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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Honorable Michael Nettles, Circuit Court Judge

Case No. 08-CP-43-00905
Appellate Case No. 2013-001968

BOBBY WAYNE STONE..... Petitioner,

v.

STATE OF SOUTH CAROLINA..... Respondent.

SUPPLEMENTAL APPENDIX
VOLUME II OF II

EMILY C. PAAVOLA
Death Penalty Resource & Defense Center
900 Elmwood Ave., Suite 101
Columbia, SC 29201
(803)765-1044

JOHN H. BLUME
Cornell Law School
158 Myron Taylor Hall
Ithaca, New York 14853
(607) 255-1030

Counsel for Petitioner

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Sr. Assistant Deputy Attorney General

ALPHONSO SIMON
Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
Columba, SC 29211
(803) 734-4037

Counsel for Respondent

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ANYTHING EVER SUBMITTED TO YOU FOR ANALYSIS AS TO HAVING MADE THE HOLE IN THE DOOR IN THE SCREEN?

A I'M NOT SURE I FOLLOW THAT QUESTION.

Q WAS ANY OBJECT OR ANY METAL OBJECT OR ANYTHING SUBMITTED TO YOU FOR EXAMINATION TO SEE IF IT MADE THE TEAR IN EXHIBIT 5?

A ANOTHER OBJECT TO SEE WHETHER OR NOT IT COULD HAVE MADE THE HOLE?

Q RIGHT.

A NO.

Q AND IN FACT, BEING A NYLON SCREEN, YOU COULD PROBABLY DO NYLON TRACE TESTING; COULD YOU NOT?

A ON THE OBJECT?

Q YES.

A IT'S DOUBTFUL WHETHER IT WOULD TRANSFER NOT A FILLMENT (SIC) NYLON, LIKE THAT SCREEN DOOR IS MADE OUT OF.

Q OKAY. BUT YOU NEVER TESTED A NYLON DOOR BEFORE; RIGHT?

A NO.

Q OKAY. JUST ONE FINAL QUESTION. AFTER ISSUING YOUR REPORT ON OCTOBER 4TH WHICH INDICATED IT WAS NEGATIVE FOR TRACE METALS, WHAT PROMPTED YOU TO DO ANOTHER TEST?

A WELL, IRA PARNELL MADE HIS TEST FIRINGS AFTER THAT REPORT WAS ISSUED. AND A REQUEST WAS MADE TO DO A

MICROSCOPIC EXAMINATION TO COMPARE THE HOLES.

Q WHO MADE THAT REQUEST?

A THE REQUEST CAME PROBABLY ULTIMATELY FROM THE SOLICITOR'S OFFICE OR THE LAW ENFORCEMENT CENTER THROUGH IRA PARNELL TO ME. AND MICROSCOPICALLY EXAMINED THE HOLES TO SEE IF THEY WERE CONSISTENT.

AND I DECIDED AT THIS POINT JUST BASICALLY OUT OF CURIOSITY TO SEE WHETHER OR NOT -- COUPLE MORE TESTS WERE ON THE SCREEN DOOR. AND WE USE THIS CAMAPHORE (SIC) TEST ON CLOTHING.

WE HAVE USED IT ON BLOOD BEFORE. NEVER USED IT ON THE SIDE OF AN OBJECT LIKE A SCREEN DOOR OR ANYTHING LIKE THAT. AND SO I TESTED IT AND FOUND THE RESULT.

Q DID YOU DO THE MICROSCOPIC TESTING BEFORE YOU DID THE...

A YES.

Q THE OTHER?

A THE MICROSCOPIC TEST SHOWED IT WAS CONSISTENT AND THEN I DECIDED TO TRY THE OTHER TEST AS WELL.

Q THE MICROSCOPIC TEST WAS CONSISTENT WITH YOUR FIRST TEST?

A THE MICROSCOPIC TEST AS FAR AS LOOKING AT THE PHYSICAL CHARACTERISTICS OF THE SCREEN DOOR AROUND THE HOLE.

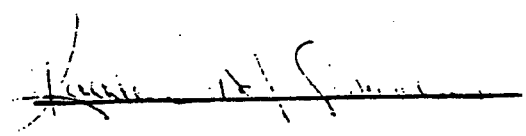
Q RIGHT.

C E R T I F I C A T E

I, THE UNDERSIGNED KATHLEEN M. SIMMONS, OFFICIAL COURT REPORTER FOR THE THIRD JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE GENERAL SESSIONS COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON THE 28TH DAY OF JANUARY, 1997.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

APRIL 3, 1997



CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER — COURT OF GENERAL SESSIONS

STATE OF S.C.,
PLAINTIFF

VS.

BOBBY WAYNE STONE,
DEFENDANT

TRANSCRIPT OF RECORD
96-GS-43-698
VOLUME III OF V

SUMTER, SOUTH CAROLINA
JANUARY 28, 1997

B E F O R E:

HONORABLE MARKELY DENNIS, JUDGE; AND A JURY.

A P P E A R A N C E S:

WADE KOLB, SOLICITOR
ATTORNEY FOR THE STATE

CAMERON LITTLEJOHN, ESQUIRE
JAMES BABB, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

KATHLEEN M. SIMMONS

CIRCUIT COURT REPORTER

A SEE WHAT EFFECT THE OBJECT HAD MADE ON ANY NYLON, TO SEE WHETHER OR NOT THE EFFECT WAS SIMILAR IN TEST FIRING THOSE VERSUS THE UNKNOWN HOLES IN THE CENTER OF THE SCREEN.

Q ALL RIGHT. SO THAT MICROSCOPIC TEST WAS JUST DONE TO MAKE A COMPARISON BETWEEN THE UNKNOWN HOLES AND THE KNOWN HOLES?

A RIGHT.

Q THAT WAS NOT FOR RESIDUE?

A NO. THAT WAS JUST...

Q ALL RIGHT. AND SO YOU TRIED THIS NEW TEST THAT CAME UP POSITIVE WHICH YOU NEVER USED ON THAT PARTICULAR TYPE---.

A WELL, IT WASN'T THE TEST. IT WAS -- I HAVE HEARD IT CALLED -- IT'S NOT -- WE USE ON SOLID OBJECTS. IT'S CALLED FOR IT TO BE USED ON CLOTHING. SINCE THE SCREEN DOOR, I HAVE TRIED OTHER SOLID OBJECTS AND IT HAS WORKED.

MR. LITTLEJOHN: THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: REDIRECT?

REDIRECT EXAMINATION BY MR. KOLB:

Q IN REGARD TO THAT MICROSCOPIC COMPARISON OF THE THREE HOLES IN THE MIDDLE PART OF THE DOOR WITH THE TEST FIRINGS, WHAT DID YOU CONCLUDE ABOUT THAT?

A THAT THEY WERE CONSISTENT. WE KNOW THAT THE BULLET CAUSED THE HOLES TO THE TOP OF THE SCREEN DOOR BECAUSE IRA

PARNELL FIRED THE GUN, THE BULLET THROUGH THERE AND THE EFFECT OF THOSE HOLES WAS COMPARED JUST VISUALLY THROUGH A MICROSCOPE TO THE EFFECT THE HOLES IN THE CENTER OF THE SCREEN DOOR AND FOUND TO BE SIMILAR.

THEY WEREN'T DISSIMILAR IN ANY WAY TO SAY THEY WEREN'T CAUSED BY A BULLET OF SIMILAR CALIBER.

Q OKAY. SO THE TEST FIRINGS WERE CONSISTENT WITH THE THREE HOLES IN THE CENTER OF THE DOOR?

A YES, THEY WERE.

MR. KOLB: THANK YOU, SIR.

THE COURT: RE-CROSS?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: YOU MAY COME DOWN, SIR.

(WHEREUPON THE WITNESS LEFT THE STAND).

MR. KOLB: CALL JEREMIAH DAVIS. CAN MR. BARRON BE EXCUSED?

THE COURT: ANY OBJECTION?

MR. LITTLEJOHN: NO OBJECTION.

THE COURT: THANK YOU VERY MUCH, MR. BARRON. YOU ARE FREE TO LEAVE, SIR. THANK YOU.

(WHEREUPON THERE WAS A PAUSE).

THE COURT: GOOD AFTERNOON, MR. DAVIS. ONCE YOU POSITION THAT MIKE WHERE YOU ARE COMFORTABLE, PLEASE STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST

JEREMIAH DAVIS, BEING FIRST DULY

SWORN, TESTIFIED AS FOLLOWS:

WITNESS: JEREMIAH DAVIS. J E R E M I A H, D A V I S.

DIRECT EXAMINATION BY MR. KOLB:

Q MR. DAVIS, COULD YOU TELL US HOW YOU ARE EMPLOYED.

A I'M EMPLOYED BY SLED.

Q AND YOU ARE AN AGENT WITH SLED?

A YES, SIR.

Q ALL RIGHT. AND HOW LONG HAVE YOU BEEN WITH SLED?

A ALMOST THIRTY YEARS.

Q ALL RIGHT. AND DID YOU BEGIN YOUR LAW ENFORCEMENT CAREER WITH SLED?

A YES, SIR.

Q ALL RIGHT. SO YOU'VE BEEN IN LAW ENFORCEMENT FOR THIRTY YEARS?

A YES, SIR.

Q ALL RIGHT. AND WHAT IS YOUR RESPONSIBILITY WITH SLED?

A I HAVE SEVERAL DIFFERENT RESPONSIBILITIES. ONE OF WHICH IS HELICOPTER PILOT.

Q AND IN REGARD TO HELICOPTER PILOT, ARE YOU PART OF -- I THINK IT'S CALLED A SWAT TEAM?

A NO, SIR. I AM NOT PART OF THE SWAT TEAM. ALL OF THE HELICOPTER PILOTS ARE NOT AND I AM NOT ONE OF THOSE PARTS OF THE SWAT TEAM BECAUSE I HAVE OTHER RESPONSIBILITIES.

Q OKAY. DO THE HELICOPTER PILOTS ASSIST THE SWAT TEAMS?

A YES, SIR.

Q ALL RIGHT. MAYBE THAT'S THE WAY TO ASK IT. AND IN PART OF -- IN THAT REGARD, DO YOU HAVE ADDITIONAL EQUIPMENT ON THE HELICOPTER TO ASSIST PEOPLE LOOKING FOR SOMEBODY ON THE GROUND?

A YES, SIR. WE DO.

Q THAT'S WHAT A SWAT TEAM DOES, LOOK FOR SOMEBODY ON THE GROUND?

A THAT IS CORRECT. YES, SIR.

Q ALL RIGHT. AND COULD YOU TELL US ABOUT WHAT A FLARE IS?

A YES, SIR. A FLARE, THAT'S THE ACTUAL NAME FOR FORWARD LOOKING INFRA RED RADAR. IT'S THE SYSTEM ON THE HELICOPTER THAT WILL PICK UP BODY HEAT, BODY HEAT FROM PERSON, BODY HEAT FROM ANIMAL.

Q ALL RIGHT, SIR. AND ARE YOU ABLE TO DISTINGUISH BETWEEN PEOPLE AND ANIMALS WITH THAT DEVICE?

A YES, SIR.

Q HOW DO YOU DO THAT?

A THERE ARE TWO MAJOR COMPONENTS OF THE FLARE SYSTEM, THERE'S ONE COMPONENT ON THE FUELA LODGE (SIC) FROM THE FRONT OF THE HELICOPTER, THE OTHER COMPONENT HAS A SCREEN LIKE A SMALL T.V. ABOUT THE SIZE OF A THIRTEEN INCH T.V. SCREEN WITHIN THE COCK PIT AND THERE'S AN IMAGE IN THE COCK PIT.

Q ALL RIGHT. ALSO SPECIAL EQUIPMENT ON YOUR HELICOPTER

-- IS THERE SOMETHING CALLED A MIDNIGHT SUN?
A YES, SIR. THAT'S A...
Q EXPLAIN THAT TO THE JURY.
A IT'S AN EXTREMELY POWERFUL SPOT LIGHT.
Q ALL RIGHT. NOW, ON THE EVENING OF FEBRUARY THE 26TH 1996, DID YOU COME AS A HELICOPTER PILOT AND FLARE OPERATOR TO SUMTER COUNTY TO ASSIST IN A MAN HUNT?
A YES, SIR.
Q ALL RIGHT. AND COULD YOU TELL US WHAT OCCURRED?
A APPROXIMATELY 8 P.M. ON THE NIGHT OF FEBRUARY 26TH 1996, I RECEIVED A CALL TO RESPOND TO THE AIIRPORT, GET THE HELICOPTER AND HEAD TOWARDS SUMTER COUNTY AND THAT WE WOULD BE GIVEN FURTHER INSTRUCTION AS WE GET THEREUPON.
Q ALL RIGHT. WHAT -- JUST GO AHEAD AND TAKE US ON THROUGH IF YOU WILL.
A AND AS WE APPROACHED SUMTER COUNTY, WE GOT IN COMMUNICATION WITH ONE OF OUR AGENT THAT WAS ON THE GROUND AND THE AGENT DIRECTED US TO AN AREA OF A WOOD TO SEARCH. AND WE COMMENCED TO SEARCHING.
Q ALL RIGHT. AND TELL US WHAT HAPPENED AS A RESULT OF THAT.
A WE SEARCHED FOR APPROXIMATELY AN HOUR AND FORTY-FIVE MINUTES OR TWO HOURS. AND APPROXIMATELY 11:00 THEREBY WE DISCOVERED A SUBJECT LYING IN THE WOOD BETWEEN TWO TREES THAT HAD FALLEN. AND WE DIRECTED THE GROUND CREW WHERE THE

SUBJECT WAS LOCATED.

Q ALL RIGHT. NOW, TELL US ABOUT HOW YOU WERE ABLE TO FIRST LOCATE HIM.

A WE LOCATED THE SUBJECT THROUGH THE INFRA RED RADAR SYSTEM THROUGH BODY HEAT.

Q ALL RIGHT. DID YOU THEN TURN -- WERE YA'LL IN RADIO CONTACT WITH AGENTS ON THE GROUND?

A YES, SIR. WE WERE IN CONSTANT RADIO CONTACT WITH THE AGENT ON THE GROUND.

Q ALL RIGHT. AND WHEN YOU -- YOU WERE ABLE TO SAY LYING ON THE GROUND BETWEEEN TWO FALLEN TREES, HOW DO YOU KNOW THAT WELL?

A WE COULD SEE THE IMAGE, WE COULD SEE THE IMAGE ON THE ON THE SCREEN. AS I SAID IT SHOWS UP LIKE A T.V. SCREEN AND WE HOVER UNTIL WE DIRECTED THE GROUND CREW, THE TRACKING TEAM, WHERE THE SUBJECT WAS.

Q ALL RIGHT. SO ONCE YOU HAD HIM SPOTTED WITH THAT FLARE DEVICE, YOU TURN ON THE MIDNIGHT SUN?

A WE TURN ON THE MIDNIGHT SUN AND OF COURSE DIRECTED THE GROUND CREW. AND WE JUST HOVERED OVER THAT PARTICULAR AREA UNTIL THE TRACKING TEAM GOT THERE.

Q ALL RIGHT.

MR. KOLB: JUST A MOMENT, PLEASE.

(WHEREUPON THERE WAS A PAUSE).

(WHEREUPON QUESTIONING RESUMED).

Q WAS THERE ANY -- DID YOU ENCOUNTER ANY DIFFICULTY IN GETTING THE AGENTS TO THAT LOCATION?

A YES, SIR. IT WAS -- THE WOODED AREA WAS PRETTY THICK. AND IT TOOK THEM A WHILE TO GET TO THE AREA THAT WE WERE HOVERING, BUT I DON'T CONSIDER IT ANY DIFFICULTIES.

Q ALL RIGHT. AND DID YOU STAY OVER THAT LOCATION WITH THE MIDNIGHT SUN ON TILL THE OFFICERS ACTUALLY GOT HIM IN CUSTODY?

A YES, SIR. WE HAD THE MIDNIGHT SUN. ALSO WE HAD THE RADAR SYSTEM ON.

Q ALL RIGHT. AND YOU WERE ACTUALLY THEN HOVERING ABOVE AS AGENTS SURROUNDED HIM AND GOT HIM IN CUSTODY?

A YES, SIR. THAT'S CORRECT.

Q ALL RIGHT. DID YOU REMAIN THERE AS THEY GOT HIM ON OUT OF THE WOODS?

A IMMEDIATELY WHEN THE TRACKING TEAM TOLD US THAT THEY HAD THE SUBJECT IN CUSTODY, WE LANDED.

Q OKAY. AND THAT -- SO WHERE DID YOU LAND?

A THERE WAS A BUILDING IN THE AREA AND IT'S A FIELD BEHIND THE BUILDING AND I GUESS APPROXIMATELY 150 YARDS FROM WHERE THE SUBJECT WAS.

Q ALL RIGHT, SIR. THANK YOU. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

THE COURT: CROSS-EXAMINE?

MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION BY MR. LITTLEJOHN:

Q GOOD AFTERNOON, SPECIAL AGENT DAVIS.

A GOOD AFTERNOON, SIR.

Q JUST A COUPLE QUESTIONS, PLEASE SIR.

A YES, SIR.

Q YOU INDICATED IT TOOK ABOUT AN HOUR AND FORTY-FIVE MINUTES TO TWO HOURS?

A APPROXIMATELY.

Q OF SEARCHING?

A YES, SIR.

Q OKAY. AND YOU WERE SEARCHING THIS WOODED AREA?

A YES, SIR.

Q OKAY. NOW, I'M ASSUMING DURING THAT TIME YOU HAD THE FLARE ON CONSTANTLY?

A THAT IS CORRECT. YES, SIR.

Q OKAY. AND I'M ASSUMING YOU DID NOT HAVE THE MIDNIGHT SUN ON CONSTANTLY?

A SOMETIME WE PUT THE MIDNIGHT SUN ON AND SOMETIME WE -- WHEN WE GET PRETTY LOW, WE PUT THE SUN TO WATCH OUT FOR POWER LINE AND TREES.

Q UNDERSTANDABLE.

A AND TOWERS.

Q OKAY. NOW, WHEN YOU SPOTTED THE SUBJECT, HOW FAR OFF THE GROUND WERE YOU?

A APPROXIMATELY 75 TO A HUNDRED FEET.

Q OKAY. HOW FAR AWAY LATERALLY WERE YOU FROM THE SUBJECT?

A MAYBE ABOUT 150 FEET.

Q 150 FEET?

A YES, SIR.

Q I'M ASSUMING THAT HELICOPTER MAKES A LOT OF NOISE?

A NOT TOO MUCH NOISE. THE TYPE OF HELICOPTER THAT WE HAVE IS A MCDONALD DOUGLAS 500 WHICH HAS FOUR ROLLER BLADE. RELATIVELY QUIET. DOES NOT MAKE AS MUCH NOISE AS MOST HELICOPTERS.

Q YOU COULD CERTAINLY HEAR IT FROM THAT DISTANCE THOUGH; COULD YOU NOT?

A FROM THE DISTANCE WHERE THE SUBJECT WAS?

Q YES, SIR.

A YES, SIR. SURE.

Q EASILY?

A YES, SIR.

Q OKAY. NOW, WHEN YOU FIRST SPOTTED THIS SUBJECT WITH THE FLARE?

A YES, SIR.

Q YOU INDICATED THAT THE PERSON WAS LAYING BETWEEN TWO TREES?

A YES, SIR.

Q IN A PRONE POSITION?

A YES, SIR.

Q LAYING ON THE GROUND?
A THAT'S RIGHT.
Q WHEN YOU APPROACHED, DID THE SUBJECT MOVE?
A NO, SIR. THE SUBJECT DID NOT MOVE. AS A MATTER OF FACT, WE WERE SOMEWHAT SURPRISED THE SUBJECT WAS ALIVE BECAUSE WE GOTTEN WORD THAT SHOTS WERE FIRED IN THE WOOD AND WHEN WE SAW THE SUBJECT THE SUBJECT WAS STILL.

AND WHEN THE TRACKING TEAM TOLD US THAT THEY GOT THE SUBJECT IN CUSTODY, WE WERE SURPRISED THEY HAD THE PERSON IN CUSTODY. WE EXPECTED THE PERSON TO BE DEAD.

Q HE WAS LAYING THAT STILL?
A YES, SIR.
Q OKAY. AND I BELIEVE YOU INDICATED IT TOOK SOME TIME FOR THE TRACKING TEAM TO GET TO THAT LOCATION BECAUSE OF THE THICKNESS OF THE WOODS, ETC.
A YES, SIR.
Q HOW LONG DID IT TAKE?
A I WOULD SAY APPROXIMATELY TWENTY, TWENTY-FIVE MINUTES.
Q TWENTY TO TWENTY-FIVE MINUTES?
A YES, SIR. I AM NOT SURE. APPROXIMATELY TWENTY, TWENTY-FIVE MINUTES.
Q AND DURING THAT ENTIRE TWENTY TO TWENTY-FIVE MINUTES THE SUBJECT LAID THERE ON THE GROUND?
A YES, SIR.

Q MADE NO ATTEMPT TO LEAVE?

A NO, SIR.

MR. LITTLEJOHN: IF YOU WOULD INDULGE ME FOR JUST A MOMENT, YOUR HONOR.

THE COURT: YES, SIR.

(WHEREUPON THERE WAS A PAUSE).

MR. LITTLEJOHN: THANK YOU, SIR. NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: REDIRECT?

REDIRECT EXAMINATION BY MR. KOLB:

Q WHEN WAS THE MIDNIGHT SUN ACTUALLY TURNED ON IN RELATION TO THE TIME OF THE ARREST?

A WE TURNED THE SUN LIGHT ON -- OFF AND ON ALL DURING THE SEARCH. BUT IT WAS ON CONSTANTLY FROM THE TIME THAT WE OBSERVED THE SUBJECT ON THE GROUND UNTIL WE GOT THE WORD THAT THE SUBJECT WAS UNDER ARREST.

Q OKAY. THANK YOU.

THE COURT: RE-CROSS?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: YOU MAY COME DOWN, SIR.

(WHEREUPON THE WITNESS LEFT THE STAND).

MR. KOLB: FREDDIE POWELL, YOUR HONOR.

THE COURT: IS YOUR NEXT WITNESS A LONG ONE?

MR. KOLB: PERHAPS A LITTLE LONGER THAN THIS ONE.

THE COURT: YA'LL FEEL ALL RIGHT? CARE TO CONTINUE

OR DO YOU WANT A BREAK AT THIS POINT? ANYBODY NEED ONE? RAISE YOUR HAND. OKAY. WE WILL CONTINUE. THANK YOU.

FRED POWELL, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: EXCUSE ME. TAKE YOUR SEAT. POSITION THE MIKE. STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST NAME FOR US.

WITNESS: FRED R POWELL, P O W E L L.

THE COURT: THANK YOU, SIR.

DIRECT EXAMINATION BY MR. KOLB:

Q MR. POWELL, HOW ARE YOU EMPLOYED?

A I'M EMPLOYED WITH THE STATE LAW ENFORCEMENT DIVISION AND LIEUTENANT, BLOOD HOUND TRACKING TEAM AT SLED.

Q AND HOW LONG HAVE YOU BEEN WITH SLED?

A OVER TEN YEARS NOW.

Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

A DURING THAT TIME I HAVE BEEN EMPLOYED AT SLED.

Q OKAY. AND YOU ARE A LIEUTENANT OF THE BLOOD HOUND TRACKING UNIT?

A YES, SIR. THAT'S CORRECT.

Q DOES THAT HAVE ANYTHING TO DO WITH MAN HUNTS?

A YES, SIR. IT HAS EVERYTHING TO DO WITH IT.

Q ALL RIGHT. DO YA'LL RECEIVE SPECIAL TRAINING IN THAT REGARD?

A WE DO. I RECEIVED TRAINING FROM PAST SUPERVISORS

THERE AT SLED AS WELL AS BEEN CERTIFIED THROUGH THE CRIMINAL JUSTICE ACADEMY AND MAN TRACKING AS WELL AS A POLICE OFFICER. AND ALSO WITH THE NUMBER OF CALLS THAT I HAVE HANDLED IN THE PAST.

Q ALL RIGHT. SO YOU -- YA'LL ARE CALLED QUITE FREQUENTLY?

A YES, SIR. I THINK LAST TIME I CHECKED I HAVE BEEN ON A THOUSAND HOURS.

Q ALL RIGHT. AND YOU HAVE ANY SPECIAL EQUIPMENT OR SWEAR ANY SPECIAL CLOTHING?

A WELL, SIR. WE -- THE TRACKING TEAM HAS A STANDARD UNIFORM THAT WE WEAR. IT'S LIKE MILITARY B T U'S, SOLID GREEN AS WELL AS THE ARMORY VEST AND SHOULDER HARNESS, REALLY. AND RADIO. THAT TYPE OF EQUIPMENT. AND IT'S ALSO TACTICAL EQUIPMENT SUCH AS SUBMACHINE GUNS AND THAT NATURE.

Q ALL RIGHT. AND AS FAR AS THE CLOTHING -- AND WHEN YOU'RE LOOKING FOR SOMEBODY A LOT OF TIMES LOOKING UP IN THE THICK OF WOODS AND SO FORTH?

A YES, SIR. THAT'S CORRECT.

Q AND WHAT -- IN THAT REGARD, WHAT KIND OF CLOTHING OR WHAT DO YOU DO TO TRY TO AVOID PROBLEMS GOING THROUGH FIELDS LIKE THAT?

A WELL, BASICALLY WE WEAR STANDARD UNIFORM AND WHETHER IT'S A HUNDRED DEGREES OUTSIDE OR -- YOU KNOW -- IN THE

WINTER TIME, USUALLY WE WILL WEAR LONG SLEEVES JUST TO COVER OURSELVES FROM BRIARS AND THINGS LIKE THAT JUST TO -- BECAUSE, I MEAN, YOU CAN WEAR SHORT SLEEVE SHIRTS IF YOU WISH, BUT LIKE I SAID I'D BEEN CUT UP BY BRIARS TOO MANY TIMES.

TRY TO WEAR GLOVES ALSO WHEN YOU GET EXPOSED TO OTHER SUBJECT'S BODILY FLUIDS, WHEN YOU GET CUT YOURSELF, SO THAT'S WHY WE TRY TO PROTECT OURSELVES IF WE CAN.

Q ALL RIGHT. ON THE NIGHT OF FEBRUARY 26TH 1996, DID YOU HAVE OCCASION TO LEAD A GROUP OF INDIVIDUALS THAT CAME TO SUMTER COUNTY ON A MAN HUNT?

A YES, SIR. THAT'S CORRECT.

Q WHAT TIME DID YOU ARRIVE HERE?

A WE RECEIVED A CALL AT APPROXIMATELY 8:30 OF THAT EVENING. I'D SAY ROUGHLY ANYWHERE FROM AN HOUR TO AN HOUR AND FIFTEEN MINUTES WOULD HAVE BEEN OUR ARRIVAL TIME. I DON'T HAVE AN EXACT TIME. THAT'S APPROXIMATE.

Q ALL RIGHT. SO THAT WOULD HAVE BEEN 9:30, QUARTER OF 10, SOMETHING LIKE THAT?

A YES, SIR. THAT'S CORRECT.

Q AND WHAT DID YOU DO ONCE YOU ARRIVED?

A WHEN WE ARRIVED ON THE SCENE, WE WERE MET BY THE SHERIFF'S OFFICE, DEPUTIES AND INVESTIGATORS AND EXPLAINED THE SITUATION TO US OF WHAT HAD HAPPENED.

AND THEY INFORMED US THAT A POLICE OFFICER HAD

BEEN SHOT AND KILLED AT THAT LOCATION AND THAT A SUBJECT -- THEY KNEW OF A SUBJECT THEY WERE LOOKING---.

MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO HAVE TO OBJECT TO ANY KIND OF HEARSAY.

THE COURT: SUSTAINED. SUSTAINED.

(WHEREUPON QUESTIONING RESUMED).

Q WHAT DID YOU DO AS A RESULT OF THE INFORMATION YOU RECEIVED?

A THE INFORMATION RECEIVED -- WE ALSO WERE SHOWN PICTURE OF WHO WE MAY BE LOOKING FOR. AT THAT TIME WE WERE ADVISED BY POLICE OFFICERS AS A DIRECTION OF TRAVEL THAT THE SUBJECT WAS LAST SEEN IN.

AND AT THAT TIME WE TOOK THE BLOOD HOUNDS WITH OUR TRACKING TEAM AND ALSO WITH TACTICAL ASSISTANCE, MEMBERS OF SWAT TEAM, THAT ASSISTED US ALSO. THEY USUALLY DO IN VIOLENT SITUATIONS.

WE BEGAN CHECKING THE AREA WITH THE BLOOD HOUND TO TRY TO PICK UP ON SUSPECT'S TRAIL.

Q DID YOU RECEIVE ASSISTANCE FROM THE SLED HELICOPTER AND FLARE?

A THAT'S CORRECT. WE ALL DID.

Q ALL RIGHT. AND WHAT ULTIMATELY HAPPENED?

A AT THAT TIME WE STARTED CHECKING THE AREA. WE FOUND A HAT THAT WAS THOUGHT TO BE BELONGING TO THE SUSPECT. WE HAD TRACKS THAT WERE CROSSING THE FENCE BEHIND THIS

RESIDENCE. THE INCIDENT LOCATION.

THE BLOOD HOUND PICKED UP THE SCENT AND WE STARTED FOLLOWING THE TRAIL. AND TRAILED FOR APPROXIMATELY HALF TO 3/4 OF A MILE.

HAVING CONSISTENT TRACKS WITH THAT FROM THE BEGINNING OF THE TRAIL THROUGHOUT THE TRAIL. THE HELICOPTER WAS FLYING AHEAD OF US ON OUR COMMAND TO TRY TO SEE IF THEY COULD FIND SOMETHING OUT AHEAD OF US.

AND SHORTLY AFTER THEY CALLED AND ADVISED THAT THEY HAD A HOT SPOT THAT THEY HAD FOUND WITH THE FLARE SYSTEM.

Q ALL RIGHT. DID YOU HAVE ANY DIFFICULTY GETTING TO THE LOCATION THEY HAD SPOTTED?

A WELL SIR, WE HAD MADE A NINETY DEGREE TURN HEADED STRAIGHT IN THE DIRECTION WHERE THE CHOPPER HAD FOUND THIS HOT SPOT AND IT WAS AN OPEN FIELD.

AT THAT POINT WE HAD FOOT PRINTS. CONTINUED ON ACROSS THE FIELD AND GOT TO A VERY HEAVILY WOODED AREA THAT WAS -- THAT WAS EXTREMELY DIFFICULT TO PASS THROUGH, BUT WE DID.

Q ALL RIGHT. AND TELL US ABOUT WHAT HAPPENED AS YOU APPROACHED THE LOCATION.

A ALL RIGHT, SIR. WE HAD -- LIKE I SAID, WE HAD THE TRACKING TEAM AND THE SWAT TEAM MEMBERS AS WELL AS SOME OF THE OTHER PERIMETER SWAT TEAM MEMBERS CAME THERE AND MET

US AND ASSISTED US AT THAT TIME.

WE BEGAN MOVING IN ON THE LOCATION WHERE THE HELICOPTER HAD PICKED UP THIS SUBJECT. HELICOPTER ALSO HAD NIGHT SUN WHICH IS A BIG SPOT LIGHT THAT THEY LIGHT UP THE SUSPECT AND GOT A DESCRIPTION FROM POLICE OFFICERS AND FELT LIKE IT WAS GOING TO BE THE SUSPECT WE WERE LOOKING FOR.

AT THAT TIME WE CONTINUED TRAVELING THROUGH THIS HEAVILY WOODED AREA. TOOK US A LITTLE WHITE TO GET TO IT BECAUSE IT WAS SO THICK WITH BRIARS AND TREES WHICH HAD FALLEN DROWN, GROWN OVER AND WE HAD TO CLEAR THESE THINGS AS WE WERE GOING -- YOU KNOW -- FOR THE SUSPECT BECAUSE WE DIDN'T KNOW EXACTLY WHERE HE WAS BECAUSE THE NIGHT SUN, THE FLOOD LIGHT, HAD GOT SUCH A WIDE SPREAD IT'S HARD TO KNOW EXACTLY -- YOU KNOW -- WHERE THIS PERSON MAY BE.

SO WE CONTINUED ON. WE CROSSED A COUPLE OF DITCHES IN THERE, DEEP DITCHES, A COUPLE OF US FELL ON THE WAY. AND CONTINUED ON AND MADE IT UP TO THE SUSPECT.

Q ALL RIGHT. TELL US ABOUT THE ACTUAL ARREST.

A MYSELF AND TWO OTHER, TWO OTHER AGENTS, A JIM LOUDER WHICH IS ON THE TRACKING TEAM, DEPUTY FULLER IS ON SWAT TEAM AND I THINK JOHN TANNER WERE THE FIRST ONES THERE TO APPROACH THE SUSPECT.

DUE TO THE VIOLENT NATURE OF THE CALL AND FROM OUR UNDERSTANDING THE SUBJECT WAS SUPPOSEDLY ARMED WITH A

HANDGUN AND POSSIBLY A SHOTGUN, WE BEGAN MOVING IN ON THE SUSPECT.

HE WAS LAYING ON HIS BACK FACING UP. HANDS WERE NOT CLEAR, COULD NOT SEE HIS HANDS. THEY WERE DOWN BY HIS SIDE OR DOWN BY A LOG. HE WAS LAYING DOWN BETWEEN TWO LOGS OR TWO FALLEN TREES AND IT WAS KIND OF DIFFICULT TO SEE EXACTLY WHAT WAS GOING ON.

WE HAD -- WE IMMEDIATELY UPON SEEING HIM STATED AND ADVISED THAT WE WERE STATE POLICE OFFICERS AND TO CLEAR HIS HANDS AND ELEVATE HIS HANDS SO WE COULD SEE THEM.

Q DID HE DO THAT?

A NO, SIR. AT NO TIME DID HE COMPLY WITH ANY OF OUR COMMANDS. WE KEPT MOVING IN. WE WEREN'T SURE WHETHER OR NOT HE WAS -- HE WAS ALIVE OR DEAD BECAUSE THE HELICOPTER -- YOU KNOW -- AT ONE TIME THOUGHT MAYBE HE WAS DECEASED BECAUSE THERE WAS NO MOVEMENT FOR A LONG, LONG PERIOD OF TIME.

ONCE WE GOT THERE, WE SAW -- WE DIDN'T KNOW WHAT THE THING -- WE WERE IDENTIFYING OURSELVES ANY WAY -- WHERE HE WAS SAFE OR NOT TO BE ON THE SAFE SIDE. AS WE MOVED IN, WE SAW SOME MOVEMENT FROM THE SUSPECT.

IMMEDIATELY WE -- YOU KNOW -- FIGURED OUT THAT HE WAS OKAY. WE GAVE THE COMMANDS AGAIN TO CLEAR HIS HANDS, GET THEM WHERE WE COULD SEE THEM, ADVISED STATE

POLICE OFFICERS CONTINUALLY.

AND LIKE I SAID THE OTHER OFFICERS WERE COMING UP APPROACHING UP BEHIND US AS WE WERE DOING THIS. AT SOME POINT IN TIME YOU GOT TO MOVE UP AND YOU GOT TO MAKE AN ARREST ON THE SUSPECT. AND THERE WAS NO COMPLIANCE. WE MOVED IN.

Q EVEN WITHOUT HIM PUTTING HIS HANDS WHERE YOU COULD SEE THEM YOU MOVED IN ON HIM?

A YES, SIR. LIKE I SAID, AT THAT POINT YOU CAN'T STAND THERE FOREVER AND SAY CLEAR YOUR HANDS AND EXPECT SOMETHING. IF HE WON'T COMPLY, THEN YOU HAVE TO GO TO HIM.

Q WHEN HE WOULDN'T COMPLY, YOU COULD HAVE SHOT HIM; COULDN'T YOU?

A YES, SIR.

Q YOU DIDN'T DO THAT?

A NO, SIR.

Q SO YOU RISKED YOUR LIFE TO GO UP THERE?

MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO HAVE TO OBJECT.

THE COURT: SUSTAINED. LETS MOVE ON, MR. SOLICITOR.

MR. KOLB: YES, SIR. ALL RIGHT. EXCUSE ME.

(WHEREUPON QUESTIONING RESUMED).

A AND, YOU KNOW, WE COULD NOT SEE THE WEAPON ANY TIME, SO WE MOVED IN. I'M RESPONSIBLE FOR THE POLICE OFFICERS IN

THERE WITH ME AND THEIR SAFETY. WE MOVED IN ON THE SUSPECT AND I PLACED MY FOOT ON THE SUBJECTS CHEST.

AND ADVISED HIM TO CLEAR HIS HANDS -- CLEAR YOUR HANDS. I SAID CLEAR YOUR HANDS, STATE POLICE, CLEAR YOUR HANDS. SUBJECT WOULD NEVER DO IT. WE HAD LONG GUNS SO IT WAS DIFFICULT TO ACTUALLY PHYSICALLY GET DOWN THERE WITH THE SUSPECT WITH LONG GUNS.

YOU'RE KIND OF LIMITED TO WHAT YOU CAN DO. THE OTHER OFFICERS CAME IN BEHIND US. WE HAD -- SOME OF THE OTHER OFFICERS DID NOT HAVE LONG GUNS THAT MOVED IN AND ACTUALLY MADE THE -- EFFECTED THE ARREST ON THE PERSON.

Q WHEN YOU SAY EFFECTED THE ARREST, WHAT'S THE FIRST THING -- YOU HAVE HIM PINNED DOWN WITH YOUR FOOT?

A YES, SIR.

Q WHAT WERE THEY GOING FOR?

A THEY WERE TRYING TO GET HIS HANDS OUT FROM UNDER HIM.

Q ALL RIGHT.

A THE SUBJECT WOULD NOT SHOW HIS HANDS AT ANY TIME. IT STARTED -- THE SUBJECT WAS RESISTING. HE WOULD NOT -- HE WOULD PULL AWAY.

AND AT THAT POINT THEY FINALLY WAS ABLE TO TURN HIM. AND WHEN THEY PULLED HIM OVER A LITTLE BIT THEY SAW THE HANDGUN. IT WAS UP UNDER HIS LEFT SHOULDER.

Q WHAT HAPPENED AFTER THE GUN WAS SPOTTED?

A ONE OF THE OFFICERS -- ONE OF THE OFFICERS SAW THE

GUN. FIRST I THINK WAS RICHARD HUNTER AND HE MADE EVERYBODY AWARE. HE SAID THERE'S A HANDGUN. MADE EVERYBODY AWARE THERE WAS ONE WITHIN HIS GRASP.

AT THAT TIME THE SUBJECT WAS PULLED AWAY FROM THE GUN FOR OUR SAFETY AND HIS AND MOVED OVER A FEW FEET TO TRY TO CONTINUE LIKE I SAID WITH THE HANDCUFF PROCEDURE WHICH WAS -- TOOK A LITTLE WHILE TO DO BECAUSE HE RESISTED.

Q ALL RIGHT. COULD YOU TELL US ABOUT ANY -- WHAT OCCURRED IN GETTING HIM OUT OF THAT PARTICULAR WOODED AREA INTO AN OPEN AREA.

A WELL, SIR. AFTER HE WAS HAND CUFFED, ONE OF THE OFFICERS TRIED TO DO A QUICK SEARCH, PAT DOWN, SEE IF HE HAD ANY OTHER WEAPONS ON HIM. THERE WAS NOT A THOROUGH PAT DOWN, BUT IT WAS ONE THAT WE FELT LIKE -- YOU KNOW -- HE DIDN'T HAVE ANY HANDGUNS OR NO WEAPONS ON HIS PERSON THAT WE COULD TELL.

THAT WAS NOT A THOROUGH SEARCH. AT THAT TIME WE TOLD THE SUSPECT OF COURSE AS WE ARE TELLING THE COURT HE WAS UNDER ARREST, HAD TO ESCORT HIM OUT. HE WAS RESISTING, PULLING AWAY FROM THE OFFICERS.

WOULD NOT WALK. HE JUST WOULD DRAG HIS FEET AND THE OFFICER BASICALLY HAD TO PICK HIM UP AND CARRY HIM TO GET HIM OUT OF THE WOODS.

Q ALL RIGHT, SIR. YOU INDICATED THAT YOU HAD TO MAKE A

TURN ONCE THE HELICOPTER SPOTTED THE SUBJECT. WHAT -- WHAT DIRECTION WERE YOU TRACKING IN OR CAN YOU TELL US ABOUT THE TRAIL YOU WERE ON.

A WELL, ACTUALLY WE HAD ALREADY MADE OUR TURN WHEN THE HELICOPTER SPOTTED AND THE HELICOPTER SPOTTED THE SUBJECT APPROXIMATELY 150 YARDS IN FRONT OF US. WE WERE HEADED IN THAT SAME DIRECTION. HAD FOOT PRINTS LEADING US IN THAT DIRECTION.

Q OKAY.

A ALL...

Q SO WHERE HE WAS SPOTTED WAS IN THE SAME -- AHEAD OF THE SAME TRAIL YOU WERE FOLLOWING?

A IT WAS IN DIRECT LINE WITH IT. YES, SIR.

Q OKAY. DID YOU RECEIVE ANY INJURIES IN EFFECTING THE ARREST?

A WELL, SIR. WE HAD SOME CUTS BECAUSE EVEN WITH THE HEAVY CLOTHING THAT WE HAD, WE'RE PASSING THROUGH THE BRIARS AND THE HEAVY TIMBERS AND ALL THIS -- YOU KNOW -- IT'S DIFFICULT TO GO THROUGH WITHOUT GETTING SOME TYPES OF CUTS OF BRUISES OR THAT KIND OF THING ON YOU.

SOME OF THE OTHER GUYS WERE NOT AS I GUESS PREPARED AS SOMEWHAT -- SOME OF THE TRACKING TEAM GUYS WERE BECAUSE WE HAD BEEN THERE BEFORE. WE KNOW WHAT TO EXPECT. THEY WERE CUT UP MORE OR I SAY SCRATCHED UP BY BRIARS AND THAT KIND OF THING.

Q ALL RIGHT. DID YOU ACTUALLY SEE THESE SCRATCHES AND INJURIES TO THOSE PERSONS?

A YES, SIR. I SAW. I OBSERVED SOME OF THEM. BUT LIKE I SAID, IT'S A COMMON OCCURRENCE AND IT'S NOTHING TO -- YOU KNOW -- NOTHING TO BE ALARMED ABOUT.

Q WHAT ABOUT MR. STONE? WAS HE ALSO SCRATCHED UP?

A YES, SIR. HE HAD SOME SCRATCHES ON HIM AND WE TRAVEL THROUGH THE WOODS WE HAVE THE -- WE HAVE A FLASHLIGHT THAT ALLOWS US TO PASS THROUGH TO SEE WHERE WE ARE GOING AND TO OUR KNOWLEDGE HE DIDN'T HAVE FLASHLIGHT AS THICK AS IT WAS. IT BE NEARLY IMPOSSIBLE TO GET THROUGH WITHOUT RECEIVING NUMEROUS CUTS AND ABRASIONS ON THE BODY.

Q IS IT POSSIBLE HE WAS SCRATCHED UP ALSO ON THE WAY OUT OR STRUGGLING WITH YOU MAKING THE ARREST?

A YES, SIR. THERE WERE BRIARS I THINK THERE -- ALL THE WAY OUT OF THIS WHOLE WOODED AREA THERE WAS PROBABLY LESS DENSE GOING OUT IN THE DIRECTION. THEN HE WAS TURNED OVER CUSTODY, PUT INTO THE VAN.

BUT THERE WERE BRIARS HANGING THROUGH THE WOODS FROM TREE TO TREE AND IT WAS VERY DIFFICULT TO TOTE SOMEONE OUT OF THE WOODS WITHOUT SUSTAINING CUTS AND SCRATCHES TO THE OFFICERS AS WELL AS THE SUBJECT. YES, SIR.

Q ALL RIGHT. DID YOU ACTUALLY SEE THE PISTOL THAT WAS FIRST SPOTTED BY OFFICER HUNTER, RICHARD HUNTER?

A I DID.
Q SHOW YOU WHAT'S BEEN MARKED EXHIBIT 40 FOR IDENTIFICATION -- EXCUSE ME -- EXHIBIT 40 INTO EVIDENCE. CAN YOU IDENTIFY THAT?
A YES, SIR. THAT APPEARS TO BE SPOTTED IN THE LOG -- THIS IS THE LOG THAT THE SUBJECT WAS LAYING BY.
Q SPEAK UP A LITTLE LOUDER.
A I WAS SAYING THIS WAS ONE OF THE LOGS. THERE WAS ANOTHER LOG CLOSE BY KIND OF LIKE A V WHERE THE TWO LOGS WERE KIND OF PARALLEL TO EACH OTHER. AND THIS PISTOL WAS NOT MOVED.

THE OFFICER THAT SPOTTED THE PISTOL AND SAW IT INITIALLY, HE STAYED WITH THE GUN FROM THERE ON OUT. SO THE GUN WAS NOT PICKED UP OR REMOVED OR ANYTHING UNTIL THE FORENSICS PEOPLE ARE READY TO COME LOOK AT IT, BUT THE PISTOL WAS LAYING UNDER HIS RIGHT -- EXCUSE ME -- HIS LEFT SIDE.

Q ALL RIGHT. AND DID YOU INDICATE WHETHER OR NOT IT WAS WITHIN HIS ARMS REACH?
A YES, SIR.
Q ALL RIGHT.
A LIKE I SAID, HIS ARM WAS ON TOP OF THE PISTOL.

(WHEREUPON THERE WAS A PAUSE).

(WHEREUPON QUESTIONING RESUMED).

Q AND CAN YOU IDENTIFY THE DEFENDANT HERE IN THE

COURTROOM?

A THAT APPEARS TO BE THE SUBJECT RIGHT THERE. HE LOOKS A LITTLE DIFFERENT THAN THE LAST TIME I SAW HIM, BUT...

Q ALL RIGHT, SIR. NOW, WERE YOU WITH HIM FROM THE TIME YOU SPOTTED HIM AS HE WAS TAKEN OUT OF THE WOODS?

A YES, SIR.

Q ALL RIGHT. OTHER THAN YOU PLACING YOUR FOOT ON HIS CHEST AS YOU INDICATED TO HOLD HIM DOWN, DID YOU SEE ANY ONE ELSE KICK OR STRIKE HIM IN ANY WAY WHATSOEVER?

A NO, SIR. I DIDN'T. AND LIKE I SAID, THERE WAS A STRUGGLE BETWEEN HIM PULLING AWAY AND HIM TRYING TO MAINTAIN CONTROL. THAT WAS GOING ON CONTINUOUSLY, SO THAT TYPE OF THING -- TRYING TO GAIN CONTROL -- THERE MAY HAVE BEEN SOME, SOME BUMPS AND SOME SHOVES AND THAT KIND OF THING.

BUT NO, ANY OUT RIGHT STRIKES. NO, SIR. I DIDN'T SEE ANYTHING OF THAT NATURE.

Q DID ANYONE ELSE PUT THEIR FOOT ON HIM AT ANY TIME THAT YOU OBSERVED OTHER THAN YOU?

A I REALLY DON'T RECALL. LIKE I SAID, WHEN WE FIRST APPROACHED, I KNOW I PLACED MY FOOT ON HIS CHEST. DON'T KNOW HOW HARD. IT WAS AN EXTREMELY STRESSFUL SITUATION AND -- YOU KNOW -- IT COULD HAVE BEEN LIGHT, COULD HAVE BEEN EXTREMELY HARD.

TO BE HONEST WITH YOU I AM NOT EXTREMELY SURE,

BUT LIKE I SAID, TRYING TO PLACE HIM UNDER SOME TYPE OF CONTROL SO THE GUYS COULD GET DOWN AND ACTUALLY CUFF HIM.

Q ALL RIGHT. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

THE COURT: TAKE A BREAK AT THIS POINT. LADIES AND GENTLEMEN, PLEASE DO NOT DISCUSS THE CASE AMONG YOURSELVES. GO TO YOUR JURY ROOM FOR A SHORT BREAK.

(WHEREUPON THE JURY LEFT THE COURTROOM AT 4:00 P.M.)

THE COURT: WE WILL BE AT EASE FOR ABOUT TEN MINUTES. I ASK YOU NOT TO TALK WITH ANYONE. THANK YOU, SIR.

(WHEREUPON A BRIEF RECESS WAS TAKEN).

THE COURT: LET THE RECORD REFLECT MR. STONE IS PRESENT. ANYTHING FROM THE STATE BEFORE WE BRING THE JURY BACK?

MR. KOLB: NOTHING.

THE COURT: ANYTHING FROM THE DEFENDANT BEFORE WE BRING THE JURY BACK?

MR. LITTLEJOHN: NONE, YOUR HONOR.

THE COURT: VERY WELL. BRING THE JURY IN.

(WHEREUPON THE JURY ENTERED THE COURTROOM AT 4:13 P.M.).

THE COURT: THANK YOU, LADIES AND GENTLEMEN. WE ARE READY TO CONTINUE. MR. LITTLEJOHN, YOU MAY CROSS-EXAMINE.

MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

THE COURT: YES, SIR.

CROSS-EXAMINATION BY MR. LITTLEJOHN:

Q GOOD AFTERNOON, LIEUTENANT POWELL.

A HOW ARE YOU DOING, SIR?

Q LIEUTENANT POWELL, FIRST OFF, PLEASE TELL ME IT IS NOT SLED'S POLICY TO SHOOT A SUSPECT WHO DOESN'T SHOW THEIR HANDS AND DOES NOT DISPLAY A WEAPON?

A I WON'T SAY IT'S A POLICY. USUALLY SLED -- IF SOMEONE'S LIFE IS IN DANGER, YOUR LIFE IS IN DANGER, OUR PROCEDURE -- THEN YOU ARE ABLE TO DO THAT.

Q AND YOU DETERMINE THAT BY THE PRESENCE OF A WEAPON; DO YOU NOT?

A FOR THE MOST PART. YES, SIR.

Q ALL RIGHT. AND UNDER THIS CIRCUMSTANCE YA'LL DIDN'T SEE THE WEAPON UNTIL BOBBY STONE WAS PULLED UP FROM BETWEEN THOSE TWO TREES?

A THAT'S CORRECT.

Q OKAY. NOW, LIEUTENANT POWELL, YOU INDICATED THAT YA'LL ARRIVED AT -- YOU GOT THE CALL AROUND 8:30, YOU ARRIVED IN SUMTER SOME TIME BETWEEN 9:30, QUARTER OF 10?

A NINE. 9:30, SOMETHING LIKE THAT. YES, SIR.

Q WHERE DID YOU START YOUR TRACKING?

A WE STARTED OFF BEHIND -- WE STARTED CHECKING THE AREA IMMEDIATELY BEHIND THE RESIDENCE OF THE INCIDENT LOCATION. FROM -- THE OFFICERS ADVISED US THAT -- SUMTER COUNTY OFFICERS ADVISED US NO OTHER OFFICERS HAD BEEN IN THAT

AREA CHECKING THE WOODS OR CHECKING BEHIND THAT LOCATION, SO IT SHOULD BE NOT CONTAMINATED. IT SHOULD BE ON THE SUSPECT TRAIL.

Q BY NOT CONTAMINATED YOU MEAN THE DOGS WOULD BE ABLE TO PICK UP A TRACK?

A WELL, WHEN I MEAN CONTAMINATED, I MEAN OTHER OFFICERS IN THE AREA, YOU KNOW. IF YOU GET SIX OR EIGHT OFFICERS IN THE AREA THEN IT CAN SOMETIMES IN EFFECT CREATE A PROBLEM ON THE TRAIL. YES, SIR.

Q WILL -- OKAY. NOW, WERE YOU FAMILIAR WITH THIS AREA AT ALL?

A NO, SIR.

Q OKAY. AND I BELIEVE YOU INDICATED IT WAS -- THERE WERE SOME CLEAR PLACES, BUT THERE WAS HEAVY BRUSH AND WOODS THAT YOU HAD TO TRAVERSE?

A THAT'S RIGHT. WHEN WE STARTED OUT IT WAS LIKE A -- LIKE A BIG CUT AND IT HAD SOME SMALL PINE TREES, BRIAR THICKETS, STUMPS, HOLES, YOU NAME IT -- IN THIS FIRST AREA WENT THROUGH SEVERAL DIFFERENT TYPES DURING THE COURSE OF OUR TRAILING.

Q ALL RIGHT. AND DO YOU KNOW EXACTLY HOW FAR YOU WENT ONCE YOU LEFT 817 TAYLOR STREET UNTIL YOU GOT TO THE SUBJECT LOCATION?

A I SAY APPROXIMATELY A HALF TO 3/4 OF A MILE.

Q HALF TO 3/4 OF A MILE. AND I BELIEVE YOU INDICATED

TO US YOU WENT IN ONE DIRECTION AND THEN TOOK A NINETY DEGREE TURN?

A THAT'S CORRECT.

Q OKAY. AND THAT NINETY -- AFTER TAKING THAT NINETY DEGREE TURN, YOU WENT ON A STRAIGHT LINE TO WHERE THE SUBJECT WAS LOCATED?

A THAT'S CORRECT.

Q DID YOU EVER DO ANY SORT OF DISTANCE MEASUREMENT TO DETERMINE HOW FAR THE SUSPECT'S LOCATION WAS FROM 817 TAYLOR STREET?

A NO, SIR. LIKE I SAID, IT WAS DARK. IT JUST -- GUESS IS ALL IT IS BASICALLY.

Q OKAY. SO IT WAS A GUESS HOW FAR YA'LL WENT IN TRACKING HIM?

A CORRECT.

Q AND I WOULD IMAGINE BASED ON THE TERRAIN, IT SEEMED LIKE IT WAS A LOT FURTHER THAN IT WAS?

A THAT'S CORRECT. AND PLUS SOMETIMES THE TRAIL -- WE HAD TRACKS COMING AND GOING AND WE ARE WALKING THOSE AREAS AND A LOT OF TIMES WE SAY THE DISTANCE IT'S NOT JUST FROM POINT A TO POINT B, BUT THE AREAS I WALKED IN BETWEEN THAT ALSO.

Q OKAY. AND THE DIFFICULTY OF COURSE IS COMPOUNDED BY THE DARKNESS?

A THAT'S CORRECT.

Q AND IT WAS FAIRLY DARK THAT NIGHT; WAS IT NOT?
A FAIRLY -- IT WAS FAIRLY -- HAD A PRETTY GOOD VIEW THAT NIGHT, IF I AM NOT MISTAKEN.
Q DO YOU RECALL?
A DON'T RECALL.
Q OKAY.
A EXACTLY WHERE IT WAS, BUT I CAN REMEMBER WE HAD -- I REMEMBER TELLING THE CHOPPER FLY TOWARDS -- MOVE ONE TIME AND CHECK THE AREA. I KNOW IT WAS -- YOU KNOW -- IT WAS LIGHTED.
Q AND THAT WAS AFTER YOU STARTED YOUR TRACKING AT 10:00 OR SO?
A YES, SIR.
Q OKAY. NOW, YOU INDICATED TO US THAT YOU GOT IN PROXIMITY TO THE HELICOPTER AND THEY NOTIFIED YOU THAT THEY HAD A SUBJECT SPOTTED ON THE FLARE?
A THAT'S CORRECT.
Q YOU WENT TO THAT LOCATION?
A THAT'S CORRECT.
Q AND AT THAT POINT YOU FOUND WHO LATER TURNED OUT TO BE MR. STONE LAYING BETWEEN TWO TREES?
A YES, SIR.
Q OKAY. NOW, AS I UNDERSTAND IT LIEUTENANT POWELL, THERE WERE VARIOUS COMMANDS GIVEN TO MR. STONE?
A THAT'S CORRECT.

Q WHICH HE APPARENTLY DIDN'T RESPOND TO?
A THAT'S CORRECT.
Q AND YOU DETERMINED THAT IT WAS A SITUATION WHERE YOU HAD TO GO IN AND GO AHEAD AND AFFECT THE ARREST; RIGHT?
A YES, SIR.
Q AND YOU WENT IN BETWEEN THE TWO TREES FIRST?
A THAT'S CORRECT.
Q AND YOU PLACED YOUR FOOT ON HIS CHEST?
A YES, SIR.
Q AS HE WAS LAYING ON THE GROUND; IS THAT CORRECT?
A THAT'S CORRECT.
Q OKAY. AND DID YOU PLACE YOUR FOOT ON HIS CHEST OR DID YOU PUT IT DOWN WITH SOME FORCE?
A IT WAS WITH SOME FORCE.
Q IT WAS WITH SOME FORCE?
A YES, SIR.
Q AND THE WAY YOU DESCRIBED IT IN THE STATEMENT YOU GAVE ON MARCH 4TH WAS IT WAS THE INITIAL KICK?
A I -- THE -- IF YOU ARE REFERRING TO THE MEMORANDUM, I DON'T THINK THAT THAT'S -- THAT'S NOT MY EXACT WORDS. I THINK THAT WAS PRETTY MUCH JUST A SUMMARY OF THE INTERVIEW THAT WAS -- THAT TOOK PLACE. I NEVER SAID KICK.
Q OKAY. SO THEN CAPTAIN GRAHAM MUST HAVE TAKEN IT DOWN WRONG OR MISINTERPRETED?
A ALL I AM SAYING IS THAT -- YOU KNOW -- I WAS -- I

HAVE NEVER REVIEWED THIS SHEET UNTIL TODAY. I -- MY SIGNATURE IS NOT ON IT.

Q RIGHT.

A LIKE I'M SAYING, IT'S NOT VERBATIM WHAT I SAID.

Q OKAY. AFTER YOU PUT YOUR FOOT ON BOBBY STONE'S CHEST, THEN THE OTHER AGENTS CAME IN AND TRIED TO SECURE HIS ARMS; IS THAT RIGHT?

A THAT'S CORRECT.

Q OKAY. SO YOU ARE STANDING ON HIS CHEST WITH ONE FOOT, THE OTHER AGENTS HAD HIM BY THE ARMS.

A THEY DON'T HAVE HIM BY THE ARMS. THEY ARE TRYING TO GET HIS ARMS.

Q THEY ARE TRYING TO GET HIS ARMS?

A HIS ARMS DOWN BY HIS SIDE. WE HAVE A LITTLE BIT OF ROOM. IT'S NOT SO TIGHT YOU CAN'T MOVE. RIGHT HERE, THERE'S TWO TREES.

HE'S BETWEEN THEM, BUT IT'S NOT LIKE IT'S A CRAMPED -- YOU KNOW -- THAT CRAMPED TO WHERE HE CAN'T -- YOU KNOW...

Q OKAY.

A SO LIKE I SAID, HE WAS JUST SQUANDERING AROUND. LIKE I SAID, HE HAD HIS ARMS DOWN TO HIS SIDE, WERE NOT CLEAR -- HIS HANDS. THEY WERE TRYING TO IN EFFECT PULL HIS ARMS OUT FROM THE SIDE OUT FROM UNDER HIM.

Q OKAY. AND THIS WAS WHILE YOU HAD YOUR FOOT ON HIS

CHEST?

A THAT'S CORRECT.

Q AND HE WAS SQUIRMING WHILE YOU HAD YOUR FOOT ON HIS CHEST?

A WHILE I PUT THIS FOOT ON HIS CHEST HE WAS NOT SQUIRMING. LET ME PUT IT THIS WAY. WHEN I PUT MY FOOT ON HIS CHEST, HE COULD STILL MOVE. I DON'T KNOW -- YOU KNOW -- SOMEONE -- THAT'S RESISTING.

IT'S NOT THAT SIMPLE. I JUST CAN'T PLACE MY FOOT ON HIM, EXPECT HIM TO BE STILL.

Q RIGHT.

A I ADVISE -- THE WHOLE TIME I SAY CLEAR YOUR HANDS, CLEAR YOUR HANDS, THE WHOLE ENTIRE TIME I HAD MY FOOT ON HIS CHEST UNTIL THE OTHER POLICE OFFICERS HAD RESTRAINED HIS ARMS.

AND BY THAT TIME I BACKED OFF AND COVERED THE SUSPECT WHILE THEY PLACED -- TRIED TO PLACE HIM UNDER ARREST.

Q OKAY. AND ONCE THEY GOT HIS ARMS AND YOU REMOVED YOUR FOOT, THEY STARTED TO GET INTO AN UP RIGHT POSITION, THAT'S WHEN YA'LL SPOTTED THE PISTOL?

A THAT'S CORRECT. THEY WERE TRYING TO ROLL HIM OVER SO THEY COULD ROLL HIM OVER FACE FIRST BECAUSE HE WAS ON HIS BACK LOOKING STRAIGHT UP, TRIED TO ROLL HIM OVER, GET HIS HANDS BEHIND HIS BACK BECAUSE THAT'S THE WAY WE COVER

SUBJECTS IS BEHIND THE BACK AND DON'T COVER THE FRONT.

Q RIGHT.

A TRY TO ROLL HIM OVER, PLACE HIS HANDS BEHIND HIS BACK. HE WAS RESISTING WITH HIS HANDS. I THINK THE OFFICER WAS ABLE TO GET ONE CUFF -- DAVE MCCLURE -- ABLE TO GET ONE CUFF ON THE SUBJECT'S HANDS.

AND DURING THAT TIME WHILE ROLLING HIM OVER, THE OTHER RICHARD HUNT SPOTTED THE GUN ON HIS LEFT SHOULDER. WOULD HAVE BEEN ON RICHARD'S RIGHT. AND HE HOLLERED GUN. AND THE SUBJECT WAS MOVED OUT OF THAT PROXIMITY TO GET HIM AWAY FROM THE GUN.

Q OKAY. NOW, PRIOR TO THIS POINT, MR. STONE HAD JUST LAID THERE WITH HIS ARMS BY -- SIDE BY SIDE; RIGHT?

A WOULD NOT COMPLY, CORRECT.

Q WOULD NOT COMPLY, BUT HIS ARMS WERE BY HIS SIDES; WEREN'T THEY? IS THAT RIGHT? YOU HAVE TO ANSWER UP SO SHE CAN TAKE IT DOWN.

A YES, SIR.

Q AND YOU INDICATED THE GUN WAS UNDER HIS LEFT SHOULDER?

A UNDER HIS LEFT -- I DON'T KNOW WHEN HE WAS ROLLED -- I DON'T KNOW IF IT WAS EXACTLY UNDER HIS SHOULDER OR IF IT WAS RIGHT UNDER HIS ARM, HIS ELBOW. I CAN'T SAY FOR SURE.

I DIDN'T SEE THE GUN INITIALLY. ONCE HE WAS

ROLLED OVER I SAW THE GUN. THE GUN WAS IN HIS GRASP AT ANY TIME. IT WAS ON HIS LEFT SIDE. AND I CAN'T TELL YOU EXACTLY THE EXACT PROXIMITY OF IT -- OF THE PISTOL AT THAT TIME.

Q OKAY. BUT IT WAS UNDER HIM; RIGHT?

A I SUPPOSE. I DIDN'T SEE IT UNTIL HE WAS MOVED, SO I DON'T KNOW IF IT WAS BESIDE HIM, UNDER HIM OR WHAT.

Q OKAY.

A THAT'S MY POINT.

Q AND YOU SAY IT WAS WITHIN HIS GRASP, BUT AT NO POINT DID HE EVER MAKE ANY ATTEMPT TO GRAB THAT GUN; DID HE?

A WELL, AT THE TIME WE DIDN'T KNOW WHERE THE GUN WAS, IF THE GUN WAS IN HIS HANDS BECAUSE WE COULD NOT SEE HIS HANDS, HIS HANDS WERE NOT CLEAR. FOR ALL WE KNEW THE GUN WAS IN HIS HANDS WITH HIS HANDS LAYING DOWN FLAT BY HIS SIDE. COULD HAVE BEEN UNDER HIS PALM.

SO LIKE I SAID WE PERCEIVED WHAT WE HAD AND THE SITUATION WE HAD WAS WE HAD ESSENTIALLY AN ARMED SUBJECT WITH A GUN. WE DIDN'T KNOW WHERE IT WAS BECAUSE WE COULD NOT -- WE COULDN'T SUBDUE HIS HANDS AT THE TIME OR GET HIM TO COMPLY WITH HIS HANDS.

Q I UNDERSTAND. ALL RIGHT. I'M SURE IT WAS A VERY INTENSE SITUATION, BUT THE QUESTION WAS AT NO TIME AS YOU DESCRIBED HIS HANDS WERE DOWN BY HIS SIDES -- AND AT NO TIME DID YOU SEE HIM ATTEMPT TO REACH FOR THE GUN?

A I DON'T KNOW. I MEAN, I PERSONALLY DIDN'T SEE HIM REACH FOR THE GUN.

Q THAT'S WHAT I'M SAYING.

A I DON'T -- NO.

Q YOU NEVER SAW HIM REACH FOR THE GUN?

A I COULD NOT CLEAR -- I COULD NOT WATCH BOTH HIS HANDS AT ALL TIMES. WE HAD OTHER OFFICERS THAT WE HAD BEEN TRYING TO SUBDUE HIS HANDS. IT WAS DONE PRETTY QUICKLY LIKE I SAID, TO GRAB HIS HANDS, BECAUSE THERE WASN'T A PERIOD OF -- A LONG PERIOD OF TIME -- FOR HIM TO GET THE GUN AFTER WE INITIALLY MOVED IN.

BUT BEFORE WE MOVED IN, OF COURSE, THE POTENTIAL WAS THERE.

Q OKAY. AND THE GUN YOU SAW, DID IT APPEAR TO BE WHAT'S PREVIOUSLY -- LET ME SEE. PREVIOUSLY BEEN MARKED STATE'S EXHIBIT 50 FOR IDENTIFICATION PURPOSES?

A THAT APPEARS TO BE IT.

Q THAT APPEARS TO BE THE GUN?

A YES.

Q OKAY. AND YOU FOUND THIS UNDER HIS LEFT SHOULDER OR RIGHT SHOULDER?

A LEFT SIDE.

Q CORRECT?

A LEFT SIDE.

Q OKAY. THAT GUN WASN'T OFF IN THE WOODS SOMEWHERE?

A THAT'S CORRECT.
Q YOU DIDN'T FIND IT ON THE TRAIL AS YOU WERE TRACKING HIM?
A THAT'S CORRECT.
Q IT WAS RIGHT THERE WITH HIM?
A THAT'S CORRECT.
MR. LITTLEJOHN: THAT'S ALL I HAVE, YOUR HONOR.
THE COURT: REDIRECT?
MR. KOLB: THANK YOU. COME DOWN. CALL STACY GRAHAM (SIC), YOUR HONOR.
(WHEREUPON THE WITNESS LEFT THE STAND).
STACY DRAKEFORD, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:
THE COURT: ONCE YOU GET THE MIKE SITUATED, IF YOU'LL STATE YOUR FULL NAME FOR THE RECORD, SPELL YOUR LAST NAME.
WITNESS: STACY LENORE DRAKEFORD D R A K E F O R D.
THE COURT: THANK YOU.
DIRECT EXAMINATION BY MR. KOLB:
Q MR. DRAKEFORD, HOW ARE YOU EMPLOYED?
A I'M EMPLOYED AS A LIEUTENANT AT THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION.
Q ALL RIGHT. AND WHAT IS YOUR RESPONSIBILITY WITH SLED?
A I AM A SUPERVISOR IN THE ALCOHOL ENFORCEMENT UNITS. IT'S MY FULL TIME JOB.

Q OKAY. AND HOW LONG HAVE YOU BEEN WITH SLED?
A FOUR YEARS AND THREE MONTHS.
Q HOW ABOUT LAW ENFORCEMENT?
A TOTAL OF NINE AND A HALF YEARS.
Q WHAT DID YOU DO BEFORE YOU CAME TO SLED?
A I WAS EMPLOYED BY THE CITY OF BENNETTSVILLE, SOUTH CAROLINA FOR APPROXIMATELY SIX MONTHS. I WAS A STATE TROOPER ASSIGNED TO YORK COUNTY FOR THREE AND A HALF YEARS.
Q ALL RIGHT. AND WHEN YOU MENTIONED ALCOHOL ENFORCEMENT YOUR FULL TIME JOB, YOU ALSO HAVE ANOTHER JOB WITH SLED?
A I'M A MEMBER OF THE SLED SWAT TEAM.
Q COULD YOU EXPLAIN TO THE JURY WHAT THAT IS.
A THAT IS A COMPONENT OF APPROXIMATELY THIRTY-TWO MEN WHO ANSWER A SERIES OF CALLS THROUGHOUT THE STATE OF SOUTH CAROLINA.
Q DO YA'LL RECEIVE -- SWAT TEAM MEMBERS -- RECEIVE SPECIAL TRAINING?
A YES, SIR.
Q ALL RIGHT. COULD YOU TELL US ABOUT SOME OF THE TRAINING AS RELATES TO MAN HUNTS?
A WE RECEIVE TRAINING IN DIFFERENT TYPES OF TECHNIQUES WHEN RUNNING THROUGH THE WOODS, WORKING TOGETHER AND TYPE OF FORMATION SITUATION. AND ALSO GUNS AND HANDLING SUSPECT TYPE THINGS.

Q ALL RIGHT. MR. DRAKEFORD, DID YOU COME TO SUMTER COUNTY ON THE NIGHT OF FEBRUARY THE 26TH, 1996?

A YES, I DID.

Q WOULD YOU TELL US WHAT OCCURRED.

A I RECEIVED A PAGE THAT THERE WAS A REQUEST FOR THE TACTICAL ASSISTANCE TEAM BY THE BLOOD HOUND TRACKING TEAM TO COME TO SUMTER, SOUTH CAROLINA.

Q ALL RIGHT. YOU REMEMBER ABOUT WHAT TIME YOU GOT OVER HERE?

A NO, SIR. I REALLY DON'T.

Q ALL RIGHT.

A I REMEMBER IT WAS DARK AND I WAS AT HOME.

Q ALL RIGHT, SIR. DID YOU GO INTO SOME WOODS?

A NO, SIR. ON THAT PARTICULAR EVENING I WAS ASSIGNED TO WORK WHAT WE CALL THE FLANKING ELEMENT OF THE ACTUAL BLOOD HOUND TEAM, SO I DIDN'T ACTUALLY GO INTO THE WOODS UNTIL LATER THAT EVENING.

Q ALL RIGHT. AND SO WHEN YOU SAY FLANKING ELEMENT, WHAT DO YOU MEAN BY THAT?

A WHILE THE BLOOD HOUND TEAM AND THE SEVERAL MEMBERS OF THE TACTICAL TEAM ARE WORKING IN THE AREA IN THE WOODS, WE ROUTINELY FLANK THEM ON THE OUTER PERIMETER WHERE THEY MAY BE IN HOUSES OR IN THE OUT BUILDINGS THAT THEY MAY COME ACROSS THAT ALL -- WE NEED TO SEARCH.

Q ALL RIGHT. AND IF -- WHAT IF THE SUSPECT IS RUNNING

AWAY FROM THE DOGS BEHIND THE SUSPECT? WHAT'S THE PURPOSE OF -- IS THERE A PERIMETER SET UP?

A THAT IS CORRECT.

Q AND THAT'S WHAT YOU ARE IN EFFECT DOING?

A YES, SIR.

Q WERE THERE OTHER MEMBERS OF LAW ENFORCEMENT BESIDES YOU SLED AGENTS THAT WERE ALSO ASSISTING IN THAT FUNCTION?

A THAT IS CORRECT.

Q NOW, DID YOU EVER HAVE OCCASION TO GO INTO SOME THICK WOODS TO HELP MAKE AN ARREST?

A YES, SIR.

Q TELL US ABOUT THAT.

A AFTER THE BLOOD HOUND TEAM WORKED THE AREA BEHIND THE HOUSE -- AND I CONSIDER THAT TO BE THE LEFT OF THE HOUSE, THE 500 WHICH IS OUR SLED HELICOPTER WAS WORKING THE AREA IN FRONT OF THE BLOOD HOUND TEAM.

AND THEY WAS USING A THERMAL IMAGERY WHICH IS A NIGHT VISION TYPE EQUIPMENT. AND THEY NOTIFIED US THAT THEY HAD SPOTTED SOMETHING THAT APPEARED TO BE HOT.

AND AT THAT POINT THEY IMMEDIATELY PUT ON THE SUN LIGHT WHICH IS -- I CALL WHICH IS A BIG BRIGHT LIGHT AND THEY NOTICED AN OBJECT BELOW THE LIGHT.

Q ALL RIGHT. TELL US ABOUT WHAT YOU DID.

A LIKE I SAID, I WAS ON THE OUTSIDE WORKING THE FLANKING SIDE OF THE DOG TEAM. AND WE APPROACHED A -- WHAT

I CONSIDER TO BE AN OPEN FIELD THAT RAN FROM BEHIND SOME HOUSES, AN OPEN FIELD INTO THE OTHER PART OF THE WOODS.

AND -- IN WHICH THE HELICOPTER WAS HOVERING ABOVE. AND AT THAT TIME THE DOG TEAM WAS RIGHT BEHIND THE HELICOPTER AND THEY NOTIFIED US TO HOLD UP TILL THEY GOT THERE.

ONCE THEY -- ONCE WE STARTED TO CROSS THE FIELD, WE IMMEDIATELY GOT UP WITH THE TRACKING TEAM AND PROCEEDED TO TRY TO GO THROUGH THE WOODS.

Q TELL US ABOUT THOSE WOODS, IF YOU WOULD.

A THEY WERE VERY THICK. THEY WAS -- HAD A LOT OF BRIARS. I WAS CARRYING A LONG GUN WHICH IS MY L15. IT GOT HUNG UP SEVERAL TIMES TRYING TO GO THROUGH THE WOODS.

Q ALL RIGHT. DID YOU IN FACT GET INJURED AND SCRATCHED UP?

A YES, SIR.

Q ALL RIGHT. CAN YOU IDENTIFY THIS PHOTOGRAPH?

A YES, SIR. THAT WAS A PHOTOGRAPH TAKEN OF MY RIGHT ARM IN THE FORENSIC BUILDING AT SLED.

Q HOW LONG WAS THAT AFTER YOU ACTUALLY GOT SCRATCHED THAT NIGHT?

A I DON'T REMEMBER. I WANT TO SAY AT LEAST A WEEK AND A HALF, TWO WEEKS.

Q ALL RIGHT, SIR.

MR. KOLB: YOUR HONOR, WE'D LIKE THE OFFER THIS INTO

EVIDENCE.

MR. LITTLEJOHN: NO OBJECTION.

THE COURT: VERY WELL. ALLOWED INTO EVIDENCE AT THIS POINT. STATE'S EXHIBIT 59, A PHOTOGRAPH INTO EVIDENCE WITHOUT OBJECTION.

(STATE'S EXHIBIT NO. 59 MARKED FOR EVIDENCE).

(WHEREUPON QUESTIONING RESUMED).

Q DID YOU -- WERE YOU ABLE TO EVENTUALLY -- TO GET TO THE LOCATION WHERE THE SUSPECT WAS?

A EXCUSE ME, SIR?

Q WERE YOU ABLE TO EVENTUALLY GET TO THE LOCATION WHERE THE SUSPECT WAS?

A YES, SIR.

Q TELL US ABOUT WHAT HAPPENED THERE.

A LIKE I SAID, IT WAS SO THICK THAT WE TRIED TO -- THE TEAM TRIED TO GET ON LINE LIKE WE CALL IT, A FLANKING MOVEMENT AND WORK TOGETHER AS A TEAM.

BUT IT WAS SO THICK THAT SOME AGENTS ACTUALLY ARRIVED A FEW SECONDS AHEAD OF OTHER AGENTS. AND I WAS KIND OF LIKE IN THE MIDDLE BECAUSE I HAD GOT HUNG UP A LITTLE BIT.

Q ALL RIGHT, SIR. AND JUST TELL US WHAT HAPPENED.

A ONCE I GOT THERE, THEY WERE -- THE AGENTS -- OTHER AGENTS OF SLED WAS TRYING TO GIVE VERBAL COMMANDS TO AN INDIVIDUAL WHO WAS LAYING BETWEEN TWO TREES. WAS A WHITE

MALE.

AND HE PROCEEDED TO IN MY OPINION TO RESIST. HE WOULDN'T COMPLY BY PLACING HIS HANDS BEHIND HIS BACK OR STANDING UP.

Q ALL RIGHT. WHAT -- SO WHAT WAS DONE?

A BASICALLY WHAT WE DID IS ONE HANDED A -- GOT HANDCUFFED. AND THEN ONCE THEY TRIED TO ROLL HIM OVER, THEN THE SPECIAL AGENT HUNTER NOTICED THAT THERE WAS A GUN.

HE YELLED GUN. SO THEY IMMEDIATELY FLIPPED HIM ON OVER AND TRIED TO -- TRY TO SUBDUE HIM.

Q WHAT DID YOU GRAB?

A AT THAT PARTICULAR MOMENT -- ONCE -- I DIDN'T GRAB ANYTHING. I WAS JUST THERE BECAUSE IT WAS OTHER AGENTS THERE AND IN MY OPINION THERE WAS ENOUGH TO DO THE APPROPRIATE JOB, SO I BASICALLY STOOD BACK.

ONCE WE FINALLY GOT HIM UP, I THEN -- I TOOK CONTROL BECAUSE IT WAS SO THICK SO THEY JUST HANDED HIM TO ME AND I PROCEEDED WITH TWO MORE AGENTS TO WALK HIM OUT THE WOODS.

Q ALL RIGHT, SIR. SO YOU ACTUALLY TOOK HIM FROM THE TIME THAT HE GOT HAND CUFFED ON OUT THE WOODS?

A YES, SIR.

Q DID HE COOPERATE WITH YOU OR GO IN THE---.

A NO, SIR.

Q TELL US ABOUT THAT.

A HE WAS STILL IN MY OPINION WAS TRYING TO RESIST. WE WAS TELLING HIM TO WALK BECAUSE IT WAS SO THICK THAT I WAS HAVING A HARD ENOUGH TIME TRYING TO WALK MYSELF.

AND INSTEAD OF TRYING TO CARRY HIM -- AND THAT'S BASICALLY WHAT WE HAD TO DO. ANOTHER AGENT AND MYSELF WAS TO TRY TO CARRY HIM OUT THE WOODS.

Q ALL RIGHT, SIR. DID YOU OR ANYONE EVER STRIKE HIM IN ANY WAY IN THE COURSE OF ANY OF THIS?

A NO, SIR.

Q ALL RIGHT. WHAT KIND OF CLOTHING WAS MR. STONE WEARING?

A HE WAS WEARING A -- I WANT TO SAY IT WAS EITHER RED OR SOME TYPE OF -- JUST A SHIRT AND A REGULAR PAIR OF PANTS.

Q ALL RIGHT, SIR. CAN YOU IDENTIFY THE DEFENDANT IN THE COURTROOM?

A YES, SIR. IT'S THE GENTLEMAN SITTING BETWEEN THE TWO GENTLEMAN IN THE SUITS. HE LOOKS A LITTLE BIT DIFFERENT. HE DIDN'T LOOK THAT WAY THAT NIGHT, BUT THAT'S HIM.

Q ALL RIGHT, SIR. AND I WANT TO SHOW YOU EXHIBIT 56 FOR IDENTIFICATION. DOES THAT LOOK LIKE THE -- CAN YOU RECOGNIZE THIS?

A THAT APPEARED TO BE WHAT HE HAD ON THAT NIGHT, BUT I AM NOT REALLY SURE. I KNOW IT WAS SOMETHING RED OR ORANGE

IN COLOR.

Q ALL RIGHT. THANK YOU. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

CROSS-EXAMINATION BY MR. LITTLEJOHN:

Q AGENT DRAKEFORD, YOU WEREN'T DRESSED LIKE THAT THAT NIGHT; WERE YOU?

A NO, SIR.

Q HOW MANY -- ONCE YA'LL STARTED PUTTING THE HANDCUFFS ON BOBBY STONE, HOW MANY AGENTS WERE THERE THERE AT THE TREES?

A AT THE TREES. TO BE HONEST WITH YOU, I COULDN'T TELL YOU TO BE FRANKLY HONEST.

Q WHAT'S YOUR BEST ESTIMATE?

A LET ME SEE. IF YOU GIVE ME A MINUTE, I...

Q SURE.

A IN THE RANGE OF TEN TO FIFTEEN.

Q TEN TO FIFTEEN?

A THAT I COULD REMEMBER.

Q OKAY. BOBBY STONE OVER HERE, WHAT WOULD YOU ESTIMATE HE IS ABOUT 5-3?

A I GUESS. I DON'T KNOW.

Q ABOUT 130 POUNDS?

A I DON'T KNOW.

Q OKAY.

MR. LITTLEJOHN: NO FURTHER QUESTIONS.

THE COURT: REDIRECT?

MR. KOLB: NOTHING FURTHER.

THE COURT: YOU MAY COME DOWN, SIR.

(WHEREUPON THE WITNESS LEFT THE STAND).

MR. KOLB: CALL RICHARD HUNTON, YOUR HONOR.

RICHARD HUNTON, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: ONCE YOU POSITION YOURSELF, GET THE MIKE SITUATED, STATE YOUR FULL NAME FOR THE RECORD.

WITNESS: RICHARD EDWIN HUNTON, JR. LAST NAME SPELLED H U N T O N

DIRECT EXAMINATION BY MR. KOLB:

Q MR. HUNTON, HOW ARE YOU EMPLOYED?

A I'M EMPLOYED AS A SPECIAL AGENT WITH THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

Q HOW LONG HAVE YOU BEEN AT SLED?

A SINCE 1989.

Q AND HOW LONG IN LAW ENFORCEMENT?

A SINCE 1989.

Q WHAT IS YOUR RESPONSIBILITY AT SLED?

A I'M AN INVESTIGATOR ASSIGNED TO THE PIEDMONT REGION OF SLED.

Q ALL RIGHT. ARE YOU -- DO YOU HAVE ANY SPECIAL RESPONSIBILITIES AT SLED?

A YES, SIR. MOST OF MY INVESTIGATION INVOLVED DEATH

INVESTIGATIONS OF INDIVIDUALS UNDER THE AGE OF EIGHTEEN.
Q ALL RIGHT. AND DO YOU WORK WITH THE SWAT TEAM?
A YES, SIR. I'M ASSIGNED TO THE SWAT TEAM AS WELL AS TRAINING SECTION.
Q ALL RIGHT. WERE YOU CALLED TO SUMTER COUNTY ON THE NIGHT OF FEBRUARY 26TH 1996?
A YES, SIR. I WAS.
Q AND WHAT WAS THE PURPOSE OF THAT?
A WE RECEIVED A CALL THAT AN INDIVIDUAL HAD SHOT A DEPUTY AND WE WERE TO RESPOND TO SUMTER COUNTY AND TO APPREHEND THAT INDIVIDUAL.
Q ALL RIGHT. DID YOU WORK WITH THE DOG TEAM OR A HELICOPTER OVERHEAD TO TRY TO LOCATE THE SUSPECT?
A YES, SIR. SURE DID. AS PART OF WHAT WE -- TACTICAL ASSISTANCE TEAM WHICH IS A GROUP OF INDIVIDUALS FROM THE SWAT TEAM.
Q ALL RIGHT. TELL US ABOUT THE -- WERE YOU PRESENT FOR THE ACTUAL ARREST OF THE DEFENDANT, BOBBY WAYNE STONE?
A YES, SIR. I WAS.
Q TELL US ABOUT WHAT OCCURRED.
A OKAY. WE HAD TRACKED THE INDIVIDUAL THROUGH THE WOODS FOR QUITE SOME TIME. I DON'T KNOW EXACTLY HOW LONG. WE TRIED TO DO IT IN A METHODICAL WAY, A CAREFUL WAY TO INSURE OUR SAFETY.
AND THE CALL CAME ACROSS OUR HAND HELD RADIO

THAT THE HELICOPTER HAD SPOTTED WHAT THEY TERMED A HOT SPOT. AND BASICALLY THAT'S WHAT THEY THEIR TERMINOLOGY IS FOR AN INFRA RED HEAT SOURCE OR HEAT SOURCE ON THE GROUND THAT THEY ARE ABLE TO DETECT WITH EQUIPMENT AND THE HELICOPTER.

AND SO THEY THEN TURNED ON A BRIGHT SPOT LIGHT FROM THE HELICOPTER TO DIRECT US IN TO THAT AREA. WE ATTEMPTED -- WE CROSSED A FIELD.

WE ATTEMPTED TO ENTER A HEAVILY WOODED AREA, BUT BECAUSE IT WAS EXTREMELY DIFFICULT TO CROSS -- I MEAN, IT LOOKED LIKE A LOT OF DEBRIS AND RESIDUE LEFT FROM MAYBE HUGO, WE HAD TO SKIRT THAT AREA AND ESSENTIALLY FIND AN OPENING IN THE WOODS THAT WAS A LITTLE BIT MORE EASY FOR US TO GET OURSELVES AND OUR EQUIPMENT IN.

WE APPROACHED, WE CROSSED SEVERAL DOWN TREES. I PERSONALLY FELL IN SOME KIND OF DITCH. I MEAN, IT WAS REAL RUGGED BACK IN THERE.

AND THEN LIKE I SAY THE SPOT LIGHT FROM THE HELICOPTER ILLUMINATED THE AREA THAT THE SUSPECT WAS SUPPOSEDLY IN.

WE APPROACHED THAT INDIVIDUAL AND NOTICED AN INDIVIDUAL LYING ON THE GROUND FACE UP WITH HIS FEET TOWARDS US. ON HIS BACK, LYING ON HIS BACK.

Q COULD YOU SEE HIS HANDS?

A NO, SIR. COULD NOT SEE HIS HANDS. WE CHALLENGED HIM

SEVERAL TIMES. OBVIOUSLY THE FIRST THING WE DID WHEN WE APPROACHED THIS INDIVIDUAL -- WE DIDN'T KNOW IF THE INDIVIDUAL WAS ALIVE OR DEAD, BUT WE CHALLENGED HIM AS IF HE WERE ALIVE TO SHOW US HIS HANDS, YOU KNOW.

RAISE YOUR HANDS. SHOW US YOUR HANDS. AND HE REFUSED TO DO THAT. HE DID NOT DO THAT.

Q ALL RIGHT. SO WHAT HAPPENED AFTER THAT?

A AT THAT POINT WE JUST GRADUALLY APPROACHED THE SUBJECT. AND IT GOT TO POINT THAT WE HAD TO MAKE THE DECISION TO GO AHEAD AND SECURE THE SUSPECT. HE AGAIN CONTINUALLY REFUSED TO SHOW US HIS HANDS, RAISE HIS HANDS.

I MIGHT ADD THE REASON WE WANT TO SEE HIS HANDS IS OBVIOUSLY IF WE CAN SEE HIS HANDS AND SEE THAT THEY ARE EMPTY, HE'S NOT A THREAT TO US, AT LEAST AT THAT POINT.

IF WE CAN SEE A MAN'S HANDS, HE'S NOT GOING TO BE A THREAT TO US IF HE DOES NOT HAVE A WEAPON OR IS NOT GOING TO BE A THREAT WITH A WEAPON.

HE MAY USE HIS HANDS ON US, BUT AT LEAST WE KNOW HE DOESN'T HAVE A -- YOU KNOW -- A PISTOL OR SHOTGUN OR KNIFE OR ANYTHING OF THAT NATURE.

MYSELF AND ANOTHER AGENT THEN QUICKLY RAN TO HIS SIDE, ATTEMPTED TO GAIN CONTROL OF HIS HANDS WHILE THE OTHER AGENTS COVERED OR KEPT US SAFE WITH THEIR WEAPONS DRAWN ON THE SUSPECT AND AGAIN WE ATTEMPTED TO GAIN CONTROL OF HIS HANDS.

TOLD HIM TO GIVE US HIS HANDS SO WE COULD HAND CUFF HIM AND GET HIM UNDER CONTROL. AND AGAIN HE REFUSED ON NUMEROUS OCCASIONS.

AFTER IT DID NOT WORK FOR US TO TRY TO PULL HIS HANDS AWAY FROM HIM AND ACTUALLY -- YOU KNOW -- PHYSICALLY GET HIS HANDS, I ATTEMPTED TO USE A PRESSURE POINT CONTROL TECHNIQUE WHICH IS BASICALLY PRESSING ON A NERVE AREA THAT'S VERY SENSITIVE IN THE JAW AREA WHICH NORMALLY WILL CAUSE SOMEONE TO RELEASE THEIR GRIP OR TO RELEASE THAT HAND AND DO WHAT WE ARE TELLING THEM.

Q THAT'S PART OF YOUR TRAINING?

A YES, SIR. IT IS. AND AGAIN THAT DID NOT WORK. AT THAT POINT ANOTHER AGENT CAME IN BESIDE ME AND ASSISTED ME IN GETTING THE SUSPECT UP.

AND SOMEWHERE IN THAT -- AT THAT TIME I NOTICED A WEAPON LYING AT THE SUSPECT'S LEFT SIDE. AND WHEN I NOTICED THAT WEAPON, I CALLED THAT GUN WHICH IS AN INDICATION TO ALL THE AGENTS, ALL THE LAW ENFORCEMENT AGENTS INVOLVED, THAT THERE IS A WEAPON PRESENT, THAT THEY NEED TO BE VERY AWARE OF WHERE IT IS AND THAT THERE IS A WEAPON.

AND I PRETTY MUCH BROKE AWAY FROM THE SUSPECT TO PROTECT THAT WEAPON AND KEEP HIM AWAY FROM THE WEAPON.

Q ALL RIGHT, SIR. DID YOU ACTUALLY -- LET ME ASK YOU... CAN YOU IDENTIFY WHAT IS SHOWN IN STATE'S EXHIBIT NO. 40?

A STATE'S EXHIBIT NUMBER 40 IS A COLOR PHOTOGRAPH WHICH EXHIBITS THE WEAPON THAT I SAW DURING THIS STRUGGLE TO GAIN CONTROL OF THE SUSPECT.

AND THIS IS THE WEAPON THAT I STAYED WITH IN THE WOODS FROM THE TIME THAT I SAW IT UNTIL THE FORENSIC AGENT FROM SLED, AGENT TOM DARNELL, CAME AND COLLECTED IT.

Q DURING PART OF THAT TIME WAS RAY MACKESSY OVER HERE STAYING WITH YOU?

A YES, SIR. MR. RAY MACKESSY WITH THE SHERIFF'S OFFICE ALSO STAYED IN THE WOODS WITH ME UNTIL AGENT DARNELL CAME.

Q AND EXHIBIT 50 FOR IDENTIFICATION, DOES THIS APPEAR TO BE THE SAME GUN?

A LOOKING AT STATE'S EXHIBIT 50, THIS IS A HIGH STANDARD SUPERMATIC (SIC) CITATION, 22 PISTOL WITH BARREL WEIGHTS, SILVER IN COLOR. AND THAT'S EXACTLY THE WAY I REMEMBERED IT.

Q ALL RIGHT. AGENT HUNTON, DID YOU OR ANYONE EVER STRIKE OR KICK THE DEFENDANT IN THE COURSE OF MAKING THE ARREST?

A NOT THAT I AM AWARE OF, SIR.

Q WERE YOU INJURED IN THE COURSE OF MAKING THE ARREST OR MAKING YOUR WAY THROUGH THE WOODS TO MAKE THE ARREST?

A WELL, YES, SIR. LET ME BACK UP AGAIN. AND JUST GIVE YOU AN IDEA OF WHAT THE WOODS LOOKED LIKE. IF YOU ARE FAMILIAR WITH THESE LARGE VINES WITH BRIARS ON THEM, BIG

AS YOUR THUMB, SOMETIMES BIGGER.

THE ENTIRE WOODED AREA THAT WE SEARCHED WAS COMPLETELY ENTANGLED WITH THESE VINES, INCLUDING -- I MEAN, JUST LARGE -- I MEAN TWO AND THREE FEET IN DIAMETER TREES THAT WE HAD TO -- YOU KNOW -- GET OVER WHILE WE ARE RUNNING, A DITCH THAT I FELL INTO WITH SEVERAL FEET OF WATER.

Q DID YOU HAVE A FLASHLIGHT?

A YES, SIR. I HAD A FLASHLIGHT. AND EVEN WITH A FLASHLIGHT IT WAS -- IT WAS PRETTY TOUGH GOING. HAD ON HEAVY CLOTHING. YOU KNOW -- OBVIOUSLY TEAR RESISTANT CLOTHING, BUT STILL I GOT A NUMBER OF SCRATCHES AND CUTS ON THE LEGS, ARMS, AND GOT A BRUISE ON MY INNER RIGHT THIGH.

Q WERE PICTURES TAKEN SOME OF THOSE SCRATCHS AND THAT BRUISE?

THE COURT: MR. SOLICITOR, PLEASE APPROACH OVER HERE.

(WHEREUPON A BENCH CONFERENCE WAS HELD).

THE COURT: MOVE ON.

(WHEREUPON QUESTIONING RESUMED).

Q CAN YOU IDENTIFY THE DEFENDANT IN THE COURTROOM?

A YES, SIR. HE'S THE GENTLEMAN SITTING AT THAT TABLE ON MY RIGHT WITH THE BLUE SHIRT AND BLUE TIE, GLASSES.

Q ALL RIGHT. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

THE COURT: YOU MAY CROSS-EXAMINE.

MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION BY MR. LITTLEJOHN:

Q SPECIAL AGENT HUNTON, VERY BRIEFLY, WHEN YOU GOT CLOSE TO BOBBY STONE TO MAKE THE ARREST, ISN'T IT TRUE, SIR, THAT YOU DETECTED A HIGH LEVEL OF ALCOHOL ON HIS PERSON?

A I COULD SMELL ALCOHOL WHEN WE GOT CLOSE TO HIM. I DON'T KNOW IF HE HAD BEEN DRINKING OR SPILLED IT ON HIMSELF OR WHAT THE SITUATION WAS, BUT I DID SMELL ALCOHOL.

Q AND IT WAS VERY NOTICEABLE TO YOU; WASN'T IT?

A YES, SIR. OF COURSE WE WERE RIGHT IN HIS FACE.

Q OKAY. THANK YOU, SIR. NO FURTHER QUESTIONS.

THE COURT: REDIRECT?

MR. KOLB: THANK YOU. CALL DAVID MCCLURE.

THE COURT: YOU MAY STEP DOWN. THANK YOU.

(WHEREUPON THE WITNESS LEFT THE STAND).

MR. LITTLEJOHN: YOUR HONOR, AS I UNDERSTAND IT THIS NEXT WITNESS WILL BE CUMULATIVE TO THE LAST THREE.

THE COURT: I DON'T KNOW. I DON'T KNOW WHAT -- YOU KNOW MORE ABOUT IT THAN I KNOW. I DON'T KNOW ANY OF THESE INDIVIDUALS THAT WALK IN. PROBABLY LIKE THE JURY, SEEING THEM FOR THE FIRST TIME.

MR. KOLB: IN LIGHT OF YOUR RULING, THAT WOULD BE THE CASE EXCEPT FOR ONE MATTER. I NEED TO CERTAINLY CALL THEM.

THE COURT: ANY NEW MATTER, BUT I WANT YOU -- IF IT'S A NEW MATTER, I WANT YOU TO GO SPECIFICALLY TO THE NEW MATTER.

MR. KOLB: ALL RIGHT, SIR.

THE COURT: WE DON'T NEED TO HEAR ABOUT THE PROCESS. THE JURY HAS HEARD THAT.

THE COURT: STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST .

WITNESS: DAVID MCCLURE M C C L U R E

DAVID MCCLURE, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: THANK YOU, SIR

DIRECT EXAMINATION BY MR. KOLB:

Q MR. MCCLURE, HOW ARE YOU EMPLOYED?

A I WORK FOR STATE LAW ENFORCEMENT DIVISION.

Q WHAT'S YOUR RESPONSIBILITY?

A MY PRIMARY RESPONSIBILITY IS IN FORENSIC LABORATORY. I DO D N A ANALYSIS. AND I'M ALSO ASSIGNED TO OUR SWAT TEAM.

Q ALL RIGHT. DID YOU PARTICIPATE IN TRACKING MR. STONE AND IN THE ACTUAL ARREST OF MR. STONE?

A YES, SIR. I WAS.

Q THE ONLY THING I WANT TO ASK YOU ABOUT IS DURING THE TRACKING PROCESS, DID YOU COME ACROSS A FIRED SHOT GUN SHELL?

A YES, SIR. WE DID.
Q WHAT DID YOU DO WITH THAT?
A WE LEFT THAT SHELL WHERE IT WAS AND NOTIFIED THE SHERIFF'S DEPARTMENT OF WHERE IT WAS.
Q ALL RIGHT. AND DID YOU SHOW IT TO IRA PARNELL WITH SLED?
A YES, SIR. WE DID.
Q ALL RIGHT.

MR. KOLB: IN LIGHT OF YOUR RULING, JUDGE, THAT'S ALL I WILL ASK.

THE COURT: VERY WELL. YOU MAY CROSS-EXAMINE.

MR. LITTLEJOHN: NO QUESTIONS.

THE COURT: YOU MAY COME DOWN.

(WHEREUPON THE WITNESS LEFT THE STAND).

THE COURT: CALL YOUR NEXT WITNESS.

MR. KOLB: JUDGE, WE NEED TO CHECK SOME MATTERS.

THE COURT: SURE.

(WHEREUPON THERE WAS A PAUSE).

THE COURT: TAKE YOUR TIME.

(WHEREUPON THERE WAS A PAUSE).

MR. KOLB: DOUG BRANNON, YOUR HONOR.

THE COURT: ALL RIGHT, SIR. COME FORWARD, PLEASE.

DOUG BRANNON, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

MR. KOLB: JUDGE, CAN WE APPROACH, SIR?

THE COURT: SURE.

(WHEREUPON A BENCH CONFERENCE WAS HELD).

THE COURT: LADIES AND GENTLEMEN, THERE'S A MATTER OF LAW I NEED TO TAKE UP OUT OF YOUR PRESENCE. PLEASE GO TO YOUR JURY ROOM. DO NOT DISCUSS THIS CASE AMONG YOURSELVES. DO NOT BEGIN YOUR DELIBERATIONS. THANK YOU.

(WHEREUPON THE JURY LEFT THE COURTROOM AT 4:57 P.M.)

MR. KOLB: JUDGE, THE DISCOVERY DOESN'T MATTER. THEY HAVE IT. HE GAVE A STATEMENT THAT -- THEY HAVE IT.

THE COURT: ALL RIGHT.

MR. KOLB: IT'S IN THE STATEMENT. SO THEY DO HAVE IT.

THE COURT: ALL RIGHT.

MR. KOLB: STILL WAS NOT IN THE COURSE OF INTERROGATION, BUT IT WASN'T DISCOVERABLE.

THE COURT: APPRECIATE YOUR DETERMINATION, BUT I GUESS IT'S MY CALL.

MR. KOLB: YES, IT IS.

THE COURT: THANK YOU, SIR. YOU MAY PROCEED.

DIRECT EXAMINATION BY MR. KOLB:

Q MR. BRANNON, COULD YOU TELL US ABOUT ANY STATEMENTS THAT MR. STONE MADE IN YOUR PRESENCE?

A YES, SIR. AT THE POINT OF ARREST AS I RECALL, WOULD HAVE BEEN THE ONLY TIME I WAS AROUND MR. STONE, I RECALL -- AND I DON'T RECALL THE EXACT VERBATIM, BUT THE WORDS

TO THE EFFECT AT THE TIME OF THE ARREST -- AND PARDON THE COURTS INDULGENCE USING THE LANGUAGE -- SOMETHING TO THE EFFECT OF GO AHEAD AND FUCK ME UP, GO AHEAD AND -- YOU KNOW -- YA'LL WANT TO. GO AHEAD AND MESS ME UP, THOSE KINDS OF WORDS.

Q ALL RIGHT, SIR. WAS THAT IN RESPONSE TO ANY INTERROGATION OR QUESTIONING OF HIM BY ANYONE?

A NO, SIR. THAT WAS IN RESPONSE APPARENTLY TO THE PHYSICAL ACT OF ARREST.

Q ALL RIGHT, SIR. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

THE COURT: CARE TO CROSS-EXAMINE AS TO THE STATEMENT?

MR. LITTLEJOHN: JUST BRIEFLY.

CROSS-EXAMINATION BY MR. LITTLEJOHN:

Q OFFICER BRANNON, WHERE WAS MR. STONE WHEN THESE STATEMENTS WERE MADE?

A I'M SORRY.

Q WHERE WAS MR. STONE?

A THIS WAS AT THE PHYSICAL SITE IN THE WOODS WHERE HE WAS ARRESTED.

Q OKAY. BUT THIS WAS AFTER THE AGENTS HAD GONE IN AND LIEUTENANT POWELL HAD PUT HIS FOOT ON BOBBY'S CHEST AND TRYING TO HAND CUFF?

A IT WAS AFTER HE WAS TAKEN INTO CUSTODY. AT THAT POINT

THERE DURING THE HANDCUFFING AND TAKING HIM TO A VEHICLE. IN BETWEEN THOSE TWO POINTS THERE.

Q BETWEEN THE PLACE HE WAS HAND CUFFED AND TAKING HIM TO THE VEHICLE?

A YEAH. DURING THAT PERIOD OF TIME THERE.

Q OKAY. WERE YOU ONE OF THE OFFICERS WHO WAS ESCORTING HIM?

A I WAS PRESENT.

Q TO THE VEHICLE?

A YES, SIR.

Q OKAY. AND AT THAT POINT I BELIEVE YA'LL HAD HIM IN AN ARM LOCK?

A I WAS PROBABLY -- YEAH, THAT'D PROBABLY BE SAFE TO SAY. HAND CUFFED BEHIND HIS BACK BEING ESCORTED BEHIND THE WOODS.

Q ACTUALLY AGENTS HAD THEIR ARMS UP UNDER HIS ARMS?

A THAT'S PROBABLE, YES, SIR.

Q PHYSICALLY PICKED HIM UP OFF THE GROUND?

A YES, SIR, BECAUSE HE WAS NOT COOPERATING AT ALL.

Q OKAY. WERE YOU ONE OF THE OFFICERS ESCORTING HIM?

A I WAS PRESENT. IF YOU WANT TO CALL THAT ESCORTING HIM. BEING ONE OF THE LOCAL OFFICERS, PRETTY MUCH HAD AN IDEA OF WHERE WE WERE AT.

Q OKAY. YOU DIDN'T HAVE HIM IN AN ARM LOCK, THOUGH. SOMEBODY ELSE DID?

A NO, SIR. I WAS PHYSICALLY IN THE ROOM IF YOU WILL JUST AS WE ARE NOW. I WAS THERE.

Q OKAY. YOU WERE JUST RIGHT THERE IN HIS PRESENCE?

A THAT'S RIGHT.

Q OKAY.

MR. LITTLEJOHN: YOUR HONOR, THAT'S ALL I HAVE. THAT WAS IN HIS STATEMENT, THOSE TWO QUOTES.

THE COURT: VERY WELL. VERY WELL. CLEARLY NOT RESPONSE TO INTERROGATION, CLEARLY VOLUNTARY STATEMENT ON THE BEHALF.... WILL NOT BE COVERED TO AFFECT THE FIFTH AMENDMENT RIGHTS OF THE DEFENDANT.

MR. KOLB: WELL, JUDGE, WHILE THE JURY IS OUT....

MR. LITTLEJOHN: YOUR HONOR, PUT ON THE RECORD THAT WE'D OBJECT TO THE INTRODUCTION OF THIS STATEMENT AS NOT BEING...

THE COURT: I ASSUMED THAT AND THEN YOU ARE CORRECT. THE RECORD NOW IS COMPLETE WITH YOUR OBJECTION. THAT'S WHY WE ARE AT THIS POINT IN THE FIRST PLACE.

MR. KOLB: JUDGE, AS I UNDERSTAND IT'S...

THE COURT: WHAT'S YOUR OBJECTION? FOR THE RECORD IF YOU WOULD -- EXCUSE ME, MR. SOLICITOR.

MR. KOLB: YES, SIR. I'M SORRY.

MR. LITTLEJOHN: YOUR HONOR, I GUESS MY OBJECTION IS JUST GIVEN THE CIRCUMSTANCES I DON'T SEE HOW THIS STATEMENT -- HOW BE IT WHETHER IT WAS AN INTERROGATION OR

NOT COULD BE DEEMED VOLUNTARY STATEMENT GIVEN THE CIRCUMSTANCES OF THE ARREST.

THE COURT: ALL RIGHT, SIR. THANK YOU, SIR. AND I WOULD OVERRULE THE OBJECTION. STATE ALSO DOES -- STATEMENT NOT PROTECTED STATEMENT. ALL RIGHT. NOW, MR. SOLICITOR.

MR. KOLB: THANK YOU, SIR. WAIT JUST A SECOND. NO, NOT...

THE COURT: NOW, MR. SOLICITOR. YES, SIR.

MR. LITTLEJOHN: LET ME ADD ANOTHER GROUND MR. BABB BROUGHT TO MY ATTENTION. WE ALSO OBJECT ON THE GROUNDS THAT THE PROBATIVE VALUE OF THIS EVIDENCE OUT WEIGHS THE PREJUDICIAL EFFECT THAT IT WILL HAVE ON THE JURY.

THE COURT: ALL RIGHT. AND I CERTAINLY -- BUT FOR SOME ISSUES THAT MAY ARISE AND MAY BE PRESENTED I THINK AT THIS POINT IT HAS SIGNIFICANCE. I THINK THE PROBATIVE VALUE OUT WEIGHS THE PREJUDICE. THANK YOU.

MR. KOLB: JUDGE, I WAS NOT GOING -- IN LIGHT OF YOUR RULING ABOUT DON'T GO INTO ANY MORE ABOUT HOW MUCH HE WAS RESISTING.

THE COURT: LETS PUT THAT ON THE RECORD. THE RECORD CLEARLY HAS CONTAINED NUMEROUS STATEMENTS BY VARIOUS WITNESSES DESCRIBING THE PROCEDURE, IN DETAIL DESCRIBING THE WOODED AREA, WE HAVE HAD PHOTOGRAPHS DEPICTING THE WOODED AREA.

WE HAVE EVERYONE WHO HAS TESTIFIED OF HAVING

DIFFICULTY ENTERING THE AREA, ALSO THE DESCRIPTIONS OF THE DEFENDANT LYING DOWN AND EACH ONE SAYING HE FAILED TO RESPOND.

THE COURT UNDER RULE 611 FOUND THAT ANY FURTHER TESTIMONY IN THIS POINT WAS CUMULATIVE AND MAY HAVE A PREJUDICIAL EFFECT WHICH WOULD OUT WEIGH SIGNIFICANTLY ANY PROBATIVE VALUE OF SUCH TESTIMONY.

AND FOR THAT REASON I LIMITED THE STATE FROM FURTHER EXAMINATION AS TO THE PROCEDURE IMPLEMENTED ON THAT NIGHT, THE DENSITY OF THE WOODS AND THE INJURY TO THE INDIVIDUALS.

AS I HAVE FURTHER INDICATED TO THE SOLICITOR EARLIER TODAY PRIOR TO THE COMMENCEMENT OF THE AFTERNOON SESSION, THAT IF IT BECOMES AN ISSUE DURING -- AT ANY POINT DURING THIS TRIAL -- DURING REPLY HE WILL BE ALLOWED TO PURSUE THAT IF NECESSARY. NOW THE RECORD IS COMPLETE, MR. SOLICITOR. ALL RIGHT, SIR.

MR. KOLB: JUDGE, I WOULDN'T ARGUE. I DID NOT REALIZE YOU HAD---.

THE COURT: I JUST WANTED THE RECORD CLEAR SINCE YOU MENTIONED SEVERAL TIMES THAT I WAS LIMITING THE STATE. YES, SIR.

MR. KOLB: YES, SIR. THE -- I WAS NOT SURE THAT I KNEW THE COURT HAD RULED IN REGARD TO ANY RESISTANCE OF ARREST, BUT I WAS NOT SURE THE COURT HAD RULED THAT WE

COULD NOT SHOW INJURIES TO THE OFFICERS.

AND MR. BRANNON HAD EXTENSIVE INJURIES THAT WE HAVE DOCUMENTED. YOU NOW MADE CLEAR THAT THAT IS THE RULING AND I WILL WAIT FOR REPLY IF IT COMES UP.

THE COURT: THANK YOU, SIR.

MR. KOLB: JUDGE, ONE OTHER THING I NEED TO DEAL WITH. OF COURSE, WE HAVE ALREADY HAD THE JACKSON DENO HEARING ON THE STATEMENTS AND YOU HEARD THAT MR. STONE ACCUSED BUSTER EDWARDS OF KICKING HIM WITH HIS FOOT -- AND -- WHILE HE WAS SITTING IN THE LAW ENFORCEMENT CENTER.

WE HAVE A NUMBER OF OTHER WITNESSES THAT ARE HERE THAT I -- IN LIGHT OF THIS RULING -- I WON'T BE CALLING AT THIS TIME, BUT I WOULD LIKE TO CALL...

THE COURT: MR. SOLICITOR, BUSTER EDWARDS IS WHO?

MR. KOLB: HE'S A SLED AGENT WHO WAS NOT PRESENT AT THE TIME OF THE ARREST, HAD NOTHING TO DO WITH IT.

THE COURT: THAT'S FINE.

MR. KOLB: ONLY CAME INTO THE LAW ENFORCEMENT CENTER AND WAS ACCUSED BY STONE.

THE COURT: MY RULING PERTAINS TO WHAT TOOK PLACE THERE. YOU MOVED THE SCENE -- CHANGED THE SCENE, I HAVEN'T -- THAT SCENE HASN'T BEEN DESCRIBED, SIR.

MR. KOLB: JUST WANTED TO MAKE SURE I WASN'T TRANSGRESSING.

THE COURT: I SIMPLY STATED YOU COVERED THE SCENE IN

THE WOODS FROM VARIOUS ANGLES AND I THINK THE JURY HAS A GOOD PICTURE OF WHAT EXISTED THAT NIGHT AND THAT'S THE WHOLE PURPOSE OF TESTIMONY, NOT TO GIVE THE JURY OR OVERWHELM THE JURORS, TRY TO SWAY THE JURY TO BECOME ANGRY OR UPSET AND I KNOW YOU ARE NOT GOING TO DO THAT.

BUT MERELY TO CREATE A PICTURE THAT SIMPLY THE JURY CAN UNDERSTAND THE WHOLE CIRCUMSTANCE. YOU HAVE DONE THAT. NOW WE WILL HAVE ANOTHER SETTING THAT HAS TO BE PAINTED AND THE PICTURE MAY BE PAINTED.

I WOULD ANTICIPATE AND PROBABLY AS EXPECTED THAT WE WOULD HEAR TESTIMONY FROM MR. EDWARDS OF HIS INVOLVEMENT AND CERTAINLY I AM NOT RESTRICTING THE STATE IN THAT REGARD.

MR. KOLB: THANK YOU. JUDGE, MY WHOLE THING WAS I WAS CONCERNED THAT -- WELL -- THERE WERE HOW MANY OFFICERS WERE THERE AND TESTIFIED, MUST HAVE BEEN THOSE OTHER GUYS THAT BEAT HIM UP.

THE COURT: AGAIN MR. SOLICITOR, YOU KNOW THE BEAUTY OF THAT. IN ORDER TO BE ABLE TO ARGUE THAT, INSOFAR AS THIS JUDGE IS CONCERNED IN CLOSING ARGUMENT, THERE HAS GOT TO BE SOME EVIDENCE IN THIS PROCEEDING THAT THAT OCCURRED IN THE FIRST PLACE.

MR. KOLB: YES, SIR.

THE COURT: AND AS WE TALKED AT THE BREAK, I BELIEVE YOU HAVE SOMETHING CALLED REPLY.

MR. KOLB: YES, SIR.

THE COURT: AND AT THIS POINT THERE ISN'T ANYTHING IN THE RECORD THAT SUGGESTS THAT ANYBODY DID ANYTHING OTHER THAN WHAT WAS REASONABLE, THAT ONE VIEW OF IT, THAT SOMEBODY IS SUSPECTED OF HAVING A FIREARM AND AN OFFICER DOESN'T KNOW WHAT THIS INDIVIDUAL HAS OR WHERE HE IS, HE'S SITTING THERE AND HE IS NOT RESPONSIVE.

I GUESS A REASONABLE PERSON COULD CONCLUDE I WOULDN'T BLAME HIM IF HE WALKED UP AND JUMPED ON HIS CHEST, YOU KNOW.

SO FROM THE STANDPOINT OF NEEDING TO PRESENT THAT, YOU HAVE GOT COMMON SENSE THAT PEOPLE ARE GOING TO RESPOND, SO WE DON'T NEED TO GO INTO A LOT OF OTHER THINGS. THANK YOU, SIR.

MR. LITTLEJOHN: MIGHT POINT OUT IT'S UP TO THE SOLICITOR WHETHER HE WANTS TO BRING OUT THE STATEMENT ATTRIBUTED TO MY CLIENT CONCERNING BUSTER EDWARDS. HE DOESN'T BRING IT OUT, IT'S NOT...

THE COURT: WELL AGAIN, I -- I COULDN'T AGREE WITH YOU MORE, MR. LITTLEJOHN. I'M NOT GOING TO TRY -- I'M CERTAINLY NOT GOING TO TRY YOUR CASE FOR YOU, MR. SOLICITOR.

BUT I AM GOING TO TAKE VERY SERIOUSLY MY RESPONSIBILITY AS I FORESEE THAT RESPONSIBILITY CREATED BY RULE 611 A.

MR. KOLB: JUDGE, ONE CONCERN IS AS WE OFFERED THE STATEMENT THAT STONE SAID SLED BEAT MY ASS, IF THEY -- THAT'S OUR EVIDENCE. IF THEY DON'T REPLY, I MEAN, IF THEY DON'T PUT UP ANY EVIDENCE, I CAN'T REPLY. AND THAT'S MY CONCERN WHY I'M PUTTING IT UP NOW.

THE COURT: WELL, YOU KNOW YOU'VE GOT -- I BELIEVE HEARD TWO WITNESSES THAT YOU ASKED THE QUESTION TO, ONE OF WHOM WAS A SLED AGENT AND YOU ASKED DO YOU KNOW ANYTHING ABOUT THAT AND HE SAYS NO.

MR. KOLB: YES, SIR.

THE COURT: SO -- YOU KNOW -- AGAIN, YOU HAVE TO LIVE WITH THE INCONSISTENCIES OR CONSISTENCIES OF YOUR STATEMENT, YOU KNOW. YOU'RE PUTTING IT IN AND YOU -- YOU'RE GOING TO ATTACK IT.

THERE ARE A LOT OF THINGS THAT HAVE COME OUT IN THIS THAT AS WELL YOU UNDERSTAND MAY REFLECT ON SOMETHING THE JURY HAS TO PASS ON AND THAT IS THE VOLUNTARINESS OF THIS STATEMENT IN THE FIRST PLACE. ALL RIGHT. ANYTHING FURTHER?

MR. KOLB: NOTHING.

THE COURT: OKAY. READY TO CONTINUE? VERY WELL. LETS BRING THE JURY BACK.

(WHEREUPON THE JURY ENTERED THE COURTROOM AT 5:08 P.M.)

THE COURT: THANK YOU VERY MUCH. NOW MR. BROWN (SIC),

THANK YOU LADIES AND GENTLEMEN. IF YOU WOULD PLEASE STATE YOUR FULL NAME FOR THE RECORD, SIR.

WITNESS: YES, SIR. DOUGLAS W BRANNON.

THE COURT: B R A N N O N? HOW ABOUT THAT?

DIRECT EXAMINATION BY MR. KOLB:

Q HOW ARE YOU EMPLOYED?

A I'M A POLICE OFFICER, CITY OF SUMTER.

Q YOU ASSISTED IN LOOKING FOR MR. STONE ON THE NIGHT OF FEBRUARY 26TH 1996?

A YES, SIR.

Q WERE YOU PRESENT AT OR ABOUT THE TIME OF HIS ARREST?

A I WAS, SIR.

Q DID YOU ASSIST IN GETTING HIM FROM THE POINT OF ARREST OUTSIDE OF THE ARREST?

A YES, SIR.

Q ALL RIGHT. LET ME ASK YOU. DURING THAT TIME DID ANYONE QUESTION MR. STONE IN ANY WAY TRYING TO GET HIM TO MAKE ANY STATEMENTS?

A NO, SIR.

Q DID HE MAKE ANY STATEMENTS NOT IN RESPONSE TO QUESTIONING BY LAW ENFORCEMENT?

A YES, SIR. HE MADE SEVERAL COMMENTS DIRECTED TOWARDS US GENERALLY.

Q ALL RIGHT. COULD YOU STATE THAT, PLEASE.

A YES, SIR. AND I WILL BE PARAPHRASING. I DON'T RECALL

THE EXACT WORDING. DURING THE ACT OF ARREST AND THE ACT OF TAKING HIM TO A VEHICLE, HE COMMENTED TO US SEVERAL TIMES IN VARIATIONS OF -- AND PARDON MY LANGUAGE, BUT I'M GOING TO TRY THE USE THE LANGUAGE THAT WAS USED.

GO AHEAD, BEAT THE FUCK OUT OF ME. YOU KNOW YOU WANT TO, GO AHEAD AND HIT ME, KICK ME, DO SOME OTHER THINGS.

Q ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

A THANK YOU, SIR.

THE COURT: YOU MAY CROSS-EXAMINE.

MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION BY MR. LITTLEJOHN:

Q OFFICER BRANNON, YOU SAID HE MADE THE STATEMENT SEVERAL TIMES?

A IT WAS OVER -- I WON'T SAY CONSTANTLY, JUST FOR MINUTES AT A TIME, BUT HE MADE THEM SEVERAL TIMES, YES, SIR. I HEARD IT MORE THAN ONCE.

Q ALL RIGHT. DO YOU RECALL BEING INTERVIEWED BY CAPTAIN BILL GRAHAM WITH SLED CONCERNING THE CIRCUMSTANCES THAT NIGHT?

A I DO.

Q DID YOU MENTION TO CAPTAIN GRAHAM THAT THESE STATEMENTS WERE MADE SEVERAL TIMES?

A I THINK THE REPORT THAT YOU ARE REFERRING TO IS KIND OF A SUMMATION OF MY STATEMENTS TO CAPTAIN GRAHAM. YES,

SIR.

Q SO YOU DON'T BELIEVE -- YOU HAVE REVIEWED THIS REPORT; HAVE YOU NOT?

A I KNOW THE REPORT YOU'RE REFERRING TO. YES, SIR.

Q SO YOU ARE SAYING THIS REPORT IS NOT ACCURATE?

A I WOULD SAY IT'S PROBABLY ACCURATE. I DON'T KNOW THAT IT'S A VERBATIM REPORT OF WHAT I TOLD CAPTAIN GRAHAM. IT'S PROBABLY NOTES OR SUMMATIONS OF WHAT I TALKED TO HIM ABOUT.

Q IN ANY EVENT, OFFICER BRANNON, WHEN BOBBY MADE THESE STATEMENTS...

A YES, SIR.

Q HE WAS BEING TAKEN FROM THE WOODS TO THE VAN THERE AT THE BOYS CLUB; IS THAT RIGHT?

A THAT'S CORRECT.

Q AND HAS HE -- HAD YA'LL CLEARED THE WOODS WHEN HE MADE THE STATEMENT?

A IN WHAT SENSE? CLEARED IN WHAT SENSE?

Q GOTTEN OUT OF THE WOODS INTO THE FIELD.

A NO, SIR. THIS WAS FROM THE POINT OF ARREST UNTIL GOING INTO THE VEHICLE.

Q OKAY. BUT THIS WAS AFTER MR. STONE HAD BEEN BROUGHT OUT FROM BETWEEN THE TREES, HAND CUFFED?

A HE WAS IN CUSTODY. YES, SIR.

Q AND IN ROUTE FROM THE PLACE WHERE HE WAS ARRESTED TO

THE VAN?

A THAT'S CORRECT.

Q NO FURTHER QUESTIONS.

THE COURT: REDIRECT, MR. SOLICITOR?

REDIRECT EXAMINATION BY MR. KOLB:

Q DID ANY ONE HIT MR. STONE IN ANY WAY ?

MR. LITTLEJOHN: YOUR HONOR, I DON'T BELIEVE THAT'S PROPER REDIRECT.

THE COURT: SUSTAINED. IMPROPER REDIRECT.

MR. KOLB: COME DOWN.

THE COURT: YOU MAY COME DOWN, SIR.

WITNESS: THANK YOU, SIR.

(WHEREUPON THE WITNESS LEFT THE STAND).

MR. KOLB: CALL BUSTER EDWARDS.

BUSTER EDWARDS, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: MR. EDWARDS, IF YOU WOULD POSITION THAT MIKE WHERE YOU ARE COMFORTABLE WITH IT, WHERE YOU NEED IT THEN WILL YOU PLEASE STATE YOUR FULL NAME FOR THE RECORD SPELLING YOUR LAST.

WITNESS: BUSTER EDWARDS, LAST NAME E D W A R D S.

DIRECT EXAMINATION BY MR. KOLB:

Q LIEUTENANT EDWARDS, COULD YOU TELL US HOW YOU ARE EMPLOYED.

A I WORK WITH THE STATE LAW ENFORCEMENT DIVISION.

Q ALL RIGHT. DID YOU HAVE OCCASION TO COME TO SUMTER COUNTY ON THE EVENING OF THE 26TH OF FEBRUARY 1996?
A YES, SIR. I DID.
Q WHAT TIME APPROXIMATELY DID YOU GET HERE?
A APPROXIMATELY SHORTLY AFTER 8:30, BETWEEN 8:30 AND 9:00 I ARRIVED.
Q DID YOU PARTICIPATE IN THE ARREST OF BOBBY STONE AT ALL?
A NO, SIR. I DIDN'T.
Q WERE YOU IN THE WOODS WHEN HE WAS ARRESTED AT ALL?
A NO, SIR. I WAS NOT.
Q ANYWHERE IN THE SCENE WHERE HE WAS ARRESTED AND TAKEN INTO CUSTODY?
A CLOSE PROXIMITY. I WAS ON THE PERIMETER.
Q ALL RIGHT. AND -- BUT YOU WERE NOT AROUND WHERE HE WAS ARRESTED?
A NO, SIR. I WAS NOT.
Q WHEN WAS THE FIRST TIME YOU SAW HIM?
A AT THE SHERIFF'S OFFICE WHEN THEY BROUGHT HIM IN.
Q SO THAT'S THE LAW ENFORCEMENT BUILDING ACROSS THE STREET HERE?
A YES, SIR. THAT IS.
Q AND THAT WAS THE FIRST TIME YOU EVER EVEN SAW HIM?
A THAT'S CORRECT, SIR.
Q ALL RIGHT. ANSWER ANY QUESTIONS THAT THE DEFENSE MAY

HAVE.

THE COURT: CROSS-EXAMINE?

MR. LITTLEJOHN: I DON'T HAVE ANY QUESTIONS.

THE COURT: YOU MAY COME DOWN.

WITNESS: THANK YOU, SIR.

(WHEREUPON THE WITNESS LEFT THE STAND).

MR. KOLB: DANA WINGATE.

DANA WINGATE, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: ONCE YOU'RE SET IN THIS CHAIR COMFORTABLY, SPEAK INTO THE MIKE AND STATE YOUR FULL NAME AND SPELL YOUR LAST.

WITNESS: SURE. DANA WINGATE, W I N G A T E.

DIRECT EXAMINATION BY MR. KOLB:

Q MR. WINGATE, HOW ARE YOU EMPLOYED.

A CRIMINAL INVESTIGATOR, NOW JUVENILE INVESTIGATOR WITH SUMTER COUNTY SHERIFF'S DEPARTMENT.

Q HOW LONG YOU BEEN INVOLVED IN LAW ENFORCEMENT?

A APPROXIMATELY EIGHT YEARS.

Q ON THE NIGHT OF FEBRUARY THE 26TH, 1996, DID YOU HAVE OCCASION TO SEE BOBBY WAYNE STONE?

A YES, SIR. I DID.

Q AND WHEN AND WHERE WAS THAT?

A I JUST RETURNED BACK TO THE OFFICE BECAUSE I HEARD THEY WERE HEADING TO THE OFFICE.

Q THIS IS AFTER THE ARREST?
A YES. IT WAS AFTER THE ARREST.
Q ALL RIGHT.
A AND I OPENED UP THE CRIMINAL INVESTIGATIONS OFFICE FOR THEM.
Q WOULD YOU DESCRIBE THAT AREA TO THE LADIES AND GENTLEMEN OF THE JURY.
A THE BIGGEST PART OF THE OFFICE IS OPEN SPACE WITH A DESK SITTING RIGHT AT THE ENTRANCE. AND APPROXIMATELY TWENTY BY TWENTY FOOT BY TWENTY FOOT. OPEN SPACE, OFFICES.
Q SO OFFICES ALL...
A OFFICE IS OFF OF THE MAIN PART.
Q DID YOU HAVE OCCASION TO TAKE CUSTODY OF MR. STONE?
A YES, SIR. I DID.
Q WHERE WAS THAT?
A IT WAS IN THE CRIMINAL INVESTIGATION OFFICE. I SIT A CHAIR IN THE MIDDLE OF AN OPEN SPACE FOR THEM TO PUT MR. STONE. AND I SAT AT THE SECRETARIES DESK APPROXIMATELY FIFTEEN FEET FROM HIM. SO THAT I WOULD BE...
Q HOW LONG WERE YOU WITH HIM THERE THAT NIGHT?
A I WAS WITH HIM FROM THE TIME THEY BROUGHT HIM IN UNTIL THE SLED FORENSIC TEAM CAME TO DO THE GUN SHOT RESIDUE KITS.
Q AND THAT'S AGENT TOM DARNELL?

A I'M NOT EXACTLY SURE WHICH ONE IT WAS.
Q AND YOU SAY GUN SHOT RESIDUE, SWABBING THE HANDS?
A YES, SIR.
Q SO YOU WERE WITH HIM FROM THE TIME HE WAS BROUGHT TO THE LAW ENFORCEMENT CENTER AFTER ARREST UNTIL THE SLED AGENTS DID THE GUN SHOT RESIDUE KIT?
A YES, SIR.
Q AND HOW LONG A PERIOD OF TIME WAS THAT?
A I'M NOT EXACTLY SURE. I DIDN'T LOOK AT MY WATCH. COULD BE ANY WHERE FROM TWO TO FOUR HOURS.
Q ALL RIGHT. DID ANYTHING OCCUR IN HIS PRESENCE TO THREATEN OR COERCE HIM IN ANY WAY WHATSOEVER?
A NO, SIR. I WAS SETTING AT THE DESK JUST TO KEEP THE TRAFFIC OUT OF THERE MOSTLY AND MAKE SURE NO ONE GOT ANYWHERE NEAR HIM.
Q AND DID YOU DO THAT?
A YES, SIR.
Q I WANT TO SHOW YOU MARKED FOR IDENTIFICATION AS EXHIBIT 56 AND ASK YOU IF YOU CAN IDENTIFY THIS.
A IT LOOKS LIKE THE COAT HE WAS WEARING THAT NIGHT. I'M NOT -- PROBABLY. LOOKS LIKE THE SAME KIND OF COAT.
Q WHILE YOU WERE WITH HIM DURING THAT PERIOD OF TIME, DID YOU HAVE OCCASION TO OBSERVE ANYTHING ON HIS PERSON?
A NO, SIR. I DIDN'T GET CLOSE ENOUGH. JUST SET THE CHAIR IN THE MIDDLE OF THE FLOOR. THEY PLACED HIM IN IT

AND I SAT AT THE DESK UNTIL THE SLED FORENSIC TEAM CAME, THEY WANTED A MORE ISOLATED SPOT TO DO THE SWABBING OR THE GUN SHOT RESIDUE KIT.

SO I TOOK HIM BACK TO JUVENILE INVESTIGATIONS WHICH IS JUST DOWN THE HALL WHICH IS WHERE HIS OFFICE IS. IT'S GOT AN INTERIOR OFFICE AND THEN TWO SMALLER OFFICES OFF OF IT.

AND THEY UNCUFFED HIM AT THAT TIME. IT'S -- THEY UNCUFFED HIS LEFT HAND AND I HELD THE HAND CUFF THAT WAS STILL ATTACHED TO HIS RIGHT ARM.

AND WHEN I LOOKED DOWN, I NOTICED THE -- A KNIFE IN HIS RIGHT COAT POCKET, OUTSIDE COAT POCKET.

Q WHAT KIND OF KNIFE WAS THAT?

A I DON'T REALLY REMEMBER. I BELIEVE IT WAS A PRO CASE, LIKE IT WAS KIND OF A YELLOWISH HANDLE KNIFE APPROXIMATELY SIX INCHES LONG.

Q CAN YOU IDENTIFY THIS?

A YES, SIR. THIS IS THE KNIFE.

Q AND WHAT KIND OF TAG IS THAT?

A THIS IS AN EVIDENCE TAG THAT I PLACED ON THE KNIFE WHEN I TOOK IT FROM HIS COAT POCKET. I LEFT HIM WITH THE SLED FORENSICS, THE TWO SLED FORENSICS GUYS AND CHIEF STEWART AND WENT TO THE OFFICE AND PLACED THIS TAG ON IT MYSELF. THIS IS MY WRITING.

MR. KOLB: WE'D LIKE TO OFFER THIS INTO EVIDENCE.

THE COURT: ANY OBJECTION?

MR. LITTLEJOHN: YOUR HONOR, I DON'T HAVE ANY OBJECTION TO IT. I DON'T KNOW WHAT IT HAS TO DO WITH THE CASE.

THE COURT: STATE'S EXHIBIT 60 IN EVIDENCE WITHOUT OBJECTION.

(STATE'S EXHIBIT NO. 60 MARKED FOR EVIDENCE).

THE COURT: IT'S A KNIFE.

(WHEREUPON QUESTIONING RESUMED).

MR. KOLB: ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

THE COURT: CROSS-EXAMINE?

MR. LITTLEJOHN: JUDGE, JUST ONE MOMENT.

THE COURT: YES, SIR.

(WHEREUPON THERE WAS A PAUSE)

CROSS-EXAMINATION BY MR. LITTLEJOHN:

Q INVESTIGATOR, JUST A FEW QUESTIONS PLEASE, SIR. YOU INDICATED THAT YOU CAME DOWN TO THE LAW ENFORCEMENT CENTER AND OPENED UP THE INVESTIGATION SECTION?

A YES, SIR.

Q OKAY. AND WHAT TIME WAS THAT? DO YOU RECALL?

A THEY HAD ALREADY HAD HIM IN THE VAN AND WAS TRANSPORTING HIM TO THE CORRECTIONS CENTER. I WAS THE CLOSEST ONE TO THE OFFICE.

NOT EXACTLY SURE WHAT TIME IT WAS. IT WAS AFTER HE WAS APPREHENDED.

Q I THINK IT WOULD HAVE BEEN SOME TIME AROUND 11:30?
A I AM NOT EXACTLY SURE WHAT TIME IT WAS. IT WAS AFTER HE WAS APPREHENDED AND THEY HAD JUST PUT HIM IN THE VAN AND SAID THEY NEEDED IT OPENED UP, SO I WAS CLOSEST TO HIM -- TO THE OFFICE.
Q ALL RIGHT, SIR. AND YOU OPENED IT UP AND THEN WHEN BOBBY STONE GOT THERE WITH THE OTHER OFFICERS, YOU TOOK CUSTODY OF HIM?
A I SET THE CHAIR IN THE MIDDLE OF THE FLOOR. THEY SET HIM IN THERE. AND I SAT AT THE DESK TO MONITOR, TO KEEP A LOT OF PEOPLE OUT OF THE OFFICE.
Q OKAY. AND YOU WERE TRYING TO KEEP PEOPLE OUT OF THAT OPEN AREA WHERE BOBBY STONE WAS; RIGHT?
A KEEP THEM AWAY FROM HIM. YES.
Q OKAY. AND I BELIEVE ONE OF THE REASONS FOR THAT WAS THAT TENSIONS WERE RUNNING VERY HIGH THAT NIGHT; WERE THEY NOT?
A I'M SURE THE TENSIONS WERE RUNNING HIGH, BUT I DIDN'T SEE ANYTHING PHYSICAL TO WHERE I WOULD REALLY BE WORRIED ABOUT IT.
Q ALL RIGHT. BUT YOU SAT HIM IN THE MIDDLE OF THE OPEN AREA?
A YES, SIR.
Q OKAY. AND YOU KEPT THE OTHER OFFICERS FROM COMING IN?
A I DIDN'T KEEP ANYBODY FROM COMING IN. I KEPT ANYONE

AWAY FROM HIM.

Q AWAY FROM HIM?

A YES, SIR.

Q OKAY. AND INVESTIGATOR WINGATE, THIS KNIFE THAT WAS JUST PLACED INTO EVIDENCE, STATE'S EXHIBIT 60, DO YOU RECALL WHEN YOU FOUND THIS KNIFE?

A IT WAS AFTER I -- WE -- UNCUFFED HIS LEFT HAND FOR THEM TO DO THE ATOMIC ABSORPTION OR THE GUN SHOT RESIDUE TEST AND I TOOK THE HAND CUFF AND MOVED HIS RIGHT HAND FROM AROUND SO IT WOULD BE A LITTLE MORE COMFORTABLE ON HIS WRIST.

AND HIS COAT POCKET KIND OF SWUNG OPEN FROM THE WEIGHT AND I LOOKED DOWN AND SAW IT.

Q OKAY. AND IT WAS IN THE CLOSED POSITION IT'S IN NOW?

A YES, SIR.

Q AND IT APPARENTLY HAD BEEN IN HIS POCKET SINCE THE TIME HE WAS ARRESTED?

A APPARENTLY SO, YES.

Q OKAY. THANK YOU, SIR.

THE COURT: REDIRECT?

MR. KOLB: NOTHING.

THE COURT: YOU MAY STEP DOWN, SIR.

(WHEREUPON THE WITNESS LEFT THE STAND).

MR. KOLB: CAN WE APPROACH, YOUR HONOR?

THE COURT: YES, SIR.

(WHEREUPON A BENCH CONFERENCE WAS HELD).

THE COURT: MY LAW CLERK SOMETIMES JUST HAVE A TENDENCY TO WANT TO ARGUE A LITTLE BIT. PLEASE IGNORE THAT. SOMETIMES WE HAVE THIS RUNNING THING GOING ON. YA'LL PUT THIS ASIDE.

LADIES AND GENTLEMEN, WE HAVE REACHED A POINT IN -- WHAT WE DID WAS TRY TO FOR PLANNING PURPOSES THE NEXT TWO WITNESSES POSSIBLY THREE ARE ALL CONNECTED -- AND PROBABLY GOING TO BE SOME LENGTH TO THOSE WITNESSES.

RATHER -- AND IT'S NOW 5:30. AND WHEN I SAY LENGTHY, IT WOULD PROBABLY BE 7:30 OR SO MY GUESSTIMATE MAY BE BEFORE WE FINISHED IT. I THINK THEY HAVE SCHEDULED -- AND I TOLD THEM TO DO THIS -- TO GO AHEAD AND MAKE THE RESERVATIONS FOR YOUR SUPPER PLANS AND THAT I WOULD PLAN ON BREAKING AROUND 6:30 SO THAT YOU COULD HAVE YOUR SUPPER AT A REASONABLE HOUR.

RATHER THAN RUN THE RISK OF HAVING TO STOP IN THE MIDDLE OF SOMETHING AND BREAK THE CONTINUITY OF IT, FOR YOUR PURPOSES I'M GOING TO GO AHEAD AND RECESS THIS EVENING.

WE WILL START AT 9 IN THE MORNING RATHER THAN 9:30. THAT -- I DON'T KNOW WHAT TIME YA'LL GET UP, BUT I ASSUME THAT DOESN'T -- THAT'S NOT A PROBLEM, IS IT, FOR ANYONE? OKAY.

SO I'M GOING TO LET YOU GO TONIGHT AT THIS

POINT. PLEASE DO NOT BEGIN YOUR DELIBERATIONS IN ANY FASHION. CERTAINLY DO NOT BEGIN DISCUSSING THIS CASE AMONG YOURSELVES. LOOK FORWARD TO SEEING YOU IN THE MORNING. HAVE A GOOD EVENING. THANK YOU.

(WHEREUPON THE JURY LEFT THE COURTROOM AT 5:32 P.M.)

THE COURT: ALL RIGHT. ANYTHING FROM THE STATE?

MR. KOLB: NO, SIR.

THE COURT: ANYTHING FROM THE DEFENSE?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: ALL RIGHT. BEFORE I RECESS, DO YOU HAVE ANY SPECIFIC THINGS THAT YOU -- ANY SPECIFIC ASPECTS OF THE LAW THAT YOU ANTICIPATE YOU WILL NEED ME TO CHARGE?

MR. KOLB: JUDGE, ONE...

THE COURT: I CAN TELL YOU MY GENERAL CHARGE IS -- YOU CAN CALL COLUMBIA, WHOMEVER YOU WISH -- GENERALLY I THINK IT COVERS EVERYTHING THAT YOU ARE GOING TO NEED.

BUT IF YOU CAN THINK OF SOME ISSUE THAT NEEDS TO BE ADDRESSED, LET ME KNOW IN THE MORNING, PLEASE. I'M GOING -- YA'LL HAVE ANYTHING?

MR. LITTLEJOHN: YOUR HONOR, COULD WE LET YOU KNOW IN THE MORNING?

THE COURT: LET ME KNOW IN THE MORNING. I WILL START PUTTING IT TOGETHER AND I WILL HAVE IT UP HERE AND I CAN WORK ON IT MAYBE DURING SOME BREAKS TOMORROW AS WELL;

OKAY? THANK YOU VERY MUCH.

I WILL BE HERE EARLY. IF ANYTHING COMES UP OVERNIGHT WE NEED TO DISCUSS, ANYTHING, I WILL BE HERE, SO -- BUT OTHERWISE I LOOK FORWARD TO SEEING YOU READY TO GO AT 9:00 IN THE MORNING. THANK YOU. BE IN RECESS UNTIL IN THE MORNING.

(WHEREUPON THIS CASE WAS IN RECESS FOR THE EVENING)

JANUARY 25, 1997.

THE COURT: LET THE RECORD REFLECT MR. STONE IS PRESENT. ANYTHING FROM THE STATE BEFORE WE BRING THE JURY BACK?

MR. KOLB: NO, SIR.

THE COURT: ANYTHING FROM THE DEFENDANT?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: THANK YOU VERY MUCH. BRING THE JURY IN.

(WHEREUPON THE JURY ENTERED THE COURTROOM AT 9:07 A.M.)

THE COURT: THANK YOU, MR. RAY. THANK YOU, LADIES AND GENTLEMEN. GOOD MORNING TO YOU. AND MR. JONES AND MRS. SINGLETARY, YA'LL SWAPPED SEATS FOR THIS MORNING? OKAY. THAT'S FINE.

WE ARE READY TO CONTINUE. PLEASE GIVE YOUR ATTENTION TO THE NEXT WITNESS. MR. SOLICITOR?

MR. KOLB: CALL GRAYSON AMICK, YOUR HONOR.

GRAYSON AMICK, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: AFTER YOU GET THE MIKE POSITIONED WHERE YOU NEED IT, THEN STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST.

WITNESS: GRAYSON AMICK, A M I C K.

DIRECT EXAMINATION BY MR. KOLB:

THE COURT: THANK YOU, SIR.

Q MR. AMICK, I BELIEVE YOU ARE A DOCTOR?

A THAT'S CORRECT.

Q AND COULD YOU TELL THE LADIES AND GENTLEMEN OF THE JURY HOW YOU ARE EMPLOYED.

A I WORK FOR SOUTH CAROLINA LAW ENFORCEMENT DIVISION, COMMONLY KNOWN AS SLED IN THE TOXICOLOGY DEPARTMENT.

Q COULD YOU TELL THE -- TELL US -- ABOUT YOUR EDUCATION AND TRAINING AND EXPERIENCE IN THAT AREA.

A SURE. I HAVE A B S IN BIOLOGY FROM THE UNIVERSITY OF SOUTH CAROLINA AND A P H D IN BIO CHEMISTRY FROM THE UNIVERSITY OF SOUTH CAROLINA. I AM CURRENTLY EMPLOYED AT SLED IN THE TOXICOLOGY DEPARTMENT.

I AM ALSO A GRADUATE OF THE CRIMINAL JUSTICE ACADEMY AND BASIC POLICE OFFICER TRAINING. I AM ALSO TRAINED IN ANALYSIS, BLOOD ALCOHOL ANALYSIS, OVER A THOUSAND BLOOD ALCOHOLS ANALYZED AS WELL AS DRUG SCREEN ANALYSIS, DRUG QUANTITATION AND IDENTIFICATION ANALYSIS.

AND ALSO CONDUCTED RESEARCH IN THE FIELD OF TOXICOLOGY AND ATTEND MEETINGS IN THE FIELD AS WELL.

Q HAVE YOU PREVIOUSLY BEEN QUALIFIED AS AN EXPERT IN THE FIELD OF TOXICOLOGY?

A YES, I HAVE.

MR. KOLB: YOUR HONOR, WE OFFER HIM TO THE COURT IN THAT REGARD.

THE COURT: CARE TO EXAMINE HIM AS TO EXPERTISE?

MR. LITTLEJOHN: , NO YOUR HONOR.

THE COURT: VERY WEL. HE CAN RENDER AN OPINION IN AREA OF TOXICOLOGY, ANALYSIS OF BLOOD?

MR. KOLB: YES, SIR. BLOOD AND OTHER BODILY SUBSTANCES.

THE COURT: THIS WITNESS AGAIN AS YESTERDAY WILL BE ALLOWED TO RENDER OPINIONS IN THE AREA OF HIS BEST EXPERTISE. I'LL GIVE YOU FURTHER INSTRUCTIONS AT THE CONCLUSION OF THIS MATTER. YOU MAY CONSIDER HIS OPINIONS.

HE WILL BE ALLOWED TO RENDER THEM TO ASSIST YOU IN DETERMINING THE FACTS AT ISSUE. HIS OPINIONS ARE NOT MEANT TO CONTROL YOUR JUDGMENT, BUT MERELY TO AID AND ASSIST YOU IN EVALUATING THE CREDIBILITY THE SAME AS YOU WOULD ANY OTHER WITNESS. YOU MAY CONTINUE.

MR. KOLB: THANK YOU, YOUR HONOR.

(WHEREUPON QUESTIONING RESUMED).

Q DR. AMICK, DID YOU HAVE OCCASION TO RECEIVE SAMPLES

FROM THE AUTOPSY OF DEPUTY CHARLES KUBALA?
A YES, I DID.
Q AND WERE THOSE ITEMS IN A EVIDENCE CONTAINER THAT WAS SEALED BY TOM DARNELL, AN AGENT AT SLED?
A YES, THEY WERE. THEY WERE CONTAINED WHEN I RECEIVED THEM IN A HEAT SEALED BAG WITH ONE SEAL WITH HIS INITIALS ON THEM.
Q ALL RIGHT. AND WHAT DID THAT INDICATE TO YOU?
A THAT INDICATES TO ME THAT WHEN I RECEIVE AN EVIDENCE BAG OF ONE SEAL AND A PERSON'S INITIALS AND DATE ON IT, THAT THE INTEGRITY OF THE EVIDENCE HAS BEEN MAINTAINED FROM THAT PERSON TO ME, THAT IS IT HASN'T BEEN TAMPERED WITH.
Q ALL RIGHT. YOU GOT THAT OUT OF THE REFRIGERATOR AT THE LOG IN SECTION AT SLED?
A THAT'S CORRECT. IT WAS PUT IN THE LOG IN REFRIGERATOR, IT'S LOCKED THE REFRIGERATOR BY THE PERSON WHO RECEIVES BAG AND THEN I RECEIVE IT FROM THAT.
Q ALL RIGHT. COULD YOU TELL THE LADIES AND GENTLEMEN OF THE JURY ABOUT THE TEST THAT YOU PERFORMED ON THIS SUBSTANCES AND WHAT YOUR RESULTS WERE.
A SURE. THE ITEMS I RECEIVED WERE BOTTLE OF URINE, GRAY TOP TUBES OF BLOOD, A BOTTLE OF BLOOD, RED TOP TUBE OF OCULAR FLUID, A RED TOP TUBE OF BILE AS WELL AS BRAIN TISSUE AND LIVER TISSUE.

I TESTED THE BLOOD OF CHARLES B KUBALA AND THE RESULTS WERE NEGATIVE FOR BLOOD ALCOHOL FOUND. BLOOD ALCOHOL LESS THAN .01 PERCENT. THE URINE WAS TESTED FOR ETHANOL AS WELL, NEGATIVE FOR ETHANOL.

THE COURT: NOW ETHANOL IS WHAT?

WITNESS: DRINKING ALCOHOL AGAIN.

(WHEREUPON QUESTIONING RESUMED).

Q ALL RIGHT.

A NEGATIVE FOR BARBITUATES -- THIS IS THE URINE, NEGATIVE FOR COCAINE AND COCAINE MALATES, NEGATIVE FOR OPIATES SUCH AS MORPHINE, CODEINE. AND NEGATIVE FOR TRICYCLIC ANTIDEPRESSANTS LIKE AMATEUR DELIAN (SIC) AND THE OCULAR FLUID AS WELL TESTED FOR ETHANOL AND IT WAS NEGATIVE.

SO I HAVE ALL NEGATIVE RESULTS OF BLOOD, URINE AS FAR AS ETHANOL AND DRUG SCREEN.

Q ALL RIGHT. NOW WHAT'S THE PURPOSE OF PRESENTING THOSE OTHER THINGS LIKE LIVER AND BRAIN AND BILE TO TOXICOLOGY?

A THOSE SAMPLES WERE SUBMITTED IN THE CASE OF ME FINDING A POSITIVE RESULT. AND DEPENDING UPON WHAT DRUG I FOUND POSITIVE I CAN GO TO ONE OF THESE TISSUES.

AND WHEN I QUANTITATE THE DRUG, I WOULD ALSO LOOK IN THAT TISSUE. THAT WILL GIVE ME INFORMATION AS TO TIME OF EXPOSURE, CHRONIC OVERDOSE IF IT HAS TO BE OVERDOSE, GIVES ME INFORMATION AND A RESULT BACK NEGATIVE

OR POSITIVE.

Q ALL RIGHT. AND IN THIS CASE SINCE YOU HAD NEGATIVE RESULTS ON ALL OF THE BLOOD, URINE AND OCULAR FLUID, WAS IT NECESSARY FOR YOU TO TEST THE REMAINING SUBSTANCES?

A NO, IT WASN'T.

Q ALL RIGHT. GET YOU TO EXPLAIN -- WHAT IS OCULAR FLUID?

A IT'S ANOTHER NAME IS BUTYROUS HUMOR. IT'S THE FLUID FROM THE EYE.

Q ALL RIGHT. WHAT IS IT ABOUT OCULAR FLUID THAT TELLS YOU THAT?

A OCULAR FLUID, ACTUALLY ALL THE SAMPLES ARE TESTED FOR ETHANOL IN A POST MORTEM SITUATION TO RULE OUT ANY CONTAMINATION OF SAID BLOOD RESULT. SO IF ALL THE -- ALL THE SAMPLES MATCH OR ARE IN A CERTAIN RANGE OF THE BLOOD, THEN I KNOW THE BLOOD HAS NOT BEEN CONTAMINATED IN ANY MEANS.

IN THIS CASE THEY WERE ALL NEGATIVE, BUT OCULAR FLUID IS A GOOD -- ALSO A GOOD INDICATOR OF THE LAST TIME THE PERSON OR IF THE PERSON IS IN AN ABORTION OR ELIMINATION PHASE, IF THERE IS ALCOHOL SO I CAN LOOK AT THE LEVELS BETWEEN THE OCULAR AND THE BLOOD AND KIND OF TELL WHEN THEY BE -- WHEN YOU STOPPED DRINKING OR WHEN THE TIME OF DEATH WAS.

SO IT CAN GIVE YOU AS WELL EXTRA INFORMATION.

BUT IN THIS CASE AGAIN THEY WERE ALL NEGATIVE.

Q ALL RIGHT. THANK YOU. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

THE COURT: ANY QUESTIONS?

MR. LITTLEJOHN: I HAVE NO QUESTIONS, YOUR HONOR.

THE COURT: YOU MAY COME DOWN.

(WHEREUPON THE WITNESS LEFT THE STAND).

MR. KOLB: WE CALL AGENT JOHN JOHNSON.

(WHEREUPON THERE WAS A PAUSE).

MR. KOLB: JUST A MOMENT PLEASE, YOUR HONOR.

(WHEREUPON THERE WAS A PAUSE).

GARY MARTIN, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: PLEASE STATE YOUR FULL NAME FOR THE RECORD. SPELL YOUR LAST.

WITNESS: MY NAME IS GARY LEWIS MARTIN, M A R T I N.

DIRECT EXAMINATION BY MR. KOLB:

Q MR. MARTIN, COULD YOU TELL US HOW YOU ARE EMPLOYED.

A I'M EMPLOYED WITH THE STATE LAW ENFORCEMENT DIVISION COMMONLY REFERRED TO AS SLED.

Q AND WHERE DO YOU RESIDE?

A I LIVE IN MANNING, SOUTH CAROLINA, NEIGHBORING COUNTY.

Q ALL RIGHT. AND WERE YOU ASSIGNED TO THIS CASE PRETTY MUCH FROM THE BEGINNING BY SLED TO CONDUCT THE

INVESTIGATION?
A YES, SIR. I WAS.
Q ALL RIGHT. AND COULD YOU TELL US IF YOU HAD OCCASION TO SEARCH THE -- YOU FAMILIAR WITH STATE'S EXHIBIT 5 OVER HERE?
A YES, SIR.
Q AND FAMILIAR WITH THE LOCATION OF MRS. GRIFFITH'S HOUSE?
A YES, SIR.
Q DID YOU HAVE OCCASION TO SEARCH THE -- THIS WOODED AREA NORTH OF HER HOME?
A YES, SIR.
Q AND THAT WAS I BELIEVE THE NEXT DAY AFTER ALL OF THIS, THE 28TH?
A IT WAS THE 28TH OF FEBRUARY, 1996.
Q ALL RIGHT. AND DID YOU HAVE OCCASION TO FIND ANY -- ANYTHING WHILE SEARCHING THAT WOODED AREA?
A YES, SIR. I DID.
Q ALL RIGHT. AND COULD YOU TELL THE LADIES AND GENTLEMEN OF THE JURY ABOUT THAT.
A SERGEANT MIKE MORRIS AND I WENT BEHIND MRS. RUTH GRIFFITH'S HOUSE, WENT TO WHERE THE SLED TRACKING TEAM HAD ENTERED THE WOODS ON FEBRUARY THE 26TH, 1996.
WE FOLLOWED THE TRAIL TO A CLEARING. ONCE WE ARRIVED AT THE CLEARING, WE OBSERVED FIVE BUDWEISER TWELVE

OUNCE BEER CANS THAT HAD HOLES IN THEM AND A 22 SHELL CASING.

Q ALL RIGHT. AND WHAT DID YOU DO WITH THAT SHELL CASING?

A MIKE MORRIS WITH THE SUMTER COUNTY SHERIFF'S OFFICE, HE CALLED INVESTIGATOR MACKESSY AND INVESTIGATOR MACKESSY CAME TO THE SCENE WHERE HE PHOTOGRAPHED AND RETRIEVED THE OBJECTS THAT WE HAD LOCATED.

Q ALL RIGHT, SIR. CAN YOU IDENTIFY EXHIBIT 47, THIS PHOTOGRAPH?

A YES, SIR.

Q DOES THAT APPEAR TO BE THE 22 SHELL CASING YOU FOUND?

A YES, SIR. IT DOES.

Q ALL RIGHT. AND THAT -- REALIZE YOU CAN'T SAY IT'S THE EXACT SAME ONE, BUT DOES THAT APPEAR TO BE THE SAME TYPE OF SHELL CASING?

A YES, SIR. IT DOES.

Q PROCURED BY OFFICER MACKESSY AT THAT TIME?

A YES, SIR.

Q ALL RIGHT.

MR. KOLB: YOUR HONOR, WE WOULD OFFER THIS FOR IDENTIFICATION AT THIS TIME.

THE COURT: IT'S AN ENVELOPE CONTAINING A TUBE?

MR. KOLB: A TUBE WITH A SHELL CASING IN IT.

THE COURT: ALL RIGHT. STATE'S EXHIBIT 61 FOR

IDENTIFICATION AT THIS POINT. ENVELOPE, BROWN ENVELOPE CONTAINING A TUBE CASING WITH A SHELL CASING IN IT.

(STATE'S EXHIBIT NO. 61 MARKED FOR IDENTIFICATION).

(WHEREUPON QUESTIONING RESUMED).

Q AND IF CAN YOU IDENTIFY THIS AS A PHOTOGRAPH OF THE GENERAL AREA WE ARE TALKING ABOUT AS A CLEARING.

A YES, SIR.

Q AND EXHIBITS 42 THROUGH 46, CAN YOU IDENTIFY THOSE, THE BEER CANS YOU WERE TALKING ABOUT?

A YES, SIR. APPEARS TO BE.

Q NOW, THIS SEARCH YOU CONDUCTED IN THESE WOODS BEHIND MRS. GRIFFITH'S HOUSE, DID YOU SEE ANY OTHER BUDWEISER BEER CANS OR OTHER BEER CANS IN THAT AREA OTHER THAN THE FIVE YOU FOUND?

A NOT THE TRAIL WE WALKED. NO, SIR.

Q ALL RIGHT. MR. MARTIN, I WANT TO BACK UP. ON THE EARLY MORNING HOURS OF FEBRUARY THE 27TH, 1996, DID YOU HAVE OCCASION TO SEE BOBBY WAYNE STONE AT THE SUMTER COUNTY SHERIFF'S DEPARTMENT?

A YES, SIR. I DID.

Q ALL RIGHT. AND COULD YOU TELL US -- WANT TO ASK YOU IF YOU CAN IDENTIFY STATE'S EXHIBIT NUMBER 3 THAT'S PREVIOUSLY BEEN MARKED FOR IDENTIFICATION.

A YES, SIR.

Q ALL RIGHT. COULD YOU TELL US WHAT YOU DID IN REGARD TO THAT EXHIBIT?

A I WAS IN THE IMMEDIATE AREA OF SUMTER COUNTY INVESTIGATIONS AT THE LAW ENFORCEMENT CENTER ACROSS THE STREET. LIEUTENANT MORRIS.

Q ACROSS THE STREET FROM HERE?

A YES, SIR. ACROSS THE STREET FROM THE COURTHOUSE. LIEUTENANT HEROD CAME TO THE DOOR.

MR. LITTLEJOHN: I'M SORRY. COULD WE APPROACH THE BENCH?

THE COURT: SURE.

(WHEREUPON A BENCH CONFERENCE WAS HELD).

(WHEREUPON QUESTIONING RESUMED).

MR. KOLB: MAY NEED TO RECALL HIM LATER ON OTHER MATTERS.

THE COURT: ALL RIGHT, SIR.

MR. KOLB: ANSWER ANY QUESTIONS OF THE DEFENSE.

MR. LITTLEJOHN: I HAVE NO QUESTIONS, YOUR HONOR.

THE COURT: YOU MAY COME DOWN, AGENT MARTIN. THANK YOU, SIR.

(WHEREUPON THE WITNESS LEFT THE STAND).

THE COURT: MAY CALL YOUR NEXT WITNESS.

MR. KOLB: JOHN JOHNSON.

(WHEREUPON A BENCH CONFERENCE WAS HELD).

MR. KOLB: YOUR HONOR, WE CALL ROBERT JONES.

ROBERT JONES, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. KOLB:

Q GIVE US YOUR NAME, PLEASE, SIR.

A ROBERT JONES.

Q AND MR. JONES, WHERE DO YOU RESIDE?

A 1015 SPARKLEBERRY LANE.

Q AND THAT'S IN SUMTER?

A YES, SIR.

Q AND DO YOU HAVE A BUSINESS?

A YES, SIR.

Q WHAT'S THE NAME OF YOUR BUSINESS?

A B J METALS.

Q WHERE IS THAT LOCATED?

A ON BELL LOAD.

Q IT'S IN SUMTER COUNTY?

A YES, SIR.

Q DO YOU KNOW THE DEFENDANT BOBBY WAYNE STONE?

A I MET HIM TWICE, MAYBE THREE TIMES.

Q ALL RIGHT. AND DID YOU HAVE OCCASION TO HAVE A CONVERSATION WITH HIM A COUPLE WEEKS BEFORE FEBRUARY THE 26TH, 1996?

A YES, SIR.

MR. LITTLEJOHN: YOUR HONOR, COULD WE APPROACH THE BENCH?

THE COURT: YES, SIR.

(WHEREUPON A BENCH CONFERENCE WAS HELD).

THE COURT: LADIES AND GENTLEMEN, I NEED FOR YOU TO GO TO YOUR JURY ROOM. DO NOT BEGIN YOUR DELIBERATIONS AT ANY TIME.

(WHEREUPON THE JURY LEFT THE COURTROOM).

THE COURT: ALL RIGHT. MR. LITTLEJOHN, YOU RAISED AN ISSUE AT SIDE BAR CONCERNING THIS WITNESSES TESTIMONY.

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

THE COURT: ALL RIGHT. WANT TO STATE THAT FOR THE RECORD, PLEASE.

MR. LITTLEJOHN: BE GLAD TO, YOUR HONOR. YOUR HONOR, THE ONLY INFORMATION WE WERE GIVEN CONCERNING THIS WITNESS WAS IN A REPORT BY THE CASE AGENT GARY MARTIN, WHICH WAS FURNISHED TO US AND WAS PREPARED ON JULY THE 15TH, 1996.

WE NEVER RECEIVED NOTICE THAT THIS REPORT HAS BEEN AMENDED OR CHANGED IN ANY WAY. THIS REPORT INDICATES THAT THIS WITNESS, MR. JONES, DENIED A STATEMENT WHICH WAS ATTRIBUTED TO MY CLIENT BY ANOTHER WITNESS. HE FLAT DENIED IT WAS EVER MADE.

IT'S MY UNDERSTANDING AT THIS POINT THAT HE HAS CHANGED HIS TESTIMONY AND THE SOLICITOR SEEKS TO HAVE THIS WITNESS RECALL THE STATEMENT AS QUOTED.

YOUR HONOR, WE HAVE HAD ABSOLUTELY NO NOTICE UNTIL THIS VERY MOMENT THAT THIS WITNESS HAS RECANTED HIS

STATEMENT AND IS ATTRIBUTING THESE WORDS TO OUR CLIENT.

YOUR HONOR, I THINK THIS IS -- THE INTRODUCTION OF THIS IS HIGHLY PREJUDICIAL. IT WAS DONE COMPLETELY WITHOUT WARNING.

WE HAVE NOT HAD A CHANCE TO INTERVIEW THIS MAN, TO TALK TO HIM, LOOK INTO HIS BACKGROUND, FIND OUT WHAT HIS RELATIONSHIP IS WITH THE DEFENDANT AND WE WERE CAUGHT TOTALLY BY SURPRISE. AND I OBJECT TO THE INTRODUCTION UNDER THE RULES.

THE COURT: THANK YOU, SIR. MR. SOLICITOR?

MR. KOLB: YOUR HONOR, THE -- FIRST OFF AS FAR AS WITHOUT WARNING, I LISTED CLINT FORD AND ROBERT JONES JUNIOR AS POTENTIAL WITNESSES IN THE TRIAL AND GAVE A COPY OF THAT LIST FOR THE DEFENSE. OF COURSE, THE COURT CALLED IT OUT BEFORE JURY WAS SELECTED.

THE DISCOVERY RULES REQUIRE THAT WRITTEN OR RECORDED STATEMENTS OF A WITNESS BE PROVIDED UPON MOTION OR IF NOT MOTION, THEN BE PROVIDED AFTER THE WITNESS TESTIFIES. AND THAT'S THE ONLY REQUIREMENT TO GIVE A WITNESSES STATEMENT.

YOUR HONOR, THERE IS NO WRITTEN OR RECORDED STATEMENT FROM THIS WITNESS AT ALL. AND SO THE DISCOVERY RULES DO NOT EVEN APPLY IN THIS INSTANCE IN MY OPINION. THERE IS NO WRITTEN OR RECORDED STATEMENT.

WE WERE NOT REQUIRED TO EVEN ADVISE THEM OF A

STATEMENT, IT BEING AN ORAL STATEMENT. WHAT THE RULES DO REQUIRE IS THAT THE DEFENSE BE PROVIDED EXCULPATORY EVIDENCE AND THE FACT THAT A WITNESS SAID ONE THING AT ONE TIME AND THEN DENIED IT WOULD BE IMPEACHMENT EVIDENCE.

AND WE PROVIDED THE IMPEACHMENT EVIDENCE TO THE DEFENSE. THEY HAVE A COPY OF THIS REPORT THAT SHOWS THAT AFTER CLINT FORD REPORTED THAT MR. JONES HAD MADE THE STATEMENT, THAT BOBBY JONES HAD SAID A POLICE OFFICER EVER FUCKED WITH ME I WILL KILL HIM, THAT THEY CONTACTED MR. JONES AND HE DENIED MAKING THE STATEMENT.

SO THEY HAVE THE IMPEACHMENT EVIDENCE WHICH IS WHAT THE BRADY CASE REQUIRES ME TO PROVIDE THEM WITH. AND I CALLED HIM UP JUST -- I MEAN, I -- I WAS AWARE HE'S A POTENTIAL WITNESS JUST LIKE THEY WERE.

I LISTED HIM AS A WITNESS. I CALLED HIM UP AND TALKED TO HIM AND HE ADMITTED THAT WHEN HE TOLD THE OFFICERS THAT WHEN THEY CALLED HIM IT WAS BECAUSE HE DIDN'T WANT TO GET INVOLVED, BUT IF HE'S PUT ON THE STAND AND HAS TO TELL THE TRUTH, HE IS GOING TO TELL THE TRUTH.

I MEAN, I TRULY, JUDGE, HAVE DONE NOTHING WRONG, HAVE NOT INTENDED TO DO ANYTHING WRONG. IN FACT, I MEAN IN ALL THE DISCOVERY I HAVE DONE, JUDGE, I HAVE GONE -- AND I WILL BE GLAD FOR THE COURT TO REVIEW IT. I HAVE GIVEN THEM EVERY DOCUMENT IN MY FILE, YOUR HONOR.

THE COURT: I'M GOING TO REVIEW IT. I WANT A COPY OF

THAT TO BECOME COURT'S EXHIBIT NUMBER 5. BE COURT'S EXHIBIT NUMBER 5. I WANT A COPY OF THAT PAGE. LET ME SEE THE POINT THAT YOU ARE REFERRING TO, PLEASE.

MR. KOLB: ALL RIGHT.

THE COURT: LET ME SEE THAT SO I CAN RULE ON IT. THANK YOU, SIR. ALL RIGHT. MR. LITTLEJOHN, WHAT'S YOUR RESPONSE?

MR. LITTLEJOHN: YOUR HONOR, OUR RESPONSE IS THIS. UP UNTIL THIS POINT WE HAVE BEEN MISLED BY THE PROSECUTION AS TO WHAT THE SUBSTANCE OF THIS WITNESSES TESTIMONY WOULD BE.

AND BASED ON THAT, YOU KNOW, WE ARE CAUGHT TOTALLY BY SURPRISE AND I THINK THAT THE SOLICITOR KNEW THAT AND THERE WAS SOME CHANGE IN CIRCUMSTANCES OR SOME CHANGE OF WHAT THIS WITNESS WAS GOING TO SAY.

HE HAD A DUTY AS AN OFFICER OF THE COURT TO INFORM US AT THAT TIME RATHER THAN TO TRY AND SURPRISE US.

THE COURT: ALL RIGHT, SIR. FIRST OF ALL I WOULD FIND OF COURSE THE RULES DO NOT REQUIRE -- THERE IS NO WRITTEN STATEMENT.

THE RULES DO NOT REQUIRE THAT IT BE DISCLOSED AS PRESENTLY DRAFTED. HOWEVER, THE SOLICITOR DID DISCLOSE A WRITING WHICH CONTAINED THE FOLLOWING LANGUAGE.

ROBERT JONES -- GIVING ADDRESS -- RELATED IN A TELEPHONIC INTERVIEW THAT BOBBY WAYNE STONE WAS AT HIS

BUSINESS, B J METALS, BUT DENIES THAT BOBBY WAYNE MADE THE COMMENT THE -- A POLICE OFFICER EVER FUCKED WITH ME I'LL KILL HIM. END OF QUOTE.

THAT WAS DISCLOSED TO THE DEFENSE. THIS DEFENSE HAD A RIGHT -- THIS BEING A PART OF THE REPORT SIGNED BY SENIOR AGENT JOHN H JOHNSON, SENIOR AGENT GARY L MARTIN.

THE DEFENSE WOULD HAVE A RIGHT TO RELY ON THAT DOCUMENT AND THE CONTENTS OF THAT DOCUMENT AND THE REPRESENTATIONS MADE IN THAT DOCUMENT.

NOW, WHETHER OR NOT THEY SHOULD HAVE CONTACTED HIM TO CONFIRM THAT STATEMENT IS A DIFFERENT MATTER. HOWEVER, THE STATE PROVIDED IT.

RULE 5C STATES -- AND THAT'S OF THE RULES OF CRIMINAL PROCEDURE -- IF PRIOR TO OR DURING A TRIAL A PARTY DISCOVERS ADDITIONAL EVIDENCE OR MATERIAL PREVIOUSLY REQUESTED OR ORDERED WHICH IS SUBJECT TO DISCOVERY OR INSPECTION UNDER THIS RULE, HE SHALL PROPERLY NOTIFY THE OTHER PARTY OR HIS ATTORNEY OR THE COURT OF IT'S EXISTANCE OF THE ADDITIONAL MATERIAL.

THAT IN IT'S ESSENSE IS AN ADDENDUM TO THIS DOCUMENT WHICH I PROVIDED BECAUSE WHAT YOU HAVE STATED IS YOU CONTACTED HIM AND IT'S -- HE'S DENYING THAT THAT STATEMENT IS CORRECT.

MR. KOLB: NO.

THE COURT: THAT'S WHAT YOU JUST SAID, MR.

SOLICITOR.

MR. KOLB: HE ADMITTED HE TOLD THE OFFICERS HE DIDN'T SAY IT.

THE COURT: THE REPORT SAYS HE DENIES IT.

MR. KOLB: HE ADMITS THAT HE DID DENY IT TO THE OFFICER.

THE COURT: THEN HE'S SAYING -- BUT HE DID SAY IT. NOW HE'S HERE TO SAY TODAY, WELL, YEAH I SAID THAT, BUT HE DID SAY IT.

MR. KOLB: YES.

THE COURT: I WOULD FIND IT WOULD BE YOUR RESPONSIBILITY HAVING PROVIDED THIS DOCUMENT TO ADVISE THE DEFENSE COUNSEL OF THAT -- OF THAT CHANGE, TO SUPPLEMENT THIS REPORT. THEY DIDN'T HAVE THE REPORT.

I'D AGREE WITH YOU YOU DON'T HAVE ANY DUTY TO DISCLOSE IT BECAUSE IT WAS NO DUTY IN THE FIRST PLACE. BUT ONCE YOU DID DISCLOSE IT, THEN YOU HAVE A CONTINUING DUTY IF THERE BE ANY ALTERATIONS TO ANY OF THESE DOCUMENTS TO ADVISE THEM. SAME WOULD BE TRUE OF THE DEFENSE.

THAT'S JUST FAIR PLAY. THAT IS PART OF IT. IT'S CLEARLY DONE AND THAT'S A TYPICAL OCCURRENCE IN A SITUATION WHERE YOU HAVE INTERROGATORIES. THEY CONTINUE UP UNTIL THE TIME OF TRIAL.

ANY MODIFICATIONS HAVE TO BE DISCLOSED, OTHERWISE IT'S TRIAL BY AMBUSH. WE DON'T NEED TO HAVE

TRIAL BY AMBUSH. WE CERTAINLY DON'T NEED TO HAVE A TRIAL BY AMBUSH IN THIS FORUM AND IN THIS PROCEEDING.

SO I DO FIND THAT YOU DID VIOLATE THE INTENT OF THE RULE, NOT NECESSARILY VERBATIM THE RULE, BUT I DO FIND THAT YOU VIOLATED THE INTENT OF THE RULE.

NOW, WHAT I'M GOING TO DO IS TAKE A RECESS AND I'M GOING TO ASK MR. JONES TO ACCOMPANY YOU AND MR. STONE AND YOU TALK WITH MR. JONES ABOUT THE STATEMENT IF YOU CARE TO. YOU ARE TO ADVISE THE COURT WHEN YOU ARE READY TO RESUME OR CONTINUE. WE WILL BE AT EASE.

(WHEREUPON A BRIEF RECESS WAS TAKEN).

THE COURT: ALL RIGHT. BACK ON THE RECORD. LET THE RECORD REFLECT MR. STONE IS PRESENT. MR. LITTLEJOHN, I JUST CAME BACK. IF WE NEED ADDITIONAL TIME TO HAVE THE -- AFFORD YOU ADDITIONAL TIME. I WAS NOT COMING BACK TO SAY I WAS READY TO START.

MR. LITTLEJOHN: I DON'T THINK WE NEED ANY ADDITIONAL TIME.

THE COURT: VERY WELL. HAPPY TO HEAR FROM YOU NOW.

MR. LITTLEJOHN: MAY I MAKE A PROFFER THROUGH THE WITNESS?

THE COURT: SURE YOU MAY.

MR. LITTLEJOHN: MR. JONES, WOULD YOU COME AROUND AND TAKE THE WITNESS STAND, PLEASE.

(WHEREUPON THE WITNESS RESUMED THE STAND)

CROSS-EXAMINATION BY MR. LITTLEJOHN:

Q MR. JONES, I BELIEVE WE DISCUSSED THE SITUATION SURROUNDING A STATEMENT THAT BOBBY STONE MADE TO YOU.

A YES, SIR.

Q IN THE PAST FEW MINUTES DURING THE BREAK.

A RIGHT.

Q OKAY. NOW --.

MR. LITTLEJOHN: MAY I LEAD A LITTLE BIT, YOUR HONOR?

THE COURT: ABSOLUTELY.

(WHEREUPON QUESTIONING RESUMED).

Q MR. JONES, DO YOU RECALL SPECIAL AGENT MARTIN CALLING YOU SOME TIME AFTER FEBRUARY 26TH 1996 WHICH IS THE DAY THAT SERGEANT KUBALA DIED?

A YES, SIR.

Q ALL RIGHT. AND WHERE WERE YOU WHEN HE CALLED YOU?

A I WAS ON MY TRUCK PHONE. I DON'T KNOW THE EXACT PLACE.

Q OKAY. AND I BELIEVE SPECIAL AGENT MARTIN ASKED YOU IF BOBBY STONE HAD EVER MADE THE STATEMENT TO YOU IF A POLICE OFFICER EVER F'D WITH ME, I WILL KILL HIM. DID HE ASK YOU THAT?

A YES, SIR. HE ASKED ME THAT---.

Q AND DID YOU DENY IT? BOBBY STONE MAKING THAT STATEMENT?

A YES, SIR. I DENIED IT.

Q WHAT DID YOU TELL SPECIAL AGENT MARTIN ABOUT YOUR CONVERSATION WITH BOBBY STONE AT THAT TIME?

A I TOLD HIM THAT.

Q PULL THAT MIKE AROUND, IF YOU WOULD.

THE COURT: SPEAK INTO THE MIKE PLEASE. THANK YOU, SIR.

THE WITNESS: I TOLD HIM THAT WE WERE ALL SITTING IN MY OFFICE TALKING AND IT WAS JUST A FIGURE OF SPEECH, THAT MOST ANYBODY HAS EVER HAD A BRUSH WITH THE LAW AND STUFF THAT SOMETIMES I FEEL LIKE KILLING SOMEONE WHEN THEY ACT LIKE THAT.

(WHEREUPON QUESTIONING RESUMED).

Q I MEAN, WHAT DID YOU TELL SPECIAL AGENT MARTIN THAT BOBBY STONE HAD REALLY SAID?

A WHAT I JUST TOLD YOU.

Q TELL US AGAIN.

A THAT WHEN PEOPLE HAVE BRUSHES WITH THE LAW, SOMETIMES THAT -- YOU KNOW -- THEY FEEL -- THEY SAY THINGS THEY SHOULDN'T AND THAT HE HAS SAID THAT HE -- SOMETIMES THEY MAKE HIM FEEL LIKE KILLING AN OFFICER, NOT I'M GOING TO F ONE UP.

Q OKAY. SO YOU HAVE A COPY OF THE AMENDED STATEMENT THERE IN FRONT OF YOU?

A YES, SIR.

Q AND THAT INDICATES THAT IN A HANDWRITTEN PORTION OF IT THAT WE WERE JUST FURNISHED IT SAYS A COUPLE OF WEEKS BEFORE THE KUBALA KILLING, QUOTE SOMETIMES THE WAY SOME OF THESE OFFICERS ACT THEY MAKE YOU FEEL LIKE WANTING TO KILL THEM UNQUOTE.

A RIGHT.

Q DID YOU TELL SPECIAL AGENT MARTIN THAT IS WHAT MR. STONE SAID DURING THAT TELEPHONIC INTERVIEW?

A RIGHT.

Q AND I NOTICE IN THIS REPORT -- YOU DON'T HAVE THE DATE ON IT -- WELL, AT THE TOP. IT'S DATED JULY 15, 1996. SO YOU WOULD HAVE HAD THIS CONVERSATION WITH SPECIAL AGENT MARTIN BEFORE THAT DAY?

A YES, SIR. BUT -- WHATEVER DAY HE WAS AT MY PLACE.

Q OKAY.

A HE USED MY TELEPHONE IN MY OFFICE TO CALL ME. I DON'T KNOW WHAT DAY IT WAS.

Q ALL RIGHT. BUT THAT WASN'T LONG AFTER SERGEANT KUBALA'S DEATH?

A NO, SIR. NO.

Q OKAY.

MR. LITTLEJOHN: YOUR HONOR, THAT WOULD BE THE PROFFER I WOULD MAKE.

THE COURT: VERY WELL. ALL RIGHT. ANYTHING FURTHER FROM THE DEFENSE?

MR. KOLB: CAN I ASK HIM QUESTIONS?

THE COURT: YOU MAY YES, SIR.

REDIRECT EXAMINATION BY MR. KOLB:

Q MR. JONES, DID -- WITHIN THE LAST COUPLE OF WEEKS, DID YOU TALK WITH ME BY TELEPHONE?

A YES, SIR.

Q AND IN THAT TELEPHONE CALL, DID I ASK YOU IF YOU HAD DENIED MAKING THE STATEMENT TO AGENT MARTIN?

A YES, SIR.

Q AND DIDN'T YOU TELL ME THAT YOU DID DENY IT BECAUSE YOU DIDN'T WANT TO GET INVOLVED IN THE THING?

A NO, SIR. I DIDN'T TELL YOU THAT. I TOLD YOU I DENIED IT, BUT I DIDN'T SEE WHERE THERE WAS A PERSONAL OPINION THAT THAT WOULD HAVE ANY REFERENCE TO THIS WHOLE...

Q ALL RIGHT, SIR.

A I DIDN'T DENY SAYING THAT.

Q WHEN I CALLED YOU, HADN'T YOU JUST RECEIVED A SUBPOENA IN THE CASE?

A YES, SIR.

Q ALL RIGHT. AND DIDN'T -- ON THE TELEPHONE THAT NIGHT, DIDN'T I EXPLAIN TO YOU THAT UNDER THE RULES THAT I WOULD CALL YOU AND IF YOU DENIED THE STATEMENT THAT I WOULD HAVE TO CALL CLINT FORD TO TELL WHAT YOU HAD TOLD HIM?

A THAT'S -- YES, SIR.

Q DIDN'T I TELL YOU THAT? AND AFTER THAT YOU TOLD ME

WHAT THESE NOTES ARE WRITTEN IN HERE THAT YOU EXPLAINED IT A WAY THAT IT WASN'T QUITE WHAT...

A I EXPLAINED A WAY -- IN A WAY -- I SAID IT. AND MR. FORD MIGHT INTERPRETED IT, BUT I COULD BE MIXED UP.

Q ALL RIGHT, SIR. THANK YOU.

MR. LITTLEJOHN: YOUR HONOR, I WOULD ARGUE TO THE COURT THAT GIVEN THE PROFFER THAT WE HAVE JUST MADE, THAT THIS SITUATION IS WORSE THAN WE THOUGHT IT WAS BECAUSE THE STATEMENT WHICH THE WITNESS ACTUALLY ATTRIBUTES TO OUR CLIENT, THE STATE KNEW ABOUT SHORTLY AFTER THE EVENTS OF FEBRUARY 26TH 1996.

THE CASE AGENT IN THIS CASE, LIEUTENANT MARTIN, HAD THAT INFORMATION. BUT YET HE WROTE UP A REPORT THAT WAS MISLEADING, DID NOT GIVE US THE FULL PICTURE AND WE HAVE NOT BEEN GIVEN THE FULL PICTURE UNTIL RIGHT NOW.

YOUR HONOR, I THINK THIS IS HIGHLY PREJUDICIAL. AND THE -- THAT SANCTIONS SHOULD BE THE EXCLUSION OF THIS EVIDENCE.

MR. KOLB: JUDGE, BEFORE YOU CONCLUDE, OFFICER MARTIN DID IN FACT RECEIVE THAT INFORMATION. I THINK WE NEED TO HEAR FROM HIM BECAUSE HE TELLS ME THAT HE CALLED THE WITNESS AND HE DENIED IT AND THAT'S ALL I HAVE EVER HEARD.

AND THE SITUATION -- OF COURSE -- RULE 607 SAYS WITNESS MAY BE IMPEACHED BY EITHER PARTY CALLING. DIDN'T USED TO BE THE RULE UNTIL ABOUT A YEAR AGO AND THAT'S WHAT

I EXPLAINED TO MR. JONES WHEN I SUBPOENAED HIM IS THAT I HAVE TWO WAYS OF GOING -- THAT I COULD CALL HIM.

IF HE DENIED IT, THEN I'M GOING TO CALL CLINT FORD. AND EXPLAINED TO HIM ALL I WANTED WAS THE TRUTH AND AT THAT POINT HE SORT OF MODIFIED THE RULE, EXPLAINED IT A WAY AND TOLD ME WHAT I THEN PENCILED IN MR. -- AS MY PERSONAL NOTES AND MY INTENT WAS TO -- AND I SUBPOENAED BOTH OF THEM.

AND IF HE DENIED STONE MAKING A STATEMENT, THEN I'D CALL MR. FORD TO IMPEACH HIM. AND IN ANY EVENT, THE DEFENSE WAS AWARE OF BOTH VERSIONS, CLINT FORD VERSION AND THE DENIAL.

THE COURT: YES, SIR. ANYTHING FURTHER, MR. SOLICITOR?

MR. KOLB: WELL, DO YOU WANT TO HEAR FROM MR. MARTIN, JUDGE, BECAUSE MR. MARTIN TELLS ME THAT HE DENIED IT PERIOD WITH NO EXPLANATION.

THE COURT: MR. SOLICITOR, I DON'T NEED TO HEAR ANYBODY THAT YOU WANT TO CALL TO IMPEACH THE WITNESS THAT YOU ARE CALLING.

I'M GOING TO RULE THAT UNDER 403, THIS TESTIMONY IS SO WROUGHT WITH MISLEADING INFORMATION THAT IT WILL DO NOTHING IN HELPING THE FINDERS OF FACT IN DETERMINING WHAT THEY ARE CALLED UPON TO DECIDE, THAT IS WHAT HAPPENED ON THE NIGHT OF FEBRUARY THE 26TH, THAT THIS WITNESSES

VERSIONS -- HE HAS EXPLAINED IT WHICH IS CONTAINED IN THE PROFFER WHICH YOU CERTAINLY ARE CORRECT INSOFAR AS YOUR RIGHT TO CALL ADDITIONAL WITNESSES TO IMPEACH THIS WITNESS.

OUR RULES DO ALLOW THAT. BUT THAT PUTS US TRYING AN ISSUE OF WHAT DID THIS INDIVIDUAL SAY AND WHAT HE SAID AND THE WEIGHT, THE MANNER IN WHICH HE SAID IT AND WHAT ALL OF THESE AGENTS HEARD CREATES A TOTAL ISSUE THAT ABSOLUTELY COULD MISLEAD THIS JURY.

AND I FIND IT UNDULY PREJUDICIAL FOR ALL OF THOSE REASONS AND WILL EXCLUDE IT FROM THIS -- FROM THIS PROCEEDING. ALL RIGHT, SIR. YOU WANT HIM TO COME DOWN NOW?

MR. KOLB: YEAH.

THE COURT: ALL RIGHT. COME ON DOWN.

(WHEREUPON THE WITNESS LEFT THE STAND).

THE COURT: ALL RIGHT. LETS BRING THE JURY BACK.

(WHEREUPON THE JURY ENTERED THE COURTROOM AT 10:12 A.M.)

THE COURT: THANK YOU, LADIES AND GENTLEMEN. READY TO CONTINUE. SOLICITOR, YOU MAY CALL YOUR NEXT WITNESS.

MR. KOLB: JOHN JOHNSON.

JOHN JOHNSON, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

WITNESS: GOOD MORNING, SIR.

THE COURT: ONCE YOU GET YOURSELF SITUATED, POSITION THAT MIKE SO YOU CAN SPEAK INTO IT. I'M GOING TO ASK YOU TO STATE YOUR NAME AGAIN FOR THE RECORD AND SPELL YOUR LAST, PLEASE.

WITNESS: JOHN H JOHNSON, LAST SPELL ON THE SPELLING IS J O H N S O N.

THE COURT: THANK YOU, SIR.

DIRECT EXAMINATION BY MR. KOLB:

Q MR. JOHNSON, HOW ARE YOU EMPLOYED?

A WITH THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

Q ALL RIGHT. AND WHERE DO YOU LIVE?

A PINEWOOD, HERE IN THE SUMTER COUNTY COMMUNITY.

Q ALL RIGHT, SIR. AND THERE'S -- ONE LOCAL SLED AGENTS, WERE YOU ASSIGNED ALONG WITH AGENT GARY MARTIN AND LIEUTENANT PERRY HEROD AS THE PRIMARY CASE AGENTS IN THIS INVESTIGATION?

A YES, SIR. I WAS.

Q AND AGENT JOHNSON, ON OCTOBER THE 2ND, 1996, DID YOU HAVE OCCASION TO PARTICIPATE IN OBTAINING A BLOOD SAMPLE FROM THE DEFENDANT, BOBBY WAYNE STONE?

A YES, SIR. I DID.

Q AND CAN YOU IDENTIFY THE DEFENDANT HERE IN THE COURTROOM?

A GENTLEMAN SEATED AT THE DEFENSE TABLE WITH THE WHITE SHIRT SEATED BETWEEN THE TWO GENTLEMAN WITH THE GRAY SUITS

ON.

Q ALL RIGHT. AND THE BLOOD SAMPLE WAS OBTAINED FROM HIM?

A YES, SIR. IT WAS.

Q AND WAS THAT ACTUALLY BY A NURSE OR A MEDICAL PERSONNEL?

A IT WAS BY A NURSE. THAT'S CORRECT.

Q AND WAS THAT IN YOUR PRESENCE?

A IT WAS.

Q OKAY. DID YOU ACTUALLY SEE THE BLOOD COMING FROM MR. STONE?

A I DID.

Q WHAT DID YOU DO WITH THAT BLOOD SAMPLE?

A AFTER OBTAINING, I IMMEDIATELY DO -- DELIVERED IT TO OUR FORENSIC LABORATORY ON BROAD RIVER ROAD, COLUMBIA.

Q ALL RIGHT. AND WAS THAT BLOOD SAMPLE TAKEN AND PLACED INTO A SEALED EVIDENCE CONTAINER FOR SUBMISSION TO THE SEROLOGY DEPARTMENT?

A IT WAS.

Q ALL RIGHT. AND YOU SEALED IT YOURSELF?

A YES, SIR.

Q ALL RIGHT, SIR. OKAY. THANK YOU. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

THE COURT: CROSS-EXAMINE?

MR. LITTLEJOHN: NO QUESTIONS, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN. THANK YOU, SIR.

MR. KOLB: CALL EMILY REINHART.

EMILY REINHART, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: GOOD MORNING, MRS. REINHART. ONCE YOU POSITION THAT CHAIR, MOVE THE MIKE SO THAT YOU CAN SPEAK COMFORTABLY. I WOULD LIKE FOR YOU TO STATE YOUR NAME AGAIN AND SPELL YOUR LAST.

WITNESS: EMILY REINHART R E I N H A R T

DIRECT EXAMINATION BY MR. KOLB:

Q MRS. REINHART, HOW ARE YOU EMPLOYED?

A I'M EMPLOYED BY THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION IN COLUMBIA.

Q AND WHAT IS YOUR POSITION THERE?

A I'M A SPECIAL AGENT ASSIGNED TO THE FORENSIC LABORATORY IN THE CAN DEPARTMENT OF SEROLOGY AND D N A ANALYSIS.

Q ALL RIGHT. COULD YOU TELL THE COURT ABOUT YOUR EDUCATION TRAINING AND EXPERIENCE IN THAT FIELD.

A YES, SIR. I'M A GRADUATE OF THE UNIVERSITY OF SOUTH CAROLINA WITH A BACHELOR OF SCIENCE DEGREE IN MEDICAL TECHNOLOGY. I'M ALSO A GRADUATE OF THE BAPTIST MEDICAL CENTER SCHOOL OF MEDICAL TECHNOLOGY.

AT THAT TIME I BECAME BOARD CERTIFIED THROUGH THE AMERICAN SOCIETY OF CLINICAL PATHOLOGISTS. AFTER

WORKING FOR TWO YEARS IN THE CHEMISTRY LAB AT BAPTIST I BEGAN MY EMPLOYMENT WITH SLED.

I WAS IMMEDIATELY ASSIGNED TO THE SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY AND COMPLETED BASIC LAW ENFORCEMENT TRAINING. AT THAT TIME I BECAME A CERTIFIED POLICE OFFICER FOR THE STATE OF SOUTH CAROLINA.

I THEN RETURNED TO SLED HEADQUARTERS AND BEGAN A SIX MONTH TRAINING PROGRAM IN THE FIELD OF FORENSIC SEROLOGY. DURING THOSE SIX MONTHS, I WAS IN THE SUPERVISION OF COURT QUALIFIED FORENSIC EXPERTS.

I WAS THEN ASSIGNED TO THE F.B.I. ACADEMY IN QUANICO, VIRGINIA AND STUDIED IN THEIR SCHOOL OF FORENSIC SEROLOGY.

IN ADDITION TO THAT FORMAL TRAINING IN SEROLOGY, I WAS -- RECEIVED SPECIALIZED TRAINING IN HOMICIDE INVESTIGATIONS AND SEXUAL ASSAULTS, MOST RECENTLY BACK IN SEPTEMBER AND OCTOBER OF 96.

I AGAIN TRAINED AT THE F.B.I. ACADEMY IN THEIR DEPARTMENT OF D N A ANALYSIS.

Q ALL RIGHT. HOW LONG HAVE YOU BEEN AT SLED?

A I HAVE BEEN THERE EIGHT YEARS.

Q ALL RIGHT. HAVE YOU PREVIOUSLY TESTIFIED IN COURT AND BEEN QUALIFIED AS AN EXPERT IN SEROLOGY AND D N A ANALYSIS?

A I HAVE BEEN QUALIFIED AS AN EXPERT IN SEROLOGY AND

I'M IN TRAINING FOR D N A.

Q ALL RIGHT.

MR. KOLB: YOUR HONOR, WE'D OFFER HER TO THE COURT AS AN EXPERT IN SEROLOGY.

THE COURT: VERY WELL. CARE TO EXAMINE HER?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: VERY WELL. LADIES AND GENTLEMEN, THIS WITNESS BECAUSE OF HER BACKGROUND AND TRAINING WILL BE ALLOWED TO RENDER OPINIONS IN THE AREA OR FIELD OF EXPERTISE OF SEROLOGY. YOU MAY CONTINUE.

(WHEREUPON QUESTIONING RESUMED).

Q MRS. REINHART, I WANT TO ASK YOU ABOUT SOME ITEMS OF EVIDENCE THAT YOU HAD OCCASION TO RECEIVE THOSE IN ADDITION TO RECEIVING -- FIRST A SWAB FROM STATE'S EXHIBIT 50 FOR IDENTIFICATION, THIS 22 PISTOL.

BEEN PREVIOUS TESTIMONY BY AGENT TOM DARNELL THAT HE FOUND A BLOOD STAIN ON THAT PISTOL AND SWABBED IT OFF AND PUT IT IN A SEALED CONTAINER FOR SUBMISSION TO THE SEROLOGY DEPARTMENT.

A THAT'S CORRECT. I DID RECEIVE THAT ITEM. SWAB FROM THE PISTOL.

Q ALL RIGHT. AND WAS IT STILL IN THE SEALED CONDITION AS SUBMITTED BY AGENT DARNELL?

A YES, SIR. IT WAS.

Q ALL RIGHT. WHAT DID THAT INDICATE TO YOU WHEN YOU

RECEIVED IT?
A THAT THE EVIDENCE HAD NOT BEEN TAMPERED WITH. I OPENED THE EVIDENCE.
Q ALL RIGHT. I WANT TO ASK YOU ABOUT IF YOU CAN -- EXHIBIT 56 FOR IDENTIFICATION. IF YOU'LL REVIEW THIS AND IT'S CONTENTS.
A YES, SIR. I CAN IDENTIFY THIS ITEM BOTH BY THE LAB NUMBER THAT IS ASSIGNED ON THE BOX AS WELL AS INITIALS ON THE EVIDENCE TAPE ON THE BOX.
Q ALL RIGHT. THAT'S YOUR OWN EVIDENCE TAPE ON THERE?
A THE YELLOW TAPE.
Q ALL RIGHT. COULD YOU LOOK AT THE -- INSIDE.
A YES, SIR. AGAIN THIS ITEM CAN BE IDENTIFIED. MY INITIALS E B R ARE DISPLAYED HERE IN THE BACK OF THE JACKET.
Q AFTER YOU WERE THROUGH WITH YOUR TESTS ON THIS EXHIBIT, DID YOU SEAL IT UP FOR SENDING BACK TO THE SUMTER COUNTY SHERIFF'S DEPARTMENT?
A THAT'S CORRECT.
MR. KOLB: YOUR HONOR, AT THIS TIME THE CHAIN BE COMPLETE. WE WOULD OFFER THIS INTO EVIDENCE.
THE COURT: ANY OBJECTION?
MR. LITTLEJOHN: NO OBJECTION, YOUR HONOR.
THE COURT: VERY WELL. STATE'S EXHIBIT FORMERLY PREVIOUSLY 56 FOR I.D. WILL NOW BECOME STATE'S EXHIBIT 56

INTO EVIDENCE WITHOUT OBJECTION. IT IS A BOX CONTAINING COAT AND BROWN PAPER BAG.

(STATE'S EXHIBIT NO. 56 MARKED FOR EVIDENCE).

(WHEREUPON QUESTIONING RESUMED).

Q DID YOU HAVE OCCASION TO RECEIVE A SUMTER SHERIFF'S DEPARTMENT DEPUTY SHERIFF'S UNIFORM, TOP SHIRT, TAN IN COLOR, BULLET PROOF VEST AND A WHITE T SHIRT?

A YES, SIR. I DID.

Q AND WHAT WERE THE CONDITIONS OF -- HOW DID YOU RECEIVE THOSE?

A THESE ITEMS WERE ALSO SEALED. AND I BROKE THE SEAL UPON RECEIPT TO MAKE THE EXAMINATION ON THOSE ITEMS.

Q OKAY. PREVIOUSLY HEARD FROM JEFF HOLIFIELD OF THE TRACE DEPARTMENT. AND HE EXAMINED THOSE ITEMS AND PUT THEM BACK IN THE CONTAINER AND SEALED THEM FOR SUBMISSION TO SEROLOGY.

WERE THEY IN THAT SAME CONDITION, SEALED BY JEFF HOLIFIELD WHEN YOU RECEIVED THEM?

A THAT'S CORRECT. THE EVIDENCE TAPE WAS IN PLACE WITH JEFF HOLIFIELD'S INITIALS AND I BROKE THE SEAL.

Q WHAT DID THAT INDICATE TO YOU -- SEAL IN PLACE.

A THAT NOTHING HAD BEEN DONE TO IT SINCE THE TIME JEFF DID HIS EXAMINATION AND SEALED IT BACK UP.

Q ALL RIGHT. ALSO I WANT TO ASK YOU ABOUT A BLOOD SAMPLE FROM DEPUTY CHARLES KUBALA.

A YES, SIR. I DID RECEIVE A SAMPLE FROM -- FROM CHARLES KUBALA.

Q COULD YOU TELL US WAS IT IN A SEALED CONTAINER AT THE TIME YOU RECEIVED IT?

A YES, SIR. IT WAS.

Q DID YOU RECEIVE IT FROM THE LOG IN REFRIGERATOR AT SLED LABORATORY HEADQUARTERS?

A THAT'S CORRECT. IT WAS SECURED FROM A REFRIGERATED STORAGE EVIDENCE AREA.

Q AND PREVIOUSLY HEARD FROM AGENT PAUL LAROSA AND THEN TOM DARNELL. THEY HAD IT IN A SEALED CONTAINER, PLACED IT IN LOG IN REFRIGERATOR FOR SEROLOGY. WAS IT IN THAT SAME CONDITION WHEN YOU RECEIVED IT?

A THAT'S CORRECT. THE SEALING OFFICIAL WAS TOM DARNELL.

Q AND WHAT DID THAT INDICATE TO YOU -- THE SEAL WAS STILL IN PLACE?

A THAT THE EVIDENCE HAD NOT BEEN TAMPERED WITH.

Q ALL RIGHT. A SWAB, A BLOOD SWAB FROM THE REAR OF THE HOUSE AT 817 TAYLOR STREET TAKEN BY SHERIFF, SUMTER SHERIFF'S OFFICE INVESTIGATOR RAY MACKESSY, DID YOU HAVE OCCASION TO RECEIVE THAT?

A YES, SIR. I DID.

Q MR. MACKESSY PREVIOUSLY TESTIFIED THAT HE SEALED THAT SAMPLE AND SUBMITTED IT TO -- IN A SEALED CONTAINER ON MARCH 8TH 1996 TO SLED HEADQUARTERS. DID YOU RECEIVE THAT

SAMPLE IN A SEALED CONTAINER?

A YES, SIR. I DID. IT WAS SEALED WITH RAY MACKESSY'S INITIALS ON IT.

Q WHAT DID THAT INDICATE TO YOU -- YOU RECEIVED IT IN THAT CONDITION?

A AGAIN THAT THE EVIDENCE HAD NOT BEEN TAMPERED WITH SINCE HE PLACED IT IN THE BAG.

Q A BLOOD SAMPLE FROM THE DEFENDANT IN THIS CASE, BOBBY WAYNE STONE. WE JUST HEARD FROM SLED AGENT JOHN JOHNSON IN THAT REGARD THAT HE RECEIVED THAT BLOOD SAMPLE AND TOOK IT TO SLED HEADQUARTERS LOG IN REFRIGERATOR AND PLACED IT THERE IN A SEALED EVIDENCE CONTAINER.

A THAT'S CORRECT.

Q AND COULD YOU TELL US HOW YOU RECEIVED IT, WHAT THAT INDICATED TO YOU.

A YES, SIR. AGAIN THIS SAMPLE WAS RECEIVED IN THE SAME CONDITION AS THE OTHERS IN A SEALED CONTAINER WITH JOHN JOHNSON BEING THE SEALING OFFICIAL.

Q NOW, MRS. REINHART, WHAT -- LET ME ASK YOU A LITTLE BIT ABOUT THE FIELD OF SEROLOGY. COULD YOU EXPLAIN TO THE LADIES AND GENTLEMEN OF THE JURY WHAT SEROLOGY IS.

A YES, SIR. IN GENERAL, SEROLOGY IS JUST THE STUDY OF BODY FLUIDS SUCH AS BLOOD, SEMEN AND SALIVA. IN A FORENSIC ASPECT WE ARE A LITTLE MORE SPECIFIC IN THAT WE EXAMINE EVIDENCE FOR THE PRESENCE OF BODY FLUIDS.

ONCE WE HAVE EXAMINED THE EVIDENCE AND HAVE POSITIVELY IDENTIFIED THAT A BODY FLUID EXIST, WE THEN TRY TO DO PARTICULAR CHEMICAL TESTS THAT WE DO IN OUR LABORATORY TO INCLUDE OR EXCLUDE INDIVIDUALS AS BEING POSSIBLE DONORS OF THAT BODY FLUID SAMPLE.

NOW, ALL OF THE WORK THAT WE DO IS DEPENDENT ON THE QUANTITY AND THE QUALITY OF THE STAIN THAT WE HAVE TO EXAMINE ON THE EVIDENCE. ONCE WE HAVE MADE A DETERMINATION AS TO WHAT TYPE OF TEST CAN BE DONE, THEN WE PROCEED AND START PERFORMING THE PARTICULAR TEST IN OUR LABORATORY.

Q ALL RIGHT. AND WHAT IS IT ABOUT BLOOD AND OTHER BODY FLUIDS THAT ALLOWS THEM TO BE IDENTIFIED?

A IN OUR PARTICULAR LABORATORY THERE ARE TWO TESTS THAT WE CAN DO ON A BLOOD STAIN. I REFER TO THESE AS GENETIC MARKERS. AND WHAT THAT SIMPLY IS IS OUR WAY OF IDENTIFYING A BLOOD SAMPLE.

IF AN INDIVIDUAL IS ASKED -- SUCH AS AN EYE WITNESS IS ASKED TO IDENTIFY A PERSON -- THEY CAN DO THAT BY HAIR COLOR, EYE COLOR, WEIGHT.

IN FORENSIC SEROLOGY WE IDENTIFY INDIVIDUALS BASED ON THEIR GENETIC MARKERS. THE ADVANTAGE THAT WE HAVE USING GENETIC MARKERS ARE THOSE THINGS ARE CONSTANT THROUGHOUT LIFE, THEY NEVER CHANGE.

AN INDIVIDUAL CAN CHANGE THEIR HAIR COLOR, THEIR EYE COLOR OR THEIR WEIGHT, BUT WITH GENETIC MARKERS THAT'S

SOMETHING THAT REMAINS CONSTANT THROUGHOUT LIFE.

Q ALL RIGHT. AND WHAT TYPE OF GENETIC MARKERS ARE YOU LOOKING FOR IN THE FIELD OF SEROLOGY?

A THE TWO THAT WE DO IN OUR LABORATORY IS THE A B O BLOOD TYPE AND A P G M SUBTYPE. YOU'RE PROBABLY ALL FAMILIAR WITH A B O BLOOD TYPE.

WE PERFORM THAT TEST IN OUR LABORATORY JUST LIKE A BLOOD BANK WOULD IN A HOSPITAL TO MAKE A BLOOD TRANSFUSION.

A P G M SUBTYPE IS JUST ANOTHER GENETIC MARKER WHERE THERE ARE TEN POSSIBILITIES FOR THE RESULT. IN THE A B O BLOOD TYPE THERE'S ONLY FOUR. WITH THE P G M THERE IS TEN POSSIBILITIES.

Q ALL RIGHT. COULD YOU TELL THE LADIES AND GENTLEMEN OF THE JURY ABOUT YOUR EXAMINATION OF THE EVIDENCE THAT WE -- THAT YOU RECEIVED.

A YES, SIR. THE FIRST ITEM OF EVIDENCE THAT I ANALYZED WAS THE SWAB FROM THE PISTOL. IT WAS IDENTIFIED AS BEING FROM A PISTOL WITH SERIAL NUMBER 1135105. HAVING EXAMINED THAT SWAB FROM THE PISTOL, I IDENTIFIED...

Q HOLD ON JUST A MINUTE. CAN YOU TELL US IF THAT'S THE SAME SERIAL NUMBER ON STATE'S EXHIBIT 50 FOR I.D.

A THE SERIAL NUMBER ON THIS WEAPON IS 1135105.

Q OKAY.

A WHICH -- YES, SIR. IS THE SAME IDENTIFICATION AS THE

SWAB.

Q ALL RIGHT.

A I IDENTIFIED HUMAN BLOOD ON THE SWAB THAT WAS COLLECTED FROM THE PISTOL. HOWEVER, THE QUANTITY OF IT WAS NOT SUFFICIENT FOR ME TO DO EITHER OF THE TWO TESTS THAT I MENTIONED THAT WE CAN DO IN OUR LABORATORY.

SO I SIMPLY WAS ABLE TO IDENTIFY THAT HUMAN BLOOD DID EXIST ON THE SWAB THAT CAME FROM THE PISTOL.

Q ALL RIGHT.

A THE NEXT ITEM OF EVIDENCE WAS A BROWN COAT OR THE JACKET THAT YOU SAW FROM BOBBY WAYNE STONE. THERE ARE ACTUALLY FIVE DIFFERENT STAINS THAT WERE ISOLATED FROM HIS JACKET.

ALL FIVE I WAS ABLE TO IDENTIFY HUMAN BLOOD IN FIVE DIFFERENT LOCATIONS ON THE JACKET. BUT AGAIN, THE QUANTITY WAS NOT SUFFICIENT FOR ME TO DO THE TYPE OF TESTING THAT WE DO IN OUR LABORATORY.

Q WHEN YOU SAY BLOOD STAIN AND QUANTITY, HOW BIG WERE THESE STAINS THAT YOU LOCATED, THESE STAINS?

A THE STAINS THAT I LOCATED WERE VERY MINIMAL, JUST -- JUST TINY LITTLE DROPS LIKE THE -- NO BIGGER THAN MAYBE SEVERAL MILIMETERS BIG. THEY WERE VERY SMALL DROPLETS OF BLOOD.

Q ALL RIGHT. COULD YOU GO AHEAD WITH THE OTHER ITEM.

A YES, SIR. THE NEXT ITEM WAS A UNIFORM TOP SHIRT, A

SUMTER COUNTY SHERIFF'S OFFICE SHIRT. HUMAN BLOOD WAS IDENTIFIED ON THIS ITEM AS WELL.

THE NEXT ITEM WAS A BULLET PROOF VEST AND THE NEXT WAS A WHITE T SHIRT. ON BOTH OF THESE TWO ITEMS, THE BULLET PROOF VEST AND THE WHITE T SHIRT, I MERELY MADE AN OBSERVATION THAT BLOOD WAS PRESENT ON THESE ITEMS.

I DID NOT DO ANY FURTHER TESTING ON THEM BECAUSE THOSE PARTICULAR ITEMS WERE LAYERED UNDERNEATH THE TOP SHIRT WHERE I IDENTIFIED HUMAN BLOOD.

SO IN OUR SITUATION IN THE LABORATORY WHEN EVER WE HAVE A LAYERED EFFECT OF CLOTHING, WE NORMALLY DO OUR ANALYSIS ON THE OUTER MOST PORTION OF THE---.

Q SO THE UNIFORM TOP SHIRT, COULD YOU TELL US A LITTLE BIT ABOUT THE QUANTITY OF BLOOD THAT YOU OBSERVED.

A YES, SIR. THE SHIRT AS WELL AS THE VEST AND THE T SHIRT WERE ALL SATURATED.

MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO OBJECT TO THIS. THIS IS...

THE COURT: SUSTAINED. NOT RELEVANT TO THE CASE.

(WHEREUPON QUESTIONING RESUMED).

Q ALL RIGHT. GOING FORWARD WITH YOUR REPORT ON YOUR ANALYSIS.

A THE NEXT ITEM THAT WAS ANALYZED WAS THE KNOWN BLOOD SAMPLES FROM CHARLES B KUBALA. THE TWO GENETIC MARKERS THAT I MENTIONED I DID IDENTIFY FROM HIS KNOWN BLOOD

SAMPLE.

HE WAS DETERMINED TO BE BLOOD TYPE O WITH A P G M SUBTYPE OF ONE PLUS. THE NEXT ITEM ANALYZED WAS A SWAB COLLECTED FROM THE CRIME SCENE IDENTIFIED AS BEING FROM THE REAR OF THE HOUSE. THERE WAS HUMAN BLOOD IDENTIFIED ON THIS SWAB AS WELL.

THE NEXT ITEM THAT I ANALYZED WAS A KNOWN BLOOD SAMPLE FROM BOBBY WAYNE STONE. HIS A B O BLOOD TYPE WAS TYPE O. P G M SUBTYPE ONE PLUS.

Q NOW, AS I UNDERSTAND YOUR RESULTS, THE A B O TYPE AND P G M SUBTYPE WERE -- BOTH MR. KUBALA AND MR. STONE WERE THE SAME?

A THAT'S CORRECT. THEY SHARED THE SAME A B O BLOOD TYPE AS WELL AS P G M SUBTYPE.

Q ALL RIGHT. NOW, THAT BEING THE CASE, WAS THERE ANY FURTHER TESTING THAT YOU COULD DO IN THE SEROLOGY LAB TO DIFFERENTIATE VARIOUS BLOOD SAMPLES THAT YOU RECEIVED?

A NO, SIR. BECAUSE AS I MENTIONED, THE WHOLE OBJECTIVE BEHIND THE WORK THAT I DO IS TO MAKE A COMPARISON.

IN THIS PARTICULAR CASE THE TWO INDIVIDUALS DID NOT DIFFER ON EITHER OF THEIR BLOOD TYPE OR THEIR P G M SUBTYPE, SO THERE WOULD NOT HAVE BEEN ANY REASON TO MAKE A DIFFERENTIATION BETWEEN THE TWO.

Q OKAY. AND AS A RESULT OF THAT, WERE THE -- IN THE SLED LABORATORY, DO YOU -- ARE YOU ABLE TO DO D N A

ANALYSIS?
A WE HAVE A D N A LABORATORY AT SLED. WE PERFORM A PARTICULAR TYPE OF D N A AT OUR SLED LABORATORY. THERE ARE SAMPLES THAT A CERTAIN TYPE OF D N A S DONE WHEN WE HAVE TO SEND IT TO AN INDEPENDENT LABORATORY.
Q ALL RIGHT. AND THE TYPE OF D N A ANALYSIS THAT YOU CAN DO AT SLED IS REFERRED TO AS R F L P ANALYSIS?
A THAT'S CORRECT.
Q WAS THERE A -- IN REGARD TO THE SWAB FROM THE PISTOL AND THE FIVE SMALL STAINS FROM BOBBY STONE'S COAT, WAS THERE SUFFICIENT AMOUNT TO DO D N A ANALYSIS?
A NOT IN OUR LABORATORY. NO, SIR. THE TYPE THAT WE DO AT SLED CANNOT BE DONE ON THESE SAMPLES.
Q ALL RIGHT. AND WHAT'S THE REASON FOR THAT?
A BECAUSE OF THE QUANTITY. THE SAMPLE WAS JUST TOO SMALL.
Q ALL RIGHT. WHEN YOU GET INTO A SITUATION LIKE THAT, IS THERE ANOTHER TYPE OF D N A THAT CAN -- ANALYSIS THAT CAN BE DONE AT ANOTHER LAB OUTSIDE OF SLED?
A YES, SIR. THERE IS ANOTHER TYPE OF D N A REFERRED TO AS P.C.R. D N A ANALYSIS. THE WHOLE REASON FOR THIS TYPE OF D N A IS THEY ARE ABLE TO TAKE VERY, VERY MINUTE SAMPLES OF A BODY FLUID, AMPLIFY IT, IN OTHER WORDS MAKE IT A LARGER SAMPLE. AND THEN THEY CAN PERFORM ANALYSIS ON THAT PARTICULAR SAMPLE.

Q DID YOU TAKE THE SAMPLES THAT YOU RECEIVED AND SEND THEM TO A P.C.R., A D N A P.C.R. LABORATORY?

A YES, SIR. THERE WERE ACTUALLY NINE SAMPLES THAT I SENT TO MICRO DIAGNOSTICS IN TENNESSEE FOR P.C.R. ANALYSIS.

Q ALL RIGHT.

MR. KOLB: YOUR HONOR, I GUESS WE SHOULD PUT ON THE RECORD AT THIS TIME THAT WE AGREE FOR HER... TO GIVE THE RESULTS.

THE COURT: STATE COULD AGREE THIS WITNESS MAY DISCUSS -- TESTIFY AS TO THE RESULTS THAT SHE RECEIVED.

MR. LITTLEJOHN: IF -- YOUR HONOR, COULD WE APPROACH SIDE BAR FOR JUST A MINUTE CONCERNING THIS?

THE COURT: SURE.

(WHEREUPON A BENCH CONFERENCE WAS HELD).

THE COURT: ALL RIGHT. WE HAVE HAD A SIDE BAR CONCERNING THIS ISSUE AND AS I UNDERSTAND IT FROM THE DEFENSE COUNSEL, IT STILL IS THE DEFENSE POSITION THIS WITNESS MAY TESTIFY AS TO THE RESULTS OF THAT REPORT.

MR. LITTLEJOHN: THAT'S CORRECT, SIR.

THE COURT: THANK YOU. YOU MAY PROCEED, SOLICITOR.

(WHEREUPON QUESTIONING RESUMED).

Q WHAT WERE THOSE SAMPLES THAT YOU SENT TO MICRO DIAGNOSTIC?

A THE NINE SAMPLES THAT WERE SENT FOR FURTHER ANALYSIS

INCLUDED THE KNOWN BLOOD STANDARD FROM BOBBY WAYNE STONE, THE KNOWN BLOOD STANDARD FROM CHARLES KUBALA, THE BLOOD SWAB FROM THE REAR OF THE HOUSE, THE BLOOD SWAB FROM THE PISTOL AND THE FIVE STAINS THAT I ISOLATED FROM THE JACKET.

Q ALL RIGHT. COULD YOU TELL US ABOUT THE RESULTS OF THAT FURTHER TESTING?

A FOR PURPOSES OF THE RECORD I WILL JUST READ DIRECTLY WHAT MIKE LIGIANO (SIC) HAS REPORTED. MOLECULAR WEIGHT D N A WAS ISOLATED FROM ALL NINE ITEMS OF EVIDENCE.

AND D N A COMPARISONS WERE MADE USING H L A D Q ALPHA POLY MARKER AND S T R P C R D N A ANALYSIS. THE RESULTS OF THE ANALYSIS ARE SHOWN IN TABLE ONE. I WILL READ THIS SUMMATION OF HIS RESULTS.

THE P C R D N A TYPES OBTAINED FROM ITEMS 1. 1 WHICH IS THE SWAB FROM THE GUN, ITEMS 10. 3, 10.4 AND 10.5 WHICH ARE ALL BLOOD STAINS ISOLATED FROM THE JACKET, ARE CONSISTENT WITH THE D N A TYPES OF BOBBY STONE AND OCCUR WITH A FREQUENCY OF 1 IN TWO BILLION, 316 MILLION IN THE NORTH AMERICAN BLACK POPULATION AND ONE IN 24 MILLION IN THE NORTH AMERICAN CAUCASION POPULATION.

THE P C R D N A TYPES OBTAINED FROM ITEM SIX WHICH IS THE BLOOD SWAB FROM THE REAR OF THE HOUSE ARE CONSISTENT WITH THE TYPES OF CHARLES KUBALA AND OCCUR WITH A FREQUENCY OF 1 IN 31 MILLION IN THE NORTH AMERICAN BLACK

POPULATION AND 1 IN 602,000 IN THE NORTH AMERICAN CAUCASION POPULATION.

Q ALL RIGHT. THANK YOU, MRS. REINHART. ANSWER ANY QUESTIONS THAT THE DEFENSE MAY HAVE.

THE COURT: YOU MAY CROSS-EXAMINE.

MR. LITTLEJOHN: INDULGE ME JUST A MOMENT.

THE COURT: YES, SIR.

(WHEREUPON THERE WAS A PAUSE)

CROSS-EXAMINATION BY MR. LITTLEJOHN:

Q GOOD MORNING, MRS. REINHART. JUST A COUPLE OF THINGS. CAN YOU IDENTIFY FOR US WHERE ON THE JACKET WHICH IS STATE'S EXHIBIT 56 THE BLOOD STAINS WERE LOCATED THAT YOU ISOLATED?

A YES, SIR. IF YOU'D LIKE FOR ME TO HOLD IT UP, I CAN POSSIBLY POINT OUT WHERE THEY WERE ISOLATED.

Q OKAY.

A THIS IS THE JACKET THAT WAS EXAMINED WHERE I ISOLATED THE BLOOD STAINS. AS I MENTIONED, THERE WERE A TOTAL OF FIVE DIFFERENT AREAS THAT I WAS ABLE TO COLLECT A HUMAN BLOOD STAIN FROM THIS JACKET.

THE FIRST CUTTING WAS MADE FROM THE LINING OF THE RIGHT SLEEVE. AND IF YOU WILL NOTICE, YOU CAN SEE WHERE I HAVE CUT AN AREA FROM THE JACKET. RIGHT HERE.

THE SECOND CUTTING WAS MADE FROM THE LINING ON THE LEFT SLEEVE AND ALSO WHERE IT -- WHEREVER I TAKE THE

SAMPLE YOU WILL ALSO SEE THE NUMBER OF THE SAMPLE. THERE IS A NUMBER TWO HERE, SO THAT'S THE SECOND CUTTING THAT WAS MADE FROM THIS JACKET.

THE THIRD SAMPLE WAS COLLECTED ON THE RIGHT FRONT HEM, IF YOU CAN SEE I HAVE MARKED AN AREA HERE ON THE JACKET WHERE THERE WAS A SMALL STAIN ISOLATED DOWN HERE ON THE JACKET.

YOU WILL NOTICE ON SOME OF THESE AREAS WHERE I HAVE CIRCLED THE AREA WHERE I TOOK MY SAMPLE FROM, THE SIZE OF THAT CIRCLE IS NOT NECESSARILY INDICATIVE OF THE SIZE OF THE STAIN.

THAT'S MERELY THE AREA IN WHICH I SWABBED. SO THAT CIRCLE DOES NOT INDICATE THE ENTIRE SWAB WAS MADE OF THAT AREA.

THE NEXT SWAB WAS MADE FROM ABOVE THE LEFT FRONT POCKET. YOU CAN SEE HERE WHERE I HAVE MADE A CIRCLE AND COLLECTED THE SAMPLE FROM ABOVE THE LEFT FRONT POCKET.

THE FINAL SWAB WAS MADE FROM THE LEFT SLEEVE. RIGHT HERE. YOU CAN SEE WHERE I HAVE ALSO MARKED HERE ON THE SLEEVE WHERE THE STAIN WAS LOCATED.

SO ALL OF THE FIVE SAMPLES THAT WERE EXAMINED ON THIS JACKET, ALL FIVE WERE HUMAN BLOOD.

Q AND ALL CONSISTENT WITH BOBBY STONE?

A THERE WERE THREE OF THEM QUOTED IN THE REPORT THAT HE MATCHED TO BOBBY STONE.

Q OKAY. AND THE FIRST TWO PLACES ON THE JACKET THAT YOU INDICATED YOUR BLOOD SAMPLES WERE FOUND WERE THE SLEEVES OF THE COAT?

A THAT'S CORRECT. THE SILK LINING TYPE PORTION OF THE COAT.

Q WHICH WOULD BE IN CONTACT WITH HIS WRIST?

A YES, SIR.

Q OKAY. AND THESE D N A TESTING, IS THAT AN EXPENSIVE OPERATION?

A P C R TESTING IS. YES, SIR.

Q VERY EXPENSIVE?

A YES, SIR.

Q THANK YOU, MA'AM.

THE COURT: RE-DIRECT?

REDIRECT EXAMINATION BY MR. KOLB:

Q OF THE FIVE SAMPLES FROM THE COAT YOU INDICATED THREE, FOUR AND FIVE WERE POSITIVE WITH BOBBY STONE.

WHAT WAS THE RESULT ON ONE AND TWO, THOSE FIRST TWO THAT YOU TOOK?

A THE RESULT FROM MR. DEGUGLIANO'S (SIC) REPORT IS THAT NO RESULT WAS OBTAINED.

Q WASN'T ENOUGH TO GET A P C R RESULT?

A I CAN'T EXPLAIN HIS REPORT. HE JUST SAYS NO REPORT WAS OBTAINED.

Q ALL RIGHT. THANK YOU.

THE COURT: RE-CROSS?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: STEP DOWN. THANK YOU.

MR. KOLB: SHE CAN BE EXCUSED ALSO, JUDGE?

THE COURT: ANY OBJECTION?

MR. LITTLEJOHN: NO OBJECTION.

THE COURT: YOU ARE FREE TO LEAVE, MRS. REINHART. THANK YOU VERY MUCH.

MR. KOLB: WE CALL PERRY HEROD.

THE COURT: MR. HEROD COME FORWARD.

PERRY HEROD, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

MR. LITTLEJOHN: YOUR HONOR, I BELIEVE THERE'S A MATTER WE NEED THE TAKE UP WHICH WE PREVIOUSLY DISCUSSED WITH THE COURT.

THE COURT: ALL RIGHT. LET ME GET MR. HEROD ON THE RECORD THEN I WILL EXCUSE THE JURY. MR. HEROD, IF YOU WOULD PLEASE POSITION THAT MIKE WHERE YOU ARE COMFORTABLE AND YOU CAN SPEAK IN IT. STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST.

WITNESS: PERRY ALSTON HEROD, H E R O D.

THE COURT: THANK YOU, SIR. LADIES AND GENTLEMEN, THERE IS A MATTER OF LAW I NEED TO DISCUSS OUT OF YOUR PRESENCE. HAVE TO SEND YOU TO THE JURY ROOOM AT THIS POINT. DO NOT DISCUSS THIS CASE AMONG YOURSELVES AND DO

NOT BEGIN YOUR DELIBERATIONS AT ANY TIME.

(WHEREUPON THE JURY LEFT THE COURTROOM AT 10:43 A.M.)

MR. LITTLEJOHN: YOUR HONOR, FIRST THING IS WE MENTIONED BEFORE THE JURY WAS SWORN IS WE WERE -- WE OBJECT TO THE INTRODUCTION OF THE WRITTEN STATEMENT BASED ON THE FACT THAT THERE WAS NO RECEIPT GIVEN FOR MR. STONE.

WE ACKNOWLEDGE THE FACT WE HAD THE STATEMENT FOR SOME TIME. HOWEVER, WE THINK THAT THE STATUTE DOESN'T MAKE ANY SORT OF DIFFERENTIATION TO NOTICE, BUT IT CLEARLY REQUIRES THE STATE TO RECEIPT FOR THE STATEMENT.

THE COURT: ALL RIGHT. CLEARLY YOU ARE REFERRING TO -- WITH RESPECT TO THE RECEIPT ASPECT, THE 181550 DEALS WITH THE TAKING OF A STATEMENT BY A PUBLIC EMPLOYEE.

CLEARLY WE ARE DEALING WITH PUBLIC -- PUBLIC EMPLOYEE IN THIS CASE. AND IT PRESCRIBES WHAT SHALL BE DONE. IT SAYS IT MUST BE TAKEN IN WRITING, COPY GIVEN AND RECEIPT FOR THAT AS WELL DELIVERED; IS THAT CORRECT?

MR. LITTLEJOHN: YES, SIR.

THE COURT: NO QUESTION YOU HAVE A COPY.

MR. LITTLEJOHN: NO QUESTION WE HAVE A COPY. YES, SIR.

THE COURT: ALL RIGHT.

MR. LITTLEJOHN: THE RECORD AT THIS POINT IS---.

THE COURT: YOUR SOLE ISSUE IS WHETHER OR NOT -- AND

THEN THAT COUPLED WITH 191 -- REALLY TWO TOGETHER. BUT 19-1-80 AND 1- 1- 90 THAT DEAL WITH THE REQUIREMENTS THAT BECAUSE 19-1-80 CLEARLY HAD FOR REVIEW PURPOSES FOR CROSS-EXAMINATION, BUT THE RESTRICTION OF 19- 1- 90 IS WHAT YOU WERE RELYING ON AGAIN.

MR. LITTLEJOHN: YES, YOUR HONOR.

THE COURT: ALL RIGHT. MR. SOLICITOR? WHAT'S THE STATE'S POSITION?

MR. KOLB: YOUR HONOR, THE TESTIMONY IS THAT THE COPY WAS AN EXACT COPY AND WAS GIVEN IMMEDIATELY TO MR. STONE, ACTUALLY PLACED IN HIS HANDS.

AND JUDGE, THERE IS -- I THINK THE CASE THAT -- I BELIEVE IT'S THE JONES CASE THAT DEALS WITH -- IT ALWAYS -- SOMETHING HAS GOT TO COME FIRST, WHETHER YOU SIGN FIRST THEN GET SOMETHING OR WHETHER YOU GET IT THEN SIGN IT.

AND I WOULD SUBMIT, JUDGE, THAT UNDER THE FACTS OF THIS CASE, THE NOTARIZING, THE SIGNING, ALL OF THE INITIALING THAT WAS DONE TO THE STATEMENT ITSELF AND THEN AS AN IMMEDIATE PART OF THAT MR. STONE IMMEDIATELY GONE OUT MAKE COPY AND COME BACK, THIS IS YOUR COPY -- THAT IN EFFECT HIS SIGNATURE IS ON THE STATEMENT ITSELF CONSTITUTES RECEIPT FROM THE STATEMENT THAT WAS GIVEN TO HIM AT THE EXACT CONTEMPORANEOUS TIME FRAME.

WE ARE NOT TALKING ABOUT GIVING IT TO HIM LATER,

THREE OR FOUR DAYS LATER. AND THAT STATUTE WAS ACTUALLY PASSED IN THE JONES CASE IN 52. THE JONES CASE DECIDED IN 56.

AND I THINK PROBABLY LAWYERS HAVE THE RIGHTS IN YOUR OFFICES, BUT AS A MATTER OF FACT THE JONES CASE IN 56 REFERS TO A STATEMENT TAKEN DOWN IN LONG HAND AND THEN IT WAS TYPED A COUPLE OF DAYS LATER AND GIVEN TO THE DEFENDANT AND HE SIGNED THAT -- IT WAS A TYPED COPY AT THAT TIME. THEN THEY OFFERED LONG HAND VERSION IN EVIDENCE AND THE COURT STATE -- THE STATUTE SHOULD BE APPLIED IN A HIGHLY TECHNICAL MANNER.

ALSO THE LATER CASE OF STATE VERSUS BUTLER DEALS WITH THE ISSUE. JUDGE, WE THINK THAT UNDER THESE CIRCUMSTANCES THAT THE WAY THIS WAS DONE AND REALLY ALL THE FORMALITY OF IT AND ALL THE DIFFERENT SIGNATURES, THAT THE QUESTION AND ANSWER FORMAT FOR THE STATEMENT ITSELF, THE PRECEDING MANNER OF THE -- BEING THOROUGH ORAL STATEMENTS THAT THEN LED INTO THE WRITTEN STATEMENT.

THAT ALL OF THAT -- THAT THERE WAS SUBSTANTIAL COMPLIANCE, IF NOT FULL COMPLIANCE, WITH THE STATUTE AND THEREFORE THE STATEMENT WOULD BE ADMISSIBLE.

THE COURT: WELL, THE ISSUE ABOUT THE RECEIPT OF THE STATEMENT IN THAT -- CONTEMPLATED IN JONES -- CLEARLY IS ADDRESSED BECAUSE IN THIS CASE TWO REASONS.

NUMBER ONE, THERE IS TESTIMONY AS I RECALL AND I

ASSUME HE IS GOING TO TESTIFY TO THE SAME -- HADN'T GAVE HIM A COPY AT THE TIME.

THE QUESTION COMES, THOUGH, THAT CONCERNS THE COURT IS THE ISSUES THAT ARE CREATED BY BOTH IN BUTLER WHERE THE COURTS EXCLUDED THE STATEMENTS WHEN SOUGHT TO BE OFFERED BY THE DEFENSE TO IMPEACH A WITNESS AND THE BASIS FOR THAT EXCLUSION WAS THAT THE STATUTE WAS NOT STRICTLY FOLLOWED IN THAT THE WITNESS DID NOT SIGN FOR THE STATEMENT.

HOW DO I DISTINGUISH THAT BECAUSE WE CLEARLY DO NOT HAVE A RECEIPT. I MEAN, THERE IS NO ISSUE THAT WE DON'T HAVE A RECEIPT SIGNED BY MR. STONE. IS THAT CORRECT? COULD YOU ADDRESS THOSE CASES AND HOW DO I RECONCILE THOSE DECISIONS?

MR. KOLB: JUDGE, COULD I REVIEW THOSE CASES? I WAS NOT -- THIS HAS NOT BEEN SOMETHING...

THE COURT: YES, SIR. YOU MAY WANT TO LOOK AT THEM. THEY ARE CITED IN THE NOTES UNDER FIFTEEN SPACE EIGHT SPACE -- EIGHT EXCUSE ME -- EIGHT SPACE FIFTEEN SPACE 50. THEY ARE CITED IN THERE.

MR. BABB: YOUR HONOR, I HAVE THE CASES.

THE COURT: YOU HAVE THEM. YOU CAN PROVIDE A COPY. GIVE YOU AN OPPORTUNITY TO REVIEW THEM.

MR. BABB: YES, SIR. THOSE I BELIEVE WERE CITED IN THE MOTION.

THE COURT: CORRECT.

MR. BABB: DIFFERENT ONE FROM GEORGETOWN. THEN FILED ONCE WE GOT...

THE COURT: THAT'S CORRECT. TELL YOU WHAT. WE'LL TAKE A RECESS, SOLICITOR. AND YOU LET ME KNOW WHEN YOU ARE READY. WE'LL BE AT EASE. YOU MAY BE AT EASE, TOO.

(WHEREUPON A BRIEF RECESS WAS TAKEN).

THE COURT: ALL RIGHT. MR. SOLICITOR, YOU'VE HAD A CHANCE. LET ME CORRECT SOMETHING I CITED BUTLERS IS NOT CORRECT IT'S -- DEALING WITH EXCLUSION.

MR. KOLB: ONE ADDITIONAL THING. MY PRIMARY POSITION IS THAT THE CONTEMPORANEOUS SIGNING OF THE STATEMENT AND GIVING A COPY CONSTITUTE A RECEIPT.

BUT WE ALSO HAVE A WRITTEN RECEIPT BY THE DEFENSE ATTORNEY OF THE STATEMENT. AND IT'S RECEIPT BY 7-16- 96. THIS PROVIDED TO MR. BABB.

THE COURT: ALL RIGHT.

MR. KOLB: SIGNED FOR IT BY HIS PARALEGAL. AND THIS -- WE WOULD CONTEND THAT THIS CONSTITUTED A WRITTEN RECEIPT.

THE COURT: THAT'S CONTEMPLATED BY THAT STATUTE, SIR?

MR. KOLB: CONSTITUTES A WRITTEN RECEIPT, YES, SIR. AND WE WOULD LIKE TO OFFER THIS INTO EVIDENCE.

THE COURT: ALL RIGHT. I'LL MAKE THAT COURT'S EXHIBIT

NUMBER 6 FOR PURPOSES OF THIS MOTION. THE RECEIPT SIGNED BY MR. BABB.

(COURT'S EXHIBIT NO. 6 MARKED FOR IDENTIFICATION).

MR. KOLB: BY HIS PARALEGAL.

THE COURT: WHEN HE ACKNOWLEDGED RECEIPT OF DISCOVERY MATERIALS IN THIS MATTER.

MR. KOLB: YES, SIR. IT SPECIFICALLY SAYS STATEMENT DIAGRAM MIRANDA FORM TEN PAGES.

THE COURT: THAT WAS DONE IN RESPONSE TO DISCOVERY REQUEST; WAS IT NOT?

MR. KOLB: YES, SIR.

THE COURT: THANK YOU, SIR.

MR. KOLB: AND JUDGE, THE CASES YOU MENTIONED, THOSE CASES DEAL WITH IMPEACHMENT OF A WITNESS. AND THE MOATS CASE, THERE'S NO EVIDENCE NOT -- IT'S NOT ONLY -- DON'T HAVE A RECEIPT, THEY NEVER GAVE A COPY.

HAD NOT GOTTEN COPY OR SIGNED RECEIPT AND WAS NOT GIVEN ANY OPPORTUNITY TO REVIEW THE STATEMENT PRIOR TO ATTEMPTED CROSS-EXAMINATION.

AND THAT'S THE WHOLE PURPOSE OF THE RULE IS TO NOT SURPRISE SOMEONE BY SPRINGING A WRITTEN STATEMENT ON THEM IN THE COURSE OF A TRIAL AND AMBUSH -- YOU MIGHT SAY. THOSE CASES WERE -- CAME UP IN THE CONTEXT OF IMPEACHMENT OF WITNESSES.

BUT A LATER DECISION OF THE STATE SUPREME COURT -- TO MY KNOWLEDGE -- THE MOST RECENT DECISION AT THE STATE SUPREME COURT ON THE MATTER IS STATE VERSUS BUTLER. 290 SE 2ND 1, A 1982, AND REFERS TO SOUTH CAROLINA CODE SECTION SHALL NOT BE APPLIED HIGHLY TECHNICAL MATTER.

NOTHING IN THE RECORD TO INDICATE THERE WAS ANY PREJUDICE TO APPELLATE'S RIGHTS, CLEARLY APPELLATE HAD AMPLE TIME TO PREPARE HIS CASE AFTER RECEIVING A COPY OF THE CONFESSION.

AND JUDGE, THIS SITUATION HERE, THE DEFENDANT WAS GIVEN A COPY AT THE SAME TIME HE SIGNED THE STATEMENT. AND HIS LAWYER WAS GIVEN A COPY AND SIGNED FOR IT SEVEN MONTHS AGO, LONG BEFORE THE TRIAL.

I HAVE NOT HEARD ANYTHING TO INDICATE ANY PREJUDICE WHATSOEVER FROM THE DEFENDANT IN PREPARATION OF HIS CASE.

THE COURT: THANK YOU, SIR. ALL RIGHT. HAPPY TO HEAR FROM YOU, MR. LITTLEJOHN. ANYTHING FURTHER?

MR. LITTLEJOHN: YOUR HONOR, I THINK WE HAVE OUTLINED OUR POSITION IN THE WRITTEN MOTION. WE THINK THIS IS A STATUTORY REQUIREMENT INSOFAR AS THE WRITTEN STATEMENT IS CONCERNED AND THAT YOU CAN'T -- IT DOESN'T REQUIRE ANY SORT OF PREJUDICE, IT DOESN'T PROVIDE FOR ANY SUBSEQUENT RECEIPT OR SUBSEQUENT NOTICE. IT'S STATUTORY REQUIREMENT.

THE COURT: ALL RIGHT. BOTH OF THE DECISIONS -- AND

THE SOLICITOR IS CORRECT IN MY REVIEW OF BOLTON AND MOATS, THERE ARE INDICATIONS THAT THERE WAS NO STATEMENT EVER GIVEN, NO TESTIMONY, NOTHING IN THE RECORD THAT SUGGESTS THAT THE INDIVIDUAL HAD IN FACT HAD AN OPPORTUNITY TO REVIEW THE STATEMENT.

CLEARLY ONE OF THEM SAYS THEY DID NOT HAVE THAT OPPORTUNITY. THE CASE IN BUTLER, THE BUTLER CASE, IS THE CASE WHERE THE SUPREME COURT HAD AN OPPORTUNITY TO STRESS OR ADDRESS WHETHER THIS IS A TECHNICAL STATUTE, BE TECHNICALLY CONSTRUED AND THEY CHOSE TO SAY THAT IT'S NOT, THAT WE ARE GOING TO LOOK AT THE ESSENSE OF WHAT IS INTENDED AND WHAT IS INTENDED IN REVIEW OF ALL OF THEM IS THAT THE PERSON BE AFFORDED AN OPPORTUNITY TO REVIEW THE STATEMENT AND HAVE AN OPPORTUNITY TO PREPARE FOR THAT OR TO PREPARE TO RESPOND TO THAT IF NECESSARY.

I WOULD ALSO FIND THAT IN STATE VERSUS BULLOCH WHERE THE ISSUE AGAIN WAS RAISED, THE COURT STATED THAT IN THAT CASE I BELIEVE THERE WAS TESTIMONY THAT THE INDIVIDUAL HAD RECEIVED A COPY AND THE COURT SAID IT'S A JURY DETERMINE -- IT'S FOR A JURY TO DECIDE.

THERE IS TESTIMONY HERE BY AS I RECALL TWO DIFFERENT WITNESSES, MAYBE EVEN MORE, ONE THAT SAID I HANDED IT TO HIM AND THE OTHER SAID I SAW IT IN HIS HANDS.

NO QUESTION HE HAD IT BEFORE. SO THE QUESTION OF THE RECEIPT AND THE TECHNICAL ASPECT OF THE RECEIPT, NO

QUESTION WE DO NOT HAVE.

AND I WOULD FIND FOR THE PURPOSES OF REVIEW THAT THE RECEIPT OF MR. BABB DOES NOT -- IS NOT THAT CONTEMPLATED BY THE STATUTE IN ANY WAY AND IS NOT CONSIDERED BY THE COURT TO BE A RECEIPT, RATHER THE COURT LOOKS FOR THE FACTS OF THE CASE OR THE TESTIMONY AND FEELS THAT THE TESTIMONY CREATES AN ISSUE OF RECEIPT.

AND TAKING BUTLER TO CONSTRUE THE STATUTE TO SAY THAT HE DOESN'T HAVE THE DOCUMENT THAT SAYS I RECEIVED IT IS HYPOTHETICAL AND THEREFORE I WILL ALLOW IT TO GO TO THE JURY WITH ADDITIONAL INSTRUCTIONS.

AND I WILL BE HAPPY TO ENTERTAIN ANY PROPOSED INSTRUCTION YOU MAY WISH ME TO GIVE CONCERNING THE STATUTE AND WHAT FINDINGS THE COURT MAY ADDRESS OR REQUEST OF THE JURY IN THAT REGARD. LIKEWISE FROM THE STATE IF YOU WANT ANY AS WELL. ALL RIGHT. ANYTHING ELSE?

MR. LITTLEJOHN: YES, YOUR HONOR. YOUR HONOR, I WOULD -- EXCUSE ME. I REFER THE COURT TO STATE'S EXHIBIT 3 FOR IDENTIFICATION PURPOSES, THE WRITTEN STATEMENT.

THE COURT: YES, SIR. LET ME GET IT. IT'S UNDER...

MR. BABB: YOUR HONOR, WHILE WE ARE GETTING THAT. JUST TO MAKE SURE THE RECORD IS CRYSTAL CLEAR ON THE RECEIPT THAT WAS SIGNED BY MY PARALEGAL.

THE COURT: YES.

MR. BABB: THERE'S A REQUIRED -- IN ORDER TO OBTAIN

THIS.

THE COURT: I UNDERSTAND. THAT'S SIMPLY A DOCUMENT THAT WAS DONE IN THE COURSE OF EXCHANGING MATERIALS. IT CERTAINLY DOES NOT CONSTITUTE THAT REQUIRED OR CONTEMPLATED BY 81550 BECAUSE CLEARLY THAT'S -- THAT CONTEMPLATES WHEN YOU HAND IT TO THEM AT THE TIME THEY MAKE IT, WHICH IS WHAT THE STATUTE SAYS IS TO BE DONE, BUT BUTLER SAYS THAT WE ARE NOT TO CONSTRUE THAT HYPOTHETICALLY.

MR. LITTLEJOHN: YOUR HONOR, THE QUESTIONS AND ANSWERS ARE OBVIOUSLY NUMBERED. I REFER THE COURT TO QUESTION 14 WHICH IS CONTAINED AT THE BOTTOM OF THE FOURTH PAGE.

THE COURT: 14? ALL RIGHT, SIR.

MR. LITTLEJOHN: THAT QUESTION READS BOBBY, YOU ARE A MULTI CONVICTED FELON. YOU KNOW THAT YOU ARE NOT ALLOWED TO OWN A FIREARM OF ANY KIND.

YOUR HONOR, THE EARLIER TESTIMONY WE HAD INDICATED THAT INVESTIGATOR GALLIMORE AND LIEUTENANT HEROD PUT THE QUESTIONS TOGETHER, THAT WAS OBVIOUS THAT THEIR LANGUAGE -- IT'S OBVIOUS WHAT THE PROBLEM IS WITH THAT LANGUAGE BEING IN THE STATEMENT.

YOUR HONOR, I THINK IF YOU COULD EXCLUDE THOSE FIRST TWO SENTENCES, THEN OF COURSE YOU WOULDN'T LOSE THE CONTEXT OF WHAT THE STATE IS TRYING TO MAKE -- THEIR

POINT.

THE COURT: WHAT'S THE STATE'S POSITION?

MR. KOLB: YOUR HONOR, THIS WAS PART OF THE STATEMENT. I -- HE'S ASKING TO EXCLUDE BOTH OF THE FIRST TWO STATEMENTS.

I THINK THE FACT THAT HE IS A MULTI CONVICTED FELON DOES BRING IN PRIOR CRIMINAL RECORD AT THE TIME THAT IT WAS NOT BEFORE THE JURY.

BUT THE FACT THAT HE'S NOT ALLOWED TO OWN A FIREARM OF ANY KIND DOES NOT IMPLY ANY PRIOR BAD ACTS. IT JUST PUTS HIM IN A STATUS THAT HE WAS POSSESSING THE FIREARMS EVEN WITHOUT LAWFUL AUTHORITY.

THE COURT: MR. SOLICITOR, CAN YOU TELL ME -- BE HAPPY TO CONSIDER IT -- IF YOU CAN TELL ME OF ANY CIRCUMSTANCE IN THIS COUNTRY UNDER WHICH AN INDIVIDUAL, A CITIZEN OF THIS COUNTRY, IS NOT ENTITLED TO OWN A FIREARM UNLESS THEY HAVE A PRIOR RECORD.

MR. KOLB: THERE ARE OTHER CIRCUMSTANCES.

THE COURT: WELL, TELL ME ONE.

MR. KOLB: JUDGE, I BELIEVE IT DEALS WITH MENTAL PERSONS -- HAD MENTAL PROBLEMS.

THE COURT: WELL, WE DON'T HAVE ANY OF THAT IN THIS CASE; DO WE?

MR. KOLB: WHAT I'M SAYING IS THERE ARE OTHER REASONS YOU ARE---.

THE COURT: WELL, THANK YOU, SIR. I WILL EXCLUDE IT. WE ARE GOING TO REDACT THE FIRST TWO SENTENCES WHICH WOULD THEN THE STATE'S QUESTION 14 WILL READ WHAT WERE YOU DOING BUYING THESE STOLEN GUNS FROM DAVID.

MR. LITTLEJOHN: PARDON ME, YOUR HONOR?

THE COURT: YOU DO NOT OBJECT TO THE LAST SENTENCE; IS THAT CORRECT?

MR. LITTLEJOHN: HAVEN'T REALLY GOTTEN TO THAT PART YET. NOT SURE EXACTLY HOW WE CAN DEAL WITH THAT, BUT FROM THE CONTEXT OF INTRODUCING THE STATEMENT, THE PARTS OF THE STATEMENT THAT INDICATE THAT MR. STONE KNEW THESE GUNS WERE STOLEN, WE WOULD ALSO OBJECT TO THAT.

THE COURT: WHY DON'T YOU -- WHY -- WHY DON'T YOU JUST FOR THE PURPOSES OF THIS PROCEEDING THAT -- ISN'T THE RESPONSE CLEAR TO WHAT WERE YOU DOING BUYING THESE GUNS FROM DAVID?

DOESN'T THAT GIVE YOU -- THEN IT SETS UP THE NEXT QUESTION WHICH IS SO YOU WERE PRETTY GOOD SHOT WITH THE PISTOL? I ASSUME THAT'S A QUESTION THAT -- THAT YOU WERE LAYING THE FOUNDATION FOR THE SECOND -- FOR THE QUESTION.

AND I UNDERSTAND THE NEED THE STATE WOULD HAVE IN RESPONSE IN YOUR LETTER, BUT CLEARLY WE DO NOT NEED TO HAVE A JURY HEAR ANYTHING ABOUT A MULTI CONVICTED FELON NOR THAT THE GUNS WERE STOLEN.

SO I WANT YOU TO PREPARE -- WHICH WILL BECOME STATES 31, STATES 3 WILL BE FOR I.D. PURPOSES ONLY. STATES 31 WILL BE THE REDACTED STATEMENT WHICH WILL REMOVE THOSE PORTIONS OF THE QUESTION 14, FOUND ON PAGES 5 -- EXCUSE ME. 4 AND 5 OF THE STATEMENT: ANY OTHER OBJECTION, ANY OTHER ASPECTS OF ANY QUESTIONS?

MR. LITTLEJOHN: COULD YOU INDULGE ME FOR JUST ONE MINUTE?

THE COURT: YES, SIR.

MR. BABB: WE ARE TRYING TO BE SURE WE UNDERSTAND EXACTLY WHAT...

THE COURT: THE QUESTION WILL READ ONCE IT'S REDACTED. WHAT WERE YOU DOING BUYING THESE GUNS FROM DAVID.

MR. BABB: ALL RIGHT, SIR.

THE COURT: THAT'S HOW IT WILL READ. I BOUGHT THE SHOTGUN BECAUSE I LIKED TO HUNT. I BOUGHT THE PISTOL BECAUSE WITH A LONG BARREL, IT'S SO ACCURATE.

MR. BABB: ALL RIGHT, SIR.

THE COURT: OKAY?

MR. BABB: YOUR HONOR, MAY WE APPROACH?

(WHEREUPON A BENCH CONFERENCE WAS HELD).

THE COURT: ALL RIGHT. 31, STATEMENT WHICH WILL BE SUBMITTED TO THE JURY AND IS TO BE INTRODUCED SUBJECT TO THE OBJECTION OF COUNSEL BECAUSE YOUR OBJECTION IS TO 3,

BUT IT ALSO APPLIES TO 31 AS WELL AS TO THE -- AS TO THE ADMISSIBILITY OF THE STATEMENT IN IT'S ENTIRELY.

MR. LITTLEJOHN: YES, SIR.

THE COURT: VERY WELL. WE WILL REDACT ALL OF 12 AND THE ANSWER. 13 AND THE ANSWER. 14 AS I HAVE PREVIOUSLY STATED, FIRST TWO SENTENCES AND THE QUESTION ABOUT STOLEN. ALSO WE WILL REDACT 16 AND THE RESPONSE.

AND I WILL GIVE SOME INSTRUCTION AS TO -- MR. SOLICITOR -- CONCERNING THE NUMBERS, THE FACT THAT THEY ARE NOT SEQUENTIALLY NUMBERED AND THE FACT THAT THERE MAY BE SOME SPACING IN THERE, NOT TO PUT ANY WEIGHT ON THAT OR CONSIDER THAT WHATSOEVER.

MR. KOLB: THE -- COULD WE JUST LEAVE THE NUMBER THERE AND JUST BLOCK OUT THE STUFF OUT?

THE COURT: SURE. HOWEVER YOU WANT TO DO IT, THAT'S FINE WITH ME. IF YOU PREFER TO DO IT THAT WAY, THAT'S OKAY, TOO.

MR. LITTLEJOHN: CAN I SUGGEST NOT? PERHAPS WE CAN TYPE THE STATEMENT, LEAVE THOSE QUESTIONS OUT.

THE COURT: NO.

MR. LITTLEJOHN: THAT WAY YOU HAVE A CONTINUOUS...

THE COURT: NO, I'M NOT GOING TO TYPE THE STATEMENT -- THAT IS ALTERING WHAT HE IS GOING TO TESTIFY TO. WE ARE NOT GOING TO DO THAT.

MR. LITTLEJOHN, WE HAVE DONE THIS BEFORE IN

CASES WITH REDACTION AND I WILL EXPLAIN IT. I'M GOING TO REDACT IT. I'M NOT GOING TO START ALTERING THE DOCUMENT.

MR. LITTLEJOHN: ALL RIGHT, SIR.

THE COURT: OKAY. ALL RIGHT. ANY OTHER ASPECTS OF THE -- OF THE DOCUMENT?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: DO YOU INTEND TO PUBLISH THIS STATEMENT AS WE'RE GOING THROUGH IT WITH MR. HEROD?

MR. KOLB: YES, SIR.

THE COURT: WHY DON'T WE GO AHEAD AND TAKE THE OPPORTUNITY THEN AND MAKE A COPY OF THAT AND REDACT IT. DO YOU HAVE SOME -- SOME OF THAT TAPE YOU CAN PUT ON TO BLOCK OUT OR RUN A COPY OF IT?

MR. KOLB: I DON'T KNOW ABOUT TAPE, BUT JUDGE, WE WILL FIGURE OUT SOME WAY TO DO IT. TAKES A FEW MINUTES.

THE COURT: YOU CAN WHITE IT OUT AND MAKE A COPY. THAT WILL BE GOOD IF WE COULD DO THAT. BUT MAKE A COPY OF THIS AND LEAVE IT IN TACT FOR REVIEW PURPOSES AS WELL.

MR. KOLB: COULD I ASK THE SOLICITORS OFFICE IF SOMEONE WOULD ADVISE INVESTIGATOR GALLIMORE WHO IS SEQUESTERED AS TO THESE CHANGES JUST SO WE DON'T HAVE -- RUN INTO ANY PROBLEM.

THE COURT: SOLICITOR, YOU ARE FREE TO TALK WITH THE WITNESSES CONCERNING THESE ALTERATIONS.

MR. KOLB: ALL RIGHT, SIR. CAN WE TAKE A SHORT

RECESS, JUDGE?

THE COURT: YES, SIR. JUST LET ME KNOW WHEN YOU ARE READY. THANK YOU. WE WILL BE AT EASE.

(WHEREUPON A BRIEF RECESS WAS TAKEN).

MR. KOLB: IF IT'S ALL RIGHT WITH THE COURT WHILE WE PREPARE THOSE MATTERS, I WILL GO ON WITH ANOTHER WITNESS.

THE COURT: SURE. FINE. WHATEVER YOU WISH TO DO. THAT'S FINE.

THE COURT: READY FOR THE JURY THEN TO RETURN?

MR. KOLB: YES, SIR. THANK YOU.

THE COURT: THE DEFENDANT IS READY?

MR. LITTLEJOHN: YES, YOUR HONOR.

THE COURT: ASK THE JURY TO COME IN, PLEASE.

(WHEREUPON THE JURY ENTERED THE COURTROOM AT 11:52 A.M.)

THE COURT: THANK YOU. GATHERING EVERYBODY. YOU COULD HOLD THEM TOGETHER A LITTLE BIT LONGER, WE WON'T HAVE TO -- WE BEEN WAITING FOR YA'LL FOR ABOUT... I DO THANK YOU VERY MUCH FOR YOUR PATIENCE THIS MORNING AGAIN AND I'M SURE THAT YOU WILL RECALL I SAID THERE ARE MATTERS I HAVE TO TAKE UP. MATTERS THAT I HAVE TO.

I THANK YOU FOR YOUR PATIENCE WITH THE COURT THIS MORNING AND I APOLOGIZE FOR KEEPING YOU BACK THERE FOR SO LONG, BUT WE ARE READY TO CONTINUE. MR. SOLICITOR, YOU MAY CALL YOUR NEXT WITNESS.

MR. KOLB: JUDGE, WE HAD CALLED MR. HEROD. WHILE THERE'S A MATTER BEING STRAIGHTENED OUT... CALL ANOTHER WITNESS IRA PARNELL.

THE COURT: MR. PARNELL?

(WHEREUPON THERE WAS A PAUSE)

IRA PARNELL, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: GOOD MORNING, MR. PARNELL. ONCE YOU GET YOUR SEAT SITUATED HOW YOU WANT IT AND MOVE THAT MIKE WHERE YOU NEED IT, I'D LIKE FOR YOU TO STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST.

WITNESS: IRA BYRD PARNELL JUNIOR. P A R N E L L.

THE COURT: THANK YOU, SIR.

DIRECT EXAMINATION BY MR. KOLB:

Q LIEUTENANT PARNELL, HOW ARE YOU EMPLOYED?

A I'M EMPLOYED BY THE STATE OF SOUTH CAROLINA LAW ENFORCEMENT DIVISION OTHERWISE KNOWN AS SLED.

Q HOW LONG HAVE YOU BEEN THERE?

A BE TWENTY-FIVE YEARS IN SEPTEMBER OF THIS YEAR.

Q OKAY. WHAT IS YOUR RESPONSIBILITIES AT SLED?

A I'M THE SUPERVISOR OF THE FIREARM TOOL MARK IDENTIFICATION LABORATORY AT SLED HEADQUARTERS IN COLUMBIA.

Q COULD YOU TELL THE COURT AND LADIES AND GENTLEMEN OF THE JURY ABOUT YOUR EDUCATION TRAINING AND EXPERIENCE IN

THAT AREA.

A YES, SIR. I GRADUATED FROM THE UNIVERSITY OF SOUTH CAROLINA WITH A DEGREE IN THE AREA OF CRIMINAL JUSTICE. I ALSO GRADUATED FROM OUR STATE CRIMINAL JUSTICE ACADEMY, THE F.B.I. NATIONAL ACADEMY.

I'M A MEMBER OF THE ASSOCIATION OF FIREARM AND TOOL MARK EXAMINERS WHICH IS AN INTERNATIONAL ORGANIZATION OF FIREARMS EXAMINERS WHO MEET ONCE A YEAR FOR A WEEK LONG SEMINAR WHERE I RECEIVE TRAINING EVERY YEAR WHEN POSSIBLE DUE TO BUDGET RESTRAINTS.

I ATTENDED NUMEROUS SEMINARS HELD AT THE F G A NATIONAL ACADEMY IN QUANDO (SIC) CALIFORNIA WHICH IS A CONTINUATION OF FIREARMS TRAINING. I TEACH AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA IN THE AREA OF FIREARMS AND FIREARMS RELATED EVIDENCE AND ALSO AT OUR STATE ACADEMY.

I'VE TESTIFIED APPROXIMATELY 425 TIMES AS AN EXPERT WITNESS IN THE FIELD OF FIREARMS IDENTIFICATION. AND I WORKED MANY, MANY THOUSANDS OF CASES AND MADE SEVERAL MILLION INDIVIDUAL COMPARISONS.

Q ALL RIGHT.

MR. KOLB: YOUR HONOR, WE'D OFFER HIM TO THE COURT AS AN EXPERT IN FIREARM TOOL MARK IDENTIFICATION.

THE COURT: ALL RIGHT. CARE TO EXAMINE HIM?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: VERY WELL. THIS WITNESS LIKE THE OTHERS

BECAUSE OF BACKGROUND AND TRAINING WILL BE ALLOWED TO RENDER OPINIONS IN THE FIELD AND EXPERTISE OF FIREARMS AND TOOL MARK IDENTIFICATION. YOU MAY CONTINUE.

MR. KOLB: THANK YOU, YOUR HONOR.

(WHEREUPON QUESTIONING RESUMED).

Q LIEUTENANT PARNELL, WOULD YOU TELL US ABOUT THE FIELD OF FIREARMS TOOL MARK IDENTIFICATION.

A SPEAKING SPECIFICALLY ABOUT FIREARMS IDENTIFICATION, ALTHOUGH THEY ARE RELATED, THEY ARE SLIGHTLY DIFFERENT FIELDS. GENERALLY WHAT IS ASKED OF THE -- A FIREARMS EXAMINER IS TO EXAMINE AND MAKE COMPARISONS UNDER VARIOUS KINDS OF EVIDENCE, SPECIFICALLY FIREARMS, FIRED BULLETS, FIRED CARTRIDGE CASES AND IN SOME CASES UNFIRED CARTRIDGES.

THE QUESTION IS USUALLY WHETHER OR NOT A PARTICULAR PIECE OF EVIDENCE CAN BE RELATED MICROSCOPICALLY TO A PARTICULAR FIREARM OR WEAPON.

IN ORDER TO DO THIS TYPE OF COMPARISON, WE USE A BINOCULAR MICROSCOPE WHICH WE CAN USE TO VIEW TWO ITEMS SIMULTANEOUSLY.

GENERALLY A TEST CONSISTS OF A FIREARM, GENERALLY FIRED BULLETS AND GENERALLY A FIRED CARTRIDGE CASE. WE TEST FIRE THE WEAPON, NOTING WHETHER OR NOT THE WEAPON IS IN FUNCTIONING ORDER.

WE DETERMINE WHAT CALIBER, WHAT TYPE OF

AMMUNITION, WHAT WEIGHT BULLET, WHAT POWDER IS BEING USED, ALL THOSE THINGS ARE TAKEN INTO CONSIDERATION.

WE TEST FIRE THE WEAPON INTO A TANK FULL OF WATER. WATER ADDS NOR TAKES AWAY ANY MICROSCOPIC MARKINGS ON THE OUTER SURFACE OF THE BULLET OR CARTRIDGE CASE.

WE TEST FIRE AND RETRIEVE THE TEST SPECIMENS WHICH WE MICROSCOPICALLY COMPARE THEM TO EACH OTHER THEN THAT WHICH WE CAN DETERMINE WHETHER OR NOT THE MARKINGS LEFT ON THE OUTER SURFACE OF THE BULLET AND OR CARTRIDGE CASE ARE THE SAME.

IN OTHER WORDS, THE WEAPON IN QUESTION IS CONSISTENT IN IT'S MARKINGS. WE THEN COMPARE ANY EVIDENCE WHICH WE MAY RECEIVE TO THE TEST WHICH WE KNOW CAME FROM A PARTICULAR WEAPON TO SEE COMMON MICROSCOPIC MARKS.

IF SUFFICIENT INDIVIDUAL CHARACTERISTICS ARE PRESENT, THEN OUR CONCLUSION WOULD BE THAT THAT BULLET OR THAT CARTRIDGE CASE WAS MICROSCOPICALLY CONSISTENT WITH OUR TEST MEANING THAT THAT BULLET OR CARTRIDGE CASE WAS FIRED BY THAT PARTICULAR WEAPON.

IF THE INDIVIDUAL CHARACTERISTICS ARE NOT CONSISTENT, THEN WE -- THEN OUR CONCLUSION WOULD BE NEGATIVE, THAT THAT PARTICULAR SPECIMEN WAS NOT FIRED FROM THAT PARTICULAR WEAPON.

Q HOW DO YOU RETRIEVE THE BULLETS THAT ARE TEST FIRED IN THE WAY THAT YOU MENTIONED?

A THE WATER TANK ITSELF IS TWO STORIES TALL. WE HAVE A RETRIEVAL CUP IN THE BOTTOM. THE BOTTOM OF THE TANK IS SHAPED WICK FUNNEL. WE FIRE IN THE WATER. THE WATER SLOWS THE BULLET DOWN, IT TUMBLES TO THE BOTTOM, ROLLS INTO THE FUNNEL AND WE PULL IT UP MUCH LIKE PULLING A WELL BUCKET UP.

Q ALL RIGHT. THE -- WHAT IS IT ABOUT SHOOTING A BULLET THROUGH A BARREL OF A PISTOL OR SHOTGUN THAT LEAVES THESE MARKINGS?

A WHEN A FIREARM IS MANUFACTURED WHICH HAS A RIFLING IN THE BARREL, A RIFLING IS A TERM -- IT'S NOT MEANING A RIFLE. THE INSIDE OF THE BARREL HAS WHAT WE CALL LANDS AND GROOVES.

A RIFLED BARREL OR A BARREL WHICH HAS RIFLING IN IT STARTS LIFE AS A PIECE OF BLANK STEEL. IT IS DRILLED. IT IS REAMED. IT IS POLISHED AND THEN IT IS RIFLED.

AND RIFLING AMOUNTS TO TAKING AWAY METAL FROM SPECIFIED WIDTH INSIDE OF A BARREL. EACH WEAPON IS UNIQUE IN THAT WHEN THIS CUTTING OR THIS REMOVAL OF METAL IS DONE, THE CUTTING TOOL ITSELF WEARS AWAY IN A MICROSCOPIC FASHION RIGHT ON THE CUTTING EDGE.

A LAND IS A RAISED PLACE OR A PLACE THAT IS LEFT UNTOUCHED IN THE BARREL. THE GROOVE IS WHERE THE METAL WAS ACTUALLY REMOVED. DIFFERENT WEAPONS HAVE DIFFERENT NUMBERS OF LANDS AND GROOVES.

AND IF YOU WERE TO LOOK DOWN A BARREL WHICH HAS BEEN RIFLED, IT WOULD APPEAR THAT YOU ARE LOOKING AT SEVERAL SPIRALING LINES FROM ONE END OF THAT BARREL BACK TO THE OTHER.

WHEN THIS METAL IS REMOVED, AS I SAID THE CUTTING TOOL IS MICROSCOPICALLY ALTERED FROM ONE END OF THAT BARREL BACK TO THE OTHER. IF THIS WERE CUT INTO 5 DIFFERENT PIECES, EACH INDIVIDUAL PIECE WOULD BE UNIQUE INTO ITSELF.

SO, THESE MARKINGS WHICH ARE MICROSCOPIC IN NATURE TRANSFER TO THE BULLET WHICH IS FIRED DOWN THAT BARREL. THE BULLET IS EXPANDING WHEN IT'S FIRED. IT FILLS UP THE INSIDE OF THE BARREL TO INCLUDE BOTH THE LANDS AND THE GROOVES IN THE BARREL.

AND IT'S CAUSED TO SPIN, TO STABILIZE JUST LIKE YOU WOULD THROW A FOOTBALL. WHEN YOU SPIRAL A FOOTBALL IT IS STABILIZING. THE BULLET DOES THE SAME THING WHEN IT GOES DOWN THE BARREL, EXCEPT IT HAPPENS REAL QUICKLY AND THE INSIDE OF THE BARREL IS PERFECTLY MASHED INTO THE OUTER SURFACE OF THAT BULLET.

NOW, IF THE BULLET ITSELF IS IN GOOD ENOUGH CONDITION AND THE GUN ITSELF IS CONSISTENT, THEN IT CAN BE MICROSCOPICALLY DETERMINED WHETHER OR NOT A FIRED BULLET CAME THROUGH A PARTICULAR BARREL.

Q WHAT'S THE PURPOSE OF PUTTING THESE LANDS AND GROOVES

OR RIFLINGS THAT YOU CALL IT INSIDE THE BARREL OF A PISTOL OR RIFLE?

A IT'S TO STABILIZE THE BULLET. THAT'S THE SOLE PURPOSE. A WEAPON WHICH DOES NOT HAVE RIFLING IS SMOOTH ON THE INSIDE AND IF A -- IF A ROUND BULLET WAS FIRED DOWN A SMOOTH BARREL, VERY UNSTABLE.

THE RIFLING ITSELF GRIPS THE BULLET AND SPINS IT AROUND CENTRAL AXIS.

Q I ASSUME MOST WEAPONS ARE MANUFACTURED IN A SIMILAR FASHION -- AND CERTAINLY BY THE SAME MANUFACTURER, SAME FASHION. WHY WOULDN'T THE RIFLING BE THE SAME IN ALL OF THE GUNS BY CERTAIN MANUFACTURERS?

A AS I STATED EARLIER, THE MICROSCOPIC EDGES OF THE CUTTING TOOLS THAT ARE USED TO REMOVE METAL INSIDE THESE, INSIDE THE BARREL ITSELF CHANGES FROM ONE END OF THE BARREL TO THE OTHER.

AND IT'S IN A CONSTANT STATE OF CHANGE. AND EACH INDIVIDUAL BARREL HAS CHARACTERISTICS THAT ARE UNIQUE TO THAT GUN AND THAT GUN ALONE.

Q AND THAT'S PART OF THE SCIENCE OF YOUR PROFESSION THAT'S IN A BALLISTICS FIREARMS, THAT EACH BARREL IS UNIQUE?

A YES, THAT'S THE BASIS FOR OUR SCIENCE.

Q ALL RIGHT. AND -- ALL RIGHT. I WANT TO ASK YOU ABOUT IN ADDITION TO RIFLING, CAN YOU LOOK AT THINGS OTHER THAN

THE PROJECTILE TO SEE IF THEY ARE UNIQUE OR IF THEY CAME FROM A PARTICULAR GUN?

A YES, SIR. THERE ARE SEVERAL OTHER AREAS WITHIN A FIREARM THAT ARE UNIQUE TO THAT PARTICULAR FIREARM BECAUSE OF THE CHANGING NATURE OR TOOL MARKS THEMSELVES.

ONE IS THE FIRING PIN. ANOTHER IS THE EXTRACTOR AND SEMIAUTOMATIC WEAPON. ANOTHER IS THE EJECTOR IN SEMIAUTOMATIC WEAPON AND STILL ANOTHER ARE THE CHAMBER MARKS GENERALLY FROM A SEMIAUTOMATIC WEAPON.

ANY OR ALL OF THESE OR A COMBINATION OF THEM CAN BE USED TO MAKE A POSITIVE IDENTIFICATION TO ASSOCIATE A FIRED SHELL CASING TO A PARTICULAR FIREARM.

Q ALL RIGHT, SIR. DID YOU HAVE OCCASION TO BE PRESENT IN SUMTER COUNTY ON THE NIGHT OF FEBRUARY THE 26TH 1996?

A YES, SIR. I DID.

Q DID YOU HAVE OCCASION TO RETRIEVE ANY ITEMS OF EVIDENCE? YOU WERE ON THE -- ASSISTING THE SWAT TEAM THAT NIGHT?

A YES, SIR. I'M A MEMBER OF THAT TACTICAL TEAM AND CAME IN RESPONSE WITH THE REST OF THE MEMBERS.

Q ALL RIGHT. DURING THE COURSE OF GOING THROUGH THE WOODS, DID YOU HAVE OCCASION TO RETRIEVE A 410 SHOTGUN SHELL?

A YES, SIR. ONE OF OUR OTHER OFFICERS DAVE MCCLURE MADE ME AWARE OF A SHELL CASING THAT HE CAME ACROSS IN THE

WOODS WITHIN AN AREA WHERE -- YOU KNOW -- SOME MASHED DOWN VEGETATION AND SO FORTH. AND AS A RESULT OF THAT HE GOT THE SHELL CASING TO ME AND I TURNED IT OVER TO RAY MACKESSY.

Q ALL RIGHT. CAN YOU IDENTIFY THIS BEING THAT 410 SHELL CASING?

A YES, SIR, I CAN. THIS BEARS MY CASE NUMBER, SPECIMEN NUMBER AND INITIALS.

MR. KOLB: YOUR HONOR, WE'D LIKE TO OFFER THIS INTO EVIDENCE AT THIS TIME.

THE COURT: ANY OBJECTION?

MR. KOLB: MACKESSY PREVIOUSLY TESTIFIED ABOUT TAKING IT TO SLED.

MR. LITTLEJOHN: NO OBJECTION.

THE COURT: VERY WELL. STATE'S EXHIBIT 62, PLASTIC BAG CONTAINING THAT SPENT SHELL?

MR. KOLB: YES, SIR.

THE COURT: 410 SHELL. 410 SHELL. INTO EVIDENCE WITHOUT OBJECTION.

(STATE'S EXHIBIT NO. 62 MARKED FOR EVIDENCE).

(WHEREUPON QUESTIONING RESUMED).

Q PUT SOME ITEMS UP HERE IN FRONT OF YOU. GOING TO STICK THIS BACK HERE. ALL RIGHT, SIR. AGENT PARNELL, I WANT TO ASK YOU ABOUT ITEMS BEEN MARKED FOR IDENTIFICATION IN SOME CASES.

AND YOU HAVE HAD OCCASION TO RECEIVE THEM AT SLED HEADQUARTERS. FIRST, IN REGARD TO THAT 410 SHOTGUN SHELL THAT YOU HAD ACTUALLY HAD A ROLE IN THE CHAIN OF CUSTODY. IF YOU WILL. ON THE 27TH YOU HAD OCCASION TO RECEIVE THAT?

A YES, SIR. I DID.

Q MR. MACKESSY INDICATED HE TOOK IT TO SLED ON MARCH 8TH 96 IN A SEALED CONTAINER FOR SUBMISSION TO YOU AND THE FIREARMS LABORATORY. DID YOU RECEIVE IT IN A SEALED CONTAINER?

A YES, SIR. I DID.

Q ALL RIGHT. WHAT DID THAT INDICATE TO YOU?

A THAT IT HAD NOT BEEN TAMPERED WITH AT ALL AND WAS IN THE SAME CONDITION THAT MR. MACKESSY BROUGHT IT TO ME IN.

Q ALL RIGHT. I ALSO ASK YOU ALSO ABOUT WHAT'S IN FRONT OF YOU MARKED AS EXHIBIT 17 AND 18. CAN YOU LOCATE THOSE?

A YES, SIR. STATE'S EXHIBITS 17 AND 18 FOR IDENTIFICATION WERE SUBMITTED ALSO IN A SEALED CONTAINER FOR MY EXAMINATION.

Q ALL RIGHT. WE HEARD PREVIOUSLY FROM DR. SEXTON AT AUTOPSY AND AGENT PAUL LAROSA WHO WAS THERE AND THEN TOM DARNELL WHO INDICATED HE...

MR. LITTLEJOHN: YOUR HONOR, I OBJECT TO THE FORM OF THE QUESTION.

THE COURT: YES. JUST ASK HIM. GO AHEAD, SOLICITOR.

SUSTAINED.

(WHEREUPON QUESTIONING RESUMED).

Q WERE THOSE ITEMS IN A SEALED CONTAINER SUBMITTED TO YOU STILL SEALED BY AGENT TOM DARNELL?

A YES, SIR.

MR. KOLB: YOUR HONOR, WE'D OFFER 17 AND 18 INTO EVIDENCE AT THIS TIME.

THE COURT: ANY OBJECTION?

MR. LITTLEJOHN: NO YOUR HONOR.

THE COURT: VERY WELL. STATE'S EXHIBIT 17, A VIAL CONTAINING METAL FRAGMENTS INTO EVIDENCE WITHOUT OBJECTION. STATE'S EXHIBIT 18 PREVIOUSLY MARKED FOR I.D. ALSO A VIAL CONTAINING METAL FRAGMENTS INTO EVIDENCE WITHOUT OBJECTION.

(STATE'S EXHIBIT NO. 17 AND 18 MARKED FOR EVIDENCE).

(WHEREUPON QUESTIONING RESUMED).

Q SHOW YOU WHAT'S BEEN MARKED FOR IDENTIFICATION EXHIBITS 53, 54 AND 55. IDENTIFIED PREVIOUSLY BY INVESTIGATOR RAY MACKESSY, BEING THE SCREEN SIDE PORCH OF RUTH GRIFFITH AT 817 TAYLOR STREET AND ASK YOU IF YOU HAD OCCASION TO RECEIVE THOSE AND WHAT CONDITION WAS WHEN YOU RECEIVED THEM.

A YES, SIR. I DID. STATE'S EXHIBITS 53, 54 AND 55 FOR IDENTIFICATION ARE THREE FIRED 22 CALIBER CARTRIDGE CASES

RECEIVED IN THE SAME SEALED CONTAINERS THAT THEY ARE IN RIGHT NOW.

THEY HAVE MY SEAL ON THEM. I BROKE THE SEAL INITIALLY AND RE-SEALED THEM MYSELF. SO I HAD EXAMINED EACH OF THESE ITEMS.

Q ALL RIGHT. AND AT -- OKAY. HAD THEY BEEN OPENED AGAIN FOR US TO VIEW THEM SINCE YOU HAVE SEALED THEM OR ARE THEY STILL SEALED?

A STILL SEALED.

MR. KOLB: YOUR HONOR, WE'D OFFER 53, 54 AND 55 INTO EVIDENCE AT THIS TIME.

THE COURT: ANY OBJECTION?

MR. LITTLEJOHN: NO OBJECTION.

THE COURT: VERY WELL. STATE'S EXHIBIT 53, 54 AND 55 FOR IDENTIFICATION PREVIOUSLY NOW INTO EVIDENCE. 53, 54 AND 55 EACH BEING A PLASTIC BAG CONTAINING 22 CARTRIDGE CASING.

(STATE'S EXHIBIT NO. 53, 54 AND 55 MARKED FOR EVIDENCE).

(WHEREUPON QUESTIONING RESUMED).

Q I JUST WANT TO ASK YOU ABOUT EXHIBITS 50, 51 AND 52 FOR IDENTIFICATION. THIS PISTOL. 50, 51 AND 52. THE -- IF YOU CAN IDENTIFY THOSE ITEMS, IF YOU HAD OCCASION TO RECEIVE THEM.

A YES, SIR. STATE'S EXHIBITS 50, 51 AND 52 FOR

IDENTIFICATION WERE ALSO RECEIVED FROM TOM DARNELL IN A SEALED CONTAINER. AND THEY ARE SEALED UP AS I SEALED THEM AFTER I FINISHED MY COMPARISON.

Q ALL RIGHT, SIR.

MR. KOLB: YOUR HONOR, AT THIS TIME WE OFFER EXHIBITS 50, 51, 52 INTO EVIDENCE.

THE COURT: ANY OBJECTION?

MR. LITTLEJOHN: IF YOU'LL INDULGE ME JUST A MOMENT.

THE COURT: YES, SIR.

MR. LITTLEJOHN: NO OBJECTION.

THE COURT: VERY WELL. STATE'S EXHIBITS 50 PREVIOUSLY FOR IDENTIFICATION NOW STATE'S 50 INTO EVIDENCE WITHOUT OBJECTION. A 22 CALIBER PISTOL.

STATE'S 51 PREVIOUSLY FOR IDENTIFICATION IS NOW STATE'S 51 INTO EVIDENCE WITHOUT OBJECTION. A PLASTIC BAG CONTAINING A MAGAZINE WITH 5 UNFIRED 22 CALIBER BULLETS.

STATE'S 52 PREVIOUSLY FOR IDENTIFICATION IS NOW STATE'S 52 INTO EVIDENCE WITHOUT OBJECTION. A PLASTIC BAG CONTAINING A 22 CALIBER CASING LIKEWISE WITHOUT OBJECTION.

(STATE'S EXHIBIT NO. 50, 51 AND 52 MARKED FOR EVIDENCE).

(WHEREUPON QUESTIONING RESUMED).

Q I WANT TO SHOW YOU THIS. THIS ALSO IS IN EVIDENCE AS EXHIBIT 27 AND 26 FOR IDENTIFICATION AND ASK YOU IF YOU HAD OCCASION TO RECEIVE THESE ALSO FROM AGENT DARNELL IN A

SEALED CONTAINER?

A YES, SIR, I DID. STATE'S EXHIBITS 26 FOR IDENTIFICATION, STATE'S EXHIBIT 27, 9 MILIMETER PISTOL AND UNFIRED CARTRIDGE, UNFIRED CARTRIDGES IN STATE'S EXHIBIT 26 FOR IDENTIFICATION WERE RECEIVED BY ME FROM TOM DARNELL.

Q ALL RIGHT.

MR. KOLB: YOUR HONOR, WE'D LIKE TO OFFER -- 27 IS ALREADY IN EVIDENCE. OFFER 26 INTO EVIDENCE AT THIS TIME.

THE COURT: ANY OBJECTION?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: VERY WELL. STATE'S EXHIBIT 26 PREVIOUSLY FOR IDENTIFICATION, BAG CONTAINING UNFIRED CARTRIDGES IS NOW INTO EVIDENCE AS STATE'S EXHIBIT 26 WITHOUT OBJECTION.

(STATE'S EXHIBIT NO. 26 MARKED FOR EVIDENCE).

(WHEREUPON QUESTIONING RESUMED).

Q DON'T WANT TO POINT IT THIS WAY OR AT THE JUDGE. ASK YOU ABOUT EXHIBITS 61 AND 62. FIRST 61. SO... THE 22 CARTRIDGE CASE PREVIOUSLY IDENTIFIED FROM AGENT GARY MARTIN, RAY MACKESSY, BEING FOUND OUT IN THE WOODED AREA AND TAKEN TO SLED IN A SEALED CONTAINER MARCH 8TH 96. IS THAT THE CONDITION YOU RECEIVED THAT?

A YES, SIR. IT IS. IT ALSO BARES MY CASE NUMBER, SPECIMEN NUMBER AND INITIALS.

Q DID YOU RECEIVE IT IN THAT SEALED CONDITION?

A YES, SIR. I DID.

MR. KOLB: YOUR HONOR, WE WOULD OFFER THAT INTO EVIDENCE AT THIS TIME.

THE COURT: ANY OBJECTION?

MR. LITTLEJOHN: NO YOUR HONOR.

THE COURT: VERY WELL. STATES 61 PREVIOUSLY FOR IDENTIFICATION, ENVELOPE CONTAINING SHELL CASING IS IT -- IN A BOTTLE? IT'S IN A VIAL -- NOW INTO EVIDENCE AS STATE'S EXHIBIT 61 WITHOUT OBJECTION.

(STATE'S EXHIBIT NO. 61 MARKED FOR EVIDENCE).

(WHEREUPON QUESTIONING RESUMED).

Q ITEM 62 ALREADY MARKED IN EVIDENCE. DID YOU HAVE OCCASION TO RECEIVE THAT AT SLED HEAD QUARTERS IN A SEALED CONDITION ALSO?

A YES, SIR.

Q 410 SHELL CASINGS IN THE WOODED AREA?

A I DID, SIR.

Q ALL RIGHT. SERGEANT PARNELL, COULD YOU TELL US ABOUT YOUR EXAMINATION OF THESE ITEMS OF EVIDENCE.

A ALL RIGHT, SIR. ANY PARTICULAR PLACE YOU WANT ME TO BEGIN.

Q WHY DON'T WE -- LETS START WITH THE -- COULD YOU TELL US ABOUT THE CONDITION OF OFFICER KUBALA'S WEAPON AT THE TIME YOU RECEIVED IT.

A YES, SIR. STATE'S EXHIBIT 26 WAS RECEIVED WITH 16

UNFIRED CARTRIDGES. FIFTEEN IN THE MAGAZINE AND ONE IN THE CHAMBER.

Q HOW MANY CARTRIDGES WILL THAT WEAPON HOLD TO BE FULLY LOADED?

A SIXTEEN.

Q FOUND AND THE CARTRIDGES STILL IN IT WHEN YOU RECEIVED IT?

A YES, SIR. THE MAGAZINE WAS FULL. LET ME LOOK AT MY NOTES REAL QUICK TO SEE IF THE ONE WAS STILL IN THE CHAMBER. IT WAS RECEIVED IN A LOADED CONDITION, LOADED TO MAXIMUM CAPACITY WHEN I RECEIVED IT.

Q ALL RIGHT. AND WHAT WOULD THAT INDICATE TO YOU AS AN EXPERT IN FIREARMS?

A THAT NONE OF THE CARTRIDGES FROM THIS WEAPON HAD BEEN FIRED OR REMOVED.

Q ALL RIGHT, SIR. THE GUN HAD NOT BEEN FIRED?

A NO, SIR. OR NO CARTRIDGES REMOVED AS I RECEIVED IT.

Q ALL RIGHT, SIR.

A I'M GOING TO ASK YOU ABOUT THE HIGH STANDARD 22 THAT'S -- I BELIEVE IT'S EXHIBIT 50?

A YES, SIR.

Q THEN EXHIBITS 51 AND 52. IF YOU COULD EXPLAIN TO US ABOUT THAT.

A STATE'S EXHIBIT 50 IS A HIGH STANDARD 22 SEMIAUTOMATIC PISTOL. MAGAZINE WILL HOLD TEN ROUNDS. WITH

ONE IN THE MAGAZINE, ONE IN THE CHAMBER. THE GUN HAS A MAXIMUM CAPACITY OF ELEVEN ROUNDS.

STATE'S EXHIBIT 51 IS THE MAGAZINE WHICH PROPERLY FITS AND OPERATES IN STATE'S EXHIBIT 50, THIS PARTICULAR PISTOL. THE 5 UNFIRED CARTRIDGES IN STATE'S EXHIBIT 5 1 OR THE 5 CARTRIDGES WHICH WERE REMOVED FROM STATE'S EXHIBITS 51'S MAGAZINE.

AND THE FIRED SHELL CASING, STATE'S EXHIBIT 5 2 WAS REMOVED FROM THE CHAMBER OF THIS PARTICULAR WEAPON AS IT WAS RECEIVED. LATENT PRINTS.

Q ALL RIGHT, SIR. DID YOU MAKE AN EXAMINATION OF THAT WEAPON AND CONDUCT TEST FIRINGS WITH THAT WEAPON?

A YES, SIR. I DID.

Q COULD YOU TELL US ABOUT THE RESULTS OF YOUR EXAMINATION.

A STATE'S EXHIBIT 50 AS I SAID IS A HIGH STANDARD SEMIAUTOMATIC PISTOL. IT FIRES EACH TIME YOU PULL THE TRIGGER, THAT'S PULLING THE SLIDE TO THE REAR. WHEN YOU PULL THE TRIGGER, FIRING PIN FALLS.

AND THEN A SEMIAUTOMATIC PISTOL, WHEN THE MAGAZINE IS IN PLACE WITH CARTRIDGES IN IT, EACH TIME YOU PULL THE TRIGGER, ASSUMING THE WEAPON IS FUNCTIONING PROPERLY, SEVERAL THINGS HAPPEN ALL AT THE SAME TIME OR SEEMINGLY ALL AT THE SAME TIME.

THE FIRED BULLET GOES OUT OF THE BARREL BEING

SPUN AND IMPRESSED BY THE RIFLING INSIDE THE BARREL THAT I DESCRIBED EARLIER, THE FIRED CARTRIDGE CASE IS BEING PULLED BACK OR EXTRACTED BY THE EXTRACTOR.

WHEN THAT HAPPENS, A FRESH CARTRIDGE IS FED OUT OF THE MAGAZINE INTO THE CHAMBER. AND IT'S PUT IN TO WHAT WE CALL THE BATTERY OR THE READY TO BE FIRED CONDITION. AND AT THE NEXT PULL OF THE TRIGGER, THE SAME CYCLE HAPPENS OVER.

Q ALL RIGHT. DOES THAT REQUIRE A SECOND PULL OF THE TRIGGER?

A YES, SIR. IT'S A SEMIAUTOMATIC WEAPON. ONE TO PULL THE TRIGGER, ONE SHOT. MUST RELEASE THE TRIGGER TO DISENGAGE AND ALLOW IT TO COCK ITSELF AGAIN.

Q ALL RIGHT, SIR. WHAT -- YOU MENTIONED THAT A SHELL WAS FIRED, CARTRIDGE CASE IS EXTRACTED. WHAT DO YOU MEAN BY THAT?

A IT MEANS THAT IT'S -- THE -- STRAIGHT PIECE OF METAL RIGHT HERE ON THE SIDE. THIS IS THE EXTRACTOR. IT DOES JUST WHAT IT SAYS. IT EXTRACTS OR PULLS THE FIRED SHELL CASING BACK OUT OF THE CHAMBER.

AND THE EJECTOR IS A SEPARATE PIECE OF MACHINERY INSIDE THE GUN WHICH EJECTS OR KICKS THE SHELL CASING OUT OF THE PISTOL.

Q ALL RIGHT, SIR. AND NOW, IS THERE ANY WAY FOR THAT GUN ON PULLING THE TRIGGER ONE TIME TO SHOOT MORE THAN ONE

BULLET?
A I DID NOT FIND THAT TO BE THE CASE. IT'S A SEMIAUTOMATIC WEAPON. I WOULD SAY NO.
Q ALL RIGHT. AND YOU TEST FIRED IT TO REACH THAT CONCLUSION.
A YES, SIR. I TEST FIRED QUITE A FEW TIMES.
Q DID YOU -- IS IT POSSIBLE TO -- EXCUSE ME. GET ON TO SOMETHING ELSE. IN YOUR TEST FIRINGS, DID YOU COMPARE THE BULLETS TAKEN FROM DEPUTY CHARLIE KUBALA'S BODY, EXHIBIT 17, 18 IN EVIDENCE, TO EXHIBIT 50, THE HIGH STANDARD 22 THAT WAS FOUND WITH MR. STONE AT THE TIME OF HIS ARREST AND TO DETERMINE -- MAKE ANY DETERMINATIONS?
A YES, SIR. I DID.
Q COULD YOU TELL THE LADIES AND GENTLEMEN OF THE JURY ABOUT THAT.
A I DID THE EXAMINATIONS I DESCRIBED EARLIER BY TEST FIRING, TAKING THE TEST BULLETS, MICROSCOPICALLY COMPARING ALL ITEMS OF EVIDENCE AND I FOUND THE FIRED BULLETS AND BULLET FRAGMENTS CONTAINED IN STATE'S EXHIBITS 17 AND 18 CONTAINED SUFFICIENT INDIVIDUAL IDENTIFYING CHARACTERISTICS TO DETERMINE THAT BOTH THESE TWO BULLETS AND ONE CASE -- WERE TWO BULLET FRAGMENTS AND ONE BULLET WERE FIRED BY STATE'S EXHIBIT 50, THIS PISTOL AND NO OTHER FIREARM.
Q THOSE THE BULLETS TAKEN FROM THE DEPUTY'S BODY AT

AUTOPSY IN YOUR OPINION FIRED BY THAT 22 HIGH STANDARD PISTOL, EXHIBIT 50 AND NO OTHER WEAPON WHATSOEVER?

A WITHOUT QUESTION.

Q ALL RIGHT, SIR. NOW, THE THREE CARTRIDGE CASES THAT ARE -- YEAH. EXHIBITS 53, 54, 55 FROM MR. MACKESSY FOUND ON THE SIDE PORCH AT 817 TAYLOR STREET. DID YOU COMPARE THOSE TO EXHIBIT 50, THE HIGH STANDARD 22?

A YES, SIR. I DID.

Q WHAT CAN YOU TELL US ABOUT THAT?

A BY EXAMINING MY TEST CARTRIDGE CASES THAT I FIRED OUT OF STATE'S EXHIBIT 50, THIS PISTOL, AND MICROSCOPICALLY COMPARING MY TEST TO THE FIRED SHELL CASES CONTAINED IN STATE'S EXHIBITS 53, 54, 55, I WAS ABLE TO CONCLUDE THAT THESE THREE CARTRIDGE CASES BROUGHT TO ME BY TOM DARNELL FROM THE CRIME SCENE WERE FIRED BY STATE'S EXHIBIT 50, THIS PISTOL, AND NO OTHER WEAPON.

Q ALL RIGHT, SIR. NOW, THE EXHIBIT, THE 22 CARTRIDGE CASES THAT WAS IDENTIFIED AS BEING FOUND UP IN THE WOODED AREA, EXHIBIT 61, DID YOU ALSO COMPARE IT TO EXHIBIT NUMBER 50, THE HIGH STANDARD 22?

A YES, SIR. I DID.

Q WHAT WAS THE RESULTS OF YOUR EXAMINATION?

A LIKE I -- LIKEWISE, I WAS ABLE TO DETERMINE THAT STATE'S EXHIBIT -- THIS WAS ALSO FIRED BY STATE'S EXHIBIT 50 AND NO OTHER FIREARM.

Q ALL RIGHT, SIR. DID YOU EXAMINE THE -- DID YOU ALSO HAVE BROUGHT WITH YOU EXHIBIT -- I BELIEVE IT'S 15?

A 13.

Q OKAY. EXHIBIT 13, THAT 410 SHOTGUN?

A YES, SIR. I DID.

Q DID YOU RECEIVE THAT AT SLED DIRECTLY FROM RAY MACKESSY?

A IT WAS BROUGHT IN THROUGH EVIDENCE AND I RECEIVED IT. YES, SIR. SEALED AT THE TIME.

Q ALL RIGHT, SIR. NOW, OKAY. THAT WAS A SEALED CONTAINER FROM TOM DARNELL?

A NO, SIR. THIS PARTICULAR ONE IS A SNAKE CHARMER WHICH IS STATE'S EXHIBIT 13 WAS ALSO WITH THE SHELL CASING OF THE 22 FROM THE WOODED AREA.

Q OKAY. AND DID YOU -- DID YOU COMPARE THE 410 SHOTGUN THERE TO THE -- I THINK IT'S EXHIBIT 62, THE 410 SHELL THAT WE FOUND OUT IN THE WOODED AREA?

A YES, SIR. I DID.

Q AND WHAT WAS THE RESULT OF YOUR EXAMINATION?

A I TEST FIRED THIS 410 SHOTGUN, STATE'S EXHIBIT 13, AND AS IN STATE'S EXHIBIT 50 THE CARTRIDGE CASES THEMSELVES CAN BE IDENTIFIED. I FOUND SUFFICIENT INDIVIDUAL MARKINGS ON MY TEST FROM STATE'S EXHIBIT 13 TO MICROSCOPICALLY CONCLUDE THAT STATE'S EXHIBIT 62, THIS FIRED 410 SHOT SHELL CASING, WAS IN FACT FIRED FROM

STATE'S EXHIBIT 13, THIS SHOTGUN AND NO OTHER WEAPON.

Q ALL RIGHT, SIR. MR. PARNELL, I WANT TO ASK YOU ABOUT THIS SCREEN DOOR, STATE'S EXHIBIT 15. YOU SEEN THIS BEFORE?

A YES, SIR. IT HAS MY INITIALS AND A DATE ON IT.

Q ALL RIGHT, SIR. AND PREVIOUSLY ADMITTED INTO EVIDENCE AND BROUGHT HERE BY JOHN BARRON, EXHIBITS 57 AND 58. DID YOU HAVE OCCASION TO EXAMINE THOSE?

A 57 I DID NOT. THAT WAS JOHN BARRON'S COMPARISON TOTALLY. THE ITEMS CONTAINED OR THE ITEM CONTAINED IN STATE'S EXHIBIT 58 IS A PORTION OF THE SCREEN THROUGH WHICH I FIRED TEST BULLETS USING STATE'S EXHIBIT 50. AND IN ORDER TO PROPERLY EXAMINE, JOHN BARRON CUT THIS OUT TO PUT IT UNDER HIS INSTRUMENTS.

Q ALL RIGHT. AND WHAT CAN YOU TELL US ABOUT IN COMPARISON BETWEEN THE TWO EXHIBITS ABOUT THE HOLES -- IN THE THREE HOLES IN EXHIBIT 57 AND THE HOLES THAT YOU FIRED WITH THIS GUN, EXHIBIT 50, THE 22 PISTOL?

A YES, SIR. I FIRED THE ONES IN STATE'S EXHIBIT 58.

Q WHAT CAN YOU TELL US IN COMPARISON OF THE TWO EXHIBITS?

A UPON VISUAL EXAMINATION -- I DID NO CHEMICAL COMPARISON, BUT UPON VISUAL EXAMINATION OF THE AREA OF THE SCREEN CONTAINED IN STATE'S EXHIBIT 57 AS WELL AS THOSE THAT I FIRED THROUGH THE SCREEN DOOR MYSELF, THEY LOOKED

VERY SIMILAR IN NATURE, THE DAMAGE WAS VERY CONSISTENT WITH EACH OTHER.

Q ALL RIGHT, SIR. AGENT PARNELL, I WANT TO ASK YOU AS A FIREARMS EXPERT, IF IN THE -- UNDER THE EVIDENCE -- LETS SEE. PREVIOUS EVIDENCE. I WANT TO ASK YOU A HYPOTHETICAL QUESTION BASED UPON EVIDENCE PREVIOUSLY SUBMITTED IN THE CASE.

AND THAT WOULD BE THAT -- UPON EXAMINATION BY THE TRACE DEPARTMENT, THE RIGHT PALM AND BACK OF THE RIGHT HAND INDICATED ELEVATED QUANTITIES OF METALS DETECTED AND INDICATES THE PRESENCE OF GUN SHOT RESIDUE ON THE RIGHT PALM AND ON THE BACK OF THE RIGHT HAND.

AND THEN IN REGARD TO MR. STONE'S LEFT HAND, ELEVATED LEVELS OF LEAD WERE FOUND ON THE LEFT PALM AND BACK OF THE LEFT HAND AND ALSO LEAD RESIDUE FOUND ON THE -- AT THE CUFF OF THE SLEEVE ON HIS JACKET ON THE LEFT HAND SIDE. AND COULD -- AS A FIREARMS EXPERT, WHAT WOULD THAT INDICATE TO YOU?

MR. LITTLEJOHN: YOUR HONOR, I DON'T THINK THAT'S A PROPER QUESTION.

THE COURT: I SUSTAIN THE OBJECTION. HE'S IDENTIFYING FIREARMS AND TOOL MARKS. WE ALREADY HAD TESTIMONY CONCERNING THAT. THE ANSWER TO THAT QUESTION -- IT'S CUMULATIVE AS WELL. SUSTAINED.

(WHEREUPON QUESTIONING RESUMED).

Q AGENT PARNELL, IN YOUR EXAMINATION OF EXHIBIT NUMBER 50, THE HIGH STANDARD 22, COULD YOU TELL THE LADIES AND GENTLEMEN OF THE JURY IF THE GUN WAS FUNCTIONING PROPERLY UPON YOUR EXAMINATION?

A I ANSWERED THAT QUESTION A QUALIFIED YES. AND TO EXPLAIN, STATE'S EXHIBIT 50 WAS EXTREMELY DIRTY IN THAT IT HAD NOT BEEN CLEANED AFTER HAVING BEEN FIRED NUMEROUS TIMES. AND THE ACTION IS VERY STICKY. KIND OF SLOW.

IT FIRED FINE MOST OF THE TIME, BUT OCCASIONALLY IT WOULD -- IT WOULD STICK JUST BEFORE IT CLOSED BACK UP. NOW, THAT JUST GIVES A LITTLE PUSH ON MY THUMB. BUT SAFETY IS FUNCTIONING PROPERLY, TRIGGER PULL IS LIGHT.

IT'S A TARGET TYPE PISTOL WHICH TRIGGER PULL IS SOMETHING I WOULD EXPECT TO FIND IN A WEAPON LIKE THIS. OTHER THAN THAT, OTHER THAN BEING JUST DIRTY AND STICKY AND FUNCTIONING -- IT FIRED FINE DURING MY TESTING.

Q WELL, WHEN I ASKED YOU EARLIER IF IT WOULD BE POSSIBLE TO FIRE MORE THAN ONE BULLET WITHOUT PULLING THE TRIGGER MULTIPLE TIMES -- IN OTHER WORDS, WOULD WHAT YOU TALKED ABOUT, WOULD THAT HAVE ANY EFFECT ON THAT?

A IF ANYTHING, IT WOULD TEND TO GO THE OTHER DIRECTION FROM FIRING MULTIPLE TIMES. I DID NOT FIND THE GUN TO MALFUNCTION IN THAT MANNER AT ALL. AND IT WOULD BE MY OPINION THAT IF -- THAT DOES NOT DO THAT.

Q DOES NOT FIRE MORE THAN...

A DOES NOT FIRE AUTOMATICALLY.
Q ALL RIGHT.
A IT FIRES IN A SEMIAUTOMATIC FASHION AS IT'S INTENDED OR DID EVERY TIME I TEST FIRED IT.
Q ALL RIGHT, SIR. WHAT -- THE FACT OF THE STICKING THAT YOU WOULD INDICATE THERE, WHAT WOULD THAT CAUSE IT TO DO?
A CAUSE IT TO FIRE SLOWER IF ANYTHING. AND TO BE ASSISTED POSSIBLY ONE OUT OF 5 OR SIX SHOTS OCCASIONALLY WITH -- TO PUSH THE THUMB, PULL THE SLIDE A LITTLE BIT FURTHER FORWARD SO THAT IT WOULD FIRE.
Q SO IT WOULDN'T FIRE AT ALL? ANOTHER BULLET AT ALL IF YOU TOOK ADDITIONAL ACTION BESIDES RELEASING THE TRIGGER?
A THAT'S CORRECT.
Q WHAT ABOUT DID YOU IN YOUR TEST FIRING, DID YOU COME UPON ANY EVIDENCE OF JAMMING?
A WELL, THE CONDITION I JUST DESCRIBED COULD BE CALLED A JAM. BUT IT'S -- IT'S ONE OF SEVERAL DIFFERENT KINDS OF JAMS. SO TO ANSWER YOUR QUESTION IT WOULD JAM, BUT IN ORDER TO OVERCOME THAT ALL I HAD TO DO WAS PUSH THE SLIDE FORWARD.
Q AND WHAT WOULD THAT DO? WHAT WOULD THAT CAUSE?
A IT WOULD CAUSE THE WEAPON TO FULLY ENGAGE IN WHAT WE CALL BATTERY OR BEING READY TO FIRE BECAUSE IT'S NOT COMPLETELY CLOSED. IF THERE'S THE SLIGHTEST CRACK IN THE ACTION, NOT COMPLETELY TIED, IT WILL NOT FIRE.

Q SO WHAT YOU ARE TALKING ABOUT, THE ONLY -- ONLY PROBLEM YOU SAW THAT WOULD CAUSE IT NOT TO BE ABLE TO FIRE AS OPPOSED TO FIRING MORE THAN ONCE?

A THAT'S CORRECT.

Q ALL RIGHT, SIR. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

THE COURT: YOU MAY CROSS-EXAMINE.

CROSS-EXAMINATION BY MR. LITTLEJOHN:

Q GOOD AFTERNOON, IRA.

A HOW ARE YOU DOING, SIR?

Q IN REGARD TO STATE'S EXHIBIT 15, THE ONLY THING YOU DID WITH IT WAS DO THE TEST SHOTS THROUGH THIS AREA UP HERE?

A YES, SIR.

Q THAT WAS THE ONLY THING YOU WERE ASKED TO DO?

A ONLY EXAMINATION I CONDUCTED. YES, SIR.

Q OKAY.

A ALTHOUGH I DID VIEW THE HOLES PRIOR TO JANUARY CUTTING THEM OUT DOWN IN THE OTHER AREA OTHER -- THEIR HOLES.

Q OKAY. I UNDERSTAND. AGENT PARNELL, IN REGARD TO EXHIBIT 50, STATE'S EXHIBIT 50, THIS IS WHAT'S KNOWN AS A TARGET PISTOL; RIGHT?

A YES, SIR. I WOULD CLASSIFY IT AS A TARGET PISTOL.

Q AND ACTUALLY THIS IS A VERY FINE TARGET PISTOL?

A IT IS.

Q AND THIS WOULD BE USED FOR PISTOL COMPETITION?

A IT WAS INITIALLY DESIGNED FOR THAT. YES, SIR.

Q TARGET. OKAY. I UNDERSTAND. AND IN FACT THERE ARE SOME SLIGHT MODIFICATOINS TO IT TO MAKE IT EVEN MORE ACCURATE; ARE THERE NOT?

A NOW, THAT I CAN'T ANSWER BECAUSE I DON'T KNOW WHEN IF AT ALL THEY WERE DONE.

Q SO IT MIGHT BE ORIGINAL EQUIPMENT. BUT FOR INSTANCE...

A MIGHT VERY WELL BE.

Q THE WEIGHTS THAT ARE UP UNDER THE BARREL, WHAT IS THE FUNCTION OF THOSE WEIGHTS?

A THE MIDDLE WEIGHTS OR THE BARREL WEIGHTS MAKE THE GUN A LITTLE HEAVIER, MAKES IT STEADIER IN THE HAND AND RECALLED -- ALTHOUGH LIGHT -- WITH A 22 CALIBER CARTRIDGE STILL CAUSES YOU TO KICK OFF A TARGET JUST A LITTLE BIT.

THE EXTRA WEIGHT TENDS TO HOLD YOU STRAIGHTER ON THE TARGET AND MORE STEADY SO THAT YOU CAN GET A TIGHTER GROOVE.

Q MAKES IT MORE ACCURATE?

A COULD BE. YES, SIR.

Q OKAY. AND I NOTICE THAT THE MUZZLE, THERE IS AN EXHAUST PORT THERE AT THE TOP. WHAT IS THE FUNCTION OF THAT EXHAUST PORT?

A IT'S THE TYPE OF COMPENSATOR. EXHAUST PORT IS A GOOD WAY TO DESCRIBE IT. IT'S A HALF MOON SHAPE CUT OUT. THAT IN ADDITION TO THE BARREL WEIGHTS ASSIST IN KEEPING THE MUZZLE POINTED DIRECTLY AT A TARGET.

THE GASES, PART OF THE GASES WHEN THIS GUN IS FIRED, EXPEL THEMSELVES THROUGH THIS SLOT WHICH WHEN THIS MOTION IS DONE, THE GAS GOES UP AND THE MUZZLE EITHER GOES DOWN A LITTLE BIT BY -- ACTS AS THE RECOIL OR THE ACTION OF FIRING.

SO YOU HAVE GOT SEVERAL ACTIONS GOING ON AT ONE TIME. WHEN YOU PULL THE TRIGGER, THE GASES COME OUT HERE, THE GUN WANTS TO RISE BECAUSE THE WEIGHT IS HOLDING IT DOWN AND THE GAS IS PUSHING DOWN, IT MOVES VERY LITTLE ONE WAY OR THE OTHER. SO IT'S ALSO AN AID TO ACCURACY.

Q AND THE PURPOSE IS WHEN YOU ARE SHOOTING COMPETITIVELY YOU WANT THE TIGHTEST POSSIBLE PATTERN BECAUSE YOU ARE SHOOTING A VERY SMALL TARGET?

A CORRECT. IN THE SMALLEST AMOUNT OF TIME.

Q OKAY. AND YOU INDICATED THAT THE TRIGGER PULL ON THAT GUN WAS VERY LIGHT. AND IS THAT NOT ANOTHER I GUESS FUNCTION OF THE TRIGGER PULL BEING LIGHT IS TO KEEP THE GUN STEADY; ISN'T THAT RIGHT?

A YES, SIR. BE CALLED A CHARACTERISTIC. AND IT IS A TARGET STYLE GUN AS YOU SAID AND IS LIGHTER.

Q OKAY. AND BECAUSE IF YOU HAVE A HEAVIER TRIGGER PULL,

IT TENDS TO MAKE THE GUN PULL TO THE SIDE; ISN'T THAT RIGHT?

A TENDS TO PULL HARD WITH YOUR TRIGGER FINGER AND THAT WOULD OVERCOME THAT TRIGGER SPRING.

Q OKAY. AND SO THE LIGHTER THE PULL, THE MORE ACCURATE THE GUN?

A BASICALLY THAT'S CORRECT.

Q OKAY. AGENT PARNELL, YOU INDICATED THAT STATE'S EXHIBIT 51 IS THE MAGAZINE THAT ACCOMPANIED THAT WEAPON WHEN YOU FIRST SAW IT.

A THAT'S CORRECT. YES, SIR.

Q AND I BELIEVE YOU INDICATED THAT MAGAZINE HAD 5 LIVE 22 CALIBER LONG RIFLE CASINGS IN IT?

A CARTRIDGES. YES, SIR.

Q CARTRIDGES. OKAY.

A UH-HUH.

Q AND I BELIEVE YOU ALSO INDICATED THAT THERE WAS A CASING THAT WAS IN THE CHAMBER OR FIRED CASING?

A THAT'S CORRECT.

Q OKAY. NOW, TELL US -- THERE ARE DIFFERENT KINDS OF 22 SHELLS; ARE THERE NOT?

A YES, SIR. THERE ARE. YOU MEAN BRANDS OR CALIBERS?

Q NOT CALIBERS. THE ROUNDS. THERE'S A 22 SHORT?

A THAT'S CORRECT. YES, SIR.

Q THERE'S A 22 LONG?

A THAT'S RIGHT.
Q AND THERE'S A 22 LONG RIFLE THAT IS THE MOST POWERFUL OF THOSE THREE.
A THAT'S CORRECT.
Q OKAY. AND THE CASING FOR A 22 LONG AND A 22 LONG RIFLE ARE VIRTUALLY THE SAME; AREN'T THEY?
A THEY ARE EXACTLY THE SAME SIZE.
Q EXACTLY THE SAME. SO WHEN YOU HAVE A SPENT CASING, YOU CAN'T TELL WHETHER THAT WAS A 22 LONG OR A -- THE 22 RIFLE -- A 22 LONG RIFLE?
A THAT'S CORRECT.
Q OKAY. NOW, THE CASING THAT CAME OUT OF THE CHAMBER, THAT HAD BEEN FIRED, OBVIOUSLY.
A YES, SIR.
Q AND I NOTICE BY YOUR REPORT YOU COULDN'T TELL WHETHER IT WAS LONG OR A LONG RIFLE?
A THAT'S CORRECT.
Q OKAY. NOW SPECIAL AGENT PARNELL, I NOTICE IN LOOKING ON THE SIDE OF THIS WEAPON, STATE'S EXHIBIT 50, IT SAYS 22 LONG RIFLE.
A THAT'S CORRECT.
Q OKAY. AND I ASSUME THAT MEANS THAT THIS GUN WAS DESIGNED TO SHOOT 22 LONG RIFLES AS OPPOSED TO SOME OTHER SORT OF 22 AMMUNITION?
A THAT IS CORRECT.

Q OKAY. AND AS YOU INDICATED TO US, THAT IS A SEMIAUTOMATIC WEAPON AS OPPOSED TO A REVOLVER?

A YES, SIR.

Q OKAY. AND WHEN THAT GUN IS FIRED, THE EXHAUST FROM THE FIRED BULLET CAUSES THE MAGAZINE TO COME BACK AND SLIDE FORWARD LOADING A NEW SHELL?

A YOUR TERMINOLOGY IS WRONG, BUT YOUR IDEA IS RIGHT.

Q OKAY. GET MY TERMINOLOGY... YOU DO THIS ALL DAY, I DON'T.

A THE SLIDE IS.

Q SLIDE?

A TALKING ABOUT THE MAGAZINE HAS CARTRIDGES AND WHEN IT IS FIRED, IT CAUSES RECOIL OR KICK. AND PART OF THAT KICK CONTRIBUTES TO MOVING THE SLIDE BACK WHICH LETS THE EXTRACTED RAM, THE SHELL CASING, PUT IT OUT THE EJECTOR KICKING AWAY FROM THE GUN.

AND AS IT GOES BACKWARDS, IT PICKS UP A FRESH CARTRIDGE OFF THE TOP OF THE MAGAZINE TO LOAD BACK INTO THE CHAMBER. READY TO FIRE AGAIN.

Q OKAY. AND IF THE GUN IS FUNCTIONING PROPERLY, THAT OCCURS IN THE BLINK OF AN EYE; DOESN'T IT?

A YES, SIR.

Q OKAY. AND YOU INDICATED THAT THE PULL ON THE TRIGGER IS VERY LIGHT?

A IT'S LIGHT. YES, SIR. IT'S NOT EXTREMELY LIGHT, BUT

IT'S LIGHT.

Q OKAY. AND WHILE WE AGREE THAT IS NOT AN AUTOMATIC WEAPON SUCH AS A MACHINE GUN AS WE COMMONLY KNOW. BUT IT IS A VERY LIGHT TRIGGER PULL AND IT WILL FIRE EACH SHELL AT THE BLINK OF AN EYE?

A YES, SIR. IF IT'S OPERATED CORRECTLY. THAT'S TRUE.

Q OKAY. ONE FINAL THING, AGENT PARNELL. OBVIOUSLY ON THE SIDE OF THE FRAME THERE WHERE IT SAYS 22 LONG RIFLE, THAT WOULD INDICATE THAT THE USER OF THAT WEAPON SHOULD USE A LONG RIFLE CARTRIDGE; ISN'T THAT CORRECT?

A THAT'S BASICALLY CORRECT. THE PROPER AMMUNITION TO BE FIRED IN STATE'S EXHIBIT 50 IS 22 LONG RIFLE AMMUNITION. TO MAKE IT FUNCTION LIKE WE HAVE BEEN TALKING ABOUT AND FUNCTION PROPERLY, IT WILL FIRE THE 22 SHORTS, OR 22 LONGS ONLY MANUALLY.

YOU WILL HAVE -- YOU WOULD HAVE TO LOAD IT ONE AT A TIME INTO THE CHAMBER. IT WOULD FIRE IT. BUT IT MIGHT NOT EXTRACT AND EJECT PROPERLY.

Q OKAY.

A UNTIL IT WAS FIRED.

Q SO IF SOMEBODY DIDN'T KNOW WHAT THEY WERE DOING, PUT A 22 LONG IN THERE AND SHOT IT, THE CASING WOULD REMAIN IN THE CHAMBER?

A POSSIBLY. SOMETIMES WITH A LONG IT'S -- IT COULD GO EITHER WAY. IT MIGHT EXTRACT AND EJECT PROPERLY. IT MIGHT

NOT.

Q OKAY.

MR. LITTLEJOHN: IF YOU WOULD INDULGE ME JUST ONE MOMENT, YOUR HONOR.

THE COURT: YES, SIR. TAKE YOUR TIME.

(WHEREUPON THERE WAS A PAUSE).

MR. LITTLEJOHN: THANK YOU, SPECIAL AGENT PARNELL.

THE COURT: REDIRECT, SOLICITOR?

REDIRECT EXAMINATION BY MR. KOLB:

Q AGENT PARNELL, WHAT WOULD BE REQUIRED TO FIRE THREE SHOTS WITH THAT PISTOL?

A IF THE GUN IS OPERATING PROPERLY AND IF THE MAGAZINE IS INSERTED WITH AT LEAST THREE CARTRIDGES IN IT, THE MAGAZINE MUST BE INSERTED, SLIDE BROUGHT TO THE REAR AND RELEASED IN ORDER TO LOAD ONE INTO THE BARREL.

EACH TIME THE TRIGGER IS PULLED, THE CYCLE EXTRACTS AN INJECTION AND RE-LOADING OF THE MAGAZINE GOES ON. AND THREE SHOTS CAN BE FIRED THAT WAY.

Q WHAT I AM TALKING ABOUT-- WHEN YOU PULL THE TRIGGER ONE TIME YOU, GOT TO RELEASE IT, GIVE IT -- THE BUTT OF THE GUN EJECTS AND RELOADS?

A CORRECT THAT'S.

Q AND YOU INDICATED THE ONLY PROBLEM YOU GOT WITH IT IS SOMETIMES IT DOESN'T EJECT PROPERLY. YOU COULD ONLY SHOOT ONCE?

MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO OBJECT TO THAT FORM OF THE QUESTION.

THE COURT: SUSTAINED. LEADING THE WITNESS.

WITNESS: THE ONLY PROBLEM THAT I ENCOUNTERED WAS THAT IT WOULD NOT COMPLETELY CLOSE BACK AFTER CYCLING. AFTER FIRING ONE TIME, IT WOULD EXTRACT THE SHELL CASING, EJECT IT AND IT WOULD NOT COMPLETELY CLOSE BACK.

I HAVE -- I DID MAYBE TWICE, SEVERAL TIMES. I TEST FIRED IT, PUSHED IT BACK TO THE SLIDE JUST TO ASSIST IT ENOUGH TO GET CLOSED AND I THINK THAT WAS JUST BECAUSE IT WAS DIRTY.

BUT WHEN YOU PULL THE TRIGGER, THERE IS A RESET THAT GOES ON BETWEEN SHOTS. SO WITHOUT THAT HAPPENING, IT WON'T FIRE BUT ONE TIME.

Q WHAT HAPPENS IF YOU JUST HOLD THE TRIGGER BACK?

A NOTHING.

Q ALL RIGHT. WILL IT RESET WITHOUT RELEASING YOUR TRIGGER?

A NO, SIR.

Q SO YOU'VE GOT TO RELEASE YOUR FINGER AND GET THE GUNS OPERATING, THEN PULL IT AGAIN?

A THAT'S CORRECT.

Q SO THREE SEPARATE PULL AND RELEASE OF TRIGGER?

A THAT'S RIGHT.

Q OF YOUR FINGER ON THE TRIGGER?

A IN ORDER TO FIRE THREE SHOTS.

Q THANK YOU, SIR.

THE COURT: RE-CROSS?

RECROSS-EXAMINATION BY MR. LITTLEJOHN:

Q ONE FINAL THING. THAT BEING A TARGET GUN SET UP WITH VERY LIGHT TRIGGER PULL, THE PLAY IN THE TRIGGER WAS VERY SLIGHT AS OPPOSED TO A GUN WITH A HEAVY PULL; ISN'T THAT RIGHT?

A THAT'S TRUE.

Q THANK YOU.

THE COURT: YOU MAY COME DOWN, SIR.

(WHEREUPON WITNESS LEFT THE STAND).

THE COURT: THANK YOU, SIR.

MR. KOLB: THANK YOU. YOU CAN COME DOWN.

(WHEREUPON THERE WAS A PAUSE).

MR. KOLB: YOUR HONOR, WE CALL PERRY HEROD.

(WHEREUPON THERE WAS A PAUSE).

MR. KOLB: MOVE TO SUBSTITUTE A COPY.

THE COURT: NO, SIR. NO, SIR.

(WHEREUPON A BENCH CONFERENCE WAS HELD)

PERRY HEROD, BEING FIRST DULY REMINDED OF OATH, TESTIFIED AS FOLLOWS:

(WHEREUPON QUESTIONING RESUMED)

DIRECT EXAMINATION BY MR. KOLB:

Q GIVE US YOUR NAME AND OCCUPATION, PLEASE.

A PERRY ALSTON HEROD. I AM AN AGENT WITH THE STATE LAW ENFORCEMENT DIVISION.

Q AND WHERE DO YOU LIVE?

A HERE IN SUMTER.

Q HOW LONG HAVE YOU BEEN INVOLVED IN LAW ENFORCEMENT?

A BE TWENTY-TWO YEARS THIS YEAR.

Q COULD YOU TELL US ABOUT WHERE YOU HAD BEEN DURING THAT CAREER?

A I STARTED WITH THE SUMTER CITY POLICE DEPARTMENT. I WORKED THERE FOR THIRTEEN YEARS. I WAS IN UNIFORM DIVISION. THEN I WENT INTO INVESTIGATIONS. IN 1988 I WAS EMPLOYED WITH SLED.

Q AND YOU ARE A RESIDENT ALONG WITH JOHN JOHNSON -- YOU ARE ONE OF THE RESIDENT SLED AGENTS HERE IN SUMTER COUNTY?

A YES, SIR.

Q AND WERE YOU, GARY MARTIN AND JOHN JOHNSON THE PRIMARY CASE AGENTS FROM THE BEGINNING OF THIS INVESTIGATION?

A YES, SIR.

Q AND DO YOU HAVE A RANK WITHIN SLED NOW?

A YES, SIR. I'M A LIEUTENANT ASSIGNED TO THE PEE DEE REGION.

Q ALL RIGHT. WHAT REGION OF THE STATE IS THAT GENERALLY? WHAT COUNTY?

A THAT INCLUDES TWELVE COUNTIES.

Q ALL RIGHT, SIR. AND ARE YOU THE LIEUTENANT IN CHARGE OF THAT REGION?
A I'M ONE OF THE LIEUTENANTS. THERE ARE THREE.
Q OKAY. ALL RIGHT. NOW, DID YOU HAVE OCCASION TO SEE BOBBY WAYNE STONE ON THE EVENING OF -- WELL, ACTUALLY ON THE NIGHT OF FEBRUARY 26TH, BUT AFTER MIDNIGHT BECAME FEBRUARY 27TH 1996?
A YES, SIR. I DID.
Q AND WHEN DID YOU FIRST SEE HIM?
A WHEN I FIRST SAW BOBBY WAYNE STONE WAS AFTER HE HAD BEEN ARRESTED. HE WAS BROUGHT TO THE LAW ENFORCEMENT CENTER. HE WAS BROUGHT OUT OF THE VAN AND TAKEN INSIDE OF THE BUILDING.
Q ALL RIGHT, SIR. AND DID YOU HAVE OCCASION TO TALK WITH HIM?
A YES, SIR. LATER I DID.
Q OKAY. SO YOU FIRST SAW HIM COMING IN TO THE BUILDING AND THEN LATER YOU INTERVIEWED HIM?
A YES, SIR. I DID.
Q ALL RIGHT. AND APPROXIMATELY WHAT TIME DID THAT INTERVIEW OCCUR?
A SOMEWHERE AROUND 2:00 IN THE MORNING.
Q ALL RIGHT, SIR. AND WHERE -- ACTUALLY, EXPLAIN A LITTLE MORE DETAIL THE FACILITIES AND SO FORTH.
A HE WAS TAKEN INTO THE LAW ENFORCEMENT CENTER WHICH

CONTAINS THE SHERIFF'S DEPARTMENT AND THE CITY POLICE. THE SHERIFF'S DEPARTMENT WAS UPSTAIRS. HE WAS TAKEN INTO THE COUNTY INVESTIGATIVE UNIT.

AND THE INTERVIEW TOOK PLACE IN INVESTIGATOR JOE GALLIMORE'S OFFICE THAT WAS IN THE COUNTY INVESTIGATIONS.

Q ALL RIGHT. AND WHO WAS PRESENT FOR THE ACTUAL INTERVIEW AND QUESTIONING OF MR. STONE?

A MYSELF AND INVESTIGATOR JOE GALLIMORE WHO WAS WITH THE SUMTER COUNTY SHERIFF'S DEPARTMENT.

Q ALL RIGHT, SIR. SHOW YOU AN EXHIBIT NUMBER 1 AND ASK YOU IF YOU CAN IDENTIFY THIS.

A YES, SIR. I CAN. THAT IS THE RIGHTS FORM THAT WAS READ TO MR. STONE THAT NIGHT.

Q AND COULD YOU -- HOW DID THIS FORM GET EXECUTED? COULD YOU EXPLAIN THAT PROCESS TO US?

A BEFORE WE TALKED TO ANYONE, WE INFORMED THEM OF THEIR -- WHAT IS KNOWN AS THEIR RIGHTS. AND AT THE TOP OF THIS FORM IT'S GOT 0155 WHICH WOULD HAVE BEEN THE HOUR, 22796 AND THIS FORM WAS READ TO BOBBY WAYNE STONE.

IT SAYS NUMBER ONE THAT I HAVE A RIGHT TO REMAIN SILENT. NUMBER TWO, THAT ANYTHING I SAY MAY BE USED IN A COURT AGAINST ME. NUMBER THREE, THAT I AM ENTITLED TO TALK TO A LAWYER NOW AND HAVE HIM OR HER PRESENT NOW OR ANY TIME DURING QUESTIONING.

4, THAT IF I CAN NOT AFFORD A LAWYER ONE WILL BE

APPOINTED TO ME WITHOUT COST BY THE COURT. NUMBER 5, THAT IF I DECIDE TO ANSWER ANY QUESTIONS NOW, THAT I MAY STOP THE QUESTIONING AT ANY TIME I SO CHOOSE OR ASK TO SPEAK WITH A LAWYER AT ANY TIME DURING THE QUESTIONING.

NUMBER SIX, THAT I UNDERSTAND EACH OF THOSE RIGHTS AND I AM WILLING TO ANSWER QUESTIONS AT THIS TIME WITHOUT HAVING A LAWYER PRESENT.

AFTER THIS FORM WAS READ TO BOBBY WAYNE STONE, IT WAS GIVEN TO HIM TO READ. AND THEN WE ASKED HIM IF HE UNDERSTOOD IT AND IF HE UNDERSTOOD THOSE RIGHTS TO SIGN THE FORM.

HE SIGNED BOBBY W STONE 158 A.M. 2- 27- 96 AND IT WAS WITNESSED BY INVESTIGATOR JOE GALLIMORE AND MYSELF. WE ALSO SIGNED THE FORM.

Q ALL RIGHT. NOW...

MR. KOLB: YOUR HONOR, WE OFFER THAT FORM INTO EVIDENCE AT THIS TIME. EXHIBIT 1 FOR IDENTIFICATION.

THE COURT: ANY OBJECTION?

MR. LITTLEJOHN: YOUR HONOR, SUBJECT TO OUR EARLIER OBJECTION.

THE COURT: ALL RIGHT. SUBJECT TO PREVIOUS OBJECTION FOR THE RECORD IN THIS MATTER STATE'S EXHIBIT 1 IS ADMITTED. A ONE PAGE DOCUMENT.

(STATE'S EXHIBIT NO. 1 MARKED FOR EVIDENCE).

(WHEREUPON QUESTIONING RESUMED).

Q NOW, MR. HEROD, BESIDES READING THOSE RIGHTS TO HIM AND GIVING HIM AN OPPORTUNITY TO READ IT HIMSELF, DID IT APPEAR TO YOU THAT HE UNDERSTOOD WHAT THE RIGHTS WERE OR AS THEY WERE READ TO HIM?

A YES, SIR. I HAD ASKED HIM IF HE COULD READ AND WRITE AND HE SAID THAT HE COULD. I ASKED HIM THE FURTHEST GRADE HE COMPLETED IN SCHOOL. HE SAID HE HAD COMPLETED THE 11TH GRADE.

Q ALL RIGHT. AND COULD YOU TELL THE LADIES AND GENTLEMEN OF THE JURY ABOUT HOW HE APPEARED TO YOU IN REGARD TO BEING ALERT OR NOT? I KNOW THIS WAS ALMOST 2:00 IN THE MORNING.

A YES, SIR. HE -- I COULD SMELL SOME TYPE OF ALCOHOLIC BEVERAGE ON HIS BREATH, BUT HE DID NOT APPEAR TO BE INTOXICATED. HIS SPEECH WASN'T SLURRED. HE -- IN MY EXPERIENCE HE UNDERSTOOD AND KNEW WHAT WAS GOING ON.

Q WAS HE AWAKE AND ALERT?

A YES, SIR. HE WAS.

Q DID YOU OR ANYONE THREATEN, COERCE OR INTIMIDATE HIM TO GET HIM TO AGREE TO TALK WITH YOU AT THAT TIME?

A NO, SIR.

Q WAS THERE ANYTHING DONE BY WAY OF INDUCEMENT, REWARD, HOPE OF REWARD OR PROMISE OF LENIENT TREATMENT TO GET HIM TO TALK WITH YOU AND WAIVE HIS RIGHTS AT THAT TIME?

A NO, SIR.

Q NOW, AFTER AGREEING TO WAIVE HIS RIGHTS AND TALK WITH YOU WITHOUT AN ATTORNEY BEING PRESENT, WHAT OCCURRED THEN?

A WE ASKED HIM AT THAT TIME IF HE WOULD TELL US WHAT HE HAD DONE SINCE THE PREVIOUS DAY. AND HE SAID THE PREVIOUS DAY HE HAD GOTTEN UP, HE HAD GOTTEN SOME BEER AND THAT HE HAD GONE OUT AND GONE TO WARDS OLD STORE ON BOULEVARD ROAD.

THEN HE HAD MET A BLACK MALE NAMED DAVID AND THAT HE WAS GOING TO BUY A COUPLE OF GUNS FROM THIS BLACK MALE AND THAT HE HAD GONE OUT IN THE WOODS WITH DAVID AND HAD FIRED THESE GUNS.

AND THEN HE SAID THAT AFTER HE HAD FIRED THE GUNS THAT HE WENT TO THIS HOUSE AND THAT A LADY WAS THERE AND SHE HAD RAN HIM OFF, RUTH GRIFFITH'S HOUSE.

LATER HE WENT BACK TO THE HOUSE, HE HAD 410 SHOTGUN WITH HIM AND A 22 PISTOL THAT WAS SILVER AND BLACK IN COLOR AND HE WAS UP ON THE BACK PORCH AND HE WAS BEATING ON THE DOOR AND SOMEBODY HOLLERED AT HIM, A MALE VOICE, AND THAT HE TURNED AROUND AND HE CLAIMED THE GUN WENT OFF ACCIDENTALLY ONE TIME AND THAT HE RAN. RAN INTO THE WOODS.

Q ALL RIGHT, SIR. DID YA'LL ASK HIM WHERE HE RAN TO?

A YES, SIR. AT THAT TIME INVESTIGATOR GALLIMORE STARTED DRAWING A -- DREW A DIAGRAM OF THE AREA. AND WE HAD BOBBY WAYNE STONE -- HE WAS GIVEN A RED PEN AND WE ASKED HIM IF

HE COULD MARK WHERE HE HAD GONE.

Q ALL RIGHT, SIR. I WANT TO SHOW YOU SOMETHING BEEN PREVIOUSLY MARKED STATE'S EXHIBIT 2 FOR IDENTIFICATION AND ASK YOU IF YOU CAN IDENTIFY THAT.

A YES, SIR. THAT IS THE DRAWING THAT WAS MADE BY INVESTIGATOR GALLIMORE. IT'S IN BLACK. AND THEN THERE IS A RED LINE DRAWN ON IT AND IT'S SIGNED IN RED BY BOBBY STONE.

Q ALL RIGHT.

A AND THEN IT IS WITNESSED BY MYSELF AND INVESTIGATOR JOE GALLIMORE.

Q ALL RIGHT.

MR. KOLB: YOUR HONOR, WE WOULD OFFER THIS INTO EVIDENCE AT THIS TIME.

THE COURT: SUBJECT TO YOUR FORMER OBJECTION?

MR. LITTLEJOHN: YES, YOUR HONOR.

THE COURT: VERY WELL. SUBJECT TO PREVIOUS OBJECTION ON THE RECORD IN THIS MATTER, STATE'S EXHIBIT 2 IS ADMITTED INTO EVIDENCE.

(STATE'S EXHIBIT NO. 2 MARKED FOR EVIDENCE).

THE COURT: ONE PAGE DOCUMENT.

(WHEREUPON QUESTIONING RESUMED).

Q ALL RIGHT. MR. HEROD, THE MATTER OF THE FIELD AND A DITCH. WHAT CAN YOU TELL US ABOUT THOSE ON THAT SKETCH?

A WHEN HE WAS EXPLAINING TO US WHERE HE HAD GONE, HE

TOLD US WHERE THE FIELD WAS AND WHERE THE DITCH WAS. HE INDICATED WHERE IT WAS.

THEN JOE GALLIMORE FILLED THAT PART IN. I HAD NOT BEEN THAT FAR BACK IN THE WOODS. I DIDN'T KNOW WHAT WAS IN THERE.

Q ALL RIGHT, SIR. NOW, WHAT HAPPENED AFTER THAT?

A WE CONTINUED TO INTERVIEW BOBBY WAYNE STONE AND DURING THAT TIME HE SMOKED CIGARETTES FREELY AND HE DRANK A SOFT DRINK. I BELIEVE IT WAS A COKE.

HE HAD SEVERAL CUPS OF COFFEE. HE WAS TAKEN TO THE BATHROOM. AND WE CONTINUED TO INTERVIEW HIM AND ASK HIM QUESTIONS.

Q ALL RIGHT, SIR. AND WHAT OCCURRED DURING THAT PERIOD OF TIME? WAS ULTIMATELY A WRITTEN STATEMENT OBTAINED?

A YES, SIR.

Q TELL US ABOUT THE -- WHAT YOU DID BETWEEN THE INITIAL STATEMENT BY HIM AND DRAWING THE DIAGRAM AND ACTUALLY REDUCING EVERYTHING TO A WRITTEN STATEMENT. WHAT OCCURRED?

A WELL, WE CONTINUED TO ASK HIM QUESTIONS ABOUT WHAT HAD HAPPENED. HE WENT BACK INTO THE STORY. SAID THAT HE HAD MET THIS BLACK MALE NAMED DAVID AND WE ASKED HIM TO GIVE US A DESCRIPTION AND DID HE KNOW HIS LAST NAME. HE SAID NO.

AND HE WAS INTENDING TO BUY THESE GUNS FROM DAVID. AND THAT THEY HAD GONE OUT IN THE WOODS TOGETHER.

HE HAD DRANK BEER AND THAT HE HAD FIRED THE 22 PISTOL AND THAT HE HAD FIRED A 410 SHOTGUN BECAUSE HE WANTED TO FIRE THEM BEFORE HE BOUGHT THEM. AND HE SAID HE HAD FIRED THE PISTOL APPROXIMATELY THIRTY TIMES.

Q ALL RIGHT, SIR. NOW, DID YOU QUESTION HIM ABOUT EVERYTHING THAT OCCURRED?

A YES, SIR.

Q ALL RIGHT. AND WHEN DID YOU ACTUALLY BEGIN THE WRITTEN STATEMENT?

A I BELIEVE IT'S AROUND 4:10 A.M. ON THE 27TH.

Q NOW, WHAT OCCURRED BETWEEN THE TIME OF THE INITIAL DRAWING OF THE DIAGRAM, STATE'S EXHIBIT 2, AND 4:10? PROCEDURALLY I WANT YOU TO TELL US WHAT YA'LL WERE DOING.

A WHAT WE WERE DOING. WE WERE ASKING HIM QUESTIONS ON WHAT HAD TAKEN PLACE. AND WE WERE GETTING HIM JUST TO RELATE THESE EVENTS TO US. SEE WHAT HE WOULD TELL US.

Q ALL RIGHT, SIR. NOW, AFTER YOU HAD DONE ALL OF THAT, WAS A DETERMINATION MADE TO DO A WRITTEN STATEMENT OF WHAT HE WAS CLAIMING HAD OCCURRED THAT NIGHT?

A YES, SIR.

Q NOW, WHAT TYPE OF WRITTEN STATEMENT DID YA'LL DO?

A WE DID A QUESTION AND ANSWER TYPE OF STATEMENT.

Q AND NOW EXPLAIN TO US ABOUT A QUESTION AND ANSWER STATEMENT.

A WHAT WE DID WAS WE EXPLAINED TO BOBBY WAYNE STONE

THAT WE WOULD ASK HIM THE QUESTION, THAT INVESTIGATOR JOE GALLIMORE WOULD WRITE THAT QUESTION ON THE STATEMENT FORM AND THEN WE WOULD ASK BOBBY WAYNE STONE TO ANSWER AND HIS ANSWER WOULD BE WRITTEN ON THE STATEMENT FORM.

Q ALL RIGHT, SIR. NOW, THESE -- THIS IS THE RESULT OF THE QUESTIONS YOU HAVE ALREADY BEEN TALKING TO HIM ABOUT A COUPLE OF HOURS?

A YES, SIR.

Q AND DID HE AGREE TO GIVE A WRITTEN STATEMENT IN THAT QUESTION AND ANSWER FORMAT?

A YES, SIR. HE DID.

Q AND DID YOU ACTUALLY PREPARE A WRITTEN STATEMENT?

A YES, SIR. WE DID.

Q ALL RIGHT.

MR. KOLB: YOUR HONOR, WE'D LIKE TO OFFER THIS -- WELL, LET ME SHOW IT TO HIM.

(WHEREUPON QUESTIONING RESUMED).

Q YOU GOT A COPY OF IT ALSO?

A NO, SIR.

THE COURT: WHY DON'T WE JUST MARK IT. YOU NEED ONE TOO, PROBABLY.

(WHEREUPON QUESTIONING RESUMED).

Q CAN YOU IDENTIFY THIS?

A YES, SIR. THIS IS THE---.

MR. KOLB: WE'VE GOT SEVERAL .

WITNESS: THE STATEMENT.

MR. KOLB: YOUR HONOR, WE WOULD OFFER THIS AS 3.

THE COURT: STATE'S 3.

MR. KOLB: 3 FOR...

THE COURT: ALL RIGHT.

MR. KOLB: OFFER THIS INTO EVIDENCE.

THE COURT: STATE'S 3. CONSISTS -- IT'S OF EIGHT PAGES. IT'S A COPY OF STATE'S 3 FOR I.D. ONLY. ANY OBJECTION?

MR. LITTLEJOHN: SUBJECT TO OUR...

THE COURT: 3. ANY ADDITIONAL OBJECTION AS TO THE COPY OR ANY OF THAT ASPECT?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: VERY WELL. SUBJECT TO THE PREVIOUS OBJECTIONS, DEFENSE COUNSEL AS TO THREE -- AND THEREFORE AS TO 3, STATE'S 3 IS ADMITTED INTO EVIDENCE.

(STATE'S EXHIBIT NO. 3 MARKED FOR EVIDENCE).

THE COURT: I WILL INDICATE, LADIES AND GENTLEMEN, AT THIS POINT YOU WILL HAVE THIS DOCUMENT AT SOME POINT. THIS IS A COPY OF A DOCUMENT WHICH YOU WILL NOT HAVE.

THIS IS A COPY OF AN ORIGINAL DOCUMENT WHICH IS PART OF THE RECORD, BUT YOU WON'T SEE THAT. THERE ARE SOME PARTS IN THIS -- MATTERS OF LAW -- THAT I HAVE DEALT WITH.

IN SOME OF THE PAGES YOU WILL SEE SOME WHITE

AREAS. YOU UNDER NO CIRCUMSTANCES MAY CONSIDER THAT IN ANY FASHION. IF YOU RECALL, YOU ARE THE TRIERS OF FACT. I AM THE TRIER OF THE LAW.

THERE ARE CERTAIN MATTERS THAT I HAVE DEALT WITH. SO PLEASE, YOU ARE NOT TO CONSIDER THE FACT THAT IT'S A COPY OR THE FACT THAT THERE ARE SOME WHITE AREAS IN THIS FORM. OKAY? YOU MAY CONTINUE.

MR. KOLB: THANK YOU, YOUR HONOR.

(WHEREUPON QUESTIONING RESUMED).

Q AGENT HEROD, YOU WOULD TELL US NOW ABOUT THE EXECUTION -- FILLING OUT OF THIS WRITTEN STATEMENT.

A YES, SIR. WHEN WE STARTED TO TAKE THIS STATEMENT, IT'S GOT A SPOT FOR THE TIME THAT WAS WRITTEN IN BY INVESTIGATOR GALLIMORE. 0410. THE DATE 2-27-96. PLACE CRIMINAL INVESTIGATIVE DIVISION OFFICE, SUMTER COUNTY SHERIFF'S DEPARTMENT, 107 EAST HAMPTON AVENUE, SUMTER, SOUTH CAROLINA.

THEN IT SAYS I BOBBY WAYNE STONE -- AND AT THAT TIME HE WAS ASKED HIS SOCIAL SECURITY NUMBER, PLACED ON HERE 247-31-1905. W SLASH M FOR WHITE MALE. HE WAS ASKED HIS BIRTHDAY. PLACED ON HERE 19- 65.

HAVING BEEN ADVISED OF MY RIGHT UNDER THE FIFTH AMENDMENT TO THE CONSTITUTION AS TO COMPULSORY SELF-INCRIMINATION, MY RIGHT OF COUNSEL AND MY RIGHT OF TRIAL AND KNOWING THAT ANYTHING I SAY MAY BE USED AGAINST

ME IN A COURT OF LAW AND KNOWING THAT I DO NOT HAVE TO MAKE ANY STATEMENTS AT ALL DO HEREBY VOLUNTEER THE FOLLOWING TO S A -- BE SPECIAL AGENT -- PERRY HEROD, SLED, AND I N V -- THAT BE INVESTIGATOR -- JOE GALLIMORE , SUMTER COUNTY SHERIFF'S DEPARTMENT WHO HAVE IDENTIFIED THEMSELVES AS LAW ENFORCEMENT OFFICERS.

Q ALL RIGHT, SIR. AND EXPLAIN TO US ABOUT THE QUESTION AND ANSWER GOING ON THROUGH THERE.

A AND AT THAT TIME WHAT WE WOULD DO WOULD BE SOME OF THESE QUESTIONS FROM INVESTIGATOR GALLIMORE AND SOME WERE MINE. SOME WERE A COMBINATION. BUT EACH QUESTION WAS NUMBERED.

AND AS THE QUESTION WAS ASKED IT WAS WRITTEN ON THIS FORM. AND IT'S GOT FIRST QUESTION. BOBBY, EARLIER WE ADVISED YOU OF YOUR RIGHTS AND YOU AGREED TO ANSWER OUR QUESTIONS WITHOUT SPEAKING TO A LAWYER AND WITHOUT HAVING A LAWYER HERE; IS THAT CORRECT?

AND THEN THERE IS A LINE FOR HIM TO INITIAL. THE ANSWER YES. THEN AFTER EACH ONE OF THESE QUESTIONS THERE WOULD BE A LINE AFTER THAT FOR HIM TO ANSWER. AND THEN AFTER THE ANSWER THERE WOULD BE ANOTHER LINE FOR HIM TO INITIAL.

Q ALL RIGHT, SIR. NOW, WHAT ABOUT THE SECOND QUESTION?

A THE SECOND QUESTION. SINCE HERE, HAVE WE ALLOWED YOU TO SIT, SMOKE CIGARETTES, DRINK COFFEE AND USE THE

BATHROOM? ANSWER YES. IF IT'S OKAY I'LL FIX ME ANOTHER CUP WHILE WE'RE TALKING.

THIRD QUESTION. PLEASE TELL ME WHAT HAPPENED -- WHAT ALL HAPPENED YESTERDAY, MONDAY, FEBRUARY 26TH, 1996. ANSWER. AROUND 8 OR 9 A.M. I WAS AT THE WARDS STORE ON BOULEVARD IN SUMTER GETTING SOME CIGARETTES.

WHILE AT WARDS I MET DAVID. I -- HEAVY SET BLACK MALE. HIS HAIR CUT KIND OF SHORT. DAVID OFFERED TO SELL ME THREE GUNS, A 410 SHOTGUN, A 22 PISTOL AND A 22 RIFLE. I DON'T REALLY KNOW HIM, I'VE JUST SEEN HIM AROUND A LOT.

WE AGREED TO MEET ON COMMANDER, A DIRT ROAD OFF OF BOULEVARD ROAD, AT 1:00 IN THE AFTERNOON. BEFORE MEETING DAVID ON COMMANDER, I HAD MY SISTER DRIVE ME BY PARDONS STORE WHERE I BOUGHT A HALF A CASE, 12 TWELVE OUNCE CANS OF BUDWEISER BEER. THEN MY SISTER DROVE ME OVER TO COMMANDER AND DROPPED ME OFF.

DAVE WAS ABOUT THIRTY MINUTES LATE. HE DROVE UP IN A LITTLE BLACK CAR. I THINK IT WAS A TOYOTA. HE HAD A BLACK AND SILVER 410 SHOT GUN AND A 22 PISTOL, THE KIND THAT TAKES A CLIP. THE SAME PISTOL I HAD WITH ME WHEN I WAS ARRESTED.

THIS CONTINUES ON THE SECOND PAGE. STATEMENT OF BOBBY WAYNE STONE. HE ONLY BROUGHT THOSE TWO GUNS AND THE SHELLS FOR BOTH. ABOUT TEN FOR THE SHOTGUN AND TWO BOXES OF 22 SHELLS.

I DON'T KNOW HOW MANY WERE IN A BOX. WE WALKED AROUND THE WOODS SHOOTING BIRDS AND THINGS FOR A COUPLE OF HOURS AND DRINKING BEER, TOO. THERE SHOULD BE SOME EMPTY SHELLS OUT THERE.

WE AGREED ON A PRICE OF $100 FOR BOTH GUNS. ANY WAY, AROUND 4:00 IN THE AFTERNOON WE WERE OVER NEAR RUTH'S HOUSE IN THE WOODS BEHIND HER HOUSE. AND I DECIDED TO GO SAY HI TO RUTH.

SHE'S A WHITE WOMAN ABOUT SIXTY, SIXTY-FIVE. HER MAIDEN NAME IS GRIFFITH. WE ARE OLD DRINKING BUDDIES. WE HAVE GONE OUT AND GOT DRUNK TOGETHER A FEW TIMES. DAVID STAYED IN THE WOODS SHOOTING GUNS. HE HAD BOTH OF THEM.

AS I WALKED OUT OF THE WOODS, I LEFT RUTH'S HOUSE FROM THE BACK. SOME GIRL, WHITE, ABOUT TWENTY-FIVE TO THIRTY, HEAVY SET WITH DARK HAIR, CAME FROM AROUND THE SIDE OF THE HOUSE AND STARTED RAISING CAIN AT ME. CALLING ME TO GET OFF THE PROPERTY AND WHATEVER ELSE.

I REALLY DIDN'T PAY THAT MUCH ATTENTION TO HER. I JUST TURNED AROUND AND WALKED BACK INTO THE WOODS. I WENT BACK TO DAVID AND PAID HIM $100 CASH FOR THE GUNS.

HE CONTINUED ON PAGE 3. HE GAVE ME THE GUNS AND HE LEFT. I STAYED IN THE WOODS SHOOTING THE GUN AND FINISHED THE LAST COUPLE OF BEERS OUT OF MY TWELVE PACK. ABOUT DARK I WENT BACK TO RUTH'S HOUSE.

I WENT UP ON THAT LITTLE SCREENED INSIDE PORCH.

I THINK IT'S GOT TWO OR THREE STEPS. ONCE I GOT UP ON THE SCREENED INSIDE OF THE PORCH, I STARTED BEATING ON THE DOOR THAT LEADS INTO THE HOUSE.

THE DOOR BROKE. THEN I HEARD A MAN'S VOICE YELLING AT ME FROM SOMEWHERE OUTSIDE THE HOUSE. I HAD THE PISTOL IN MY RIGHT HAND. I HAD SET THE SHOTGUN DOWN ON THE PORCH LEANING UP AGAINST THE CORNER NEXT TO THE DOOR, I THINK.

I TURNED ALL THE WAY AROUND TO THE RIGHT SO I WAS FACING THE SCREEN DOOR. THE PORCH WAS DARK. THERE WASN'T ANY LIGHTS ON. AS I TURNED ON THE PORCH, THE GUN WENT OFF AND I RAN. AND HERE WE ARE.

QUESTION 4. BOBBY, WHERE DO YOUR WORK? I'M A SELF-EMPLOYED MECHANIC. QUESTION 5. BESIDES THE TWELVE, TWELVE OUNCE CANS OF BUDWEISER THAT YOU GOT AT PARDONS STORE, DID YOU HAVE ANY OTHER ALCOHOL TO DRINK ON MONDAY? NO, SIR.

QUESTION 6. AND YOU DRANK THESE TWELVE BEERS OVER A SIX HOUR PERIOD FROM ABOUT 1:00 TO 7? PAGE 4. YES. DO YOU DRINK A LOT OF BEER? A PRETTY GOOD BIT.

Q MAKE SURE YOU SAY QUESTION AND ALL.

A EXCUSE ME. THAT WAS QUESTION 7. DO YOU DRINK A LOT OF BEER. ANSWER WAS A PRETTY GOOD BIT. QUESTION EIGHT. WHAT'S A PRETTY GOOD BIT? AT LEAST A TWELVE PACK A DAY, SOMETIMES MORE, SOMETIMES A WHOLE CASE.

QUESTION 9. DID YOU USE ANY MARIJUANA, COCAINE OR ANY OTHER DRUGS YESTERDAY? I SMOKED A JOINT EARLY MONDAY MORNING AROUND 10:00 OR SO. QUESTION 10. WERE YOU TAKING ANY PRESCRIPTION MEDICINES YESTERDAY? NO, SIR.

QUESTION 11. WHAT DID YOU EAT FOR BREAKFAST ON MONDAY? NOTHING AND I DIDN'T EAT LUNCH EITHER. CONTINUING TO QUESTION 14. WHAT WERE YOU DOING BUYING THOSE GUNS FROM DAVID? I BOUGHT THE SHOTGUN BECAUSE I LIKED TO HUNT AND I BOUGHT THE PISTOL BECAUSE WITH THE LONG BARREL IT WAS SO ACCURATE.

QUESTION 15. SO YOU WERE A PRETTY GOOD SHOT WITH THAT PISTOL? NO, I BOUGHT IT BECAUSE IT WAS ACCURATE. YESTERDAY WAS THE FIRST TIME I EVER SHOT A PISTOL.

CONTINUING TO QUESTION 17. THIS GIRL THREW YOU OFF THAT PROPERTY, WHY DID YOU GO BACK? ANSWER, I DIDN'T KNOW SHE LIVED THERE.

QUESTION 18. THE FIRST TIME YOU WENT TO RUTH'S HOUSE AT 4:00, HOW MANY DIFFERENT DOORS DID YOU KNOCK ON? I DIDN'T GET TO IT -- GOT KNOW ON THIS STATEMENT, I DIDN'T GET TO KNOW ON ANY DOORS. THE GIRL CAME OUT RAISING CAIN BEFORE I GOT TO THE HOUSE.

QUESTION 19. THE SECOND TIME YOU WENT TO RUTH'S ABOUT 7:00, HOW MANY DOORS DID YOU KNOCK ON? JUST THE ONE ON THE SIDE PORCH.

QUESTION 20. WHAT DID YOU SAY OR YELL AS YOU

BROKE IN THAT SIDE DOOR? IT'S ON PAGE 6. I DIDN'T SAY ANYTHING. I WAS JUST BEATING ON THE DOOR AND NOBODY ANSWERED ME. THEN SOMEBODY STARTED YELLING AT ME FROM OUTSIDE THE HOUSE AND I TURNED AND THE PISTOL WENT OFF.

QUESTION 21. WHY'D YOU BREAK IN THE DOOR? I WAS JUST BEATING ON IT AND IT BROKE. MAYBE HIT IT TOO HARD. QUESTION 22. YOU WERE BEATING ON THE DOOR OF A HOUSE YOU'D BEEN RUN OFF FROM THREE HOURS BEFORE? I WENT BACK TO TALK TO RUTH.

QUESTION 23. AFTER HAVING BEEN RUN OFF THE PROPERTY THREE HOURS BEFORE? I DIDN'T KNOW THE GIRL LIVED THERE. QUESTION 24. SO WHY'D YOU GO BACK TO RAISE SOME CAIN WITH THE MOUTHY GIRL THAT RAN YOU OFF THREE HOURS BEFORE? NO.

QUESTION 25. WHEN YOU FIRED THE GUN ON THE PORCH, WHAT WERE YOU SHOOTING AT? I JUST TURNED FROM THE HOUSE DOOR AND THE GUN WENT OFF ON THE PORCH AND I RAN.

QUESTION 26. HOW MANY TIMES DID YOU SHOOT AT THAT DEPUTY YOU KILLED? I DIDN'T THINK THE GUN WENT OFF BUT ONCE. AND I NEVER SAW NO DEPUTY.

QUESTION 27. ARE YOU SAYING YOU NEVER SAW ANY DEPUTIES OR ANY SHERIFF'S CARS IN THAT YARD? I NEVER SAW NO COPS OR ANY COP CARS.

QUESTION 28. WHY DID YOU SHOOT AT THAT SECOND DEPUTY AS HE WAS TRYING TO HELP HIS WOUNDED PARTNER WHILE

YOU WERE RUNNING AWAY? I DID NOT. I NEVER SAW ANYBODY.

QUESTION 29. DID YOU FIRE ANOTHER SHOT AFTER YOU RAN OFF THAT SCREENED IN PORCH? NO, SIR. I DID NOT. QUESTION 30. AFTER YOU LEFT THE PORCH, DID THE PISTOL EVER GO OFF AGAIN? NO, SIR.

QUESTION 31. YOU WERE CAUGHT HIDING NEAR THE EDGE OF THE WOODS, THE AREA WAS SURROUNDED BY FIFTY COP CARS, THE BLOOD HOUNDS AND A SWAT TEAM WERE CHASING YOU THROUGH THE WOODS AND THE HELICOPTER WAS HOVERING OVER YOU. WHAT DID YOU THINK WAS GOING ON? I DIDN'T KNOW.

QUESTION 32. HOW DO YOU THINK THE DEPUTY GOT SHOT? I DON'T KNOW. QUESTION 33. WITH ALL THIS POLICE ACTIVITY GOING ON, WHY DIDN'T YOU JUST WALK OUT OF THE WOODS WITH YOUR HANDS UP? I DIDN'T THINK ABOUT IT.

QUESTION 34. BOBBY, I'VE WRITTEN THIS OUT OUR QUESTIONS AS Q'S AND YOUR ANSWERS A'S, VERBATIM. WE'RE GOING TO READ IT TO YOU THEN HAVE YOU READ IT YOURSELF AND INITIAL EACH QUESTION AND ANSWER ON THE LINES I DREW FOR IT AND SIGN EACH PAGE; OKAY? ANSWER OKAY. THEN THERE'S QUESTION 35.

Q EXPLAIN THAT IF YOU WOULD.

A AFTER WE HAD GONE THROUGH THESE THIRTY-FOUR QUESTIONS AND WHAT I JUST READ, INVESTIGATOR GALLIMORE CONTINUED TO WRITE AND HE WROTE I BOBBY WAYNE STONE HAVE READ THIS EIGHT PAGE STATEMENT.

I HAVE INITIALED AFTER EACH QUESTION AND EACH ANSWER AND SIGNED EACH PAGE. I SWEAR UNDER OATH THAT THIS STATEMENT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, RECOLLECTIONS AND BELIEFS SO HELP ME GOD.

THEN THERE WAS A LINE DRAWN FOR BOBBY WAYNE STONE TO SIGN. THEN THERE WAS A WITNESS LINE FOR JOE GALLIMORE TO SIGN, A WITNESS, LINE FOR MYSELF TO SIGN AND THEN AT THE BOTTOM IS WRITTEN SWORN TO AND SUBSCRIBED BEFORE ME THIS 27TH DAY OF FEBRUARY 1996.

NOTARY PUBLIC FOR SOUTH CAROLINA. MY COMMISSION EXPIRES. SO THIS PAGE -- EXCUSE ME -- HAD BEEN FILLED UP AND AFTER THIS WAS DONE, WE HAD A COUPLE MORE QUESTIONS THAT WE WANTED TO ASK HIM.

SO INSTEAD OF ADDING ANOTHER PAGE AFTER ALL OF THIS HAD BEEN WRITTEN IN, WE FELT THAT WE HAD ENOUGH ROOM TO WRITE IN THE TOP.

Q ALL RIGHT. AND COULD YOU TELL US ABOUT THOSE QUESTIONS.

A QUESTION 35. AFTER YOU RAN OFF RUTH'S PORCH, YOU RAN AROUND INTO THE WOODS IN THE DARK LIKE THAT DIAGRAM YOU DID AND SIGNED? ANSWER YES, SIR.

QUESTION 36. WHAT ABOUT THE DEPUTY'S FLASHLIGHTS THAT HE SHONE ON YOU WHILE YOU WERE ON RUTH'S PORCH? NOBODY SHINED NO FLASHLIGHT ON ME. I NEVER SAW NOBODY OR NO FLASHLIGHT. NO, SIR.

Q ALL RIGHT, SIR. AFTER THIS WAS ACTUALLY WRITTEN AND HE GAVE THE ANSWER AND HIS ANSWERING TO WRITTEN OUT, WHAT PROCESS DID YOU GO THROUGH AS FAR AS SIGNING AND INITIALING? COULD YOU EXPLAIN THAT TO THE JURY IN DETAIL.

A YES, SIR. I CAN. AFTER THIS STATEMENT HAD BEEN WRITTEN AND IT TOOK SOME TIME TO DO THIS. IT WAS A COUPLE OF HOURS. AFTER THIS WAS WRITTEN BY INVESTIGATOR JOSEPH GALLIMORE, I TOLD HIM THEN, I SAID YOU'VE WRITTEN IT OUT. I SAID I WILL READ THE STATEMENT TO BOBBY STONE.

SO AT THAT TIME I WENT BACK AND I READ THE TOP PORTION OF IT AND I READ EACH QUESTION TO HIM ON EACH PAGE AGAIN. AND AFTER I HAD DONE THAT---.

Q HIS ANSWER WAS ALREADY WRITTEN IN?

A YES, SIR. THE ANSWERS WERE ALREADY WRITTEN IN. QUESTIONS WERE WRITTEN AND THE ANSWERS HAD ALREADY BEEN WRITTEN DOWN. AND THEN I READ EACH QUESTION AND ANSWER TO HIM.

Q WHAT WAS THE PURPOSE OF DOING THAT?

A JUST SO HE WOULD KNOW WHAT WAS ON HERE.

Q ALL RIGHT.

A AND AT THAT TIME...

Q WOULD THAT GIVE HIM AN OPPORTUNITY TO CHANGE ANYTHING HE WANTED TO CHANGE?

A WELL, I'M GETTING TO THAT.

Q OKAY. GO AHEAD.

A AT THIS POINT INVESTIGATOR GALLIMORE TOOK THE STATEMENT. AND AGAIN HE READ EACH QUESTION TO BOBBY WAYNE STONE AND THEY SAT TOGETHER AND HE WAS ALLOWED TO READ IT ALSO.

AND THEN AFTER EACH QUESTION WAS READ TO HIM AGAIN, THEN HE WAS ASKED TO INITIAL AFTER EACH QUESTION. AND THEN THE ANSWER WOULD BE READ TO HIM AND HE WAS ASKED TO INITIAL AFTER EACH ANSWER. AND THAT WAS DONE THROUGH ALL THIRTY-SIX QUESTIONS.

Q AND I NOTICE SIGNATURES ON THE LEFT HAND MARGIN OF EACH PAGE. EXPLAIN TO US ABOUT THAT.

A YES, SIR. AND AFTER HE HAD COMPLETED EACH PAGE, THEN HE WOULD SIGN HIS NAME ON THE SIDE OF THE PAGE, BOBBY W STONE. AND SOME TME DURING THIS PROCESS I HAD ASKED THAT GARY MARTIN, SLED AGENT GARY MARTIN, TO COME INTO THE ROOM, THAT -- HE WAS A NOTARY PUBLIC.

AND THAT HE WOULD NOTARIZE THIS STATEMENT. HE WOULD NOTARIZE BOBBY WAYNE STONE'S SIGNATURE.

Q EXPLAIN TO US ABOUT WHAT HAPPENED THERE.

A AGENT MARTIN CAME IN AND HE WITNESSED BOBBY WAYNE STONE SIGN THIS STATEMENT, BOBBY W STONE. AND I SIGNED IT, INVESTIGATOR GALLIMORE SIGNED IT.

AND ON THE BOTTOM IT'S SWORN TO AND SUBSCRIBED TO BEFORE ME THIS 27TH DAY OF FEBRUARY, 1996, NOTARY

PUBLIC FOR SOUTH CAROLINA, MY COMMISSION EXPIRES 8- 19-2004. GARY L MARTIN.

Q EXPLAIN TO US ABOUT THE SIGNATURE AT THE BOTTOM OF THE FIRST PAGE ALSO.

A AND THEN WHEN THAT WAS FINISHED ON THE -- THIS IS A STATEMENT FORM. ON THE BOTTOM OF THE FIRST PAGE OF THAT STATEMENT FORM IT HAS I HAVE READ THE ABOVE STATEMENT CONSISTING OF EIGHT PAGES AND ATTEST THAT IT IS A TRUE AND ACCURATE ACCOUNT OF EVENTS WHICH TOOK PLACE ON MONDAY, FEBRUARY 26TH 1996 AT -- IT WAS GIVEN BY ME FREELY AND VOLUNTARILY WITHOUT FEAR OF THREAT OF PROMISE OR REWARD.

AND WE ASKED BOBBY STONE TO SIGN THAT, WHICH HE DID. AND IT WAS WITNESSED BY MYSELF AND INVESTIGATOR GALLIMORE.

Q ALL RIGHT, SIR. NOW, ONCE IT WAS SIGNED IN THAT FASHION, DID YOU GIVE A COPY TO MR. STONE?

A YES, SIR. AT THAT TIME AFTER IT WAS SIGNED, I THEN TOOK THE ORIGINAL AND WENT TO THE COPY MACHINE AND MADE SEVERAL COPIES AND CAME BACK IN THE ROOM AND GAVE BOBBY WAYNE STONE A COPY OF THE STATEMENT.

Q DID YOU PUT A COPY OF THAT -- THIS EIGHT PAGE STATEMENT -- IN HIS HANDS?

A YES, SIR. I DID. I HANDED IT TO HIM.

Q AND WHEN WAS THE LAST YOU SAW THAT STATEMENT?

A AFTER HE HAD SIGNED IT, I WENT OUT TO DO SOMETHING.

SEVERAL MINUTES LATER I CAME BACK AND HE WAS STILL SITTING IN INVESTIGATOR GALLIMORE'S OFFICE AND I SAW A PAPER ROLLED UP LIKE THIS. HE WAS HOLDING....

Q NOW, I WANT TO ASK YOU SOMETHING IN REGARD TO THIS OF COURSE EIGHT PAGE WRITTEN STATEMENT. THIS WITH A COMBINATION OF TALKING TO HIM ORALLY AND GETTING ORAL ANSWERS -- FOR WHAT PERIOD OF TIME BEFORE THIS?

A I GUESS WE TALKED TO HIM APPROXIMATELY TWO HOURS OFF AND ON BEFORE THE WRITTEN STATEMENT WAS TAKEN.

Q ALL RIGHT. IS EVERYTHING THAT'S IN THE WRITTEN STATEMENT SOMETHING THAT HE TOLD YOU ORALLY BEFORE YOU GOT INTO GIVING A WRITTEN STATEMENT?

A YES, SIR.

Q IN OTHER WORDS, EVEN IF WE DIDN'T HAVE THE WRITTEN STATEMENT, DID HE TELL YOU EVERYTHING THAT'S IN IT ORALLY?

A YES, SIR. WE HAD GONE OVER THIS LIKE I SAID FOR APPROXIMATELY TWO HOURS.

Q ALL RIGHT, SIR. NOW, WHEN HE WAS TALKING TO YOU ORALLY, WERE THERE SOME MATTERS THAT HE TALKED TO YOU ABOUT THAT DIDN'T ACTUALLY GET IN TO THIS STATEMENT?

A YES, SIR. THERE WERE SEVERAL THINGS. ONE I RECALL THAT HE SAID HE PROBABLY FIRED THE GUN THROUGH THE DOOR THAT -- AND THEN THAT HE HAD SAID THAT HE HAD BEEN OUT IN THE WOODS SHOOTING.

THE COURT: HOLD ON JUST ONE SECOND.

MR. BABB: YOUR HONOR, I JUST WANTED TO NOTE AN OBJECTION WITH REGARD TO ORAL STATEMENTS FOR PURPOSES OF PRESERVING ANY IMPACT UPON OUR PREVIOUSLY RAISED MOTIONS.

THE COURT: ALL RIGHT. THE RECORD WILL REFLECT OBJECTION CONTINUING FOR THE PURPOSES OF ORAL STATEMENTS AS WELL AS THE WRITTEN STATEMENT AS NOTED FOR THE RECORD AND UNDERSTAND IT APPLIES TO BOTH ORAL AND WRITTEN STATEMENTS AND I OVERRULE YOUR OBJECTION.

(WHEREUPON QUESTIONING RESUMED).

Q LET ME ASK YOU A LITTLE MORE ABOUT THAT. YOU SAY THROUGH THE DOOR. WHICH DOOR ARE YOU TALKING ABOUT?

A WOULD HAVE BEEN TALKING ABOUT THE SCREEN DOOR.

Q ALL RIGHT. AND DID HE SAY ANYTHING TO YOU ABOUT WHETHER ANYONE WOULD BELIEVE WHAT HE WAS CLAIMING?

A YES, SIR. WHEN WE HAD GONE THROUGH THIS STATEMENT, WE HAD POINTED OUT SOME INCONSISTENCIES. HE HAD MADE THE COMMENT THAT I KNOW NOBODY WILL BELIEVE THIS STORY, BUT IT'S TRUE. HE SAID THAT A COUPLE OF TIMES.

Q DID YOU KNOW MR. STONE BEFORE -- WELL, DID YOU TALK TO HIM ABOUT WHETHER HE WAS RIGHT HANDED OR LEFT HANDED?

A YES, SIR. I DID. HE HAD INDICATED THAT HE WAS RIGHT HANDED. AND DURING THIS INTERVIEW BEFORE WE STARTED WITH THE DIAGRAM, HE HAD CALLED ME BY NAME AND CALLED ME MR. HEROD AND STATED HE KNEW WHO I WAS.

Q ALL RIGHT, SIR. AND DID YOU TALK TO HIM ABOUT THE --

WHETHER THE POLICE WOULD COME IN THE WOODS LOOKING FOR HIM?

A WELL, HE HAD SAID THAT WHEN HE GOT IN THE WOODS, THAT HE HAD TRIPPED AND FELL OVER A LOG AND THAT HE DIDN'T THINK THAT ANY POLICE OFFICER WOULD COME IN THE WOODS AFTER HIM.

Q ALL RIGHT.

(WHEREUPON THERE WAS A PAUSE).

(WHEREUPON QUESTIONING RESUMED).

Q MR. HEROD, LIEUTENANT HEROD, AT ANY TIME DURING THE INTERVIEW FROM BEGINNING THE ORAL STATEMENTS THROUGH THE TAKING OF THIS DETAILED WRITTEN STATEMENT YOU JUST INDICATED, DID YOU OR ANYONE TO YOUR KNOWLEDGE EVER THREATEN, COERCE OR INTIMIDATE MR. STONE IN ANY WAY WHATSOEVER?

A NO, SIR. WE DID NOT. WE ALLOWED HIM TO DRINK COFFEE. HE FREELY SMOKED CIGARETTES. WE TOOK HIM TO THE REST ROOM. WE DID NOT DO ANYTHING OUT OF THE WAY.

Q DID YOU OR ANYONE OFFER HIM ANY REWARD, HOPE OF REWARD OR PROMISE OF LENIENT TREATMENT TO GET HIM TO GIVE YOU A STATEMENT?

A NO, SIR.

Q ALL RIGHT. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE FOR YOU.

A YES, SIR.

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, MR. LITTLEJOHN, I'M ADVISED THE FOOD HAS ARRIVED. SO I'M GOING TO USE THIS AS A TIME TO BREAK FOR LUNCH. THIRTY MINUTES BE ENOUGH, FORTY-FIVE MINUTES?

THIRTY TO FORTY-FIVE MINUTES? WE WILL BE HERE AT THIRTY, SO IF YOU NEED A LITTLE LONGER, YOU TAKE IT. BUT WE WILL BE READY TO START IN THIRTY. I WILL LET YOU GO.

PLEASE DO NOT BEGIN YOUR DELIBERATIONS. DO NOT DISCUSS THE CASE AMONG YOURSELVES.

(WHEREUPON THE JURY LEFT THE COURTROOM AT 1:27 P.M.)

THE COURT: ALL RIGHT. ANYTHING FROM THE STATE AT THIS POINT BEFORE WE RECESS?

MR. KOLB: NO, SIR.

THE COURT: ANYTHING FROM THE DEFENDANT?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: MR. HEROD, I WOULD ASK THAT DURING THE RECESS SINCE YOU'RE IN THE MIDDLE OF YOUR TESTIMONY, YOU NOT HAVE ANY DISCUSSIONS WITH THE SOLICITOR OR ANYONE IN THE SOLICITOR'S OFFICE.

THE WITNESS: YES, SIR.

THE COURT: THANK YOU, SIR.

(WHEREUPON THE WITNESS LEFT THE STAND).

(WHEREUPON COURT WAS IN RECESS FOR LUNCH).

THE COURT: ALL RIGHT. I'M ADVISED THAT THE JURY IS READY. IS THE STATE READY?

MR. KOLB: YES, SIR.

THE COURT: DEFENSE READY?

MR. LITTLEJOHN: YES, YOUR HONOR.

THE COURT: LET THE RECORD REFLECT MR. STONE IS PRESENT. BRING THE JURY BACK.

(WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:14 P.M.)

THE COURT: THANK YOU VERY MUCH, LADIES AND GENTLEMEN. WE ARE READY TO CONTINUE. HOPE YOUR LUNCH WAS OKAY. I BELIEVE WHEN WE BROKE WE WERE READY FOR CROSS-EXAMINATION. MR. LITTLEJOHN?

MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION BY MR. LITTLEJOHN:

Q GOOD AFTERNOON, LIEUTENANT.

A GOOD AFTERNOON.

Q LIEUTENANT, WHEN DID YOU FIRST SEE BOBBY STONE ON THAT EVENING?

A THE FIRST TIME I SAW BOBBY STONE HE HAD BEEN BROUGHT FROM THE ARREST SCENE TO THE LAW ENFORCEMENT CENTER AND HE WAS BROUGHT OUT OF THE VAN AND TRANSPORTED IN. HE WAS ESCORTED BY A COUPLE OF DEPUTIES INTO THE BUILDING.

Q OKAY. AND YOU MET HIM UP AT THE CRIMINAL INVESTIGATIONS SECTION; IS THAT RIGHT?

A YES, SIR. WHEN I FIRST SAW HIM HE HAD GOTTEN OUT OF THE VAN AND WAS BEING LED INTO THE BUILDING. AS HE WAS BEING LED INTO THE BUILDING, THERE HAD BEEN A NUMBER OF OFFICERS INVOLVED IN THE SITUATION THAT HAD COME FROM THE SHERIFF'S OFFICE AND THERE WERE PROBABLY FIFTEEN OR TWENTY OFFICERS STANDING AROUND.

AND AS BOBBY WAYNE STONE WAS GOING INTO THE BUILDING, HE MADE THE COMMENT YA'LL GETTING OFF ON THIS. THEN HE WAS TAKEN INTO THE---.

MR. LITTLEJOHN: YOUR HONOR, I ASK THAT YOU INSTRUCT THE WITNESS TO ANSWER THE QUESTION.

THE COURT: ALL RIGHT. PLEASE MR. HEROD, FIRST ANSWER THE QUESTION. THEN IF YOU NEED TO EXPLAIN YOUR ANSWER, YOU CERTAINLY MAY DO SO, BUT ANSWER THE QUESTION FIRST BEFORE YOU START EXPLAINING.

THE WITNESS: YES, SIR.

THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY CONTINUE.

(WHEREUPON QUESTIONING RESUMED).

Q LIEUTENANT, HOW LONG WAS IT AFTER YOU SAW THEM BRINGING BOBBY INTO THE BUILDING THAT YOU MET WITH HIM UP IN THE INVESTIGATIONS SECTION?

A IT WAS A COUPLE OF HOURS LATER.

Q OKAY. ABOUT WHAT TIME WAS IT?

A IT WAS APPROXIMATELY 1:55 A.M.

Q OKAY. YOU AND INVESTIGATOR GALLIMORE BROUGHT MR. STONE INTO A SEPARATE OFFICE TO BEGIN YOUR QUESTIONING OF HIM?

A YES, SIR, WE DID. WE BROUGHT HIM INTO INVESTIGATOR GALLIMORE'S OFFICE.

Q OKAY. AND HOW MANY PEOPLE WERE PRESENT IN THAT OFFICE?

A JUST MYSELF AND INVESTIGATOR GALLIMORE.

Q OKAY. AND I BELIEVE YOU INDICATED THAT YOU GAVE HIM -- BEING MR. STONE -- WHAT ARE COMMONLY KNOWN AS THE MIRANDA WARNINGS?

A YES, SIR. I DID.

Q OKAY. AND THOSE WARNINGS ARE CONTAINED IN STATE'S EXHIBIT NUMBER 1?

A YES, SIR. THEY ARE.

Q OKAY. AND AFTER YOU GAVE BOBBY STONE HIS MIRANDA WARNINGS, HE SIGNED THAT DOCUMENT?

A YES, SIR. HE DID.

Q CORRECT? AND HE AGREED TO TALK TO YOU?

A YES, SIR. HE DID.

Q OKAY. DIDN'T ASK FOR A LAWYER?

A NO, SIR. HE DID NOT.

Q DIDN'T ASK FOR A FAMILY MEMBER?

A NO, SIR.

Q HE AGREED TO TALK TO YOU?

A YES, SIR. HE DID.
Q OKAY. AND I BELIEVE YOU INDICATED THAT WAS -- AT THAT POINT THAT HE KIND OF GAVE YOU AN OVERVIEW OF WHAT HE HAD DONE THAT DAY; IS THAT RIGHT?
A YES, SIR. HE KIND OF GAVE ME A QUICK OVERVIEW OF WHAT HAD TAKEN PLACE.
Q AND HE TOLD YOU WHAT HAD TAKEN PLACE AT MRS. GRIFFITH'S HOUSE; RIGHT?
A YES, SIR.
Q OKAY. AND AS A RESULT OF THAT, I BELIEVE INVESTIGATOR GALLIMORE DREW THIS DIAGRAM WHICH HAS BEEN PLACED IN EVIDENCE STATE'S EXHIBIT NO. 2; RIGHT?
A YES, SIR.
Q OKAY. AND BOBBY INDICATED HIS ROUTE FROM THE HOUSE WHICH HE FREELY TOLD YOU HE WAS AT ON STATE'S EXHIBIT NUMBER 2?
A YES, SIR. HE DID.
Q OKAY. NOW, AFTER HE EXPLAINED TO YOU HIS ACTIVITIES OF THAT DAY AND THAT EVENING IS WHEN YOU AND INVESTIGATOR GALLIMORE TOOK THIS WRITTEN STATEMENT?
A YES, SIR.
Q OKAY. AND YOU EXPLAINED TO US HOW THE QUESTIONS WERE WRITTEN OUT.
A YES, SIR.
Q AND THE ANSWERS WERE WRITTEN OUT.

A YES, SIR.
Q AND YA'LL WENT THROUGH A VERY PAINSTAKING PROCESS.
A YES, SIR. WE DID.
Q AND YOU SAID IT TOOK A COUPLE OF HOURS TO DO.
A YES, SIR.
Q AND BOBBY CONTINUED TO TALK TO YOU?
A YES, SIR. HE DID.
Q ANSWERED ALL OF YOUR QUESTIONS?
A YES, SIR.
Q OKAY. AND HE EXPLAINED TO YOU WHAT HE KNEW ABOUT THE EVENTS OF FEBRUARY THE 22ND -- 26TH, EXCUSE ME.
A HE TOLD US HIS SIDE OF THE STORY.
Q YES, SIR. OKAY. NOW LIEUTENANT HEROD, EXCUSE ME JUST A MOMENT.

(WHEREUPON THERE WAS A PAUSE).

(WHEREUPON QUESTIONING RESUMED).

Q LIEUTENANT HEROD, THE STATEMENT WHICH IS EXHIBIT 3 FOR THE STATE, DO YOU HAVE THAT IN FRONT OF YOU?
A NO, SIR.
Q OKAY. LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 3. THOSE ARE THE QUESTIONS AND THOSE ARE ANSWERS THAT BOBBY STONE GAVE TO YOU?
A YES, SIR. THEY ARE.
Q OKAY. AND IN THERE ON THE FIRST PAGE WHEN YOU ASKED HIM GENERALLY WHAT HAD HAPPENED IN QUESTION NUMBER 3, HE

TOLD YOU ABOUT HIS ACTIVITIES THAT MORNING; RIGHT?
A YES, SIR.
Q AND HE TOLD YOU ABOUT THE 22 CALIBER PISTOL; RIGHT?
A YES, SIR.
Q AND HE READILY ADMITTED THAT HE HAD A PISTOL WHEN HE WAS ARRESTED?
A YES, SIR.
Q OKAY. NOW, HE WENT ON TO TELL YOU HOW HE HAD BEEN OUT IN THE WOODS SHOOTING THE SHOTGUN AND THAT 22 CALIBER PISTOL; RIGHT?
A YES, SIR.
Q AND HE INDICATED THAT IN RESPONSE TO QUESTION NUMBER 3 ON PAGE 2, THAT HE HAD BEEN OUT SHOOTING FOR A COUPLE OF HOURS AND DRINKING BEER. AND HE SAID THERE SHOULD BE SOME EMPTY SHELLS OUT THERE; RIGHT?
A YES, SIR. HE DID.
Q AND IN FACT LIEUTENANT MARTIN FOUND ONE OF THOSE SHELLS; ISN'T THAT YOUR UNDERSTANDING?
A YES, SIR.
Q AND THERE WAS A SHOT GUN SHELL THAT WAS FOUND OUT IN THE WOODS?
A YES, SIR.
Q AND INVESTIGATOR MACKESSY FOUND A BUNCH OF BEER CANS OUT IN THE WOODS; ISN'T THAT RIGHT?
A YES, SIR.

Q OKAY. NOW, BOBBY WENT ON TO EXPLAIN TO YOU THAT THE REASON HE WENT TO 817 TAYLOR STREET ON THAT FIRST OCCASION WAS TO SAY HI TO RUTH?

A YES, SIR. THAT'S WHAT HE SAID.

Q OKAY. AND THAT'S IN HIS STATEMENT. AND HE DESCRIBED RUTH?

A YES, SIR. HE DID.

Q SAID SHE WAS A WHITE WOMAN ABOUT SIXTY TO SIXTY-FIVE, HER MAIDEN NAME IS GRIFFITH.

A YES, SIR.

Q THAT'S WHAT HE TOLD YOU?

A YES, SIR.

Q OKAY. AND HE INDICATED WE ARE OLD DRINKING BUDDIES MEANING HE AND RUTH. WE HAVE GONE OUT AND GOT DRUNK TOGETHER A FEW TIMES.

A THAT'S WHAT HE SAID.

Q THAT'S WHAT HE SAID; RIGHT?

A YES, SIR.

Q OKAY. NOW, THEN HE EXPLAINED TO YOU HOW HE HAD BEEN THERE IN THE AFTERNOON AND A YOUNG LADY HAD RUN HIM OFF. HE TOLD YOU THAT; DIDN'T HE?

A YES, SIR.

Q AND YOU HEARD THE TESTIMONY OF MRS. GRIFFITH'S DAUGHTER WHEN SHE TESTIFIED THAT SHE RAN HIM OFF THAT AFTERNOON; RIGHT?

A YES, SIR. I DID.
Q OKAY. NOW, HE WENT ON TO EXPLAIN TO YOU HOW LATER IN THE EVENING HE WENT BACK TO TALK TO RUTH; RIGHT?
A YES, SIR.
Q OKAY. AND HE ADMITTED GOING ON THE PORCH, THE LITTLE SIDE PORCH; RIGHT?
A YES, SIR.
Q AND HE SAID HE PUT THE SHOTGUN DOWN. AND YA'LL FOUND THE SHOTGUN ON THE SIDE PORCH; DIDN'T YOU?
A YES, SIR. IT WAS.
Q OKAY. AND HE SAID THE PORCH WAS DARK; RIGHT?
A YES, SIR.
Q AND HE INDICATED TO YOU AS A RESULT OF YOUR QUESTIONING THAT THE GUN WENT OFF WHILE HE WAS ON THE PORCH.
A YES, SIR.
Q HE HEARD SOMEBODY SAY SOMETHING AND THE GUN WENT OFF; RIGHT?
A YES, SIR.
Q AND HE RAN?
A YES, SIR.
Q AND HE ALSO INDICATED TO YOU THAT HE NEVER SAW ANY DEPUTY?
A THAT'S WHAT HE CLAIMED.
Q OKAY. NOW YOU EXPLAINED TO US, LIEUTENANT HEROD, THAT

AFTER -- THIS STATEMENT WAS TAKEN FROM THE ORAL STATEMENTS WHICH BOBBY MADE TO YOU; IS THAT CORRECT?

A WE HAD TALKED ABOUT THESE MATTERS BEFORE THE WRITTEN STATEMENTS WERE TAKEN.

Q RIGHT. AND THERE WERE SOME THINGS THAT DIDN'T GO INTO THE STATEMENT?

A YES, SIR.

Q OKAY. AND I BELIEVE AT ONE POINT BOBBY DESCRIBED THE 22 CALIBER PISTOL TO YOU AS BEING HAIR TRIGGERED; DIDN'T HE?

A YES, SIR. HE DID. SAID HAD A HAIR TRIGGER.

Q OKAY. AND AFTER PUTTING THE STATEMENT TOGETHER, BOBBY SIGNED IT; RIGHT?

A YES, SIR.

Q IN YOUR PRESENCE?

A YES, SIR.

Q AND IT WAS NOTARIZED?

A YES, SIR.

Q AND HE DIDN'T HAVE ANY PROBLEM SIGNING IT?

A NO, SIR.

Q OKAY. AND THEN IN ACTUALITY, YA'LL CONCLUDED THE INTERVIEW; HE DIDN'T.

A THAT'S CORRECT.

Q ISN'T THAT RIGHT?

A YES, SIR.

Q OKAY. NOW, AFTER YOU TOOK THE STATEMENT THEN BOBBY WAS PLACED UNDER ARREST; RIGHT?

A I'M NOT SURE WHEN I FINISHED WITH THE STATEMENT. I DIDN'T LEAVE THEN, BUT I WAS FINISHED WITH HIM.

Q WAS IT YOUR UNDERSTANDING AT THAT POINT HE WAS CHARGED WITH MURDER?

A YES, SIR. I BELIEVE HE WAS THEN SOMEWHAT LATER TAKEN TO THE CORRECTIONAL CENTER.

Q OKAY. AND TOLD WHAT HIS CHARGES WERE?

A YES, SIR.

Q OKAY. JUST ONE FINAL THING, LIEUTENANT. WHAT TIME WAS STATE'S EXHIBIT NUMBER 1 EXECUTED, THE MIRANDA FORM?

A BEGAN AT 1:55 A.M.. HE SIGNED IT AT 1:58 A.M.

Q OKAY. AND RIGHT AFTER THAT IS WHEN HE TOLD YOU -- HE TOLD YOU WHAT HAD HAPPENED DURING FEBRUARY 26TH?

A YES, SIR. HE BRIEFLY TOLD US WHAT HAD TAKEN PLACE.

Q AND HE TOLD YOU ABOUT GOING TO THE HOUSE, ABOUT GOING TO MRS. GRIFFITH'S HOUSE?

A YES, SIR.

Q AND ALL OF THAT. BASICALLY HE GAVE YOU AN OVERVIEW?

A YES.

Q OKAY. AND THIS IS AFTER HE WAIVED HIS RIGHTS, DIDN'T WANT AN ATTORNEY, DIDN'T WANT A FAMILY MEMBER?

A THAT'S CORRECT.

Q OKAY. AND THEN AFTER HE TOLD YOU ALL OF THAT IS WHEN

YA'LL DREW UP STATE'S EXHIBIT NO. 2; RIGHT?

A YES, SIR. IT IS.

Q OKAY. AND ISN'T THERE A TIME ON STATE'S EXHIBIT 2?

A YES, SIR. IT IS. IT'S 2:10 A.M.

Q OKAY. SO THAT'S SOME TWELVE MINUTES LATER?

A YES, SIR.

Q AND SO HE DIDN'T HESITATE TO TELL YOU ABOUT FEBRUARY 26TH 1996. HE TOLD YOU ALL OF THAT IN TWELVE MINUTES, GAVE YOU AN OVERVIEW?

A YES, SIR. HE GAVE US A BRIEF OVERVIEW OF WHAT HAD TAKEN PLACE.

MR. LITTLEJOHN: THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: REDIRECT?

MR. KOLB: THAT'S ALL. COME DOWN.

THE COURT: YOU CAN COME DOWN.

MR. KOLB: CALL JOE GALLIMORE.

JOE GALLIMORE, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: GOOD AFTERNOON. AFTER YOU POSITION YOURSELF, MOVE THE MIKE. IF YOU WOULD PLEASE FOR THE RECORD -- STATE YOUR FULL NAME AND SPELL YOUR LAST.

WITNESS: YES, SIR. MY NAME IS JOSEPH KEITH GALLIMORE, G A L L I M O R E.

DIRECT EXAMINATION BY MR. KOLB:

Q MR. GALLIMORE, CAN YOU TELL US HOW YOU ARE EMPLOYED.

A YES, SIR. I'M EMPLOYED AS CAPTAIN OF INVESTIGATIONS WITH BISHOPVILLE POLICE DEPARTMENT.

Q AND BEFORE YOUR CURRENT -- BISHOPVILLE IS IN LEE COUNTY, NEXT COUNTY TO THE NORTH?

A YES, SIR. THAT'S CORRECT.

Q AND BEFORE TAKING THAT POSITION, WHERE WERE YOU EMPLOYED?

A WITH THE SUMTER COUNTY SHERIFF'S DEPARTMENT. I WAS A CRIMINAL INVESTIGATOR.

Q ALL RIGHT. AND HOW LONG WERE YOU IN THE SHERIFF'S DEPARTMENT HERE IN SUMTER COUNTY?

A TWO YEARS AND THREE MONTHS.

Q YOU'VE BEEN IN LAW ENFORCEMENT PRIOR TO THAT?

A YES, SIR.

Q COULD YOU TELL THE JURY ABOUT THAT.

A I PRIOR TO COMING HERE I SPENT FOURTEEN MONTHS AS CHIEF CRIMINAL INVESTIGATIONS, SMITHSONIAN INSTITUTION IN WASHINGTON D.C..

PRIOR TO THAT I SPENT TWENTY-ONE YEARS AS A MILITARY CRIMINAL INVESTIGATOR, A SPECIAL AGENT WITH THE UNITED STATES ARMY'S CRIMINAL INVESTIGATION DIVISION.

Q ALL RIGHT, SIR. DID YOU HAVE OCCASION -- WELL, LET ME ASK YOU BEFORE I GO ANY FURTHER. ARE YOU FAMILIAR WITH THE LOCATION OF 817 TAYLOR STREET, THE RESIDENCE OF RUTH GRIFFITH?

A SOMEWHAT, SIR. YES.
Q AND IS THAT IN SUMTER COUNTY?
A YES, SIR. IT IS.
Q DID YOU HAVE OCCASION TO SEE THE DEFENDANT IN THIS CASE, BOBBY WAYNE STONE, ON THE EVENING OF FEBRUARY 26TH OR AFTER MIDNIGHT FEBRUARY 27TH, 1996?
A AFTER MIDNIGHT ON THE 27TH. YES, SIR. I DID.
Q THE FIRST TIME YOU SAW HIM?
A YES, SIR.
Q ALL RIGHT. WHERE WAS THAT WHEN YOU FIRST SAW HIM?
A ON THE SECOND FLOOR OF THE SUMTER COUNTY CITY COUNTY LAW ENFORCEMENT CENTER UP IN THE SHERIFF'S DEPARTMENT IN THE INVESTIGATIONS AREA.
Q DID YOU CONDUCT AN INTERVIEW OF MR. STONE?
A YES, SIR. I DID.
Q LET ME... MIGHT STILL BE UP THERE. YEAH. IF YOU WOULD REFER TO STATE'S EXHIBIT NUMBER 1. TELL US IF YOU CAN IDENTIFY THAT.
A YES, SIR. THIS IS THE ORIGINAL OF A RIGHTS ADVISEMENT MIRANDA WARNING THAT I USED TO ADVISE BOBBY WAYNE STONE OF HIS CONSTITUTIONAL RIGHTS TO SILENCE AND LEGAL COUNSEL. WE STARTED 1:55 IN THE MORNING OF 27TH OF FEBRUARY 1996 AND CONCLUDED AT 1:58 A.M. ON THE MORNING OF 2-27-96.

HE WAIVED HIS RIGHTS TO SILENCE AND LEGAL COUNSEL. HE ACKNOWLEDGED UNDERSTANDING HIS RIGHTS AND

STATED THAT HE WOULD ANSWER OUR QUESTIONS WITHOUT TALKING TO A LAWYER FIRST AND WITHOUT HAVING A LAWYER PRESENT WITH HIM.

RECOGNIZE THE DOCUMENT BECAUSE IT BEARS MY SIGNATURE, BOBBY STONE'S AND ALSO PERRY HEROD'S WHERE HE SIGNED AS A WITNESS.

Q AT THAT TIME WAS ANYONE ELSE IN THE ROOM?

A NO, SIR. JUST THE THREE OF US.

Q WHAT ROOM WAS THIS?

A THIS WAS IN MY OFFICE IN THE INVESTIGATIONS DIVISION ON THE SECOND FLOOR OF THE SHERIFF'S DEPARTMENT.

Q ALL RIGHT. WAS MR. STONE MADE COMFORTABLE AT THAT TIME AND THROUGHOUT THE INTERVIEW?

A YES, SIR. HE WAS ALLOWED TO SIT. HE WAS ALLOWED TO SMOKE CIGARETTES, SOME OF WHICH I PROVIDED. HE DRANK COFFEE. DRANK A SODA THAT HE BOUGHT FOR HIM. I HAD A COFFEE POT IN MY OFFICE.

I THINK WE RAN THROUGH ABOUT TWO POTS OF COFFEE. HE WAS ALLOWED TO USE THE BATHROOM WHENEVER HE WANTED TO. AND HE WAS ALLOWED TO SIT. HE WASN'T HANDCUFFED, BUT THE CUFFS WAS IN FRONT OF HIM.

Q AND DID YOU OR ANYONE THREATEN, COERCE OR INTIMIDATE HIM IN ANY WAY TO GET HIM TO WAIVE HIS RIGHTS AND AGREE TO TALK TO YOU?

A NO, SIR. WE DID NOT.

Q DID YOU OFFER HIM ANY REWARD, HOPE OF REWARD, PROMISE OF LENIENT TREATMENT, ANYTHING OF THAT SORT TO INDUCE HIM TO WAIVE HIS RIGHTS AND TALK WITH YOU?

A NO, SIR. WE DID NOT.

Q AND THIS STATEMENT WAS FREE AND VOLUNTARY ON HIS PART?

A YES, SIR.

Q ALL RIGHT. NOW, AFTER THE SIGNING OF THE ADVICE OF RIGHTS FORM, WHAT WAS THE NEXT THING THAT OCCURRED?

A WE ACTUALLY -- I THINK IT WAS LIEUTENANT HEROD FROM SLED SAID -- YOU KNOW -- I'M GETTING AHEAD OF MYSELF. PRIOR TO ACCOMPLISHMENT OF RIGHTS FORM, WE -- I MADE CERTAIN THAT HE COULD READ AND WRITE THE ENGLISH LANGUAGE.

Q OKAY.

A THAT HE WAS SOBER, THAT HE WASN'T ON DRUGS OR MEDICATION. HE DIDN'T APPEAR TO BE INTOXICATED OR OUT OF TOUCH WITH REALITY. HE SEEMED VERY COGNIZANT OF HIS SURROUNDINGS AND WHAT WAS GOING ON.

WE ASKED HIM -- LIEUTENANT HEROD SAID BOBBY, WHY DON'T YOU TELL US WHAT YOU DID YESTERDAY. STARTING WITH, STARTING WHEN YOU GOT UP. THE CONVERSATION FLOWED RAPIDLY. PROBABLY WITHIN NINETY SECONDS OF HIS -- HE TALKED ABOUT NINETY, THIRTY SECONDS AND ALL OF A SUDDEN HE IS ON THE PORCH, THE GUN IS GOING OFF AND HE'S RUNNING OFF THE PORCH.

AND THAT WAS -- GOSH, IT WAS QUICK. I DREW A DIAGRAM AND ASKED HIM TO SHOW US WHERE I DREW IN BLACK. APOLOGIZE I'M NOT AN ARTIST. HE TRACED A LINE IN RED WITH ARROWS SHOWING HIS DIRECTION OF FLIGHT -- OFF THE PORCH AFTER THE HANDGUN HE WAS HOLDING HAD DISCHARGED.

AFTER THAT -- AND HE SIGNED THE DIAGRAM. I SIGNED IT. AND I COLOR CODED IT. THE BLACK WAS MINE, THE RED WAS HIS. LIEUTENANT HEROD SIGNED IT AS A WITNESS.

Q ALL RIGHT. IS THAT -- YOU RECOGNIZE STATE'S EXHIBIT NO. 2 IN FRONT OF YOU THERE?

A YES, SIR. I DO. THIS IS THE ORIGINAL. RECOGNIZE IT BEARS MY SIGNATURE OVER MY PRINTED NAME. AND LIEUTENANT HEROD'S SIGNATURE WHERE HE SIGNED IT.

IT ALSO HAS THE DIRECTION OF FLIGHT AND THE ARROWS TRACED BY MR. STONE AND IT ALSO BEARS HIS SIGNATURE AND THE TIME AND THE DATE THAT HE SIGNED IT.

Q TELL ME ABOUT THE -- DID -- YOU ACTUALLY DREW OUT THE RIDGEWAY AND TAYLOR STREET AND MRS. GRIFFITH'S HOUSE IN ROUGH FORM?

A YES, SIR. I HAD BEEN THERE EARLIER AT THE CRIME SCENE. AND IT WAS MY INVOLVEMENT AROUND THE CRIME SCENE -- THAT THE SCOPE OF THE AREA WAS VERY LIMITED. I SKETCHED OUT WHAT I KNEW, WHAT I HAD SEEN AND WHAT I REMEMBERED. AND HE FILLED IN.

Q DID YOU GET UP IN THE WOODS AS OF THAT TIME?

A NO, SIR. I HAD NOT. NEVER DID.

Q OKAY.

A HE TOLD ME, I REMEMBERED THE HOUSE, THE SHED OBVIOUSLY, AND ALSO WHERE THE BACK DOOR WAS. THERE WAS A LARGE SLAB, CONCRETE SLAB, IN BACK OF THE HOUSE. THERE WAS A PICNIC TABLE ON IT.

AND A BIT FURTHER BACK THERE WAS A SHED. AND THEN THERE WAS A WOOD LINE BACK BEHIND THAT. AND THERE WAS A HOUSE NEXT TO IT ON THE RIGHT AS YOU ARE -- AS YOU ARE FACING THE CRIME SCENE. AND IT HAD A SHED OFF TO THE SIDE OF IT.

AND OF COURSE THERE WAS A HOUSE SOMEWHAT ON THE LEFT BEFORE YOU GOT TO IT PLUS ONE KIND OF CATI CORNER ACROSS THE STREET FROM IT. AND IT WAS -- AGAIN, IT WAS WOODS BEHIND THE CRIME SCENE. I KNEW THAT. I HAD SEEN THEM. HADN'T BEEN IN THEM.

SO HE STARTED -- WHEN HE WAS DESCRIBING GOING THROUGH THE FIELD, GOING THROUGH THE DITCH, I DIDN'T KNOW WHERE HE WAS TALKING ABOUT AND I -- YOU KNOW -- WHERE ON THE MAP LIKE OVER HERE? HE SAID YEAH.

I WROTE IN THE WORD FIELD. HE DREW THE RED SQUARE THAT'S SHOWING WHERE THAT WOULD BE OR -- AND ALSO I WROTE IN THE WORD DITCH AFTER HE DREW OUT WHERE THE DITCH WAS. I DIDN'T KNOW. I HADN'T BEEN BACK THERE.

Q WHAT HAPPENED AFTER THAT?

A AFTER THAT, WE -- WE TOOK HIM THROUGH HIS STORY VERY SLOWLY. TWICE. AT LEAST TWICE. I MADE NOTES AS WE TALKED. AFTER WE HAD A PRETTY GOOD GRASP OF WHAT HE HAD TO SAY, THEN WE SET DOWN AND I ASKED HIM WITH HIS PERMISSION I'D LIKE TO -- I'D LIKE TO DO A WRITTEN STATEMENT TO ESTABLISH A FIRM RECORD OF WHAT YOU HAD TO SAY HERE SO I DON'T WRITE DOWN WHAT YOU SAID AND MAYBE MISQUOTE IT.

HE DIDN'T HAVE ANY PROBLEM. HE SAID -- YOU KNOW -- I CAN SEE IT, RIGHT? WELL, YEAH, YOU GET TO SEE IT BECAUSE YOU ARE GOING TO HAVE TO INITIAL AFTER EACH QUESTION AND EACH ANSWER.

WE WILL MAKE IT REAL SIMPLE. I WILL WRITE THE QUESTION OUT AND I WILL WRITE DOWN EXACTLY WHAT YOU TELL ME. AND AS A RESULT OF THAT---.

Q WHAT IS THE PURPOSE OF DOING A STATEMENT LIKE THAT IN QUESTION AND ANSWER FORM?

A TO COLLECT ALL OF THE FACTS POSSIBLE. AND TO ESTABLISH A FIRM WRITTEN RECORD OF WHAT HE HAD TO SAY IN THAT ROOM SO THAT IT WOULDN'T BE SUBJECT TO BEING MISQUOTED AT A LATER POINT.

Q ALL RIGHT. OKAY.

A AS A RESULT OF THAT, A -- AN EIGHT PAGE STATEMENT WAS TAKEN. I WROTE OUT THE QUESTIONS. SOME OF THE QUESTIONS WERE MY OWN. SOME OF THEM WERE GENERATED BY LIEUTENANT HEROD. AND I WROTE OUT MR. STONE'S ANSWERS VERBATIM.

WE STARTED THE STATEMENT AT TEN MINUTES AFTER 4 AND IT TOOK LIKE NINETY MINUTES TO TWO HOURS TO ACCOMPLISH. AFTER WE HAD IT DOWN IN WRITING, LIEUTENANT GARY MARTIN FROM SLED CAME IN. HE'S A NOTARY. AND I HAD -- LET ME SEE.

LIEUTENANT HEROD HAD READ THE STATEMENT TO MR. STONE. I READ IT TO HIM. ACTUALLY, HE WAS GIVEN THE STATEMENT TO READ HIMSELF. AND THEN I READ THE STATEMENT OVER TO HIM SITTING NEXT TO HIM SHOWING WHERE TO PUT HIS INITIALS AFTER EACH Q AND EACH A.

SO HE HAD THE STATEMENT READ TO HIM TWICE, ONCE BY LIEUTENANT HEROD, ONCE BY MYSELF AND IN BETWEEN THE TWO HE READ IT. HE INITIALED AFTER EACH QUESTION AND EACH ANSWER ON THE LINES THAT I PROVIDED AND HE SIGNED EACH PAGE.

AND THEN LIEUTENANT MARTIN FROM SLED CAME IN -- NOTARY PUBLIC. HE NOTARIZED THE STATEMENT. HE ADMINISTERED THE OATH TO MR. STONE. MR. STONE AFTER HAVING SIGNED EVERYTHING, BEING SWORN TO IT -- LIEUTENANT HEROD TOOK THE STATEMENT OUT TO THE XEROX MACHINE.

HE MADE A BUNCH OF COPIES. CAME BACK, GAVE ME ONE FOR MY RECORD. HE ALSO GAVE ONE TO MR. STONE.

Q ALL RIGHT, SIR. NOW, I WANT TO ASK YOU SPECIFICALLY ABOUT ONE POINT IN THERE WHERE MR. STONE DESCRIBES HIS VERSION OF BEING ON THE PORCH AND THE GUN GOING OFF.

A YES, SIR.

Q COULD YOU -- YOUR -- THE -- THE WORDS IN THE STATEMENT AS YOU TURN TO THE RIGHT. IF YOU WOULD EXPLAIN TO THE JURY ABOUT WHAT -- YOU GOT HIM TO DEMONSTRATE THAT FOR YOU?

A I DID GET HIM TO DEMONSTRATE. HAVING BEEN AT THE CRIME SCENE, HAVING BEEN UP ON THE PORCH AND KNOWING WHAT HE WAS TALKING ABOUT, AS HE DESCRIBED THE ACTIONS THAT HE WENT THROUGH, HE WAS BEATING ON THE DOOR WITH HIS LEFT.

HE HAD PUT A LONG GUN DOWN IN THE CORNER. HE HAD THE PISTOL IN HIS RIGHT HAND AND HE WAS BEATING ON THE DOOR WITH HIS LEFT HAND. THEN HE HEARD SOMEBODY YELLING, A MAN'S VOICE YELLING FROM OUTSIDE THE HOUSE.

AS HE'S BEATING ON THAT DOOR -- IT'S RIGHT IN FRONT OF HIM. WELL, THE STEPS IN THE DOOR LEADING ON TO THE PORCH ARE TO HIS IMMEDIATE LEFT, NINETY DEGREES. AS HE DESCRIBED IT AND -- MAY I STAND UP?

Q YES, SIR.

A HE'S FACING -- SAID HE WAS FACING THE DOOR BEATING ON IT. GOT THE GUN---.

MR. LITTLEJOHN: EXCUSE ME. COULD WE APPROACH THE BENCH ONE SECOND?

(WHEREUPON A BENCH CONFERENCE WAS HELD).

THE COURT: MR. BABB, YOU HAVE AN OBJECTION?

MR. BABB: YES, SIR. WE'D JUST RENEW OUR PREVIOUS

OBJECTION. ASK THAT BE CONTINUED AS TO VERBAL STATEMENTS ON THE BASIS OF WHAT IS IN THE REPORT.

THE COURT: ALL RIGHT. THE RECORD WILL NOTE YOUR OBJECTION. OVERRULED. YOU MAY PROCEED.

(WHEREUPON QUESTIONING RESUMED).

Q YOU MAY GO AHEAD, MR. GALLIMORE.

A AS HE DESCRIBED IT, HE WAS -- HAD THE PISTOL IN HIS RIGHT HAND. HE'S BEATING ON THE DOOR LEADING INTO THE HOUSE OFF THE PORCH WITH HIS LEFT HAND.

THE SCREEN DOOR -- THE STEPS LEADING UP ARE HERE. HE HEARD A MAN'S VOICE FROM OUTSIDE THE HOUSE YELLING. AND AS HE DESCRIBED IT HE TURNED AROUND TO THE RIGHT. AND I GOT UP AND I SAID SHOW ME. LIKE THIS? HE SAID YEAH.

AND I WENT THROUGH EVERYTHING. THE DOOR IS HERE. THE SCREEN DOOR IS HERE. THE STEPS ARE HERE. AND THEN HE ALSO STOOD UP AND SHOWED ME. BUT HE TURNED NOT TO THE DOOR AND THE STEPS -- THAT'S NOT WHAT HE DESCRIBED.

HE DESCRIBED TURNING THE WAY AROUND WHAT WOULD BE 270 DEGREES AND HE SAID WHEN HE TURNED AROUND LIKE THAT, HE SAID THE PISTOL FIRED, ACCIDENTALLY WENT OFF ONCE, SCARED HIM AND SAID HE RAN OFF THE PORCH.

Q ALL RIGHT, SIR. WAS -- HE CONTENDED THE GUN WENT OFF ONLY ONE TIME?

A I BEG YOUR PARDON, SIR?

Q WAS HE FIRM IN CONTENDING THE GUN ONLY WENT OFF ONE TIME?

A YES, SIR.

Q ONE SHOT ONLY?

A ONE SHOT ONLY.

Q NOW MR. GALLIMORE, YOU INDICATED AFTER THE ADVICE OF RIGHTS AND THE DEFENDANT AGREED TO TALK WITH YOU THAT -- AND THE EXHIBIT 2 THE SKETCH -- THAT YOU WENT THROUGH EVERYTHING TWO TIMES ORALLY WITH HIM BEFORE YOU GOT THE WRITE -- TO MAKE A WRITTEN STATEMENT?

A YES, SIR. THAT'S CORRECT. ACTUALLY, I SAY TWO TIMES. HE WENT THROUGH THE STORY TWO TIMES AND THERE WERE QUESTIONS AND ASKED TO CLARIFY POINTS.

Q SO...

A FOR A TOTAL OF TWO OR THREE TIMES.

Q SO WHAT ENDED UP IN THIS EIGHT PAGE WRITTEN STATEMENT, HAD IT BEEN TOLD TO YOU AND DISCUSSED WITH YOU ORALLY AT LEAST TWICE BEFORE IT WAS WRITTEN DOWN IN THE STATEMENT?

A AT LEAST TWICE. YES, SIR.

Q AND THIS -- THE WHOLE STATEMENT WAS WHAT HE CLAIMED TO HAVE HAPPENED THAT NIGHT?

A YES, SIR.

Q CAN YOU IDENTIFY THE DEFENDANT IN THE COURTROOM WHO GAVE YOU THIS STATEMENT?

A YES, SIR. BOBBY WAYNE STONE. HE IS SITTING TO MR. BABB'S IMMEDIATE RIGHT AT THE DEFENSE TABLE. HE'S WEARING A WHITE SHIRT, A TIE AND DOES NOT HAVE A COAT ON UNLIKE THE TWO LAWYERS.

Q YOU INDICATED THE DEFENDANT'S -- WHETHER OR NOT HE WAS ALERT AT THE BEGINNING OF -- WENT ON FOR A COUPLE OF HOURS. WHAT ABOUT 4:00 AND DURING THIS PROCESS OF THE WRITTEN STATEMENT. WHAT WAS HIS CONDITION AT THAT TIME?

A AWARE. COGNIZANT OF HIS SURROUNDINGS. AN ACTIVE PARTICIPANT IN WHAT WAS GOING ON. DRINKING COFFEE. SMOKING CIGARETTES. WENT TO THE BATHROOM A COUPLE TIMES.

THERE WAS ONE POINT IN THERE HE ASKED FOR A SODA. I DON'T REMEMBER WHO BOUGHT IT FOR HIM. I THINK IT WAS A MELLOW YELLOW OR ONE OF THOSE WEIRD DRINKS.

Q NOW MR. GALLIMORE, HAD YOU -- YOU INDICATED YOU HAD BEEN AT THE CRIME SCENE?

A YES, SIR.

Q DURING THE EVENING OF THE 26TH BEFORE TAKING THIS STATEMENT?

A YES, SIR. I HAD.

Q HAD YOU IN FACT SEEN THE THREE HOLES IN THE SCREEN DOOR?

A YES, SIR. I DID. TALKED AT LENGTH ABOUT THOSE THREE HOLES WITH MY BOSS, CAPTAIN STEVE ALSBROOKS OF SUMTER COUNTY SHERIFF'S DEPARTMENT AS WELL AS OUR CRIME SCENE

TECHNICIAN INVESTIGATOR, RAY MACKESSY.

Q AND WHAT, IF ANYTHING, DID YOU NOTE ABOUT THE FACT THAT THE DEFENDANT CLAIMED HE FIRED ONLY ONE SHOT?

A WELL, THERE WERE THREE HOLES IN THE SCREEN. THERE WAS ALSO THREE SPENT SHELL CASINGS FROM A 22 ON THAT PORCH. IF... YOU GOT THREE SPENT SHELL CASINGS LAYING THERE FROM A 22.

YOU GOT THREE LITTLE BITTY HOLES IN THAT SCREEN AND HE'S LATER APPREHENDED BY SLED SWAT TEAM WITH A 22 CALIBER PISTOL.

MR. LITTLEJOHN: I OBJECT.

THE COURT: I SUSTAIN THE OBJECTION. HE IS BEYOND SPECULATING NOW, SOLICITOR. LETS MOVE ON, PLEASE, SIR.

MR. KOLB: OKAY.

(WHEREUPON QUESTIONING RESUMED).

Q THIS STATEMENT WAS WHAT HE WANTED TO SAY AS OPPOSED TO WHAT YOU WANTED HIM TO SAY?

A THAT'S CORRECT, SIR.

Q ALL RIGHT. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

A YES, SIR.

THE COURT: CROSS-EXAMINE.

MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION BY MR. LITTLEJOHN:

Q INVESTIGATOR GALLIMORE, WHEN YOU ADMINISTERED THE

MIRANDA WARNINGS TO BOBBY STONE.

A YES, SIR.

Q HE READILY AGREED TO WAIVE HIS RIGHTS AND TALK TO YOU; DIDN'T HE?

A YES, SIR. HE DID.

Q HE DIDN'T ASK FOR AN ATTORNEY?

A NO, SIR.

Q DIDN'T ASK FOR A FAMILY MEMBER?

A NO, SIR.

Q DIDN'T ASK FOR A FRIEND TO BE THERE?

A NO, SIR.

Q AND AFTER HE SIGNED THE MIRANDA FORM, WHICH IS STATE'S EXHIBIT NUMBER 1, HE GAVE YOU A -- HE TOLD YOU VIRTUALLY EVERYTHING THAT HAD HAPPENED THAT DAY; ISN'T THAT CORRECT?

A WITHOUT A WHOLE LOT OF DETAIL. YES, SIR.

Q WITHOUT A WHOLE LOT OF DETAIL?

A YES, SIR.

Q YOU WEREN'T TAKING NOTES DURING THIS; WERE YOU?

A NOT INITIALLY.

Q NOT INITIALLY? OKAY. DO YOU REMEMBER FILLING OUT A SUPPLEMENTARY REPORT CONCERNING THE INTERVIEW?

A YES, SIR.

Q AND I BELIEVE YOU HAVE ENTRIES IN HERE BY TIME?

A YES, SIR.

Q THERE WAS AN ENTRY AT 1:54, 2-27-96. IS THAT RIGHT?
A IF I COULD SEE IT.
Q SURE.
A YES, SIR.
Q OKAY. AND YOU FOLLOWED WITH YOUR SUPPLEMENTARY -- I BELIEVE THERE'S LIKE THREE SHEETS. HERE IS ANOTHER ONE.
A ALL RIGHT.
Q ALL RIGHT.
A YES, SIR.
Q AND THAT'S KIND OF A CHRONOLOGICAL PROGRESSION OF THE EVENTS DURING THE COURSE OF THIS INVESTIGATION?
A MY INVOLVEMENTS. YES, SIR.
Q FROM YOUR INVOLVEMENT. OKAY. AND I BELIEVE THE FIRST ENTRY ON THE FIRST PAGE IS 1:54?
A 1:54, 2-27-96.
Q OKAY. AND THEN AS YOU GO OVER TO THE SECOND PAGE IT INDICATES THAT THE DIAGRAM WAS SKETCHED BY YOU AND IT WAS SIGNED BY BOBBY STONE AT 2:10 A.M.
A YES, SIR.
Q OKAY. SO, IS IT SAFE TO SAY YOU GOT THIS INFORMATION ON PAGE ONE AND THE INFORMATION DOWN TO THE 2:10 A.M. ENTRY DURING THE FIRST INITIAL INTERVIEW?
A NO, SIR.
Q IT'S NOT?
A I DIDN'T SIT THERE AND WRITE IT AT THAT TIME.

Q YOU DIDN'T?
A NO, SIR.
Q OKAY. WELL, LET ME ASK YOU THIS, INVESTIGATOR GALLIMORE. WHEN YOU FIRST BEGAN TALKING TO BOBBY STONE, YOU INDICATED THAT YOU ASSURED YOURSELF THAT HE APPEARED TO BE SOBER?
A YES, SIR.
Q DID YOU DETECT AN ODOR OF ALCOHOL ABOUT HIM?
A THERE WAS A FAINT ODOR OF ALCOHOL. SMELLED SOMEWHAT LIKE BEER.
Q OKAY. AND IN FACT HE TOLD YOU THAT HE HAD HAD A HALF CASE OR TWELVE CANS OF BUDWEISER THAT DAY; ISN'T THAT RIGHT?
A WHAT HE ENDED UP SAYING WAS THAT HE HAD SPLIT A TWELVE PACK OF BUDWEISER TWELVE OUNCE CANS WITH ANOTHER FELLOW.
Q UH-HUH. OKAY. BUT HE HAD HAD A -- HE HAD HAD BEER THAT DAY; RIGHT?
A YES, SIR. HE HAD BEER THAT DAY.
Q HE TOLD YOU HE SMOKED A MARIJUANA CIGARETTE THAT DAY?
A YES, SIR. THAT MORNING WHEN HE GOT UP.
Q OKAY. NOW, HE WENT ON IN -- ACCORDING TO YOUR NARRATIVE HERE -- HE SAID HE -- WHEN HE FIRST WENT TO 817 TAYLOR STREET, THAT HE WALKED UP TO THE HOUSE TO SEE HIS GOOD FRIEND AND PARTYING -- AND THEN YOU GOT IN QUOTES

DRINKING BUDDY RUTH?
A YES, SIR.
Q THAT'S WHAT HE TOLD YOU; RIGHT?
A WORDS TO THAT AFFECT.
Q OKAY. WELL, THAT'S -- YOU PUT IT DOWN AS ACCURATELY AS YOU COULD REMEMBER IT; DIDN'T YOU?
A IF IT'S GOT QUOTATION MARKS AROUND IT.
Q THAT WOULD MAKE IT MORE ACCURATE; WOULDN'T IT?
A YES, SIR.
Q OKAY. AND YOU INDICATED TO YOU THAT A LADY WHO WAS UNKNOWN TO HIM HAD RUN HIM OFF THAT AFTERNOON?
A YES, SIR.
Q RIGHT? AND YOU SAID HE WENT BACK IN THE WOODS AND WAS SHOOTING THE GUN, FINISHED HIS LAST TWO OR THREE BEERS THEN HE WENT BACK TO MRS. GRIFFITH'S HOUSE TO SEE HER?
A YES, SIR.
Q RIGHT? AND YOU INDICATED IN HERE IN YOUR NOTES OF INTERVIEW, THAT HE KNOCKED WITH A MEDIUM KNOCK AND NOBODY ANSWERED.
A THAT'S WHAT HE INITIALLY SAID.
Q THAT'S WHAT HE SAID TO YOU. OKAY. AND HE SAID THEN HE WENT TO KNOCK A SECOND TIME?
A CAN I REFER TO MINE?
Q SURE. IT'S RIGHT THERE IN YOUR WRITING.
A YES, SIR. THAT'S WHAT HE WAS SAYING BEFORE WE GOT

DOWN TO PUTTING IT IN THE STATEMENT.
Q OKAY. AND THEN, INVESTIGATOR GALLIMORE, YOU AND LIEUTENANT HEROD WROTE OUT THIS LONG STATEMENT WHICH IS STATE'S EXHIBIT 3?
A I WROTE IT, SIR.
Q YOU WROTE IT. AS A MATTER OF FACT, EVERY HAND WRITTEN WORD ON HERE OTHER THAN SIGNATURES IS YOURS?
A THAT'S CORRECT.
Q OKAY. AND YA'LL RE WROTE THE -- OR YOU WROTE THE QUESTIONS OUT?
A YES, SIR.
Q BETWEEN YOU AND LIEUTENANT HEROD, YA'LL CAME UP WITH THE QUESTIONS?
A YES.
Q RIGHT? BOBBY CAME UP WITH THE ANSWERS?
A YES, SIR.
Q HE ANSWERED EVERY QUESTION THAT YOU ASKED HIM?
A YES, SIR.
Q DIDN'T HESITATE TO TALK TO YOU?
A THAT'S CORRECT.
Q OKAY. AND IN FACT, YA'LL HAD TO CONCLUDE THE INTERVIEW; RIGHT?
A WE CONCLUDED IT. LIKE -- THE STATEMENT WAS FINISHED.
Q ALL RIGHT. BUT I MEAN, BOBBY WAS STILL TALKING TO YOU; WASN'T HE?

A YES, SIR.
Q OKAY. AND HE TOLD YOU AND YOU PUT DOWN IN HIS STATEMENT ALL THE EVENTS HE PREVIOUSLY TOLD YOU ABOUT; RIGHT?
A YES, SIR.
Q YOU TRIED TO FILL THIS OUT AND MAKE IT ACCURATE; DID YOU NOT?
A I TRIED TO FILL IT OUT EXACTLY AS HE ANSWERED THE QUESTION, SIR.
Q OKAY. AND...
A I FILLED IT OUT EXACTLY AS HE ANSWERED THE QUESTIONS, SIR.
Q OKAY. AND SO YOU FILLED IT OUT. AND IN REGARD TO QUESTION NUMBER 3 WHERE BOBBY TOLD YOU THAT HE DECIDED TO GO SAY HI TO RUTH THAT DAY AND INDICATED WE ARE OLD DRINKING BUDDIES -- AND HE INDICATED WE HAVE GONE OUT AND GOT DRUNK TOGETHER A FEW TIMES. THAT'S THE MIDDLE OF PAGE 2?
A YES, SIR. THOSE WERE HIS WORDS.
Q THOSE WERE HIS WORDS. OKAY. AND HE ALSO TOLD YOU AND YOU PUT DOWN IN THIS STATEMENT IN RESPONSE TO QUESTION 26 HE INDICATED TO YOU THAT HE NEVER SAW NO DEPUTY?
A I NEVER SAW NO DEPUTY. THOSE WERE HIS WORDS.
Q OKAY. AND THEN IN RESPONSE TO QUESTION 28 HE SAID I DID NOT -- I NEVER SAW ANYBODY?

A THAT'S CORRECT.

Q AND THAT'S WHAT HE TOLD YOU TO BEGIN WITH AND THAT'S WHAT HE TOLD YOU TO END WITH?

A YES, SIR .

MR. LITTLEJOHN: IF YOU WOULD INDULGE ME JUST A MOMENT, YOUR HONOR.

THE COURT: YES, SIR.

(WHEREUPON THERE WAS A PAUSE) .

MR. LITTLEJOHN: THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: REDIRECT?

MR. KOLB: NO, SIR.

THE COURT: YOU CAN COME DOWN.

(WHEREUPON THE WITNESS LEFT THE STAND).

MR. KOLB: YOUR HONOR, THAT'S THE STATE'S CASE.

THE COURT: VERY WELL. LADIES AND GENTLEMEN, I NEED FOR YOU TO GO TO YOUR JURY ROOM FOR A FEW MOMENTS.

THERE'S SOME MATTERS OF LAW I NEED TO TAKE UP OUT OF YOUR PRESENCE. DO NOT BEGIN TO DISCUSS THIS CASE OR BEGIN YOUR DELIBERATIONS IN ANY FASHION.

(WHEREUPON THE JURY LEFT THE COURTROOM AT 2:58 P.M.)

THE COURT: ANYTHING FROM THE STATE?

MR. KOLB: NO, SIR.

THE COURT: NOTHING? ALL RIGHT. MR. LITTLEJOHN?

MR. LITTLEJOHN: GIVE ME JUST A MOMENT, YOUR HONOR.

THE COURT: YES, SIR.

(WHEREUPON THERE WAS A PAUSE).

MR. LITTLEJOHN: YOUR HONOR, PURSUANT TO RULE 19 OF THE SOUTH CAROLINA RULES OF PROCEDURE IN CRIMINAL CASES, WE WOULD RESPECTFULLY MOVE FOR A DIRECTED VERDICT AS TO THE THREE COUNTS IN THE INDICTMENT.

AS TO THE FIRST COUNT, THE BURGLARY COUNT, WE THINK THE EVIDENCE IS INSUFFICIENT TO SHOW THAT THE DEFENDANT INTENDED TO COMMIT A CRIME WITHIN THE DWELLING.

IT'S OBVIOUS THAT HE WAS FAMILIAR WITH THE LADY THAT LIVED THERE AND I THINK WHEN YOU TAKE THE TESTIMONY IN THE LIGHT EVEN MOST FAVORABLE TO THE STATE, IT INDICATES THAT HE HAD AN ANTICIPATION OF BEING ABLE TO GO SEE HIS FRIEND.

YOUR HONOR, AS TO COUNT TWO, THE MURDER CHARGE, WE WOULD RESPECTFULLY MOVE FOR A DIRECTED VERDICT IN THAT THE STATE HAS FAILED TO PROVE ALL OF THE ELEMENTS OF MURDER AND THE FAILURE OF THEIR PROOF WOULD NECESSITATE THE COURT GRANTING A DIRECTED VERDICT.

YOUR HONOR, IF THOSE TWO COUNTS FAIL THEN OBVIOUSLY COUNT THREE FAILS. AND FOR THAT REASON WE WOULD ALSO MOVE FOR A DIRECTED VERDICT AS TO COUNT THREE.

THE COURT: THANK YOU. AS TO THE BURGLARY, THERE ARE A LOT OF INTERESTING LEGAL ISSUES THAT CERTAINLY REVOLVE AROUND THE FACTUAL SITUATION HERE CONCERNING THAT CHARGE.

HOWEVER, IN THE LIGHT MOST FAVORABLE TO THE STATE, AT THIS POINT I HAVE AN INDIVIDUAL WHO HAD BEEN NOT -- DEPENDING ON VERSIONS -- HOW LONG, A SHORT PERIOD OF TIME BEFORE SOMEONE WHO CLAIMS TO HAVE KNOWN.

FIRST VISIT WENT TO THE BACK DOOR, KNOCKED ON THE BACK DOOR. THIS VISIT HE COMES TO A SIDE DOOR IN THE DARK, IS HAMMERING AT THE DOOR, HAS A GUN IN HIS HAND LOADED, HAS A SHOTGUN LOADED ON THE PORCH.

AND HAVING BEEN INSTRUCTED JUST BRIEFLY BEFORE AS WELL AS TESTIMONY THAT'S IN THE RECORD AT THIS POINT EARLIER THAN THIS EVENING THAT HE WAS NOT WELCOME AT THE PREMISES, BUT HAVING BEEN REMINDED OF THAT BY AN INDIVIDUAL AND ASKED TO LEAVE.

I THINK THAT THOSE -- GIVEN THOSE FACTS, THERE IS SUFFICIENT -- I THINK IT GETS TO THE QUESTION OF HIS INTENT IS A MATTER FOR THE JURY AND I THINK THERE IS SUFFICIENT FACTS IN THE RECORD FROM WHICH THEY COULD CONCLUDE THAT HE WAS INTENDING TO COMMIT A CRIME.

AS TO THE MURDER, OBVIOUSLY WE HAVE NO QUESTION AN INDIVIDUAL WAS SHOT, NO QUESTION AT THIS POINT IN THE LIGHT MOST FAVORABLE TO THE STATE THE FIREARM WAS HELD BY THE DEFENDANT BECAUSE OF THE BLOOD WHICH WAS FOUND AND IDENTIFIED AS BEING ON THE TRIGGER.

THE GUN WAS IN HIS POSSESSION. CLEARLY THE SLUGS THAT WERE REMOVED FROM DEPUTY KUBALA'S BODY WERE THOSE

FIRED FROM THAT WEAPON.

CLEARLY THE USE OF A FIREARM, DISCHARGING A FIREARM, SHOOTING AT SOMEONE IN A LIGHT MOST FAVORABLE TO THE STATE AT THIS POINT I WOULD HAVE TO DENY THE MOTION. I THINK ALL THE ELEMENTS ARE PRESENT.

THAT HAVING BEEN SAID AND THE FACT THAT HE WAS FOUND IN POSSESSION OF THE PISTOL WHICH BY HIS STATEMENT, BY THE CASINGS BEING ON THE PORCH, CLEARLY INDICATE THE FIREARM WAS IN HIS POSSESSION AT THE TIME HE WAS KNOCKING ON THE DOOR WITH THE PISTOL.

THE THIRD CHARGE LIKEWISE SURVIVES. SO... I WOULD RESPECTFULLY DENY YOUR MOTION. IS THAT -- SEPARATELY AND IN TOTAL. ALL RIGHT. ARE YOU READY TO PROCEED?

MR. LITTLEJOHN: COULD WE HAVE A FEW MOMENTS TO MAKE SURE OUR WITNESSES ARE HERE? I THINK THEY ALL...

THE COURT: HOW LONG?

MR. LITTLEJOHN: ABOUT TEN MINUTES.

THE COURT: OKAY. WE WILL START AT 5 MINUTES AFTER 3. PLEASE HAVE YOUR FIRST WITNESS ALREADY IN THE COURTROOM READY TO GO. WELL, TELL YOU WHAT LETS DO.

YOU CHECK ON THAT, HAVE THEM -- BECAUSE I WANT TO DISCUSS SOME MATTERS OR WE ARE PREPARED TO. LET ME DO THAT AT THIS POINT WITH REGARD TO THE DEFENDANT.

MR. LITTLEJOHN: YES, SIR. WE CAN DO THAT IF YOU GIVE ME JUST A SECOND.

THE COURT: WE WILL DO THAT WHEN WE COME BACK.

MR. KOLB: JUDGE, CAN WE GET THE NAMES AND DATE OF BIRTH, SOCIAL SECURITY NUMBERS OF ANY DEFENSE WITNESSES AT THIS TIME---.

THE COURT: I WOULD ASK YOU TO GIVE HIM THE NAMES AND SOCIAL SECURITY NUMBERS, IF YOU HAVE THEM, OF THE WITNESSES.

MR. KOLB: DATE OF BIRTH?

THE COURT: DATE OF BIRTH.

(WHEREUPON A BRIEF RECESS WAS TAKEN).

THE COURT: LET THE RECORD REFLECT MR. STONE IS PRESENT. ALL RIGHT. HAVE YOU HAD AN OPPORTUNITY TO DISCUSS CERTAIN MATTERS WITH MR. STONE?

MR. LITTLEJOHN: I HAVE, YOUR HONOR.

THE COURT: FIRST OF ALL, IN YOUR OPINION DOES HE FULLY UNDERSTAND HIS RIGHTS?

MR. LITTLEJOHN: YES, YOUR HONOR.

THE COURT: AND HAVE YOU HAD SUFFICIENT OPPORTUNITY TO TALK TO HIM?

MR. LITTLEJOHN: AS TO THIS POINT SEVERAL TIMES. WE'VE TALKED ABOUT IT SEVERAL TIMES.

THE COURT: ALL RIGHT. MR. STONE, GOOD AFTERNOON, SIR.

THE DEFENDANT: GOOD AFTERNOON.

THE COURT: I NEED TO ASK YOU CERTAIN QUESTIONS.

FIRST OF ALL, SIR, HAVE YOU HAD AN OPPORTUNITY TO TALK WITH YOUR LAWYERS ABOUT WHETHER OR NOT YOU WISH TO TESTIFY IN THIS MATTER ?

THE DEFENDANT: YES, SIR .

THE COURT: YOU UNDERSTAND, SIR, THAT IT IS YOUR RIGHT TO TESTIFY AND YOUR RIGHT NOT TO TESTIFY?

THE DEFENDANT: YES, SIR.

THE COURT: THEY HAVE EXPLAINED THAT TO YOU?

THE DEFENDANT: YES, SIR.

THE COURT: YOU UNDERSTAND THAT IF YOU TESTIFY, YOU WOULD BE SUBJECT TO CROSS-EXAMINATION AS ANY WITNESS WOULD BE CROSS-EXAMINED; YOU UNDERSTAND THAT?

THE DEFENDANT: YES, SIR.

THE COURT: YOU ALSO UNDERSTAND THAT IF YOU CHOOSE NOT TO TESTIFY, I WILL INSTRUCT THE JURY THAT THEY CANNOT USE THAT AGAINST YOU IN ANY FASHION. YOU UNDERSTAND THAT AS WELL?

THE DEFENDANT: YES, SIR.

THE COURT: HAVE YOU HAD AN OPPORTUNITY TO MAKE A DECISION ABOUT WHETHER OR NOT YOU WISH TO TESTIFY IN THIS PROCEEDING?

THE DEFENDANT: YES, SIR.

THE COURT: AND WHAT IS YOUR DECISION?

THE DEFENDANT: I DON'T WANT TO TESTIFY.

THE COURT: YOU DO NOT WISH TO TESTIFY ?

THE DEFENDANT: NO, SIR.

THE COURT: DO YOU FEEL THAT YOU HAD SUFFICIENT TIME TO MAKE THAT DECISION?

THE DEFENDANT: YES, SIR .

THE COURT: ALL RIGHT. DO YOU KNOW OF ANYTHING THAT'S AFFECTING YOUR ABILITY TO MAKE A DECISION OF THAT NATURE HERE TODAY?

THE DEFENDANT: NO, SIR.

THE COURT: ARE YOU UNDER THE INFLUENCE OF ANY DRUGS OR ANY MEDICATION HERE TODAY ?

THE DEFENDANT: NO, SIR.

THE COURT: CERTAINLY THE PRESSURE OF THE PROCEEDING I UNDERSTAND, BUT IS ANYTHING ABOUT THAT AFFECTING YOUR ABILITY TO MAKE DECISIONS ?

THE DEFENDANT: NO, SIR.

THE COURT: ARE YOU SATISFIED WITH THE MANNER IN WHICH YOUR ATTORNEYS HAVE ADVISED YOU IN THIS REGARD ?

THE DEFENDANT: YES, SIR.

THE COURT: DO YOU NEED ANY ADDITIONAL TIME TO TALK WITH HIM?

THE DEFENDANT: NO, SIR.

THE COURT: VERY WELL. THANK YOU VERY MUCH. I DO FIND THAT MR. STONE HAS HAD AN OPPORTUNITY TO DISCUSS WITH HIS ATTORNEYS HIS RIGHT TO TESTIFY AND NOT TO TESTIFY, THAT HE FULLY UNDERSTANDS HIS RIGHTS AND HAS FREELY AND

VOLUNTARILY ELECTED NOT TO TESTIFY.

I FURTHER FIND THAT MR. STONE APPEARS TO BE VERY COGNIZANT OF WHAT OF HIS DECISION -- OF HIS RIGHTS. HE -- NOTHING ABOUT HIS DEMEANOR SUGGESTS THAT HE IS NOT FULLY IN CONTROL OF HIS FACULTIES AND HE HAS CLEARLY ARTICULATED HIS POSITION IN THIS MATTER.

AND THEREFORE THE RECORD SHOULD FIND THAT I DO FIND THAT IS KNOWINGLY, VOLUNTARILY AND FREELY MADE. THANK YOU. AND HE'S HAD THE BENEFIT OF COMPETENT COUNSEL WITH WHOM HE IS SATISFIED. THANK YOU. YOU MAY BE SEATED: ALL RIGHT. ARE WE READY?

MR. LITTLEJOHN: YES, YOUR HONOR.

THE COURT: ALL RIGHT. YOU MAY CALL -- WELL, NOT YET. LETS GET SOMEBODY ELSE, THIS IMPORTANT GROUP, BACK IN HERE. BRING THE JURY IN.

(WHEREUPON THE JURY ENTERED THE COURTROOM AT 3:19 P.M.)

THE COURT: THANK YOU SO MUCH. THANK YOU, LADIES AND GENTLEMEN. WE ARE READY TO CONTINUE. PLEASE GIVE YOUR ATTENTION TO THE NEXT WITNESS. MR. LITTLEJOHN, YOU MAY CALL THE FIRST WITNESS.

MR. LITTLEJOHN: THANK YOU, YOUR HONOR. WE CALL MARY G WILSON.

THE COURT: OKAY.

MR. LITTLEJOHN: YOUR HONOR, SHE'S RIGHT BACK HERE IN

THE HALL.

MR. BABB: BRING HER IN THIS DOOR OR RIGHT HERE?

THE COURT: DOESN'T MATTER. THIS IS WHERE SHE'S GOING TO BE. THAT WILL BE FINE.

MARY G. WILSON, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: GOOD AFTERNOON, MRS. WILSON. IF YOU WOULD PLEASE FOR THE RECORD -- AND YOU CAN MOVE THAT MIKE -- MAKE SURE YOU SPEAK INTO THAT MIKE WHEN YOU ARE ANSWERING THE QUESTIONS AND SPEAK LOUDLY, PLEASE. STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST.

WITNESS: MARY GRIFFITH WILSON, W I L S O N.

THE COURT: THANK YOU.

DIRECT EXAMINATION BY MR. LITTLEJOHN:

Q GOOD AFTERNOON, MRS. WILSON. MRS. WILSON, WOULD YOU TELL US WHERE YOU LIVE, PLEASE MA'AM.

A I LIVE AT 1410 MOONEYHAM ROAD. I DID RESIDE IN LYNCHBURG.

Q ALL RIGHT. LET ME ASK YOU TO PULL THAT MICROPHONE TO YOU JUST A LITTLE BIT SO EVERYBODY CAN HEAR YOU; OKAY? MRS. WILSON, ARE YOU EMPLOYED?

A YES, SIR.

Q WHAT IS YOUR EMPLOYMENT?

A I WORK YELLOW CAB.

Q THAT'S HERE IN SUMTER?

A YES, SIR.
Q WHAT ARE -- WHAT DO YOU DO AT YELLOW CAB?
A I DRIVE AND DISPATCH.
Q OKAY. HOW LONG HAVE YOU BEEN DOING THAT?
A ALMOST TWENTY-ONE YEARS.
Q ALL RIGHT. MRS. WILSON, ARE YOU ACQUAINTED WITH BOBBY STONE?
A YES, SIR.
Q HAVE YOU KNOWN HIS FAMILY FOR SOME TIME?
A YES, SIR. I HAVE.
Q WOULD YOU TELL US HOW YOU GOT TO KNOW BOBBY STONE'S FAMILY?
A WELL, MY DAUGHTER AND HIS CHILDREN WENT TO SCHOOL TOGETHER.
Q WHAT IS YOUR DAUGHTER'S NAME?
A MICHELLE LYNCH.
Q OKAY. DID YOU EVER LIVE IN THE SAME NEIGHBORHOOD AS BOBBY AND HIS FAMILY?
A YES, SIR.
Q WHERE WAS THAT NEIGHBORHOOD?
A AT 713 RAVENEL STREET.
Q OKAY. AND WHERE IS RAVENEL STREET?
A RUNS OFF THE BOULEVARD AND OFF OF BELK STREET BEHIND FIRST BAPTIST CHURCH.
Q OKAY. HOW CLOSE IS THAT TO RUTH GRIFFITH'S RESIDENCE

ON TAYLOR STREET?
A APPROXIMATELY THREE OR 4 BLOCKS.
Q THREE OR 4 BLOCKS?
A UH-HUH.
Q ALL RIGHT. NOW, YOU INDICATED THAT YOU MOVED TO RAVENEL STREET. DO YOU RECALL WHEN THAT WAS?
A IT'S BEEN ABOUT SEVENTEEN YEARS AGO.
Q OKAY. HOW OLD WAS BOBBY STONE AT THAT TIME?
A HE WAS LESS THAN TEN YEARS OLD WHEN I FIRST MET BOBBY WAYNE.
Q OKAY. AND YOUR DAUGHTER MICHELLE AND BOBBY ARE APPROXIMATELY THE SAME AGE?
A I THINK SHE'S A COUPLE YEARS OLDER THAN HE IS.
Q OKAY. WERE THEY CHILDHOOD FRIENDS?
A YES, SIR.
Q OKAY. DID YOU SEE MICHELLE, YOUR DAUGHTER AND BOBBY GROW UP TOGETHER?
A YES, SIR. I DID.
Q OKAY. AND I BELIEVE BOBBY HAS A SISTER?
A MELINDA.
Q MELINDA?
A UH-HUH.
Q AND YOU KNOW MELINDA?
A UH-HUH.
Q OKAY. NOW, MRS. WILSON, DO YOU KNOW RUTH GRIFFITH?

A THAT'S MY SISTER-IN-LAW. YES, SIR.
Q OKAY. WOULD YOU EXPLAIN TO THE JURY WHAT YOUR RELATIONSHIP IS, HOW YA'LL ARE SISTER-IN-LAWS.
A SHE WAS MARRIED TO MY OLDEST BROTHER BEFORE HE PASSED AWAY.
Q OKAY. WHEN DID THEY GET MARRIED?
A IN 1949 OR 1950. I CAN'T REMEMBER THE EXACT YEAR.
Q ALL RIGHT. DID YOU MEET HER AT THAT TIME?
A YES, SIR. I WAS...
Q OKAY. NOW, HAVE YOU BEEN FRIENDS WITH RUTH GRIFFITH OVER THE YEARS?
A YES, SIR. WE LIVED IN THE SAME HOUSE MOST OF THAT TIME.
Q OKAY. WHAT HOUSE IS THAT?
A WHEN HER AND MY BROTHER GOT MARRIED, THEY LIVED IN THE HOUSE WITH ME AND MY MOTHER AND MY OTHER BROTHERS.
Q OKAY. HOW LONG DID THAT GO ON?
A 51, 52, SOMEWHERE AROUND THERE.
Q ALL RIGHT. DO YOU RECALL WHEN MRS. GRIFFITH MOVED TO 817 TAYLOR STREET?
A YES, SIR, I DO. BECAUSE I WENT OVER THERE AND HELPED HER CLEAN THE HOUSE.
Q ALL RIGHT. ABOUT WHEN WAS THAT?
A BEEN ABOUT TWENTY-FOUR, TWENTY-FIVE YEARS AGO.
Q OKAY.

A SOMEWHERE IN THAT NEIGHBORHOOD.
Q 1971 OR SO?
A YES, SIR.
Q OKAY. NOW, DID YOUR DAUGHTER MICHELLE EVER LIVE WITH RUTH GRIFFITH?
A YES, SIR. SHE DID.
Q AND DO YOU RECALL WHEN THAT WAS AND FOR HOW LONG THAT WAS?
A IT WAS RIGHT AFTER HURRICANE HUGO. DO KNOW THAT. SIX OR SEVEN YEARS AGO.
Q RIGHT AFTER HUGO?
A YES, SIR.
Q AND HUGO WAS IN SEPTEMBER OF 1989. I THINK WE ALL KNOW.
A UH-HUH.
Q OKAY. NOW, WHAT WAS THE RELATIONSHIP AFTER MICHELLE MOVED IN WITH RUTH -- WHAT WAS THE RELATIONSHIP BETWEEN BOBBY AND MICHELLE?
A THEY WERE FRIENDS.
Q OKAY. WERE THEY BOYFRIEND GIRLFRIEND FRIENDS?
A LATER ON THEY WERE, BUT NOT AT THAT TIME I DON'T BELIEVE.
Q OKAY. NOW, DID YOUR DAUGHTER MICHELLE EVER HAVE OCCASION TO LIVE WITH RUTH GRIFFITH?
A YES, SIR.

Q OKAY. DO YOU KNOW WHETHER BOBBY WOULD EVER GO SEE MICHELLE AT MRS. GRIFFITH'S HOUSE?

A YES, SIR. BOBBY AND HIS SISTER WENT DOWN THERE.

Q OKAY. WAS THAT MORE OR LESS A FREQUENTLY -- WHAT SORT OF BASIS -- HOW OFTEN WOULD THEY DO THAT?

A TWO OR THREE TIMES A MONTH, 4 TIMES A MONTH.

Q OKAY. DO YOU REMEMBER HOW LONG MICHELLE LIVED AT RUTH'S?

A ON AND OFF DURING THE YEARS.

Q ON AND OFF?

A SINCE HUGO, UH-HUH.

Q DID YOU EVER HAVE OCCASION TO LIVE OVER AT RUTH GRIFFITH'S HOUSE?

A YES, I DID.

Q DO YOU RECALL WHEN THAT WAS AND FOR HOW LONG?

A ON AND OFF FOR THE LAST SEVEN OR EIGHT YEARS.

Q OKAY.

A SHE USED TO LIVE WITH ME ALSO.

Q ALL RIGHT. NOW, OVER THE YEARS DID YOU EVER SEE BOBBY OVER AT RUTH GRIFFITH'S HOUSE?

A YES, SIR. I DID.

Q AND WOULD YOU EXPLAIN TO THE JURY WHY HE WOULD BE THERE AND WHAT KIND OF OCCASION THAT WOULD BE.

A WELL, AT ONE TIME HE WENT DOWN WITH THE BACK HOE AND LEVELED THE DIRT IN HER YARD.

Q OKAY.
A I THINK HE FIXED HER SEPTIC TANK ONE TIME.
Q OKAY.
A STUFF LIKE THAT.
Q HAVE YOU SEEN HER -- HAVE YOU SEEN HIM OVER AT HER HOUSE?
A YES, SIR. I DID.
Q OKAY. AND WHAT WOULD HE BE DOING AT THE HOUSE?
A DRINKING BEER WITH RUTH.
Q ALL RIGHT. NOW -- AND DID THAT HAPPEN ON ONE OCCASION OR MORE?
A ONLY ONE THAT I WAS THERE.
Q OKAY. HOW WOULD YOU CHARACTERIZE FROM WHAT YOU SAW THE RELATIONSHIP BETWEEN BOBBY AND RUTH?
A THEY ACTED LIKE THEY WERE FRIENDS. I MEAN, YOU WOULDN'T WANT AN ENEMY COMING IN YOUR HOUSE.
Q RIGHT. NOW, TELL ME THIS, MRS. WILSON. WHAT WAS THE SITUATION WITH MRS. GRIFFITH'S MEDICATIONS? DID SHE TAKE MEDICATIONS ON A REGULAR BASIS?
A YES, SIR. SHE DID. EVERY DAY.
Q WHAT SORT OF MEDICATION?
A SHE TOOK HEART MEDICINE, GOUT MEDICINE, KEEP FROM -- MEDICINE TO KEEP HER ARTERIES FROM BEING BLOCKED AND CLOGGED.
Q OKAY. DID SHE DRINK BEER ON A REGULAR BASIS?

A YES, SIR. SHE DID.
Q WITH THE MEDICATION?
A YES, SIR.
Q DID YOU EVER HAVE A DISCUSSION WITH RUTH GRIFFITH ABOUT HER SMOKING MARIJUANA?
A YES, SIR. I DID.
Q WHAT DID SHE TELL YOU ABOUT THAT?
A SAID SHE SMOKED WITH BOBBY WAYNE AND MICHELLE.
Q OKAY.
A SAID SHE TRIED IT, BUT SHE DIDN'T LIKE IT.
Q ALL RIGHT. NOW, DID YOU EVER HAVE OCCASION TO GO OUT WITH RUTH TO NIGHT PLACES, NIGHT SPOTS?
A NUMEROUS OCCASIONS.
Q WHERE WOULD YOU ALL GO?
A WE GO TO NASHVILLE STATION, BILLS PLACE, SNOOKIE'S PLACE AND HODGE'S WHEN IT WAS OPEN.
Q DID YA'LL---.
A REST STOPS.
Q DID YA'LL HAVE A REGULAR CROWD THAT WOULD GO?
A YES, SIR.
Q AND WHO WAS IN THAT CROWD?
A ALL OF US. IT WAS A BUNCH OF US. MICHELLE, BOBBY WAYNE, ALL OF US WOULD GO.
Q OKAY. AND WOULD BOBBY TALK TO RUTH?
A YES, SIR.

Q OKAY. DID YOU EVER KNOW OF AN OCCASION WHEN BOBBY DROVE RUTH HOME FROM A NIGHT SPOT?

A HE DROVE BOTH OF US HOME. HIM AND MY DAUGHTER.

Q ALL RIGHT. MRS. WILSON, YOU INDICATED THAT YOU HAVE KNOWN BOBBY SINCE HE WAS ABOUT TEN YEARS OLD.

A YES, SIR. OR BEFORE THAT.

Q OKAY. HAVE YOU EVER KNOWN BOBBY TO HAVE IN HIS POSSESSION A PISTOL?

A NO, SIR. I HAVE NOT.

Q OKAY. THANK YOU, MRS. WILSON. PLEASE ANSWER ANY QUESTIONS THAT THE SOLICITOR MAY HAVE FOR YOU.

THE COURT: CROSS-EXAMINE.

CROSS-EXAMINATION BY MR. KOLB:

Q SEPTEMBER 4TH, 1995, WERE YOU AROUND AT RUTH GRIFFITH'S HOUSE?

MR. LITTLEJOHN: YOUR HONOR, I THINK THERE'S A MATTER WE NEED TO TAKE UP AT SIDE BAR.

THE COURT: ALL RIGHT, SIR.

(WHEREUPON A BENCH CONFERENCE WAS HELD).

(WHEREUPON QUESTIONING RESUMED).

Q MRS. WILSON, WHEN IS THE LAST TIME YOU'VE BEEN TO MRS. GRIFFITH'S HOUSE?

A I BELIEVE IT WAS THE -- LAST AUGUST. MY MOTHER WAS IN THE HOSPITAL. I STAYED WITH HER FOR SOME DAYS.

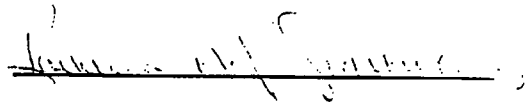
Q AUGUST OF 1995?

C E R T I F I C A T E

I, THE UNDERSIGNED KATHLEEN M. SIMMONS, OFFICIAL COURT REPORTER FOR THE THIRD JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE GENERAL SESSIONS COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON THE 28TH DAY OF JANUARY, 1997.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

APRIL 3, 1997



CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER — COURT OF GENERAL SESSIONS

STATE OF S.C., PLAINTIFF)
VS.)
BOBBY WAYNE STONE, DEFENDANT)

TRANSCRIPT OF RECORD
96-GS-43-698
VOLUME IV OF V

SUMTER, SOUTH CAROLINA
JANUARY 28, 1997

B E F O R E:

HONORABLE MARKELY DENNIS, JUDGE; AND A JURY.

A P P E A R A N C E S:

WADE KOLB, SOLICITOR
ATTORNEY FOR THE STATE

CAMERON LITTLEJOHN, ESQUIRE
JAMES BABB, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

KATHLEEN M. SIMMONS

CIRCUIT COURT REPORTER

A YES, SIR.
Q AND HAVE YOU GOT ANY EVIDENCE WHATSOEVER THAT BOBBY STONE HAS BEEN IN MRS. GRIFFITH'S HOUSE AT ANY TIME SINCE THEN?
A NO, SIR. I DO NOT.
Q ALL RIGHT. AND HER BEING YOUR SISTER-IN-LAW, IN FACT YOU KNOW THAT SHE DID NOT WANT HIM AROUND HER HOUSE; ISN'T THAT CORRECT?
A NO, SIR. IT'S NOT. SHE NEVER SAID ONE TIME THAT SHE DIDN'T WANT HIM THERE.
Q YOU ARE SAYING SHE NEVER SAID THAT TO YOU?
A NO, SIR.
Q OKAY. BUT YOU DON'T KNOW WHAT SHE MAY HAVE SAID TO OTHER PEOPLE?
A NO, SIR. I DO NOT.
Q OKAY. NOW, WHEN IS THE LAST TIME YOU SAW BOBBY STONE AROUND AT RUTH GRIFFITH'S HOUSE FOR ANY REASON WHATSOEVER?
A IT'S BEEN I GUESS THREE YEARS.
Q ALL RIGHT. AND YOU ARE SAYING THAT YOU SAW HIM AROUND HER HOUSE BACK IN 1989?
A YES, HE WAS THERE. I BELIEVE.
Q WELL, ARE YOU SAYING THAT'S WHEN YOUR DAUGHTER MICHELLE LIVED WITH HER WAS RIGHT AFTER HUGO WHICH WAS SEPTEMBER OF 89, SO SEPTEMBER OF 89 -- FIRST PART OF 90?
A THE LAST TIME I SEEN HIM THERE MICHELLE AND BOBBY

WAYNE WAS LIVING TOGETHER.

Q ALL RIGHT. AND MICHELLE AND BOBBY WAYNE WERE LIVING TOGETHER AT RUTH GRIFFITH'S HOUSE?

A NO, SIR.

Q OKAY.

A THEY HAD THEIR OWN HOUSE.

Q OKAY. AND MICHELLE WENT BY TO SEE HER AUNT?

A YES, SIR.

Q OKAY. AND BOBBY CAME BY TO PICK HER UP?

A TO PICK MICHELLE UP.

Q RIGHT.

A YES, SIR.

Q AND THEN LEFT?

A YES, SIR.

Q ALL RIGHT. AND THAT WAS THE LAST TIME YOU HAVE SEEN HIM AT RUTH GRIFFITH'S HOUSE?

A YES, SIR.

Q THAT WAS AT LEAST THREE YEARS AGO?

A TWO OR THREE YEARS AGO. I CAN'T REMEMBER THE EXACT...

Q WELL, INSTEAD OF TWO OR THREE YEARS FROM NOW, FROM FEBRUARY THE 26TH 1996 WHEN THIS HAPPENED, IT HAS BEEN TWO OR THREE YEARS BEFORE THAT THAT YOU HAD SEEN BOBBY STONE AT HER HOUSE?

A NO.

Q FOR ANY REASON?

A IT'S BEEN ABOUT TWO YEARS AGO WHEN I SEEN HIM THERE.
Q SO EARLY PART OF 1994?
A YES, SIR.
Q LAST TIME YOU SAW HIM THERE?
A YES, SIR.
Q ALL RIGHT. AND ARE YOU SAYING THAT YOU SAW HIM OVER THERE WHEN SHE -- WHEN MICHELLE WAS STAYING -- THE LAST TIME MICHELLE STAYED WITH RUTH WAS IN -- RIGHT AFTER HUGO?
A THEY WERE -- HE DIDN'T SEE HER THEN OR SHE DIDN'T SEE HIM.
Q ALL RIGHT. BUT THAT'S THE LAST TIME MICHELLE STAYED WITH MRS. GRIFFITH?
A I BELIEVE IT IS.
Q RIGHT AFTER HUGO?
A SHE MIGHT HAVE STAYED A COUPLE DAYS JUST VISITING. I DON'T KNOW.
Q OKAY. BUT AS FAR AS LIVING WITH MRS. GRIFFITH, YOUR DAUGHTER MICHELLE WAS LAST LIVING WITH MRS. GRIFFITH IN EARLY PART OF 1990?
A I THINK SHE STAYED SOME WITH HER AFTER THAT. I AM NOT POSITIVE.
Q OKAY. AND BOBBY MAY HAVE COME BY THERE IN THE EARLY PART OF 94 ONE TIME AND THAT'S THE LAST TIME YOU KNOW?
A YES, SIR.
Q DO YOU AND RUTH GRIFFITH GET ALONG GOOD WITH EACH

OTHER?
A WELL, WE DID UNTIL ALL THIS HAPPENED AND SHE TOLD ME SHE DIDN'T WANT ANY GRIFFITHS AT HER HOUSE.
Q AND YOU INDICATED THAT SHE USED TO DRINK A GOOD BIT. YOU HAVEN'T BEEN WITH HER GOING OUT WITH HER SINCE HOW LONG?
A I QUIT DRINKING SIX YEARS AGO. SO IT'S BEEN BEFORE THAT.
Q ALL RIGHT. SO 1991 OR BEFORE IS THE LAST TIME YOU WENT OUT DRINKING WITH RUTH GRIFFITH?
A YES, SIR.
Q THE LAST TIME THAT YOU CAN SAY SHE WENT OUT DRINKING WITH ANYONE WAS 1991 OR BEFORE?
A YES, SIR.
Q AND YOU ARE SAYING THAT ONE TIME PRIOR TO 1991 -- AND FRANKLY IT WOULD BE PRIOR TO 1987; WOULDN'T IT?
A I BELIEVE SO. YES.
Q WELL, I MEAN BETWEEN 1987 AND 1991 THERE IS NO WAY WHATSOEVER BOBBY STONE WAS OUT DRINKING WITH YOU AND RUTH GRIFFITH?
A NOT THEN, NO. IT WAS BEFORE THAT.
Q SO IT WAS BEFORE 1987?
A YES, SIR.
Q SO MORE THAN TEN YEARS AGO --.
A UH-HUH.

Q -- IF AT ALL -- THAT BOBBY STONE EVER WAS OUT DRINKING SOMEWHERE AT THE SAME PLACE YOU---.

A EXCEPT AT HER HOUSE.

Q MA'AM?

A EXCEPT AT HER HOUSE.

Q OKAY. AND THIS -- TALKING ABOUT DRINKING OR GOING TO CLUBS WAS PRIOR -- AS FAR AS YOU WERE CONCERNED, IT'S NOT ANY CLOSER TO TODAY'S DATE THAN 1991, BUT AS FAR AS BOBBY STONE IT COULDN'T POSSIBLY BE ANY CLOSER THAN TODAY'S DATE AND 1987?

A I DON'T THINK SO.

Q AT LEAST TEN YEARS?

MR. LITTLEJOHN: COULD WE APPROACH SIDE BAR FOR ONE MOMENT?

THE COURT: MR. SOLICITOR, HOLD ON ONE SECOND.

(WHEREUPON A BENCH CONFERENCE WAS HELD).

(WHEREUPON QUESTIONING RESUMED).

Q YOU SAID THAT THERE WAS ONE TIME THAT BOBBY AND MICHELLE GAVE YOU AND RUTH A RIDE HOME FROM A CLUB THAT YA'LL HAD GONE TO?

A YES, SIR.

Q AND THAT WAS PRIOR TO 1987?

A I DON'T REMEMBER THE EXACT YEAR.

Q WELL, COULDN'T -- IT HAD TO BE BEFORE THAT ACCORDING TO WHAT YOU JUST TOLD US EARLIER.

A IT MIGHT HAVE BEEN BEFORE THAT. I AM NOT POSITIVE.

Q THANK YOU, MA'AM.

THE COURT: REDIRECT?

MR. LITTLEJOHN: NOTHING FURTHER. WE ASK MRS. WILSON BE EXCUSED.

THE COURT: ANY OBJECTION, SOLICITOR?

MR. KOLB: NO.

THE COURT: YOU MAY BE EXCUSED, MRS. WILSON. YOU MAY COME DOWN.

(WHEREUPON THE WITNESS LEFT THE STAND).

MR. LITTLEJOHN: CALL MICHELLE LYNCH.

MICHELLE LYNCH, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: MRS. LYNCH, WHY DON'T YOU ADJUST THE SEAT, MOVE THE MIKE WHERE IT'S COMFORTABLE FOR YOU SO YOU CAN SPEAK IN IT WHEN YOU ARE ANSWERING QUESTIONS. STATE YOUR FULL NAME FOR THE RECORD. SPELL YOUR LAST .

WITNESS: MICHELLE BAILEY LYNCH, L Y N C H.

THE COURT: THANK YOU.

DIRECT EXAMINATION BY MR. LITTLEJOHN:

Q MICHELLE, CAN YOU TELL US WHERE YOU LIVE PLEASE MA'AM.

A RIGHT NOW?

Q YES, MA'AM.

A IN BELTON, SOUTH CAROLINA.

Q AND ARE YOU EMPLOYED?
A NO, SIR. NOT AT THIS TIME.
Q OKAY. WERE YOU WORKING IN BELTON?
A YES, SIR.
Q WHERE WERE YOU WORKING?
A THE B M W PLANT DRAPE (SIC) PRODUCTS IN ANDERSON, SOUTH CAROLINA.
Q OKAY. NOW MICHELLE, DO YOU HAVE A PRIOR CRIMINAL RECORD?
A YES, SIR.
Q YOU EVER BEEN CONVICTED OF SOMETHING?
A YES, SIR.
Q I BELIEVE YOU'VE BEEN CONVICTED OF FORGERY?
A YES, SIR.
Q AND HOW LONG AGO WAS THAT?
A IT WAS EITHER 5 OR SIX YEARS. I AM NOT REAL SURE.
Q OKAY. NOW MICHELLE, I BELIEVE THAT WAS YOUR MOTHER THAT JUST TESTIFIED?
A YES, SIR.
Q MARY GRIFFITH WILSON?
A YES, SIR.
Q OKAY. AND DO YOU KNOW THE DEFENDANT BOBBY STONE?
A YES, SIR.
Q HOW LONG HAVE YOU KNOWN BOBBY STONE?
A BETWEEN TWENTY-FIVE AND TWENTY-SEVEN YEARS.

Q IS YOUR FAMILY AND BOBBY'S FAMILY CLOSE?
A YES, SIR.
Q DO YOU KNOW BOBBY'S SISTER MELINDA?
A YES, SIR.
Q SHE'S A CLOSE FRIEND OF YOURS?
A MY BEST FRIEND. YES, SIR.
Q OKAY. AND INSOFAR AS BOBBY, HAVE YA'LL BEEN BOY FRIEND, GIRL FRIEND?
A YES, SIR.
Q ON OCCASION? OKAY. DID YA'LL LIVE TOGETHER ON OCCASION?
A YES, SIR.
Q OKAY. NOW MICHELLE, IN REGARD TO RUTH GRIFFITH, WHAT IS HER RELATIONSHIP TO YOU?
A SHE'S MY AUNT.
Q OKAY. AND SHE'S YOUR AUNT BECAUSE YOUR MOTHER'S BROTHER WAS HER HUSBAND?
A YES, SIR.
Q IS THAT RIGHT? BUT YOU CONSIDER HER YOUR AUNT?
A YES, SIR. I DO.
Q OKAY. NOW, DID YOU EVER HAVE OCCASION TO LIVE AT RUTH GRIFFITH'S HOUSE AT 817 TAYLOR STREET?
A YES, SIR. I HAVE.
Q AND DO YOU RECALL WHEN THAT WAS APPROXIMATELY?
A WELL, SEVERAL DIFFERENT OCCASIONS, BUT THE LATEST ONE

WAS BETWEEN THE YEAR OF 92 AND 93.

Q OKAY. AND HOW LONG DID YOU LIVE OVER THERE? DO YOU RECALL?

A OFF AND ON ABOUT 4 YEARS. OFF AND ON. BUT THE LAST TIME WAS IN 93.

Q ALL RIGHT. NOW, THEREAFTER DID -- WHO DID YOU LIVE WITH?

A BOBBY STONE.

Q OKAY. DID YA'LL HAVE OCCASION TO GO TO RUTH GRIFFITH'S HOUSE?

A YES, SIR.

Q AND WHAT WOULD TAKE YOU OVER THERE? HOW WOULD -- I MEAN, WHAT WOULD YOU DO WHEN YOU GOT OVER THERE?

A I LOVED MY AUNT RUTH AND SHE WAS ALWAYS REAL GOOD TO ME. AND WE'D GO OVER THERE AND JUST SIT AND TALK TO HER. HER AND BOBBY -- YOU KNOW -- THEY WOULD DRINK A FEW BEERS. I DIDN'T DRINK.

I'D DRINK COKE OR COFFEE OR WHATEVER. BUT WE JUST GO OVER THERE AND MOSTLY TALK TO HER BECAUSE SHE WAS REAL LONELY ALL THE TIME BECAUSE OF THE FACT I WASN'T THERE WITH HER ANY MORE.

Q OKAY. NOW BEFORE THAT, HAD YA'LL EVER GONE OUT TO NIGHTCLUBS AND NIGHT SPOTS?

A YES, SIR.

Q OKAY. YOU AND RUTH AND YOUR MOTHER AND BOBBY?

A NO, SIR. NO, SIR.
Q OKAY.
A ME AND BOBBY HAD WENT TO A CLUB AND MY MOTHER AND MY AUNT RUTH WERE THERE.
Q OKAY.
A AND THEY HAD BEEN DRINKING, SO WE TOOK THEM HOME -- WHICH HOME WAS TO MY AUNT RUTH'S HOUSE AT 817 TAYLOR STREET.
Q OKAY. NOW, LET ME DIRECT YOU TO SEPTEMBER OF 1993. YOU RECALL WHAT HAPPENED IN SEPTEMBER OF 1993 IN THE STONE FAMILY?
A YES, SIR. BOBBY STONE'S MOTHER PASSED AWAY.
Q OKAY. AND DID YOU GO TO THE FUNERAL?
A YES, SIR. ME AND BOBBY WENT.
Q OKAY. WHAT DID YA'LL DO TO GET READY TO GO TO THE FUNERAL?
A WELL, BOBBY DIDN'T HAVE ANY DRESS CLOTHES TO WEAR. AND MY AUNT RUTH'S SON AND BOBBY WERE NOT EXACTLY THE SAME SIZE AT THIS TIME, BUT THEY USED TO BE.

AND SHE HAD A SUIT. AND I CALLED HER AND SHE SAID IF HE COULD WEAR IT THAT HE WOULD BE MORE THAN WELCOME TO BORROW IT. AND I BORROWED A SUIT FROM HER ALSO.

Q OKAY. SO YA'LL BORROWED CLOTHES FROM RUTH TO GO TO BOBBY'S MOTHER'S FUNERAL?

A YES, SIR.
Q OKAY. NOW OVER THE YEARS, DID YOU AND BOBBY HAVE OCCASION TO GO TO RUTH'S HOUSE MORE THAN ONCE?
A YES, SIR.
Q AND WHAT WOULD YA'LL DO OVER THERE?
A WELL, ONE TIME BOBBY -- HER SEPTIC TANK WAS BACKED UP AND BOBBY WAYNE WENT OUT THERE, DUG THE SEPTIC TANK LINE UP. THEY HAD COVERED UP WITH DIRT. SOMEBODY ELSE SHE HAD TO LOOK AT IT.

AND BOBBY WENT OUT THERE AND GOT THE LINE, THE AIR LINE, UNCOVERED FROM DIRT SO HER COMMODES WOULD FLUSH.

AND, YOU KNOW, DIFFERENT THINGS LIKE FIXING TOILETS OR SOMETHING, YOU KNOW. SHE NEEDED SOMETHING THAT BOBBY COULD DO, HE WOULD DO IT FOR HER.
Q DID BOBBY EVER CHARGE HER?
A NO, SIR.
Q OKAY. NOW, WHAT DO YOU KNOW ABOUT RUTH GRIFFITH'S MEDICATION THAT SHE TOOK OVER THE YEARS?
A SHE'S -- SHE TAKES A LOT OF HEART MEDICINE AND SHE TAKES A LOT OF NERVE MEDICINE AND SHE DRINKS SOMETIMES WHEN SHE TAKES IT.
Q OKAY.
A AND SHE SOMETIMES TALKS CRAZY STUFF SOMETIMES.
Q OKAY. DO YOU KNOW HOW MANY DOCTORS SHE HAS TREATING

HER OR HOW MANY SHE DID BACK THEN?

A APPROXIMATELY 4.

Q OKAY. NOW, HAVE YOU EVER KNOWN RUTH GRIFFITH TO SMOKE MARIJUANA?

A ONE TIME. YES, SIR.

Q OKAY. WHERE WAS THAT AND WHO WAS PRESENT?

A AT HER HOME. IT WAS HER AND BOBBY STONE.

Q OKAY. AND YOU WERE THERE AT THE HOUSE?

A NO, SIR.

Q OKAY.

A I WAS AT MY HOUSE.

MR. KOLB: I OBJECT. CLEARLY SHE WOULDN'T HAVE ANY WAY OF KNOWING THAT. AND I WOULD OBJECT AND MOVE IT BE STRICKEN.

THE COURT: SUSTAINED. BEYOND SCOPE. JURY DISREGARD THE LAST ANSWER.

(WHEREUPON QUESTIONING RESUMED).

Q MICHELLE, JUST A COUPLE OF FINAL THINGS. DID YOU EVER OVER THE YEARS THAT YOU HAVE KNOWN BOBBY STONE, HAVE YOU EVER SEEN HIM WITH A PISTOL?

A NO, SIR.

Q OKAY. LET ME ASK YOU ABOUT THIS: ARE YOU FAMILIAR WITH THE AREA OUT THERE WHERE RAVENEL STREET, TAYLOR STREET AND THE COMMANDER ROAD AREA?

A YES, SIR.

Q AND I BELIEVE BACK BEHIND TAYLOR STREET THERE IS A LARGE WOODED AREA?

A YES, SIR.

Q IS BOBBY FAMILIAR WITH THAT WOODED AREA?

A VERY MUCH SO. YES, SIR.

Q HOW DO YOU KNOW THAT?

A WE USED TO GO BACK THERE ALL THE TIME. WE LIVED BACK UP IN THAT WOODED AREA THAT YOU'RE TALKING -- ACROSS THE ROAD FROM COMMANDER AND WE USED TO WALK THAT WAY TO HIS SISTER MELINDA'S HOUSE.

Q HAS BOBBY DONE THAT PRETTY MUCH ALL THE TIME YOU'VE KNOWN HIM?

A YES, SIR.

Q DOES HE KNOW THOSE WOODS?

A YES, SIR.

Q OKAY.

(WHEREUPON THERE WAS A PAUSE).

(WHEREUPON QUESTIONING RESUMED).

Q THANK YOU, MICHELLE. PLEASE ANSWER ANYTHING THAT THE SOLICITOR MAY HAVE.

A YES, SIR.

THE COURT: YOU MAY CROSS-EXAMINE.

CROSS-EXAMINATION BY MR. KOLB:

Q NOW, YOU HAD EIGHT COUNTS OF FORGERY IN JANUARY OF 1992?

A YES, SIR.
Q AND YOU SAY YOU LOVE YOUR AUNT RUTH?
A YES, SIR. I DO.
Q BUT YOU CAME UP HERE TO CRITICIZE HER TODAY?
A NO, SIR. I DIDN'T. I COME TO TELL THE TRUTH.
Q SHE'S NOT EVER BEEN CONVICTED OF ANY CRIME; HAS SHE?
A NO, SIR. NOT THAT I KNOW OF.
Q AND YOU SAY THAT YOU AND BOBBY NEVER WENT OUT TO ANY NIGHTCLUBS WITH YOUR MOTHER AND MRS. GRIFFITH?
A WE DIDN'T EXACTLY GO IN THE SAME CAR, BUT WE HAVE MET OUT AT CLUBS. YES, SIR.
Q BUT YOU NEVER WENT WITH THEM AS A GROUP?
A NOT TO THE BEST OF MY KNOWLEDGE.
Q ALL RIGHT. AND YOU SAY ONE TIME YOU WERE AT A CLUB WHERE YOUR MOTHER AND RUTH GRIFFITH WERE THERE AND YOU AND BOBBY BROUGHT THEM HOME?
A YES, SIR.
Q AND THAT OCCASION WAS AT LEAST TEN YEARS AGO; WASN'T IT? MORE THAN TEN YEARS AGO?
A I'M NOT EXACTLY SURE.
Q OKAY.
A OF THE DATE.
Q WOULD IT HAVE BEEN BEFORE 1987?
A MAYBE.
Q WELL, TELL ME IF ANY POSSIBILITY IT COULD HAVE BEEN

SINCE 1987?
A NO, SIR. I DON'T THINK SO.
Q NOW, YOU SAY THE LAST TIME THAT YOU LIVED WITH YOUR AUNT RUTH GRIFFITH WAS IN 1992 AND 1993?
A YES, SIR.
Q AND BOBBY STONE NEVER CAME OVER THERE DURING THAT PERIOD OF TIME?
A YES, SIR. HE DID COME OVER THERE.
Q WHILE YOU WERE LIVING THERE IN 1992?
A NO, SIR. IN 93.
Q OKAY. THE LATTER PART OF 93?
A JUNE. JULY OR AUGUST, I BELIEVE. I AM NOT REAL SURE, BUT I THINK THAT'S WHEN IT WAS.
Q AND -- WELL, HOW LONG DID YOU STAY THERE? YOU SAID YOU WERE THERE FROM 92 TO 93?
A I STAYED OFF AND ON WITH HER FOR PROBABLY THREE OR 4 YEARS ALTOGETHER.
Q ALL RIGHT. YOU SAID THE LAST TIME WAS 92, 93?
A YES, SIR.
Q IT DIDN'T GO INTO LATE 1993 OR 94; DID IT?
A I DON'T THINK SO. NO, SIR.
Q OKAY. YOU HAVE ANY INFORMATION WHATSOEVER THAT BOBBY STONE HAD BEEN AT RUTH GRIFFITH'S HOUSE WITHIN TWO YEARS PRIOR TO FEBRUARY OF 1996?
SINCE FEBRUARY OF 94, WITHIN TWO YEARS LEADING

UP TO FEBRUARY OF 96 WHEN THIS HAPPENED, DO YOU HAVE ANY INFORMATION HE HAD EVER DONE THAT?

A I'M NOT UNDERSTANDING WHAT YOU ARE SAYING, SIR.

Q EVER BEEN THERE ON A SOCIAL CALL? WELL, FRIENDLY VISIT, WITHIN TWO YEARS PRIOR TO FEBRUARY 26TH 1996? DO YOU HAVE ANY INFORMATION?

A I'M NOT EXACTLY SURE.

Q ALL RIGHT. AND IS THERE ANY DOUBT IN YOUR MIND THAT HE WAS NOT WELCOME THERE FROM SEPTEMBER OF 1995 FORWARD?

A TO THE BEST OF MY KNOWLEDGE, NO, SIR.

Q AND YOU WERE NOT AT MRS. GRIFFITH'S HOUSE THE SIXTH OF FEBRUARY 96 -- I MEAN 1996; WERE YOU?

A NO, SIR. I WAS LIVING IN GREENVILLE, SOUTH CAROLINA.

Q ALL RIGHT.

MR. KOLB: JUDGE, CAN WE APPROACH ON ANOTHER MATTER?

(WHEREUPON A BENCH CONFERENCE WAS HELD).

MR. KOLB: NOTHING FURTHER.

THE COURT: REDIRECT?

REDIRECT EXAMINATION BY MR. LITTLEJOHN:

Q ONE QUESTION. DO YOU KNOW OF ANY REASON BOBBY WOULDN'T BE WELCOME OVER AT RUTH'S HOUSE?

A NO, SIR. I DON'T.

Q OKAY. THANK YOU.

THE COURT: YOU WANT TO APPROACH, RE-CROSS? WANT TO APPROACH, MR. SOLICITOR?

MR. KOLB: YES, SIR.

(WHEREUPON A BENCH CONFERENCE WAS HELD).

THE COURT: LADIES AND GENTLEMEN, NEED FOR YOU TO GO TO THE JURY ROOM. THERE'S A MATTER I NEED TO TAKE UP OUT OF YOUR PRESENCE. DO NOT DISCUSS THE CASE AMONG YOURSELVES.

(WHEREUPON THE JURY LEFT THE COURTROOM AT 3:53 P.M.)

THE COURT: MR. SOLICITOR, YOU INDICATED AT SIDE BAR YOU HAVE A STATEMENT OF THIS WITNESS INDICATING SOME PRIOR KNOWLEDGE OF WHY MRS. GRIFFITH WOULD NOT WANT HER -- WOULD NOT WANT THE DEFENDANT PRESENT.

MR. KOLB: YES, SIR. JUDGE, CAN I...

THE COURT: FROM THIS WITNESS.

MR. KOLB: YES, SIR.

(WHEREUPON THERE WAS A PAUSE).

MR. KOLB: JUDGE, CAN I EXAMINE HER ON THIS MATTER?

THE COURT: WELL, NO, SIR. BECAUSE YOU STATED TO ME THAT YOU HAD A STATEMENT FROM THIS WITNESS OF ANY PRIOR---.

MR. KOLB: WHAT I HAVE IS RUTH GRIFFITH TELLING ME WHAT THIS PERSON TOLD HER.

THE COURT: WELL, IF YOU DON'T HAVE A STATEMENT FROM THIS WITNESS, THEN THAT'S NOT WHAT YOU REPRESENTED TO ME.

MR. KOLB: WELL, JUDGE, WHAT I -- I WAS THINKING

SHE---.

THE COURT: YOU HAVE SOMEBODY TOLD YOU THAT SHE KNOWS SOMETHING AND SHE -- HE HAS ASKED HER A QUESTION AND SHE SAYS I DON'T KNOW ANYTHING. SO IF YOU DON'T HAVE ANYTHING THAT WOULD DIRECT -- I'M NOT GOING LET YOU GET INTO WHAT RUTH GRIFFITH MAY HAVE TOLD YOU SHE KNOWS THROUGH THIS WITNESS. IF SHE HAS TOLD YOU SOMETHING, THAT'S FINE.

MR. KOLB: SHE HAS NOT, BUT SHE HAS NOT BEEN ASKED THAT. SHE'S ON THE STAND NOW SAYING SOMETHING CONTRARY TO THAT AND THAT'S WHAT I WANTED TO ASK HER.

THE COURT: YOU MAY ASK HER WHAT SHE KNOWS.

RECROSS-EXAMINATION BY MR. KOLB:

Q MRS. LYNCH, DIDN'T YOU TELL RUTH GRIFFITH THAT BOBBY STONE THOUGHT THAT SHE HAD REPORTED YOU AND HIM TO YOUR PROBATION OFFICERS FOR USING DRUGS, FOR MESSING WITH DRUGS?

A NO, SIR.

Q AND THAT BOBBY WAS MAD AT HER AND COMING TO GET HER BECAUSE HE THOUGHT THAT SHE HAD REPORTED HIM TO THE PROBATION OFFICE?

A NO, SIR. I DID NOT.

Q YOU DID NOT TELL RUTH GRIFFITH THAT?

A NO, SIR.

Q WERE YOU AWARE THAT ON SEPTEMBER THE 4TH, 1995 RUTH GRIFFITH SAW BOBBY AT HER WINDOW TRYING TO GET THE AIR

CONDITIONER OUT OF THE WINDOW AND REPORTED HIM TO THE POLICE AND THE POLICE ACTUALLY CAME OVER TO THE HOUSE? WEREN'T YOU AWARE OF THAT INCIDENT?

A I...

MR. LITTLEJOHN: UNLESS SHE'S GOT SOME PERSONAL KNOWLEDGE.

THE COURT: AGAIN THIS IS A PROFFER. I'M GOING -- SHE CAN ANSWER THE QUESTION.

A I DON'T HAVE ANY PERSONAL KNOWLEDGE OF IT. NO, SIR. I WASN'T THERE.

Q YOU WEREN'T THERE, BUT DIDN'T YOU KNOW ABOUT THAT FROM TALKING TO BOBBY STONE OR RUTH GRIFFITH OR BOTH?

A NO, SIR. NOT FROM NEITHER ONE OF THEM, NO, SIR. THAT'S NOT WHO I HEARD IT FROM.

Q ALL RIGHT.

MR. KOLB: NOTHING FURTHER, YOUR HONOR.

THE COURT: ALL RIGHT. LET ME APPROACH, PLEASE.

(WHEREUPON A BENCH CONFERENCE WAS HELD).

THE COURT: YOU WISH TO RE-CROSS THIS WITNESS?

MR. KOLB: NO, SIR.

THE COURT: VERY WELL. YOU MAY COME DOWN. YOU MAY STEP DOWN.

THE WITNESS: THANK YOU.

(WHEREUPON THE WITNESS LEFT THE STAND).

THE COURT: READY TO GO WITH YOUR NEXT WITNESS, MR.

LITTLEJOHN?

MR. BABB: YES, SIR.

MR. LITTLEJOHN: CAN YOU GIVE US JUST A MINUTE? THIS IS OUR LAST WITNESS. THIS ONE I MENTIONED WE MIGHT NEED TWO MINUTES.

THE COURT: ALL RIGHT. GOT TWO MINUTES. HOLD ON A SECOND. TWO MINUTES. WE'RE GOING TO SIT TIGHT. YES, SIR.

(WHEREUPON THERE WAS A PAUSE).

THE COURT: ALL RIGHT. WE ARE GOING TO PROFFER THE TESTIMONY.

TEANNE OEHLER, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: IF YOU WOULD PLEASE STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST. JUST DONE THAT...

WITNESS: TEANNE OEHLER. MY LAST NAME IS SPELLED O E H L E R.

THE COURT: OKAY. THANK YOU

DIRECT EXAMINATION BY MR. LITTLEJOHN:

Q WHAT IS YOUR OCCUPATION, PLEASE MA'AM?

A I'M A CLINICAL SOCIAL WORKER AND PSYCHOTHERAPIST.

Q OKAY. AND LETS SEE.

MR. LITTLEJOHN: YOUR HONOR, I HADN'T -- FOR PURPOSES OF THIS PROFFER, I DON'T ANTICIPATE GOING THROUGH HER WHOLE C V AND ALL THAT KIND OF STUFF.

THE COURT: SOLICITOR, CAN WE STIPULLATE THAT? YOU

AGREE WITH HER QUALIFICATIONS?

MR. KOLB: AT THIS POINT.

THE COURT: FOR PURPOSE OF THIS PROFFER?

MR. KOLB: YES, SIR.

THE COURT: THANK YOU, SIR.

(WHEREUPON QUESTIONING RESUMED).

Q MRS. OEHLER, LAST NIGHT WE WERE DISCUSSING YOUR WORK IN THIS CASE BY TELEPHONE.

A YES, SIR.

Q OKAY. AND WE STARTED TALKING ABOUT A -- I DON'T KNOW -- A CONDITION CALLED EXAGGERATED STARTLE RESPONSE.

A YES, SIR. WE DID.

Q AND YOU EXPLAINED THAT TO ME?

A YES, SIR. IT'S A BEHAVIORAL CHARACTERISTIC. CHARACTERISTIC OF SOMEONE WHO HAS A PROBLEM WITH ALCOHOL DEPENDENCE OR SUBSTANCE ABUSE DEPENDENCE.

Q OKAY. AND IN YOUR WORK ON THIS PARTICULAR CASE, HAVE YOU LEARNED WHETHER BOBBY STONE HAS SUCH A DEPENDENCE?

A YES, SIR. HE DOES HAVE A PROBLEM WITH ALCOHOL. HAS A DIAGNOSIS OF ALCOHOL DEPENDENCE AND ALSO CANNABIS DEPENDENCE.

Q WOULD YOU TELL THE COURT HOW THE CONDITION KNOWN AS EXAGGERATED STARTLE RESPONSE AFFECTS SOMEONE WHO IS SO CHEMICALLY DEPENDENT.

A THE INTERACTION OF THE ALCOHOL AND THE MARIJUANA

COMBINED TOGETHER WOULD CAUSE HIM TO HAVE AN INCREASED AROUSAL TO STIMULI IN THE ENVIRONMENT THAT HE'S IN SO THAT HE WOULD HAVE REACTIVE PHYSIOLOGICAL RESPONSE SO THAT HE MIGHT JUMP SUDDENLY OR MOVE SUDDENLY WHEN HE HEARS A NOISE OR WHEN HE SEES A SUDDEN MOVEMENT OR WHEN HE MIGHT TOUCH SOMETHING THAT IS NOT SOMETHING THAT'S NORMALLY IN HIS ENVIRONMENT.

BUT THOSE THREE PARTICULAR AREAS, THAT IS VISUALLY, SEEING SOMETHING SUDDENLY, HEARING SOMETHING SUDDENLY OR IS SUDDENLY FEELING SOMETHING THAT IS NOT NORMAL TO HIS ENVIRONMENT OR NOT NORMAL TO WHAT THE SITUATION IS WOULD CAUSE HIM TO REACT SUDDENLY.

Q OKAY. WOULD THIS HEIGHTEN HIS DEFENSE MECHANISMS?

A YES, IT WOULD. IT WOULD CAUSE HIM TO SUDDENLY RESPOND WITH THE FEELING OF HAVING TO DEFEND HIMSELF OR TRYING TO PROTECT HIMSELF.

Q OKAY. IS THERE ALSO A TERM THAT YOU USE IN YOUR PROFESSION KNOWN AS INCREASED REACTION TO STIMULI?

A YES, SIR. THAT IS WHAT I HAVE JUST DESCRIBED. WHEN SOMEONE HEARS OR SEES OR FEELS SOMETHING THAT IS NOT USUAL TO THE SITUATION THAT THEY ARE IN, THAT -- ALL OF THEIR SENSES BECOME MORE ALERT TO REACT TO THAT.

AND IT CAUSES AN INCREASED OR A HYPER TYPE OF REACTION TO THAT.

Q OKAY. WOULD THE EFFECT OF THIS BE HEIGHTENED IF THE

INDIVIDUAL WAS PARTAKING OF ALCOHOLIC BEVERAGES OR CANNABIS?

A PARTICULARLY SO IF THEY HAD HAD A GREAT DEAL OF ALCOHOL AND HAD BEEN SMOKING MARIJUANA AND WE'RE NOT JUST TALKING ABOUT A ONE TIME OR A FIRST TIME INCIDENT WHEN SOMEONE IS HAVING A DRINK OR THEY ARE INTOXICATED OR SMOKING POT, BUT THIS IS MOST ESPECIALLY CHARACTERISTIC OF SOMEONE WHO HAS HAD LONG TERM USE OF ALCOHOL AND LONG TERM USE OF DRUG USE WITH PARTICULAR.

Q OKAY.

MR. LITTLEJOHN: YOUR HONOR, THAT WOULD BE OUR PROFFER.

THE COURT: CARE TO EXAMINE THE WITNESS FOR THE PURPOSE?

MR. KOLB: NO, YOUR HONOR.

THE COURT: ALL RIGHT. YOU OBJECT TO THIS TESTIMONY IN THIS PROCEEDING?

MR. KOLB: SIR?

THE COURT: DO YOU OBJECT TO THIS TESTIMONY?

MR. KOLB: YES, SIR. I THINK IT'S IRRELEVANT AND INADMISSIBLE IN THE LAW OF THIS STATE ON THAT PARTICULAR ISSUE, YOUR HONOR.

THE COURT: ALL RIGHT. MR. LITTLEJOHN, WHAT'S YOUR POSITION? WHY IS THIS TESTIMONY RELEVANT BECAUSE CLEARLY I HAVEN'T HEARD THE QUESTION, BUT THERE IS NO QUESTION

BEEN ASKED AS TO WHETHER OR NOT IT AFFECTED HIS ABILITY TO -- OR WHETHER IT CAUSED HIM A LACK OF CAPACITY TO DISTINGUISH BETWEEN MORAL RIGHT OR WRONG OR UNDERSTAND AND APPRECIATE HIS ACTIONS ON THAT PARTICULAR NIGHT. THERE IS NO QUESTION PUT TO THAT LEVEL; IS THAT CORRECT?

MR. LITTLEJOHN: YOUR HONOR, NO. IT DOES NOT RISE TO THE LEVEL OF...

THE COURT: OF THE M'NAGHTEN TEST.

MR. LITTLEJOHN: EXACTLY. YOUR HONOR, WE JUST OFFER THIS TESTIMONY BECAUSE WE THINK IT IS -- IT'S IMPORTANT FOR THE JURY TO UNDERSTAND WHY BOBBY STONE MAY HAVE REACTED IN THE MANNER IN WHICH HE DID ON THE NIGHT OF FEBRUARY 26TH. AND...

THE COURT: I DON'T QUESTION NOR WOULD I -- I MEAN, AT THIS POINT I DON'T KNOW WHAT OTHER OBJECTION MAY BE RAISED AT A LATER STAGE. CERTAINLY NOT INDICATING THAT I'M RULING IN ADVANCE.

BUT THIS LINE OF TESTIMONY IS APPROPRIATE FOR THE PENALTY PHASE WHICH IS CONTEMPLATED BY OUR LAW. IT DOESN'T RISE TO THE LEVEL OR STANDARD OF M'NAGHTEN TEST.

CLEARLY OUR STATE -- AND WE HAVE CHECKED, AND AS RECENT AS THE CASE OF STATE VERSUS SOUTH WHICH DECISION I'M TRYING TO CURSOR UP TO THE TOP WAS JUST HANDED DOWN -- OUR SUPREME COURT WHERE SIMILAR ISSUES WERE ADDRESSED INSOFAR AS THE USE OF -- DECIDED IN 1993 WHERE THEY USED

ALCOHOL AND DRUGS OR A COMBINATION OF THEM.

THIS HOWEVER DEALT WITH A POSSIBILITY OF A TUMOR AND WHETHER OR NOT THAT AFFECTED HIS SANITY IN THE COURT. AGAIN, AFTER HAVING SOME DISCUSSION ABOUT THE M'NAGHTEN TEST REAFFIRMED AND RESTATED THE LONGSTANDING POSITION IN THIS STATE AS ESTABLISHED BY STATE VERSUS VAUGHN (SIC) AND THAT IS SIMPLY THAT VOLUNTARY INTOXICATION DOES NOT RELIEVE AN INDIVIDUAL FROM CRIMINAL RESPONSIBILITY.

WHAT WE ARE TALKING ABOUT HERE IS A BY-PRODUCT OF A VOLUNTARY INTOXICATION OR HIS CONDITION. IF NOT, IT STILL DOES NOT RISE TO THE LEVEL NECESSARY AND WOULD NOT BE OF ANY NEED IN THIS PARTICULAR POINT BECAUSE IT CERTAINLY WOULD NOT BE RELEVANT.

IT WOULD BE THE SAME AS IF SOMEONE WERE TO COME IN AND THINK -- SAID I THINK HE MET THE M'NAGHTEN TEST. THE SAME TESTIMONY WOULD BE INADMISSIBLE BECAUSE IT DOESN'T RISE TO THE LEVEL THAT WOULD REQUIRE THAT TO A REASONABLE DEGREE OF MEDICAL CERTAINTY IT HAD TO.

SO THOSE ARE THE WHAT I AM CONFRONTING NOW IS JUST SIMPLY NOT RELEVANT TO THIS PROCEEDING. IT IS -- MAY BE APPROPRIATE FOR THE PENALTY PHASE, SO I WOULD SUSTAIN THE STATE'S OBJECTION. THANK YOU.

MR. LITTLEJOHN: ALL RIGHT, SIR.

THE COURT: ALL RIGHT. YOU WOULD LIKE THE WITNESS TO STAND DOWN, I ASSUME?

MR. LITTLEJOHN: YES, YOUR HONOR. I THINK WE NEED TO EXCUSE HER FOR THIS PART OF THE TRIAL.

THE COURT: ALL RIGHT. YOU ARE FREE TO LEAVE AT THIS POINT. THANK YOU. YOU HAVE HER UNDER SUBPOENA?

MR. LITTLEJOHN: YES, SIR. WE'VE GOT IT WORKED OUT.

THE COURT: YOU AREN'T FREE TO LEAVE TOTALLY. YOU FREE TO JUST BE ON CALL.

WITNESS: OKAY.

THE COURT: THANK YOU.

(WITNESS LEFT COURTROOM) .

THE COURT: ANY MORE WITNESSES?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: WISH TO BRING THE JURY BACK AND REST AND DO THE MOTIONS OR YOU WANT TO GO AHEAD, TELL ME YOU REST NOW AND LETS ARGUE MOTIONS. THEN WHEN THEY COME BACK YOU CAN STATE YOU REST AND MOVE ON FROM THAT POINT. GO AHEAD AND ARGUE?

MR. LITTLEJOHN: YOUR HONOR, ARE YOU GOING TO GIVE US A LITTLE BIT OF TIME BEFORE WE...

THE COURT: ALL RIGHT. LETS BRING THEM BACK AND I WILL TELL THEM WE HAVE SOME MOTIONS. THAT WILL SET UP SOME TIME FOR YA'LL. HOW LONG DO YOU NEED TO GET READY?

MR. LITTLEJOHN: IF YOU'LL INDULGE ME JUST A MOMENT.

THE COURT: YES, SIR. MR. SOLICITOR?

MR. KOLB: JUDGE, COULD YOU ALSO DEAL WITH THE

DEFENDANT'S RIGHT TO ARGUE HIMSELF?

THE COURT: I'M GOING TO DEAL WITH THAT. IF-- I'LL TAKE CARE OF IT AND DEAL WITH THAT AS WELL. YES, SIR, BEFORE WE START.

MR. KOLB: THANK YOU, SIR.

THE COURT: NO QUESTION. THANK YOU FOR REMINDING ME.

MR. LITTLEJOHN: YOUR HONOR, COULD WE APPROACH?

THE COURT: YES, SIR.

(WHEREUPON A BENCH CONFERENCE WAS HELD).

THE COURT: ALL RIGHT. LET'S BRING THE JURY BACK IN, PLEASE.

(WHEREUPON THE JURY ENTERED THE COURTROOM AT 4:20 P.M.)

THE COURT: THANK YOU, LADIES AND GENTLEMEN.

BAILIFF: YOUR HONOR, THE JURY IS PRESENT AND SEATED.

THE COURT: THANK YOU SO MUCH. ANY ADDITIONAL WITNESSES?

MR. LITTLEJOHN: NO, YOUR HONOR. THE DEFENSE RESTS.

THE COURT: ANY REPLY WITNESSES FOR THE STATE?

MR. KOLB: NO, SIR.

THE COURT: LADIES AND GENTLEMEN, THERE ARE SOME MATTERS THAT I NEED TO TAKE UP NOW. LET ME TELL YOU, THERE ARE CERTAIN STAGES IN EVERY PROCEEDING WHERE THERE ARE SOME MATTERS OF LAW THAT HAVE TO BE ARGUED AT A CERTAIN POINT AND THIS IS ONE OF THEM.

NOW, THERE ARE SOME MATTERS I NEED TO TAKE UP MAYBE OUT OF YOUR PRESENCE, SO YOU DON'T HOP RIGHT BACK UP AND LEAVE AGAIN. BUT I WOULD LIKE TO ASK YOU AND JUST SORT OF TELL YOU LETS GO BACK TO -- WAS IT YESTERDAY? THURSDAY.

FOUR STAGES TO THIS PROCEEDING. YOU JUST COMPLETED NOW TWO. YOU HAVE NOW THE CLOSING ARGUMENTS AND THE CHARGE BEFORE YOU WILL BE INSTRUCTED TO BEGIN YOUR DELIBERATIONS -- IF WE GET TO THAT POINT.

I WOULD ANTICIPATE WE HAVE GOT SOME MATTERS TO TAKE UP THAT ARE PROBABLY GOING TO TAKE THIRTY TO FORTY-FIVE MINUTES WORTH OF MY WORK TIME TO DO BEFORE WE WOULD BE READY TO START THE THIRD PHASE OF CLOSING ARGUMENTS.

WE HAVE BEEN TALKING JUST BEFORE YOU CAME OUT TRYING TO GET FROM ME TO GET A PROJECTION OR FEEL FOR THE TIME INVOLVED HERE SO THAT YOU WOULD HAVE A FEEL FOR IT AS WELL.

I WOULD SAY THAT THE TWO PHASES TOGETHER THAT REMAIN ARE PROBABLY GOING TO TAKE ABOUT TWO AND A HALF HOURS TO THREE. SO THAT WOULD MEAN THAT IF WE STARTED ONCE WE COMPLETE -- WE FINISH THIS PART AND START AT ABOUT 5, THAT WOULD MEAN 8:00 THAT YOU WOULD -- 7:30 TO 8 SAY THAT YOU WOULD RECEIVE THE CASE TO BEGIN YOUR DELIBERATIONS.

I'M WILLING. IT'S EARLY FOR YOU. I'M WILLING TO

SO THAT WE CAN GO AHEAD AND FINISH THOSE MATTERS THAT I NEED TO DEAL WITH AND TAKE CARE OF THOSE -- IS TO LET YOU GO BACK NOW, COME BACK IN THE MORNING EARLY AND WE WILL BE PREPARED TO START INTO THOSE TWO STAGES.

THAT WOULD MEAN IF WE STARTED AT 9:00 OR THAT SUITS EVERYONE, THAT YOU WOULD -- THEN WE GOT THAT POINT YOU WOULD BE ABLE TO DO YOUR DELIBERATIONS AT 11:30 OR 12 WHICH IS THE MORNING TIME.

I KNOW YOU ARE GIVING UP YOUR TIME AND I WANT TO USE YOUR TIME EFFECTIVELY, BUT I ALSO WANT TO BE CANDID WITH YOU AND TELL YOU THAT WE ARE TALKING ABOUT WORKING TILL 7, 7:30.

THEN OF COURSE YOU WOULD BE RETIRING AND WORKING TO WHEN YOU WANTED TO STOP, ASSUMING THAT YOU NEEDED TO CONTINUE. SO, I WOULD LIKE FOR YOU, THE PRESIDING JUROR, WHEN I LET YOU GO BACK IN YOUR ROOM TO DISCUSS IT WITH YOUR JURY, YOU ALL TELL ME WHAT YOU WISH TO DO AND WE WILL START THE PROCESS. BUT IF YOU WISH TO GO AHEAD BACK, THAT'S OKAY.

BUT JUST LET ME KNOW WHICH ONE IT IS; OKAY? PLEASE DO NOT BEGIN YOUR DELIBERATIONS AT ALL. WHILE YOU MAY FEEL WELL I WON'T HEAR ANY MORE EVIDENCE -- AND YOU WOULD BE RIGHT.

NOW, I REMIND YOU THE CLOSING ARGUMENTS, WHILE THEIR REMARKS ARE NOT EVIDENCE, THEY ARE EXTREMELY HELPFUL

IN THIS PROCESS. AND I THINK YOU WILL FIND THEM HELPFUL WHEN YOU GET TO THAT POINT.

AND OBVIOUSLY YOU HAVE NOT RECEIVED THE LAW THAT YOU NEED TO HEAR AND APPLY TO THESE FACTS, SO DO NOT BEGIN TO REACH ANY CONCLUSIONS, DO NOT BEGIN YOUR DELIBERATIONS IN ANY FASHION. THANK YOU VERY MUCH, LADIES AND GENTLEMEN. YOU MAY RETIRE.

(WHEREUPON THE JURY LEFT THE COURTROOM AT 4:25 P.M.)

THE COURT: FIRST ANY OBJECTION TO THE COURT'S REMARKS TO THE JURY FROM THE STATE?

MR. KOLB: NO, SIR.

THE COURT: ANY OBJECTION FROM THE DEFENDANT?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: ALL RIGHT. ANY MOTIONS FROM THE STATE? NO?

MR. KOLB: NO, SIR.

THE COURT: THANK YOU. YES, SIR.

MR. LITTLEJOHN: YOUR HONOR, WE WOULD RENEW OUR MOTIONS UNDER RULE 19 FOR A DIRECTED VERDICT AS TO ALL THREE COUNTS.

THE COURT: AND I RESPECTFULLY DENY THOSE MOTIONS AND THE BASIS AND THE REASONS WOULD BE THE SAME AS PREVIOUSLY STATED FOR THE RECORD. ALL RIGHT. LETS -- YA'LL, I WOULD SUGGEST -- I WANT TO LETS START.

WHAT DOES THE STATE -- THE STATE HAS HANDED ME VOLUNTARY INTOXICATION. I CERTAINLY INTEND TO CHARGE THAT.

MR. KOLB: YES, SIR.

THE COURT: THAT IS AN ISSUE IN THE CHARGE THAT I THINK NEEDS TO BE CHARGED. ANYTHING ELSE?

MR. KOLB: YOUR HONOR, I'M A LITTLE CONCERNED ABOUT THE BURGLARY. IS IT JUST GOING TO BE GUILTY, NOT GUILTY OF BURGLARY AND NOT WORRY ABOUT DEGREES? I DON'T WANT THE JURY -- IN OTHER WORDS IT'S BEEN STIPULATED.

THE COURT: NO REAL DEGREE ISSUE HERE; IS IT?

MR. KOLB: THAT'S WHAT I WAS THINKING, GUILTY OR NOT GUILTY OF BURGLARY AND THE STIPULATION BASICALLY NOT GOING TO BE ARGUING ABOUT HAVING THE PISTOL OR IT BEING NIGHT TIME OR NOT, IT'S JUST WHETHER HE ENTERED WITH INTENT TO COMMIT A CRIME.

THE COURT: I THINK -- WELL, I MEAN, THEY CAN ARGUE ABOUT IT NIGHT -- THE WHOLE AS I SEE THIS YOU MEET BY THE STATUTE, ASSUMING THAT THEY CONCLUDE THAT HE HAD THE INTENT TO COMMIT A CRIME, I BELIEVE YOU COVERED JUST ABOUT EVERYONE OF THE SUB- PARTS OF THAT SECTION.

DO YOU SEE THIS CASE AS BEING ANYTHING OTHER THAN REALLY RISING INSOFAR AS BURGLARY WHAT HIS INTENT WAS? I MEAN, THE OTHER ASPECTS OF IT ARE -- I MEAN I -- I AM NOT GOING TO CHARGE -- OBVIOUSLY, I DO NOT INTEND TO GIVE AN INSTRUCTION AS TO THE -- IF THEY FIND THAT HE HAS

MULTIPLE CHARGES WHICH THE STATUTE PRESCRIBES, I DON'T INTEND TO TELL THE JURY THAT.

BUT I INTEND TO SAY THAT YOU FIND IT WAS IN THE NIGHT TIME, IT WAS ARMED WITH A WEAPON AND THOSE TYPES OF THINGS THE STATUTE...

MR. KOLB: IT JUST SEEMS TO ME LIKE SINCE THERE WAS SOME TESTIMONY ABOUT DUSK DARK OR WHETHER IT WAS ACTUALLY NIGHT TIME AND THEN THE DEFINITION OF NIGHT TIME IS WHEN IT'S TOO DARK TO DISCERN FEATURES OF A FACE, SEEMS LIKE I SHOULDN'T HAVE TO ARGUE THAT WHEN IT'S STIPULATED AT LEAST ONE OF THE AGGRAVATING CIRCUMSTANCES APPLIES.

THE COURT: WELL -- WELL, I UNDERSTAND WHAT YOU ARE SAYING. I...

MR. KOLB: I NEED TO KNOW HOW THE COURT FEELS, SO I KNOW HOW TO ARGUE.

THE COURT: WHAT'S YOUR POSITION, MR. LITTLEJOHN?

MR. LITTLEJOHN: YOUR HONOR, I DON'T SEE ANY BASIS IN THE RECORD FOR ASKING FOR A SECOND OR THIRD DEGREE.

THE COURT: IT'S NOT.

MR. LITTLEJOHN: LESSER INCLUDED. SO THEN, I MEAN THAT -- AS TO ONE.

THE COURT: I'M GOING TO CHARGE -- SINCE WE HAVE A STIPULATED AGGRAVATING CIRCUMSTANCE, THE PROBLEM IS -- IS THIS: WELL, I MEAN YOU GOT THE ONE TO -- A PERSON, IF THEY CONCLUDE -- MY PROBLEM IS THIS FROM MY STANDPOINT.

IF I GIVE IT, THE JURY DECIDES WAS IT NIGHT TIME AND THEY COME BACK SAY NO, IT WAS DUSK DARK, DOESN'T THAT -- DOESN'T THAT DEFEAT IT?

OF COURSE, THERE ARE OTHER PARTS WHERE HE'S ARMED WITH A DEADLY WEAPON WHERE SOMEBODY WAS INJURED THAT WAS NOT INVOLVED IN THE COMMISSION OF THE OFFENSE. THERE ARE A NUMBER OF OTHER FACETS THAT ARE THERE....

WE CAN HAVE A SPECIAL INTERROGATORY ATTACHED IF YOU WANT. IF YOU---.

MR. KOLB: SEEMS LIKE TO ME THEY OUGHT TO BE CHARGED BURGLARY WITHOUT A DEGREE AND JUST BE CHARGED THAT BURGLARY IS ENTERING THE DWELLING HOUSE OF ANOTHER WITHOUT CONSENT WITH INTENT TO COMMIT A CRIME THEREIN AND THAT BE THE ONLY ELEMENTS THEY ARE CHARGED.

AND IF THEY FIND GUILTY, WE JUST STIPULATE IT'S BURGLARY FIRST DEGREE. I MEAN, THAT'S WHAT I THOUGHT -- HONESTLY THAT'S WHAT I THOUGHT THE STIPULATION WAS TO START WITH.

I WANTED TO HAVE IT CLEAR. I KNEW IT WASN'T STEALING WITH THE AGGRAVATING CIRCUMSTANCES LIKE THE WEAPON, THE INJURY AND THE NIGHT TIME.

THE COURT: WHAT'S YOUR POSITION, MR. LITTLEJOHN?

MR. LITTLEJOHN: YOUR HONOR, WOULD YOU GIVE ME JUST A MOMENT, PLEASE?

THE COURT: SURE. WE WILL LOOK AT IT TOGETHER.

(WHEREUPON THERE WAS A PAUSE).

THE COURT: SAYS WHEN HE IS ARMED WITH A DEADLY WEAPON OR CAUSES PHYSICAL INJURY OR USES A -- OR THREATENS OR DISPLAYS ONE OF THOSE. PROBABLY NEED TO CHARGE THAT PART OF IT. OR NIGHT TIME. SAYS EITHER ONE OF THOSE THREE.

MR. KOLB: THAT'S MY PROBLEM IS THEY STIPULATED TO ONE OF THEM.

THE COURT: STIPULATED TO. SO -- WHICH IS ALREADY STIPULATED TO. NUMBER TWO BEING BURGLARY COMMITTED BY A PERSON WITH PRIOR RECORD OF TWO OR MORE CONVICTIONS FOR BURGLARY OR HOUSE BREAKING OR A COMBINATION.

AND YOU DON'T WANT ME TO CHARGE THEM, SO THE FIRST PART IS THE ONLY PART WE NEED TO CHARGE.

(WHEREUPON THERE WAS A PAUSE).

THE COURT: YOU GOT TWO ASPECTS WITHOUT CONSENT AND THE OTHER PART OF IT, TOO. I UNDERSTAND THAT'S A PART AS WELL.

MR. LITTLEJOHN: WE UNDERSTAND. WE THINK THE LANGUAGE OF A IS THE SUBSTANCE OF THE CHARGE.

THE COURT: ALL I REALLY NEED IS TO DEFINE THOSE TERMS AND FOCUS ON JUST THE BARRYMORE DEFINITION OF BURGLARY.

MR. KOLB: WITHOUT CONSENT WITH INTENT TO COMMIT A CRIME.

THE COURT: THAT'S CORRECT. WITH INTENT TO COMMIT A

CRIME. A DWELLING. AND I WILL DEFINE DWELLING AS THE STATUTE WHICH INCLUDES A HEN HOUSE ACROSS THE ROAD FROM SOMEONE'S PRESENCE.

MR. KOLB: YES, SIR. JUDGE, ONE OTHER MATTER. ONCE YOU MAKE THAT CLEAR A PORCH IS A DWELLING HOUSE, BUT SINCE IT'S A JURY ISSUE, I BELIEVE WE SHOULD CHARGE ATTEMPTED BURGLARY ALSO.

THE COURT: BECAUSE MY CHARGE SAYS IT DOESN'T MATTER WHETHER HE COMPLETES IT.

MR. KOLB: ALL RIGHT, SIR.

THE COURT: I MEAN, THE ENTERING OCCURRED -- UNDER YOUR -- UNDER THE LAW, IF HE WENT ON THAT PORCH WITH THE INTENT TO COMMIT A FELONY WITHOUT THE CONSENT, IT'S DONE.

MR. KOLB: ALL RIGHT, SIR. GUILTY OR NOT GUILTY.

THE COURT: I MEAN HE'S THERE AS I READ THE CASES.

MR. LITTLEJOHN: YOUR HONOR, WE HAVE SOME CASES AND WE WOULD LIKE TO PRESENT THEM TO THE COURT.

THE COURT: YOU HAVE THE ONE ABOUT THE PORCH AND THE PIAZZA?

MR. LITTLEJOHN: YES, SIR.

THE COURT: I FIGURED YOU HAD THAT. I READ THE PORCH AND PIAZZA, TOO. PORCH AND PIAZZA IS AN OPEN PORCH, CLEARLY THIS ISN'T A PIAZZA AND CLEARLY THIS IS A PLACE THAT IS WALLED, IT HAS A DOOR.

IT HAS -- YOU BROUGHT OUT THE FACT AND I

UNDERSTAND THE REASONS FOR THAT -- THAT WE ARE TALKING ABOUT A ROOM IN ESSENSE WITH A DOOR, AN ENTRANCE DOOR.

I CAN'T CONCEDE IF A HEN HOUSE ACROSS THE ROAD CONSTITUTES AS A PART OF A DWELLING, I CAN'T SEE HOW THIS IS NOT PERTINENT, AN ATTACHMENT.

I WILL BE HAPPY TO HEAR YOU, BUT I READ SO MANY CASES ABOUT BURGLARY LAST NIGHT TILL IT WAS COMING OUT -- SO -- BUT, I MAY NOT HAVE READ ALL OF THEM, BUT I KNOW ABOUT THE PORCH AND PIAZZA.

MR. LITTLEJOHN: I DIDN'T KNOW ABOUT THE HEN HOUSE.

THE COURT: THE HEN HOUSE IS AN INTERESTING ONE. YOU OUGHT TO READ THAT ONE. IT'S ACROSS A HIGHWAY ON THE OTHER SIDE. I DON'T KNOW WHO DWELLS IN A HEN HOUSE, BUT THAT'S PART OF A DWELLING.

MR. KOLB: JUDGE---.

THE COURT: IT'S A LITTLE BIT OLDER THAN YOUR PIAZZA. I THINK THE PIAZZA IS WHAT 1907 OR...

MR. LITTLEJOHN: FAIRLY RECENT CASE, YOUR HONOR.

THE COURT: WELL, A HEN HOUSE WAS 1895, SO YOURS IS A LITTLE BIT NEWER THAN MY HEN HOUSE.

MR. LITTLEJOHN: THE CHICKENS MORE THAN THEY DO---.

THE COURT: I WON'T TOUCH THAT.

MR. KOLB: YOUR HONOR, ONE OTHER MATTER THAT I HAVE. I HANDED THE COURT AND THE DEFENSE SOME CASES ON THIS. AND THERE'S A LINE OF CASES IN THIS STATE TO MY KNOWLEDGE.

THE MOST RECENT ONE WAS BY THE STATE SUPREME COURT NOVEMBER 4TH, 96, STATE VERSUS TUCKER WHICH WAS AFFIRMING A DEATH PENALTY CASE.

AND I HAVE NOT GIVEN THAT ONE TO YOU AND I PLAN TO MAKE A COPY AND GIVE THAT ALSO. BUT HOLDS THAT THE LAW OF ACCIDENT AND ALSO THE LAW OF INVOLUNTARY MANSLAUGHTER DO NOT APPLY WHERE A DEFENDANT IS NOT ACTING LAWFULLY.

THE COURT: WELL, LETS -- WE AREN'T THERE YET. I THINK THAT'S MORE OF A RESPONSE WHEN THEY REQUEST IT. SO HOLD OFF ON THAT.

MR. KOLB: OKAY.

THE COURT: I'VE BEEN READING THAT ONE, TOO. ALSO YOU GOT -- YOU GOT YOUNG IN THERE. THAT WAS JUST RECENTLY AFFIRMED WHERE THEY WERE ASKING FOR THAT ONE, TOO.

(WHEREUPON THERE WAS A PAUSE).

THE COURT: ANY OTHER PARTS FROM THE STATE?

MR. KOLB: NO, SIR.

THE COURT: OKAY. MR. BABB?

MR. BABB: WE ASK BOTH OF THOSE CHARGES TO BE INCLUDED, YOUR HONOR.

THE COURT: ACCIDENT?

MR. BABB: ACCIDENT AND...

THE COURT: INVOLUNTARY.

MR. BABB: INVOLUNTARY, YEP.

THE COURT: OKAY. I'M GLAD THEY ASKED THIS QUESTION

BECAUSE I'VE REALLY BEEN WORRIED ABOUT TOMORROW FOR A LOT OF REASONS. STARTLING DELIBERATIONS AT NOON.

AND THE PRESIDING JUROR HAS SENT -- THIS WILL BE COURT'S EXHIBIT 7 I THINK. COURT'S EXHIBIT 7. YOUR HONOR, THE JURY WOULD LIKE TO LISTEN TO THE CLOSING ARGUMENTS TOMORROW MORNING.

NEXT, WHEN WE START OUR DELIERATIONS MUST BE CONTINUE UNINTERRUPTED UNTIL WE REACH A VERDICT? NOW, I INTEND TO ADDRESS THAT. AND I'M -- SINCE HE HAS ASKED THE QUESTION BECAUSE IT CONCERNED ME. SOME HAD BEEN WANTING TO KNOW WHETHER OR NOT THEY COULD WATCH THE SUPER BOWL TOMORROW.

AND I THOUGHT LORD FORBID THAT WE START THIS CASE BEING DELIBERATED AND THE JURY IS THINKING FOR WHATEVER REASON WE NEED TO HURRY UP AND GET THIS CASE RESOLVED. SO I'M GOING TO ADDRESS THAT AND ADVISE THEM THEY ARE SEQUESTERED, THEY CAN STOP AT ANY POINT THEY WANT TO, GO BACK AND TELL US WHAT TIME TO RETURN.

SO ANY OBJECTION TO MY ADVISING THE JURY OF THAT? RESPONSE TO THAT? ANY OBJECTION FROM THE DEFENDANT?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: THANK YOU VERY MUCH. YOU CAN BRING THEM IN. I WILL ADDRESS THAT QUESTION. THANK YOU.

(COURT'S EXHIBIT NO. 7 MARKED FOR

IDENTIFICATION).

(WHEREUPON THE JURY ENTERED THE COURTROOM).

THE COURT: THANK YOU, LADIES AND GENTLEMEN. PRESIDING JUROR, THANK YOU VERY MUCH. I UNDERSTAND WE WILL LET YA'LL GO AHEAD TO SUPPER AND WE WILL START BACK ABOUT 7:00. THAT'S WHAT YA'LL INDICATED YOU WANTED TO DO; WASN'T IT?

THANK YOU VERY MUCH. I APPRECIATE THAT. WE WILL ABIDE BY THAT. WE WILL START AT 9:00 IN THE MORNING AND I-- WE WILL ALL BE FRESH AND I THINK IT WOULD BE -- THAT'S A GOOD IDEA AND I APPRECIATE YA'LLS DECISION AND I CONCUR WITH YOUR DECISION.

WITH RESPECT TO THE SECOND QUESTION ABOUT MUST YOUR DELIBERATIONS CONTINUE UNTIL YOU REACH A VERDICT, I APPRECIATE YOU ASKING ME THAT QUESTION.

THE ANSWER TO THAT IS SINCE YOU ARE SEQUESTERED, NO. YOU MAY BREAK FOR DELIBERATIONS AT ANY POINT YOU WISH, ADVISE US THAT YOU WISH TO RETURN TO REST OR WHATEVER REASON. I WILL GIVE YOU SOME LIMITED INSTRUCTION OF COURSE THAT YOU CAN'T CONTINUE TO DISCUSS IT OR -- AND THAT WOULD HAVE TO BE STRICTLY FOLLOWED.

BUT OTHER THAN THAT, YOU ARE FREE TO STOP AND RECESS YOUR DELIBERATIONS IF YOU NEED TO. SO THAT'S UP TO YOU. YOU ALL SET YOUR PACE WITH RESPECT TO DELIBERATIONS AND WE WILL BE CERTAINLY AVAILABLE TO EXTEND. IF YOU NEED

US FOR ANYTHING, YOU CALL AND WE WILL BE HERE FOR YOU.

BUT IT WILL -- CONTROL WILL SHIFT FROM MY RUNNING AND THEN IT BECOMES ALL OF -- IT'S YOUR CALL AS TO HOW LONG YOU WISH TO WORK. OKAY? THANK YOU VERY MUCH.

LADIES AND GENTLEMEN, I APPRECIATE IT AND I KNOW TODAY HAS BEEN MUCH OF YOUR GOING BACK AND I ASSURE YOU AS WE TALK THAT'S PART OF THIS PROCESS. MUST WORK IN THIS -- WORKING THROUGH THIS DISPUTE AND RESOLVING THIS MATTER AND I APPRECIATE YOUR WORKING WITH THE COURT IN THAT REGARD.

I WILL LET YOU GO HOME. HAVE A GOOD EVENING. PLEASE DO NOT DISCUSS THE CASE AMONG YOURSELVES. OF COURSE DO NOT BEGIN YOUR DELIBERATIONS THIS EVENING. SEE YOU IN THE MORNING. THANK YOU.

(WHEREUPON THE JURY LEFT THE COURTROOM AT 4:42 P.M.).

THE COURT: ANY OBJECTION FROM THE STATE?

MR. KOLB: NO, SIR.

THE COURT: ANY OBJECTION FROM THE DEFENDANT?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: ALL RIGHT. NOW, LETS -- WE WERE BACK AT THE CHARGE. WE CAN DO THIS -- WE CAN DO THIS IN CHAMBERS AND TALK ABOUT THAT.

I DON'T THINK WE NEED TO -- THE COURT REPORTER HAS BEEN DILIGENT -- ON THE RECORD I WANT THIS -- AND THIS WILL GIVE HER AN OPPORTUNITY TO TAKE A BREAK, TOO. WE CAN

TALK ABOUT IT AND JUST PUT IT ON IN THE MORNING IF SHE'S WILLING TO COME ABOUT 8:45. THANK YOU.

WE WILL BE AT EASE. IF I COULD SEE YA'LL, WE CAN TALK ABOUT A COUPLE OF THINGS.

(WHEREUPON THIS CASE WAS IN RECESS FOR THE EVENING)

JANUARY 26, 1997.

THE COURT: ALL RIGHT. LET THE RECORD REFLECT THAT MR. STONE IS PRESENT. WE HAD A INFORMAL CONFERENCE IN CHAMBERS YESTERDAY AFTERNOON CONCERNING THE CHARGE.

I BELIEVE WHEN WE LEFT THERE WERE TWO ISSUES THAT I WAS GOING TO INDICATE TO YOU THIS MORNING MY INTENTION. AND I BELIEVE AND JUST -- IT'S MY UNDERSTANDING BECAUSE I HAVE BEEN PRESENTED -- YOU HAVE THE FORMAL REQUEST FROM THE DEFENDANT? THERE ARE SEVEN IN NUMBER?

MR. KOLB: YES, SIR.

THE COURT: ALL RIGHT. THAT WILL BECOME COLLECT -- THEY ARE NOW COLLECTIVELY COURT'S EXHIBIT NUMBER 7. I WILL DEAL WITH THEM ONE AT A TIME. BUT I NOTE THAT IN THE SEVEN THEY ARE NOT REQUESTING ACCIDENT; IS THAT CORRECT?

MR. BABB: THAT IS CORRECT, YOUR HONOR.

THE COURT: VERY WELL. ALL RIGHT. LETS DISCUSS INVOLUNTARY MANSLAUGHTER. BECAUSE THE REQUEST -- THE REQUEST PERTAINING TO BASICALLY INVOLUNTARY MANSLAUGHTER AND THE CIRCUMSTANTIAL EVIDENCE WHICH I WILL -- ARE

SEPARATE, SIX AND SEVEN DEAL WITH CIRCUMSTANTIAL EVIDENCE AS I UNDERSTAND; IS THAT CORRECT?

MR. BABB: YES, SIR.

THE COURT: ALL RIGHT. THE REST OF THEM, ONE THROUGH FIVE ARE CHARGES THAT ARE IN SOME WAY CONNECTED TO THE CHARGE OF INVOLUNTARY MANSLAUGHTER. WHAT'S THE STATE'S POSITION NOW REGARDING INVOLUNTARY MANSLAUGHTER?

MR. KOLB: YOUR HONOR, WE DON'T BELIEVE THEY ARE ENTITLED TO A CHARGE ON INVOLUNTARY MANSLAUGHTER.

THE COURT: ALL RIGHT. THANK YOU, SIR. CLEARLY INVOLUNTARY MANSLAUGHTER IS THE UNINTENTIONAL KILLING WHEN A PERSON IS EITHER DOING ONE AN UNLAWFUL ACT AND THERE ARE CERTAIN RESTRICTIONS -- OR A LAWFUL ACT -- AND HE DOES IT RECKLESSLY.

WELL, CLEARLY POSSESSING A FIREARM WHICH IS CLEARLY IN -- NO QUESTION ABOUT THAT FACT -- ON THE PROPERTY OF SOMEONE ELSE IS AN UNLAWFUL ACT. DOES NOT AMOUNT -- DOES NOT RISE TO A FELONY.

BUT CLEARLY POSSESSING IT AND POINTING IT ARE BOTH UNLAWFUL ACTS UNDER OUR LAW. BUT NEITHER OF WHICH ARE FELONIES. SO THE SECOND PART OF DOING A LAWFUL ACT RECKLESSLY, THAT GOES BECAUSE HE'S NOT DOING A LAWFUL ACT.

NOT CHARGE THAT PART OF IT BECAUSE THAT WOULD JUST BE -- THAT WOULD NOT APPLY TO THE FACTS IN THIS CASE BECAUSE THERE IS NO WAY YOU COULD CONCLUDE HE WAS DOING A

LAWFUL ACT. HE CAN'T HAVE A GUN.

I MEAN, THAT'S A VIOLATION OF THE LAW JUST POSSESSING IT. IF I WALK ON YOUR PROPERTY WITH A FIREARM, THAT'S A VIOLATION OF THE LAW.

SO THE OTHER PART OF THAT IS -- AND THIS IS THE PART I GUESS GIVES THE COURT SOME CONCERN AND I WANT TO HEAR YOU ON IT, LOOK THROUGH MY CHARGE AS IT IS NOW SO THAT WE CAN DEAL SPECIFICALLY -- IS BASICALLY THAT PART THAT TALKS ABOUT THAT IT'S AN UNLAWFUL ACT NOT AMOUNTING TO A FELONY, BUT -- AND NOT LIKELY OR NATURALLY CAN BE TO ENDANGER LIFE.

TELL ME HOW THE PERSON -- THE RECORD NOW -- IS AN INDIVIDUAL WHO IS TO SOME DEGREE IMPAIRED, QUESTION OF DEGREE BECAUSE THERE'S TESTIMONY THAT HE WASN'T UNDER THE INFLUENCE AND THERE'S CERTAINLY EVIDENCE WHICH THE JURY COULD INFER THAT HE WAS.

HAVING A LOADED FIREARM IN HIS HAND, HOW THAT IS NOT NATURALLY TENDING TO ENDANGER SOMEONE'S LIFE.

MR. BABB: ALL RIGHT, SIR.

THE COURT: BECAUSE TO ME EVERYTHING ELSE WOULD -- IN OTHER WORDS, I AGREE WITH YOU THAT IF THE FACTS MAKE OUT AN UNLAWFUL ACT NOT AMOUNTING TO A -- NOT AMOUNTING TO A FELONY AND THE UNINTENTIONAL SHOOTING. I AGREE WITH THAT PART OF IT. GIVES ME SOME CONCERN.

MR. BABB: WELL, SIR, OVER THE EVENING HOURS I MAY

HAVE DIFFERENT INTERPRETATION ALTOGETHER I WOULD LIKE TO PRESENT.

THE COURT: ALL RIGHT.

MR. BABB: I UNDERSTAND THE CASES THE COURT IS RELYING ON SUCH AS THE SMITH CASE AND THE COBB CASE, THE DOZIER CASE. NOW, THE GENESIS OF THAT LINE OF CASES IS STATE V BARNETT WHICH IS A 1951 CASE. IN THREE DAYS (SIC) THE INVOLUNTARY MANSLAUGHTER STATUTE.

SO WE HAVE A STATUTE 16350 THAT PROVIDES A PENALTY FOR MANSLAUGHTER AND DEFINED IT IN THIS TERMS -- OF THE UNLAWFUL KILLING OF ANOTHER WITHOUT MALICE.

16360 DEFINES CRIMINAL NEGLIGENCE ASPECT OF IT. AND IT DEFINES INVOLUNTARY MANSLAUGHTER. TO CONVICT UPON IT IT MUST BE A SHOWING OF CRIMINAL NEGLIGENCE.

THAT IS DEFINED AS THE RECKLESS DISREGARD OF THE SAFETY OF OTHERS. SO WE HAVE THE ELEMENTS PRESENTED BY THE STATUTE, THESE STATUTES ARE OF COURSE PENAL IN NATURE. MUST BE STRICTLY CONSTRUED.

TO GO INTO THE ISSUE OF WHETHER SOME OTHER CRIME MAY BE COMMITTED IS ADDED TO THAT STATUTE. IT IS CHANGING THE STATUTE. IT IS EXPANDING THE STATUTE.

SINCE THAT IS OUR POSITION ON THAT, WHILE THE JURY WOULD CERTAINLY BE ENTITLED TO CONSIDER FACTS AND CIRCUMSTANCES, TO CONSIDER WHAT THEY HAVE DETERMINED WITH REGARD TO WHETHER THE STATE HAS MET IT'S BURDEN FOR

ESTABLISHING A BURGLARY, BUT TO TELL THEM EITHER IN A CHARGE OR TO A VERDICT FORM THAT THEY CANNOT CONSIDER IT INVOLUNTARY MANSLAUGHTER, SHOULD THEY FIND THE DEFENDANT GUILTY OF BURGLARY, INVADES THE PROVINCE OF THE JURY IN DECIDING THE FACTS.

AND IT CHANGES THE STATUTE BY EXPANDING IT IN A WAY, YOUR HONOR, THAT WE BELIEVE WOULD BE A DENIAL OF DUE PROCESS.

THE COURT: ALL RIGHT, SIR. THE COURT WILL CHARGE LESSER INCLUDED OFFENSE OF INVOLUNTARY MANSLAUGHTER BECAUSE I DO NOT BELIEVE AS A MATTER OF LAW I CAN CONCLUDE OR DETERMINE THAT CONDUCT WHICH IS NATURALLY TENDING TO CAUSE DEATH OR GREAT BODILY HARM.

SOMEONE COULD TECHNICALLY BE FIRED -- A GUN GO OFF AND IT NOT NECESSARILY CAUSE GREAT BODILY HARM. AND THE JURY COULD MAKE THAT CONCLUSION. I BELIEVE THAT WOULD BE A POSSIBLE AND REASONABLE INFERENCE TO BE DRAWN.

FOR THAT REASON I WILL CHARGE IT, HOWEVER I BELIEVE THAT THE INVOLUNTARY MANSLAUGHTER IS NOW CLEARLY DEFINED IN OUR LAW, CLEARLY DEFINED IN OUR -- INSTRUCT THE LAW AS IT APPEARS IN THE STATE VERSUS TUCKER CASE AND OTHER CASES AND I WILL ONLY CHARGE IN DEFINING IT.

I WILL NOT CHARGE DOING A LAWFUL ACT. I WILL CHARGE AN UNLAWFUL ACT NOT AMOUNTING TO A FELONY AND THEN OF COURSE I WILL EXPLAIN AND GIVE THE DEFINITION OF

CRIMINAL NEGLIGENCE.

I WILL CHARGE THE CAUSATION. SO LETS LOOK AT YOUR REQUEST TO CHARGE, IT HAVING DEALT WITH THAT CHARGE. YOUR REQUEST NUMBER ONE WILL BE COVERED IN MY GENERAL CHARGE. AND I UNDERSTAND THE STATE'S POSITION.

WHAT'S THE STATE'S POSITION NOW THAT I HAVE RULED ON THE CHARGING OF THE LESSER INCLUDED OFFENSE OF INVOLUNTARY MANSLAUGHTER? WHAT'S YOUR -- DO YOU HAVE ANY OBJECTION TO NUMBER TWO?

MR. KOLB: JUDGE, THEY CITE TUCKER. YOU SAY YOU CHARGING THE DEFINITION FROM TUCKER, I FEEL MORE COMFORTABLE WITH THE CHARGE YOU ALREADY THOUGHT OUT AND I THINK IT COVERS THIS.

THE COURT: WELL, I WILL CHECK IT. IF IT DOES NOT INCLUDE THIS, I WILL INCLUDE PORTIONS OF NUMBER TWO. IT WILL EITHER BE GIVEN OR COVERED. ONE OR THE OTHER.

MR. BABB: YES, SIR.

THE COURT: I THINK NUMBER THREE IS REALLY MORE OR LESS REPETITIOUS AND A DUPLICATION OF TWO. I DON'T THINK WE NEED TO GIVE THEM BOTH. I THINK IT'S COVERED IN MY CHARGE SUFFICIENTLY.

I WILL -- NUMBER FOUR IS COVERED, APPROXIMATE CAUSE, CAUSATION AND I WILL USE -- BUT FOR IN DEFINING APPROXIMATE CAUSE, THE DIRECT CAUSE, THE CAUSE WITHOUT WHICH IT WOULD NOT HAVE OCCURRED BUT FOR THIS ACTION.

I WILL INCLUDE THAT LANGUAGE. IT'S TYPICALLY GIVEN IN DEFINING APPROXIMATE CAUSE. SO THOSE -- THAT WILL BE COVERED AS WELL. I WILL GIVE CIRCUMSTANTIAL EVIDENCE CHARGE.

IT WILL -- YOUR BOTH SIX AND SEVEN I BELIEVE WILL BE COVERED. SO CHECK IT AND SEE. I AM ALMOST POSITIVE THIS APPEARS TO BE VERY SIMILAR TO THE COURT'S GENERAL CHARGE. OKAY?

MR. BABB: YES, SIR. DOES THE COURT WISH ME TO PRESENT THESE TO OUR REPORTER SO SHE CAN MARK THEM?

THE COURT: I CAN OR I WILL SIMPLY HAND HER MINE. IF YOU'VE GOT AN EXTRA COPY, THAT WOULD BE GOOD.

MR. BABB: I REALLY HAVE HIS COPIES.

THE COURT: THAT'S FINE. I WILL GIVE MINE WHEN I AM FINISHED WITH THEM.

MR. KOLB: JUDGE, OF COURSE, THE MOUZON TYPE OF LANGUAGE FROM THE PART OF YOUR CHARGE ON MALICE, MALICE AND INTENT.

THE COURT: WITH RESPECT TO MY CHARGE ON MALICE IS DEPRAVED SPIRIT, DEVOID OF SOCIETY, THAT TYPE OF LANGUAGE.

MR. KOLB: JUDGE, HOW ARE YOU GOING TO DISTINGUISH FOR THEM THAT IF THEY CONCLUDE HE WAS ENGAGED IN THE COMMISSION OF A FELONY BEING BURGLARY THEN INVOLUNTARY MANSLAUGHTER IS NOT?

THE COURT: I'M GOING TO EXPLAIN TO THEM THAT PART.

I'M GOING TO IN EXPLAINING THE VERDICT FORM, TELL THEM JUST STRAIGHT UP THAT BURGLARY IS A FELONY AND REMIND THEM OF MY CHARGE.

NOT GOING TO DO IT IN A GENERAL CHARGE. I AM NOT GOING TO STOP AT THAT POINT. I'M GOING TO EXPLAIN THESE LAWS. THEN WHEN I SIT DOWN AND EXPLAIN THE VERDICT FORM MY INTENTION IS -- BECAUSE WE ARE GOING TO LIST IT BURGLARY FIRST.

AND I AM GOING TO TELL THEM LADIES AND GENTLEMEN CONSISTENT WITH MY CHARGE, IF YOU CONCLUDE -- IF IT'S YOUR DECISION THAT HE IS GUILTY OF BURGLARY, THEN YOU MAY NOT CONSIDER THE LESSER INCLUDED OFFENSE OF INVOLUNTARY MANSLAUGHTER. OKAY?

MR. BABB: AND YOUR HONOR, JUST SO THAT THE RECORD IS PERFECTLY CLEAR, WE RESPECTFULLY TAKE ISSUE AND WOULD OBJECT TO THE INCLUSION IN THE INVOLUNTARY CHARGE OF THE UNLAWFUL ACT FOR...

THE COURT: YOU OBJECT TO MY CHARGING THE DEFINITION? BECAUSE THAT'S THE DEFINITION OF THE LAW. I MEAN, THAT'S THE LAW.

MR. BABB: ALL RIGHT. SO MY BASIS IS THE ARGUMENT THAT I PRESENTED TO THE COURT WITH REGARD TO INCLUDE THAT THIS IS GOING BEYOND THE STATUTORY DEFINITION.

THE COURT: THAT'S THE LAW AS DEFINED IN THIS STATE. IT'S EITHER -- DOING OF A LAWFUL ACT. AND HOW CAN I

CHARGE A LAWFUL ACT IN THIS CIRCUMSTANCE?

MR. BABB: NO, SIR. I'M SAYING THE INCLUSION OF AN UNLAWFUL ACT AS IS DONE IN TUCKER AS TO THE ELEMENT THAT I WAS ALREADY AGAINST.

THE COURT: WELL, THE SUPREME COURT HAS ALREADY SIGNED OFF ON THAT; HAVEN'T THEY? BY RECOGNIZING THAT THAT WAS PROPER.

MR. BABB: YOUR HONOR, I HAVE LOOKED AT THOSE CASES. I DON'T THINK THE ISSUE...

THE COURT: HAS BEEN RAISED.

MR. BABB: THAT I HAVE PRESENTED TO THE COURT OR ATTEMPTED TO HAS BEEN RAISED.

THE COURT: THAT'S FINE. YOU NEED TO RENEW THAT, OF COURSE, AT THE CONCLUSION OF THE CHARGE. THANK YOU, SIR.

MR. BABB: YOUR HONOR, JUST A COUPLE OF OTHER...

THE COURT: SURE.

MR. BABB: QUICK POINTS. WE WOULD REQUEST A KING CHARGE.

THE COURT: I WILL CHARGE A KING CHARGE.

MR. BABB: COVERED CIRCUMSTANTIAL. THERE HAS BEEN SOME TESTIMONY THAT'S PRESENTED THAT'S BEEN OVERRULED, BUT THE JURY HAS HEARD THAT.

SO WE JUST ASK FOR THE SHORT INCLUSION OF SOME CURATIVE CHARGE THAT THEY ARE JUST TO CONSIDER WHAT'S BEEN PRESENTED AND DISREGARD ANYTHING...

THE COURT: I WILL REMIND THEM. I BELIEVE I HAVE -- THAT WAS ONE OF THE THINGS AND THAT'S WHY I SAID AT THE START, THAT'S WHY I INCLUDE THAT.

MR. BABB: YES, SIR.

THE COURT: THAT THEY SHOULD NOT -- THAT'S FOR ME TO CONSIDER. AND SO I HAVE ALREADY GIVEN THAT AND TOLD THEM THAT THEY ARE TO FIND THIS ON THE EVIDENCE, BUT I WILL REMIND THEM THE OBJECTIONS AND ANY LANGUAGE THAT'S BEEN EXCLUDED THEY ARE NOT TO CONSIDER.

MR. BABB: YES, SIR. AND THE DEFENDANT'S RIGHT NOT TO TESTIFY.

THE COURT: THAT WILL BE COVERED IN MY GENERAL CHARGE.

MR. BABB: THEY'RE TO DETERMINE THE VOLUNTARINESS OF THE STATEMENT....

THE COURT: THAT'S IN MY GENERAL CHARGE. EXPERT WITNESS IS IN MY GENERAL CHARGE.

MR. BABB: PRESUMPTION OF INNOCENSE. JUST TRYING TO INSURE THAT I HAVE DONE MY JOB.

THE COURT: I UNDERSTAND. I WILL TELL YOU -- THE ORDER OF THE CHARGE -- THE GENERAL STATEMENT WHICH WILL PROBABLY INCLUDE THE STATEMENT ABOUT THE EVIDENCE.

THE NEXT PART OF THE ARGUMENT IS PRESUMPTION OF INNOCENSE. THEN I DEFINE REASONABLE DOUBT, THE INCLUSION IN THERE THAT YOUR REMARKS -- REMIND THEM THEY ARE NOT

EVIDENCE.

TALK ABOUT CREDIBILITY, BELIEVABILITY. WE TALK ABOUT CIRCUMSTANTIAL EVIDENCE, DIRECT EVIDENCE, EXPERT TESTIMONY, VOLUNTARINESS, I'M THE JUDGE OF THE LAW AND THEY MUST FOLLOW THE LAW AS I GIVE IT TO THEM.

THEN I DEFINE FOR THEM THE VARIOUS CHARGES, BURGLARY, MURDER, LESSER INCLUDED OFFENSE OF INVOLUNTARY MANSLAUGHTER, POSSESSION OF A FIREARM WHILE IN THE COMMISSION OF A VIOLENT CRIME.

THEN I WILL CHARGE A GENERAL CHARGE ON INTENT BEING AN ELEMENT THAT MUST BE ESTABLISHED BEYOND A REASONABLE DOUBT.

AND THEN MY GENERAL CONCLUSION WHERE I DISCUSS WITH THEM THEIR RESPONSIBILITIES AS A JUROR. SO THAT'S IN A NUT SHELL AN OUTLINE OF MY CHARGE AND ANY OTHER PARTS THAT YOU THINK I NEED TO INCLUDE.

MR. BABB: I BELIEVE THAT COVERS IT, YOUR HONOR.

THE COURT: VERY WELL. ALL RIGHT. ANYTHING ELSE FROM THE STATE?

MR. KOLB: NOTHING.

THE COURT: VERY WELL. LETS BRING THE JURY IN.

(WHEREUPON THE JURY ENTERED THE COURTROOM AT 9:22 A.M.).

THE COURT: THANK YOU, LADIES AND GENTLEMEN. GOOD MORNING. NICE AND COOL THIS MORNING. FRESH. AND I HOPE

YOU ALL HAD A RESTFUL EVENING.

WE ARE READY TO START NOW THE THIRD PHASE OF THIS TRIAL AND THAT OF COURSE IS WHEN THE ATTORNEYS HAVE ANOTHER OPPORTUNITY TO SPEAK TO YOU. PLEASE GIVE THEM YOUR ATTENTION. I KNOW THAT YOU WILL.

THEIR REMARKS ARE VERY HELPFUL, NOT A LITTLE, BUT VERY HELPFUL IN THIS PROCESS. LET ME TELL YOU WHAT OUR PLAN PROBABLY WILL BE TODAY SO THAT YOU WILL KNOW THAT YOU WILL HAVE A BREAK, NOT WORRY ABOUT THAT.

WE WILL HAVE THE ARGUMENT BY THE STATE. WILL PROBABLY TAKE A BREAK. THEN WE WILL HAVE THE ARGUMENT BY THE DEFENDANT, WE WILL TAKE A BREAK AT THE CONCLUSION OF THAT AND THEN I WILL GIVE YOU THE CHARGE.

SO THERE WILL BE BUILT IN BREAKS ALONG THE WAY. ALSO FOR THOSE OF YOU IN THE AUDIENCE, IF YOU NEED TO LEAVE OR YOU HAVE A REASON AT THIS POINT, I NEED FOR YOU TO GO AHEAD BECAUSE ONCE THE STATE BEGINS HIS ARGUMENT I AM NOT GOING TO ALLOW ANYONE TO LEAVE OR ENTER AND AT THE BREAK POINT ALLOW THAT TO BE ACCOMPLISHED.

DOES ANYONE NEED TO LEAVE AT THIS POINT? OKAY. THANK YOU VERY MUCH. ALL RIGHT, LADIES AND GENTLEMEN. THANK YOU AGAIN. AND PLEASE NOW GIVE YOUR ATTENTION TO THE SOLICITOR. MR. SOLICITOR?

MR. KOLB: THANK YOU, YOUR HONOR.

THE COURT: YES, SIR.

CLOSING STATEMENT BY MR. KOLB.

LADIES AND GENTLEMEN, I WANT TO THANK YOU FOR GIVING YOUR ATTENTION TO THE FACTS IN THIS CASE AND I KNOW ALL OF YOU PAID VERY CLOSE ATTENTION TO WHAT'S BEEN GOING ON.

OF COURSE AS YOU KNOW THIS IS A VERY IMPORTANT CASE. IT'S AN IMPORTANT CASE TO MRS. GRIFFITH, AN IMPORTANT CASE TO THE KUBALA FAMILY. IT'S AN IMPORTANT CASE FOR CITIZENS OF SUMTER AND THE STATE OF SOUTH CAROLINA.

OF COURSE IT'S AN IMPORTANT CASE FOR BOBBY STONE. IT'S AN IMPORTANT CASE FOR YOU AS I'M SURE YOU TAKE YOUR DUTIES VERY SERIOUSLY AS JURORS IN THIS CASE TO FIND THE TRUTH AND REACH A TRUE VERDICT AND A JUST VERDICT.

ONE THING IS AS YOU NOTICE I'M GOING FIRST AND I AM NOT GOING TO HAVE A CHANCE TO RESPOND TO ANYTHING THE DEFENSE MAY SAY. NONE OF OUR WITNESSES THAT WERE CALLED TO THE STAND AND QUESTIONED IN DETAIL HAVE AN OPPORTUNITY TO RESPOND TO ANYTHING.

AND AS YOU ARE WELL AWARE, THE DEFENSE HAS NOTHING TO PROVE AND I'M NOT SUGGESTING THEY HAVE TO PROVE SOMETHING. THEY GET UP HERE AND SUGGEST SOMETHING OR ASK SOME QUESTION OR WHY WASN'T THIS, WHY WASN'T THAT, YOU ARE ENTITLED TO THINK TO YOURSELVES WELL WHY WASN'T THAT ASKED DURING THE COURSE OF THE STATE'S WITNESS IF THAT'S SUCH A

SERIOUS ISSUE.

I DON'T THINK ANY SUCH QUESTION WOULD BE ASKED, BUT YOU ARE ENTITLED TO THINK THAT. AND AGAIN THE DEFENSE HAS NOTHING TO PROVE. THE STATE MUST PROVE IT'S CASE AND WE ACCEPT, WILLINGLY ACCEPT THAT BURDEN IN THIS CASE TO PROVE THE DEFENDANT'S GUILT TO THESE CHARGES BEYOND A REASONABLE DOUBT.

AND I SUGGEST THAT ANY QUESTION OR ISSUE THAT MAY BE RAISED IN THE DEFENSE ARGUMENT THAT I -- OUR WITNESSES -- HAD NO OPPORTUNITY TO RESPOND TO, YOU CAN RESPOND TO IT IN YOUR OWN MINDS AND IN YOUR OWN JUDGMENT AND YOUR OWN GOOD COMMON SENSE WHICH I BELIEVE THE COURT TOLD YOU WHEN WE STARTED MONDAY THAT THAT'S WHAT THE PARTIES WANTED FROM YOU IS TO USE YOUR GOOD JUDGMENT AND YOUR GOOD COMMON SENSE.

ONE OF THE FIRST THINGS I WANT TO TALK TO YOU ABOUT IS ABOUT STATEMENTS OF THE DEFENDANT. WE ARE GOING TO HEAR ABOUT SOME OF THIS -- IS THAT FOR YOU TO CONSIDER ANY STATEMENT. YOU MUST FIND IT WAS VOLUNTARILY MADE.

AND SO THAT'S WHY ALL THE EVIDENCE WAS BROUGHT OUT BY THESE STATEMENTS THAT WERE MADE. THEY WERE FREE AND VOLUNTARY AND NO INDUCEMENT, NO THREATS, NOTHING OF THAT SORT.

THERE IS NO EVIDENCE WHATSOEVER OF ANYTHING AT ALL THAT WOULD MAKE THE STATEMENTS THAT THE DEFENDANT MADE

ANYTHING BUT FREE AND VOLUNTARY ON HIS PART.

NOW, YOU NOTICE THERE WERE A COUPLE OF TIMES WHEN PEOPLE TALKED ABOUT HOW HE BLURTED OUT SOMETHING LIKE WHEN HE WAS ARRESTED HE MADE STATEMENTS OR AS HE WAS WALKING IN THE LAW ENFORCEMENT CENTER HE MADE STATEMENTS AND OF COURSE HE MAKES STATEMENTS TO THE VICTIMS AND OTHERS.

THEY WERE ALL TALKING ABOUT STATEMENTS AND YOU CONSIDER THEM AND THE VOLUNTARY -- HAD NOTHING TO DO WITH STATEMENTS HE MAKES TO ANYTHING OTHER THAN STATE AGENTS, POLICE OFFICERS.

BUT WHEN YOU TALK ABOUT THAT, YOU HAVE TO FIND THEM VOLUNTARY BEFORE YOU CAN CONSIDER THEM. WHAT THE LAW IS TALKING ABOUT IS STATEMENTS TO POLICE OFFICERS OR IN THE PRESENCE OF POLICE OFFICERS.

BUT WHEN A DEFENDANT BLURTS OUT OR JUST SAYS SOMETHING NOT IN RESPONSE TO INTERROGATION, THERE IS NO REQUIREMENT THAT WE SHOW THAT HE'S RECEIVED HIS MIRANDA WARNING, FOR INSTANCE.

SO YOU CAN CONSIDER ANY SORT OF BLURTED OUT STATEMENTS LIKE THAT WITHOUT CONSIDERING THE PERIMETERS. THAT'S THE FREE -- LOOKS AS YOU FIND IT WAS FREE AND VOLUNTARY, WE DON'T HAVE TO SHOW THAT HE WAS ADVISED OF THE MIRANDA RIGHTS.

AND IT'S JUST -- AND SO THAT'S A DIFFERENT TYPE

OF STATEMENT IN THE PRESENCE OF LAW ENFORCEMENT OFFICERS. BUT THEN WHEN YOU MAKE A STATEMENT IN RESPONSE TO POLICE QUESTIONING OR IN RESPONSE TO WHAT'S CALLED CUSTODIAL INTERROGATION....

AND WE HAVE ALL HEARD THIS I'M SURE THROUGHOUT YOUR LIFE, THEN THE STATE IS REQUIRED TO SHOW THAT THE DEFENDANT'S ADVISED OF HIS MIRANDA RIGHTS AND THAT WAS DONE IN THIS CASE.

EVERYTHING WAS DONE IN THIS CASE PROFESSIONALLY AND HONESTLY AND PROPERLY. AND YOU, LADIES AND GENTLEMEN, WILL HAVE BEFORE YOU BESIDES THE TESTIMONY OF SLED AGENT INVESTIGATOR GALLIMORE, HAVE THIS ORIGINAL DOCUMENT.

THESE ARE THE MIRANDA RIGHTS. AND THE DEFENDANT SIGNED AND ACKNOWLEDGED RECEIPT OF THOSE RIGHTS BEFORE GIVING ANY CUSTODIAL INTERROGATION WHATSOEVER. HE BLURTED OUT STATEMENTS -- MAY TALK ABOUT AND THAT YOU REMEMBER THE HEARING WAS BEFORE THIS.

BUT THEY DON'T HAVE TO BE AFTER MIRANDA. WE TALK ABOUT BLURTED OUT TYPE THINGS, STATEMENTS ME MAKES NOT IN RESPONSE TO QUESTIONS. THE ONLY STATEMENTS HE MADE THAT WE ARE GOING TO TALK ABOUT IN RESPONSE TO POLICE QUESTIONING WERE AFTER -- UNCONTRADICTED EVIDENCE IS AFTER HE ACKNOWLEDGED SIGNED RECEIPT OF HIS MIRANDA RIGHTS, THIS FORM.

AND OF COURSE THOSE STATEMENTS ARE CLEARLY

VOLUNTARY, CLEARLY VOLUNTARY. AND, YOU KNOW, STATEMENTS I THINK THAT WHEN WE LOOK AT -- WE GO THROUGH ALL THIS TROUBLE TO SHOW YOU VOLUNTARINESS AND COMPLIANCE WITH MIRANDA AND ALL THE SURROUNDING CIRCUMSTANCES AND THAT THERE WERE NO THREATS OR INTIMIDATION, NO HOPE OF REWARD, NO PROMISE OF LENIENT TREATMENT, NONE OF THAT.

WE GO THROUGH ALL OF THAT THEN WE PRESENT A DEFENDANT'S STATEMENT. THE JURY MIGHT WOULD THINK -- AND I HOPE NOT -- HOPE -- REALIZE NOT, THAT OH, NOW THE STATE IS GOING THROUGH ALL THESE HOOPS. NOW THEY ARE GOING TO GIVE US THIS STATEMENT OF WHAT REALLY HAPPENED AND THESE ARE ACTUAL FACTS, NO.

THAT ABSOLUTELY IS NOT WHAT WE ARE DOING HERE. THE OFFICERS HAVE TO TAKE WHAT HE SAYS AS VOLUNTARY. CAN'T MAKE HIM SAY SOMETHING. WOULDN'T BE LEGAL TO DO IT. AND SO YOU HAVE TO TAKE WHAT HE SAYS AND SO WE DID ALL OF THAT TO SHOW YOU THE FREENESS AND VOLUNTARINESS AND COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS OF THE MIRANDA DECISION.

BUT THEN WE SHOWED YOU THE STATEMENT IS WHAT BOBBY WAYNE STONE SAID. THAT'S WHAT HE CLAIMS. HAPPENED THAT NIGHT. AND YOU KNOW, JUST AN EXAMPLE OF THAT IS OFFICER GALLIMORE AND LIEUTENANT HEROD, THEY KNEW ABOUT THE THREE -- THEY BEEN AT THE CRIME SCENE.

THEY KNEW ABOUT THE THREE HOLES IN THE SCREEN. THEY KNEW ABOUT THE THREE 22 SHELL CASINGS. OF COURSE,

THEY DIDN'T KNOW YET WE EVER EVEN RECOVERED A MURDER WEAPON.

THEY DIDN'T KNOW YET THAT THAT MURDER WEAPON WOULD BE MATCHED TO THE TWO BULLETS IN THE BODY OF THE POLICE OFFICER AND MATCHED CONCLUSIVELY TO THE THREE SHELL CASINGS ON THE PORCH, BUT THERE WERE THREE SHELL CASINGS AND THEY KNEW THERE WERE THREE HOLES IN THAT SCREEN.

OKAY. THEY KNEW THAT BEFORE THEY TALKED WITH BOBBY STONE. BUT WHEN BOBBY STONE GAVE HIS STATEMENT, HE SAID I WAS ON THAT PORCH AND THE GUN WENT OFF ONE TIME.

NOW, YOU THINK ABOUT THAT. IF THE POLICE ARE GOING TO LIE AND FORCE SOMEBODY TO GIVE A STATEMENT AND FALSIFY EVIDENCE, WHY DIDN'T THEY JUST WRITE UP A STATEMENT THAT SAID I SAW THE OFFICER AND I AIMED AT HIM AND I SHOT THREE TIMES WITH MY 22 PISTOL IF THEY WEREN'T GOING TO GET UP HERE AND TELL YOU THE TRUTH AND TELL YOU EXACTLY WHAT BOBBY STONE SAID.

SO THEY TOLD YOU WHAT HE SAID. AND YOU KNOW, SURE THEY'D LOVE TO PUT IN THERE THE TRUTH OF WHAT REALLY HAPPENED, THAT THIS POLICE OFFICER WAS AMBUSHED AND INTENTLY SHOT THREE TIMES.

BUT THEY HAVE TO PUT WHAT BOBBY STONE SAID BECAUSE THEY ARE HONEST PEOPLE DOING A PROFESSIONAL JOB LIKE ALL OTHER OFFICERS IN THIS CASE. AND I HOPE THAT YOU CITIZENS WERE IMPRESSED WITH THE PROFESSIONAL JOB THAT WAS

DONE BY YOUR FELLOW EMPLOYEES IN THIS CASE.

BUT YOU KNOW WHAT HAPPENED? AS BOBBY STONE GETS CAUGHT AND HE MAKES UP WHAT HE THINKS IS HIS BEST EXCUSE AND HE GIVES HIS EXCUSE, THAT'S WHAT THAT STATEMENT WAS.

IT'S NOT WHAT WE THINK HAPPENED. IT'S FULL OF LIES. JUST AS AN EXAMPLE, THAT STATEMENT HE SAYS THAT DAVE, DAVE -- STAYED IN THE WOODS WITH BOTH GUNS.

YOU WILL HAVE THE STATEMENT THERE WITH YOU. HE SAYS DAVID STAYED IN THE WOODS WITH BOTH GUNS WHILE HE WENT UP TO RUTH GRIFFITH'S HOUSE THE FIRST TIME. AND YOU -- MARY RUTH MCLEOD SAW HIM AND SHE IDENTIFIED THAT SHOTGUN.

THAT'S THE WEIRD LOOKING SHOTGUN, TOO. IN HIS HANDS WHEN HE WENT UP TO THE HOUSE. IT IS ABSOLUTELY CHOP FULL OF LIES. AS A MATTER OF FACT, THERE IS NO DAVID. IT'S FULL OF LIES. THIS WHOLE STATEMENT IS.

BUT LADIES AND GENTLEMEN, IT'S WHAT HE WANTED TO SAY. IT'S HIS EXCUSE, HIS EXPLANATION. BUT YOU KNOW, AMONG ALL THOSE LIES HE MAKES SOME VERY IMPORTANT ADMISSIONS, SO WE OBVIOUSLY DO WANT YOU TO CONSIDER THAT.

WE WANT YOU TO CONSIDER THAT STATEMENT AND WE WANT YOU TO REALIZE THAT IT WAS FREELY AND VOLUNTARILY GIVEN AFTER COMPLIANCE WITH MIRANDA. THINK ABOUT THE IMPORTANT ADMISSIONS IN THE STATEMENT BECAUSE HE ADMITS THAT HE WAS AT RUTH GRIFFITH'S HOUSE EARLIER.

HE ADMITS THAT HE WAS TOLD HE WAS NOT WANTED THERE. HE ADMITS THAT HE HAD BEEN SHOOTING THAT 22 ALL AFTERNOON AND KNEW THAT IT WAS ACCURATE. HE ADMITS THAT HE WENT BACK TO RUTH GRIFFITH'S HOUSE AND WENT ON THAT SCREEN SIDE PORCH.

HE ADMITS THAT HE HAD THE 410 SHOTGUN ON THAT SIDE OF THE PORCH. HE ADMITS THAT HE WAS BEATING ON THE DOOR AND IT BROKE. HE ADMITS HE HAD THE 22 ON THE FLOOR IN HIS RIGHT HAND.

NOW, HE DOESN'T SAY THIS, BUT HE IN ADMITTING HE HAD THAT 22 IN HIS RIGHT HAND, LADIES AND GENTLEMEN, THE INESCAPABLE FACT IS HE HAD IT IN HIS RIGHT HAND FULLY LOADED WITH THE SAFETY OFF AND WITH HIS FINGER ON THE TRIGGER AS HE ADMITS THE 22 WAS SHOT ON THE PORCH.

NOW, OF COURSE HE CLAIMS IT WAS ONLY SHOT ONCE AND THAT HE DIDN'T MEAN TO DO IT, YOU KNOW. BUT AGAIN THAT'S WHY YOU LADIES AND GENTLEMEN GET TO USE YOUR GOOD JUDGMENT AND YOUR GOOD COMMON SENSE IN DECIDING WHAT THE TRUTH IS IN THIS CASE.

HE ADMITS THAT HE RAN AWAY FROM THE SCENE AND HID IN THE WOODS FOR FOUR HOURS. HAPPENED RIGHT AFTER 7. HE'S ARRESTED RIGHT AFTER 11. FOUR HOURS IN THE WOODS AT NIGHT, FOLKS. HE ADMITS THAT.

HE ADMITS THAT HE KNEW THERE WAS A HUGE POLICE PRESENCE ALL SURROUNDING THAT AREA, ALL AROUND THE WOODS,

BUT YET HE CONTINUED HIDING.

AND HE ADMITS THAT THE 22 FOUND UNDER HIM AT THE TIME OF THE ARREST WAS HIS AND WAS THE SAME GUN THAT HE HAD ON RUTH GRIFFITH'S PORCH WHEN THE SHOT WAS FIRED, THE ONE SHOT ACCORDING TO HIM.

SO THOSE ARE IMPORTANT ADMISSIONS AND WE WILL -- I WILL TALK ABOUT THEM A LITTLE MORE AS WE GO ON. NOW, ALL OF THE THINGS THAT ARE IN THAT WRITTEN STATEMENT WERE DISCUSSED AND WHEN -- YOU HEARD THE PROCEDURE -- IN GREAT DETAIL ORALLY, ORALLY WITH THE OFFICER AND DISCUSSED IN GREAT DETAIL WITH BOTH OFFICERS AT LEAST TWICE, THE WHOLE STORY.

BUT HE TOLD IT QUICK ONE TIME. THEN THEY WENT THROUGH IT IN DETAIL TWICE AND ONLY THEN AFTER TWO HOURS OF TALKING WITH HIM, GOING OVER EVERY DETAIL TWICE, ONLY THEN DID THEY GET INTO TAKING A WRITTEN STATEMENT.

AND OF COURSE THE WRITTEN STATEMENT YOU HAVE BEFORE YOU. AND YOU UNDERSTAND THAT THIS IS A COPY AND DON'T HOLD THAT AGAINST ANYBODY. JUST THERE IS AN ORIGINAL, THE ORIGINAL SIGNATURE.

THIS IS FOR EVIDENTIARY REASONS YOU NEED TO CONSIDER THIS COPY. AND ONE THING I NEED TO MENTION. I THINK HIS HONOR WILL CHARGE YOU THAT IN REGARD TO WRITTEN STATEMENTS -- AND THIS DOESN'T APPLY TO ALL THE ORAL STATEMENTS.

ORAL STATEMENTS -- ALL WE HAVE TO CONSIDER IS WERE THEY MADE AND UNCONTRADICTED EVIDENCE IS THAT THEY WERE MADE TO BOTH OF THESE OFFICERS. AND YOU HAVE TO CONCLUDE THAT THEY WERE MADE VOLUNTARILY. IN OTHER WORDS, THAT THEY WEREN'T FORCED.

THAT'S WHAT I'VE BEEN TALKING ABOUT. IT WAS AFTER COMPLIANCE WITH THE MIRANDA AND THAT'S WHAT YOU HAVE TO CONSIDER. AND CLEARLY THAT'S THE CASE.

WITH A WRITTEN STATEMENT, THERE'S AN ADDITIONAL REQUIREMENT I BELIEVE HIS HONOR IS GOING TO TELL YOU ABOUT AND THAT IS THE DEFENDANT MUST BE GIVEN A COPY AND RECEIPT FOR IT.

AND THE LAW OF THIS STATE, THE SUPREME COURT, IS THAT THAT STATUTE IS NOT TO BE COMPLIED WITH SOME HYPOTHETICAL FASHION. THE PURPOSE OF IT IS TO PROVIDE A DEFENDANT WITH---.

MR. LITTLEJOHN: I HAVE TO OBJECT. I THINK THIS IS NOT A MATTER THAT'S BEFORE THIS -- I -- IT'S ON THE RECORD.

THE COURT: I SUSTAIN. YOU CAN MOVE ON.

MR. KOLB: IS THERE GOING TO BE A CHARGE?

THE COURT: JUST THAT HE RECEIVED A COPY OF IT.

MR. KOLB: OH, IT IS? OKAY. ALL RIGHT, SIR. I DIDN'T REALIZE THAT. OKAY.

THE COURT: THAT'S FINE. THANK YOU.

MR. KOLB: ALL RIGHT. NOT A JURY ISSUE? I THOUGHT IT WAS. I'M SORRY.

THE COURT: WHETHER OR NOT HE RECEIVED COPY IS. I'M GOING TO GIVE THAT PART OF THE CHARGE BUT NOT ANY OTHER ASPECT OF THAT STATEMENT.

MR. KOLB: OKAY. ALL RIGHT. THANKS.

(WHEREUPON MR. KOLB CONTINUED).

SO ANY WAY, THE -- UNCONTRADICTED EVIDENCE IN THE CASE OF BOTH OFFICERS IS THAT AS SOON AS IT WAS SIGNED, INITIALED EVERY PARAGRAPH, SIGNED EVERY PAGE, SIGNED THE BOTTOM OF THE PAGE, SIGNED THE BACK PAGE, SWORN BEFORE NOTARY UNDER OATH AND IMMEDIATELY COPIED AND STUCK IN HIS HANDS.

AND YOU HAVE TO CONCLUDE HE ACTUALLY RECEIVED A COPY BEFORE YOU CAN CONSIDER A WRITTEN STATEMENT. WELL, I DON'T SEE HOW YOU COULD CONCLUDE ANYTHING ELSE BUT HE DID BECAUSE TWO OFFICERS WITH NO REASON TO LIE TO YOU -- SURELY CAME ACROSS AS HONEST AND PROFESSIONAL -- TOLD YOU CLEARLY THAT HE DID.

AND BUT EVEN IF YOU DID, THAT DOESN'T MEAN YOU CAN'T CONSIDER THE ORAL TESTIMONY OF WHAT HE TOLD THE INITIAL THING THEN GOING THROUGH IN DETAIL TWICE BEFORE HE COULD EVEN GET TO THE WRITTEN STATEMENT.

ANY WAY, THAT'S THE MATTER IN REGARD TO THE STATEMENT. AND OF COURSE THIS, THIS SKETCH HERE IS ALL

PART OF THAT. AND I HAD MENTIONED -- I MENTIONED OF COURSE THAT'S HIS STORY.

WE ARE NOT SAYING THAT THAT'S WHAT THE STATE AGREES HAPPENED, BUT THERE ARE SOME IMPORTANT ADMISSIONS IN THERE THAT WE DO THINK YOU SHOULD CONSIDER.

NOW, LET ME DISCUSS ONE ADDITIONAL MATTER AND THAT'S INTOXICATION. YOU HEARD SOME EVIDENCE THAT THE DEFENDANT CLAIMED -- AGAIN THIS IS WHAT HE CLAIMED -- YOU KNOW -- YOU HAVE HEARD TALKING ABOUT EXCUSES OH, DIDN'T MEAN FOR THE GUN TO GO OFF. OH, I WAS TOO DRUNK. I WAS DRUNK, THAT'S WHY I DID IT.

THAT'S AN EXCUSE. MAYBE IT'S AN EXCUSE SOME -- UP TO PEOPLE IN THEIR NORMAL DEALINGS WITH EACH OTHER IN RELATIONS BETWEEN PEOPLE WHETHER -- YOU KNOW -- SOMEBODY SAYS SOMETHING RUDE TO YOU AND THEY SAY WELL THAT'S JUST BECAUSE I WAS DRUNK.

WHETHER YOU EXCUSE THEM OR NOT, THAT'S UP TO YOU. THAT'S A PERSONAL DECISION. BUT LADIES AND GENTLEMEN, THE SAME LAW OF THIS STATE THAT YOU SWORE YOU WOULD ACCEPT, THE SAME LAW OF THIS STATE THAT SAYS THE DEFENDANT IS PRESUMED INNOCENT AND THE STATE HAS THE BURDEN OF PROOF, THAT SAME LAW SAYS THAT VOLUNTARY INTOXICATION IS NEVER, NEVER A DEFENSE OR EXCUSE FOR THE COMMISSION OF A CRIMINAL ACT.

IT'S NOT AN EXCUSE IN THE LAW. AND YOU HAVE

HEARD SOME EVIDENCE -- WELL, HE'S SMOKED A JOINT HE CLAIMS. NO EVIDENCE TO SUPPORT THAT. THAT HE DRANK TWELVE BEERS. WELL, HE SAYS HE SPLIT THEM WITH DAVID. IF THERE WAS A DAVID.

THAT GIVING -- DRINKING SIX OVER A WHOLE AFTERNOON FROM 1:00 TO 7:00. HE CLAIMED NORMALLY HE DRINKS AT LEAST TWELVE A DAY IF NOT A CASE. SO HE IS IN CONTROL -- THE WITNESSES DID SEE HIM WITH A LITTLE BIT OF GLASSY EYED, A LITTLE STAGGERED.

BUT LADIES AND GENTLEMEN, THAT DOESN'T UNDER THE LAW OR IN FACT OR IN YOUR GOOD JUDGMENT AND COMMON SENSE I SUBMIT IN ANY WAY EXCUSE OR JUSTIFY CRIMINAL ACTS. EVEN IF HE HAD SOME DEGREE OF INTOXICATION, IT'S NO EXCUSE, NO JUSTIFICATION.

BUT YOU KNOW WHAT'S INTERESTING IS HE -- YOU KNOW -- AND I'M NOT REALLY A GUNSMAN. MAYBE YA'LL PICKED THAT UP DURING THE TRIAL. AND HOPEFULLY SOME OF YOU ARE. AND THAT'S WHY THERE ARE TWELVE, GET DIFFERENT EXPERIENCES.

AND THIS -- THESE GUNS -- THIS GUN HERE, AND YOU HAVE GOT THE MAGAZINE AND ALL OF THAT. LADIES AND GENTLEMEN, IT'S NO EASY THING TO LOAD BULLETS IN TO THAT MAGAZINE AND PUT THE MAGAZINE IN HERE AND THEN USE THIS GUN.

BUT HE SAID HE WAS SHOOTING IT ALL AFTERNOON.

AND SO HE LOADED AND RELOADED THIS GUN. HE HAD TO HAVE LOADED IT BEFORE HE WENT TO RUTH GRIFFITH'S.

NOW, YOU KNOW TECHNICALLY THEY SAID IT CAN HOLD ELEVEN, BUT PUT TEN IN A MAGAZINE. SOME OF YOU LADIES AND GENTLEMEN THAT KNOW ABOUT GUNS MIGHT KNOW THIS.

BUT THEY SAID TECHNICALLY THIS GUN CAN HOLD ELEVEN BECAUSE THE MAGAZINE HOLDS TEN. WELL, LET ME EXPLAIN TO YOU WHO DON'T KNOW ABOUT GUNS WHAT WAS EXPLAINED TO ME.

TO DO THAT, TO GET IT WITH ELEVEN, YOU GOT TO PUT TEN BULLETS IN THE MAGAZINE AND PUT THE MAGAZINE IN THE GUN. AND THEN YOU HAVE GOT TO DO SOMETHING TO CHAMBER ONE OF THE BULLETS INTO THE -- INTO THE CHAMBER OF THE GUN.

AT THAT POINT THERE IS ONLY NINE IN THE MAGAZINE, SO YOU CAN PULL THE MAGAZINE OUT IF YOU WANT TO AND PUSH ONE MORE BULLET IN THERE SO IT'S FULLY LOADED.

I'M DIGRESSING, BUT THAT'S THE SITUATION WITH CHARLIE KUBALA'S SERVICE PISTOL. IT HOLDS FIFTEEN IN A MAGAZINE. HE DID NOT SHOOT, LADIES AND GENTLEMEN. THERE'S NO QUESTION ABOUT THAT.

HIS GUN HAD SIXTEEN BULLETS IN IT. HOLDS FIFTEEN IN THE MAGAZINE. WHEN A POLICE OFFICER LOADS HIS GUN, HE WANTS IT FULLY LOADED, SO HE PUTS THE FIFTEEN IN THERE. HE CHAMBERS ONE.

AND THEN HE PULLS THE MAGAZINE OUT AND PUTS ONE MORE IN THERE SO IT IS FULLY LOADED WITH AS MANY BULLETS AS IT WILL HOLD. BUT ANY WAY, THAT'S KIND OF TECHNICAL MAYBE.

BUT THE THING IS, HE WASN'T SO DRUNK HE COULDN'T DO THAT OUT THERE SHOOTING ALL AFTERNOON. HE WASN'T SO DRUNK HE COULDN'T WALK UP TO HER HOUSE AND HE DIDN'T KNOW WHERE HE WAS GOING.

BUT EVEN IF YOU THINK HE WAS SO INTOXICATED, THERE IS NO EXCUSE. THAT'S THE BOTTOM LINE. NO EXCUSE IN THE EYES OF THE LAW. NO EXCUSE AND NO JUSTIFICATION.

NOW LADIES AND GENTLEMEN, I WANT TO TALK WITH YOU A LITTLE BIT ABOUT BURDEN. THE LAW OF THIS STATE IS THAT IT IS UNLAWFUL TO ENTER THE DWELLING HOUSE OF ANOTHER WITHOUT CONSENT WITH INTENT TO COMMIT A CRIME THEREIN.

NOW, YOU HAVE HEARD BEFORE PROBABLY SORT OF COMMON KNOWLEDGE TYPE THING IS A PERSON'S HOME IS THEIR CASTLE. HAVEN'T YOU HEARD THAT? A PERSON'S HOME IS THEIR CASTLE AND THAT'S WHAT THE BURGLARY LAW IS ALL ABOUT.

YOU GOT A RIGHT TO BE LEFT ALONE IN YOUR OWN HOME. THAT'S WHAT WE GOT POLICE FOR IS TO PROTECT THAT RIGHT. ENTER THE DWELLING HOUSE OF ANOTHER WITHOUT CONSENT WITH INTENT TO COMMIT A CRIME THEREIN.

IF THE STATE PROVED THOSE ELEMENTS RIGHT THERE, YOU MUST FIND THE DEFENDANT GUILTY OF BURGLARY. NOW --

ENTERED THE DWELLING.

I WANT TO TALK ABOUT THAT JUST A LITTLE BIT BECAUSE, YOU KNOW, SOME POLICE OFFICERS -- OBVIOUSLY I'M GOING TO TALK ABOUT THAT. BUT A LOT OF PEOPLE THINK THAT ENTER THE DWELLING MEANS ENTER THE HEATED AREA. ENTER THE HEATED AREA.

WELL, LETS STOP THERE JUST A MINUTE. EVEN IF IT MEANS ENTER THE HEATED AREA, WHEN BOBBY STONE WAS BEATING ON THAT DOOR AND BROKE IT, MRS. GRIFFITH SAID THAT THING WAS KNOCKED LOOSE, HE HIMSELF ADMITTED THAT HE BROKE IT AND HE -- WHEN HE BROKE IT WITH HITTING HIS HAND THIS -- YOU DON'T BREAK SOMETHING HERE AND HAVE YOUR HAND STOP. YOUR HAND GOES THROUGH EVEN SLIGHTLY; OKAY?

SO EVEN IF THE LAW WAS THAT YOU HAD TO ENTER THE HEATING AREA. AND YOU KNOW, POLICE OFFICERS REPORT THEY BROUGHT OUT BY THE DEFENSE THAT THE WAS ENTRY ACCOMPLISHED? NO.

I THINK THE POLICE OFFICER THOUGHT IT WAS ENTRY INTO THE HEATED AREA ACCOMPLISHED LIKE THE DOOR KICKED IN AND THE GUY GETS IN THERE AND ASSAULTS ONE OF THE VICTIMS ON THE INSIDE OF THE HOUSE AND NO, IT WASN'T IN THAT REGARD.

BUT THAT'S NOT WHAT IS REQUIRED FOR BURGLARY. AGAIN, LIKE I SAY IN THE LAW WE GOT THE BURDEN OF PROOF. THAT SAME LAW -- AND I BELIEVE HIS HONOR WILL CHARGE YOU

THAT ANY INJURY OF A PART OF THE PERPETRATOR'S BODY OR OF ANY OBJECT, NO MATTER HOW SLIGHT IS SUFFICIENT TO CONSTITUTE AN INJURY.

ENTER THE MEANING OF BURGLARY LAW. NO MATTER HOW SLIGHT. AND BY THE DEFENDANT'S OWN ADMISSION HE BEAT ON THAT DOOR INTO THE HEATED AREA. BUT YOU KNOW, I TALKED ABOUT COMMON CONCEPTION IS IN THE HEATED AREA. THAT AIN'T THE LAW.

THE LAW IS -- AND HIS HONOR WILL CHARGE YOU -- YOU DON'T HAVE TO GO INTO A HEATED AREA. YOU CAN GO INTO A CHICKEN COOP IN THE BACK YARD AND AS LONG AS IT IS WITHIN THE CURTILAGE, THAT MEANS WITHIN 200 FEET SURROUNDING THE DWELLING HOUSE AND YOU INTEND TO COMMIT A CRIME, THAT'S BURGLARY.

IT AIN'T GOT TO BE A HEATED AREA. IT CAN BE A SHED, AN OUT BUILDING, A CHICKEN COOP ACROSS THE STREET. AND IT CERTAINLY INCLUDES AND SPECIFICALLY INCLUDES PORCHES. IT INCLUDES PORCHES. NOW -- PARTICULARLY IN THIS CASE A CONNECTED PORCH LIKE THIS.

SO LADIES AND GENTLEMEN, WHEN HE WENT AND ENTERED THAT SCREEN DOOR, IF IT WAS WITHOUT CONSENT WITH INTENT TO COMMIT A CRIME, I WILL TALK ABOUT THAT IN A MINUTE.

WHEN HE ENTERED THAT SCREEN DOOR, THAT WAS ENTRY WITHIN THE MEANING OF THE BURGLARY LAW AS HIS HONOR WILL

CHARGE YOU THAT LAW. ANY PORCHES, SHED -- OUT -- ALL OF THAT IS COMPLETE.

AND FOR THAT REASON YOU MIGHT SAY WELL, THIS BURGLARY CASE, YOU KNOW, WHY AREN'T WE CONSIDERING ATTEMPTED BURGLARY. YOU ARE NOT GOING TO EVEN HAVE ATTEMPTED BURGLARY TO CONSIDER BECAUSE EITHER IT WASN'T HIM AND HE WASN'T THERE OR IT'S BURGLARY OR WE DIDN'T PROVE WITHOUT CONSENT AND INTENT TO COMMIT A CRIME THEREIN.

BECAUSE UNDER THE EVIDENCE HE WAS ON THAT PORCH AND IN THE EYES OF THE LAW ON THAT PORCH ASSUMING THE OTHER ELEMENTS ARE PROVED IS -- AND IT'S EITHER BURGLARY OR IT'S NOT. IT'S NO ATTEMPTED BURGLARY TO IT. OKAY?

AND SO THAT'S ENTERED THE DWELLING. NO QUESTION RUTH GRIFFITH'S DWELLING. NEXT ELEMENT IS WITHOUT CONSENT. OKAY. YOU HEARD THE DEFENSE'S TESTIMONY.

IT'S -- I GUESS IT'S THEIR CONTENTION THAT BECAUSE MRS. GRIFFITH USED TO GO OUT DRINKING WITH BOBBY STONE'S GIRL FRIENDS' MOTHER BACK IN THE 1950'S AND 60'S BEFORE STONE WAS EVEN BORN THAT HE'S GOT A PERPETUAL RIGHT TO GO INTO HER HOUSE ANY TIME HE WANTS TO.

FOLKS, THAT AIN'T THE LAW. THE LAW IS THAT A PERSON'S HOME IS THEIR CASTLE. AND IF A GIRL IS GOING WITH A GUY AND HE'S STAYING OVER THERE OCCASIONALLY, GOT PERMISSION TO COME ANY TIME HE WANTS TO, THEN SHE DECIDES

SHE DON'T WANT TO GO WITH HIM ANY MORE AND SAYS I DON'T WANT YOU AROUND MY HOUSE ANY MORE, THAT DAY HE -- IF HE COMES TO HER HOUSE AND KICKS THE DOOR IN OR ENTERS WITHOUT HER CONSENT, THAT IS A CRIME.

A PERSON'S HOME IS THEIR CASTLE. YOU CAN BE A GUEST TODAY AND ENTER WITHOUT CONSENT TONIGHT. AND ONCE THAT CONSENT IS REVOKED -- AND SO WHAT DIFFERENCE DOES IT MAKE THAT HE MIGHT HAVE GONE OVER THERE A FEW TIMES BACK IN 1993?

I BELIEVE THAT'S THE LAST TIME THEY SAID THEY KNOW ANYTHING ABOUT HIM GOING OVER THERE. AND EVEN THEN THE LAST THING THEY GAVE YOU WAS SEPTEMBER OF 93 THAT MICHELLE LYNCH WENT OVER AND BORROWED A SUIT FOR HIM TO WEAR TO A FUNERAL.

THAT WAS THE LAST TIME SHE WAS LIVING THERE WAS IN 1993. AND CLEARLY THE EVIDENCE IN THIS CASE IS THAT EVER SINCE SEPTEMBER OF 1995 MRS. GRIFFITH AND LAW ENFORCEMENT HAD MADE IT CRYSTAL CLEAR TO BOBBY WAYNE STONE THAT HE WAS NOT WELCOME ON HER PROPERTY.

WHAT ELSE CAN SHE DO BUT THAT? THAT IS THE UNCONTRADICTED EVIDENCE IN THIS CASE. AND THEN LADIES AND GENTLEMEN, IF THE FACT THAT HE BEEN ON NOTICE FOR SIX MONTHS WASN'T ENOUGH, THAT DAY RIGHT BEFORE THE 5:39 CALL...

AND YOU KNOW, THEY SORT OF FOCUS IN ON HIS

STATEMENT BECAUSE OH, WELL, I DIDN'T EVEN KNOW SHE LIVED THERE. I DON'T KNOW WHY SHE COULD TELL YOU. FORGET ABOUT KNOWING NOT TO BE THERE FOR SIX MONTHS -- AND NO EVIDENCE WHATSOEVER THAT HE HAD EVER BEEN THERE THE LAST SIX MONTHS BEFORE THIS OCCURRED -- EVER HAVE PERMISSION TO BE ON HER PROPERTY FOR ANY REASON WHATSOEVER.

KNEW HE WASN'T SUPPOSED TO BE THERE. IT'S NOT JUST LIKE YOU LEAVE YOUR HOUSE AND WHILE YOU ARE GONE SOMEBODY BREAKS IN. YOU KNOW, YOU HAVEN'T EVER ACTUALLY DIRECTLY TOLD THEM I DON'T WANT YOU AROUND MY HOUSE.

THIS IS THE CASE WHERE HE WAS TOLD HE WASN'T WELCOME THERE SIX MONTHS BEFORE. AND THEN THAT NIGHT TOLD DIRECTLY AGAIN. AND THEY SORT OF ACT LIKE WELL, WELL THAT WAS JUST MARY RUTH MCLEOD AND HE KNEW THAT SHE WAS LIVING THERE WITH HER MOTHER.

IT'S REALLY RUTH GRIFFITH'S CALL. LADIES AND GENTLEMEN, WHEN HE KNOCKED ON THE DOOR, REMEMBER WHAT HAPPENED? RUTH GRIFFITH WENT TO THE DOOR AND OPENED IT. SHE SAW IT WAS BOBBY STONE, WHAT DID SHE DO?

SHE SMILE, HEY BUDDY, HEY OLD DRINKING BUDDY, I SURE AM GLAD YOU ARE HERE TO SEE ME? SHE RAN IN TERROR. RAN IN TERROR.

NOW, IF SHE SAW HIM, HE'S LOOKING THROUGH THE WINDOW SEEING HER. HE SEES HER. HE KNOWS SHE DON'T WANT HIM THERE AND THEN ON TOP OF THAT MARY RUTH MCLEOD GOES

OUT AND MAKES IT CLEAR TO HIM AGAIN THAT SHE TELLS HIM GET AWAY FROM HERE, WE DON'T WANT YOU AROUND HERE, YOU KNOW WE DON'T WANT YOU AROUND HERE, YOU'VE BEEN TOLD YOU ARE NOT WANTED AROUND HERE.

ALL OF THIS IS CLEAR ON THAT 911. I MEAN, POLICE DISPATCHING 911 CALLS THAT YOU WILL GET TO LISTEN TO. AND BY THE WAY, WE HAVE GOT A BETTER TAPE PLAYER.

AND I THINK INSTEAD OF USING THE COURT SYSTEM YOU CAN USE THAT TAPE PLAYER IN THE JURY ROOM OR WHATEVER. YOU CAN HEAR THAT TAPE AND HEAR A LOT BETTER THAN YOU DID THE OTHER DAY.

WE GOT THE TAPE LIKE THE JUDGE WANTED WHERE IT'S JUST THE PARTS THAT YOU LISTENED TO THE OTHER DAY. GOT IT READY. BUT ANY WAY, HE WAS DIRECTLY TOLD THAT HE WAS NOT WANTED THERE AND THE POLICE WERE GOING TO BE CALLED.

WITHOUT -- LADIES AND GENTLEMEN, THIS ISN'T A CASE OF HIM KNOWING -- IT WAS WITHOUT CONSENT FOR HIM TO BE THERE. I DON'T KNOW WHEN YOU WOULD EVER GET IT.

NOW, YOU KNOW, THE DEFENSE SORT OF DRAWED OUT WELL, WHEN YOU WENT OVER TO SEE HER, DID HE WALK -- YOU KNOW -- MRS. GRIFFITH'S GOT A PORCH OUT IN FRONT OF HER FRONT DOOR TO HER HEATED AREA.

AND DIDN'T YOU WALK UP AND GO IN HER PORCH AND KNOCK ON THE DOOR? YEAH. THEY KIND OF TRYING TO PREVAIL UPON YOU HOW YOU WOULD BE -- AS A REGULAR CITIZEN, HOW YOU

WOULD DEAL WITH PEOPLE WHO COME TO SEE YOU? GENERALLY WELCOME, EVEN SALESMEN COMING AROUND.

WELL, TO BE FRANK WITH YOU FOLKS -- AND YOU'RE REASONABLE PEOPLE. I THINK WHEN YOU GO INTO A HOUSE WHERE YOU DON'T KNOW THE PEOPLE AND YOU COME UP TO A HOUSE LIKE THE FRONT OF RUTH GRIFFIT'S, YOU ARE GOING TO KNOCK ON THE SCREEN DOOR.

I DON'T BELIEVE YOU ARE GOING TO GO -- AND YOU ARE REASONABLE PEOPLE. I DON'T BELIEVE YOU ARE GOING TO GO INSIDE THE PORCH. YOU JUST GOING TO KNOCK ON THE SCREEN DOOR OUTSIDE.

AND THAT'S WHEN YOU HAVEN'T BEEN PUT ON NOTICE THAT YOU AIN'T WANTED THERE. WHEN YOU GOING TO KNOCK ON THE SCREEN. BUT LETS SAY EVEN IF YOU KNOW THE PEOPLE, YOU SORT OF FRIENDLY AND YOU DO GO IN THE SCREEN DOOR AND YOU GO UP AND KNOCK ON THE DOOR TO THE HEATED AREA.

THAT'S THE WHOLE SITUATION IN BOBBY STONE. AND I GUESS THEY WOULD LIKE YOU TO THINK THAT IF YOU WENT UP TO SOMEBODY'S HOUSE AND WALKED IN THEIR PORCH WITHOUT THEIR PERMISSION AND KNOCK ON THE DOOR THAT YOU'RE GUILTY OF BURGLARY.

NO. ABSOLUTELY NOT. AND THE REASON WHY IS BECAUSE YOU DON'T HAVE THE INTENT TO COMMIT A CRIME. THE SALES MAN HAS NO INTENT TO COMMIT A CRIME.

THE STRANGER GOING AROUND THE NEIGHBORHOOD

LOOKING FOR A FRIEND AIN'T GOT ANY INTENT TO COMMIT A CRIME.

AND EVEN MORE CONCLUSIVELY, YOU HAVE NEVER BEEN PUT ON NOTICE THAT YOU ARE NOT WANTED ON THAT PROPERTY FOR ANY REASON WHATSOEVER. SO DON'T GET OUT THERE AND GET YOU TO THINKING OH, THEY TALKING ABOUT THIS PORCH.

YOU PLEAD GUILTY TO THAT IF YOU JUST WENT TO SEE A FRIEND? NO. BECAUSE THE LAW REQUIRES DWELLING HOUSE OF ANOTHER WHICH INCLUDES PORCHES, WITHOUT CONSENT AND WITH THE INTENT TO COMMIT A CRIME THEREIN.

AND SO THEN WE GET TO INTENT TO COMMIT A CRIME. BUT BEFORE WE DO THAT -- YOU KNOW -- THIS WHOLE THING ABOUT THE LAST SIX MONTHS AND HIM KNOWING HE WASN'T SUPPOSED TO BE THERE AND THEN HIM -- MRS. GRIFFITH RUNNING AWAY IN TERROR AND MARY RUTH MCLEOD GOING OUT, TELL HIM GET AWAY FROM HERE, WE DON'T WANT YOU AROUND HERE, WHAT DID HE DO?

THINK ABOUT WHAT HE DID. HE WENT BACK OUT IN THE WOODS AND HE SULKED AND HE WAS ANGRY AND HE CAME BACK WITH A VENGEANCE. EXACTLY WHAT HAPPENED. ABOUT WHAT HAPPENED SIX MONTHS AGO. VENGEANCE ABOUT WHAT HAPPENED THAT -- WHO KNOWS.

BUT HE CAME BACK WITH A VENGEANCE AND THAT RELATES TO THIS SAME INTENT TO COMMIT A CRIME. INTENT TO COMMIT A CRIME DEPENDS UPON THE CIRCUMSTANCES, LADIES AND

GENTLEMEN. AND IT'S ANY CRIME.

IF YOU GO INTO SOMEBODY'S HOUSE WITHOUT CONSENT INTENDING JUST TO DAMAGE THE PROPERTY OR JUST TO BREACH THE PEACE OF CAUSE SOME TYPE OF DISTURBANCE, THAT'S A CRIME. I AM TALKING ABOUT MINOR THINGS. DOESN'T HAVE TO BE INTENT TO GO AND KILL SOMEBODY.

JUST IF YOU INTEND TO BREACH THE PEACE OR DAMAGE THE PROPERTY OR THREATEN SOMEBODY OR CARRY A PISTOL WHICH IS UNLAWFUL ON SOMEBODY ELSE'S PROPERTY OR POINT A GUN OR SHOOT, RAPE OR KILL SOMEBODY OR ANY OF THE OTHER CRIMES, IF YOU ENTER THE DWELLING HOUSE OF ANOTHER WITHOUT CONSENT WITH INTENT TO COMMIT ANY CRIME WHATSOEVER, THAT'S BURGLARY.

AND THE EVIDENCE IS CLEAR IN THIS CASE. LOOK AT THE VICTIM'S FEAR. YOU KNOW, THESE ARE PEOPLE THAT KNOW BOBBY WAYNE STONE AND THEY ARE DEATHLY AFRAID OF HIM.

LISTEN TO THE 911 CALL IF YOU DON'T THINK THEY ARE DEFINITELY AFRAID OF HIM, IF YOU DON'T THINK HE INTENDED TO COMMIT A CRIME WHEN HE WENT TO THAT HOUSE, IF YOU THINK HE WAS JUST GOING TO SEE SOME OLD DRINKING BUDDY ON A SOCIAL CALL.

LISTEN TO THOSE 911 CALLS. AND YOU KNOW, MR. TAYLOR -- WHEN HE WAS TALKING ABOUT HE WAS SCARED TO STAND IN FRONT OF A WINDOW THAT STONE WOULD SHOOT HIM THROUGH THE WINDOW, SEE HIM IN THERE AND SHOOT HIM. HE WAS HIDING

BEHIND A CHAIR.

ALL OF THAT IS ADMISSIBLE ON THE ISSUE OF THE DEFENDANT'S INTENT TO COMMIT A CRIME. AND THE PEOPLE THAT KNEW HIM WERE AFRAID OF HIM. YOU KNOW, WE GO INTO ALL OF THAT, THERE'S -- HE'S TOLD NOT TO BE THERE AND WENT BACK WITH TWO LOADED WEAPONS. TWO LOADED WEAPONS.

NOW, I THOUGHT I WAS STOPPING BY TO SEE SOMEONE ON A SOCIAL CALL, I HAPPENED TO HAVE SOME WEAPONS, FOLKS I WOULD LEAVE THEM OUTSIDE; WOULDN'T YOU? THAT'S REASONABLE.

BUT HE WENT INSIDE THE HOUSE -- AND BY THE WAY, I FORGOT TO MENTION THAT SCREEN DOOR. MRS. GRIFFITH SAID BEFORE THAT NIGHT THAT THAT SCREEN DOOR -- THEY DON'T USE IT MUCH.

AND SHE CAN'T SAY ABSOLUTELY POSITIVELY WHETHER THE LATCH WAS LATCHED OR NOT. DIDN'T EVEN ASK HER THAT. WHETHER IT'S LATCHED OR NOT DOESN'T MATTER BECAUSE ENTER DOESN'T MEAN YOU BREAK IN AND CUT A SLASH, CONCLUDES THAT.

ENTER MEANS YOU OPEN DOORS. SO IT DON'T MATTER THAT'S WHAT WE ASKED. BUT THE POINT IS LOOK AT THAT SCREEN THAT HAD NO RIPS, NO TEARS AND NO HOLES IN IT BEFORE THAT NIGHT AND LOOK AT THAT SCREEN NOW AND LOOK AT THAT RIP RIGHT DOWN THERE WHERE THE LATCH IS.

AND THEN THEY SEEM TO BE ASKING SOME QUESTION ABOUT COULDN'T THAT RIP HAVE BEEN CHECKED IF IT WAS CUT

WITH A KNIFE OR WHATEVER AND -- AS IF HE DIDN'T HAVE A KNIFE, SO THAT'S WHY WE WERE -- WE WEREN'T EVEN GOING TO PUT THAT KNIFE IN EVIDENCE UNTIL ASKED THAT QUESTION THEN SHOWED ME HE HAD A KNIFE IN HIS POCKET.

SO DOESN'T MATTER WHETHER HE CUT THE SCREEN TO GET IN THERE OR NOT. IT'S STILL BURGLARY WHEN HE WENT ON THAT PORCH WITHOUT CONSENT WITH INTENT TO COMMIT A CRIME.

BUT YOU KNOW, WHAT'S IMPORTANT BESIDES GOING BACK AND WHETHER HE CUT THE SCREEN OR WHETHER HE RIPPED THE -- OR WHATEVER, GOING IN THAT PORCH WITH TWO LOADED GUNS.

AND HE DOESN'T GO TO THE FRONT DOOR WHERE ANY REASONABLE PERSON WOULD GO IF YOU WANT TO SEE A FRIEND AND KNOCK ON THE FRONT DOOR. DOESN'T EVEN GO TO THE BACK DOOR WHICH IS THE DOOR HE USED, THE DOOR HE WENT TO TO START WITH.

HE GOES TO THE DOOR THAT THEY DON'T EVEN USE, FOLKS. HE GOES TO A DOOR THAT IS ON THE SIDE OF A HOUSE WITH NO LIGHT ON, THE LITTLE PORCH HAS NO LIGHT ON.

AND HE GOES UP ON THAT PORCH AND WHETHER HE HAD TO CUT THE SCREEN TO FLIP THE LIGHTS OR NOT, HE GOES ON TO THAT PORCH ON A DARK PORCH TO A ROOM AND HE IS SUPPOSED TO KNOW.

HE'S SUPPOSED TO BE THEIR OLD FRIEND AND JUST GOES INTO THE WASHROOM. AND THAT'S WHY MRS. GRIFFITH

NEVER USED IT. HER HUSBAND PUT IT ON THE HOUSE NOT FOR A POINT OF ENTRY. ALREADY HAD A BACK DOOR TEN FEET AWAY.

PUT ON THE HOUSE SO THEY WOULD HAVE A COVERED AREA TO KEEP THE WOOD OUT THERE, SO THEY NEVER USED IT. AND IF STONE IS SUCH A GOOD BUDDY, HE MUST HAVE KNOWN THAT.

BUT HE GOES ON THAT PORCH MAYBE BECAUSE HE SEES THAT ONE OF THE WINDOWS HAS ALREADY BEEN BROKEN OUT AND IT'S AN EASIER POINT OF ENTRY FOR HIM. I DON'T KNOW. WE DON'T HAVE TO PROVE ALL THAT. JUST THROWING UP SOME THINGS -- THAT YOU ARE LOOKING AT ALL OF THIS EVIDENCE.

BUT HE GOES UP THERE WITH A 410 SHOTGUN LOADED AND COCKED. NOW, I HOPE THERE ARE SOME HUNTSMEN ON THIS JURY. YOU DON'T CARRY A SHOTGUN PACKING WITH THE HAMMER BACK, FOLKS. YOU DON'T DO THAT.

AND IT'S -- AND THE HAMMER IS COCKED. AND HE'S GOT THAT THERE. AND THEN HE'S BEATING ON THE DOOR WITH A 22 PISTOL IN HIS HAND. IT'S NOT IN HIS POCKET. IT'S NOT -- YOU KNOW -- DOWN THE BACK OF HIS PANTS JUST BECAUSE HE'S CARRYING IT GOING HOME.

HE IS STOPPING BY TO SEE A FRIEND. IT'S NOT LEFT OUTSIDE BECAUSE HE WANTED TO GO BY AND SEE A GOOD FRIEND BEFORE HE WENT HOME. HE'S GOT A GUN IN HIS HAND FULLY LOADED WITH THE SAFETY OFF.

AND YOU KNOW, WHILE HE IS BEATING ON THE DOOR

WITH NO LIGHT ON THE SIDE DOOR THAT THEY DON'T USE, THE MAN -- YOU KNOW -- MR. TAYLOR THOUGHT WELL, I THOUGHT I WOULD YELL AT HIM, LET HIM KNOW THERE WAS A MAN. HAS ABSOLUTELY NO EFFECT.

THIS IS BOBBY STONE. THAT'S WHY THEY ARE AFRAID OF HIM. HAS ABSOLUTELY NO EFFECT ON HIM. MR. TAYLOR YELLS. HE STOPS RATTLING AT THE DOOR FOR JUST A MINUTE AND STARTS RIGHT BACK AGAIN.

YELLING BY MR. TAYLOR ON THE INSIDE HAD ABSOLUTELY NO EFFECT ON HIM. INTERESTING. SOMETHING I WANT TO MENTION IN A MINUTE, FOLKS. I COULD ARGUE ON AND ON ABOUT DWELLING HOUSE OF ANOTHER WITHOUT CONSENT WITH INTENT TO COMMIT A CRIME THEREIN.

AND CLEARLY, CLEARLY THERE IS EVIDENCE IN THE CASE THAT PROVES OF BURGLARY -- THIS IS IT. AND CLEARLY BOBBY STONE DID NOT GO THAT NIGHT ON SOME -- THERE THAT NIGHT ON SOME ANTISOCIAL CALL.

NOW, I WANT TO TALK ABOUT MURDER. BURGLARY IS A SERIOUS CRIME. MURDER IS A VERY SERIOUS CRIME. AND HIS HONOR, I BELIEVE, WILL CHARGE YOU THAT SOMETHING ABOUT THAT IF YOU CONCLUDE THAT HE WAS THERE AND COMMITTED SOME CRIME OTHER THAN BURGLARY OR OTHER THEN A FELONY AND BURGLARY IS A FELONY, SOME LESSER TYPE CRIME.

LIKE FOR INSTANCE -- THAT IF YOU CONCLUDE THAT THAT'S ALL IT WAS AND NOT BURGLARY, THEN YOU CAN CONSIDER

INVOLUNTARY MANSLAUGHTER. HE'S GOING TO CHARGE THAT. HE HAS TO CHARGE IT AS THE LAW.

AND SO HE WILL EXPLAIN THAT TO YOU. BUT LADIES AND GENTLEMEN, ONE THING IS INTERESTING AND THAT IS IN THE LAW THAT WHEN YOU ARE IN THE COMMISSION OF A FELONY AND YOU ARE IN THE COMMISSION OF A FELONY -- AND BURGLARY IS A FELONY, WHETHER IT'S COMPLETED OR NOT BY THE WAY -- BUT WHEN YOU ARE IN THE COMMISSION OF A FELONY AND DEATH RESULTS, THERE IS NO SUCH THING AS ACCIDENT, NO SUCH THING AS INVOLUNTARY MANSLAUGHTER.

IF DEATH RESULTS -- AND THERE'S A DEFINITION OF THAT -- IF DEATH RESULTS WHILE YOU ARE IN THE COMMISSION OF A FELONY, CALLED FELONY MURDER.

THE JUDGE WILL USE THOSE WORDS, BUT THAT'S WHAT LAWYERS GENERALLY CALL IT, FELONY MURDERS. IF DEATH RESULTS WHILE YOU ARE IN THE COMMISSION OF A FELONY, THAT IS MURDER. YOU CAN'T SAY OH, I DIDN'T MEAN TO SHOOT.

AND THE VERY REASON IS YOU DON'T GO UP TO SOMEBODY'S HOUSE COMMITTING A BURGLARY WITH A LOADED GUN IN YOUR HAND AND SAY OH, I DIDN'T MEAN TO KILL HIM.

THE LAW DON'T ALLOW YOU TO DO THAT IN THOSE CIRCUMSTANCES. ONLY REASON YOU ARE EVEN GOING TO CONSIDER THAT BECAUSE IT'S UP TO YOU WHETHER HE COMMITTED A BURGLARY OR NOT.

YOU CONCLUDE HE COMMITTED BURGLARY, THEN THAT

AIN'T EVEN AN ISSUE. BUT LADIES AND GENTLEMEN, EVEN IF THERE ISN'T A BURDEN, I DON'T SEE HOW IN THE WORLD HE CAN DO IT -- BUT EVEN IF THERE IS NOT A BURGLARY, IT'S STILL CLEARLY MURDER.

IT'S STILL CLEARLY MURDER BECAUSE EVEN IF HE WASN'T IN THE HOUSE, IF HE DID WHAT HE DID, THE DEATH OF CHARLIE KUBALA IS MURDER.

YOU KNOW, TALK ABOUT INTENT. AND ALL OF US GOT SOME IDEA ABOUT INTENT, BUT INTENT IS NOT JUST A MATTER OF I MEAN TO DO THIS, I MEAN TO SHOOT THIS GUN AND I MEAN TO HIT YOU AND I MEAN IT TO KILL YOU.

INTENT CAN BE SHOWN FROM GROSS RECKLESSNESS, FROM A MALIGNANT HEART, THE ACTIONS JUST TOTALLY UNEXCUSABLE ACTIONS.

AND THE JUDGE WILL DEFINE IN SORT OF FANCY LANGUAGE, BUT EVEN IF YOU DON'T SPECIFICALLY INTEND, GROSS RECKLESSNESS IS ENOUGH TO PROVIDE MALICE AND INTENT IN THE MURDER LAW, EVEN IF YOU WEREN'T IN THE COMMISSION OF A FELONY.

NOW, BUT WHAT YOU HAVE GOT HERE IS AN INTENTIONAL KILLING. I MEAN, YOU COULD FIND MURDER BASED ON THAT.

BUT FOLKS, THE EVIDENCE SHOWS IT'S INTENTIONAL. I KNOW FROM THIS STATEMENT HE SAID OH, I DIDN'T MEAN FOR IT TO GO OFF, IT JUST WENT OFF. IT JUST WENT OFF AND I

JUST SHOT ONE TIME.

BUT WHAT YOU HAVE GOT HERE IS CLEAR EXPERT TESTIMONY THAT THAT GUN FIRED THREE, AT LEAST THREE, AND IT COULD HAVE BEEN FOUR SHOTS AS YOU UNDERSTAND BECAUSE THREE WERE -- HAD TO BE FIRED BECAUSE THE SHELL CASINGS WERE EJECTED FROM THE GUN AND ARE STILL ON THE PORCH; OKAY?

THREE HOLES WERE IN THE SCREEN. BUT AS YOU KNOW, WHEN STONE WAS FOUND, THERE WAS A FIRED CARTRIDGE STILL IN THE CHAMBER. SO IT WASN'T EJECTED. HE SHOT SOME TIME AFTER HE SHOT THE THREE, AT LEAST THREE TIMES ON THE PORCH. HE SHOT ONCE MORE AT LEAST ONCE MORE.

WHEN THE GUN DIDN'T EJECT -- REMEMBER MR. PARNELL TOLD YOU ABOUT THAT SOMETIMES HE FOUND THAT TO BE THE CASE AND YOU HAVE TO MANUALLY DO IT?

AND SO MAYBE SHOT FOUR TIMES AND THE FOURTH SHELL DIDN'T EJECT AND THE FOURTH BULLET, INSTEAD OF GOING THROUGH THAT SCREEN WENT THROUGH THAT RIP. I DON'T KNOW. DOESN'T MATTER.

HE SHOT AT LEAST THREE TIMES AND IT HAS TO BE INTENTIONAL. HAS TO BE AN INTENTIONAL ACT, LADIES AND GENTLEMEN. MR. -- THE EXPERT WITNESS -- OUR TWENTY-FIVE YEAR BALLISTICS EXPERT TEST FIRED THAT GUN AND I GUESS THEY'RE GOING TO TRY TO SAY HE HAD HIS GUN, WHAT'S HE DOING WITH HIS FINGER ON THE TRIGGER IN SOMEBODY ELSE'S

HOUSE REGARDLESS WITH THE SAFETY OFF?

PUT THAT ASIDE. IS THAT -- I GUESS THEY ARE GOING TO TRY TO SAY WELL, HE HAD HIS FINGER ON THE TRIGGER AND HE GOT STARTLED. WELL, HE DIDN'T GET STARTLED WHEN MR. TAYLOR YELLED AT HIM FROM INSIDE. THAT DIDN'T HAVE ANY EFFECT ON HIM.

THEY ARE SAYING WELL, THEY GOT STARTLED AND THEN SOMETHING HAPPENED AND THE TRIGGER WENT OFF ONE TIME? NO. THIS IS WHY THE EVIDENCE IS SO CLEAR. YOU HAVE TO HEAR IT, THAT SCIENTIFIC EVIDENCE AND THE EXPERT TESTIMONY.

MR. PARNELL SAID ABSOLUTELY NO WAY THAT THAT COULD HAVE HAPPENED. THAT GUN IS SEMIAUTOMATIC, NOT AN AUTOMATIC.

THIS IS NOT A MACHINE GUN WHERE YOU PULL THE TRIGGER DOWN AND IT SHOOTS UNTIL -- AS LONG AS IT KEEPS FUNCTIONING PROPERLY, IT SHOOTS UNTIL THE GUN IS EMPTY.

THIS IS THE GUN WHERE YOU HAVE GOT TO PULL, RELEASE, PULL, RELEASE, PULL AND RELEASE TO SHOOT THREE TIMES. AND IF THE ONLY THING -- THE ONLY MISS FIRE ABOUT THAT GUN AND THIS AGENT WHO TEST FIRED IT WAS EVEN THAT WOULDN'T DO IT IF IT JAMMED.

I MEAN, IF YOU SHOT ONE TIME AND IT JAMMED THEN YOU HAVE GOT TO DO SOMETHING LIKE THAT BEFORE YOU CAN SHOOT AGAIN. AND THAT'S WHY IT WAS -- THAT WAS IMPORTANT BECAUSE THAT SHOWS THAT THERE IS NO WAY, THREE SHOTS WERE

FIRED AT LEAST THREE IF NOT FOUR WERE FIRED ON THAT PORCH AND IT HAD TO BE INTENTIONAL.

AND THEN NOT ONLY THAT, YOU GOT THOSE THREE HOLES RIGHT THERE KIND OF IN A LINE. AND LADIES AND GENTLEMEN, IT IS CONSISTENT WITH THIS, BAM, BAM, BAM, IS THAT POLICE OFFICER COMES AROUND THAT CORNER.

IT AIN'T CONSISTENT WITH SOME MISS FIRING. I MEAN IT'S NOT -- AS I SAID, IT IS NOT POSSIBLE FOR IT TO MISS FIRE LIKE THAT. AND YOU KNOW, THIS IS A SITUATION WHERE STONE SAID OH, I WAS ON THE PORCH, HE BEEN SHOOTING THAT GUN ALL AFTERNOON.

HE KNEW HOW TO RE-LOAD IT. HE KNEW HOW TO SHOOT IT AND HE KNEW HOW TO TAKE THE SAFETY OFF AND HOW TO PUT IT ON. AND HE'S UP ON SOMEBODY ELSE'S PORCH AT NIGHT AFTER THEY TOLD HIM NOT TO BE THERE WITH A GUN WITH THE SAFETY OFF WITH HIS FINGER ON THE TRIGGER?

THAT'S WHEN HE TALK ABOUT THIS GROSS RECKLESSNESS. THAT AIN'T INVOLUNTARY MANSLAUGHTER. TWO OF THOSE SHOTS -- AND THE CONCLUSIVE EVIDENCE IS THAT TWO OF THOSE 23, 22 SHOTS THAT WERE FIRED ON THAT PORCH HIT THE DEPUTY IN THE SIDE, NOT IN THE FRONT.

NOT HEY I'M COMING TO GET YOU AND SHOOT HIM IN THE FRONT, IN THE SIDE. ONE OF THEM GOES IN HIS NECK DOWNWARD YOU KNOW, SHOOTING FROM ABOVE ON THE PORCH, GOES IN HIS NECK DOWNWARD AND THE OTHER ONE GOES IN HIS EAR

DOWNWARD SHOOTING FROM ABOVE.

LADIES AND GENTLEMEN, BOTH OF THOSE, THE EVIDENCE IN THIS CASE, THE UNREFUTED EVIDENCE IN THIS CASE IS THAT BOTH OF THOSE BULLETS CAME FROM THIS GUN, THE GUN THAT BOBBY STONE ADMITS WAS HIS, THE GUN HE ADMITS HE HAD ON THAT PORCH, THE GUN HE ADMITS THAT HE HAD WITH HIM WHEN HE WAS ARRESTED. THEY CAME FROM THIS GUN.

AND DR. SEXTON TOLD YOU THAT EITHER ONE OF THEM COULD HAVE KILLED THE DEPUTY. HE'S DEFINITELY DEAD. THE -- ONLY ONE OF THEM HAD HIT HIM HE WOULD BE DEAD AND THIS WOULD BE MURDER.

BUT BOTH OF THEM HIT HIM AND BOTH OF THEM COULD HAVE KILLED HIM. EITHER ONE COULD HAVE KILLED HIM.

YOU KNOW, ON TOP OF THAT, YOU HEARD THE EVIDENCE ABOUT THE AREA AROUND THERE BEING DARK AND DEPUTY KUBALA CAME AROUND THERE WITH A FLASHLIGHT UNDER HIS ARM.

AND YOU KNOW, THEY BROUGHT OUT AND YOU'LL SEE THE PICTURES ABOUT HOW THE PORCH LETS SEE HOW I AM GOING TO DO THIS -- THAT THE PORCH -- LETS SAY IS HERE.

AND ON THIS SIDE IS WOOD UP ABOUT THIS HIGH AND ON THIS SIDE IS WOOD UP ABOUT THIS HIGH AND ON THIS SIDE IS THE SCREEN DOOR.

AND THE DEPUTY IS COMING UP. HE DRIVES UP OUT FRONT AND WHERE HE PARKED HIS CAR IS NOT WITHIN SIGHT OF THAT PORCH. THAT PORCH IS A SCREEN PORCH IT -- OPEN AIR.

YOU CAN HEAR AND THEN SOMEBODY DRIVES UP INTO YOUR YARD ON YOUR DRIVEWAY, ROCKS IN THE DRIVEWAY, THAT KIND OF STUFF. YA'LL KNOW A CAR MAKES SOME NOISE.

AND SO I SUBMIT TO YOU BOBBY STONE HEARD THAT CAR DRIVE UP. AND LADIES AND GENTLEMEN, I SUBMIT TO YOU THAT UNFORTUNATELY YOU KNOW THAT'S WHY I WANT YOU TO LISTEN TO THAT 911 TAPE AGAIN.

THESE CALLS ARE COMING IN ALL THE TIME, PEOPLE CALLING FOR SERVICE -- YOU KNOW. WE DON'T WANT TO PAY ENOUGH TAXES TO HAVE A POLICE OFFICER ON EVERY BLOCK AND SO EVERYBODY'S CALLING WANTING DEPUTY TO HELP THEM AND SOMETHING AND THEY DISPATCHERS SEND THEM AROUND TO DO THIS, DO THIS, DO THAT. THEY'VE GOT A BUSY SHIFT.

AND CHARLIE KUBALA SIGNS DOWN I'M 1023, I AM AT THE LOCATION OF 817 TAYLOR STREET. HE SIGNS DOWN AS POLICE RADIO THEN HE GETS OUT WITH HIS WALKIE TALKIE. UNCONTRADICTED EVIDENCE.

HE GETS OUT WITH HIS WALKIE TALKIE. AND LADIES AND GENTLEMEN, A MINUTE IT WAS 190655 WHEN HE SAID 113, 1023 TAYLOR STREET AND MEANS HE'S THERE, ANSWERING THE CALL.

IT WAS ONE MINUTE LATER, 10755, ANOTHER DISPATCHER BUSY AS THEY CAN BE WITH THE CITIZENS CALLING IN, SAYS YOU KNOW -- AIN'T GOT BUT CERTAIN NUMBER OF DEPUTIES OUT -- THERE SAY 113 WE GOT A 1046 OAKLAND AND

DEPUTIES OUT THERE -- SAY 113, WE GOT A 1046 OAKLAND AND WHATEVER IT WAS. DISABLED CAR IS WHAT THAT MEANT.

AND THAT'S A MINUTE AFTER HE SIGNED DOWN AT THAT LOCATION. AND SO THAT NOISE WAS COMING OUT OF THAT WALKIE TALKIE. AND DEPUTY KUBALA IS SOMEWHERE OUT OF HIS CAR WALKING AROUND THAT HOUSE SEEING TO A BURGLARY CALL.

BOBBY STONE HEARS THAT POLICE TRANSMISSION? WHEN YOU HEARD THAT 911 CALL, WHEN YOU HEARD 911 CALLS ON THESE COP CARS ON T.V. IS THERE ANY DOUBT IN YOUR MIND THAT THAT'S POLICE ACTIVITY?

SHOULD THERE BE ANY DOUBT IN A REASONABLE PERSON'S MIND THAT THAT'S POLICE ACTIVITY WHEN THEY HEAR THAT WALKIE TALKIE AND THAT KIND OF CHATTER?

AND THEN THE LAST WORDS -- AMONG THE LAST WORDS FROM CHARLIE KUBALA IS CAN YOU HOLD THE CALLS, I'M KIND OF -- 10 6 -- I'M BUSY.

NOW, YOU HEARD THAT AND YOU WILL HEAR IT AGAIN ON THAT TAPE WHERE HE SAYS HOLDS THE CALLS. NOW, COULD HAVE HAPPENED ONE OF TWO WAYS.

COULD HAVE BEEN HE'S WALKING AROUND THERE WITH THAT STUFF COMING OUT ON THE RADIO 10- 46 OAKLAND AND WEST WOOD, ALL THAT STUFF LIKE YOU HAVE HEARD.

SO I WANT YOU TO HEAR. BUT THAT NOISE, REMEMBER THAT THING -- RAY MACKESSY GOT UP THERE SOME TIME LATER AND THAT WALKIE TALKIE WAS FACE DOWN, THE SPEAKER WAS DOWN

ON THE GROUND AND HE COULD HEAR THE POLICE CHATTER GOING OVER THAT RADIO TEN FEET AWAY FROM HIM?

WHAT ABOUT BOBBY STONE INSIDE OF THAT OPEN AIR SCREEN PORCH? IN THE DARK. CAN'T BE SEEN WITH THE WOOD THERE WHERE HE CAN HIDE BEHIND IT.

AND CHARLIE, HE COME AROUND LIKE A SITTING DUCK. HEARD THE CAR DRIVE UP. HEARD THE POLICE CHATTER ON THE RADIO. HEARD HIM RESPONDING.

IS THERE ANY DOUBT? IT -- WOULD IT MATTER WHETHER HE KILLED A POLICE OFFICER OR NOT? FOLKS, WHEN HE SHOT THAT GUN AT A HUMAN BEING AND KILLED HIM, IT'S MURDER.

BUT IT'S EVEN MORE IMPORTANT THAT HE KNEW IT WAS A POLICE OFFICER BECAUSE HE DIDN'T WANT TO BE CAUGHT AT THAT HOUSE. HE DIDN'T WANT TO GO TO JAIL.

YOU KNOW, JUST YOU OR ME HELL, MIGHT SAY OH, I'M HERE TO SEE MY FRIEND RUTH. SAY GOOD TO SEE YOU AND MOVE ON. BUT WHEN HE KNOWS IT'S A POLICE OFFICER, HE KNOWS IT'S EITHER HIM OR THEM. EITHER HIM OR THEM. AND HE PICKED HIM.

HE LEFT IT UP TO YOU. HE KNEW IT WAS A POLICE OFFICER. HE HEARD THAT POLICE CHATTER. AND HE LIED IN WAIT THERE BEHIND THAT LITTLE THING WHERE THE DEPUTY UNFORTUNATELY COULDN'T SEE HIM AND UNFORTUNATELY THE DEPUTY WHEN HE'D COME THERE EARLIER HAD GONE TO THE ACTUAL BACK DOOR, NOT THAT LITTLE SCREEN SIDE PORCH.

AND OBVIOUSLY DEPUTY KUBALA CAME THERE THINKING THE FELLOW WAS AT THE BACK DOOR. AGAIN ON THE 911 YOU CAN HEAR THEM SAY WELL, IS IT THE BACK DOOR ON FRONT DOOR? SAID OH, BACK DOOR.

YOU KNOW, UNFORTUNATELY DEPUTY CAN'T THINK THAT SAME BACK DOOR. AND YOU KNOW WHETHER WHAT LAST WORDS THAT YOU AND I KNOW WERE SAID BECAUSE IT'S ON THE 911 BASICALLY HOLD THE CALLS AND KIND OF 10 6.

WELL, WHETHER THAT WAS WHAT MRS. GRIFFITH AND MR. TAYLOR HEARD ON THE INSIDE AND CHARLIE WAS JUST TOTALLY DEALING WITH DISPATCH AND OTHER CALLS AND EVERYTHING, HAD JUST GOTTEN TOTALLY SIDE WHACKED, SHOT IN THE SIDE OF HIS HEAD AND SIDE OF HIS EAR OR WHETHER CHARLIE CAME AROUND THERE, HEADED TO THAT BACK DOOR AND JUST FOR AN INSTANT GLANCED OVER AND SAW STONE CROUCHING THERE AIMING AT HIM AND SAID HOLD IT THERE OR HALT LIKE THE PEOPLE INSIDE THINK THEY HEARD.

ONE OF THEM SAID HALT AND ONE SAID THOUGHT THEY HEARD SOMETHING HALT. BAM. BAM BAM. FOLKS, IT WAS AN INTENTIONAL ACT. AND THE JUDGE WILL TELL YOU ABOUT MALICE AND INTENT.

AND MURDER. MURDER IS SOMEBODY ENDED UP BEING KILLED. AND THE ELEMENTS OF MALICE AND INTENT -- AND I MENTION ABOUT THE INTENT -- SOMETIMES IT GETS INTO GROSS RECKLESSNESS LIKE IS INVOLVED HERE. DEPRAVED HEART.

BUT THE THINGS THAT SHOW MALICE AND THE USE OF A DEADLY WEAPON FOLKS THIS IS THE DEADLY WEAPON. LYING IN WAIT, DOESN'T MEAN YOU'RE LAYING DOWN. KIND OF LIKE THE OLD THING, WATCH WESTERN MOVIES, WAITING AND BAM, BAM, BAM OR SOMETHING.

YOU KNOW, WHEN YOU GET OUT AND SOMEBODY INSULTS YOU AND YOU INSULT THEM, YOU GET IN A FIGHT AND UNFORTUNATELY SOMEBODY GETS HIT WRONG AND DIES, I MEAN, THAT'S WHERE WE TALK ABOUT VOLUNTARY MANSLAUGHTER OR SOMETHING.

BUT MALICE INVOLVES ONE OF THE -- DON'T HAVE TO PROVE IT. BUT ONE OF THE THINGS THAT SHOW MALICE IS LYING IN WAIT. AND FOLKS, THAT'S WHAT HAPPENED HERE.

STONE WAS UP ON THAT PORCH COMMITTING A FELONY, COMMITTING A BURGLARY. AND ALL OF A SUDDEN APPEARS A POLICE OFFICER, THE GUY HEARS POLICE CHATTER ON THE RADIO AND HERE COMES THE POLICE OFFICER AROUND THROUGH THAT SCREEN.

WHETHER HE SAW HIM, SAID SOMETHING TO HIM OR -- DEPUTY KUBALA DIDN'T SHOOT. IF HE SAW HIM, HE DIDN'T SEE HIM LONG ENOUGH TO EVEN PULL A TRIGGER.

AND I TELL YOU WHAT, DEPUTY KUBALA KIND OF FELLOW -- AND YA'LL HEARD A LITTLE ABOUT HIM, WHAT A GOOD GUY HE WAS. IF HE HAD SEEN STONE, IT WOULDN'T BEEN HIS FIRST THOUGHT TO SHOOT EVEN IF HE HAD SEEN HIM.

IT WOULD HAVE BEEN HIS FIRST THOUGHT TO DO JUST LIKE THAT OFFICER DID OUT IN THE WOODS, RISK HIS OWN LIFE. WOULDN'T HAVE BEEN HIS FIRST THOUGHT TO SHOOT. BUT IT WAS BOBBY STONE'S FIRST THOUGHT TO SHOOT.

BOBBY STONE LYING IN WAIT. BOBBY STONE SAYING HUH-UH, THAT OFFICER AIN'T TAKING ME TO JAIL. BOBBY STONE THINKING IT'S ME OR HIM AND I AIN'T GOING TO JAIL. IT'S WHAT HAPPENED.

AND YOU KNOW, YOU GOT THREE DIFFERENT WITNESSES. ONE DOWN THE STREET THAT I GUESS THEY ARE GOING TO SAY OH, IT'S SO DARK HE COULDN'T REALLY TELL IF IT WAS A DEPUTY.

FOLKS, YOU KNOW BETTER THAN THAT. YOU HEARD THE -- IRREGARDLESS OF WHAT THE EYES SEE AND THE FLASHLIGHT AND ALL THAT, BUT YOU KNOW, MR. BETHEA DOWN THE STREET, IT WAS LIGHT ENOUGH, DUSK DARK IT WAS LIGHT ENOUGH THAT HE COULD DISCERN IT WAS CHARLIE KUBALA IN THE CAR AS HE WENT BY AND A MINUTE OR TWO LATER HE HEARD BAM, BAM, BAM.

AND THE PEOPLE INSIDE HEARD -- KNEW STONE WAS BEATING ON THE DOOR AND HEARD SOMETHING FROM THE OUTSIDE, WHATEVER IT WAS, THEN HEARD BAM, BAM, BAM, BAM.

ONE OF THEM SAID BAM, BAM, BAM. AND MR. TAYLOR SAID BAM, BAM, BAM, BAM. BUT FOLKS, THE FIRST SHOT WAS SEPARATED FROM THE SECOND.

AND THEN THERE WAS A THIRD ONE. IT WAS DISTINCT

SHOTS. IT WAS THREE, AT LEAST THREE IF NOT FOUR, DISTINCT AND INTENTIONAL ACTS OF BOBBY STONE MAKING A CHOICE THAT THAT DEPUTY WAS GOING TO GO DOWN AND HE WAS NOT GOING TO JAIL.

BOBBY STONE MADE THAT CHOICE. AND YOU KNOW, HE HAS THE AUDACITY TO SAY I RAN OFF THE PORCH AND I DIDN'T SEE NO DEPUTY. LAYING THERE LIKE A FROG ON HIS BACK WITH HIS LEGS SPREAD WITH HIS GUN OUT FROM THE SIDE AND HIS WALKIE TALKIE OUT ON HIS RIGHT -- LEFT SIDE AND THAT FLASHLIGHT UP UNDER HIS ARM.

HAD AUDACITY TO SAY I DIDN'T SEE NO DEPUTY. GUN JUST WENT OFF ACCIDENTALLY ONE TIME AND I DIDN'T SEE NO DEPUTY. THAT'S WHAT HE SAID.

BUT THEN HE WENT AND RAN THROUGH THOSE WOODS WITHOUT A FLASHLIGHT NEARLY RUNNING INTO TREES, RUNNING INTO BRIARS, FALLING IN DITCHES, RUNNING INTO TREES, FALLING OVER STUMPS, FALLING OVER A TREE AND HIDING THERE IN THE WOODS FOR FOUR HOURS.

BUT HE DIDN'T SEE NO DEPUTY. GUN WENT OFF ACCIDENTALLY ONE TIME. FOUR HOURS OF NIGHT IN THE WOODS WITH NO FLASHLIGHT RUNNING THROUGH BRIARS AND RUNNING INTO TREES, FOLKS, BUT HE DIDN'T SEE NO DEPUTY.

AND I GUESS THEY BROUGHT OUT, WELL HE WENT THROUGH ALL THOSE WOODS, HE COULD HAVE GOT RID OF THE GUN. IF HE KNEW THIS WAS THE GUN THAT HE SHOT A DEPUTY WITH,

WHY DIDN'T HE JUST GET RID OF THE GUN?

WELL, THAT'S INTERESTING TOO BECAUSE THERE'S ANOTHER SIDE TO THAT. HE ALREADY KILLED ONE POLICE OFFICER, WHAT'S KEEPING HIM FROM KILLING ANOTHER?

AND SO HE KEEPS THAT GUN WITH HIM AND HE'S TRYING -- HE KNOWS THOSE WOODS, HE'S TRYING TO GET OUT. THANK GOODNESS JOHN PRINCE WAS RIGHT BEHIND.

GOT THERE PRETTY QUICK AND THEY SURROUNDED THE AREA AND THERE WERE POLICE OFFICERS AT THE BOYS CLUB AND ALL AROUND THAT AREA. AND THAT STATEMENT -- THOUGHT IT WAS FIFTY POLICE.

EVENTUALLY SWAT TEAM THERE WITHIN AN HOUR OR SO, HELICOPTER EVENTUALLY OVER HEAD. HE COULDN'T GO OUT. HE COULD HAVE BEEN TREATED FINE AND PROFESSIONALLY LIKE HE WAS WHEN HE WAS APPREHENDED IN THE WOODS. HE COULD HAVE GONE OUT.

BUT IF THE GUN WENT OFF ACCIDENTALLY AND HE DIDN'T SEE NO DEPUTY, HE DIDN'T KNOW HE HAD DONE ANYTHING WRONG, WHAT'S HE DOING IN THOSE WOODS FOR FOUR HOURS RUNNING IN THOSE BRIARS AND HIDING THERE WHEN HERE IS GUARDIANS OF OUR SAFETY RIGHT UP THERE WITH BLUE LIGHTS TO PROTECT HIM IF HE AIN'T DONE NOTHING WRONG.

AND NO, HE DECIDES TO HIDE IN THE WOODS FOR FOUR HOURS. AND THEN YOU KNOW WHAT HE'S THINKING, IF THEY -- MAYBE HE ACTUALLY TOLD THEM I DIDN'T THINK THE

OFFICERS COME UP IN THOSE PARTICULAR WOODS TO GET ME.

MAYBE HE THOUGHT HE'D LAY THERE FOR A WHILE AND WHEN THEY DIDN'T SEE HIM WALKING DOWN THE STREET THEY'D GO LOOK SOMEPLACE ELSE. HE WAS HIDING IN THOSE THICK WOODS. HE DIDN'T KNOW ABOUT THE FLARE.

YOU AND I DIDN'T KNOW ABOUT THE FLARE UNTIL THIS CASE, YOU KNOW, BUT THEY GOT IT, YOU KNOW, TO FIND PEOPLE IN THOSE KINDS OF WOODS. BUT ANY WAY, HE IS LAYING THERE AND HE HAS GOT THAT GUN, YOU KNOW.

HE DIDN'T GET RID OF IT BECAUSE HE IS STILL -- WAS THINKING ABOUT USING IT. BUT WHAT HAPPENED BECAUSE THEN THERE'S A HELICOPTER OVERHEAD AND THEN ALL OF A SUDDEN THERE'S A MIDNIGHT SUN, THEN ALL OF A SUDDEN THERE'S OFFICERS ALL AROUND HIM CLOSING IN.

IT'S BOBBY STONE DOING -- HE GOT WHAT FIVE BULLETS LEFT, CAN'T GET RID OF ALL OF THEM. SO HE DECIDES TO GIVE UP. BUT WHAT DOES HE DO? THIS INNOCENT GUY DOESN'T BELIEVE HE SHOT ANYBODY, MUCH LESS A DEPUTY, WHAT'S HE DO?

LOOK AT THAT GUN. DID HE TRY TO RAM THAT GUN UNDER THAT THING ON THOSE LEAVES, TRY TO HIDE IT AND HOPE THEY WOULDN'T FIND IT? NOW THAT WE'RE UP HERE TRYING A CASE WITHOUT MATCHING THE BALLISTICS TO A GUN HE HAD WHEN HE WAS ARRESTED?

HE GOTTEN HID A LITTLE BIT BETTER? WAS THAT

WHAT HE WAS DOING, TRYING TO HIDE THAT THING BEFORE THE POLICE GRABBED HIM THERE? HE KEPT IT TILL THE LAST MINUTE IN CASE JUST MAYBE ONE OR TWO OFFICERS CAME TO HIM, WE WOULD HAVE HAVE TWO UNSOLVED MURDERS MAYBE.

BUT WHAT HE DID IS HE KEPT THAT GUN IN HIS LAST SECOND TO USE IT AGAIN AND THEN WHEN HE SAW HE DIDN'T HAVE ANY HOPE, THEN HE TRIED TO HIDE IT. BUT THEY START AND THEY ARRESTED HIM.

YOU KNOW ABOUT HIM FIGHTING WITH THEM AND EVERYTHING AND MAKING STATEMENTS. THESE OFFICERS, THIS IS ONE OF THEIR BROTHERS THAT WAS KILLED. ONE OF THEIR BROTHERS.

THESE OFFICERS ARE ALL PROFESSIONALS, LADIES AND GENTLEMEN. BUT WHAT WAS BOBBY STONE DOING? YOU KNOW, MAKING STATEMENTS LIKE WHY DON'T YA'LL GO AHEAD AND BEAT ME UP, WHY DON'T YOU GO AHEAD AND KILL ME, I KNOW THAT'S WHAT YOU WANT TO DO.

NOW, THIS IS A GUY -- YOU KNOW -- HE'S TELLING YOU THE GUN JUST WENT OFF ACCIDENTALLY, DIDN'T KNOW -- DIDN'T MEAN TO SHOOT ANYBODY, DIDN'T KNOW I HAD EVEN SHOT ANYBODY, DIDN'T EVEN KNOW THERE WAS A DEPUTY SHOT, DIDN'T KNOW THERE WAS ANY PERSON SHOT. I DIDN'T SEE NOTHING LIKE THAT.

BUT THEN HE GOES AND HIDES IN THE WOODS FOR FOUR HOURS. ALL OF THOSE CIRCUMSTANCES WE JUST WENT THROUGH.

AND THEN WHEN THEY GET HIM, SAYS WHY DON'T YA'LL GO AHEAD AND BEAT ME UP, WHY DON'T YOU GO AHEAD AND KILL ME? I KNOW THAT'S WHAT YOU WANT TO DO.

THIS IS THE GUY WHO DIDN'T SHOOT NO DEPUTY, DIDN'T KNOW HE SHOT NO DEPUTY?

THE COURT: SOLICITOR, LETS MOVE ON TO CONCLUSION, PLEASE.

MR. KOLB: YES, SIR.

(MR. KOLB CONTINUED).

LADIES AND GENTLEMEN, I'M GOING TO CONCLUDE NOW. THANK YOU, YOUR HONOR. BUT I KNOW YOU PAID CLOSE ATTENTION. YOU HOPEFULLY -- I BELIEVE YOU'D HAVE MADE THE RIGHT DECISION IN THIS CASE IF I HADN'T SAID A WORD.

LADIES AND GENTLEMEN, IN CONCLUSION, THAT NIGHT MRS. GRIFFITH DIDN'T HAVE ANY CHOICE. MRS. GRIFFITH WAS IN HER HOUSE AND SHE HAD A RIGHT TO BE SECURE AND PROTECTED THERE.

AND BOBBY STONE PUT HER IN A POSITION WHERE SHE DIDN'T HAVE ANY CHOICE. AND SHE HAD TO CALL THE POLICE BECAUSE THEIR JOB IS TO PROTECT HER AS A CITIZEN FROM PEOPLE LIKE BOBBY STONE.

CHARLIE KUBALA DIDN'T HAVE ANY CHOICE. HE HAD A SWORN DUTY TO PROTECT THE PUBLIC. EVEN AT THE EXPENSE OF RISKING HIS OWN LIFE, A SWORN DUTY THAT HE FATEFULLY EXECUTED.

BOBBY STONE HAD A CHOICE. BOBBY WAYNE STONE IS THE ONLY PERSON HERE THAT HAD A CHOICE. BOBBY STONE MADE THAT CHOICE AND NOW COMES HERE JUST LIKE IT WAS CHARLIE KUBALA'S DUTY.

LADIES AND GENTLEMEN, I SUBMIT TO YOU NOW AS CITIZENS IT'S YOUR DUTY. THE CASE HAS BEEN PRESENTED AND CONCLUSIVELY SHOWN HE IS GUILTY OF ALL OF THESE CHARGES. AND WE ASK YOU TO DO YOUR DUTY NOW AND TO FIND A TRUE AND JUST VERDICT. THANK YOU.

THE COURT: THANK YOU, MR. SOLICITOR. ALL RIGHT. LADIES AND GENTLEMEN, I'M GOING TO LET YOU GO TO YOUR JURY ROOM FOR ABOUT FIVE OR TEN MINUTES. PLEASE DO NOT BEGIN YOUR DELIBERATIONS. DO NOT DISCUSS THIS CASE AMONG YOURSELVES. YOU MAY RETIRE.

(WHEREUPON THE JURY LEFT THE COURTROOM AT 10:29 A.M.)

THE COURT: ANYTHING FROM THE STATE?

MR. KOLB: NOTHING.

THE COURT: ANYTHING FROM THE DEFENDANT?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: LET ME EXAMINE THE DEFENDANT IF YOU WOULD CONCERNING YOUR RIGHT, YOU HAD A CHANCE TO SPEAK? PLEASE DO SO.

(WHEREUPON THERE WAS A PAUSE).

THE COURT: MR. STONE, YOU HAD AN OPPORTUNITY TO

DISCUSS A MATTER WITH YOUR LAWYER. I ASSUME THAT YOU WERE TALKING ABOUT YOUR RIGHT, YOUR INDIVIDUAL RIGHT, TO SPEAK TO THIS JURY IN THIS PHASE OF THIS PROCEEDING. HAS HE EXPLAINED THAT TO YOU?

THE DEFENDANT: YES, SIR.

THE COURT: I PURPOSELY WANTED BEFORE ADDRESSING THIS TO AFFORD YOU AN OPPORTUNITY TO LISTEN TO THE SOLICITOR'S CLOSING ARGUMENT WHICH YOU HAVE DONE; IS THAT CORRECT?

THE DEFENDANT: YES, SIR.

THE COURT: YOU UNDERSTAND YOUR RIGHT TO ADDRESS THIS JURY?

THE DEFENDANT: YES, SIR.

THE COURT: WHAT IS YOUR DESIRE? DO YOU WISH TO -- AND YOU UNDERSTAND ALSO YOUR LAWYERS HAVE EXPLAINED THAT WOULD BE IN ADDITION TO YOUR LAWYERS.

THE DEFENDANT: YES, SIR.

THE COURT: WHAT IS YOUR DESIRE?

THE DEFENDANT: I DON'T WISH TO ADDRESS THEM.

THE COURT: YOU DO NOT WISH TO ADDRESS THEM AT THIS STAGE?

THE DEFENDANT: NO, SIR.

THE COURT: DO YOU FEEL LIKE YOU HAD SUFFICIENT TIME TO DISCUSS THIS MATTER WITH YOUR LAWYERS?

THE DEFENDANT: YES, SIR.

THE COURT: YOU UNDERSTAND FULLY YOUR RIGHT TO SPEAK

WITH THE JURY?

THE DEFENDANT: YES, SIR.

THE COURT: HAVE YOU HAD ANY -- CONSUMED ANY ALCOHOL OR TAKEN ANY DRUGS IN THE LAST TWENTY-FOUR HOURS?

THE DEFENDANT: NO, SIR.

THE COURT: DO YOU KNOW OF ANYTHING THAT'S AFFECTED YOUR ABILITY TO MAKE A DECISION -- A DECISION THAT YOU ARE COMFORTABLE WITH MAKING?

THE DEFENDANT: NO.

THE COURT: SO YOU ARE COMFORTABLE IN THAT DECISION?

THE DEFENDANT: YES, SIR.

THE COURT: VERY WELL. I DO FIND THE DEFENDANT HAS HAD AN OPPORTUNITY TO CONSIDER HIS RIGHT TO SPEAK TO THE JURY, FIND THAT HE HAS HAD THE BENEFIT OF COMPETENT COUNSEL TO EXPLAIN THAT TO HIM.

HE FULLY UNDERSTANDS HIS RIGHTS AND HAS EXPRESSED FREELY AND VOLUNTARILY A WILLINGNESS AND HIS DESIRE NOT TO SPEAK AND ADDRESS THE JURY DURING THIS PHASE. THANK YOU, SIR. YOU MAY BE SEATED. WE WILL BE AT EASE FOR ABOUT FIVE MINUTES.

(WHEREUPON A BRIEF RECESS WAS TAKEN).

THE COURT: LET THE RECORD REFLECT MR. STONE IS PRESENT. MR. STONE, YOU MAY REMAIN SEATED. BUT I FAILED TO ASK YOU ONE OTHER ASPECT.

I ASKED YOU EARLIER YESTERDAY IN FACT WHETHER OR

NOT YOU WERE SATISFIED WITH THE MANNER IN WHICH YOUR ATTORNEYS HAVE ADVISED YOU AND CONCERNING -- YOU KNOW -- AT THAT POINT I ASKED YOU ABOUT YOUR RIGHT TO TESTIFY AND NOT TESTIFY.

I NEED TO ASK YOU AGAIN WITH REGARD TO THOSE QUESTIONS THAT I JUST ASKED YOU CONCERNING YOUR RIGHT TO ADDRESS THE JURY. ARE YOU SATISFIED WITH THE MANNER IN WHICH THEY HAVE ADVISED YOU IN THAT REGARD?

THE DEFENDANT: YES, SIR.

THE COURT: VERY WELL. LET THE RECORD REFLECT HE ALSO HAS INDICATED HE'S FULLY SATISFIED WITH HIS ATTORNEYS. ALL RIGHT. LETS BRING THE JURY IN, PLEASE.

(WHEREUPON THE JURY ENTERED THE COURTROOM AT 10:42 A.M.)

THE COURT: THANK YOU VERY MUCH. THANK YOU, LADIES AND GENTLEMEN. READY TO CONTINUE WITH THE CLOSING ARGUMENTS. NOW, IF YOU'LL GIVE YOUR ATTENTION TO COUNSEL FOR THE DEFENDANT. MR. LITTLEJOHN?

MR. LITTLEJOHN: MAY IT PLEASE THE COURT?

THE COURT: YES, SIR.

CLOSING STATEMENT BY MR. LITTLEJOHN.

MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, I'D LIKE TO THANK YOU AGAIN FOR YOUR SERVICE DURING THE COURSE OF THIS CASE. STATE VERSUS BOBBY WAYNE STONE.

AS I INDICATED TO YOU, THIS IS BOBBY STONE'S

ONLY DAY IN COURT. I NOTICED DURING THE COURSE OF THIS TRIAL THAT EACH AND EVERYONE HAS -- YOU HAVE PAID VERY CLOSE ATTENTION TO THE EVIDENCE AS IT HAS UNFOLDED FOR BOTH SIDES AND FOR THAT I AM VERY APPRECIATIVE.

LADIES AND GENTLEMEN, YOU ARE ABOUT TO HEAR THE LAST CLOSING ARGUMENT AND THEN HIS HONOR WILL INSTRUCT YOU AS TO THE LAW THAT YOU ARE TO APPLY TO THE FACTS AS YOU FIND THEM IN THIS CASE.

AT THE CONCLUSION OF THAT IT WILL BE YOUR DUTY TO DELIBERATE AND RETURN A VERDICT AS TO THE THREE COUNTS IN THE INDICTMENT.

NOW, YOUR DELIBERATIONS WON'T CONCERN THE THREE COUNTS IN THE INDICTMENT. IF THERE WAS SOME WAY YOU COULD WRITE A VERDICT THAT WOULD BRING BACK DEPUTY KUBALA, I WOULD ASK YOU TO DO THAT.

BUT THERE IS NO SUCH VERDICT. THERE IS NO WAY ANYBODY ON EARTH CAN DO THAT. YOUR JOB IS TO CONSIDER WHETHER THE STATE HAS PROVEN THE GUILT OF BOBBY STONE. THAT'S YOUR ONLY JOB.

WHEN YOU TOOK YOUR OATH AS JURORS, THAT'S WHAT YOU PROMISED YOU WOULD DO. YOU PROMISED THAT YOU WOULD PUT THE STATE TO IT'S BURDEN OF PROOF WHICH IS BEYOND A REASONABLE DOUBT.

YOU PROMISED THAT YOU WOULD MAKE THEM MEET THAT BURDEN OF PROOF BEFORE YOU RENDERED A GUILTY VERDICT.

THAT'S ALL WE CAN ASK YOU TO DO. THOSE ARE THE ISSUES THAT ARE IMPORTANT.

NOW, LADIES AND GENTLEMEN, THE SOLICITOR KOLB CAME UP HERE AND GAVE A VERY COMPELLING ARGUMENT. AND ONE OF THE FIRST THINGS HE SAID WAS WHEN HE GOT THROUGH THAT HE WAS GOING TO SIT DOWN AND HE WOULDN'T BE ABLE TO CALL ANY WITNESSES AND HE WANTED YOU TO KNOW THAT IF THERE WERE QUESTIONS THAT SHOULD HAVE BEEN ASKED, THEY SHOULD HAVE BEEN ASKED EARLIER.

WELL, THAT'S NOT -- AND HE KNOWS THAT'S NOT RIGHT. WHEN YOU TOOK YOUR OATH, YOU RECALL YOU PROMISED THAT THE DEFENDANT WOULDN'T HAVE TO PROVE ANYTHING. HE WOULDN'T HAVE TO SAY ANYTHING.

HE WOULDN'T HAVE TO ANSWER ANY QUESTIONS. THE STATE CLEARLY HAS THE BURDEN OF PROOF, NOBODY ELSE. IT'S UP TO THEM TO PUT UP HARD EVIDENCE BEFORE YOU COULD FIND BOBBY STONE GUILTY.

IT'S UP TO THEM TO PROVE IT TO YOU, NOT BY SPECULATION, NOT BY SAYING WELL, THIS MIGHT HAVE HAPPENED AND THAT MIGHT HAVE HAPPENED OR MAYBE WE CONCLUDE THIS COULD HAVE HAPPENED. SOMETHING ELSE.

NOW, SOLICITOR KOLB SAID I'M GOING TO HAVE QUESTIONS ABOUT THE STATE'S CASE AND HE IS DARNED RIGHT BECAUSE THERE ARE A LOT OF HOLES IN IT. THERE ARE SO MANY HOLES THAT I SUBMIT MANY OF THESE THINGS HAVEN'T BEEN

PROVED.

LETS TALK FIRST ABOUT THE FIRST COUNT OF THE INDICTMENT, THE BURGLARY. THE STATE CLEARLY HAS THE BURDEN OF PROVING TO YOU THAT NOT ONLY DID BOBBY STONE BREAK AND ENTER AT 817 TAYLOR STREET, BUT HE DID SO WITH THE INTENT TO COMMIT A CRIME THEREIN.

LADIES AND GENTLEMEN, THEY HAVEN'T PROVED THE INTENT TO COMMIT A CRIME THEREIN. AS TO THE BREAKING AND ENTERING, LETS LOOK AT THIS FIRST; OKAY? LETS LOOK AT WHAT BOBBY STONE COULD HAVE DONE IF HE IS THIS ARCH BURGLAR AND CRIMINAL THEY WANT TO PAINT HIM TO BE.

YOU KNOW, HE CAME TO THE HOUSE AT 5:39 THAT AFTERNOON. AND AS I RECALL THE TESTIMONY, WHEN HE WALKED UP TO THE BACK DOOR HE DIDN'T HAVE A SHOTGUN IN HAND. HE KNOCKED ON THE DOOR.

MRS. GRIFFITH TOLD HER DAUGHTER FOR REASONS NEVER BEEN EXPLAINED SHE DIDN'T WANT BOBBY WAYNE STONE THERE. MRS. MCLEOD WENT TO THE DOOR.

AS I RECALL THE TESTIMONY -- AND LET ME GIVE YOU THIS CAVEAT FIRST OFF. IT'S UP TO YOU TO DECIDE WHAT THE TESTIMONY IS. THAT'S YOUR JOB. TO FIND THE TRUTH.

I'M GOING TO BE RECOUNTING WHAT I RECALL THE TESTIMONY TO BE. IF I MAKE A MISTAKE IT'S BECAUSE OF THIS AND NOT THIS. SO WHEN YOU GO BACK TO DELIBERATE, YOU TAKE THE TESTIMONY AND THE EVIDENCE AS YOU RECALL IT AND THAT'S

WHAT IT IS.

BUT AS I RECALL THE TESTIMONY, WHEN MRS. MCLEOD WENT OUT THE BACK DOOR BOBBY WAYNE WAS LEAVING. HE WAS WALKING AWAY. MRS. MCLEOD WHO BOBBY MAINTAINED HAD NEVER KNOWN SAID I WANT YOU TO LEAVE.

WHAT WAS HIS CONDITION AT THIS TIME? HIS EYES WERE GLASSY. HE WAS WOBBLING. APPARENTLY HE HAD BEEN DRINKING. HE WENT UP TO THE SHED. SHE SAID WHERE ARE YOU GOING? HE SAID I'M GOING HOME. NOT VERY RESPONSIVE.

BUT IN ANY EVENT, HE LEFT. LATER SHE WENT UP IN THE WOODS AND THAT'S WHEN SHE SAW HIM WITH A SHOTGUN WHILE HE WAS UP IN THE WOODS.

NOW LADIES AND GENTLEMEN, IF HE'S THIS -- A BURGLAR, HE COULD HAVE COME BACK, BROKEN IN, DONE ALL THESE HORRENDOUS THINGS THE STATE WANTS YOU TO THINK HE WAS GOING TO DO. HE COULD HAVE DONE IT RIGHT THEN.

IF YOU RECALL, MRS. MCLEOD THEREAFTER CALLED 911. DEPUTY KUBALA RESPONDED, BUT HE DIDN'T GET THERE FOR ABOUT FORTY-FIVE MINUTES. IF BOBBY WAYNE STONE WANTED TO WREAK HAVOC IN THAT HOUSE AT 817 TAYLOR STREET, CERTAINLY COULD HAVE DONE IT THEN.

NOW, LATER HE EXPLAINED TO OFFICERS -- AND YOU HAVE THE STATEMENT. HE CAME BACK BECAUSE HE WANTED TO TALK TO RUTH. HE DIDN'T KNOW THIS LADY WHO RUN HIM OFF, BUT HE'D KNOWN RUTH. HE DRUNK BEER WITH HER.

ON ONE OCCASION HE WAS IN THE HOUSE, SOMEBODY WAS SMOKING MARIJUANA. THE LADY HAD LENT HIM A SUIT TO GO TO HIS MOTHER'S FUNERAL. NOW, HE GOES TO THE SIDE DOOR AND MRS. GRIFFITH CHARACTERIZED IT AS A BEATING ON THE DOOR.

I THINK BOBBY SAID HE WAS KNOCKING, MAYBE HE WAS BEATING. BUT WE DO KNOW THIS, LADIES AND GENTLEMEN. IF HE HAD AN INTENTION TO BREAK INTO THE HOUSE, WAS THAT DOOR GOING TO STOP HIM?

THAT DOOR WITH FIVE PANES OF GLASS AND A THIN BOARD COVERING THE SIXTH? NO DEADLOCK ON THAT DOOR. YOU KNOW, HE HAD THE SHOTGUN THERE, WHICH HE SHOULDN'T HAVE HAD. HE COULD HAVE TAKEN THE BUTT OF THE SHOTGUN AND BROKEN IN THAT DOOR.

HE COULD HAVE TAKEN THE SHOTGUN AND BLOWN THE LOCK OFF IF HE WANTED TO, BUT HE DIDN'T. HE COULD HAVE JUST KNOCKED THAT BOARD AWAY AND GONE RIGHT IN THAT HOUSE, WREAK ALL THIS MYSTERY THEY CONVINCED YOU HE WAS GOING TO DO.

OR WAS IT LIKE BOBBY TOLD INVESTIGATOR GALLIMORE AND LIEUTENANT HEROD, HE KNOCKED ON THE DOOR AND NOBODY ANSWERED. THIS LITTLE GUY WHO HAD BEEN DRINKING ALL AFTERNOON?

NOW, IF YOU RECALL, MRS. GRIFFITH CALLED 911 TO REPORT THAT NIGHT AT ABOUT 7:04 AND FOURTEEN SECONDS. AS INDICATED ON THE TAPES AND FROM THE FIRST WITNESS WHO

TESTIFIED IT WAS ABOUT THREE MINUTES BEFORE SERGEANT KUBALA EVEN ARRIVED ON THE PREMISES.

LADIES AND GENTLEMEN, IF BOBBY STONE WANTED TO GET IN THAT DOOR, HE CERTAINLY COULD HAVE DONE IT IN THREE MINUTES. BUT AS THE OFFICIAL REPORT IN THIS CASE, THE INCIDENT REPORT OF THE SUMTER COUNTY SHERIFF'S DEPARTMENT SAYS LIEUTENANT HOBBS, NO FORCED ENTRY. TWICE.

LETS BREAK IT DOWN, LADIES AND GENTLEMEN. WHAT WITNESSES HELP US WITH THE BURGLARY CHARGE? ACTUALLY THERE ARE TWO MAIN WITNESSES. THERE IS RUTH GRIFFITH AND THERE IS LANDROW TAYLOR.

LETS TALK ABOUT RUTH GRIFFITH A LITTLE BIT. THIS IS A LADY I THINK THAT'S BEEN PROVEN TAKES MULTIPLE MEDICATIONS, DRINKS BEER ON A REGULAR BASIS. HER NIECE TESTIFIED SHE MAKES THINGS UP.

AND SHE IS OUR MAIN WITNESS AS TO THE BURGLARY COUNT. AND BY HER TESTIMONY SHE DIDN'T SEE ANYTHING THAT HAPPENED ON THAT PORCH. ACCORDING TO HER, THE DOOR NEVER OPENED. THE WINDOWS NEVER BROKE.

HER THIN BOARD GOT LOOSE, BUT NOBODY REACHED IN AND TURNED THE KNOB. NOW, THEY WANT TO MENTION THE SCREEN DOOR. WHAT KIND OF EVIDENCE HAVE WE GOT ABOUT THE SCREEN DOOR BEING INVOLVED OTHER THAN RUTH GRIFFITH?

A LADY WHO BEGAN HER TESTIMONY BY MAKING -- SHE WANTED TO MAKE YOU THINK THAT SHE DIDN'T HAVE ANY

RELATIONSHIP WITH BOBBY STONE. LATER SHE ADMITTED SHE DID. LATER WHEN WE PUT THE WITNESSES UP IT WAS OBVIOUS.

WHY WOULD SHE DO THAT? WHY WOULD SHE ATTEMPT TO MISLEAD YOU ABOUT SOMETHING LIKE THAT? THERE MUST BE SOME REASON, BECAUSE THE STATE HASN'T ADDRESSED IT.

THEY HAVE THE BURDEN OF PROOF IN THIS CASE. BUT AS TO THE SCREEN DOOR. YEAH, I ASKED IF THE SCREEN DOOR HAD BEEN EXAMINED. THEY WANT TO MAKE A BIG DEAL ABOUT ALL THE FORENSICS.

DID AGENT MARTIN EXAMINE IT? NO. DID ANYBODY EXAMINE IT? NO. DID ANY OF THE OFFICERS WHO WERE ON THE SCENE THAT NIGHT LOOK AT THE DOOR? LOOK AT THE LATCH TO SEE IF THERE WAS A LATCH? WE HAVE GOT NO TESTIMONY.

DID ANYBODY TAKE A PICTURE OF IT? OTHER THAN THE OUTSIDE OF THE DOOR? NO. IT'S UP TO THEM, LADIES AND GENTLEMEN. AND MORE IMPORTANT THAN THAT, YOU ARE GOING TO HAVE TWO PICTURES IN THERE OF THE BOTTOM OF THE INTERIOR DOOR. TO ME THAT IS PRIVY.

THERE IS NO -- WE DON'T EVEN HAVE A PICTURE OF THIS THIN BOARD. IT'S NOT UP TO US TO PROVE ANYTHING. IT'S UP TO THE STATE. YOU WOULD THINK IN A CASE LIKE THIS THEY COULD HAVE AT LEAST TAKEN A PICTURE SO WE'D KNOW WHAT IT LOOKS LIKE.

THIS LITTLE PORCH USED FOR STORING FIRE WOOD, COVERED. HIS HONOR WILL INSTRUCT YOU IN THAT REGARD. IT

WASN'T A SITTING AREA. IT WASN'T SOMEWHERE WHERE PEOPLE STAYED.

LADIES AND GENTLEMEN, I SUBMIT TO YOU THAT THE STATE HAD FAILED TO PROVE BY THEIR LACK OF EVIDENCE BREAKING AND ENTERING AND BY THEIR LACK OF EVIDENCE OF ANY INTENT ON THE PART OF BOBBY STONE TO COMMIT A CRIME INSIDE RUTH GRIFFITH'S HOUSE.

THIS IS A LADY WHO HE OBVIOUSLY KNEW. HE HAD DRUNK WITH HER. SHE HAD GIVEN HIM A SUIT TO WEAR TO HIS MOTHER'S FUNERAL.

LADIES AND GENTLEMEN, LETS TALK ABOUT COUNT TWO. THE STATE OBVIOUSLY WANTS YOU TO THINK THAT BOBBY STONE IS A COLD BLOODED KILLER OF A POLICE OFFICER.

THEY WANT YOU TO THINK THAT HIS INITIAL OBJECT OF EVIL INTENT WAS RUTH GRIFFITH. BUT AS WE DISCUSSED, IF THAT WAS HIS ORIGINAL INTENT, HE CERTAINLY HAD EVERY OPPORTUNITY TO CARRY THAT OUT AND HE DID IT.

THEY WANT YOU TO THINK THAT BOBBY STONE MEANT TO KILL SERGEANT KUBALA. BUT I SUBMIT TO YOU, LADIES AND GENTLEMEN, THEY HAVEN'T PROVED IT.

THEY HAVEN'T ELIMINATED ALL REASONABLE DOUBT THAT BOBBY STONE COMMITTED -- AND HIS HONOR WILL GIVE YOU THE INSTRUCTIONS AND HE WILL DEFINE MURDER FOR YOU. HE WILL DEFINE THE ELEMENTS.

BUT HE'S GOING TO TELL YOU BASICALLY THAT MURDER

IS THE UNLAWFUL KILLING, WILLFULLY AND WITH MALICE AFORETHOUGHT. THAT'S BASICALLY THE DEFINITION OF MURDER.

THE STATE HAS THE BURDEN OF PROVING EVERY ELEMENT INCLUDING MALICE. HIS HONOR WILL INSTRUCT YOU IN GREAT DEGREE, BUT BASICALLY FIND MALICE EXISTS WHEN A DEFENDANT HAS A DEPRAVED HEART, BENT ON WICKEDNESS.

AND I ASK YOU LADIES AND GENTLEMEN, GIVEN ALL OF THE CIRCUMSTANCES OF THIS CASE, DID THIS LITTLE GUY IN HIS DRUNKEN STUPOR ON THAT EVENING HAVE THE INTENTION OR CAPACITY TO BE THAT EVIL?

THE STATE WANTS TO SUGGEST TO YOU THAT BOBBY STONE WAS WAITING, WAITING TO AMBUSH DEPUTY KUBALA. THEY WANT YOU TO THINK THAT HE KNEW WHAT HE WAS DOING.

THEY PIN THAT ON TWO THINGS -- WELL, REALLY THREE. FIRST THEY WANT YOU TO BELIEVE THAT BOBBY STONE ON THAT PORCH COULD HAVE HEARD SERGEANT KUBALA COME UP.

SOLICITOR KOLB SAYS IT'S TRUE YOU CAN HEAR ON A SCREENED IN PORCH. YOU KNOW, IT'S A LIGHT -- YOU KNOW, CAR COMES UP ON GRAVEL DRIVE WAY. ALL WE KNOW IT'S A DIRT DRIVEWAY. THE CAR WAS CATI CORNER TO THE HOUSE ON THE OTHER SIDE.

NOBODY SAID ANYTHING ABOUT SIRENS GOING, BLUE LIGHTS GOING. SERGEANT KUBALA WAS THERE INVESTIGATING WHAT WAS RELATED TO HIM AS A BREAK IN IN PROGRESS. I'M SURE HE CAME ON THE SCENE.

NOW, THEY WANT YOU TO THINK THAT SERGEANT KUBALA WOULD HAVE HAD HIS RADIO ON IN INVESTIGATING A SUSPECTED BREAK IN IN THE REAR OF A HOUSE.

NOW, LADIES AND GENTLEMEN, FIRST OFF LETS LOOK AT THE FACTS. SERGEANT KUBALA TELLS DISPATCH HE'S BUSY AT 70755 AFTER HE'S ARRIVED. HE'S ALREADY SIGNED DOWN AT THE LOCATION A MINUTE BEFORE.

NOW, AT THAT POINT HE TELLS DISPATCH HE IS BUSY, HOLD HIS CALLS. NOBODY COULD TELL US WHETHER HE DID THAT WITH HIS WALKIE TALKIE OR WITH THE RADIO IN HIS CAR. WE DON'T KNOW.

BUT WE DO KNOW THAT FROM THE TIME HE DID THAT UNTIL WHEN RUTH GRIFFITH REPORTS SHOTS WERE JUST FIRED WAS SOME THIRTY-FIVE SECONDS. I SUBMIT TO YOU EASILY ENOUGH TIME TO WALK FROM THE CAR TO AROUND THIS HOUSE WHERE THIS PORCH WAS. AND WERE THERE CALLS IN BETWEEN? I DIDN'T HEAR ANY.

AND THE RADIO. THIRTY-FIVE OR FORTY-FIVE MINUTES AFTER THIS THING HAPPENED, SAID I HEARD THE RADIO WAY DOWN IN THE GRASS, SPEAKER DOWN. YOU KNOW, IT'S FUNNY. WE HAD...

PRINCE WAS THERE FIRST. LIEUTENANT HOBBS CAME ON THE SCENE, DEPUTY WINSTON, THE E M T PEOPLE. THEY WERE ALL THERE WHEN THAT RADIO WOULD HAVE BEEN JUMPING. THEY DIDN'T HEAR IT.

IT'S UP TO THEM TO PROVE THESE THINGS, LADIES AND GENTLEMEN. AND THE FLASHLIGHT. THEY WANT TO SAY WELL, SERGEANT KUBALA HAD A FLASHLIGHT, OBVIOUSLY BOBBY STONE SAW IT.

YOU ARE GOING TO SEE, LADIES AND GENTLEMEN -- THIS IS STATE'S EXHIBIT 22 AND THIS IS WHAT I WAS MAKING REFERENCE TO. THE LITTLE PORCH IS BOARDED UP TO AN ELEVATION THAT WAS OVER INVESTIGATOR MACKESSY'S HEAD. HE WAS TALLER THAN SERGEANT KUBALA.

NOW, SOLICITOR KOLB WANTS YOU TO SAY WELL, THE WOODS ARE STANDING UP A LITTLE WAYS. BOBBY STONE COULD LOOK RIGHT OVER IT. YOU LOOK AT IT, LADIES AND GENTLEMEN. THAT BOARDING COMES UP FAR UP ON THAT PORCH.

IF SERGEANT KUBALA IS WALKING RIGHT NEXT TO THE HOUSE, HOW IS BOBBY STONE GOING TO SEE HIM? HOW WAS BOBBY STONE GOING TO HEAR HIM IF BOBBY STONE IS KNOCKING ON THE DOOR?

NOW, AS I RECALL THE TESTIMONY OF MR. TAYLOR AND MRS. GRIFFITH, HE WAS KNOCKING ON THE DOOR UNTIL THEY HEARD HALT OR HOLD.

AND THIS -- GIVEN THE FACT HE'S FACING THE INTERIOR DOOR WHICH THE STATE WANTS YOU TO BELIEVE AND WHICH BOBBY STONE BELIEVES -- IT'S AN INTERIOR DOOR THAT YOU ARE GOING TO RECEIVE.

BUT THE QUESTION REMAINS -- SERGEANT KUBALA IS A

GOOD OFFICER. IS HE GOING TO ALERT THE SUSPECT WITH A FLASHLIGHT? I SUBMIT HE WOULD NOT. THEN WHAT HAPPENED?

THE TRAGIC INCIDENT, THE SECONDS THAT SHAPE THIS CASE AND MAKE THIS CASE. BOBBY STONE HAS BEEN DRINKING DURING THE COURSE OF THE AFTERNOON, SMOKED MARIJUANA THAT MORNING, HAS BEEN UNEXPECTEDLY CHASED OFF FROM THE HOUSE OF THE LADY HE USED TO DRINK WITH, GAVE HIM A SUIT TO GO TO HIS MOTHER'S FUNERAL.

HE'S IN THE DARK AND SUDDENLY HE IS STARTLED BY A VOICE. AND HE TURNS AND AS HE TOLD YOU IN HIS STATEMENT, THE HAIR TRIGGER DONE AGAIN WENT OFF. APPARENTLY THREE SHOTS.

AS INVESTIGATOR PARNELL, LIEUTENANT PARNELL, SAID FIRING IN A BLINK OF AN EYE WITH THAT HAIR TRIGGER. AND I UNDERSTAND WHAT SOLICITOR KOLB IS SAYING ABOUT THAT GUN AND I DON'T BLAME HIM, BUT IT'S A HAIR TRIGGER GUN.

LADIES AND GENTLEMEN, IT'S NOT A MACHINE GUN. BUT IT'S THE CLOSEST THING THERE IS PROBABLY. BUT THEN AFTER THESE SHOTS RING OUT ON THAT SMALL PORCH, BOBBY STONE RUNS AWAY FROM THE DARKNESS.

RUNS AWAY NOT REALIZING WHAT HAS OCCURRED AND WHAT REALLY IS ABOUT TO HAPPEN. AND WHY DO I SAY THAT? WHY DO I SUGGEST THAT? LET ME ASK YOU THIS QUESTION, LADIES AND GENTLEMEN.

WHO KNOWING THEY HAVE KILLED A DEPUTY OR KILLED

ANYBODY FOR THAT MATTER AND TAKES OFF THROUGH THE WOODS IS GOING TO KEEP A MURDER WEAPON THAT'S NOT REGISTERED TO THEM, SO THEY ARE NOT ASSOCIATED WITH THEM.

WHY HANG ON TO IT? BOBBY STONE KNEW THE WOODS LIKE THE BACK OF HIS HAND. HE COULD HAVE DITCHED IT IF HE HAD KNOWN WHAT WAS GOING ON. IF HE HAD KNOWN WHAT REALLY HAPPENED, WHY DID HE GO JUST A SHORT DISTANCE AWAY FROM WHERE THIS CRIME TOOK PLACE?

HE WASN'T FAR AT ALL. THEY SAY WELL, IT WAS THIS BIG DRAG NET THING, HE KNEW HIS WOODS LIKE THE BACK OF HIS HANDS. AND IF YOU WILL SEE YOU HAVE STATE'S EXHIBIT 5 BACK THERE.

THE DRAG NET WAS ON THE SIDE STREET. THEY WEREN'T DRAGGING IT UP THROUGH THOSE WOODS THAT HE KNEW ALL ABOUT. IF HE HAD REALLY DONE IT, DON'T YOU THINK HE WOULD HAVE REALLY TAKEN OFF? FOUR HOURS.

AND LADIES AND GENTLEMEN, HE BEING THIS NOTORIOUS KILLER THEY WANT TO MAKE HIM OUT TO BE, WOULD SIT THERE MOTIONLESS UNDER A HELICOPTER AND WAIT FOR THE SWAT TEAM TO ARRIVE?

NOW, SOLICITOR KOLB WANTS TO MAKE SOMETHING OUT OF THE STATEMENTS THAT WERE ATTRIBUTED BY COMING OUT OF THAT ARREST WHERE HE SAID BEAT ME UP KILL ME, WHATEVER.

WELL, I SUGGEST TO YOU LADIES AND GENTLEMEN THAT BOBBY HAD JUST GOTTEN THE SWAT TEAM SOBER UP TREATMENT AND

WITH TWELVE OF THEM AROUND HIM PULLING HIM OUT OF THE WOODS, I DON'T THINK THOSE STATEMENTS ARE TOO INCREDIBLE.

AND HE BEING SUCH AN ARCH VILLAIN AS THEY WANT TO PORTRAY HIM, GOES INTO THE POLICE STATION, WAIVES HIS WARNINGS AND ANSWERS EVERY QUESTION LIEUTENANT HEROD AND INVESTIGATOR GALLIMORE HAD.

AND YOU HEARD THINGS HE ADMITTED TO AND YOU WILL HAVE HIS STATEMENT IN THERE. HE DIDN'T HAVE TO DO THAT. HE COULD HAVE SAID I'M NOT GOING TO TALK TO YOU. HE COULD HAVE SAID I WANT A LAWYER. HE COULD HAVE SAID I NEVER WAS AT RUTH GRIFFITH'S HOUSE.

BUT HE DID. HE TOLD HIS STORY. LADIES AND GENTLEMEN, I SUBMIT TO YOU COUNT TWO HAS NOT BEEN PROVED AND WE WILL TALK A LITTLE BIT MORE ABOUT COUNT TWO IN JUST A MINUTE.

COUNT THREE CHARGES BOBBY STONE WITH POSSESSION OF A DEADLY WEAPON DURING THE COURSE OF A CRIME OF VIOLENCE.

I SUBMIT TO YOU BRIEFLY THAT IF THE STATE HAS FAILED DURING THEIR PROOF AS TO COUNT ONE AND COUNT TWO, THEN THEY HAVE ALSO FAILED AS TO THAT PARTICULAR CHARGE.

NOW, AS TO COUNT TWO, LADIES AND GENTLEMEN -- AND I'M GOING TO SIT DOWN HERE VERY SHORTLY. HIS HONOR IS GOING TO INSTRUCT YOU AS TO THE LAW THAT YOU ARE TO APPLY TO THE FACTS AS YOU FIND THEM IN THIS CASE.

HE IS ALSO GOING TO INSTRUCT YOU AS TO THOSE OFFENSES WHICH YOU MAY CONSIDER DURING YOUR DELIBERATIONS. HE IS GOING TO TELL YOU THAT YOU MAY CONSIDER A LESSER OFFENSE AS TO COUNT TWO, COUNT TWO BEING MURDER CHARGE.

HE IS GOING TO TELL YOU THAT YOU MAY CONSIDER AND DETERMINE THAT THE DEFENDANT BOBBY STONE IS GUILTY OF INVOLUNTARY MANSLAUGHTER IF YOU DETERMINE THAT THE STATE HAS NOT PROVEN THE BURGLARY.

HE IS GOING TO TELL YOU ALL OF THE ELEMENTS OF THAT SERIOUS CRIME. INVOLUNTARY MANSLAUGHTER. HE WILL TELL YOU HOW THAT OFFENSE WAS COMMITTED AND HOW IT IS COMMITTED WHEN SOMEONE ACTS WITH CRIMINAL NEGLIGENCE AND A LIFE IS TAKEN.

I CANNOT CONTEND THAT BOBBY STONE WAS NOT GUILTY OF INVOLUNTARY MANSLAUGHTER. CRIMINAL NEGLIGENCE, THAT APPEARS TO BE WHAT THIS IS. THAT'S UP TO YOU. YOU ARE THE JUDGES OF THE FACTS IN THIS CASE.

YOU'RE THE ONES THAT HAVE TO MAKE THE DECISION, THE DECISIONS THAT WILL INFLUENCE THE REST OF THE LIFE OF BOBBY STONE.

BUT I ASK YOU TO ONCE AGAIN CONSIDER YOUR OATH AND REMEMBER THE PROMISES THAT WERE MADE WHEN YOU AGREED TO THIS JOB AND YOU ACCEPTED.

THE BURDEN OF PROOF IN THIS CASE IS SQUARELY UPON THE STATE AND IS BEYOND A REASONABLE DOUBT AND THAT'S

YOUR OBLIGATION TO DO. AGAIN I THANK YOU FOR YOUR SERVICE ON BEHALF OF JIM BABB AND BOBBY STONE.

WE KNOW WHEN YOU GO BACK TO DELIBERATE AND CONSIDER ALL OF THE FACTS THAT HAVE BEEN PRESENTED, WHEN YOU CONSIDER THE LAW THAT HIS HONOR WILL INSTRUCT YOU, THAT YOU WILL RENDER A VERDICT.

VERDICT COMES FROM THE LATIN WORD VEREDICTO. WHICH MEANS IN LATIN TO SPEAK THE TRUTH. THAT'S WHAT WE ASK OF YOU. THANK YOU, LADIES AND GENTLEMEN, APPRECIATE YOUR ATTENTION.

THE COURT: THANK YOU, MR. LITTLEJOHN. LADIES AND GENTLEMEN, ANYONE NEED A BREAK AT THIS POINT? IF YOU DO, RAISE YOUR HAND. IF NOT...? ALL RIGHT.

CHARGE OF THE COURT.

LADIES AND GENTLEMEN OF THE JURY, WE HAVE NOW COMPLETED THE THIRD PHASE OF THIS PROCEEDING. AND IT'S NOW THE POINT, THE LAST PHASE, WHICH IS KNOWN AS THE CHARGE ON THE LAW. BECOMES MY RESPONSIBILITY AS THE JUDGE OF THE LAW AND THE PRESIDOR OF THE CASE TO GIVE YOU THE LAW, WHICH I WILL NOW DO.

LET ME TELL YOU AT THIS POINT THERE ARE PARTS OF THIS I WILL BE ABLE TO MAKE CONTACT AT TIMES, BUT THERE ARE PARTS WHERE I WILL READ YOU THE SPECIFIC LAW.

FORGIVE ME FOR READING TO YOU AND NOT MAKING EYE CONTACT. MAY BE DISCONCERTING SOMEWHAT, BUT I WANT TO BE

CERTAIN THAT I STAY ACCURATE WITHIN THE LAW WHICH YOU MUST APPLY TO THE FACTS.

SO I TELL YOU THAT NOW IF YOU SEE ME LOOKING AT THIS COMPUTER SCREEN, IT'S NOT THAT I WISH NOT TO MAKE EYE CONTACT, BUT RATHER THAT I WISH TO STATE CORRECTLY THE LAW FOR YOU.

LADIES AND GENTLEMEN, IT'S MY RESPONSIBILITY TO STATE THE LAW AND IT'S YOUR RESPONSIBILITY AND EXCLUSIVE DUTY TO ACCEPT THIS LAW AS I STATE IT TO YOU, APPLY THIS LAW TO THE FACTS AS YOU DETERMINE THOSE FACTS TO BE AND TO DETERMINE THE TRUTH OF THE EVIDENCE OR THE TRUE FACTS OF THIS CASE.

BOTH THE STATE AND MR. STONE HAVE A RIGHT TO EXPECT THAT YOU WILL CONSCIENTIOUSLY CONSIDER AND EVALUATE THE EVIDENCE AND APPLY THE LAW TO THOSE FACTS AND TO THAT END BOTH THE STATE AND MR. STONE WILL RECEIVE A FAIR AND IMPARTIAL DETERMINATION IN THIS MATTER.

IF DURING MY INSTRUCTIONS I SHOULD FAIL TO SPECIFICALLY DEFINE A TERM OR A GROUP OF WORDS TO YOUR SATISFACTION, PLEASE UNDERSTAND EVERYTHING THAT I AM ABOUT TO TELL YOU IN IT'S PLAIN ORDINARY COMMON SENSE MANNER, IN OTHER WORDS APPLY YOUR GOOD JUDGMENT AND COMMON SENSE TO THESE WORDS.

AFTER ALL, YOU WERE SELECTED AS COMMON SENSE INDIVIDUALS. THIS WHOLE PROCESS IS A COMMON SENSE

EXERCISE. SO UNDERSTAND EVERYTHING THAT I'M ABOUT TO TELL YOU IN A COMMON SENSE FASHION.

DURING THIS INSTRUCTION, FROM TIME TO TIME I MAY USE THE WORD DEFENDANT. LET ME TELL YOU THAT WORD DOESN'T REALLY MEAN ANYTHING OTHER THAN IT'S A NAME GIVEN TO A PARTY IN THIS MATTER. THAT'S THE PURPOSE OF IT.

IT DEFINES ONE OF THE PARTIES. WHEN I USE THAT WORD I AM REFERRING TO MR. STONE. HE IS THE DEFENDANT IN THIS MATTER. MR. STONE IN THIS CASE -- I MENTIONED TO YOU ON MONDAY THAT HE'S CHARGED OR ACCUSED IF YOU WILL BY THIS DOCUMENT I NOW HOLD IN MY HAND.

IT'S AN INDICTMENT. IT IS WHAT IT APPEARS TO BE, A PIECE OF PAPER. NOTHING MORE. IT CONTAINS THE CHARGES. IT INFORMS HIM OF THAT WHICH HE IS ACCUSED OR STANDS ACCUSED.

TO THIS INDICTMENT MR. STONE HAS RENDERED A PLEA OF NOT GUILTY WHICH PLACES UPON THE STATE THE BURDEN OF PROOF IN THIS CASE BEYOND A REASONABLE DOUBT.

NOW, THIS INDICTMENT IS NOT AN EXHIBIT. THE REASON IT'S NOT AND THAT'S WHY IT'S NOT EVIDENCE AS I TOLD YOU. THE STATE ACCUSES MR. STONE OF DOING THIS:

IN COUNT ONE THAT ON FEBRUARY 26TH 1996 HE DID WILLFULLY OR UNLAWFULLY ENTER THE DWELLING OF RUTH GRIFFITH WITHOUT CONSENT AND WITH INTENT TO COMMIT A CRIME THEREIN.

COUNT TWO. HE DID IN SUMTER COUNTY ON OR ABOUT FEBRUARY 26TH 1996 FELONIOUSLY, WILLFULLY AND WITH MALICE AFORETHOUGHT KILL ONE LAW ENFORCEMENT OFFICER DEPUTY SHERIFF CHARLES KUBALA.

AND THEN COUNT THREE ALSO IN SUMTER COUNTY ON OR ABOUT FEBRUARY 26TH 1996 MR. STONE DID POSSESS OR DISPLAY A FIREARM TO WIT: A SHOTGUN AND PISTOL DURING THE COMMISSION OR ATTEMPTED COMMISSION OF A VIOLENT CRIME.

THOSE ARE THE THREE CHARGES. AND TO THOSE CHARGES AS I STATED MR. STONE HAS ENTERED A PLEA OF NOT GUILTY WHICH MEANS THE STATE MUST PROVE THOSE THREE CHARGES BEYOND A REASONABLE DOUBT.

THIS PLEA AND IT'S EFFECT IS WHAT ESTABLISHES THIS WHOLE PROCESS. AS I HAVE STATED TO YOU MANY TIMES DURING THIS MATTER, A PERSON WHO IS ACCUSED WITH THE COMMISSION OF A CRIMINAL OFFENSE IN THIS STATE, IN THIS COUNTRY, IS NEVER REQUIRED TO COME IN AND PROVE HIMSELF OR HERSELF INNOCENT.

EACH OF YOU IS REQUIRED UNDER OUR LAW AND BY YOUR OATH TO ACTIVELY PRESUME THAT THE DEFENDANT IS NOT GUILTY. THE PRESUMPTION OF INNOCENT IS MAINTAINED AT ALL TIMES THROUGHOUT THE TRIAL OF THIS CASE AND IS ONLY REMOVED WHEN AND IF THE STATE BRINGS IN ENOUGH EVIDENCE TO PERSUADE YOU BEYOND ALL REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY.

SO THEN LADIES AND GENTLEMEN, OBVIOUSLY IT FOLLOWS THAT THE FACT THAT A DEFENDANT DOES NOT TESTIFY IN HIS OR HER OWN BEHALF CANNOT AND MUST NOT BE CONSIDERED AGAINST THAT DEFENDANT UNDER ANY CIRCUMSTANCES OR IN ANY MANNER WHATSOEVER.

A DEFENDANT, LADIES AND GENTLEMEN, HAS THE CONSTITUTIONAL RIGHT TO REMAIN SILENT. AND THE ASSERTION OF SUCH RIGHT CANNOT AND MUST NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS.

THEREFORE UNDER YOUR OATH YOU ARE TO RECEIVE NO INFERENCE AND DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT HIMSELF TESTIFY.

THE FAILURE TO TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM. THE BURDEN OF PROOF AS I HAVE STATED IS UPON THE STATE AND IT REMAINS UPON THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT.

THE FAILURE TO TESTIFY CANNOT AND MUST NOT BE CONSIDERED BY YOU IN DETERMINING THIS ISSUE OF GUILT OR WHETHER THE DEFENDANT IS GUILTY OR NOT GUILTY.

NOW, THE BURDEN OF PROOF WHICH I HAVE MENTIONED IS BEYOND A REASONABLE DOUBT. WHAT IS REASONABLE DOUBT? A REASONABLE DOUBT IS A DOUBT WHICH MAKES AN HONEST, SINCERE, CONSCIENTIOUS JUROR IN SEARCH OF THE TRUTH IN A CASE TO HESITATE.

PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT

LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. NOW, THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW TO AN ABSOLUTE CERTAINTY.

AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF BASED UPON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF A CRIME OR CRIMES CHARGED, YOU MUST FIND HIM GUILTY.

IF, ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT HE IS NOT GUILTY, YOU MUST GIVE HIM THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

REASONABLE DOUBT, LADIES AND GENTLEMEN, MAY ARISE FROM THE EVIDENCE WHICH IS IN THE CASE OR FROM THE LACK OR ABSENCE OF THE CASE. IT'S UP TO YOU TO DETERMINE WHETHER OR NOT A REASONABLE DOUBT EXISTS AS TO THE GUILT OF THIS DEFENDANT.

I CHARGE YOU THAT THE DEFENDANT IS ENTITLED TO EVERY REASONABLE DOUBT ARISING IN THE WHOLE CASE. IF UPON ANY ISSUE OF FACT ESSENTIAL TO A CONVICTION AND A VERDICT OF GUILTY YOU DO HAVE A REASONABLE DOUBT AS TO HOW THAT ISSUE SHOULD BE RESOLVED, IT WOULD BE YOUR DUTY TO RESOLVE THAT REASONABLE DOUBT IN FAVOR OF THE DEFENDANT.

NOW, THE EVIDENCE THAT YOU ARE TO CONSIDER IN THIS CASE CONSISTS OF THE TESTIMONY OF THE WITNESSES AND THE EXHIBITS THAT HAVE BEEN OFFERED AND RECEIVED DURING

THE TRIAL.

THE OBJECTIONS OF THE ATTORNEYS AND MY RULINGS ON THE OBJECTIONS, ANY TESTIMONY THAT WAS EXCLUDED FROM YOUR CONSIDERATION, THOSE MATTERS MAY NOT BE CONSIDERED BY YOU BECAUSE THEY ARE NOT EVIDENCE.

AGAIN, EVIDENCE IS THE TESTIMONY OF THE WITNESSES AND THE EXHIBITS WHICH HAVE BEEN OFFERED. LIKEWISE, IF IT APPEARS TO YOU THAT DURING THIS TRIAL I HAVE COMMENTED ON ANY FACTS OR INDICATED A POSITION I MAY HAVE ON THOSE FACTS, YOU MUST DISREGARD THAT.

LIKEWISE IF IN GIVING THESE INSTRUCTIONS YOU SHOULD THINK THAT I AM COMMENTING ON THE FACTS, YOU MUST DISREGARD THAT AS WELL BECAUSE YOU SEE LADIES AND GENTLEMEN THAT'S YOUR SOLE RESPONSIBILITY.

IT'S UP TO YOU TO DETERMINE WHAT ARE THE FACTS OF THIS CASE. ALSO THE REMARKS OF THE ATTORNEYS AS I HAVE STATED ARE NOT EVIDENCE. THEIR STATEMENTS AND THEIR ARGUMENTS ARE INTENDED TO HELP YOU TO UNDERSTAND THE EVIDENCE AND TO APPLY THE LAW.

YOU SHOULD THEREFORE DISREGARD ANY REMARK, ANY STATEMENT OR ARGUMENT WHICH IS NOT SUPPORTED BY THE EVIDENCE OR THE LAW AS I GIVE IT TO YOU.

HOW DO YOU DO THIS BUSINESS OR THIS PROCESS AND WHAT'S INVOLVED IN DECIDING THE FACTS OF A CASE? WELL, SURPRISINGLY IT'S WHAT WE HAVE BEEN TALKING ABOUT.

IT'S THE EXERCISE OF YOUR COMMON SENSE, THE APPLICATION OF YOUR SENSE OF REASON, YOUR SENSE OF LOGIC. YOU MAKE DECISIONS EVERY DAY IN YOUR LIFE WHETHER SOMETHING IS BELIEVABLE, WHETHER SOMETHING IS CREDIBLE AND HOW MUCH WEIGHT YOU WISH TO GIVE TO THAT.

YOU DO THIS SAME -- THIS IS THE SAME PROCESS THAT YOU USE IN MAKING THE DECISION ON THIS -- IN THIS PARTICULAR CASE.

NOW, OUR LAW DOES STATE IN CONSIDERING ONE OF THE ISSUES -- AND THAT IS THE ISSUE OF CREDIBILITY AND BELIEVABILITY OF THE WITNESSES, THERE ARE CERTAIN FACTORS THAT YOU MAY CONSIDER.

NOW, I WOULD HASTEN TO ADD THAT THIS IS NOT ALL INCLUSIVE. AGAIN YOUR COMMON SENSE, YOU APPLY THAT. BUT YOU CERTAINLY MAY CONSIDER THE MANNER IN WHICH THE PERSON TESTIFIED OR THE APPEARANCE, THE DEMEANOR OF THE WITNESS.

DID THE WITNESS APPEAR TO BE STRAIGHT FORWARD OR HESITANT IN ANSWERING QUESTIONS? WAS THE WITNESSES TESTIMONY CONSISTENT OR INCONSISTENT? HOW DID THAT WITNESS COME TO KNOW THE FACTS THAT HE OR SHE TESTIFIED TO AND WHAT WAS THE ABILITY OF THAT WITNESS TO KNOW THESE FACTS?

IS THERE A REASON THE WITNESS WOULD WANT TO GIVE TESTIMONY WHICH WOULD HELP OR HURT ONE SIDE OR THE OTHER? IN OTHER WORDS, WAS THE WITNESS BIASED OR PREJUDICED IN

ANY WAY?

THERE IS ALSO IN THIS -- DURING THIS TRIAL TESTIMONY CONCERNING A PREVIOUS CONVICTION OF A WITNESS. THIS MAY BE CONSIDERED BY YOU ONLY FOR THE PURPOSE OF DETERMINING THE CREDIBILITY OF THAT WITNESS AND FOR NO OTHER PURPOSE WHATSOEVER.

THE FACT OF SUCH CONVICTION DOES NOT NECESSARILY DESTROY OR EVEN IMPAIR THE WITNESSES CREDIBILITY. IT IS JUST SIMPLY ONE OF THOSE CIRCUMSTANCES THAT YOU MAY TAKE INTO CONSIDERATION IN WEIGHING AND DETERMINING THE CREDIBILITY OF THAT PARTICULAR WITNESS.

IN DETERMINING THESE ISSUES, THIS ISSUE OF CREDIBILITY AND BELIEVABILITY OF A WITNESS, YOU HAVE VERY BROAD DISCRETIONS. YOU MAY BELIEVE ONE WITNESS AGAINST MANY, MANY WITNESSES AGAINST ONE, YOU CAN BELIEVE A LARGE PORTION OF WHAT ONE SAYS AND DISBELIEVE THE SMALL OR VICE VERSA.

YOU HAVE THE RIGHT, LADIES AND GENTLEMEN, TO DISBELIEVE A WITNESSES TESTIMONY IN IT'S ENTIRETY IF YOU CHOOSE TO. THESE DECISIONS, HOWEVER, YOU DO NOT MAKE OR EXERCISE THAT DISCRETION ARBITRARILY, BUT IF THERE IS A SOUND REASON IN THE RECORD FOR SO DOING.

YOU DO ENJOY THAT PREROGATIVE. YOUR MISSION AND YOUR OBJECTION IS TO SPEAK THE TRUTH IN THIS MATTER REGARDLESS OF THE SOURCE OF THE EVIDENCE.

NOW, EVIDENCE CAN BE PRESENTED IN ONE OF TWO WAYS. ONE IS BY DIRECT EVIDENCE AND ONE IS BY INDIRECT EVIDENCE. AND THE MORE POPULAR NAME FOR THAT IS CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS WHEN SOMEONE COMES IN AND TESTIFIES TO SOME FACT THAT THEY PERCEIVE THROUGH THEIR SENSORY PERCEPTIONS. I SAW SOMETHING. I HEARD SOMETHING. I FELT SOMETHING OR THE LIKE. THAT IS DIRECT EVIDENCE.

INDIRECT EVIDENCE OR CIRCUMSTANTIAL EVIDENCE IS WHEN SOMEBODY TESTIFIES TO DIFFERENT EVENTS THAT OCCUR. AND WHEN YOU LENGTHEN -- THEY POINT TO A FACT OR TO THE COMMISSION OF A CRIME.

NOW, EITHER METHOD CAN BE USED AND QUITE OFTEN BOTH METHODS ARE USED IN PRESENTING A CASE, BUT OUR LAW SAYS THAT TO THE EXTENT THAT THE STATE RELIES ON CIRCUMSTANCE CIRCUMSTANTIAL EVIDENCE, IT HAS TO MEET CERTAIN TESTS.

FIRST, THE STATE AS TO EACH ONE OF THOSE EVENTS OR CIRCUMSTANCES THAT THEY ARE RELYING ON HAS TO PROVE EACH ONE OF THOSE BEYOND A REASONABLE DOUBT.

FURTHER, THESE FACTS MUST POINT CONCLUSIVELY TO THE GUILT OF THE ACCUSED, TO THE DEFENDANT, AND THEY MUST BE WHOLLY, PERFECTLY CONSISTENT WITH EACH OTHER IN EVERY PARTICULAR RESPECT.

THESE FACTS MUST ALSO BE ABSOLUTELY INCONSISTENT WITH ANY OTHER THEORY OTHER THAN THE GUILT OF THE ACCUSED. THAT IS IS THERE ANOTHER REASONABLE EXPLANATION OTHER THAN GUILT.

IF IT IS, THEN YOU CAN'T CONVINCE (SIC) ON THAT EVIDENCE. CONVICT ON THAT EVIDENCE. EXCUSE ME. IF THERE BE ANOTHER REASONABLE EXPLANATION.

I FURTHER INSTRUCT YOU THAT THE MERE FACT THAT THE CIRCUMSTANCES IN A CASE BROUGHT UP -- THAT ARE BROUGHT OUT -- ARE STRONGLY SUSPICIOUS OF GUILT OR THE CIRCUMSTANCES ARE SUCH THE DEFENDANTS GUILT IS PROBABLE, THAT THAT IS NOT ENOUGH.

THAT IS NOT SUFFICIENT TO SUSTAIN A CONVICTION BECAUSE THE PROOF OFFERED BY THE STATE HAS TO BE MORE THAN MERE SUSPICION. IT HAS TO BE MORE THAN SOMEONE BEING PROBABLY GUILTY. IT HAS TO BE PROVED, LADIES AND GENTLEMEN, TO SATISFY YOU BEYOND A REASONABLE DOUBT.

NOW, DURING THE TRIAL OF THIS CASE IN ADDITION TO LAY WITNESSES YOU HAVE HEARD WITNESSES THAT I HAVE IDENTIFIED AS EXPERT WITNESSES OR PERSONS WHO WERE ALLOWED TO GIVE OPINIONS IN THE FIELD OF THEIR EXPERTISE.

AS I STATED TO YOU, ORDINARILY WITNESSES ARE NOT PERMITTED TO COME IN AND TESTIFY TO ANYTHING OTHER THAN MATTERS WHICH ARE CAPABLE OF BEING PERCEIVED BY ONE OF THE SENSES, IN OTHER WORDS, GENERALLY WITNESSES ARE NOT

ALLOWED TO GIVE OPINIONS.

BUT OUR LAW AND OUR RULES DO PERMIT IN CERTAIN CASES, IN CERTAIN CIRCUMSTANCES, THAT SOME PERSONS WHO BECAUSE OF EDUCATION AND EXPERIENCE AND TRAINING PROFESS SOME EXPERTISE, THOSE INDIVIDUALS MAY BE PERMITTED TO GIVE AN OPINION IN REGARD TO THEIR FIELD OF EXPERTISE.

THAT DOES NOT MEAN THEIR TESTIMONY NECESSARILY HAS TO RECEIVE MORE WEIGHT THAN ANY OTHER WITNESS. YOU SHOULD CONSIDER THE EXPERT TESTIMONY IN THE SAME MANNER AS YOU DO ANY OTHER TESTIMONY AND GIVE TO IT SUCH WEIGHT AS YOU MAY BELIEVE IT TO BE ENTITLED WHEN CONSIDERED WITH ALL OF THE OTHER EVIDENCE IN THE CASE.

SUCH TESTIMONY AFTER ALL, LADIES AND GENTLEMEN, IS GIVEN FOR THE PURPOSE OF HELPING YOU UNDERSTAND THE EVIDENCE AND NOT FOR THE PURPOSE OF CONTROLLING YOUR JUDGMENT.

THE VALUE OF IT DOES NOT DEPEND UPON THE SKILL AND KNOWLEDGE PROFESSED BY THE EXPERT, BUT RATHER UPON THE SKILL AND KNOWLEDGE THAT THE EXPERT ACTUALLY POSSESSES.

AND IT'S FOR YOU TO JUDGE WHETHER AN EXPERT DOES POSSESS SUCH KNOWLEDGE. IN THIS REGARD YOU MAY WISH TO CONSIDER THE EXPERTS TRAINING, EXPERIENCE, ABILITY TO COMMUNICATE IDEAS, THE LOGIC OF THE EXPERTS OPINION, THE FACTUAL SUPPORT FOR THAT OPINION AND ALL OTHER FACTORS THAT YOU WOULD USE TO JUDGE AND WEIGH THE TESTIMONY OF ANY

OTHER WITNESS IN THIS MATTER.

NO MERE OPINION OF AN EXPERT CAN BE EXPECTED AS IN AND OF ITSELF TRUTHFUL OR RELIABLE. IT FIRST MUST BE WEIGHED BY YOU AND CONVINCE YOUR JUDGMENTS BEYOND A REASONABLE DOUBT AND WITHIN THE SAME FORCE AND EFFECT AS ANY OTHER FACT PROVED IN THIS CASE BEFORE YOU MAY RELY ON IT.

NOW LADIES AND GENTLEMEN, GIVE SUCH EXPERT TESTIMONY THE WEIGHT IF ANY TO WHICH YOU DEEM IT ENTITLED. THERE HAS ALSO BEEN ADMITTED IN THE RECORD OF THIS CASE A STATEMENT ALLEGED TO HAVE BEEN MADE BY THE DEFENDANT.

BEFORE YOU MAY CONSIDER THIS STATEMENT AS EVIDENCE FOR ANY PURPOSE, YOU MUST DETERMINE CERTAIN QUESTIONS.

FIRST, DID THE DEFENDANT MAKE THE STATEMENT? SECOND, WAS THE DEFENDANT WARNED OF HIS CONSTITUTIONAL RIGHTS? THIRD, DID THE DEFENDANT KNOWINGLY AND INTELLIGENTLY WAIVE HIS CONSTITUTIONAL RIGHTS?

FOUR, WAS THE STATEMENT GIVEN VOLUNTARILY. AND LASTLY, IN THIS CASE WHETHER OR NOT THE DEFENDANT RECEIVED A COPY OF THAT PARTICULAR STATEMENT, THE WRITTEN STATEMENT, THAT WE ARE TALKING ABOUT AS BEING INTRODUCED IN THIS MATTER.

THE FACT THAT THE COURT HAS ADMITTED A STATEMENT INTO EVIDENCE SHOULD NOT BE CONSIDERED BY YOU AS ANY

EVIDENCE WHATSOEVER THAT THE DEFENDANT MADE SUCH A STATEMENT OR THAT THE REQUIRED CONSTITUTIONAL SAFE GUARDS WERE IN FACT PROVIDED AND WEIGHED BY THE DEFENDANT OR THAT THE STATEMENT WAS VOLUNTARILY GIVEN, BECAUSE AS I HAVE STATED THESE ISSUES, LADIES AND GENTLEMEN, ARE FOR YOU TO DETERMINE.

THE STATE MUST PROVE BEYOND A REASONABLE DOUBT EACH OF THOSE REQUIREMENTS BEFORE YOU CAN CONSIDER THE STATEMENT AS EVIDENCE OR CONSIDER FOR ANY PURPOSE WHATSOEVER.

NOW, AS TO DID THE DEFENDANT MAKE THE STATEMENT, IF YOU CONCLUDE THAT THE DEFENDANT DID NOT MAKE THE STATEMENT, YOU CAN NOT AND YOU MUST NOT CONSIDER IT AS EVIDENCE IN ANY MANNER WHATSOEVER AND YOU SHOULD JUST COMPLETELY DISREGARD IT IN IT'S ENTIRETY.

IF ON THE OTHER HAND YOU FIND THAT THE STATE HAS PROVED BEYOND A REASONABLE DOUBT THE DEFENDANT DID MAKE THE STATEMENT, THEN YOU MUST CONSIDER THE NEXT REQUIREMENT, AND THAT IS WAS THE DEFENDANT WARNED OF HIS CONSTITUTIONAL RIGHTS?

WHEN AN INDIVIDUAL IS TAKEN INTO CUSTODY AND OTHERWISE DEPRIVED OF HIS FREEDOM OF ACTION IN ANY SIGNIFICANCE BY A POLICE OFFICER OR LAW ENFORCEMENT OFFICER, HE MUST BE WARNED HE OR SHE MUST BE WARNED OF THE CONSTITUTIONAL RIGHT PRIOR TO AND BEFORE ANY CUSTODIAL

INTERROGATION OR CUSTODIAL QUESTIONS OR QUESTIONS OR ASKED -- SUBMITTED TO THE WITNESS OR TO THE INDIVIDUAL -- EXCUSE ME.

THESE RIGHTS ARE THAT THE INDIVIDUAL HAD THE RIGHT TO REMAIN SILENT, THAT ANY STATEMENT THE INDIVIDUAL MADE COULD AND WOULD BE USED AGAINST HIM IN A COURT OF LAW.

THAT THE INDIVIDUAL HAD THE RIGHT TO SELECT AN ATTORNEY OF HIS CHOICE, HER CHOICE. BUT IF THE INDIVIDUAL DID NOT HAVE MONEY OR RESOURCES TO EMPLOY AN ATTORNEY, THAT THE COURT WOULD APPOINT ONE FOR THAT INDIVIDUAL TO REPRESENT THE INDIVIDUAL WITH OR WITHOUT COST OR EXPENSE IF THEY SO DESIRED.

THAT THE INDIVIDUAL HAD THE RIGHT TO CONSULT A LAWYER BEFORE ANSWERING ANY QUESTIONS OR MAKING ANY STATEMENTS AND THAT THE INDIVIDUAL HAD THE RIGHT TO HAVE THE LAWYER PRESENT WITH HIM AT ANY AND ALL TIMES DURING THE INTERVIEWS OR INTERROGATION.

IF YOU DETERMINE THAT THESE CONSTITUTIONAL WARNINGS WERE NOT GIVEN TO THE DEFENDANT PRIOR TO THE INTERROGATION AND THE TAKING OF THE STATEMENT, AND THE DEFENDANT WAS NOT AFFORDED AN OPPORTUNITY TO EXERCISE THESE RIGHTS, YOU MUST COMPLETELY DISREGARD THE STATEMENT.

AND IN THAT EVENT YOU CAN NOT CONSIDER THE

STATEMENT AS EVIDENCE IN ANY MANNER WHATSOEVER. IF YOU FIND THAT HE DID MAKE THE STATEMENT AND THAT YOU CONCLUDE THAT THESE CONSTITUTIONAL WARNINGS WERE IN FACT GIVEN, IN OTHER WORDS THE STATE HAS ESTABLISHED THAT TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT, THEN YOU MUST ALSO -- THEN YOU WOULD ALSO CONSIDER THE NEXT ELEMENT OR ASPECT OF THAT AND THAT IS DID THIS DEFENDANT KNOWINGLY AND INTELLIGENTLY WAIVE THESE CONSTITUTIONALL RIGHTS?

AND IN THAT REGARD OBVIOUSLY IF YOU CONCLUDE THAT HE DID NOT KNOWINGLY AND INTELLIGENTLY WAIVE HIS CONSTITUTIONAL RIGHTS, THEN YOU MAY NOT CONSIDER THAT STATEMENT IN ANY FASHION WHATSOEVER.

BUT IF YOU CONCLUDE THAT THE STATE HAS SATISFIED YOU THAT HE MADE THE STATEMENT, WARNINGS WERE MADE AND THE DEFENDANT IN THIS CASE WAS AFFORDED AN OPPORTUNITY TO EXERCISE THESE CONSTITUTIONAL RIGHTS, AND THAT HE KNOWINGLY AND INTELIGENTLY WAIVED THESE RIGHTS, THEN YOU WOULD NEXT CONSIDER THE ASPECT OF WHETHER OR NOT THE STATEMENT WAS VOLUNTARILY GIVEN.

THE WORD VOLUNTARILY MEANS THAT THE STATEMENT WAS THE EXPRESSION OF THE DEFENDANT'S OWN FREE WILL AND WAS NOT INDUCED BY PRESSURE, FORCE OR FEAR OR THE INFLUENCE OR HOPE OF PROMISE OF SOME BENEFIT OR REWARD OR EXTRACTED BY THREATS OF COERCION OR INTIMIDATION.

A STATEMENT IS NOT VOLUNTARY AND MAY NOT BE USED

AGAINST THE DEFENDANT UNLESS IT IS THE PRODUCT OF AN ESSENTIALLY FREE AND UNCONSTRAINED CHOICE BY IT'S MAKER.

IF THE STATEMENT IS VOLUNTARY, IF THE DEFENDANT HAS WILLED TO MAKE A STATEMENT, IT MAY BE USED AGAINST HIM. IF THE STATEMENT IS NOT VOLUNTARY, THEN OF COURSE IT CANNOT BE USED AGAINST HIM.

IN DETERMINING WHETHER THE DEFENDANT'S WILL WAS OVERCOME AND DETERMINING AND OBTAINING THE STATEMENT, THE LAW REQUIRES YOU TO CONSIDER THE -- WHAT'S KNOWN AS THE TOTALITY OF THE CIRCUMSTANCES.

YOU SHOULD CONSIDER BOTH THE CHARACTERISTICS OF THE DEFENDANT AND THE CIRCUMSTANCES SURROUNDING ANY QUESTIONING OR INTERROGATION.

AND I WOULD ALSO ADD THAT IN CONSIDERING THESE CIRCUMSTANCES FOR DETERMINING WHETHER THEY VOLUNTARY, YOU WOULD ALSO USE THESE SAME ISSUES IN DETERMINING WHETHER OR NOT HE KNOWINGLY AND INTELLIGENTLY VOLUNTARILY WAIVED HIS RIGHTS TO HIS CONSTITUTIONAL RIGHTS.

SOME OF THE FACTORS THE LAW SAYS YOU MAY CONSIDER ARE THE AGE OF THE DEFENDANT, THE DEFENDANTS EDUCATIONAL BACKGROUND, THE DEFENDANTS MENTAL ABILITY OR CAPACITY AND ALL OTHER FACTS AND CIRCUMSTANCES SURROUNDING THE MAKING OF THE ALLEGED STATEMENT.

IF THE STATE FAILS TO PROVE BEYOND A REASONABLE DOUBT ANY OF THOSE ELEMENTS THAT I JUST DISCUSSED TO YOUR

SATISFACTION, THEN LADIES AND GENTLEMEN YOU MAY NOT CONSIDER THE STATEMENT UNDER OUR LAW.

IF, ON THE OTHER HAND, YOU'RE CONVINCED BEYOND A REASONABLE DOUBT THE STATE HAS MET IT'S BURDEN AND SATISFIED YOU TO EACH OF THOSE ELEMENTS, I WOULD ASK YOU ALSO TO CONSIDER WHETHER OR NOT THE STATE HAS PROVED TO YOU BEYOND A REASONABLE DOUBT THAT THE DEFENDANT RECEIVED A COPY OF THE STATEMENT.

IF HE DID NOT RECEIVE A COPY OF THE STATEMENT, IN YOUR OPINION STATE HAS NOT PROVED THIS YOU BEYOND A REASONABLE DOUBT THAT HE RECEIVED A COPY, THEN YOU MAY NOT CONSIDER THE STATEMENT AS WELL.

IF ON THE OTHER HAND YOU HAVE DECIDED THE STATE MET IT'S BURDEN OF PROOF OF ALL THE ELEMENTS AND THE DEFENDANT WAS GIVEN A COPY OF THE STATEMENT THEN YOU MAY CONSIDER THE STATEMENT AND GIVE TO IT SUCH WEIGHT AS YOU DETERMINE IT TO BE ENTITLED IN THIS MATTER IF ANY.

NOW, WHILE YOU ARE GIVEN WIDE LATITUDE WITH REGARD TO DETERMINING THE FACTS OF THIS CASE, YOU AS I HAVE STATED TO YOU ON SEVERAL OCCASIONS DO NOT ENJOY THAT BROAD OR WIDE LATITUDE FOR DISCRETION IN DETERMINING THE LAW OR APPLYING THE LAW IN THIS MATTER.

YOU HAVE TAKEN AN OATH TO ACCEPT THE LAW AS I GIVE IT TO YOU AND APPLY IT TO THE FACTS IN THIS CASE, WHILE YOU HAVE A RIGHT TO THINK LAW SHOULD CHANGE OR BE

CHANGED.

FOR THIS PROCEEDING YOU MUST SET THAT ASIDE, TAKE THIS LAW APPLY IT TO THE FACTS AS YOU DETERMINE THOSE FACTS TO BE AND WRITE A DECISION. THAT DECISION, LADIES AND GENTLEMEN, IS ALSO KNOWN AS YOUR VERDICT. IN THIS MATTER.

NOW, I WANT TO DISCUSS WITH YOU AS I STATED, THE DEFENDANT IN THIS CASE IS CHARGED WITH THREE CRIMINAL OFFENSES, BURGLARY, MURDER AND POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME.

I'M GOING TO NOW DISCUSS WITH YOU THOSE THREE CRIMES -- OR THOSE THREE CRIMINAL ACTS. FIRST I WOULD LIKE TO TALK ABOUT THE BURGLARY. UNDER SECTION 1611311 OF THE SOUTH CAROLINA CODES, BURGLARY IN THE FIRST DEGREE IS DEFINED AS THE ENTERING OF THE DWELLING HOUSE OF ANOTHER WITHOUT CONSENT WITH THE INTENT TO COMMIT A CRIME THEREIN.

THERE ARE FOUR ESSENTIAL ELEMENTS TO THE REQUIREMENT THAT THE DEFENDANT ENTERED THE DWELLING HOUSE OF ANOTHER WITHOUT THE CONSENT WITH INTENT TO COMMIT A CRIME. THEY ARE AS FOLLOWS.

FIRST, THE STATE MUST PROVE AND I WOULD TELL YOU THE STATE HAS TO PROVE EACH OF THESE BEYOND A REASONABLE DOUBT.

FIRST THEY MUST PROVE THAT THE ENTERING THAT THERE WAS AN ENTERING, THAT THE DEFENDANT ACTUALLY WENT

INSIDE THE DWELLING OF SOME PART OF IT.

IT IS NOT NECESSARY HOWEVER THAT THE ENTIRE BODY OF THE DEFENDANT ENTERED THE HOUSE. THE SMALLEST ENTRY IS SUFFICIENT AND IT MAY BE ANY PART OF A BODY AS A HAND OR FOOT OR EVEN AN INSTRUMENT SUCH AS A HOOK OR OTHER INSTRUMENT. NO FORCE NEED BE USED IN GAINING ENTRY.

SECOND, THE ENTRY MUST BE WITHOUT THE CONSENT. ASIDE FROM THE USUAL AND NORMAL UNDERSTANDING OF THE PHRASE WITHOUT CONSENT, THE TERM ENTRY HAS -- MEANS TO ENTER A BUILDING BY USING DECEPTION OR TRICK OR MISREPRESENTATION TO GAIN CONSENT OR TO ENTER FROM THE PERSON IN A LAWFUL POSSESSION.

THE PLACE ENTERED -- THIRDLY PLACE ENTERED MUST BE A DWELLING HOUSE. THE TERM DWELLING HOUSE MEANS ANY BUILDING INHABITED BY A PERSON OR PERSONS AND IN WHICH THEY CUSTOMARILY SLEEP.

THE TERM DWELLING ALSO MEANS THE LIVING QUARTERS OF A BUILDING USED OR NORMALLY USED FOR SLEEPING, LIVING OR LODGING BY A PERSON. ALL HOUSES, OUT HOUSES, BUILDINGS, SHED AND ERECTIONS THAT ARE WITHIN TWO HUNDRED YARDS OF A DWELLING ARE ATTACHED TO THE DWELLING SHALL BE INCLUDED AS A PART OF THAT DWELLING.

THE DEFENDANT MUST HAVE AN INTENT, A FOURTH ELEMENT TO COMMIT A CRIME. THE MERE ENTRY INTO A DWELLING WITHOUT CONSENT IS NOT A VIOLATION OF THE BURGLARY

STATUTE.

IT IS ONLY WHERE THERE IS AN INTENT TO COMMIT A CRIME, WHETHER IT BE A FELONY OR MISDEMEANOR, THAT THE CRIME IS -- THAT THE CRIME IS COMPLETED. PROOF OF INTENT NECESSARILY RESTS ON THE INFERENCES FROM THE CONDUCT.

IT IS ESSENTIAL THAT THE FELONIOUS INTENT CAN EXIST AT THE TIME OF ENTRY. IT IS NOT SUFFICIENT THAT THE FELONIOUS INTENT IS FORMED AFTERWARDS.

ON THE OTHER HAND, WHERE THE INTENT EXISTS AT THE TIME OF ENTRY, IT IS NO DEFENSE THAT THE INTENT WAS ABANDONED AFTER THE INJURY. IT DOES NOT MATTER THAT THE INTENDED CRIME WAS NOT COMPLETED.

NOW, THE NEXT MATTER I WISH TO DISCUSS WITH YOU IS THE MURDER CHARGE. AND ALSO I'M GOING TO INSTRUCT YOU ON WHAT'S KNOWN AS IN ADDITION TO THE MURDER CHARGE, THAT MEANING UNDER OUR LAW WE HAVE A KNOWN -- WHAT'S KNOWN AS THE LESSER INCLUDED CHARGES.

THE MURDER CHARGE IN AND OF ITSELF WOULD INCLUDE LESSER INCLUDED OFFENSE KNOWN AS INVOLUNTARY MANSLAUGHTER WHICH I'M GOING TO EXPLAIN TO YOU AFTER I DISCUSS THE MURDER CHARGE WITH YOU.

SECTION 16- 3- 10 OF THE SOUTH CAROLINA CODE DEFINES MURDER AS THE KILLING OF ANY PERSON WITH MALICE AFORETHOUGHT EITHER EXPRESSED OR IMPLIED.

IN ORDER TO CONVICT A PERSON OF MURDER, THE

STATE MUST NOT ONLY PROVE THE KILLING OF THE INDIVIDUAL AT THE TIME AND PLACE STATED IN THE INDICTMENT BY THE DEFENDANT, IT MUST ALSO PROVE CRIMINAL INTENT AND THAT THE KILLING WAS DONE WITH MALICE AFORETHOUGHT.

ALL OF THOSE FACTS MUST BE PROVED BEYOND A REASONABLE DOUBT. IN OTHER WORDS, THERE MUST BE A COMBINATION OF PREVIOUS EVIL INTENT AND AN INFLICTION OF AN INJURY CALCULATED AND INTENDED TO PRODUCE DEATH.

MALICE, ONE OF THE TERMS IN THE DEFINITION, INDICATES A FORMED PURPOSE AND DESIGN TO DO A WRONGFUL ACT UNDER CIRCUMSTANCES THAT EXCLUDE ANY LEGAL RIGHT TO DO IT. MALICE IS A TERM OF ART THAT IMPARTS WICKEDNESS AND EXCLUDES A JUST CAUSE OR EXCUSE.

IT IS SOMETHING THAT SPRINGS FROM THE WITNESS FROM A DEPRAVED SPIRIT FROM A SPIRIT MEANT ON MISCHIEF AT THAT TIME. AND FROM NOT THEN HAVING REGARD FOR THE SOCIAL OBLIGATIONS OR THE OBLIGATIONS WHICH REST UPON MAN KIND.

THE WORDS EXPRESS AND IMPLIED I USED IN THAT DEFINITION, MALICE EXPRESSED OR IMPLIED, DO NOT MEAN TWO DIFFERENT KINDS OF MALICE. RATHER THEY ARE THE PLANNERS BY WHICH MALICE MAY BE PROVED.

EXPRESSED MALICE IS WHERE A PERSON BY WORD OF MOUTH EXPRESSED HATRED OR ILL WILL FOR ANOTHER OR WHETHER STATE PROVES BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS MAKING PREPARATIONS BEFORE THE EVENT TO ACCOMPLISH THE

EVENT.

YOU MAY ALSO CONCLUDE BY CONDUCTIVE REASONING THAT UNDER CERTAIN CIRCUMSTANCES MALICE ARISE EVEN THOUGH THERE IS NO EXPRESS OR DIRECT EVIDENCE OF AN INTENT TO KILL.

MALICE MAY BE INFERRED IF IT IS PROVED BEYOND A REASONABLE DOUBT THAT THERE WAS A WILLFUL, DELIBERATE AND INTENTIONAL DOING OF AN UNLAWFUL ACT WITHOUT JUST CAUSE OR EXCUSE.

FOR INSTANCE, THE LAW SAYS THAT IF IT IS PROVED BEYOND A REASONABLE DOUBT, THAT ONE INTENTIONALLY KILLED ANOTHER WITH A DEADLY WEAPON OR WITH A DANGEROUS INSTRUMENTALITY AN IMPLICATION OF MALICE MAY ARISE.

THE USE OF A DEADLY WEAPON PERMITS YOU TO INFER MALICE, BUT IT DOES NOT REQUIRE YOU TO INFER MALICE.

IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR SATISFACTION, THIS INFERENCE WOULD BE SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU, THE JURY, ALONG WITH ALL OTHER EVIDENCE IN THE CASE AND YOU MAY GIVE IT SUCH WEIGHT AS YOU FIND IT SHOULD RECEIVE.

YOU AS JURORS ARE FREE TO ACCEPT OR REJECT THIS PERMISSIVE INFERENCE DEPENDING UPON YOUR VIEW OF THE FACTS IN THIS CASE. IN ADDITION TO THERE BEING MALICE, THE MALICE MUST BE AFORETHOUGHT WHICH MEANS THAT THE MALICE

MUST HAVE BEEN CONCEIVED IN THE MIND OF THE DEFENDANT PRIOR TO THE ACT PRODUCING THE FATAL RESULT.

HOWEVER, THE LAW DOES NOT REQUIRE THAT MALICE MUST EXIST FOR ANY APPRECIABLE LENGTH OF TIME BEFORE THE COMMISSION OF THE ACT.

MALICE NEED NOT BE IN THE MIND OF THE ONE DOING THE KILLING ANY PARTICULAR LENGTH OF TIME BEFORE THE ACT OF KILLING IN ORDER TO RENDER THE KILLING MURDER.

IF IT IS PRESENT IN THE MIND OF THE ONE DOING THE KILLING ANY LENGTH OF TIME BEFORE THE ACT, THEN IT'S PRESENCE WOULD BE SUFFICIENT TO RENDER THE KILLING MURDER.

NOW, AS I STATED TO YOU IN ADDITION TO THE OFFENSE OF MURDER, THAT CHARGE WOULD ALSO INCLUDE A LESSER INCLUDED OFFENSE KNOWN AS INVOLUNTARY MANSLAUGHTER.

NOW, IN ORDER TO MAKE OUT THE OFFENSE OF INVOLUNTARY MANSLAUGHTER, THE STATE MUST PROVE THE FOLLOWING ELEMENTS BEYOND A REASONABLE DOUBT.

ONE, THAT THE VICTIM IN THE MATTER, THE DECEASED, DIED AT THE TIME AND PLACE SET FORTH THE INDICTMENT AND THAT THE DEFENDANT DID UNLAWFULLY AND UNINTENTIONALLY KILL THE VICTIM.

AND THAT THE DEFENDANTS CONDUCT WAS CRIMINALLY NEGLIGENT WHICH IS DEFINED BY SECTION 16360 AS THE RECKLESS DISREGARD FOR THE SAFETY OF OTHERS.

AND FOUR, THAT THE ALLEGED CRIMINAL NEGLIGENCE

OF THE DEFENDANT WAS THE APPROXIMATE CAUSE OF THE DEATH OF THE VICTIM.

THE CRIME OF INVOLUNTARY MANSLAUGHTER REQUIRES THAT THERE BE AN UNLAWFUL KILLING OF ANOTHER UNINTENTIONALLY BY THE DEFENDANT WITHOUT MALICE.

INVOLUNTARY IS DEFINED AS THE -- AS DOING SOME UNLAWFUL ACT NOT AMOUNTING TO A FELONY AND NOT LIKELY OR NATURALLY TENDING TO ENDANGER LIFE.

INVOLUNTARY MANSLAUGHTER IS WITHOUT THE MALICE THAT I HAVE JUST DEFINED FOR YOU. NO NEED FOR ME ME TO RE-DEFINE THAT. IT'S THE -- IT IS WITHOUT THAT MALICE.

NOW, THE THIRD ELEMENT THAT I MENTIONED TO YOU IN THE INVOLUNTARY MANSLAUGHTER, THE KILLING AND AN UNINTENTIONAL ACT. THE THIRD ELEMENT IS THAT THE DEFENDANTS CONDUCT WAS CRIMINALLY NEGLIGENT.

NEGLIGENCE IS DEFINED BY -- CRIMINAL NEGLIGENCE IS DEFINED BY THIS, BY THE LAW AS THE RECKLESS DISREGARD FOR THE SAFETY OF OTHERS.

THUS MERE NEGLIGENCE WILL NOT SUFFICE TO SUPPORT A CONVICTION OF INVOLUNTARY MANSLAUGHTER. THE BURDEN IS UPON THE STATE TO PROVE HEEDLESSNESS OR WILLFULNESS, RECKLESS, WILLFULNESS OR RECKLESSNESS IN THIS REGARD.

RECKLESSNESS IMPLIES THE DOING OF A NEGLIGENT ACT KNOWINGLY WHEN AN INDIVIDUAL ACTS NEGLIGENTLY AND HE REALIZES THAT HE IS ACTING NEGLIGENTLY OR SHOULD HAVE

REALIZED THAT HE IS ACTING NEGLIGENTLY, THEN OUR LAW SAY THAT'S HE IS RECKLESS, HEEDLESS OR WILLFUL OR WANTON.

WILLFULNESS IS THE INTENTIONAL DOING OR ADMITTING SOME ACTION OR SOMETHING IN DISREGARD FOR THE RIGHTS OF OTHERS AFTER NOTICE OF THOSE RIGHTS.

WANTONNESS, WILLFULNESS, RECKLESSNESS IS AN INDIFFERENCE TO THE CONSEQUENCES OF THE ACT OR OMISSION (SIC) OF THE ACT TO ACT.

NOW, THE LAST ELEMENT THAT MUST BE ESTABLISHED BEYOND A REASONABLE DOUBT IN ADDITION TO THE ONES THAT I JUST MENTIONED, THE THREE, IS THAT THE NEGLIGENCE OR THE RECKLESS, THE CRIMINAL NEGLIGENCE IN THIS MATTER MUST BE THE APPROXIMATE CAUSE OF THE DEATH.

APPROXIMATE CAUSE IS A DIRECT CAUSE OR THE CAUSE WITHOUT WHICH THE DEATH WOULD NOT HAVE OCCURRED.

IN ORDER TO SHOW THE VICTIMS DEATH WAS APPROXIMATELY CAUSED BY ANY RECKLESS CONDUCT OF THE DEFENDANT, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THERE WOULD NOT HAVE BEEN A DEATH BUT FOR THE RECKLESS CONDUCT IN THIS MATTER.

NOW, CONSIDERING THESE TWO CHARGES OUR LAW SAYS OR THESE TWO CRIMES, MURDER AND INVOLUNTARY MANSLAUGHTER, OUR LAW STATES THAT IF IN YOUR VIEW OF THE FACTS YOU REACH A POINT THAT YOU HAVE A REASONABLE DOUBT AS TO WHETHER OR NOT THE DEFENDANT COMMITTED THE ACT OF MURDER OR COMMITTED

THE ACT OF INVOLUNTARY MANSLAUGHTER, IN OTHER WORDS YOUR VIEW OF THE EVIDENCE IN THIS CASE, YOU HAVE A DOUBT, OUR LAW WOULD SAY THAT YOU MUST RESOLVE THAT DOUBT OR THAT REASONABLE DOUBT IN FAVOR OF THE LESSER CHARGE OR IN FAVOR OF THE DEFENDANT AND FIND THE DEFENDANT GUILTY OF THE LESSER CHARGE.

ON THE OTHER HAND, IF YOU HAVE A DOUBT AS TO WHETHER HE'S GUILTY OF ANY CHARGE OR NOT GUILTY, OF COURSE OUR LAW WOULD SAY THAT YOU MUST RESOLVE THAT DOUBT IN FAVOR OF THE DEFENDANT AND FIND HIM NOT GUILTY.

ON THE OTHER HAND, IF YOU HAVE DO NOT HAVE A DOUBT, A REASONABLE DOUBT AS TO THE CHARGE OF MURDER THEN OUR LAW SAY THAT YOU MUST FIND HIM GUILTY OF MURDER.

AND LIKEWISE IF YOU DO NOT HAVE A REASONABLE DOUBT AS TO THE CHARGE OF INVOLUNTARY MANSLAUGHTER, IF YOU HAD A REASONABLE DOUBT AS TO MURDER, THEN YOU RESOLVE IT -- THEN OUR LAW WOULD SAY YOU FIND HIM GUILTY OF INVOLUNTARY MANSLAUGHTER.

AGAIN, MUST BE PROVED BEYOND A REASONABLE DOUBT TO YOUR SATISFACTION AS YOU VIEW THE EVIDENCE IN THIS PARTICULAR CASE.

NOW, THE THIRD CHARGE WHICH HAS BEEN MADE IS THE CHARGE CONCERNING POSSESSION OF A PISTOL DURING THE COMMISSION OF A VIOLENT CRIME.

SECTION 1623490 PROVIDES THAT IT IS ILLEGAL TO

POSSESS A FIREARM, DISPLAY A FIREARM, DURING THE COMMISSION OF A VIOLENT CRIME.

I WOULD TELL YOU AND INSTRUCT YOU THAT UNDER SOUTH CAROLINA LAW A VIOLENT CRIME INCLUDES THE OFFENSE OF MURDER AND BURGLARY IN THE FIRST DEGREE.

FOR YOU TO FIND THE DEFENDANT GUILTY OF THIS SEPARATE STATUTORY OFFENSE OF POSESSING A FIREARM DURING A VIOLENT CRIME, YOU MUST FIRST FIND THE DEFENDANT GUILTY OF THE VIOLENT CRIME.

IF YOU FIND THE DEFENDANT GUILTY OF A VIOLENT CRIME THEN YOU MUST DETERMINE THAT THE STATE HAS PROVED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS IN POSSESSION OF A FIREARM OR VISIBLY DISPLAYED WHAT APPEARED TO BE A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME.

AS USED IN THIS SECTION A FIREARM IS DEFINED AS ANY PISTOL OR ANY WEAPON WHICH WILL BE OR IS DESIGNED TO OR MAY READILY CONVERT, BE CONVERTED TO EXPEL A PROJECTILE.

NOW, IN THOSE CHARGES WHICH I MENTIONED TO YOU AND I SAID THE INTENT, I WOULD TELL YOU THAT UNDER THE CHARGES IN CRIMINAL LAW IT IS NECESSARY THE STATE ALSO PROVE IN ALL CASES THAT CRIMINAL INTENT AND THAT MUST BE PROVED LIKE ANY OTHER ELEMENT BEYOND A REASONABLE DOUBT.

CRIMINAL INTENT IS ALWAYS A MATTER WHICH MUST BE DETERMINED BY YOU FROM THE CIRCUMSTANCES SURROUNDING THE

SITUATION. IT MAY BE -- IS TO BE INFERRED FROM THE CIRCUMSTANCES THAT HAVE BEEN SHOWN TO HAVE EXISTED AND THIS IS HOW YOU MAKE A DETERMINATION ON WHETHER OR NOT THIS ELEMENT IS PRESENT.

CRIMINAL INTENT, LADIES AND GENTLEMEN, IS THE STATE OF MIND THAT OPERATES JOINTLY WITH AN ACT IN THE COMMISSION OF A CRIME.

INTENT INCLUDES THOSE CONSEQUENCES WHICH REPRESENT THE VERY PURPOSE FOR WHICH AN ACT IS DONE OR ARE KNOWN TO BE SUBSTANTIALLY CERTAIN TO RESULT REGARDLESS OF DESIRE.

CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS WRONGDOING. SO IT'S UP TO YOU TO DETERMINE WHETHER -- TO DETERMINE WHETHER THE DEFENDANT INTENDED TO DO BASED ON THE CIRCUMSTANCES SHOWN TO HAVE EXISTED.

I TELL YOU THAT AGAIN THAT THE STATE MUST PROVE CRIMINAL INTENT AS EVERY OTHER ELEMENT BEYOND A REASONABLE DOUBT.

I WOULD FURTHER INSTRUCT YOU AND CHARGE YOU, LADIES AND GENTLEMEN, THAT VOLUNTARY INTOXICATION WHERE IT HAS NOT PRODUCED A PERMANENT INSANITY IS NEVER AN EXCUSE FOR OR A DEFENSE TO A CRIME OR CRIMINAL ACT REGARDLESS OF WHETHER THE INTENT INVOLVED BE GENERAL OR SPECIFIC.

NOW LADIES AND GENTLEMEN, YOU ARE NOT PARTISONS IN THIS CASE OR ADVOCATES IN THIS CASE FOR THE STATE OR

MR. STONE.

YOU DO NOT SERVE AS JURORS IN THIS MATTER TO REWARD ANY FRIENDS OR PUNISH ANY ENEMIES. YOU HAVE BEEN SELECTED BY THE STATE AND MR. STONE AS FAIR AND IMPARTIAL JURORS.

IT IS YOUR DUTY THEN BY YOUR JOINT DELIBERATIONS TO DETERMINE THE TRUTH IN THIS CASE GIVING TO THE DEFENDANT THE BENEFIT OF EVERY REASONABLE DOUBT.

THEN TO THE FACTS WHICH YOU DETERMINE TO BE TRUE YOU TAKE AND APPLY THE LAW WHICH I HAVE JUST GIVEN YOU AND THUS ARRIVE AT A VERDICT WHICH DOES SPEAK THE TRUTH IN THIS CASE.

ONCE YOU HAVE ACCOMPLISHED THIS AND WRITTEN YOUR VERDICT, YOU WILL HAVE DISCHARGED YOUR DUTIES TO THE STATE AND MR. STONE AND TO THIS COURT.

YOUR VERDICT IN THIS MATTER, LADIES AND GENTLEMEN, MUST BE UNANIMOUS. THAT MEANS TWELVE TO ZERO. ELEVEN TO ONE IS NOT SUFFICIENT. TEN TO TWO, THAT WON'T WORK. HAS TO BE TWELVE TO 0.

IT'S YOUR COLLECTIVE JUDGMENTS IN THIS CASE THAT MATTERS AND THAT'S WHAT WILL CONSTITUTES A VERDICT.

TO ASSIST YOU IN REPORTING YOUR VERDICT AND ONLY TO ASSIST YOU BECAUSE AGAIN NOTHING THAT I SAY OR DO SHOULD BE CONSIDERED BY YOU AS A STATEMENT OF THE COURT OF ANY FACTORS OR ANY DECISION THAT YOU SHOULD MAKE.

BUT TO ASSIST YOU IN REPORTING THAT VERDICT, I HAVE PREPARED A FORM WHICH BASICALLY IS CAPTIONED, YOU DISREGARD THE CAPTION. THE CAPTION IS FOR RECORD KEEPING, SO THAT DOESN'T REALLY MEAN ANYTHING FOR YOU. YOU SHOULDN'T CONSIDER THAT AT ALL.

BUT I HAVE LISTED THEM AND LISTED THE POSSIBLE CHOICES. THERE ARE TWO IN EACH ONE. AND IT'S UP TO YOU AS TO HOW YOU COMPLETE THIS FORM.

ALSO, YOU SHOULD NOT IN ANY WAY TAKE AS A SUGGESTION FROM THE COURT HOW I HAVE ORDERED YOUR OPTIONS. PLEASE, AGAIN, THAT'S YOUR RESPONSIBILITY. HAD TO PUT THEM IN SOME ORDER.

I DON'T -- BUT DON'T PUT ANY WEIGHT ON THE MATTER IN WHICH THEY APPEAR, BECAUSE IT'S UP TO YOU. I HAVE LISTED THEM ONE TWO AND THREE. TWO HAS TWO PARTS. I'M GOING TO TALK ABOUT THAT IN JUST A SECOND.

THE FIRST ONE IS BURGLARY IN THE FIRST DEGREE. NOW AS THE TWELVE OF YOU MUST CONSIDER THE EVIDENCE AND DECIDE WHETHER THE STATE HAS MET IT'S BURDEN OF PROOF BEYOND A REASONABLE DOUBT AND ESTABLISHED ALL OF THOSE ELEMENTS THAT I HAVE EXPLAINED TO YOU.

IF YOU CONCLUDE THAT THE STATE HAS MET IT'S BURDEN THEN IT WOULD BE YOUR DUTY TO FIND THE DEFENDANT GUILTY OF THAT CHARGE.

AND IN THAT REGARD YOU WOULD SIMPLY CHECK THAT

CHOICE. AND I WOULD ASK YOU TO CIRCLE IT AS WELL. THAT WAY THERE IS NO QUESTION THAT THAT IS YOUR DECISION.

IF ON THE OTHER HAND YOU FEEL THAT THE STATE HAS FAILED TO MEET IT'S BURDEN OF PROOF AND HAS NOT ESTABLISHED TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT ALL OF THOSE ELEMENTS, OR ANYONE OF THOSE ELEMENTS, THEN IT WOULD BE YOUR DUTY TO FIND THE DEFENDANT NOT GUILTY OF THAT OFFENSE AND IF THAT BE YOUR DECISION, CHECK IT AND CIRCLE IT AS WELL.

THEN YOU WOULD MOVE TO THE NEXT CHARGE AND I ASK YOU TO DO IT IN THAT ORDER FOR THIS REASON. THE NEXT CHARGE IS THE SECOND CHARGE IS MURDER.

AND AS I DEFINE FOR YOU THE LESSER INCLUDED OFFENSES OF INVOLUNTARY MANSLAUGHTER, I STATED TO YOU THAT IT'S DOING OF AN UNLAWFUL ACT, NO INTENTION INVOLVED, BUT DOING AN UNLAWFUL ACT THAT DID NOT AMOUNT TO A FELONY, DID NOT RISE TO A FELONY.

IF YOU HAVE CONCLUDED IN THE FIRST FORM -- IN THE FIRST CHARGE THAT HE IS GUILTY, THEN YOU MAY NOT CONSIDER THE LESSER INCLUDED OFFENSE BECAUSE IT WOULD NOT BE APPROPRIATE IN THIS CASE BECAUSE BURGLARY IN THE FIRST DEGREE IS A FELONY.

BUT ON THE OTHER HAND, IF YOU CONCLUDED THE STATE FAILED TO MEET IT'S BURDEN OF PROOF, THEN YOU WOULD CONSIDER THE LESSER INCLUDED OFFENSES AS I HAVE DEFINED IT

FOR YOU.

AND IN THAT REGARD IF YOU CONCLUDE THE STATE HAS MET IT'S BURDEN OF PROOF AND ESTABLISHED ALL OF THOSE ELEMENTS, THE DEFENSE OF MURDER, THEN JUST AS IN BURGLARY YOUR CHOICE WOULD BE GUILTY, CIRCLE IT.

ON THE OTHER HAND, IF YOU CONCLUDE THAT THE STATE HAS FAILED TO MEET IT'S BURDEN OF PROOF NOT SATISFYING YOU BEYOND A REASONABLE DOUBT AS TO THE OFFENSE OF MURDER AND YOU HAVE ALSO VOTED OR CONCLUDED NOT GUILTY IN THE FIRST ONE, THEN YOU WOULD CONSIDER AND SHOULD CONSIDER THE NEXT OR THE LESSER INCLUDED OFFENSE. AND THAT WOULD BE THE OFFENSE OF INVOLUNTARY MANSLAUGHTER.

IF YOU GET TO THAT, YOU CONSIDER THE STATE HAS FAILED TO MEET IT'S BURDEN OF PROOF, THEN YOU WOULD FIND HIM NOT GUILTY OF THAT CHARGE AS WELL.

AND I WOULD ASK YOU TO COMPLETE BOTH OF THOSE IN THAT REGARD. IF ON THE OTHER HAND YOU FIND THE STATE HAS SATISFIED YOU IN THAT REGARD THEN HE IS GUILTY OF INVOLUNTARY MANSLAUGHTER THEN YOU WOULD CHECK GUILTY AND CIRCLE THAT CHOICE AS WELL.

AND AGAIN, I WOULD REMIND YOU IF YOU HAVE A DOUBT -- WHEN YOU REACH THAT POINT YOU HAVE A DOUBT BETWEEN MURDER AND INVOLUNTARY MANSLAUGHTER, IT WOULD BE YOUR RESPONSIBILITY TO RESOLVE THAT IN FAVOR OF THE LESSER INCLUDED OFFENSE.

LIKEWISE, IF YOU'RE SATISFIED THE STATE HAS FAILED TO MEET IT'S BURDEN OF PROOF AS TO BOTH OF THOSE, THEN YOUR VERDICT WOULD BE NOT GUILTY. RESOLVING AS I INSTRUCTED, ANY REASONABLE DOUBT IN FAVOR OF THE DEFENDANT.

IF YOU HAVE FOUND THE STATE HAS FAILED TO MEET IT'S BURDEN ON BOTH OF THOSE OFFENSES, THEN YOU WOULD SIMPLY CHECK NOT GUILTY ON THE THIRD ONE BECAUSE IT -- OBVIOUSLY YOU WILL HAVE CONCLUDED THAT THERE WAS NO VIOLENT OFFENSE AS I HAVE DEFINED THAT FOR YOU.

IF ON THE OTHER HAND CONCLUDED THE STATE HAS MET IT'S BURDEN OF PROOF AS TO ONE OR MORE OF THOSE TWO CHARGES, OR ONE OR BOTH OF THOSE CHARGES, THEN YOU MUST CONSIDER THE THIRD CHARGE WHICH IS THE UNLAWFUL CARRYING OF A PISTOL. DURING THE COMMISSION OF A VIOLENT OFFENSE.

THEN YOU WOULD LOOK TO THOSE CHARGES AND THOSE ELEMENTS I DEFINED FOR YOU. IF YOU FIND THE STATE HAS FAILED TO MEET IT'S BURDEN OF PROOF, YOUR VERDICT WOULD BE NOT GUILTY. YOU CHECK IT CIRCLE IT.

ON THE OTHER HAND IF YOU FIND THAT THE STATE MET IT'S BURDEN OF PROOF THEN YOUR VERDICT WOULD BE GUILTY AND YOU WOULD CHECK THAT AS WELL.

ONCE YOU HAVE COMPLETED THE FORM, IF YOU WILL SIGN IT, KNOCK ON THE DOOR, WE WILL BE HAPPY TO RECEIVE YOU IN THE COURTROOM AND RECEIVE THE VERDICT.

AT THIS POINT DO ALL THE TWELVE, FIRST TWELVE JURORS, YOU ALL FEEL WELL ENOUGH TO CONTINUE WITH YOUR DELIERATIONS IN THIS MATTER? IF ANYONE DOES NOT, PLEASE RAISE YOUR HAND AT THIS TIME.

THE RECORD WILL REFLECT NO HANDS ARE RAISED. THERE FOR, MRS. JONES, MR. SINGLETARY, THE ALTERNATE JURORS, I WILL ASK YOU NOW TO WHEN WE -- WHEN I LET THE JURY RETIRE TO BEGIN DELIBERATIONS, THAT YOU NOW WILL NOT RETURN TO THE JURY ROOM AT THIS POINT.

WE WILL KEEP YOU IN A SEPARATE ROOM UNTIL THEY HAVE COMPLETED THEIR DELIBERATIONS IN THIS MATTER.

LADIES AND GENTLEMEN, I KNOW THAT EACH ONE OF YOU ARE PROBABLY READY TO START WITH YOUR JOBS. AND PERFORMING YOUR RESPONSIBILITIES AS I HAVE DEFINED THEM FOR YOU.

AND YOU MAY THINK THAT YOU HAVE REACHED A POINT WHERE YOU MAY NOW BEGIN YOUR DELIBERATIONS. BUT NOT YET. I'M GOING TO EXCUSE YOU FOR A MOMENT. I NEED TO DISCUSS MY CHARGE WITH THE ATTORNEYS.

IF FOR SOME REASON THERE SHOULD BE ANY PART OF THE CHARGE THAT NEEDS TO BE CLARIFIED OR SOME ADDITIONAL INSTRUCTIONS GIVEN, THEN I WILL BRING YOU BACK INTO THE JURY ROOM -- BACK INTO THE COURTROOM -- AS WELL AS THE ALTERNATES AND GIVE THAT INSTRUCTION.

IN THAT REGARD, LET ME STATE YOU ARE TO CONSIDER

THIS CHARGE IN IT'S ENTIRETY. YOU ARE NOT TO PUT ANY GREATER WEIGHT ON ANYONE ASPECT OF MY CHARGE.

YOU ALSO SHOULD NOT CONSIDER THE ORDER IN WHICH THE CHARGE WAS GIVEN AS TO INDICATING AGAIN ANY FEELING I HAVE ABOUT THE FACTS OF THIS CASE.

LIKEWISE, IF I HAVE TO BRING YOU BACK IN AND GIVE ANY ADDITIONAL INSTRUCTION, I WOULD ASK YOU TO CONSIDER THAT WITH ALL OTHER ASPECTS OF THE CHARGE. DON'T JSUT SAY WELL NOW I CAN FOCUS ON JUST THIS ONE.

NO. YOU MUST CONSIDER IT WITH ALL OTHER PARTS OF THE CHARGE. THANK YOU FOR YOUR ATTENTION LADIES AND GENTLEMEN. IF THERE AREN'T ANY ADDITIONS OR EXCEPTIONS, THEN WE WILL GATHER THE EXHIBITS, DELIVER THEM TO YOU AND YOU MAY AT THAT TIME BEGIN YOUR DELIBERATIONS.

NOW, YOU HAVE OR SHOULD HAVE A LEGAL PAD IN YOUR JURY ROOM. IF AT ANY TIME DURING YOUR DELIBERATIONS YOU HAVE A QUESTION, WE WILL BE HERE.

I WOULD ASK YOU AS PRESIDING JUROR THAT YOU WRITE THAT QUESTION WHETHER IT'S ONE WORD OR SEVERAL LINES, ON AN ENTIRE SHEET OF PAPER.

ALL COMMUNICATION BETWEEN US HAS -- IS PART OF THE RECORD AND FACILITATES THAT. MANY TIMES I CAN WRITE MY RESPONSE ON THE PAPER AND RETURN IT TO YOU.

IF ON THE OTHER HAND IT'S NECESSARY TO ANSWER THAT TO BRING YOU INTO THE COURTROOM, THEN WE WOULD -- WE

CAN ACCOMPLISH THAT AS WELL.

IN ANSWERING OR ASKING QUESTIONS I WOULD REMIND YOU IF YOU HAVE A QUESTION OF THE LAW, PLEASE STATE THAT LAW AND I WILL BE HAPPY TO ANSWER IT.

IF IT'S A QUESTION ABOUT WHAT A FACT OR WHAT SOMEBODY SAID, YOU NEED TO TRY TO RESOLVE THAT. THAT'S NOT MY RESPONSIBILITY.

I CAN'T PARTICIPATE IN THAT, BUT I WILL TELL YOU THIS. IF YOU REACH AN IMPASS AND YOU CAN'T RESOLVE IT OR YOU HAVE A QUESTION ABOUT WHAT SOMEONE SAID, WE DO HAVE THE ABILITY OF RE-PLAYING OR RESTATING THAT FOR YOU.

IF THAT SHOULD OCCUR, I WOULD ASK THAT YOU SIMPLY WRITE THAT WITNESS DOWN, THAT INDIVIDUAL, IF THERE IS ONLY A PORTION OF IT THAT YOU WISH, YOU WILL LET ME KNOW THAT, MAYBE SOMETIMES WE CAN FIND THAT PORTION.

BUT IF YOU WANT TO HEAR THE ENTIRE ONE, YOU MAY DO SO IF YOU NEED IT. FOR MY REASON, OKAY? THANK YOU VERY MUCH, LADIES AND GENTLEMEN. I ASK THAT YOU RETIRE ASK THE ALTERNATE NOT TO RETURN TO THE JURY ROOM AT THIS TIME.

(WHEREUPON THE JURY LEFT THE COURTROOM AT 12:05 P.M.)

THE COURT: ANY EXCEPTIONS, ADDITIONS FROM THE STATE?

MR. KOLB: NONE, YOUR HONOR.

THE COURT: ANY EXCEPTIONS OR ADDITIONS FROM THE DEFENDANT?

MR. BABB: YES, SIR, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. BABB: NOTE AN OBJECTION EARLIER. TAKE EXCEPTION ON THAT BASIS, LIKE TO EXPLAIN IT BRIEFLY.

THE COURT: OKAY.

MR. BABB: MURDER AND LESSER INCLUDED OFFENSE IS INVOLUNTARY MANSLAUGHTER STATUTORILY.

THE COURT: SAY MURDER IS LESSER INCLUDED?

MR. BABB: NO, SIR. THE LESSER INCLUDED OFFENSE OF MANSLAUGHTER. THEY ARE BOTH STATUTORILY DEFINED.

THE COURT: ALL RIGHT, SIR.

MR. BABB: ALL RIGHT, SIR. THE CHARGE GIVEN IT HAS GIVEN IN THE INSTRUCTIONS ON THE CONSIDERATION OF IT GO BEYOND THE ELEMENTS CONTAINED IN THESE TWO STATUTORY OFFENSES.

UNDER OUR CASE LAW A LESSER INCLUDED OFFENSE CONTAINS SOME BUT NOT ALL OF THE ELEMENTS. IF IT CONTAINS ANY ADDITIONAL ELEMENTS, THEN IT'S NOT A LISTENING (SIC) TO THE DEFENSE BY DEFINITION.

THE CHARGES GIVEN BRINGS INTO CONSIDERATION AN ELEMENT THAT'S PRESENT IN EITHER THE DEFINITION OF MANSLAUGHTER, I INVOLUNTARY MANSLAUGHTER, NOR THE DEFINITION OF MURDER.

INTERJECTS THAT BOTH IN THE DEFINITION OF MANSLAUGHTER GIVEN AND IT SHIFTS OR LESSENS THE BURDEN OF

THE STATE WITH REGARD TO PROVING MURDER. IF IT'S INSERTED CONTEMPORANEOUS FELONY, IF THE JURY FINDS A CONTEMPORANEOUS FELONY SUCH AS BURGLARY, THEN THEY CANNOT EVEN CONSIDER IT.

AND WITH THE INSTRUCTIONS THEY NOT EVEN CONSIDER THE CHARGE ON MANSLAUGHTER, IT'S OUR POSITION---.

THE COURT: LETS MAKE THE RECORD -- EXCUSE ME FOR INTERRUPTING YOU. SAY THE MANSLAUGHTER -- I GAVE NO CHARGE ON MANSLAUGHTER, YOU'RE TALKING ABOUT INVOLUNTARY MANSLAUGHTER?

MR. BABB: YES, SIR.

THE COURT: OKAY.

MR. BABB: THAT'S TOTALLY OUT. IT CREATED A RANGE OF ACTIVITIES NOT INCLUDES -- AND IT'S LESSENING THE STATES BURDEN WITH REGARD TO THE MURDER CHARGE.

FOR THAT REASON IT SEEMS TO ME AND WE TAKE THE POSITION WE GONE INTO AN AREA THAT IS THE PROVINCE OF THE JURY AND WE HAVE DONE IT IN A MANNER -- AND I UNDERSTAND THE CASE LAW THAT THE COURT IS LOOKING AT -- THAT IT'S OUR POSITION THAT YOU CANNOT CONSTITUTIONALLY EVEN UNDER THE U.S. OR IN SOUTH CAROLINA CONSTITUTION WITHOUT VIOLATING DUE PROCESS, TAKE A PENAL CRIMINAL STATUTE AND EXPAND IT OR IT CAN BE RESTRICTED BUT IT CANNOT BE EXPANDED.

THE DEFENDANT HAS A RIGHT TO REPLY ON THE WORDING AS GIVEN IN THE STATUTES. WE HAVE NOW INSERTED NEW

WORDING INTO THE DEFINITION AS WELL AS INSTRUCTED WHAT THE JURY MUT NOT DO BASED ON ANOTHER CHARGE.

THE COURT: WHAT NEW WORDING ARE YOU SUGGESTING? THE THAT HAS BEEN INSERTED, THE ONE -- THE DEFINITION OF AN UNLAWFUL ACT NOT AMOUNTING TO A FELONY?

MR. BABB: YES, SIR.

THE COURT: OKAY. ALL RIGHT, SIR.

MR. BABB: THAT'S OUR EXCEPTION.

THE COURT: ANY OTHER EXCEPTIONS?

MR. BABB: NO, YOUR HONOR.

THE COURT: VERY WELL. THE -- I APPRECIATE YOUR POSITION. THE RECORD IS CLEAR. I GAVE THE DEFINITION AS STATED NUMEROUS AND LAST -- WELL, I DON'T KNOW ABOUT LASTLY.

CERTAINLY WHICH WAS FILED NOVEMBER THE FOURTH 1996, THE STATE VERSUS JAMES NEAL TUCKER WHERE AGAIN THE COURT RECOGNIZES AND SETS FORTH THE DEFINITION OF INVOLUNTARY MANSLAUGHTER.

AS I STATED BEFORE I ONLY CHARGED THE -- IT GIVES TWO. I DID NOT CHARGE THE SECOND. WHICH DEALS WITH A LAWFUL ACT BECAUSE FOR THE REASONS STATED THAT POSSESSION OF THE FIREARM ON THE PREMISES WAS NOT ONE OF THOSE EXCEPTIONS PROVIDED BY LAW THAT HE DIDN'T, THERE FORE HE WAS UNLAWFULLY IN THE POSSESSION OF A FIREARM.

FURTHERMORE THERE WAS TESTIMONY AND EVIDENCE OF

POINTING THE FIREARM WHICH WOULD AGAIN BE A VIOLATION OF THE LAW.

SO FOR THOSE REASONS I DID NOT CHARGE THE SECOND ASPECT OF THE DEFINITION, BUT I BELIEVE I CHARGED VERBATIM THE FIRST DEFINITION.

I UNDERSTAND YOUR POSITION AND IN THAT REGARD. WITH RESPECT TO ADVISING THE JURY OF THE THEIR DECISIONS AND CONSIDERING -- I FEEL THAT THAT WAS AN INSTRUCTION ON THE LAW WHICH I'M REQUIRED TO DO AND EXPLAIN TO THE JURY THE -- WHICH THEY ARE LAY PERSONS.

I WOULD SIMPLY SAY BURGLARY IS A FELONY EXPECT THEM TO TAKE IN THAT DECISION. THE PART THAT I GAVE -- I GAVE BOTH WAYS, GAVE THEM THEIR OPTION, BUT SIMPLY SAID IF THEY HAD CONCLUDED NOT SUGGESTING IN ANY WAY THEY SHOULD CONCLUDE -- BUT IF THEY DID CONCLUDE BEYOND A REASONABLE DOUBT THEN THEY MAY NOT UNDER OUR LAW CONSIDER IT.

I BELIEVE THAT TO BE A STATEMENT OF THE LAW TAKING ALL THE CASES AND PUTTING THEM AND APPLYING THEM TO THE FACTS OF THIS CASE. BUT THANK YOU. THE RECOLLECT NOTES YOUR EXCEPTION.

MR. BABB: THANK YOU, SIR.

THE COURT: THANK YOU. IF YOU WOULD, I THINK THERE ARE -- I THINK ALL OF THE STATE'S EXHIBITS WITH EXCEPTION OF STATES 3 FOR IDENTIFICATION ARE IN THE RECORD. THE TAPE IS THERE.

MY REGARD OF THAT IS JUST TO WAIT. IF THEY NEED TO HEAR IT WE WILL SEND IT BACK TO THEM. BUT I'M NOT GOING TO SEND IT IN AT THIS POINT. WE WILL, IN THE MEAN TIME YOU ALL BE CONSIDERING IF YOU HAVE ANY OBJECTIONS SHOULD THAT OCCUR.

I'LL JUST WAIT AND SEE WHAT THE JURY SAYS IN THAT REGARD. THE FOUR DEFENDANT'S EXHIBITS THAT HAVE BEEN REFERENCED IN THE PROCEEDING, DEFENSE 1, 2, 3 AND 4, PHOTOGRAPHS OF THE DEFENDANT, THOSE ARE FOR I.D. PURPOSES ONLY AT THIS PROCEEDING AND THEY ARE NOT GOING BACK AS WELL.

IF YOU ALL WILL CHECK TO MAKE SURE THEY ARE ALL HERE THEN WE CAN GIVE THEM TO THE JURY. I WOULD ALSO LIKE TO INQUIRE OF THE JURY WHETHER THEY WISH TO GO TO EAT FIRST AND THEN RETURN.

DO YOU HAVE ANY OBJECTION TO THAT INQUIRY AND IF THEY CHOOSE TO GO EAT BEFORE THEY BEGIN THEIR DELIERATIONS, THAT WILL HELP US AND WHAT OUR PLANS CAN DO -- CAN BE AS WELL. ANY OBJECTION FROM THE STATE?

MR. KOLB: NO, SIR. THAT BE FINE.

THE COURT: IS THAT AGREEABLE?

MR. LITTLEJOHN: NO OBJECTION.

MR. BABB: MAY WANT TO ASK YOUR HONOR IF THEY...

MR. KOLB: ONE THING, YOUR HONOR. IN REGARD TO THE TAPE, SINCE IT'S IN EVIDENCE. IT SEEMS TO ME, I

UNDERSTAND THE COURT WANTS TO HAVE CONTROL OF THEM LISTENING TO IT, BUT IT SEEMS LIKE THEY OUGHT TO KNOW THAT THE TAPE IS OUT HERE THEY CAN LISTEN TO IT IF THEY WANT TO. BUT I MEAN JUST NO NOT GIVE IT TO THEM.

THE COURT: I WILL BE HAPPY TO BRING THEM BACK IN AND EXPLAIN THE TAPE IF YOU LIKE.

MR. KOLB: ALL RIGHT, SIR. I MEAN, SEEMS LIKE WE GAVE IT TO THEM.

THE COURT: OR I COULD -- JUST DON'T GIVE IN THE TAPE RECORDER. IF THEY WANT TO LISTEN TO IT...

(WHEREUPON THERE WAS A PAUSE).

THE COURT: I CAN DO THAT OR WE CAN SIMPLY I GUESS BEST THING TO DO IS BRING THEM IN AND EXPLAIN THAT TO THEM. BRING THEM.

MR. KOLB: GIVE THEM THE TAPE IF THEY WANT TO LISTEN TO IT?

THE COURT: I WILL ACCOMPLISH THE INQUIRY ABOUT LUNCH, TOO, AT THE SAME TIME. ANY OBJECTION TO MY DOING THAT? EXPLAINING THAT? ANY OBJECTION FROM THE DEFENDANT?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: ALL RIGHT.

(WHEREUPON THE JURY ENTERED THE COURTROOM).

THE COURT: THANK YOU LADIES AND GENTLEMEN. TWO MATTERS I NEED TO DISCUSS WITH YOU -- MORE -- IF YOU WILL.

ONE OF THE THINGS IS I'M GOING TO SEND WITH YOU ONE OF THE STATE'S EXHIBITS, A TAPE.

I'M NOT GOING TO SEND WITH THE PLAYER. IF YOU NEED IT, JUST LET US KNOW AND WE WILL BE HAPPY TO JUST SEND IT TO YOU. BUT UNTIL YOU REQUEST IT, I'M NOT GOING TO SEND THAT BACK TO YOU. BUT IT'S HERE IF YOU SHOULD NEED IT FOR ANY PURPOSE WHATSOEVER.

SECONDLY, IT IS A LITTLE BIT AFTER 12. I DON'T KNOW WHAT YOUR PLANS ARE ABOUT LUNCH. IF YOU WOULD PREFER TO GO TO LUNCH NOW BEFORE YOU BEGIN YOUR DELIBERATIONS, THAT WILL BE FINE.

I WILL LET YOU MAKE YOUR DECISION IN THAT -- IN FACT. LET ME SAY THIS. THAT THE TWO ALTERNATES MAY EAT WITH YOU ALL AT THIS POINT. ARE YOU IN THE SAME AREA? I WOULD ASK THAT YOU HAVE THE ALTERNATES SIT AT A DIFFERENT TABLE, PLEASE.

AT THIS POINT WITH SOMEONE WITH THEM. LETS GO AHEAD GO THE LUNCH NOW THEN WHEN WE RETURN AT THAT TIME YOU MAY BEGIN YOUR DELIBERATIONS. UNTIL THEN YOU MAY NOT DISCUSS THIS CASE AT ALL. OKAY?

ONCE YOU BEGIN YOUR DELIBERATIONS, IF WE STOP THEN I WILL GIVE YOU SOME LIMITED INSTRUCTION. AT THIS POINT YOU MAY NOT BEGIN YOUR DELIBERATIONS UNTIL YOU HAVE RETURNED TO THE JURY ROOM FROM YOUR LUNCH BREAK.

I WOULD ALSO ADD THIS RESTRICTION, IF YOU WILL.

DELIBERATIONS. YOU DETERMINE HOW YOU WISH TO PROCEED WITH ONE RESTRICTION. IF AT ANY TIME IT BECOMES NECESSARY FOR THE JUROR TO LEAVE THE TABLE FOR ANY REASON, DELIBERATIONS MUST STOP AND MAY NOT RESUME UNTIL ALL TWELVE OF YOU ARE TOGETHER.

OTHER THAN THAT, YOU CAN PROCEED AS YOU DEEM APPROPRIATE; OKAY? THANK YOU, LADIES AND GENTLEMEN. YOU MAY RETIRE OR YOU MAY GO ON TO LUNCH AND WE WILL BE HERE UPON YOUR RETURN IF YOU SHOULD NEED US FOR ANY REASON. THANK YOU VERY MUCH.

THE COURT: ANY OBJECTION TO ADDITIONAL COMMENTS BY THE COURT?

MR. KOLB: (NO RESPONSE).

THE COURT: FROM THE STATE, ANY OBJECTIONS? FROM THE DEFENDANT?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: THANK YOU. WE WILL BE AT EASE. JUST OUT OF ABUNDANCE OF CAUTION, YOU ALL COULD TAKE TAKE MAYBE THIRTY OR FORTY-FIVE MINUTES THEN BE AVAILABLE IF -- AND YOU DON'T HAVE TO BE IN HERE, BUT JUST LEAVE A MESSAGE WHERE -- I MEAN -- SOME WAY TO GET IN TOUCH WITH YOU IN CASE YOU ARE NOT. THANK YOU VERY MUCH.

(WHEREUPON COURT WAS IN RECESS FOR LUNCH).

(WHEREUPON JURY BEGAN DELIBERATIONS AT 1:25 P.M.)

(COURT'S EXHIBIT NO. 9 MARKED FOR

IDENTIFICATION).

THE COURT: OKAY. THIS RESPONSE?

MR. KOLB: MAKE A COPY FOR THE RECORD.

THE COURT: TELL THEM TO KEEP THIS WITH ALL OF THE OTHER EXHIBITS. ALL RIGHT. I HAVE REVIEWED COURT'S EXHIBIT 9, INQUIRY FROM THE JURY WITH THE STATE, THE SOLICITOR AND -- PARDON -- THE COURT -- THE STATE AND COUNSEL FOR THE DEFENDANT.

AND THEY HAVE HAD AN OPPORTUNITY TO REVIEW IT WITH THE DEFENDANT, MR. STONE, WHO IS PRESENT. ARE THERE ANY OBJECTIONS TO THE COURTS RESPONSE TO COURT'S EXHIBIT 9 FOR THE JURY'S INQUIRY FROM THE STATE?

MR. KOLB: JUDGE, YOU INTERPRET THAT JUST ELEMENTS AS OPPOSED TO DEFINITION OF ELEMENTS?

THE COURT: THAT'S CORRECT. I PUT IN THE RESPONSE IT'S CLEAR, I'M ATTACHING THE FOUR ELEMENTS WHICH YOU REQUESTED. I STATED IF YOU NEED FURTHER INFORMATION, LET ME KNOW.

MR. KOLB: NO, SIR.

THE COURT: ANY OBJECTION TO THE RESPONSE?

MR. KOLB: NO, SIR.

THE COURT: ANY OBJECTION FROM THE DEFENSE?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: VERY WELL. YOU HAVE THE TAPE PLAYER? OKAY. TAPE PLAYER AND THIS AND PLEASE ADVISE THE PRESIDING

JUROR TO KEEP THIS WITH THE OTHER EXHIBITS. THANK YOU VERY MUCH. WE WILL BE AT EASE.

(JURY NOTE WAS SENT OUT AT 1:55 P.M.)

(WHEREUPON A BRIEF RECESS WAS TAKEN).

THE COURT: BACK ON THE RECORD. LET THE RECORD REFLECT MR. STONE IS PRESENT. I'M ADVISED THAT THE JURY HAS REACHED A VERDICT.

I DON'T KNOW IF THERE IS ANY PROCEDURE FOR IT. I HAVE DONE IT ONE WAY ONCE BEFORE. ANY OBJECTION FROM THE STATE OF ALTERNATES COMING IN WITH THE JURY AND JUST TAKING THEIR SEAT?

MR. KOLB: NO, SIR. THAT'S FINE.

THE COURT: ANY OBJECTION FROM THE DEFENDANT?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: THEY'VE BEEN A PART. I DON'T SEE HOW IT WOULD BE OF ANY HARM. BUT I JUST WANT TO ASK YOU. NO OBJECTION. VERY WELL. WE WILL LET THEM COME IN AND TAKE THEIR SEATS. ALL RIGHT. BEFORE YOU BRING THEM....

(WHEREUPON THERE WAS A PAUSE).

THE COURT: WOULD YOU CHECK AND SEE IF THERE IS ANYONE ELSE THAT WANTS TO COME IN FOR THE VERDICT BECAUSE ONCE I START TALKING TO THOSE PRESENT, I DON'T WANT ANYONE ELSE TO COME IN.

OFFICER: NO ONE OUT THERE.

THE COURT: THANK YOU VERY MUCH. LADIES AND

GENTLEMEN, THOSE OF YOU THAT ARE IN THE AUDIENCE, I HAVE SAID THIS A NUMBER OF TIMES BEFORE. TYPICALLY DO IT IN CASES OF THIS NATURE.

BUT IN THIS CASE I UNDERSTAND EVEN MORE THE NEED TO SAY IT. FIRST OF ALL, FIRST OF ALL, I WANT TO TELL YOU SOMETHING AS THE TRIAL JUDGE IN THIS MATTER AND THIS IS TO BOTH SIDES. THIS IS TO BOTH FRIENDS AND FAMILY, FOR BOTH SIDES.

SOMETIMES YOU WORRY ABOUT REACTIONS AND THE POSSIBLE INFLUENCE ON JURORS. BUT FROM THE START IT'S BEEN MY OBSERVATION AND I WILL TELL YOU AS A PERSON I DON'T KNOW THAT I COULD HAVE DONE IT AS WELL AND AS PROFESSIONALLY AND AS WONDERFULLY AS EACH ONE OF YOU HAVE DONE IT.

I CAN'T IMAGINE ANYTHING MORE DIFFICULT. I CAN'T IMAGINE ANYTHING THAT WOULD CAUSE YOUR HEART STRINGS AND TEAR AT YOU, BUT I COMMEND EACH ONE OF YOU FOR THE WAY YOU HAVE CONDUCTED YOURSELF THROUGHOUT THIS TRIAL.

I WOULD ASK YOU NOW, HOWEVER, TO CONTINUE TO RESPECT THE DIGNITY OF THIS PROCEEDING, OF THIS COURT, AND REFRAIN FROM ANY OUT BURSTS AT ALL.

I DON'T KNOW WHAT THE VERDICT IS JUST LIKE YOU. WHATEVER THAT VERDICT IS, THOSE TWELVE PEOPLE HAVE I BELIEVE LISTENED TO THE FACTS, LISTENED TO THE EVIDENCE, TAKEN THE LAW AND HAVE APPLIED THAT LAW TO THOSE FACTS AND

REACHED A DECISION WHICH THEY BELIEVE SPEAKS THE TRUTH.

AND THAT'S WHAT WE HAVE ASKED THEM TO DO. THAT'S WHAT WE PICKED THEM TO DO. SO IF YOU FEEL THAT YOU CAN'T DO THAT, I CERTAINLY WOULD UNDERSTAND THAT AND RESPECT YOU AS WELL FOR THAT.

BUT I WOULD ASK THAT YOU LEAVE NOW. AND IF YOU REMAIN, THEN I WILL ASSUME THAT YOU WILL FOLLOW THE COURTS INSTRUCTION AND NOT HAVE ANY RESPONSE AT ALL WITH REGARD TO THE VERDICT. OKAY?

THANK YOU VERY MUCH. DOES ANYBODY FEEL THAT THEY NEED TO LEAVE? THANK YOU. LETS BRING THE JURY IN.

(WHEREUPON THE JURY ENTERED THE COURTROOM AT 3:41 P.M.)

V E R D I C T.

BAILIFF: YOUR HONOR, ALL JURORS ARE PRESENT.

THE COURT: THANK YOU VERY MUCH. LADIES AND GENTLEMEN AS I UNDERSTAND, THE JURY HAS REACHED A VERDICT. IS THAT CORRECT, MR. PRESIDING JUROR?

FOREMAN: YES, SIR.

THE COURT: IF YOU WOULD HAND ME THE FORM, PLEASE. THANK YOU, SIR.

(WHEREUPON THERE WAS A PAUSE).

THE COURT: THE FORM HAS BEEN PROPERLY COMPLETED. THE DEFENDANT PLEASE RISE AND YOU MAY PUBLISH THE VERDICT.

BAILIFF: INDICTMENT NUMBER 96-GS 43- 698, THE STATE

OF SOUTH CAROLINA VERSUS BOBBY WAYNE STONE, WE THE JURY IN THE ABOVE ENTITLED ACTION FIND THE DEFENDANT BOBBY WAYNE STONE, AS TO THE COUNT OF BURGLARY IN THE FIRST DEGREE GUILTY.

AS TO THE COUNT OF MURDER, COUNT TWO, GUILTY. AS TO THE COUNT OF UNLAWFUL CARRYING OF A PISTOL, GUILTY. SIGNED DAN E RIEGEL, FOREPERSON. THIS BE YOUR VERDICT, SAY SO YE ALL.

THE COURT: I WOULD ASK YOU TO DO ONE FURTHER THING. IF THIS BE YOUR VERDICT, PLEASE RAISE YOUR RIGHT HAND. YOU MAY PUT THEM DOWN. THANK YOU. ANYTHING FURTHER FROM THE STATE AT THIS POINT?

MR. KOLB: NO, SIR.

THE COURT: ANYTHING FURTHER FROM THE -- MR. STONE AT THIS POINT?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: VERY WELL. THANK YOU VERY MUCH. THANK YOU, LADIES AND GENTLEMEN FOR YOUR WORK THIS AFTERNOON. AND PLEASE UNDERSTAND WHEN I SAY THANK YOU, THAT HAS NOTHING TO DO WITH YOUR DECISION.

THAT IS YOUR DECISION. NO NEED TO THANK YOU FOR DOING YOUR JOB. YOU WERE -- THAT'S WHAT YOU WERE ASKED TO DO. I THANK YOU FOR THE MANNER IN WHICH YOU HAVE CONDUCTED YOURSELF TO THIS POINT.

AS YOU KNOW, THIS IS -- AND WE TALKED. THIS IS

A TWO PART PROCEEDING. THE STATUTE REQUIRES THAT THERE BE A TWENTY-FOUR HOUR WAITING PERIOD NOW BEFORE WE BEGIN THE SECOND PORTION. APPROACH, PLEASE, JUST ONE SECOND.

(WHEREUPON A BENCH CONFERENCE WAS HELD).

THE COURT: THAT MEANS THAT WE WILL NOT START TAKING TESTIMONY UNTIL TOMORROW AND I WILL JUST TELL YOU WE WILL START AT 3:45. I HAD IT BEING 3:35 AT THIS POINT.

SO I ASSUME THAT YOU WANT TO START AND GO AHEAD AND USE THE PORTION OF THE DAY; IS THAT -- I WOULD ASSUME THAT WOULD BE YOUR DESIRE? IF YOU CHANGE YOUR MIND, LET US KNOW. BUT OTHERWISE I WILL SEE YOU AT 3:45.

NOW LADIES AND GENTLEMEN, THAT CONCLUDES ONE PHASE. AGAIN, YOU MAY NOT DISCUSS THIS CASE OR ANTICIPATE ANYTHING.

YOU RECALL WHEN WE TALKED AND I WILL GIVE YOU SOME -- WE WILL START -- IT'S A NEW PHASE. I WILL GIVE YOU SOME OPENING REMARKS, MAY BE OPENING STATEMENTS AND WE'LL START ANOTHER TRIAL.

SO REMEMBER NOW YOU'RE STARTING ANOTHER TRIAL WITH AN OPEN MIND. THANK YOU VERY MUCH. SEE YOU TOMORROW AT 3:45.

(WHEREUPON THE JURY LEFT THE COURTROOM AT 3:47 P.M.).

THE COURT: ANYTHING FROM THE STATE?

MR. KOLB: NO, SIR.

THE COURT: ANYTHING FROM THE DEFENDANT AT THIS POINT?

MR. LITTLEJOHN: YOUR HONOR, FOR THE RECORD WE WOULD LIKE TO RENEW OUR MOTION FOR DIRECTED VERDICT AND MAKE A MOTION FOR JUDGMENT NOT WITH STANDING THE VERDICT BASED UPON THE PREVIOUS GROUNDS STATED AND THE LACK OF PROOF ON PART OF THE STATE.

THE COURT: THANK YOU, SIR. I BELIEVE THAT CONSIDERING THE FACTS THAT THE JURY -- THERE WERE CERTAINLY EVIDENCE TO SUPPORT THIS VERSION OR THIS CONCLUSION AND THEREFORE WOULD DENY YOUR MOTION. THANK YOU.

MR. LITTLEJOHN: AND JUST FOR THE RECORD, I MAKE -- I MOVE FOR A NEW TRIAL JUST TO PRESERVE THAT ISSUE.

THE COURT: THANK YOU, SIR. AND THAT LIKEWISE IS DENIED. ALL RIGHT. WE WILL SEE YOU THEN TOMORROW AT 3:45. THAT WAY WE CAN MAKE SURE WE ARE BEYOND THE TWENTY-FOUR HOURS, SO... HAVE A GOOD EVENING. WE WILL BE IN RECESS UNTIL TOMORROW.

(WHEREUPON THIS CASE WAS IN RECESS FOR THE EVENING)

JANUARY 27, 1997.

THE COURT: LET THE RECORD REFLECT MR. STONE IS PRESENT. WE ARE WAITING FOR THE SOLICITOR. AS SOON AS THE SOLICITOR COMES, I WILL BE HAPPY TO HEAR YOU.

(WHEREUPON THERE WAS A PAUSE).

THE COURT: ALL RIGHT. MR. BABB, BE HAPPY TO HEAR YOU.

MR. BABB: THANK YOU, YOUR HONOR. I WILL BE BRIEF. I -- WE HAD SOME DISCUSSIONS IN CHAMBERS WITH MR. KOLB PRESENT ON THESE MOTIONS. OUR FIRST MOTION WOULD BE TO QUASH STATES NOTICE OF INTENT TO SEEK THE DEATH PENALTY IN THIS CASE.

WE HAD PREVIOUSLY FILED TWO MOTIONS TO QUASH THE INDICTMENT, MADE RULING ON THOSE. WE WOULD RENEW THOSE WITH RESPECT TO THE NOTICE OF INTENT TO SEEK THE DEATH PENALTY THAT CAME OUT OF THOSE INDICTMENTS.

ALSO MOVE TO QUASH THAT ON THE BASIS THAT MR. STONE WAS TWICE INDICTED AS TO THE SECOND RE-INDICTMENT ON THE SAME CHARGES, WE HAVE NEVER BEEN SERVED WITH A NOTICE OF INTENT TO SEEK THE DEATH PENALTY AS REQUIRED UNDER 163-46.

THE COURT: ALL RIGHT. LET ME RESPOND TO THAT ONE. AS I UNDERSTAND THE INDICTMENT, HE WAS RE-INDICTED, THE SAME INDICTMENT NUMBER THE NOTICE WAS PREVIOUSLY GIVEN, THE NOTICE WAS GIVEN AND THAT HE DID HAVE PROPER NOTICE AS THAT CONTEMPLATED BY STATUTE; ALL RIGHT.

MR. BABB: THANK YOU, YOUR HONOR. WE HAVE A MOTION IN LIMINE TO EXCLUDE ANY EVIDENCE OF TESTIMONY CONCERNING A PENDING CHARGE AGAINST MR. STONE, THAT -- BY PENDING, I

MEAN HE HAS BEEN INDICTED.

THE COURT: OKAY.

MR. BABB: AND THAT -- OUR REASON FOR THAT IS THE PREJUDICIAL AFFECT OUTWEIGHS ANY PROBATIVE VALUE AND OF COURSE HE HAS NOT BEEN CONVICTED.

THE COURT: ALL RIGHT. AS I INDICATED IN CHAMBERS AS TO ANY PENDING CHARGES, AT THIS POINT THE COURT WOULD PROBABLY EXCLUDE ANY TESTIMONY OR CONCERNING THE PENDING CHARGES, HOWEVER OF COURSE THAT WOULD DEPEND UPON A NUMBER -- AS WE KNOW A MOTION IN LIMINE -- I DON'T KNOW WHAT THE TESTIMONY WE HAVE OR THE OTHER REASONS THAT THAT TESTIMONY MAY BECOME OTHERWISE ADMISSIBLE AS A RESULT OF SOMETHING THAT OCCURS IN THE TRIAL, BUT AT THIS POINT I WILL -- WE WILL NOT ALLOW TESTIMONY OF ANY PENDING CHARGE.

MR. BABB: YES, SIR, YOUR HONOR. THE SECOND MOTION IN LIMINE RELATES TO MR. STONE'S PRIOR RECORD. THERE -- IN HEARINGS NOT BEFORE THIS COURT, BEFORE ANOTHER JUDGE, WITH REGARD TO THE ISSUE OF WHETHER THOSE PRIOR CONVICTIONS MAY HAVE BEEN FOR VIOLENT CRIMES, THAT ISSUE HAS BEEN SETTLED ON THE RECORD.

THERE IS A RECORD OF THAT. SO WE WOULD ASK ANY OF THOSE CRIMES NOT BE REFERENCED, REFERRED TO, ALUDED TO BY THE SOLICITOR AS VIOLENT CRIMES, STATUTORILY DEFINED.

THE COURT: ALL RIGHT. AS I UNDERSTAND IT, OUR CONFERENCE IN CHAMBERS OF COURSE THAT REALLY IS BECAUSE

THIS OCCURRED AFTER JANUARY THE 1ST 1996, IT REALLY -- THAT DETERMINATION REALLY LOSES IT'S SIGNIFICANCE FOR THIS TRIAL.

THE ONLY POINT THAT WE DISCUSSED -- AND THAT POINT HAS NOT BEEN DECIDED AT THIS POINT -- CONCERNS THE ISSUE OF WHETHER OR NOT BURGLARY AND AS I UNDERSTAND IT'S ALLEGED THAT IT'S CONVICTION FOR BURGLARY OF A BUSINESS AT NIGHT, WHETHER OR NOT THAT IS A CRIME OF VIOLENCE AGAINST A PERSON AS STATED IN ONE OF THE MITIGATING CIRCUMSTANCES, WHETHER OR NOT HE'S BEEN CONVICTED OF A CRIME OF VIOLENCE AGAINST A PERSON.

MR. BABB: YES, YOUR HONOR. THAT'S OUR CONCERN.

THE COURT: AND WE DISCUSSED THE DETERMINATIONS MADE AS TO WHETHER OR NOT THESE ARE CRIMES OF VIOLENCE AS CONTEMPLATED BY THE STATUTE.

AND THAT TERMS ARE NOT SYNONYMOUS AND WE WILL -- I WILL MAKE A DETERMINATION AT THAT TIME RELATIVE TO THAT IF NECESSARY. IT MAY NOT BE NECESSARY.

MR. BABB: I UNDERSTAND VERY WELL, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU.

MR. BABB: THIRD MOTION IN LIMINE WILL BE TO EXCLUDE ANY EVIDENCE NOT TIMELY DISCLOSED. AND AS I EXPLAINED IT TO THE COURT, WE CONSTRUE THE REQUIREMENT THAT ANY EVIDENCE IN AGGRAVATION BE TIMELY PROVIDED IN WRITING AND THAT YOU HAVE THIRTY DAY NOTICE AND THAT THAT SHOULD APPLY

TO ANY OF THAT EVIDENCE.

THE COURT: ALL RIGHT. THAT ONE I -- WE UNDERSTAND YOUR MOTION. UNTIL I SEE THE SPECIFIC EVIDENCE, I DON'T KNOW THAT I CAN REALLY INTELLIGENTLY GIVE YOU A RESPONSE OR AN INDICATION OF HOW THE COURT MIGHT RULE.

I HAVE TO RESERVE THAT UNTIL THAT PARTICULAR EVIDENCE IS OFFERED.

MR. BABB: YES, SIR, YOUR HONOR. THE FOURTH MOTION IN LIMINE WOULD GO TO ANY EVIDENCE. AND THIS IS A MATTER THAT'S ALREADY IN THIS RECORD WITH REGARD TO MR. FRAIL'S (SIC) TRUCK AND AN ALLEGED THEFT OF THAT TRUCK.

THAT WOULD BE HIGHLY PREJUDICIAL. MR. STONE HAS NOT EVEN BEEN CHARGED WITH THAT, MUCH LESS CONVICTED. IT WOULD CREATE A VIRTUAL MINI TRIAL WITHIN THIS PROCEEDING AND QUITE FRANKLY...

THE COURT: ALL RIGHT. AS I INDICATED IN CHAMBERS, AT THIS POINT THE ISSUE ABOUT THE GUNS BEING STOLEN, I WILL ALLOW SOME LIMITED TESTIMONY IN THAT REGARD.

HOWEVER, THE ISSUE OF THE TRUCK, THE STOLEN TRUCK AT THIS POINT WOULD NOT -- WOULD NOT PERMIT TESTIMONY ABOUT THAT PARTICULAR ISSUE AS I STATED IN CRIMES FOR WHICH HE HAS NOT BEEN CONVICTED AND THAT WOULD BE ONE OF THOSE CRIMES BECAUSE IN THE COURT'S OPINION IN AT LEAST AT THIS JUNCTURE -- AGAIN THIS IS IN LIMINE -- THE PROBATIVE VALUE IS IN THE COURTS OPINION OUTWEIGHED BY

THE PREJUDICE.

MR. BABB: THANK YOU, YOUR HONOR.

THE COURT: OKAY.

MR. BABB: SIXTH MOTION IN LIMINE WILL BE TO EXCLUDE ANY ADDITIONAL EVIDENCE SURROUNDING BURGLARY ITSELF. THAT OF COURSE IS AN AGGRAVATED CIRCUMSTANCE. THE JURY HAS ALREADY SPOKEN ON THAT ISSUE.

THE COURT: ALL RIGHT. AND AS WE DISCUSSED, I THINK WE HAVE HEARD ALL OF THE CIRCUMSTANCES SURROUNDING THE BURGLARY.

THE ONLY ISSUE I THINK THAT WOULD BE AS WE MENTIONED -- AND I DON'T KNOW WHETHER THAT COMES INTO THIS OR YOU CONTEMPLATE THIS TESTIMONY -- WOULD BE TESTIMONY CONCERNING MR. STONE'S UNDERSTANDING PRIOR TO THAT NIGHT OF HIS -- WHETHER OR NOT HE WAS WELCOME ON THOSE PREMISES AND IN FACT HAD BEEN INSTRUCTED NOT TO BE ON THE PREMISES.

AND AS I HAVE INDICATED, I MAY PERMIT TESTIMONY OF A LIMITED NATURE TO THAT ISSUE. THAT WOULD BE ONE ASPECT THAT COULD BE CONSIDERED A CIRCUMSTANCE, BUT OTHER THAN THAT I WOULD HAVE TO SEE. AND I CERTAINLY -- IF IT'S CUMULATIVE, THEN I WILL EXCLUDE IT ON THAT BASIS.

MR. BABB: YES, SIR, YOUR HONOR.

THE COURT: OKAY.

MR. BABB: THE SEVENTH MOTION IN LIMINE WE WOULD MOVE TO EXCLUDE CERTAIN PICTURES MADE BY OUR -- ON BEHALF OF

DR. SEXTON IN RELATING ACTIVITIES THAT HE WAS INVOLVED IN OR ANY SIMILAR PHOTOGRAPHS.

THE COURT: AS I DISCUSSED IN CHAMBERS, THE PHOTOGRAPHS IN THIS PARTICULAR CASE -- THERE REALLY ISN'T.

MR. KOLB: EXCUSE ME. I'M SORRY. I THOUGHT YOU WERE SPEAKING TO ME.

THE COURT: NO. THERE REALLY IS NOT AN ISSUE THAT THE PHOTOGRAPHS ASSIST IN DETERMINING, DOES NOT -- DR. SEXTON TESTIFIED THERE WAS NO POWDER, THERE WAS NO RESIDUE AS TO INDICATE SOME CLOSE SHOT.

THE -- AT THIS POINT THE PREJUDICIAL ASPECT OUTWEIGHS ANY PROBATIVE VALUE, SO I WOULD DENY IT. I WILL EXCLUDE THOSE PHOTOGRAPHS FROM EVIDENCE AS I DID IN THE PRIOR TRIAL. I MEAN IN THE TRIAL -- THE GUILT PHASE OF THIS PROCEEDING.

MR. BABB: YOUR HONOR, I BELIEVE ANY -- I THINK MY LAST MOTION IN LIMINE -- I WILL NEED TO CONFER WITH MR. LITTLEJOHN FOR JUST A SECOND -- WOULD RELATE TO THE EXCLUSION OF THE TESTIMONY OF MR. JONES.

THAT'S THE WITNESS THAT PROFFERED CERTAIN TESTIMONY, A LOT OF QUESTIONS ABOUT WHAT WAS SAID, WASN'T SAID TO THE SLED AGENT, THE RECORD HERE HAS COVERED THAT.

WE WOULD JUST RENEW OUR MOTION THAT THAT BE KEPT OUT AND ALSO MOVE IN LIMINE TO HAVE THAT AT THIS STAGE.

THE COURT: ALL RIGHT. AS I MENTIONED IN CHAMBERS, I

PROBABLY WILL PERMIT THAT TESTIMONY OF A LIMITED NATURE. WHAT I MAY WISH TO DO, THOUGH, MR. SOLICITOR IF YOU REACH THAT IS LETS PROFFER THE LINE THAT YOU WISH BEFORE SO I CAN GET A FEEL FOR IT BEFORE THE JURY HEARS IT.

AND THAT WOULD BE THE -- WHAT I PROPOSE WE DO, BUT I WILL -- IF THE STATE DESIRES, I WILL MOST PROBABLY ALLOW THAT ASSUMING THE PROFFER BEARS IT OUT; OKAY? ANYTHING ELSE?

MR. BABB: YOUR HONOR, AND I -- COURT'S INDULGENCE.

THE COURT: YES, SIR.

(WHEREUPON THERE WAS A PAUSE).

MR. KOLB: JUDGE, THESE MATTERS THAT YOU INDICATED YOU'D GIVE ME A CHANCE TO BE HEARD ON.

THE COURT: SURE. I WILL HEAR YOU.

MR. KOLB: YOU WANT TO HEAR THEM NOW OR...

THE COURT: OR WHEN YOU WISH TO OFFER THAT EVIDENCE. WHATEVER YOU LIKE. I WILL BE HAPPY TO HEAR YOU NOW IF YOU WISH.

MR. KOLB: WE CAN -- I THINK WE COULD GO AHEAD AND LET THE COURT HEAR IT NOW.

THE COURT: SURE. BE HAPPY TO.

MR. KOLB: AND MAKE OUR ARGUMENTS.

THE COURT: OKAY.

MR. KOLB: JUDGE, THE FIRST THING IS THE MATTER OF THE LEWD ACT THE DEFENDANT COMMITTED. AND DO YOU WANT TO

ACTUALLY HEAR THE WITNESS OR YOU WANT TO...

THE COURT: NO, SIR. I DON'T NEED TO HEAR THE WITNESS, MR. SOLICITOR. AND I WOULD ASK YOU THAT YOU IN YOUR ARGUMENTS PLEASE LETS USE THE PROPER WORDING. HE'S ALLEGED TO HAVE COMMITTED, NOT HE COMMITTED.

MR. KOLB: YES, SIR.

THE COURT: OKAY?

MR. KOLB: HE -- ON SEPTEMBER THE FOURTH, 1995, APRIL BARFIELD WILL TESTIFY THAT SHE WAS SLEEPING ON A COUCH AT -- LETS SEE. AT 711 RAVENEL STREET. THAT'S THE HOUSE NEXT DOOR TO...

MR. LITTLEJOHN: EXCUSE ME. I WOULD OBJECT. AS I UNDERSTAND THE COURT'S RULING, NONE OF THIS INFORMATION WAS COMING INTO THE RECORD.

THE COURT: I REALLY DON'T NEED YOU TO STATE IN GREAT DETAIL ABOUT THIS, MR. SOLICITOR. I DON'T KNOW WHY YOU NEED TO PUT IT ON THE RECORD.

BE PERFECTLY HONEST, WITH THE SPECIFICS OF THE ALLEGED OFFENSE -- HE'S CHARGED WITH THAT. THERE HAS BEEN NO DISPOSITION ON THAT. IT IS CLEARLY, CLEARLY -- THE NATURE OF THAT OFFENSE IS SOMETHING THAT WILL CERTAINLY INFLAME A NUMBER OF PEOPLE, JUST THE MERE ACCUSATION.

I HAVE INDICATED TO YOU BEFORE THAT THE -- AND I THINK THAT YOU ARE NOT SEEKING TO DO THAT AS A CHARACTER BECAUSE CERTAINLY HE'S NOT BEEN CONVICTED OF THAT.

HE'S INNOCENT OF THAT, SO YOU CAN'T USE THAT, THAT HE IS ACCUSED OF THAT. AS I UNDERSTAND YOUR ARGUMENT, YOU CONNECTED THE ISSUE OF THE BOND THAT HE WAS OUT ON BOND FOR THAT OFFENSE AT THE TIME THAT HE COMMITTED THIS OFFENSE.

MR. KOLB: WELL JUDGE, THAT'S THE REASON I WANTED TO ARGUE THIS. IT IS CHARACTER EVIDENCE. IT ALSO IS RELEVANT ON ANOTHER ISSUE. BUT AS FAR AS CHARACTER IS CONCERNED...

THE COURT: ALL RIGHT. WELL, LETS...

MR. KOLB: AS FAR AS THE CHARACTER IS CONCERNED, THE STATE SUPREME COURT HAS DEFINITELY HELD THAT EVIDENCE AS TO CRIMES COMMITTED BY THE DEFENDANT NOT THE SUBJECT OF CONVICTION ARE ADMISSIBLE.

THAT'S -- I WILL CITE THAT STATE VERSUS GREEN, 392 S.E. 2ND 157 A 1990, THAT'S THE LEADING CASE ON THAT AND THERE HAVE BEEN SEVERAL OTHER CASES SINCE THEN.

THE COURT: MR. SOLICITOR, IF YOU COULD POINT OUT IN EACH ONE OF THOSE CASES. I AM FAMILIAR WITH THOSE CASES. IF YOU CAN SHOW ME IN THERE WHERE IT TALKS ABOUT CRIMES -- WHEN YOU SAY CRIME -- THAT THEY ARE TALKING ABOUT SOMETHING FOR WHICH HE HAS NOT BEEN CONVICTED.

MR. KOLB: YES, SIR. THAT'S IN GREEN. I THINK NUMEROUS THINGS HE HAD NOT BEEN CONVICTED OF.

THE COURT: EXCUSE ME? ALL RIGHT. AND PERTAINED TO SOME PERTINENT ISSUE IN THAT TRIAL; DID IT NOT? IT WAS

CONNECTED.

MR. KOLB: NO, SIR. IT WAS -- WELL, IT WAS CHARACTER EVIDENCE IN THE PENALTY PHASE THAT -- AND OTHER CASES HAVE SAID DO YOU HAVE -- DOES THE PROOF HAVE TO BE CLEAR AND CONVINCING?

AND THE COURT HAS ADDRESSED THAT THAT NO, IT DOESN'T -- IS THAT THE EVIDENCE THAT CONNECTS THE DEFENDANT TO THE COMMISSION OF THE CRIME EVEN WHERE THERE IS NOT A CONVICTION, THAT THAT IS RELEVANT CHARACTER EVIDENCE AND THAT THE JURY SHOULD HAVE THAT CHARACTER EVIDENCE IN THE PENALTY PHASE OF A CAPITAL TRIAL. IS A WHOLE LINE OF CASES ON THAT.

THE COURT: ALL RIGHT, SIR.

MR. KOLB: AND JUDGE, SO I THINK CASES ALLOW THAT AND THEN ADDITIONALLY, I SUBMIT THAT WHERE HE IS OUT ON PAROLE AND WITH THE CONDITION THAT HE NOT VIOLATE THE LAW AND THEN HE COMMITS -- BE UP TO THE JURY TO CHARACTER EVIDENCE, WHETHER OR NOT HE COMMITS VIOLATIONS OF LAW.

AND THEN HE'S OUT ON BOND FOR THAT VIOLATION AND THE CONDITION OF HIS BOND IS THAT HE CONTINUE TO OBEY THE LAWS OF THE STATE.

AND THEN HE COMMITS THE CRIME THIS JURY HAS CONVICTED HIM OF, I THINK IT'S HIGHLY RELEVANT ON THE ISSUE OF WHETHER HE ABIDES BY THE RULES THAT ARE SET FORTH BY HIM, BY THE CORRECTIONAL AGENCIES OF THIS STATE.

AND IT'S HIGHLY -- I MEAN IT'S -- TO ME IT'S THE MOST RELEVANT EVIDENCE YOU COULD POSSIBLY HAVE IN MAKING DECISION OF WHETHER IMPRISONMENT OR THE DEATH PENALTY IS APPROPRIATE.

THE COURT: WHICH ONE YOU WANT? YOU WANT THAT ONE OR YOU WANT THE CONVICTIONS FOR BURGLARY AND HOUSE BREAKING? I WILL GIVE YOU ONE OF THEM. WHICH ONE YOU WANT?

MR. KOLB: WELL JUDGE, UNDER THE LAW I BELIEVE I'M ENTITLED TO THE LAW.

THE COURT: NO, SIR. UNDER THE LAW YOU'RE ENTITLED TO WHAT I SAY YOU MAY GO INTO, SO LETS BE SURE WE STATE THAT CORRECTLY TOO, SIR. WHICH ONE DO YOU WANT, MR. SOLICITOR, BECAUSE WHAT YOU ARE TALKING ABOUT, HE WAS ON PAROLE FOR BURGLARIES.

MR. KOLB: YES, SIR.

THE COURT: AND YOU'RE GOING TO HAVE TESTIMONY FROM THE PAROLE AGENT TO TESTIFY WHAT HE WAS EXPLAINED. YOU HAVE HIM NOW CONVICTED OF A CRIME. YOU HAVE HIM NOW CARRYING A FIREARM WHICH HE IS ABSOLUTELY PROHIBITED FROM HAVING, LET ALONE USING. BUT HE'S PROHIBITED FROM HAVING.

MR. KOLB: YES, SIR.

THE COURT: SO CLEARLY, CLEARLY HIS CHARACTER IS ESTABLISHED BY THE PRIOR CONVICTIONS, HIS CHARACTER IS ESTABLISHED BY THE FACT THAT HE VIOLATED SOMETHING THAT SOMEBODY TOLD HIM HE COULD NOT DO.

THOSE ISSUES ARE SUPPORTED BY AN ABUNDANCE OF EVIDENCE THAT YOU WILL BE PERMITTED TO INTRODUCE. I'M GOING TO EXCLUDE THIS ONE PARTICULAR ONE THAT TALKS ABOUT SOMETHING THAT'S NOT RELATED TO BURGLARY.

IT'S TALKING ABOUT SOMETHING THAT OF IT'S VERY NATURE I BELIEVE THE MERE ACCUSATION COULD INFLAME THE JURY AND THEREBY PREJUDICE THIS RECORD AND THAT'S PRECISELY WHY I AM NOT GOING TO ALLOW IT TO COME IN.

IF THE PROBATIVE VALUE IS OUTWEIGHED BY PREJUDICE -- AND THAT'S CLEARLY MY REASON. THE FACT THAT IT'S OTHERWISE MAY BE ADMISSIBLE IN SOME PROCEEDINGS.

I DON'T DISAGREE WITH YOU AT ALL IN YOUR STATEMENT. I'M JUST TELLING YOU IN THIS PARTICULAR CASE I'M NOT GOING TO ALLOW IT; OKAY?

MR. KOLB: YES, SIR. JUDGE, AM I -- CAN I BE ALLOWED TO ARGUE IN REGARD TO THE THEFT OF THE GUNS?

THE COURT: SURE. NO. WAIT A MINUTE. THEFT OF THE GUNS OR THEFT OF THE TRUCK?

MR. KOLB: THE THEFT OF -- WELL, I WILL BE SATISFIED WITH ANY VERSION THE COURT WILL ALLOW.

THE COURT: I SAID YOU GOT THE GUNS BECAUSE HE ADMITS THAT THEY WERE HOT. HE KNOWS THEY WERE STOLEN.

MR. KOLB: BUT JUDGE, THE FACT THAT HE BLAMED THE THEFT OF THOSE GUNS ON AN UN-NAMED BLACK MALE WHEN IN FACT HE STOLE THEM HIMSELF IS HIGHLY RELEVANT ON HIS CHARACTER.

AND THAT'S...

THE COURT: IT'S RELEVANT HE BLAMED IT ON A BLACK MALE?

MR. KOLB: OR ANOTHER PERSON. HE BLAMES THE THEFT OF THOSE GUNS ON SOME -- HE SAID A BLACK MALE NAMED DAVID. THE FACT HE BLAMED IT ON A BLACK MALE NAMED DAVID OR WHATEVER, WHO -- THE FACT IS HE BLAMED IT ON SOMEBODY ELSE AND IN FACT HE STOLE THEM HIMSELF.

THE COURT: WHAT'S THE RELEVANCE?

MR. KOLB: THE CHARACTER.

THE COURT: THE FACT HE BLAMED IT?

MR. KOLB: CHARACTERISTICS OF THE DEFENDANT.

THE COURT: WHAT'S THE CHARACTERISTICS THAT ARE RELEVANT, THAT HE BLAMED IT ON SOMEONE ELSE?

MR. KOLB: THAT THE JURY SHOULD HAVE AS MUCH INFORMATION ABOUT THE CHARACTERISTICS OF THE DEFENDANT AS IN TO MAKE THE DECISION BETWEEN LIFE AND DEATH --

THE COURT: THANK YOU, SIR.

MR. KOLB: -- THEY ARE CALLED UPON TO MAKE. AND THE FACT IT ALSO GOES TO THE CREDIBILITY OF THE STATEMENT WHICH IS IN ISSUE AND I UNDERSTAND THE COURT EXCLUDING IT IN THE GUILT PHASE WHEN IT WAS IRRELEVANT ISSUE, BUT IN THE PENALTY PHASE WHEN HIS CHARACTER IS AT ISSUE....

AND ALSO THE FACT THAT THIS THING ABOUT THE TRUCK BEING STOLEN AND HIM PROVIDING THE GUNS, THE ACTUAL

MURDER WEAPON WAS STOLEN BY HIM AND IT WAS IN A GROUP OF WEAPONS THAT THE TWO THAT HE ENDED UP WITH, HE HAD -- HE PROVIDED OTHER WEAPONS TO OTHER PERSONS WHO ARE CERTAIN NOW IN PRISON -- ARE CONVICTED FELONS THEMSELVES -- AND CANNOT POSSESS GUNS.

THE COURT: HAS HE BEEN CHARGED WITH ANY OF THIS?

MR. KOLB: PROVIDING THEM WITH GUNS? NO, SIR.

THE COURT: HAS HE BEEN CHARGED WITH STEALING THE TRUCK?

MR. KOLB: NO, SIR.

THE COURT: OKAY. SO HE HASN'T EVEN BEEN CHARGED.

MR. KOLB: NO, SIR. IT WAS OUR -- IT WAS OUR PLAN TO USE THIS AS CHARACTER EVIDENCE TO CONNECT HIM TO THE GUNS AND INITIALLY IN THE GUILT PHASE THE COURT RULED AGAINST US ON THAT.

BUT WE FELT THAT DUE TO THE CLOSE CONNECTION OF THESE GUNS WE ARE TALKING ABOUT THE MURDER WEAPON IN THIS CASE, WE WERE HOPING THAT THE COURT WOULD ALLOW EVIDENCE OF THE THEFT OF THE GUNS IN THE PENALTY PHASE.

THE COURT: I TOLD YOU AGAIN, HE'S ADMITTING -- I SAID THAT YOU WILL HAVE THAT PART THAT HE KNEW THEY WERE HOT. THAT MEANS HE KNEW THEY WERE STOLEN.

YOU DON'T HAVE ANY -- YOU NOW CAN ARGUE ABOUT THE GUNS BEING STOLEN AND THAT HE KNEW THEY WERE STOLEN. NOT ONLY COULD HE NOT HAVE THEM, BUT HE KNEW THAT THEY

WERE STOLEN GUNS. HOW CAN THEY NOT -- HOW CAN THEY OBJECT TO THAT?

MR. KOLB: WELL, THE STATEMENT SAYS WELL BUY THEM FOR $100, YOU KNEW THEY WERE PROBABLY HOT. HE SAID YEAH THEY PROBABLY WERE. THAT'S A HECK -- AND HIM SAYING THAT THIS DAVID GUY MUST HAVE STOLEN THEM IS A HECK OF A LOT DIFFERENT FROM US HAVING PROOF THAT BOBBY STONE STOLE THEM.

THE COURT: THE BEAUTY OF IT IS YOU DON'T HAVE TO PROVE THAT HE STOLE THEM. AND THE BEAUTY OF IT IS WE ARE NOT GOING TO TRY THAT ISSUE IN THIS BECAUSE HE ADMITS HE KNEW THEY WERE HOT.

AND THAT GOES TO THE WHOLE ISSUE. AND THE BOTTOM LINE IS HE KNEW THEY WERE HOT AND THE MOST IMPORTANT WAS HE KNEW HE SHOULDN'T HAVE THEM AND WASN'T SUPPOSED TO HAVE THEM IN THE FIRST PLACE.

SO, I'M ALLOWING IT THROUGH THE STATEMENT. YOU ARE NOT GOING TO GET INTO THE TRUCK BEING STOLEN AND THE CIRCUMSTANCES SURROUNDING THAT FASHION.

MR. KOLB: ALL RIGHT, SIR.

THE COURT: OKAY?

MR. KOLB: JUDGE, I HAVEN'T HAD A CHANCE TO SPEAK WITH THE FAMILY AND THE SHERIFF REGARDING YOUR PRELIMINARY RULING ABOUT THE VICTIM IMPACT TESTIMONY.

AND OF COURSE IS THERE GOING TO BE A MOTION TO

SEQUESTER THE WITNESS IN THIS PHASE?

THE COURT: FIRST OF ALL, I HAVE MADE NO PRELIMINARY RULINGS ABOUT ANY TESTIMONY. WE HAVE JUST BEEN TALKING.

MR. KOLB: YES, SIR. I UNDERSTAND.

THE COURT: OF COURSE. I HAVEN'T RULED ANYTHING AT THIS POINT.

MR. KOLB: WE MAY BE ABLE TO PICK OUT THE PEOPLE THAT ARE GOING TO TESTIFY. IF WE COULD HAVE JUST A FEW MINUTES.

THE COURT: SURE. GIVE YOU AS LONG AS YOU NEED.

MR. KOLB: IS THERE GOING TO BE A MOTION TO SEQUESTER WITNESSES IN THIS PHASE?

MR. BABB: YOUR HONOR, THAT WAS -- THEY WERE ALREADY SEQUESTERED AS I UNDERSTAND.

THE COURT: ALL RIGHT. ALL WITNESSES WILL BE SEQUESTERED. YOU MAY KEEP THE ONE YOU CHOOSE TO KEEP PRESENT.

MR. KOLB: THIS WILL BE WITNESSES THAT PLAN TO TESTIFY IN THIS FASHION?

THE COURT: THAT IS CORRECT. ANYONE ELSE IS WELCOME TO REMAIN. ABSOLUTELY. AND ONCE THEY HAVE TESTIFIED, THEY DON'T HAVE TO BE SEQUESTERED EITHER.

MR. KOLB: THEY DO NOT HAVE TO?

THE COURT: I'M NOT GOING TO WORRY ABOUT REPLY. THAT'S GOING TO BE MY RULING. THEY BE SEQUESTERED FOR THE

INITIAL.

I WILL DO THIS AND CARRY IT OVER BECAUSE WE DID RULE THAT WAY, BUT THIS PART IS NOT -- I'M NOT GOING TO RULE THAT THEY HAVE TO BE SEQUESTERED IN CASE THEY HAVE TO BE CALLED IN REPLY.

MR. BABB: YES, SIR, YOUR HONOR. THAT BE FINE. JUST A COUPLE OF LITTLE QUICK MATTERS BEFORE THE SOLICITOR -- OR ARE YOU THROUGH, WADE?

MR. KOLB: YOUR HONOR, ONE OTHER AS I INDICATED POTENTIAL VICTIM IMPACT WITNESS, THE COURT WOULD BE WILLING TO HEAR FROM SOME AS TO WHETHER WE COULD USE HER. MRS. CROOKSHANKS. YOU INDICATED YOU WOULD HEAR WHEN IT CAME TO THAT. I...

THE COURT: I WILL BE HAPPY TO HEAR IT. I MEAN, IS SHE ONE OF THE FIRST ONES YOU WANT TO CALL?

MR. KOLB: NO, SIR. JUST...

THE COURT: WHAT I WOULD LIKE TO DO IS MAYBE IF SHE'S ONE THAT -- I DON'T KNOW HOW LONG WE WILL GO TODAY, BUT I WILL BE HAPPY TO STOP AND BE HAPPY TO HEAR HER TESTIMONY.

MR. KOLB: COULD WE HAVE A FEW MINUTES NOW?

THE COURT: YES, SIR. BUT JUST ONE SECOND BEFORE WE TAKE A BRIEF RECESS.

MR. BABB: JUST A COUPLE OF REAL QUICK MATTERS, YOUR HONOR. DOES THE COURT INTEND ON MR. STONE'S RECORD, -- THERE'S A NUMBER OF MISDEMEANORS. DOES THE COURT INTEND

EVERYTHING INCLUDING THE MISDEMEANORS OR JUST FELONIES?

THE COURT: I WILL GIVE YOU A DETERMINATION ON THAT AT THIS POINT.

MR. KOLB: JUDGE, AT THIS POINT WE ONLY PLAN TO USE THE GENERAL SESSIONS.

THE COURT: I ASSUMED YOU WERE. BUT IF YOU NEED ME TO, I WILL BE GLAD TO RULE. I ASSUME YOU'RE TALKING ABOUT BURGLARIES AND...

MR. KOLB: BREAKING INTO AUTOMOBILES AND LARCENIES.

MR. BABB: SHOULD HAVE DISCUSSED IT IN CHAMBERS. I DIDN'T THINK OF IT TILL WE GOT BACK HERE. BEEN DONE IN OTHER TRIALS, NOT OF THIS LEVEL, BUT IF THE COURT WOULD ALLOW MOTIONS, OBJECTIONS IN LIMINE, TO CONTINUE RUNNING SO THAT WE AREN'T NAILING SOMETHING DOWN AND KIND OF CONFUSING THE JURY AND PREJUDICING ONE SIDE OR ANOTHER.

THE COURT: GIVEN THIS AND GIVEN THE PRESENT STATUS OF REVIEW FOR THESE TYPES OF CASES, I THINK I WOULD ASK THAT YOU RAISE YOUR OBJECTION AT THE TIME.

NOW, OBVIOUSLY IF IT'S -- THIS PERSON IS GOING TO TESTIFY AND HE GOES ON, YOU WILL HAVE TO CONTINUE. I MEAN, IF IT'S THAT LINE. BUT IF IT BREAKS AND IT STARTS, I WOULD PREFER THAT YOU...

MR. BABB: LIKE YOU SAY, YOUR HONOR, WE AGREE WITH YOU. OUR OBJECTION ON THIS POINT AND EVERYBODY IS OKAY.

THE COURT: THAT BE FINE. IF THERE ARE ADDITIONAL

GROUNDS, PLEASE STATE THEM AT THAT POINT, SHOULD THERE BE ANY ADDITIONAL GROUNDS.

MR. BABB: ALL RIGHT, SIR.

THE COURT: OKAY. WE WILL BE AT EASE FOR A SECOND.

(WHEREUPON A BRIEF RECESS WAS TAKEN).

MR. KOLB: JUDGE, WOULD SEQUESTRATION APPLY TO CLERK OF COURT TO PROVE CERTIFIED COPIES OF THE INDICTMENT?

THE COURT: NO.

THE COURT: STATE READY?

MR. KOLB: YES, SIR.

THE COURT: DEFENSE READY?

MR. LITTLEJOHN: YES, YOUR HONOR.

THE COURT: LET THE RECORD REFLECT MR. STONE IS PRESENT. ALL RIGHT. LETS BRING THE JURY IN, PLEASE.

(WHEREUPON THE JURY ENTERED THE COURTROOM AT 5:10 P.M.).

THE COURT: THANK YOU, MR. RAY. THANK YOU, LADIES AND GENTLEMEN. THANK YOU FOR YOUR PATIENCE. GOING SINCE ABOUT 3 AND I APOLOGIZE.

THIS WHOLE THING WILL BE GETTING DONE, BUT THANK YOU FOR BEING PATIENT. HOPE EVERYTHING WAS OKAY LAST NIGHT AND I HOPE YOUR DAY HAS BEEN WELL.

LET ME ASK YOU THIS BEFORE I START WITH MY OPENING REMARKS. IT'S 5:00. YOU ALL HAVE BEEN RESTING. DOES IT SUIT YOU TO GO A LITTLE BIT LATER TONIGHT IN

TAKING SOME TESTIMONY? ANYBODY HAVE ANY PROBLEM WITH 8, 8:30 OR THEREABOUTS OR YOU WANT TO WORK LATER THAN THAT?

FOREMAN: NO PROBLEM.

THE COURT: ALL RIGHT. VERY WELL. THAT WILL BE MY PLAN AND MY INTENTION, BUT I DIDN'T KNOW IF YA'LL...

FOREMAN: PROBABLY HAVE TO...

THE COURT: YA'LL DISCUSS IT AMONG YOURSELVES. I REALIZE SOME PEOPLE MAY NEED -- I'M ONE OF THOSE PERSONS IF I EAT AFTER A CERTAIN HOUR AND I GET IN THE BED, IT DOESN'T DO SO WELL SOMETIMES.

SO I DON'T KNOW WHETHER ANY OF YOU ARE LIKE THAT, SO I'LL KEEP THAT IN MIND AND YOU ARE AS WELL. BUT THANK YOU VERY MUCH.

NOW LADIES AND GENTLEMEN, IF I COULD HAVE YOUR ATTENTION. AS YOU KNOW, JUST AS THE SECOND PHASE NOW. IT'S CALLED THE PENALTY PHASE. AND THIS IS THE START OF THE PRIOR PHASE WITH SOME OPENING INSTRUCTIONS.

I WANT TO GIVE YOU SOME BRIEF INSTRUCTIONS CONCERNING THIS PHASE. YESTERDAY, JANUARY 26TH 1997, YOU THE JURY CONVICTED BOBBY WAYNE STONE, THE DEFENDANT IN THIS CASE, OF THE OFFENSE OF MURDER, AND THE OFFENSES OF BURGLARY IN THE FIRST DEGREE AND UNLAWFUL CARRYING OF A PISTOL.

IT THEREFORE BECOMES NECESSARY FOR US TO ENGAGE IN THIS PROCEEDING WHICH CONCERNS THE PUNISHMENT THAT THE

COURT IS TO IMPOSE ON THE DEFENDANT.

SOUTH CAROLINA LAW PROVIDES THAT A PERSON WHO IS CONVICTED OF OR PLEADS GUILTY TO MURDER SHALL BE PUNISHED BY DEATH OR BY LIFE IMPRISONMENT.

SOUTH CAROLINA LAW FURTHER PROVIDES THAT UPON CONVICTION OF A DEFENDANT OF MURDER, THE COURT SHALL CONDUCT A SEPARATE SENTENCE PROCEEDING TO DETERMINE WHETHER THE DEFENDANT SHOULD BE SENTENCED TO DEATH OR SHOULD BE SENTENCED TO LIFE IMPRISONMENT.

DURING THIS SENTENCING PROCEEDING, TESTIMONY WILL BE PRESENTED CONCERNING THE APPROPRIATE SENTENCE. BOTH SIDES WILL HAVE AN OPPORTUNITY TO PRESENT ARGUMENTS FOR AND AGAINST THE IMPOSITION OF THE DEATH PENALTY.

AND AFTER THESE ARGUMENTS, THE COURT WILL GIVE YOU CERTAIN INSTRUCTIONS. YOU WILL THEN RETIRE TO DETERMINE WHETHER A DEATH SENTENCE OR A LIFE SENTENCE IS TO BE RECOMMENDED.

NOW, ALTHOUGH I USE THE WORD RECOMMENDED, WHATEVER YOU DECIDE WILL BE THE SENTENCE THAT THE DEFENDANT WILL RECEIVE.

IN THIS PROCEEDING YOU ARE NOT CONCERNED WITH THE DEFENDANTS GUILT OR INNOCENCE. THAT QUESTION HAS ALREADY BEEN DECIDED.

THE DEFENDANT HAS BEEN CONVICTED OF MURDER AND YOU MUST NOW CONSIDER WHAT HIS PUNISHMENT IS TO BE.

SOLICITOR?

MR. KOLB: THANK YOU, YOUR HONOR.

OPENING STATEMENT BY MR. KOLB.

LADIES AND GENTLEMEN, WE NOW PRESENT EVIDENCE TO YOU TO SUPPORT THE AGGRAVATING CIRCUMSTANCES AND ACTUALLY UNDER THE LAW, THE AGGRAVATING CIRCUMSTANCES AS YOU KNOW THE LEGISLATURE SETS THE TYPES OF CASES FOR WHICH THE DEATH PENALTY IS A POSSIBLE PUNISHMENT.

AND THOSE WE CONTEND APPLY IN THIS CASE ARE THAT THE MURDER WAS OF A LAW ENFORCEMENT OFFICER, DEPUTY SHERIFF, CHARLIE KUBALA, DURING OR CAUSE EMPLOYMENT OF HIS OFFICIAL DUTIES.

ADDITIONAL AGGRAVATING CIRCUMSTANCE IS THAT THE MURDER WAS COMMITTED WHILE IN THE COMMISSION OF THE CRIME OR ACT OF BURGLARY.

SO OBVIOUSLY YOU HAVE ALREADY HEARD THE EVIDENCE IN SUPPORT OR MOST OF THE EVIDENCE IN SUPPORT OF THOSE STATUTORY AGGRAVATING CIRCUMSTANCES AND ALL OF THE EVIDENCE THAT IS EVIDENCE, TESTIMONY, EXHIBITS, THAT YOU HAVE ALREADY HEARD IN THE FIRST PHASE OF THE TRIAL WILL BE ADMITTED INTO THIS TRIAL.

SO ALL OF THAT EVIDENCE YOU NOW CONSIDER. I THINK MADE, WHEN YOU WERE BEING QUALIFIED LIKE IT'S TWO SEPARATE PROCEEDINGS. IT HAD TO BE EXPLAINED.

BUT I THINK WILL MAKE, NEED TO MAKE IT CLEAR TO

YOU THAT THIS SECOND PROCEEDING WHEN YOU TAKE EVERYTHING HAPPENED IN THE FIRST PROCEEDING, ALL OF THE EVIDENCE, ALL OF THE TESTIMONY, ALL OF THE EXHIBITS, YOU TAKE THAT CARRY IT FORWARD.

AND NOW WHAT YOU HEAR IS ADDITIONAL INFORMATION THAT YOU WERE NOT ENTITLED TO HEAR DURING THE FIRST PHASE OF THE TRIAL. AND THEN ON THE TOTALITY OF ALL OF THAT IS WHAT YOU MAKE YOUR DECISION AS TO THE PUNISHMENT TO BE IMPOSED.

THEN I BELIEVE HIS HONOR WILL CHARGE YOU THAT WHEN YOU RECOMMEND THE DEATH PENALTY, A LOT OF PEOPLE THINK THAT'S THE ELECTRIC CHAIR. BUT NOW THE LEGISLATURE HAS CHANGED AND THE DEATH PENALTY NOW IS BY LETHAL INJECTION.

AND SO YOU WILL MAKE YOUR DECISION WHETHER THE DEFENDANT WILL BE SUBJECTED TO THE DEATH PENALTY BY LETHAL INJECTION OR WHETHER HE RECEIVE LIFE IMPRISONMENT.

AND IT WILL BE BASED UPON THE EVIDENCE IN THIS PROCEEDING, THE PROOF OF THESE STATUTORY AGGRAVATING CIRCUMSTANCES FOR WHICH YOU HAVE ALREADY HEARD AND ALSO BASED ON THE EVIDENCE OF HIS CHARACTER.

AND SO WE WILL GIVE YOU SOME EVIDENCE ABOUT HIS CHARACTER AND CHARACTERISTICS, HIS PRIOR CRIMINAL RECORD AND ALSO VICTIM IMPACT TESTIMONY.

YOU ARE ENTITLED TO HEAR THAT. ABOUT THE WORK OF

THE VICTIM, TYPE OF PERSON HE WAS AND IMPACT OF HIS DEATH UPON HIS FAMILY, THE SHERIFF'S DEPARTMENT AND THIS COMMUNITY AND WE WILL PRESENT THAT TO YOU. THANK YOU.

THE COURT: MR. BABB?

MR. BABB: THANK YOU, YOUR HONOR.

OPENING STATEMENT BY MR. BABB.

GOOD AFTERNOON, LADIES AND GENTLEMEN. I LIKE TO THANK YOU FOR YOUR SERVICE IN THIS TRIAL THUS FAR TODAY. YOU KNOW IT WAS TOUGH FROM THE BEGINNING.

STARTED OFF FROM GEORGETOWN, HAD A NUMBER OF DISCUSSIONS AND MOVED INTO GUILT PHASE. YA'LL HEARD THE EVIDENCE THAT WAS PROPER TO HEAR AND RECEIVED THE LAW THAT HIS HONOR AND YOU REACHED A DECISION.

YOU DETERMINED THAT BOBBY STONE IS GUILTY OF THE CHARGES FOR WHICH HE WAS INDICTED. WE ACCEPTED YOUR DECISION. WE ARE NOW MOVING INTO THE SECOND PHASE. WE EXPECT YOU TO UPHOLD THE SAME CONTRACT.

WE REACHED -- IN GEORGETOWN BROUGHT YOU THROUGH THE FIRST PHASE AND INTO THE SECOND PHASE. AND WHEN I SAY WE, IN THAT REGARD I BELIEVE I'M SPEAKING FOR THE STATE, FOR THE JUDICIAL SYSTEM, HIS HONOR, MR. KOLB AND MR. STONE.

AND THAT CONTRACT AND WE ARE PARTICIPATING IN DECIDING WHO WILL BE ON THIS JURY AND WHO WILL NOT, YA'LL COULD FAIRLY CONSIDER IF HE WERE CONVICTED WHETHER

POSSIBLE SENTENCE.

CONVICT HIM OF MURDER AS YOU KNEW AT THAT TIME THE MATTERS WERE PUT TO YOU, EITHER BY ME OR MR. LITTLEJOHN ON VARIOUS DEGREES.

COULD YOU FAIRLY CONSIDER IT AS SENTENCE. THOSE SENTENCES LIFE IMPRISONMENT OR DEATH. AND YOU ARE HERE BECAUSE OF YOUR ANSWERS TO THOSE QUESTIONS.

NOW WE MOVE INTO THE SECOND PHASE. YOU HAVE HEARD THE EVIDENCE. HIS HONOR WILL INSTRUCT YOU SOMEWHAT LATER HOW YOU SHOULD CONSIDER THE EVIDENCE IN THIS PHASE AND WE EXPECT YOU TO FOLLOW IT.

BECAUSE MR. STONE HAS BEEN CONVICTED OF BURGLARY DOESN'T MEAN AT THIS POINT THAT THE SENTENCE MUST BE DEATH. YOU MUST CONSIDER BOTH FAIRLY.

WHAT YOU ARE GOING TO HEAR NOW THE STATE WILL PRESENT EVIDENCE IN SUPPORT OF THE AGGRAVATING CIRCUMSTANCES WHICH IS -- YOU DETERMINE THAT, BUT THAT DOES NOT MEAN THAT YOU MUST RETURN -- THAT DECISION IS UP TO YOU AND OUR CONTRACT IS THAT IT BE FAIRLY CONSIDERED.

YOU WILL ALSO HEAR AS AGGRAVATING CIRCUMSTANCE THIS WAS -- ON THE SIDE FOR MURDER OCCURRED OF AN OFFICER IN THE COMMISSION. THAT IS SOMETHING NOT NEW.

DETERMINATION. A LOT OF THE QUESTIONS IN GEORGETOWN SURROUNDED THE ABILITY TO REMAIN FAIR AND IMPARTIAL AT THIS JUNCTURE, EVEN THOUGH CHARGES INVOLVED

MURDER.

FRANKLY IN THIS CASE, AS MR. LITTLEJOHN TOLD YOU AT THE VERY BEGINNING.

THE COURT: MR. BABB, EXCUSE ME. BUT WHEN YOU TURN AWAY FROM US AND THAT'S FINE, BUT I NEED TO BE SURE I HEAR YOU AND THE COURT REPORTER.

MR. BABB: YES, SIR YOUR HONOR.

THE COURT: FORGIVE ME FOR INTERRUPTING.

MR. BABB: NO, SIR. THANK YOU.

(WHEREUPON MR. BABB CONTINUED).

WE CONCEDE TO THAT. GOING TO HEAR THAT EVIDENCE. WE WOULD AGREE THAT YOU GOT TO FAIRLY CONSIDER BOTH. LIFE OR DEATH. YOU ARE ALSO GOING TO HEAR EVIDENCE ABOUT BOBBY WAYNE STONE.

STATE IS GOING TO BRING UP HIS CRIMINAL HISTORY. HE HAS BEEN IN TROUBLE BEFORE. NO QUESTION ABOUT THAT. YOU HAVEN'T HEARD ANY EVIDENCE UP TO THIS POINT ABOUT THAT THAT'S GOING TO SURPRISE YOU.

NOWHERE IN THERE DO YOU FIND THAT HE HAS ATTACKED OR ASSAULTED A PERSON OF ANOTHER INDIVIDUAL. YOU ARE NOT GOING TO SEE THAT. THEY WILL TALK ABOUT THE CHARACTER -- CHARACTER IS A FACT OF NATURE (SIC).

WHAT YOU ARE GOING TO HEAR IS THE PROCEEDINGS A LOT ABOUT MR. STONE, ABOUT HE GREW UP, THE EVENTS THAT SHAPED AND FORMED -- SHAPED HIS LIFE LEADING UP TO MAKE A

REASONABLE DECISION.

AND MANY OF THOSE EVENTS WHICH HE HAD NO CONTROL OVER, NOT IN -- JUST ASK THAT YOU KEEP YOUR CONTRACT THAT WE MADE THAT YOU HAVE WITH HIS HONOR THAT YOU HAVE WITH MR. KOLB AND THAT YOU HAVE WITH ME AND MR. LITTLEJOHN ON BEHALF OF BOBBY STONE. AGAIN I THANK YOU FOR YOUR SERVICE THUS FAR.

THE COURT: THANK YOU, SIR. YOU MAY CALL YOUR FIRST WITNESS, MR. SOLICITOR.

MR. KOLB: YOUR HONOR, THE COURT -- LITTLE BIT OF INFORMATION. YOUR HONOR, AT THIS TIME STATE WOULD OFFER INTO THE RECORD OF THIS PROCEEDING ALL OF THE EVIDENCE, ALL OF THE TESTIMONY AND ALL OF THE EXHIBITS THAT WERE ADMITTED IN THE FIRST PHASE OF THIS PROCEEDING.

THE COURT: VERY WELL. ANY OBJECTION?

MR. LITTLEJOHN: YOUR HONOR, WE HAD NO PER SAY OBJECTION. ANY PREVIOUSLY MADE OBJECTIONS DURING THE COURSE OF THE FIRST PHASE, WE'D CERTAINLY LIKE TO HAVE THOSE RESERVED FOR THE RECORD.

THE COURT: ALL PREVIOUS OBJECTIONS MADE WITH ANY EVIDENCE THAT WAS ADMITTED WILL STAND AND YOU DO NOT NEED TO RESTATE THEM FOR THE RECORD. YOU RAISE THE SAME OBJECTION IN THIS PROCEEDING; IS THAT CORRECT?

MR. LITTLEJOHN: THAT'S CORRECT.

THE COURT: THANK YOU. SUBJECT TO OBJECTIONS AS TO

THOSE ITEMS THAT WERE TO WHICH THE DEFENSE DID REGISTER AN OBJECTION, THEY ARE OTHERWISE ADMITTED.

MR. KOLB: THANK YOU, YOUR HONOR. YOUR HONOR, FIRST WITNESS WOULD BE SLED AGENT PERRY HEROD.

THE COURT: MR. HEROD, COME FORWARD.

PERRY HEROD, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: MR. HEROD, I WOULD ASK YOU STATE YOUR FULL NAME AGAIN FOR THE RECORD.

WITNESS: FERRY ALSTON HEROD.

THE COURT: THANK YOU, SIR.

DIRECT EXAMINATION BY MR. KOLB:

Q LIEUTENANT HEROD, I WANT TO SHOW YOU WHAT'S PREVIOUSLY BEEN MARKED STATE'S EXHIBIT 3 FOR IDENTIFICATION. ASK YOU IF YOU CAN IDENTIFY THAT.

A YES, SIR. I CAN. THAT WAS A WRITTEN STATEMENT GIVEN BY BOBBY WAYNE STONE ON FEBRUARY 27TH, 1996.

Q ALL RIGHT. AND PREVIOUS PHASE OF THE TRIAL WE OFFERED BASICALLY A XEROXED COPY OF AN EDITED VERSION OF THAT STATEMENT INTO EVIDENCE.

A YES, SIR.

Q ALL RIGHT. AND THAT'S THE ACTUAL ORIGINAL EIGHT PAGE STATEMENT THERE?

A YES, SIR. THIS IS THE ORIGINAL STATEMENT.

Q DOES ALL OF YOUR TESTIMONY THAT YOU GAVE ABOUT THE

PROCEEDINGS AND THE VOLUNTARINESS AND HOW THAT STATEMENT WAS OBTAINED, ALL OF THAT STILL THE SAME?

A YES, SIR. IT IS.

Q THE ONLY THING WOULD BE DIFFERENT IS THAT AS FAR AS THAT STATEMENT IS CONCERNED, THAT'S THE ORIGINAL WITHOUT CERTAIN PORTIONS DELETED?

A YES, SIR. THIS IS THE ORIGINAL.

MR. KOLB: YOUR HONOR, WE'D LIKE TO OFFER THE ENTIRE ORIGINAL STATEMENT AT THIS TIME.

THE COURT: ANY OBJECTION?

MR. LITTLEJOHN: SUBJECT TO MY PREVIOUS OBJECTIONS, YOUR HONOR.

THE COURT: ALL RIGHT, SIR. PREVIOUS OBJECTIONS ARE THOSE OBJECTIONS THAT WERE PREVIOUSLY HEARD ON THE RECORD; IS THAT CORRECT?

MR. LITTLEJOHN: THAT'S CORRECT.

THE COURT: MAY I SEE THE STATEMENT JUST ONE SECOND, PLEASE.

(WHEREUPON THERE WAS A PAUSE).

THE COURT: VERY WELL. SUBJECT TO THE OBJECTION OF DEFENSE AS PREVIOUSLY ARGUED ON THIS RECORD AND THE RULINGS PREVIOUSLY GIVEN BY THIS COURT AS TO THOSE OBJECTIONS IT'S IS ADMITTED AS STATE'S EXHIBIT NUMBER 3.

(STATE'S EXHIBIT NO. 3 MARKED FOR EVIDENCE).

(WHEREUPON QUESTIONING RESUMED).

Q AGENT HEROD, I PREVIOUSLY HAD YOU PUBLISH THE STATEMENT WITH THE EXCEPTION OF PORTIONS THAT HAD BEEN DELETED AT THAT TIME. SO I JUST WANTED TO ASK YOU ABOUT THOSE THAT HAD BEEN DELETED.

A YES, SIR.

Q IF I COULD AT THIS TIME. COULD YOU PUBLISH FOR US QUESTION TWELVE OF THE STATEMENT.

A YES, SIR. THIS IS QUESTION TWELVE OFF OF THE STATEMENT GIVEN BY BOBBY WAYNE STONE. QUESTION TWELVE IS WHERE DID DAVID STEAL THE GUNS FROM? ANSWER. I DON'T KNOW.

THERE'S A LOT OF CRIMINAL ACTIVITY THAT GOES ON AROUND THAT STORE THERE. YOU PULL UP IN A -- THEY WILL RUN OUT AND TRY TO SELL YOU CRACK COCAINE.

Q ALL RIGHT. AND QUESTION NUMBER THIRTEEN.

A YES, THIRTEEN. SO YOU KNEW THAT FOR ONLY $100 YOU HAD TO BE BUYING STOLEN GUNS. ANSWER. I KNEW THE GUNS HAD TO BE HOT OR STOLEN. FOR THAT PRICE, SOMETHING GOT TO BE WRONG.

Q AND FOURTEEN WAS TWO OF THE THREE SENTENCES AND ONE ADDITIONAL WORD WAS DELETED. WOULD YOU JUST PUBLISH IT IN IT'S ENTIRETY AT THIS TIME.

A YES, SIR. QUESTION FOURTEEN. BOBBY, YOU ARE MULTI CONVICTED FELON. YOU KNEW THAT YOU ARE NOT ALLOWED TO OWN A FIREARM OF ANY KIND. WHAT WERE YOU DOING BUYING THOSE

STOLEN GUNS FROM DAVID?

ANSWER. I BOUGHT THE SHOTGUN BECAUSE I LIKED TO HUNT. AND I BOUGHT THE PISTOL BECAUSE WITH THE LONG BARREL IT WAS SO ACCURATE.

Q AND EXHIBIT NUMBER -- I MEAN QUESTION NUMBER SIXTEEN.

A QUESTION SIXTEEN. NONETHELESS, THE LAW SAYS YOU CAN'T OWN A GUN. ANSWER I KNOW THAT. I WISH LIKE HELL I NEVER WENT AND BOUGHT IT.

Q IF YOU WOULD ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

THE COURT: CROSS-EXAMINE?

MR. LITTLEJOHN: VERY BRIEFLY.

CROSS-EXAMINATION BY MR. LITTLEJOHN:

Q LIEUTENANT HEROD, REFERRING YOUR ATTENTION TO QUESTION TWELVE, YOU ASKED BOBBY STONE ABOUT WHERE DID DAVID STEAL THE GUNS FROM?

A YES, SIR.

Q THAT WAS THE QUESTION POSED?

A YES, SIR.

Q AND HE VOLUNTEERED TO YOU THE INFORMATION ABOUT THE STORE AND PEOPLE SELLING CRACK COCAINE; IS THAT CORRECT?

A YES, SIR. HE DID.

Q OKAY. AND IN REGARD TO QUESTION NUMBER SIXTEEN, YOU TOLD BOBBY IN A QUESTION THE LAW SAYS YOU CAN'T OWN A GUN.

AND WHAT WAS HIS ANSWER?

A HIS ANSWER WAS I KNOW THAT. I WISH LIKE HELL I NEVER WENT AND BOUGHT IT.

Q AND HE VOLUNTEERED THAT TO YOU?

A YES, SIR.

Q ALL RIGHT. NO FURTHER QUESTIONS.

THE COURT: REDIRECT? YOU MAY COME DOWN, MR. HEROD. THANK YOU, SIR.

(WHEREUPON THE WITNESS LEFT THE STAND).

MR. KOLB: YOUR HONOR, WE'D LIKE TO CALL THE DEPUTY CLERK OF COURT FROM SUMTER COUNTY, DEBBIE MATHIS.

THE COURT: ALL RIGHT. MRS. MATHIS.

DEBBIE MATHIS, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. KOLB:

Q GIVE US YOUR NAME AND OCCUPATION, PLEASE.

A I'M DEBRA MATHIS. I'M CHIEF DEPUTY CLERK FOR GENERAL SESSIONS COURT, SUMTER COUNTY CLERK OF COURT'S OFFICE.

Q AND MRS. MATHIS, IS THE RESPONSIBILITY OF YOUR OFFICE TO KEEP THE RECORDS OF THE COURT OF GENERAL SESSIONS?

A YES, SIR.

THE COURT: MRS. MATHIS, EXCUSE ME ONE SECOND. IF YOU COULD PULL THAT MIKE TO YOU. THANK YOU.

THE WITNESS: YES, SIR.

THE COURT: THANK YOU VERY MUCH.

(WHEREUPON QUESTIONING RESUMED).

Q MRS. MATHIS, HAVE YOU OBTAINED --

MR. KOLB: JUDGE, I ASSUME THESE BE COURT'S EXHIBITS AND JUST PUBLISH THEM AT THIS TIME? THEY WOULD NOT GO TO THE JUROR? DO THEY GO TO THE JURY? THE INDICTMENTS THEMSELVES?

THE COURT: I THINK -- I WOULD THINK YOU JUST PUBLISH THEM TO THE JURY.

MR. KOLB: ALL RIGHT, SIR.

(WHEREUPON QUESTIONING RESUMED).

Q ALL RIGHT. YOU HAVE CERTIFIED COPIES OF THE ORIGINAL RECORDS IN YOUR OFFICE OF CONVICTIONS REGARDING BOBBY WAYNE STONE?

A YES, SIR. I DO.

Q ALL RIGHT. AND I WANT TO ASK YOU ABOUT THOSE. DO YOU HAVE INDICTMENT 85-GS-43- 456.?

A YES, SIR.

Q OKAY. AND WAS BOBBY WAYNE STONE CONVICTED ON THAT INDICTMENT?

A YES. HE WAS.

Q WHAT WAS THE DATE OF THE OFFENSE IN THAT INDICTMENT?

A THE 9TH DAY OF MAY, 1985.

Q AND WHAT WAS THE -- WHAT WAS HE CONVICTED OF?

A BREAKING INTO A MOTOR VEHICLE AND LARCENY.

THE COURT: SOLICITOR, WHY DON'T WE -- HOW MANY DO WE

HAVE?

MR. KOLB: ABOUT TEN I BELIEVE.

THE COURT: WHY DON'T WE MARK THEM SO THAT THAT WAY IT WILL BE...

MR. KOLB: ALL RIGHT. SHE'S GOT THEM CERTIFIED AND THEY GOT THE INDICTMENT NUMBER ON THEM, I THINK.

THE COURT: IF YOU WANT TO MOVE TO INTRODUCTION, I WILL BE HAPPY TO HEAR YOU. WHATEVER YOU WANT TO DO. WHAT'S YOUR... APPROACH.

(WHEREUPON A BENCH CONFERENCE WAS HELD).

THE COURT: STATE'S EXHIBIT 63. WE WILL MARK THEM EACH BEING SEPARATELY A CERTIFIED INDICTMENT OR RECORD FROM THE CLERK OF COURT'S OFFICE SO YOU -- YOU CAN GO AHEAD, MARK THEM HOWEVER YOU WISH. THERE ARE TEN? THERE ARE TEN OF THEM?

MR. KOLB: JUDGE...

(WHEREUPON THERE WAS A PAUSE).

MR. KOLB: NINE.

THE COURT: NINE?

MR. KOLB: ULTIMATELY. I BELIEVE.

THE CLERK: NINE.

THE COURT: I HAVE IT BEING 63 THROUGH 71, I BELIEVE.

MR. KOLB: THAT FIRST GROUP HAS A ONE PAGE SENTENCE WITH THEM. I THINK THAT HAVE TO BE A SEPARATE EXHIBIT.

THE COURT: MAKE IT ALL COLLECTIVELY.

MR. KOLB: WE MARKED EACH ONE INDIVIDUALLY. SO...

THE COURT: WHATEVER IT IS, IT'S ATTACHED. IT'S ALL PART OF THAT EXHIBIT. SHE'S GOING TO BE REFERRING TO IT -- THEY ARE ALL STAPLED TOGETHER OR ARE YOU GOING TO USE IT?

MR. KOLB: EACH INDICTMENT WAS MARKED INDIVIDUALLY AND THEN THERE'S ACTUALLY A SENTENCE ON EACH INDICTMENT, BUT THEN A -- YOU KNOW -- A YOUTHFUL OFFENDER SENTENCE FORM. DOESN'T MATTER?

THE COURT: WHATEVER. IF IT'S ATTACHED TO THE INDICTMENT, THE FORM OR ANOTHER FORM, IT'S JUST A PART OF THAT EXHIBIT, WHATEVER THE NUMBER IS.

MR. KOLB: OKAY. SO IT'S A PART OF....

(STATE'S EXHIBIT NO. 63, 64, 65, 66, 67, 68, 69, 70 AND 71 MARKED FOR IDENTIFICATION).

(WHEREUPON QUESTIONING RESUMED).

Q SO YOU HAVE INDICTMENT 85- 457?

A YES, I DO.

THE COURT: IF YOU WOULD GIVE ME THE -- EACH ONE OF THOSE. YOU GOING TO GIVE ME THE NUMBER OF THE STATE'S EXHIBIT NUMBER, TOO, PLEASE. WHEN YOU DO THAT.

THE CLERK: OKAY.

THE COURT: THANK YOU. GO AHEAD, MR. SOLICITOR.

(WHEREUPON QUESTIONING RESUMED).

Q WHAT EXHIBIT NUMBER IS THAT?

A 457 IS EXHIBIT 64.

Q ALL RIGHT. AND WHAT WAS THAT A CONVICTION FOR?
A HOUSE BREAKING AND LARCENY.
Q ALL RIGHT. AND THIS IS -- THIS WOULD BE GRAND LARCENY?
A YES, SIR.
Q ON THIS ONE AND THE PREVIOUS ONE, BREAKING INTO A MOTOR VEHICLE AND GRAND LARCENY. AND THIS ONE IS HOUSE BREAKING AND GRAND LARCENY. WHAT'S THE DATE OF THIS OFFENSE?
A APRIL THE 21ST, 1985.
Q ALL RIGHT. INDICTMENT 85- 458, COULD YOU GIVE US THE EXHIBIT NUMBER?
A 65.
Q AND WHAT IS THAT A CONVICTION FOR?
A HOUSE BREAKING AND GRAND LARCENY.
Q AND WHAT WAS THE DATE OF THAT OFFENSE?
A APRIL 26TH 1985.
Q AND INDICTMENT 85- 459?
A STATE'S EXHIBIT 66.
Q ALL RIGHT. AND WHAT IS THAT A CONVICTION FOR?
A BREAKING INTO A MOTOR VEHICLE AND PETTY LARCENY.
Q ALL RIGHT. AND WHAT'S THE DATE OF THAT OFFENSE?
A MAY 5TH, 1985.
Q ALL RIGHT. AND 85- 460?
A STATE'S EXHIBIT 67.

Q WHAT IS THAT A CONVICTION FOR?
A BREAKING INTO A MOTOR VEHICLE AND GRAND LARCENY.
Q ALL RIGHT. AND THE DATE OF THAT OFFENSE?
A APRIL 20TH 1985.
Q AND INDICTMENT 85- 461?
A STATE'S EXHIBIT 68.
Q ALL RIGHT. WHAT'S THAT A CONVICTION FOR?
A BREAKING INTO A MOTOR VEHICLE AND GRAND LARCENY.
Q WHAT'S THE DATE OF THAT OFFENSE?
A MAY 6TH, 1985.
Q AND INDICTMENT 85- 462?
A STATE'S EXHIBIT 69. IT'S AN INDICTMENT FOR GRAND LARCENY.
Q AND WHAT'S THE DATE OF THAT OFFENSE?
A APRIL 23RD, 1985.
Q ALL RIGHT. AND THE DEFENDANT RECEIVE ONE SENTENCE ON ALL OF THOSE INDICTMENTS?
A YES, SIR.
Q I BELIEVE IT WAS A LONG... AND WHAT WAS THAT SENTENCE?
A HE WAS SENTENCED UNDER THE YOUTHFUL OFFENDER ACT.
Q A PERIOD OF TIME NOT TO EXCEED SIX YEARS?
A THAT'S CORRECT.
Q ALL RIGHT. NOW, LET ME ASK YOU... YOU ALSO HAVE INDICTMENT 87 G S 43- 828?

A YES, I DO. THAT'S STATE'S EXHIBIT 70.
Q AND WHAT WAS THE DEFENDANT CONVICTED OF UNDER THAT INDICTMENT?
A TWO COUNTS OF BURGLARY SECOND DEGREE AND TWO COUNTS OF GRAND LARCENY.
Q ALL RIGHT. THE FIRST BURGLARY SECOND DEGREE, WHAT WAS THE DATE OF THAT OFFENSE?
A COUNT ONE IS ON OR ABOUT SEPTEMBER 10TH, 1987.
Q AND IS THAT ALLEGED TO BE IN THE NIGHT TIME?
A YES, SIR.

MR. BABB: YOUR HONOR?

THE COURT: YES, SIR.

MR. BABB: JUST WANTED -- WHETHER PREVIOUS POINTS WE MADE...

THE COURT: QUESTION WAS WHETHER -- WAS ALLEGED AS BEING IN THE NIGHT TIME. I DON'T -- ARE YOU OBJECTING TO THAT? THAT'S A---.

MR. BABB: NO, SIR. I THOUGHT IT WAS...

THE COURT: ALL RIGHT, SIR.

(WHEREUPON QUESTIONING RESUMED).

Q AND THE COUNT TWO GRAND LARCENY, DID THAT GO ALONG WITH COUNT ONE SEPTEMBER 10, 1987?
A YES, SIR.
Q AND COULD YOU TELL US THE VALUE OF THE GOODS IN THAT INSTANCE?

A TWO COUNTS WERE MERGED INTO ONE AND IT SAYS $11,000 AND $9,000.

Q SO A TOTAL OF $20,000?

A YES, SIR.

Q THEFT. COUNT FOUR, THE SECOND COUNT OF BURGLARY IN THE SECOND DEGREE?

A YES, SIR.

Q IS THAT AT A SEPARATE PLACE FROM THE COUNT ONE BURGLARY SECOND DEGREE?

A IT'S A DIFFERENT BUSINESS. YES, SIR.

Q AND WHAT WAS THE DATE OF THAT VIOLATION?

A ON OR ABOUT SEPTEMBER 10TH 1987.

Q ALL RIGHT. AND ALSO ANOTHER GRAND LARCENY COUNT FIVE?

A YES, SIR.

Q ALL RIGHT. AND HE WAS CONVICTED OF ALL OF THOSE COUNTS?

A YES, SIR.

Q ALL RIGHT. LET ME ASK YOU ABOUT -- IF YOU HAVE INDICTMENT 87- 875?

A YES, SIR. THAT'S STATE'S EXHIBIT 71.

Q AND WHAT WAS HE CONVICTED OF ON THAT INDICTMENT?

A ONE COUNT OF BURGLARY SECOND DEGREE AND ONE COUNT OF GRAND LARCENY.

Q AND ON THE BURGLARY SECOND DEGREE, WAS THAT IN THE NIGHT TIME?

A IN THE INDICTMENT IT SAYS IN THE NIGHT TIME.
Q AND THE VALUE OF THE STOLEN GOODS?
A $2,580.
Q ALL RIGHT. OKAY. AND WHAT DATE WAS HE SENTENCED ON THOSE TWO INDICTMENTS?
A THE SENTENCE SHEET IS DATED DECEMBER 3RD, 1987.
Q ALL RIGHT. IF YOU WOULD ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

THE COURT: CROSS-EXAMINE?

CROSS-EXAMINATION BY MR. LITTLEJOHN:

Q A COUPLE OF THINGS, PLEASE MA'AM. THE FIRST SERIES OF INDICTMENTS THAT YOU IDENTIFIED AS STATE'S EXHIBIT 63 THROUGH 69 FOR IDENTIFICATION PURPOSES.
A YES, SIR.
Q YOU INDICATED THERE WAS ONE SENTENCE RENDERED FOR ALL OF THOSE?
A THE JUDGE WROTE YOUTHFUL OFFENDER NOT TO EXCEED SIX YEARS. YOU WANT ME TO ELABORATE?
Q WELL, THAT WAS THE SENTENCE HE RECEIVED ON ALL OF THOSE?
A YES, SIR. THAT'S WHAT HE SAID. AND THEN ON DIFFERENT INDICTMENTS HE'S WRITTEN SAME AS LEAD INDICTMENT AND CONCURRENT.
Q OKAY. I UNDERSTAND.
A YOU MAY WANT TO LOOK AT THAT.

Q OKAY. NO, WELL I MEAN THE BOTTOM LINE WAS IT WAS A SIX YEAR YOUTHFUL OFFENDER ACT SENTENCE?

A YES, SIR.

Q OKAY. AND DO YOU HAVE THE DEFENDANT BOBBY STONE'S BIRTH DATE THERE INDICATED ON YOUR RECORDS?

A I DON'T HAVE IT ON THIS RECORD.

Q OKAY. SO YOU DON'T KNOW HIS AGE AT THE TIME HE...

A WELL, I WAS IN THE COURTROOM AND I HAVE A DEFENDANT'S CARD AND I HAVE A DATE OF BIRTH ON THAT. I DO HAVE A COPY OF THAT.

Q OKAY.

A PERHAPS MR. RAY COULD HAND IT TO YOU.

THE COURT: IF YOU NEED TO STEP DOWN, YOU MAY.

WITNESS: MIGHT NEED TO. NO, SIR. IT'S THE XEROXED COPY.

(WHEREUPON THERE WAS A PAUSE).

WITNESS: DO YOU WANT ME TO TELL YOU WHAT HIS RECORD REFLECTS HIS DATES OF BIRTH IS?

Q YES, MA'AM.

A I HAVE 9- 1965.

Q OKAY. NOW...

A ON ANOTHER PIECE OF PAPER I HAVE 9-16-65 ON SOMETHING. THAT WAS COPIED INCORRECTLY.

Q OKAY. WE WILL GO WITH THAT. AT THE TIME THE DISPOSITION WAS RENDERED ON THESE FIRST SEVEN THAT YOU

HAVE IDENTIFIED, STATES 63 THROUGH 69 FOR IDENTIFICATION PURPOSES.

A YES, SIR.

Q WHAT WAS THE DATE OF THE DISPOSITION ON THOSE SEVEN?

A IT'S DATED JULY 24TH 1985.

Q AND THAT'S AS TO ALL SEVEN?

A YES, SIR.

Q AND YOUR RECORDS INDICATE THAT THOSE WERE SEVEN GUILTY PLEAS; IS THAT CORRECT?

A YES, SIR.

Q AND ACCORDING TO THE RECORDS YOU HAVE THEN -- YOU HAVE THERE BEFORE YOU -- THAT WOULD INDICATE BOBBY STONE WAS NINETEEN YEARS OLD?

A YES, SIR.

Q AT THE TIME?

A YES, SIR.

Q OKAY. MRS. MATHIS, LET ME REFER YOU TO STATE'S EXHIBIT 70 FOR IDENTIFICATION PURPOSES, THE INDICTMENT NUMBERED I BELIEVE IT'S 87- 828?

A YES, SIR.

Q YOU INDICATED THERE WERE ACTUALLY FOUR COUNTS CHARGED IN THAT INDICTMENT.

A HE PLEAD TO FOUR COUNTS.

Q HE ENTERED GUILTY PLEAS TO ALL COUNTS?

A YES, SIR.

Q ALL RIGHT. AND YOU INDICATED THOSE WERE BOTH BUSINESSES?

A YES, SIR.

Q ALL RIGHT. AND I BELIEVE ON THE SAME DAY HE ALSO ENTERED A GUILTY PLEA TO 87- 875 WHICH IS STATE'S EXHIBIT 71 FOR IDENTIFICATION PURPOSES?

A YES, SIR.

Q OKAY. SO THOSE -- THAT SET OF CHARGES HE ALSO ENTERED A GUILTY PLEA ON?

A YES, SIR.

Q OKAY. ALL RIGHT, MA'AM. AND AT THAT TIME ACCORDING TO THE RECORDS -- LETS SEE. WHAT WAS THE DATE OF THAT DISPOSITION?

A THE SENTENCE SHEET IS DATED 12- 3- 87.

Q OKAY. WAS THE -- WAS THE GUILTY PLEA PRIOR TO THAT?

A NO, SIR.

Q WAS THAT DATE. OKAY. THANK YOU, MA'AM.

THE COURT: YES, SIR. REDIRECT?

MR. LITTLEJOHN: COULD YOU INDULGE ME JUST A MOMENT, PLEASE?

THE COURT: YES, SIR. TAKE YOUR TIME.

(WHEREUPON THERE WAS A PAUSE).

(WHEREUPON QUESTIONING RESUMED).

Q MRS. MATHIS, COULD I LOOK AT YOUR EXHIBITS 63 FOR 69 FOR IDENTIFICATION PURPOSES?

A YES, SIR.
Q THANK YOU. MRS. MATHIS, ONE FINAL QUESTION AND YOU MAY NEED TO TAKE A SECOND TO REVIEW THOSE INDICTMENTS, BUT IT APPEARS THAT ALL THE HOUSE BREAKINGS -- AND THAT'S WHAT WE CALL HOUSE BREAKING BACK THEN -- BUT ALL OF THE PLACES THAT WERE BROKEN INTO WERE BUSINESS ESTABLISHMENTS; WERE THEY NOT? TAKE A MOMENT AND LOOK, PLEASE.
A YES, SIR. THEY WERE BOTH BUSINESSES. BOTH OF THE HOUSE BREAKINGS WERE BOTH BUSINESSES.
Q OKAY. ALL RIGHT. VERY GOOD. THANK YOU, MA'AM.
A YES, SIR.
THE COURT: REDIRECT?
MR. KOLB: NOTHING FURTHER.
THE COURT: YOU MAY COME DOWN, MRS. MATHIS. THANK YOU.
THE WITNESS: THANK YOU.
(WHEREUPON THE WITNESS LEFT THE STAND)
STEVE LANEY, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:
THE COURT: POSITION THAT MIKE SO THAT YOU CAN SPEAK INTO IT, PLEASE, SIR. AND THEN STATE YOUR FULL NAME FOR THE RECORD AND PLEASE SPELL YOUR LAST.
WITNESS: STEVEN HARRIS LANEY, L A N E Y
DIRECT EXAMINATION BY MR. KOLB:
Q MR. LANEY, COULD YOU TELL US HOW YOU ARE EMPLOYED?

A I AM A REGIONAL DIRECTOR WITH THE SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES.

Q OKAY. AND COULD YOU TELL US WHERE YOU LIVE?

A BISHOPVILLE, SOUTH CAROLINA.

Q AND THAT'S IN LEE COUNTY?

A YES, SIR.

Q ABOUT TWENTY MILES NORTH OF HERE?

A YES, SIR.

Q HOW LONG HAVE YOU BEEN WITH THE PROBATION AND PAROLE DEPARTMENT?

A APPROXIMATELY EIGHTEEN AND A HALF YEARS.

Q ALL RIGHT. DID YOU BEGIN AS A REGULAR PAROLE AGENT HERE IN SUMTER COUNTY?

A YES, SIR. I DID.

Q AND COULD YOU TELL US ABOUT YOUR PROGRESS WITHIN THE DEPARTMENT AFTER THAT?

A BEGAN HERE IN 78 AS AN AGENT. I WAS PROMOTED TO AN AGENT -- TO HERE. I WAS PROMOTED TO AGENT IN CHARGE OF LEE COUNTY OFFICE IN 1981. I WAS PROMOTED TO POSITION OF REGIONAL DIRECTOR IN 1987. OF THE MIDLAND REGION.

Q ALL RIGHT. TELL US WHAT REGION DOES THAT INCLUDE? WHAT COUNTIES?

A MIDLAND REGION PROVIDES THIRD CIRCUIT, FIFTH CIRCUIT AND SEVENTH CIRCUIT.

Q SO THAT'S SUMTER, LEE, CLARENDON, WILLIAMSBURG?

A YES, SIR.
Q RICHLAND, KERSHAW, FAIR FIELD, CHESTER AND LANCASTER COUNTIES?
A YES, SIR.
Q ALL RIGHT. AND WHAT IS YOUR FUNCTION IN THAT POSITION?
A I OVERSEE THE OPERATIONS OF THOSE COUNTY OFFICES WITHIN MY REGION.
Q ALL RIGHT. WELL, YOU ARE THE DIRECTOR, THE SUPERVISOR OF ALL THE PROBATION OFFICERS?
A YES, SIR.
Q IN OPERATIONS OF YOUR DEPARTMENT IN THOSE COUNTIES?
A YES, SIR. WE HAVE AN AGENT IN CHARGE ON EACH OF THOSE COUNTY -- OVERSEES. THOSE AGENTS IN CHARGE ARE UNDER MY DIRECTION.
Q DO YOU HAVE IN YOUR POSSESSION THE OFFICIAL FILE OF YOUR DEPARTMENT IN REGARD TO THIS DEFENDANT, BOBBY WAYNE STONE?
A YES, SIR. I DO.
Q ARE THE RECORDS KEPT IN THAT FILE KEPT IN THE NORMAL COURSE OF BUSINESS FOR YOUR AGENCY?
A YES, SIR.
Q COULD YOU TELL US WHAT YOUR RECORDS REFLECT REGARDING WHAT HAPPENED AFTER HIS YOUTHFUL OFFENDER SENTENCE IN 1985.

A TO MY KNOWLEDGE HE WAS PAROLED FROM HIS YOUTHFUL OFFENDER SENTENCE IN 1985. DID NOT HAVE ANY RECORDS, OUR FILES USUALLY PURGED -- DO NOT HAVE ANY RECORDS AS TO HIS SUPERVISION IN THAT PERIOD AT ALL.

Q ALL RIGHT, SIR. AND THEN AFTER HIS SENTENCE DECEMBER THE 3RD, 1987, COULD YOU TELL US WHAT SENTENCE HE RECEIVED ON THAT, THOSE CHARGES.

A YES, SIR. HE WAS SENTENCED ON DECEMBER THE 3RD OF 1987 FOR BURGLARY SECOND AND GRAND LARCENY TWO COUNTS EACH TO A SENTENCE OF FIFTEEN YEARS PROVIDED UPON SERVICE OF FIVE YEARS AND FIVE YEARS PROBATION.

THAT SENTENCE IS RUN CONSECUTIVE TO INDICTMENT 828 WHICH WAS ALSO BURGLARY SECOND AND GRAND LARCENY TWO COUNTS ON THE SAME DAY, FIFTEEN YEARS EACH COUNT.

Q ALL RIGHT. SO WHAT'S THE TOTAL ACTIVE SENTENCE?

A THE TOTAL ACTIVE SENTENCE IF HE WOULD HAVE TO SERVE WOULD HAVE BEEN TWENTY YEARS. THE ACTUAL SENTENCE RECEIVED TOTAL WOULD HAVE BEEN THIRTY BETWEEN THE TWO.

Q COULD YOU TELL US WHAT HAPPENED AFTER RECEIVING THAT SENTENCE?

A HE WAS ACTUALLY -- AFTER HE WENT AND BEGAN SERVICE OF SENTENCE AT THAT TIME, MR. STONE WAS PAROLED TO OUR SUPERVISION ON THE 9TH DAY OF JUNE OF 1993.

Q ALL RIGHT. AND THAT WAS AFTER BEING SENTENCED DECEMBER THE 3RD, 1987?

A YES, SIR.
Q SO SERVED A LITTLE OVER FIVE YEARS ON THAT THIRTY YEAR SENTENCE?
A YES, SIR.
Q NOW, WERE HE TO VIOLATE PAROLE, IS HE LOOKING AT SERVING THE REST OF THE THIRTY YEAR SENTENCE?
A YES. WELL, SIR, HE IS -- HE WOULD SERVE OUT THE MAXIMUM AMOUNT OF THE TWENTY YEARS THAT HE -- HIS PAROLE ELIGIBILITY IS BASED ON THE THIRTY.

HIS TIME THAT HE WOULD HAVE TO SERVE IF HE WAS REVOKED IS BASED ON THE AMOUNT OF TIME THAT HE WAS ACTUALLY ACTIVELY SENTENCED TO WHICH WOULD BE TWENTY YEARS.

Q ALL RIGHT. BUT THE TEN YEARS WAS SUSPENDED, BECAUSE HE WOULD BE OUT ON -- AFTER SERVING TWENTY YEARS?
A RIGHT.
Q TECHNICALLY HE WOULD BE OUT ON PROBATION FOR -- WITH THE TEN, ADDITIONAL TEN YEARS HANGING OVER HIS HEAD?
A YES, SIR.
Q NOW, WHEN SOMEONE IS PAROLED WITH A SPLIT SENTENCE LIKE THAT, DO THEY ALSO GO OUT -- BESIDES PAROLE -- DO THEY ALSO GO OUT ON PROBATION?
A YES, SIR.
Q AND AGAIN IF HE -- HIS PAROLE IS REVOKED, IS IT POSSIBLE THAT HIS PROBATION WOULD BE REVOKED ALSO?

A YES, SIR. THAT'S CORRECT.
Q SO POTENTIALLY AFTER SERVING FIVE YEARS OF A THIRTY YEAR SENTENCE, HE'S LOOKING ON A REVOCATION OF SERVING FROM FIFTEEN TO TWENTY-FIVE ADDITIONAL YEARS?
A HE WOULD ACTUALLY LOOK AT SERVICE OF -- ON THE SUSPENDED SENTENCE WITH THE PROBATION CASE, HE WOULD LOOK AT SERVING TEN YEARS AND ON HIS PAROLE CASE.

BASED ON HIS MAX OUT DATE WHICH IS AUGUST 29TH OF 2002, HE WOULD HAVE REMAINDER OF THAT TIME WHICH WOULD BE BASICALLY FIVE YEARS SEVEN MONTHS TWO DAYS FROM TODAY.
Q SO SOME FIFTEEN YEARS THEN?
A YES, SIR.
Q ALL RIGHT. SO AND THAT WAS -- THAT POSSIBILITY OF THAT SENTENCE BEING RE-IMPOSED UPON HIM WAS SOMETHING SORT OF HANGS OVER HIS HEAD WHILE HE IS ON PAROLE?
A YES, SIR.
Q ON PROBATION?
A THAT IS CORRECT.
Q ALL RIGHT. AND COULD YOU EXPLAIN TO THE LADIES AND GENTLEMEN OF THE JURY ABOUT WHEN SOMEONE IS PAROLED AND WHEN MR. STONE WAS PAROLED, WHETHER OR NOT THERE ARE ANY SPECIFIC CONDITIONS THAT ARE IMPOSED UPON THAT PERSON?
A WHAT HAPPENS ON ALL OF OUR OFFENDERS IS WHEN HE IS RELEASED -- IN THIS CASE HE ACTUALLY HAS TWO RELEASES. HE HAS A PROBATIONARY CASE WHERE HIS CONDITIONS OF PROBATION

WERE EXPLAINED TO HIM ON THE DAY OF SENTENCE WHICH WOULD HAVE BEEN IN 1987.

AND THOSE CONDITIONS WOULD BEGIN ON THE DATE OF HIS RELEASE. HE WAS ALSO RELEASED CONCURRENTLY ON PAROLE ON THAT CASE, ON THE SPLIT SENTENCE, SO A SUSPENDED PORTION OF HIS SENTENCE AS HE WAS RELEASED ON PAROLE, HE ALSO WAS RE-READ THE CONDITIONS OF HIS PAROLE AT THAT TIME.

AND BOTH OF THOSE WERE EXPLAINED TO HIM. SO HE GETS IT ACTUALLY EXPLAINED TWICE, ONCE IN 1987, THEN WHEN HE WAS RELEASED IN JUNE OF 1993, THEY WERE EXPLAINED TO HIM AGAIN.

Q WITH PROBATION AND PAROLE, CAN THERE BE ADDITIONAL CONDITIONS IN ADDITION TO THE NORMAL STATUTORY CONDITIONS THAT ARE ALWAYS IMPOSED?

A YES, SIR.

Q HOW MANY STATUTORY CONDITIONS ARE ALWAYS IMPOSED UPON ANY PROBATION OR OTHER?

A FIFTEEN OR SIXTEEN. THERE ARE SEVERAL THAT ARE IMPOSED.

Q I WANT TO ASK YOU IF THOSE ARE EXPLAINED TO A PAROLEE UPON HIS PAROLE?

A YES, SIR. THEY ARE.

Q HE ACTUALLY RECEIVE IT IN WRITING?

A YES, SIR.

Q AND COULD YOU TELL THE LADIES AND GENTLEMEN OF THE JURY WHAT CONDITION NUMBER 11 IS?

A CONDITION NUMBER 11 ON HIS PAROLE CERTIFICATE STATES I SHALL NOT HAVE IN MY POSSESSION OR PURCHASE A WEAPON.

Q AND THAT'S WEAPON OF ANY KIND?

A YES, SIR.

Q ALL RIGHT. COULD YOU TELL US ABOUT CONDITION NUMBER FIVE -- SIX? EXCUSE ME, CONDITION NUMBER FIVE?

A CONDITION NUMBER FIVE ON...

MR. LITTLEJOHN: YOUR HONOR, I HAVE TO INTERPOSE AN OBJECTION. I THOUGHT THIS TESTIMONY -- I WAS LEAD TO BELIEVE IT WAS INTRODUCED FOR ONE SPECIFIC PURPOSE WHICH I THINK HE HAS ACCOMPLISHED.

THE COURT: I DON'T KNOW WHAT -- YOU OBJECT TO HIM DISCUSSING THE CONDITION NUMBER FIVE?

MR. LITTLEJOHN: YES, YOUR HONOR.

THE COURT: ALL RIGHT. LET ME SEE. I DON'T HAVE THAT BEFORE ME, SO APPROACH SIDE BAR.

(WHEREUPON A BENCH CONFERENCE WAS HELD).

THE COURT: LADIES AND GENTLEMEN, THERE'S A MATTER I NEED TO TAKE UP OUT OF YOUR PRESENCE. WON'T TAKE VERY LONG. PLEASE DO NOT DISCUSS THE MATTER. DO NOT BEGIN YOUR DELIBERATIONS.

(WHEREUPON THE JURY LEFT THE COURTROOM AT 6:01 P.M.)

THE COURT: OKAY, MR. LITTLEJOHN. YOU OBJECT TO THE CONDITIONS AND LETS IDENTIFY THEM. FIVE I THINK DEALS WITH THE USE OF CONTROLLED SUBSTANCES. OBJECT TO HIM DISCUSSING THAT?

MR. LITTLEJOHN: THAT'S CORRECT, YOUR HONOR. SPECIFICALLY NUMBER FIVE SAYS I SHALL NOT USE CONTROLLED SUBSTANCES EXCEPT WHEN PROPERLY PRESCRIBED BY A LICENSED PHYSICIAN.

THE COURT: ALL RIGHT.

MR. LITTLEJOHN: YOUR HONOR, WE WOULD OBJECT AS TO THAT CONDITION OF PAROLE HAVING ANY RELEVANCY ON THE ISSUES THAT ARE BEFORE THE JURY AT THIS TIME.

WE THINK THIS IS JUST THE STATE TRYING TO BRING IN PREJUDICIAL MATTERS THAT REALLY SHOULDN'T BE BEFORE THE JURY.

THE COURT: VERY WELL. AND OF COURSE WE HAVE TESTIMONY IN THE RECORD THAT HE ADMITTED TO HE STARTED HIS DAY BY GETTING UP AND SMOKING A MARIJUANA CIGARETTE.

PART OF THE ISSUES IS WHETHER OR NOT HE CAN FOLLOW RULES, HOW HIS -- WHAT HE'S LIKE BEING AS FAR AS OBEYING THE RULES. THAT'S A RELEVANT ISSUE.

THAT GOES TO -- DIRECTLY TO AN ISSUE AT HAND THAT THE JURY HAS TO CONSIDER. AND IN THAT REGARD I WOULD DENY YOUR OBJECTION. OVERRULE YOUR OBJECTION.

MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. LITTLEJOHN: AS TO NUMBER SIX, CONDITION UNDER WHICH PAROLE IS GRANTED, READS I WILL NOT CONSUME ALCOHOLIC BEVERAGES TO EXCESS OR VISIT ESTABLISHMENTS WHOSE PRIMARY BUSINESS IS THE DISPENSATION AND CONSUMPTION OF ALCOHOLIC BEVERAGES. SAME OBJECTION.

THE COURT: VERY WELL. AND AGAIN BASED ON THE TESTIMONY, HE TESTIFIED HE CONSUMED TWELVE. QUESTION FOR THE JURY WHETHER THAT IS TO EXCESS.

HE CERTAINLY IS PERMITTED BY THAT TO CONSUME ALCOHOL, BUT THERE'S A QUESTION THERE AND I PROBABLY -- THAT THIS INDIVIDUAL'S TESTIMONY CONCERNING THAT WOULD BE HELPFUL TO THE BACKGROUND.

MR. LITTLEJOHN: ALL RIGHT, SIR.

THE COURT: THERE WAS ALSO ONE OTHER I THINK YOU...

MR. KOLB: NUMBER NINE.

MR. LITTLEJOHN: YOUR HONOR, I WOULD ALSO OBJECT TO NUMBER NINE. I DIDN'T KNOW THEY INTEND ON GOING INTO -- NUMBER NINE READS FOR THE RECORD I SHALL REFRAIN FROM VIOLATION OF ANY FEDERAL, STATE OR LOCAL PENAL LAW AND WILL CONTACT MY SUPERVISING AGENT IMMEDIATELY IF ARRESTED OR QUESTIONED BY LAW ENFORCEMENT OFFICIAL. SAME OBJECTION.

THE COURT: VERY WELL. AGAIN THERE WERE SEVERAL SITUATIONS, VIOLATIONS, ALREADY BEEN CONVICTED OF ONE. SO AGAIN THE CONTACT PART I WOULD AGREE THAT THAT'S NOT -- IF

YOU WANT TO JUST LIMIT IT TO -- HOWEVER, REFRAIN FROM VIOLATIONS, I DON'T THINK YOU HAVE ANY EVIDENCE THAT HE DIDN'T CONTACT ANYONE, SO I OVERRULE.

MR. KOLB: JUDGE, ACTUALLY HE DIDN'T AS A MATTER OF FACT.

THE COURT: WELL, MR. SOLICITOR, LETS DON'T JUMP. LETS STAY ON THIS ONE. I UNDERSTAND. AND I APPRECIATE IT. WE WERE BACK TO WHERE WE WERE BEFORE AND I GUESS WE WILL HEAR ABOUT THAT FOR THE BALANCE OF THIS TRIAL, BUT THANK YOU, SIR.

I APPRECIATE IT. NOT GOING TO ALLOW YOU TO HAVE THE LEWD ACT AT THIS POINT, SIR. BUT YOU CAN CONTINUE TO TRY TO ADDRESS IT.

MR. KOLB: MY QUESTION IS THEY OPENED THE DOOR ON THESE MATTERS.

THE COURT: I QUESTION THAT TOO, SIR. I'M THINKING ABOUT THAT. I HEARD THE SAME THING THAT YOU HEARD. OKAY? I -- WE WILL GET TO THAT POINT AND WE WILL ADDRESS IT AT THAT POINT. THANK YOU, SIR.

MR. LITTLEJOHN: DID I UNDERSTAND YOU WERE GOING TO RESTRICT NUMBER NINE?

THE COURT: NINE TO BEING SIMPLY VIOLATING THE LAW. HE'S NOT GOING TO DISCUSS REPORTING RESPONSIBILITIES. OKAY. OTHER THAN THAT, I OVERRULE YOUR OBJECTION. ALL RIGHT. LETS BRING THE JURY BACK, PLEASE SIR.

(WHEREUPON THE JURY ENTERED THE COURTROOM AT 6:05 P.M.)

THE COURT: THANK YOU VERY MUCH. THANK YOU, LADIES AND GENTLEMEN. WE ARE READY TO CONTINUE. MR. SOLICITOR, YOU MAY CONTINUE.

MR. KOLB: THANK YOU, SIR.

(WHEREUPON QUESTIONING RESUMED).

Q MR. LANEY, COULD YOU TELL US ABOUT CONDITION NUMBER FIVE?

A CONDITION NUMBER FIVE IS I SHALL NOT USE CONTROLLED SUBSTANCES EXCEPT WHEN PROPERLY PRESCRIBED BY A LICENSED PHYSICIAN.

Q CONDITION NUMBER SIX?

A CONDITION NUMBER SIX IS I WILL NOT CONSUME ALCOHOLIC BEVERAGES TO EXCESS OR VISIT ESTABLISHMENTS WHOSE PRIMARY BUSINESS IS THE DISPENSATION AND CONSUMPTION OF ALCOHOLIC BEVERAGES.

Q ALL RIGHT. AND CONDITION NUMBER NINE?

A CONDITION NUMBER NINE READS I SHALL REFRAIN FROM VIOLATION OF ANY FEDERAL, STATE OR LOCAL PENAL LAW AND WILL CONTACT MY SUPERVISOR---.

MR. LITTLEJOHN: YOUR HONOR.

MR. KOLB: THAT'S...

MR. LITTLEJOHN: EXCUSE ME. I -- THIS -- AS I UNDERSTAND, THE COURT WAS GOING TO LIMIT THAT.

THE COURT: HE DID. DISREGARD THE WORD CONTACT. THAT'S -- I SUSTAIN THAT. IT DOESN'T HAVE ANYTHING. DISREGARD THAT. STRIKE THAT WORD.

(WHEREUPON QUESTIONING RESUMED).

Q MR. LANEY, UPON MR. STONE'S PAROLE JUNE 9TH 1993, DO YOU HAVE IN YOUR OFFICIAL RECORDS A COPY OF THE FORM SIGNED BY MR. STONE ACKNOWLEDGING RECEIPT OF THOSE CONDITIONS?

A YES, SIR. I DO.

Q AND THE OTHER NORMAL CONDITIONS?

A YES, SIR.

Q ALL RIGHT. IF YOU WOULD ANSWER ANY QUESTIONS THAT THE DEFENSE MAY HAVE. WELL, LET ME ASK YOU THIS. WAS HIS PAROLE AND PROBATION ACTIVE AT THE TIME OF FEBRUARY THE 26TH, 1996?

A TO THE BEST OF MY KNOWLEDGE. TO MY KNOWLEDGE I BELIEVE SO. YES, SIR.

Q ALL RIGHT. WELL, LET ME JUST ASK YOU ABOUT THE PAROLE. THE PAROLE WAS STILL A VALID PAROLE AS OF JUNE?

A YES, SIR. HE WAS BEING SUPERVISED UNDER PAROLE AT THAT TIME. YES, SIR.

Q ALL RIGHT. SO WHAT WE ARE TALKING ABOUT, ABOUT A SENTENCE STILL HANGING OVER HIS HEAD WAS THE CONDITION AS OF FEBRUARY THE 26TH, 1996?

A YES, SIR.

Q ALL RIGHT, SIR. THANK YOU, SIR.

THE COURT: YOU MAY CROSS-EXAMINE. ANY QUESTIONS?

MR. LITTLEJOHN: VERY BRIEFLY.

CROSS-EXAMINATION BY MR. LITTLEJOHN:

Q YOU DIDN'T PERSONALLY ADVISE MR. STONE OF THESE SEVERAL CONDITIONS?

A NO, SIR. I DID NOT.

Q YOU DON'T KNOW WHAT THE CIRCUMSTANCES WERE?

A NO, SIR.

Q OKAY. ALL RIGHT, SIR. THANK YOU.

THE COURT: REDIRECT?

REDIRECT EXAMINATION BY MR. KOLB:

Q YOU DO KNOW THE CIRCUMSTANCES, IS THAT RIGHT, THAT HE WAS ADVISED?

A YES, SIR. YES, SIR.

Q DOES YOUR FILE REFLECT WHO THE AGENT WAS THAT DID ADVISE HIM?

A YES, SIR. MY FILES DO REFLECT THAT. YES, SIR.

Q ALL RIGHT. THANK YOU.

THE COURT: RE-CROSS?

RECROSS-EXAMINATION BY MR. LITTLEJOHN:

Q DOES IT INDICATE WHICH PAROLE AGENT ADVISED HIM?

A YES, SIR.

Q WHO WAS THAT?

A AGENT GEORGE SPRY.

Q THAT'S ON THE FORM?
A YES, SIR. HE WAS THE ASSIGNED AGENT AT THE TIME.
Q ALL RIGHT.
THE COURT: ALL RIGHT. YOU MAY COME DOWN, SIR.
(WHEREUPON THE WITNESS LEFT THE STAND).
MR. KOLB: CALL SHERIFF TOMMY MIMS.
TOMMY MIMS, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:
THE COURT: AFTER YOU POSITION THAT MIKE WHERE YOU NEED IT, GET YOURSELF COMFORTABLE, WOULD YOU PLEASE STATE YOUR FULL NAME FOR THE RECORD .
WITNESS: THOMAS ROY MIMS, JUNIOR.
THE COURT: THANK YOU, SIR.
WITNESS: THAT LAST NAME IS M I M S.
THE COURT: OKAY.
DIRECT EXAMINATION BY MR. KOLB:
Q SHERIFF MIMS, COULD YOU TELL US HOW LONG YOU HAVE BEEN INVOLVED IN LAW ENFORCEMENT?
A THIS PAST JUNE IS TWENTY-SIX YEARS.
Q WOULD YOU TELL US ABOUT YOUR PROGRESS STARTING WITH THE DEPARTMENT.
A YES, SIR. IN SEPTEMBER OF 96 I BECAME EMPLOYED WITH THE SHERIFF'S OFFICE.
THE COURT: 76 OR 96?
A 65.

Q EXCUSE ME.
A SEPTEMBER OF 65. THAT SERVICE HAS NOT BEEN CONTINUOUS THROUGHOUT THE YEARS, BUT I HAVE TWENTY-SIX YEARS SERVICE WITH THE SHERIFF'S OFFICE IN SUMTER.
Q JUST BRIEFLY, WHAT HAVE YOU DONE OVER THE YEARS?
A WELL, I STARTED OUT AS A PATROLMAN. ADVANCED UP THROUGH THE RANKS AS INVESTIGATOR, WORKED IN THE NARCOTICS UNIT FOR APPROXIMATELY FOURTEEN YEARS.

AND RESIGNED IN 84, RAN FOR SHERIFF AT THAT TIME AND WAS NOT SUCCESSFUL. I RAN AGAIN IN 88 AND WAS ELECTED THAT YEAR AND BEGAN TO SERVE AS THE SHERIFF IN 1989.

Q ALL RIGHT. AND I BELIEVE YOU WERE RE-ELECTED IN 1992 AND 1996?
A YES, SIR.
Q ALL RIGHT. SHERIFF, YOU KNEW SERGEANT CHARLIE KUBALA?
A YES, SIR.
Q AND COULD YOU TELL THE LADIES AND GENTLEMEN OF THE JURY AS OF FEBRUARY THE 26TH, 1996, WHETHER SERGEANT KUBALA WAS DULY APPOINTED BY YOU AS A DEPUTY SHERIFF OF SUMTER COUNTY?
A YES, SIR. HE WAS.
Q AND WAS HE ON DUTY AT APPROXIMATELY 7:00 P.M. MAYBE 8 MINUTES THEREAFTER ON THE NIGHT OF FEBRUARY 26TH, 1996?
A HE WAS.
Q SHERIFF, COULD YOU TELL THE LADIES AND GENTLEMEN OF

THE JURY SOME THINGS ABOUT SERGEANT KUBALA'S PERFORMANCE AS A DEPUTY SHERIFF?

A YES, SIR. I'LL BE HAPPY TO. HE BEGAN HIS SERVICE AS A LAW ENFORCEMENT OFFICER IN 1986 UNDER ANOTHER SHERIFF AND WAS PROMOTED TO THE RANK OF SERGEANT IN FEBRUARY OF 1989 AFTER I WAS ELECTED SHERIFF.

HE RESIGNED IN JUNE OF 1990 FOR ANOTHER POSITION WHICH I WILL SPEAK TO IN JUST A MINUTE. AND HE WAS RE-HIRED IN JULY OF 1991.

HE WAS PROMOTED TO SERGEANT IN 1994 AND THAT WAS THE POSITION OF THE RANK HE HELD AS A SERGEANT ASSIGNED TO A SHIFT ON FEBRUARY THE 26TH 96.

Q SHERIFF, DURING THE ENTIRE TIME THAT HE SERVED AS A DEPUTY SHERIFF, DID YOU EVER SEE -- RECEIVE -- ONE SINGLE COMPLAINT ABOUT HIM AT ALL?

A NO, SIR. I DID NOT. I HAVE LOOKED AT HIS PERSONAL RECORDS FROM THAT STAND POINT AND FROM PERSONAL KNOWLEDGE HAVE NOT RECEIVED ANY COMPLAINTS CONCERNING HIS PERFORMANCE OF DUTY.

Q AND ON THE OTHER HAND DID YOU EVER HAVE OCCASION TO RECEIVE PRAISE?

A YES, SIR.

Q COULD YOU TELL THE LADIES AND GENTLEMEN ABOUT THAT?

A FOR A LETTER FROM A TEACHER IN SUMTER HIGH SCHOOL. HE ASSISTED HER WITH A MOCK TRAFFIC TEAM THAT WORKED WITH

YOUNG -- WITH STUDENTS IN THAT CLASS.

THEY PUT TOGETHER A MOCK TEAM, MOCK TRIAL TEAM -- THAT'S THE WORD I AM LOOKING FOR, A TRIAL TEAM. HE ASSISTED WITH THAT.

AND FROM SEVERAL SCOUT LEADERS IN THE COUNTY THAT HE ASSISTED IN OUR OFFICE WITH OUR EXPLORER POST, BOY SCOUT EXPLORER POST.

Q ALL RIGHT, SIR. COULD YOU TELL US ABOUT THE KIND OF SERVICE THAT YOU EXPECTED, THAT YOU LEARNED TO EXPECT JUST -- I KNOW YOU THOUGHT THROUGH WHAT YOU WANT TO SAY.

A YES, SIR. I LOOKED AT THE PERSONNEL FILE AND WENT BACK THROUGH THE EVALUATIONS THAT WERE SUBMITTED BY HIS SUPERVISERS OVER THE NINE YEARS HE SERVED AS A DEPUTY SHERIFF HERE IN SUMTER COUNTY.

AND I'D JUST LIKE TO RELATE TO YOU NOW SOME OF THOSE COMMENTS, NOT ALL OF THEM AND NOT IN DETAIL, BUT JUST SOME OF THE HIGHLIGHTS FROM SOME OF THOSE COMMENTS MADE BY PEOPLE THAT SUPERVISED HIM.

HE WAS -- MOST OF THESE RATINGS WERE SUPERIOR IN NATURE AND THE FOLLOWING COMMENTS. HE KNOWS HIS JOB. HE'S A TEAM WORKER. HE ACCEPTS ADDITIONAL DUTIES AND RESPONSIBILITIES. HE'S ON TIME. HE'S NEAT.

HIS ATTITUDE IS POSITIVE AND OUTSTANDING. THOROUGH IN ALL ASPECTS OF HIS WORK. CAN BE DEPENDED ON TO GET THE JOB DONE. PROMOTES GOOD WILL, THE SPIRIT OF GOOD

WILL AMONG HIS FELLOW OFFICERS AND TOWARD THE COMMUNITY.

AS AN OFFICER HE IS FIRM, BUT FAIR. QUICK TO ADJUST WITH AND WILLING TO MAKE SPECIAL -- EXCUSE ME -- WILLING TO MAKE PERSONAL SACRIFICES, A SOLID LAW ENFORCEMENT OFFICER.

RESPONSIBILITY IS NO STRANGER TO HIM. HE SEEKS IT. LOYAL. DEPENDABLE. AN EXAMPLE FOR HIS FELLOW OFFICERS TO PATTERN AFTER.

I CONSIDER SERGEANT KUBALA TO BE AN OUTSTANDING OFFICER AND A COMMUNITY SERVER WITHIN THE SHERIFF'S OFFICE.

IF THERE IS ONE THING THAT OFFICERS HATE TO DO IS TO SIT DOWN AND WRITE REPORTS. BUT HE WAS ASSIGNED THE TASK OF UPDATING AND REWRITING OUR PERSONNEL AND POLICY PROCEDURE MANUALLY.

AND HE TOOK THIS ON AS AN ADDITIONAL RESPONSIBILITY AND DID AN OUTSTANDING JOB WITH IT.

Q AND WHAT ELSE CAN YOU TELL US ABOUT HIM?

A THE -- I THOUGHT ABOUT THE IMPACT THAT HE'S HAD ON THE SHERIFF'S OFFICE AND ON THE SUMTER COMMUNITY. AND THESE ARE THE THOUGHTS THAT CAME TO MIND AS I PUT THESE DOWN.

THE SHERIFF'S OFFICE HAS LOST ONE OF OUR YOUNG, BRIGHT, ENERGETIC OFFICERS FOREVER. THE IDEAS AND THE ENERGY THAT HE BROUGHT TO THIS JOB, TO THIS PROFESSION, TO

HIS JOB, HAS BEEN LOST.

HE SOUGHT TO IMPROVE THE DELIVERY OF SERVICES IN EVERYTHING THAT HE DID AND THESE ARE NO LONGER AVAILABLE TO US. HIS POSITIVE ATTITUDE AND WILLINGNESS TO WORK WITH OUR YOUTH WILL BE GONE FOREVER AND HARD TO REPLACE.

THE IMPACT I THINK IT'S HAD ON OUR COMMUNITY IS IT'S CAUSED EACH OF US IN THIS COMMUNITY TO TAKE THE ROLES THAT THE PUBLIC SERVANT, THE PUBLIC SAFETY OFFICER, PLAYS IN THE OVERALL SCOPE OF ACTIVITY IN THIS COMMUNITY.

HAS CAUSED US AS CITIZENS TO LOOK AT IT IN A DIFFERENT LIGHT. ON A PERSONAL NOTE, AS THE SHERIFF OF THE COUNTY AND AS THE SHERIFF, I VIEW THE OFFICERS WHO WORK IN THAT OFFICE AS BROTHERS AND SISTERS, IF YOU WILL.

AND EVEN SOMETIMES I SEE MYSELF AS A PARENT, ESPECIALLY TO SOME OF THE YOUNG MEN AND WOMEN WHO ARE HAVING PERSONAL PROBLEMS AT HOME OR WITHIN SOME ASPECT OF THEIR LIFE. SEEKING ADVICE.

I SENSE A DEEP AND I HAVE A DEEP SENSE OF RESPONSIBILITY FOR EACH ONE OF THEM. LAW ENFORCEMENT IS MORE THAN JUST A MERE JOB, A PAY CHECK COMING IN.

BECAUSE IF YOU WOULD LOOK AT WHAT THEY MAKE, CERTAINLY THEY DO NOT DO THAT, PERFORM THAT DUTY, FOR THE PAY THAT IT BRINGS IN BECAUSE MOST OF THEM LIKE KUBALA WORKED SECOND JOBS TO HELP MAINTAIN THE STATUS OF AND STANDARD OF LIVING THAT HE DESIRED FOR HIS FAMILY.

THEY DON'T DO IT FOR THAT. THEY DO IT OUT OF A SENSE OF LOYALTY OF COMMITTING, OF PROVIDING A UNIQUE SERVICE IN THAT AREA.

I SEE IT AS A SPECIAL CALLING TO A UNIQUE SERVICE TO ALL MAN KIND. KUBALA WAS A LAW ENFORCEMENT OFFICER THROUGH AND THROUGH. AND ONE OF THE HIGHEST CALIBER.

HE LOVED HIS JOB. THE TIME HE RESIGNED IN 1990 WAS TO GO TO A JOB THAT PAID MORE MONEY. BUT HERE AGAIN IT WAS HELPING PEOPLE. THE JOB HE TOOK DURING THAT PERIOD OF TIME WAS REPAIRING DIALYSIS MACHINES IN A CERTAIN SECTION OF THIS STATE.

BUT HE COULDN'T FIND THE FULFILLMENT AND CONTENTMENT IN THAT POSITION THAT HE WANTED BECAUSE AS I SAY LAW ENFORCEMENT GETS IN YOUR BLOOD AND IT WAS IN HIS BLOOD AND HE CAME BACK, HE ASKED FOR A POSITION AND I WAS HAPPY TO RECEIVE HIM BACK AND TO GIVE HIM A POSITION IN 1991.

GOING TO THE NIGHT OF FEBRUARY THE 26TH, 1996, THE NIGHT I WILL NEVER FORGET. WHEN I RECEIVED THE NEWS THAT THE SHOOTING HAD TAKEN PLACE.

IT'S THE HARDEST THING I HAVE EVER HAD TO DEAL WITH AND FACE. AS A LAW ENFORCEMENT OFFICER IN THESE TWENTY-SIX YEARS I HAVE DEALT WITH A FEW HARD THINGS, BUT THIS WAS THE TOUGHEST.

AS I MADE MY WAY TO THE HOUSE OF THE FAMILY, I WAS GROPING FOR WORDS TO FIND TO TRY TO PROVIDE SOME COMFORT TO THEM. AND TO TRY TO FIND A REASON WHY SUCH A SENSELESS KILLING HAD TAKEN PLACE.

BUT WHEN I ARRIVED, I MET FRED KUBALA, CHARLIE'S FATHER IN THE FRONT YARD. AND INSTEAD OF ME PROVIDING COMFORT TO HIM, HE PROVIDED SOME FOR ME.

HE SAID I KNOW IN MY MIND AND IN MY HEART THAT CHARLIE DIED DOING WHAT HE LOVED TO DO, HELPING OTHER PEOPLE. AND THAT HAS BEEN THEIR -- THEIR STANCE THROUGHOUT THIS WHOLE ORDEAL.

HE HAS A VERY CLOSE, LOVING AND CARING FAMILY. AND THEY SUPPORT EACH OTHER VERY MUCH. TO CLOSE MY REMARKS I WOULD LIKE TO SAY THAT THE SUMTER COMMUNITY HAS LOST AN OUTSTANDING CITIZEN AND A SERVER.

THE SHERIFF'S OFFICE HAS LOST ONE OF OUR BRIGHT YOUNG ENERGETIC OFFICERS. I CERTAINLY HAVE LOST A BROTHER LAW ENFORCEMENT OFFICER AND A TRUE FRIEND.

I HAVE MISSED CHARLIE'S CONTAGIOUS, POSITIVE ATTITUDE. I NEVER SAW HIM WHEN HE DIDN'T HAVE A SMILE ON HIS FACE AND REALLY EXCITED AND UP BEAT ABOUT WHAT'S GOING ON.

HE WAS NEVER ONE TO MOPE ABOUT SOMETHING BAD THAT MAY HAVE HAPPENED. HE ALWAYS HAS A POSITIVE OUTLOOK. I MISS HIS EAGERNESS TO DO HIS JOB AND THE WILLINGNESS TO

GO ABOVE AND BEYOND THE CALL OF DUTY.

I MISS HIS SMILE. AND I AGREE WITH ONE OF HIS SUPERVISORS' EVALUATIONS, STATEMENTS, THAT CHARLIE WAS WILLING TO MAKE PERSONAL SACRIFICES.

HE WAS A SOLID OFFICER. RESPONSIBILITY WAS NO STRANGER TO HIM. HE SOUGHT AFTER RESPONSIBILITY. HE SET AN EXAMPLE FOR FELLOW OFFICERS TO FOLLOW.

AND I WOULD ADD TO THAT NOT ONLY TO HIS FELLOW OFFICERS, BUT TO ALL OF US IN BOTH PUBLIC AND PRIVATE EMPLOYMENT WOULD DO WELL TO PATTERN OUR LIVES AFTER AFTER SERGEANT CHARLIE KUBALA.

Q SHERIFF, I BELIEVE YOU TOLD ME YOU HAD LETTERS THAT YOU...

A YES. THIS FOLDER CONTAINS A NUMBER OF LETTERS FROM LAW ENFORCEMENT AGENCIES ACROSS THIS STATE AND EVEN ACROSS THIS COUNTRY EXPRESSING THEIR FEELINGS ABOUT THE LOSS OF A LAW ENFORCEMENT OFFICER, SOME CARDS.

THERE WAS ALSO A STACK OF SEVERAL LETTERS FROM A SECOND GRADE CLASS AT POCALLA SCHOOL. POCALLA SPRINGS PRIMARY SCHOOL.

ONE OF THE CHILDREN IN THAT CLASS WAS RELATED TO MRS. GRIFFITH AND THAT CLASS WAS HAVING SOME PROBLEMS DEALING WITH THIS LOSS AND THEY ASKED ME TO COME OUT TO THE CLASS AND SPEAK TO THE CLASS, WHICH I READILY DID.

AND THESE ARE SOME OF THE FOLDERS AND NOTES AND

WHATEVER THAT THEY SENT THAT THEY MADE UP TO THE MEN AND WOMEN OF THE SUMTER SHERIFF'S DEPARTMENT.

MR. BABB: YOUR HONOR, MAY WE APPROACH.

THE COURT: YES, YOU MAY. HOLD ON ONE SECOND, PLEASE.

(WHEREUPON A BENCH CONFERENCE WAS HELD).

MR. KOLB: JUST A MINUTE, PLEASE JUDGE.

(WHEREUPON THERE WAS A PAUSE).

(WHEREUPON QUESTIONING RESUMED).

Q SHERIFF, I WANT TO ASK YOU ABOUT THIS PHOTOGRAPH HERE. WHAT CAN YOU TELL US ABOUT THAT. THE DEFENSE HAS A COPY.

A YEAH. THAT'S A PHOTOGRAPH OF...

MR. LITTLEJOHN: YOUR HONOR, IF WE COULD PERHAPS SEE THE PHOTOGRAPH.

MR. KOLB: SPECIAL OLYMPICS.

THE COURT: SPECIAL OLYMPICS. LOOKS LIKE A NEWSPAPER PHOTOGRAPH.

MR. LITTLEJOHN: YOU FURNISHED SOME PHOTOGRAPH, BUT I DON'T KNOW WHICH ONE HE HAD.

THE COURT: HE CAN IDENTIFY IT. SHOW IT TO HIM. LET'S HAVE IT MARKED SO WE CAN PUT IT IN EVIDENCE.

MR. KOLB: ALL RIGHT.

(WHEREUPON THERE WAS A PAUSE).

MR. KOLB: OFFER THIS INTO EVIDENCE, YOUR HONOR.

THE COURT: BE STATE'S EXHIBIT 72. ANY OBJECTION?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: VERY WELL. STATE'S EXHIBIT 72, A -- IS IT A LAMINATED---.

MR. KOLB: LAMINATED NEWSPAPER CLIPPING.

THE COURT: NEWSPAPER CLIPPING INTO EVIDENCE WITHOUT OBJECTION.

(STATE'S EXHIBIT NO. 72 MARKED FOR EVIDENCE).

(WHEREUPON QUESTIONING RESUMED).

Q SHERIFF, COULD YOU EXPLAIN WHAT THIS IS PLEASE.

A YES, SIR. THIS IS A PHOTOGRAPH OF CHARLIE KUBALA. DEPUTY KUBALA AND ANOTHER DEPUTY ANTHONY BRADFORD PARTICIPATED IN THE STATE LAW ENFORCEMENTS SPECIAL OLYMPICS TORCH RUN.

THIS OCCURS EVERY YEAR. AND LAW ENFORCEMENT OFFICERS AROUND THE STATE START IN DIFFERENT AREAS AND WIND UP IN COLUMBIA. AND THE IDEA IS TO RAISE SOME MONEY TO HELP THE SPECIAL OLYMPICS. AND CHARLIE ALWAYS PARTICIPATED.

Q ALL RIGHT.

A IN -- NOT ONLY IN THIS TYPE OF EVENT, BUT ANY OTHERS.

Q ALL RIGHT. SHERIFF, COULD YOU TELL US ABOUT SERGEANT KUBALA'S SERVICE BADGE, DEPUTY SHERIFF BADGE.

A HIS NUMBER AS YOU HAVE HEARD WAS NUMBER 113. WE HAVE RETIRED THAT NUMBER AND HIS BADGE.

Q IF YOU WOULD ANSWER ANY QUESTIONS THE DEFENSE MIGHT

HAVE.

THE COURT: ANY QUESTIONS?

CROSS-EXAMINATION BY MR. BABB:

Q GOOD AFTERNOON, SHERIFF.

A GOOD AFTERNOON.

Q SERGEANT KUBALA WAS AN INDIVIDUAL WHO HAD A GREAT RESPECT FOR PEOPLE; WAS HE NOT?

A YES, SIR.

Q HE HAD A GREAT RESPECT FOR THE LAW; DID HE NOT?

THE COURT: RAISE YOUR VOICE. MAKE SURE YOU SPEAK CLOSE TO THE MIKE.

(WHEREUPON QUESTIONING RESUMED).

Q HE WAS THE TYPE OF INDIVIDUAL WHO GREATLY RESPECTED THE LAW; WAS HE NOT?

A VERY MUCH SO. YES, SIR.

Q HE IS THE TYPE OF INDIVIDUAL WHO WOULD EXPECT THE JUDICIARY TO DO IT'S JOB; WOULDN'T HE?

A YES, SIR.

Q HE WOULD EXPECT ALL THOSE INVOLVED TO DO THEIR JOB?

A THAT'S CORRECT.

Q TO DO THEM HONESTLY, IMPARTIALLY AND FAIRLY?

A THAT'S CORRECT.

Q THANK YOU, SIR.

THE COURT: REDIRECT?

MR. KOLB: NOTHING FURTHER.

THE COURT: YOU MAY COME DOWN, SHERIFF.

WITNESS: CAN I STAY IN THE COURTROOM?

THE COURT: YES, SIR. YOU MAY.

(WHEREUPON THE WITNESS LEFT THE STAND).

MR. KOLB: JUDGE, IS THIS A GOOD TIME FOR A BRIEF BREAK? WE HAVE BEEN AT IT...

THE COURT: BE HAPPY TO. LADIES AND GENTLEMEN, LETS GO TO YOUR JURY ROOM FOR A MOMENT. AS I UNDERSTAND WE WILL TAKE THIS, I'M ADVISED THAT SOMETIME BETWEEN 8 AND 8:30 THAT YOU WOULD LIKE FOR SUPPER.

WE ARE MAKING ARRANGEMENTS FOR THAT SO WE WILL PLAN ON STOPPING AT THAT POINT SO THAT YOU CAN GET THERE IN TIME AND HAVE YOUR SUPPER AT THAT POINT. THANK YOU.

IF YOU WOULD RETIRE TO YOUR JURY ROOM. DO NOT BEGIN YOUR DELIBERATIONS. DO NOT DISCUSS THE MATTER AMONG YOURSELVES. THANK YOU.

(WHEREUPON THE JURY LEFT THE COURTROOM AT 6:29).

THE COURT: ANYTHING FROM THE STATE BEFORE WE RECESS FOR THE RECORD?

MR. KOLB: NO, SIR.

THE COURT: ANYTHING FROM THE DEFENDANT?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: THANK YOU. WE WILL BE AT EASE.

(WHEREUPON A BRIEF RECESS WAS TAKEN).

THE COURT: ALL RIGHT. LET THE RECORD REFLECT MR.

STONE IS PRESENT. MR. LITTLEJOHN?

MR. LITTLEJOHN: YOUR HONOR, JUST A COUPLE OF THINGS. I UNDERSTAND FROM TALKING TO SOLICITOR KOLB THAT HIS NEXT WITNESS WOULD BE ANOTHER INDIVIDUAL WITH SUMTER COUNTY SHERIFF'S DEPARTMENT. AND WE HAD DISCUSSED THE NUMBER OF WITNESSES PREVIOUSLY.

IT SEEMS TO US WITHOUT OBJECTION SHERIFF MIMS COVERED QUITE THOROUGHLY THE CAREER OF SERGEANT KUBALA AND IF WE ARE GOING TO DUPLICATE THAT WE CERTAINLY INTERPOSE AN OBJECTION.

THE COURT: ALL RIGHT. I DON'T KNOW WHAT THIS OFFICER...

MR. KOLB: THIS WOULDN'T BE DUPLICATION, JUDGE. I KEPT THE SHERIFF AWAY FROM THE EXPLORER POST WHICH THE DEPARTMENT HAS AND DEPUTY METTS IS IN CHARGE OF THAT POST AND UNDERSTANDS IT AND HAPPENS TO BE A DEPUTY, BUT HE IS MORE OVER A PERSONAL FRIEND AND TALKING ABOUT THE WORK OF THE EXPLORER.

THE COURT: I'M GOING TO ALLOW YOU ANOTHER WITNESS. I DON'T FIND THIS NECESSARILY GOES OVER, BUT YOU KNOW, AGAIN 611 DEALS WITH CUMULATIVE EVIDENCE. IF YOU FEEL IT'S CUMULATIVE, IF YOU WISH TO OPPOSE AN OBJECTION AT THAT POINT I WILL BE HAPPY TO INDICATE.

I AM NOT GOING TO RESTRICT YOU FROM CALLING ANOTHER OFFICER AT THIS POINT. AS I UNDERSTAND IT'S NOT

CUMULATIVE. THANK YOU, SIR.

MR. LITTLEJOHN: YOUR HONOR, SECOND THING IS WE WERE JUST HANDED SOME ADDITIONAL DISCOVERY MATERIAL. SOME PICTURES THAT I UNDERSTAND THE SOLICITOR WANTS TO INTRODUCE AND ALSO A COPY OF SOMETHING FROM THE DEPARTMENT OF YOUTH SERVICES, APPARENTLY CONCERNING MR. STONE'S YOUTHFUL OFFENDER SENTENCE.

AND WE CERTAINLY THINK THIS COMES TOO LATE FOR US TO GIVE MEANINGFUL -- TO BE ABLE TO CONTEST IT OR DETERMINE WHAT IT IS.

THE COURT: WHAT IS IT, MR. SOLICITOR?

MR. KOLB: THIS IS JUVENILE RECORD, JUDGE. AND JUDGE, WE WERE NOT GOING TO CALL SOMEBODY TO PROVE THE JUVENILE RECORD. WE JUST WANTED THEM TO HAVE IT.

THE COURT: ALL RIGHT, SIR. YOU ARE NOT HAVING ANY TESTIMONY ABOUT A JUVENILE RECORD?

MR. KOLB: IF THE DEFENDANT TESTIFIES I MIGHT CROSS-EXAMINE HIM ON IT, BUT I DON'T PLAN TO CALL A WITNESS TO PROVE IT AT THIS STAGE.

THE COURT: ALL RIGHT. WELL, IS IT -- DOES IT CONTAIN, IS IT BEING OFFERED AS EVIDENCE OF AGGRAVATING CIRCUMSTANCES?

MR. KOLB: NO, SIR.

THE COURT: WELL, AT THIS POINT IT DOESN'T APPEAR TO HAVE BEEN PROVIDED, SO...

MR. LITTLEJOHN: VERY GOOD. THE SECOND THING CONCERNS COPIES OF SOME PHOTOGRAPHS THAT WE WERE HANDED. YOUR HONOR, APPARENTLY SEVERAL OF THEM DEAL WITH SERGEANT KUBALA'S GRAVE SITE. AND WE WOULD OBJECT.

THE COURT: I HAVEN'T SEEN THAT. I WOULD NOT ALLOW -- YOU DON'T NEED TO HAVE HIS GRAVE STONE IN THERE.

MR. KOLB: THE -- JUST TO TELL THE COURT JUDGE THEY WERE -- HE AND HIS WIFE AND CHILDREN WERE CAMPERS. AND OF COURSE YOU WILL HEAR THROUGH THIS NEXT DEPUTY ABOUT THE EXPLORER POST AND POSITIVE ACTIVITIES FOR YOUNG FOLKS.

THE -- THIS DEPUTY IS A PART OF THAT CAMPING, EXPLORER CLUB. TOOK A PICTURE THAT THEY HAVE -- AND THEY HAVE HAD FOR A LONG TIME -- OF THE DEPUTY AND HIS WIFE AND TWO CHILDREN CAMPING.

AND THAT I GUESS THIS DEPUTY -- AND I THINK IT'S VERY PROUD. BUT THAT PICTURE WAS SELECTED FOR THE TOMBSTONE AND THEY WANTED TO JUST SHOW THE TOMBSTONE THAT THAT PICTURE WAS---.

THE COURT: WELL, I UNDERSTAND IT AND I UNDERSTAND THIS BEING PROUD AND I RESPECTFULLY -- CERTAINLY RESPECT YOUR POSITION, BUT THE RISK OF HAVING THE TOMBSTONE...

THE BACKGROUND IS -- JUST UNFORTUNATELY HAD A PICTURE YOU COULD ISOLATE SO THAT YOU DIDN'T SEE IT, THE TOMBSTONE, THEN POSSIBLY I WOULD -- I COULD ALLOW IT, BUT I'M NOT GOING TO ALLOW IT. THE PROBATIVE VALUE IS OUT

WEIGHED BY THE PREJUDICE.

MR. KOLB: ALL RIGHT.

THE COURT: SEEK TO INFLAME THE PASSIONS OF THE JURY AND THAT'S NOT WHAT WE ARE ABOUT.

MR. KOLB: JUDGE, WHILE THE JURY IS OUT, THE MATTER THAT MR. BABB'S OPENING STATEMENT MENTIONING ABOUT ACTIONS AGAINST PEOPLE.

AND WE CONTEND THAT THAT OPENED THE DOOR ON THIS MATTER OF LEWD ACT THAT WE -- THAT THEY PREVIOUSLY MADE A MOTION IN LIMINE. I JUST WANTED TO BRING THAT UP TO THE COURT. I -- YOU KNOW...

THE COURT: WELL, FIRST OF ALL YOUR REMARKS AND MR. BABB'S REMARKS ARE NOT EVIDENCE.

MR. KOLB: YES, SIR.

THE COURT: THEREFORE THERE HASN'T BEEN ANY EVIDENCE THAT HAS BEEN INTRODUCED AT THIS POINT. I DON'T -- OPENING STATEMENTS ARE GENERALLY SORT OF AN OVER VIEW OF WHAT EVIDENCE THE JURY IS GOING TO HEAR.

ONCE WE GET TO THAT POINT, THEN I WILL BE HAPPY TO RE-VISIT IT WITH YOU. BUT AT THIS POINT I'M NOT GOING TO RE-VISIT IT OR PERMIT IT JUST BASED ON OPENING STATEMENTS. NO, SIR.

MR. KOLB: JUDGE, THE PROBLEM WHEN YOU SAID THAT YOU WILL HEAR THE -- BE NO EVIDENCE THAT HE'S EVER TOUCHED ANOTHER PERSON.

MR. BABB: NO, SIR.

MR. KOLB: FOR THEM TO KNOW THAT THERE IS EVIDENCE---.

THE COURT: MR. SOLICITOR, MAYBE -- YOU KNOW -- I MAY NEED TO MOVE BACK, TRY TO FIGURE OUT HOW TO COMMUNICATE WITH YOU BECAUSE I'M NOT MAKING IT CLEAR SOMEHOW.

I JUST SAID TO YOU I HAVEN'T HEARD ANY EVIDENCE. SO YOU ARE ASKING ME NOW -- I DON'T KNOW WHAT EVIDENCE YOU ARE TALKING ABOUT. THERE IS NO EVIDENCE. WHAT HE SAID IS NOT EVIDENCE. WHAT YOU SAID IS NOT EVIDENCE.

YOUR REMARKS, HIS REMARKS ARE NOT GOING TO CHANGE MY RULINGS. WHEN THE EVIDENCE COMES IN, I WILL BE HAPPY TO CONSIDER IT AT THAT POINT. AS YOU KNOW YOU HAVE AN OPPORTUNITY TO RESPOND.

IF THERE IS TESTIMONY TO THE EFFECT THAT HE'S NEVER TOUCHED ANYONE OR I NEVER DONE ANY SUCH -- THAT'S A DIFFERENT BALL GAME.

MR. KOLB: ALL RIGHT, SIR.

THE COURT: OKAY, SIR?

MR. KOLB: I THOUGHT YOU WERE SAYING THAT I HAD TO CALL THE GIRL TO GET THE RULING. I UNDERSTAND THAT. IN OTHER WORDS THEY...

THE COURT: I'M SAYING TO YOU MY RULING STANDS UNTIL THE DOOR HAS BEEN TILL SOMETHING OCCURS THAT I BELIEVE RAISES AN ISSUE AND CREATES A PICTURE FOR THE JURY THAT IS

SIMPLY NOT COMPLETE. AT THAT POINT I WILL BE HAPPY TO RE-VISIT IT. THANK YOU. ANYTHING ELSE?

MR. LITTLEJOHN: NOT AT THIS TIME, YOUR HONOR.

THE COURT: ALL RIGHT. BRING THE JURY BACK, PLEASE.

(WHEREUPON THE JURY ENTERED THE COURTROOM AT 6:50 P.M.)

THE COURT: THANK YOU VERY MUCH, LADIES AND GENTLEMEN. WE A READY TO CONTINUE. MR. SOLICITOR, YOU MAY CALL YOUR NEXT WITNESS.

MR. KOLB: YOUR HONOR, WE CALL DEPUTY GARY METTS.

GARY METTS, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: POSITION YOURSELF. GET THE MIKE COMFORTABLE FOR YOU. IF YOU'LL PLEASE STATE YOUR FULL NAME FOR THE RECORD SPELL YOUR LAST .

WITNESS: GARY ALLEN METTS, M E T T S.

THE COURT: THANK YOU, SIR.

DIRECT EXAMINATION BY MR. KOLB:

Q LIEUTENANT METTS, WOULD YOU TELL US HOW YOU ARE EMPLOYED?

A THROUGH THE SUMTER COUNTY SHERIFF'S DEPARTMENT.

Q AND HOW LONG HAVE YOU BEEN WITH THE DEPARTMENT?

A FIVE YEARS.

Q AND COULD YOU TELL US ABOUT YOUR CAREER IN LAW ENFORCEMENT?

A THIRTEEN YEARS IN LAW ENFORCEMENT. PART OF THAT WAS IN THE MILITARY. AND AFTER I DID ABOUT EIGHT YEARS IN THE MILITARY I WENT TO THE SHERIFF'S DEPARTMENT AND BEEN THERE EVER SINCE.

Q ALL RIGHT, SIR. AND DID YOU KNOW SERGEANT CHARLIE KUBALA?

A YES, SIR.

Q AND WHAT WAS YOUR RELATIONSHIP WITH HIM?

A HE WAS MY BEST FRIEND AND HE WAS A MEMBER OF THE EXPLORER POST, ADVISOR TO EXPLORER POST.

Q COULD YOU EXPLAIN TO THE LADIES AND GENTLEMEN OF THE JURY WHAT THE EXPLORER POST IS?

A THE EXPLORER POST IS A -- IT'S MADE UP FOR YOUNG PEOPLE WHO ARE AGE FOURTEEN TO TWENTY WHO ARE INTERESTED IN THE FIELD OF LAW ENFORCEMENT, WHO ARE IN HIGH SCHOOL AND WOULD LIKE TO KNOW A LITTLE BIT MORE ABOUT IT.

SO IT RUNS OFF THE BOY SCOUTS OF AMERICA BUT IT'S A CO-ED GROUP WHICH WE TRY TO TEACH THEM DIFFERENT ASPECTS OF LAW ENFORCEMENT BEFORE, TRY TO HELP THEM MAKE UP THEIR MIND FOR THEIR CAREER.

Q ALL RIGHT. AND WHAT IF ANY WAS DEPUTY KUBALA'S ROLE WITH THAT EXPLORER POST?

A HE WAS MY ASSISTANT ADVISOR. HE HELPED ME IN PREPARING THESE YOUNG PEOPLE FOR DIFFERENT ROLES IN LIFE.

Q COULD YOU TELL US HOW CHARLIE FELT ABOUT WORKING WITH

THE YOUNG PEOPLE AND THAT EXPLORER POST?

A HE LOVED IT. I GOT IN EXPLORING ABOUT FOUR YEARS AGO. LIEUTENANT HOBBS WAS IN CHARGE OF IT AND HE WENT TO SHIFT AND I TOOK OVER AND I NEEDED SOME HELP AND I TALKED TO CHARLIE.

AND HE HAD HIS OWN TWO CHILDREN AND I KNEW HE WAS BUSY AND HE HAD HIS OTHER JOB AND HE TOLD ME HE WAS WILLING TO COME HELP ME. HE SAID I LOVE IT. HE SAID LETS DO IT. LETS SEE WHAT WE CAN MAKE OF IT. AND...

Q IS THIS SOMETHING THAT YOU WOULD BE IN ADDITION TO YOUR REGULAR DUTIES AS A POLICE OFFICER?

A HE WAS NOT PAID ANYTHING EXTRA TO DO IT. THIS IS -- A LOT OF TIME WHEN YOU'RE ON OFF DUTY TIME TO GO DO THIS AT NIGHT WITH THE KIDS.

WE MET TWICE A MONTH AND WE WOULD DO DIFFERENT EVENTS LIKE COME TO THE COURTHOUSE AND LEARN ABOUT LAW AND TAKE TRIPS TO COLUMBIA AND DIFFERENT PLACES.

Q ALL RIGHT, SIR. COULD YOU TELL US ABOUT HOW THE EXPLORER POST IS DIFFERENT NOW WITHOUT CHARLIE, HOW IT'S AFFECTED YOU IN THE EXPLORER POST?

A I QUIT THE EXPLORERS. I COULDN'T FACE IT. I TURNED IT OVER TO SOMEONE ELSE.

Q SO THE YOUNG PEOPLE DON'T HAVE YOU OR SERGEANT KUBALA TO WORK WITH THEM ANY MORE?

A NO, SIR.

Q CAN YOU IDENTIFY THIS PHOTOGRAPH FOR ME?
A THIS PICTURE OF ME AND CHARLIE AND KIDS WE WORKED WITH IN A CAMPING TRIP.
Q ALL RIGHT.
MR. KOLB: I'D LIKE TO OFFER THAT INTO EVIDENCE, YOUR HONOR.
THE COURT: ANY OBJECTION?
MR. LITTLEJOHN: NO OBJECTION, YOUR HONOR.
THE COURT: VERY WELL. STATE'S EXHIBIT 73 INTO EVIDENCE. A PHOTOGRAPH. WITHOUT OBJECTION.
(STATE'S EXHIBIT NO. 73 MARKED FOR EVIDENCE).
(WHEREUPON QUESTIONING RESUMED).
Q CAN YOU IDENTIFY THIS PHOTOGRAPH FOR ME?
A YES, SIR. IT'S A PICTURE OF HIS FAMILY I TOOK ONE TIME WHEN WE WENT CAMPING.
Q ALL RIGHT. WHAT COULD YOU TELL US ABOUT AS FAR AS WHY THAT'S SIGNIFICANT TO YOU THAT YOU TOOK THAT PICTURE, THE PICTURE THAT---.
MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO HAVE TO OBJECT. I THINK WE PREVIOUSLY DISCUSSED THIS.
THE COURT: I SUSTAIN THE OBJECTION.
(WHEREUPON QUESTIONING RESUMED).
Q NOT TALKING ABOUT THE USE THE PHOTOGRAPH WAS PUT TO, BUT WAS THIS CAMPING SOMETHING THAT CHARLIE AND HIS FAMILY LIKED TO DO WITH YOU AND YOUR FAMILY?

A CHARLIE LOVED TO CAMP. HE -- WE ALWAYS WENT CAMPING. WE NOT ONLY WITH THE EXPLORERS, BUT ESPECIALLY BEING CHARLIE -- HIS FAMILY DID A LOT OF THINGS TOGETHER BY THE HOLIDAYS, WE SPENT CHRISTMAS TOGETHER EVERY CHRISTMAS AND NEW YEARS EVE.

AND WE'D GO TO THE FAIR AND DIFFERENT PLACES, CONCERTS. AND WE -- HE LOVED TO GO CAMPING AND WE'D ALWAYS GO CAMPING IN THE SUMMER ALL THE TIME, THE BEACH AND THE MOUNTAINS.

MR. KOLB: I'D LIKE TO OFFER THAT PHOTOGRAPH INTO EVIDENCE, YOUR HONOR.

THE COURT: ANY OBJECTION?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: VERY WELL. STATE'S EXHIBIT 74 A COLOR PHOTOGRAPH INTO EVIDENCE WITHOUT OBJECTION.

(STATE'S EXHIBIT NO. 74 MARKED FOR EVIDENCE).

(WHEREUPON QUESTIONING RESUMED).

Q DEPUTY METTS, COULD YOU TELL US ABOUT YOUR ACTIONS WITH CHARLIE'S FAMILY AS A RESULT OF THIS, WHAT HAPPENED ON FEBRUARY 26TH 1996?

A WHEN I FIRST FOUND OUT CHARLIE HAD BEEN KILLED, I WENT TO HIS HOUSE AND STAYED THERE JUST ABOUT OVER A WEEK UNTIL HIS WIFE RAN ME OUT OF THE HOUSE. TRIED TO HELP HER OUT AND SUPPORT HER AS MUCH AS I COULD AND DO WHATEVER I COULD AROUND THE HOUSE FOR HER AND HER FAMILY AND

CHILDREN.

Q WHAT ABOUT OTHER FAMILY MEMBERS, CHARLIE'S PARENTS?

A RIGHT AFTER CHARLIE DIED, EVERYBODY WAS KIND OF CURIOUS AND ASKING A LOT OF QUESTIONS ABOUT WHAT HAD HAPPENED, THEY WEREN'T SURE.

AND I TALKED TO THE SHERIFF AND THE SHERIFF TOLD ME IT WOULD BE ALL RIGHT IF I TOOK THE FAMILY AROUND AFTER I TALKED TO MRS. GRIFFITH TO SEE WHERE CHARLIE HAD BEEN SHOT.

AND THE FIRST TIME I TOOK JUST HIS BROTHERS AND SISTERS AND HIS MOTHER AROUND TO THE SCENE WHERE IT HAPPENED. AND THEN LATER HIS WIFE AND HIS CHILDREN WANTED TO GO.

AND JUST ME AND THE CHILDREN AND HIS WIFE WENT TO THE SCENE TO MEET MRS. GRIFFITH AT AND SEE THE SCENE.

Q WHAT -- HOW DID THAT AFFECT YOU AND THEM HAVING TO DO THAT?

A IT WAS A VERY EMOTIONAL TIME. THE KIDS REALLY WERE ASKING A LOT OF QUESTIONS AND TERESA ASKED ME A LOT OF QUESTIONS AND I TRIED TO ANSWER THEM THE BEST I COULD TO TRY TO HELP HER UNDERSTAND WHAT HAPPENED THAT NIGHT.

I THINK MORE THAN ANYTHING HER SON WAS -- JUST DIDN'T UNDERSTAND. LITTLE CHARLIE, THAT WE -- THAT'S WHAT I CALL HIM. LITTLE CHARLIE, THEIR SON. HE WAS -- HE WAS ONLY TEN YEARS OLD.

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SUMMARY OF RESULTS PSYCHOLOGICAL EVALUATION

Name: Bobby Stone Dob: _____ Age: 9,5

School: Lemira Elem. Grade: 3

Test Date(s): WISC 2-18-75 SIT 12-12-74 PPVT 12-12-74 ITPA 12-20-74

Referring Teacher(s): C. Rogers

1. WISC Verbal I.Q. 97 Performance I.Q. 76 Full Scale I.Q. 86

PRORATED Scaled Scores

Verbal Tests		Performance Tests	
Information		Picture Completion	6
Comprehension		Picture Arrangement	
Arithmetic		Block Design	7
Similarities	12	Object Assembly	
Vocabulary	11	Coding	
Digit Span	6	Mazes	

WISC profile already on record no

Bobby attained a verbal IQ of 97, performance IQ of 76, and a full scale IQ of 86. Test results reveal a good capacity for concept formation and for abstract reasoning at the verbal level along with good word knowledge and expressive vocabulary. Weaknesses are in visual perception, visual memory and alertness to details, and in rote and immediate memory. Wide variance in scores indicate deficits in sequencing and spatial abilities at the performance level.

2. Slosson Intelligence Test
CA 9.3 MA 8.2 IQ 88

3. Peabody Picture Vocabulary Test From A
Raw score 63 MA 7.6 EQ 86

4. Illinois Test Of Psycholinguistic Abilities
Mean SS 32.4 AR 26 VR 39 VM 39 AA 34 AM 30 VA 23 VC 33 VE 28
GC 36 ME 36 AC 30 SB 43 (over)

Recommendation:
L.D. Resource

Russell J. Trader

Russell J. Trader, Ph.D.
School Psychologist

4. ITPA

Bobby cooperated well during the testing and seemed to enjoy most of it. The examiner noticed that his eyes did not seem to work together properly. Bobby's scores indicate an erratic pattern of strengths and weaknesses. He seems strongest in the visual areas except for visual association.

CONFIDENTIAL

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PSYCHOLOGICAL REPORT

Student's Name Bobby Stone Date October 12, 1976

Birthdate [redacted] 1965 Age 11.1 Sex male

School Lemira Elementary Teacher Bivens Grade 4

Reason(s) for Referral: Re-evaluation

Behavioral Observations:

Bobby was friendly, pleasant and cooperative. Although he put forth good effort, his attitude was one of indifference.

Test Interpretations and Educational Implications: (Use back, if necessary.)

Bobby attained a Verbal I.Q. of 90, Performance I.Q. of 70, yielding a Full Scale I.Q. of 78. This would indicate major problems in visual-motor coordination and integration.

His strength is in arithmetic reasoning and facility with numbers, and ability to recall auditory information in proper sequence and detail.

Make extensive use of visual tracking exercises. These may be timed as progress is made. Use Dubnoff perceptual-motor writing exercises. Make use of jigsaw puzzles, crossword puzzles, scrabble and analogy games. Cut up words and sentences that can be arranged to make logical sentences.

Apply the use of meaningful practice and drill, emphasize copy work from the blackboard and books, and use rote drills whenever possible.

Bobby Stone

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Test Results:

1. Intelligence Test WISC-R Date 10-12-76

(a) Raw score _____ Mental Age _____ I.Q. Score _____

(b) Verbal I.Q. 90 Performance I.Q. 70 Full Scale I.Q. 78

Verbal Tests		Performance Tests	
Information	8	Picture Completion	6
Similarities	6	Picture Arrangement	8
Arithmetic	11	Block Design	5
Vocabulary	8	Object Assembly	4
Comprehension		Coding	4
(Digit Span)	9	(Mazes)	

2. Test Peabody Picture Vocabulary Test Date 10-12-76
74 Raw Score 9.6 Mental Age 90 Other, specify IQ
This test results indicate low average psychological functioning.

3. Test Bender-Gestalt Date 10-12-76
6 Raw Score 6 Yr. LevMental Age _____ Other, specify _____
This test results indicate low psychological functioning.

4. Achievement Test Wide Range Achievement Test Date 4-26-76
Grade levels: 2.5 Reading 2.5 Arithmetic _____ Spelling
Percentile: _____ _____ _____

5. Adaptive Behavior Scale _____
Date _____
_____ Raw Score _____ Mental Age _____ Social Age
This test results indicate _____

If supplementary testing is needed, use back of page to record results. (over)

Recommendations:

Test data indicates that Bobby is functioning overall in the borderline range of intelligence, with substantial deficits in the performance area. He will need concentrated help to remediate these visual-motor problems. He should work with the L.D. resource teacher on a regular basis and coordinate specific exercises into regular classroom activities and instruction.

Evaluator
(circle level) EE, Psy. 1, 2, 3

6. Draw-A-Man 10-28-76

Total Points 9 CA 11.1 MA 5.3 IQ 48

Very low psychological functioning.

7. WISC-R 10-12-76

On the WISC his average score in Auditory/Language is 7, Visual is 4, Haptic/Sensory Motor is 4. Based on his low performance in the Haptic/Sensory Motor area and the Bender-Gestalt and Draw-A-Man, it appears that his primary dysfunction is in the Haptic/Sensory Motor area.

PSYCHOLOGICAL REPORT CONFIDENTIAL
For Professional Use Only

Student's Name Bobby Stone Date 791101

Birthdate [redacted] Age 14-1 Sex Male

School Bates Middle Teacher Davis Grade 7th

Reason for Referral: Re-evaluation for continued LD-Resource placement.

Behavior Observation: Bobby was cooperative. He appeared to be putting forth good effort.

Bobby is very small for his age, several inches below five feet. A brief, informal motor screening did not indicate any major coordination problems.

Test Results: The WISC-R indicates Verbal Skills range between 73 and 81, Performance between 66 and 76, and Full Scale between 69 and 75. This should reflect Bobby's functioning two-thirds of the time.

All Verbal skills were below the normal range, except Arithmetic (8) and Comprehension (8). Vocabulary (4) was the weakest Verbal area.

All Performance skills were below the normal range, except Picture Arrangement (9) and Object Assembly (8). Coding (2) and Block Design (3) were the lowest test areas.

The PPVT indicated receptive vocabulary was at the 9th percentile, in the slow learner range of functioning.

The Bender, with 4 errors, was below the 5th percentile, at a quality level expected of the average 8-5 year old.

The WRAT indicated achievement for Math was at the 3.6 grade level and 2nd percentile, Reading at 4.2 and 4th percentile, and Spelling at 2.9 and 1st percentile. Standard Scores were 70, 73, and 66, respectively.

The AAMD indicated adaptive functioning generally below the normal range. Only Numbers and Time, Vocational Activity and Responsibility were in the normal range. Independent Functioning (IQ equivalent = 56) and Economic Activity (IQ equivalent = 59) were the lowest areas.

Educational Implications: At this time Bobby is functioning overall in the EMH range. His verbal scores have dropped considerably, from the normal range to slow learner. Vocabulary and Digit Span measures fell 4 scaled scores. Achievement is at or below expected levels.

Activities to develop Vocabulary skills could include improving concepts (up-down, first-last), word games, completing story begun by teacher, describing in detail an object and explaining a game.

Activities to develop Block Design skills could include sorting by category, copying designs, copying cutting and folding exercises, figure-ground reproducing designs from memory and model kits.

Pupil's Name STONE, Bobby Wayne Home Address 409 Polk Tel. No.
(Last) (First) (Middle) (use pencil) (use pencil)

Birthdate [redacted]65 Birthplace Florence Co, S.C. Birth Cert. No. Soc. Sec. No. Sex M Race W

Date of Entrance 8/28/73 School Entered Central School Formerly Attended Jacksonville

FAMILY 212

2nd

SUMTER HIGH SCHOOL
UNPAID FEES AND BILLS

Bobby Stone 8182 9
Student's Name Year Grade

$ 12 00

Instructional Fees: $

Lost Books: Title $

$

$

$

$

Other: (Candy, etc.) $

TOTAL: $

SI

In order to be following forms back:

1. The current
2. Health recor
3. Test record c
4. Permanent re
5. Student progr
6. Reading progr.

Permanent rec binders if desir

CORD—GRADES 1-12

Read Carefully

oncerning recordkeeping and use of this

l entries in black ink except for addresses numbers. Use pencil for these.

data indicated as needed.

a locked space and allow use only by nnel in a designated area.

nation except that on folder or per- ard without specific permission of

5. Notify parents when information is released.

6. In general, give out no information by telephone.

7. Destroy all materials which may have been added temporarily as soon as they cease to be useful.

8. Do not keep confidential information from school psychologists in this folder.

9. Study the report on collection, use, maintenance, and discrimination of information about students and follow the guidelines.

Transferred to:

School Central Date 1-16-74

School _____ Date _____

School _____ Date _____

Student withdrew from school on _____
Date

Reason for withdrawal: _____

Moved out of School District 1-16-74 Parent

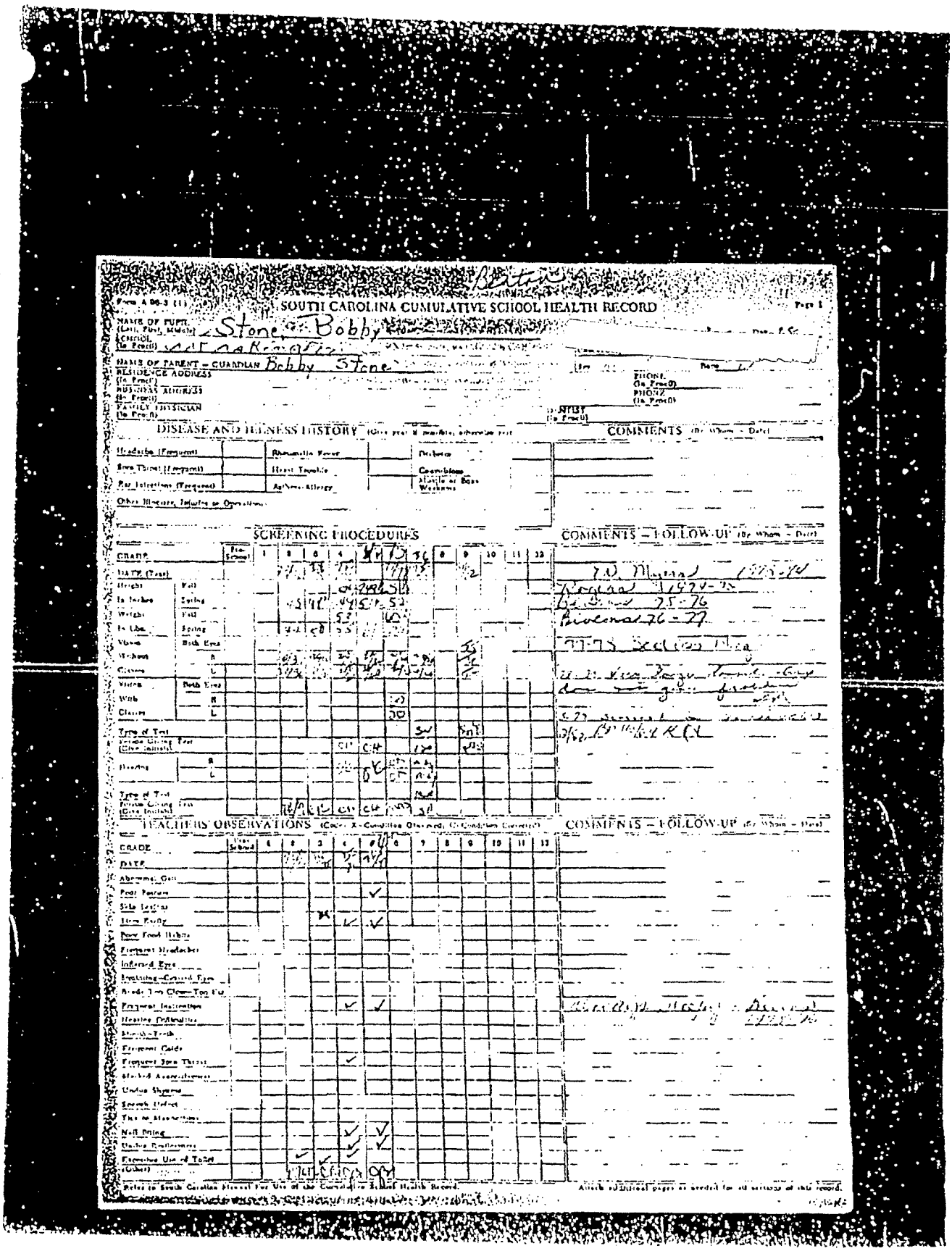
Activities to develop Coding skills could include copying symbols from memory, tracing geometric shapes, timed activities, identifying a letter traced on palm (eyes closed) and deciphering.

Recommendations:

1. At this time Bobby no longer qualifies for LD-Resource. He does qualify for EMH-Resource and a change of placement is necessary.

Elaine S Harris
Psychologist I

Psychologist II



SOUTH CAROLINA CUMULATIVE SCHOOL HEALTH RECORD

NAME OF PUPIL (Last, First, Middle): Stone, Bobby

NAME OF PARENT – GUARDIAN: Bobby Stone

DISEASE AND ILLNESS HISTORY

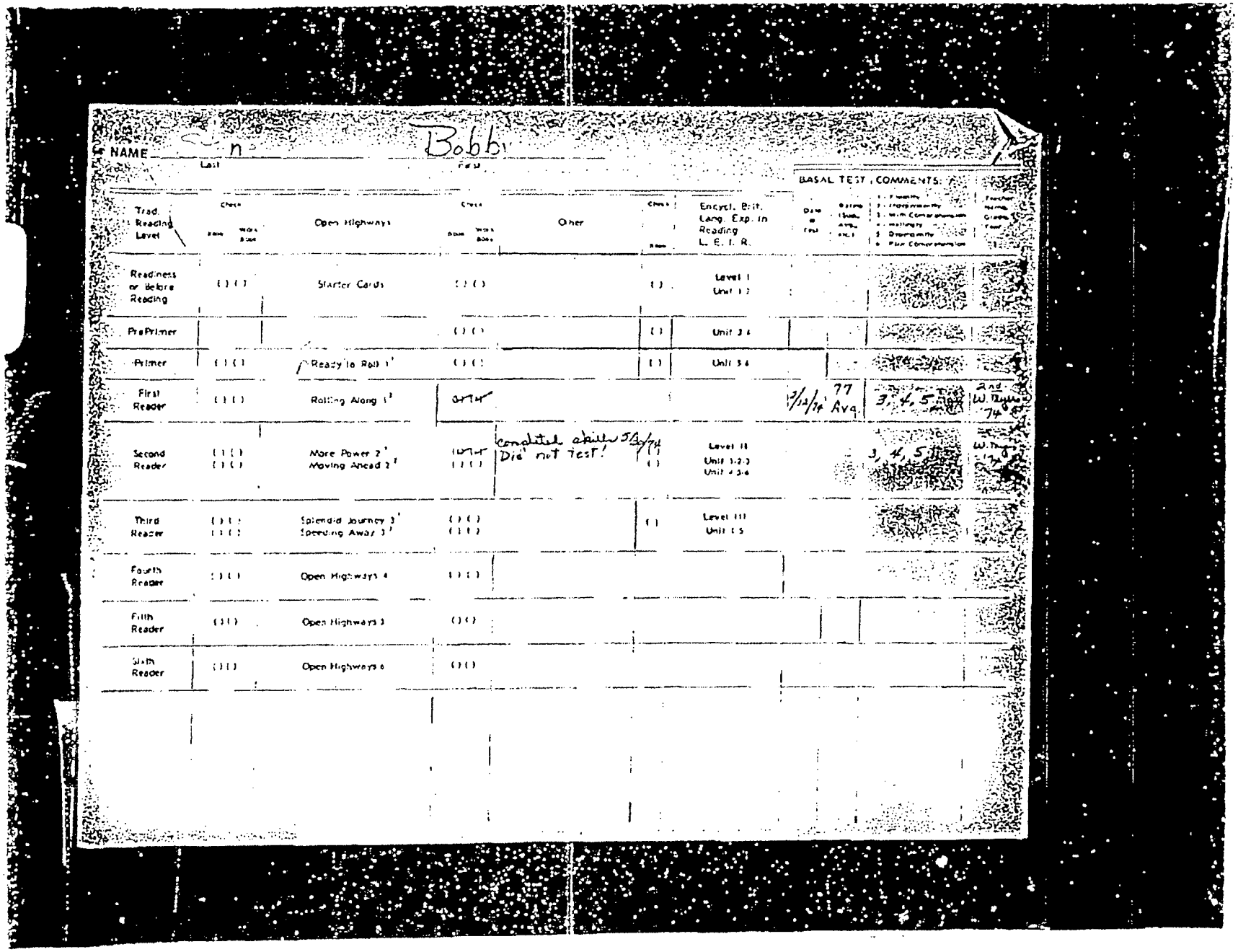
COMMENTS

SCREENING PROCEDURES

COMMENTS – FOLLOW-UP

TEACHERS' OBSERVATIONS

COMMENTS – FOLLOW-UP



NAME Bobby

Trad. Reading Level	Check Done	Check Work Done	Open Highways	Check Done	Check Work Done	Other	Check Done	Encycl. Brit. Lang. Exp. In Reading L. E. I. R.	BASAL TEST COMMENTS:
Readiness or Before Reading	( )	( )	Starter Cards	( )	( )		( )	Level I Unit 1-2	
PrePrimer				( )	( )		( )	Unit 3-4	
Primer	( )	( )	Ready to Roll 1	( )	( )		( )	Unit 5-6	
First Reader	( )	( )	Rolling Along 1	ORAL				3/12/74 77 Avg.	3, 4, 5 2nd W. Pages 74
Second Reader	( )	( )	More Power 2	ORAL		completed abilities 5/6/74 Did not test!	( )	Level II Unit 1-2-3 Unit 4-5-6	3, 4, 5 W. Pages 74
	( )	( )	Moving Ahead 2	( )	( )				
Third Reader	( )	( )	Splendid Journey 3	( )	( )		( )	Level III Unit 1-5	
	( )	( )	Speeding Away 3	( )	( )				
Fourth Reader	( )	( )	Open Highways 4	( )	( )				
Fifth Reader	( )		Open Highways 5	( )					
Sixth Reader	( )		Open Highways 6	( )					

INDIVIDUAL PUPIL PROGRESS IN READING — SUMTER SCHOOL DISTRICT NO. 17

NAME Stone (Last) Bobby (First)

READINESS SCORE Total _____ Reading _____

Trad. Reading Level	Check: does	Check: won't	American	Check: does	Check: won't	Harcourt, Brace	Check	Scott, Foresman	BASAL TEST: Date of Test	Rating (Sub., Avg., Sup.)	COMMENTS:	Teacher, Home, Grade, Year
Readiness or Before Reading	( )	( )	1 First Step 2 Second Step 3 Third Step				( )	Level 1				
PrePrimer	( )	( )	4 And So You Go 5 Be On the Go 6 Can You	( )	( )	Sun Up PP1 A Happy Morning PP2 A Magic Afternoon PP3	( )	Level 2				
Primer	( )	( )	7 Days and Ways	( )	( )	Sun and Shadow	✓	Level 3	9/23	Avg.	1, 5, 6	Roger III 1974-1975
First Reader	( )	( )	8 Each and All	✓	✓	5-76 Mumble Gr. 4 Together We Go	✓	Level 4			Completed material. 1, 5,	Rupra 3rd-74-75
2¹	( )	( )	Far and Away	✓	✓	The World of Surprises	( )	Level 5) a)	5-76	H Avg.	2, 3	5-76 Gr 4 Mumble
2²	( )	( )	Gold and Silver	( )	( )	Going Places, Seeing People	( )	Level 7) a)	3/22	Sup.	4, 6, b	4th 1977 Rupra
3¹	( )	( )	High and Wide	( )	( )	Widening Circles	( )	Level 9) 10)				
3²	( )	( )	Ideas and Images	( )	( )	Ring Around the World	( )	Level 11) 12)				
4	( )	( )	Joys and Journeys	( )	( )	Goals in Reading (Skills)						
				( )	( )	Much Majesty (Lit.)						
5	( )	( )	Kings and Things	( )	( )	Reading to Learn (Skills)						
				( )	( )	Wider Than the Sky (Lit.)						
6	( )	( )	Launchings and Landings	( )	( )	Reading Power (Skills)						
				( )	( )	First Splendor (Lit.)						

1017

011

I. NAME (PRINT) LAST Cone FIRST Ricky MIDDLE Walter

M SEX

W RACE

BIRTH DATE [illegible] PLACE [illegible] STATE

RECORD STARTED: DATE 4/27/77 SCHOOL Eastern GRADE 4

AUTHORITY FOR BIRTH DATA [illegible]

II. 1st PHOTOGRAPH

PASTE

III. FAMILY DATA (Use Pencil)

	NAME	CHANGE IN FAMILY STATUS	ADDRESS	PHONE	OCCUPATION	Number of Children
FATHER	Ricky Steve		[illegible] Box 123		[illegible]	BOYS: 3
MOTHER (Maiden Name)	Mayhill Floyd		[illegible]		[illegible]	GIRLS: 3
GUARDIAN						
PUPIL LIVES WITH		(Relation)				

V. 2nd PHOTOGRAPH

PASTE

DATE

AGE

GRADE

IV. TRANSFER — DROP-OUT — RE-ENTRY RECORD

DATE	SCHOOL & GRADE LEFT	REASON	DATE RE-ENTERED	SCHOOL & GRADE RE-ENTERED	REMARKS

VI. ELEMENTARY SCHOOL RECORD

	GRADE [illegible]	GRADE	GRADE	GRADE	GRADE	GRADE
YEAR	[illegible]					
READING	C					
WRITING	C					
ARITHMETIC	C					
SPELLING						
LANGUAGE	D+					
SCIENCE						
GEOGRAPHY						
HISTORY						
SOCIAL STUDIES	C					
MUSIC						
ART						
Health and Safety	C					
Citizenship	B					

This card is to be left in folder only as long as student is in school.

Name Hall, Bobby Wayne (Last) (First) (Middle) Birthdate

Information on this card may be released without permission of parent.

RECORD OF INTELLIGENCE TESTS

Grade	Date Given Mo/Day/Year	Name of Test	Language I.Q.	Non-Language I.Q.	Total I.Q.	Test Given By
2	9/1173	S.F.T. of Academic Aptitude	84	91	86	M. Pinton
4	10-75	CTES	70	84	75	Brien
5	Oct 77	CTES	82	82	80	Observation

RECORD OF APTITUDE TESTS (If scores are supplied on gummed labels, attach neatly in chronological order.)

RECORD OF INTEREST INVENTORIES (If scores are supplied on profile sheets, attach sheet to this card.)

Psychological Evaluation on File Yes No Dated

Sumter School District No. 17, Form # 3 (5/17/72)

1019

013

Fullington

4-7-81

SUMTER SCHOOL DISTRICT NUMBER TWO
SUMTER, SOUTH CAROLINA
PUPIL TRANSFER

NAME OF PUPIL STONE, BOBBY W. SEX M RACE W GRADE 8

NAME OF PARENT Maubelle Stone ADDRESS 7

BIRTHDATE [illegible] DATE OF ENTRANCE 3/80

DATE OF WITHDRAWAL 1-23-81 (MONTH DAY YEAR) REASON FOR TRANSFER MOVED TO DIST #17

WAS PUPIL COUNTED IN 10 DAY ENROLLMENT? YES 35 DAY ENROLLMENT? YES

ELEMENTARY SCHOOL RECORD

GRADE	6	7
YEAR	79	80
READING	B	
WRITING		
ARITHMETIC	D	C
SPELLING		
LANGUAGE	F	
SCIENCE	E	D
GEOGRAPHY		
HISTORY		
SOCIAL STUDIES	F	C
MUSIC		
ART		
HEALTH		S
DAYS BELONGING	160	75
DAYS PRESENT	174	64
TIMES TARDY	0	2
PROMOTION	YES	YES

PROMOTION CODE - YES-PROMOTED NO-RETAINED
ADV. - ADVANCED

GRADING SYSTEM:
A--95-100
B--85-94
C--75-84
D--70-74
F--BELOW 70

STANDARDIZED TEST RECORD

DATE	GRADE	FORM	INTELLIGENCE TESTS	CA	MA	IQ
			No Record			

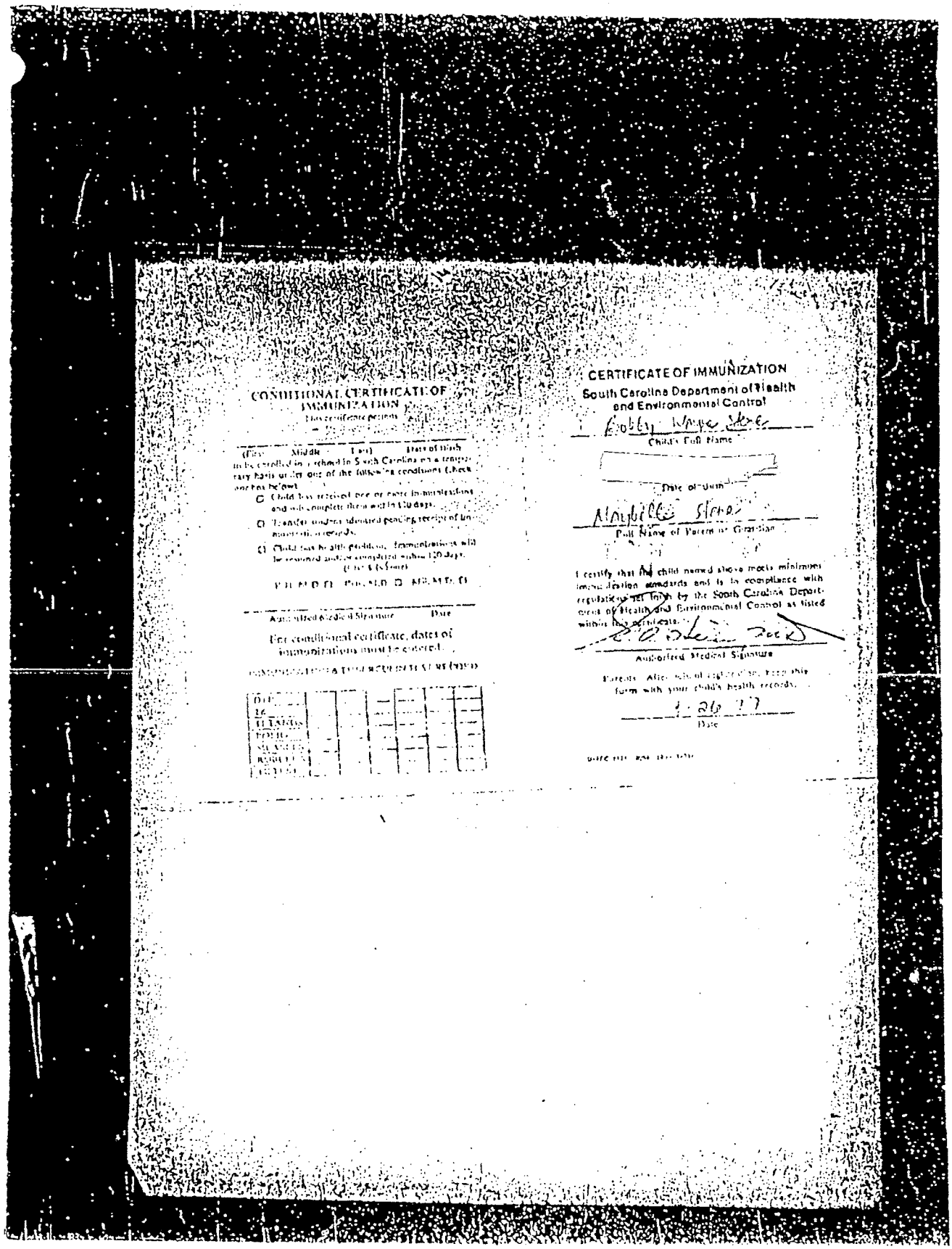
DATE	GRADE	FORM	ACHIEVEMENT TESTS	CA	SCORE: NORM
3/80	7.6	S2	CTBS	14	TB= 3.7 GE READ = 3.8 LANG = 3.2 MATH = 4.1 REF = 3.3

EXTRA CURRICULAR RECORD

GRADE	7	8
PUBLICATIONS		
BAND		
VOCAL MUSIC		
ORCHESTRA		
DRAMATICS		
STUDENT COUNCIL		
SAFETY PATROL		Capt. - 1980
HALL MONITORS		
CLUBS		

ADDITIONAL COMMENTS:
- S.C. Shot record on file
- LD-Res. 1979-80
- Attendance Record (1980-81):
  DB-95
  A-7
  T-10

Robert Reagan
Counselor
Manchester Middle
NAME OF SCHOOL



CONDITIONAL CERTIFICATE OF IMMUNIZATION

CERTIFICATE OF IMMUNIZATION
South Carolina Department of Health and Environmental Control

Child's Full Name

Date of Birth

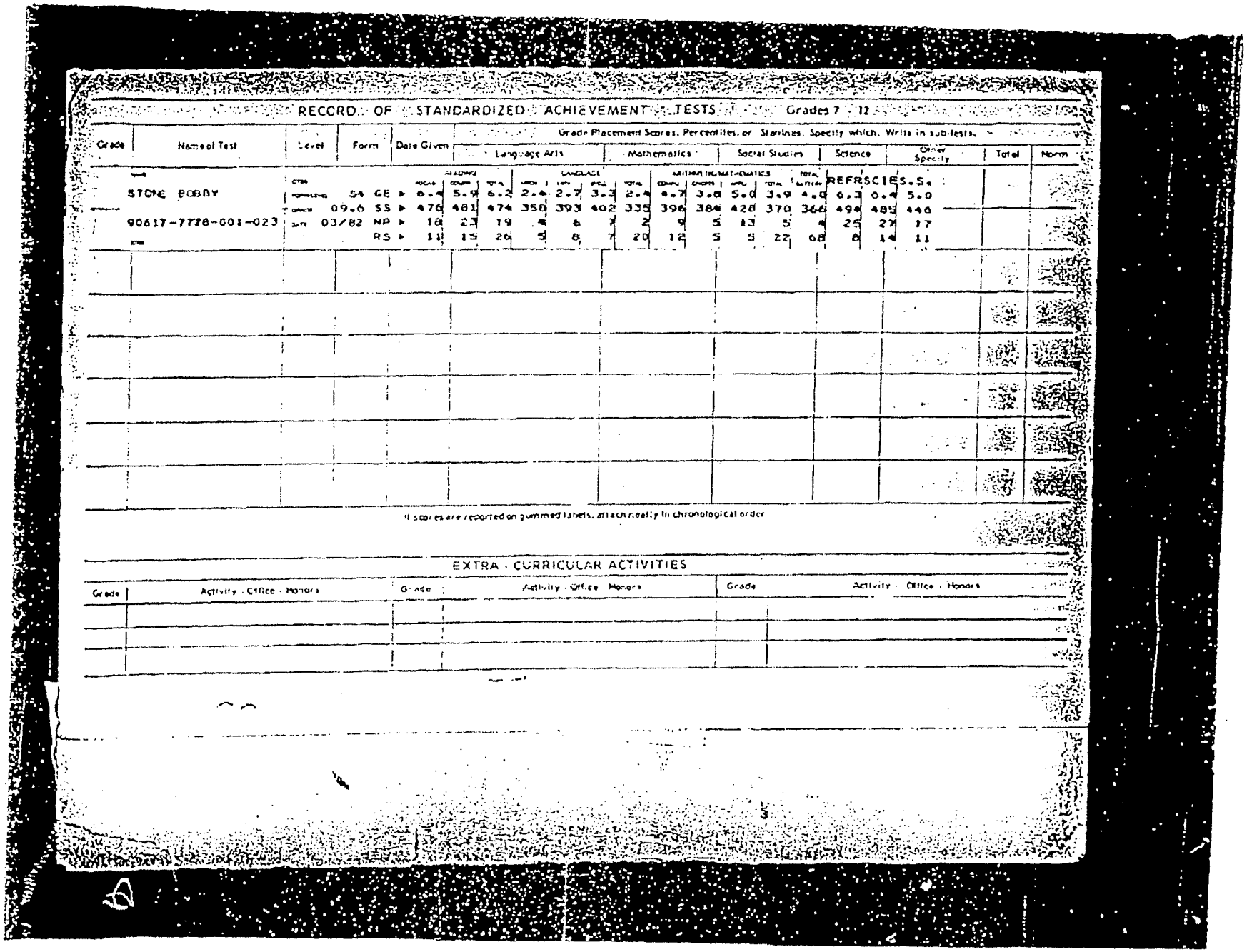
Full Name of Parent or Guardian

I certify that the child named above meets minimum immunization standards and is in compliance with regulations set forth by the South Carolina Department of Health and Environmental Control as listed within this certificate.

Authorized Medical Signature

Parents: Also sign at right, keep this form with your child's health records.

Date



RECORD OF STANDARDIZED ACHIEVEMENT TESTS Grades 7 12

Grade	Name of Test	Level	Form	Date Given	Grade Placement Scores, Percentiles, or Stanines. Specify which. Write in subtests. Language Arts						Mathematics				Social Studies	Science	Other Specify	Total	Norm
					READING			LANGUAGE			MATHEMATICS								
	STONE BOBBY		SA	GE ▸	6.4	5.9	6.2	2.4	2.7	3.3	2.4	4.7	3.8	5.0	3.9	4.0	6.3	6.4	5.0
		09.6	SS ▸		476	481	474	358	393	402	335	396	384	428	370	366	496	485	446
	90617-7778-001-023	03/82	NP ▸		16	23	19	4	6	7	2	9	5	13	5	4	25	27	17
			RS ▸		11	15	26	5	8	7	20	12	5	5	22	68	8	14	11

REFRSCIES.Se

If scores are reported on gummed labels, attach neatly in chronological order

EXTRA - CURRICULAR ACTIVITIES

Grade	Activity - Office - Honors	Grade	Activity - Office - Honors	Grade	Activity - Office - Honors

1022

016

Pupil's Name STONE, Bobby Wayne Home Address 409 Belk Tel. No.

Birthd. Birthplace Florence Co, S.C. Birth Cert. No. C Pupil Soc. Sec. No. Sex M Race W

Date of Entrance 8/28/73 School Entered Central School Formerly Attended Johnsonville

1977-78

FAMILY DATA

Parents Guardian	NAME	Address if different from pupil's	Living?	In the Home?	Date on which family data is recorded. Use pencil.
Father	Bobby R. Stone		yes	yes	9/28/73
Mother	Maybelle Stone		yes	yes	9/28/73
Guardian					
Relationship					

e immediately below may be used for noting any change in status of pupil with respect to parent or guardian.

ORD OF STANDARDIZED ACHIEVEMENT TESTS - Grades 1 - 6

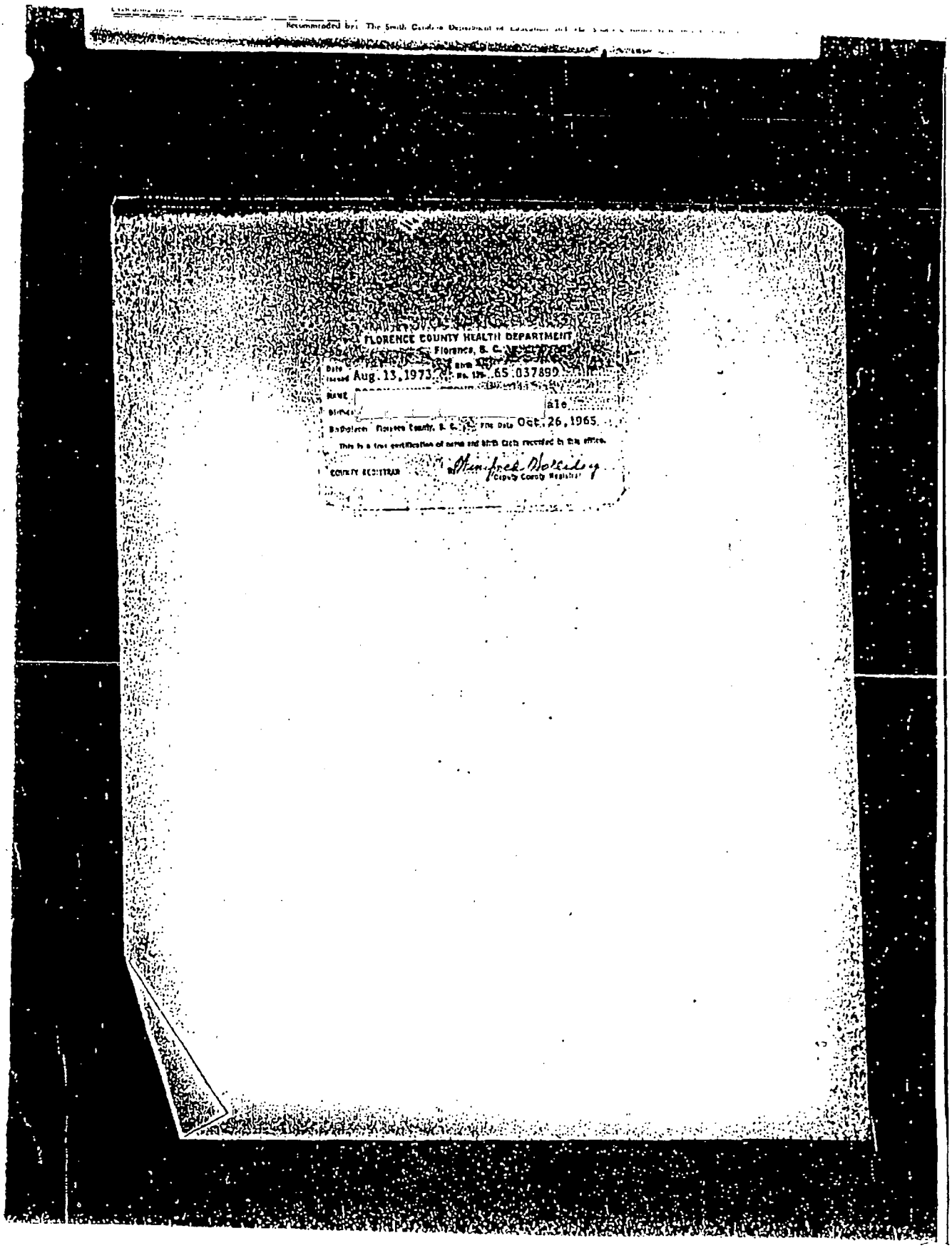
Grade	Name	Form	Date Given	Grade Placement Scores Only — Language Arts	Mathematics	Science-Studies	Science	Other (specify)	Total	Norm
				(W.K. W.D. Reading)						
2	Metropolitan Achievement Test	II	A	3 22 74 1.8 2.2 1.9	3.0	1.6				

Grade																		
4	CUBS	1														REFR SCIES. S.		
			SI	GE	2.2	3.1	2.7	2.2	2.8	2.1	2.4	3.1	2.4	2.8	2.9	2.7	3.2	2.9	1.5
			04.6	SS	306	368	329	350	399	339	338	328	320	326	320	292	371	358	278
			03/76	NP	7	29	12	11	18	8	9	11	10	13	11	9	22	17	3
				RS	12	19	31	7	14	22	43	23	11	9	43	117	9	14	6
3		1														REFR SCIES. S.		
			SI	GE	1.4	1.7	1.6	2.0	1.5	1.8	1.7	2.7	1.0			1.0		
			03.6	SS	255	268	246	333	315	316	280	308	225			208		
			03/75	NP	4	5	3	13	5	6	4	13	1			2		
				RS	7	8	15	6	8	19	31	17	3			2		

Psychological Evaluation Given: Yes ☐ Date:

1023

017



FLORENCE COUNTY HEALTH DEPARTMENT
Florence, S. C.

Date Issued Aug. 13, 1973 No. Yr. 65 037890

Name [redacted] ale

Birth

Birthplace Florence County, S. C. File Date Oct. 26, 1965

This is a true certification of name and birth data recorded in this office.

COUNTY REGISTRAR Mrs. Jack Worsley
Deputy County Registrar

PERMANENT RECORD — PREPRIMARY - GRADE SIX — SCHOOL DISTRICT No. 17 SUMTER, S. C.

PUPIL'S NAME [redacted] BIRTH DATE [redacted] ADDRESS [redacted] Ravenel St.

Date of entry	ADMITTING SCHOOL	SCHOOL RECEIVED FROM	YEAR
8/73	Central [redacted]	Sumterville [redacted] S.C.	1973

ACHIEVEMENT RECORD

Pre-Primary - School [redacted] (Check below to indicate satisfactory achievement)

	First Year	Second Year	Third Year		First Year	Second Year	Third Year
Knows colors				Alphabet recognition			
Numbers 1 - 10 (recognition counting)				Positive self-image			
Music interest				Assumes responsibility			
Completes tasks				Personal hygiene			
Interest in books				Discriminates differences			
Knows left and right				Discriminates similarities			
Communications skills				Problem solving skills			
Follows directions				Other			
Days belonging				Days present			

RECOMMENDATIONS

First Year

Second Year

Third Year

SCHOOL Central GRADE 2 YEAR 73-74 TEACHER N. Benton

	E.M.H.	LOW	AVERAGE	HIGH
ACADEMIC LEVEL OF PUPIL IN PRESENT CLASS (Check one)				

☐ Satisfactory ☐ Needs Improvement
☐ Improving

PUPIL'S ADJUSTMENT TO GROUP SITUATION: (Check one)

	E.M.H.	FIRST	TRANSITIONAL	REGULAR	SECOND	OTHER (State)
RECOMMENDATION FOR NEXT YEAR: (Check one)						

PUPIL IS APPARENTLY WORKING UP TO ☐ NOT WORKING UP TO ☐ MENTAL ABILITY

Days Belonging 114 Conference date

Days Absent 1 Tardy 7

Nancy Benton
Teacher's Signature (Full name)

SCHOOL Lincoln GRADE 2 YEAR 73-74 TEACHER W. Myers

	E.M.H.	LOW	AVERAGE	HIGH
ACADEMIC LEVEL OF PUPIL IN PRESENT CLASS (Check one)		✓		

☐ Satisfactory ☐ Needs Improvement
☐ Improving

PUPIL'S ADJUSTMENT TO GROUP SITUATION: (Check one)

	E.M.H.	SECOND	TRANSITIONAL	REGULAR	THIRD	OTHER (State)
RECOMMENDATION FOR NEXT YEAR (Check one)					K	

PUPIL IS APPARENTLY WORKING UP TO ☑ NOT WORKING UP TO ☐ MEASURED MENTAL ABILITY

Days Belonging 132 Conference date Did not come for appt.

Days Absent 5 Tardy 12 Teacher's Signature (Full name) Mrs. Mae Myers

Form [redacted]
(5-17-72)

Form A 93-1 (1)

PREVENTIVE PROCEDURES – INOCULATIONS AND SPECIAL TESTS

Page 8

INOCULATIONS	BASIC SERIES (Give Dates)	BOOSTERS (Give Dates)			INOCULATIONS	BASIC SERIES (Give Dates)	BOOSTERS (Give Dates)			SPECIAL TESTS	DATE	RESULT	DATE	RESULT
Diphtheria					Measles (Rubeola)					Hemoglobin				
Whooping Cough					German Measles (Rubella)					Urinalysis				
Tetanus										Tuberculin				
Typhoid Fever										Feces				
Smallpox														
Poliomyelitis – Alternate (Oral)	Type I													
	Type II													
	Type III													

MEDICAL APPRAISAL BY PHYSICIAN (By Whom – Date)

Grade	SIGNIFICANT CONDITIONS (Physical, Mental, Emotional) – RECOMMENDATIONS
Pre-School	
Elementary	Hay fever, Pollen [illegible]
Junior High	
Senior High	

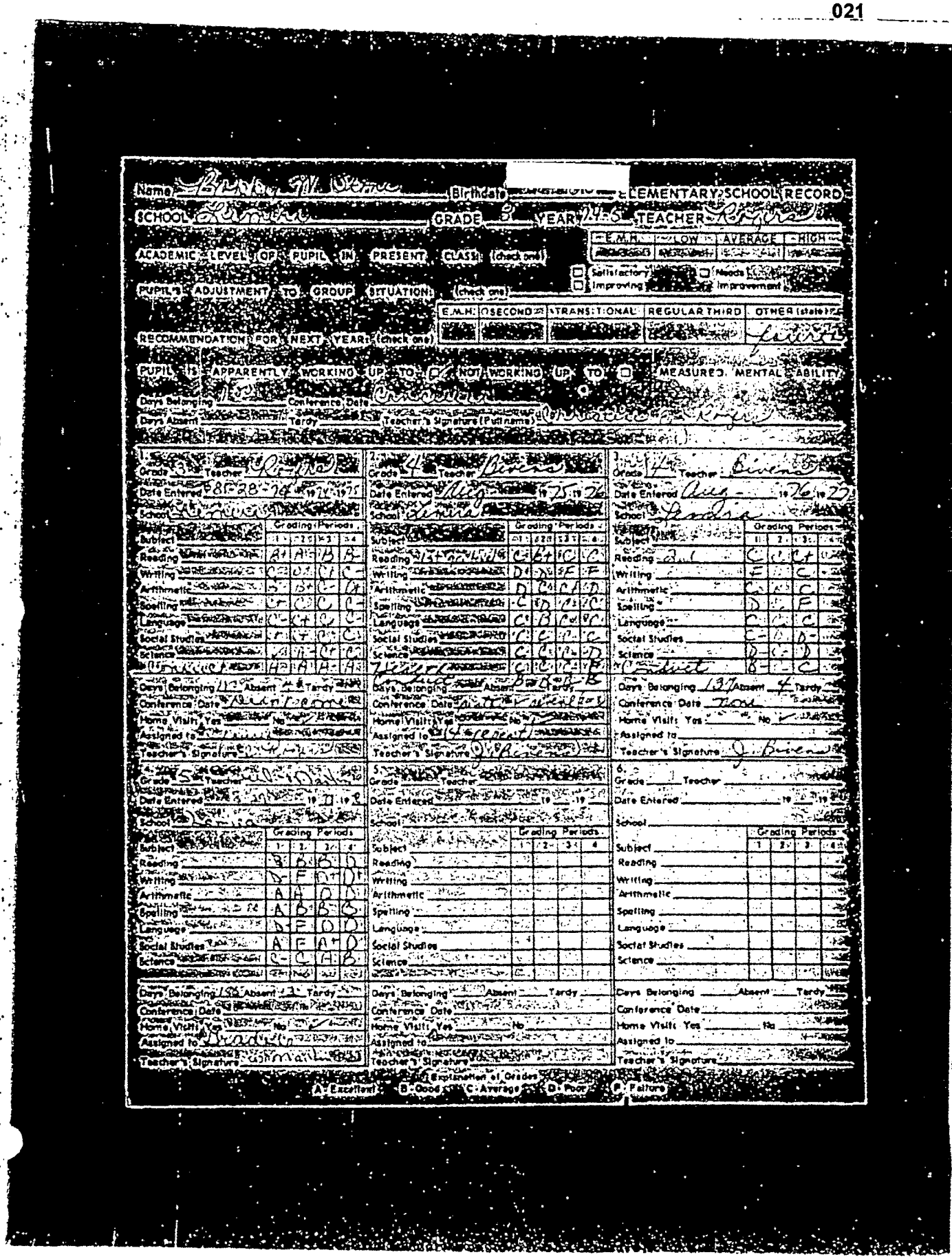
COMMENTS – FOLLOW-UP (By Whom – Date)

DENTAL APPRAISAL BY DENTIST (Grade: X–Condition Observed, C–Condition Corrected)

COMMENTS – FOLLOW-UP (By Whom – Date)

	Pre-School	Elementary	Junior High	Senior High
Grade and Date				
Decayed, Missing, Filled				
Needs Space Maintainers				
Needs Orthodontia				
Needs Crowns and Bridge				
Needs Prosthesis				
Abscessed Teeth				
Referred to Dentist (Give Dates)				
Examining Dentist				

Recommended by: The South Carolina Department of Education and The South Carolina State Board of Health – Revised 1971



ELEMENTARY SCHOOL RECORD

Name [redacted] Birthdate [redacted]

SCHOOL [redacted] GRADE 3 YEAR 74-75 TEACHER [redacted]

ACADEMIC LEVEL OF PUPIL IN PRESENT CLASS (check one): E.M.H. | LOW | AVERAGE | HIGH

PUPIL'S ADJUSTMENT TO GROUP SITUATION: (check one) ☐ Satisfactory ☐ Needs Improvement ☐ Improving ☐ Improvement

E.M.H. | SECOND | TRANSITIONAL | REGULAR THIRD | OTHER (state)

RECOMMENDATION FOR NEXT YEAR: (check one)

PUPIL IS APPARENTLY WORKING UP TO ☐ NOT WORKING UP TO ☐ MEASURED MENTAL ABILITY

Days Belonging [redacted] Conference Date [redacted]

Days Absent [redacted] Tardy [redacted] Teacher's Signature (Full name) [redacted]

1. Grade 3 Teacher [redacted]
Date Entered 8-28-74 19 74 - 19 75
School [redacted]

Subject	Grading Periods 1	2	3	4
Reading	A+	A-	B	B-
Writing	C	C+	C	C-
Arithmetic	B-	B+	C-	C+
Spelling	C+	C	C	C-
Language	C-	C+	C	C-
Social Studies	C+	C+	C	C
Science	A	A-	C+	C
[redacted]	A+	A	A-	A

Days Belonging 132 Absent [redacted] Tardy [redacted]
Conference Date [redacted]
Home Visits Yes [redacted] No [redacted]
Assigned to [redacted]
Teacher's Signature [redacted]

2. Grade 4 Teacher [redacted]
Date Entered [redacted] 19 75 - 19 76
School [redacted]

Subject	Grading Periods 1	2	3	4
Reading	C	B+	C	C
Writing	D+	D	F	F
Arithmetic	D	C	C	D
Spelling	C	D	C	C
Language	C	B	C	C
Social Studies	C	C	C	C
Science	C	C	C-	D
[redacted]	C	C	C	F

Days Belonging [redacted] Absent [redacted] Tardy [redacted]
Conference Date [redacted]
Home Visits Yes [redacted] No [redacted]
Assigned to [redacted]
Teacher's Signature [redacted]

3. Grade 4 Teacher [redacted]
Date Entered [redacted] 19 76 - 19 77
School [redacted]

Subject	Grading Periods 1	2	3	4
Reading	C	C	C+	
Writing	F		C	
Arithmetic	C	C	C	
Spelling	D		F	
Language	C	C	C	
Social Studies	C-	C	D-	
Science	D-	C-	D	
[redacted]	B		C	

Days Belonging 137 Absent 4 Tardy [redacted]
Conference Date [redacted]
Home Visits Yes [redacted] No [redacted]
Assigned to [redacted]
Teacher's Signature [redacted]

4. Grade 5 Teacher [redacted]
Date Entered [redacted] 19 [redacted] - 19 [redacted]
School [redacted]

Subject	Grading Periods 1	2	3	4
Reading	B	B	B	D
Writing	D-	F	D+	D
Arithmetic	A	A	D	D
Spelling	A	B	B	B
Language	D	F	D	D
Social Studies	A	F	A+	D
Science	C-	C	A	B-
[redacted]				

Days Belonging [redacted] Absent [redacted] Tardy [redacted]
Conference Date [redacted]
Home Visits Yes [redacted] No [redacted]
Assigned to [redacted]
Teacher's Signature [redacted]

5. Grade [redacted] Teacher [redacted]
Date Entered [redacted] 19 [redacted] - 19 [redacted]
School [redacted]

Subject	Grading Periods 1	2	3	4
Reading				
Writing				
Arithmetic				
Spelling				
Language				
Social Studies				
Science				
[redacted]				

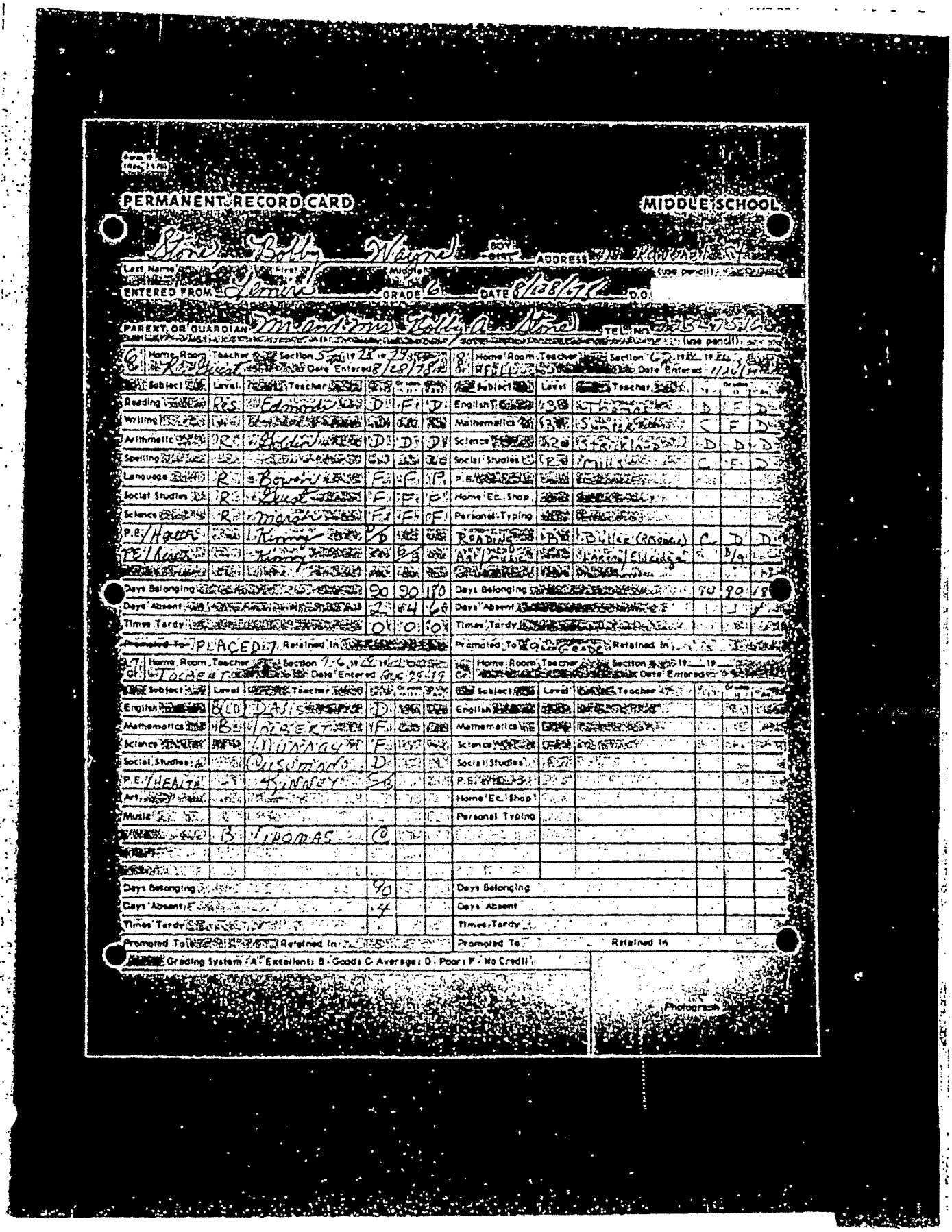
Days Belonging [redacted] Absent [redacted] Tardy [redacted]
Conference Date [redacted]
Home Visits Yes [redacted] No [redacted]
Assigned to [redacted]
Teacher's Signature [redacted]

6. Grade [redacted] Teacher [redacted]
Date Entered [redacted] 19 [redacted] - 19 [redacted]
School [redacted]

Subject	Grading Periods 1	2	3	4
Reading				
Writing				
Arithmetic				
Spelling				
Language				
Social Studies				
Science				
[redacted]				

Days Belonging [redacted] Absent [redacted] Tardy [redacted]
Conference Date [redacted]
Home Visits Yes [redacted] No [redacted]
Assigned to [redacted]
Teacher's Signature [redacted]

Explanation of Grades
A - Excellent B - Good C - Average D - Poor F - Failure



PERMANENT RECORD CARD

MIDDLE SCHOOL

Last Name: Stout First: Bobby Middle: Wayne BOY GIRL ADDRESS: [redacted] (use pencil)

ENTERED FROM: Lemon's GRADE: 6 DATE: 8/28/78 D.O.B.: [redacted]

PARENT OR GUARDIAN: Mrs. Billy A. Stout TEL. NO.: [redacted] (use pencil)

6 Gr. Home Room Teacher: Kincaid Section: 5 Date Entered: 8/28/78

Subject	Level	Teacher			
Reading	RES	Edmonds	D	F	D
Writing					
Arithmetic	R	Holden	D	D	D
Spelling					
Language	R	Bowen	F	F	F
Social Studies	R	Kincaid	F	F	F
Science	R	Marsh	F	F	F
P.E./Health		Kinney	B		
P.E./Health		Kinney	B	B	
Days Belonging			90	90	180
Days Absent			2	4	6
Times Tardy			0	0	0

Promoted To: PLACED Retained In:

7 Gr. Home Room Teacher: TOLBERT Section: 7-6 Date Entered: AUG 25 19

Subject	Level	Teacher			
English	R(LD)	DAVIS	D		
Mathematics	B	NIXON	F		
Science		KINNEY	F		
Social Studies		OSMOND	D		
P.E./HEALTH		KINNEY	B		
Art					
Music	B	THOMAS	C		
Days Belonging			90		
Days Absent			4		
Times Tardy					

Promoted To: Retained In:

8 Gr. Home Room Teacher: WEST Section: C2 Date Entered: 11/21

Subject	Level	Teacher			
English	B	THOMAS	D	F	D
Mathematics	B	SUTTLE	C	F	D
Science	R2	STRICKLAND	D	D	D
Social Studies	R	MILLS	C	F	D
P.E.					
Home Ec. Shop					
Personal Typing					
READING	B	BUTLER (ROOM 4)	C	D	D
ART/MUSIC		CARTER/ELDRIDGE		B/G	
Days Belonging			90	90	180
Days Absent				3	3
Times Tardy					

Promoted To: 9th Grade Retained In:

Grading System: 'A' Excellent; B - Good; C - Average; D - Poor; F - No Credit

Photograph

HIGH SCHOOL PERMANENT RECORD CARD School District Seventeen Sumter, S.C.

NAME Stone, Bobby (Boy / Girl) ADDRESS 469 Bell

ENTERED FROM Bates Middle GRADE 9 DATE 8/31/81 Use pr D.O.B

PARENT OR GUARDIAN Mrs Mabel Stone TEL. NO

STONE BOBBY AI-0690 YR-1981-82
GR-09 HMRM-212

COURSE	TEACHER	DAYS ABS	GRADES S1	S2	FNL	UNT CR
ENGLISH	RICHBURG	16	F	F	F	
MATH LAB	FREEMAN	49	F	C	C	1.00
CIVICS 8	BOCHETTE	23	F	F	F	
GEN SCI	THOMPSON	14	F	F	F	
RESOURCE	KLOTZLE	49	B	B	B	1.00
PHYS ED	MARTIN	16	F	D	D	1.00

ABSEX-33 ABSUNEX-18 TAR-6 YR CR-3.00
GPR-1.000 PRE CR-
CGPR-1.000 RANK-605/775 TOTCR-3.00

1. Home Room Teacher ____ Grade Level ____ School Date Entered ____ 19__

Subject	Teacher	Days Absent	Grade	
English				

Days Absent, Excused
Days Absent, Unexcused
Times Tardy

2. Home Room Teacher ____ Grade Level ____ School Date Entered ____ 19__

Subject	Teacher	Days Absent	Grade	
English				

Days Absent, Excused
Days Absent, Unexcused
Times Tardy

STONE BOBBY AI-0690 YR-1982-83
GR-10 HMRM-WD

COURSE	TEACHER	DAYS ABS	GRADES S1	S2	FNL	UNT CR
ENG II LA	PRICE		WF			
GMATH I	BRODDON	23	WF			
MATH LAB-V	HUNTER		WP			
GEN SCI	KINDER	21	WF			
RESOURCE	THOMPSON		WF			
IND ART I	FULWOOD	25	WF			

ABSEX- ABSUNEX- TAR- YR CR-
GPR- PRE CR- 3.00
CGPR- RANK- 727 TOTCR- 3.00
Times Tardy

3. Home Room Teacher ____ Grade Level ____ School Date Entered ____ 19__

Subject	Teacher	Days Absent	Grade	
English				

Days Absent, Excused
Days Absent, Unexcused
Times Tardy

4. Home Room Teacher ____ Grade Level ____ School Date Entered ____ 19__

Subject	Teacher	Days Absent	Grade	
English				

Days Absent, Excused
Days Absent, Unexcused
Times Tardy

WITHDREW 10/15/82 Date Reason
RETURNED Date Reason
WITHDREW 10-15-82 Date
GRADUATED Date TOTAL UNITS
GRADE POINT RATIO RANK
DIPLOMA CERTIFICATE
CREDITS SENT TO Date
CREDITS SENT TO Date

Grading System: A-Excellent; B-Good; C-Average; D-Poor; F-No credit

W

024

Child's name Bobby Floyd Stone

Date of birth [redacted] Born at [redacted]

Place of birth Florence

Father's name Bobby D. Stone

Father's occupation Nolan Dev. Co.

Father's education

Father's place of birth

Mother's name Myrtle Floyd Stone

Mother's occupation

Mother's education

Mother's place of birth

Home address Easton, Pa. (10 N. Church)

Telephone number

With whom does the child reside? Parents

Family doctor Dr. Seitz

Was your child's birth a boy? Girl

Number of brothers and sisters Younger Sister

Grade

Kindergarten

I. NAME _____ (LAST) (FIRST) (MIDDLE) MALE ☐ FEMALE ☐ DATE OF BIRTH _____ YR. MO. DAY PLACE OF BIRTH _____ TOWN STATE NATIONALITY _____ CODE ☐

DATE	LOCAL ADDRESS*	PHONE*	DATE OF ATTENDANCE*	NAME OF SCHOOL*
72-73	[illegible]	—	9-3-71	[illegible]

II. DROP-OUT AND RE-ENTRY RECORD

DATE	SCHOOL AND GRADE LEFT	REASON	DATE RE-ENTERED	SCHOOL AND GRADE RE-ENTERED
1-19-72	[illegible]	[illegible]		

IV. PHOTOGRAPH

1971-72

III. FAMILY DATA

	MOTHER	FATHER
NAME OF PARENTS		
HOME ADDRESS		
NATIONAL DESCENT		
DATE NATURALIZED		
LANGUAGE IN HOME		
OCCUPATION		
EDUCATION		
MARITAL STATUS		
DECEASED		
WITH WHOM DOES CHILD RESIDE*		

CODE FOR REASONS FOR LEAVING SCHOOL

(R)—TRANSFERRED EP—EMPLOYMENT PERMIT D—DEAD

PI—PERMANENT ILLNESS OA—OVER LEGAL AGE M—MARRIED

DATE AND GRADE RECORD STARTED 9-22-71

NUMBER CHILDREN IN FAMILY* 7

BOYS* 2 GIRLS* 2

*REMARKS REGARDING HOME CONDITIONS

DATE	

DATE 9-10-71

AGE 6

GRADE 1

V. ELEMENTARY SCHOOL RECORD

	YEAR		71-72									
	SUBJECTS	KDG.	1st GRADE Reading Writing	1st GRADE Arithmetic	GRADE	GRADE	GRADE	GRADE	GRADE	GRADE
ARITHMETIC			D M D	B+ C+						
ENGLISH	READING		D C a	C+ C						
	LANGUAGE GRAMMAR		D D-	B C						
	HANDWRITING		D D	B C						
	SPELLING									
SOCIAL STUDIES	S.S		C C	B C+						
SCIENCE	GENERAL SCIENCE			C+						
	AGRICULTURE									
	PHYSIOLOGY HYGIENE		D+	B-						
ARTS AND CRAFTS	HOUSEHOLD ARTS									
	INDUSTRIAL ARTS									
	ART									
	MUSIC									
DAYS PRESENT			83	87	10					
DAYS ABSENT			7	3	5					
TIMES TARDY										
REMARKS										

VII.

VI. SECONDARY SCHOOL RECORD

YEAR	7TH GRADE	YEAR	8TH GRADE	YEAR	GRADE
WEEKS IN SCHOOL YEAR SUBJECTS	MARK 1ST 2ND / UNITS	WEEKS IN SCHOOL YEAR SUBJECTS	MARK 1ST 2ND / UNITS	WEEKS IN SCHOOL YEAR SUBJECTS	MARK 1ST 2ND / UNITS
UNITS FOR THE YEAR		UNITS FOR THE YEAR		UNITS FOR THE YEAR	
HALF DAYS ABSENT		HALF DAYS ABSENT		HALF DAYS ABSENT	

YEAR	GRADE	YEAR	GRADE	YEAR	GRADE
WKS. IN SCH. YR. SUBJECTS	HRS. PER WEEK / MARK 1ST 2ND / UNITS / POINTS	WKS. IN SCH. YR. SUBJECTS	HRS. PER WEEK / MARK 1ST 2ND / UNITS / POINTS	WKS. IN SCH. YR. SUBJECTS	HRS. PER WEEK / MARK 1ST 2ND / UNITS / POINTS
UNITS AND POINTS FOR YEAR		UNITS AND POINTS FOR YEAR		UNITS AND POINTS FOR YEAR	
UNITS AND POINTS TO DATE		UNITS AND POINTS TO DATE		UNITS AND POINTS TO DATE	

* USE PENCIL

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025

DATE	GRADE	INTELLIGENCE TESTS	C. A.	M. A.	I. Q.

DATE	GRADE	ACHIEVEMENT TESTS	C. A.	SCORE	NORM.

DATE	GRADE	INTEREST AND APTITUDE TESTS	C. A.	RAW SCORE	COM. SCORE

YEAR	GRADE						
WKS. IN SCH. 19 — SUBJECTS	HRS. PER WEEK	MARK 1ST	MARK 2ND	UNITS	POINTS		

YEAR	GRADE						
WKS. IN SCH. 19 — SUBJECTS	HRS. PER WEEK					UNITS	POINTS

PUB. SCHOOL SCORE	DATE 4/72	GRADE 1	TM	X TEST	SAT	BAT. PRI 1	SCORE
	WD	RDG	PAR	PNC	VOCAB	SPELL	LK ST	SK ARITH
	GE 1.4824	1.6505	1.2 62		1.0 21	1.4284		

IN SCHOOL SCORE	DATE 4/73	GRADE 1	TM	W TEST	SAT	BAT. PRI 1	SCORE
	WD	RDG	PAR	PNC	VOCAB	SPELL	LK ST	SK ARITH
	NGE 1.3203	1.0 21	1.4734	1.1203	1.5405	1.8560		

SICKNESS WHEN POSSIBLE

MUMPS	SMALLPOX	TYPHOID	TONSILITIS

IMMUNIZING AND DIAGNOSTIC PROCEDURES RECORD

YEAR AND RESULT	DIPHTHERIA	SMALLPOX	T-B TESTS	X-RAY	RESULT OF X-RAY

IX. GRADUATION FROM SENIOR HIGH SCHOOL

GRADUATION DATE	NAME OR SIGNATURE OF HIGH SCHOOL PRINCIPAL

NO. IN CLASS	RANK IN CLASS	NO. OF RANKS	COURSE COMPLETED

CODE OF BIRTH INFORMATION — CERTIFIED COPY OF BIRTH CERTIFICATE=BC; CHURCH RECORD=CR; FAMILY BIBLE=FB; SCHOOL RECORD=SR; PASSPORT=PP; PARENT'S STATEMENT=PS; LIFE INSURANCE POLICY=LI; IMMIGRATION CERTIFICATE=IC

X. EXTRA CURRICULAR ACTIVITIES

GRADE									
PUBLICATIONS									
BAND									
VOCAL MUSIC									
ORCHESTRA									
DRAMATICS									
STUDENT COUNCIL									
SAFETY PATROL									
CLASS OFFICER									
CLUBS									
AUDITORIUM ACTIVITIES									
ATHLETICS									

XI. EVALUATION OF PERSONAL AND SOCIAL ASSETS

GRADE	1ST									
COOPERATION	N	N								
COURTESY	N	N								
DEPENDABILITY	N	N								
INDUSTRIOUSNESS	N	N								
INITIATIVE	N	N								
LEADERSHIP	N	N								
EMOTIONAL MATURITY	N	N								
PERSONAL APPEARANCE	N	N								
SELF CONTROL	N	N								
HONESTY	N	N								
PERSEVERANCE	N	N								
SERVICE TO SCHOOL	N	N								
CODE	1-B									
B – BELOW										
N – NORMAL										
A – ABOVE										
NAME OF TEACHER										

XII. EDUCATIONAL FOLLOW-UP RECORD

RECORD SENT: DATE — TO: SCHOOL

NAME OF SCHOOL — DATE ENTERED

COURSE OF STUDY

REPORTED PROGRESS

XIII. RECORD OF COMMUNICATIONS FOR EMPLOYMENT

DATE	TO WHOM SENT	REASON

XIV. EDUCATIONAL PLANS | VOCATIONAL PLANS | INTERESTS AND HOBBIES | SOCIAL TALENTS

1032

026

Form A 98-3 (1)

SOUTH CAROLINA CUMULATIVE SCHOOL HEALTH RECORD

027

NAME OF PUPIL (Last, First, Middle): Stone, Bobby Wayne

Birth Tvd.
Birth Cert. on File
Date

SCHOOL (In Pencil): Johnsonville

Sex: M Race: W

NAME OF PARENT – GUARDIAN: Bobby + Mychelle Stone

RESIDENCE ADDRESS (In Pencil): Pearson

PHONE (In Pencil)

BUSINESS ADDRESS (In Pencil)

PHONE (In Pencil)

FAMILY PHYSICIAN (In Pencil): Dr Sanders

DENTIST (In Pencil)

DISEASE AND ILLNESS HISTORY (Give year if possible, otherwise yes)

Headaches (Frequent)		Rheumatic Fever		Diabetes	
Sore Throat (Frequent)		Heart Trouble		Convulsions	
Ear Infections (Frequent)		Asthma-Allergy		Muscle or Bone Weakness	
Other Illnesses, Injuries or Operations					

COMMENTS (By Whom – Date)

SCREENING PROCEDURES

COMMENTS – FOLLOW-UP (By Whom – Date)

GRADE		Pre-School	1	2	3	4	5	6	7	8	9	10	11	12
DATE (Year)			72	73										
Height	Fall		48	48										
In Inches	Spring		44	48										
Weight	Fall		38	39										
In Lbs.	Spring		38	40										
Vision	Both Eyes			20/										
Without	R		20/	20/										
Glasses	L		20/	20/										
Vision	Both Eyes													
With	R													
Glasses	L													
Type of Test			T	S										
Person Giving Test (Give Initials)			KB	BB										
Hearing	R		P	P										
	L		P	P										
Type of Test			A	A										
Person Giving Test (Give Initials)			KB	BB										

TEACHERS' OBSERVATIONS (Code: X–Condition Observed; C–Condition Corrected)

COMMENTS – FOLLOW-UP (By Whom – Date)

GRADE	Pre-School	1	2	3	4	5	6	7	8	9	10	11	12
DATE													
Abnormal Gait													
Poor Posture													
Skin Lesions													
Tires Easily													
Poor Food Habits													
Frequent Headaches													
Inflamed Eyes													
Squinting–Crossed Eyes													
Reads Too Close–Too Far													
Frequent Inattention													
Hearing Difficulties													
Mouth–Teeth													
Frequent Colds													
Frequent Sore Throat													
Marked Aggressiveness													
Undue Shyness													
Speech Defect													
Ties or Mannerisms													
Nail-Biting													
Undue Restlessness													
Excessive Use of Toilet													
(Other)													

Refer to South Carolina Manual For Use of the Cumulative School Health Record. Attach additional pages as needed for all sections of this record.

INDIVIDUAL PUPIL PROGRESS SHEETS

NAME Bobby Stone

First Reader Level	Date	Reader Page Completed	Workbook Page Completed
SCOTT FORESMAN SERIES			
We Read Pictures			
We Read More Pictures			
Before We Read	11-27-73		✓
Sally Dick and Jane	3-5-73	✓	
Fun With Our Family	3-8-73	✓	
Fun Wherever We Are	3-12-73	✓	
Guess Who			
Fun With Our Friends			
More Fun With Our Friends			
The New We Three			
ECONOMY COMPANY			
Phonetic Keys To Reading			
Tag	1-10-73		96
Dot and Jim	5-15-73		96
All Around			
HOUGHTON MIFFLIN SERIES			
Getting Ready To Read			
Tip			
Tip and Mitten			
The Big Show			
Jack and Janet			
Up and Away			
Listen and Learn			
Listen and Do			
Story Concept Cards	2-23-73	✓	✓
Reading Rate	4-12-73	95	104
Reading Power	5-23-73	82	90

029

SIXTIES EDITION

BASIC READING TEST

to accompany

BEFORE WE READ

Marion Monroe · Helen M. Robinson

The New Basic Readers

CURRICULUM FOUNDATION SERIES®

SCOTT, FORESMAN AND COMPANY

ATLANTA
DALLAS
GLENVIEW
PALO ALTO
OAKLAND, N.J.

NAME Bobby Stone

SCHOOL Johnsonville GRADE 1

TEACHER Bacus

DATE OF TEST 11-8-72

DATE OF BIRTH

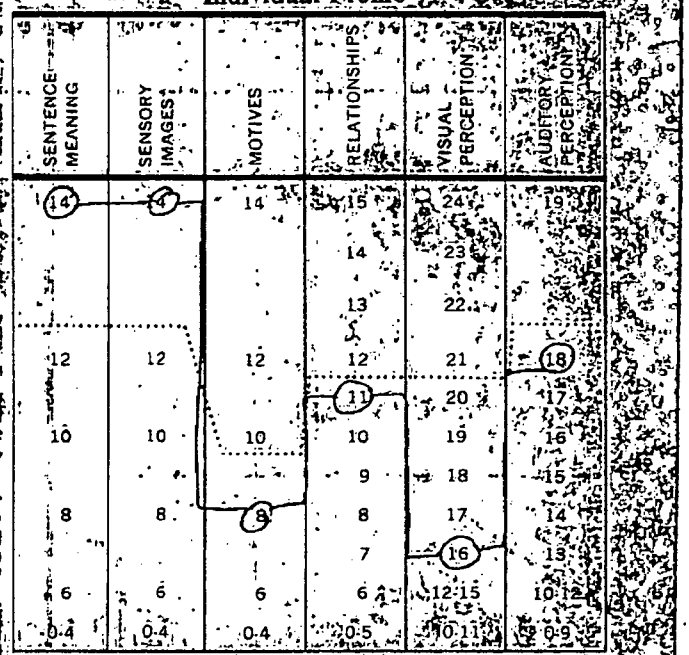
AGE: YEARS 7 MONTHS 2

INTELLIGENCE TEST DATE GIVEN IQ

COMMENTS

SUBTEST		POINTS
I.	Sentence Meaning	14
II.	Sensory Images	8 14
III.	Motives	8
IV.	Relationships	11
V.	Visual Perception	16
VI.	Auditory Perception	18
	Total Points (or per cent correct)	81
	Percentile	
	Rating	Low

Individual Profile



Percentiles shown are based on 1967 and 1968 scores.

TOTAL POINTS	0-69	71	76	80	82	84	85	86	88	89	90	91	92	93	94	95	96	98-100
PERCENTILE	1-4	5	10	15	20	25	30	35	40	45	50	55	60	65	70	75	80	85	90	95-99
RATING	VERY LOW		LOW						AVERAGE							HIGH		VERY HIGH		

MEDIAN 90

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Metropolitan Readiness Tests

FORM A

by GERTRUDE H. HILDRETH, NELLIE L. GRIFFITHS, MARY E. McGAUVRAN

NAME Bobby Stone BOY ✓ GIRL ___ DATE OF TESTING 1971 (Year) 10 (Month) 4 (Day)

TEACHER [redacted] SCHOOL J- Elem DATE OF BIRTH ___ (Year) (Month) (Day)

CITY Jamestville COUNTY Florence STATE S.C. PUPIL'S AGE Yrs 6 Mos. 1

GRADE 1 NUMBER OF MONTHS KINDERGARTEN TRAINING ___

TEST	RAW SCORE
1. WORD MEANING	3
2. LISTENING	2
3. MATCHING	4
4. ALPHABET	3
5. NUMBERS	3
6. COPYING	2
Total Score, Tests 1-6	17
Percentile Rank	10
Letter Rating	D

Readiness status, recommendation, other scores, remarks:

79 I.Q.

Metropolitan Readiness Tests

by GERTRUDE H. HILDRETH, NELLIE L. GRIFFITHS, MARY E. McGAUVRAN

NAME Abby Stone BOY ✓ GIRL ___ DATE OF TESTING 7 1 9 20
Year Month Day

TEACHER P. Tanner SCHOOL Johnsonville DATE OF BIRTH ___
Year Month Day

CITY Johnsonville COUNTY Florence STATE S. C PUPIL'S AGE Yrs ___ Mos. ___

GRADE 1 NUMBER OF MONTHS KINDERGARTEN TRAINING ___

TEST	RAW SCORE
1. WORD MEANING	41
2. LISTENING	12
3. MATCHING	8
4. ALPHABET	15
5. NUMBERS	14
6. COPYING	6
Total Score, Tests 1-6	59
Percentile Rank	59
Letter Rating	C

Readiness status, recommendation, other scores, remarks:

HF

NAME [illegible] Stan DATE OF BIRTH

SCHOOL Johnsonville E.

IQ TEST DATE

INDIVIDUAL CUMULATIVE RECORD
Scott, Foresman Reading Tests

OPEN HIGHWAYS TESTS/GRADES 1-4

STARTER CONCEPT CARB

Subtests	Scores
I. Scrutiny	10
II. Ph.-Gr. Relationships	28
III. Concepts	8
Total	46
Percentile	65 Ave.

DATE TESTED 9-1-73

AGE

GRADE 1-B

READY TO ROLL

Subtests	Scores
I. Scrutiny	10
II. Ph.-Gr. Relationships	12
III. Concepts	16
IV. Comprehension	7
Total	34
Percentile	30 Ave.

DATE TESTED 4-12-73

AGE

GRADE 1-B

ROLLING ALONG

Subtests	Scores
I. Scrutiny	
II. Ph.-Gr. Relationships	
III. Concepts	
IV. Comprehension	
Total	
Percentile	

DATE TESTED

AGE

GRADE

MORE POWER

Subtests	Scores
I. Ph.-Gr. Relationships	
II. Word Study	
III. Comprehension	
IV. Pre-Dictionary Skills	
Total	
Percentile	

DATE TESTED

AGE

GRADE

MOVING AHEAD

Subtests	Scores
I. Ph.-Gr. Relationships	
II. Word Study	
III. Comprehension	
IV. Pre-Dictionary Skills	
Total	
Percentile	

DATE TESTED

AGE

GRADE

SPLENDID JOURNEY

Subtests	Scores
I. Ph.-Gr. Relationships	
II. Word Study	
III. Comprehension	
IV. Pre-Dictionary Skills	
Total	
Percentile	

DATE TESTED

AGE

GRADE

SPEEDING AWAY

Subtests	Scores
I. Ph.-Gr. Relationships	
II. Word Study	
III. Comprehension	
IV. Pre-Dictionary Skills	
Total	
Percentile	

DATE TESTED

AGE

GRADE

OPEN HIGHWAYS, 4

Subtests	Scores
I. Word and Phrase Meaning	
II. Sentence and Paragraph Meaning	
III. Main Idea	
IV. Relationships	
V. Scrutiny-Context	
VI. Phonetic Analysis	
VII. Structural Analysis	
VIII. Dictionary	
Total	
Percentile	

DATE TESTED

AGE

GRADE

NOTE:

Scores at or below the 25th percentile can be circled in color.

1038

032

STARTER CONCEPT CARDS

reading test

033

OPEN HIGHWAYS

a diagnostic and developmental reading program

Bobby Stone

NAME

DATE OF BIRTH

AGE YEARS MONTHS

2-1-73

DATE OF TEST

Johnsonville Elem. 1

SCHOOL GRADE

Backus

TEACHER

COMMENTS

subtest	points	individual profile
I. Scrutiny	10	0-1 2 3 4 5 6 7 8 9 (10)
II. Phonemic-Graphemic Relationship	28	0-3 6 9 12 15 18 21 24 (27) 30
III. Concepts	8	0-1 2 3 4 5 6 7 (8) 9 10
total	46	Average

percentile — 65

Unstandardized Edition

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READY TO ROLL

034

reading test

Marion Monroe / Helen M. Robinson

OPEN HIGHWAYS

a diagnostic and developmental reading program

Stone, Bobby — NAME

April 12, 1973 — DATE OF TEST

DATE OF BIRTH

Johnsonville — SCHOOL

1-B — GRADE

AGE — YEARS — MONTHS

Mrs Backus — TEACHER

subtest	scores	individual profile
I. Scrutiny	10	0-1 2 3 4 5 6 7 8 9 (10)
II. Phoneme-Grapheme-Relationships	12	0-2 3 4 5 6 7 8 9 10 11 (12) 13 14 15 16 17 18 19 20
III. Concepts	10	0-1 2 3 4 5 6 7 8 9 (10)
IV. Comprehension	2	0-1 (2) 3 4 5 6 7 8 9 10
total	34	*(Scores to the left of the dotted line are at or below the 25th percentile.)*
percentile	30	
rating	average	

total	0-21	22	26	29	31	33	35	37	38	40	41	42	43	44	45	46	47	48	49	50
percentile	0-4	5	10	15	20	25	30	35	40	45	50	55	60	65	70	80	85	95	97	98-99
rating	very low		low				average									high			very high	

median 41

Standardized Edition
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035

I. NAME (PRINT) LAST: Stone FIRST: Bobby MIDDLE: Wayne | SEX: M | RACE: W | BIRTH: MONTH — YEAR: — TOWN: Florence STATE: SC

RECORD STARTED: DATE 4/27/77 SCHOOL Eastern GRADE 4 | AUTHORITY FOR BIRTH DATA:

II. 1st PHOTOGRAPH — PASTE

DATE: AGE: GRADE:

III. FAMILY DATA (USE PENCIL)

	NAME	CHANGE IN FAMILY STATUS	ADDRESS	PHONE	OCCUPATION	NUMBER OF CHILDREN
FATHER	Bobby Stone		Rt 5 Box 133			BOYS: 2
MOTHER (MAIDEN NAME)	Maybell Floyd		~~housewife~~		housewife	GIRLS 2
GUARDIAN						
PUPIL LIVES WITH		(RELATION)				

V. 2nd PHOTOGRAPH — PASTE

DATE: AGE: GRADE:

IV. TRANSFER — DROP-OUT — RE-ENTRY RECORD

DATE	SCHOOL & GRADE LEFT	REASON	DATE RE-ENTERED	SCHOOL & GRADE RE-ENTERED	REMARKS

VI. ELEMENTARY SCHOOL RECORD

GRADE	4 (5 4C days)
YEAR 19	77-78
READING	C
WRITING	D
ARITHMETIC	D
SPELLING	F
LANGUAGE	D+
SCIENCE	
GEOGRAPHY	
HISTORY	
SOCIAL STUDIES	D
MUSIC	S
ART	S
Health and Safety	C
Conduct	B
DAYS ATTENDING	40
DAYS PRESENT	39
TIMES TARDY	1
PROMOTION*	yes

*PROMOTION CODE: YES-PROMOTED NO-RETAINED ADV-ADVANCED

DEFINITION OF MARKS: A 90-100 B 80-89 C 75-84 D 70-74 F BELOW 70 INCOMPLETE

VII. SECONDARY SCHOOL RECORD

YEAR:	GRADE:	YEAR:	GRADE:	YEAR:	GRADE:	YEAR:	GRADE:
WKS. IN SCH. YR.		WKS. IN SCH. YR.		WKS. IN SCH. YR.		WKS. IN SCH. YR.	
SUBJECTS	HRS PER WK. / MARK 1ST / 2ND / UNITS	SUBJECTS	HRS PER WK. / MARK 1ST / 2ND / UNITS	SUBJECTS	HRS PER WK. / MARK 1ST / 2ND / UNITS	SUBJECTS	HRS PER WK. / MARK 1ST / 2ND / UNITS
UNITS FOR YEAR		UNITS FOR YEAR		UNITS FOR YEAR		UNITS FOR YEAR	
UNITS TO DATE		UNITS TO DATE		UNITS TO DATE		UNITS TO DATE	
DAYS ABSENT		DAYS ABSENT		DAYS ABSENT		DAYS ABSENT	

YEAR:	GRADE:	YEAR:	GRADE:	YEAR:	GRADE:	YEAR:	GRADE:
WKS. IN SCH. YR.		WKS. IN SCH. YR.		WKS. IN SCH. YR.		WKS. IN SCH. YR.	
SUBJECTS	HRS PER WK. / MARK 1ST / 2ND / UNITS	SUBJECTS	HRS PER WK. / MARK 1ST / 2ND / UNITS	SUBJECTS	HRS PER WK. / MARK 1ST / ART / UNITS	SUBJECTS	HRS PER WK. / MARK 1ST / 2ND / UNITS
UNITS FOR YEAR		UNITS FOR YEAR		UNITS FOR YEAR		UNITS FOR YEAR	
UNITS TO DATE		UNITS TO DATE		UNITS TO DATE		UNITS TO DATE	
DAYS ABSENT		DAYS ABSENT		DAYS ABSENT		DAYS ABSENT	

Official Copy
Dana Carolina
12/5/08

VIII. STANDARDIZED TEST RECORD

DATE	GRADE	FORM	INTELLIGENCE TESTS	C. A.	M. A.	I. Q.

IX. GRADUATION DATA

GRADUATION DATE:	NAME OR SIGNATURE OF PRINCIPAL:
NO. IN CLASS: / RANK IN CLASS:	COURSE COMPLETED:

X. HEALTH RECORD (check — give year if possible)

WHOOPING COUGH:

036

I. NAME (PRINT) LAST STONE, FIRST BOBBY, MIDDLE WAYNE — M/W — BIRTH — YEAR — TOWN — STATE SC

RECORD STARTED: DATE 3/80 SCHOOL Manchester 7 — AUTHORITY FOR BIRTH DATA:

II. 1st PHOTOGRAPH — PASTE — DATE: AGE: GRADE:

III. FAMILY DATA (USE PENCIL)

	NAME	CHANGE IN FAMILY STATUS	ADDRESS	PHONE	OCCUPATION	NUMBER OF CHILDREN
FATHER			RT 2 Box 627-2			BOYS:
MOTHER (MAIDEN NAME)	Maybelle Stone		Sumter, S.C.			
GUARDIAN						GIRLS:
PUPIL LIVES WITH	Parents	(RELATION)				

V. 2nd PHOTOGRAPH — PASTE — DATE: AGE: GRADE:

IV. TRANSFER — DROP-OUT — RE-ENTRY RECORD

DATE	SCHOOL & GRADE LEFT	REASON	DATE RE-ENTERED	SCHOOL & GRADE RE-ENTERED	REMARKS
6-78	LEMIRA-5	8-78		BATES-6	
1-80	BATES-7	1-80		MANCHESTER-7	
1-81	MANCHESTER-8		1-81	BATES-8	

VI. ELEMENTARY SCHOOL RECORD

GRADE:						6	7TH
YEAR 19__						79	80
READING						B	
WRITING							
ARITHMETIC						D	C
SPELLING							
LANGUAGE						F	
SCIENCE						F	D
GEOGRAPHY							
HISTORY							
SOCIAL STUDIES						F	C
MUSIC							
ART							
Health							D
DAYS BELONGING						180	175
DAYS PRESENT						176	
TIMES TARDY						0	0
"PROMOTION"						YES	YES

"PROMOTION" CODE: YES-PROMOTED NO-RETAINED ADV-ADVANCED

DEFINITION OF MARKS: A 90-100 B 85-84 C 75-84 D 70-74 F BELOW 70 I INCOMPLETE

VII. SECONDARY SCHOOL RECORD

YEAR:	GRADE:																							
Wks. in Sch. Yr.		WKS PER WK.	MARK 1ST	MARK 2ND	Units	Wks. in Sch. Yr.		WKS PER WK.	MARK 1ST	MARK 2ND	Units	Wks. in Sch. Yr.		WKS PER WK.	MARK 1ST	MARK 2ND	Units	Wks. in Sch. Yr.		WKS PER WK.	MARK 1ST	MARK 2ND	Units
SUBJECTS						SUBJECTS						SUBJECTS						SUBJECTS					
UNITS FOR YEAR						UNITS FOR YEAR						UNITS FOR YEAR						UNITS FOR YEAR					
UNITS TO DATE						UNITS TO DATE						UNITS TO DATE						UNITS TO DATE					
DAYS ABSENT						DAYS ABSENT						DAYS ABSENT						DAYS ABSENT					

Official Copy
Joan Carraway
12/5/08

VIII. STANDARDIZED TEST RECORD

DATE	GRADE	FORM	INTELLIGENCE TESTS	C. A.	M. A.	I. Q.

IX. GRADUATION DATA

GRADUATION DATE:	NAME OR SIGNATURE OF PRINCIPAL:
NO. IN CLASS: / RANK IN CLASS:	COURSE COMPLETED:

X. HEALTH RECORD (check — give year if possible)

Form 17
(Rev. 7-1-75)

037

PERMANENT RECORD CARD — MIDDLE SCHOOL

Stone, Bobby Wayne BOY ~~GIRL~~ ADDRESS 111 X
Last Name First Middle (use pencil)

ENTERED FROM Lenoir GRADE 6 DATE 8/28/78 D.O.

PARENT OR GUARDIAN Mr. and Mrs. Bobby A. Stone TEL. NO. (use pencil)

6 Gr. Home Room Teacher R. Guest Section 5 19 78 19 79 Date Entered 8/28/78

Subject	Level	Teacher	Grades I	Grades II	Av.
Reading	Res.	Edmonds	D	F	D
Writing					
Arithmetic	R	Golden	D	D	D
Spelling					
Language	R	Bowen	F	F	F
Social Studies	R	Guest	F	F	F
Science	R	Marsh	F	F	F
P.E./Health		Kinney	D/D		
PE/Health		Kinney		B/B	
Days Belonging			90	90	180
Days Absent			2	4	6
Times Tardy			0	0	0

~~Promoted To~~ PLACED 7 Retained In

Gr. Home Room Teacher Section 19 19 Date Entered

Subject	Level	Teacher	Grades I	Grades II	Av.
English					
Mathematics					
Science					
Social Studies					
P.E.					
Home Ec. Shop					
Personal Typing					
Days Belonging					
Days Absent					
Times Tardy					

Promoted To Retained In

7 Gr. Home Room Teacher TOLBERT Section 7-6 19 79 19 80 Date Entered AUG 29 '79

Subject	Level	Teacher	Grades I	Grades II	Av.
English	E(LD)	DAVIS	D		
Mathematics	B	TOLBERT	F		
Science		MURRAY	F		
Social Studies		CIGUMARO	D		
P.E./HEALTH		KINNEY	C/B		
Art					
Music					
	B	THOMAS	C		
Days Belonging			90		
Days Absent			4		
Times Tardy					

Promoted To Retained In

Gr. Home Room Teacher Section 19 19 Date Entered

Subject	Level	Teacher	Grades I	Grades II	Av.
English					
Mathematics					
Science					
Social Studies					
P.E.					
Home Ec. Shop					
Personal Typing					
Days Belonging					
Days Absent					
Times Tardy					

Promoted To Retained In

Grading System - A - Excellent; B - Good; C - Average; D - Poor; F - No Credit

Photograph

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81325

1044

COUNTY SUTTER DIST 17 SCHOOL 22

INDIVIDUAL TEST RECORD — S2

COMPREHENSIVE TESTS OF BASIC SKILLS
EXPANDED EDITION

CTBS
RE# 104701

NAME ▶ [illegible] TEACHER ▶ [illegible] BATCH ▶ [illegible]
SCHOOL ▶ BATES MIDDLE GRADE ▶ 6.1 GROUP ▶ [illegible]
CITY ▶ DATE OF TESTING ▶ 4/79 RUN DATE ▶ 6/21/79

TEST	RS		SS	GE	NP
READING VOCABULARY	033		516	62	6
READING COMPREHENSION	038		507	75	6
TOTAL READING	071		532	69	6
SPELLING	049		623	93	8
LANGUAGE MECHANICS	016		534	63	6
LANGUAGE EXPRESSION	031		613	87	7
TOTAL LANGUAGE	096		593	90	8
MATHEMATICS COMPUTATION	038		464	51	5
MATHEMATICS CONCEPTS	018		484	50	5
MATHEMATICS APPLICATIONS	020		505	61	6
TOTAL MATHEMATICS	076		472	54	5
TOTAL BATTERY	243		523	73	6
REFERENCE SKILLS	012		464	35	4
SCIENCE	026		503	70	7
SOCIAL STUDIES	027		545	73	6

NATIONAL PERCENTILE

1 2 5 10 20 30 40 50 60 70 80 90 95 98 99

STUDENT CLUES = 001

READING VOCABULARY

TRANSLATION

RECALL OF SYNONYM

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40

LANGUAGE MECHANICS

RECOGNITION/APPLICATION	
PUNCTUATION	CAPITALIZATION
1 2 3 4 5 6 7 8 9 10	11 12 13 14 15 16 17 18 19 20

LANGUAGE EXPRESSION

RECOGNITION/ APPLICATION	TRANSLATION	INTERPRE TATION	ANALYSIS
USAGE	DICTION	SYNTACTIC RELATION	ORGANIZATION
21 22 23 24 25 26 27 28 29 30	31 32 33 34 35 36 37 38 39 40 41 42 43 44	45 46 47 48 49	50 51 52 53 54 55

READING COMPREHENSION

RECOGNITION/ APPLICATION	TRANSLATION		INTERPRETATION			ANALYSIS
LITERAL RECALL	REWORDING	CONTEXT CLUES	MAIN IDEA	DETAIL & PHRASE MEANING	CONCLUSIONS	STRUCTURE/ STYLE
6 13 16 21 22 26 33 34	8 20 23 36 41 45	7 9 14 15 28	2 12 24 38 44	19 30 37 39	10 11 17 31 37 42 43	3 4 5 18 25 27 29 35 40

SPELLING

RECOGNITION/APPLICATION	TRANSLATION
RECALL OF RULE	CONTEXT CLUES
1 2 3 4 5 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 32 33 34 35 36 37 39 40 41 44 45 46 50	6 31 38 42 43 47 48 49

MATHEMATICS COMPUTATION

APPLICATION			
ADDITION	SUBTRACTION	MULTIPLICATION	DIVISION
1 2 3 4 5 6 7 8 9 10 11 12	13 14 15 16 17 18 19 20 21 22 23 24	25 26 27 28 29 30 31 32 33 34 35 36	37 38 39 40 41 42 43 44 45 46 47 48

MATHEMATICS CONCEPTS

RECOGNI TION	INTERPRETATION/ANALYSIS		
[illegible]	NUMBER SYSTEMS	MEASURE MENT	PROBLEM SOLVING
10 13 14 15	1 2 6 7 8 9 16 22	11 12 19 20	3 4 5 17 18 21 23 24 25

MATHEMATICS APPLICATIONS

INTERPRETATION			ANALYSIS
NUMBER SYSTEMS	MEASURE MENT	PROBLEM SOLVING	[illegible]
27 28 29 30 31 33	34 38 41 43	26 32 35 36 37 39 42 45 47 48 49	40 44 46 50

REFERENCE SKILLS

RECOGNITION/APPLICATION		
PARTS OF A BOOK	DICTIONARY SKILLS	LIBRARY USE
14 15 16	6 7 8 9 10 18 19 20	1 2 3 4 5 11 12 13

SCIENCE

RECOGNITION	CLASSIFICATION	QUANTIFICATION	INTERPRETATION OF DATA	PREDICTION FROM DATA	HYP EVAL & DESIGN ANA	
26 27 28 29 30 35	5 6 7 8 9 10 22	1 2 3 12 19 37	11 13 14 23 34 36	15 16 17 18 20 24 25	4 21 31	33

SOCIAL STUDIES

RECOGNITION	TRANSLATION	INTERPRE TATION	APPLICATION	ANALYSIS
13 18 22 23 24 26 27 28 29 30 31 32 35	4 6 7 8 19 20 21	1 9 10 17 34	3 11 14 16 25 33 36 37	2 5 12 15

SCORE UNDERPROCESSED BY SC DEPT OF ED

LEGEND

RS	RAW SCORE	AAGE	ANTICIPATED ACHIEVEMENT GRADE EQUIVALENT
GE	GRADE EQUIVALENT	AASS	ANTICIPATED ACHIEVEMENT SCALE SCORE
SS	SCALE SCORE	DIFF	DIFFERENCE BETWEEN OBTAINED AND ANTICIPATED SCORE WHEN SIGNIFICANT
NP	NATIONAL PERCENTILE RANK	LP	LOCAL PERCENTILE RANK

CONDITIONAL CERTIFICATE OF IMMUNIZATION

This certificate permits

(First Middle Last) Date of Birth

to be enrolled in a school in South Carolina on a temporary basis under one of the following conditions (check one box below).

- ☐ Child has received one or more immunizations and will complete them within 120 days.
- ☐ Transfer student admitted pending receipt of immunization records.
- ☐ Child has health problem. Immunizations will be resumed and/or completed within 120 days.

(Check (✓) one)

P.H. M.D. ☐ Priv. M.D. ☐ Mil. M.D. ☐

Authorized Medical Signature Date

For conditional certificate, dates of immunizations must be entered.

IMMUNIZATION & TUBERCULIN TEST RECORD

DTP						
Td						
TETANUS						
POLIO						
MEASLES						
RUBELLA						
MUMPS						

CERTIFICATE OF IMMUNIZATION

South Carolina Department of Health and Environmental Control

Bobby Wayne Stone

Child's Full Name

Date of Birth

Maybelle Stone

Full Name of Parent or Guardian

I certify that the child named above meets minimum immunization standards and is in compliance with regulations set forth by the South Carolina Department of Health and Environmental Control as listed within this certificate.

C. R. Stein 2nd

Authorized Medical Signature

Parents: After school registration, keep this form with your child's health records.

8-26-77

Date

DHEC 1125 80M (Rev 5/75)

I. NAME (PRINT) Stone (LAST) Bobby (FIRST) Wayne (MIDDLE)

M (SEX)

B. [ ] (MONTH) (DAY) (YEAR) Florence (TOWN) (STA)

RECORD STARTED: DATE 4/27/77 SCHOOL Eastern GRADE 4

W (RACE)

AUTHORITY FOR BIRTH DATA: [ ]

CUMULATIVE RECORD

SUMTER COUNTY SCHOOL DISTRICT NUMBER TWO

SUMTER, SOUTH CAROLINA

XIX. TRANSCRIPTS

DATE	TO WHOM SENT	REASON
9-7-77	Lemira School	Transferred.
Transferred to Lemira - Sumter Dist. 17		

XX. OTHER SIGNIFICANT DATA

1046

, HILL PRINTING COMPANY - SUMTER, S. C.
COMPILED AND ARRANGED BY PERMANENT RECORD COMMITTEE, 1953-55

040

NAME (PRINT) LAST STONE, FIRST BOBBY MIDDLE WAYNE | SEX M | BIRTH: MONTH DAY YEAR TOWN STATE S

RECORD STARTED: DATE 3/80 SCHOOL Manchester GRADE 7 | RACE W | AUTHORITY FOR BIRTH DATA:

NO READING GAIN (Pitman)

CUMULATIVE RECORD
SUMTER COUNTY SCHOOL DISTRICT NUMBER TWO
SUMTER, SOUTH CAROLINA

XIX. TRANSCRIPTS

DATE	TO WHOM SENT	REASON
4-7-81	BATES MIDDLE SCHOOL	MOVED
Transferred to Bates - Sumter Dist. 17 jc		

NAME	CTBS		READING			LANGUAGE				ARITHMETIC/MATHEMATICS				TOTAL BATTERY	REFR SCIES. S.
			VOCAB	COMPR	TOTAL	MECH	EXPR	SPELL	TOTAL	COMPU	CNCPTS	APPLI	TOTAL		
STONE BOBBY	FORM/LEVEL	S2 GE ▶	3.6	4.0	3.8	2.7	5.0	2.3	3.2	3.9	6.6	2.6	4.1	3.7	3.3
	GRADE	07.6 SS ▶	373	417	386	380	477	350	385	371	469	317	376	356	373
765E-003-004	DATE	03/80 NP ▶	7	17	10	10	30	4	9	8	37	3	10	8	9
61202		▶													

1047

041

HILL PRINTING COMPANY - SUMTER, S. C.
COMPILED AND ARRANGED BY PERMANENT RECORD COMMITTEE, 1953-55

Bobby Stone – School Records

School Summary

- Bobby did not attend kindergarten.
- He failed the first grade at Johnstonville Elementary School and repeated at Johnstonville.
- Bobby began the second grade at Central Elementary School, but transferred later that year to Lemira Elementary in Sumter. His academic level was recorded as "low."
- Bobby was referred for a psychological evaluation by his 3rd grade teacher at Lemira Elementary. He was tested and placed in L.D. Resource.
- Bobby failed the 4th grade and repeated at Lemira.
- During his second attempt at the 4th grade, Bobby transferred to Eastern Elementary..
- Bobby attended the 6th grade at Bates Middle School. He failed the 6th grade, but was "placed" into 7th grade.
- Bobby attended part of the 7th grade at Bates Middle School. During that time, he was tested and moved from L.D. Resource to EMH Resource. During the spring of his 7th grade year, Bobby transferred from Bates Middle to Manchester Middle School (in Sumter School District #2).
- Bobby attended the 8th grade in Sumter District #17. All of his classes were either "Basic" or "Resource." His final grades were a "D" in every class. He was promoted to the 9th grade at the end of the school year.
- Bobby attended 9th grade at Sumter High School. He received mostly Cs and Fs.
- He began the 10th grade at Sumter High School, but withdrew during the first semester when he was committed to DJJ. He dropped out of school in the 10th grade at age 17.

IQ Scores

Date/Age	School/Grade	Test	Results			Notes
2/18/1975 (Age 9)	Lemira Elementary (3rd Grade)	WISC	VIQ 97	PIQ 76	**FSIQ** **86**	"Weaknesses are in visual perception, visual memory and alertness to details, and in rote and immediate memory. Wide variance in scores indicate deficits in sequencing and spacial abilities at the performance level." "The examiner noticed that his eyes did not seem to work together properly." Recommended for L.D. Resource.
10/12/1976 (Age 11)	Lemira Elementary (4th Grade, second attempt)	WISC-R	VIQ 90	PIQ 70	**FSIQ** **78**	Test results "indicate major problems in visual-motor coordination and integration." "Bobby is functioning overall in the borderline range of intelligence, with very substantial deficits in the performance area." Recommended for continued L.D. Resource.
11/1/1979 (Age 14)	Bates Middle (7th Grade)	WISC-R	VIQ 73-81	PIQ 66-76	**FSIQ** **69-75**	"Bobby is very small for his age, several inches below five feet." "Bobby is functioning overall in the EMH range. His verbal scores have dropped considerably, from the normal range to slow learner." Change of placement to EMH Resource is necessary.

Academic/Other Testing

Date/Age	School/Grade	Test/Results			
10/12/1976 (Age 11)	Lemira Elementary (4th Grade, second attempt)	**Peabody Picture Vocabulary Test** Low average psychological functioning.	**Bender-Gestalt** Score = 6 Results indicate low psychological functioning.	**WRAT** Reading - 2.5 grade level. Arithmetic – 2.5 grade level.	**Draw-A-Man** Very low psychological functioning.
11/1/1979 (Age 14)	Bates Middle (7th Grade)	**Peabody Picture Vocabulary Test** Slow learner range of functioning.	**Bender** Score was below the 5th percentile, at a quality level expected of an average 8-5 year old.	**WRAT** Reading – 4.2 grade level, 4th percentile. Spelling – 2.9 grade level, 1st percentile. Math – 3.6 grade level, 2nd percentile.	**AAMD** Indicated adaptive functioning generally below the normal range. Only Numbers and Time, Vocational Activity and Responsibility were in the normal range. Independent Functioning (IQ equivalent = 56) and Economic Activity (IQ equivalent = 59) were the lowest areas.

Stone Siblings
School Failures & IQ Scores

Jerry Stone

- Jerry failed 1st grade and had to repeat.
- He also failed the 2nd grade, but he was "placed" into 3rd grade.
- In the 4th grade (age 10), Jerry was evaluated and placed in EMH Resource. He remained in the resource program for the remainder of his school history.
- Jerry failed the 7th grade, but was "assigned to 8th grade by the principal."
- Jerry failed the 8th grade, receiving an F in all of his classes except for PE (in which he received a B). He repeated the 8th grade.
- During his second attempt at the 8th grade, Jerry received Fs in English, Math and Social Studies. He received Ds in Reading (resource) and Health, and he received Cs in Science, PE, Art and Music.
- Jerry technically failed the 8th grade a second time, but he was "promoted to 9th – district policy."
- Jerry's 9th grade scores are: no credit for remedial reading; C- in remedial math; D in science; F in English, C- in civics; and, C+ in resource.
- Jerry's 10th grade scores are: D in remedial reading; C in remedial math; C in pre-biology; F in English I basic; C in PE; and B in resource.
- Jerry's 11th grade scores are: D in remedial reading, Cs in remedial math and U.S. history; no credit for English; and a B in resource.
- Jerry was 19 years old in the 12th grade. His final scores were Cs in remedial writing and math lab; F in remedial English; and Bs in Economics, Government and resource.
- Jerry failed to meet the state's minimum standards for math and writing on his first attempt at the Exit Exam for the Basic Skills Assessment Program. He repeated the exam and passed the math section with a score of 726 (the required minimum score was 700). But he failed the writing section a second time.
- Jerry received a High School Certificate for graduation on June 8, 1991 (not a regular diploma). He was 20 years old at the time.

Jerry Stone

Date/Age	School/Grade	Test	Results			Notes
9/14/1981 (Age 10)	Lemira Elementary (4th Grade)	WISC-R	VIQ 70	PIQ 69	**FSIQ** **68**	Jerry is a small boy for his age. His intellectual functioning is in the educable mentally handicapped range. His lowest scores were on vocabulary and visual-perceptual-motor skills. Recommended for EMH Resource.
9/12/1984 (Age 13)	Bates Middle (7th Grade)	WISC-R	VIQ 72	PIQ 78	**FSIQ** **73**	Jerry's scores range from severely below average to average. His verbal comprehension was in the significantly below average range. No other relative strengths or weaknesses were noted. The Peabody Individual Achievement Test indicated that receptive vocabulary and visual-motor integration were both significantly below average. Recommended for continued EMH Resource.
10/16/1987 (Age 16.5)	Sumter High (9th Grade)	WISC-R	VIQ 67	PIQ 69	**FSIQ** **66**	Intellectual assessment indicates that Jerry is currently functioning within the mildly handicapped range of ability. Achievement test data suggest continued severe deficits in all areas, with Jerry functioning below a third grade level in reading, on a third grade level in spelling and on a fifth grade level in math. Continued placement in EMH Resource required.
1/28/1991 (Age 19-9)	Sumter High (12th Grade)	WAIS-R	VIQ 81	PIQ 77	**FSIQ** **78**	Verbal mental ability, non-verbal mental ability and academic achievement were all below average in all areas measured.

Tammy Stone

- Tammy attended pre-school at Headstart. She failed the first grade and was determined to be "Educably Mentally Handicapped" in grade 1. She remained in the EMH program for the duration of her schooling.
- Tammy had consistently poor grades throughout her school performance. She failed the 10th grade **three** times. After her fourth attempt at the 10th grade, she was given a "certificate" from high school, not a diploma. No reason was listed. Her final class rank was 610/789.

Date/Age	School/Grade	Test	Results			Notes
5/31/1978 (Age 10)	Lemira Elementary (5th Grade)	WISC-R	VIQ 58-66	PIQ 72-82	**FSIQ** **65-71**	Tammy is a small, frail child. Her weakest areas appear to be in vocabulary, use of common sense, judgment and reasoning, associative thinking and general comprehension of facts, and, ability to perceive, analyze, synthesize, and reproduce abstract designs. Test data supports eligibility for EMH Resource.
5/27/1981 (Age 13)	Bates Middle (8th Grade)	WISC-R	VIQ 68	PIQ 86	**FSIQ** **75**	Tammy came to the testing in a very wrinkled shirt and had very short hair, appearing to be younger than her thirteen years. Her scores on the Peabody Individual Achievement Test are grade equivalent between 1st and 2nd grade in all areas.

Melina Stone

- Melinda was classified as Ecuably Mentally Handicapped by at least the 6th grade. Her WRAT scores in grade 6 were a verbal equivalent of 2.5 and a math equivalent of 3.9. Her yearly average grades were all Cs. She was promoted to 7th EMH. On her grade report, the word "compensatory" was written down the subject level of all her classes.
- Melinda consistently obtained below average grades.
- She dropped out of school after only 40 days into the 10th grade because she was pregnant and got married.
- There are no IQ scores recorded in Melinda's school records.