVEN SEPARATE TESTS, CORRECT?

14 A IN THIS PARTICULAR CASE, THAT'S CORRECT.

15 Q ALL RIGHT. AND THE TESTIMONY IS ALSO THAT YOUR CONTROLS IN
16 THIS CASE WERE ACCURATE, CORRECT? YOU DIDN'T HAVE ANY
17 PROBLEMS?

18 A THAT'S CORRECT, SIR.

19 Q OKAY. NOW, AND IN ACTUALITY, UTILIZING -- LET ME BACK UP
20 JUST A SECOND. THIS PROTOCOL SETS FORTH THE PROCEDURES TO
21 USE IN CONDUCTING YOUR TESTING, RIGHT?

22 A THAT'S CORRECT, SIR.

23 Q AND IT SETS FORTH WHEN YOU CAN AND CANNOT USE RESULTS
24 GENERATED IN YOUR TESTING, CORRECT?

25 A ALL THAT'S OUTLINED IN OUR PROTOCOL. THAT'S CORRECT.

1 Q IF CERTAIN THINGS HAPPEN, BE IT TO A TEST IN GENERAL OR TO A
2 PARTICULAR PROBE IN A CASE, IF CERTAIN THINGS HAPPEN, YOU
3 CAN'T USE IT. RIGHT?

4 A IF CERTAIN THINGS HAPPEN -- I'M NOT SURE WHERE YOU'RE GOING
5 -- BUT IF CERTAIN THINGS OCCUR, WE DON'T USE THE RESULTS.
6 THAT'S CORRECT.

7 Q WELL, WHERE I'M GOING IS YOU RAN SEVEN PROBES IN THIS CASE,
8 CORRECT?

9 A I DID.

10 Q AND YOU CAME UP WITH THIS NUMBER 1 IN 15 MILLION AS THE -- I
11 THINK THE TERMINOLOGY WOULD BE -- CHANCE OF A RANDOM MATCH IN
12 THE AFRICAN-AMERICAN POPULATION. IS THAT CORRECT?

13 A 1 IN 15 MILLION. THAT'S CORRECT, SIR.

14 Q RIGHT. RIGHT. OKAY. YOU RAN SEVEN PROBES, CAME UP WITH
15 THAT NUMBER. AND IN ACTUALITY, YOU ONLY USED FOUR OF THE
16 SEVEN PROBES IN ARRIVING AT THIS NUMBER, CORRECT?

17 A TO GENERATE THE STATISTICS. THAT'S CORRECT.

18 Q THAT'S CORRECT. THAT'S BECAUSE UNDER THE RULES THAT YOU
19 OPERATE UNDER, THIS PROTOCOL BOOK. OKAY?

20 A YES, SIR.

21 Q YOU COULD NOT USE THREE OF THE SEVEN RESULTS, CORRECT?

22 A THAT'S CORRECT, SIR. WE COULDN'T USE THEM FOR A MATCH.

23 Q WELL, LET'S PUT IT THIS WAY. YOU TALKED ABOUT ACCREDITATION,
24 SIR, RIGHT?

25 A YES, SIR. THAT'S RIGHT.

1 Q ONE OF THE THINGS THAT HAVE YOU TO HAVE FOR ACCREDITATION IS
2 THIS SET OF RULES, RIGHT?

3 A THAT'S ABSOLUTELY CORRECT, SIR.

4 Q ALL RIGHT. AND ONE OF THE RECOMMENDATIONS FROM THE
5 GOVERNMENT FROM ON HIGH, RECOMMENDATIONS FROM ON HIGH, IS
6 THAT EACH LABORATORY DEVELOPS ITS OWN RULES, DEVELOPS ITS OWN
7 DATABASE, RIGHT?

8 A OWN RULES? THEY DON'T REQUIRE ANYBODY -- THEIR OWN DATABASE.
9 WE HAVE TO HAVE OUR OWN RULES, OUR PROCEDURE MANUAL.

10 Q ALL RIGHT. I DIDN'T HAVE ANYTHING TO DO WITH DEVELOPING THE
11 RULES THAT YOU APPLY, RIGHT?

12 A NO, SIR.

13 Q ABSOLUTELY NOT?

14 A NO, SIR.

15 Q RIGHT. THE RULES THAT YOU USE SAY THAT THREE OUT OF THE FOUR
16 TESTS THAT YOU RAN CAN BE USED IN COMING UP WITH THE NUMBERS,
17 RIGHT?

18 A CANNOT BE USED TO GENERATE A FREQUENCY. THAT'S CORRECT.

19 Q THREE OF THE SEVEN PROBES WERE, IN TERMS OF THE REPORTS THAT
20 YOU HAVE BEFORE YOU, INCONCLUSIVE. I THINK THAT'S THE TERM.

21 A THAT'S THE TERM WE USE, IS INCONCLUSIVE. THAT'S CORRECT,
22 SIR.

23 Q OKAY. INCONCLUSIVE? SO, YOU RAN SEVEN TESTS AND YOU CAN USE
24 THE RESULTS FROM FOUR OF THEM. IS THAT CORRECT? UNDER YOUR
25 OWN RULES?

1 A I CAN USE THE RESULTS OF THE FOUR THAT I DEEMED TO MATCH TO
2 GENERATE A FREQUENCY STATISTIC. FREQUENCY. THAT'S CORRECT.

3 Q AND THAT'S THE ONLY THING YOU CAN TALK ABOUT, ISN'T IT?

4 A I COULD TALK ABOUT THE OTHER THREE AS WELL. BUT AS FAR AS
5 THE FREQUENCY IS CONCERNED, THE FREQUENCY IS BASED ON THOSE
6 FOUR MATCHES THAT WE GOT. THAT'S CORRECT.

7 Q RIGHT. AND LET'S SEE. YOU TALKED ABOUT YOUR CONTROLS BEING
8 ACCURATE. AND I ASSUME THEY ARE, BECAUSE ONE OF THE REASONS
9 THAT YOU DIDN'T USE ONE OF THE THREE, OKAY, IS THAT ONE OF
10 THE CONTROLS YOU HAD FOR THAT PARTICULAR PROBE FAILED.
11 CORRECT?

12 A I DON'T REMEMBER THAT. NO, SIR.

13 Q I'M TALKING ABOUT A MALE CONTROL SAMPLE THAT WAS OUTSIDE OF
14 THE RANGE.

15 A JUST A SECOND. LET ME REFER TO MY NOTES HERE REAL QUICK.

16 Q YES, SIR. I'D DIRECT YOU TO PAGE -- LET'S SEE HERE. PAGE --
17 IT LOOKS LIKE 89 OF YOUR NOTES REFERENCING PROBE D4S139, THE
18 TOP OF THE --

19 A PAGE WHAT NOW? I'M SORRY. PAGE WHAT?

20 Q I BELIEVE IT'S 89. IT'S KIND OF CUT OFF ON MY COPY. D4S139.
21 THE SECOND TIME YOU RAN THE TEST ON THIS CASE; NOT THE FIRST
22 TIME, THE SECOND TIME, THE TOP ALLELE OF MALE CONTROL OUT OF
23 RANGE. IS THAT CORRECT?

24 A I'M TRYING TO FIND -- WHICH PROBE IS IT ON? I'M TRYING TO
25 FIND IT.

1 Q D4S139, IF I REMEMBER MY NUMBERS CORRECTLY.

2 A YES. THAT'S CORRECT, SIR.

3 Q OKAY. NOW, THAT DOES NOT NECESSARILY SAY THE CONTROLS
4 FAILED. THE CONTROLS WORKED JUST THE WAY THEY SHOULD. THAT
5 THING WAS OUT OF RANGE, THE MALE CONTROL, CORRECT?

6 A THAT'S CORRECT, SIR.

7 Q AND AS A RESULT OF THAT, YOUR PROTOCOL SAYS WHAT?

8 A DIDN'T USE THE D4.

9 Q CAN'T USE IT. RIGHT? BECAUSE IT DIDN'T WORK RIGHT.
10 SOMETHING DIDN'T WORK RIGHT?

11 A THAT'S CORRECT, SIR.

12 Q OKAY. WELL, LET'S TALK JUST A LITTLE BIT ABOUT WHAT YOU'RE
13 DOING. I MEAN, I SAW YOUR SLIDE SHOW. WHEN YOU CHOP THIS
14 DNA UP AND YOU EXPOSE IT TO THE ELECTROPHORESIS, THAT MEANS
15 RUN THAT ELECTRIC CURRENT ACROSS IT?

16 A THAT'S CORRECT.

17 Q AND IT — I THINK THE TERM YOU USE IS MIGRATES, MOVES ACROSS
18 —

19 A THAT'S A GOOD TERM; YES, SIR.

20 Q — THIS GEL? OKAY. AND THAT GEL IS AGAROSE GEL, CORRECT?

21 A AGAROSE.

22 Q AGAR?

23 A AGAROSE. THAT'S CORRECT.

24 THE COURT: WAIT ONE SECOND. ONE SECOND. ONE SECOND.

25 MR. STRICKLER: I'M SORRY, SIR.

1 THE COURT: BOTH OF YOU ALL ARE TALKING -- YOU'RE
2 STEPPING ON EACH OTHER'S LINES IN THE TERMS OF THE THEATER.
3 SO, PLEASE, LET MS. WILLIAMS TAKE IT DOWN.

4 MR. STRICKLER: AND I APOLOGIZE.

5 THE COURT: PLEASE, MR. STRICKLER.

6 MR. STRICKLER: YES, SIR. I APOLOGIZE.

7 THE COURT: ALL RIGHT. THANK YOU. APPRECIATE IT.

8 Q AGAROSE GEL. AND THAT'S A GEL DEVELOPED FROM SEAWEEED, RIGHT?
9 IT'S COMMONLY USED IN LABORATORIES AS A CULTURE MEDIUM,
10 CORRECT?

11 A THAT'S CORRECT. IT'S COMMONLY USED IN LABORATORIES. YES.

12 Q NOW, YOU RUN THIS CURRENT AND YOU HAVE THESE DIFFERENT SIZE
13 PIECES OF DNA MIGRATE DIFFERENT LENGTHS, DIFFERENT DISTANCES.
14 CORRECT?

15 A THAT'S CORRECT.

16 Q THE BIGGER PIECE IS HEAVIER, SO IT DOESN'T MOVE AS FAR AS THE
17 SMALLER PIECES. IS THAT CORRECT?

18 A THAT'S A GOOD DESCRIPTION. YES, SIR.

19 Q OKAY. AND YOU -- WE DON'T HAVE ANY OF YOUR X-RAY FILMS.
20 NOW, THOSE WERE CALLED -- THOSE X-RAYS FILMS USED TO BE
21 CALLED AUTORADIOGRAMS, CORRECT?

22 A THAT'S THE CORRECT TERM AGAIN. YES, SIR.

23 Q OKAY. I THOUGHT THEY WERE LUMOGRAPHS AT THIS POINT?

24 A LUMOGRAPHS IS ANOTHER WAY TO DESCRIBE THEM. THEY'RE X-RAY
25 FILM, IS PROBABLY THE BEST WAY FOR THE JURY TO UNDERSTAND IT.

- 1 Q OKAY. BUT YOU NO LONGER DO AUTORADIOGRAPHY. YOU DO
2 LUMINOGRAPHY, RIGHT?
- 3 A LUMINOGRAPHY IT WOULD BE. THAT'S CORRECT.
- 4 Q YOU'VE TAKEN THE —
- 5 A RADIOACTIVE.
- 6 Q — RADIOACTIVE SUBSTANCE OUT OF PLAY, AS IT WERE?
- 7 A THAT'S CORRECT.
- 8 Q IT MAKES IT SAFER TO DEAL WITH, RIGHT?
- 9 A THAT'S CORRECT, SIR.
- 10 Q IT YIELDS THE SAME SORT OF PICTURE, RIGHT?
- 11 A THE SAME RESULT.
- 12 Q OKAY. SINCE WE DON'T HAVE ONE, LET'S JUST — LET'S CALL THIS
13 AN X-RAY FILM. ALL RIGHT? THE END RESULT OF WHAT YOU'RE
14 GOING TO GET?
- 15 A THAT'S CORRECT.
- 16 Q RIGHT? YOU WILL SEE — YOU HAVE WHAT YOU CALL A SERIES OF
17 LANES WHICH RUNS THIS DIRECTION. RIGHT?
- 18 A THE VERTICAL LANES. THAT'S CORRECT.
- 19 Q VERTICAL LANES. OKAY. AND YOU'RE GOING TO HAVE IN IT — AND
20 I'M NOT COUNTING AND I'M NOT PLACING THEM. DON'T HOLD ME TO
21 IT. YOU'RE GOING TO HAVE, DEPENDING UPON THE SIZE OF THE
22 PLATE THAT YOU'RE USING, THESE SHOULD BE THE SAME NUMBERS OF
23 LINES IN EACH PLACE. SO I'M NOT TRYING TO MISLEAD ANYONE
24 WITH THAT. YOU HAVE A SERIES OF WHAT ARE CALLED MARKER LANES
25 OR SIZING LANES. IS THAT CORRECT?

1 A THAT'S CORRECT.

2 Q OKAY. NOW, THESE ARE LANES -- THESE ARE PIECES OF DNA ALSO,
3 RIGHT?

4 A WELL, THEY'RE ALL FRAGMENTS OF DNA.

5 Q RIGHT. THEY ARE FRAGMENTS THAT YOU BUY FROM A COMMERCIAL
6 SUPPLIER, CORRECT?

7 A YES. THAT MOLECULAR MARKER THAT YOU CALLED IT IS PURCHASED
8 FROM A VENDOR.

9 Q AND THEY ARE OF KNOWN SIZES, RIGHT?

10 A YES, SIR.

11 Q OKAY. SO, HENCE, THE MARKER LANE OR SIZING LANE, RIGHT?

12 A YES.

13 Q WHEN YOU RUN THE ELECTROPHORESIS, IT'S USED ON THESE MARKER
14 LANES AS WELL AS THE EVIDENCE LANES, RIGHT?

15 A YES. YOU COULD THINK OF THOSE AS LIKE A RULER WHERE YOU CAN
16 MEASURE THE UNKNOWN BANDS AGAINST. THAT IS CORRECT.

17 Q SO YOU'VE GOT A RULER, OR SEVERAL SETS OF RULERS ACTUALLY,
18 DEPENDING UPON THE SIZE OF THE FILM THAT YOU'RE USING, RIGHT?

19 A CORRECT.

20 Q NOW, IN ADDITION, YOU WILL HAVE ONE LANE WHICH HAS A COUPLE
21 OF BANDS IN IT. I'M NOT PLACING THEM IN ANY PARTICULAR
22 LOCATION. JUST TWO BANDS. AND I DON'T REMEMBER. IT'S K532?

23 A 562.

24 Q 562. THANK YOU. THAT IS A KNOWN SAMPLE, CORRECT?

25 A A KNOWN SAMPLE FROM A FEMALE.

1 Q OF A FEMALE. ALL RIGHT. IT'S GOT A COUPLE OF BANDS. YOU
2 KNOW WHAT SIZE THEY'RE SUPPOSED TO BE, RIGHT?

3 A YES, SIR.

4 Q AND YOUR PROTOCOL SAYS IF WE RUN A TEST AND BANDS WE KNOW THE
5 SIZE OF DON'T SHOW UP WHERE THEY'RE SUPPOSED TO SHOW UP, WHAT
6 HAPPENS? YOU CAN'T USE THE RESULTS OF THAT TEST?

7 A ON THAT PARTICULAR LOCI. THAT'S CORRECT.

8 Q RIGHT. OKAY. WE'LL GET TO LOCI IN A MINUTE. AND ALSO OVER
9 ON THE OTHER SIDE -- I'M JUST GOING TO GO M.M. -- YOU'VE GOT
10 ANOTHER QUALITY ASSURANCE. IT'S A MALE STANDARD?

11 A YES.

12 Q IS THAT CORRECT?

13 A THAT'S CORRECT. IT'S A FEMALE ON THE LEFT; MALE ON THE
14 RIGHT.

15 Q RIGHT. AND ONCE AGAIN, THAT'S A SAMPLE OF A KNOWN SIZE.
16 OKAY?

17 A CORRECT.

18 Q AND IF WHEN YOU RUN THIS PARTICULAR TEST THE SAMPLES ARE NOT
19 WHERE THEY SHOULD BE SIZE WISE, YOU CAN'T USE THE RESULTS OF
20 THE TEST. THAT'S INCONCLUSIVE, RIGHT?

21 A CORRECT.

22 Q OKAY. AND WHAT I WAS JUST TALKING ABOUT WITH YOU AT THE
23 PROBE LOCI D4S139 WAS THE SAMPLE, I BELIEVE THE TOP ALLELE --
24 AND I ALWAYS GET CONFUSED. I DON'T REMEMBER WHERE THIS IS
25 TOP OR THIS IS TOP. SOMETIMES THINGS IN DNA ARE

1 COUNTERINTUITIVE, SO I'M NOT SURE. BUT ONE OF THESE WAS NOT
2 WHERE IT'S SUPPOSED TO BE. RIGHT?

3 A THAT'S CORRECT.

4 Q PUT AS SIMPLY AS I CAN PUT IT.

5 A SIMPLY PUT, THAT'S CORRECT.

6 Q OKAY. AND BECAUSE OF THAT, YOU COULDN'T USE THIS RESULT,
7 RIGHT?

8 A THAT'S CORRECT, SIR.

9 Q AND THAT'S ACTUALLY NOT AN EXAMPLE OF YOUR QUALITY CONTROL
10 FAILING. IT'S AN EXAMPLE OF YOUR QUALITY CONTROL WORKING,
11 RIGHT?

12 A CORRECT, SIR.

13 Q OKAY. SO, NOW, YOU MENTIONED THE TERM "LOCI". THAT IS THE
14 SINGULAR OR THE PLURAL OF THE TERM "LOCUS", CORRECT?

15 A THAT'S THE PLURAL OF THE TERM "LOCUS".

16 Q RIGHT. AND LOCUS JUST IS THE LOCATION, RIGHT?

17 A LOCATION ON A DNA MOLECULE. THAT'S CORRECT.

18 Q RIGHT, SIR. DNA MOLECULE. AND YOU'VE TESTED SEVEN SEPARATE
19 LOCATIONS ON THE DNA MOLECULE?

20 A WE DO THAT ON EVERY TEST. WE DO THAT. CORRECT, SIR.

21 Q THAT'S WHAT YOU'VE DESCRIBED HERE, RIGHT?

22 A MM-HMM (AFFIRMATIVE).

23 Q NOW, EACH LOCATION, THAT IS A GENE ON THE DNA MOLECULE?

24 A IT COULD BE CALLED A GENE. A GENE CODES FOR A PARTICULAR
25 PROTEIN PRODUCT. THESE PARTICULAR LOCATIONS DON'T CODE FOR A

1 PROTEIN PRODUCT. SO THEY'RE REALLY NOT GENES. THEY'RE JUST
2 GENETIC LOCATIONS.

3 Q WELL, WE'RE BUSY MAPPING THE HUMAN GENE AT PRESENT, RIGHT?
4 WE'RE NOT DONE YET, ARE WE?

5 A NOT AT ALL.

6 Q OKAY. SO AT PRESENT WE DON'T KNOW THAT THEY CODE FOR ANY
7 PROTEIN PRODUCT?

8 A THAT'S WHY WE CALL THEM LOCUS VERSUS GENES. THAT'S CORRECT,
9 SIR.

10 Q OKAY. SO WHILE THEY ARE NOT ASSOCIATED WITH ANY KNOWN
11 GENETIC TRAIT, WE'RE NOT DONE WITH THE WORK YET. BUT TO
12 EVERYONE'S KNOWLEDGE IN THIS FIELD THEY ARE JUST FILLER?

13 A THAT'S CORRECT.

14 Q OKAY. ALL RIGHT. SO YOU PROBE SEVEN LOCI FOR THE GENES THAT
15 ARE PRESENT, RIGHT?

16 A THAT'S CORRECT.

17 Q OKAY. NOW, LET ME ASK YOU THIS. HOW MUCH LOCI ARE THERE IN
18 ALL THE DNA THAT A PERSON HAS? ONE COPY OF ALL THE DNA.

19 A LITERALLY THOUSANDS. I DON'T KNOW THE EXACT NUMBER. I DON'T
20 KNOW THE NUMBER. I'M NOT SURE ANYONE KNOWS IT. BUT THERE'S
21 THOUSANDS OF LOCI.

22 Q THOUSANDS?

23 A YES, SIR.

24 Q WOULD IT BE THOUSANDS OR TENS OF THOUSANDS?

25 A IT COULD BE. IT'S AN IMMENSE NUMBER.

1 Q WELL, THOUSANDS OR TENS OF THOUSANDS?

2 A PROBABLY TENS OF THOUSANDS. I'VE NEVER TRIED TO COUNT AND
3 NEVER TRIED TO RESEARCH IT IN THE LITERATURE.

4 Q TENS OF THOUSANDS OR HUNDREDS OF THOUSANDS?

5 A I REALLY DON'T KNOW.

6 Q WELL, NOW, I'M ONE OF THESE PEOPLE WHOSE LAST EXPOSURE TO
7 THIS WAS TENTH GRADE BIOLOGY, MY LAST FORMAL TRAINING IN
8 THIS. SO TENS OF THOUSANDS OF LOCI? I MEAN, ---

9 A I DON'T KNOW ---

10 Q --- I'M ASKING YOU FOR YOUR EXPERTISE, PLEASE, SIR.

11 A WELL, AND I DON'T KNOW. THERE ARE LITERALLY THOUSANDS OF
12 DIFFERENT LOCATIONS WITHIN THE DNA MOLECULE. NOW, WHETHER
13 THERE'S TENS OF THOUSANDS OR HUNDREDS OF THOUSANDS, I REALLY
14 DON'T KNOW THE EXACT NUMBER.

15 Q OKAY. NOW, AS I UNDERSTAND IT, YOU CHOP THIS STUFF UP. AND
16 DNA IS COMPOSED OF PROTEINS? IS THAT CORRECT? WHAT'S IT
17 COMPOSED OF?

18 A IT CODES FOR PROTEINS.

19 Q OKAY. WHAT'S IT COMPOSED OF?

20 A BASE PAIRS.

21 Q BASE PAIRS. OKAY. BASE PAIRS ARE COMBINATIONS OF WHAT? HOW
22 MANY DIFFERENT VARIETIES OF BASE ---

23 A FOUR.

24 Q FOUR? OKAY. COULD YOU GIVE ME THEIR NAMES, PLEASE?

25 A I'M NOT SURE I CAN REMEMBER THEIR NAMES. PURATES. NO.

1 EXCUSE ME. LET ME BACK UP. ADENINE, GUANINE, CYTOSINE AND
2 THYMINE.

3 Q OKAY. AND THOSE ARE THE MOLECULES. IS THAT RIGHT?

4 A THOSE ARE THE BASE PAIRS.

5 Q OKAY. THOSE ARE THE BASE PAIRS. ACTUALLY, YOU'VE GOT TO
6 HAVE TWO OF THEM ASSOCIATED WITH EACH OTHER IN ORDER TO MAKE
7 A BASE PAIR. IS THAT CORRECT?

8 A THAT'S CORRECT, SIR.

9 Q OKAY. AND THE WAY DNA IS SET UP IS THEY'LL ONLY ARRANGE IN
10 CONCERN WAYS. IS THAT RIGHT? "A" WILL ONLY LINK WITH WHAT?

11 A "T".

12 Q "T"? "G" WILL ONLY LINK WITH WHAT?

13 A "C".

14 Q OKAY. SO THAT'S IT?

15 A WITH THOSE FOUR BASE PAIRS, THAT'S THE COMBINATIONS.

16 Q THOSE ARE THE COMBINATIONS. ALL RIGHT. SO WHEN YOU LOOK AT
17 A PARTICULAR LOCUS FOR -- WELL, WHAT ARE THE ONES YOU USE?
18 YOU DO D1S7?

19 A CORRECT.

20 Q IS THAT CORRECT? D2S ...?

21 A 44.

22 Q 44.

23 Q RIGHT. D4S139?

24 A THAT'S CORRECT.

25 Q D5S2 ...?

1 A 110.

2 Q 110. THANK YOU.

3 Q D7S —

4 A I THINK IT'S 467.

5 Q 467.

6 A D10S28.

7 Q D10S28?

8 A AND D17S79.

9 Q OKAY. SO, OF HOWEVER MANY LOCI THAT THERE ARE IN DNA, YOU
10 ALL LOOK AT THOSE SEPARATE. WHETHER IT'S 10,000 POSSIBLE
11 LOCATIONS OR 100,000 OR A MILLION OR HOWEVER MANY THERE ARE,
12 YOU LOOK AT SEVEN OF THEM, RIGHT?

13 A CORRECT.

14 Q OKAY. AND IN THIS CASE YOU DIDN'T -- YOU LOOKED AT ALL OF
15 THEM, BUT YOU DIDN'T USE D4S139. YOU DIDN'T USE WHAT OTHER
16 ONES?

17 A LET ME LOOK AT MY REPORT HERE FOR A SECOND, SIR. THE ONES WE
18 CALLED INCONCLUSIVE WERE THE D1, THE D4 AND THE D10.

19 Q OKAY. THANK YOU. NOW, AND ONE -- JUST SO WE'RE STRAIGHT
20 HERE. WHEN YOU SAY D2 -- AND I WILL JUST SAY D2 BECAUSE THE
21 REST GETS TO BE A MOUTHFUL -- D2 MEANS A LOCATION ON THE
22 NUMBER 2 CHROMOSOME?

23 A ON THE SECOND CHROMOSOME. THAT'S CORRECT, SIR.

24 Q AND, LIKEWISE, D5 IS ON THE FIFTH CHROMOSOME, D7, SEVENTH, ET
25 CETERA. RIGHT?

1 A THAT'S CORRECT, SIR.

2 Q OKAY. AND THERE ARE SOME REASONS THAT YOU'VE GOT THEM ON
3 DIFFERENT CHROMOSOMES. I DON'T INTEND TO GO INTO THEM UNLESS
4 WE HAVE TO. OKAY. SO, YOU TEST AT THESE LOCATIONS. AND YOU
5 ARE LOOKING FOR DIFFERENT LENGTHS OF DNA, RIGHT?

6 A WE'RE LOOKING ON MATCHES BASED ON VARYING LENGTHS OF DNA.

7 Q OKAY. THAT'S BECAUSE WHAT YOU'RE DOING IS WHAT'S CALLED
8 RESTRICTION FRAGMENT LENGTH POLYMORPHISM. MANY DIFFERENT
9 APPEARANCES, MANY DIFFERENT SIZES IS WHAT YOU'RE LOOKING FOR?

10 A THAT'S CORRECT.

11 Q DNA ANALYSIS, RIGHT?

12 A CORRECT, SIR.

13 Q WHICH LOOKS FOR WHAT'S CALLED VARIABLE NUMBER OF TANDEM
14 REPEATS; V.N.T.R., VARIABLE NUMBER OF TANDEM REPEATS IN DNA.
15 IS THAT RIGHT?

16 A THAT'S THE CORRECT TERM, SIR.

17 Q OKAY. NOW, WHAT YOU LOOK -- AND A TANDEM REPEAT IS YOU'LL
18 GET A SEQUENCE OF -- I'M FORGETTING WHAT CONNECTS WITH WHAT
19 AT THIS PARTICULAR POINT.

20 A "G" "C"'S AND "A"'S AND "T"'S.

21 Q OKAY. WELL, LET'S JUST SEE "G", "C", "A", "T". ALL RIGHT?
22 THAT'S COULD BE A SEQUENCE. I'M NOT SAYING IT'S THE SAME AS

23 —

24 A THAT —

25 Q GO AHEAD, SIR.

1 A I'M SORRY. I DON'T WANT TO STEP ON YOUR LINES. THAT COULD
2 BE A SEQUENCE.

3 Q OKAY. AND, TO BE HONEST, YOU DON'T LOOK AT A SEQUENCE THAT'S
4 FOUR UNITS LONG. THE SEQUENCE YOU'RE LOOKING FOR ARE MANY
5 UNITS LONG, RIGHT?

6 A THAT'S CORRECT, SIR.

7 Q OKAY. CAN YOU TELL US HOW LONG THE SEQUENCE IS AT, YOU KNOW,
8 THE D5S110 LOCATION?

9 A I DON'T KNOW THAT I KNOW THE LENGTH OF THE REPEAT SEQUENCE?

10 Q RIGHT.

11 A I DON'T KNOW THE LENGTH OF THE REPEAT SEQUENCE.

12 Q OKAY.

13 A THESE ARE THINGS FURNISHED BY VENDORS, AND THIS IS PATENTED
14 TRADEMARK INFORMATION. THEY DON'T EVER RELEASE THAT TO US.

15 Q OKAY. AND DO YOU KNOW -- NOT JUST THE LENGTH OF THE REPEAT
16 SEQUENCE. DO YOU KNOW WHAT THE REPEAT SEQUENCE IS?

17 A I DON'T KNOW THEM; NO, SIR.

18 Q OKAY. SO WE'RE LOOKING FOR SOMETHING OF SOME LENGTH THAT YOU
19 DON'T KNOW AND IN SOME ORDER THAT YOU DON'T KNOW. BUT WHAT
20 YOU'RE LOOKING FOR IS "G" ALIGNS WITH WHAT?

21 A "C".

22 Q WITH "C". AND "C" WITH "G" AND "A" WITH "T" AND "T" WITH
23 "C". AND WHEN YOU PROBE SOMETHING, IF THIS WERE THE
24 SEQUENCE, THE PROBE WOULD HAVE THAT SEQUENCE?

25 A THAT'S CORRECT, SIR.

1 Q AND IT WOULD ATTACH ITSELF WHERE IT FOUND THE SEQUENCE THAT
2 IT MATCHED. IS THAT RIGHT?

3 A THAT'S THE BASIS OF FORENSIC R.F.L.P. TESTING, WHAT YOU JUST
4 DESCRIBED. YES, SIR.

5 Q OKAY. THAT'S FINE. GIVEN WE'RE NOT DOING THINGS THAT ARE
6 FOUR LONG, WE'RE DOING THINGS THAT ARE VERY LONG. BUT WHEN
7 YOU TALK ABOUT VARIABLE NUMBER OF TANDEM REPEATS, IF THIS
8 WERE THE SEQUENCE, YOU MIGHT FIND A "G" "C" AND "A", "T".
9 ANOTHER PERSON MIGHT HAVE "G", "C", "A", "T"; "G", "C", "A",
10 "T"?

11 A REPEATED. THAT'S CORRECT.

12 Q REPEATED. TWICE. OR THREE TIMES OR FOUR TIMES OR 100 TIMES
13 OR HOWEVER MANY TIMES. RIGHT?

14 A THE VARIABLE NUMBER MEANS -- TANDEM REPEATS MEANS REPEATED
15 ONE AFTER THE OTHER A VARIABLE NUMBER OF TIMES.

16 Q GOT IT.

17 A IT MAY REPEAT IT 15 TIMES IN MY DNA AND 100 TIMES IN YOURS.

18 Q IF IT'S 15 TIMES, THEN THAT PARTICULAR PIECE OF DNA IS
19 SHORTER THAN THE PIECE IN WHICH IT'S REPEATED 100 TIMES,
20 RIGHT?

21 A THAT'S CORRECT, SIR.

22 Q AND SINCE IT'S SHORTER, IT WEIGHS LESS THAN THE PIECE THAT'S
23 REPEATED 100 TIMES, RIGHT?

24 A IT WILL BE A SMALLER -- IT WILL BE A LARGER MOLECULE THAT
25 WON'T TRAVEL AS FAST IN THE ELECTROPHORESIS.

1 Q FINE. SO WHEN YOU APPLY THE ELECTROPHORESIS TO IT, IT
2 DOESN'T MOVE AS FAR AS THE SMALLER PIECE DOES?

3 A THAT'S CORRECT, SIR.

4 Q OKAY. SO YOU GET DIFFERENT APPEARANCES AFTER YOU RUN THE
5 PROBE?

6 A THE BANDS END UP IN DIFFERENT LOCATIONS.

7 Q NOW, I AM CORRECT, AM I NOT, IN STATING THAT YOU RAN THE
8 TESTING IN THIS CASE TWICE?

9 A I RAN THE VAGINAL SWAB SAMPLE TWICE. THAT'S CORRECT.

10 Q YES, SIR. LET ME DO THIS. I'VE GOT COPIES HERE. DO YOU
11 HAVE THE ORIGINALS?

12 A YES, I DO.

13 Q OKAY, MR. JEFFCOAT. COULD I ASK HIM TO STEP DOWN FROM THE
14 STAND OR HAVE SOMEONE PROVIDE HIM -- OR DO YOU HAVE THEM WITH
15 YOU?

16 A I HAVE THEM RIGHT HERE.

17 Q ALL RIGHT. IF I COULD, PLEASE, ASK YOU TO REFER TO THE TWO
18 RUNS YOU DID ON D2S44. I'VE GOT 5-28-98 AND 7-21-98.

19 A OKAY.

20 Q IF I COULD TAKE A BRIEF LOOK AT THEM, MAKE SURE THEY
21 CORRESPOND WITH WHAT I'VE SEEN. THANK YOU, SIR. ALL RIGHT,
22 SIR. I'D SHOW YOU THIS ITEM AND ASK IF YOU RECOGNIZE IT,
23 SIR?

24 A YEAH. THIS IS THE AUTORAD, THE FILM THAT I DEVELOPED.

25 Q FOR WHAT SAMPLE?

1 A THIS --

2 Q WHAT PROBE?

3 A THIS IS THE D2, THE SECOND CHROMOSOME, CHROMOSOME NUMBER 2.

4 Q I DON'T THINK THIS IS D2.

5 A I GAVE YOU THE WRONG ONE. I'M SORRY.

6 Q THAT'S OKAY.

7 A MAYBE I'VE GOT THE WRONG STACK, SIR. HOLD ON. THERE YOU GO.
8 THAT SHOULD BE IT RIGHT THERE.

9 Q AND IF I COULD SEE THE -- YOU'VE IDENTIFIED THIS AS THE D2S44
10 PROBE. THIS WAS RUN ON ...?

11 A THIS FILM WAS DEVELOPED ON MAY 28TH, 1998.

12 Q ALL RIGHT, SIR. AND THAT WOULD BE THE FIRST TIME YOU RAN
13 THAT PROBE. IS THAT CORRECT?

14 A THAT'S CORRECT, SIR.

15 Q AND THEN I PRESENT YOU WITH THIS AND ASK YOU IF YOU RECOGNIZE
16 THAT?

17 A YES. THIS IS THE SECOND DNA TEST THAT I RAN ON THE VAGINAL
18 SWAB. IT WAS ON THE D2, THE SECOND CHROMOSOME AGAIN. IT WAS
19 RUN ON 7-21-98.

20 Q OKAY. AND LET ME HAVE THAT. I'D LIKE TO ASK THAT THESE BE
21 MARKED.

22 THE COURT: EXCUSE ME. YOU WANT TO HAVE THEM MARKED?

23 MR. STRICKLER: YES.

24 THE COURT: SURE. WELL, I DON'T KNOW IF YOU'RE OFFERING
25 THEM IN EVIDENCE OR SIMPLY HAVING THEM MARKED.

1 MR. STRICKLER: I'D JUST LIKE THEM MARKED FOR
2 IDENTIFICATION ONLY AT THIS POINT.

3 THE COURT: OKAY. SURE. GO AHEAD. YOU SHOULD CONFER
4 WITH MR. JEFFCOAT. IS THERE ANY SPECIFIC PLACE ON THERE THAT
5 IT SHOULD BE MARKED SO IT WILL NOT OBLITERATE ANY —

6 A ANY CORNER. THAT'S CORRECT. THE CORNER IS FINE.

7 THE COURT: THANK YOU.

8 (DEFENDANT KENNETH JAMES'S EXHIBIT NOS. 3 AND 4, TWO
9 LUMOGRAPHS, MARKED FOR IDENTIFICATION ONLY)

10 Q (BY MR. STRICKLER) ALL RIGHT, SIR. NOW, I DON'T HAVE A
11 COMPUTER WITH THIS SETUP ON IT. BUT LET'S JUST GO BACK TO A
12 MORE PERMANENT MEANS OF VISUAL COMMUNICATION. ONCE YOU RUN
13 THESE SAMPLES AND GENERATE THIS LUMOGRAPH, ALL RIGHT, THESE
14 ARE YOUR MARKER LANES, OKAY; YOU'RE GOING TO HAVE YOUR
15 QUALITY CONTROL, THAT "K" LANE, AND YOU'RE GOING TO HAVE THE
16 MALE SAMPLE LANE OVER HERE. AND IN THIS PARTICULAR CASE YOU
17 HAVE A LANE FOR *victim*?

18 A *victim* THAT'S RIGHT.

19 Q RIGHT. AND THEN YOU HAVE A LANE FOR ROBERT JAMES?

20 A ROBERT JAMES IS NEXT.

21 Q YOU'VE GOT A LANE FOR KENNETH JAMES?

22 A CORRECT.

23 Q ALL RIGHT. THESE ARE ALL TO THE SIDE OF ONE OF THE MARKER
24 LANES?

25 A THEY'RE BETWEEN TWO MARKERS LANES.

1 Q BETWEEN TWO MARKERS LANES. RIGHT. I ACTUALLY HAVE ONE SHORT
2 HERE. THEN ON THE OTHER SIDE OF THIS MARKER LANE IN THE
3 MIDDLE YOU HAVE SOME QUESTION SAMPLE LANES, CORRECT?

4 A THAT WOULD BE EVIDENCE STAINS. THAT'S CORRECT.

5 Q RIGHT. OKAY. AND ALL WE'RE DEALING WITH IS THE SAMPLE
6 REFERRED TO AS 1.7. OR ALL I ASK THAT WE DEAL WITH IS 1.7,
7 WHICH IS SAMPLE FROM THE VAGINAL SAMPLE.

8 A THAT'S THE VAGINAL SAMPLE FROM *victim* THAT WE IDENTIFIED
9 SEMEN ON.

10 Q RIGHT. YOU HAD A COUPLE OF OTHERS ---

11 COURT REPORTER: EXCUSE ME. I NEED TO CHANGE ---

12 THE COURT: NEEDS TO RELOAD. GO AHEAD, PLEASE, SIR.

13 Q THANK YOU, SIR. YOU HAD A COUPLE OF OTHERS, THOSE BEING -- I
14 FORGET. IT'S 2.1 OR 3.1 OR 3.1 AND 4.1 FROM THE CONDOMS?

15 A THAT'S CORRECT.

16 Q THAT YOU DIDN'T GET ANY RESULTS FROM?

17 A NO RESULTS WERE OBTAINED FROM THE CONDOMS. THAT'S CORRECT.

18 Q THE ONLY ONE WE'RE TALKING ABOUT IS THE SWABS THAT YOU
19 RECEIVED IN THE SEXUAL ASSAULT KIT. THAT'S 1.7, RIGHT?

20 A CORRECT.

21 Q OKAY. NOW, WHEN YOU RAN WHAT'S NOW MARKED AS DEFENDANT'S
22 EXHIBIT 3 AT THIS POINT FOR IDENTIFICATION ONLY ON D2S44,
23 FIRST OF ALL, LET ME ASK YOU THIS. LET ME BACK UP.
24 NORMALLY, ALL RIGHT, WHEN YOU RUN A PROBE FOR ONE LOCATION ON
25 AN INDIVIDUAL, YOU WOULD EXPECT ONE OF TWO OUTCOMES; EITHER

1 TWO BANDS OR ONE BAND. IS THAT CORRECT?

2 A NORMALLY. THAT'S CORRECT, SIR. BASED ON A SINGLE -- A
3 SINGLE DONOR, THEY CAN HAVE EITHER ONE OR TWO BANDS.

4 Q TWO BANDS BECAUSE WE EACH INHERIT ONE COPY OF THE GENE FROM
5 EACH OF OUR PARENTS, RIGHT?

6 A CORRECT, SIR.

7 Q SOMETIMES YOU GET ONE BAND BECAUSE YOU MIGHT INHERIT THE SAME
8 EXACT GENE FROM BOTH PARENTS?

9 A THAT'S ONE REASON FOR A SINGLE BANDED PATTERN. THAT'S
10 CORRECT, SIR.

11 Q SO, NORMALLY, WHEN YOU'RE LOOKING AT A SAMPLE FROM ONE PERSON
12 YOU'D EXPECT TO SEE EITHER TWO BANDS OR ONE BAND?

13 A NORMALLY. THAT'S CORRECT, SIR.

14 Q AND WHEN YOU TEST A SAMPLE THAT IS OF MIXED ORIGIN AS YOU
15 JUST -- YOU TALKED ABOUT DURING YOUR SLIDES, SUCH AS A SAMPLE
16 REFERRED COVERED FROM A SEXUAL ASSAULT, OKAY, WE HAVE A
17 MIXTURE OF SEMEN AND VAGINAL FLUID?

18 A WE EXPECT THAT. THAT'S CORRECT, SIR.

19 Q THERE IS A PROCEDURE THAT IS SET OUT IN THIS PROTOCOL FOR
20 SEPARATING WHAT'S CALLED THE MALE FRACTION FROM THE FEMALE
21 FRACTION, CORRECT?

22 A THAT'S CORRECT, SIR.

23 Q OKAY. SO THAT THERE IS A CHEMICAL PROCEDURE WHERE YOU
24 SEPARATE THE PART THAT'S GOING TO COME FROM THE PERSON --
25 ASSUMING IT'S A MAN ASSAULTING A WOMAN, YOU KNOW, IT'S GOING

1 TO COME FROM THE MALE FROM THE PART THAT'S COMING FROM THE
2 FEMALE. AND WHEN YOU RUN IT ON THIS, WHEN YOU RUN IT ON
3 ELECTROPHORESIS, YOU ARE ACTUALLY RUNNING A 1.7 MALE AND A
4 1.7 FEMALE SAMPLE. IS THAT CORRECT?

5 A THAT'S WHAT WE ATTEMPT TO DO BASED ON THE PROCEDURE, YES. WE
6 ATTEMPT TO SEPARATE MALE FROM FEMALE FRACTIONS.

7 Q OKAY. AND SOMETIMES YOU'RE NOT COMPLETELY SUCCESSFUL IN
8 SEPARATING THE MALE FROM THE FEMALE FRACTION. IS THAT
9 CORRECT?

10 A IT'S NOT UNCOMMON TO HAVE SOME OF THE FEMALE STILL
11 CONTAMINATE THE MALE FRACTION IN THIS TYPE OF ANALYSIS.
12 THAT'S CORRECT.

13 Q MM-HMM (AFFIRMATIVE). AND IN WHAT'S MARKED AS DEFENDANT'S 3,
14 THE D2, THE MALE FRACTION SHOWS HOW MANY BANDS?

15 A FOUR BANDS.

16 Q FOUR BANDS?

17 A MM-HMM (AFFIRMATIVE).

18 Q IT DOESN'T SHOW THREE BANDS. IT SHOWS FOUR?

19 A THAT'S CORRECT, SIR.

20 Q WHICH I TAKE IT YOUR TESTIMONY WILL BE IS A COMBINATION OF
21 THE FEMALE BAND AND THE MALE -- OR THE MALE FRACTION AND THE
22 FEMALE FRACTION?

23 A THE FOUR BANDS THAT I SAW IN THE FILM, TWO WERE FROM THE
24 VICTIM, *victim* ; AND TWO MATCHED THE DNA PRINT FROM
25 MR. KENNETH JAMES.

1 Q OKAY. NOW, IF YOU ARE -- IF YOU WOULD, PLEASE -- OKAY. IF I
2 CAN, YOUR HONOR, AT THIS POINT IN TIME I'M GOING TO MOVE TO
3 INTRODUCE DEFENDANT'S 3 FOR I.D.

4 THE COURT: MR. GASSER?

5 MR. GASSER: NO OBJECTION.

6 THE COURT: WITHOUT OBJECTION.

7 (DEFENDANT KENNETH JAMES'S EXHIBIT NO. 3, LUMOGRAPH, RECEIVED
8 IN EVIDENCE)

9 Q (BY MR. STRICKLER) IF YOU COULD AT THE TOP SO THAT WE DON'T
10 INTERFERE WITH ANY OF THE BANDS PUT A 1, IF YOU HAVE
11 SOMETHING THAT YOU CAN MARK WITH.

12 A I DON'T.

13 Q IF WE HAVE ANYTHING AVAILABLE.

14 A I'VE GOT AN INK PEN, BUT I DON'T KNOW IF THAT WILL SHOW UP ON
15 THAT OR NOT. WE CAN TRY IT.

16 Q OKAY. LET'S GIVE IT A TRY. WE'LL FIND SOMETHING LATER. IF
17 YOU COULD PUT A 1 OVER THE LANE ASSOCIATED WITH THE KNOWN
18 SAMPLE OF *victim*, PLEASE?

19 A YEAH. THIS SHOWS UP.

20 Q IT SHOWS UP?

21 A MM-HMM (AFFIRMATIVE).

22 Q OKAY. AND THEN IMMEDIATELY ADJACENT TO IT, IF I UNDERSTAND,
23 YOU HAVE A LANE ASSOCIATED WITH ROBERT JAMES?

24 A THAT'S CORRECT, SIR.

25 Q WOULD YOU PUT A 2 OVER THAT?

1 A MM-HMM (AFFIRMATIVE).

2 Q OKAY. AND THEN NEXT TO THAT WOULD BE A LANE ASSOCIATED
3 WITH KENNETH JAMES, CORRECT?

4 A CORRECT.

5 Q PUT A 3 OVER THAT. OKAY. AND THEN IF YOU COULD PUT A --
6 LET'S DO "M" HERE SO WE'RE CLEAR -- AN "M" OVER THE MALE
7 FRACTION OF 1.7, RIGHT?

8 A OKAY.

9 Q AND THEN I GUESS AN "F" OVER THE FEMALE FRACTION.

10 A I'VE GOT IT.

11 Q OKAY? SO, YOUR TESTIMONY THEN IS THAT THE SAMPLE THAT YOU
12 TESTED FOR AS OPPOSED TO THE KNOWN SAMPLES, IN THE MALE
13 FRACTION THERE ARE NOT THREE BANDS, THERE ARE FOUR?

14 A THERE'S A FOURTH REAL WEAK BAND AT THE BOTTOM. THAT'S
15 PARTIALLY WHY I REPEATED THIS ANALYSIS.

16 Q UH-HUH (AFFIRMATIVE). THERE'S A FOURTH REAL WEAK BAND AT THE
17 BOTTOM?

18 A THAT'S CORRECT, SIR.

19 Q BECAUSE OF COURSE IF THERE WERE ONLY THREE BANDS AND NOT A
20 FOURTH AT THE BOTTOM, THEN IT WOULDN'T BE A MIXTURE OF
21 KENNETH JAMES AND MS. BROWN'S SAMPLE. IT WOULD BE EITHER
22 INCONCLUSIVE OR EXCULPATORY?

23 A IT COULD BE INCONCLUSIVE. BUT STILL -- WELL, WHAT YOU JUST
24 DESCRIBED, IF THAT BOTTOM BAND DID NOT SHOW UP, IT WOULD
25 STILL BE CALLED INCONCLUSIVE BECAUSE THE TOP BAND THAT DOES

1 SHOW UP DOES STILL MATCH MR. KENNETH JAMES.

2 Q OKAY. SO WHEN WE'RE LOOKING AT "M", THERE ARE THREE BANDS?

3 A YES. AND ONE POINT I WANT TO MAKE. AND IT'S DIFFICULT FOR
4 US BECAUSE WE DON'T HAVE A BACK LIGHT HERE. AT THE LAB WE
5 HAVE AN X-RAY BOX LIKE DOCTORS USE FOR X-RAY FILM THAT WE PUT
6 THESE FILM ON THAT HELP US VISUALIZE THESE BANDS. IT'S
7 DIFFICULT TO DO IT HERE IN THE COURTROOM WITHOUT A BACK
8 LIGHT. BUT THAT WEAK BAND THAT I POINTED OUT WOULD BE A LOT
9 EASIER TO SEE WITH A BACK LIGHT.

10 Q WE DON'T HAVE A BACK LIGHT HERE?

11 A I HAVEN'T SEEN ONE YET. NO, SIR.

12 Q YES, SIR. YOU DIDN'T BRING ONE?

13 A I DIDN'T BRING ONE.

14 Q OKAY. NOW, AND YOU RAN A SECOND ONE?

15 A THAT'S CORRECT.

16 Q YOU RAN THE SAME TEST AGAIN, RIGHT?

17 A YES, SIR.

18 Q I'M NOT BEING CLEAR. THIS IS DEFENDANT'S 4?

19 A THAT'S CORRECT.

20 Q OKAY. AND I WOULD GO AHEAD AND MOVE THIS INTO EVIDENCE AT
21 THIS POINT IN TIME.

22 THE COURT: MR. GASSER, NO OBJECTION?

23 MR. GASSER: NO OBJECTION.

24 THE COURT: WITHOUT OBJECTION.

25 (DEFENDANT KENNETH JAMES'S EXHIBIT NO. 4, LUMOGRAPH, RECEIVED

1 IN EVIDENCE)

2 Q (BY MR. STRICKLER) NOW, THIS IS A SOMEWHAT DIFFERENT FORMAT
3 BECAUSE YOU DIDN'T RUN ALL THE DIFFERENT ITEMS YOU RAN IN THE
4 FIRST ONE, RIGHT?

5 A CORRECT. ON THE SECOND ONE I SIMPLY RAN THE VAGINAL SWAB
6 AGAIN THAT CONTAINED THE SEMEN STAIN PLUS THE CONTROLS. I
7 DIDN'T RUN THE STANDARDS FROM THE VICTIM OR THE SUBJECTS, OR
8 I DIDN'T REPEAT THE CONDOM SAMPLES THAT I'D RUN IN THE FIRST
9 RUN.

10 Q AND IF YOU COULD, ON WHAT'S NOW MARKED AS DEFENDANT'S 4, MARK
11 AN "M" OVER THE MALE FRACTION AND AN "F" OVER THE FEMALE
12 FRACTION?

13 A THERE YOU GO.

14 Q OKAY. ALL RIGHT. AND LO AND BEHOLD ---

15 MR. GASSER: OBJECTION.

16 MR. STRICKLER: PARDON ME?

17 THE COURT: YEAH. "LO AND BEHOLD". STRIKE "LO AND
18 BEHOLD" FROM YOUR CONSIDERATION.

19 MR. STRICKLER: YES, SIR. THANK YOU.

20 THE COURT: JUST ASK A QUESTION.

21 Q (BY MR. STRICKLER) AND ON DEFENDANT'S 4 YOU SEE FOUR BANDS?

22 A I CAN DISCERN FOUR BANDS IN THAT PARTICULAR ONE A LOT EASIER
23 THAN I COULD ON THE OTHER ONE. THAT'S CORRECT, SIR.

24 Q NOW, THIS FIRST ONE, DEFENDANT'S 3, WAS RUN MAY 28TH OF 1998.
25 AND THEN ON DEFENDANT'S 4, THAT WAS -- I MEAN, SCANNED -- WAS

1 ON JULY 21ST OF 1998?

2 A THAT'S CORRECT.

3 Q IS THAT CORRECT?

4 A THAT'S CORRECT. YEAH.

5 Q SOME TWO MONTHS LATER. YOU CAN SEE A BAND THAT EXISTS ON THE
6 FIRST ONE MUCH EASIER ON THE SECOND ONE, RIGHT?

7 A ALL FOUR BANDS ARE VERY DISCERNIBLE ON THE SECOND AUTORAD.
8 YES, SIR. THAT'S CORRECT.

9 Q NOW, JUST SO WE'RE CLEAR, YOU RAN ALL SEVEN TESTS TWICE.
10 EACH ONE OF THEM YOU RAN TWICE, RIGHT?

11 A I REPEATED THE COMPLETE ANALYSIS ON ALL SEVEN CHROMOSOMES THE
12 SECOND TIME. THAT'S CORRECT.

13 Q AND EVEN AFTER REPEATING IT TWICE, THERE WERE THREE OF THEM
14 THAT YOUR OWN RULES SAID WERE INCONCLUSIVE, RIGHT?

15 A WERE INCONCLUSIVE AS FAR AS DEALING WITH THE FREQUENCY.
16 THAT'S CORRECT, SIR.

17 Q YES, SIR. ALL RIGHT. I'D LIKE TO ASK YOU, IF YOU COULD,
18 PLEASE, LOCATE YOUR ORIGINALS FOR D5?

19 A HERE'S ONE OF THEM HERE.

20 Q OKAY. ANOTHER ONE? THANK YOU. ALL RIGHT. AND I'D LIKE TO
21 GO AHEAD AND ASK IF YOU CAN IDENTIFY THIS ITEM, PLEASE?
22 FIRST OF ALL, IDENTIFY IT.

23 A OH. I'M SORRY. THIS IS A FILM FROM THIS CASE WHERE I RAN
24 THE D5 CHROMOSOME THAT WAS RUN ON 6-10, JUNE 10TH, 1998.

25 Q ALL RIGHT. THAT WOULD BE THE FIRST TIME THAT YOU RAN IT?

1 A THIS IS THE FIRST ---

2 Q IS THAT CORRECT?

3 A --- RUN.

4 Q OKAY. AND I ASK IF YOU CAN IDENTIFY THAT?

5 A THIS IS THE SECOND RUN ON THE VAGINAL SWAB, ONCE AGAIN THE
6 FIFTH CHROMOSOME, RUN ON AUGUST 12TH, 1998.

7 Q ALL RIGHT, SIR.

8 MR. STRICKLER: AND, YOUR HONOR, I'D LIKE THESE MARKED,
9 AND I'D LIKE THEM INTRODUCED.

10 MR. GASSER: NO OBJECTION.

11 THE COURT: WITHOUT OBJECTION THEY'RE NOW INTRODUCED.
12 AS ...?

13 COURT REPORTER: AS 5 AND 6, YOUR HONOR.

14 THE COURT: 5 AND 6.

15 Q (BY MR. STRICKLER) EXCUSE ME. MR. JEFFCOAT, WOULD IT BE
16 APPROPRIATE TO GO AHEAD AND PUT THE EVIDENCE TAG UP AT THE
17 TOP AFTER THERE ARE NO MORE MARKER LANES?

18 A YEAH. THAT WOULD BE FINE. YEAH.

19 Q SO IT WON'T COVER ANY OF THE WRITING AT THE BOTTOM.

20 (DEFENDANT KENNETH JAMES'S EXHIBIT NOS. 5 AND 6, TWO
21 LUMOGRAPHS, MARKED AND RECEIVED IN EVIDENCE)

22 Q AND IF I CAN, WE'LL JUST GO THROUGH THE SAME ROUTINE ON THESE
23 AS WE DID ON THE LAST TWO. IF YOU COULD, PLEASE, ON THIS,
24 WHAT'S MARKED DEFENDANT'S 5 MARKED *victim*, ROBERT JAMES,
25 KENNETH JAMES, 1, 2 AND 3, AND THEN "M" AND "F" FOR THE MALE

1 AND FEMALE —

2 THE COURT: MR. SHUPPER, YOU HAVE NO OBJECTION TO THOSE
3 MATTERS RELATING TO ROBERT JAMES?

4 MR. SHUPPER: NO, YOUR HONOR.

5 THE COURT: THANK YOU. OKAY.

6 Q AND IF I COULD NOW, DEFENDANT'S 6 IS FROM AUGUST 12TH. AND,
7 AGAIN, YOU DIDN'T RUN EVERYTHING ON THIS ONE THAT YOU RAN ON
8 THE FIRST ONE. SO IF YOU'D MARK IT SIMILARLY TO THE WAY YOU
9 MARKED DEFENDANT'S 4, PLEASE.

10 (WITNESS COMPLIES)

11 Q OKAY. NOW, ON D5S110, DEFENDANT'S 5, YOUR TESTIMONY IS THAT
12 THERE ARE FOUR BANDS IN THE MALE FRACTION OF THE 1.7 WHICH
13 YOU'VE GOT MARKED AS "M" THERE, FOUR BANDS THAT CORRESPOND
14 WITH THE KNOWN BANDS OF ~~victim~~ AND KENNETH JAMES?

15 A IN THE MALE FRACTION?

16 Q I THINK SO. YEAH.

17 A YEAH. I CAN EASILY DISCERN THREE BANDS. I DON'T SEE THE
18 FOURTH BAND HERE ON THIS PARTICULAR AUTORAD.

19 Q SHOULD THERE BE FOUR BANDS?

20 A SHOULD THERE BE? I DON'T KNOW. IT DEPENDS UPON — THE
21 REASON WE REPEATED THE ANALYSIS TO BEGIN WITH WAS THERE WAS
22 NOT ENOUGH DNA IN THE FIRST SET OF SAMPLES. AND I HAD TO
23 EXTRACT TO GET MORE DNA THE SECOND TIME AROUND. BUT SHOULD
24 THERE BE? I DON'T KNOW.

25 Q HOLD IT A SECOND. I REMEMBER YOUR SLIDE SHOW. ONE OF THE

1 FIRST STEPS IN YOUR PROCEDURE THAT YOU DO IS MAKE SURE THAT
2 YOU HAVE ENOUGH HIGH QUALITY DNA TO DO THE TESTING.

3 A THAT'S CORRECT, SIR.

4 Q OKAY. SO HOW COME YOU CAN'T HAVE NOT ENOUGH DNA THERE, SIR?

5 A WELL, BECAUSE THE TESTS THAT WE DO FOR IT DOESN'T
6 DIFFERENTIATE MALE VERSUS FEMALE DNA. WHEN I SAW I HAD
7 ENOUGH DNA, AS IT TURNS OUT, MOST OF THE DNA OF THAT
8 PARTICULAR FIRST SAMPLE WAS FROM THE FEMALE, FROM HER
9 EPITHELIAL CELLS FROM THE VAGINAL SECRETIONS, NOT FROM THE
10 SEMEN. SO I HAD TO GO BACK AND TRY TO CONCENTRATE AND GET --
11 WHICH ONE ARE YOU LOOKING FOR NOW?

12 Q DEFENDANT'S 5, SIR. SO YOU HAVE AN APPROPRIATE NUMBER OF
13 BANDS FOR A MIXED SAMPLE IN THIS MALE FRACTION?

14 A YES, SIR. IT WAS OBVIOUS FROM THAT PARTICULAR PATTERN THAT I
15 HAD A MIXED BODY FLUID STAIN, TWO DONORS, ONE OF THE DONORS
16 BEING THE VICTIM, AND THE BAND THAT WAS APPARENT WAS
17 CONSISTENT WITH MR. KENNETH JAMES.

18 Q ALL RIGHT. THEN I'LL SHOW YOU DEFENDANT'S 6, THE REPETITION
19 OF THIS SAME TEST FROM AUGUST 12TH. AND HOW MANY BANDS DO
20 YOU SAY THERE ARE THERE?

21 A I SEE FOUR BANDS IN THIS ONE, TWO VERY WHAT WE CALL A TIGHT
22 DOUBLET, TO USE OUR TERMINOLOGY IN OUR LAB; TWO TIGHT BANDS
23 THAT ARE VERY CLOSE TOGETHER.

24 Q MM-HMM (AFFIRMATIVE).

25 A SO I SEE A TOTAL OF FOUR BANDS.

1 Q YES, SIR.

2 A YES, SIR.

3 Q FOUR BANDS. YOU DON'T HAVE A LIGHT BOX HERE?

4 A NO, SIR. BUT I HAVE REVIEWED IT AT THE LAB USING A LIGHT
5 BOX. I'VE DONE THAT NUMEROUS TIMES IN PREPARATION FOR COURT
6 AND GETTING MY RESULTS READY.

7 Q CERTAINLY, SIR. NOW, YOU ARE AN EMPLOYEE OF THE STATE LAW
8 ENFORCEMENT DIVISION, CORRECT?

9 A THAT'S WHAT I SAID EARLIER. THAT'S CORRECT, SIR.

10 Q YES, SIR. YOU'RE A LIEUTENANT IN THAT ORGANIZATION, CORRECT?

11 A CORRECT, SIR.

12 Q YOU ARE A LICENSED LAW ENFORCEMENT OFFICER IN THE STATE OF
13 SOUTH CAROLINA, CORRECT?

14 A CORRECT AGAIN, SIR.

15 Q YOU HAVE -- YOU'RE AUTHORIZED TO CARRY A WEAPON, CORRECT?

16 A THAT'S CORRECT, SIR.

17 Q AND YOU HAVE STATEWIDE JURISDICTION AND STATEWIDE ARREST
18 POWERS, CORRECT?

19 A ABSOLUTELY.

20 Q YES, SIR. I'VE JUST GOT A COUPLE OF MORE THINGS TO ADD.

21 AFTER YOU'RE DONE RUNNING THESE THINGS AND DOING THE CHEMICAL
22 TESTING AND THE AGAROSE GEL, ELECTROPHORESIS AND YOUR SIZING,
23 OKAY, IS WHAT YOU END UP DOING WITH THIS IN ALL THESE CASES
24 IS YOU END UP -- WE'RE GOING TO DEAL WITH TWO BANDS PER --
25 YOU'RE GOING TO END UP WITH A LANE AND A LANE AND A KNOWN