

Volume I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lee County

William Jeffrey Young, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

EUNICE MCCALL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case no. 2012-213542

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STATE OF SOUTH CAROLINA)

COUNTY OF LEE

THE STATE OF SOUTH CAROLINA,)
PLAINTIFFS

VS.
EFRAIN THOMAS, EUNICE MCCALL,
CHAD JAMES,
DEFENDANTS

DOCKET NO. 05-GS-31-102

VOLUME I

APRIL 4TH-6TH 2006
BISHOPVILLE, S.C.

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, JUDGE.

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ATTORNEY FOR JAMES

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COURT REPORTER

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1 THE COURT: YOU MAY CALL YOUR FIRST CASE.

2 MR. SAVERANCE: MAY IT PLEASE THE COURT, YOUR HONOR.

3 THE COURT: YES, SIR.

4 MR. SAVERANCE: YOUR HONOR, THE STATE WOULD CALL
5 INDICTMENT DOCKET NO. 05-GS-31-102. YOUR HONOR, THE
6 INDICTMENT IS FOR MURDER AND ACCESSORY AFTER THE FACT OF
7 MURDER, AND POSSESSION OF A FIREARM DURING THE CRIME OF
8 VIOLENCE. COUNT 1, IS MURDER CHARGING EUNICE DAVIS MCCALL
9 AND EFRAIN THOMAS WHILE IN LEE COUNTY ON ABOUT APRIL 7,
10 2005, WITH VIOLATING SECTION 16-3-10 OF THE CODE OF LAWS
11 OF SOUTH CAROLINA; IN THAT, THEY DID WITH MALICE
12 AFORETHOUGHT, KILL ONE TROY ROUSE BY SHOOTING HIM. TROY
13 ROUSE DID DIE AS A RESULT THEREOF.

14 YOUR HONOR, COUNT 2, IS ACCESSORY AFTER THE FACT OF
15 MURDER. CHARGING CHAD JAMES WITH, IN LEE COUNTY ON APRIL
16 7, 2005, WITH RENDERING ASSISTANCE TO EUNICE DAVIS MCCALL
17 AFTER THEY HAD COMMITTED THE CRIME OF MURDER. COUNT 3,
18 YOUR HONOR, POSSESSION OF A FIREARM DURING A CRIME OF
19 VIOLENCE, CHARGES EUNICE DAVIS MCCALL AND EFRAIN THOMAS
20 BY BEING IN POSSESSION OF A FIREARM DURING THE COMMISSION
21 OF A VIOLENT CRIME. AND A VIOLENT CRIME IN THIS CASE
22 WOULD BE THE MURDER. AND THAT'S VIOLATION OF 16-23-49,
23 YOUR HONOR. THAT WOULD BE THE CASE WE CALL AT THIS TIME.

24 THE COURT: LADIES AND GENTLEMEN, THE STATE HAS
25 CALLED FOR TRIAL, THE CASE OF THE STATE OF SOUTH CAROLINA

1 VERSUS CHAD JAMES. MR. JAMES, IF YOU WILL STAND. THE
2 STATE VERSUS EUNICE DAVIS MCCALL, THE STATE VERSUS EFRAIN
3 THOMAS. YOU MAY BE SEATED. THIS IS AN INDICTMENT
4 CHARGING MR. EUNICE DAVIS MCCALL AND EFRAIN THOMAS WITH
5 MURDER. AND ALSO POSSESSION OF A FIREARM DURING THE
6 COMMISSION OF A CRIME OF VIOLENCE. ALSO CHARGES CHAD
7 JAMES WITH ACCESSORY AFTER THE FACT OF MURDER. THE
8 DEFENDANTS HAVE PLED NOT GUILTY TO THESE CHARGES, AND ARE
9 PRESUMED TO BE NOT GUILTY OF THESE CHARGES UNLESS THE
10 STATE CAN PROVE THEM GUILTY. THE STATE MUST MEET THAT
11 BURDEN BY PRESENTING EVIDENCE WHICH CONVINCES A JURY OF
12 THEIR GUILT BEYOND A REASONABLE DOUBT.

13 IS THE DEFENSE READY FOR TRIAL?

14 MR. WHEELER: YES, SIR, YOUR HONOR.

15 MR. WATTS: YES, YOUR HONOR.

16 MR. JOHNSON: YES, YOUR HONOR.

17 THE COURT: ANY MATTER FROM THE DEFENSE RELATIVE TO
18 THE INDICTMENT?

19 MR. JOHNSON: YOUR HONOR, AS STATED BEFORE IN YOUR
20 CHAMBERS, ON BEHALF OF MY CLIENT CHAD JAMES, WE JUST
21 BELIEVE THAT THE ACCESSORY AFTER THE FACT OF MURDER, THE
22 BODY OF THE INDICTMENT WAS INCORRECT. HOWEVER, I THINK
23 AFTER DISCUSSING IT WITH THE COURT, THE COURT DECIDED THAT
24 IT DOES MET THE REQUIREMENTS. AND WE WANTED TO MAKE THAT
25 PART OF THE RECORD; THAT WE DID OBJECT PRIOR TO THE JURY

1 BEING SELECTED.

2 THE COURT: THE COURT WILL MAKE NOTE OF THE
3 OBJECTION, AND WILL ADDRESS IT IF NEED BE AT A LATER TIME.

4 MR. WHEELER: NOTHING FROM DEFENDANT THOMAS, YOUR
5 HONOR.

6 MR. WATTS: NOTHING AS TO DEFENDANT MCCALL, YOUR
7 HONOR.

8 THE COURT: MR. -- I DIDN'T HEAR WHAT YOU SAID,
9 COUNSEL.

10 MR. WHEELER: NOTHING AS TO DEFENDANT THOMAS, YOUR
11 HONOR.

12 THE COURT: LADIES AND GENTLEMEN, THE STATE IN THIS
13 CASE IS REPRESENTED BY COUNSEL. IF YOU WILL STAND AND
14 INTRODUCE YOURSELF, PLEASE.

15 MR. SAVERANCE: MY NAME IS PAT SAVERANCE.

16 MR. FATA: PAUL FATA.

17 THE COURT: AND THE DEFENSE IS REPRESENTED BY
18 COUNSEL. IF YOU WILL STAND AND INTRODUCE YOURSELF.

19 MR. WHEELER: WILL WHEELER, REPRESENTING MR. THOMAS.

20 MR. WATTS: TREY WATTS, REPRESENTING MR. MCCALL.

21 MR. JOHNSON: CHARLIE JOHNSON. I REPRESENT CHAD
22 JAMES.

23 THE COURT: THIS MATTER ALLEGES THE CRIMES OF MURDER
24 AND ACCESSORY AFTER THE FACT OF MURDER OCCURRING ON OR
25 ABOUT APRIL 7, 2005, IN WHAT AREA OF THE COUNTY,

1 SOLICITOR?

2 MR. SAVERANCE: YOUR HONOR, IT'S HERE IN BISHOPVILLE.
3 IT'S NEAR WILSON STREET. AND THAT IS OVER NEAR CHAPEL
4 ROAD WHERE THE RECREATION DEPARTMENT HAS A BALL FIELD.
5 AND OVER THERE WHERE THE TENNIS COURTS ARE AND THAT SORT
6 OF THING.

7 THE COURT: THE ALLEGED OFFENSE IS IN THE CITY OF
8 BISHOPVILLE NEAR THE TENNIS COURTS AS STATED ON OR ABOUT
9 APRIL 7, 2005 INVOLVING THE ALLEGED VICTIM TROY ROUSE. IS
10 ANY MEMBER OF THE JURY PANEL FAMILIAR WITH THE FACTS IN
11 THIS CASE? OR IF YOU HAVE HEARD ANYTHING ABOUT THE FACTS
12 OF THIS CASE, PLEASE STAND. YES, MA'AM. MS. HILL?

13 THE JUROR: MS. HILL. SHIRLEY HILL.

14 THE COURT: MS. HILL, DO YOU BELIEVE THAT FACT WOULD
15 AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IF SELECTED
16 AS A JUROR IN THIS CASE?

17 THE JUROR: YES, YOUR HONOR.

18 THE COURT: MS. HILL, WE WILL NOT CONSIDER YOU FOR
19 SELECTION AS A JUROR IN THIS CASE, BUT STAY WITH US. YOU
20 MAY BE SEATED. AND WITNESSES WHO MAY TESTIFY IN THIS
21 CASE, SOLICITOR, DO YOU HAVE A WITNESS LIST?

22 MR. SAVERANCE: YES, SIR. THE ONES I'VE WRITTEN OUT.

23 THE COURT: I'LL PUBLISH THEM.

24 MR. SAVERANCE: MAY I APPROACH, YOUR HONOR?

25 THE COURT: YES, SIR.

1. (THEREUPON, THE ATTORNEYS APPROACH THE BENCH AND
2 CONFER WITH JUDGE.)

3 THE COURT: THE FOLLOWING PEOPLE MAY TESTIFY AS
4 WITNESSES IN THIS CASE. AND IF YOU ARE, PLEASE STAND WHEN
5 I CALL YOUR NAME. TIFFANY HILL, COURTNEY JOHNSON,
6 SAMANTHA HICKMAN, KESHA SINGLETARY.

7 MR. SAVERANCE: SECILIA.

8 THE COURT: SECILIA SINGLETARY. JANICE ROSS, VELLO
9 PAAVEL.

10 MR. SAVERANCE: THAT'S VELLO PAAVEL, YOUR HONOR.

11 THE COURT: VELLO PAAVEL. ILLIA SIMMONS, STEPHEN
12 CURTIS, LENNY GREEN, LUCILLE, WESLEY, CHARLIE ROGERS,
13 CAPTAIN TOM BURKE, INVESTIGATOR THOMPSON, SALLIZA WILSON,
14 ALFRED ELMORE, CALVIN COLLINS, WENDY BELL, CHIEF MCCONNELL
15 SIMON, KENO SLATER, LARRY STIVENDER, EFRAIN THOMAS. FACE
16 THE JURY PANEL PLEASE. EUNICE MCCALL, CHAD JAMES, COREY
17 MCCLELLAN. IF ANY MEMBER OF THE JURY PANEL IS RELATED BY
18 BLOOD OR CONNECTED BY MARRIAGE, FRIENDSHIP, OR ANY
19 PERSONAL RELATIONSHIP WITH ANY OF THE PEOPLE WHOSE NAMES
20 I'VE JUST CALLED AS POSSIBLE WITNESSES, PLEASE STAND.

21 YES, SIR, MR.?

22 THE JUROR: MIXON.

23 THE COURT: AND WHO ARE YOU FRIENDS, RELATIVES OR
24 ASSOCIATES OF?

25 THE JUROR: CHAD JAMES.

1 THE COURT: AND WOULD THAT FACT AFFECT YOUR ABILITY
2 TO SIT AS A FAIR AND IMPARTIAL JUROR IF PICKED IN THIS
3 CASE?

4 THE JUROR: YES.

5 THE COURT: MR. MIXON, WE WILL NOT SELECT YOU AS A
6 JUROR IN THIS CASE. YOU MAY BE SEATED. ANYONE ELSE?
7 ANYONE STAND AT THIS TIME IF YOU ARE A FRIEND, RELATIVE,
8 OR CLOSE ASSOCIATE OF ANY OF THE WITNESSES WHOSE NAMES I
9 HAVE CALLED. YES, MA'AM.

10 THE JUROR: CHAD JAMES.

11 THE COURT: AND YOUR NAME, PLEASE?

12 THE JUROR: BRENDA EVANS.

13 THE COURT: WOULD THAT FACT AFFECT YOUR ABILITY TO
14 SIT AS A FAIR---

15 THE JUROR: YES.

16 THE COURT: ---IMPARTIAL JUROR IF SELECTED IN THIS
17 CASE?

18 THE JUROR: YES, SIR.

19 THE COURT: TELL ME YOUR NAME ONE MORE TIME.

20 THE JUROR: BRENDA EVANS.

21 THE COURT: MS. EVANS, WE WILL NOT CONSIDER YOU FOR
22 SELECTION AS A JUROR IN THE CASE. IF ANY MEMBER OF THE
23 JURY PANEL IS RELATED BY BLOOD OR CONNECTED BY MARRIAGE,
24 OR IF YOU ARE A FRIEND OR ACQUAINTANCE OF ANYONE EMPLOYED
25 IN THE ATTORNEY GENERAL'S OFFICE, THE SOLICITOR'S OFFICE,

1 THE -- MR. SAVERANCE AND MR. FATA'S OFFICE, OR IF YOU ARE
2 A FRIEND OR RELATIVE OF ANY OF THE DEFENSE ATTORNEYS,
3 PLEASE STAND.

4 MR. WATTS: YOUR HONOR, IF I MAY, MY PARTNER CARL
5 SMITH MAY BE ASSISTING IN THIS CASE AS WELL, SO I WOULD
6 LIKE TO PUBLISH HIS NAME TO SEE IF ANYONE ON THE JURY
7 PANEL KNOWS.

8 THE COURT: IF YOU ARE A FRIEND OR RELATIVE OF CARL
9 SMITH FROM HARTSVILLE? IF SO, PLEASE STAND.

10 (THEREUPON, NO RESPONSE.)

11 MR. WATTS: THANK YOU, YOUR HONOR.

12 THE COURT: IF YOU HAVE EVER BEEN EMPLOYED BY A LAW
13 ENFORCEMENT AGENCY. IF YOU HAVE EVER BEEN EMPLOYED WITH
14 LAW ENFORCEMENT, PLEASE STAND. ANY JURORS WHO HAVE EVER
15 BEEN EMPLOYED BY LAW ENFORCEMENT, PLEASE STAND.

16 THE JUROR: IN ANY CAPACITY? OR AS ADMINISTRATOR,
17 SECRETARY?

18 THE COURT: IF YOU HAVE EVER BEEN EMPLOYED WITH LAW
19 ENFORCEMENT, PLEASE STAND. YES, MA'AM.

20 THE JUROR: WELL I'VE WORKED AS AN ADMINISTRATOR FOR
21 THE OFFICE OF SPECIAL INVESTIGATIONS WITH THE AIR FORCE.

22 THE COURT: WHAT IS YOUR NAME, PLEASE?

23 THE JUROR: VALERIE HAYGOOD.

24 THE COURT: MS. HAYGOOD, WOULD THAT FACT AFFECT YOUR
25 ABILITY TO SIT AS A FAIR AND AN IMPARTIAL JUROR?

1 THE JUROR: NO, IT WOULD NOT.

2 THE COURT: AND THANK YOU. IF ANY MEMBER OF THE JURY
3 PANEL IS A MEMBER OR CONTRIBUTOR TO ANY GROUP WHICH HAS AS
4 ITS PRIMARY CONCERN THE PROMOTION OF LAW ENFORCEMENT OR
5 VICTIM'S RIGHTS; SUCH AS, MADD, SADD, CAVE, OR ANY SIMILAR
6 ORGANIZATIONS? IF SO, PLEASE STAND.

7 (THEREUPON, NO RESPONSE.)

8 THE COURT: IF ANY MEMBER OF THE JURY PANEL WAS
9 RELATED TO TROY ROUSE, OR A FRIEND OR ACQUAINTANCE OF HIS,
10 PLEASE STAND.

11 (THEREUPON, NO RESPONSE.)

12 THE COURT: IF ANY MEMBER OF THE JURY PANEL OR ANY
13 CLOSE FAMILY MEMBER OR CLOSE FRIEND HAS EVER BEEN THE
14 VICTIM OF MURDER, OR A SIMILAR CRIMINAL OFFENSE, PLEASE
15 STAND.

16 THE JUROR: I WAS A VICTIM OF A MURDER, MY MOTHER.

17 THE COURT: AND WHAT IS YOUR NAME, MA'AM?

18 THE JUROR: IESHA NEDD.

19 THE COURT: AND, MA'AM, WOULD THAT FACT AFFECT YOUR
20 ABILITY TO BE A FAIR AND IMPARTIAL JUROR IF SELECTED IN
21 THIS CASE?

22 THE JUROR: YES, SIR.

23 THE COURT: AND YOUR NAME AGAIN IESHA?

24 THE JUROR: IESHA NEDD.

25 THE COURT: NEDD. ALL RIGHT, WE WILL NOT SEAT YOU ON

1 THIS CASE. THANK YOU FOR BRINGING THAT TO OUR ATTENTION.

2 THE CLERK: NEDD, JUROR 204.

3 THE COURT: JUROR 204. DO YOU KNOW OF ANY REASON
4 WHATSOEVER WHY YOU CANNOT GIVE BOTH THE STATE OF SOUTH
5 CAROLINA AND THE DEFENDANTS A FAIR AND IMPARTIAL TRIAL?
6 IF YOU HAVE ANY REASON WHATSOEVER WHY YOU SHOULD NOT BE
7 CONSIDERED FOR SELECTION AS A JUROR IN THIS CASE, PLEASE
8 STAND. AT THIS TIME.

9 (THEREUPON, NO RESPONSE.)

10 THE COURT: ANY ADDITIONAL VOIR DIRE QUESTIONS
11 PROPOSED BY THE STATE OR THE DEFENSE?

12 MR. SAVERANCE: NONE FROM THE STATE, YOUR HONOR.

13 MR. WHEELER: NONE, YOUR HONOR.

14 MR. WATTS: NONE, YOUR HONOR.

15 MR. JOHNSON: NONE.

16 THE COURT: LADIES AND GENTLEMEN, WE WILL PROCEED
17 WITH JURY SELECTION. IF YOU WILL GIVE THE CLERK YOUR
18 ATTENTION. THE STRIKES ARE 10 AND 20.

19 MR. SAVERANCE: CAN WE APPROACH FOR ONE BRIEF SECOND,
20 YOUR HONOR?

21 THE COURT: YES, SIR.

22 (THEREUPON, THE ATTORNEYS APPROACH THE BENCH AND
23 CONFER WITH THE JUDGE.)

24 THE COURT: IF ANY OF THE JURORS ARE CURRENTLY BEING
25 REPRESENTED BY ANY OF THE LAWYERS INVOLVED IN THIS CASE,

1 OR IF YOU HAVE BEEN REPRESENTED BY THEM OR ANY MEMBER OF
2 THEIR LAW FIRM WITHIN THE PAST FIVE YEARS, PLEASE STAND.
3 YES, MA'AM.

4 THE JUROR: MR. WHEELER WAS MY LAWYER ABOUT 2 YEARS
5 AGO.

6 THE COURT: AND WHAT IS YOUR NAME, PLEASE?

7 THE JUROR: WANDA WATSON.

8 THE COURT: AND, MS. WATSON, WOULD THAT FACT AFFECT
9 YOUR ABILITY TO BE FAIR AND IMPARTIAL?

10 THE JUROR: I DON'T THINK SO.

11 THE COURT: THANK YOU FOR BRINGING THAT TO OUR
12 ATTENTION, MS. WATSON. SHE IS QUALIFIED TO SERVE. YES,
13 MA'AM.

14 THE JUROR: DEBORAH WILLIAMSON. I RETAINED PAUL FATA
15 ABOUT 2 AND HALF YEARS AGO.

16 THE COURT: AND WOULD THAT FACT AFFECT YOUR ABILITY
17 TO BE FAIR AND IMPARTIAL?

18 THE JUROR: NO.

19 THE COURT: AND YOUR NAME AGAIN, MA'AM?

20 THE JUROR: DEBORAH WILLIAMSON.

21 THE COURT: WILLIAMSON. THANK YOU. THE JUROR IS
22 QUALIFIED. YES, MA'AM.

23 THE JUROR: GEORGIA SCARBOROUGH. I AM BEING
24 REPRESENTED BY MR. PAUL FATA IN A CAR ACCIDENT.

25 THE COURT: AND IS THAT CURRENT REPRESENTATION?

1 THE JUROR: YES.

2 THE COURT: WE WILL NOT INCLUDE YOU FOR SELECTION AS
3 A JUROR IN THIS CASE. THANK YOU FOR BRINGING IT TO OUR
4 ATTENTION. ANYONE ELSE?

5 (THEREUPON, NO RESPONSE.)

6 THE COURT: MADAM CLERK, WE WILL PROCEED WITH JURY
7 SELECTION.

8 THE CLERK: AS I CALL YOUR NAME, PLEASE COME STAND TO
9 THE FRONT, AND TURN AROUND AND FACE THE AUDIENCE.

10 JUROR: 192 DEBORAH WILLIAMSON (F-W) DEFENSE STRUCK.
11 181 WOODROW THOMAS (M-B) STATE STRUCK. JUROR NO. 140
12 LEATHA PRESCOTT (F-B) ACCEPTED. JUROR NO. 129 EDDIE
13 MONTGOMERY (M-B) ACCEPTED. JUROR 133 WILLIE MYERS (M-B)
14 DEFENSE STRUCK. JUROR NO. 10 THOMAS BARWICK (M-W) DEFENSE
15 STRUCK. JUROR NO. 119 ANN MCFADDEN (F-B) ACCEPTED. JUROR
16 NO. 69 MYRON GREEN (M-B) STATE STRUCK. JUROR NO. 8
17 ANTHONY BAKER (M-B) ACCEPTED. JUROR NO. 124 BERTHA
18 MICHAEL (F-B) ACCEPTED. JUROR NO. 154 JIMMY RUBIN (M-B)
19 STATE STRUCK. JUROR NO. 77 VALERIE HEYWARD (F-B) DEFENSE
20 STRUCK. JUROR NO. 61 CALVIN FORTUNE (M-B) ACCEPTED.
21 JUROR NO. 188 TABETHA WESLEY (F-B) STATE STRUCK. JUROR
22 NO. 196 PATRICIA WINDBURN (F-W) DEFENSE STRUCK. JUROR NO.
23 67 LARRY GRANTHAM (M-W) ACCEPTED. JUROR NO. 107 GERARD
24 LUCAS (M-B) ACCEPTED. JUROR NO. 182 BARBARA TONEY (F-B)
25 DEFENSE STRUCK. JUROR NO. 123 AMANDA MELTON (F-W) DEFENSE

1 STRUCK. JUROR NO. 175 MARY SMITH (F-B) DEFENSE STRUCK.
2 JUROR NO. 97 MARTIN KEENAN (M-W) DEFENSE STRUCK. JUROR
3 NO. 206 JULIA SMALETZKA (F-W) DEFENSE STRUCK. JUROR NO.
4 37 MARION COOPER (F-B) ACCEPTED. JUROR NO. 32 FLORENCE
5 CANNON (F-B) ACCEPTED. JUROR NO. 45 SUSAN DAVIS (F-W)
6 DEFENSE STRUCK. JUROR NO. 84 CHRISTOPHER HOLMES (M-B)
7 STATE STRUCK. JUROR NO. 167 JAMES SHIRLEY (M-W)
8 ACCEPTED. JUROR NO. 109 DYRHANDA MACK (F-B) STATE STRUCK.
9 JUROR NO. 98 CHRIS KENNEDY (M-B) ACCEPTED.

10 THE COURT: SELECT TWO ALTERNATES. THE STRIKES ARE 1
11 AND 2 AS TO EACH ALTERNATE.

12 THE CLERK: JUROR NO. 83 LISA HOLLAND (F-W)
13 ACCEPTED. JUROR NO. 202 SYLVIA DEWITT (F-B) ACCEPTED.

14 THE COURT: ARE THERE ANY MATTERS REGARDING JURY
15 SELECTION AT THIS TIME?

16 MR. SAVERANCE: THERE ARE FROM THE STATE, YOUR HONOR.

17 THE COURT: WHAT SAYS THE DEFENSE? ANY MATTERS OF
18 LAW REGARDING JURY SELECTION?

19 MR. WHEELER: I HAVE A CROSS MOTION AS TO THE STATE
20 AS WELL, YOUR HONOR. WE NEED TO TAKE THAT UP.

21 THE COURT: LADIES AND GENTLEMEN, I NEED YOU TO GO TO
22 THE JURY ROOM THIS WAY. AND PLEASE DO DISCUSS THIS MATTER
23 WHILE YOU ARE BACK THERE.

24 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
25 PRESENCE OF THE JURY.)

1 THE COURT: LADIES AND GENTLEMEN, THOSE OF YOU WHO
2 WERE NOT SELECTED IN THE TRIAL OF THIS CASE, WE NEED TO
3 TAKE UP A MATTER OUTSIDE OF YOUR PRESENCE. I NEED YOU TO
4 LEAVE THE COURTROOM. IT'S 5:05. I NEED YOU TO RETURN IN
5 20 MINUTES AT 5:25. PLEASE DO NOT STAND IN THE BACK DOOR.
6 YOU NEED TO LEAVE THE COURTROOM, AND COME BACK IN 20
7 MINUTES. ALL JURORS PLEASE LEAVE THE COURTROOM, AND COME
8 BACK IN 20 MINUTES. ALL JURORS PLEASE LEAVE THE COURTROOM
9 AND COME BACK IN 20 MINUTES.

10 THE COURT: YES, SIR, MR. SAVERANCE.

11 MR. SAVERANCE: YOUR HONOR, WE'D MAKE A MOTION UNDER
12 BATSON. THERE ARE TWO ISSUES. ONE ISSUE IS THE REASON
13 FOR TWO WHITE MALES BEING STRUCK IS JUROR NO. 10 AND JUROR
14 NO. 97. I THINK TWO WERE ACCEPTED AND TWO WEREN'T. BUT
15 MORE IMPORTANT, OR I GUESS THE ISSUE MORE IMPORTANTLY IS
16 THE WHITE FEMALES. THERE WERE FIVE WHITE FEMALES, NO.
17 192, NO. 196, NO. 123, NO. 206 AND NO. 45. FIVE WERE
18 PULLED OUT OF THE HAT, AND ALL FIVE WERE STRUCK BY THE
19 DEFENSE. I KNOW ONE WAS TAKEN AS AN ALTERNATE. BUT I'M
20 LOOKING AT THE 12 THAT WERE PICKED. SO WE WOULD MAKE A
21 BATSON MOTION BASED ON THOSE 7 EXCLUDED JURORS.

22 THE COURT: AND WHAT IS THE DEFENSE'S MOTION, MR.
23 WHEELER?

24 MR. WHEELER: YOUR HONOR, WE WOULD MAKE THE SAME
25 MOTION WITH REGARD TO THE STRIKES EXERCISED BY THE -- JUST

1 A SECOND, IF I MIGHT.

2 THE COURT: YES, SIR.

3 MR. WHEELER: YOUR HONOR, I WOULD JUST MAKE THE SAME
4 MOTION WITH REGARD TO THE STRIKES EXERCISED BY THE STATE
5 UNDER BATSON. THE STATE EXERCISED 6 STRIKES. ALL BUT ONE
6 OF WHICH WAS AGAINST A BLACK MALE. AND THE ONE THAT WAS
7 NOT WAS AGAINST A BLACK FEMALE. ALL RELATIVELY YOUNG
8 PEOPLE BY MY COUNT. THAT WOULD BE OUR CROSS MOTION. IF
9 YOU WANT TO HEAR LATER ON THE POSITION ON OURS. WHATEVER
10 YOU WANT TO DO.

11 THE COURT: YES, SIR. THE EQUAL PROTECTION OF THE
12 CONSTITUTION FORBIDES THE PROSECUTOR OR THE DEFENSE
13 ATTORNEY FROM STRIKING JURORS IN A DISCRIMINATORY MANNER
14 WHERE MEMBERS OF AN IDENTIFIABLE CLASS AS HAVE BEEN
15 POINTED OUT TO THE COURT AS HAVING BEEN STRUCK. THE
16 PERSON MAKING THE STRIKES FIRST, THE COURT WILL HOLD A
17 BATSON HEARING. AND SECOND, THE PROPONENT OF THE STRIKE
18 MUST PRESENT A RACE GENDER NEUTRAL EXPLANATION FOR THE
19 STRIKE. THE STATE HAS IDENTIFIED MEMBERS OF THE CAUCASIAN
20 RACE BEING STRUCK BY THE DEFENSE. AND THE DEFENSE HAS
21 POINTED OUT AFRICAN AMERICANS STRUCK BY THE STATE. AND
22 THEREFORE THE PARTY MUST ESTABLISH RACE NEUTRAL REASONS
23 FOR THOSE STRIKES. WHAT SAYS THE DEFENSE AND WHAT SAYS
24 THE STATE?

25 MR. WHEELER: YOUR HONOR, I THINK I AM TRYING TO

1 SPEAK FOR EVERYBODY. WITH REGARD TO THE DEFENSE, OUR
2 FIRST POSITION WOULD BE THAT OVERALL, CERTAINLY OUR
3 STRIKES AS EXERCISED BY ALL THREE DEFENDANTS ARE RACE
4 NEUTRAL; IN THAT, A TOTAL OF 11 STRIKES WERE EXERCISED.
5 WHICH WERE JUST A TAD UNDER HALF OF WHAT WE COULD HAVE
6 EXERCISED. YOUR HONOR, 7 OF THOSE STIKES WERE AGAINST
7 AFRICAN AMERICANS. FOUR WERE CAUCASIANS. SO THE STRIKES
8 WERE EQUAL AS EXERCISED. AND, YOUR HONOR, THAT WOULD BE
9 OUR PRIMARY POSITION. WHEN YOU LOOK AT, I DON'T THINK
10 THAT BATSON WOULD NORMALLY TAKEN INTO ACCOUNT ONE
11 INDIVIDUAL STRIKE ON AN INDIVIDUAL JURY. AND THE PATTERN
12 THAT WAS DONE. AND OUR PATTERN WOULD APPEAR TO BE PRETTY
13 EQUAL ACTUALLY, YOUR HONOR. GIVEN THE STRIKES WE
14 EXERCISED AND OURS ARE NOT ACTUALLY USING A GOOD NUMBER OF
15 THE STRIKES THAT WE COULD HAVE.

16 BUT OVERALL BY MY COUNT, IT'S 7 TO 4, AS OPPOSED TO
17 THE TYPE OF STRIKES USED BY THE STATE. YOUR HONOR, AS TO
18 EACH JUROR, IF YOU DECIDE WE NEED TO GO IN TO THAT, WOULD
19 YOU GIVE US SINCE WE DID KIND OF COME UP THROUGH THREE
20 PEOPLE, AND I WILL JUST BE MOUTHING THE RESULT OF THREE,
21 IF YOU COULD GIVE US JUST A FEW MOMENTS TO PUT THAT
22 TOGETHER. BUT I WOULD ASK THE COURT NOT TO GO IN TO THAT,
23 BECAUSE I THINK ON IT'S FACE THE WAY WE'VE EXERCISED THE
24 STRIKES IS RELATIVELY VERY EQUAL ACTUALLY THE WAY THEY
25 WERE EXERCISED.

1 THE COURT: YOU KNOW THE CASE LAW HAS ESTABLISHED
2 THAT EACH INDIVIDUAL JUROR HAS A CONSTITUTIONAL RIGHT NOT
3 TO BE DISCRIMINATED AGAINST. WHEREAS THE COURT CAN
4 CONSIDER AND EXAMINE THE MATTER INVOLVING THE STRIKES BY
5 LOOKING AT THE FACTS AND CIRCUMSTANCES SURROUNDING THE
6 STRIKES AND PERHAPS THE JURY SELECTED. NEVERTHELESS, ONCE
7 THE PARTIES HAVE POINTED OUT MEMBERS OF THE CLASS WHO WERE
8 STRUCK, THE COURT IS ADVISED TO CONDUCT A BATSON HEARING.
9 AND UPON THOSE STRIKES MUST ESTABLISH A RACE NEUTRAL
10 REASON FOR EACH STRIKE.

11 MR. WHEELER: IN THAT INSTANCE, COULD YOU GIVE US
12 JUST A MINUTE?

13 THE COURT: ALL RIGHT.

14 MR. WHEELER: I WOULDN'T WANT TO LEAVE OUT MR. WATTS
15 OR MR. JOHNSON.

16 THE COURT: NO, WE'LL TAKE A FEW MINUTES TO LET Y'ALL
17 CONFER.

18 (THEREUPON, THE COURT TAKES A SHORT RECESS.)

19 MR. WHEELER: THERE WERE FIVE WHITE FEMALES STRUCK TO
20 ADDRESS THE STATE'S MOTION. AFTER TALKING WITH OTHER
21 DEFENSE COUNSEL, WE ARE GOING TO KIND OF, YOUR HONOR, OF
22 COURSE, AS YOU KNOW, IN THE INTEREST OF TIME, WE STRUCK
23 THEM INDEPENDENTLY. SO IF THE COURT WOULD ALLOW EACH
24 COMMENT ON SOME OF THESE STRIKES BECAUSE---

25 THE COURT: OKAY.

1 MR. WHEELER: ---THEY HAVE BEEN GENERATED.

2 THE COURT: WHEN YOU GIVE THEM TO ME, GIVE ME
3 EVERYTHING YOU HAVE TO SAY AT ONCE.

4 MR. WHEELER: YOUR HONOR, THE FIRST ONE I WOULD
5 SUBMIT IS JUROR 192, MS. WILLIAMSON.

6 THE COURT: 192.

7 MR. WHEELER: YOUR HONOR, I SUBMIT TO THE COURT THAT
8 SHE INDICATED SHE HAD BEEN REPRESENTED BY MR. FATA IN THE
9 PAST. AND ALSO SHE HAD COME FORWARD EARLIER, AND HAD SOME
10 PRIOR CRIMINAL CHECK CHARGES AND SOME FAMILY MATTERS.

11 THE COURT: SHE DID?

12 MR. WHEELER: YOUR HONOR, ESPECIALLY PRIMARILY HER
13 REPRESENTATION BY MR. FATA. WHETHER SHE INDICATED SHE
14 COULD DECIDE FAIRLY OR NOT. IT JUST ALSO RAISES A
15 CONCERN. AND, YOUR HONOR, I WILL GO AHEAD AND SKIP TO THE
16 NEXT ONE THAT I WAS GOING TO ADDRESS. THAT'S 123. THAT
17 IS MS. MELTON. I BELIEVE IT'S AMANDA MELTON.

18 THE COURT: ALL RIGHT.

19 MR. WHEELER: YOUR HONOR, IT IS MY BELIEF THAT SHE IS
20 THE CHILD OF DON AND PEG MELTON. OR THE ADULT CHILD.
21 THEY WERE FORMER OWNERS AND RAN THE PIGGLY WIGGLY STORE
22 HERE IN BISHOPVILLE RIGHT ACROSS FROM THE COURTHOUSE.
23 WHICH MY OFFICE HAS SUED A LOT OVER THE YEARS. AN AWFUL
24 LOT. YOUR HONOR, THE MELTONS STILL OWN THE PROPERTY ON
25 WHICH THE PIGGLY WIGGLY SITS. THEY LEASED IT BACK TO

1 ANOTHER COMPANY. THIS TIME IT'S BEEN THAT WAY FOR A FEW
2 YEARS. AND ACTUALLY, YOUR HONOR, WE ARE DRAFTING A SUIT
3 RIGHT NOW ABOUT AN ACCIDENT THAT HAPPENED IN THAT PARKING
4 LOT. THEY AREN'T PROBABLY ON THAT PARTICULAR CLAIM, EVEN
5 THOUGH THEY DON'T RUN THE STORE, THEY ARE PROBABLY ABOUT
6 TO GET SUED ON THE OWNERSHIP OF THAT PARKING LOT. AND
7 THEY'RE PROBABLY VERY FAMILIAR WITH THAT. YOUR HONOR,
8 THOSE ARE THE TWO I WILL ADDRESS. I WILL LET MR. JOHNSON
9 GO AHEAD.

10 MR. JOHNSON: YOUR HONOR, ON NUMBER 196, WHICH WAS
11 PATRICIA WINDBURN.

12 THE COURT: YES, SIR.

13 MR. JOHNSON: ON MS. WINDBURN, YOUR HONOR, MY CLIENT
14 INDICATED TO ME, YOUR HONOR, THAT DURING THE VOIR DIRE
15 SECTIONS AND THE COURT QUESTION OF THE JURY, THE
16 QUALIFICATIONS AND DIFFERENT THINGS, HE NOTICED THAT SHE
17 DID NOT APPEAR TO BE AS ATTENTIVE OR PAYING THAT CLOSE
18 ATTENTION. AND HE WAS CONCERNED OF HIS PARTICIPATION OF
19 ACCESSORY AFTER THE FACT. HE WANTED SOMEONE HE FELT WOULD
20 BE MORE ATTENTIVE TO THE CASE. AND HE ASKED THAT SHE BE
21 REMOVED FOR THAT NATURE. AND THAT BASICALLY IS THE FIRST
22 STRIKE THAT BASICALLY CAME FROM MY CLIENT, AND HIS
23 PERSONAL OBSERVATION. AND HIS REQUEST OF ME TO HAVE HER
24 REMOVED BECAUSE OF THAT.

25 ON NO. 45, YOUR HONOR, WHICH IS A SUSAN DAVIS, I THINK

1 WHEN SHE CAME DOWN AND STOOD BEFORE THE COURT, SHE HAD
2 THIS LOOK OF HOSTILITY IN HER EYES, YOUR HONOR. SHE
3 STARED AT BOTH CLIENTS. AND APPEARED TO US THAT SHE WAS
4 VERY HOSTILE. AND WE FELT THAT SHE WAS NOT APPROPRIATE
5 FOR THE JURY BASED ON THAT, YOUR HONOR.

6 MR. WATTS: YOUR HONOR, IF I MAY, I WOULD ADDRESS
7 205, WHICH IS MS. -- EXCUSE ME, 206, WHICH IS MS. JULIA
8 ZIMLEKSKA. MY UNDERSTANDING WAS THAT SHE WAS PART OF A
9 SALES REP. FOR A PROMOTIONAL COMPANY. I ASSUMED SHE WAS
10 SELF EMPLOYED. MY CONCERN IS SHE IS NOT GOING TO MAKE THE
11 PROPER FOCUS AND PUT THE KIND OF ATTENTION IN TO THIS
12 TRIAL. SHE WAS WORRIED ABOUT LOSING MONEY. THERE WERE
13 OTHER PEOPLE WHO WERE EXCUSED, WORKING IN THESE
14 CIRCUMSTANCES. IF SHE'S SITTING ON THIS JURY PANEL AND
15 YOU'RE TALKING ABOUT THESE SERIOUS CHARGES, AND SHE'S
16 WORRYING ABOUT HOW MUCH MONEY OR SHE'S NOT REPRESENTING OR
17 WHO SHE IS NOT CALLING TO GET SOMEBODY PROMOTED, SHE'S NOT
18 GOING TO GIVE THE FULL ATTENTION IN EFFECT TO WHAT WE'RE
19 TYRING TO DEAL WITH HERE. AND THESE ARE SERIOUS CHARGES,
20 YOUR HONOR. WE HOPE THAT EVERYBODY HERE WILL BE ABLE TO
21 DEVOTE TO THE FULLEST POSSIBLE THE EXTENT OF THEIR
22 ATTENTION. WE FEEL LIKE SHE WASN'T GOING TO BE ABLE TO
23 ADDRESS THE ISSUES HERE AS SOME OF THE OTHER JURORS THAT
24 WE DID SELECT WILL.

25 THE COURT: MR. SAVERANCE, ANY RESPONSE?

1 MR. SAVERANCE: YOUR HONOR, AS FAR AS NO. 123,
2 MELTON, I BELIEVE MR. WHEELER HAS SAID THEY DON'T RUN
3 PIGGLY WIGGLY; THAT HE WAS BROUGHT UNDER SUIT. ALWAYS
4 KNOW WHY THEY WERE BEING SUED. IF THEY HADN'T BROUGHT
5 THEM YET AND CHARGING PAPERS, I DON'T BELIEVE HE SAID THEY
6 WERE GOING TO DEFINITELY BE NAMED IN THE SUIT. THEY MIGHT
7 BE. I CAN UNDERSTAND GOING AND SUING THE PIGGLY WIGGLY
8 AND HAVING LIKE THE MANAGER OF THE PIG YOU CAN CALL HIS
9 NAME OR SOMETHING LIKE THAT. KIND OF WONDERING ABOUT
10 THAT. BUT I THINK IT'S A PRETTY -- A FAR STRETCH TO SAY
11 THEY WERE IN THE PARKING LOT AND MAY BE BRINGING A SUIT.
12 YOU ASKED ALL THESE JURORS UNDER OATH TO TAKE IT
13 SERIOUSLY. IF THEY HAD ANY CONFLICTS WITH ANY OF THE
14 ATTORNEYS THEN DECIDE. AND THIS JUROR DID NOT SEE ANY
15 PROBLEM SERVING AND GIVING US A CLEAR RESPONSE ALONG WITH
16 EVERYBODY ELSE. I THINK THERE'S A LOT OF SPECULATION AND
17 GUESSWORK ON THAT ONE. AS FAR AS, 196, HOLD ON ONE
18 SECOND, YOUR HONOR. MS. WINDBURN, I BELIEVE IS THE ONE
19 THEY SAID SHE WAS NOT PAYING ATTENTION. YOUR HONOR, I
20 DIDN'T NOTICE THAT. AND I WILL SAY THAT I THINK THAT IS A
21 VERY WEAK AND EASY WAY TO GET OUT OF SOMETHING IN THIS
22 TYPE OF MOTION. THERE WERE A LOT OF PEOPLE BACK THERE
23 KIND OF LAUGHING FROM TIME TO TIME AND YAWNING AND STUFF
24 LIKE THAT.
25 THERE WERE PEOPLE THAT THEY PICKED SITTING THERE, ()

1 THAT I SAW YAWNING AND KIND OF LOOKING AROUND AND THAT
2 SORT OF STUFF TOO. SO IT BOTHERED ME. THERE WAS OTHER
3 PEOPLE YAWNING AND THAT SORT OF THING. SO I DON'T HAVE
4 ANY EVIDENCE THAT WILL HAVE TO APPLY. NO. 45. MS. DAVIS, I
5 THINK MR. JOHNSON IS THE ONE THAT TALKED ABOUT A POSSIBLE
6 LOOK. YOUR HONOR, SHE IS THE JUROR THAT CAME UP THERE. I
7 SAW HOW THEY LOOKED AT US AND I SAW HOW THEY LOOKED AT THE
8 DEFENSE TABLE. AND, YOU KNOW, THERE REALLY DIDN'T SEEM TO
9 BE ANYBODY SMILING AT US AND FROWNING AT THEM. I MEAN,
10 PEOPLE STANDING UP THERE WERE ALL, YOU KNOW, IF THEY WERE
11 FROWNING, THEY WERE FROWNING. IF THEY WERE SMILING, THEY
12 WERE SMILING. I DIDN'T NOTICE ANY HOSTILITY BY THAT JUROR
13 WHATSOEVER. AND I THINK THAT IS A GREAT DEAL OF
14 SPECULATION OR SOMETHING THAT, YOU KNOW, THAT'S HARD TO
15 PIN DOWN. IT'S JUST SPECULATION AND EXCUSE BEYOND THE
16 REAL REASON SHE WAS STRUCK.

17 YOUR HONOR, AS FAR AS NO. 206, THE SALES
18 REPRESENTATIVE. YOUR HONOR, I ASKED ABOUT PEOPLE TAKING
19 THIS SERIOUSLY AND IF THEY WERE SELF-EMPLOYED THAT NEEDED
20 TO GET OUT OF THIS, TO LET THEM OUT. I BELIEVE YOU LET
21 TWO PEOPLE GO THAT WERE SELF-EMPLOYED. SO THIS WOMAN
22 SAYING SHE WAS SELF-EMPLOYED AND MR. WATTS DOESN'T BELIEVE
23 WHAT SHE SAYS, THAT DOESN'T CUT IT. SHE WAS ASKED UNDER
24 OATH. SHE TOOK AN OATH. SHE SAID SHE DIDN'T MIND
25 STAYING. TWO OTHER PEOPLE WERE LET GOT THAT DIDN'T CARE

1 ABOUT STAYING. SHE DIDN'T, YOU KNOW, BRING UP ANY
2 CONCERNS. SHE DIDN'T SAY SHE COULDN'T DO THIS. YOU KNOW,
3 AS I SAID, SHE COULD HAVE COME UP HERE AND MADE A BIG FUSS
4 AND GOTTEN AN EXCUSE LIKE TWO OTHER PEOPLE. SHE DIDN'T.
5 SO THAT'S JUST THE OPPOSITE. THAT SHOWS SHE DOES CARE.
6 AND SHE WAS PAYING ATTENTION. AND THAT WILL GIVE BOTH
7 SIDES A FAIR SHAKE.

8 BUT, YOUR HONOR, I UNDERSTAND 192, MS. WILLIAMSON
9 WITH THE BAD CHECKS, BUT I THINK THE OTHER FOUR, ARE
10 CLEARLY, THE REASONS ARE EXCUSES. AND CLEARLY NOT
11 ANYWHERE CLOSE TO BEING RACE NEUTRAL. AND JUST EXCUSES
12 AND REASONS FOR STRIKING, AND NOT RACE NEUTRAL, YOUR
13 HONOR.

14 THE COURT: WELL THE JUROR 192 SAID SHE HAD A PRIOR
15 RECORD. AND MR. FATA REPRESENTS HER. REPRESENTED HER. I
16 THINK THAT'S RACE NEUTRAL. THE MELTON JUROR NO. 123, THAT
17 MR. WHEELER SAID HE IS PERSONALLY FAMILIAR WITH, AND FILED
18 A LAWSUIT, HE BELIEVES THAT SHE MAY NOT GIVE THEM A FAIR
19 SHAKE BASED ON HER FAMILY INVESTMENTS AND THE LIKE. I
20 FIND THAT IS A RACE NEUTRAL REASON.

21 JUROR NO. 206 THE SELF-EMPLOYED PERSON INVOLVED IN
22 PHARMACEUTICALS.

23 MR. WHEELER: PROMOTIONS, I THINK.

24 THE COURT: SAY IT AGAIN.

25 MR. WHEELER: PROMOTIONS, YOUR HONOR, IS WHAT SHE

1 SAID.

2 THE COURT: PROMOTIONS. I FIND THAT THAT IS A RACE
3 NEUTRAL REASON. IN THE CASE OF THE STATE V. WRIGHT, THE
4 APPELLATE COURT FOUND THAT THE STATE ERRED WHEN THEY DID
5 NOT -- THE TRIAL COURT ERRED IN DETERMINING THAT THE STATE
6 ARTICULATED A REASON FOR RHETORICALLY STRIKING A BLACK
7 JUROR. BUT WAS NOT RACIALLY NEUTRAL. WHERE THE STATE
8 BASED ITS STRIKE ON JURORS THAT HAD AN INTERESTED ATTITUDE
9 AND DEMEANOR OBSERVED IN THE COURT PROCEEDING WHICH WAS
10 CONTRASTED WITH OTHER JURORS WHO APPEARED TO BE
11 INTERESTED. I TAKE THAT INTERPRETATION TO BE JUROR'S
12 APPARENT INTEREST OR THE INATTENTIVENESS OR DISPLAY OR
13 HOSTILITY HAVE BEEN ACCEPTED AS BEING A RACE NEUTRAL
14 REASON. OF COURSE THE COURT FOUND THAT WHERE THE
15 SOLICITOR STRUCK A JUROR, SHUCKED AND JIVED, THE COURT
16 FOUND THAT THAT WAS A NOT RACE NEUTRAL REASON BUT A
17 PRETEXT.

18 OBVIOUSLY, IT'S DIFFICULT FOR ME TO EVALUATE WHETHER
19 OR NOT THE REASON GIVEN WAS A MERE PRETEXT OR SIMPLY
20 CREATED OR MANUFACTURED TO GET BATSON. BUT BATSON
21 REQUIRES ONLY THAT THE RACE NEUTRAL BE GIVEN. AND IT'S
22 USUALLY -- IT IS USUALLY SHOWN TO BE A VIOLATION OF BATSON
23 WHERE SOMEONE SIMILARLY SITUATED HAS APPEARED. NOW
24 WHEREAS IT'S NOT NECESSARILY PRESSED IN THE REASONS GIVEN
25 ABOUT THE WAY THE JUROR LOOKED AT ME OR THE JUROR DID NOT

1 APPEAR TO BE PAYING CLOSE ATTENTION ACCORDING TO WHAT THE
2 CLIENT SAID. BASED ON THE STATE V. WRIGHT, I FIND THAT
3 THAT IS A RACE NEUTRAL REASON EXPLANATION ACCEPTED IN
4 LARGE PART BY THE STATE PURSUANT TO STATE V. WRIGHT. AND
5 FURTHER, THAT THE DEFENDANT MET ITS BURDEN OF SHOWING THE
6 STRIKES MADE WERE RACIALLY NEUTRAL. SO I DENY THE STATE'S
7 BATSON MOTION.

8 AS TO THE DEFENSE'S MOTION, MR. WHEELER?

9 MR. WHEELER: YOUR HONOR, JUST IN THE INTEREST OF
10 TIME, HAVING DENIED THE STATE'S MOTION, THE DEFENSE WOULD
11 WITHDRAW IT'S MOTION IF IT PLEASE THE COURT.

12 THE COURT: ON YOUR MOTION.

13 MR. WHEELER: IF THAT'S OKAY.

14 THE COURT: YOU CAN DO THAT. LET'S BRING THE JURORS
15 IN. THEY CAN ALL COME IN. ALL THE JURORS CAN COME IN.
16 NOW THIS CASE IS GOING TO TAKE HOW LONG, DAYS RIGHT?

17 MR. SAVERANCE: YES, SIR. YOUR HONOR, WHAT WE HAVE,
18 MY ANTICIPATION IS I THINK WE HAVE PROBABLY 11 OR 12
19 REGULAR WITNESSES. THAT WOULD BE LAW ENFORCEMENT OF
20 COURSE AND WE HAVE MAYBE ONE OR TWO CHAIN OF CUSTODY ONLY.
21 THAT WOULD BE OUR PLAN TO PRESENT.

22 THE COURT: ALL JURORS COME IN QUIETLY. GO AHEAD.

23 MR. SAVERANCE: MAYBE ONE OR TWO CHAIN OF CUSTODY AND
24 THAT COULD BE SHORTER IF THERE IS NOT ANY STIPULATION ON A
25 COUPLE OF PEOPLE LIKE THAT. SO PROBABLY 11 OR 12 MAIN

1 WITNESSES. ONE OR TWO CHAIN OF CUSTODY. BUT THAT IS OUR
2 PLAN AS FAR AS WHAT WE PLAN TO SUBMIT, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 MR. WATTS: YOUR HONOR, IF I MAY.

5 THE COURT: YES, SIR.

6 MR. WATTS: JUST FOR THE RECORD, MR. MCCALL WOULD
7 LIKE TO WITHDRAW HIS BATSON MOTION. JUST TO HAVE THAT ON
8 THE RECORD.

9 THE COURT: MR. JOHNSON.

10 MR. JOHNSON: YOUR HONOR, FOR THE RECORD AS WELL, THE
11 DEFENDANT CHAD JAMES WOULD ALSO LIKE TO WITHDRAW.

12 THE COURT: THE BATSON IS WITHDRAWN. YOU MAY BRING
13 THE JURY IN THIS CASE. WHAT TIME TOMORROW WILL Y'ALL BE
14 READY TO GO?

15 MR. SAVERANCE: YOUR HONOR, I HAVE BEEN INFORMED
16 THERE MAY BE A COUPLE OF MOTIONS. DO YOU WANT THE JURY TO
17 COME IN AT 10 AND WE START AT 9:30 OR WHAT?

18 THE COURT: MR. WHEELER?

19 MR. WHEELER: YOUR HONOR, I HAVE GOT A JACKSON V.
20 DENNO. I THINK IT WILL BE RELATIVELY BRIEF. I WOULD HAVE
21 A MOTION IN LIMINE REGARDING CERTAIN RECORDS. I DON'T
22 KNOW IF YOU WANT TO TAKE IT UP IN THE MORNING. OR IF YOU
23 WANT TO WAIT UNTIL LATER ON. IF YOU WANT TO TAKE IT UP, I
24 WILL HAVE THAT. AND I SUSPECT THERE IS ALSO AN ISSUE YOU
25 WOULD LIKE TO CALL WHETHER THAT TESTIMONY WOULD BE

1 ALLOWED.

2 THE COURT: WHAT IS THE LAST THING YOU SAID?

3 MR. WHEELER: YOUR HONOR, OUR DEFENSE IS LARGELY SELF
4 DEFENSE. IT INVOLVES A WITNESS THAT WAS INVOLVED IN
5 ANOTHER INCIDENT PERPETRATED BY THE VICTIM; THAT WE WOULD
6 LIKE TO CALL SOME WITNESSES. I THINK THE STATE OBJECTS.
7 AND I GUESS YOU ARE GOING TO HAVE TO DETERMINE.

8 THE COURT: A MOTION IN LIMINE DID YOU SAY? OR WHAT
9 TYPE OF MOTION?

10 MR. WHEELER: IT'S REALLY THE STATE'S MOTION, YOUR
11 HONOR. I THINK THEY WANT TO MAKE A MOTION IN LIMINE. OF
12 COURSE, IT'S A DEFENSE WITNESS IT MAY NOT BE RIGHT.

13 MR. SAVERANCE: YOUR HONOR, I'M SORRY, I THOUGHT MR.
14 WHEELER IF HE PLANNED TO PUT IT UP DURING OUR CASE, I WAS
15 GOING TO MAKE A MOTION EARLIER. IF HE WAS GOING TO WAIT
16 UNTIL HIS CASE THEN I WAS GOING TO ADDRESS THAT LATER ON.
17 I'LL TALK TO HIM ON THAT.

18 THE COURT: OKAY. YES, SIR.

19 MR. WATTS: THANK YOUR HONOR. WE MAY HAVE SOME
20 MOTIONS IN LIMINE IN THE MORNING OR WE MAY NOT WITH THAT
21 WITNESS. WE WERE JUST DISCUSSING IT, SO IF IT DOESN'T
22 COME UP WITH THE SAME KIND OF SITUATION REGARDING THAT
23 ISSUE.

24 THE COURT: MR. JOHNSON.

25 MR. JOHNSON: YOUR HONOR, MY CLIENT WE REALLY HAVE NO

1 MOTIONS. I WOULD JUST LIKE TO CLARIFY THE MOTION THAT WAS
2 HEARD EARLIER TODAY CONCERNING THE INDICTMENT, AND JUST
3 PUT THAT ON THE RECORD.

4 THE COURT: I WILL HEAR ALL OF THE MATTERS, INCLUDING
5 THAT MOTION TOMORROW MORNING REGARDING THE PROBLEMS YOU
6 CONTEND IN THIS INDICTMENT. WE ARE GOING TO CONVENE AT
7 9:30 IN THE MORNING. I WILL HAVE THE JURY COME IN AT 10
8 TOMORROW MORNING. SO I WILL HAVE THEM COME IN AT THIS
9 TIME.

10 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
11 PRESENCE OF THE JURY.)

12 THE COURT: LADIES AND GENTLEMEN, YOU HAVE BEEN
13 SELECTED TO BE THE JURY IN THE TRIAL OF THIS CASE. AS
14 YOU CAN SEE, WE HAVE USED UP THIS DAY. WE'LL GET STARTED
15 FURTHER DOWN THE ROAD IN THIS CASE TOMORROW. I WILL GIVE
16 YOU A MORE DETAILED ORIENTATION AND INSTRUCTION CONCERNING
17 THIS MATTER BEFORE WE BEGIN WITH THE ACTUAL TRIAL OF THIS
18 CASE TOMORROW. AND THE ONE THING THAT I WILL TELL YOU AND
19 EMPHASIZE THROUGHOUT THE TRIAL AND THAT IS, THAT YOU ARE
20 TO DECIDE THE CASE FROM WHAT YOU HEAR IN THE COURTROOM
21 THROUGH TESTIMONY AND EXHIBITS. AND YOU MUST NOT BE
22 INFLUENCED BY ANYTHING THAT YOU MIGHT HAVE HEARD OUTSIDE
23 THE COURTROOM, MIGHT HEAR OUTSIDE THE COURTROOM.

24 IN THAT CONNECTION, YOU ARE NOT ALLOWED TO DISCUSS
25 THE CASE AT ALL UNTIL I AUTHORIZE YOU TO TALK ABOUT IT.

1 YOU ARE NOT TO TALK ABOUT IT WITH EACH OTHER AT ANY POINT
2 AND TIME OR TALK ABOUT THE CASE WITH ANYONE THAT YOU'RE --
3 YOUR FAMILY AT HOME OR OUTSIDE THE COURTROOM. THAT WILL
4 AMOUNT TO PREMATURE DELIBERATIONS, AND YOU ARE NOT TO DO
5 THAT. I WILL GIVE YOU A MORE DETAILED EXPLANATION OF THAT
6 TOMORROW MORNING. I LOOK FORWARD TO WORKING WITH YOU ON
7 THIS CASE. I NEED ALL OF YOU BACK AT 10. AND WHEN YOU
8 COME, PLEASE DO NOT COME INTO THE COURTROOM, BUT COME TO
9 THE BACK HALLWAY DIRECTLY INTO THE JURY ROOM. AND WE
10 NEED YOU THERE AT 10 O'CLOCK TOMORROW. I HOPE YOU HAVE A
11 GOOD EVENING, AND WE'LL SEE YOU TOMORROW.

12 (THEREUPON, AT 5:40 P.M. THE JURY IS DISMISSED.)

13 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
14 PRESENCE OF THE JURY.)

15 THE COURT: ARE THERE ANY OTHER MATTERS BEFORE WE
16 BREAK FOR THIS DAY?

17 MR. SAVERANCE: YOUR HONOR, THE ONLY OTHER ISSUE AND
18 I KNOW IT'S YOUR DISCRETION. I JUST WANT TO BRING IT TO
19 YOUR ATTENTION. I KNOW THAT ETHAN THOMAS IS IN CUSTODY.
20 WE WOULD REQUEST THE OTHER TWO DEFENDANTS BE TAKEN INTO
21 CUSTODY SINCE THEY'RE FACING MURDER AND THE TIME THAT'S
22 INVOLVED HERE. AND BEING A MOST SERIOUS VIOLENT CRIME. I
23 KNOW ONE OF THE DEFENDANT'S IS CHARGED WITH ACCESSORY TO
24 MURDER WHICH IS LESS, BUT IT'S STILL A SOMEWHAT SERIOUS
25 CRIME. AS I SAID, MR. THOMAS IS ALREADY IN CUSTODY. TH

1 OTHER TWO DEFENDANTS ARE OUT. THE IMPORTANCE OF THAT OF
2 COURSE IS MAKING SURE EVERYBODY IS HERE IN THE MORNING AND
3 WE'VE GOT THE JURY AND WE CAN GET MOVING ON THIS SO...

4 MR. WATTS: YOUR HONOR, IF I MAY ADDRESS IT AS FAR AS
5 MR. MCCALL. MR. MCCALL HAS APPEARED EVERY TIME HE'S BEEN
6 REQUESTED. HE'S BEEN OUT FOR A SIGNIFICANT PERIOD OF
7 TIME. HE'S BEEN RESPONSIVE TO ME WHEN I'VE REQUESTED HIM
8 TO BE SOMEWHERE. HE WAS HERE EARLY TODAY. HE'S BEEN
9 ANYWHERE WE NEEDED TO BE. I DON'T THINK THIS IS AN
10 APPROPRIATE SITUATION EVEN THOUGH THESE CHARGES. HE'S
11 DONE EVERYTHING HE NEEDED TO. HE WILL BE HERE TOMORROW.
12 AND I WOULD ASK THAT HE BE RELEASED IN HIS PARENT'S
13 CUSTODY OR BE ALLOWED TO STAY OUT WITHOUT INCARCERATION
14 TONIGHT, BECAUSE THERE ARE SOME OTHER ISSUES THAT WE NEED
15 TO DISCUSS AS WELL. AND HERE THERE WILL BE TIME ISSUES IF
16 WE HAVE TO GO MEET SOMEWHERE ELSE. HE'S DONE EVERYTHING
17 THAT'S BEEN ASKED OF HIM. HE'S SHOWN UP EVERY TIME HE'S
18 NEEDED TO BE SOMEWHERE. HE HASN'T LEFT; A FLIGHT RISK.
19 WE WOULD ASK THAT HE BE ABLE TO REMAIN OUT FROM
20 INCARCERATION WITH A LIMITED INSTRUCTION.

21 I KNOW IT'S A DAY BY DAY CASE, YOUR HONOR, BUT I
22 WOULD LIKE TO AT LEAST MAKE THE MOTION TONIGHT TO KEEP HIM
23 OUT.

24 THE COURT: MR. JOHNSON.

25 MR. JOHNSON: YOUR HONOR, AS RELATES TO MY CLIENT, HE

1 AS WELL HAS BEEN PREPARED FOR COURT. HE HAS NOT VIOLATE
2 ANY CONDITION OF HIS BOND SINCE THE INITIAL ARREST WHICH
3 HAS ALMOST BEEN A YEAR. HE IS PRESENTLY CHARGED WITH
4 ACCESSORY AFTER THE FACT, YOUR HONOR. IT'S A NONVIOLENT
5 OFFENSE. HE HAS DONE NOTHING TO INDICATE THAT HE WOULD
6 NOT BE APPEARING TOMORROW. AND WE WOULD ASK THAT YOU
7 ALLOW HIM TO REMAIN ON BOND.

8 THE COURT: I WILL ADDRESS THIS ISSUE CONCERNING THIS
9 PARTICULAR ISSUE TOMORROW. I CAN TELL YOU THAT WHERE THE
10 CASE HAS BEEN CALLED FOR TRIAL UNLESS A BONDSMAN CONSENTS
11 FOR THEM TO REMAIN OUT ON BOND, A BONDSMAN REALLY NEEDS
12 FROM MY RESPONSIBILITY TO BE HERE CONCERNING THEIR BOND.
13 I WILL ADDRESS THOSE ISSUES RELATING TO WHETHER OR NOT THE
14 DEFENDANTS SHOULD BE IN CUSTODY DURING THIS TRIAL. I WILL
15 ADDRESS THOSE ISSUES TOMORROW. BUT I WILL NOT TAKE ANY
16 ACTION REGARDING TODAY.

17 MR. WATTS: THANK YOU, YOUR HONOR.

18 THE COURT: WE WILL BE IN RECESS UNTIL 9:30 TOMORROW
19 MORNING.

20 (THEREUPON, THE TRIAL COMMENCES AT 9:30 A.M. ON
21 TUESDAY, APRIL 4TH, 2006.)

22 THE COURT: MR. JOHNSON, YOUR MOTION CONCERNING THE
23 INDICTMENT.

24 MR. JOHNSON: THANK YOU, YOUR HONOR. YOUR HONOR, I
25 JUST WANTED TO PUT ON THE RECORD FOR CLARIFICATION ON WHAT

1 THE ISSUE WAS ON THE MOTION, BUT THE COURT DECIDED TO GO
2 FORWARD.

3 THE COURT: THE COURT HAS NOT MADE ANY DECISION. I
4 HAVE NOTED THAT YOUR MOTIONS WERE PROPERLY MADE AND I WILL
5 HEAR IT AT THIS TIME PRIOR TO BE JURY BEING SWORN, AND THE
6 JURY HAS NOT BEEN SWORN. SO I AM READY TO HEAR THE ENTIRE
7 MATTER.

8 MR. JOHNSON: YOUR HONOR, MY MOTION IS BASED ON THE
9 INDICTMENT AS IT IS WRITTEN. THE INDICTMENT ON MY CLIENT
10 MR. JAMES STATED THAT CHAD JAMES DID IN LEE COUNTY ON OR
11 ABOUT APRIL 7TH 2005, RENDER ASSISTANCE TO A FELON:
12 NAMELY, EUNICE DAVIS MCCALL AND EFRAIN THOMAS. WHO ON OR
13 ABOUT APRIL 7TH 2005, COMMITTED THE CRIME OF MURDER AS
14 PROHIBITED BY SECTION 16-1-55 OF THE CODE OF LAWS OF SOUTH
15 CAROLINA 1976 AS AMENDED. THERE IS A CASE, YOUR HONOR,
16 WHICH IS WAYNE C. HOOKS PETITIONER VERSUS THE STATE OF
17 SOUTH CAROLINA WHICH IS 575, S.E. 2D 211. IN THAT CASE,
18 YOUR HONOR, THERE WAS AN INDICTMENT FOR ACCESSORY AFTER
19 THE FACT, WHICH THE COURT FOUND TO BE INADEQUATE.

20 IT WAS BASICALLY THAT THE COURT RULED THAT THE
21 INDICTMENT DID NOT MEET THE REQUIREMENTS OF THE CODE.
22 AND RULED THAT THE INDICTMENT THEREFORE WAS VOID.
23 HOWEVER THAT CASE WAS EVENTUALLY OVERTURNED BY GENTRY.
24 AND GENTRY, I THINK IS FOOTNOTE NO. 8. IT'S ONE OF THE
25 CASES THAT WAS OVERTURNED. I THINK GENTRY, YOUR HONOR, I

1 ARGUE TO THE COURT IS THAT GENTRY OVERRULED THE CASE
2 BASED ON IT BEING A SUBJECT MATTER JURISDICTION; THAT THE
3 DEFENSE COUNSEL DID NOT OBJECT TO INDICTMENT PRIOR TO THE
4 JURY BEING SWORN IN; THAT IT WOULD HAVE BEEN UPHELD.
5 THAT THAT INDICTMENT WAS VOID.

6 YOUR HONOR, THE INDICTMENT IN THIS CASE IS IDENTICAL
7 TO THE INDICTMENT THAT WAS USED IN THE HOOKS CASE. IT
8 WOULD ALSO BE VERBATIM TO THE SAME INDICTMENT. AND I
9 THINK BY MY MAJOR ARGUMENT, YOUR HONOR, WE UNDERSTAND
10 THAT GENTRY THAT WAS A SUBJECT MATTER JURISDICTION ISSUE
11 SAYING THAT THE COURT HAD SUBJECT MATTER JURISDICTION TO
12 HEAR A CRIMINAL CASE.

13 I THINK, YOUR HONOR, THE DEFENSE IS WHEN AN
14 INDICTMENT IS NOT VALID AS OUR CONTENTION IN THIS CASE,
15 AND THE MOTION IS MADE PRIOR TO JURY BEING SWORN IN; THAT
16 THE INDICTMENT THEN WOULD BE VOID. AND THEREFORE, MY
17 CLIENT WOULD NOT RECEIVE PROPER NOTICE. I THINK THAT A
18 DUE PROCESS ISSUE MORE THAN SUBJECT MATTER JURISDICTION
19 ISSUE. AND IN THIS CASE WE FEEL THAT THAT WAS A -- THAT
20 THE INDICTMENT WAS VOID DUE TO LACK OF PROPER NOTICE. I
21 THINK THAT IS A DUE PROCESS ISSUE MORE SO THAN A SUBJECT
22 MATTER JURISDICTION ISSUE. AND IN THIS CASE WE FEEL THAT
23 THAT WAS A -- THAT THE INDICTMENT WAS VOID DUE TO A LACK
24 OF PROPER NOTICE AND NOT BEING A SUBJECT MATTER
25 JURISDICTION ISSUE BUT ONE OF DUE PROCESS.

1 THE COURT: WHAT IS WRONG WITH THE INDICTMENT IN THIS
2 CASE?

3 MR. JOHNSON: THE INDICTMENT IN THIS CASE IS
4 IDENTICAL TO THE INDICTMENT THAT WAS RULED ON IN HOOKS AND
5 WOULD NOT BE VALID.

6 THE COURT: WHAT IS WRONG WITH IT?

7 MR. JOHNSON: IT DOESN'T GIVE PROPER NOTICE, YOUR
8 HONOR. IT -- IN HOOKS THE COURT STATES THAT IT MUST HAVE
9 THE ELEMENTS OF NOTICE TO PUT THE CLIENT ON NOTICE THAT
10 FIRST, THE THREE REQUIREMENTS ARE THAT A CRIME WAS
11 COMMITTED. THAT THE DEFENDANT WAS AWARE OF THE CRIME
12 PRIOR TO WHATEVER ASSISTANCE HE WAS CHARGED WITH GIVING.
13 AND THAT A RESULT OF THAT ASSISTANCE IT THEREBY, I THINK
14 THE THIRD REQUIREMENT IS, ONE MINUTE, YOUR HONOR. THE
15 THIRD ONE AS I UNDERSTAND IT, YOUR HONOR, IS THAT; AS I
16 SAID, A CRIME WAS COMMITTED, THAT THERE WAS ASSISTANCE.
17 AND THAT ASSISTANCE ASSISTED ONE OF THE CO-DEFENDANTS IN
18 THE I WOULD SAY, EVADING THE POLICE OR ADVANCING THE
19 CAUSE. AND THERE IS NOTHING WITHIN THE BODY OF THE
20 INDICTMENT THAT WOULD PUT MY CLIENT ON NOTICE OF THE
21 ELEMENTS OF THE CRIME SO THAT HE MAY BE PREPARED TO DEFEND
22 HIMSELF.

23 THE COURT: ALL RIGHT.

24 MR. JOHNSON: FOR THE RECORD, YOUR HONOR, OF COURSE I
25 WOULD SAY THAT I AM PREPARED TO GO FORWARD, AND I AM AWARE

1 OF THE ELEMENTS. I THINK IT WOULD BE DISINGENUOUS OF ME
2 TO TELL THE COURT THAT WE ARE NOT PREPARED TO GO FORWARD.
3 I HAVE GONE OVER THE ELEMENTS OF THE CRIME WITH MY CLIENT
4 PRIOR TO IN COURT TODAY.

5 THE COURT: SOLICITOR.

6 MR. SAVERANCE: YOUR HONOR, THIS IS JUST BASICALLY
7 WITHIN THE INDICTMENT WHICH IS WHAT WE ALWAYS USE TO
8 MITIGATE THE FACTS. NOT THAT THAT JUSTIFIES ME USING IT.
9 I MEAN IT'S JUST A STANDARD INDICTMENT. IT GIVES THE
10 COUNTY. IT GIVES THE DATE. IT GIVES THE NAME CHAD JAMES.
11 IT SAYS ACCESSORY AFTER THE FACT TO MURDER. IT SAYS HE
12 GAVE ASSISTANCE TO AND NAMES THE OTHER TWO DEFENDANTS. IT
13 NAMES THE CRIME OF MURDER THEY COMMITTED. YOUR HONOR,
14 CLEARLY THE CODE SECTION HAS BEEN NOTATED. THE CHARGE HAS
15 BEEN LAID OUT. THE CO-DEFENDANTS HAVE BEEN NAMED. I MEAN
16 IT TELLS THE DEFENDANT EVERYTHING THAT HE HAS BEEN CHARGED
17 WITH. AND AS I SAID, IT SAYS HE RENDERED ASSISTANCE AFTER
18 THE FACT TO A MURDER.

19 YOUR HONOR, I THINK CLEARLY I THINK WE HAVE PUT IN
20 MORE THAN ENOUGH EVIDENCE TO PUT THE DEFENDANT ON NOTICE.
21 LIKE I SAID, THE CODE SECTION IS THERE. IT IS ACCESSORY
22 AFTER THE FACT OF MURDER. IT TELLS YOU WHAT THE CHARGE
23 OF THE ACCESSORY IS. IT SAYS HE HELPED THE CO-DEFENDANT
24 AFTER THE MURDER. IT SAYS HE DID RENDER ASSISTANCE TO
25 HIM. I DON'T THINK WE ARE REQUIRED TO GO INTO DETAIL AND

1 SAY HE RENDERED ASSISTANCE BY DOING X, Y, Z. I MEAN
2 CLEARLY INDICTMENTS ARE NOT A BOOK. THEY'RE JUST SIMPLY
3 A PARAGRAPH TO PUT THE DEFENDANT ON NOTICE. I WOULD ALSO
4 STATE, YOUR HONOR, THE WARRANT, THE INCIDENT REPORT, ALL
5 THIS OTHER STUFF, THE DEFENSE AND THE DISCOVERY, THE
6 STATE HAS TAKEN, LAYS OUT, STATE THE DEFENSE. OUR
7 ALLEGATION IS THAT THE DEFENDANT DROVE -- THE DEFENDANT
8 MR. JOHNSON, (SIC) DROVE ONE OF THE DEFENDANTS AWAY RIGHT
9 AFTER THE CRIME INTO ANOTHER COUNTY. AND AS MR. JOHNSON
10 SAID, HE EVEN KNOWS WHAT THE FACTS ARE AND KNOWS WHAT THE
11 CHARGES ARE IN THIS CASE WITHOUT BEING READY.

12 SO I BELIEVE THE INDICTMENT PUTS THE DEFENDANT ON
13 CLEAR NOTICE OF WHAT HE IS CHARGED WITH AND WHAT HE NEEDS
14 TO BE READY FOR. AND AS THEY ADMIT, THEY ARE READY. AND
15 THEY ARE PREPARED. THEY KNOW WHAT THE ALLEGATIONS ARE.

16 THE COURT: MR. SAVERANCE, HAVE YOU REVIEWED THE
17 HOOKS CASE?

18 MR. SAVERANCE: YOUR HONOR, MY UNDERSTANDING IS THAT
19 I DID. AND IT'S MY UNDERSTANDING IS THAT WAS OVERRULED
20 BY GENTRY. AND I UNDERSTAND MR. JOHNSON'S ARGUMENT THEY
21 OVERRULED IT FOR DIFFERENT REASONS. YOUR HONOR, I WOULD
22 JUST SAY THAT IT WAS OVERRULED. AS I SAID BEFORE, I DO
23 BELIEVE JUST SAYING THAT SOMEBODY RENDERED ASSISTANCE TO
24 SOMEBODY IN THE COMMISSION OF A MURDER, AND NAMED THE
25 CO-DEFENDANT AND EVERYTHING ELSE IS MORE THAN ENOUGH

1 NOTICE TO THE DEFENDANT OF WHAT HE IS CHARGED WITH, AND
2 KNOWS WHAT TO PREPARE TO DEFEND HIMSELF AGAINST.

3 THE COURT: MR. JOHNSON.

4 MR. JOHNSON: YOUR HONOR, AS I STATED, I HAVE
5 NOTHING, YOUR HONOR. I THINK THIS CASE SPEAKS FOR ITSELF.
6 AND I WOULD ASK THE COURT TO CONSIDER THAT. I AM AWARE---

7 THE COURT: TELL ME YOUR ARGUMENT AGAIN. I AM TRYING
8 TO UNDERSTAND IT. THE HOOKS CASE BASICALLY SAYS THAT WHEN
9 YOU HAVE AN INDICTMENT CHARGING A PERSON WITH ACCESSORY
10 AFTER THE FACT, YOU MUST HAVE IN THE INDICTMENT THAT THE
11 PERSON WAS NOT PRESENT AT THE TIME OF THE CRIME.

12 MR. JOHNSON: THAT IS CORRECT, YOUR HONOR.

13 THE COURT: AND SO IN HOOKS WHEN THEY REVERSED OR
14 VACATED THE GUILTY PLEA AND SAID THAT THE INDICTMENT WAS
15 INEFFECTIVE. THEREFORE THE COURT DOES NOT HAVE SUBJECT
16 MATTER JURISDICTION TO ACCEPT THE GUILTY PLEA ON THAT
17 DEFECTIVE INDICTMENT. THAT WAS 2003. WHERE HAS THE LAW
18 GONE SINCE THEN?

19 MR. JOHNSON: SINCE THEN, YOUR HONOR, THERE HAVE NOT
20 BEEN ANY CASES UNTIL GENTRY CAME OUT. AND IN GENTRY,
21 GENTRY SPECIFICALLY DESIGNATED HOOKS. I THINK IT WAS CASE
22 NO. 8, WHERE THEY SPECIFICALLY POINTED OUT HOOKS AND SAID
23 THAT IT WAS OVERTURNED. NOW IT DID NOT GIVE ANY
24 CLARIFICATION AS TO ON WHAT GROUND. WHETHER IT WAS EVERY
25 GROUND OR SPECIFIC GROUNDS. ULTIMATELY WHAT YOU READ IN

1 GENTRY, GENTRY IS MAINLY A SUBJECT MATTER JURY ARGUMENT IN
2 SAYING THAT ALL COURTS, MY READING OF GENTRY IS THAT ALL
3 COURTS, ALL CIRCUIT COURTS, HAVE JURISDICTION TO HEAR
4 CRIMINAL CASES. AND THAT THEREFORE AN INDICTMENT THEN IS
5 A NOTICE DOCUMENT. BUT A NOTICE DOCUMENT THEREFORE, YOUR
6 HONOR, IT IS MY UNDERSTANDING IS A DUE PROCESS ARGUMENT
7 AND NOT A SUBJECT MATTER JURISDICTION. BECAUSE IN GENTRY,
8 THEY STILL DIDN'T REQUIRE THE COURT -- IN GENTRY IT STILL
9 STATED THAT ANY ARGUMENTS CONCERNING THE FINALITY OF THE
10 INDICTMENT WOULD HAVE TO BE MADE PRIOR TO THE JURY BEING
11 SWORN IN. AND SHORT OF THAT, THEN YOU WAIVE YOUR RIGHT TO
12 ARGUMENT THE INDICTMENT.

13 THE COURT: YOU WERE SAYING SOMETHING ABOUT IF
14 SOMEONE HAD MADE AN ARGUMENT AT SUCH AND SUCH A TIME THEN
15 THEREFORE THE COURT WOULD HAVE RULED IN A CERTAIN WAY.
16 TELL ME WHAT YOU ARE TALKING ABOUT.

17 MR. JOHNSON: OUR ARGUMENT IS THAT IN HOOKS, ONE
18 ARGUMENT WAS MADE OF THE REASON THAT IT WAS CLEARLY STATED
19 IN HOOKS THAT THE DEFENSE ATTORNEY DID NOT STATE HIS
20 ARGUMENT CONCERNING THE INDICTMENT PRIOR TO THE JURY BEING
21 SWORN IN. THAT THAT INDICTMENT CLAUSE WAS ACTUALLY
22 BROUGHT UP ON APPEAL. AND IT WAS FOUND TO BE BECAUSE IT
23 WAS RAISED IN APPEAL IS AND NOT PRIOR TO THE JURY BEING
24 SWORN IN, THAT IT WAS, THAT THE ISSUE WAS NOT HEARD AS FAR
25 AS WHETHER THE INDICTMENT WAS VALID OR NOT. BUT IT DOES

1 INDICATE THAT AT LEAST THAT AN INDICTMENT WAS INVALID AS
2 WRITTEN.

3 THE COURT: I UNDERSTAND YOUR ARGUMENT. WELL I FIND
4 THAT IN THIS CASE THAT PURSUANT TO STATE V. GENTRY AND
5 ALSO PURSUANT TO STATE V. LYNN THAT THIS INDICTMENT
6 APPLIES TO THE STATUTE; NAMELY, THE SOUTH CAROLINA CODE
7 SECTION 17-19-30, WHICH STATES THAT AS FAR AS EVERY
8 INDICTMENT TO WHICH A PERSON IS INDICTED FOR MURDER SHALL
9 BE DEEMED AND JUDGED EFFICIENT. AND VIEWING THE LAW IN
10 ADDITION TO SETTING FORTH THE TIME AND PLACE, TOGETHER
11 WITH THE PLAINTIFF'S STATEMENT, DIVESTED OF ALL USELESS
12 PHRASEOLOGY OF THE MANNER IN WHICH THE DEATH OF THE
13 DECEASED WAS CAUSED, CHARGES THAT THE DEFENDANT DID
14 FELONIOUSLY AND WILLFULLY AND WITH MALICE AFORETHOUGHT,
15 KILL AND MURDER THE DECEASED.

16 SO THAT REFERS SPECIFICALLY TO THE INDICTMENT
17 CHARGING MURDER. THE COURT IN ANALYZING WHAT IS ESSENTIAL
18 FOR THE MURDER INDICTMENT, GOES ON TO SAY THAT THE
19 EFFICIENT -- IF THE OFFENSE IS STATED WITH EFFICIENT
20 CERTAINTY AND PARTICULARITY TO ENABLE THE COURT TO KNOW
21 WHAT JUDGMENT TO PRONOUNCE. THE DEFENDANT TO KNOW WHAT HE
22 IS CALLED UPON TO ANSWER. AND IF AN ACQUITTAL OR A
23 CONVICTION THEREON BE COMPLETED AND BAR ANY SUBSEQUENT
24 PROSECUTION. IN ADDITION, THE COURT MUST LOOK AT THE
25 INDICTMENT IN A PRACTICAL LINE IN VIEW OF THE SURROUNDING

1 CIRCUMSTANCES. AND WHETHER THE INDICTMENT WOULD BE MORE
2 CERTAIN AND DEFINITE IS IRRELEVANT.

3 AS TO THIS PARTICULAR INDICTMENT WHICH IS A
4 THREE-COUNT INDICTMENT CHARGING MURDER OF TROY ROUSE BY
5 EUNICE DAVIS MCCALL AND EFRAIN THOMAS. AND ALSO CHARGING
6 CHAD JAMES WITH ACCESSORY AFTER THE FACT OF THAT MURDER,
7 THE INDICTMENT SPECIFICALLY STATES THAT HE DID SO ON APRIL
8 7, 2005, RENDER AN ASSISTANCE TO THE DEFENDANTS MCCALL AND
9 THOMAS, WHO HAD COMMITTED THE CRIME OF MURDER. AND THAT
10 THIS ACCESSORY AFTER THE FACT WAS DONE IN VIOLATION OF
11 SECTION 16-1-55 OF THE LAW. I FIND THAT THAT IS
12 SUFFICIENT TO PUT THE DEFENDANT ON NOTICE AS TO WHAT HE IS
13 ACCUSED OF DOING. AND IT IS SUFFICIENT TO HAVE THE COURT
14 TO KNOW WHAT HE IS ACCUSED OF DOING, AND WHAT JUDGMENT OR
15 SENTENCE TO PRONOUNCE IF HE IS. AND ALSO FOR ANY
16 APPELLATE COURT TO REVIEW ANY SUBSEQUENT PROCEEDINGS AT
17 THE END OF THIS TRIAL.

18 SO I FIND THAT THE MOTION IS PROPERLY MADE PRIOR TO
19 THE SWEARING OF THE JURY. I DENY THE MOTION. I THINK THE
20 COURT HAS GONE SOME LONG WAY TO SORT OF KIND OF CLARIFY
21 ALL OF THESE DISPUTES OVER THE INDICTMENT. AND HAS STATED
22 THE LAW SUCH THAT ONCE THE DEFENDANT IS -- ONCE THE
23 INDICTMENT SPECIFIES THE STATUTE, THE STATUTE WHICH A
24 PERSON IS ACCUSED OF VIOLATING, AND THE BASIC FACTS TO LET
25 THE DEFENDANT KNOW WHAT HE IS ACCUSED OF DOING SO THAT HE

1 CAN PREPARE A DEFENSE IF HE HAS ONE. AND THAT THE LAW H
2 BEEN COMPLIED WITH. AND I FIND THAT IT HAS BEEN COMPLIED
3 WITH BY THE STATE IN THIS CASE. AND YOUR MOTION REGARDING
4 THIS INDICTMENT IS DENIED.

5 MR. JOHNSON: THANK YOU, YOUR HONOR.

6 THE COURT: WHAT'S NEXT? MR. WHEELER?

7 MR. WHEELER: THANK YOU, YOUR HONOR. I GUESS WHAT
8 WOULD BE NEXT, IT'S MY UNDERSTANDING THAT MY CLIENT GAVE A
9 STATEMENT IN THIS CASE WHICH I BELIEVE THE STATE INTENDS
10 TO INTRODUCE IN ITS CASE IN CHIEF.

11 THE COURT: YOU MOVE TO SUPPRESS THE STATEMENT?

12 MR. WHEELER: YES, SIR, YOUR HONOR. I WOULD JUST
13 MOVE PURSUANT TO JACKSON V. DENNO FOR THE COURT TO
14 CONDUCT AN INQUIRY INTO WHETHER THAT STATEMENT MAY BE
15 USED.

16 THE COURT: WHAT POINT AND TIME DO YOU INTEND TO GET
17 IN TO THAT EVIDENCE?

18 MR. SAVERANCE: YOUR HONOR, I HAVE PROBABLY TWO OR
19 THREE LAY WITNESSES FIRST. SO IT WOULD PROBABLY BE MADE A
20 LITTLE BIT ON DOWN THE LINE WITH TWO INVESTIGATORS. THEY
21 WILL NOT BE THE FIRST TWO WITNESSES CALLED. SO HOWEVER
22 THE COURT WANTS TO HANDLE THAT. I PROBABLY HAVE THREE
23 MAYBE FOUR IN FRONT OF THEM THAT WILL TESTIFY. OF COURSE,
24 THEY WILL BE TESTIFYING AS TO---

25 THE COURT: PRIOR TO ANY TESTIMONY MENTIONING THE

1 OTHER STATEMENT, THE COURT WOULD BE OBLIGED TO CONDUCT A
2 HEARING ON THE ADMISSIBILITY OF THE STATEMENT PRIOR TO IT
3 BEING ADMITTED OR ATTEMPTED TO BE ADMITTED PURSUANT TO
4 RULE 104 OF THE SOUTH CAROLINA RULES OF EVIDENCE. WE WILL
5 ADDRESS THAT WHEN WE NEED TO. DO WE HAVE ALL THE JURORS
6 HERE?

7 MR. WHEELER: JUST A HOUSEKEEPING MATTER. DEFENSE
8 COUNSEL JUST WANTED TO GET YOUR GUIDANCE IN THIS CASE IN
9 WHAT ORDER YOU WANT US TO PROCEED IN. JUST IN WHAT
10 FASHION.

11 THE COURT: WELL THE WAY THAT YOU ARE SEATED IS
12 PROBABLY A GOOD WAY, ONE, TWO, THREE. UNLESS IT WOULD BE
13 EASIER FOR ME TO RECOGNIZE YOU IN ORDER TO PROCEED AT,
14 YOUR CLIENT IS?

15 MR. WHEELER: THOMAS.

16 THE COURT: THOMAS.

17 MR. WHEELER: EFRAIN THOMAS.

18 THE COURT: THOMAS, MCCALL AND JAMES.

19 MR. WHEELER: YES, SIR.

20 THE COURT: OF COURSE, Y'ALL CAN DO IT IN ANY ORDER
21 YOU WOULD LIKE. BUT THE PERSON THAT IS SEATED WHERE YOU
22 ARE WOULD PROBABLY BE THE PERSON THAT I WOULD CALL. DO WE
23 HAVE ANY OTHER SUGGESTIONS? YES, SIR, MR. JOHNSON.

24 MR. JOHNSON: YOUR HONOR, I DO HAVE ONE QUESTION ON
25 CROSS EXAMINATION OR ON DIRECT EXAMINATION. WOULD EACH OF

1 US HAVE TO MAKE SEPARATE OBJECTIONS? OR IF ONE MADE AN
2 OBJECTION WOULD IT BE FOR ALL THREE, OR DO WE HAVE TO BE
3 SPECIFIC WE WERE ALSO INCLUDED IN THAT OBJECTION?

4 THE COURT: WHAT DO YOU SAY ABOUT THAT? MR. JOHNSON,
5 WHAT DO YOU WANT IT TO BE?

6 MR. JOHNSON: YOUR HONOR, I WOULD PREFER THAT WE ALL
7 HAVE TO MAKE SEPARATE OBJECTIONS, BECAUSE IT MIGHT BE
8 DIFFERENT. JUST BECAUSE MY CLIENT IS CHARGED WITH A
9 DIFFERENT CHARGE THAN THE OTHER TWO, I MIGHT HAVE TO HAVE
10 THE RECORD SQUARED AWAY. I THINK IT TO BE BEST THAT HE
11 SHOULD TURN AND SPECIFY WHETHER THEY WOULD BE INCLUDED IN
12 THAT OBJECTION OR NOT.

13 THE COURT: MR. . . .

14 MR. WATTS: I WOULD OBJECT TO HAVING AN
15 INDIVIDUALIZED OBJECTION. I THINK IF ONE PARTY OBJECTS
16 AND DUE TO THE SIMILARITY OF THE CHARGES THAT MORE THAN
17 LIKELY, WE WILL MAKING THE SAME OBJECTION ON TESTIMONY,
18 BUT I WILL BE HAPPY ON THE RECORD TO SAY THAT I AM JOINING
19 IN ANY OBJECTION THAT MR. WHEELER IS MAKING. OR IF MR.
20 WHEELER MAKES AN OBJECTION, I AM SURE HE WOULD -- OR IF I
21 MAKE ONE, I AM SURE HE WOULD BE ABLE TO SPECIFY WHETHER HE
22 JOINS IN THAT OBJECTION OR NOT.

23 THE COURT: WHAT DO YOU SAY NOW, MR. WHEELER?

24 MR. WHEELER: YOUR HONOR, THAT WOULD BE FINE. I
25 GUESS THE FIRST ONE TO OBJECT AND THE OTHER ONES JUST

1 BRIEFLY JOIN IN THE OBJECTION---

2 THE COURT: ALL RIGHT.

3 MR. WHEELER: ---AND NOT SAY ANY MORE THAN THAT.

4 THE COURT: VERY GOOD.

5 MR. WHEELER: AND, YOUR HONOR, I THINK IT WOULD BE
6 FINE ON EVERYBODY IN THE ORDER YOU MENTIONED, YOUR HONOR.
7 WE'LL DO THAT. OPENING EXAMINATIONS AND EVERYTHING ELSE
8 WE WILL JUST GO IN THAT ORDER. THANK YOU.

9 THE COURT: YES, SIR. ANYTHING ELSE?

10 MR. WHEELER: BEFORE WE BROKE THE ISSUE, I THINK IT'S
11 GOING TO COME UP IN OUR CASE IN CHIEF, MEANING THAT I KNOW
12 MY CLIENT, AND PROBABLY MR. WATTS' CLIENT, THE ISSUE OF A
13 WITNESS NAMED CORY MCCLEM, WHO HAD BEEN ASSAULTED
14 APPROXIMATELY TWO MONTHS BEFORE. AND MR. ROUSE WAS UNDER
15 INDICTMENT FOR THAT ASSAULT WITH INTENT TO KILL AT THE
16 TIME OF HIS DEATH. BOTH OF OUR CLIENTS WERE AWARE OF
17 THAT. THAT GOES WITH ANY SELF DEFENSE. YOUR HONOR, OF
18 COURSE WE WOULD BE INCLINED TO MENTION THAT IN OUR
19 STATEMENTS; THAT WE MIGHT WANT TO GIVE SOME EVIDENCE OF
20 THAT. WE MIGHT WANT YOU TO CONSIDER A RULING ON THAT. SO
21 I WOULD HATE TO TELL THE JURY SOMETHING IN OPENING AND
22 HAVE YOU RULE OTHERWISE.

23 THE COURT: MR. SAVERANCE.

24 MR. SAVERANCE: YOUR HONOR, MY POSITION ON THAT IS,
25 WHAT THEY'RE GOING TO GET INTO AND WHAT THEY'RE GOING TO

1 ARGUE ABOUT IS GOING TO HAVE TO BE PUT IN IN THEIR CASE
2 CHIEF. AND I DON'T SEE -- I THINK IT'S A LITTLE
3 PREMATURE. WE CAN GO AHEAD AND GIVE OPENING STATEMENTS.
4 AND THEN ONCE WE REST, THEY HAVE EVERY CHANCE IN THE WORLD
5 TO REGROUP AND DECIDE WHAT THEY ARE GOING TO PUT UP AND
6 PUT UP WHAT THEY WANT TO, AND LET IT BE ARGUED AT THAT
7 POINT AND TIME. SO, YOUR HONOR, I THINK THAT THAT WOULD
8 BE A LITTLE BIT OF A PROCESS TO GO THROUGH. I WOULD
9 RATHER JUST START ON OPENING STATEMENTS, GO FROM THERE.
10 AND WHEN WE REST, YOU'RE GOING TO HAVE TO ADDRESS THE
11 DEFENDANTS ON SOME OTHER ISSUES AT THAT TIME. WE CAN TAKE
12 IT UP THEN. AND THEY WOULD HAVE THE OPPORTUNITY TO PUT UP
13 THEIR ENTIRE CASE TO KNOW WHAT THE RULING WOULD BE. AND I
14 DON'T THINK THERE WOULD BE PREJUDICE. BUT OPENING
15 STATEMENTS, THAT'S JUST OVER HIS WORD. I MEAN, JUST, WE
16 DON'T THINK IT SHOULD BE ADMITTED AT THIS POINT AND TIME,
17 YOUR HONOR.

18 SO WE WOULD BE PREPARED TO JUST GO AHEAD AND JUMP IN
19 TO THIS CASE AND GET GOING.

20 THE COURT: AND THE OPENING STATEMENTS ARE JUST AS
21 IMPORTANT PART OF THE TRIAL AS ANY OTHER PART OF THE
22 TRIAL. I AM NOT INCLINED TO TRY TO HAMSTRING THE DEFENSE
23 BY PROHIBITING THEM FROM TELLING THE JURY WHAT THEIR
24 DEFENSE IS IN OPENING STATEMENTS. NOW ON THE ISSUE OF
25 SELF-DEFENSE, THE VICTIM'S VIOLENT REPUTATION WAS AN

1 ELEMENT OF SELF-DEFENSE AS RELATES TO THE RIGHT OF THE
2 DEFENDANT OR DEFENDANT'S RIGHT AND APPEARANCES AND PRIOR
3 DIFFICULTY AND REPUTATION AND THE LIKE AND HIS PRIOR
4 VIOLENT THREATS. SO THOSE ARE THINGS THAT ARE ADMISSIBLE.
5 OF COURSE, WE WILL NOT ENGAGE IN ANY SIDESHOW OF TRYING A
6 SEPARATE CASE OTHER THAN THE ONE THAT WE ARE HERE TO TRY.

7 BUT THE LAW DOES PERMIT THAT EVIDENCE AS LIMITED BY
8 THE CASE LAW APPLICABLE TO THAT PARTICULAR SUBJECT MATTER.
9 SO YOU TRY YOUR CASE. IF THERE'S AN OBJECTION, I WILL
10 RULE ON THE OBJECTION. BUT I'M NOT GOING TO SCREEN THE
11 TESTIMONY.

12 MR. WHEELER: THANK YOU, YOUR HONOR. CAN WE ACCEPT
13 THAT AS A RULING THAT HE WOULD BE ABLE TO TESTIFY SUBJECT
14 TO OBJECTION THEY MAY HAVE DURING THE COURSE OF HIS
15 TESTIMONY, IS THAT CORRECT?

16 THE COURT: WELL I DON'T KNOW. I DON'T KNOW ANYTHING
17 ABOUT WHAT YOU'RE TALKING ABOUT OTHER THAN THE LIMITED
18 THING THAT YOU MENTIONED TO ME, WHICH IS A PRIOR CRIMINAL
19 ACT BY THE DEFENDANT, WHICH I ASSUME TO BE SOME CLAIM BY
20 THE DEFENSE OF A VICTIM'S VIOLENT REPUTATION OR
21 SOMETHING -- HAS SOMETHING TO DO WITH THE DEFENSE OF SELF
22 DEFENSE. AND IF THAT'S WHAT YOU PLAN TO ARGUE, YOU CAN
23 MAKE THAT ARGUMENT. IF THERE IS AN OBJECTION BY THE
24 STATE, I WILL RULE AT THAT TIME. I CAN'T ASSUME
25 EVERYTHING THAT YOU ARE GOING TO ASK. I WILL RULE WHILE

1 YOU ARE ASKING IT. YOU JUST HAVE TO PROCEED WITH WHAT YOU
2 WANT TO DO, THE WAY YOU WANT TO DO IT. ANYTHING ELSE?

3 MR. SAVERANCE: NOTHING FROM THE STATE.

4 MR. WATTS: ARE YOU GOING TO SELECT A JURY FOREMAN OR
5 ARE YOU GOING TO ALLOW THE JURY TO SELECT THEIR OWN
6 FOREMAN?

7 THE COURT: I NEED TO SELECT THE FOREPERSON OF THE
8 JURY AND APPOINT. I USUALLY APPOINT THE FOREPERSON OF THE
9 JURY. SOMETIMES THAT HELPS, BUT OTHER TIMES AS I SAY, IT
10 DEPENDS ON WHETHER I FEEL I KNOW ENOUGH ABOUT WHO IS ON
11 THERE TO APPOINT A FOREPERSON.

12 MR. WATTS: THANK YOU.

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

14 THE COURT: YOU MAY BRING THE JURY.

15 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
16 PRESENCE OF THE JURY.)

17 THE COURT: LADIES AND GENTLEMEN, GOOD MORNING. IF
18 YOU WILL STAND AT THIS TIME AND BE SWORN.

19 (THEREUPON, THE JURY IS SWORN.)

20 THE COURT: WELL, LADIES AND GENTLEMEN OF THE JURY,
21 YOU WERE SUMMONED TO APPEAR FOR JURY DUTY, AND YOU
22 RESPONDED TO THAT SUMMONS. YESTERDAY WE WENT THROUGH THE
23 JURY QUALIFICATIONS PROCESS. AND YOU WERE QUALIFIED TO
24 SERVE ON JURY DUTY. YOU THEN WENT THROUGH THE JURY
25 SELECTION PROCESS AND YOU WERE SELECTED TO BE ON THIS.

1 JURY. AND NOW YOU HAVE TAKEN AN OATH TO WELL AND DULY TRY
2 THIS CASE AND RENDER A TRUE VERDICT ACCORDING TO THE LAW
3 AND ACCORDING TO THE EVIDENCE PRESENTED DURING THIS TRIAL.

4 AND WHAT I STATE TO YOU NOW IS INTENDED TO SERVE AS
5 AN INTRODUCTION TO THE TRIAL OF THIS CASE. AND TO LET YOU
6 KNOW WHAT THIS IS ALL ABOUT AND WHAT WE WILL BE DOING. IT
7 IS NOT INTENDED TO BE A SUBSTITUTE TO BE A MORE DETAILED
8 INSTRUCTION ON THE LAW THAT I WILL GIVE TO YOU AT THE END
9 OF THE CASE BEFORE YOU RETIRE TO CONSIDER YOUR VERDICT.
10 THIS IS A CRIMINAL CASE WHICH WAS COMMENCED BY THE STATE
11 OF SOUTH CAROLINA CHARGING THE DEFENDANTS IN THIS CASE,
12 THE DEFENDANTS BEING EUNICE DAVIS MCCALL AND EFRAIN THOMAS
13 AND CHAD JAMES. THE INDICTMENT CHARGES MR. MCCALL AND
14 MR. THOMAS WITH MURDER AND POSSESSION OF A FIREARM AND
15 WITH THE COMMISSION OF A CRIME OF VIOLENCE. AND CHARGES
16 CHAD JAMES WITH ACCESSORY AFTER THE FACT OF MURDER.

17 THIS CASE COMES IN TO COURT AS THE RESULT OF AN
18 INDICTMENT RETURNED BY THE GRAND JURY OF LEE COUNTY. AND
19 YOU SHOULD DISTINCTLY UNDERSTAND THAT THE INDICTMENT IS
20 SIMPLY A CHARGE. IT IS NOT IN ANY SENSE EVIDENCE OF THE
21 ALLEGATIONS IN THE INDICTMENT. EACH DEFENDANT HAS PLED
22 NOT GUILTY TO EACH AND EVERY CHARGE IN THE INDICTMENT.
23 THE STATE THEREFORE HAS THE BURDEN OF PROVING EACH OF THE
24 ESSENTIAL ELEMENTS OF THE INDICTMENT BEYOND A REASONABLE
25 DOUBT. AND THE PURPOSE OF A TRIAL IS TO DETERMINE WHETHER

1 THE STATE CAN MET THAT BURDEN. YOUR PURPOSE AS JURORS IS
2 AND WILL BE TO FIND AND DETERMINE THE FACTS OF THIS CASE.
3 UNDER OUR SYSTEM OF LAWS, ONLY YOU THE JURY CAN DECIDE THE
4 FACTS OF THIS CASE. OUT OF ALL THE OTHER PEOPLE IN LEE
5 COUNTY, OUT OF ALL THE OTHER PEOPLE IN SOUTH CAROLINA, OUT
6 OF ALL THE OTHER PEOPLE IN THE WORLD, ONLY THE 12 OF YOU
7 WHO WILL DELIBERATE CAN DECIDE THE FACTS OF THIS CASE.
8 AND IT WILL BE YOUR DUTY TO EVALUATE AND WEIGH THE
9 EVIDENCE AND TO DETERMINE WHICH EVIDENCE CONVINCES YOU OF
10 ITS TRUTH.

11 IT IS ESPECIALLY IMPORTANT THAT YOU PERFORM YOUR DUTY
12 AS JURORS DILIGENTLY AND CONSCIENTIOUSLY, BECAUSE
13 ORDINARILY THERE IS NO MEANS OF CORRECTING AN ERRONEOUS
14 DECISION OF DETERMINING THE FACTS BY THE JURY. JUST AS
15 ONLY YOU CAN DECIDE THE FACTS OF THIS CASE, I AM THE SOLE
16 JUDGE OF THE LAW OF THIS CASE. AND IT IS YOUR DUTY AS
17 JURORS TO ACCEPT AND APPLY THE LAW EXACTLY AS I STATE IT
18 TO YOU AT THIS TIME, DURING THE TRIAL, AND AT THE END OF
19 THE TRIAL. AND YOU WILL DETERMINE THE FACTS OF THIS CASE
20 FROM THE TESTIMONY THAT YOU HEAR AND THE OTHER EVIDENCE
21 INTRODUCED IN THIS COURT. YOU MUST NOT CONSIDER ANYTHING
22 THAT YOU MAY HAVE HEARD OR READ, OR ANY OTHER
23 COMMUNICATIONS CONCERNING THIS MATTER THAT YOU MIGHT
24 RECEIVE OUTSIDE OF THE COURTROOM BEFORE THE TRIAL, DURING
25 THE TRIAL, OR DURING THE TRIAL AND UNTIL THE CASE IS

1. SUBMITTED TO YOU FOR YOU TO DELIBERATE AND DISCUSS. YOU
2. ARE NOT PERMITTED TO DISCUSS IT WITH ANYONE OR WITH EACH
3. OTHER.

4. IT WILL BE A VIOLATION OF YOUR DUTY AS JURORS TO
5. ENGAGE IN ANY FORM OF PREMATURE DISCUSSION IN THIS CASE,
6. IN THE JURY ROOM, OR TO ALLOW ANYONE OUTSIDE OF THE
7. COURTROOM, EVEN YOUR FAMILY MEMBERS, FRIENDS TO DISCUSS
8. THIS MATTER WITH YOU, OR FOR YOU TO DISCUSS IT WITH THEM
9. PRIOR TO ME AUTHORIZING YOU TO DO SO. AND IT'S ESPECIALLY
10. IMPORTANT THAT YOU KEEP AN OPEN MIND CONCERNING THIS
11. MATTER UNTIL YOU'VE HEARD THE ENTIRE MATTER; AS WELL AS,
12. THE INSTRUCTIONS OF LAW. NOW THIS CASE, THIS TRIAL WILL
13. PROBABLY BE DIFFERENT FROM WHAT YOU MIGHT EXPECT. MANY
14. PEOPLE DO NOT HAVE A CHANCE TO ATTEND COURT OR TO SIT ON A
15. JURY AS YOU ARE DOING NOW. AND MANY THINK FROM WATCHING
16. TELEVISION OR MOVIES OR READING BOOKS, THAT TRIALS ARE
17. ALWAYS FULL OF INTENSE DRAMA, RIVETING EXCITEMENT OR AND
18. OTHER TENSE ACTION. AND WHILE THESE THINGS MAY BE TRUE AT
19. TIMES, THIS TRIAL IS NOT FOR THE PURPOSE OF ENTERTAINMENT;
20. SUCH AS TV, MOVIES, OR BOOKS.

21. IT IS A FUNDAMENTAL PART OF OUR DEMOCRACY, IT IS A
22. SEARCH FOR THE TRUTH IN AN EFFORT TO MAKE SURE THAT
23. JUSTICE IS DONE BETWEEN THE PARTIES BEFORE THE COURT. A
24. SEARCH FOR THE TRUTH IS OFTEN A SLOW, DELIBERATE, AND
25. SOMETIMES REPETITIVE PROCESS. THE OPPOSITE OF WHAT YOU

1 MAY HAVE SEEN ON TV OR IN THE MOVIES OR READ IN BOOKS. ○
2 THE COURTROOM IS A PLACE OF HONOR DEDICATED TO THE
3 PROTECTION AND PRESERVATION OF CITIZEN'S RIGHTS. AND WHAT
4 MANY HAVE CALLED THE GREATEST JUSTICE SYSTEM EVER CREATED.

5 THE ATTORNEYS APPEARING BEFORE YOU ARE ADVOCATES FOR
6 THE PARTIES THAT THEY REPRESENT. BUT FIRST AND FOREMOST,
7 THEY ARE OFFICERS OF THE COURT SWORN TO UPHOLD THE
8 INTEGRITY AND FAIRNESS OF THE JUDICIAL SYSTEM. AND TO
9 HELP YOU IN YOUR SEARCH FOR THE TRUTH DURING THIS PROCESS.
10 AND YOU SHOULD EXPECT OF THEM TO BE PROFESSIONAL,
11 COMPETENT AND ETHICAL IN THE REPRESENTATION OF THEIR
12 CLIENT'S INTERESTS. REMEMBER YOU HAVE TAKEN AN OATH TO
13 TRY THIS CASE AND REACH A FAIR AND JUST VERDICT. AND IN
14 THAT CONNECTION, YOU ARE ALL EXPECTED TO BE PROFESSIONAL,
15 REASONABLE AND ETHICAL. I WANT TO THANK YOU FOR
16 RESPONDING TO YOUR JUROR'S SUMMONS TO A CALL TO DUTY. AND
17 ACCEPTING OF COURSE THE RESPONSIBILITY THAT YOU HAVE FOR
18 JURY SERVICE AND FOR CONTRIBUTING TO OUR SYSTEM OF
19 JUSTICE.

20 NOW WE ARE GOING TO BEGIN NOW WITH OPENING STATEMENTS
21 FROM THE LAWYERS. UNDERSTANDING THAT WHAT THEY TELL YOU
22 AT THIS TIME AND THROUGHOUT THE TRIAL IS NOT EVIDENCE.
23 BECAUSE AS I HAVE EXPLAINED, YOU WILL RECEIVE THE EVIDENCE
24 FROM THE WITNESS STAND OR THROUGH EXHIBITS INTRODUCED
25 DURING THE TRIAL. WHAT THEY TELL YOU MAY NOT BE THE LAW ()

1 AS I HAVE EXPLAINED TO YOU, I AM THE SOLE JUDGE OF THE LAW
2 AND I WILL EXPLAIN THE LAW. BUT CERTAINLY WHAT THEY TELL
3 YOU IS IMPORTANT. WHAT THEY TELL YOU IS AN ESSENTIAL PART
4 OF THE TRIAL. AND WHAT THEY TELL YOU, PLEASE LISTEN TO
5 AND CONSIDER GREATLY. BECAUSE THEY HAVE ONE OF THE MOST
6 ESSENTIAL ROLES TO PLAY IN THIS PROCESS.

7 STARTING OUT WITH OPENING STATEMENTS, MR. SOLICITOR,
8 MR. SAVERANCE.

9 MR. SAVERANCE: MAY IT PLEASE THE COURT, YOUR HONOR.

10 THE COURT: YES, SIR.

11 MR. SAVERANCE: LADIES AND GENTLEMEN, AS YOU KNOW, I
12 HAVE ALREADY INTRODUCED MYSELF. I'M PAT SAVERANCE. I'M
13 AN ATTORNEY HERE IN BISHOPVILLE. HERE IN LEE COUNTY. I
14 WORK WITH JIMMY SEGARS AND PAUL FATA. AND MY OFFICE IS
15 OVER THERE ON MARKET. Y'ALL KNOW ABOUT THAT. BUT I'M
16 ALSO AN ASSISTANT SOLICITOR. AND WHAT THAT MEANS IS WHEN
17 CASES ARE BROUGHT UP HERE BEFORE THIS COURT, BEFORE YOUR
18 HONOR, BEFORE ALL THE JUDGES, IT IS MY JOB TO PROSECUTE
19 THE CASE. AND THAT'S THE SIDE THAT I AM ON IN THIS CASE,
20 THE PROSECUTION.

21 NOW I KNOW THAT IF YOU HAD YOUR DRUTHERS, YOU WOULD
22 RATHER BE DOING A LOT OF OTHER THINGS BESIDES THIS. AND I
23 KNOW YOU'RE THINKING A MURDER CASE, IT TAKES A LONG TIME.
24 I COULD BE, YOU KNOW, WORKING OR SPENDING TIME WITH FAMILY
25 OR MAYBE SHOPPING OR SOMETHING LIKE THAT. AND I KNOW

1 THERE'S A LOT OF OTHER THINGS GOING ON. BUT THIS IS A
2 VERY IMPORTANT CASE. Y'ALL KNOW THAT. WE'RE NOT TALKING
3 ABOUT A CASE WHERE SOMEBODY JUST TOOK SOME MONEY AND
4 SOMEBODY WANTS RESTITUTION BACK. WE'RE NOT TALKING ABOUT
5 SOMEBODY BEING INJURED OR BROKE AN ARM AND WANTS JUSTICE.
6 WE'RE TALKING ABOUT A MURDER. WE'RE TALKING ABOUT
7 SOMETHING THAT CAN'T BE UNDONE. NOTHING. IT CAN'T BE
8 CHANGED OR TAKEN BACK. WE'RE TALKING ABOUT MURDER. THE
9 LOSS OF LIFE. AND WE BELIEVE THE EVIDENCE WILL SHOW THAT
10 TROY ROUSE WAS MURDERED. HE WAS KILLED WITHOUT
11 JUSTIFICATION. WITHOUT LEGAL JUSTIFICATION.

12 NOW YOU'RE GOING TO HEAR TERMS. AND THE JUDGE HAS
13 ALREADY TOLD YOU, EVIDENCE, FACTS, LAW AND THAT SORT OF
14 THING. Y'ALL ARE GOING TO DETERMINE THE FACTS OF THIS
15 CASE. I DON'T DETERMINE THEM. MR. WHEELER, THE OTHER
16 ATTORNEYS THERE DON'T DETERMINE IT. NOBODY. NO ONE
17 DETERMINES THE FACTS OF THIS CASE, Y'ALL DO. Y'ALL DO.
18 Y'ALL HAVE THAT POWER. AND WITH POWER AS WE KNOW IT,
19 COMES RESPONSIBILITY. AND I KNOW Y'ALL WILL BE
20 RESPONSIBLE AND LISTEN. AND GIVE YOUR TIME AND ATTENTION
21 TO THIS MATTER.

22 NOW AS FAR AS THE EVIDENCE GOES, THE EVIDENCE CAN
23 TAKE THE SHAPE OF MANY DIFFERENT FORMS. EVIDENCE MAY BE
24 BULLETS. THE EVIDENCE MAY BE PICTURES OR DIAGRAMS. IT
25 COULD BE NUMEROUS THINGS. IT CAN ALSO COME FROM THAT

1 CHAIR RIGHT THERE. IF WITNESSES COME AND SWEAR TO TELL
2 THE TRUTH AND THEY TAKE THE STAND AND ANSWER QUESTIONS
3 FROM BOTH SIDES MOST OF THE TIME. AND YOU CAN BELIEVE ALL
4 OF IT. YOU CAN BELIEVE ALL OF WHAT SOMEBODY SAID, PART OF
5 IT OR NONE OF IT. YOU DECIDE WHO IS CREDIBLE AND WHO IS
6 BELIEVABLE. AND WHAT REASON THIS PERSON HAD TO TELL WHAT
7 HE OR SHE TOLD. DO I BELIEVE ALL OF IT, SOME OF IT, OR
8 NONE OF IT. AND THAT'S Y'ALLS POWER, LADIES AND
9 GENTLEMEN. THAT IS Y'ALLS RESPONSIBILITY AND Y'ALLS DUTY.
10 AND Y'ALL MAKE THAT CALL. Y'ALL DECIDE. AND NOBODY CAN
11 FORCE YOU. ALL WE CAN ASK YOU TO DO IS TO BE OPEN AND
12 LISTEN AND AT THE END OF THE DAY, COME TO THE DECISION
13 THAT REFLECTS WHAT HAS BEEN PRESENTED IN THIS CASE.

14 NOW WHEN YOU MAKE A DECISION AT THE END OF THE DAY OR
15 WHEN I SAY DAY, I DON'T MEAN TODAY, BUT WHENEVER THIS
16 TRIAL ENDS, AND YOU DECIDE WHAT THE FACTS ARE, THE JUDGE
17 IS GOING TO TELL YOU WHAT THE LAW IS. AND ALL YOU DO IS
18 COMBINE YOUR FACTS WITH THE LAW, AND YOU HAVE YOUR
19 DECISION. NOW WE, AS I SAID BEFORE, WE HAVE A CASE HERE
20 DEALING WITH MURDER. THE UNLAWFUL KILLING OF SOMEBODY
21 ELSE WITH MALICE. MALICE. THAT MEANS, YOU KNOW, MAYBE
22 SOMEBODY USED THEIR WEAPON, OR MAYBE SOMEBODY HAD ILL WILL
23 OR WHATEVER. MALICE TAKES MANY SHAPES AND FORMS. AND ON
24 OR ABOUT APRIL 7, 2005, TROY ROUSE, TROY ROUSE WAS THE
25 VICTIM IN THE CASE. WAS, WE BELIEVE THE EVIDENCE WILL

1 SHOW, MURDERED. MURDERED. NOW THAT'S WHY WE ARE HERE
2 TODAY. THE DEFENDANTS HAVE BEEN CHARGED WITH CERTAIN
3 CRIMES.

4 WE KNOW THAT THE DEFENDANT EFRAIN THOMAS HAS BEEN
5 CHARGED WITH MURDER. HE HAS BEEN CHARGED WITH THE
6 UNLAWFUL KILLING OF TROY ROUSE. WE KNOW THAT EUNICE
7 MCCALL HAS BEEN CHARGED WITH MURDER, THE UNLAWFUL KILLING
8 OF SOMEBODY WITH MALICE WITHOUT JUST CAUSE, WITHOUT JUST
9 REASON. NOW YOU MAY SAY WELL WHY ARE TWO PEOPLE CHARGED.
10 WELL WE BELIEVE THE FACTS AND THE EVIDENCE ARE GOING TO
11 SHOW THAT EFRAIN THOMAS AND EUNICE MCCALL BOTH FIRED SHOTS
12 FROM TWO DIFFERENT GUNS INTO THE VICTIM TROY ROUSE. AND
13 YOU'RE GOING TO HEAR TESTIMONY ABOUT, YOU KNOW, ABOUT
14 WHICH BULLETS WERE FATAL. WHICH MAY HAVE BEEN FATAL,
15 WHICH WEREN'T FATAL. WE THINK THE EVIDENCE IS GOING TO
16 SHOW THAT BOTH EFRAIN THOMAS AND EUNICE MCCALL WERE
17 RESPONSIBLE FOR KILLING TROY ROUSE.

18 NOW CHAD JAMES AS YOU KNOW, HAS BEEN CHARGED WITH
19 ACCESSORY AFTER THE FACT. AND WHAT THAT MEANS IS, AFTER
20 THIS CRIME OCCURRED, AFTER THIS MURDER OCCURRED, THAT HE
21 DID SOMETHING. HE TOOK SOME SORT OF STEPS TO ASSIST THE
22 DEFENDANTS, ONE OR BOTH OF THEM, AFTER THIS TOOK PLACE.
23 AND WE'LL GET IN TO A LITTLE BIT MORE OF THAT LATER ON.
24 BUT THOSE ARE KIND OF WHAT THOSE CHARGES MEAN AND WHAT
25 THOSE CHARGES ARE. WE'VE ALSO CHARGED EFRAIN THOMAS AND ()

1 EUNICE MCCALL WITH HAVING A WEAPON, A GUN, DURING A
2 VIOLENT CRIME. SO THAT'S ANOTHER CHARGE THEY HAVE THAT
3 WE'RE TALKING ABOUT. BUT WHAT I WANT YOU TO DO IS TO GO
4 BACK WITH ME TO APRIL 7, 2005, HERE NEAR WILSON STREET IN
5 LEE COUNTY. AND I APOLOGIZE THAT'S OVER THERE NEAR CHAPEL
6 ROAD. AND THE RECREATION DEPARTMENT HAS A BALL FIELD AND
7 TENNIS COURTS AND THAT SORT OF THING.

8 NOW THAT EVENING SOMETIME AROUND 10 P.M., LIKE I
9 SAID, YOU'RE GOING TO HEAR PEOPLE THAT WERE THERE AND THAT
10 SORT OF THING. AND THEY CAN TELL YOU WHAT TIME A LOT
11 BETTER THAN I CAN. BUT AROUND 10 P.M. THAT EVENING,
12 YOU'RE GOING TO -- WE'RE GOING TO HAVE TESTIMONY THAT
13 SOMEBODY WAS WALKING THROUGH THE AREA. AND THE TESTIMONY
14 I BELIEVE IS GOING TO BE, THAT SHE IDENTIFIED ALL THREE
15 DEFENDANTS, MR. THOMAS, MR. MCCALL AND MR. JAMES.
16 IDENTIFIED ALL THREE OF THEM AS WALKING WITH THE VICTIM
17 TROY ROUSE. AND AS SHE PASSES BY, YOU'RE GOING TO HEAR,
18 YOU'RE GOING TO HEAR AS SHE GETS PAST THEM, THEY'RE RIGHT
19 AROUND, SHE'S GOING TO TELL YOU SHE CAN SEE REAL WELL.
20 SHE HEARS SOME COMMOTION. AND SHE TURNS AROUND. AND
21 YOU'RE GOING TO HEAR TESTIMONY WE SUBMIT THAT WHEN SHE
22 TURNS AROUND, EUNICE MCCALL AND TROY ROUSE ARE SCUFFLING,
23 SCUFFLING. AND AT SOME POINT SHE SEES, YOU KNOW, SHE'S
24 GOT A CLEAR VIEW FROM WHAT SHE'S GOING TO SAY, IS SHE SEES
25 EUNICE MCCALL AND TROY ROUSE, THE VICTIM, STANDING FACE TO

1 FACE CLOSE TOGETHER.

2 AND EUNICE MCCALL TAKES OUT A WEAPON AND FIRES IT.
3 BAM. AT CLOSE RANGE. TROY ROUSE HAS BEEN SHOT THEN.
4 THEN AFTER THAT, SHE HEARS SEVERAL MORE SHOTS FROM THE
5 SIDE WHERE SHE SAYS EFRAIN THOMAS HAD BEEN AT, WHERE THOSE
6 SHOTS WERE COMING FROM. OF COURSE SHE LEAVES AT THAT
7 POINT. AND WE CAN'T BLAME HER. WE CAN'T BLAME HER. SHE
8 LEAVES. BUT SHE'S GOING TO TELL YOU WHAT SHE SAW. SHE'S
9 GOING TO TELL YOU WHAT HAPPENED. SHE'S GOING TO TELL
10 ABOUT THIS CASE, AND WHAT SHE KNOWS ABOUT IT. AND THERE'S
11 ALSO GOING TO BE TESTIMONY THAT AFTER THIS KILLING, THIS
12 MURDER OCCURRED. SOON AFTER, EFRAIN THOMAS AND CHAD JAMES
13 GO BACK TO MR. JAMES' HOUSE HERE IN LEE COUNTY, HERE IN
14 BISHOPVILLE. AND THAT THAT HOUSE IS NEAR THE CRIME SCENE.
15 AND EFRAIN THOMAS BEGAN TO TALK ABOUT WHAT HAPPENED.

16 AND YOU'RE GOING TO HEAR ABOUT THAT DISCUSSION
17 BECAUSE THERE ARE THREE OR FOUR OTHER PEOPLE THERE. AND
18 ABOUT TROY BEING SHOT. BEING LEFT IN THE STREET. AND
19 CHAD JAMES WAS THERE. AND YOU'RE GOING TO HEAR THAT
20 MR. JAMES AT SOME POINT GOES AND GETS IN THE CAR. BUT
21 THREE OR FOUR PEOPLE GET IN THE CAR, AND CHAD IS DRIVING.
22 AND EFRAIN THOMAS AT SOME POINT GETS IN THE TRUNK OF THE
23 CAR, AND THEY LEAVE. THEY DRIVE OUT OF LEE COUNTY. SO
24 RIGHT AFTER THIS MURDER OCCURRED. RIGHT AFTER. NOW
25 THERE'S ALSO GOING TO BE TESTIMONY FROM LAW ENFORCEMENT

1 HERE IN BISHOPVILLE. AND WHY IS THAT? WHEN SHOTS RING
2 OUT AND WHEN CRIMES OCCUR, THEY GO RESPOND TO THE SCENE.
3 THEY GET CALLED. YOU'RE GOING TO HEAR HOW THEY SECURED
4 THE CRIME AREA. WHERE THE CRIME AREA WAS AT. WHAT THEY
5 SAW. WHAT THEY GATHERED, EVIDENCE: BULLETS, CLOTHES,
6 PICTURES THEY TOOK AND THINGS LIKE THAT. AND YOU'RE GOING
7 TO HEAR THEY TALKED TO A NUMBER OF WITNESSES. AND
8 TRACKED DOWN CERTAIN LEADS.

9 AND AT SOME POINT THE DECISION WAS MADE TO BRING
10 CHARGES AGAINST ALL THREE OF THESE DEFENDANTS FOR MURDER
11 AND ACCESSORY AFTER THE FACT OF MURDER. NOW WE'RE GOING
12 TO ALSO HAVE SOME PEOPLE THAT ARE CALLED EXPERTS, THAT
13 WE'RE GOING TO PRESENT TO TESTIFY IN THIS MATTER. AND
14 YOU'RE GOING TO HEAR FROM A FORENSIC PATHOLOGIST. AND
15 THAT'S A PERSON THAT DOES AUTOPSIES AND IS AN EXPERT IN
16 THAT FIELD. AND WHAT PERSON IS THAT? WELL THIS EXPERT
17 CAN SAY, I SAW THE BODY OF TROY ROUSE. I SAW CERTAIN
18 WOUNDS. I SAW CERTAIN GUNSHOT WOUNDS. AND THIS EXPERT IS
19 GOING TO TALK ABOUT THE NUMBER OF GUNSHOT WOUNDS IN
20 MR. ROUSE'S BODY. AND THAT'S IMPORTANT. THAT'S
21 IMPORTANT. HOW MANY TIMES SOMEBODY GETS SHOT, AND WHERE.
22 AND SHE'S GOING TO TALK ABOUT EACH BULLET, WHERE IT WENT
23 IN, WHERE SHE THOUGHT IT MAY HAVE GONE OUT. AND WHAT IT
24 MAY HAVE DONE TO CERTAIN ORGANS IN MR. ROUSE'S BODY.
25 SHE'S GOING TO TALK TO YOU ABOUT THE FACT THAT THE

1 BULLETS CAME, THERE WERE TWO DIFFERENT GUNS. TWO
2 DIFFERENT GUNS. SHE'S GOING TO INDICATE THE BULLETS IN
3 HER VIEW CAME FROM TWO DIFFERENT WEAPONS. AND SHE'S ALSO
4 GOING TO TELL YOU SHE LOOKED AT THIS CASE AND CLASSIFIED
5 IT AS A HOMICIDE. A MURDER. SO AND AGAIN, BEING AN
6 EXPERT, I FEEL SHE CAN DO A BETTER JOB THAN I CAN. BUT
7 THAT'S WHAT YOU'RE GOING TO HEAR FROM HER. AND THAT'S
8 IMPORTANT, THE CAUSE OF DEATH, THE NUMBER OF BULLETS,
9 WHERE WAS THE WOUNDS, WHICH BULLETS CAUSED THE DEATH. OR
10 MAY HAVE CAUSED THE DEATH. WE'RE ALSO GOING TO PRESENT
11 SOMEBODY WHO SAYS -- IS AN EXPERT IN IDENTIFYING BULLETS,
12 GUNS, AND THAT SORT OF THING.
13 NOW IN THIS CASE, WE DON'T HAVE THE TWO GUNS THAT
14 WERE USED THAT MATCHED THE BULLETS. AND I'LL TELL YOU WHY
15 THEY WEREN'T FOUND AT THE SCENE. WE DON'T HAVE THEM. IF
16 WE HAD THEM, THEY WOULD HAVE BEEN TESTED. BUT THIS
17 FIREARM IDENTIFICATION EXPERT WILL TAKE THE STAND AND IS
18 GOING TO SAY THAT HE TESTED THESE BULLETS, AND YOU'VE GOT
19 CERTAIN BULLETS THAT WILL MATCH CERTAIN TYPES OF GUNS.
20 AND THE OTHER BULLETS WILL MATCH ANOTHER TYPE OF GUN. SO
21 HIS VIEW IS GOING TO BE AGAIN, THESE BULLETS CAME FROM TWO
22 DIFFERENT GUNS. TWO DIFFERENT GUNS, OKAY. AND THAT'S
23 IMPORTANT. THAT'S IMPORTANT. WE'LL TALK TO YOU MORE
24 ABOUT THAT. IN CLOSING, LADIES AND GENTLEMEN, I WANT YOU
25 TO KEEP IN MIND THAT I KNOW THAT THE STATE HAS THE BURDEN

1 OF PROVING THEIR CASE. AND WE ACCEPT THAT BURDEN. AND
2 IT'S NOT ANY DOUBT. IT'S A REASONABLE DOUBT. REASONABLE
3 DOUBT.

4 AND WE BELIEVE THAT WHEN WE REST OUR CASE, WHEN WE
5 FINISH THIS CASE AND WHEN THIS CASE DOES GO TO THE JURY,
6 THAT WE WOULD HAVE PRESENTED MORE THAN ENOUGH EVIDENCE TO
7 CONVICT ALL THREE DEFENDANTS. TO CONVICT EFRAIN THOMAS
8 AND EUNICE MCCALL OF MURDER, OF UNLAWFULLY KILLING TROY
9 ROUSE. SHOOTING HIM NUMEROUS TIMES. THEN BEING LEFT
10 THERE AND DYING IN THE STREETS. AND CHAD JAMES WITH
11 ACCESSORY AFTER THE FACT, WITH HELPING THEM AFTER THE
12 MURDER LEAVE THE SCENE, LEAVE THE AREA. AND DRIVE OFF.
13 AND DRIVE TO CAMDEN. WE BELIEVE THAT IS WHAT THE FACTS
14 WILL SHOW, LADIES AND GENTLEMEN. BUT THANK YOU FOR YOUR
15 TIME. THANK YOU FOR YOUR ATTENTION. AND WE DO APPRECIATE
16 YOU BEING HERE. BUT WE ALL KNOW THIS IS IMPORTANT. AND
17 WE THANK YOU IN ADVANCE.

18 THE COURT: MR. WHEELER.

19 MR. WHEELER: THANK YOU, YOUR HONOR. MAY IT PLEASE
20 THE COURT.

21 THE COURT: YES, SIR.

22 MR. WHEELER: GOOD MORNING, LADIES AND GENTLEMEN. MY
23 NAME IS WILL WHEELER AND I GOT TO MEET Y'ALL YESTERDAY. I
24 DO PRACTICE LAW HERE IN BISHOPVILLE. I GREW UP HERE IN
25 LEE COUNTY. AND I PRACTICE IN THE JENNINGS LAW FIRM RIGHT

1 ACROSS THE STREET BESIDE THE COURTHOUSE. IT IS MY
2 PLEASURE TODAY TO REPRESENT BEFORE YOU, MR. EFRAIN THOMAS
3 BESIDE ME AT THE TABLE WHO Y'ALL MET YESTERDAY AS WELL.
4 EFRAIN IS 24-YEARS-OLD. HE GREW UP IN NEW YORK, BUT HE
5 HAS TIES HERE IN LEE COUNTY. BUT HE HAS FAMILY HERE IN
6 LEE COUNTY. HIS GRANDMOTHER LIVES HERE, AND HE MOVED DOWN
7 HERE IN 2004, AND LIVES WITH HER. AND I AM GLAD TO BE
8 REPRESENTING HIM BEFORE Y'ALL TODAY.

9 LADIES AND GENTLEMEN, YESTERDAY PROBABLY, WHEN Y'ALL
10 WERE BEING SELECTED TO BE ON THIS JURY, OR MAYBE SHORTLY
11 AFTER YOU WERE SELECTED ON THIS JURY, I THINK WE CALLED
12 THIS CASE FOR TRIAL MAYBE YESTERDAY. YOU HEARD THE NUMBER
13 OF THE INDICTMENT AND A MURDER CASE BEFORE YOU WENT HOME
14 LAST NIGHT. NOW WHEN Y'ALL WENT HOME LAST NIGHT EVEN
15 BEFORE Y'ALL CAME BACK THIS MORNING, YOU KNEW SOMETHING
16 ALREADY ABOUT THIS CASE; THAT THERE ARE TWO SIDES TO THIS
17 STORY. BECAUSE WE ARE NOT JUST HERE TO SHOOT THE BREEZE.
18 WE WENT THROUGH TWO AND HALF HOURS OF JURY SELECTION
19 YESTERDAY BRINGING THIS MANY PEOPLE INTO THIS COURTROOM
20 JUST TO SAY ENOUGH, WHAT MR. SAVERANCE SAID, THAT'S IT.
21 THAT'S THE END OF THE STORY. THAT WOULD BE A LOT OF TIME
22 WASTED ENOUGH. THERE'S A LOT MORE TO IT THAN MAY MEET THE
23 EYE ON THE FACE OF THE INDICTMENT. THERE'S AN AWFUL LOT
24 MORE TO IT THAN THAT.

25 LADIES AND GENTLEMEN, IN LISTENING TO MR. SAVERANCE

1 OPENING THIS MORNING, IF Y'ALL SEE A COMPUTER SITTING ON
2 MY TABLE, THAT'S NOT MINE. I'M NOT THAT FANCY. THIS IS
3 THE ONLY THING THAT CAME TO MY MIND. THREE LETTERS. WHY?
4 NOW MR. SAVERANCE MIGHT HAVE TOLD YOU A WHAT, BUT HE
5 HADN'T TOLD YOU ANYTHING ABOUT A WHY. AND Y'ALL KNOW THAT
6 FOR EVERY WHAT THAT HAPPENS IN THIS WORLD, THERE'S A WHY.
7 NOTHING HAPPENS WITHOUT A REASON. SOMETHING COMES
8 TOGETHER BY EVERYTHING THAT HAPPENS. NOW YOU'RE GOING TO
9 FIND IN THIS CASE, AND I'LL JUST COME OUT AND TELL YOU
10 THIS, AND IT IS NO SECRET. BUT WHAT IS TRUE. WHAT HE
11 TOLD YOU IS TRUE. MR. ROUSE WAS SHOT. MR. THOMAS SHOT
12 HIM. AND SO DID MR. MCCALL. THAT'S NOT AN ISSUE. IF
13 THEY SPEND TIME PROVING TO YOU TODAY THAT MR. ROUSE WAS
14 SHOT, THEY MIGHT ALSO WANT TO PROVE THAT THE SUN IS OUT,
15 BECAUSE THAT IS NOT AN ISSUE.

16 BUT WHAT HE DIDN'T MENTION TO YOU IS ONE IOTA, IS
17 WHY. YOU'RE GOING TO HEAR IN THIS CASE THAT THESE TWO
18 GENTLEMEN, I THINK ALL THREE OF THESE GENTLEMEN, AND THE
19 VICTIM, MR. ROUSE, WERE FRIENDS. KNEW EACH OTHER. THERE
20 WERE OTHER YOUNG MEN WITH THEM THERE THAT NIGHT AND THEY
21 WERE ON THE WAY TO PLAY POOL. THEY WERE WALKING DOWN TO
22 WILSON OR RAY. THIS HAPPENED AT THE INTERSECTION OF THOSE
23 TWO STREETS RIGHT THERE WHERE MR. SAVERANCE SAID IT DID.
24 THEY WERE WALKING DOWN TO PLAY POOL, GETTING ALONG FINE.
25 EVERYBODY IS FREE. IT DIDN'T JUST COME FROM THAT TO THE

1 SHOOTING. Y'ALL KNOW IF THE STORY STARTS THAT WAY,
2 SOMETHING HAD TO HAPPEN. AND WHAT HAPPENED IS A FIGHT
3 BROKE OUT BETWEEN MR. ROUSE AND MR. MCCALL. AND THAT'S
4 HOW IT STARTED.

5 NOW WHAT WE'VE GOT HERE IN OUR CASE, THE DEFENSE
6 CASE, IS SELF DEFENSE AND THE DEFENSE OF OTHERS. YOU ARE
7 GOING TO HEAR ABOUT THE NATURE OF THESE FOLKS. AND YOU'RE
8 GOING TO HEAR ABOUT MR. ROUSE. THE THING THAT YOU WILL
9 HEAR AND HIS HONOR WILL CHARGE YOU AT THE END OF THE CASE,
10 THAT YOU CONSIDER IN SELF DEFENSE ARE THINGS LIKE THE SIZE
11 OF THE VICTIM AND THE STATE OF INTOXICATION. AND THINGS
12 LIKE THAT THAT ARE RELEVANT TO SELF DEFENSE. WHAT
13 SOMEBODY'S PROPENSITY TO DO THESE THINGS. NOW MR.
14 SAVERANCE DIDN'T MENTION A WORD ABOUT ANY OF THESE THINGS.
15 AND HE MAY NOT WANT YOU TO KNOW ABOUT SOME OF THESE
16 THINGS. HE MAY NOT WANT YOU TO KNOW THAT MR. ROUSE WAS A
17 GOOD BIT BIGGER THAN BOTH OF THESE GENTLEMEN. AND THEY'LL
18 STAND UP WHEN THEY GO TAKE THE STAND. AND Y'ALL SEE THAT
19 THEY ARE BOTH PRETTY SMALL IN STATURE AND WEIGHT.

20 NOW HE PROBABLY WOULDN'T MENTION TO YOU THE
21 TOXICOLOGY RESULTS ON MR. ROUSE SHOW THAT HE'S ABOUT TWO
22 TIMES THE LEGAL LIMIT OF BEING INTOXICATED AT THAT TIME.
23 AND HE MAY NOT ALSO WANT YOU TO KNOW THAT HE CUT
24 SOMEBODY'S THROAT---

25 MR. SAVERANCE: OBJECTION. OBJECTION, YOUR HONOR.

1 THE COURT: OBJECTION IS OVERRULED. YOU MAY PROCEED.

2 MR. WHEELER: LIKE I SAID, HE MAY NOT LET YOU KNOW
3 WHAT MR. ROUSE'S PROPENSITIES HAVE BEEN THAT BOTH OF THESE
4 GENTLEMEN KNEW ABOUT. MR. SAVERANCE TOLD YOU THAT HE'S ON
5 THE SIDE OF THE PROSECUTION AND WANTS TO GET A CONVICTION
6 FOR MURDER. I WANT YOU TO SEE THAT IF HE GIVES YOU ANY
7 EVIDENCE OF WHY IT'S INCONSISTENT WITH THE EVIDENCE YOU
8 HEAR FROM THE STAND AND FROM THE PICTURES YOU SEE FROM THE
9 POLICE DEPARTMENT INVESTIGATION. AFTER YOU LISTEN TO ALL
10 THIS EVIDENCE, THE ONLY WHY THAT YOU'RE GOING TO COME UP
11 WITH IS WHAT THESE GENTLEMEN TELL YOU THE EVIDENCE IS
12 CONSISTENT WITH. THEY HAD TO MAKE A CHOICE. A DIFFICULT
13 CHOICE. I CAN'T SPEAK FOR MR. MCCALL. I KNOW MR. THOMAS.
14 HE'S ALREADY DIED ONE DEATH. HE HAD NO ADVANTAGE OVER
15 MR. ROUSE. HE DID WHAT HE HAD TO DO WHAT HE DID.

16 HE'S NEVER BEEN, I DON'T KNOW HOW TO DESCRIBE IT, BUT
17 HE'S TERRIBLY UNHAPPY ABOUT WHAT HAPPENED. BUT WHEN HE
18 TELLS YOU ABOUT THE FACTS THAT HE FACED, THE THREAT OF
19 BEING CHOKED, THE SHOOTING TAKING PLACE. MR. ROUSE HAD
20 BEEN SHOT, DIDN'T GO DOWN. KEPT ON CHOKING HIM. DID HE
21 HAVE TO RUN AND JUST LET HIM KILL THIS MAN? WHETHER HE
22 HAD TO MAKE A DECISION. NOT A GOOD DECISION TO HAVE TO
23 MAKE. AND THAT'S WHAT HE DID, HE MADE A DECISION. NOW
24 HE MAY HAVE REGRETS. AND DOES HAVE REGRETS. WE REGRET
25 THAT TROY ROUSE IS DEAD. BUT IT'S A DECISION THAT THEY

1 HAD TO MAKE TO SAVE THEMSELVES. THAT'S A LEGAL DEFENSE
2 THAT YOU'VE ALL HEARD OF MANY TIMES. WE ALL KNOW THAT WE
3 HAVE A RIGHT OF INHERITANCE TO PROTECT OURSELVES IF WE GET
4 PUT IN A SITUATION. YOU KNOW, YOU MAY PUT YOURSELF IN A
5 SITUATION THAT MAY NOT BE WISE, BUT ONCE YOU'RE THERE,
6 YOU'RE GOING TO HAVE TO MAKE A CALL. AND THAT'S WHAT WE
7 HAVE HERE. AND THEY CAN TELL YOU ABOUT IT. AND AGAIN,
8 YOU KNOW THE PHYSICAL EVIDENCE IN A CASE CAN'T BE ALL.
9 PEOPLE CAN GET UP ON THE STAND AND SAY ANYTHING.

10 WHAT WE HAVE HERE TO LOOK AT IS WHETHER THAT MATCHES
11 THE PHYSICAL EVIDENCE. THE THINGS THAT CAN'T BE CHANGED.
12 WHETHER IT WAS RAINING. WHETHER IT WAS COLD. WHAT
13 CALIBER OF BULLETS. WHAT THE PICTURES SHOW DOWN AT THE
14 SCENE. SEE IF ANY OF THAT IS INCONSISTENT WITH WHAT
15 THEY'RE GOING TO TELL YOU. I SUBMIT TO YOU IF IT IS IN
16 THE LAW, LINK IT UP TO WHAT THEY SAY IS CORRECT. NOW,
17 LADIES AND GENTLEMEN, BEFORE I SIT DOWN, I AM GOING TO
18 MENTION TO YOU ONE MORE THING. AS I SAY, I AM PROUD AGAIN
19 TO REPRESENT MR. THOMAS BECAUSE HE IS AN INNOCENT MAN. HE
20 IS INNOCENT CERTAINLY UNDER THE LAW AS HE SITS BEFORE YOU
21 TODAY. HE IS INNOCENT UNTIL HE IS PROVEN GUILTY. THE
22 STATE MUST RENDER THAT PROOF BEYOND A REASONABLE DOUBT.

23 NOW Y'ALL TOOK AN OATH THIS MORNING TO WELL AND TRULY
24 TRY THIS CASE AND TAKE THE LAW AS IT'S BEEN GIVEN TO YOU
25 AND I KNOW ALL OF YOU WILL DO THAT. YOU KNOW WE DON'T S

1 THINGS TONGUE AND CHEEK. WE DON'T HAVE SOLDIERS IN OTHER
2 LANDS FOR THE LAST HUNDREDS OF YEARS IN THIS COUNTRY
3 DEFENDING RIGHTS LIKE THE RIGHT TO BE INNOCENT UNTIL
4 PROVEN GUILTY SO THAT ANYBODY CAN COME IN HERE AND GIVE A
5 WINK AND A NOD. THERE'S A LOT MORE TO IT THAN THAT. SO
6 WHAT I WOULD ASK YOU TO DO IS TO KEEP AN OPEN MIND. HIS
7 HONOR WILL TELL YOU, DON'T MAKE UP YOUR MIND ON ANYTHING
8 UNTIL IT'S ALL DONE. THERE ARE TWO SIDES TO THIS STORY.
9 Y'ALL CAN LISTEN TO BOTH SIDES BY BEING PROMPT; THAT YOU
10 WILL ACQUIT MR. THOMAS OF WHAT HE IS CHARGED WITH. THANK
11 YOU.

12 THE COURT: MR. WATTS.

13 MR. WATTS: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
14 COURT.

15 THE COURT: YES, SIR.

16 MR. WATTS: I THINK YOU SAW THE VICTIM. I THINK YOU
17 KNOW WHY YOU'RE HERE. I THINK FROM EVERYTHING YOU'VE
18 HEARD ALREADY YOU UNDERSTAND THE GRAVITY OF THE SITUATION.
19 WHEN YOU LOOK AT THE FACTS OF WHAT HAPPENED AGAIN, MR.
20 ROUSE IS DEAD. THEY'RE GOING TO TALK ABOUT THE BULLETS.
21 THEY'RE GOING TO TALK ABOUT CERTAIN THINGS. THEY'RE
22 GOING TO BRING AN EXPERT TO TALK ABOUT. BUT AGAIN,
23 THEY'RE NOT GOING TO HAVE PEOPLE TALK ABOUT WHAT WAS
24 HAPPENING, THE CIRCUMSTANCES SURROUNDING THE SITUATION,
25 WHAT WAS GOING ON. YOU ARE GOING TO HEAR ABOUT MR. ROUSE.

1 YOU'RE GOING TO HEAR ABOUT WHAT WAS DONE BEFORE. AND
2 YOU'RE GOING TO HEAR THAT MR. MCCALL KNEW ABOUT THAT.
3 YOU'RE GOING TO HEAR ABOUT SELF DEFENSE. YOU'RE GOING TO
4 HEAR ABOUT THE REASON TO DO IT AND WHAT MR. MCCALL DID.
5 WHAT WOULD YOU DO IF SOMEONE YOU KNEW---

6 MR. SAVERANCE: YOUR HONOR, I WOULD OBJECT TO PUTTING
7 THE JURY IN A PLACE OF THE DEFENDANT OR ANYBODY ELSE.
8 IT'S IMPROPER.

9 THE COURT: COUNSEL?

10 MR. WATTS: YOUR HONOR, I THINK THAT IT IS A PROPER
11 OPENING STATEMENT TO FIND THE LAW. I'M PUTTING THE --
12 GIVING THE JURY AN IDEA OF WHAT HAPPENED IN THIS CASE.

13 THE COURT: STAY WITHIN WHAT YOU THINK THE EVIDENCE
14 WILL SHOW IN THIS CASE. YOU MAY PROCEED.

15 MR. WATTS: MR. MCCALL HAD TO DEAL WITH THE
16 INFORMATION HE HAD AT THE TIME. AND YOU'RE GOING TO HEAR
17 SOME TESTIMONY ABOUT THIS. AND YOU MIGHT HEAR IT
18 CLASSIFIED AS A SCUFFLE OR A TUSSLE. THERE WAS A FIGHT.
19 AND THIS WAS NOT SOMETHING THAT WAS JUST MERE PLAYING OR
20 JOKING AROUND. THIS WAS SOMETHING THAT WAS SERIOUS. THIS
21 WAS SOMETHING THAT PUT MR. MCCALL IN A SITUATION WHERE HE
22 HAD TO DEFEND HIMSELF. IS THAT WHAT HE WANTED TO DO? I
23 DON'T THINK ANYBODY WANTS TO TAKE ANOTHER LIFE. BUT WHAT
24 IS THE DECISION? ARE YOU GOING TO PROTECT YOURSELF? USE
25 SELF DEFENSE? THE STATE HAS THE BURDEN TO PROVE TO YOU ()

1 BEYOND A REASONABLE DOUBT THAT MR. MCCALL DID WHAT HE IS
2 CHARGED WITH. REASONABLE DOUBT.

3 YOU'RE DOING TO HEAR FROM MR. MCCALL TALKING ABOUT
4 THE SITUATION OF WHAT HE KNEW. I'M SORRY HE'S GONE. I
5 CAN'T DO ANYTHING HERE TODAY TO BRING HIM BACK. BUT WHAT
6 WE'RE TALKING ABOUT IS THE JUSTIFICATION OF MR. MCCALL.
7 YOU HEARD IT BEFORE. YOU HEARD THE SOLICITOR TALK ABOUT
8 JUSTIFICATION. YOU MAY CONSIDER THAT. I'M NOT GOING TO
9 TELL YOU ABOUT THE LAW. THE JUDGE WILL CHARGE YOU THE
10 LAW. YOUR JOB IS TO LISTEN TO THE TESTIMONY THAT IS
11 PRESENTED. YOU'RE GOING TO HEAR SOME FROM THE STATE.
12 YOU'RE GOING TO HEAR TESTIMONY FROM THE DEFENSE. YOU'RE
13 GOING TO HEAR THIS SIDE. LISTEN TO THAT TESTIMONY. YOU
14 CAN DETERMINE WHO YOU BELIEVE AND WHAT THE MOTIVATION
15 BEHIND IT.

16 WHEN YOU'RE TALKING ABOUT THE SITUATION FROM THE
17 EXPERTS THAT THE STATE IS GOING TO PRESENT, SOME OF THE
18 OFFICERS THAT ARE GOING TO COME UP, WHAT ARE THEY DOING,
19 WHAT DO THEY KNOW ABOUT THE SITUATION. THEY KNOW ABOUT
20 THE SITUATION AFTER THE FACTS. - THEY CAN TELL YOU WHAT
21 THEY CAME UPON. THEY CAN'T TELL YOU ABOUT WHAT HAPPENED,
22 OKAY. THEY CAN'T TELL YOU ABOUT THE SITUATION THAT
23 OCCURRED. MR. ROUSE'S ACTIONS. MR. MCCALL BEING INJURED.
24 WHEN YOU DETERMINE AFTER ALL THE EVIDENCE IS IN AND YOU'RE
25 MAKING A DECISION, THINK ABOUT EVERYTHING AND REALIZE THAT

1 IN LIFE THERE ARE CHOICES. AND THERE ARE HARD CHOICES. ○
2 AND WHAT YOU HAVE TO DO TO MAKE CHOICES THAT ARE
3 REASONABLE. AND AT THE TIME THEY MIGHT BE THE BEST CHOICE
4 YOU EVER HAD AND WANT TO MAKE, BUT YOU HAVE TO HAVE.

5 AND WHAT WE'RE TALKING ABOUT HERE IS THE SITUATION OF
6 SELF DEFENSE. MR. MCCALL, THE CHOICE OF SELF DEFENSE.
7 MR. THOMAS. THANK YOU VERY MUCH FOR YOUR ATTENTION AND
8 TIME YOU HAVE GIVEN US. YOU ARE MAKING AN INVESTMENT IN
9 THIS. EVERYBODY WHO SERVES ON THE JURY IS MAKING AN
10 INVESTMENT. AN INVESTMENT OF YOUR TIME. BUT YOU'RE ALSO
11 MAKING AN INVESTMENT IN OUR COUNTRY, IN OUR COUNTY, IN OUR
12 STATE AND OUR COUNTY. IT'S YOUR SERVICE. WHAT YOU'RE
13 DOING THAT TRIGGERS US TO THE GREATEST COUNTRY AS A WHOLE.
14 NOT JUST BECAUSE THE STATE SAYS SOMETHING IS TRUE, THAT
15 SOMEONE IS FOUND GUILTY. YOU ARE THE OFFICERS OF THE
16 FACTS. YOU ARE THE ONES THAT MAKE THE DECISIONS. IT'S
17 YOUR DECISION. THANK YOU FOR YOUR ATTENTION. I
18 APPRECIATE IT.

19 THE COURT: MR. JOHNSON.

20 MR. JOHNSON: THANK YOU, YOUR HONOR. MAY IT PLEASE
21 THE COURT.

22 THE COURT: YES, SIR.

23 MR. JOHNSON: GOOD MORNING, LADIES AND GENTLEMEN, MY
24 NAME IS CHARLIE JOHNSON. I'M AN ATTORNEY IN COLUMBIA. MY
25 PRIMARY PRACTICE IS THERE. IN BISHOPVILLE I'VE BEEN HERE

1 FOR THE 5 YEARS IN THE PRACTICE OF CRIMINAL LAW. THIS IS
2 CHAD JAMES. HE IS MY CLIENT. HE IS HERE TODAY BECAUSE HE
3 IS CHARGED WITH ACCESSORY AFTER THE FACT OF MURDER. NOW,
4 IN ORDER TO BE CHARGED WITH ACCESSORY AFTER THE FACT OF
5 MURDER, IS SAYING THAT HE WAS NOT THERE DURING THE MURDER.
6 OR NOT THERE BEFORE THE MURDER. WELL HE WAS NOT THERE
7 DURING THE MURDER. HE HAD NOTHING TO DO WITH THE ACTUAL
8 MURDER THAT THE OTHER TWO CO-DEFENDANTS ARE CHARGED WITH.

9 HE IS CHARGED WITH GIVING SOME ASSISTANCE TO MR.
10 THOMAS THERE, AFTER THE FACT. AND LET ME TELL YOU WHAT
11 THE STATE HAS MY CLIENT SAYING WHAT HE SAID. HE GAVE MR.
12 THOMAS A RIDE TO CAMDEN. THAT'S IT. THAT'S THE ONLY
13 THING HE SAID. HE DIDN'T HIDE A GUN. HE DIDN'T DRIVE THE
14 BODY. HE DIDN'T GIVE ANY ADVICE. HE DIDN'T LIE. HE
15 DIDN'T CHEAT OR STEAL. HE GAVE MR. THOMAS A RIDE TO
16 CAMDEN WITH FIVE OTHER PEOPLE. AND HE'S SITTING THERE
17 NOW, FIGHTING FOR THIS FREEDOM. THAT'S ALL HE'S BEEN
18 CHARGED WITH.

19 NOW THINK ABOUT THIS. IN ORDER FOR THE STATE TO
20 PROVE THIS, THEY'RE GOING TO HAVE TO SHOW THAT HE KNEW
21 PRIOR TO TAKING HIM, THAT MR. THOMAS HAD COMMITTED THIS
22 CRIME. AND WE INTEND ON SHOWING YOU THAT THERE IS NO
23 EVIDENCE OF THAT. YOU CAN ALSO HAVE SUSPICION, BUT THE
24 STATE MUST PROVE NOT THAT HE IS SUSPICIOUS THAT MR. THOMAS
25 COMMITTED THE CRIME, THEY HAVE TO SHOW THAT MY CLIENT KNEW

1 THAT MR. THOMAS COMMITTED SOME CRIME. AND SOMEHOW HE
2 ASSISTED THEM. BUT LET'S TALK ABOUT ASSISTANCE. IN ORDER
3 TO ASSIST SOMEONE, YOU HAVE TO BE WANTED BY SOMEONE. AT
4 THE TIME THAT MY CLIENT GAVE MR. THOMAS A RIDE, THE POLICE
5 WEREN'T EVEN LOOKING FOR MR. THOMAS. YOU WILL ALSO FIND
6 OUT THAT MR. THOMAS TURNED HIMSELF IN. I'VE NEVER HEARD
7 OF IT. I LOOK AT TV, AND I SEE ON TV ALL KIND OF THINGS
8 ON TV WHERE ANYTHING IS POSSIBLE. YOU KNOW, ON CS, ON
9 CRIME SCENE, THEY FOLLOW THE CRIME IN THE HOUSE.

10 BUT I'VE NEVER SEEN ANYONE WHO ESCAPES AND THEN TURNS
11 AROUND AND TURNS HIMSELF BACK IN. THEY'RE SAYING THAT MY
12 CLIENT ASSISTED MR. THOMAS IN EVADING THE POLICE. WELL IT
13 WOULD BE VERY HARD TO EVADE THE POLICE IF YOU TURN AROUND
14 WITHIN A CERTAIN NUMBER OF DAYS AND JUST TURN YOURSELF IN.
15 THE POLICE WERE NOT EVEN LOOKING FOR HIM AT THAT TIME.
16 BUT ONCE AGAIN, LOOK AT THIS CASE. YOU ARE THE TRIERS OF
17 THE FACTS. THE STATE CAN TELL YOU THEIR BURDEN. WE CAN
18 TELL YOU OUR BURDEN. BUT YOU ARE THE TRIER OF THE FACTS.
19 IT'S YOUR DECISION. THERE WON'T BE ANY SMOKING MIRRORS.
20 THERE WON'T BE ANY TRICKERY OR THERE'S NOTHING UP MY
21 SLEEVE. IT'S ONLY THE TRUTH. SO YOU AS THE JURY MAKE A
22 DETERMINATION OF THE TRUTH.

23 NOW, THERE ARE NO GUNS HERE TODAY. LET'S PUT THIS ON
24 THE LINE. THERE IS SOMEONE THAT HAS BEEN KILLED OR
25 SOMEONE HAS DIED. EVEN BY REASON OF SELF DEFENSE, WHICH

1 IS THE CONTENTION OF THE CO-DEFENDANTS THERE, THAT HE
2 CAUSED THIS OR WAS SELF DEFENSE, OR IF THE STATE CONTENDS
3 THERE WAS SOME MURDER. HOWEVER, THERE IS A FAMILY THAT IS
4 WITHOUT A SON. THERE ARE FAMILIES HERE THAT REPRESENT THE
5 CO-DEFENDANTS. THEY ARE HOPING AND PRAYING THAT THEY ARE
6 FOUND NOT GUILTY. BUT THE END OF THE DAY, THERE ARE NO
7 WINNERS. THAT'S WHY YOU THE JURY ARE VERY IMPORTANT.
8 BECAUSE YOU HAVE TO MAKE A DECISION AS TO WHAT IS FAIR,
9 WHAT IS JUST, AND WHAT IS RIGHT.

10 THE JUDGE IS THERE BECAUSE HE MAKES A DECISION AS TO
11 THE LAW AS TO WHAT'S REQUIRED BY THE LAW. BUT YOU AS THE
12 JURY, YOU SIT THERE AND YOU MAKE A DETERMINATION AS TO
13 WHAT IS FAIR. AND THERE IS A DIFFERENCE BETWEEN JUSTICE
14 AND FAIRNESS. SOME PEOPLE TELL YOU THAT JUSTICE AND
15 FAIRNESS ARE THE SAME THING. I WOULD SUBMIT TO YOU THAT
16 THEY ARE OPPOSITES. JUST AS IN THE PROCEEDINGS, YOU HAVE
17 A RIGHT TO A JURY, YOU HAVE THE RIGHT TO ATTORNEYS, AND
18 YOU HAVE THE RIGHT TO SOLICITORS, AND POLICE, THE JUDGE.
19 YOU HAVE A RIGHT TO BE HERE. THAT'S JUSTICE IN THE
20 PROCEEDINGS. FAIRNESS IS A PERSONAL PERCEPTION OF THE
21 OUTCOME. AND IN MOST CASES THE LAW IS NOT CONCERNED WITH
22 THAT. THAT'S WHY AN INNOCENT PERSON CAN GO TO JAIL AND A
23 GUILTY PERSON CAN GO FREE, BECAUSE THE JURY MAKES THE
24 DECISION AS TO WHAT IS FAIR.

25 YOU ARE HERE TODAY TO MAKE THE DECISION. AND I'M

1 TELLING YOU, IF YOU LOOK AT THE FACTS OF THIS CASE AS YOU
2 THINK THAT THEY ARE, YOU WILL SEE THAT THE ONLY THING THAT
3 MY CLIENT DID WAS GIVE AN INDIVIDUAL A RIDE. AND NOW HE'S
4 SITTING THERE BASICALLY FIGHTING FOR HIS FREEDOM. AND I
5 THINK AT THE END OF THE DAY, IF YOU LOOK AT THE EVIDENCE
6 IN THE LIGHT AS WE THINK IT WILL SHOW, YOU WILL FIND MY
7 CLIENT NOT GUILTY.

8 THE COURT: MEMBERS OF THE JURY, PLEASE GO TO THE
9 JURY ROOM. I'LL HAVE YOU COME BACK OUT FAIRLY SOON. I
10 WANT TO MENTION ONE ADDITIONAL THING TO YOU; THAT IS, THAT
11 LATER ON IN THE PROCESS I WILL APPOINT ONE OF YOU TO SERVE
12 AS THE FOREPERSON OF THE JURY... I WILL APPOINT ONE OF YOU
13 TO SERVE AS THE FOREPERSON OF THE JURY. THAT PERSON WILL
14 SERVE AS A SPOKESPERSON FOR THE JURY AND WILL PRESIDE OVER
15 THE JURY DELIBERATIONS AND COMPLETE THE VERDICT FORM
16 REPRESENTING THE UNANIMOUS VERDICT OF THE JURY WHEN WE
17 REACH THAT POINT. BUT WE WILL GET TO THAT AT A LATER
18 PROCESS. AT THIS POINT, PLEASE GO TO THE JURY ROOM.
19 PLEASE DO NOT DISCUSS THE MATTER.

20 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
21 PRESENCE OF THE JURY.)

22 THE COURT: MR. JOHNSON.

23 MR. JOHNSON: YOUR HONOR, AT THIS TIME WE WOULD MAKE
24 A MOTION TO SEQUESTER THE WITNESSES BOTH FOR THE STATE AND
25 THE DEFENSE.

1 THE COURT: ALL WITNESSES?

2 MR. JOHNSON: YOUR HONOR, WE HAVE NO PROBLEM WITH THE
3 POLICE OFFICERS OR THE FACT WITNESSES, THE WITNESSES AS
4 RELATE TO THE TESTIMONY OF THE WITNESSES. AGAIN, THE
5 POLICE OFFICERS, WE HAVE NO OBJECTION TO THE POLICE
6 OFFICERS BEING PRESENT.

7 THE COURT: MR. WHEELER.

8 MR. WHEELER: THAT'S CORRECT, YOUR HONOR. WE WOULD
9 JOIN IN THAT MOTION. AND AGAIN I HAVE NO PROBLEM WITH THE
10 POLICE AND THE SLED FOLKS AND WHAT NOT.

11 THE COURT: MR. WATTS.

12 MR. WATTS: YOUR HONOR, I CONCUR IN THAT. WE HAVE NO
13 PROBLEM WITH LAW ENFORCEMENT AND SLED BEING PRESENT. BUT
14 THE OTHER FACT WITNESSES WE WOULD ASK TO BE SEQUESTERED.

15 THE COURT: MR. SAVERANCE.

16 MR. SAVERANCE: YOUR HONOR, I WAS UNDER THE
17 IMPRESSION WITH THE COURT. I BELIEVE WE HAVE IN THE BACK
18 SEQUESTERED ANY LAY WITNESSES. SO IF THE COURT RULES THAT
19 WAY, WE'VE ALREADY DONE IT. IF NOT...

20 THE COURT: THE MOTION IS GRANTED AS TO BOTH THE
21 STATE AND THE DEFENSE AS TO ALL FACT WITNESSES.

22 MR. JOHNSON: YOUR HONOR, THE ONLY OTHER ISSUE THAT I
23 HAVE IS TIFFANY HILL THAT WAS MENTIONED IN HIS OPENING
24 TESTIMONY. SHE'S A WITNESS ON THE LIST. I HAVE NOT BEEN
25 GIVEN COPIES OF THE STATEMENTS GIVEN BY HER. AND I ASK

1 THE COURT TO REQUEST THE STATE TO GIVE ME ANY STATEMENTS
2 OR ANYTHING THEY MIGHT HAVE. THIS IS MY FIRST TIME
3 ACTUALLY HEARING OF HER, OTHER THAN THE WITNESS LIST THAT
4 WAS GIVEN TO ME.

5 MR. SAVERANCE: YOUR HONOR, THE REASON IT HASN'T BEEN
6 PROVIDED IS A WRITTEN STATEMENT HAS NOT BEEN GIVEN. WE'VE
7 GIVEN THEM STATEMENTS FOR ABOUT 15 OR 16 PEOPLE IN THIS
8 CASE. AND ALL THE DISCOVERY I HAVE THEY HAVE RECEIVED
9 FROM MY UNDERSTANDING. MS. HILL, AND LAW ENFORCEMENT CAN
10 VOUCH THIS, DID NOT GIVE A WRITTEN STATEMENT. AND THAT'S
11 HER RIGHT. SHE CAN GIVE A WRITTEN ORDER OR AN ORAL
12 STATEMENT. SO HER TESTIMONY STANDS UPON ITSELF.

13 MR. JOHNSON: I HAVE NO OTHER QUESTIONS, YOUR HONOR.
14 I MEAN, IF THERE WAS NO STATEMENT GIVEN.

15 MR. SAVERANCE: WE DON'T HAVE ANY WRITTEN STATEMENT
16 FROM MS. HILL.

17 THE COURT: DO YOU WITHDRAW YOUR REQUEST THEN?

18 MR. JOHNSON: YES, I WILL, YOUR HONOR.

19 THE COURT: ANYTHING ELSE BEFORE WE BRING THE JURY AT
20 THIS TIME AND KEEP GOING?

21 MR. WHEELER: NOTHING, YOUR HONOR.

22 MR. WATTS: NO, SIR.

23 THE COURT: ASK THE JURY TO COME BACK, PLEASE.

24 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
25 PRESENCE OF THE JURY.)

1 THE COURT: YOU MAY CALL YOUR FIRST WITNESS, PLEASE.

2 MR. SAVERANCE: THE STATE WOULD CALL TIFFANY HILL,
3 YOUR HONOR.

4 THE COURT: MA'AM, YOU MAY COME FORWARD.

5 TIFFANY HILL, BEING
6 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 THE CLERK: STATE YOUR FULL NAME.

8 A TIFFANY HILL.

9 DIRECT EXAMINATION BY MR. SAVERANCE:

10 Q NOW, MS. HILL, YOU NEED TO SPEAK UP. I AM NOT BEING
11 MEAN TO YOU, BUT YOU NEED TO SPEAK UP BECAUSE THE COURT
12 REPORTER IS TAKING DOWN WHAT YOU SAY. AND THE JURORS NEED
13 TO HEAR WHAT YOU SAY AS WELL AS EVERYBODY SITTING AT THESE
14 TABLES, OKAY. CAN YOU DO THAT?

15 A YES.

16 Q CAN YOU PUSH THE MICROPHONE TOWARDS YOU A LITTLE BIT?
17 OKAY, CAN YOU DO THAT?

18 A YES.

19 Q OKAY. JUST LIKE THAT. MS. HILL, ARE YOU NERVOUS?

20 A YES.

21 Q WHERE DO YOU LIVE, MS. HILL?

22 A

23 Q AND YOU'RE UNDER SUBPOENA TO BE HERE TODAY?

24 A YES.

25 Q HOW LONG HAVE YOU LIVED IN LEE COUNTY?

1 A OFF AND ON ALL MY LIFE.

2 Q DID YOU KNOW TROY ROUSE?

3 A YES, I KNOW HIM.

4 Q SO YOU KNEW HIM BEFORE HE WAS KILLED.

5 A YES.

6 Q DO YOU REMEMBER SEEING HIM ON OR ABOUT APRIL 7, 2005?

7 I MEAN, ABOUT A YEAR AGO?

8 A YES.

9 Q WAS THAT, WHAT TIME? I MEAN, WAS THAT IN THE
10 MORNING, EVENING, NIGHTTIME?

11 A IT WAS NIGHT.

12 Q DO YOU KNOW ABOUT WHAT TIME THAT WAS?

13 A PROBABLY I WOULD SAY 10.

14 Q AROUND 10 P.M.

15 A YES.

16 Q WHAT AREA OF BISHOPVILLE OF THIS TOWN DID YOU SEE HIM
17 IN?

18 A WILSON STREET.

19 Q DID YOU SEE ANYBODY ELSE WITH HIM?

20 A YES.

21 Q WHO DID YOU SEE?

22 A CHAD JAMES, EUNICE MCCALL AND EFRAIN THOMAS.

23 Q IS THIS MR. JAMES?

24 A YES.

25 Q AND THAT'S MR. MCCALL?

1 A YES.

2 Q AND THAT'S MR. THOMAS?

3 A YES.

4 MR. SAVERANCE: YOUR HONOR, LET THE RECORD REFLECT
5 SHE IDENTIFIED ALL THREE DEFENDANTS AS BEING WITH THE
6 VICTIM.

7 THE COURT: YES, SIR.

8 Q DID YOU KNOW THEM ALSO BEFORE THIS HAPPENED?

9 A UH-HUH. (AFFIRMATIVE.) YES.

10 Q AND WHERE DID YOU SEE THEM AT?

11 A I WAS COMING FROM FROM A FRIEND'S
12 HOUSE THAT NIGHT. AND I SAW THEM WALKING BESIDE THE
13 STORE. AND I DON'T KNOW IF THEY REMEMBERED SEEING ME. I
14 DON'T -- BUT I REMEMBER SEEING ALL FOUR OF THEM TOGETHER.

15 Q WERE YOU WALKING?

16 A YES, I WAS.

17 Q WERE THEY ALL FOUR WALKING?

18 A YES, THEY WERE.

19 Q AND I'M NOT TALKING ABOUT THE ACTUAL SHOOTING, BUT I
20 MEAN BEFORE THAT, HOW CLOSE DID YOU GET TO THEM IN
21 PASSING?

22 A I WASN'T THAT CLOSE TO THEM.

23 Q OKAY. WOULD IT BE FROM WHERE YOU ARE AT TO---

24 A WHERE THEY WERE, I WAS ON THE SIDE OF THIS -- WALKING
25 ON THE SIDE OF THE STORE. SO I COULDN'T SAY.

1 Q WAS THERE SOME LIGHT COMING IN THERE?

2 A YES, THERE WERE.

3 Q AND YOU CLEARLY COULD IDENTIFY ALL THREE OF THE MEN.

4 A YES.

5 Q AND TROY ROUSE?

6 A YES, SIR.

7 Q WAS ANY OF THEM WEARING A HAT OF ANY KIND?

8 A YES, SIR. I REMEMBER EUNICE HAD A BLACK HAT ON. AND

9 I AM NOT SURE WHAT, HIS SHIRT WAS DARK. I AM NOT SURE

10 WHAT IT WAS.

11 Q YOU SAID EUNICE MCCALL -- MR. MCCALL HAD A BLACK HAT?

12 A YES, SIR.

13 Q WHERE WERE YOU GOING?

14 A I WAS GOING HOME.

15 Q WELL TELL US IN YOUR OWN WORDS, WHAT YOU SAW THAT

16 NIGHT?

17 A WELL THAT NIGHT I WAS WALKING HOME, I SAW THEM. AND

18 WHAT MADE ME STOP IS WHEN I HEARD EUNICE AND TROY

19 FIGHTING. AND THEY WAS TUSSLING WITH EACH OTHER. THEY

20 WERE FIGHTING OR WHATEVER. AND I REMEMBER SEEING EFRAIN

21 STANDING THERE. BUT I DON'T KNOW IF HE WAS LIKE GOING

22 TOWARDS THEM OR WHATEVER. AND I WAS LOOKING BESIDE THE

23 BUILDING. I SAW -- WELL I HEARD TWO GUNSHOTS WENT OFF.

24 AND I SEEN TROY WAS STILL STANDING THERE WHERE EUNICE WAS.

25 AND GRADUALLY REMEMBER SEEING HIM I BELIEVE GETTING UP, OR

1 HE WENT TOWARDS THERE. AND I HEARD ANOTHER SHOT AND THEN
2 I RAN. AND FROM ME RUNNING, I COULD HEAR MULTIPLE SHOTS.
3 AND THE NEXT THING YOU KNOW, THAT'S WHEN I SEEN THE
4 POLICE.

5 Q NOW I WANT TO GO BACK. NOW YOU SAID THAT EUNICE
6 MCCALL AND TROY WERE FIGHTING OR---

7 A YES, SIR.

8 Q ---WRESTLING?

9 A YES, SIR.

10 Q DID YOU SEE THEM FROM THE BACK SIDE, OR FROM THE SIDE
11 LIKE THIS, OR HOW DID YOU SEE THEM?

12 A I SEEN THEM FROM THE SIDE OF THE BUILDING LIKE THIS.

13 Q SO THEY WOULD BE STANDING LIKE THIS. AND YOU WERE AT
14 THAT END?

15 A YES, IT WAS -- I WAS ON THE SIDE AND EUNICE AND TROY
16 WERE BY THE SIDE.

17 Q SO YOU SAW THEM FROM THE SIDE?

18 A YES.

19 Q HOW MANY SHOTS IF YOU REMEMBER, DID EUNICE FIRE?

20 A I REMEMBER SIX.

21 Q RIGHT AT THE TIME BEFORE HE FIRED THE FIRST SHOT,
22 WHAT POSITION WERE HE AND TROY ROUSE?

23 A FROM THE ANGLE I SAW, THEY WAS ON EACH OTHER'S ANGLE
24 KIND OF CLOCKWISE LIKE.

25 Q WHAT I MEAN WAS, WERE THEY FACE TO FACE OR WAS ONE OF

1 THEM TURNED AND OR WHAT?

2 A I REMEMBER ONE WAS TURNED AROUND AND THEN HE TURNED
3 HIS FACE TO THE BACK OF HIM.

4 Q DID YOU SEE TROY ROUSE PULL A GUN?

5 A I SURE DIDN'T.

6 Q DID YOU SEE HIM SHOOT AT ANYBODY?

7 A I SURE DID NOT.

8 Q TELL ME AGAIN ABOUT MR. EFRAIN THOMAS. WHERE COULD
9 YOU SEE HIM?

10 A I COULDN'T, I SAW HIM BUT HE WASN'T FIGHTING WITH
11 TROY. HE WASN'T ON TROY WHEN EUNICE AND THEM WAS
12 FIGHTING.

13 Q NOW WHEN EUNICE MCCALL, WHEN HE FIRED THAT SHOT, WAS
14 HE IN A HEADLOCK OR SOMETHING LIKE THAT, OR WAS HE
15 ACTUALLY FACING TROY ROUSE?

16 A I DON'T REMEMBER A HEADLOCK.

17 Q YOU DON'T REMEMBER A HEADLOCK?

18 A NO.

19 MR. SAVERANCE: YOUR HONOR, IF I COULD HAVE A SECOND.
20 YOUR HONOR, I WOULD LIKE TO MAKE THIS EXHIBIT OR DIAGRAM
21 AS STATE'S 1 FOR IDENTIFICATION.

22 (DIAGRAM MARKED STATE'S EXHIBIT NO. 1 FOR ID.)

23 I WOULD ALSO LIKE TO HAVE THE WITNESS COME DOWN.

24 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
25 STAND.)

1 Q MS. HILL, I WANT YOU TO LOOK AT THIS DIAGRAM. STAND
2 OVER THIS WAY A LITTLE BIT SO EVERYBODY CAN SEE. ARE YOU
3 FAMILIAR WITH THAT DIAGRAM?

4 A YES.

5 Q ARE YOU FAMILIAR WITH THIS AREA?

6 A UH-HUH. (AFFIRMATIVE.)

7 Q IS THIS WHERE TROY ROUSE WAS KILLED, THIS AREA?

8 A IN THAT AREA.

9 Q DO YOU KNOW THIS---

10 A I WOULD SAY RIGHT THERE ON THE SIDE. WELL IT'S --
11 I'M GOING TO SAY THAT'S THE STORE. THIS IS THE SIDE OF
12 THE STORE. LIKE A LITTLE CUT BY THE STORE. I WOULD SAY
13 RIGHT THERE. I WOULD SAY RIGHT THERE BY THE STORE. THAT
14 IS THE ANGLE OF THE STORE. IT WAS RIGHT IN THIS AREA
15 RIGHT THERE.

16 Q IS THAT A FAIR DESCRIPTION OF WHAT THE AREA LOOKED
17 LIKE AT THE TIME?

18 A YES, IT DOES. BUT DURING THE TIME THERE WAS LIKE A
19 LITTLE SHACK RIGHT HERE.

20 Q I AM GOING TO HAVE YOU PUT A W FOR WITNESS WHERE YOU
21 WERE AT. JUST TAKE YOUR TIME. IT'S OKAY.

22 A CAN I SHOW YOU NOW THE STORE?

23 Q WELL IF YOU WANT TO, HOW ABOUT MARK WHERE YOU WERE AT
24 TO START WITH.

25 A ALL RIGHT. THIS IS THE FRONT OF THE STORE. THIS IS

1 THE SIDE OF THE STORE WHERE HE CAME. IT'S CUT OFF. LIKE
2 A TRAILER SHAPED STORE. THE BACK OF THE STORE IS RIGHT
3 HERE. THIS WAS UP IN THIS AREA. THEY WAS WALKING IN THAT
4 AREA.

5 Q NOW WHERE THE SHOOTING OCCURRED, I WANTED TO PUT A W
6 FOR WITNESS WHERE YOU WERE AT WHEN THE SHOOTING OCCURRED.

7 A RIGHT HERE ON THE SIDE OF THE STORE.

8 Q AND WHEN THE ACTUAL SHOOTING OCCURRED, I WANT YOU TO
9 PUT AN M WHERE EUNICE MCCALL AND TROY ROUSE WHERE.

10 MR. WHEELER: YOUR HONOR, OBJECTION. THAT'S BEEN
11 ASKED AND ANSWERED. HE JUST ASKED HER WHERE SHE WAS WHEN
12 THE SHOOTING OCCURRED. AND SHE DREW A W. SHE ANSWERED
13 THE QUESTION. SHE ANSWERED THE QUESTION.

14 THE COURT: THE OBJECTION IS OVERRULED. YOU MAY
15 PROCEED.

16 Q YOU WANT TO PUT AN M WHERE YOU SAW EUNICE MCCALL AND
17 TROY ROUSE.

18 A IT WAS IN THIS AREA RIGHT HERE.

19 Q AND WERE THERE ANY LIGHTS ON OUT THERE?

20 A YES. THERE WAS A STOP LIGHT RIGHT HERE. AND---

21 Q I MEAN ANY LIGHTS FOR VISION?

22 A FOR WHERE I COULD SEE THEM?

23 Q YES.

24 A BACK HERE THERE IS NO LIGHTS, BUT THERE IS A LIGHT IN
25 THE FRONT OF THE STORE.

1 Q AND ARE YOU SURE YOU SAW---

2 A I AM POSITIVE.

3 Q ---4 PEOPLE?

4 A I AS POSITIVE. I SEE THEM, AND I SAW HOW -- I RAN.

5 Q NOW WHERE WAS MR. EFRAIN THOMAS AT?

6 A EFRAIN, I WOULD SAY---

7 Q PUT A T.

8 A THERE WAS A BUNCH OF DIRT OVER THERE. SO I REALLY
9 THINK HE WAS BY THE DIRT THING.

10 Q PUT A T WHERE YOU THINK HE WAS AT.

11 A OVER THERE BY THE DIRT. I AM TRYING TO REMEMBER,
12 EXCUSE ME. AND THEY WAS LIKE OVER HERE LIKE. BUT I DON'T
13 REMEMBER SEEING CHAD IF HE WAS SOMEWHERE OR NOT. I AM NOT
14 SURE. BUT I DO REMEMBER THOSE THREE.

15 Q AND WHERE THIS M IS, IS WHERE EUNICE MCCALL WAS?

16 A BASICALLY.

17 Q OKAY YOU CAN GO BACK TO YOUR SEAT.

18 (THEREUPON, THE WITNESS RESUMES THE WITNESS STAND.)

19 Q DID YOU SEE ANYBODY ELSE SHOOT TROY ROUSE?

20 A NO, AFTER THAT I HEARD MULTIPLE GUNSHOTS. LIKE A
21 THIRD SHOT. WHILE I WAS RUNNING YOU COULD STILL HEAR THE
22 SHOTS, BECAUSE THEY WERE LOUD SHOTS.

23 THE COURT: MR. SAVERANCE, THE JURORS NEED TO BE ABLE
24 TO SEE THE WITNESS.

25 A I AM SORRY.

1 THE COURT: ALL JURORS MUST BE ABLE TO SEE THE
2 WITNESSES.

3 Q WHERE DID YOU GO AFTER THESE SHOTS WERE FIRED?

4 A I WENT HOME.

5 Q CAN YOU TELL ME HOW CLOSE EUNICE MCCALL WAS TO TROY
6 ROUSE WHEN HE FIRED THE SHOT?

7 A BODY TO BODY TOGETHER.

8 Q AND WHERE THIS SHOOTING OCCURRED IS THAT IN LEE
9 COUNTY?

10 A YES, SIR.

11 MR. SAVERANCE: ONE SECOND, YOUR HONOR. YOUR HONOR,
12 I WOULD LIKE TO MARK THIS AS PLAINTIFF'S 2 FOR
13 IDENTIFICATION. IT IS A BLACK CAP. AND WE CAN MARK THIS
14 BAG.

15 (BLACK CAP MARKED STATE'S EXHIBIT NO. 2 FOR ID.)

16 Q YOU DON'T HAVE TO TOUCH THIS. BUT JUST TELL ME, CAN
17 YOU IDENTIFY THAT?

18 A YES.

19 Q DID MR. MCCALL HAVE A BLACK CAP?

20 A I REMEMBER A BLACK HAT.

21 Q YOU JUST REMEMBER A BLACK HAT. SO YOU DON'T KNOW IF
22 THAT'S THE ONE OR NOT.

23 A I DON'T KNOW IF THAT IS THE ONE OR NOT.

24 MR. SAVERANCE: YOUR HONOR, I WOULD MOVE TO ADMIT
25 ITEM 1, THE DIAGRAM INTO EVIDENCE AT THIS TIME.

MR. WATTS: I OBJECT TO THAT.

THE COURT: YOU MOVE TO ADMIT WHAT, MR. SAVERANCE?

MR. SAVERANCE: THE DIAGRAM, YOUR HONOR. SHE'S IDENTIFIED THE LOCATION OF WHERE THIS OCCURRED. SHE'S IDENTIFIED WHAT SHE HAS MARKED ON THERE. IT IS A FAIR AND ACCURATE DESCRIPTION ACCORDING TO HER OF THE SCENE OF THE CRIME.

THE COURT: WHAT SAYS THE DEFENSE?

MR. WATTS: YOUR HONOR, IF HE IS REFERRING TO THE HAT.

THE COURT: HE IS REFERRING TO THE EXHIBIT, THE DIAGRAM. IT'S ON THE BOARD.

MR. WATTS: WE ASK THAT WE HAVE SOME CROSS EXAMINATION BEFORE THAT IS ADMITTED AS AN EXHIBIT. ADMITTED AS STATE'S 1. WE WOULD LIKE TO CROSS EXAMINE.

THE COURT: THE OBJECTION IS OVERRULED. THE ITEM IS ADMITTED AS STATE'S NO. 1.

(DIAGRAM MARKED AS STATE'S EXHIBIT NO. 1 INTO EVIDENCE.)

MR. SAVERANCE: THAT'S ALL I HAVE OF THIS WITNESS, YOUR HONOR.

THE COURT: CROSS EXAMINATION MR. WHEELER.

MR. WHEELER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT.

CROSS EXAMINATION BY MR. WHEELER:

1 Q MS. HILL, YOU INITIALLY TALKED TO THE POLICE
2 DEPARTMENT ON APRIL 13, 2005, IS THAT CORRECT?

3 A YES, SIR.

4 Q AND YOU WENT DOWN AND TALKED WITH, IS IT INVESTIGATOR
5 THOMPSON AT THE POLICE DEPARTMENT?

6 A YES.

7 Q OR DO YOU REMEMBER EXACTLY WHO IT WAS?

8 A I USUALLY TALK -- I DON'T KNOW.

9 Q BUT YOU KNOW YOU WENT DOWN THERE AND TALKED TO THEM
10 AT THE POLICE DEPARTMENT?

11 A YES.

12 THE COURT: MS. HILL, PULL THE MIC PLEASE SO THAT YOU
13 CAN SPEAK LOUDER AND EVERYBODY CAN HEAR YOU.

14 A YES.

15 Q AND YOU TOLD THEM WHAT YOU SAW THAT NIGHT, IS THAT
16 CORRECT?

17 A YES, SIR.

18 Q NOW YOU INDICATED THAT YOU SEEN THESE THREE GENTLEMEN
19 AND MR. ROUSE OR EXCUSE ME, THESE TWO GENTLEMAN AND MR.
20 ROUSE WALKING TOGETHER OR WHO?

21 A NO, IT WAS FOUR OF THEM. MR. ROUSE, CHAD JAMES,
22 EUNICE MCCALL, AND EFRAIN THOMAS.

23 Q DID YOU SEE ANYBODY ELSE OR WAS IT JUST FOUR OF THEM?

24 A I MEAN, YOU KNOW, I WASN'T COMING OUT OF THE HOUSE
25 DURING THAT TIME. I WAS ALREADY WALKING HOME.

1 Q NOW WERE YOU COMING FROM YOUR HOUSE WHEN YOU SAW
2 THEM---

3 A I WAS COMING FROM A FRIEND'S HOUSE.

4 Q WHAT DOES THIS LOCATION RIGHT HERE REPRESENT?

5 A THAT'S CALLED COOTS STORE. IT'S A STORE, AND IT'S
6 BETWEEN RAY STREET AND WILSON STREET.

7 Q EXCUSE ME, YOUR HONOR. AM I BLOCKING ANYBODY THE WAY
8 THIS IS? AND CAN YOU SEE IT, MS. HILL?

9 A YES, SIR.

10 Q LADIES AND GENTLEMEN, CAN Y'ALL SEE IT OKAY? IF YOU
11 WERE RIGHT HERE WHERE YOU MARKED THE W, WHAT DIRECTION
12 HAD YOU COME FROM UP HERE?

13 A I WAS, WHAT DO YOU MEAN WHAT DIRECTION? WHERE I WAS
14 COMING FROM?

15 Q YES, MA'AM, WHERE HAD YOU BEEN?

16 A I WAS COMING FROM WILSON STREET. IT IS A HOUSE RIGHT
17 IN FRONT OF COOTS STORE. I WAS COMING FROM THAT HOUSE.

18 Q SO YOU HAD CROSSED THE STREET AND YOU WERE OVER HERE?

19 A YES.

20 Q BESIDE THE STORE.

21 A YES.

22 Q NOW WHEN DID YOU OBSERVE THESE PEOPLE WALKING
23 TOGETHER?

24 A WHEN I HEARD THEM ARGUING.

25 Q I SAID WHEN DID YOU OBSERVE THESE PEOPLE WALKING

1 TOGETHER? DID YOU OBSERVE THEM BEFORE YOU GOT HERE---

2 A WELL, I DIDN'T EVEN KNOW WHERE---

3 THE COURT: MS. HILL,---

4 A HUH?

5 THE COURT: WAIT UNTIL THE LAWYER IS THROUGH ASKING
6 THE QUESTIONS BEFORE YOU -- AND WAIT UNTIL I AM THROUGH
7 TALKING BEFORE YOU RESPOND. WAIT UNTIL THE LAWYER IS
8 THROUGH ASKING THE QUESTIONS BEFORE YOU START ANSWERING
9 THE QUESTIONS.

10 A OKAY.

11 THE COURT: OKAY. GO AHEAD, MR. WHEELER.

12 MR. WHEELER: THANK YOU, YOUR HONOR.

13 Q MS. HILL, AT WHAT POINT IN WALKING FROM THE HOUSE ON
14 WILSON STREET TO THE SIDE OF THE STORE DID YOU FIRST
15 OBSERVE THE INDIVIDUALS JUST WALKING IN THE STREET?

16 A WHEN I FIRST NOTICED THEM?

17 Q YES, MA'AM.

18 A WHEN I WAS LIKE TURNING AWAY GOING HOME FROM THE
19 STORE WHEN I FIRST NOTICED THEM.

20 Q OKAY, SO WERE YOU LEAVING THE STORE TO GO BACK HOME?

21 A NO, I WAS -- YES, I WAS BY THE STORE TURNING ON MY
22 WAY TO GO HOME.

23 Q OKAY. AND THIS WHERE YOU PUT THIS W, IS THAT THE
24 ADVANTAGE POINT THAT YOU OBSERVED THEM FROM?

25 A YES, SIR. YES, SIR.

1 Q NOW A MINUTE AGO WHEN MR. SAVERANCE FIRST ASKED YOU
2 ABOUT THIS, DID YOU SAY THERE WAS SOME OTHER KIND OF SHED
3 OR SOMETHING WASN'T SHOWN ON HERE?

4 A THERE WAS A SHED BETWEEN THE -- IT IS A HOUSE RIGHT
5 THERE.

6 Q LET ME GET YOU TO SHOW IT ON THERE. YOUR HONOR, CAN
7 I GET MS. HILL TO STEP DOWN?

8 THE COURT: YES.

9 (THEREUPON, WITNESS STEPS DOWN FROM THE WITNESS
10 STAND.)

11 Q I AM SORRY TO DRAG THIS THING ABOUT. THIS ISN'T A
12 MARKER. BUT IF YOU WOULD, DRAW THE SHED THAT YOU HAD
13 MENTIONED.

14 A THIS IS THE STORE. THIS IS SOMEBODY'S HOUSE. AND
15 BETWEEN THERE IS LIKE A SHED.

16 Q OKAY. THAT'S GOOD.

17 (THEREUPON, THE WITNESS RESUMES THE WITNESS STAND.)

18 Q NOW YOU KNEW ALL THREE OF THESE OR ALL FOUR OF THESE
19 GENTLEMAN, IS THAT RIGHT?

20 A UH-HUH (AFFIRMATIVE.)

21 Q HAD MET THEM BEFORE?

22 THE COURT: YEAH.

23 Q SOCIALLY---

24 A YES.

25 Q ---OR WHATEVER. NOW IT APPEARED TO YOU THEY WERE ALL

1 HEADED SOMEWHERE TOGETHER. DID YOU UNDERSTAND THEY WERE
2 GOING TO PLAY POOL?

3 A I DON'T KNOW WHERE THEY WERE GOING.

4 Q IS THERE A POOL HALL HERE? OR IS THERE ONE SOMEWHERE
5 ELSE RIGHT AROUND HERE?

6 A THERE IS A POOL HALL ON FRIERSON STREET.

7 Q BACK THIS WAY?

8 A NO. THAT WAY.

9 Q BUT THIS IS FRIERSON RIGHT HERE ACCORDING TO---

10 A THIS IS FRIERSON STREET THAT WAY, AND FRIERSON STREET
11 THIS WAY.

12 Q IS THERE A POOL HALL NEAR BY?

13 A UH-HUH. (AFFIRMATIVE.)

14 Q NOW YOU INDICATED THAT MR. MCCALL AND MR. ROUSE WERE
15 ARGUING, IS THAT CORRECT?

16 A YES, SIR.

17 Q AND THEY WERE TUSSLING SOMEWHAT TO YOUR OBSERVATION?

18 A YES, SIR.

19 Q AND I BELIEVE YOU DESCRIBED THAT WHEN THE FIRST SHOTS
20 YOU HEARD OR SAW FIRED WAS MADE, THEY WERE ON EACH OTHER
21 WERE THE WORDS THAT YOU USED.

22 A UH-HUH. (AFFIRMATIVE.)

23 Q IS THAT CORRECT?

24 A UH-HUH. (AFFIRMATIVE.) I'M SORRY, YES, SIR.

25 Q AND YOU SAID AT SOME POINT YOU SAW MR. THOMAS GET U

1 LIKE HE HAD BEEN CROUCHED DOWN?

2 A IT LOOKED LIKE HE WAS SOMEWHERE. BUT, YES, HE WAS
3 LIKE HE WAS CROUCHED DOWN. BUT REALLY YOU COULD HARDLY
4 SEE HIM LIKE YOU COULD SEE EUNICE AND TROY.

5 Q BUT HE WAS NOT IN THAT INITIAL PICTURE WHERE THE
6 TUSSLE WAS GOING ON.

7 A NO, HE WASN'T.

8 Q HE CAME IN TO IT, DIDN'T HE?

9 A UH-HUH. (AFFIRMATIVE.)

10 Q AND YOU DID NOT SEE HIM FIRE ANY SHOTS BUT YOU HEARD
11 SHOTS?

12 A I HEARD A SHOT. AFTER THE FIRST TWO SHOTS, I RAN.

13 Q AND I BELIEVE YOU TOLD THE POLICE THAT MR. MCCALL AND
14 MR. THOMAS RAN IN SEPARATE DIRECTIONS AFTER THE SHOTS WERE
15 FIRED. IS THAT CORRECT?

16 A UH-HUH. (AFFIRMATIVE.)

17 Q TO DIFFERENT PLACES. NOW SOMETHING ELSE YOU TOLD THE
18 POLICE AND I DON'T THINK MR. SAVERANCE ASKED YOU ABOUT IT.
19 YOU TOLD THEM THAT TROY WAS VERY DRUNK AND HIGH AND HAD AN
20 ARGUMENT, DIDN'T YOU?

21 A YES, THEY WERE ALL DRINKING. HE WAS DRUNK, YES.

22 Q I DIDN'T THINK I HEARD THEM ASK YOU THAT. I DON'T
23 MEAN TO REPEAT ANYTHING. TROY WAS BIGGER THAN BOTH OF
24 THESE GENTLEMEN, WASN'T HE?

25 A YES, SIR.

1 Q HOW MUCH BIGGER? CAN YOU SAY WITH ANY SURETY OR JUST
2 GENERALLY LARGER?

3 A I WOULD SAY HE WAS LIKE A LITTLE TALLER THAN CHAD.
4 NO, A LITTLE, A COUPLE OF INCHES TALLER THAN CHAD JAMES.

5 Q MR. JAMES, CHAD JAMES?

6 A YES.

7 Q AND JUST LOOKING AT HIM GENERALLY, IF HE WAS BIGGER
8 THAN CHAD, HE WAS CERTAINLY BIGGER THAN---

9 A NO, HE WAS NOT BIGGER THAN CHAD. HE WAS JUST A
10 COUPLE OF INCHES SHORTER THAN.

11 Q OKAY.

12 A BUT HE'S NOT, HE WASN'T THAT TALL.

13 Q NOW AFTER YOU SAW THE FIRST TWO SHOTS TROY CONTINUED
14 TO STAND, DIDN'T HE?

15 A YES, SIR.

16 Q AND DID THERE SEEM TO BE A TUSSELE OR AT EACH OTHER
17 GOING ON?

18 A THEY WAS ON EACH OTHER.

19 Q OKAY.

20 A I JUST RAN. I RAN HOME. I DIDN'T SEE NO MORE, I
21 WENT HOME.

22 Q OKAY. HOW WELL DID YOU KNOW THESE MEN?

23 A I KNOW THEM.

24 Q DID YOU KNOW ANY BETTER THAN THE OTHERS?

25 A YEAH, THEY ALL BE OUT TOGETHER. YOU KNOW, WHAT YOUNG

1 PEOPLE DO.

2 Q WERE YOU CLOSER TO TROY ROUSE THAN SAY EFRAIN THOMAS?

3 A I WOULD SAY I WAS MORE CLOSER TO CHAD JAMES THAN I
4 WAS THE OTHERS.

5 Q CLOSER TO CHAD?

6 A YES, SIR.

7 Q NOW AND YOU CERTAINLY LIVE IN THE SAME COMMUNITY?

8 A I SURE DO.

9 Q AND DURING THAT SAME TIME, WERE YOU AWARE THAT IN
10 JANUARY, MR. ROUSE HAD CUT CORY MCCLEM'S THROAT?

11 A I HEARD OF IT, YES.

12 Q YOU HEARD ABOUT THAT INCIDENT.

13 A UH-HUH. (AFFIRMATIVE.)

14 Q DID YOU KNOW MR. MCCLEM?

15 A WHO?

16 Q MR. MCLEM, CORY MCCLEM?

17 A NOT PERSONALLY, BUT YES, I KNOW HIM.

18 Q BUT YOU KNOW ABOUT THE INCIDENT.

19 A UH-HUH. (AFFIRMATIVE.)

20 Q WAS IT PRETTY WIDELY KNOWN OF IN THE COMMUNITY THAT
21 HE HAD---

22 MR. SAVERANCE: OBJECTION, YOUR HONOR.

23 THE COURT: BASIS FOR THE OBJECTION?

24 MR. SAVERANCE: YOUR HONOR NO. 1, I THINK THE

25 SUFFICIENCY OF THE SUBSTANCE IS NOT PROPER, THE PENDING

1 CHARGES OF THE VICTIM. AND NO. 2, THE STIPULATION IS THAT
2 IT WAS WIDELY KNOWN. I THINK SHE CAN TESTIFY AS TO
3 WHETHER SHE KNEW. AND THAT'S THE EXTENT OF IT.

4 THE COURT: MR. WHEELER, WHAT DO YOU SAY?

5 MR. WHEELER: YOUR HONOR SHE SAID SHE KNEW THE
6 VICTIM. LIVED IN THAT COMMUNITY. AND IT WAS WIDELY KNOWN
7 IN THAT SAME COMMUNITY. AS FAR AS BOTH THE VICTIM AND THE
8 DEFENDANT'S COMMUNITY.

9 THE COURT: THE OBJECTION IS OVERRULED. YOU MAY
10 ANSWER.

11 MR. WHEELER: THANK YOU. AND, YOUR HONOR, THAT'S THE
12 LAST QUESTION I HAD ON IT.

13 Q BUT YOU HAD HEARD OF THE INCIDENT.

14 A I HAD.

15 MR. WHEELER: THANK YOU, MS. HILL. THAT'S ALL I
16 HAVE.

17 CROSS EXAMINATION BY MR. WATTS:

18 Q MORNING, MS. HILL.

19 A GOOD MORNING.

20 Q CAN YOU SEE THIS STILL?

21 A I CAN SEE IT.

22 Q YOU INDICATED EARLIER THAT YOU WERE ABOUT WHERE THIS
23 W IS, IS THAT CORRECT?

24 A YES, SIR.

25 Q YOU TESTIFIED YOU TOOK OFF AFTER YOU HEARD SHOTS?

1 A I DID.

2 Q WHICH WAY DID YOU RUN?

3 A BACK ON RAY STREET.

4 Q OKAY, CAN YOU COME BACK DOWN HERE AND KIND OF SHOW ME
5 WHERE YOU WENT?

6 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
7 STAND.)?

8 A I WENT THAT WAY.

9 Q SO YOU CAME TO, TO BACK OF THE BUILDING OPPOSITE OF
10 WHERE EVERYBODY ELSE WAS AND YOU WENT THIS WAY?

11 A YES.

12 Q SO YOU CAN, HOW ABOUT DRAW ME A LINE. DRAW ME A LINE
13 OF YOUR DIRECTION OF TRAVEL AFTER YOU HEARD.

14 A THAT WAY.

15 Q SO IT WAS OFF THE MAP?

16 A YES, SIR.

17 Q AND YOU WENT WHERE?

18 A HOME.

19 Q HOW ABOUT PUT AN ARROW AT THE END OF THAT LINE AND
20 SHOW THE DIRECTION YOU WERE GOING.

21 A RAY STREET.

22 Q OKAY. THANK YOU.

23 (THEREUPON, THE WITNESS RESUMES THE WITNESS STAND.)

24 Q YOU TESTIFIED EARLIER ABOUT A MOUND?

25 A A MOUND.

1 Q DIRT?

2 A YES, SIR.

3 Q A MOUND OF DIRT?

4 A IT'S DIRT RIGHT THERE.

5 Q OKAY.

6 A IT'S LIKE A BUNCH OF DIRT UP IN THAT AREA.

7 Q OKAY.

8 A IF YOU WANT TO GET TO THE STREET.

9 Q IS IT -- HOW BIG IS THE MOUND?

10 A IT IS NOT BIG.

11 Q WOULD IT BE 1 FOOT, 2-FOOT?

12 A 1 FOOT.

13 Q 1 FOOT?

14 A YES.

15 Q JUST A SMALL MOUND NEAR THE STOP SIGN, IS THAT RIGHT?

16 A YES, IT'S DIRT.

17 Q YOU SAID YOU SAW MR. ROUSE AND EUNICE TIED UP?

18 A I DID.

19 Q YOU SAW THEM HAVING AN ALTERCATION?

20 A I DID.

21 Q IS MR. ROUSE TALLER THAN EUNICE?

22 A YES, HE IS.

23 Q IS MR. ROUSE BIGGER THAN EUNICE?

24 A HE'S SKINNY TO ME. I DON'T -- I HAVEN'T REALLY SEEN

25 HIM IN A LONG TIME, SO I COULDN'T SAY HE IS BIG.

1 Q MAYBE SKINNY AND MEDIUM?

2 A YEAH, MEDIUM, YES.

3 Q HOW LONG DID YOU STAY THERE AFTER YOU HEARD THE SHOT?

4 A I STAYED THERE FOR A MINUTE, BECAUSE THEY WAS LIKE
5 FIGHTING, YOU KNOW, FIGHTING ONE ANOTHER. LIKE TRYING TO
6 GET SOMEBODY OFF EACH OTHER.

7 Q OKAY. SO YOU STOOD THERE FOR A MINUTE?

8 A NOT I MEAN, WHEN I MEAN A MINUTE, I STOOD THERE A
9 LONG TIME BASICALLY. THAT'S WHAT I MEAN.

10 Q OKAY, IT WASN'T A MINUTE, BUT IT WAS A LONG TIME.
11 WHAT ARE YOU DEFINING AS A LONG TIME?

12 A A COUPLE OF MINUTES.

13 Q A COUPLE OF MINUTES?

14 A I AM SORRY. CAN I SAY SOMETHING? YOU KNOW, ON THE
15 STREET WE SAY A MINUTE. THAT MEANS LIKE A COUPLE OF
16 MINUTES. I WOULD SAY IT WAS A COUPLE OF MINUTES.

17 Q OKAY. SO TELL ME IN REAL TIME HOW LONG YOU STOOD
18 THERE?

19 A IN REAL TIME?

20 Q WHEN YOU HEARD THE SHOTS.

21 A THEY WAS AT IT FOR ABOUT, I STOOD THERE FOR ABOUT --
22 I CAN'T SAY, I DIDN'T HAVE A WATCH ON ME. BUT I STOOD
23 THERE AND WATCHED THEM TUSSLE TOWARDS EACH OTHER. I STOOD
24 THERE AND I SAW, AND I HEARD TWO GUNSHOTS WENT OFF. AND
25 THAT'S HOW LONG I STOOD THERE. AFTER THEM GUNSHOTS, I

1 Q YES, MA'AM.

2 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
3 STAND.)

4 A AND I GUESS I WAS BEING NOSY. SO, EXCUSE ME, I WAS
5 ON MY KNEES ON THE SIDE OF THE BUILDING LOOKING THAT WAY.

6 Q YOU WERE ON YOUR KNEES?

7 A I WAS ON MY KNEES.

8 Q ON THE SIDE OF THE BUILDING?

9 A THAT'S RIGHT.

10 Q LOOKING TOWARD THE FRONT.

11 A THAT'S RIGHT.

12 Q WHAT WERE YOU WEARING?

13 A I HAD ON GRAY SWEAT PANTS, WHITE TEE SHIRT AND BLACK
14 FLIP FLOPS.

15 Q OKAY. WAS THERE ANYTHING IN YOUR BLIND SIGHT WHEN
16 YOU WERE ON YOUR KNEES LOOKING TOWARD THE STREET?

17 A IN MY LIGHT SIGHT?

18 Q IN YOUR LINE OF SIGHT, BLOCKING YOUR VISION?

19 A NO, SIR.

20 Q OKAY.

21 A BECAUSE THE SHACK IS NOT THAT BIG. AND IT WAS NOT
22 DIRECTLY IN THE FRONT OF THE STORE BEFORE THEY GOT DOWN.
23 IT WAS THE HOUSE, THE SHACK, THE STORE.

24 Q OKAY. THERE WAS A BUILDING BETWEEN THESE TWO OTHER
25 BUILDINGS THAT HAS---

1 A UH-HUH. (AFFIRMATIVE.)

2 Q ---BEEN DEMOLISHED?

3 A YES, SIR, IT WAS.

4 Q YOU TESTIFIED YOU TOOK OFF AFTER YOU HEARD THE FIRST
5 TWO SHOTS?

6 A I SURE DID.

7 Q AND YOU HEARD THERE WERE MORE SHOTS?

8 A I SURE DID.

9 Q OKAY. YOU PREVIOUSLY TESTIFIED YOU SAW THEM RUNNING
10 IN TWO DIFFERENT DIRECTIONS?

11 A WHEN, THE ONLY WAY YOU COULD SEE SOMEBODY RUNNING
12 THAT WAY, LIKE TOWARDS MY FRIEND'S HOUSE. WELL, EXCUSE
13 ME, SHE IS NOT HERE. TOWARDS EUNICE'S FAMILY HOUSE DURING
14 THAT TIME. AND I DON'T KNOW WHERE EVERYBODY ELSE WENT
15 BECAUSE IT WAS JUST LIKE, YOU COULD SEE THEM RUNNING. IT
16 WAS LIKE TROY, FROM WHERE I SEEN IT AT, THAT'S WHERE THE
17 OFFICER CAME. LIKE TROY HAD TRIED TO RUN, BECAUSE HE
18 WASN'T IN THAT SAME AREA WHERE HE STOOD WHERE THEY WAS AT
19 FIGHTING.

20 Q WAS HE CLOSER TO RAY STREET OR WAS HE CLOSER TO
21 FRIERSON STREET WHEN YOU WALKED BACK DOWN TO THE AREA?

22 A WHEN I WALKED BACK DOWN TO THE AREA AND SEE HIS BODY?

23 Q YES, MA'AM.

24 A HE WAS ON HIS SIDE WHERE IT SAYS RAY -- BY THE SIGN
25 WHERE IT SAYS RAY STREET BEFORE YOU TURN DOWN TO THAT

1 STREET. HE WAS STILL ON WILSON STREET. BUT HIS BODY WAS
2 LAYING DOWN BY THE SIGN WHERE YOU TURN DOWN THE STREET BY
3 RAY STREET.

4 Q BUT YOU SAID YOU TOOK OFF RUNNING AFTER TWO SHOTS.

5 A I SURE DID.

6 Q OKAY.

7 MR. WATTS: NO FURTHER QUESTIONS, YOUR HONOR.

8 THE COURT: MR. JOHNSON.

9 CROSS EXAMINATION BY MR. JOHNSON:

10 Q GOOD MORNING, TIFFANY.

11 A GOOD MORNING.

12 Q YOU STATED THAT EARLIER THAT YOU DIDN'T REMEMBER
13 SEEING CHAD.

14 A I REMEMBER SEEING THEM ALTOGETHER. BUT AS FAR AS ME
15 SEEING WHERE HE WAS IN THAT ALTERCATION, NO, I DON'T
16 REMEMBER HIM IN THAT ALTERCATION WITH THE OTHER TWO GUYS.

17 Q NOW DO YOU REMEMBER HAVING AN INTERVIEW WITH
18 INVESTIGATOR THOMPSON OR THE POLICE WHEN YOU WENT---

19 A YES, SIR.

20 Q ---DOWN TO TALK TO THEM?

21 A YES.

22 Q AND APPARENTLY, DID THEY TAKE NOTES WHEN YOU WAS
23 TALKING TO THEM?

24 A I GUESS THEY DID.

25 Q AND YOU TOLD THEM EVERYTHING YOU SAW, IS THAT

1 CORRECT?

2 A YES. I TOLD THEM EVERYTHING THAT I KNEW THAT I SAW.

3 Q OKAY. AND THAT WAS NOT TOO SOON AFTER IT HAPPENED,
4 IS THAT CORRECT?

5 A YES.

6 Q SO PROBABLY YOU REMEMBERED MORE THEN THAN YOU DO NOW,
7 WOULDN'T THAT BE A FAIR STATEMENT?

8 A YES, IT WAS A WHILE BACK.

9 Q AND YOU BASICALLY TOLD THEM EVERYTHING BECAUSE YOU
10 WANTED TO HELP OUT BECAUSE SOMEBODY HAD BEEN KILLED, IS
11 THAT CORRECT?

12 A I SURE DID.

13 Q WELL IN THAT STATEMENT YOU DIDN'T MENTION-SEEING CHAD
14 AT ALL?

15 A I DID TOLD THEM I SAW FOUR OF THEM TOGETHER. YES, I
16 DID.

17 MR. JOHNSON: YOUR HONOR, MAY I APPROACH THE WITNESS?

18 THE COURT: YES, SIR.

19 MR. SAVERANCE: YOUR HONOR, CAN I SEE WHAT HE IS
20 APPROACHING THE WITNESS?

21 A YES, I DID TELL THEM THAT.

22 Q TIFFANY, THIS IS A STATEMENT GIVEN TO ME BY THE STATE
23 OF THE INTERVIEW TAKEN BY INVESTIGATOR THOMPSON WHEN HE
24 TALKED TO YOU. TAKE YOUR TIME AND LET ME KNOW WHEN YOU
25 HAVE FINISHED.

1 MR. SAVERANCE: YOUR HONOR, I WOULD PLACE AN
2 OBJECTION AT THIS POINT AND TIME. SHE SAID THAT SHE DID
3 NOT SIGN THE STATEMENT, GIVE A WRITTEN STATEMENT. I DON'T
4 THINK THAT WOULD BE PROPER FOR HER TO BE READING FROM
5 SOMETHING THAT IS NOT SOMETHING THAT SHE WROTE AND SHE
6 SIGNED.

7 THE COURT: MR. JOHNSON.

8 MR. JOHNSON: YOUR HONOR, I AM NOT GIVING HER THAT AS
9 TO THE FACTS OF IT. SHE STATED THAT SHE MET WITH
10 INVESTIGATOR THOMPSON, AND THAT HE WROTE DOWN WHAT SHE
11 SAID. THAT WAS GIVEN TO ME BY THE STATE AS THE STATEMENT
12 TAKEN BY INVESTIGATOR THOMPSON. I ASKED HER TO READ IT.

13 MY NEXT QUESTION WOULD BE, DOES THAT REFLECT WHAT SHE
14 SAID. I THINK SHE CAN SAY THAT REFLECTS WHAT SHE TOLD OUR
15 INVESTIGATOR. IT IS FOR IMPEACHMENT PURPOSES, YOUR HONOR.

16 THE COURT: IMPEACHMENT OF WHO?

17 MR. JOHNSON: ON HER STATEMENT.

18 THE COURT: MA'AM, WHEN WE ARE TALKING, YOU BE QUIET,
19 OKAY. YOU UNDERSTAND?

20 A YES.

21 THE COURT: ALL RIGHT.

22 MR. JOHNSON: WELL IT'S MY ATTEMPT TO SEE IF THAT
23 STATEMENT GIVEN TO ME BY THE STATE WAS CORRECT. SHE HAS A
24 RIGHT TO SAY THAT IT WASN'T, YOUR HONOR.

25 THE COURT: YOUR OBJECTION IS SUSTAINED.

1 Q DID YOU READ THE STATEMENT?

2 A FROM WHICH PART? WHICH PART?

3 Q WELL DID YOU READ THE WHOLE STATEMENT?

4 A YES, I READ IT.

5 Q OKAY, DOES THAT REFLECT---

6 THE COURT: THE OBJECTION IS SUSTAINED. YOU CAN GET
7 THE STATEMENT BACK.

8 Q SO IF THERE WAS SOME STATEMENT, DO YOU REMEMBER THAT
9 OTHER, WHEN YOU WERE BEING CROSS EXAMINED BY THE OTHER TWO
10 CO-DEFENDANT'S ATTORNEYS, THEY KEPT SAYING THREE PEOPLE.
11 DO YOU REMEMBER THEM SAYING THAT?

12 A I REMEMBER THEM SAYING THAT.

13 Q WOULD THAT BE A SURPRISE, BECAUSE THAT IS THE FIRST
14 TIME YOU EVER MENTIONED SEEING CHAD JAMES?

15 A NO, IT WOULDN'T BE A SURPRISE. BEING SURPRISED BY
16 WHAT?

17 Q THAT NOBODY EVER HEARD OF YOU SAYING THAT CHAD JAMES
18 WAS PRESENT.

19 A BECAUSE DURING THAT TIME, I DON'T REMEMBER HIM
20 STANDING THERE DURING THE ALTERCATION. I DID NOT SEE HIM
21 STANDING THERE NEXT TO EUNICE AND TROY. I DID SEE HIM
22 STANDING NEXT TO EFRAIN. NO, I DIDN'T.

23 Q AND YOU DIDN'T SEE HIM HAVE ANYTHING AT ALL TO DO
24 WITH IT, IS THAT CORRECT?

25 A NO, I DID NOT.

1 Q SO IT'S POSSIBLE HE WAS NOT EVEN THERE WHEN THE
2 SHOOTING OCCURRED, IS THAT POSSIBLE?

3 A I REMEMBER HIM WALKING WITH THE GUYS.

4 Q EARLIER.

5 A YES.

6 Q BUT YOU DID NOT REMEMBER SEEING HIM THERE?

7 A I DO NOT.

8 Q SO IT IS POSSIBLE THAT HE WAS NOT THERE.

9 A IT IS A POSSIBILITY.

10 MR. JOHNSON: NO OTHER QUESTIONS.

11 THE COURT: MR. SAVERANCE?

12 MR. SAVERANCE: THAT'S ALL WE HAVE FOR THIS WITNESS,

13 YOUR HONOR.

14 THE COURT: MR. WHEELER?

15 MR. WHEELER: NO RECROSS, YOUR HONOR.

16 THE COURT: MR. WATTS?

17 MR. WATTS: NO RECROSS, YOUR HONOR.

18 THE COURT: YOU MAY STEP DOWN, MA'AM.

19 A THANK YOU.

20 MR. SAVERANCE: YOUR HONOR, WE WOULD CALL COURTNEY

21 JOHNSON.

22 COURTNEY JOHNSON, BEING FIRST DULY

23 SWORN, TESTIFIED AS FOLLOWS:

24 THE CLERK: STATE YOUR FULL NAME.

25 A COURTNEY JOHNSON.

1 DIRECT EXAMINATION BY MR. SAVERANCE:

2 Q MS. JOHNSON, I WANT YOU TO SPEAK INTO THE MICROPHONE
3 AND SPEAK UP SO EVERYBODY CAN HEAR YOU. THE COURT
4 REPORTER IS TAKING DOWN WHAT YOU SAY. AND THE JURORS AND
5 EVERYBODY AT THESE TABLES NEED TO HEAR WHAT YOU HAVE TO
6 SAY, OKAY. AND YOU HAVE TO SAY YES OR NO. YOU CAN'T---

7 A OKAY.

8 Q I NEED YOU TO SPEAK UP, OKAY?

9 A OKAY.

10 Q ARE YOU NERVOUS?

11 A YES, SIR.

12 Q THAT'S OKAY. THAT'S OKAY. NOW GIVE YOUR NAME AGAIN
13 PLEASE.

14 A COURTNEY JOHNSON.

15 Q MS. JOHNSON, WHERE DO YOU LIVE?

16 A ON [REDACTED]

17 Q IS THERE HERE IN BISHOPVILLE?

18 A YES, SIR.

19 Q IS THAT OVER NEAR WILSON STREET AND THAT SORT OF
20 THING?

21 A UH-UH. (NEGATIVE.)

22 Q YOU DON'T LIVE IN THAT AREA?

23 A NO, SIR.

24 Q WHAT AREA DO YOU LIVE IN?

25 A IN THE COUNTRY.

1 Q IN THE COUNTRY?

2 A YES.

3 Q OKAY. HAVE YOU BEEN LIVING THERE A LONG TIME?

4 A YES, SIR.

5 Q DO YOU REMEMBER BACK ON APRIL 7TH, 2005, WHICH WOULD
6 HAVE BEEN ABOUT A YEAR AGO, HEARING ABOUT TROY ROUSE BEING
7 KILLED?

8 A YES, SIR.

9 Q THAT EVENING, AFTERNOON AND NIGHT, WHERE WERE YOU AT
10 THAT DAY HE WAS KILLED?

11 A I WAS AT CHAD JAMES' HOUSE.

12 MR. SAVERANCE: COULD I HAVE THE DEFENDANT MR. JAMES
13 STAND UP YOUR HONOR?

14 Q IS THAT MR. CHAD JAMES?

15 A YES, SIR.

16 Q WERE YOU THERE PART OF THE DAY, ALL OF THE DAY OR?

17 A ALL OF THE DAY.

18 Q WHO ALL WAS WITH YOU THAT DAY?

19 A ME, SAMANTHA, ---

20 Q SAMANTHA WHO?

21 A HICKMAN. ME, SAMANTHA HICKMAN, KEVIN, AND KENO
22 SLATER.

23 Q AND CHAD JAMES' HOUSE IS IN LEE COUNTY, RIGHT?

24 A YES, SIR.

25 Q WAS CLAD JAMES THERE THE ENTIRE TIME?

1 A HE LEFT THERE AT ONE POINT AND TIME.

2 Q DO YOU REMEMBER WHAT TIME THAT WAS?

3 A NO, SIR.

4 Q DID HE COME BACK AT SOME POINT?

5 A YES, SIR.

6 Q WAS IT DARK OR LIGHT WHEN HE CAME BACK?

7 A IT WAS DARK WHEN I SAW HE CAME BACK.

8 Q DID YOU SEE EFRAIN THOMAS THERE THAT EVENING?

9 A YES, SIR.

10 Q IS THIS MR. THOMAS?

11 A YES, SIR.

12 Q DID YOU KNOW THEM BEFORE THIS HAPPENED?

13 A YES, SIR.

14 Q WHEN EFRAIN THOMAS CAME BACK TO CHAD JAMES' HOUSE,

15 WHERE DID YOU -- DO YOU REMEMBER SEEING HIM?

16 A YES, SIR.

17 Q DID YOU TALK TO HIM?

18 A YES, SIR.

19 Q DID HE TALK TO YOU?

20 A YES, SIR.

21 Q TELL ME WHAT HE SAID.

22 A WHEN HE CAME BACK INTO CHAD JAMES' HOUSE, HE PULLED

23 ME INTO THE BATHROOM. HE WASHED HIS HANDS AND HE WASHED

24 HIS FACE. HE SAID ME AND EUNICE---

25 MR. WATTS: OBJECTION, YOUR HONOR, HEARSAY.

1 THE COURT: SIR?

2 MR. WATTS: HEARSAY OBJECTION, YOUR HONOR. ANY
3 STATEMENTS MADE ABOUT MR. MCCALL.

4 THE COURT: LADIES AND GENTLEMEN, I AM GOING TO NEED
5 YOU TO GO TO JURY ROOM WHILE WE DISCUSS A MATTER OF LAW.
6 PLEASE GO TO THE JURY ROOM.

7 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
8 PRESENCE OF THE JURY.)

9 MR. WATTS: YOUR HONOR, I WAS OBJECTING ON HEARSAY
10 GROUNDS FOR ANYTHING THIS WITNESS IS GOING TO SAY RELATING
11 TO MR. MCCALL. IT GOES TO THE TRUTH OF THE MATTER. I
12 MEAN, I CAN'T SAY ANYTHING ELSE. BUT WHEN YOU ARE TALKING
13 ABOUT THE TESTIMONY SHE MAY HAVE ABOUT WHAT ANYONE ELSE
14 HAS SAID REGARDING MR. MCCALL, THAT GOES TO -- WEIGHED
15 INTO THE TRUTH OF THE MATTER ASSERTED. THAT IS HEARSAY.
16 ANY OF HER TESTIMONY REGARDING WHAT SOMEBODY SAID ABOUT
17 MR. MCCALL, THAT IS HEARSAY.

18 THE COURT: MR. SAVERANCE.

19 MR. SAVERANCE: YOUR HONOR, IT IS NOT HEARSAY. SHE
20 IS RELATING WHAT ONE OF THESE THREE DEFENDANTS SAID.
21 SHE'S NOT SAYING EUNICE MCCALL SAID SOMETHING. SHE'S
22 SAYING THAT EFRAIN THOMAS MADE THESE STATEMENTS. I WAS
23 THERE, I HEARD HIM. SHE IS NOT ABLE---

24 THE COURT: ANSWER THE QUESTION NOW. WHAT YOU WERE
25 ABOUT TO SAY BEFORE YOU WERE CUT OFF. HE SAID WHAT?

1 A HE SAID ME AND EUNICE, JUST KILLED TROY.

2 THE COURT: ALL RIGHT.

3 A AND I ASKED HIM WAS IT TROY STEVENSON. AND HE SAID
4 YES, BUT HE DIDN'T KNOW WHO.

5 THE COURT: ALL RIGHT, I AM NOT SO MUCH WORRIED ABOUT
6 HEARSAY WHERE SOMEONE CONFESSED TO KILLING SOMEONE. THE
7 CONCERN IS WHETHER THE STATEMENT WAS STATED BY
8 MR. WHEELER'S CLIENT, IS THAT RIGHT?

9 MR. WHEELER: YES, YOUR HONOR. THE STATEMENT THAT
10 WAS MADE BY MY CLIENT.

11 THE COURT: YES, EFRAIN SAID ME AND EUNICE KILLED
12 TROY. SO THE QUESTION IS WHETHER THE STATEMENT BY ONE
13 CO-DEFENDANT IMPLICATING ANOTHER CO-DEFENDANT ON A MURDER
14 IS PROPER TESTIMONY.

15 MR. SMITH: YOUR HONOR.

16 THE COURT: YES, SIR.

17 MR. SMITH: CARL SMITH. I ALSO REPRESENT MR. MCCALL.
18 I APOLOGIZE, YOUR HONOR. THE STATE CHOSE TO TRY THESE
19 DEFENDANTS TOGETHER. THE STATEMENT HE IS NOW TRYING TO
20 INTRODUCE THROUGH THIS WITNESS ACTUALLY GOES TO GUILT OR
21 INNOCENCE OF OUR CLIENT. WHICH IN ANOTHER TRIAL WOULD BE
22 INADMISSIBLE. AND, YOUR HONOR, WE WOULD MOVE THAT THE
23 WHOLE STATEMENT HAS TO BE STRUCK IN RELATION TO THIS
24 TRIAL. THEY CHOSE THIS. THEY CHOSE TO PUT THE PARTIES
25 TOGETHER. NOW HE WANTS TO INTRODUCE A STATEMENT BY THIS

1 WITNESS; THAT HE IS ALLEGING IT'S BY ONE OF THE DEFENDANTS
2 THAT RELATES TO ANOTHER. AND THAT WOULD BE PREJUDICIAL.

3 THE COURT: MR. WHEELER?

4 MR. WHEELER: YOUR HONOR, I NOT MAKING ANY OBJECTION
5 TO THE STATEMENT. AND I PROBABLY DON'T HAVE MUCH BASIS
6 FOR GIVING MY CLIENT THERE, BUT IT WOULD SEEM TO ME IF
7 THAT IS NOT THE PROVEN ISSUE, IT COULD BE CURED BY
8 REDACTION. I AM NOT SURE WE COULD.

9 THE COURT: MR. SAVERANCE?

10 MR. SAVERANCE: YOUR HONOR, MR. THOMAS MADE THESE
11 STATEMENTS TO A WITNESS NOT AN AGENT OF THE STATE. I
12 KNOW THAT IS IMPLICATING ANOTHER DEFENDANT ALSO, BUT
13 MR. MCCALL'S HAVE FREE REIGN TO CROSS EXAMINATION TO
14 DETERMINE WHAT KIND OF STATEMENT. AND WAS IT CREDIBLE
15 AND THAT SORT OF THING. AND THEY HAVE EVERY RIGHT TO
16 CROSS EXAMINE THIS WITNESS ABOUT THOSE STATEMENTS AND IF
17 IT WAS CREDIBLE AND WEIGH IT THAT WAY.

18 THE COURT: WE ALL KNOW THAT. THE QUESTION IS
19 WHETHER OR NOT IT IS ADMISSIBLE UNDER BRUTON, AND THE LINE
20 OF CASES THAT SPEAKS TO A STATEMENT BY ONE DEFENDANT
21 IMPLICATING ANOTHER DEFENDANT. WHETHER OR NOT YOU CAN DO
22 THAT.

23 MR. SAVERANCE: WELL, YOUR HONOR, THESE MEN WORKED
24 TOGETHER. THEY BOTH, FROM THE FIRST NOTICE WE HAD IS THEY
25 BOTH DID FIRE SHOTS INTO THE VICTIM. WHAT I WOULD SAY IS,

1 THE STATEMENT BY MR. THOMAS STATING WHAT HE DID IN HIS
2 SHOOTING AND ALSO IMPLICATING MR. MCCALL, YOUR HONOR; YOU
3 KNOW AS I SAID BEFORE, I THINK IT WOULD BE ADMISSIBLE IN
4 THIS CASE, YOU KNOW, BECAUSE IT DOES SHOW IT WAS FREELY
5 GIVEN. IT WAS A STATEMENT OF SOMEBODY THAT WASN'T AN
6 AGENT OF THE POLICE. AND LIKE I SAID, WE HAVE ALREADY PUT
7 UP TESTIMONY THAT BOTH PEOPLE WERE THE SHOOTER. I JUST
8 THINK IT WOULD BE ALLOWED.

9 NOW, YOUR HONOR, IF THE COURT DISAGREED, I WOULD SAY
10 THAT THE WITNESS WOULD AT LEAST BE ABLE TO TESTIFY AS TO
11 WHAT EFRAIN THOMAS, HIS INVOLVEMENT IN THIS WAS.

12 THE COURT: ANY RESPONSE MR. WATTS, OR MR. SMITH?

13 MR. WATTS: WELL, YOUR HONOR, AGAIN, I THINK IT GOES
14 BACK TO THE STATE'S DECISION TO TRY THESE THREE DEFENDANTS
15 TOGETHER. AND IN SO DOING, THEY LIMITED THEMSELVES AS TO
16 WHAT THEY CAN PRESENT AND NOT PRESENT UNDER THE LAWS OF
17 EVIDENCE. YOUR HONOR, IN THIS PARTICULAR CASE, YOUR
18 HONOR, TAKING THE FACT SAY THEY WOULD TRY ONE OF THE
19 DEFENDANTS BY ITSELF, THAT CASE BY ITSELF, EQUAL THE
20 CHARGES, AND AFTER THE JURY WOULD HAVE HEARD ALL OF THE
21 EVIDENCE, THEY COULD HAVE POSSIBLY PRESENTED THAT
22 STATEMENT IN SAY THE TRIAL OF THE ONE OF THE DEFENDANTS.
23 BUT NOW HE IS TRYING TO USE THAT STATEMENT AS IT APPLIES
24 TO ANOTHER DEFENDANT IN THIS CASE. AND THAT, YOUR HONOR,
25 SHOULD NOT BE ADMITTED.

1 THE COURT: MR. SAVERANCE, ARE YOU NOW TRYING TO
2 CHANGE HER STATEMENT TO SAY THAT SHE SHOULD BE ABLE TO
3 TESTIFY THAT -- IF THE STATEMENT WAS, ME AND EFRAIN DID
4 SUCH AND SUCH; ME AND EFRAIN KILLED TROY? DO YOU WANT HER
5 TO CHANGE THE STATEMENT AND HAVE HER SAY I KILLED TROY?

6 MR. SAVERANCE: YOUR HONOR, I THINK SHE SAID NOT ME
7 AND EFRAIN. I THINK IT WAS EFRAIN AND EUNICE MCCALL.

8 THE COURT: SAY IT AGAIN?

9 MR. SAVERANCE: SHE WAS SAYING THAT EFRAIN THOMAS
10 SAID THIS. THAT ME AND EUNICE MCCALL.

11 THE COURT: THE STATEMENT OF WHICH DEFENDANT?

12 MR. SAVERANCE: EFRAIN THOMAS.

13 THE COURT: THE STATEMENT.

14 MR. SAVERANCE: YOUR HONOR, WHAT I AM SAYING IS IF
15 FOR SOME REASON IT IS NOT ADMISSIBLE AGAINST MR. EUNICE
16 MCCALL SINCE HE WASN'T THERE, I THINK IT STILL CLEARLY IS
17 ADMISSIBLE AS FAR AS WHAT EFRAIN THOMAS SAID. I MEAN, IF
18 HE COMES OUT AS THE WITNESS AND SAID, HE COMES IN THE
19 HOUSE AND HE VOLUNTARILY SAYS WHAT HE HAD JUST DONE.

20 THE COURT: SO THE STATEMENT IS A STATEMENT OF YOUR
21 CLIENT?

22 MR. WHEELER: THE STATEMENT I BELIEVE THE WITNESS IS
23 GETTING READY TO TESTIFY TO IS A STATEMENT MADE BY
24 MR. THOMAS.

25 THE COURT: THE STATEMENT OF EFRAIN THOMAS.

1 MR. WHEELER: CORRECT.

2 THE COURT: SO THAT'S, I AM CORRECT ON THE FACTS. I
3 HAVE THE PARTIES, JUST THE NAMES IN THIS BACK ARE LISTED
4 IN A DIFFERENT ORDER. SHE SAYS THAT EFRAIN THOMAS SAYS
5 THAT ME AND EUNICE MCCALL KILLED TROY. ARE YOU NOW TRYING
6 TO CHANGE THAT STATEMENT FOR HER TO SAY THAT EFRAIN THOMAS
7 SAYS I KILLED TROY?

8 MR. SAVERANCE: YOUR HONOR, NO, SIR, I AM NOT TRYING
9 TO GET HER TO CHANGE ANYTHING. MY STATEMENT IS, IF THE
10 COURT FOUND THAT THIS WAS NOT ADMISSIBLE AS IT RELATES TO
11 MR. MCCALL, IF THE STATE FOUND THAT, I STILL BELIEVE WE
12 WOULD BE ABLE TO HAVE HER GIVE A STATEMENT AS TO WHAT
13 EFRAIN THOMAS SAID. WHAT MY, I GUESS----

14 THE COURT: WHAT STATEMENT WOULD YOU HAVE HER GIVE?

15 MR. SAVERANCE: WELL, YOUR HONOR, VERY CLEARLY, THAT
16 EFRAIN THOMAS ACKNOWLEDGED THAT HE SHOT AND KILLED TROY
17 ROUSE.

18 THE COURT: SO THAT GOES BACK TO MY QUESTION. DO YOU
19 WANT TO CHANGE YOUR STATEMENT?

20 MR. SAVERANCE: YOUR HONOR, I DON'T WANT TO CHANGE IT
21 IN A SENSE, THAT DOESN'T SOUND RIGHT. I DON'T WANT TO
22 CHANGE WHAT SHE SAID BEFORE. MY POINT IS, I THINK SHE CAN
23 TESTIFY AS TO ANYTHING EFRAIN THOMAS SAID THAT HE DID THAT
24 EVENING.

25 THE COURT: ANY FURTHER ARGUMENT ON THIS ISSUE?

1 MR. WHEELER: YOUR HONOR, COULD I BE HEARD JUST VERY
2 BRIEFLY?

3 THE COURT: YES, SIR.

4 MR. WHEELER: IT'S NOT REALLY MY MOTION. I WOULD
5 JUST POINT OUT, MY UNDERSTANDING OF BRUTON, IS THAT THE
6 STATEMENT COULD BE REDACTED. BUT THE LEAD WORDS, BUT I
7 DON'T KNOW THAT YOU'RE ENTERTAINING THAT MOTION, YOUR
8 HONOR, OF WHETHER MR. SAVERANCE MEANT TO SAY I, INSTEAD OF
9 WE. AND TAKE SOLE RESPONSIBILITY. I DON'T HAVE ANY
10 PROBLEM SAYING INVOLVED. BECAUSE FRANKLY I DON'T, IF I AM
11 NOT MISTAKEN, I DON'T WANT ANY WORDS TO BE CHANGED. BUT
12 THEY CAN BE DELETED.

13 THE COURT: I WASN'T SUGGESTING ANYTHING. I JUST
14 ASKED A QUESTION.

15 MR. WHEELER: WELL I UNDERSTAND, BUT I JUST WANTED TO
16 MAKE SURE. AND THAT'S ALL I AM GOING TO ADD.

17 THE COURT: MR. SMITH.

18 MR. SMITH: YOUR HONOR, AGAIN, I APOLOGIZE, BUT I
19 DON'T EVEN THINK YOU CAN REDACT A STATEMENT WHERE IT
20 WOULD MAKE SENSE. AND THEREFORE, I THINK THE STATEMENT
21 CANNOT BE USED IN THE TRIAL OF THIS CASE AT ALL. BECAUSE
22 IT INFERS ON THE CO-DEFENDANT SOME TYPE OF GUILT WHICH
23 THEY COULD NOT DO. THE ONLY OTHER WAY THEY COULD GET
24 THAT IS BY TRYING THESE THREE DEFENDANTS SEPARATELY. AND
25 THEY DIDN'T CHOOSE TO DO THAT. I DON'T THINK THE

1 STATEMENT CAN BE LET IN AT ALL, YOUR HONOR. I DON'T
2 THINK IT CAN BE REDACTED. IF YOU ARE CHANGING THE FACTS
3 OF IT, I DON'T BELIEVE IT CAN BE CHANGED IN ANY WAY,
4 SHAPE OR FORM, AND STILL HAVE CREDIBILITY. I BELIEVE IT
5 HAS TO BE OMITTED COMPLETELY.

6 THE COURT: MR. JOHNSON, WHAT DO YOU SAY ABOUT ALL
7 THAT?

8 MR. JOHNSON: WELL, YOUR HONOR, I GUESS I REALLY
9 DON'T HAVE A DOG IN THIS FIGHT. BUT I THINK IT CAN EASILY
10 BE SOLVED IF THE STATE WOULD JUST ASK THE WITNESS DID
11 EFRAIN THOMAS ADMIT HE KILLED ANY PERSON. AND THAT WOULD
12 NOT INCLUDE THE CO-DEFENDANT.

13 THE COURT: WHAT DO YOU SAY ABOUT THAT, MR. WHEELER?

14 MR. WHEELER: YOUR HONOR, I THINK IF IT GETS IN TO
15 THAT QUESTION AND THAT FORMAT, ESPECIALLY NOT WITH THAT
16 WORD. YOUR HONOR, ALTHOUGH WITH THE STATEMENT I ADMIT I
17 DON'T HAVE A PROBLEM WITH IT. I THINK I AGREE WITH
18 MR. SMITH. I DON'T SEE HOW IT COULD BE REDACTED. BUT I
19 THINK THAT WOULD BE THE STATE'S BURDEN TO DO THAT. BUT
20 JUST READING IT, I DON'T SEE HOW IT CAN.

21 MR. SAVERANCE: YOUR HONOR, MY POSITION IS IF THE
22 COURT RULES THAT IT IS NOT ADMISSIBLE IN THAT FORM---

23 THE COURT: I SO RULE IT IS NOT ADMISSIBLE IN THAT
24 FORM.

25 MR. SAVERANCE: I UNDERSTAND MR. SMITH'S OBJECTION

1 TO MR. MCCALL. HE IS RUNNING INTO A PROBLEM WITH
2 MR. THOMAS. I DON'T SEE WHY IT WOULD NOT BE ALLOWED IN AS
3 FAR AS THE WITNESS BEING ASKED A DIFFERENT QUESTION AS FAR
4 AS MR. THOMAS' ACKNOWLEDGEMENT OF HIS INVOLVEMENT IN
5 THIS -- I MEAN, I AM NOT ASKING WORD FOR WORD IN HIS
6 STATEMENT SPECIFICALLY MR. THOMAS WHAT, YOU KNOW, WHAT HE
7 MAY HAVE SAID OR MAY NOT HAVE SAID THAT HE, HIS
8 INVOLVEMENT IN THIS SHOOTING.

9 THE COURT: ASIDE FROM ALL OF THAT, WHAT OTHER
10 IMPORTANT INFORMATION IF ANY, DO YOU INTEND TO TRY TO GET
11 FROM THIS WITNESS?

12 MR. SAVERANCE: YOUR HONOR, AS FAR AS THIS WITNESS
13 GOES, WE HEARD THAT HER TESTIMONY WAS GOING TO BE THAT
14 EFRAIN THOMAS, YOU KNOW, CAME IN ABOUT AND STATED ABOUT
15 THE SHOOTING AND THAT SORT OF THING. THE REST OF HER
16 TESTIMONY WILL BASICALLY BE, AT THAT POINT, SOME PEOPLE
17 GETTING IN THE CAR AND DRIVING OFF. SO THAT'S THE TWO
18 PARTS OF HER TESTIMONY.

19 THE COURT: MR. SMITH.

20 MR. SMITH: YOUR HONOR, I AM JUST LISTENING TO THE
21 SOLICITOR. I JUST WANT TO MAKE SURE THAT HER TESTIMONY IS
22 NOT GOING TO RELATE TO ANY OTHER COMMENTS OR STATEMENTS
23 ABOUT ANY OTHER CO-DEFENDANTS OR ANYTHING OF THAT NATURE
24 IF HE IS JUST GOING TO BASICALLY GET HER TO SAY THAT SHE
25 SAW HIM, THAT THEY THEN LEFT IN A CAR. I DON'T HAVE A

1 PROBLEM WITH THAT. I WILL HAVE A PROBLEM, IT MAY BE
2 NECESSARY FOR US TO GO IN TO HER TESTIMONY BEFORE THE JURY
3 IS BROUGHT BACK IN, SO WE DON'T HAVE THIS COME UP AGAIN.
4 IF HE IS GOING TO MAKE REFERENCES TO STATEMENTS MADE BY
5 ANYONE.

6 THE COURT: YOU DO NOT INTEND TO ILLICIT FROM THIS
7 WITNESS ANY OTHER STATEMENTS, DO YOU?

8 MR. SAVERANCE: YOUR HONOR, THE STATEMENTS THAT SHE
9 WOULD BE TESTIFYING TO, WOULD BE WHAT SHE SAID ABOUT
10 EFRAIN THOMAS. AND THERE WAS ALSO A STATEMENT THAT CHAD
11 JAMES WAS AT THE HOUSE AND HE SAID WE HAVE GOT TO GET
12 MR. THOMAS OUT OF HERE. SO THOSE WOULD BE, AS FAR AS HER
13 TESTIMONY, THOSE WOULD BE THE TWO STATEMENTS. THE
14 STATEMENT FROM EFRAIN THOMAS ON THE SHOOTING AND THE
15 STATEMENT OF CHAD JAMES DEALING WITH, YOU KNOW, GETTING
16 HIM OUT OF THERE. AND MR. JAMES I DON'T BELIEVE THE
17 TESTIMONY WOULD GO IN TO DETAIL ABOUT OH, HE COMMITTED A
18 MURDER, LET'S GO. BUT JUST SIMPLY GET IN THE CAR AND
19 LET'S GET HIM OUT OF HERE.

20 THE COURT: ALL RIGHT, MR. JOHNSON.

21 MR. JOHNSON: YES, YOUR HONOR, I GUESS I HAVE GOTTEN
22 THE STATEMENTS GIVEN TO ME FROM THE STATE. THERE IS
23 NOWHERE IN THIS STATEMENT GIVEN BY THIS WITNESS, I GUESS I
24 CAN CROSS EXAMINE HER. BUT THERE IS NOTHING MENTIONING
25 ANYTHING IN THE STATEMENT THAT MR. JAMES, OR ANYTHING, "I

1 HAVE TO GET YOU OUT OF THERE." THIS IS MY FIRST TIME OF
2 EVEN HEARING THAT EXISTED.

3 THE COURT: MR. SAVERANCE.

4 MR. SAVERANCE: YOUR HONOR, THOSE WOULD BE THE
5 STATEMENTS THAT WERE MADE BY TWO OF THE DEFENDANTS AT THE
6 TIME. BUT HER ONLY TESTIMONY WOULD BE WHAT MR. THOMAS
7 SAID. AND BASICALLY THE FACT THAT MR. JAMES ONE OF THE
8 DEFENDANTS, AND HER AND FEW OTHER PEOPLE GOT IN THE CAR
9 AND DROVE.

10 THE COURT: I UNDERSTAND WHAT YOU SAID IT WAS GOING
11 TO BE. BUT THE OBJECTION WAS YOU HAVE VIOLATED DISCOVERY
12 BY NOT GIVING IT TO HIM.

13 MR. SAVERANCE: YOUR HONOR, I HAVE GIVEN MR. JOHNSON
14 AND ALL THESE ATTORNEYS EVERYTHING I HAVE GOT. IF HE
15 THINKS SOMETHING IS NOT IN THE STATEMENT, HE CAN CROSS
16 EXAMINE THE COPS AND THE WITNESS ABOUT THAT.

17 THE COURT: DO YOU HAVE A STATEMENT?

18 MR. SAVERANCE: YOUR HONOR, I DO. WOULD YOU LIKE ME
19 TO APPROACH WITH THE STATEMENT YOUR HONOR?

20 THE COURT: PARDON ME?

21 MR. SAVERANCE: DID YOU WANT ME TO APPROACH WITH
22 THIS?

23 THE COURT: NO, I ASKED YOU A QUESTION. DID YOU
24 PRODUCE THE STATEMENT?

25 MR. SAVERANCE: YES, YOUR HONOR, WE HAVE PRODUCED A

1 TYPED AND HANDWRITTEN STATEMENT TO ALL OF THE ATTORNEYS
2 INVOLVED.

3 MR. JOHNSON: I HAVE THE STATEMENT YOUR HONOR, THERE
4 IS NOTHING IN THERE TO WHAT THE STATE JUST SAID THAT THE
5 WITNESS IS GOING TO TESTIFY TO.

6 MR. SAVERANCE: YOUR HONOR, THERE IS A PORTION IN
7 HERE WHICH SAYS THAT CHAD TOLD, THAT BASICALLY CHAD SAID,
8 DON'T LET EFRAIN OUT OF THE CAR -- OUT OF THE TRUCK, LET
9 HIM COME IN FROM THE BACK SEAT.

10 THE COURT: I CAN'T UNDERSTAND WHAT YOU SAID.

11 MR. SAVERANCE: IN THE STATEMENT THIS WITNESS STATES
12 THAT CHAD SAID, CHAD JAMES SAID, DON'T LET EFRAIN THOMAS
13 OUT OF THE TRUNK HAVE HIM COME THROUGH THE BACK SEAT TO
14 GET OUT OF THE CAR. THAT'S WHAT IS IN THIS STATEMENT.

15 THE COURT: ALL RIGHT, I FIND NO VIOLATION OF BRADY
16 REGARDING THE STATEMENT. NO DISCOVERY RULE VIOLATION
17 REGARDING THE STATEMENT. I AM ALSO GOING TO ALLOW THE
18 TESTIMONY, AND YOU WOULD HAVE TO DIRECT THE QUESTION TO
19 SOME EXTENT AS TO THE ADMISSION OF EFRAIN THOMAS REGARDING
20 HIS INVOLVEMENT IN THE SHOOTING OF MR. ROUSE. BUT YOU CAN
21 NOT TESTIFY AT ALL AS TO ANY INVOLVEMENT THAT MR. EFRAIN
22 THOMAS SAID THAT EUNICE DAVIS MCCALL HAD REGARDING THE
23 SHOOTING. DO YOU UNDERSTAND, MA'AM?

24 A YES, SIR.

25 THE COURT: WE WILL TAKE ABOUT FIVE MINUTES AND THEN

1 WE WILL PROCEED.

2 (THEREUPON, THE COURT TAKES A SHORT RECESS.)

3 THE COURT: YOU MAY BRING THE JURY.

4 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
5 PRESENCE OF THE JURY.)

6 THE COURT: THE JURY IS BACK. THE OBJECTION IS
7 SUSTAINED. YOU MAY PROCEED.

8 MR. SAVERANCE: MAY IT PLEASE THE COURT, YOUR
9 HONOR.

10 DIRECT EXAMINATION CONTINUES BY MR. SAVERANCE:

11 Q MS. JOHNSON, HOW DO YOU KNOW EFRAIN THOMAS?

12 A HE WAS MY BOYFRIEND. AND I HAVE A FIVE MONTH OLD BY
13 HIM.

14 Q OKAY. WHEN MR. THOMAS CAME TO THAT HOUSE THAT NIGHT,
15 DID HE SAY ANYTHING AS FAR AS ANYTHING THAT HE DID
16 INVOLVING TROY ROUSE EARLIER? CAN I REPHRASE, YOUR HONOR?

17 THE COURT: YES.

18 Q YOU TESTIFIED YOU TALKED TO EFRAIN THOMAS WHEN HE
19 CAME BACK, RIGHT?

20 A YES, SIR.

21 Q WHAT DID HE SAY IF ANYTHING, THAT HE DID WITH TROY
22 ROUSE?

23 A HE SAID HE SHOT HIM.

24 Q WHAT DID YOU DO?

25 A I GOT REAL NERVOUS.

1 Q DID YOU SEE ANY INJURIES TO EFRAIN THOMAS AT THAT
2 TIME?

3 A NO, SIR.

4 Q ANY MARKS OR SCARS OR ANYTHING LIKE THAT?

5 A NO, SIR.

6 Q WHAT DID YOU DO NEXT?

7 A I WENT AND TALKED TO SAMANTHA HICKMAN.

8 Q AND AFTER YOU TALKED TO HER, WHAT DID YOU DO?

9 A NOTHING. I STILL WAS JUST NERVOUS.

10 Q AT SOME POINT DID YOU LEAVE THE RESIDENCE?

11 A YES, SIR.

12 Q HOW DID YOU LIVE?

13 A IN A GREEN NEON.

14 Q WHO GOT INTO THE GREEN NEON?

15 MR. SMITH: YOUR HONOR, I APOLOGIZE. I DON'T
16 BELIEVE THE JURORS OR, AND I CERTAINLY DIDN'T UNDERSTAND
17 HER LAST RESPONSE.

18 THE COURT: OKAY, MA'AM, I DIDN'T QUITE UNDERSTAND
19 WHAT YOU WERE SAYING EITHER. I NEED TO MAKE SURE THAT WE
20 UNDERSTAND THE WORDS THAT YOU ARE USING AND WHAT YOU ARE
21 SAYING. YOU NEED TO TRY TO SPEAK CLEARER AND SPEAK INTO
22 THE MIC. RESTATE THE QUESTION.

23 Q WHO ALL GOT IN TO THE GREEN NEON?

24 A ME, SAMANTHA HICKMAN, KENO SLATER AND CHAD JAMES,
25 EFRAIN THOMAS.

1 Q WHO DROVE?

2 A CHAD JAMES.

3 Q WHERE WAS EFRAIN THOMAS IN THE VEHICLE?

4 A IN THE TRUNK.

5 Q WHAT DO YOU MEAN IN THE TRUNK? IN THE TRUNK,
6 COMPLETELY IN THE TRUNK?

7 A YES, SIR. ONE OF THE BACK SEATS, THE BACK SEAT WAS
8 DOWN..

9 Q THE BACK SEAT OF THE TRUNK WAS DOWN?

10 A IT WAS DOWN.

11 Q WHERE DID YOU ALL GO?

12 A WELL ON THE WAY THERE, WE STOPPED AT THE INTERSTATE
13 SHELL.

14 Q WHAT DID YOU ALL DO AT INTERSTATE SHELL?

15 A CHAD PUMPED GAS, AND KENO SLATER PAID FOR IT.

16 Q WHAT DID YOU ALL DO AFTER THAT?

17 A WE WENT TO CAMDEN ON THE INTERSTATE.

18 Q AND WHERE DID YOU ALL END UP?

19 A AT SAMANTHA'S HOUSE.

20 Q ONCE YOU GOT TO SAMANTHA'S HOUSE, DID YOU ALL GET OUT
21 OF THE CAR, OR STAY IN THE CAR?

22 A WE GOT OUT OF THE CAR. AND CHAD, KENO AND EFRAIN,
23 STOOD OUTSIDE TALKING.

24 Q CHAD WHO?

25 A JAMES. KENO SLATER AND EFRAIN THOMAS.

1 Q THEY WERE TALKING?

2 A YES, SIR.

3 Q THEN WHAT HAPPENED?

4 A ME AND SAMANTHA WENT INTO THE HOUSE.

5 Q YOU AND SAMANTHA WENT IN THE HOUSE?

6 A YES, SIR.

7 Q DID YOU LEAVE OR DID YOU STAY AT THE HOUSE WITH

8 SAMANTHA?

9 A I STAYED AT THE HOUSE.

10 Q DID CHAD JAMES AND EFRAIN THOMAS LEAVE AT SOME POINT,

11 OR DID THEY STAY?

12 A CHAD JAMES, KENO SLATER AND SAMANTHA HICKMAN LEFT.

13 EFRAIN STAYED AT THE HOUSE.

14 Q DO YOU KNOW WHY EFRAIN THOMAS WAS IN THE TRUNK?

15 MR. WHEELER: OBJECTION, YOUR HONOR.

16 MR. JOHNSON: ALSO OBJECTION, YOUR HONOR.

17 SPECULATION.

18 THE COURT: THE OBJECTION IS SUSTAINED.

19 Q DID ANYBODY TELL EFRAIN THOMAS TO GET INTO THE TRUNK?

20 A YES, SIR.

21 Q WHO?

22 A CHAD JAMES.

23 Q DID YOU TALK TO THE POLICE SHORTLY AFTER THIS

24 INCIDENT WHEN TROY ROUSE WAS KILLED?

25 A YES, SIR.

1 Q AND DID YOU HAVE ONE OR TWO INTERVIEWS WITH THEM?
2 DID YOU TALK TO THEM ONCE OR TWICE?

3 A TWICE.

4 Q WERE YOU PREGNANT AT THIS TIME WHEN YOU WERE TALKING
5 TO THEM?

6 A YES, SIR.

7 MR. SAVERANCE: CAN I HAVE ONE SECOND, YOUR HONOR?

8 THE COURT: YES.

9 Q HOW DID EFRAIN THOMAS GET OUT OF THE VEHICLE?

10 A HE GOT OUT THROUGH THE BACK -- HE WAS IN THE TRUNK,
11 AND HE GOT OUT THROUGH THE BACK SEAT AND GOT OUT THE BACK
12 DOOR.

13 Q DID SOMEBODY TELL HIM TO DO THAT?

14 A YES, SIR.

15 Q WHO?

16 A CHAD JAMES.

17 Q THE FIRST TIME YOU TALKED TO THE POLICE, DID YOU TELL
18 THEM EVERYTHING YOU HAVE SAID HERE TODAY?

19 A NO.

20 Q DID YOU TELL THEM THE SECOND TIME?

21 A YES.

22 Q WHY DIDN'T YOU TELL THEM THE FIRST TIME?

23 A I WAS SCARED. NERVOUS. AND I WAS PREGNANT AT THE
24 TIME.

25 Q AND YOU SAID YOU HAD A CHILD BY EFRAIN THOMAS?

1 A YES, SIR.

2 Q THE FIRST TIME THEY QUESTIONED YOU, WAS THAT IN FRONT
3 OF SOME OTHER PEOPLE?

4 A YES, SIR.

5 Q IN THE COMMUNITY I MEAN.

6 A YES, SIR.

7 Q AND CHAD JAMES' HOUSE, WHERE Y'ALL DROVE FROM, WHERE
8 HE DROVE FROM WITH EFRAIN IN THE TRUNK, THAT'S IN LEE
9 COUNTY, RIGHT?

10 A YES.

11 Q DID EFRAIN THOMAS EVER MENTION THAT TROY ROUSE HAD A
12 WEAPON OR A GUN AT THE TIME OF THE SHOOTING?

13 A NO, SIR.

14 Q AND AGAIN, YOU DIDN'T SEE ANY BLACK EYES OR MARKS OR
15 CUTS ON EFRAIN THOMAS?

16 A NO, SIR.

17 MR. SAVERANCE: THAT'S ALL, YOUR HONOR.

18 THE COURT: MR. WHEELER?

19 MR. WHEELER: YOUR HONOR, I DON'T HAVE ANY CROSS
20 EXAMINATION AT THIS TIME. HOWEVER, I HAVE MS.-JOHNSON
21 UNDER SUBPOENA AS WELL. AND I WOULD ASK THAT SHE NOT BE
22 RELEASED BASED ON SOME OF THE EVIDENTIARY RULINGS. I
23 WOULD LIKE TO BE ABLE TO RECALL HER IN OUR CASE IN CHIEF.

24 THE COURT: OKAY.

25 MR. WHEELER: THANK YOU.

1 THE COURT: MR. WATTS?

2 MR. WATTS: NOTHING AT THIS TIME, YOUR HONOR.

3 THE COURT: MR. JOHNSON.

4 CROSS EXAMINATION BY MR. JOHNSON:

5 Q GOOD MORNING, COURTNEY. YOU GAVE TWO STATEMENTS, IS
6 THAT CORRECT?

7 A I CAN'T REMEMBER.

8 Q DO YOU REMEMBER GIVING A WRITTEN STATEMENT TO THE
9 POLICE?

10 A YES, SIR.

11 Q AND THAT WAS ON APRIL 28TH 2005?

12 A YES, SIR.

13 Q IN THAT STATEMENT, WAS EVERYTHING IN THAT STATEMENT
14 TRUE? OR WAS SOME OF IT TRUE AND SOME OF IT NOT TRUE?

15 A IT WAS TRUE.

16 Q SO THE FIRST STATEMENT WAS TRUE AS WELL?

17 A YES. THE SECOND ONE?

18 MR. JOHNSON: YOUR HONOR, MAY I APPROACH?

19 THE COURT: YES.

20 Q I AM JUST GOING TO SHOW HER. THAT'S A HANDWRITTEN
21 STATEMENT. DO YOU RECOGNIZE THAT?

22 A YES, SIR.

23 Q THAT'S A COPY OF THE STATEMENT THAT YOU FIRST GAVE
24 THE POLICE, IS THAT CORRECT?

25 A YES, SIR.

1 Q NOW IN THAT STATEMENT YOU SAID THAT CHAD JAMES WASN'T
2 EVEN DRIVING THE CAR.

3 A HE WAS DRIVING THE CAR.

4 Q I KNOW, BUT IN THAT STATEMENT, THAT SWORN STATEMENT
5 THAT YOU GAVE, NOW YOU GAVE THAT UNDER OATH, IS THAT
6 CORRECT?

7 A YES, SIR.

8 Q AND YOU SWORN TO TELL THE TRUTH, IS THAT CORRECT?

9 A YES. THE SECOND ONE...

10 Q BUT IN THE FIRST STATEMENT YOU SAID THAT CHAD JAMES
11 WASN'T EVEN DRIVING THE CAR. IS THAT CORRECT?

12 A YES, SIR.

13 Q SO YOU LIED IN THAT STATEMENT, DIDN'T YOU?

14 A YES, SIR. BUT WHEN THEY QUESTIONED ME AGAIN, I GAVE
15 THEM A STATEMENT, BECAUSE I WASN'T FOCUSING ON THE FIRST
16 STATEMENT. I WAS SCARED.

17 Q OKAY. AND YOU WASN'T SCARED THE SECOND TIME?

18 A BECAUSE FOR THE TRUTH, I WAS SCARED AND NERVOUS. I
19 HAVE NEVER BEEN IN A SITUATION LIKE THIS.

20 Q ALSO IN THAT FIRST STATEMENT, DID YOU READ IT? I
21 WILL GIVE YOU TIME TO READ THE WHOLE STATEMENT. I DON'T
22 WANT TO CONFUSE YOU. SO TAKE YOUR TIME AND LOOK AT IT.
23 WHEN YOU FINISH, LET ME KNOW. ARE YOU FINISHED?

24 A UH-HUH. (AFFIRMATIVE.)

25 Q IN THAT STATEMENT, ISN'T IT TRUE THAT YOU SAID THAT

1 CHAD WAS IN THE HOUSE ASLEEP WHEN EFRAIN CAME TO THE
2 HOUSE?

3 A YES, SIR. WHEN EFRAIN CAME TO THE HOUSE, CHAD WAS ON
4 THE PHONE IN HIS ROOM.

5 Q BUT HE WAS INSIDE THE HOUSE, RIGHT?

6 A BUT HE WAS THERE BEFORE EFRAIN.

7 Q RIGHT. HE WAS THERE BEFORE EFRAIN GOT THERE, IS THAT
8 CORRECT?

9 A YES, SIR.

10 Q WHEN EFRAIN CAME INTO THE HOUSE, HE CAME STRAIGHT, IS
11 THAT CORRECT?

12 A YES, SIR.

13 Q AND THEN HE TOOK YOU INTO ANOTHER ROOM?

14 A YES, SIR.

15 Q THAT'S WHEN HE TOLD YOU, OR DESCRIBED SOME OF THE
16 SITUATIONS RELATED TO WHAT HE HAD DONE, IS THAT CORRECT?

17 A YES, SIR.

18 Q NOW CHAD DID NOT HEAR YOU, DID HE? CHAD JAMES COULD
19 NOT HEAR WHAT YOU WERE TAKING ABOUT, COULD HE?

20 A NO, SIR.

21 Q AND NOBODY DIDN'T HEAR IT AT THE TIME. THAT'S WHY HE
22 TOOK YOU INTO THE ROOM, IS THAT CORRECT?

23 A YES, SIR.

24 Q SO THEN WHEN YOU CAME BACK OUT, WHO DID YOU TELL?

25 A SAMANTHA HICKMAN.

1 Q DID YOU TELL CHAD JAMES ANYTHING ABOUT IT?

2 A NO, SIR.

3 Q HE DIDN'T KNOW ANYTHING ABOUT IT. UP UNTIL THAT
4 POINT, YOU HAVE NO PERSONAL KNOWLEDGE THAT HE KNEW
5 ANYTHING ABOUT WHAT WAS GOING ON.

6 A NO, SIR.

7 Q THEN WHO SUGGESTED THAT YOU GO TO CAMDEN?

8 A CHAD JAMES.. KENO---

9 Q WELL, HOW WOULD -- GO AHEAD.

10 A AND KENO SLATER.

11 Q WHY WOULD THEY SUGGEST YOU GO TO CAMDEN?

12 A I GUESS THEY WANTED TO GET OUT OF BISHOPVILLE.

13 Q IN YOUR STATEMENT, YOU SAID THAT YOUR BOYFRIEND
14 EFRAIN ASKED YOU TO ASK SAMANTHA COULD THEY GO TO CAMDEN
15 TO HER HOUSE?

16 A HE ASKED SAMANTHA, BUT AFTER CHAD JAMES HAD SAID IT.

17 Q BUT THAT IS NOT IN YOUR STATEMENT. WHERE IN YOUR
18 STATEMENT DO YOU SAY ANYTHING ABOUT CHAD JAMES SAYING
19 THAT?

20 A NOWHERE.

21 Q NOWHERE IN THERE, IS IT?

22 A NO, SIR.

23 Q WHAT DO YOU HAVE IN YOUR STATEMENT? ISN'T IT TRUE
24 THAT YOU SAID IN YOUR STATEMENT THAT EFRAIN ASKED YOU TO
25 ASK SAMANTHA COULD YOU GO TO THEIR HOUSE?

1 A YES.

2 Q AND YOU DO NOT MENTION CHAD AT ALL, DO YOU?

3 A NO.

4 Q NOW WHEN THEY GOT INTO THE CAR, IT WAS ACTUALLY WAS
5 DRIVEN BY CHAD, WASN'T IT?

6 A YES.

7 Q SO WHEN YOU PUT IN THAT STATEMENT THAT CHAD WASN'T
8 DRIVING, YOU WASN'T TELLING THE TRUTH, DID YOU?

9 A NO.

10 Q NOW, WHEN YOU GOT INTO THE CAR, DIDN'T HE INITIALLY
11 SIT IN THE SEAT, AND DID NOT ACTUALLY GET INTO THIS HALF
12 WAY, HALF WAY OUT OF THE SEAT UNTIL YOU GOT TO THE SERVICE
13 STATION?

14 A YOU SAID DID HE, CAN YOU REPEAT THAT?

15 Q HE WAS, YOU SAY HE WAS IN THE TRUNK. THE BACK SEAT
16 OF THE NEON FOLDS DOWN, CORRECT?

17 A YES, SIR.

18 Q AND HE WAS LIKE HALF WAY IN THE BACK SEAT AND THE
19 TRUNK, ISN'T THAT CORRECT?

20 A I WASN'T IN THE BACK SEAT AT THE TIME.

21 Q YOU DON'T KNOW?

22 A HE WAS IN THE TRUNK, BUT I DON'T KNOW IF HE WAS HALF
23 WAY IN OR HALF WAY OUT. I WAS IN THE FRONT SEAT.

24 Q BUT THE BACK SEAT WAS DOWN.

25 A YES, SIR.

1 Q AND HE WAS KIND OF STICKING OUT THROUGH THE BACK SEAT
2 OR SOMETHING, IS THAT CORRECT?

3 A YES, SIR.

4 Q SO HE WAS NOT ALL THE WAY IN THE TRUNK, IS THAT
5 CORRECT?

6 A HE WAS IN THE TRUNK, BUT HE WAS TALKING. BUT I NEVER
7 SAW HIM HALF WAY IN AND OUT.

8 Q SO YOU COULD HEAR HIM TALKING. I AM SORRY, I WILL
9 WAIT UNTIL YOU FINISH.

10 A THE BACK SEAT WAS DOWN.

11 Q OKAY.

12 A BUT I DIDN'T SEE HIM HALF WAY IN AND OUT.

13 Q NOW YOU PERSONALLY NEVER SAW HIM TELL CHAD JAMES
14 ANYTHING ABOUT HIS INVOLVEMENT IN THAT CASE, DID YOU? YOU
15 NEVER HEARD HIM TELL CHAD JAMES ANYTHING ABOUT IT, DO YOU?

16 A NO, SIR.

17 Q SO YOU DON'T KNOW IF CHAD JAMES KNEW ANYTHING ABOUT
18 IT OR NOT, DO YOU?

19 A NO, SIR.

20 Q SO YOU DON'T KNOW IF CHAD JAMES KNEW ANYTHING ABOUT
21 IT OR NOT, DO YOU?

22 A NO, SIR.

23 Q YOU ALSO GIVE A SECOND STATEMENT, DO YOU REMEMBER
24 THAT ONE?

25 A YES, SIR.

1 Q WOULD YOU PLEASE TAKE A LOOK AT THAT? NOW WELL, I
2 WILL WAIT UNTIL YOU FINISH. WHEN YOU FINISH, LET ME KNOW.
3 ARE YOU FINISHED?

4 A YES.

5 Q OKAY. NOW THAT'S A SECOND STATEMENT YOU GIVE WHICH
6 YOU SAID WAS A STATEMENT WHERE YOU WANTED TO MAKE SURE YOU
7 TOLD THE WHOLE TRUE, IS THAT CORRECT?

8 A YES, SIR.

9 Q AND YOU WANTED TO MAKE SURE YOU TOLD THE POLICE
10 EVERYTHING BECAUSE IT WAS VERY IMPORTANT. IS THAT
11 CORRECT?

12 A YES, SIR.

13 Q WHERE IN THAT STATEMENT DO YOU SAY CHAD JAMES SAID TO
14 GET INTO THE TRUNK?

15 A WHEN WE ALL WAS AT THE HOUSE. AND WE WERE STANDING
16 AT THE CAR. AND EFRAIN THOMAS -- EFRAIN THOMAS AND CHAD
17 JAMES WHEN THEY WERE STANDING AT THE CAR TALKING, AND
18 BEFORE WE GOT INTO THE CAR, HE TOLD EFRAIN TO GET IN THE
19 TRUNK.

20 Q ISN'T THAT -- BUT THAT'S NOT IN THERE, IS IT? ISN'T
21 THAT THE STATEMENT YOU GAVE WHEN YOU ALL GOT TO THE HOUSE
22 IN CAMDEN, "THEY WERE STANDING BY THE TRUNK OF THE CAR
23 TALKING?"

24 A YES. THEY WERE STANDING BY THE TRUNK TALKING BEFORE
25 WE GOT TO THE CAR AND CAME OUT.

1 Q WELL WHERE IS THAT IN THE STATEMENT THAT YOU GAVE?

2 A YESTERDAY CHAD AND EFRAIN DISCUSSED THE MURDER AT THE
3 HOUSE.

4 Q UH-HUH. (AFFIRMATIVE.) GO AHEAD. HOLD ON. WHAT
5 PART ARE YOU TAKING ABOUT?

6 A THIS.

7 Q OKAY.

8 A YOU SAID DID CHAD TELL EFRAIN?

9 Q UH-HUH. (AFFIRMATIVE.)

10 A NAH, HE TOLD HIM WHEN THEY WERE OUTSIDE.

11 Q SO THEY WERE TALKING OUTSIDE.

12 A YES, SIR.

13 Q SO YOU DON'T KNOW WHAT THEY WERE TALKING ABOUT?

14 A NO, SIR.

15 Q SO YOU ARE JUST SPECULATING, IS THAT CORRECT? I MEAN
16 I KNOW YOU ARE SCARED, SO I AM NOT TRYING TO SCAR YOU.

17 BUT I KNOW YOU ARE AFRAID THAT YOU COULD HAVE BEEN CHARGED
18 WITH SOMETHING. IS THAT CORRECT?

19 A YES, SIR.

20 Q AND YOU WERE PREGNANT AT THIS TIME, IS THAT CORRECT?

21 A YES, SIR.

22 Q AND THE LAST PERSON IN THE WORLD YOU WANTED TO UPSET
23 WAS TO POLICE, IS THAT CORRECT?

24 A YES, SIR.

25 Q AND THAT'S WHY YOU WENT AND GAVE A SECOND STATEMENT.

1 IS THAT CORRECT?

2 A YES, SIR.

3 Q AND YOU WERE TRYING TO MAKE SURE THAT YOU PLEASSED
4 THEM, IS THAT CORRECT?

5 A YES, SIR.

6 MR. JOHNSON: I HAVE GOT NO OTHER QUESTIONS.

7 THE COURT: MR. SAVERANCE.

8 MR. SAVERANCE: VERY BRIEFLY, YOUR HONOR.

9 REDIRECT EXAMINATION BY MR. SAVERANCE:

10 Q THE SECOND STATEMENT YOU GAVE TO THE POLICE, WAS IT
11 TRUE AND ACCURATE?

12 A YES, SIR.

13 Q WERE YOU SAYING THAT BECAUSE THE COPS WANTED YOU TO,
14 OR WAS THAT WHAT WAS TRUE?

15 A IT WAS TRUE.

16 Q YOU SAID YOU WERE IN THE FRONT SEAT ON THE RIDE TO
17 CAMDEN?

18 A YES, SIR.

19 Q COULD YOU HEAR EFRAIN THOMAS TALKING? COULD YOU HEAR
20 EFRAIN THOMAS TALKING WHEN YOU WERE IN THE FRONT SEAT?

21 A HE WAS YELLING WHERE I COULD HEAR A LITTLE OF WHAT HE
22 SAID.

23 Q DID HE MENTION ANYTHING ELSE?

24 MR. JOHNSON: YOUR HONOR, OBJECTION. OUTSIDE MY
25 CROSS.

1 THE COURT: OBJECTION IS SUSTAINED.

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

3 THE COURT: MR. WHEELER?

4 MR. WHEELER: THE SAME RESERVATION I MADE EARLIER,
5 YOUR HONOR.

6 THE COURT: MR. WATTS?

7 MR. WATTS: NOTHING FURTHER, YOUR HONOR.

8 MR. JOHNSON: I HAVE NOTHING FURTHER, YOUR HONOR.

9 THE COURT: MADAM, YOU CAN STEP DOWN. NEXT WITNESS.

10 MR. SAVERANCE: YOUR HONOR, WE WOULD CALL LUCILLE
11 WESLEY.

12 LUCILLE WESLEY, BEING FIRST DULY
13 SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION BY MR. SAVERANCE:

15 THE COURT: YOU MAY PROCEED.

16 MR. WATTS: YOUR HONOR, IF WE MAY, ONE QUESTION ABOUT
17 THE PRIOR ISSUE WE ADDRESSED EARLIER.

18 THE COURT: A QUESTION FOR WHO?

19 MR. WATTS: BETWEEN THE STATE AND THE ISSUE WE
20 ADDRESSED EARLIER. THE BRUTON ISSUE.

21 MR. SMITH: IF WE COULD HAVE ONE MOMENT, YOUR HONOR.
22 THANK YOUR HONOR.

23 Q PLEASE GIVE YOUR NAME FOR THE JURY?

24 A MY NAME IS LUCILLE WESLEY.

25 Q NOW, MS. WESLEY---

1 A YES.

2 Q NOW, MS. WESLEY, I NEED YOU TO SPEAK CLEARLY. I AM
3 NOT TRYING TO BE MEAN ABOUT IT. BUT WE HAVE A COURT
4 REPORTER TAKING SOME NOTES DOWN. AND WE HAVE A JURY HERE,
5 AND WE HAVE A LOT OF PEOPLE HERE THAT NEED TO HEAR WHAT
6 YOU HAVE TO SAY. SO IF YOU WOULD SPEAK UP AND SPEAK
7 CLEARLY INTO THE MICROPHONE.

8 A OKAY.

9 Q I WOULD APPRECIATE IT.

10 A ALL RIGHT.

11 Q WHERE DO YOU LIVE, MS. WESLEY?

12 A I LIVE AT

13 Q IS THAT IN LEE COUNTY?

14 A IN BISHOPVILLE.

15 Q HOW LONG HAVE YOU LIVED THERE?

16 A FAMILY HOUSE THERE ABOUT 40 YEARS. BUT I HAVE BEEN
17 BACK HERE ABOUT 15 YEARS NOW.

18 Q I WANT TO GO BACK TO APRIL 7, 2005, HERE IN
19 BISHOPVILLE IN THAT AREA. DO YOU REMEMBER WHEN TROY ROUSE
20 WAS KILLED?

21 A YES, I DO.

22 Q WHERE WERE YOU WHEN THAT HAPPENED?

23 A AT HOME.

24 Q WAS THIS NIGHTTIME? DAYTIME?

25 A IT WAS ABOUT 10:00 O'CLOCK. 10:16 P.M.

1 Q DO YOU LIVE NEAR WHERE THIS OCCURRED?

2 A YES, I DO.

3 MR. SAVERANCE: YOUR HONOR, COULD I HAVE THE WITNESS
4 STEP DOWN FOR ONE SECOND?

5 THE COURT: YES.

6 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
7 STAND.)

8 Q YOU CAN COME STAND ON THIS SIDE SO THE JURY CAN SEE,
9 OKAY. I WANT YOU TO LOOK AT THE DIAGRAM OF THOSE STREETS.
10 AND, YOUR HONOR, THIS IS STATE'S 1 THAT HAD BEEN ADMITTED
11 INTO EVIDENCE. ARE YOU FAMILIAR WITH THAT AREA?

12 A YES, I AM.

13 Q AND IS THAT AN ACCURATE DESCRIPTION OF THE AREA?

14 A SOMEWHAT SO.

15 Q OKAY. AND I UNDERSTAND EVERY LITTLE THING MIGHT NOT
16 BE ON THERE.

17 A YES.

18 Q CAN YOU TELL ME WHERE YOU LIVE?

19 A I LIVE ON WOULD BE
20 ON THIS SIDE OF AROUND WOULD BE ON
21 THAT SIDE.

22 Q OKAY. SO WHERE WOULD YOU BE, OR WHERE IS YOUR HOUSE
23 AT?

24 A MY HOUSE WOULD BE COMING DOWN AND YOU
25 WOULD MAKE THE MY HOUSE IS THE

1

2 Q OKAY. DOES YOUR HOUSE FRONT WHERE THE SHOOTING TOOK
3 PLACE?

4 A NO, MY HOUSE IS BESIDE WHERE THE SHOOTING TOOK PLACE.

5 Q ABOUT HOW FAR FROM WHERE THE SHOOTING TOOK PLACE DO
6 YOU LIVE?

7 A IT WOULD BE FROM HERE ON O ABOUT RIGHT HERE
8 ON ... AND MY HOUSE WOULD BE HERE.

9 Q

10 A F

11 Q YOU CAN GO BACK AND HAVE A SEAT.

12 (THEREUPON, THE WITNESS RESUMES THE WITNESS STAND.)

13 Q DID YOU HEAR SOME SHOTS THAT NIGHT?

14 A YES, I DID.

15 Q WHERE WERE YOU WHEN YOU FIRST HEARD SOME SHOTS?

16 A SITTING ON THE FOOT OF MY BED LOOKING AT TV.

17 Q YOU WERE INSIDE?

18 A YES, I WAS.

19 Q WHAT DID YOU HEAR?

20 A I HEARD TWO SHOTS A PAUSE, AND BAM, BAM, BAM, FIVE
21 MORE.

22 Q TWO SHOTS, A PAUSE AND FIVE MORE.

23 A FIVE OTHER SHOTS.

24 Q DID YOU SEE ANYTHING?

25 A AT THAT TIME, I DID NOT.

1 Q COULD YOU TELL WHERE THE SHOTS WERE COMING FROM?

2 A YOU COULD HEAR THAT THE SHOTS WERE COMING FROM WITHIN
3 THAT CLOSE RANGE OF THAT AREA.

4 Q WHAT HAPPENED AFTER YOU HEARD THOSE SHOTS?

5 A MY NEPHEW WAS IN THE LIVING ROOM, AND HE HAD JUST
6 WALK OUT THE DOOR BEFORE THE SHOTS TOOK PLACE. SO ANOTHER
7 ONE OF MY NEPHEWS COMES RUNNING IN SAYING THAT SOMEBODY IS
8 LAYING IN THE STREET SHOT. AND WE ASKED HIM WHAT DOES HE
9 HAVE ON. AND HE SAID A WHITE TEE SHIRT AND BLUE JEANS.
10 AND THAT'S THE SAME THING THAT MY NEPHEW HAD ON. SO
11 EVERYONE WENT FLYING OUT OF THE HOUSE TO SEE IF THAT WAS
12 HIM. BUT IT WASN'T, THANK GOD. SO THE CHILDREN WAS
13 RUNNING OUT AND I WAS TRYING TO GET THEM BACK BECAUSE AT
14 THE TIME THEY THOUGHT IT WAS MY NEPHEW. BUT I HAD LOST
15 ALL CONTROL OF THE CHILDREN. AND ABOUT FIVE MINUTES
16 LATER, MAYBE BETWEEN FIVE AND SEVEN MINUTES MR. MCCALL WAS
17 IN THE HOUSE.

18 Q IS THIS MR. MCCALL?

19 A YES, IT IS.

20 Q DO YOU KNOW CHAD JAMES?

21 A I KNOW CHAD JAMES.

22 Q DO YOU KNOW EFRAIN THOMAS?

23 A I KNOW ALL OF THEM.

24 Q DID YOU KNOW THEM BEFORE THIS SHOOTING TOOK PLACE?

25 A I KNOW ALL OF THEM. YES, I DO.

1 Q SO YOU SAID EUNICE MCCALL CAME IN YOUR HOUSE.

2 A YES.

3 Q NOW WHAT, DID HE TALK TO YOU ONCE HE CAME IN THE
4 HOUSE?

5 A YES, HE DID.

6 Q DID HE TALK TO YOU ABOUT WHAT HAD JUST HAPPENED?

7 A YES. WHEN I WAS UPSET AND WAS CRYING, BECAUSE I
8 THOUGHT IT WAS MY NEPHEW, LIKE I SAID. AND THE CHILDREN
9 CAME BACK AND CONFIRMED THAT IT WASN'T. AND HE ASSURED
10 ME THAT IT WAS NOT HIM. AND I ASKED HIM, I GET EMOTIONAL
11 WHEN I TALK ABOUT THIS, I AM SORRY. I SAID CHILD, TELL ME
12 YOU DID NOT DO THIS. AND HE TOLD ME HE HAD SHOT AT HIM
13 TWICE TO GET HIM OFF OF ME.

14 MR. WHEELER: OBJECT. YOUR HONOR, ANYTHING, I DON'T
15 KNOW EXACTLY WHAT SHE IS GOING TO SAY, BUT ANYTHING THAT
16 MR. MCCALL MAY HAVE SAID RELATING TO MY CLIENT.
17 OBJECTION.

18 THE COURT: ALL RIGHT, MR. SAVERANCE.

19 A NO.

20 MR. SAVERANCE: I WAS ABOUT TO DO THAT, YOUR HONOR.

21 Q I AM NOT ASKING YOU WHAT WAS SAID ABOUT ANYTHING
22 ELSE.

23 A I DON'T KNOW ANYTHING ABOUT ANYTHING ELSE.

24 Q YOU UNDERSTAND?

25 A YES.

1 Q WHAT DID EUNICE MCCALL SAY THAT HE DID? . . .
2 A HE SAID HE SHOT THE BOY AND GOT HIM OFF OF HIM.
3 Q DID HE SAY HOW MANY TIMES?
4 A EXCUSE ME, SIR?
5 Q DID HE SAY HOW MANY TIMES HE SHOT HIM?
6 A HE TOLD ME TWO TIMES.
7 Q DID EUNICE MCCALL HAVE ANY BLACK EYES OR BROKEN TEETH
8 OR BUSTED LIP?
9 A NOT THAT I NOTICED.
10 Q ANY SIGN THAT HE HAD BEEN IN A FIGHT?
11 A NOT THAT I SEE.
12 Q DID HE ASK YOU TO CALL FOR MEDICAL HELP?
13 A NO, SIR, HE DID NOT.
14 Q DID HE LEAVE?
15 A I TOLD HIM HE COULD NOT STAY IN MY HOUSE BECAUSE I
16 DIDN'T WANT ANYTHING TO DO WITH IT, AND HE LEFT.
17 Q DID HE SAY ANYTHING ABOUT TROY ROUSE HAVING A GUN OR
18 A WEAPON?
19 A NO, SIR, HE DID NOT.
20 Q DID HE SAY HE WAS DEFENDING HIMSELF?
21 A NO, SIR, HE DID NOT.
22 MR. SAVERANCE: ONE SECOND, YOUR HONOR.
23 Q DID MR. MCCALL OR YOU, I MEAN DID ANYBODY USE THE
24 PHONE TO CALL EMS TO HELP TROY?
25 A AT THAT TIME, SIR, THE POLICE WAS ARRIVING. AND, NO,

1 WE DID NOT.

2 Q AND AGAIN, THAT WOULD BE MR. MCCALL?

3 A YES, SIR.

4 Q AND THAT'S THE PERSON THAT CAME IN THERE AND TALKED
5 TO YOU AFTER THE SHOOTING?

6 A YES, SIR.

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

8 THE COURT: MR. WHEELER?

9 MR. WHEELER: NOTHING FOR THIS WITNESS.

10 CROSS EXAMINATION BY MR. WATTS:

11 Q GOOD AFTERNOON, MS. WESLEY. YOU TESTIFIED EARLIER
12 THAT ON THE NIGHT IN QUESTION, APRIL 7TH 2005, THAT THE
13 INCIDENT HAPPENED SOMEWHERE BETWEEN 10 AND 10:16?

14 A YES, SIR.

15 Q AND YOU HEARD SHOTS?

16 A I HEARD SHOTS.

17 Q AND YOU WERE INSIDE AT THE TIME?

18 A YES, I WAS.

19 Q WHAT TIME WAS IT WHEN YOU SAY THAT MR. MCCALL CAME
20 AND TALKED TO YOU?

21 A RIGHT AFTER THE INCIDENT HAPPENED, SIR.

22 Q AND YOU WERE UPSET AT THE TIME?

23 A VERY MUCH SO.

24 Q OKAY. YOU THOUGHT IT WAS ONE OF YOUR FAMILY MEMBERS?

25 A YES, I DID.

1 Q WERE YOU CRYING AT THE TIME?

2 A I WAS VERY UPSET. A LITTLE HYSTERICAL: YES, I WAS.

3 Q YOU WERE HYSTERICAL?

4 A YES, I WAS.

5 Q SO AT THE TIME THIS HAPPENED AND YOU WERE TALKING TO
6 MR. MCCALL, YOU WERE HYSTERICAL.

7 A I HAD CALMED DOWN, SIR, AT THE TIME WHEN I LOOKED AND
8 SEEN THAT HE WAS IN MY HOME.

9 Q OKAY.

10 A I WAS STILL UPSET. I WAS HYSTERICAL BEFORE HE CAME
11 IN, BECAUSE I REALIZED HE WAS IN MY HOUSE.

12 Q OKAY. HOW LONG WAS MR. MCCALL STAY IN YOUR HOUSE?

13 A HOW LONG DID HE STAY THERE?

14 Q YES, MA'AM.

15 A HE STAYED THERE A GOOD 10 MINUTES BECAUSE WE WERE
16 TALKING.

17 Q OKAY. YOU WERE TALKING?

18 A WE WAS TALKING.

19 Q AND DURING THAT TIME YOU WERE TALKING, YOU DIDN'T TRY
20 TO CALL ANYONE?

21 A NO, BECAUSE LIKE I SAID, DURING THE TIME HE WAS
22 TELLING ME WHAT HAPPENED, SIR. WHAT HAPPENED, WHAT TOOK
23 PLACE OUTSIDE, SIR. I COULD ALREADY HEAR THE POLICE
24 SIRENS COMING DOWN THERE BY WHERE WE LIVE ON WILSON
25 STREET. THERE WAS NO NEED FOR ME TO CALL ANYONE BECAUSE I

1 DIDN'T WANT TO GET INVOLVED.

2 Q YOU DIDN'T WANT TO GET INVOLVED?

3 A NO, SIR, I DID NOT.

4 Q DO YOU RECALL WHEN YOU TALKED WITH THE POLICE?

5 A YES, I DID.

6 Q DO YOU REMEMBER WHEN---

7 A A COUPLE OF WEEKS AFTER THE INCIDENT OCCURRED.

8 Q ---A COUPLE OF WEEKS AFTER?

9 A ABOUT A MONTH.

10 Q ABOUT A MONTH?

11 A IT WAS A A COUPLE OF WEEKS OR A MONTH, I AM NOT SURE.

12 Q OKAY. SO IT WAS SOME TIME AFTER THIS INCIDENT
13 OCCURRED THAT YOU WENT TO THE POLICE.

14 A YES, I DID.

15 Q DO YOU RECALL MR. -- DO YOU RECALL EUNICE SAYING
16 ANYTHING ABOUT THE INCIDENT ABOUT THE ALTERCATION BETWEEN
17 HIM AND MR. ROUSE?

18 A I, HE DID NOT, HE WAS NOT SPECIFIC, SIR, ABOUT HOW
19 THE ALTERCATION TOOK PLACE. HE TOLD ME THAT HIM AND TROY,
20 HE GOT THE NIGGER OFF OF HIM, AND HE SHOT HIM TWICE.
21 THOSE WITH HIS WORDS. THOSE WERE THE WORDS THAT WAS TOLD
22 TO ME.

23 Q SO EUNICE SAID THAT HE GOT MR. ROUSE OFF OF HIM?

24 A THAT'S WHAT HE SAID, SIR.

25 Q OKAY. SO YOU SAID EARLIER THERE WAS AN ALTERCATION

1 YOU UNDERSTOOD THERE WAS AN ALTERCATION BETWEEN THE TWO?

2 A I DID NOT SAY THERE WAS AN ALTERCATION BETWEEN THE
3 TWO UNTIL HE SAID HE GOT THE NIGGER OFF OF HIM. THAT
4 COULD HAVE BEEN ANYTHING. I DON'T KNOW, I AM JUST
5 REPEATING WHAT I HEARD AND THAT IS THE TRUTH.

6 Q HAVE YOU GIVEN A STATEMENT IN THIS MATTER, IN
7 RELATION TO THIS MATTER?

8 A YES, I DID.

9 Q DO YOU RECALL WHEN YOU GAVE THE STATEMENT?

10 A EXCUSE ME?

11 Q DO YOU RECALL WHEN YOU GAVE THAT STATEMENT?

12 A TO HIS LAWYER.

13 Q OKAY.

14 A THEY WANTED TO MAKE HIS BOND HEARING. AND HIS
15 GRANDFATHER CAME TO ME AND ASKED US CAN WE GO AND SAY WE
16 SEEN EUNICE RUNNING AWAY FROM THE SCENE OF CRIME. I
17 CALLED HIS LAWYER BACK AND TOLD HIM I DIDN'T WANT ANYTHING
18 TO DO WITH THAT, BECAUSE THAT'S NOT EXACTLY WHAT HAPPENED.
19 AND THEN HE SAID CAN I CALL THE SOLICITOR AND TELL THEM
20 THE TRUTH. THEY TOLD ME NOT TO CALL THE SOLICITOR.
21 WHOEVER THE SOLICITOR WILL FIND OUT HAPPENED ONCE WE COME
22 TO COURT. THAT'S WHY I AM HERE.

23 Q SO YOU ARE UNDER SUBPOENA TO APPEAR---

24 A I WAS GIVEN A SUMMONS LIKE EVERYONE ONE ELSE WAS
25 GIVEN A SUMMONS, SIR.

1 Q ---MA'AM, I AM JUST ASKING IF YOU ARE UNDER SUBPOENA
2 TO BE HERE---

3 A YES.

4 Q ---TODAY.

5 A YES.

6 Q THE PREVIOUS STATEMENT YOU GAVE, WAS IT CONSISTENT OR
7 INCONSISTENT WITH THE STATEMENT YOU GAVE THE POLICE ABOUT
8 A MONTH AFTER THIS INCIDENT HAPPENED?

9 A WELL, I COULDN'T TELL EVERYTHING THE NIGHT THIS THING
10 HAPPENED, BECAUSE I WASN'T OUT THERE TO SAY THAT I SEEN
11 ANYTHING. OR THE REPORT THAT I GAVE TO THE OFFICER WAS
12 WHAT MR. MCCALL TOLD ME. I MEAN, I COULDN'T IMPLICATE
13 ANYBODY ELSE FROM WHAT HE TOLD ME. I CAN ONLY SAY WHAT
14 HIS TRUTH WERE. NOBODY ELSE TALKED TO ME THAT NIGHT BUT
15 HIM.

16 Q SO ALL YOU CAN SAY IS THAT IN THE CONVERSATION THAT
17 YOU HAD WITH HIM, THAT HE STATED THAT HE HAD TO GET
18 MR. ROUSE OFF OF HIM AND THAT HE SHOT HIM?

19 A YES.

20 Q OKAY.

21 A AND THERE WAS OTHER INFORMATION THAT HE TOLD ME, BUT
22 I AM NOT HERE TO GO AND REPEAT SOMETHING SOMEBODY ELSE
23 TOLD ME ABOUT SOMEONE ELSE. I AM JUST HERE TO TELL THE
24 TRUTH ABOUT OF WHAT I KNOW.

25 Q ONE SECOND, YOUR HONOR. DID YOU EVER SIGN A

1 STATEMENT THAT SAID YOU HEARD GUNSHOTS AFTER YOU SAW
2 EUNICE MCCALL?

3 A THAT'S THE ONE I AM TAKING ABOUT WE GAVE THESE
4 LAWYERS, SIR.

5 Q OKAY.

6 A AND ALSO RETRACTED THAT, BECAUSE I TOLD HIM I DID NOT
7 WANT ANYTHING TO DO WITH THAT. BUT I HAVE ALWAYS ALSO
8 GAVE MY STATEMENT TO THE POLICE BEFORE WE DID THAT
9 STATEMENT AT THE LAWYER'S OFFICE.

10 Q OKAY. DID YOU SIGN THAT STATEMENT, THAT SWORN
11 STATEMENT? AT THE TIME YOU GIVE THAT TESTIMONY, THAT
12 STATEMENT, IT WAS A SWORN STATEMENT.

13 A AT THIS TIME, I DID NOT KNOW WHAT THEY WAS GOING TO
14 DO WITH THE STATEMENT. SO I CALLED HIS LAWYER BACK THE
15 SAME DAY. BY THE TIME WE LEFT HIS OFFICE AND GOT BACK TO
16 MY HOUSE, I CALLED HIS LAWYER AND TOLD HIM I SAID, SIR, WE
17 DID NOT SEE HIM RUNNING AWAY FROM THE SCENE OF THE CRIME.
18 I SAID I HAVE TO CALL THE SOLICITOR AND TELL THEM WHAT I
19 REALLY KNOW. I DIDN'T WANT ANYTHING TO DO WITH THAT. I
20 DIDN'T WANT TO COME BACK AND TESTIFY FOR ANYONE OR AGAINST
21 ANYONE. THAT IS THE CONVERSATION THAT HIS LAWYER AND I
22 HAD; NOT TO USE MY STATEMENT IN SAYING THAT. THEY CAME TO
23 ME ASKING ME FOR HELP TO HELP THE YOUNG MAN. I REALIZED
24 UPON THAT TIME THAT WE HAD RETURNED, AND AFTER DISCUSSING
25 IT WITH ANOTHER FAMILY MEMBER OF HIS, I DECIDED I DID NOT

1 WANT ANYTHING TO DO WITH IT.

2 Q MS. WESLEY, YOU SIGNED THIS SWORN STATEMENT
3 INDICATING THE FACTS AT THE TIME YOU SIGNED THE STATEMENT
4 OF WHAT YOU WERE SAYING WHAT HAPPENED, IS THAT CORRECT?

5 A YES.

6 Q AND SUBSEQUENTLY YOU GAVE ANOTHER VERSION TO THE
7 POLICE OFFICERS, IS THAT CORRECT?

8 A THE FIRST TESTIMONY I GAVE, I GAVE TO THE POLICE
9 OFFICER. YES, I DID.

10 Q OKAY. SO AT SOME POINT YOU ARE SAYING THERE ARE TWO
11 DIFFERENT STORIES THAT YOU GAVE---

12 A NO, SIR. THIS IS NOT WHAT I AM TELLING YOU, THAT HIS
13 FAMILY, HIS GRANDFATHER CAME TO ME AND ASKED ME CAN WE SAY
14 WE SEEN HIM RUNNING SO HE CAN HAVE A BAIL HEARING. I
15 THOUGHT IT WAS FOR A BAIL HEARING TO HELP GET HIM OUT OF
16 JAIL. I TOLD HIM I DID NOT WANT HIM USING THAT STATEMENT
17 BECAUSE I DID NOT WANT TO GET INVOLVED. AND I UNDERSTAND
18 THAT IT WAS A SWORN STATEMENT.

19 Q OKAY.

20 A YES, I DO UNDERSTAND THAT.

21 Q DO YOU RECALL WHAT THAT SWORN STATEMENT SAID?

22 MR. SAVERANCE: OBJECTION, YOUR HONOR. THAT HAS
23 BEEN ASKED AND ANSWERED THREE OR FOUR TIMES.

24 THE COURT: THE OBJECTION IS OVERRULED. YOU MAY
25 ANSWER IT, MA'AM.

1 A I MAY?

2 THE COURT: YES, MA'AM. THE QUESTION IS YES OR NO
3 WAS, DO YOU RECALL THE STATEMENT?

4 A YES, I DO.

5 Q WHAT DID YOUR SWORN STATEMENT, NOT TO POLICE BUT TO
6 MR. MCCALL'S ATTORNEYS, DO YOU RECALL WHAT THAT SAID?

7 A I TOLD HIM WE HEARD THE SHOOTING GOING ON. AND AT
8 THE TIME WE HEARD THE SHOOTING GOING ON, EUNICE MCCALL WAS
9 RUNNING. AND I WAS ON MY BACK PORCH LOOKING OUT. AND I
10 SEEN HIM RUNNING THROUGH THE LITTLE SHADOW AREA.

11 Q OKAY. AFTER YOU SAW MR. MCCALL DID YOU REPORT
12 ANYTHING ELSE IN THAT STATEMENT? DO YOU SAY ANYTHING
13 ABOUT ADDITIONAL GUNSHOTS?

14 A YES, I DID. THERE WAS FIVE OTHER GUNSHOTS AFTER I
15 HEARD TWO.

16 Q OKAY.

17 A IT WAS TWO. A PAUSE, FIVE OTHER SHOTS.

18 Q OKAY.

19 A IT WAS SEVEN SHOTS IN ALL THAT I COUNTED. BAM, BAM,
20 THERE WAS A LITTLE QUICK PAUSE AND THEN THERE WAS 5 OTHER
21 SHOTS.

22 MR. WATTS: YOUR HONOR, I HAVE NO OTHER QUESTIONS.

23 THE COURT: MR. JOHNSON:

24 MR. JOHNSON: THANK YOU.

25 CROSS EXAMINATION BY MR JOHNSON:

1 Q MS. WESLEY, I AM GOING TO ASK YOU THE EASIEST
2 QUESTION YOU HAVE HAD ALL DAY TODAY.

3 A THANK YOU.

4 Q DO YOU KNOW ANYTHING ABOUT MR. CHAD JAMES?

5 A SIR, I WOULD BE LYING IF I TELL YOU I DO. I DON'T
6 KNOW WHAT HAPPENED OUT THERE. THE ONLY PERSON I SEEN THAT
7 NIGHT WAS EUNICE MCCALL.

8 MR. JOHNSON: THANK YOU.

9 THE COURT: MR. SAVERANCE?

10 MR. SAVERANCE: NO QUESTIONS, YOUR HONOR.

11 THE COURT: MR. WHEELER?

12 MR. WHEELER: NOTHING FURTHER, YOUR HONOR.

13 THE COURT: MR. WATTS?

14 MR. WATTS: NOTHING.

15 THE COURT: ALL RIGHT. YOU MAY STEP DOWN, MA'AM.

16 A THANK YOU.

17 THE COURT: YOU ARE WELCOME.

18 MR. SAVERANCE: YOUR HONOR, WE ARE GOING TO KEEP
19 MS. WESLEY UNDER SUBPOENA, BUT WE ARE GOING TO RELEASE
20 HER. YOU SAY THEY KNOW TO KEEP HER UNDER SUBPOENA FOR A
21 WEEK.

22 THE COURT: OH, I GUESS, IT IS 1 O'CLOCK. SO WE WILL
23 BREAK FOR LUNCH AT THIS TIME, WE WILL BE BACK AT 2:15. IF
24 YOU WILL BE BACK IN THE JURY ROOM AT 2:15.

25 (THEREUPON, THE JURY GOES TO LUNCH AT 1 O'CLOCK ()

1 P.M.)

2 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
3 PRESENCE OF THE JURY.)

4 THE COURT: ANYTHING FURTHER BEFORE WE BREAK FOR
5 LUNCH?

6 MR. SAVERANCE: ON THE DEFENDANT MCCALL THERE IS THE
7 BOND ISSUE. JUST TO APPEAR THROUGHOUT THE TRIAL.

8 MR. WATTS: I REQUEST THAT MY CLIENT BE ABLE TO
9 REMAIN OUT ON BOND. HE IS ON A \$100,000 SURETY BOND BY
10 HIS FAMILY. HE HAS APPEARED EVERY TIME HE WAS REQUESTED
11 TO BE HERE. HE HAS BEEN HERE. I ASK THAT HE BE ABLE TO
12 REMAIN OUT ON BOND UNTIL THE CONCLUSION OF THE TRIAL.

13 THE COURT: SURETY?

14 MR. WATTS: SURETY PROPERTY BOND.

15 THE COURT: THERE WAS AN ISSUE WITH YOU YESTERDAY
16 REGARDING.

17 MR. WATTS: YES, SIR. THERE WAS NO BONDSMAN HERE TO
18 ATTEMPT TO PUT THAT UP. IT'S A PROPERTY BOND. HIS
19 GRANDFATHER IS THE PARTY WHO PUT IT UP.

20 THE COURT: SIR, WHAT IS YOUR NAME?

21 MR. DIXON: LEROY DIXON.

22 THE COURT: SIR?

23 MR. DIXON: LEROY DIXON. D-I-X-O-N.

24 THE COURT: MR. DIXON, YOU POSTED YOUR PROPERTY OF
25 \$100,000 TO GET HIM OUT---

1 MR. DIXON: I DID.

2 THE COURT: ---OF JAIL? AND DO YOU AGREE TO STAY ON
3 THIS BOND THROUGHOUT THE COURSE OF THIS TRIAL?

4 MR. DIXON: I DO.

5 THE COURT: HE WILL, THAT BOND WILL CONTINUE IN
6 EFFECT DURING THE COURSE OF THE TRIAL. THANK YOU, SIR.

7 MR. DIXON: THANK YOU, YOUR HONOR.

8 THE COURT: MR. JOHNSON?

9 MR. JOHNSON: MY CLIENT'S BAIL BONDSMAN WAS HERE
10 EARLIER OUTSIDE. I THINK SHE WAS RIGHT OUTSIDE. BUT I AM
11 NOT SURE IF SHE IS STILL HERE. BUT WE HAD TALKED TO HER
12 ABOUT CONTINUING ON THE BOND. MY CLIENT SAID HE
13 DISCUSSED IT WITH HER AND SHE AGREED. I DID NOT
14 PERSONALLY TALK TO HER MYSELF.

15 THE COURT: WHICH PERSON IS THAT AGAIN?.

16 THE DEFENDANT JAMES: PATRICIA WRIGHT.

17 MR. JOHNSON: PATRICIA WRIGHT, YOUR HONOR.

18 THE COURT: ALL RIGHT.

19 MR. JOHNSON: OR I WALK OUT AND SEE IF SHE IS RIGHT
20 OUTSIDE. OR WE CAN CALL, YOUR HONOR, IF SHE IS NOT
21 THERE.

22 THE COURT: ALL RIGHT, I WILL NEED TO HAVE THAT
23 CONFIRMATION NO LATER THAN 2:15. OTHERWISE, HE IS IN
24 CUSTODY.

25 MR. JOHNSON: I UNDERSTAND, YOUR HONOR.

1 THE COURT: WE ARE IN RECESS UNTIL 2:15.

2 (THEREUPON, THE COURT BREAKS FOR LUNCH.)

3 MR. JOHNSON: YOUR HONOR, I HAVE THE BAIL BONDSMAN
4 FOR MY CLIENT, CHAD JAMES. PATRICIA ADDISON. AND WE HAD
5 EXPLAINED TO HER THE SITUATION OF HER REMAINING ON BOND.
6 IS THAT RIGHT, MS. ADDISON?

7 MS. ADDISON: YES.

8 THE COURT: AND YOU UNDERSTAND THAT YOU ARE
9 RESPONSIBLE FOR HIS BEING HERE AND BOND IS SUBJECT TO
10 ESTREATMENT SHOULD HE FAIL TO APPEAR?

11 MS. ADDISON: YES, SIR.

12 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

13 MR. JOHNSON: THANK YOUR HONOR.

14 MR. WHEELER: YOUR HONOR, IF---

15 THE COURT: YES, SIR.

16 MR. WHEELER: ---YOU, WE ARE GOING TO TRY TO PREMARK
17 A COUPLE OF THESE PICTURES. I THINK MR. SAVERANCE
18 INDICATED HE HAD ONE MORE WITNESS BEFORE HE WOULD BE
19 PUTTING SOMETHING IN.

20 (PHOTOGRAPHS MARKED DEFENDANT'S EXHIBIT NOS. 1-8 INTO
21 EVIDENCE.)

22 MR. JOHNSON: YOUR HONOR, JUST, I GUESS IT WOULDN'T
23 BE A MOTION, BUT IT WOULD BE RELATED TO MY CLIENT AND THE
24 EVIDENCE. WE HAVE NOT PUT ANY EVIDENCE IN AS IT RELATES
25 TO MY CLIENT.

1 THE COURT: AND WHAT IS THE MOTION?

2 MR. JOHNSON: WELL I THINK I NEED TO PUT ON THE
3 RECORD SINCE THERE ARE THREE DEFENDANTS.

4 THE COURT: RIGHT.

5 MR. JOHNSON: THAT MY CLIENT HAS NOT ENTERED IN ANY
6 EVIDENCE. THE TWO CO-DEFENDANTS HERE, THEY HAVE SOME
7 EVIDENCE HERE THAT THEY INTEND ON MARKING IN ADVANCE AND
8 MARKING AS DEFENSE EXHIBITS.

9 THE COURT: ALL RIGHT.

10 MR. JOHNSON: THAT FOR THE RECORD MY CLIENT IS NOT
11 ENTERING ANY DEFENSE EXHIBITS. AND WE DON'T FEEL THAT WE
12 SHOULD BE A PART OF THAT. IT MIGHT AFFECT IF MY CLIENT,
13 SAY MY CLIENT DECIDES NOT TO TESTIFY, IT MIGHT AFFECT HIS
14 ABILITY TO HAVE THE LAST ARGUMENT.

15 THE COURT: AT THIS POINT AND TIME, NO EXHIBITS HAVE
16 BEEN ENTERED OTHER THAN STATE'S EXHIBIT NO. 1.

17 MR. JOHNSON: RIGHT.

18 THE COURT: IF THERE IS A STIPULATION REGARDING
19 ADMITTING EXHIBITS, I WANT TO HAVE STIPULATIONS FROM
20 EVERYONE IN ORDER. THAT DOESN'T MEAN IT IS YOUR EXHIBIT.

21 MR. JOHNSON: I UNDERSTAND.

22 THE COURT: YES, SIR. MR. WATTS.

23 MR. WATTS: I WAS JUST GOING TO SAY WE WITHDRAW THAT
24 AS DEFENDANT'S EXHIBIT. WE WITHDRAW THAT IF YOU WANT TO
25 PUT IT IN AS STATES.

1 MR. WHEELER: MR. SAVERANCE TELLS ME SOUNDS LIKE HE
2 HAS GOT ONE WITNESS TO GO BEFORE WE MIGHT COME TO A
3 WITNESS THAT WOULD INVOLVE SOME JACKSON V. DENNO ISSUES.
4 AND HOWEVER YOU WANT TO TAKE THAT UP, JUDGE.

5 THE COURT: LET'S DO THAT WITNESS AND LET'S ROLL.

6 MR. SAVERANCE: YES, YOUR HONOR.

7 THE COURT: LET'S BRING THE JURY PLEASE.

8 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
9 PRESENCE OF THE JURY.)

10 THE COURT: THE JURY IS BACK. YOU MAY CALL YOUR NEXT
11 WITNESS PLEASE.

12 MR. SAVERANCE: THE STATE CALLS SAMANTHA HICKMAN.

13 SAMANTHA HICKMAN, BEING FIRST DULY
14 SWORN, TESTIFIED AS FOLLOWS:

15 THE CLERK: STATE YOUR FULL NAME PLEASE.

16 A SAMANTHA HICKMAN.

17 DIRECT EXAMINATION BY MR. SAVERANCE:

18 Q MS. HICKMAN WERE YOU SUBPOENAED TO BE HERE TODAY?

19 A YES.

20 Q ARE YOU A LITTLE BIT NERVOUS?

21 A YES.

22 Q OKAY I UNDERSTAND. AND I THINK EVERYBODY
23 UNDERSTANDS, YOU KNOW IT IS KIND OF A NEW THING FOR YOU.
24 SO YOU KNOW WE WILL TRY AND HELP YOU. BUT I NEED YOU TO
25 TALK CLEARLY. I NEED YOU TO SPEAK INTO THE MICROPHONE SO

1 THE COURT REPORTER CAN TAKE DOWN WHAT YOU' SAYING, AND SO
2 THE JURY CAN HEAR YOU AND SO THAT EVERYBODY AT THESE
3 TABLES CAN HEAR YOU, OKAY?

4 A YES.

5 Q SPEAK UP FOR ME NOW.

6 A YES.

7 Q SPEAK UP AND INTO THE MICROPHONE, OKAY?

8 A OKAY.

9 Q I APPRECIATE IT. GIVE ME YOUR NAME AGAIN?

10 A SAMANTHA HICKMAN.

11 Q WHERE DO YOU LIVE MS. HICKMAN?

12 A [REDACTED]

13 Q IS THAT HERE IN BISHOPVILLE?

14 A NO.

15 Q WHERE IS THAT?

16 A CAMDEN.

17 Q HOW LONG HAVE YOU BEEN THERE?

18 A ABOUT A YEAR.

19 Q DO YOU REMEMBER THE NIGHT TROY ROUSE WAS KILLED?

20 A NOT THAT MUCH, BUT I KNOW SOMETHING.

21 Q DO YOU REMEMBER KIND OF WHEN IT HAPPENED?

22 A THE NIGHT WE WAS OVER AT CHAD JAMES' HOUSE.

23 Q WOULD THAT HAVE BEEN IN APRIL OF 2005, ABOUT A YEAR

24 AGO?

25 A YES.

1 Q WHOSE HOUSE WERE YOU AT?
2 A CHAD JAMES.
3 Q IS THIS MR. JAMES RIGHT HERE?
4 A YES.
5 Q DID YOU KNOW MR. JAMES?
6 A YES.
7 Q YOU HAD KNOWN HIM BEFORE THIS TOOK PLACE?
8 A YES.
9 Q HOW LONG WERE YOU AT HIS HOUSE? ALL DAY? HALF THE
10 DAY?
11 A ALL DAY.
12 Q WHAT WERE YOU ALL DOING THERE?
13 A JUST TALKING.
14 Q JUST HANGING OUT?
15 A YES.
16 Q WHO WAS THERE? WELL LET ME REPHRASE THAT, YOUR
17 HONOR. THAT EVENING WHEN IT GOT DARK, DO YOU REMEMBER WHO
18 WAS THERE WHEN IT GOT DARK THAT EVENING?
19 A YES.
20 Q WHO WAS IT?
21 A WE WAS IN THE ROOM IT WAS ME, COURTNEY, KENO AND
22 KEVIN.
23 Q COURTNEY JOHNSON?
24 A YES.
25 Q AND KENO?

1 A SLATER.

2 Q DID YOU SEE EFRAIN THOMAS AT SOME POINT THAT NIGHT?

3 A NO.

4 Q YOU DID NOT SEE EFRAIN THOMAS? DID YOU SEE CHAD

5 JAMES?

6 A NOT AT THIS TIME. I DIDN'T SAW NEITHER ONE OF THEM

7 AT THE TIME.

8 Q AT SOME POINT DID YOU SEE THEM?

9 A YES.

10 Q OKAY. AND I AM SORRY, WAS THIS AT CHAD'S HOUSE?

11 A YES.

12 Q SO CHAD JAMES AND EFRAIN THOMAS SHOWED UP AT NIGHT

13 THERE?

14 A YES.

15 Q WHEN THEY SHOWED UP, DID YOU TALK TO EFRAIN THOMAS?

16 A NO.

17 Q DID YOU TALK TO CHAD JAMES?

18 A NO.

19 Q WHAT, DID YOU SEE THEM? WERE THEY TOGETHER AT SOME

20 POINT?

21 A AT THE TIME WHEN I SEE THEM?

22 Q THEY WERE OR THEY WEREN'T?

23 A THEY WAS AT THE TIME I HAD SEEN THEM.

24 Q SO CHAD JAMES AND EFRAIN THOMAS WERE TOGETHER, RIGHT?

25 A AT THE TIME WE WERE GETTING READY TO GO, I SEE THEM.

1 TOGETHER.

2 Q WHERE WERE YOU WHEN SAW THEM TOGETHER?

3 A OVER AT CHAD'S.

4 Q WERE YOU INSIDE? OUTSIDE?

5 A INSIDE.

6 Q WHERE WERE THEY?

7 A OH, I AM NERVOUS.

8 Q I UNDERSTAND. JUST TELL ME WHAT YOU REMEMBER.

9 THAT'S ALL I AM ASKING.

10 A CAN YOU REPEAT THAT QUESTION, PLEASE?

11 Q YOU WERE INSIDE AND YOU SAID CHAD JAMES AND EFRAIN

12 THOMAS WERE TOGETHER. WERE THEY OUTSIDE TOGETHER OR

13 INSIDE?

14 A INSIDE.

15 Q DID YOU HEAR THEM TALKING?

16 A NO.

17 Q AT SOME POINT DID THEY GET IN A VEHICLE OR A CAR?

18 A IN A CAR.

19 Q IN WHAT COLOR OF CAR?

20 A I THINK IT WAS A GREEN, BLUE. IT WAS DARK.

21 Q DID YOU GET IN A CAR?

22 A YES.

23 Q WHO ALL GOT IN THE CAR?

24 A ME, EFRAIN, CHAD, KEON AND COURTNEY.

25 Q WHY DID YOU ALL GET IN THE CAR?

1 A TO TAKE ME TO MY HOUSE.

2 Q DID EFRAIN SAY ANYTHING DURING THAT TRIP TO YOU OR
3 THAT YOU HEARD?

4 A HE WAS TALKING TO THEM ABOUT HE HAD SHOT TROY.

5 Q WAS THAT WHEN Y'ALL WERE IN THE CAR OR OUT OF THE
6 CAR?

7 A YES, IN THE CAR.

8 Q OKAY, WHERE WERE YOU WHEN HE SAID THAT?

9 A WE WAS ON OUR WAY GOING TO CAMDEN. WE WAS ON THE
10 INTERSTATE.

11 Q WERE YOU IN THE FRONT SEAT OR THE BACK SEAT?

12 A BACK SEAT.

13 Q WHO WAS DRIVING?

14 A CHAD.

15 Q DID EFRAIN THOMAS SAY IT LOUD ENOUGH WHERE EVERYBODY
16 COULD HEAR?

17 MR. JOHNSON: YOUR HONOR,---

18 A YES.

19 MR. JOHNSON: ---OBJECTION, YOUR HONOR. IT CALLS
20 FOR SPECULATION.

21 THE COURT: THE OBJECTION IS OVERRULED.

22 Q HE SAID IT LOUD ENOUGH WHERE EVERYBODY COULD HEAR?

23 A YES.

24 Q DID CHAD JAMES SAY ANYTHING TO EFRAIN THOMAS?

25 A NOBODY WAS REALLY TALKING OR NOTHING.

1 Q WAS EFRAIN IN THE TRUNK?

2 A HE WAS HALF WAY OUT AND HALF WAY IN.

3 Q DOES THE BACK SEAT COME DOWN TO THE TRUNK?

4 A YES.

5 Q AND I AM ASKING IF YOU KNOW. DO YOU KNOW WHY HE WAS
6 IN THE TRUNK?

7 A THE ONLY THING I KNOW IS WHAT THEY HAD TOLD ME EFRAIN
8 HAD SHOT SOMEONE.

9 MR. WHEELER: OBJECTION, YOUR HONOR, HEARSAY.

10 THE COURT: OBJECTION IS SUSTAINED. THE JURY IS TO
11 DISREGARD THE QUESTION AND THE RESPONSE.

12 Q YOU ALL STOPPED AT THE INTERSTATE FOR GAS?
13 INTERSTATE SHELL, SOMETHING LIKE THAT?

14 A YEAH, BEFORE WE WAS ON THE INTERSTATE WE STOPPED FOR
15 GAS.

16 Q WHERE DID Y'ALL GET GAS?

17 A WE WENT ON DOWN THE INTERSTATE.

18 Q WHERE DID YOU ALL GO?

19 A WE WAS ON OUR WAY GOING TO CAMDEN ON THE INTERSTATE.

20 Q AND WHOSE HOUSE DID YOU ALL GO TO?

21 A MY HOUSE.

22 Q WHEN YOU GOT TO YOUR HOUSE, DID ANYBODY GET OUT OF
23 THE CAR?

24 A EVERYBODY GOT OUT OF THE CAR.

25 Q DID EVERYBODY STAY OR DID SOME PEOPLE LEAVE?

1 A NO, COURTNEY AND EFRAIN STAYED.

2 Q HOW DID EFRAIN THOMAS GET OUT OF THE TRUNK?

3 A ON THE BACK SEAT. THE BACK DOOR, I MEAN.

4 Q HE CLIMBED FROM THE TRUNK TO THE BACK SEAT?

5 A YES.

6 Q DO YOU KNOW WHY?

7 A I GUESS HE WAS NERVOUS.

8 MR. SMITH: OBJECTION, YOUR HONOR, SHE IS
9 SPECULATING. HE SAID DO YOU KNOW WHY, AND SHE SAID I
10 GUESS.

11 THE COURT: AND ARE YOU GOING TO CROSS EXAMINE THIS
12 WITNESS MR. SMITH?

13 MR. SMITH: I APOLOGIZE, YOUR HONOR.

14 THE COURT: THE OBJECTION IS PART OF THE EXAMINATION
15 OF THE WITNESSES. I AM GOING TO SUSTAIN THAT OBJECTION.
16 GO AHEAD.

17 Q DID CHAD JAMES SAY ANYTHING TO EFRAIN THOMAS ABOUT
18 GETTING IN AND OUT OF THE TRUNK?

19 A I AIN'T HEARD WHEN CHAD TOLD HIM TO GET OUT OF THE
20 TRUNK.

21 Q DID EFRAIN THOMAS SAY ANYTHING ELSE ABOUT THAT NIGHT
22 WHILE YOU WERE AROUND?

23 A NO.

24 Q AND YOU TALKED TO THE POLICE TWO TIMES?

25 A YES.

1 Q THE FIRST TIME DID YOU TELL THEM ALL THAT YOU ARE
2 TELLING US TODAY?

3 A NO.

4 Q WHY IS THAT?

5 A BECAUSE I WAS SCARED. THEY WERE QUESTIONING ME IN
6 FRONT OF EVERYBODY.

7 Q WHAT DO YOU MEAN THEY WERE QUESTIONING YOU IN FRONT
8 OF EVERYBODY?

9 A WE-- HE CAME AND GOT ME AND COURTNEY. WE WAS ON THE
10 BACK STREET. SO WE GOT IN THE CAR WITH THEM AND WE STAYED
11 IN FRONT. AND EVERYBODY WAS STANDING THERE WATCHING THEM
12 QUESTIONING US.

13 Q SO YOU WENT AND TALKED TO THE POLICE AGAIN AFTER
14 THAT?

15 A YES.

16 Q AND CHAD JAMES' HOUSE, THAT IS IN LEE COUNTY, RIGHT?

17 A YES.

18 Q IS THAT NEAR WILSON STREET WHERE THIS INCIDENT
19 OCCURRED?

20 A I REALLY DON'T KNOW WHAT THE STREET AND ALL.

21 Q I THINK YOU SAID YOU LIVE IN CAMDEN?

22 A YES.

23 MR. SAVERANCE: YOUR HONOR, COULD I HAVE ONE SECOND?

24 THE COURT: YES.

25 MR. SAVERANCE: THAT'S ALL I HAVE FOR THIS WITNESS,

1 YOUR HONOR.

2 THE COURT: MR. WHEELER.

3 MR. WHEELER: THANK YOU, YOUR HONOR.

4 CROSS EXAMINATION BY MR. WHEELER:

5 Q MS. HICKMAN, I DON'T HAVE BUT JUST A COUPLE OF
6 QUESTIONS FOR YOU.

7 A OKAY.

8 Q YOU SAID YOU HAD BEEN IN CHAD JAMES' HOUSE EARLIER IN
9 THE DAY?

10 A YES.

11 Q NOW WASN'T MR. THOMAS THERE EARLIER IN THE DAY?

12 A YES, HE WAS THERE EARLIER THAT DAY.

13 Q UP UNTIL DARK AND AROUND DARK TIME?

14 A YES.

15 Q AND THEN YOU SAW HIM LATER AGAIN IN THE EVENING, IS
16 THAT CORRECT?

17 A NO. LATER ON AT DARK.

18 Q THE TRIP TO CAMDEN LATER ON IN THE EVENING THAT YOU
19 JUST TALKED ABOUT.

20 A YES, IT WAS DARK.

21 Q AND SO MR. THOMAS HAD BEEN AT CHAD'S HOUSE EARLIER, A
22 GOOD BIT OF THE DAY, HADN'T HE?

23 A YES, EARLY THAT MORNING.

24 Q WITH THE OTHER PEOPLE YOU MENTIONED.. I THINK
25 MR. JOHNSON, MR. SLATER AND THOSE, IS THAT RIGHT?

1 A YES.

2 MR. WHEELER: THANK YOU, MS. HICKMAN.

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

4 MR. SMITH: THANK YOU, YOUR HONOR.

5 CROSS EXAMINATION BY MR. SMITH.

6 Q MR. MCCALL HAD BEEN IN THE HOUSE EARLIER.

7 A I DIDN'T SEE HIM IN THE HOUSE.

8 Q DID YOU SEE MR. MCCALL AT ANY TIME THAT EVENING?

9 A NOT THAT I CAN REMEMBER.

10 Q WAS MR. MCCALL PRESENT DURING ANY OF THIS TESTIMONY
11 THAT YOU PROVIDED TO THE SOLICITOR? THE FACTS THAT
12 HAPPENED IN THIS CAR, AND GOING TO CAMDEN? WAS HE
13 PRESENTS DURING ANY OF THAT?

14 A. NOT WITH US. BUT---

15 Q HE WAS NOT PRESENT IN YOUR PRESENCE?

16 A NO.

17 THE COURT: MR. JOHNSON.

18 CROSS EXAMINATION BY MR JOHNSON:

19 Q TIFFANY (SIC) HOW ARE YOU DOING?

20 A OKAY.

21 Q I KNOW YOU ARE A LITTLE NERVOUS SO WE ARE GOING TO
22 TRY TO TAKE IT REAL SLOW. AND IF I GET TOO FAST, LET ME
23 KNOW. OKAY. YOU SAID YOU SPOKE TO THE OFFICER TWICE?

24 A YES.

25 Q WHICH OFFICER, IS HE IN THE COURTROOM TODAY?

1 A YES, SIR.

2 Q WHICH ONE?

3 A THE ONE SITTING OVER THERE.

4 Q WITH THE BALD HEAD IN THE BACK?

5 A NO.

6 Q WHICH ONE, IS HE UP FRONT?

7 A YES.

8 Q SO HE CAME, THE FIRST TIME YOU SPOKE WITH HIM, WHERE

9 WERE YOU?

10 A ON THE BACK.

11 Q ON THE BACK STREET BACK THERE?

12 A YES.

13 Q AND WHAT DID HE DO? HE PICKED YOU UP AND PUT YOU

14 INSIDE A POLICE CAR?

15 A YES.

16 Q DID HE SAY YOU WERE UNDER ARREST?

17 A NO.

18 Q HE ASKED YOU TO GET IN?

19 A HE JUST WANTED TO QUESTION US.

20 Q DID HE TELL YOU YOU WERE A SUSPECT?

21 A NO.

22 Q HE JUST TOLD YOU TO GET IN THE CAR?

23 A AT FIRST HE WAS TALKING TO -- I THINK HE WAS TALKING

24 TO COURTNEY. AND WE JUST, AND COURTNEY, WE WENT IN THE

25 CAR.

1 THE COURT: MA'AM, SPEAK CLEARER AND SAY AGAIN WHAT
2 YOU JUST SAID. SPEAK INTO THE MICROPHONE.

3 A OKAY.

4 THE COURT: REPEAT YOUR ANSWER.

5 A WHEN HE CAME ON THE BACK, HE ASKED FOR SAMANTHA
6 HICKMAN AND COURTNEY JOHNSON. SO WE WERE STANDING UP AND
7 THEN WE WENT TO THE CAR.

8 Q OKAY. THAT WAS SOME DAYS LATER AFTER Y'ALL WENT TO
9 CAMDEN.

10 A YES.

11 Q AND WHEN YOU GOT IN THE CAR, HE KIND OF LIKE TALKED
12 TO YOU IN FRONT OF EVERYBODY IN THE COMMUNITY, KIND OF
13 THING. PEOPLE WERE LOOKING?

14 A YEAH, AND THEN WE DROVE OFF.

15 Q SO YOU BECAME, YOU WERE SOMEWHAT AFRAID OR SCARED?

16 A YES, I WAS SCARED.

17 Q WHAT WERE YOU SCARED OF?

18 A ABOUT WHAT HAPPENED.

19 Q WERE YOU AFRAID THAT YOU COULD POSSIBLY GO TO JAIL OR
20 SOMETHING?

21 A UH-HUH. (AFFIRMATIVE.)

22 Q WHY WERE YOU AFRAID THAT YOU COULD GO TO JAIL? IS IT
23 BECAUSE YOU LET THEM GO TO YOUR HOUSE THAT NIGHT?

24 A YES.

25 Q AND BECAUSE YOU KNEW ABOUT IT BEFORE THEY WENT TO

1 YOUR HOUSE, IS THAT CORRECT?

2 A I HAD KNOW. EFRAIN HAD TOLD ME.

3 Q AT THE HOUSE.

4 A ON THE WAY GOING TO THE HOUSE.

5 Q OKAY. BUT THAT'S THE FIRST TIME YOU HEARD ANYTHING

6 ABOUT IT, IS THAT CORRECT?

7 A YES.

8 Q BUT THAT'S NOT TRUE. THINK ABOUT IT. DIDN'T

9 COURTNEY TELL YOU IN THE HOUSE, IN THE BATHROOM OR

10 WHEREVER YOU WENT TO, THAT EFRAIN HAD JUST SAID HE HAD

11 KILLED SOMEBODY?

12 A HE DIDN'T SAY KILLED NOBODY.

13 Q THAT HE HAD SHOT SOMEBODY.

14 A I WASN'T PAYING NO ATTENTION.

15 Q BUT DIDN'T COURTNEY TELL YOU THAT?

16 A NOT THAT I CAN REMEMBER.

17 Q SO COURTNEY DIDN'T TELL YOU THAT?

18 A SHE PROBABLY DID, I JUST AIN'T HEARD HER.

19 Q EVERYBODY WAS IN THE HOUSE EARLIER THAT DAY, IS THAT

20 CORRECT?

21 A YES.

22 Q SO WAS CHAD AND EVERYBODY WAS THERE EARLIER, ---

23 A YES.

24 Q ---IS THAT CORRECT?

25 A EARLIER, YES.

1 Q AND DIDN'T YOU DISCUSS EARLIER THAT DAY THAT YOU WERE
2 GOING TO CAMDEN THAT NIGHT?

3 A YES.

4 Q SO THIS WAS NOTHING THAT WAS PLANNED AFTER THE
5 SHOOTING. THIS WAS SOMETHING THAT Y'ALL HAD PLANNED
6 ALREADY, CORRECT?

7 A YES.

8 Q AND DIDN'T CHAD TELL YOU THAT HE WAS GOING TO TAKE
9 YOU TO CAMDEN?

10 A YES.

11 Q SO IT WAS NOTHING UNUSUAL THAT WHEN YOU ASKED HIM TO
12 TAKE YOU TO CAMDEN, THAT HE WAS GOING TO TAKE YOU, RIGHT?

13 A YES.

14 Q AND HE HAD TAKEN YOU THERE BEFORE, RIGHT?

15 A YES.

16 Q NOW LET ME ASK YOU THIS, AND IT'S VERY IMPORTANT.
17 DID YOU EVER SEE EFRAIN TELL CHAD ANYTHING ABOUT HIM
18 SHOOTING SOMEBODY BEFORE YOU WENT TO CAMDEN?

19 A NO.

20 Q NEVER DID, DID YOU?

21 A NO.

22 Q AND WHEN CHAD -- WHEN EFRAIN CAME TO THE HOUSE, HE
23 CAME TO THE HOUSE BY HIS SELF, DIDN'T HE? YOU DIDN'T SEE
24 HIM AND CHAD WALK IN THE HOUSE TOGETHER.

A NOT TOGETHER.

1 Q THEY DID NOT COME IN THE HOUSE TOGETHER, DID THEY?
2 WHEN YOU FIRST SAW CHAD, WHERE WAS HE? LATER ON THAT
3 NIGHT WHEN AFTER EFRAIN GOT THERE, WHEN WAS THE FIRST TIME
4 YOU SAW CHAD, WAS IT IN THE BEDROOM?

5 A I REALLY DON'T KNOW, BECAUSE I WAS IN THE ROOM.

6 Q YOU WERE IN YOUR ROOM, RIGHT?

7 A THE ROOM THAT I ALWAYS GO TO.

8 Q YOU WAS IN A ROOM WITH A FRIEND OF YOURS, IS THAT
9 CORRECT?

10 A YES.

11 Q AND EFRAIN CAME IN THE HOUSE AND CAME IN THE ROOM AND
12 CALLED FOR COURTNEY, IS THAT CORRECT?

13 A YES.

14 Q CHAD WAS NO WHERE AROUND, WAS HE?

15 A NOT THAT I HAD SEEN.

16 Q AND YOU NEVER SAW EFRAIN TELL CHAD ABOUT ANYTHING
17 ABOUT WHAT HE HAD DONE, DO YOU?

18 A NO.

19 Q SO YOU WOULD AGREE THAT YOU KNOW OF NO REASON OF WHY
20 CHAD WOULD KNOW WHAT EFRAIN DID, IS THAT CORRECT?

21 MR. SAVERANCE: OBJECTION.

22 THE COURT: THE OBJECTION IS SUSTAINED.

23 Q BUT YOU NEVER SAW ANYTHING AS FAR AS EFRAIN TELLING
24 CHAD ANYTHING ABOUT THAT.

25 A NO, SIR. THE FIRST TIME. THE ONLY TIME THAT I

1 HEARD.

2 Q AND YOU JUST HEARD IT FROM THE BACK SEAT, IS THAT
3 CORRECT?

4 A YES.

5 Q SO YOU DON'T KNOW IF CHAD HEARD IT, DO YOU?

6 A NO.

7 MR. JOHNSON: NO OTHER QUESTIONS.

8 THE COURT: MR. SAVERANCE?

9 MR. SAVERANCE: NOTHING FURTHER, YOUR HONOR.

10 THE COURT: MR. WHEELER?

11 MR. WHEELER: YOUR HONOR, I DON'T HAVE ANYTHING AT
12 THIS TIME. AS WITH THE PREVIOUS WITNESS, MS. HICKMAN, WHO
13 I SUBPOENAED, I WOULD JUST LIKE TO RESERVE THE RIGHT TO
14 CALL HER IN MY CASE IN CHIEF. THANK YOU.

15 THE COURT: MR. WATTS, MR. SMITH?

16 MR. WATTS: I HAVE NOTHING FURTHER, YOUR HONOR.

17 THE COURT: YOU MAY STEP DOWN, MA'AM. YOUR NEXT
18 WITNESS.

19 MR. SAVERANCE: THE STATE WOULD CALL SALLIZA WILSON,
20 YOUR HONOR.

21 SALLIZA WILSON, BEING FIRST DULY
22 SWORN, TESTIFIED AS FOLLOWS:

23 THE CLERK: STATE YOUR FULL NAME.

24 A SALLIZA WILSON.

DIRECT EXAMINATION BY MR. SAVERANCE:

1 Q WHAT DO YOU DO FOR A LIVING?

2 A I'M AN INVESTIGATOR WITH THE BISHOPVILLE POLICE
3 DEPARTMENT.

4 Q HOW LONG HAVE YOU BEEN THERE?

5 A SIX YEARS.

6 Q WHAT ARE SOME OF YOUR DUTIES AND RESPONSIBILITIES?

7 A TO FOLLOW UP AFTER A CRIME HAS BEEN COMMITTED,
8 COLLECT EVIDENCE.

9 Q YOU INVESTIGATE, COLLECT EVIDENCE, THAT SORT OF
10 THING?

11 A UH-HUH. (AFFIRMATIVE.)

12 Q HOW LONG HAVE YOU BEEN DOING THAT?

13 A A LITTLE OVER A YEAR.

14 Q AND HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT TOTAL?

15 A SIX YEARS.

16 Q DID YOU BECOME INVOLVED IN THIS CASE THAT WE'RE HERE
17 TODAY ON?

18 A REPEAT YOUR QUESTION.

19 Q DID YOU BECOME INVOLVED IN THIS CASE REGARDING TROY
20 ROUSE BEING SHOT?

21 A I HAVE.

22 Q AND THAT WAS BACK ON APRIL 7, 2005?

23 A THAT'S RIGHT.

24 Q JUST TELL ME BRIEFLY HOW YOU GOT INVOLVED IN THE
25 CASE.

1 A I WAS WORKING SHIFT THAT DAY. AND WE RECEIVED A CALL
2 THAT THERE WERE SOME SHOTS FIRED, AND THERE WAS SOMEONE --
3 SOMEONE WAS LAYING IN THE MIDDLE OF THE STREET.

4 Q --AND WHAT WAS THE LOCATION?

5 A WILSON STREET.

6 Q HERE IN BISHOPVILLE?

7 A HERE IN BISHOPVILLE.

8 Q DID YOU RESPOND?

9 A I DID.

10 Q DO YOU REMEMBER WHAT TIME THAT WAS?

11 A ABOUT 3 O'CLOCK.

12 Q HOW LONG DID IT TAKE YOU ROUGHLY TO GET TO THE SCENE?

13 A LESS THAN A MINUTE.

14 Q WHEN YOU GOT THERE, TELL ME WHAT YOU SAW.

15 A I SAW A BODY LAYING IN THE MIDDLE OF THE STREET.

16 Q WHAT ELSE, ANYTHING?

17 A THAT WAS IT.

18 Q WHAT DID YOU DO?

19 A AFTER I GOT IN MY VEHICLE, MYSELF AND MY PARTNER AT
20 THE TIME, BASICALLY SCANNED THE AREA TO SEE IF ANYONE WAS
21 AROUND.

22 Q DID YOU FIND ANYBODY?

23 A THERE WAS A COUPLE OF PEOPLE WALKING TOWARDS THE BODY
24 ONCE WE ARRIVED ON THE SCENE.

25 Q BUT YOU DIDN'T TAKE ANYBODY INTO CUSTODY AT THAT

1 POINT.

2 A NO, I DID NOT.

3 Q AS FAR AS THE CRIME SCENE GOES, WHAT DID YOU DO? DID
4 YOU CORDON OFF THE AREA, OR I MEAN, DID YOU DO SOME
5 THINGS?

6 A I DID. I TAPED OFF THE AREA TO KEEP THE CROWD AWAY
7 FROM THE BODY.

8 Q AND THAT'S JUST A TYPICAL THING YOU DO WHEN THIS
9 HAPPENS?

10 A IT IS, YES.

11 Q AND THAT'S JUST TO MAKE SURE THAT EVERYTHING THAT IS
12 THERE, STAYS THERE?

13 A STAYS THE WAY IT WAS.

14 Q DID YOU GATHER AND COLLECT CERTAIN EVIDENCE?

15 A I DIDN'T GATHER AND COLLECT ANYTHING. IN THIS
16 PARTICULAR CASE, SLED RESPONDED. AND THEY GATHERED AND
17 COLLECTED THE EVIDENCE.

18 Q YOU WERE THERE WHEN THIS HAPPENED.

19 A I WAS.

20 Q BUT YOU GOT THERE FIRST. BUT YOU'RE AT THE SCENE,
21 AND THEY CAME?

22 A YES.

23 Q AND YOU, I GUESS, YOU WOULD OBSERVE THEM AND HELP
24 THEM IN WHATEVER CAPACITY YOU COULD?

25 A YES.

1 Q I AM GOING TO SHOW YOU PICTURES. AND IF YOU CAN
2 IDENTIFY THEM, THAT'S FINE. IF YOU CAN'T, BECAUSE I
3 UNDERSTAND LIKE YOU SAID, YOU DIDN'T COLLECT EVERYTHING.
4 THAT'S FINE. BUT I JUST WANT TO SHOW YOU SOME PICTURES.
5 AND LET ME KNOW IF YOU RECOGNIZE ANY OF THEM.

6 A YES, SIR.

7 Q THIS IS THE STATE'S, MAY I APPROACH, YOUR HONOR?
8 STATE'S 13. DO YOU RECOGNIZE THAT PICTURE?

9 A I DO.

10 Q SPEAK UP. WHAT IS IT A PICTURE OF?

11 A IT'S A PICTURE OF TROY ROUSE LAYING IN THE MIDDLE OF
12 THE STREET ON THE CORNER OF WILSON AND RAY.

13 Q AND THERE'S A SHEET?

14 A AND COVERED WITH A SHEET.

15 Q DOES THAT APPEAR, IS THAT AN ACCURATE PICTURE OF WHAT
16 YOU SAW THAT NIGHT?

17 A THAT'S ACCURATE.

18 Q I'M GOING TO SHOW YOU STATE'S 5 THROUGH 12. JUST
19 LOOK AT THEM AND TELL ME IF YOU IDENTIFY THOSE PICTURES.

20 A ALL THESE ARE PICTURES OF THE AREA SURROUNDING THE
21 BODY.

22 Q OKAY.

23 A THESE PICTURES HERE ARE WHERE THE CONES ARE, IS WHERE
24 THE ROUNDS WERE FOUND.

25 Q WHAT DO YOU MEAN BY ROUNDS?

1 A THE SHELL CASINGS FROM THE BULLETS.

2 Q CASING FROM BULLETS?

3 A RIGHT.

4 Q AND IS THAT NORMALLY PART OF YOUR INVESTIGATION TO
5 TRY TO FIND AND LOCATE ROUNDS FROM BULLETS THAT ARE FOUND?

6 A YES.

7 Q AND THOSE CONES IDENTIFY WHERE THE---

8 A WHERE THE SHELL CASINGS WERE FOUND ONCE WE ARRIVED ON
9 THE SCENE.

10 MR. SAVERANCE: YOUR HONOR, I WOULD LIKE TO PUBLISH
11 THESE PICTURES TO THE JURY.

12 THE COURT: ANY OBJECTION TO THESE PHOTOGRAPHS BEING
13 ADMITTED IN TO EVIDENCE?

14 MR. WHEELER: NO, SIR, YOUR HONOR.

15 MR. WATTS: NO, YOUR HONOR.

16 MR. JOHNSON: NO, YOUR HONOR.

17 THE COURT: TELL ME THE EXHIBIT NUMBERS.

18 MR. SAVERANCE: YOUR HONOR, THIS IS STATE'S 5, 6, 7,
19 8, 9 AND 13.

20 THE COURT: 5, 6, 7, 8, 9 AND 13 ARE ADMITTED WITHOUT
21 OBJECTION. YOU MAY PUBLISH THEM.

22 (PHOTOGRAPHS MARKED STATE'S EXHIBIT NOS. 5, 6, 7, 8,
23 9 AND 13 INTO EVIDENCE.)

24 Q DID YOU GO UP TO WHERE MR. ROUSE WAS LAYING IN THE
25 ROAD. I MEAN HE WAS DEAD, RIGHT? OR COULD YOU TELL? ()

1 A WHEN I GOT TO THE BODY, I KNEELED DOWN. AND IT
2 APPEARED TO ME THAT HE WAS TAKING HIS LAST BREATH, AS I
3 KNEELED DOWN TO HIM.

4 Q DID HE PASS AWAY SHORTLY AFTER THAT?

5 A YES.

6 Q WERE YOU ABLE TO GET ANY KIND OF EMS OR ANYBODY ELSE
7 THERE BEFORE HE PASSED AWAY?

8 A NO.

9 Q SO YOU DID GET A GOOD LOOK AT HIS BODY?

10 A YES.

11 Q I AM GOING TO SHOW YOU STATE'S 15 THROUGH 19. AND
12 TELL ME IF CAN IDENTIFY THOSE.

13 A YES. THESE PHOTOGRAPHS WERE TAKEN AT THE SCENE BY
14 SLED. ALL OF THESE WERE TAKEN AFTER EMS RESPONDED. JUST
15 SHOWING WHERE THE ENTRY WOUNDS WERE ON THE VICTIM.

16 MR. SAVERANCE: YOUR HONOR, I WOULD LIKE TO PUBLISH
17 THESE PICTURES TO THE JURY AT THIS TIME.

18 THE COURT: ARE YOU GOING TO OFFER THEM IN TO
19 EVIDENCE?

20 MR. SAVERANCE: YOUR HONOR, THEY HAVE BEEN OFFERED
21 AND ADMITTED IN BY CONSENT. BUT I WILL GO AHEAD AND
22 FORMALLY MOVE TO ADMIT THEM IN AT THIS TIME. I APOLOGIZE.

23 THE COURT: NORMALLY THEY ARE ADMITTED BY THE COURT.

24 MR. SAVERANCE: I'M SORRY, I'LL MOVE TO HAVE THESE
25 ADMITTED AT THIS TIME.

1 THE COURT: WHAT EXHIBIT NOS. ARE THEY?

2 MR. SAVERANCE: YOUR HONOR, THESE WOULD BE, 15, 16,
3 17, 18 AND 19.

4 THE COURT: 15, 16, 17, 18 AND 19. ARE THERE ANY
5 OBJECTIONS TO THEM BEING ADMITTED?

6 MR. WHEELER: NO, SIR.

7 MR. WATTS: NO, SIR, YOUR HONOR.

8 MR. JOHNSON: NONE, YOUR HONOR.

9 THE COURT: THEY ARE ADMITTED. YOU MAY PUBLISH THEM.

10 (PHOTOGRAPHS MARKED STATE'S EXHIBIT NOS. 15, 16, 17,
11 18, 19 INTO EVIDENCE.)

12 Q I'M GOING TO APPROACH AND SHOW YOU WHAT'S BEEN MARKED
13 STATE'S 10, 12, 14, 8 AND 21. AND TELL ME IF YOU CAN
14 IDENTIFY THOSE PICTURES.

15 A YES.

16 Q NOW ONE OF THEM, WHICH IS THE STATE'S 10, IS THAT A
17 PICTURE OF A BLACK HAT?

18 A IT IS. THIS WAS, THIS HAT WAS FOUND NOT TOO FAR FROM
19 THE BODY.

20 Q AND THAT WAS PLACED INTO EVIDENCE?

21 A ALL OF THESE PICTURES ARE BASICALLY SHOWING EXACTLY
22 WHERE THE ROUNDS WERE FOUND, THE HAT, CHANGE, AND SHOWING
23 EXACTLY WHERE HE WAS WHEN HE WAS FOUND.

24 Q STATE'S EXHIBIT 14 IS A BLUE BUILDING. WHAT IS THAT?

25 A IT'S A STORE. ()

1 Q IS THAT IN THE AREA?

2 A IT IS RIGHT BEHIND WHERE THE BODY WAS FOUND.

3 Q I'M NOT TRYING TO PUT WORDS IN YOUR MOUTH, BUT IS
4 THIS WHERE THAT STORE IS LOCATED? COULD SHE STEP DOWN,
5 YOUR HONOR?

6 THE COURT: YES.

7 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
8 STAND.

9 A THIS SQUARE IN PENCIL?

10 Q RIGHT.

11 A YES.

12 Q AND THAT'S RIGHT THERE IN FRONT OF THE CRIME SCENE?

13 A YES.

14 (THEREUPON, THE WITNESS RESUMES THE WITNESS STAND.)

15 Q THE LAST THING I AM GOING TO SHOW YOU IS STATE'S 11.
16 CAN YOU IDENTIFY THAT?

17 A THIS WAS A PICTURE OF THE VICTIM WITH HIS HANDS TAPED
18 UP IN A PAPER BAG SO THEY CAN TEST IT FOR GUNSHOT RESIDUE.

19 Q SO THE PAPER BAG ON THE VICTIM'S HANDS, THAT'S SO
20 THAT YOU CAN TEST HIS HANDS LATER AND THEY WON'T BE
21 CONTAMINATED?

22 A RIGHT.

23 Q YOU DON'T DO THOSE KIND OF TESTS YOURSELF THOUGH, DO
24 YOU?

25 A I DON'T.

1 Q OKAY.

2 MR. SAVERANCE: YOUR HONOR, I WOULD MOVE AT THIS TIME
3 TO ADMIT STATE'S 10, 11, 12, 14, 20 AND 21 INTO EVIDENCE.

4 THE COURT: ANY OBJECTION?

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

6 MR. WATTS: NONE, YOUR HONOR.

7 MR. JOHNSON: NONE, YOUR HONOR.

8 THE COURT: THEY'RE ADMITTED.

9 (PHOTOGRAPHS MARKED STATE'S EXHIBIT NOS. 10, 11, 12,
10 14, 20 AND 21 INTO EVIDENCE.)

11 MR. SAVERANCE: MAY I PUBLISH THEM, YOUR HONOR?

12 THE COURT: YES.

13 Q NOW WHILE YOU WERE AT THE CRIME SCENE, DID YOU AT
14 SOME POINT TAKE POSSESSION OF SOME SORT OF -- SOME TYPE OF
15 EVIDENCE THAT WAS COLLECTED THERE?

16 A I DIDN'T TAKE POSSESSION OF ANY EVIDENCE AT THE CRIME
17 SCENE. I DIDN'T TAKE POSSESSION OF THE EVIDENCE UNTIL THE
18 PATHOLOGIST WAS FINISHED WITH THE AUTOPSY.

19 Q DID YOU FOLLOW THE BODY TO THE AUTOPSY?

20 A I DID.

21 Q IS THAT COMMON PRACTICE?

22 A IT IS.

23 Q SO YOU TOOK THE BODY TO WHERE?

24 A TO NEWBERRY.

25 Q AND TO YOUR KNOWLEDGE, WAS AN AUTOPSY PERFORMED?

1 A IT WAS.

2 Q WHERE WAS THE BODY -- WHAT WAS DONE WITH MR. ROUSE'S
3 BODY AFTER THAT?

4 A IT WAS TRANSPORTED BACK HERE.

5 Q NOW IT'S MY UNDERSTANDING THAT YOU SIGNED A FORM FROM
6 WHERE THE AUTOPSY WAS PERFORMED FOR CERTAIN PERSONAL ITEMS
7 THAT CAME OFF THE VICTIM, IS THAT CORRECT?

8 A THAT'S CORRECT.

9 MR. SAVERANCE: YOUR HONOR, MAY I APPROACH?

10 THE COURT: YES.

11 Q IS THAT THE FORM YOU SIGNED?

12 A IT IS.

13 Q THAT MEANT YOU TOOK POSSESSION OF THOSE ITEMS?

14 A YES, SIR.

15 Q TELL US JUST BRIEFLY, WHAT'S LAID OUT ON THAT PAPER.

16 A THIS JUST GIVES A LISTING OF THE VICTIM'S CLOTHING,
17 ANY ITEMS HE MIGHT HAVE HAD ON HIS PERSON. ANY PERSONAL
18 ITEMS THAT WERE WITH THE BODY THAT MIGHT HAVE -- ANY, ALL
19 OF THE ITEMS LISTED HERE IS HIS CLOTHING AND PERSONAL
20 ITEMS.

21 Q AT SOME POINT, DID YOU HAVE POSSESSION OF SOME
22 BULLETS OR SHELL CASINGS?

23 A YES.

24 Q WHICH ONES?

25 A THE SHELL CASINGS, ROUNDS THAT WERE TAKEN FROM THE

1 VICTIM'S BODY.

2 Q THAT WOULD HAVE BEEN THE BULLETS?

3 A IT WAS.

4 Q SO AT THE AUTOPSY THE DOCTOR TAKES THE BULLETS OUT,
5 AND YOU'RE THE ONE THAT BROUGHT THE BULLETS FROM THE
6 DOCTOR.

7 A YES, SIR.

8 Q WHERE DID YOU TAKE THEM TO?

9 A TO SLED.

10 Q TO BE TESTED?

11 A TO BE TESTED.

12 Q DID YOU HAVE ANYTHING ELSE TO DO WITH THEM?

13 A NO.

14 Q AND AS FAR AS SHELL CASINGS, YOU NEVER HAD POSSESSION
15 OF THOSE.

16 A NO.

17 MR. SAVERANCE: MARK THAT FOR IDENTIFICATION, PLEASE.
18 YOUR HONOR, THIS IS STATE'S EXHIBIT NO. 22 FOR
19 IDENTIFICATION.

20 (EVIDENCE FORM & BAG MARKED STATE'S EXHIBIT NO. 22
21 FOR ID ONLY.)

22 Q IF YOU CAN JUST LOOK AT THAT BAG AND JUST TELL ME IF
23 THOSE APPEAR TO BE THE BULLETS YOU TOOK FROM THE AUTOPSY
24 TO SLED.

25 A IT APPEARS THAT IT IS.

1 Q DO YOU HAVE ANY MARKINGS FOR IT OR ANYTHING?

2 A ALL OF THEM ARE LABELED. THEY ARE LABELED.

3 Q OKAY. IF YOU LOOK AT THEM, CAN YOU TELL THAT THOSE
4 ARE THE ONES YOU TOOK TO SLED?

5 A IT WOULD BE NO WAY FOR ME TO TELL SPECIFICALLY THAT
6 THESE ARE THE ONES. ONLY THAT THEY'RE MARKED. THIS LOOKS
7 LIKE THE ROUNDS THAT WERE TAKEN FROM THE BODY.

8 MR. SAVERANCE: CAN I APPROACH, YOUR HONOR?

9 THE COURT: YES.

10 Q I WILL GIVE THOSE BACK THOSE BACK TO YOU. NOW I AM
11 GOING TO SHOW YOU TWO BAGS LABELED, STATE'S 3 AND 4 WITH
12 MR. ROUSE'S NAME ON IT. I JUST WANT YOU TO LOOK IN THERE
13 AND TELL ME IF THAT APPEARS TO BE THE PERSONAL EFFECTS
14 THAT YOU TOOK FROM THE AUTOPSY.

15 A YES, THESE ARE THE SHOES AND HIS UNDERWEAR. YES,
16 THESE ARE ITEMS. THESE ARE THE CLOTHES HE HAD ON.

17 MR. SAVERANCE: YOUR HONOR, I WOULD MOVE TO HAVE THIS
18 FORM, CHAIN OF CUSTODY FORM SIGNED BY THE WITNESS AS SHE
19 TESTIFIED AND AUTHENTICATED, MOVED INTO EVIDENCE.

20 THE COURT: ANY OBJECTION?

21 MR. WHEELER: I DON'T HAVE ANY OBJECTION, YOUR HONOR.

22 MR. WATTS: NO OBJECTION.

23 THE COURT: ANY OBJECTION, MR. JOHNSON?

24 MR. JOHNSON: NO OBJECTION, YOUR HONOR.

25 THE COURT: ADMITTED WITHOUT OBJECTION.

1 (CHAIN OF CUSTODY FORM MARKED STATE'S EXHIBIT NO. 2
2 INTO EVIDENCE.)

3 Q IF I CAN APPROACH, YOUR HONOR, I WILL MOVE THESE
4 ITEMS OUT OF THE WAY. ONE SECOND, YOUR HONOR. I THINK
5 THAT'S ALL I HAVE. WAS THAT THE EXTENT OF YOUR
6 INVOLVEMENT IN INVESTIGATING THIS CASE?

7 A BESIDES BEING A WITNESS TO SOME OF THE STATEMENTS,
8 THAT'S THE EXTENT.

9 Q WERE THERE OTHER OFFICERS THAT WERE THERE WHEN THE
10 STATEMENTS WERE---

11 A THERE WERE.

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

13 MR. SMITH: YOUR HONOR, MAY WE GET THE PHOTOGRAPHS
14 FROM THE WITNESS?

15 THE COURT: YES.

16 MR. SMITH: THANK YOU, YOUR HONOR.

17 THE COURT: MR. WHEELER.

18 CROSS EXAMINATION BY MR. WHEELER:

19 Q OFFICER WILSON, WHAT IS YOUR RANK AGAIN IN THE POLICE
20 DEPARTMENT?

21 A MY RANK IS CORPORAL.

22 Q NOW THIS IS A BISHOPVILLE CITY POLICE DEPARTMENT
23 CASE, IS IT NOT?

24 A YES.

25 Q ULTIMATELY, WHO IS RESPONSIBLE FOR CARRYING OUT ANY

1 MAINTAINING THE INVESTIGATION IN THIS CASE?

2 A THE LEAD INVESTIGATOR.

3 Q AND WHO IS THE LEAD INVESTIGATOR IN THIS CASE?

4 A IN THIS CASE WAS CAPTAIN BURKE AND THOMPSON. AND
5 CAPTAIN THOMPSON.

6 Q THEY ARE THE LEAD INVESTIGATIVE TEAM ON THIS CASE?

7 A THEY ARE.

8 Q NOW SLED ASSISTED YOU IN DEVELOPING THIS CASE AND IN
9 DOING YOUR WORK. BUT IT'S ULTIMATELY THE CITIES CASE, IS
10 THAT A FAIR STATEMENT.

11 A IT IS.

12 Q NOW THE PICTURES THAT YOU IDENTIFIED EARLIER, WERE
13 ALL OF THOSE TAKEN BY SLED?

14 A THEY WERE.

15 Q AND ONCE THEY WERE DEVELOPED AND WHAT NOT, WERE THEY
16 RETURNED TO THE POLICE DEPARTMENT FOR Y'ALL TO KEEP THEM?
17 OR WHERE WERE THEY BEFORE TODAY?

18 A IN EVIDENCE.

19 Q IN EVIDENCE WHERE?

20 A IN THE LOCKER AT THE POLICE DEPARTMENT.

21 Q SO THEY WERE RETURNED TO THE POLICE DEPARTMENT THEN.

22 A UH-HUH. (AFFIRMATIVE..)

23 Q NOW YOU WERE FAMILIAR WITH THE SCENE EVEN THOUGH YOU
24 DIDN'T TAKE THE PHOTOGRAPHS IS THAT---

25 A I WAS.

1 Q ---I WAS. NOW IN CONNECTION WITH YOUR WORK IN THIS
2 INVESTIGATION, HAVE YOU COMPLETED ANY INVENTORY OF
3 EVIDENCE OTHER THAN WHAT'S BEEN SUBMITTED AS STATE'S
4 EXHIBIT 23?

5 A CAN YOU REPEAT THE QUESTION?

6 Q HAVE YOU COMPLETED ANY OTHER INVENTORY OF EVIDENCE
7 OTHER THAN WHAT HAS BEEN SUBMITTED ON STATE'S EXHIBIT NO.
8 23?

9 A NO.

10 Q IN YOUR CAPACITY WITH THE POLICE DEPARTMENT, WERE YOU
11 AWARE OF ANY OTHER INVENTORY OF EVIDENCE MAINTAINED IN
12 CONNECTION WITH THIS CASE?

13 A OTHER THAN WHAT'S ON THIS SHEET?

14 Q OTHER THAN WHAT'S ON THIS SHEET.

15 A IS THERE ANY OTHER EVIDENCE?

16 Q ANY OTHER INVENTORY OF EVIDENCE?

17 A NO.

18 Q IS THAT A COMMON PRACTICE TO INVENTORY AND KEEP TRACK
19 OF THE EVIDENCE THAT YOU RETRIEVE FROM A CRIME SCENE?

20 A IT IS.

21 Q INVESTIGATOR, I AM GOING TO SHOW YOU WHAT HAS BEEN
22 MARKED AS DEFENDANT'S, FOR IDENTIFICATION PURPOSES,
23 DEFENDANT'S, 1, 6, AND 4. DO YOU RECOGNIZE THOSE AS BEING
24 PHOTOGRAPHS TAKEN BY SLED AT THE SCENE OF THIS INCIDENT?

25 A I DO.

1 Q OKAY. AND ARE THEY AN ACCURATE DEPICTION OF THE WAY
2 THE THINGS THEN EXISTED AT THE TIME YOU ARRIVED UPON THE
3 SCENE AND IT WAS PHOTOGRAPHED?

4 A NO. THIS IS NOT HOW THE SCENE WAS WHEN I ARRIVED.
5 THESE ARE ITEMS THAT WERE PULLED FROM THE VICTIM'S
6 POCKETS. SO THEY LOOKED LIKE THIS ONCE I RESPONDED.

7 Q BUT THOSE THINGS WERE TAKEN FROM THE VICTIM'S
8 POCKETS.

9 A YES.

10 Q BUT THEY ARE AN ACCURATE DEPICTION OF THE THINGS
11 TAKEN FROM HIS POCKET. IS THAT FAIR TO SAY? AS THEY
12 WERE PHOTOGRAPHED.

13 A AS THEY WERE PHOTOGRAPHED.

14 MR. WHEELER: YOUR HONOR, I WOULD LIKE TO PUBLISH
15 THESE TO THE JURY. CAN I PUBLISH THEM TO THE JURY?

16 THE COURT: ARE THEY IN EVIDENCE?

17 MR. WHEELER: NO, SIR.

18 THE COURT: NO, SIR.

19 Q WE CAN JUST GO OVER. TELL ME WHAT AMOUNT OF MONEY
20 YOU SEE IN THAT PICTURE. JUST ROUGHLY.

21 A ABOUT \$23 AND SOME CHANGE.

22 Q IS THERE A CELL PHONE IN THAT PICTURE?

23 A THERE IS.

24 Q IS THERE A CIGARETTE LIGHTER IN THAT PICTURE?

25 A THERE IS.

1 Q IS THERE A SET OF CAR KEYS IN THAT PICTURE?

2 A THERE ARE A SET OF KEYS.

3 Q YEAH. IT SHOULD SAY CAR KEYS.

4 A I DON'T KNOW IF THEY ARE CAR KEYS, BUT THEY ARE A SET
5 OF KEYS.

6 Q IS THAT THE SAME CASH AND ANOTHER SET OF KEYS? OR IS
7 THAT A DIFFERENT?

8 A FROM THE PICTURES IT APPEARS THAT THIS IS A DIFFERENT
9 SET OF KEYS THAN THAT'S HERE. THIS SET OF KEYS IS KIND OF
10 COVERED UP BY THE MONEY, SO I CAN'T TELL WHETHER IT'S THE
11 SAME SET OR NOT.

12 Q AND THIS LAST PHOTOGRAPH IS A PILL BOTTLE, IS IT NOT?

13 A IT IS.

14 Q AND WHAT WAS BELIEVED TO BE THE CONTENTS OF THE PILL
15 BOTTLE?

16 A I DON'T KNOW THE CONTENTS OF THE PILL BOTTLE.

17 Q DO YOU KNOW IF ANYONE IN YOUR AGENCY FORMED A BELIEF
18 OR AN OPINION AS TO THE CONTENTS OF THE PILL BOTTLE?

19 A THEY MAY HAVE.

20 Q DO YOU KNOW ABOUT IT?

21 A NO, SIR.

22 Q NOW HAVING GONE OVER THE CONTENTS OF THE THINGS
23 REMOVED FROM THIS GENTLEMAN'S POCKETS---

24 A UH-HUH. (AFFIRMATIVE.)

25 Q ---IS THE \$23 AND CHANGE LISTED ON THE INVENTORY OF

1 EVIDENCE?

2 A NO, SIR.

3 Q IS THE CELL PHONE LISTED ON YOUR INVENTORY OF
4 EVIDENCE?

5 A NO.

6 Q IS THE PILL BOTTLE LISTED ON THE INVENTORY OF
7 EVIDENCE?

8 A NO, IT IS NOT.

9 Q AND AGAIN, TO YOUR KNOWLEDGE, THERE IS NO OTHER
10 INVENTORY MAINTAINED BY YOUR DEPARTMENT IN THIS CASE.

11 A NO OTHER INVENTORY THAT I SIGNED FOR.

12 Q IS THERE ANOTHER ONE THAT YOU ARE AWARE OF?

13 A I DON'T KNOW.

14 Q IF YOU DON'T KNOW, ARE YOU AWARE OF IT?

15 A I DON'T KNOW OF ANY OTHER INVENTORY.

16 Q OKAY.

17 A I CAN ONLY TELL YOU WHAT WAS ON HIS PERSON WHEN HE
18 WENT TO NEWBERRY FOR THE AUTOPSY.

19 Q SO YOU DIDN'T ACCOUNT FROM ANY OTHER EVIDENCE THAT
20 WAS PHOTOGRAPHED AT THE CRIME SCENE.

21 A SAY THAT AGAIN.

22 Q YOU DIDN'T INVENTORY ANY OTHER EVIDENCE THAT WAS
23 RECOVERED OR PHOTOGRAPHED AT THE SCENE.

24 A NO.

25 Q NOW WERE YOU AND YOUR -- WHO WAS YOUR PARTNER, BY THE

1 WAY?

2 A THAT NIGHT IT WAS PATROLMAN WOODHAM.

3 Q WERE Y'ALL TO YOUR KNOWLEDGE, THE FIRST OFFICERS TO
4 ARRIVE ON THE SCENE?

5 A WE WERE.

6 Q DID Y'ALL CORDON THE SCENE OFF BEFORE ANYBODY ELSE
7 ARRIVED? POLICE OFFICERS, AT ANY RATE?

8 A WE DID.

9 Q NOW DO YOU BELIEVE THAT YOU AND OR OFFICER WOODHAM
10 WERE THE FIRST ONES TO APPROACH MR. ROUSE'S BODY?

11 A I DON'T THINK SO, NO.

12 Q OKAY. THE FIRST POLICE OFFICERS, I---

13 A YES.

14 Q ---SHOULD SAY. Y'ALL WERE THERE BEFORE EMS.

15 A WE WERE.

16 Q NOW DID YOU NOTICE AN ODOR OF ALCOHOL ABOUT HIS BODY
17 OR PERSON?

18 A DID I NOTICE AN ODOR---

19 Q AN ODOR OF ALCOHOL ABOUT HIS PERSON OR BODY?

20 A I DIDN'T, NO.

21 Q YOU DID NOT.

22 A I DID NOT.

23 Q NOW WAS IT YOUR DECISION, OR WHOSE DECISION WAS IT TO
24 BAG HIS HANDS, AS WAS REFLECTED IN ONE OF THE PICTURES WE
25 LOOKED AT?

1 A IT WASN'T MY DECISION.

2 Q OKAY. DID YOU ASSIST IN DOING THAT?

3 A I DID NOT.

4 Q NOW YOU'RE AN INVESTIGATOR WITH THE DEPARTMENT,
5 HOWEVER.

6 A YES, SIR.

7 Q AND THERE'S A REASON THAT Y'ALL BAG SOMEBODY'S HANDS,
8 ISN'T THERE?

9 A YES, SIR.

10 Q TO DETERMINE IF THERE IS GUNSHOT RESIDUE ON THEIR
11 HANDS?

12 A RIGHT.

13 Q AND THAT'S IMPORTANT, IS IT NOT?

14 A IT IS.

15 Q WOULD THE FACT THAT SOMEONE HAD GUNSHOT RESIDUE ON
16 THEIR HANDS INDICATE AT LEAST, A CLOSENESS IN PROXIMITY TO
17 THE PERSON THAT SHOT THEM AND WHETHER THEY MAY HAVE
18 DISCHARGED A WEAPON?

19 A THAT'S CORRECT.

20 Q SO IT IS TELLING, IS IT NOT, IF HE HAS GUNSHOT
21 RESIDUE ON HIS HANDS.

22 A IT CAN BE.

23 Q NOW I SHOW YOU WHAT HAS BEEN MARKED FOR
24 IDENTIFICATION AS DEFENDANT'S EXHIBIT NO. 5. DOES THAT
25 APPEAR TO YOU TO BE AN ACCURATE DEPICTION OF WHAT THAT

1 BOOT LOOKED LIKE RELATIVE TO WHERE THE BODY WAS?

2 A THAT'S ACCURATE.

3 Q OKAY. AND THERE WAS A BOOT SOME DISTANCE FROM THE
4 BODY, IS THAT FAIR TO SAY?

5 A YES.

6 Q WOULD YOU CARE TO MAKE AN ESTIMATE OF HOW FAR THAT
7 BOOT IS FROM THE BODY, IF YOU DON'T RECALL SPECIFICALLY?

8 A IT APPEARS THAT THE BOOT IS PROBABLY ABOUT 12 TO 15
9 FEET FROM THE BODY.

10 Q BY YOUR ESTIMATION.

11 A FROM MY ESTIMATION.

12 Q DO YOU KNOW IF ANYBODY TOOK ANY MEASUREMENTS OF WHERE
13 THAT BOOT WAS IN RELATION TO THE BODY?

14 A I DIDN'T.

15 Q NOW, YOU DON'T KNOW ANYTHING ABOUT WHAT HAPPENED
16 BEFORE Y'ALL RECEIVED A CALL THAT SHOTS HAD BEEN FIRED, DO
17 YOU?

18 A I DON'T.

19 Q ALL YOU KNOW IS WHAT YOU WITNESSED WHEN YOU CAME AND
20 CORDONED OFF THE SCENE. IS THAT FAIR TO SAY?

21 A THAT'S CORRECT.

22 Q BUT YOU DO KNOW THAT NONE OF THIS CASH, OR THIS CELL
23 PHONE, OR ANY APPARENT VALUABLES WERE TAKEN FROM THE
24 SCENE. BECAUSE THEY WERE STILL THERE WHEN YOU GOT THERE.
25 IS THAT FAIR TO SAY?

1 A RIGHT.

2 Q AND YOU DO KNOW THAT WHATEVER WAS IN THIS VILE WAS
3 NOT TAKEN FROM THE SCENE, IS THAT CORRECT?

4 A I KNOW THAT IT WASN'T ON HIS PERSON AT THE AUTOPSY.

5 Q YOU FOUND THIS AND SOMEBODY PHOTOGRAPHED IT AT THE
6 SCENE, CORRECT?

7 A I DIDN'T FIND IT.

8 Q OKAY.

9 A SOMEBODY PHOTOGRAPHED IT.

10 Q ARE YOU FAMILIAR WITH IT AT ALL?

11 A I WASN'T THERE WHEN THE PICTURE WAS TAKEN BY SLED.

12 Q OKAY.

13 A I WASN'T RIGHT NEXT TO THEM.

14 Q I'LL TALK TO THEM ABOUT THAT PICTURE THEN. SO
15 NOTHING YOU WITNESSED AT THE SCENE WOULD SAY THAT A
16 STRUGGLE DID NOT OCCUR.

17 A FROM WHAT I WITNESSED ON THE SCENE, I COULD SAY THAT
18 A STRUGGLE TOOK PLACE.

19 Q YOU SAY THAT IT DID.

20 A IT APPEARED THAT A STRUGGLE TOOK PLACE.

21 Q OKAY.

22 A HE WAS NOT IN HIS SHOES.

23 Q OKAY. SO IT WOULD BE APPARENT THEN THAT A STRUGGLE
24 HAD TAKEN PLACE.

25 A POSSIBLY.

1 MR. WHEELER: I THINK THAT'S ALL I HAVE. LET ME
2 CHECK MY NOTES. THANK YOU. THAT'S ALL I HAVE.

3 CROSS EXAMINATION BY MR. WATTS:

4 Q MS. WILSON, GOOD AFTERNOON.

5 A GOOD AFTERNOON.

6 Q I KNOW YOU HAVE LOOKED AT IT ALREADY. YOU'VE
7 IDENTIFIED THIS AS STATE'S EXHIBIT 14. WHAT DOES THAT
8 SHOW?

9 A THE BUILDING BEHIND WHERE THE BODY WAS FOUND.

10 Q THE BUILDING BEHIND WHERE THE BODY WAS FOUND, IS THAT
11 CORRECT?

12 A THAT'S CORRECT.

13 MR. WATTS: YOUR HONOR, CAN I ASK THE WITNESS TO STEP
14 DOWN PLEASE?

15 THE COURT: YES.

16 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
17 STAND.)

18 Q IN RELATION TO THIS GRAPH THAT HAS---

19 A UH-HUH. (AFFIRMATIVE.)

20 Q ---BEEN ADMITTED AS STATE'S EXHIBIT 1, I BELIEVE.

21 A UH-HUH. (AFFIRMATIVE.)

22 Q DOES THIS SQUARE, DOES THAT REPRESENT THAT SAME
23 BUILDING IDENTIFIED IN 14?

24 A THAT WOULD BE THAT BUILDING, YES.

25 Q ON, IN THE PICTURE, STATE'S 14, IS THAT BUILDING, ()

1 THE SHED ATTACHMENT BESIDE IT, IS THAT AWAY FROM THE
2 BUILDING OR IS IT CONNECTED TO THE BUILDING?

3 A THIS?

4 Q ON THE RIGHT HAND SIDE IN RELATION TO THAT PICTURE.

5 A WHAT EXACTLY ARE YOU TALKING ABOUT?

6 Q OKAY. THIS BUILDING IS THE STORE, IS THAT CORRECT?

7 A RIGHT.

8 Q ON THE RIGHT HAND SIDE OF IT THERE IS SOME ATTACHMENT
9 OR SHED, IS THAT CORRECT? ON THE LEFT SIDE OF THE
10 BUILDING.

11 A RIGHT.

12 Q OKAY.

13 A UH-HUH. (AFFIRMATIVE.)

14 Q THIS SQUARE ON THIS GRAPH REPRESENTS THIS STORE, IS
15 THAT CORRECT?

16 A THAT'S CORRECT.

17 Q THIS BUILDING TO THE LEFT OF IT---

18 A UH-HUH. (AFFIRMATIVE.)

19 Q ---WHEN YOU'RE FACING THE BUILDING.

20 A UH-HUH. (AFFIRMATIVE.)

21 Q THE STRUCTURE ON THE LEFT IS IT SITTING AWAY FROM THE
22 BUILDING OR IS IT ATTACHED?

23 A IN THIS PICTURE IT IS ATTACHED.

24 Q OKAY. SO IN ACTUALITY, THIS ATTACHMENT IS NOT
25 PROPERLY IDENTIFIED HERE, IT SHOULD BE CONNECTED TO THE

1 BUILDING. THAT WOULD BE CORRECT?

2 A IF THAT'S WHAT THIS IS SUPPOSED TO BE.

3 Q DID YOU SEE ANY OTHER SHED IN THIS AREA, OR ANY OTHER
4 BUILDING OR STRUCTURE IN THAT AREA THE NIGHT YOU WENT TO
5 THE SCENE, THAT WOULD INDICATE BEING A SEPARATE BUILDING?

6 A NO, THIS INDICATES WHAT I SAW AT THE SCENE.

7 Q OKAY. AND THIS IS A VIEW OF THE BUILDING FROM THE
8 ROAD?

9 A FROM WILSON STREET.

10 Q FROM WILSON STREET. OKAY. SO IN APPROXIMATION OF
11 THIS ANGLE, THIS PICTURE, WOULD YOU BE TO THE LEFT OR THE
12 RIGHT OF THE BUILDING?

13 A IT DEPENDS.

14 Q OKAY.

15 A IF I'M----

16 Q THIS PICTURE WAS TAKEN OF AN ANGLE ON THE LEFT OR THE
17 RIGHT OF THE BUILDING.

18 A RIGHT. THIS PICTURE WAS TAKEN FROM THE LEFT.

19 Q OKAY. SO THIS PICTURE, AND THIS REPRESENTATION, THE
20 PICTURE IS BEING PHOTOGRAPHED FROM OVER HERE.

21 A RIGHT.

22 Q CORRECT?

23 A RIGHT.

24 Q TO THE LEFT OF THE BUILDING. AND TO YOUR KNOWLEDGE,
25 WHAT YOU REMEMBER ABOUT THE SCENE, THERE WAS NO OTHER

1 SEPARATE BUILDING IN THIS AREA NEXT TO THIS STORE.

2 A NOT THAT I CAN REMEMBER.

3 Q OKAY. DO YOU BELIEVE THIS IS AN ACCURATE
4 REPRESENTATION OF THE BUILDING THAT WAS IDENTIFIED BY THIS
5 GRAPH AS THE STORE?

6 A I BELIEVE THIS IS AN ACCURATE REPRESENTATION OF THE
7 STORE.

8 Q OKAY. SO YOU BELIEVE THIS IS INACCURATE?

9 A THIS WOULD BE WITH THIS BUILDING RIGHT HERE.

10 Q OKAY.

11 A I CAN'T SPECULATE, BECAUSE I DON'T KNOW WHAT THAT'S
12 SUPPOSED TO BE.

13 Q IF IT'S SUPPOSED TO BE THE ATTACHMENT TO THE STORE,
14 IS IT IN THE RIGHT PLACE OR THE WRONG PLACE?

15 A NO.

16 MR. SAVERANCE: YOUR HONOR, I WOULD OBJECT. SHE
17 STATED THAT THAT PICTURE WAS AN ACCURATE DESCRIPTION OF
18 THAT BUILDING, WHAT SHE SAW. THAT'S THE THIRD TIME, SHE
19 WASN'T AWARE OF IT BEING THERE. HE WANTED HER TO CALL IT
20 SOMETHING, SHE DOESN'T KNOW WHAT IT IS.

21 THE COURT: THE BASIS OF YOUR OBJECTION IS WHAT?

22 MR. SAVERANCE: THAT SHE HAS ALREADY ANSWERED THAT.

23 THE COURT: OBJECTION IS OVERRULED.

24 Q AGAIN, IS THERE ANY OTHER BUILDING UP HERE, THAT YOU
25 RECALL?

1 A THERE IS NO OTHER BUILDING.

2 Q OKAY.

3 A THIS SQUARE REPRESENTS THIS BUILDING.

4 Q AND THIS SQUARE, SLIDE OVER A LITTLE BIT.

5 A OKAY.

6 Q THIS BUILDING AND THIS PICTURE, THE DRAWING IN THIS

7 GRAPH---

8 A UH-HUH. (AFFIRMATIVE.)

9 Q ---ADMITTED AS STATE'S EVIDENCE, IS INACCURATE. AS

10 FAR AS THE ATTACHED BUILDING AND LOCATION.

11 A THIS IS NOT AN ATTACHED BUILDING.

12 Q IS THERE IS A SPACE BETWEEN THIS BUILDING AND THIS

13 STRUCTURE?

14 A NO.

15 Q IT'S ATTACHED TO THAT STRUCTURE.

16 A THIS IS NOT A BUILDING. THIS SQUARE REPRESENTS THIS

17 BUILDING.

18 Q OKAY. IF THIS SQUARE REPRESENTS THIS BUILDING---

19 A UH-HUH. (AFFIRMATIVE.)

20 Q ---WOULD IT BE MORE ACCURATE TO HAVE AN OUTCROPPING

21 OR A JUTTING OF A STRUCTURE TO THE SIDE OF IT?

22 A IT WOULD BE.

23 Q THANK YOU. YOU TESTIFIED THAT YOU TOOK THE BODY TO

24 NEWBERRY?

25 A I ESCORTED IT.

1 Q YOU ESCORTED IT? DID ANYBODY GO WITH YOU?

2 A UH-HUH. (AFFIRMATIVE.)

3 Q WHAT KIND OF VEHICLE WAS USED?

4 A TO TRANSPORT THE BODY?

5 Q YES, MA'AM.

6 A EMS TRANSPORTED THE BODY IN AN AMBULANCE.

7 Q DID YOU SIT IN THE BACK?

8 A I DIDN'T SIT IN THE VEHICLE.

9 Q YOU WERE IN A SEPARATE VEHICLE?

10 A CORRECT.

11 Q OKAY. YOU WERE IN A LEAD VEHICLE ESCORTING THE BODY?

12 A THE AMBULANCE WAS THE LEAD VEHICLE. I WAS FOLLOWING
13 THE AMBULANCE.

14 Q OKAY. CAN YOU IDENTIFY FROM PICTURES AND YOUR
15 RECOLLECTION OF THE SCENE, WHERE THE BODY WAS LOCATED WHEN
16 YOU CAME ON THE SCENE IN RELATION TO THIS GRAPH? I'M
17 SORRY, YOUR HONOR, MAY I ASK HER TO COME DOWN ONE MORE
18 TIME? I APOLOGIZE.

19 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
20 STAND.)

21 A WHEN I ARRIVED, I WAS COMING FROM CEDAR LANE. AS I
22 TURNED THE CORNER, I SAW THE BODY LAYING IN THE STREET ON
23 WILSON STREET.

24 Q OKAY. CAN YOU PUT YOUR FINGER WHERE YOU BELIEVE THE
25 BODY WAS TO YOUR RECOLLECTION.

1 A (WITNESS INDICATING.) I WOULD SAY RIGHT HERE.

2 Q RIGHT AROUND IN THIS AREA?

3 A RIGHT IN THIS AREA. NOT TO SCALE, BUT IT WAS RIGHT
4 IN THIS AREA.

5 Q WAS IT CLOSER TO RAY HERE WHERE YOU INDICATED, OR WAS
6 IT OVER IN THIS AREA? I MEAN, WHERE WAS THE BODY?

7 A IT WAS IN THIS AREA, CLOSER TO RAY STREET. YES.

8 Q OKAY. DO YOU RECALL WHERE THE BOOT WAS?

9 A THE BOOT WAS OVER HERE.

10 Q DO YOU RECALL WHERE THE SHELL CASINGS WERE?

11 A THE SHELL CASINGS WERE AROUND THE BODY IN THIS AREA
12 HERE. THE SHELL CASINGS WAS IN THIS AREA NOT TOO FAR FROM
13 THE BOOT.

14 Q THANK YOU.

15 (THEREUPON, THE WITNESS RESUMES THE WITNESS STAND.)

16 Q DID YOU HAVE ANY OTHER DUTIES IN RELATION TO THIS
17 CASE AFTER YOU ESCORTED THE BODY TO NEWBERRY?

18 A NO.

19 Q THAT WAS THE LAST TIME YOU HAD ANY CONTACT WITH THIS
20 CASE?

21 A NO. AS I SAID BEFORE, I WAS IN THE ROOM WHEN SOME OF
22 THE DEFENDANTS WERE BEING INTERVIEWED.

23 Q SO YOU WERE PRESENT FOR SOME WITNESS STATEMENTS OR
24 SOME INTERVIEWS AND THAT SORT OF THING.

25 A UH-HUH. (AFFIRMATIVE.)

1 Q DID YOU EVER HAVE ANY INVOLVEMENT IN TAKING EVIDENCE
2 FROM THE AUTOPSY TO SLED?

3 A I DID.

4 Q WAS THAT THE SAME NIGHT OF THE AUTOPSY?

5 A YES, IMMEDIATELY AFTER.

6 Q SO YOU ESCORTED THE BODY TO NEWBERRY AND THEN YOU
7 STAYED THERE?

8 A THE WHOLE TIME, YES.

9 Q AND THEN YOU RETRIEVED THAT AND BROUGHT THAT BACK?

10 A TO SLED.

11 Q OKAY, YOU BROUGHT THE ARTICLES. SOME KIND OF
12 EVIDENCE, YOU TOOK IT STRAIGHT TO SLED.

13 A YES, SIR.

14 Q DO YOU KNOW THE RESULTS OF ANY GUNSHOT RESIDUE TEST?

15 A I DON'T.

16 Q YOU DON'T RECALL SEEING THE BOTTLE, PILL BOTTLE, AT
17 ANY TIME?

18 A DO I RECALL SEEING IT?

19 Q AT THE SCENE, DO YOU RECALL?

20 A AT THE SCENE? I CAN'T SAY I SAW IT AT THE SCENE.

21 Q HOW LONG WERE YOU THERE BEFORE SLED ARRIVED?

22 A WE WERE THERE MAYBE ABOUT 45 MINUTES.

23 Q WHEN SLED ARRIVED, DID YOU MOVE TO THE PARAMETER OF
24 THE SCENE, OR DID YOU STILL REMAIN IN CLOSE PROXIMITY TO
25 THE SLED OFFICERS?

1 A I WASN'T IN FULL PROXIMITY.

2 Q DID YOU BASICALLY, WERE YOU AT THE PARAMETER OF THE
3 SCENE?

4 A I WAS.

5 Q DID YOU STAY IN CLOSE PROXIMITY WHEN EMS ARRIVED?

6 A YES.

7 Q AND WHAT TIME DID YOU MOVE?

8 A WHEN SLED ARRIVED.

9 Q SO IN 45 MINUTES YOU WERE NEAR BY AND CLOSELY
10 INVOLVED?

11 A YES.

12 Q YOU TESTIFIED EARLIER YOU WENT DOWN AND YOU TRIED TO
13 INSPECT THE DECEDENT?

14 A I DID.

15 Q YOU HAD TRIED TO COME DOWN AND YOU GOT CLOSE TO THE
16 DECEDENT.

17 A I DID.

18 Q AND IN THAT TIME, WHAT DID YOU DO OTHER THAN JUST
19 EXAMINE HIM?

20 A I DIDN'T EXAMINE HIM.

21 Q YOU DIDN'T DO ANYTHING, YOU JUST LOOKED?

22 A I KNEELED DOWN. I LOOKED. EMS WAS APPROACHING.

23 Q OKAY.

24 A SO I BACKED OFF AND LET THEM...

25 Q SO EMS WAS APPROACHING AT THE SAME TIME YOU WERE

1 KNEELING DOWN TO LOOK?

2 A NO. BUT I HEARD THEM COMING, SO I BACKED OFF.

3 Q OKAY. HOW CLOSE DID YOU GET TO THE BODY WHEN YOU
4 LEANED OVER?

5 A CLOSE ENOUGH. I WAS -- I KNEELED DOWN NEXT TO THE
6 BODY.

7 Q OKAY. DID YOU KNEEL DOWN ON THE KNEE? DID YOU BEND
8 AT THE WAIST?

9 A NO, I DIDN'T. I JUST BENT DOWN.

10 Q OKAY. DO YOU RECALL HOW MANY INCHES AWAY YOU WERE
11 FROM THE BODY?

12 A I WAS CLOSE TO THE BODY.

13 MR. WATTS: NO FURTHER QUESTIONS, YOUR HONOR.

14 THE COURT: MR. JOHNSON.

15 MR. JOHNSON: I HAVE NO QUESTIONS, YOUR HONOR.

16 THE COURT: ANYTHING FURTHER, MR. SAVERANCE?

17 MR. SAVERANCE: NO, SIR, YOUR HONOR.

18 THE COURT: MR. WHEELER, ANYTHING FURTHER?

19 MR. WHEELER: NO, SIR, YOUR HONOR.

20 THE COURT: YOU MAY STEP DOWN. JURORS MAY GO TO THE
21 JURY ROOM FOR RECESS FOR ABOUT 15 MINUTES. ARE THERE ANY
22 MATTERS BEFORE WE RECESS?

23 MR. SAVERANCE: NONE FROM THE STATE, YOUR HONOR.

24 MR. WHEELER: NONE FOR THE DEFENSE.

25 THE COURT: NOW REGARDING THIS---

1 MR. WATTS: NONE, YOUR HONOR.

2 MR. JOHNSON: NOTHING, YOUR HONOR.

3 THE COURT: REGARDING THIS JACKSON DENNO ISSUE, WHEN
4 IS IT COMING UP?

5 MR. SAVERANCE: IT'S COMING UP NEXT, YOUR HONOR.
6 IT'S BASICALLY GOING TO BE TWO ISSUES. CAPTAIN BURKE IS
7 GOING TO TESTIFY THAT HE---

8 THE COURT: YOU DON'T HAVE TO TELL ME ALL ABOUT IT.
9 I JUST WANT TO KNOW.

10 MR. SAVERANCE: YOUR HONOR, CAPTAIN BURKE IS GOING TO
11 COME UP NEXT. AND THERE WAS AN ORAL STATEMENT MADE TO HIM
12 FROM ONE OF THE DEFENDANTS. AFTER HIM, INVESTIGATOR
13 THOMPSON WILL TESTIFY THAT THERE WAS A WRITTEN STATEMENT.
14 A WRITTEN STATEMENT FROM ONE OF THE DEFENDANTS.

15 THE COURT: ALL RIGHT.

16 MR. SAVERANCE: AND I BELIEVE THE STATEMENT FROM
17 CAPTAIN BURKE IS ONE OF THE DEFENDANTS, WHILE THE WRITTEN
18 ONE DEALS WITH REDACTING THE TWO THAT WERE GIVEN EARLIER.

19 THE COURT: WE'LL ADDRESS THOSE. AND AFTER A SHORT
20 BREAK BEFORE THE JURY COMES BACK IN.

21 MR. WHEELER: THANK YOU, YOUR HONOR.

22 THE COURT: WE'LL TAKE ABOUT 10 MINUTES.

23 (THEREUPON, THE COURT TAKES A SHORT RECESS.)

24 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
25 PRESENCE OF THE JURY.)

1 THE COURT: ON THE JACKSON DENNO ISSUES, CALL YOUR
2 FIRST WITNESS.

3 MR. SAVERANCE: WE WOULD CALL CAPTAIN BURKE WITH THE
4 BISHOPVILLE CITY POLICE DEPARTMENT.

5 CAPTAIN BURKE, BEING FIRST DULY
6 SWORN, TESTIFIED AS FOLLOWS:

7 THE CLERK: STATE YOUR FULL NAME.

8 A THOMAS BURKE. B-U-R-K-E.

9 DIRECT EXAMINATION BY MR. SAVERANCE:

10 Q CAPTAIN BURKE, HAVE YOU BEEN INVOLVED IN THIS
11 INVESTIGATION IN THIS CRIMINAL MATTER?

12 A I HAVE.

13 Q AT SOME POINT AND TIME, DID YOU GET SOME SORT OF
14 STATEMENT FROM EFRAIN THOMAS?

15 A I HAVE AN ORAL STATEMENT FROM HIM, I THINK, ON APRIL
16 THE 11TH.

17 MR. SAVERANCE: YOUR HONOR, I WILL MARK THIS WAIVER
18 FORM FOR IDENTIFICATION AT THIS POINT AND TIME.

19 THE COURT: ALL RIGHT.

20 (MIRANDA FORM MARKED STATE'S EXHIBIT NO. 24 FOR ID
21 ONLY.)

22 Q CAN I APPROACH, YOUR HONOR? CAN YOU TELL ME WHAT
23 THAT IS?

24 A THIS IS A MIRANDA RIGHTS ADVISEMENT FORM.

25 Q AND DID EFRAIN THOMAS SIGN THIS?

1 A YES, HE DID.

2 Q DOES THAT MEAN HE SIGNED HIS WAIVER OF RIGHTS AND
3 AGREED TO TALK TO YOU?

4 A THAT'S CORRECT. I ADVISED HIM OF HIS MIRANDA RIGHTS
5 AND HE AGREED TO WAIVE COUNSEL AND TALK TO ME AT THAT
6 TIME.

7 Q CAPTAIN BURKE, HOW LONG HAVE YOU BEEN WORKING IN THIS
8 CAPACITY AS FAR AS WITH THE POLICE DEPARTMENT, TAKING,
9 GIVING MIRANDA WARNINGS, TAKING STATEMENTS AND THAT SORT
10 OF THING?

11 A I'VE BEEN WITH THE BISHOPVILLE POLICE DEPARTMENT A
12 LITTLE OVER 9 YEARS.

13 Q DURING THAT TIME, OFF AND ON, YOU HAVE BEEN INVOLVED
14 IN TAKING STATEMENTS?

15 A THAT'S CORRECT.

16 Q IN YOUR OPINION, WAS THE STATEMENT GIVEN BY EFRAIN
17 THOMAS AT THAT DATE AND TIME, FREELY AND VOLUNTARILY DONE
18 SO?

19 A I BELIEVE SO, YES.

20 Q DID YOU THREATEN HIM OR COERCE HIM IN ANY WAY TO GIVE
21 ANY STATEMENTS?

22 A I DID NOT.

23 Q DID HE APPEAR TO BE HIGH ON DRUGS OR ALCOHOL ANYTHING
24 LIKE THAT?

25 A NO, HE DID NOT.

1 Q DID HE APPEAR TO UNDERSTAND YOUR QUESTIONS AND WHAT
2 HE HAD TO SAY?

3 A I BELIEVE HE DID.

4 Q TELL US WHAT HE -- TELL US WHAT YOU ASKED AND WHAT HE
5 SAID.

6 A SHORTLY AFTER INVESTIGATING THE MURDER, EFRAIN'S NAME
7 HAD BEEN MENTIONED SO I WENT TO HIS GRANDMOTHER'S HOUSE,
8 HIS GREAT GRANDMOTHER'S HOUSE, AND TOLD HIM I WANTED TO
9 TALK TO HIM. AND HE CAME IN TO THE POLICE DEPARTMENT ON
10 APRIL THE 11TH. AT THAT TIME I TOLD HIM I WANTED TO
11 QUESTION HIM ABOUT THE MURDER OF TROY ROUSE. BUT TO BE ON
12 THE SAFE SIDE, I WANTED TO ADVISE HIM OF HIS MIRANDA
13 RIGHTS BEFORE WE STARTED ANY QUESTIONING. I DID THAT.
14 HE WAIVED HIS RIGHTS, AND THEN I QUESTIONED HIM IN
15 REFERENCE TO THE MURDER.

16 Q WHAT DID YOU ASK HIM ABOUT THE MURDER OF TROY ROUSE?

17 A SURE. I ASKED HIM IF HE HAD ANY INVOLVEMENT WITH IT,
18 AND HE SAID HE DID NOT. I ASKED HIM IF HE COULD GIVE HIS
19 WHEREABOUTS FOR THAT EVENING. HE TOLD ME HE WAS IN CAMDEN
20 AT THE RIVER WINDS APARTMENTS.

21 THE COURT: OFFICER BURKE, THE ISSUE BEFORE THE COURT
22 IS WHETHER HE MADE A STATEMENT AND WHETHER THE STATEMENT
23 WAS FREELY AND VOLUNTARILY GIVEN. THE CONTENTS OF THE
24 STATEMENT IS NOT BEFORE THE COURT, UNLESS THERE IS SOME
25 SPECIFIC REASON I NEED TO HEAR IT.

1 MR. SAVERANCE: YOUR HONOR, IF I COULD ASK ONE
2 QUESTION THAT WOULD TAKE CARE OF THIS.

3 THE COURT: ALL RIGHT.

4 Q WAS THERE ANYBODY ELSE'S NAME MENTIONED AS FAR AS ANY
5 OTHER DEFENDANTS IN THIS STATEMENT? DID EFRAIN THOMAS
6 MENTION ANYBODY ELSE'S NAME?

7 A NO, HE DID NOT.

8 MR. SAVERANCE: THAT'S ALL, YOUR HONOR.

9 THE COURT: MR. WHEELER.

10 MR. WHEELER: THANK YOU, YOUR HONOR. MAY IT PLEASE
11 THE COURT.

12 CROSS EXAMINATION BY MR. WHEELER:

13 Q SO THE WAIVER OF RIGHTS FORM THAT HAS BEEN SUBMITTED
14 DATED APRIL THE 11TH IS FOR AN ORAL STATEMENT, IS THAT
15 CORRECT?

16 A THAT'S CORRECT.

17 Q OKAY. NOW I SEE YOU DOWN AS A WITNESS ON THAT FORM,
18 IS THAT YOUR SIGNATURE?

19 A YES, IT IS.

20 Q THERE ARE TWO SPOTS FOR WITNESSES TO SIGN. THAT DOES
21 APPEAR TO ME WERE SIGNED, IS THAT CORRECT?

22 A THAT IS CORRECT.

23 Q WHERE DID THIS CONVERSATION TAKE PLACE?

24 A IN MY OFFICE AT THE BISHOPVILLE POLICE DEPARTMENT.

25 Q AND HE HAD COME THERE VOLUNTARILY?

1 A THAT'S CORRECT.

2 Q WAS HE IN CUSTODY AT THAT TIME?

3 A NO, HE WAS NOT.

4 Q WAS HE A SUSPECT AT THAT TIME, OR JUST SOMEBODY YOU
5 WANTED TO TALK TO?

6 A WELL HE WAS SOMEONE WE WANTED TO TALK TO. HIS NAME
7 HAD BEEN MENTIONED. AND I WANTED TO TALK TO HIM AND SEE,
8 YOU KNOW, IF HE HAD ANY INVOLVEMENT THAT I KNEW OF, OR HE
9 COULD PROVIDE AN ALIBI. AND THE RIGHTS OF ADVISEMENT
10 WOULD GIVE US SOMETHING TO DISCUSS. AND BE CAREFUL AND
11 MAKE SURE I DIDN'T VIOLATE IT.

12 Q AND, YOUR HONOR, IF YOU WOULD ALLOW ME, I JUST WANTED
13 TO -- I FEEL LIKE I NEED TO ASK HIM A LITTLE ABOUT HIS
14 STATEMENT SO I WILL KNOW WHAT TO ASK HIM FROM THERE.

15 THE COURT: ALL RIGHT.

16 Q YOU WERE TO THE POINT HE HAD INDICATED THERE WAS NO
17 INVOLVEMENT, AND HE CAME TO RIVER WINDS. DID HE TELL YOU
18 ANYTHING OTHER THAN THAT? DID YOU ASK HIM ANY OTHER
19 QUESTIONS?

20 A NO. ONCE I DID THE INITIAL INTERVIEW, ONCE AGAIN, WE
21 WERE IN, YOU KNOW, THE VERY BEGINNING OF THIS
22 INVESTIGATION. HE BASICALLY TOLD ME WHERE HE WAS AND WHO
23 HE WAS WITH. AT THAT POINT, I HAD NO OTHER REASON TO HOLD
24 HIM OR DO ANYTHING ELSE WITH HIM. SO AT THAT TIME HE WAS
25 FREE TO GO. AND WE WOULD FOLLOW UP ON HIS ALIBI.

1 Q SO THE ONLY STATEMENT THAT YOU WOULD CONTEND CAME
2 FROM THAT, IS THAT HE WASN'T INVOLVED; THAT HE WAS IN
3 CAMDEN AT RIVER WINDS. IS THAT---

4 A THAT'S IT.

5 Q ---CORRECT?

6 A YES, SIR.

7 Q AND IT APPEARS THAT YOU WERE THE ONLY OFFICER OR
8 OFFICIAL INVOLVED WITH THAT ORAL STATEMENT.

9 A THAT'S CORRECT.

10 Q AND THE REMAINING JACKSON DENNO MATTERS ARE TAKEN UP
11 WITH ANOTHER OFFICER. IS THAT RIGHT, OFFICER THOMPSON?

12 A YES, SIR.

13 MR. WHEELER: THANK YOU.

14 THE COURT: MR. WATTS, ANY QUESTIONS?

15 MR. WATTS: I DON'T HAVE ANY QUESTIONS OF THIS
16 WITNESS, YOUR HONOR.

17 THE COURT: MR. JOHNSON?

18 MR. JOHNSON: YOUR HONOR, I JUST HAVE ONE.

19 CROSS EXAMINATION BY MR. JOHNSON:

20 Q WHEN WAS THIS STATEMENT TAKEN?

21 A THIS -- MY INTERVIEW BASED ON THIS WAS APRIL 11TH,
22 2005.

23 Q AND HOW MANY DAYS AFTER THE INCIDENT DID IT OCCUR
24 ABOUT 7?

25 A FOUR.

1 Q FOUR DAYS?

2 A THAT'S CORRECT.

3 Q AND AT THAT TIME, HE WAS NOT A SUSPECT?

4 A NO. HE WAS A PERSON OF INTEREST. SOMEBODY WE NEEDED
5 TO TALK TO, HIS NAME HAD BEEN MENTIONED.

6 Q OKAY. IT WAS NOT OFFICIALLY WITH THE DEPARTMENT, HE
7 WAS NOT A SUSPECT.

8 A AT THIS TIME, ON THE 11TH, NO.

9 Q OKAY. THANK YOU.

10 THE COURT: MR. SAVERANCE.

11 MR. SAVERANCE: YOUR HONOR, I DON'T HAVE ANYTHING
12 FURTHER.

13 THE COURT: ANY ADDITIONAL WITNESSES ON THIS ISSUE?

14 MR. SAVERANCE: YOUR HONOR, WE HAVE INVESTIGATOR
15 THOMPSON.

16 INVESTIGATOR THOMPSON,
17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 THE CLERK: STATE YOUR FULL NAME.

19 A DETECTIVE CHEZ-DENT THOMPSON.

20 DIRECT EXAMINATION BY MR. SAVERANCE:

21 Q INVESTIGATOR THOMPSON, HOW LONG HAVE YOU BEEN A LAW
22 ENFORCEMENT OFFICER?

23 A 10 YEARS TOTAL.

24 Q HOW ABOUT HERE IN LEE COUNTY?

25 A 15 MONTHS NARCOTICS.

1 Q DO YOU INVESTIGATE CRIMES AFTER THEY HAPPEN? IS THAT
2 PART OF WHY YOU ARE AN INVESTIGATOR? YOU JUMP IN AFTER
3 SOMETHING HAPPENS AND THEN INVESTIGATE?

4 A THAT'S CORRECT.

5 Q DOES THAT INCLUDE TALKING TO PERSONS OF INTEREST,
6 SUSPECTS, WITNESSES AND OTHER PEOPLE?

7 A THAT'S CORRECT.

8 Q IN THIS CASE DID YOU TALK TO EFRAIN THOMAS?

9 A I DID.

10 Q DO YOU KNOW WHEN THAT WAS?

11 A THAT WAS ON APRIL THE 29TH ABOUT 5 O'CLOCK.

12 Q WHERE DID THAT CONVERSATION TAKE PLACE?

13 A AT THE BISHOPVILLE POLICE DEPARTMENT INTERVIEW ROOM.

14 Q DID YOU ADVISE MR. THOMAS OF HIS RIGHTS.

15 A I DID. I ADVISED HIM OF HIS MIRANDA WARNINGS AND HE
16 ALSO SIGNED A WAIVER.

17 Q HAVE YOU DONE THAT ON NUMEROUS OCCASIONS AS PART OF
18 THE INVESTIGATION IN THE PAST?

19 A THAT'S CORRECT.

20 Q WHEN YOU SPOKE TO EFRAIN THOMAS, DID HE APPEAR TO BE
21 INTOXICATED, HIGH ON DRUGS OR ANYTHING LIKE THAT?

22 A HE DID NOT.

23 Q DID HE APPEAR TO UNDERSTAND YOUR QUESTIONS?

24 A HE DID.

25 Q DID HE SPEAK CLEARLY, AND WAS HE ABLE TO UNDERSTAND

1 WHAT YOU WERE SAYING IN YOUR OPINION?

2 A HE DID.

3 Q AND HE DID TALK TO YOU?

4 A HE DID.

5 Q DID YOU FORCE OR COERCE HIM TO SAY ANYTHING AGAINST
6 HIS WILL?

7 A I DID NOT.

8 Q NOW DID EFRAIN THOMAS NAME ANYBODY ELSE IN HIS
9 STATEMENT TO YOU?

10 A IN EFRAIN THOMAS' STATEMENT HE DID NOT NAME ANYONE
11 ELSE BY NAME.

12 Q DID HE MAKE A REFERENCE TO SOMEBODY ELSE INVOLVED IN
13 THE SHOOTING?

14 A HE DID MAKE A REFERENCE.

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

16 THE COURT: MR. WHEELER.

17 MR. WHEELER: THANK YOUR HONOR.

18 CROSS EXAMINATION BY MR. WHEELER:

19 Q INVESTIGATOR THOMPSON, ON THE 29TH OF APRIL, 2005,
20 HOW DID MR. EFRAIN THOMAS COME TO BE AT THE BISHOPVILLE
21 POLICE DEPARTMENT?

22 A HE WAS ARRESTED ON WARRANTS FOR THE MURDER OF TROY
23 ROUSE.

24 Q AND HAD YOU CONDUCTED THAT ARREST?

25 A I DID ALONG WITH CAPTAIN THOMAS BURKE AT [REDACTED]

1

2 Q WAS IT JUST THE TWO OF Y'ALL AT THAT ADDRESS THAT
3 PICKED HIM UP?

4 A WE WERE THE TWO INITIAL OFFICERS. I DO REMEMBER
5 ANOTHER UNIFORM PATROL IN THE AREA, BUT THEY DID NOT TAKE
6 PART IN THE ACTUAL ARREST.

7 Q WAS IT A DIFFICULT ARREST TO YOUR RECOLLECTION, OR
8 DID HE COME ALONG WITH YOU AT THE TIME YOU PICKED HIM UP?

9 A YOU ARE ASKING ME DURING THE ARREST?

10 Q YES, WAS IT A DIFFICULT ARREST? DID HE STRUGGLE OR
11 ANYTHING?

12 A NO, SIR. HE WAS COOPERATIVE.

13 Q HE DID WHAT YOU ASKED HIM TO DO?

14 A HE DID.

15 Q AND YOU TOOK HIM TO THE POLICE DEPARTMENT, IS THAT
16 CORRECT?

17 A THAT'S CORRECT.

18 Q NOW YOU ARE ALSO INVOLVED IN, AS SOMETIMES STATED
19 BEFORE OR SINCE THIS DATE, YOU'VE BEEN INVOLVED IN THE
20 NARCOTICS END OF THE POLICE DEPARTMENT, IS THAT CORRECT?

21 A THAT'S CORRECT.

22 Q IN CONNECTION WITH THAT DO Y'ALL TAKE AUDIO OR
23 VISUALLY, BUYS AND THINGS OF NATURE IN THE COURSE OF THE
24 INVESTIGATIONS FROM TIME TO TIME?

25 A ARE YOU REFERRING TO NARCOTICS INVESTIGATIONS?

1 Q THAT'S CORRECT.

2 A THAT'S CORRECT.

3 Q AND Y'ALL HAVE WITHIN THE DEPARTMENT EQUIPMENT TO DO
4 THAT WITH, THAT WOULD MAKE AN AUDIOTAPE. DO Y'ALL HAVE
5 EQUIPMENT THAT WOULD MAKE AN AUDIOTAPE?

6 A WITHIN OUR DEPARTMENT, SIR?

7 Q UH-HUH. (AFFIRMATIVE.)

8 A NOT IN THE CAPACITY YOU MAY BE THINKING OF, NO.

9 Q WHAT CAPACITY AM I THINKING OF?

10 A WELL I ASSUME THAT WHAT YOU ARE SAYING IS AUDIOTAPE
11 SURVEILLANCE OF VISUAL BUGS, AND SO FORTH, NO.

12 Q WHAT I AM GETTING AT IS, DO Y'ALL HAVE ANYTHING THAT
13 WOULD HAVE TAPE RECORDED THIS CONVERSATION YOU HAD WITH
14 HIM?

15 A YES, WE HAVE ACCESS TO A TAPE RECORDER.

16 Q DID YOU TAPE RECORD THE CONVERSATION YOU HAD WITH
17 HIM?

18 A YES, WE DID TAPE RECORD THE CONVERSATION.

19 Q YOU DID TAPE RECORD THIS CONVERSATION.

20 A WE DID TAPE RECORD WITH CONVERSATION.

21 Q DO YOU KNOW WHERE THAT TAPE IS?

22 A IT SHOULD BE WITH THE EVIDENCE.

23 Q IS IT AN AUDIOTAPED?

24 A IF THERE IS ANY AUDIOTAPE IT SHOULD BE WITH THE
25 EVIDENCE.

1 Q HOW ABOUT VIDEO? DID Y'ALL VIDEOTAPE IT?

2 A NO, WE DIDN'T.

3 Q NOW THIS, THE FIRST 3 OR 4 PAGES OF THIS WRITTEN
4 STATEMENT APPEARS TO BE IN A QUESTION AND ANSWER TYPE OF A
5 FORMAT. I WILL LET YOU LOOK AT THAT, IS THAT FAIR TO SAY?
6 DO YOU HAVE A COPY OF THAT?

7 A YES.

8 Q WHOSE HAND IS THAT WRITTEN IN?

9 A IT'S WRITTEN IN MY HAND, SIR.

10 Q NOW DID YOU WRITE THAT REAL TIME AS YOU WERE GOING
11 THROUGH, OR DID YOU SUMMARIZE THAT FROM A CONVERSATION
12 AFTERWARDS?

13 A NO, WE SPOKE ON THE TOPIC AT HAND. AT WHICH TIME AND
14 THE REASON FOR THAT, IT'S COMMON PRACTICE DURING ANY
15 INVESTIGATION TO GET THE BRASS TAX OF THE PARTICULAR CASE
16 AND TO AVOID UNNECESSARY TIME TAKING STATEMENTS THAT MAY
17 BE FALSE. WE SPOKE ABOUT THE CASE AT HAND, THE FACTS OF
18 IT. AT WHICH TIME HE GAVE ME STATEMENTS I KNEW TO BE
19 INCONSISTENT WITH THE FACTS OF THE CASE. AT THE TIME HE
20 RECANTED THE OLD STATEMENTS AND CHOSE TO TELL ME THE TRUTH
21 OF THE MATTER, WHAT HAPPENED. AT WHICH TIME HE ADVISED ME
22 HE WAS WILLING TO GIVE A WRITTEN STATEMENT. AND AT THAT
23 TIME A STATEMENT WAS MADE.

24 Q OKAY.

25 A AND THAT STATEMENT WAS WRITTEN IN HAND IN Q AND A

1 FORMAT, IN HIS PRESENCE.

2 Q OKAY. BUT BY THE TIME YOU WROTE THIS DOWN, WHEN YOU
3 WROTE DOWN A QUESTION YOU ALREADY KNEW WHAT ANSWER YOU
4 WERE GOING TO WRITE DOWN AFTERWARDS, IS THAT FAIR TO SAY?

5 A ACTUALLY, THAT'S INCORRECT, SIR. HE WAS ADVISED
6 BEFORE I TOOK THIS STATEMENT IN THIS FORM. I AM GOING TO
7 WRITE DOWN THE QUESTION. I AM GOING TO READ THAT QUESTION
8 TO YOU. WHAT ANSWER -- WHATEVER ANSWER THAT YOU GIVE ME,
9 IS THE WAY THAT I AM GOING TO WRITE IT. ONCE I WROTE THIS
10 DOWN, WE WENT OVER THE STATEMENT AGAIN. IF THERE IS ANY
11 CHANGE THAT NEEDS TO BE MADE, LET ME KNOW. HE GAVE ME
12 THOSE ANSWERS AS HE SAW FIT, AND THEY WERE WRITTEN DOWN AS
13 HE SAID.

14 Q SO YOU ASKED EACH QUESTION INDIVIDUALLY. DID YOU
15 THEN WRITE DOWN THE ANSWER BEFORE YOU PROCEEDED TO THE
16 NEXT QUESTION?

17 A YES.

18 Q WAS MR. -- EXCUSE ME, OFFICER COLLINS THERE FOR ALL
19 THIS? I KNOW SHE IS A WITNESS.

20 A NOT ALL OF IT. SHE WAS IN AND OUT OF THE STATEMENT.
21 SHE DID GO OVER THE STATEMENT WITH MR. EFRAIN THOMPSON.
22 ASKED HIM IF HE DID GIVE A STATEMENT OF HIS OWN FREE WILL,
23 WHICH HE DID ADVISE OFFICER COLLINS THAT HE DID. AND MS.
24 COLLINS, SUBSEQUENTLY WITNESSED THE STATEMENT ALONG WITH
25 ME.

1 Q OKAY. THE LAST PAGE 4 OF 4, WHOSE HAND IS THAT IN?

2 A THIS IS IN THE HANDWRITING OF MR. EFRAIN THOMAS.

3 Q WHAT POINT DID HE COME TO WRITE THAT? WAS IT AFTER
4 Y'ALL HAD FINISHED ALL THIS?

5 A THAT'S CORRECT.

6 Q HIS LAST QUESTION, HIS LAST ANSWER TO THE STATEMENT
7 OTHER THAN WHAT YOU HAVE TOLD ME, IS THERE ANYTHING THAT
8 YOU WISH TO ADD TO YOUR STATEMENT?

9 A HE CHOSE TO WRITE IN ADDITION BASICALLY APOLOGIZING
10 FOR THE INCIDENT.

11 Q NOW, THIS WAIVER, WAS IT SIGNED IMMEDIATELY PRIOR TO
12 THIS?

13 A EXCUSE ME, SIR?

14 Q WAS THE WAIVER SIGNED IMMEDIATELY PRIOR TO STARTING
15 THIS CONVERSATION?

16 A NO, ACTUALLY THE WAIVER ITSELF WAS SIGNED PRIOR TO
17 TALKING TO HIM AT ALL.

18 Q WAS THAT DONE AT HIS HOUSE WHEN Y'ALL ARRESTED HIM,
19 OR AT THE POLICE STATION?

20 A NO, AT THE POLICE STATION. WE BROUGHT HIM TO THE BPD
21 AT ABOUT 12 O'CLOCK IN THE AFTERNOON. AND A FORMAL
22 WRITTEN STATEMENT WAS ACTUALLY EXECUTED ABOUT 14:00 HOURS.

23 MR. WHEELER: COURT'S INDULGENCE FOR ONE MOMENT,
24 PLEASE.

25 Q NOW YOU SAID THERE IS AN AUDIOTAPE OF THAT?

1 A THERE IS AN AUDIOTAPE, YES, SIR.

2 MR. WHEELER: THANK YOU.

3 THE COURT: MR. WATTS.

4 MR. WATTS: NO QUESTIONS, YOUR HONOR.

5 THE COURT: MR. JOHNSON.

6 MR. JOHNSON: I HAVE NO QUESTIONS, YOUR HONOR.

7 THE COURT: ANYTHING FURTHER, MR. SAVERANCE?

8 MR. SAVERANCE: YOUR HONOR, THAT'S ALL I HAVE. AND I
9 DON'T BELIEVE THERE HAS BEEN ANY KIND OF MOTION OR
10 ANYTHING LIKE THAT, AS FAR AS THE STATEMENT. AS FAR AS
11 REDACTING IT WE HAVE NOT, BECAUSE HE DIDN'T MAKE IT TO
12 ANYBODY ELSE. SO THAT'S WHAT WE INTEND TO PROCEED
13 FORWARD.

14 THE COURT: YOU MAY STEP DOWN, SIR. DO YOU HAVE ANY
15 ADDITIONAL WITNESSES ON EITHER STATEMENT?

16 MR. SAVERANCE: NONE THAT WE ARE GOING TO CALL, YOUR
17 HONOR.

18 THE COURT: MR. WHEELER, ANY WITNESSES THAT YOU HAVE?

19 MR. WHEELER: NO WITNESS, YOUR HONOR.

20 THE COURT: BUT THIS IS A STATEMENT AS TO YOUR CLIENT
21 ONLY?

22 MR. WHEELER: YES, YOUR HONOR.

23 THE COURT: THESE TWO STATEMENTS?

24 MR. WHEELER: YES, YOUR HONOR.

25 THE COURT: THE ISSUE THAT EITHER OF YOU HAD

1 REGARDING THE STATEMENTS, MR. WATTS, MR. SAVERANCE?

2 MR. WATTS: YOUR HONOR, I'D MAKE A BRIEF MOTION OF
3 THIS ON THE RECORD BECAUSE IT DOES REFERENCE THE SUBJECT.
4 AND THE REFERENCES TALK ABOUT ANOTHER PERSON. THE OTHER
5 PERSON CHARGED IN THE MURDER IS MY CLIENT, MR. MCCALL,
6 SITTING RIGHT HERE. I THINK THAT IT NEEDS TO BE REDACTED
7 OR ADDRESS THAT STATEMENT WHERE IT IS NOT MAKING THOSE
8 STATEMENTS A PART OF THE INTRODUCTION OF THE EVIDENCE.
9 BECAUSE EVEN THOUGH IT'S A REFERENCE TO SOMEONE ELSE, THE
10 PARTY SITTING BESIDE THE OTHER PERSON CHARGED WITH THE
11 CRIME IS MR. MCCALL. AND THE JURY IS GOING TO MAKE THE
12 INFERENCE THAT THE PERSON WHO ADMITTED TO THE TRUTH BEING
13 REFERRED TO, MR. MCCALL.

14 THE COURT: MR. JOHNSON.

15 MR. JOHNSON: YOUR HONOR, MY ONLY OBJECTION WOULD BE
16 THAT PART OF THE STATEMENT WHERE I THINK ON THE FIRST
17 PAGE, YOUR HONOR, IT SAYS: WHAT OCCURRED ON THE EVENING
18 IN QUESTION. IT SAYS, "ME, TROY AND TWO OTHER PEOPLE WERE
19 ON OUR WAY TO PLAY POOL." I WOULD HAVE AN OBJECTION TO
20 THE TWO OTHER PEOPLE BEING INCLUDED. BUT THE STATE, MY
21 CLIENT IS NOT ACTUALLY CHARGED WITH BEING AT THE SCENE.
22 BUT I THINK HE IS CHARGED WITH ACCESSORY AFTER THE FACT.
23 AND IT MIGHT GIVE AN INFERENCE THAT MY CLIENT WAS PRESENT
24 OR SOMETHING OF THAT NATURE. AND I ASK THAT THAT BE
25 REDACTED FROM THE STATEMENT.

1 THE COURT: MR. SAVERANCE.

2 MR. SAVERANCE: YOUR HONOR, AS FAR AS THE STATE'S
3 POSITION, THE STATEMENT NAMES EFRAIN THOMAS, BASICALLY
4 NAMES HIMSELF. HE DOESN'T SAY, TWO PEOPLE WERE WITH HIM,
5 AND ONE OTHER PERSON DID SOME OF THE SHOOTING. HE DOESN'T
6 SPECIFICALLY NAME WHO THOSE PEOPLE WERE. SO I FEEL LIKE
7 IT WOULD BE PROPER TO COME IN AS IS WITHOUT THE REDACTION.
8 AND, YOU KNOW, SO THAT'S OUR POSITION. HE DIDN'T
9 SPECIFICALLY NAME EITHER OF THE OTHER TWO DEFENDANTS BY
10 NAME. HE JUST SAID, TWO OTHER PEOPLE. SO WE FEEL LIKE IT
11 IS PROPER AS IT IS.

12 THE COURT: YOU MADE THE STATEMENT -- HAVE YOU MADE
13 THE STATEMENT A PART OF THE RECORD IN THIS CASE?

14 MR. SAVERANCE: YOUR HONOR,---

15 THE COURT: HAVE YOU OFFERED THE STATEMENT AS PART OF
16 AN EXHIBIT FOR THIS HEARING PURPOSES OR ANY PURPOSE?

17 MR. SAVERANCE: YOUR HONOR, IF I CAN APPROACH, I DO
18 WANT TO MARK THIS FOR IDENTIFICATION PURPOSES, I'M SORRY.

19 MR. THOMAS.

20 THE COURT: YOU MAKE IT A COURT'S EXHIBIT FOR
21 PURPOSES OF THIS HEARING, THE COURT NEEDS TO KNOW WHAT IT
22 IS.

23 MR. SAVERANCE: CAN I APPROACH, YOUR HONOR?

24 THE COURT: YES.

25 MR. SAVERANCE: YOUR HONOR, WOULD YOU LIKE THE

1 ONE-PAGE MIRANDA FORM FROM CAPTAIN BURKE'S?

2 (STATEMENT OF THOMAS. MARKED COURT'S EXHIBIT 1 AND 1-B
3 FOR ID ONLY.)

4 MR. SAVERANCE: MAY I APPROACH, YOUR HONOR?

5 THE COURT: YES, SIR. MR. WHEELER, DO YOU HAVE ANY
6 ARGUMENT OVER THE ISSUE OF VOLUNTARINESS?

7 MR. WHEELER: NOT SO MUCH WITH REGARD TO
8 VOLUNTARINESS, YOUR HONOR. BUT IF I COULD BE HEARD.

9 THE COURT: YES, SIR.

10 MR. WHEELER: YOUR HONOR, I DO HAVE SOME CONCERN IN
11 QUESTIONING INVESTIGATOR THOMPSON IN REGARD TO AN
12 AUDIOTAPE MADE OF THE INTERROGATION, BECAUSE I WAS NEVER
13 AWARE OF IT UNTIL TODAY.. NEVER. BRADY AND RULE 5, I WAS
14 PROVIDED A WRITTEN COPY OF IT. I JUST ASKED THAT QUESTION
15 TO ASK IT. REALLY I HAD NO IDEA. WE HAD A MEETING LAST
16 THURSDAY, AND I UNDERSTOOD I WAS GIVEN ALL OBJECTS,
17 TANGIBLE OBJECTS OF EVIDENCE IN THE CASE AT THAT TIME.

18 THE COURT: OKAY, TELL ME AGAIN WHAT THE PROBLEM IS.

19 MR. WHEELER: APPARENTLY THERE IS AN AUDIOTAPE OF THE
20 ENTIRE INTERROGATION AND STATEMENT THAT MY CLIENT GAVE, AS
21 I UNDERSTAND INVESTIGATOR THOMPSON.

22 THE COURT: THAT YOUR CLIENT GAVE TO---

23 MR. WHEELER: THE POLICE DEPARTMENT ON THE 29TH OF
24 APRIL. AS I UNDERSTAND IT, WHEN I QUESTIONED HIM, AND
25 CORRECT ME IF I AM WRONG, BUT THE EVENTS THAT LED TO THE

1 HANDWRITTEN INDICTMENT, I THINK YOUR HONOR ASKED AND BEEN
2 DISCUSSED WERE AUDIOTAPED.

3 THE COURT: MR. SAVERANCE.

4 MR. SAVERANCE: YOUR HONOR, THE ONLY THING THAT WAS
5 AUDIOTAPED WAS INVESTIGATOR THOMPSON. YOUR HONOR, I
6 SPOKE, AND I WANT TO BE CAREFUL OF WILL, I AM NOT TRYING
7 TO SAY ANYTHING NEGATIVE. I KNOW WE SPOKE BY PHONE A GOOD
8 WHILE BACK, IF HE HAD A LIST OF THINGS HE WANTED TO SEE.
9 MY MEMORY IS I MENTIONED ABOUT THE AUDIOTAPE ON THAT.
10 THAT'S MY MEMORY. I DIDN'T PUT IT IN WRITING. WE DID
11 MEET LAST THURSDAY. THE TAPE WAS NOT THERE. OF COURSE,
12 IT WAS NOT ANYTHING INTENTIONAL OR ANYTHING LIKE THAT. I
13 THOUGHT HE HAD MENTIONED. IT WASN'T REQUESTED OF YOU.
14 INVESTIGATOR BURKE WILL BE TESTIFYING FIRST.

15 I HAVE NO PROBLEM IF MR. WHEELER WANTS TO LOOK AT
16 INVESTIGATOR THOMPSON'S AUDIO. IN FACT WHEN CAPTAIN BURKE
17 TESTIFIES, WE BREAK AND DO IT, THAT'S FINE. BECAUSE WE
18 ARE NOT IN ANY WAY TRYING TO WITHHOLD ANYTHING. BECAUSE I
19 THOUGHT WE HAD VERBALLY TALKED ABOUT THAT BRIEFLY ON THE
20 PHONE SEVERAL WEEKS AGO. LIKE I SAID, I DID, WE DID HAVE
21 ON THURSDAY WHEN ALL THE EVIDENCE. I THOUGHT THAT---

22 THE COURT: I THINK THE MATTER PROVIDES THAT COUNSEL
23 HAVE AN OPPORTUNITY TO REVIEW OVERNIGHT. AND WE'LL
24 PROCEED WITH THE TRIAL ON ISSUES UNRELATED TO THIS
25 STATEMENT THAT IS BEING OBJECTED. BASED ON JUST THAT TAPE

1 NOTHING ELSE.

2 MR. WHEELER: THANK YOU, YOUR HONOR.

3 THE COURT: IF YOU WILL BRING THE JURY.

4 MR. WATTS: EXCUSE ME, YOUR HONOR. I'M SORRY. JUST
5 A RULING ON MY -- REGARDING THE BURDEN. CAN THE STATE
6 WITHHOLD THAT INFORMATION UNTIL TOMORROW SO HE CAN LISTEN
7 TO THE TAPE?

8 THE COURT: PART OF THE SAME STATEMENT?

9 MR. WATTS: YES, SIR, IT'S THE SAME STATEMENT.

10 THE COURT: HE WILL HAVE AN OPPORTUNITY TO LISTEN.

11 MR. WATTS: THANK YOU.

12 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
13 PRESENCE OF THE JURY.)

14 THE COURT: THE JURY IS BACK. YOU MAY CALL YOUR NEXT
15 WITNESS.

16 MR. SAVERANCE: WE WOULD CALL CAPTAIN BURKE, YOUR
17 HONOR.

18 CAPTAIN BURKE, BEING
19 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 THE CLERK: STATE YOUR FULL NAME FOR THE COURT.

21 A THOMAS BURKE. B-U-R-K-E.

22 DIRECT EXAMINATION BY MR. SAVERANCE:

23 Q CAPTAIN BURKE, WHAT DO YOU DO FOR A LIVING?

24 A I'M A POLICE OFFICER WITH THE BISHOPVILLE POLICE
25 DEPARTMENT.

1 Q HOW LONG HAVE YOU BEEN IN THAT CAPACITY?

2 A NINE YEARS.

3 Q AND JUST TELL US BRIEFLY WHAT SOME OF YOUR DUTIES AND
4 RESPONSIBILITIES ARE?

5 A I'M A CAPTAIN. AND I'M IN CHARGE OF OPERATIONS AND
6 INVESTIGATIONS.

7 Q SO ONCE A CRIME OCCURS AND YOU ARE CALLED TO THE
8 SCENE, YOU BEGIN AN INITIAL INVESTIGATION?

9 A THAT'S RIGHT.

10 Q DO YOU, ARE YOU THE PERSON THAT ALWAYS STAYS ON THE
11 CASE UNTIL THE END OR DO YOU SOMETIMES HAND OFF
12 INVESTIGATIONS AT SOME POINT?

13 A IT VARIES. BUT RECENTLY I'VE HANDED CASES OFF TO
14 OTHER INVESTIGATORS.

15 Q DID YOU BECOME INVOLVED IN THIS CASE THAT WE'RE HERE
16 FOR TODAY INVOLVING THE KILLING OF TROY ROUSE?

17 A I DID.

18 Q HOW DID YOU BECOME INVOLVED?

19 A THE NIGHT IT OCCURRED, APRIL 7TH, I WAS TELEPHONED AT
20 HOME BY INVESTIGATOR THOMPSON AND ADVISED THERE WAS A
21 MURDER AT THE RAY STREET AREA. AND I RESPONDED TO THE
22 SCENE.

23 Q DO YOU REMEMBER ABOUT WHAT TIME YOU GOT THERE?

24 A I GOT THERE A LITTLE AFTER 11 O'CLOCK P.M.

25 Q NOW, DID YOU HAVE SOME OF YOUR OTHER OFFICERS UNDER

1 YOU, ALREADY AT THE SCENE?

2 A THAT'S CORRECT.

3 Q AND WHO WOULD THAT BE?

4 A THE OFFICERS THAT I HAD THERE AT THE TIME I GOT THERE
5 WERE OFFICER STIVENDER, OFFICER WOOD, INVESTIGATOR WILSON,
6 CHIEF SIMON. CAPTAIN DELLINGER WITH THE SHERIFF'S
7 DEPARTMENT WAS THERE. WE SOME HAD OTHER SHERIFF DEPUTIES
8 THAT WERE THERE AT THE SCENE. I DON'T RECALL ALL THEIR
9 NAMES.

10 Q AND OFFICER WILSON THAT TESTIFIED JUST A FEW MINUTES
11 AGO, SHE IS UNDER YOUR COMMAND, SO TO SPEAK?

12 A THAT'S CORRECT.

13 Q AND SHE GOT TO THE SCENE FIRST, IS THAT FAIR TO SAY?

14 A MY UNDERSTANDING IS OFFICER WOOD WAS NOT THERE.
15 THERE WAS THE USUAL RESPONDING OFFICERS.

16 Q NOW WHEN YOUR PEOPLE GO TO A SCENE AND CORDON OFF THE
17 AREA, DO THEY SEE WHAT IS ON THE VICTIM'S BODY AND LOOK
18 FOR WEAPONS AROUND THE AREA AND THAT SORT OF THING?

19 A THEY DO THE INITIAL VISUAL ASSESSMENT OF THE AREA.
20 BUT WE ALSO HAVE TO BE CAREFUL NOT TO CONTAMINATE THE
21 SCENE OURSELVES. SO WHAT WE WOULD DO IS KEEP THE AREA
22 ROPED OFF. DO AN ACCESS. AND, YOU KNOW, LOOK AND SEE
23 WHAT WE HAVE GOT THAT'S OBVIOUS.

24 Q TO YOUR KNOWLEDGE, WERE ANY WEAPONS, GUNS, KNIVES, OR
25 ANYTHING LIKE THAT, PLACED IN Y'ALLS POSSESSION AT THE

1 SCENE OF THE CRIME?

2 A NO, SIR.

3 Q WAS ANYTHING LIKE THAT TAKEN OFF OF MR. ROUSE'S BODY,
4 TO YOUR KNOWLEDGE?

5 A TO MY KNOWLEDGE, NO, SIR.

6 Q I AM GOING TO SHOW YOU STATE'S 14 THAT HAS ALREADY
7 BEEN ADMITTED AS EVIDENCE. DO YOU KNOW WHAT THAT IS?

8 A YES, I DO.

9 Q CAN YOU TELL ME WHAT THAT IS?

10 A YES, SIR. IT'S A LOCAL STORE. COMMONLY KNOWN AS
11 COOTS STORE. IT'S LOCATED ON WILSON AND RAY STREET.

12 MR. SAVERANCE: YOUR HONOR, I WOULD LIKE THE WITNESS
13 TO STEP DOWN FOR A BRIEF MINUTE.

14 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
15 STAND.)

16 Q WHERE IS THAT STORE LOCATED ON THIS DIAGRAM?

17 A RIGHT HERE.

18 Q NOW AT THE TIME THIS OCCURRED, WAS ANY OTHER
19 BUILDINGS NEXT TO THE STORE?

20 A THIS CHART, THIS ONE SQUARE, ALTHOUGH IT DOESN'T LOOK
21 LIKE IT'S EXACTLY IN POSITION, THIS SQUARE REPRESENTS THE
22 ENTIRE COMPLEX. THIS BUILDING HERE IS ANOTHER SHED THAT
23 IS LOCATED BETWEEN COOTS STORE AND A RESIDENCE LOCATED ON
24 FRIERSON STREET THAT SITS NEXT DOOR. THIS SHED IS NOT
25 DEPICTED AT THAT TIME OF THIS CHART BECAUSE IT NO LONGER

1 EXISTS. AND QUITE FRANKLY, I FORGOT IT WAS THERE. BUT IT
2 WAS THERE AT THE TIME OF THIS INCIDENT.

3 Q IT'S BEEN TORN DOWN SINCE?

4 A IT'S BEEN TORN DOWN.

5 Q NOW IS IT THE SPACE BETWEEN ONE BUILDING AND WHERE
6 THE SHED WAS?

7 A YES, SIR.

8 Q NOW CAN YOU TELL ME WHAT THIS SECTION IS NEXT TO THE
9 STORE?

10 A IT LOOKS LIKE IT MIGHT BE SOME KIND OF STORAGE AREA
11 THAT'S CONNECTED TO THE STORE. I AM NOT REAL SURE EXACTLY
12 THE USE OF THAT.

13 Q BUT THERE WAS ANOTHER LITTLE STORAGE AREA SHED---

14 A YES, SIR.

15 Q ---AT THE TIME OF THIS CRIME.

16 A THAT'S CORRECT.

17 MR. SAVERANCE: YOU CAN GO BACK AND HAVE A SEAT.

18 (THEREUPON, THE WITNESS RESUMES THE WITNESS STAND.)

19 Q WHAT DID YOU DO THAT NIGHT AT THE SCENE OF THE CRIME?

20 A WELL BASICALLY WHEN I GO THERE, EMS, THE CORONER,
21 EVERYBODY ELSE HAD ALREADY BEEN THERE AND DONE WHAT THEY
22 NEEDED TO DO. SO WHAT I DID WAS JUST ADVISED EVERYONE TO
23 JUST WAIT FOR SLED TO COME PROCESS THE SCENE. WE BOTH DID
24 INITIALLY START CANVASSING THE AREA AND SEE IF WE COULD
25 LOCATE POSSIBLE WITNESSES.

1 Q AS FAR AS THAT EVENING, DID YOU END UP TAKING ANYBODY
2 INTO CUSTODY ON THIS MATTER, ON THAT EVENING?

3 A NO, WE DID NOT.

4 Q AT SOME POINT AFTER THAT, DID YOU HAVE ANY OF THE
5 DEFENDANTS?

6 A AT SOME POINT AFTER THAT, YES, SIR, I DID.

7 Q WHICH DEFENDANT WOULD THAT BE?

8 A MR. THOMAS.

9 Q IS THAT MR. THOMAS RIGHT HERE?

10 A THAT'S CORRECT.

11 MR. SAVERANCE: YOUR HONOR, CAN I GET THAT FORM BACK
12 THAT WAS MARKED FOR THE COURT? THANK YOU. CAN I APPROACH
13 THE WITNESS, YOUR HONOR?

14 THE COURT: YES, SIR.

15 Q THIS IS STATE'S 24 FOR IDENTIFICATION. DO YOU
16 RECOGNIZE THAT FORM?

17 A I DO.

18 Q WHAT IS IT?

19 A IT'S A MIRANDA ADVISEMENT FORM.

20 Q WHAT IS A MIRANDA FORM?

21 A THAT'S AN ADVISEMENT OF THE FIFTH AMENDMENT RIGHTS
22 AND SELF-INCRIMINATION, ETC.

23 Q WHAT WAS THE DATE AND THE TIME OF THAT FORM?

24 A APRIL 11TH AT 16:56, WHICH IS 4:56, P.M.

25 Q FOUR DAYS AFTER THE MURDER?

1 A THAT'S RIGHT.

2 Q AND WHOSE NAME IS LISTED ON THAT FORM?

3 A EFRAIN THOMAS.

4 Q DID YOU INTERVIEW MR. THOMAS?

5 A I DID.

6 Q DID YOU ADVISE HIM OF HIS MIRANDA RIGHTS?

7 A I DID.

8 Q DID HE AGREE TO SIGN A WAIVER?

9 A YES, HE DID.

10 Q WHAT DOES THAT MEAN TO SIGN A WAIVER?

11 A YES, HE DID.

12 Q WHAT DOES THAT MEAN TO SIGN A WAIVER?

13 A THAT MEANS DURING THAT AT THE TIME WE ARE CONDUCTING

14 THE INTERVIEW, I ADVISED HIM OF HIS RIGHTS. AT THAT TIME,

15 HE HAD WAIVED HIS RIGHT TO A LAWYER AND AGREED TO ANSWER

16 QUESTIONS.

17 Q NOW WHEN YOU TALKED WITH HIM DURING THIS DISCUSSION

18 AND QUESTION AND ANSWER STATEMENT Y'ALL WENT THROUGH, DID

19 HE APPEAR TO BE UNDER THE INFLUENCE OF ANYTHING OR

20 INTOXICATED OR ANYTHING LIKE THAT?

21 A NO, SIR.

22 Q DID HE APPEAR TO UNDERSTAND YOUR QUESTIONS?

23 A YES, SIR.

24 Q DID HE GIVE COHERENT RESPONSES?

25 A YES, SIR.

1 Q DID YOU UNDERSTAND HIS RESPONSE?

2 A YES, SIR.

3 Q DID YOU FORCE OR COERCE HIM TO SAY ANYTHING AGAINST
4 HIS WILL?

5 A NO, SIR.

6 Q HOW MANY YEARS HAVE YOU BEEN DOING THIS TYPE OF WORK
7 INVOLVED, AS FAR AS, OFFERING MIRANDA RIGHTS, TAKING DOWN
8 FORMS, TAKING STATEMENTS AND THAT SORT OF THING?

9 A ALMOST 30 YEARS.

10 Q NOW TELL ME WHAT YOU SAID OR ASKED MR. THOMAS.

11 A WELL I ADVISED MR. THOMAS THAT HIS NAME HAD BEEN
12 MENTIONED IN THIS INCIDENT. AND I JUST WANTED TO TALK
13 WITH HIM ABOUT IT. AND HE WOULD COME, YOU KNOW, FIND OUT
14 WHAT WAS GOING ON. I ASKED HIM IF HE HAD BEEN INVOLVED IN
15 IT. HE DENIED THAT.

16 Q INVOLVED IN WHAT?

17 A IN THE MURDER OR TROY ROUSE. AND HE DENIED BEING
18 INVOLVED IN IT AT ALL. I ASKED HIM, YOU KNOW, WHERE HE
19 WAS AT THE TIME OF THE INCIDENT. AND HE ADVISED ME THAT
20 HE WAS IN CAMDEN WITH HIS GIRLFRIEND AT RIVER WIND
21 APARTMENTS WITH A SAMANTHA HICKMAN.

22 Q DID YOU ASK HIM ANY OTHER QUESTIONS?

23 A NO, NOT THAT I RECALL. WE JUST TALKED FOR A FEW
24 MOMENTS. LIKE I SAID, HE DENIED EVERYTHING. SO AT THAT
25 POINT, I RELEASED HIM, LET HIM GO. WE JUST FOLLOWED UP.

1 Q DID HE SAY ANYTHING ABOUT THIS HAPPENED IN
2 SELF-DEFENSE OR ANYTHING LIKE THAT AT THAT TIME?

3 A NO, SIR.

4 Q DID HE APPEAR TO HAVE ANY VISIBLE PHYSICAL INJURIES
5 TO HIS BODY?

6 A NOT THAT I RECALL.

7 Q DID HE MENTION THE SHOOTING TOOK PLACE BECAUSE OF
8 SELF-DEFENSE OR DEFENSE OF SOMEBODY ELSE?

9 A NO, SIR.

10 Q NOW THE PLACE WHERE THIS MURDER OCCURRED, THAT'S IN
11 LEE COUNTY, CORRECT?

12 A IN THE CITY OF BISHOPVILLE. LEE COUNTY, THAT'S
13 CORRECT.

14 Q IF MR. THOMAS DENIED BEING INVOLVED FOUR DAYS AFTER
15 THE MURDER, WHY, YOU KNOW, DID HE BECOME A SUSPECT LATER
16 ON?

17 A HE DID.

18 Q AT SOME POINT HE WAS CHARGED.

19 A HE WAS.

20 Q WHY WAS THAT?

21 A WELL BASED ON THE EVIDENCE THAT WE HAD GATHERED
22 BETWEEN THE TIME OF THE MURDER AND THE TIME OF HIS ARREST,
23 WE BROUGHT THAT TO THE COUNTY MAGISTRATE. HE DETERMINED
24 THAT THERE WAS PROBABLE CAUSE TO EFFECT AN ARREST AND
25 ISSUE A WARRANT.

1 MR. SAVERANCE: ONE SECOND, YOUR HONOR.

2 Q ONE LAST QUESTION, CAPTAIN BURKE, DURING THIS
3 INTERVIEW, DID EFRAIN THOMAS SAY HE SHOT TROY ROUSE
4 BECAUSE HE WAS TRYING TO HELP -- WELL, LET ME -- YOUR
5 HONOR, LET ME WITHDRAW THAT.

6 MR. WHEELER: YOUR HONOR, THAT'S BEEN ASKED AND
7 ANSWERED.

8 MR. SAVERANCE: YOUR HONOR, I'LL WITHDRAW. THAT'S
9 ALL I HAVE, YOUR HONOR.

10 THE COURT: MR. WHEELER.

11 MR. WHEELER: THANK YOU, YOUR HONOR. MAY IT PLEASE
12 THE COURT.

13 THE COURT: YES, SIR.

14 CROSS EXAMINATION BY MR. WHEELER:

15 Q CAPTAIN BURKE, ARE YOU OVER THE INVESTIGATIONS OF THE
16 BISHOPVILLE POLICE DEPARTMENT?

17 A THAT'S CORRECT.

18 Q AND OTHER THAN THE CHIEF OF POLICE, WOULD YOU BE THE
19 MOST SENIOR OFFICIAL WITHIN THE POLICE DEPARTMENT?

20 A YES, SIR.

21 Q OKAY. WHEN IT COMES TO THESE INVESTIGATIONS.

22 A YES, SIR.

23 Q NOW OTHER OFFICERS HAD ALREADY RESPONDED TO THE SCENE
24 BY THE TIME YOU GOT THERE THAT EVENING, IS THAT CORRECT?

25 A THAT'S CORRECT.

1 Q BUT YOU DID -- DID YOU UNDERSTAND THAT NOTHING HAD
2 BEEN MOVED, AND THE SCENE HAD BEEN SECURED PRIOR TO YOUR
3 ARRIVAL?

4 A THAT WAS MY UNDERSTANDING. YES, SIR.

5 Q NOW MR. SAVERANCE HAS ASKED YOU SOME QUESTIONS ABOUT
6 YOUR MEETING WITH MR. THOMAS ON APRIL 11TH. NOW THAT IS
7 FOUR DAYS AFTER THE SHOOTING, IS THAT CORRECT?

8 A THAT IS CORRECT.

9 Q NOW HE CAME IN VOLUNTARILY AT THAT TIME, IS THAT
10 CORRECT?

11 A HE DID.

12 Q YOU DIDN'T HAVE TO GO OUT AND ROUST HIM UP AND HAVE
13 HIM COME IN TO TALK TO YOU, IS THAT RIGHT?

14 A CORRECT, NO.

15 Q AND THAT'S THE ONLY CONVERSATION THAT YOU HAVE EVER
16 HAD WITH HIM, IS THAT CORRECT?

17 A YES, SIR. I WAS ENTAILING ANOTHER INTERVIEW, BUT I
18 WASN'T CONSIDERED RESPONSIBLE FOR.

19 Q OTHER OFFICERS UNDER YOU IN YOUR DEPARTMENT HAD
20 TALKED TO HIM AT OTHER TIMES.

21 A YES, SIR.

22 Q NOW DID YOU ACQUAINT YOURSELF WITH THE SCENE THE
23 EVENING THAT YOU ARRIVED? AT LEAST GENERALLY?

24 A YES, SIR.

25 Q AND ARE YOU FAMILIAR WITH SOME OF THESE PHOTOGRAPHS?

1 THAT SLED TOOK THAT EVENING?

2 A I AM.

3 Q AND IF YOU WILL JUST LOOK THROUGH THOSE THAT HAVE
4 BEEN PREVIOUSLY MARKED FOR IDENTIFICATION. ARE YOU
5 FAMILIAR WITH THOSE PICTURES?

6 A YES, SIR.

7 Q NOW THESE TWO PICTURES RIGHT HERE, DO THEY SHOW A
8 SIGNIFICANT AMOUNT OF MONEY AND CHANGE?

9 A THEY SHOW U.S. CURRENCY IN PAPER AND COINS.

10 Q MORE THAN 75 CENTS?

11 A YEAH, OBVIOUSLY.

12 Q AND A CELL PHONE?

13 A YES, SIR.

14 Q AND SOME KEYS?

15 A YES, SIR.

16 Q NOW ARE YOU AWARE OF ANY OTHER INVENTORY EVIDENCE
17 THAT YOUR DEPARTMENT KEEPS OTHER THAN THIS STATE'S EXHIBIT
18 THAT OFFICER WILSON IDENTIFIED EARLIER?

19 A YES. THIS WAS THE ITEMS THAT OFFICER WILSON TOOK
20 FROM THE AUTOPSY. AND THIS WAS ACTUALLY TURNED BACK TO
21 THE POLICE DEPARTMENT IMMEDIATELY.

22 Q OKAY.

23 A WHICH I RECEIPTED FOR. SHE HAD ALSO TOOK SOME
24 BULLETS AND SHELL CASINGS FROM THE AUTOPSY RECORDS.

25 OTHER EVIDENCE, I THINK WE HAVE THREE COINS. THEY WERE

1 NOT A PART OF THIS. THEY WERE PICKED UP FOR FINGERPRINT
2 ANALYSIS THAT WERE TAKEN. AND TO MY, AS FAR AS I KNOW,
3 THEY WERE TAKEN WITH THE FOUR SHELL CASINGS, A BLACK
4 COLORED HAT WITH A LETTER A ON THE FRONT AND---

5 Q I GUESS WHAT I'M ASKING, CAPTAIN BURKE, DID ANYBODY
6 INVENTORY THIS OTHER SUM OF CASH AND CELL PHONE AND THINGS
7 OF THAT NATURE THAT WERE AT THE SCENE?

8 A WE DID NOT. THE BISHOPVILLE POLICE DEPARTMENT DID
9 NOT. THAT WOULD HAVE BEEN THE RESPONSIBILITY OF THE SLED
10 OFFICERS CONDUCTING THE CRIME SCENE INVESTIGATION.

11 Q AND IS THERE ANY METHOD BY WHICH Y'ALL DETERMINE WHO
12 KEEPS TRACK OF WHAT EVIDENCE, OR IS IT JUST HAPPENSTANCE?

13 A WELL PROCEDURES BASICALLY THEY TAKE THE EVIDENCE AND
14 ADVISE ME OF THINGS THAT ARE OF EVIDENTIARY VALUE, THEY
15 TAKE. AND THEY GO TO SLED AND MAKE THEIR WAY THROUGH THE
16 VARIOUS FORENSIC LABS. AND THEN WE RECEIVE THE, YOU KNOW,
17 THE RESULTS.

18 Q OKAY. SO IS IT YOUR BELIEF THEN THAT IF SOMEBODY
19 FROM SLED COMES TOMORROW, THEY'RE GOING TO HAVE THESE
20 THINGS?

21 A IT IS MY BELIEF. BUT THIS, I DID NOT SEE THIS AT THE
22 SCENE. SO THIS MAY HAVE BEEN DONE BEFORE I GOT THERE.
23 BUT THIS IS MY BELIEF THEY WILL HAVE THIS.

24 Q BUT YOU KNOW THAT THOSE ARE PICTURES THAT SLED TOOK
25 AT THE SCENE?

1 A THEY ARE. THAT IS CORRECT.

2 Q OKAY. AND DOES THAT TELL YOU THAT THESE ITEMS WERE
3 ON OR NEAR THE PERSON OF MR. ROUSE?

4 A YES. I CAN TELL BY THE PHOTOGRAPHS, YES.

5 Q AND YOU BELIEVE THAT IS A FAIR STATEMENT IF I SAY
6 THAT THESE ITEMS WERE ON, AT OR NEAR HIS BODY AT THE SCENE
7 OF THE CRIME?

8 A YES.

9 Q IS THAT A FAIR STATEMENT?

10 A YES, SIR, IT IS.

11 Q NOW, I BEG THE COURT'S INDULGENCE. NOW YOU HAVE
12 MENTIONED THAT WAS THE ONLY INVENTORY OF EVIDENCE. I AM
13 GOING TO ASK YOU TO LOOK AT THIS DOCUMENT, AND SEE IF YOU
14 CAN IDENTIFY THAT.

15 A OH, YES. THIS IS AN EVIDENCE RECEIPT FORM FOR SOME
16 PROPERTY TAKEN OFF OF -- OUT OF ANOTHER POCKET OF TROY
17 ROUSE'S BODY.

18 Q AND WHO IS IT SIGNED BY?

19 A I DID. I TOOK IT.

20 Q IS THIS PICTURE WHAT YOU REFERRED TO IN THAT---

21 A THAT IS CORRECT.

22 Q ---DOCUMENT?

23 A YES, SIR.

24 Q AND WHAT HAVE YOU DESCRIBED AS THAT DOCUMENT THAT YOU
25 SIGNED?

1 A I DESCRIBED IT AS A WHITE IN COLOR PLASTIC MEDICINE
2 PILL BOTTLE CONTAINING 10 YELLOWISH WHITE IN COLOR ROCKS
3 SUSPECTED OF BEING CRACK COCAINE.

4 Q AND DID YOUR DEPARTMENT HAVE THOSE THINGS ANALYZED?

5 A WELL WE DID SEND THEM TO THE LAB, BUT IT WAS NEVER
6 ANALYZED.

7 Q OKAY. BUT IT WAS YOUR BELIEF WHEN YOU SIGNED THIS
8 FORM THAT IT WAS CRACK COCAINE?

9 A THAT'S CORRECT.

10 MR. WHEELER: LET ME GET YOU TO MARK THAT FOR
11 IDENTIFICATION.

12 (RECEIPT OF PROPERTY MARKED DEFENDANT'S EXHIBIT NO. 9
13 FOR ID ONLY.)

14 Q NOW WERE YOU INVOLVED WITH THE DECISION TO PLACE, WE
15 TALKED, I THINK YOU HEARD ME TALKING WITH OFFICER WILSON
16 EARLIER, ABOUT THE BAG THAT Y'ALL PLACED ON MR. ROUSE'S
17 HAND. WERE YOU INVOLVED WITH THE DECISION TO PLACE THOSE
18 BAGS ON HIM AND WRAP THEM UP?

19 A THAT WAS DONE PRIOR TO ME ARRIVING ON THE SCENE.
20 THAT WAS DONE BY CAPTAIN DELLINGER OF THE SHERIFF'S
21 DEPARTMENT.

22 Q IS THAT A PRETTY COMMON THING THAT Y'ALL DO IN POLICE
23 WORK TO BAG THOSE HANDS?

24 A YES, SIR.

25 Q NOW YOU CERTAINLY MUST DO THAT FOR SOME REASON, IS

1 THAT FAIR TO SAY?

2 A YES, SIR.

3 Q IS THAT TO DETERMINE WHETHER HE HAS FIRED A WEAPON,
4 OR BEEN VERY CLOSELY NEAR SOMEONE THAT FIRED A WEAPON?

5 A THAT IS CORRECT. THAT IS TO PROTECT THE HANDS FOR
6 ANY RESIDUE THAT MAY BE PRESENT. TO PROTECT THE HANDS
7 FROM THE ELEMENTS, RAIN, OR WHATEVER, ANYTHING THAT IS
8 INVOLVED GOES TO THE GUNSHOT RESIDUE KIT.

9 Q WHICH Y'ALL DID SEND OFF TO HAVE DONE.

10 A WE DID.

11 Q AND ARE YOU AWARE OF THE RESULTS OF THAT TEST?

12 A I AM.

13 Q AND WERE THEY POSITIVE?

14 A THEY WERE.

15 Q FOR GUNSHOT RESIDUE TO THE BACK OF HIS HANDS?

16 A I COULDN'T TELL YOU IF IT WAS BACK, HAND PALM, OR
17 JUST BACK.

18 Q SOMEONE ELSE IS MORE FAMILIAR WITH THAT, IS THAT FAIR
19 TO SAY?

20 A YES, SIR. VERY MUCH.

21 Q OKAY. WAS MR. ROUSE'S BODY STILL AT THE SCENE WHEN
22 YOU ARRIVED?

23 A IT WAS.

24 Q DID YOU EVER COME WITHIN CLOSE PROXIMITY TO IT?

25 A I DID.

1 Q HOW CLOSE?

2 A A COUPLE OF FEET.

3 Q DID YOU LEAN DOWN OR DID YOU JUST STAND OVER IT?

4 A I JUST STOOD.

5 Q DID YOU NOTICE AN ODOR OF ALCOHOL ABOUT HIS BODY?

6 A I DID NOT.

7 Q DID YOU LOOK FOR THAT AT ALL, OR DID YOU -- DIDN'T

8 PAY ANY ATTENTION TO IT?

9 A NO, SIR, I DID NOT.

10 Q BUT YOUR DEPARTMENT DID ASK FOR A TOXICOLOGY SCREEN

11 OF HIS BODY?

12 A THAT'S CORRECT.

13 Q ALONG WITH THE AUTOPSY.

14 A THAT'S CORRECT.

15 Q NOW HOW LONG HAVE YOU BEEN WITH THE BISHOPVILLE

16 POLICE DEPARTMENT?

17 A A LITTLE OVER 9 YEARS.

18 Q NOW ARE YOU FAMILIAR WITH PRETTY MUCH ALL THE

19 SIGNIFICANT CASES OTHER THAN TRAFFIC STOPS AND THINGS OF

20 THAT NATURE?

21 A PRETTY MUCH.

22 Q AND YOU WERE FAMILIAR WITH MR. ROUSE BEFORE THIS,

23 WEREN'T YOU?

24 A I WAS. YES, I KNEW HIM. I WASN'T FAMILIAR WITH HIM.

25 I KNEW WHO HE WAS.

1 Q DID YOU ASSIST IN THE CASE WHERE HE WAS INDICTED FOR
2 THE ASSAULT OF CORY MCCLEM?

3 MR. SAVERANCE: YOUR HONOR, I WOULD OBJECT.

4 THE COURT: OBJECTION IS OVERRULED.

5 A THE ONLY INVOLVEMENT I HAD IN THAT CASE WAS, I WAS
6 OUT THE NIGHT THAT CORY MCCLEM RAN INTO THE QUICK MART NO.
7 2. AND HE HAD BEEN SEVERELY CUT. AND THAT WAS MY ONLY
8 INVOLVEMENT WITH THAT. AT THAT POINT, I DIDN'T EVEN KNOW
9 WHO THE SUSPECT WAS, OR WHETHER THEY EVEN HAD A SUSPECT.
10 THAT WAS MY INVOLVEMENT. THAT WAS A SHERIFF'S DEPARTMENT
11 CASE.

12 Q OH, THAT WAS A SHERIFF'S DEPARTMENT CASE.

13 A THAT'S CORRECT.

14 Q SO IF IT WAS PRESENTED FOR INDICTMENT BY THE GRAND
15 JURY, IT WASN'T BY YOU.

16 A NO, SIR, IT WASN'T.

17 Q IT WOULD HAVE BEEN BY THE SHERIFF'S OFFICE.

18 A THAT'S CORRECT.

19 Q OKAY. BUT YOU ACTUALLY SAW MR. MCCLEM CUT AND
20 BLEEDING.

21 A YES, I DID.

22 Q AND THAT WAS IN JANUARY OF THE SAME YEAR. END OF
23 JANUARY?

24 A IT COULD HAVE BEEN. I DON'T REMEMBER.

25 Q SO YOU HAVE NOTHING BASED ON THE MONEY, THE DRUGS,

1 AND EVERYTHING ELSE FOUND AT THE SCENE, APPEARED TO HAVE
2 BEEN TAKEN FROM MR. ROUSE, DID IT?

3 A NO, SIR.

4 Q WERE THE -- LET ME SHOW YOU THIS PICTURE TOO, MARKED
5 AS DEFENDANT'S 5 FOR IDENTIFICATION. IF YOU WOULD,
6 DESCRIBE THAT PICTURE FOR ME.

7 A IN THE BACKGROUND IS THE COVERED BODY OF TROY ROUSE.
8 AND THE FOREGROUND IS A BLACK SNEAKER HIGH TOP.

9 Q DID YOU BELIEVE THAT SNEAKER OR BOOT TO BE
10 MR. ROUSE'S?

11 A I DID.

12 Q AND DOES THAT APPEAR TO BE AN ACCURATE REPRESENTATION
13 OF WHAT THE SCENE REFLECTED?

14 A YES, SIR, IT DOES. . THIS PICTURE IS A LITTLE DARKER.

15 Q AND THAT BOOT BEING THAT DISTANCE FROM THE BODY,
16 WOULD YOU DISAGREE THAT THAT IS CONSISTENT WITH SOME TYPE
17 OF A STRUGGLE GOING ON?

18 A I WOULDN'T DISAGREE WITH THAT. NO, SIR.

19 Q AND WOULD THE FACT THAT THE GUNSHOT RESIDUE, IF IT IS
20 TESTIFIED TO TOMORROW, APPEARED ON THE BACK OF MR. ROUSE'S
21 HANDS, INDICATE THAT THERE WAS VERY CLOSE PROXIMITY WHEN
22 ANY WEAPON WAS DISCHARGED WITH HIM?

23 A YES, THAT WOULD INDICATE HIM BEING IN CLOSE PROXIMITY
24 WITH A DISCHARGED WEAPON.

25 Q AND YOU WEREN'T ON THAT SCENE ANY TIME BEFORE YOU ()

1 CALLED AT YOUR -- BEFORE YOU GOT THERE, FROM YOUR HOME THAT
2 NIGHT?

3 A NO, SIR. I HAD TRAVELED FROM SUMTER. I DIDN'T GET
4 THERE UNTIL AFTER 11 O'CLOCK.

5 Q AND YOU WOULDN'T UNDERTAKE TO SAY ANYTHING THAT
6 HAPPENED AT THE TIME OF THIS SHOOTING, WOULD YOU?

7 A NO, SIR.

8 MR. WHEELER: THANK YOU, CAPTAIN BURKE.

9 CROSS EXAMINATION BY MR. WATTS:

10 Q GOOD AFTERNOON, CAPTAIN BURKE. DID YOU HAVE ANYTHING
11 TO DO WITH THE PREPARATION OF THIS CHART?

12 A I DIDN'T.

13 Q YOU SOUND LIKE YOU HAD SOME KNOWLEDGE ABOUT IT
14 EARLIER. THIS PICTURE DOESN'T ACCURATELY DESCRIBE OR TO
15 GIVE AN ACCURATE DESCRIPTION OR SCALE OF THE BUILDING, AS
16 IT WAS IN ONE OF THE PRIOR PICTURES WE HAVE SEEN. I THINK
17 THAT WAS STATE'S EXHIBIT 14.

18 A RIGHT.

19 Q IS THAT CORRECT?

20 A THAT'S CORRECT.

21 Q CAPTAIN BURKE, IN REGARDS TO STATE'S EXHIBIT 13, ARE
22 YOU FAMILIAR WITH THAT PICTURE?

23 A YES, SIR, I AM.

24 Q DOES THAT GIVE AN ACCURATE DESCRIPTION OF THE
25 LOCATION OF THE BODY AND THE CASINGS THAT WERE FOUND?

1 A YES, SIR, IT DOES.

2 Q IS THAT YOUR RECOLLECTION OF THE SCENE?

3 A YES, SIR.

4 Q I BELIEVE YOU'VE SEEN THIS EARLIER. THIS WAS DEFENSE
5 EXHIBIT 4 FOR IDENTIFICATION.

6 A YES, SIR.

7 Q OKAY, YOU'RE FAMILIAR WITH THAT?

8 A I AM.

9 Q DID YOU PERSONALLY TAKE THIS PROPERTY OFF THE
10 DECEASED'S BODY?

11 A ACTUALLY THE CORONER MR. ALFRED YOUNGBLOOD WAS
12 CHECKING THE BODY. AS SOON AS HE SAW IT ON THE BODY, HE
13 HANDED IT DIRECTLY TO ME.

14 Q YOU SAID IT WAS YOUR BELIEF THAT IT WAS SENT OFF TO
15 TEST?

16 A IT WAS. IT WAS SENT TO SLED.

17 Q DO YOU HAVE A RECEIPT OR ANY KIND OF DOCUMENTATION
18 SHOWING WHEN IT WAS SENT TO SLED FOR TESTING?

19 A YEAH, WE DO. THE EVIDENCE ITSELF WAS OVER HERE JUST
20 LIKE THE DEFENDANTS WERE THERE.

21 Q CAPTAIN BURKE, DID YOU EVER INTERVIEW TIFFANY HILL?

22 A I DID.

23 Q AT ANY TIME DID SHE TELL YOU DURING THE INTERVIEW
24 ABOUT SQUATTING DOWN?

25 A I DON'T RECALL IF SHE SAID SHE WAS SQUATTING DOWN.

1 I REMEMBER HER TELLING ME THAT SHE WAS BESIDE THAT SHED.

2 Q OKAY.

3 A BUT I DON'T REMEMBER HER TELLING ME SHE WAS SQUATTING
4 DOWN.

5 Q OKAY. AND WHEN YOU'RE TALKING ABOUT BESIDE OF THE
6 SHED, YOUR EARLIER TESTIMONY WAS THERE A BUILDING THAT WAS
7 THERE THAT IS NOT REPRESENTED ON THIS, THAT'S BEEN THAT
8 WAS PRESENT AT THE TIME. AND THEN WHEN WE GOT THE OTHER
9 ADDITION, IT'S NOT REALLY REFLECTED ON THIS. DID SHE
10 INDICATE WHICH ONE?

11 A YES, SIR. THE ONE REFLECTED ON THE TAPE. I'M SORRY,
12 THE ONE THAT'S PENCILED IN.

13 Q SHE WAS INDICATING TO YOU IN HER INTERVIEW THAT SHE
14 HAD IT PENCILED IN AND THAT WAS PART OF THE ORIGINAL?

15 A THAT'S CORRECT.

16 MR. WATTS: THANK YOU. NO FURTHER QUESTIONS.

17 MR. JOHNSON: THANK YOU, YOUR HONOR. MAY IT PLEASE
18 THE COURT.

19 CROSS EXAMINATION BY MR. JOHNSON:

20 Q CAPTAIN BURKE, YOU SAID THAT YOU INTERVIEWED TIFFANY
21 HILL?

22 A I DID.

23 Q SHE GAVE YOU A LIST OF DIFFERENT NAMES AND STUFF, IS
24 THAT CORRECT?

25 A SHE DID.

1 Q SHE DID NOT MENTION CHAD JAMES, DID SHE?

2 A NOT THAT I CAN RECALL.

3 Q AND YOU WROTE DOWN EXACTLY WHAT SHE SAID TO YOU, IS
4 THAT CORRECT?

5 A I WROTE DOWN A SYNOPSIS OF WHAT SHE SAID.

6 Q BUT YOU DON'T RECALL HER EVER MENTIONING THAT SHE SAW
7 CHAD JAMES.

8 A I DON'T RECALL THAT.

9 Q A SEPARATE QUESTION. EFRAIN CAME TO YOU AND
10 VOLUNTARILY CAME IN, IS THAT CORRECT?

11 A ON APRIL THE 11TH, YES, SIR.

12 Q SO WHAT, HOW DID HE GET NOTICE THAT YOU NEEDED TO SEE
13 HIM? YOU GOT WORD TO HIM?

14 A I TALKED TO HIS GRANDMOTHER.

15 Q AND HE CAME IN, IS THAT CORRECT?

16 A YES, SIR.

17 Q SO THAT WAS ROUGHLY ABOUT FOUR DAYS AFTER?

18 A YES, SIR.

19 Q SO AND I THINK YOU SAID AT THAT TIME HE WASN'T EVEN A
20 SUSPECT, RIGHT?

21 A WELL, I MEAN THERE'S A REASON I WANTED TO TALK TO
22 HIM. BUT WAS HE AN OFFICIAL SUSPECT, NO. HE WAS SOMEBODY
23 WE WANTED TO TALK TO. A PERSON OF INTEREST. JUST TO KIND
24 OF FOLLOW UP ON THE LEADS WE HAD AT THAT POINT.

25 Q AND WHEN YOU GOT WORD TO HIM, HE CAME IN, IS THAT

1 CORRECT?

2 A THAT'S CORRECT.

3 Q HE WASN'T IN CAMDEN, WAS HE?

4 A WHEN?

5 Q WHEN, I MEAN YOU DIDN'T FIND HIM IN CAMDEN. HE CAME
6 HERE TO BISHOPVILLE TO TALK TO YOU, IS THAT CORRECT?

7 A HE CAME TO THE POLICE DEPARTMENT TO TALK TO HER.

8 Q SO HE WASN'T TRYING TO EVADE YOU IN ANY WAY JUST BY
9 HIM SHOWING UP AT THAT TIME.

10 A NOT THAT I KNOW OF.

11 Q AND PRIOR TO YOU GETTING WORD TO HIS GRANDMOTHER, YOU
12 WEREN'T EVEN LOOKING FOR HIM, WERE YOU?

13 A WELL WE WANTED TO TALK TO HIM OF THE INCIDENT.

14 Q OKAY.

15 A WE WENT TO HIS HOUSE AND MR. MCCALL'S.

16 Q OKAY. BUT JUST FOR CLARIFICATION, I KNOW IT'S
17 GETTING REDUNDANT. BUT HE WASN'T A SUSPECT AT THE TIME HE
18 INITIALLY TALKED TO YOU FOUR DAYS AFTER THE INCIDENT.

19 A NO.

20 THE COURT: ANYTHING FURTHER, MR. SAVERANCE?

21 MR. SAVERANCE: NO, SIR, YOUR HONOR.

22 THE COURT: MR. WHEELER?

23 MR. WHEELER: NO, SIR, YOUR HONOR.

24 THE COURT: MR. WATTS?

25 MR. WATTS: NONE, YOUR HONOR.

1 THE COURT: YOU MAY STEP DOWN. MR. SAVERANCE.

2 MR. SAVERANCE: YOUR HONOR, THE NEXT WITNESS WOULD BE
3 INVESTIGATOR THOMPSON.

4 THE COURT: LADIES AND GENTLEMEN, WE WILL RECESS FOR
5 THIS DAY. IF YOU WILL BE BACK AT 9:30 TOMORROW MORNING.
6 AND PLEASE DO NOT DISCUSS THE CASE OR READ ANY NEWS
7 ACCOUNTS REGARDING THIS CASE. AND PLEASE BE BACK IN YOUR
8 JURY ROOM AT 9:30 TOMORROW MORNING. THANK YOU VERY MUCH.
9 SEE YOU THEN.

10 (THEREUPON, THE JURY IS DISMISSED AT 4:55 P.M.)

11 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
12 PRESENCE OF THE JURY.)

13 THE COURT: MR. WATTS, LET ME HEAR WHAT YOU HAVE TO
14 SAY AGAIN ABOUT THE STATEMENT AGAIN IN REGARDS TO YOUR
15 CLIENT.

16 MR. WATTS: YOUR HONOR, OUR CASE WOULD BE THAT THIS
17 STATEMENT, EVEN THOUGH THE PARTY IS NOT REFERENCED BY
18 NAME, IT TALKS ABOUT OTHER INDIVIDUALS. AND THE NATURE OF
19 THE SITUATION TALKS ABOUT THERE BEING TWO OTHER PEOPLE.
20 WELL, THERE ARE TWO OTHER PEOPLE WHO ARE AT THIS STAGE
21 PRESENTLY THAT'S GOING TO CREATE AN INFERENCE IN THAT
22 STATEMENT ABOUT WHO WE ARE TALKING ABOUT. I THINK THAT
23 THAT INFERENCE IS IMPROPER. AND IT SHOULD BE REMOVED AND
24 REDACTED IN ANY KIND OF INTRODUCTION OF THAT STATEMENT.

25 THE COURT: WELL HOW DO YOU SQUARE THAT IN COURT?

1 THERE ARE THREE CASES, U.S. V. RICHARDSON, U.S. V.
2 WILLIAMS, AND STATE V. EVANS. AND THAT'S A CASE
3 DETERMINING A HIT AND RUN ACCIDENT OVER IN COLUMBIA WHERE
4 TWO PEDESTRIANS WERE KILLED. AND ONE GUY WAS CHARGED WITH
5 CAUSING OR LEAVING THE SCENE OF AN ACCIDENT INVOLVING THE
6 DEATH. THE OTHER ONE WAS CHARGED WITH MISPRISON OF A
7 FELON BY NOT TALKING ABOUT IT OR TELLING THEM.

8 THE STATEMENT OF ALTMAN OR WASN'T DRIVING ANYONE, AND
9 EVIDENCE CONTENDS THAT THAT STATEMENT IMPLICATED HIM AS
10 THE DRIVER. BECAUSE ALTMAN DID NOT DO DAMAGES, BECAUSE
11 ALTMAN DID NOT TESTIFY AT TRIAL. AND THE ADMISSION OF HIS
12 TESTIMONY VIOLATED BRUTON. THE COURT IN THAT CASE CITED
13 RICHARDSON V. MARCH. THE SUPREME COURT SPECIFICALLY
14 DECLINED TO ATTEND THE BRUTON SITUATION WHEN A DEFENDANT'S
15 NAME OR HIS RECORD OF A DEFENDANT'S REDACTMENT, EVEN
16 THOUGH THE STATED APPLICATION WAS LINKED UP BY OTHER
17 EVIDENCE POSSIBLY -- PROPERLY ADMITTED. AND UNDER
18 RICHARDSON HAS ADMISSION OF EVIDENCE WHICH INFERENTIALLY
19 INCRIMINATES THE CO-DEFENDANT. UNDER RICHARDSON ADMISSION
20 OF THE INFERENTIALLY INCRIMINATING CO-DEFENDANT'S
21 CONFESSION WHICH REDACTS ANY REFERENCE TO THE DEFENDANT,
22 DOES NOT VIOLATE THE CONFRONTATION CLAUSE IF A PROPERLY
23 LIMITING INSTRUCTION IS GIVEN.

24 IN U.S. V. WILLIAMS THE COURT CONCLUDED THAT THE
25 CONFRONTATION CLAUSE IS NOT VIOLATED BY THE ADMITTANCE OF

1 A REDACTED CONFESSION WHEN THE STATEMENT STANDING ALONE
2 DOES NOT OTHERWISE CONNECT CO-DEFENDANT'S TO THE TRIAL.
3 AND THE COURT SAID THAT IN THE EVANS CASE, THE STATE DID
4 NOT ONLY FACED INCRIMINATING EVIDENCE ALTHOUGH IT'S
5 INCRIMINATING IMPORTANT INFERENCE AND OTHER EVIDENCE WAS
6 PROPERLY ADMITTED AGAINST HIM. AND THEREFORE, HIS
7 CONFRONTATION RIGHTS WERE NOT VIOLATED. SO HOW DOES THAT,
8 YOUR ARGUMENT IN THIS CASE FIT WITH THE OTHER LINE OF
9 CASES?

10 MR. WATTS: YOUR HONOR, I WOULD SAY THAT WHILE THE
11 EVIDENCE MAY BE ADMISSIBLE IN THAT KIND OF SENSE, WHEN
12 YOU'RE TALKING ABOUT THE INFERENCES CREATED IN A NEW
13 TRIAL, I DON'T KNOW THE CASE LAW THAT YOU'RE REFERRING TO
14 AS WELL AS YOUR HONOR. AND I'M NOT SURE IN THAT CASE IF
15 BOTH DEFENDANT'S WERE TRIED AT THE SAME TIME OR NOT IN
16 THIS SITUATION. IN THIS SITUATION THEY ARE TRIED AT THE
17 SAME TIME. I WOULD ASK, YOUR HONOR, AND PUT MY OBJECTION
18 ON THE RECORD. I'M NOT AS WELL VERSED IN THESE CASES AS
19 YOU ARE AT THIS POINT. MAYBE I CAN ADDRESS THAT TOMORROW
20 MORNING WHEN WE RECONVENE AT 9:30. WE WILL NOTE THAT
21 OBJECTION ON THE RECORD.

22 THE COURT: I HAVEN'T RULED, I JUST ASKED THE
23 QUESTION.

24 MR. WATTS: YOUR HONOR, I THINK THAT IF HE'S TALKING
25 ABOUT THE STATEMENT THAT DOESN'T DIRECTLY INVOLVE OR NAME

1 MY CLIENT, BUT THE INFERENCE IS THERE AND THE PREJUDICIAL
2 EFFECT OF THAT CONCUR, I BELIEVE THAT THAT IS SOMETHING
3 THAT WOULD ALLOW THIS REDACTION TO REMOVE THAT REFERENCE
4 TO HIM.

5 THE COURT: WHAT WOULD YOU HAVE HIM REDACT?

6 MR. WATTS: I WOULD ASK THAT, WELL I THINK THAT
7 THERE'S A REFERENCE TO TWO OTHER PEOPLE. AND ANYTHING
8 THAT REFERS TO ISSUES NOT INVOLVING MR. THOMAS HIMSELF. I
9 THINK THAT THAT STATEMENT TALKING ABOUT WHAT HAPPENED WITH
10 OTHER PEOPLE, THAT HE HASN'T NAMED THAT PARTICULAR PERSON,
11 BUT TALKING ABOUT WHAT HAPPENED TO THESE OTHER PEOPLE.
12 AND I THINK THAT'S GOING TO CREATE A RISING INFERENCE IN
13 WHAT WE ARE TALKING ABOUT WITH MR. MCCALL. AND, YOU
14 HONOR, IF I COULD ASK FOR ANY COURT'S INDULGENCE. IF I
15 COULD LOOK AT THE CASES YOU'VE CITED IN MORE---

16 THE COURT: ALL RIGHT. THE STATE V. EVANS IS A '94
17 CASE. AND IT REFERS TO ANOTHER CASE. IN THAT CASE
18 JUSTICE FINNEY AT THE TIME WAS STRONGLY SAYING THAT A
19 NONTESTIFYING CO-DEFENDANT'S STATEMENT NEED NOT NAME THE
20 DEFENDANT IN ORDER TO INCRIMINATE HIM. AND WHERE THE
21 NAME WAS REDACTED BUT NOT A GENERAL PHYSICAL DESCRIPTION.
22 HE ALSO CITED SEVERAL, STATE V. MCLAUGHLIN. WITH THE
23 SUBSTITUTION OF MR. KATZ' FOR THE DEFENDANT'S NAME, WOULD
24 NOT SATISFY BRUTON. MR. JOHNSON, YOU MADE AN OBJECTION.
25 WHAT'S YOUR OPINION ON ALL THIS?

1 MR. JOHNSON: YOUR HONOR, MY OBJECTION IS SIMILAR.
2 EXCEPT THAT I THINK IT IS EVEN MORE PREJUDICIAL TO MY
3 CLIENT. DUE TO THE FACT THAT MY CLIENT IS NOT ACTUALLY
4 CHARGED WITH ACTUALLY BEING PRESENT AT THE SCENE. ONE OF
5 THE ELEMENTS OF ACCESSORY AFTER THAT FACT, YOUR HONOR,
6 IT'S MY UNDERSTANDING THAT THE STATE IS SAYING THAT MY
7 CLIENT WAS NOT PRESENT AT THE SCENE.

8 THE COURT: WELL HOW DO YOU KNOW THEY ARE TALKING
9 ABOUT YOUR CLIENT?

10 MR. JOHNSON: WELL, YOUR HONOR, THAT'S MY POINT. WE
11 DON'T KNOW. AND THE PREJUDICIAL EFFECT IS OUTWEIGHED TO
12 ME, THE PREJUDICIAL EFFECT IS OUTWEIGHED BY -- THE
13 PREJUDICIAL EFFECT IS OUTWEIGHED BY THE PROBATIVE VALUE.
14 THAT TAKING THE LINE THAT I WAS REFERRING TO TWO OTHER
15 PEOPLE WOULD HAVE NO EFFECT ON THE STATE'S CASE AS FAR AS
16 RELATING TO THE DEFENDANT WHO MADE THE STATEMENT.

17 THE COURT: WHEN THOMAS SAYS THAT ME, TROY AND TWO
18 OTHER PEOPLE WERE ON OUR WAY TO PLAY POOL, YOU THINK THAT
19 THAT STATEMENT STANDING ALONE VIOLATES YOUR GUY'S RIGHT TO
20 CONFRONTATION?

21 MR. JOHNSON: THAT'S CORRECT, YOUR HONOR. BECAUSE---

22 THE COURT: BECAUSE IT PUTS YOUR GUY AT THE SCENE OF
23 THE CRIME? THE JURY WOULD FIGURE OUT THAT HE WAS ONE OF
24 THE ONES GOING TO PLAY POOL?

25 MR. JOHNSON: WELL ONE OF THE ARGUMENTS OF THE STATE

1 IS THAT MY CLIENT HAD SOME PRIOR KNOWLEDGE. NOW GRANTED
2 THE STATE IS NOT SAYING THAT MY GUY PARTICIPATED IN THE
3 CRIME, OR HAD ANY PRIOR KNOWLEDGE TO IT. BUT WAS PRESENT
4 AT THE SCENE. I THINK THE STATE IS TRYING TO HAVE IT TWO
5 WAYS. BECAUSE THEY'RE TRYING TO CHARGE HIM WITH ACCESSORY
6 AFTER THE FACT WHICH ONE OF THE ELEMENTS ARE, YOU'RE NOT
7 THERE. BUT BY TRYING TO PROVE ACCESSORY AFTER THE FACT BY
8 SAYING HE HAD KNOWLEDGE BY BEING THERE.

9 AT NO POINT DOES ANYTHING INDICATE THAT MY CLIENT IS
10 THERE IN THE STATEMENT. BY TAKING OUT THOSE TWO ELEMENTS,
11 I DO NOT SEE THE HARM TO THE STATE'S CASE. BUT I DO SEE
12 THE PREJUDICIAL EFFECT OF MY CASE IF THOSE STATEMENTS ARE
13 ALLOWED IN THE CASE.

14 THE COURT: MR. SAVERANCE, WHAT ABOUT ALL THAT?

15 MR. SAVERANCE: YOUR HONOR, IN MY VIEW, NOTHING
16 SHOULD BE REDACTED, BECAUSE MR. THOMAS MADE THE STATEMENT
17 AND HE DID NOT IMPLICATE ANYBODY ELSE BY NAME. IN FACT,
18 HE WENT OUT OF HIS WAY IN NAMING THOSE PEOPLE THAT
19 PARTICIPATED. HE JUST SAID SOMETHING ELSE. AND THEN HE
20 SAID SUBJECT NO. 2 OR PERSON NO. 2 AND HE SAID YES. I
21 THINK CLEARLY THE STATEMENT SHOULD COME IN IN ITS
22 ENTIRETY. BECAUSE IT IS RELEVANT. IT IS OF PROBATIVE
3 VALUE. AND IF HE SAID JUST A FEW MINUTES AGO, THEY ARE
4 NAMED SPECIFICALLY IN THERE, IT IS UP TO THE JURY TO
5 LISTEN TO THE FACTS AND DETERMINE WHETHER WE PUT THEM

1 THERE OR NOT AND THAT SORT OF THING.

2 SO I JUST DON'T THINK IT RISES TO THE LEVEL OF THE
3 PEOPLE HAVE SAID, CHAD JAMES WAS WITH ME. EUNICE MCCALL
4 DID THE SHOOTING TOO.

5 THE COURT: BUT YOU WANT THE JURY TO FILL IN THE
6 BLANKS THEN. AND SINCE HE DOESN'T SPECIFICALLY NAME THEM,
7 YOU WANT THE JURY TO SORT OF CONCLUDE THAT HE MUST BE
8 TALKING ABOUT THEM. MEANING THE OTHER CO-DEFENDANTS.

9 MR. SAVERANCE: YOUR HONOR, I JUST WANT THIS
10 STATEMENT TO COME IN IN THE FULLNESS OF WHAT HE SAID
11 HAPPENED. AND WHATEVER ELSE WE PUT UP---

12 THE COURT: OF COURSE YOU WANT THAT. THAT'S WHY WE
13 HAVE BRUTON. SO THAT IS FINE, BUT IF YOU WANT THAT, YOU
14 CAN'T VIOLATE THE DEFENDANT'S CONFRONTATION RIGHTS BY
15 HAVING ONE -- BY PITTING THE CO-DEFENDANT. BY HAVING ONE
16 CO-DEFENDANT STATEMENT USED AGAINST THE OTHER. YOU MAY
17 HAVE A NONTESTIFYING SITUATION. OF COURSE ALL OF THE --
18 ALL OF WHAT IS BEING ARGUED HERE MAY END UP BEING GIVEN
19 LATER ON IN THE TRIAL.

20 MR. SAVERANCE: YOUR HONOR, MY OTHER POINT, I GUESS
21 JUST TO MAKE A BRIEF IS, I THINK YOU CAN DISTINGUISH
22 BETWEEN A CO-DEFENDANT NAMING OTHERS BY NAME AND BASICALLY
23 SAYING SOME OTHER PERSON WAS THERE. THAT'S THE ONLY
24 ARGUMENT, YOUR HONOR.

25 THE COURT: YEAH, THE WHOLE LINE OF CASES ARE JUST

1 -- ADDRESSING THE ISSUES OF HOW FAR IS FAR ENOUGH, AS FAR
2 AS REDACTING AND THE COURT ATTEMPTING TO HAVE A JOINT
3 TRIAL ON THE ONE HAND, BUT NOT HAVING THE DEFENDANT'S
4 TESTIMONY USED AGAINST A CO-DEFENDANT WHEN THEY DON'T
5 TESTIFY. SO YOU'VE GOT MR. WATTS COMPLAINING THAT MR.
6 THOMAS SAYS, WELL, WHEN THE GUY JUST GOT THROUGH SHOOTING
7 HIM, HE CAME AFTER ME. SO THAT'S MY GUY'S INVOLVEMENT.
8 AND SO MR. WATTS HAS SAID WELL EVEN THOUGH HE DIDN'T CALL
9 MY CLIENT BY NAME, HE DOESN'T SAY MR. MCCALL, YOU ARE
0 REFERRING THAT HE'S ONE. MR. JOHNSON SAYS WELL HE SAID
1 THAT THE FOUR OF US WERE GOING TO PLAY POOL. AND THOUGH
2 HE DOESN'T CALL HIS GUY'S NAME, MEANING ONE HEAD AMONG THE
3 CROWD, CHAD JAMES, HIS DEFENSE IS THAT MR. JAMES DIDN'T
4 KNOW ANYTHING ABOUT ANY MURDER. SO HE'S NOT GUILTY OF
5 BEING AN ACCESSORY. THEN WHY SHOULD WE BE ABLE TO IMPLY
6 INFERENTIALLY THAT HE KNEW SOMETHING ABOUT THE MURDER WHEN
7 HIS CONFRONTATION RIGHTS WOULD OTHERWISE BE VIOLATED.

3 MR. SAVERANCE: I UNDERSTAND, YOUR HONOR. I GUESS MY
3 POINT IS, I THINK IT IS RELEVANT. I DON'T THINK THE
1 PREJUDICIAL EFFECT OUTWEIGHS THE PROBATIVE VALUE. AND I
GUESS MY CONTENTION IS IF THEY AREN'T NAMED, I THINK IT IS
RELEVANT ENOUGH TO COME IN. AND WITHOUT THEM BEING NAMED,
I JUST DON'T THINK THE COURT AFTER THE EXTENT OF EFFECTING
THAT FAR AND TO WIPE OUT WHAT IS SAID ABOUT OTHER PEOPLE.
OTHER PEOPLE THAT WERE THERE, AND DID OTHER THINGS AT THE

1 TIME.

2 THE COURT: BUT YOU ARE USING A STATEMENT AGAINST MR.
3 THOMAS, AREN'T YOU?

4 MR. SAVERANCE: YES, SIR, YOUR HONOR.

5 THE COURT: AND THE PURPOSE OF THE STATEMENT IS
6 TRYING TO GET IN MR. THOMAS' CONFESSION; NOT IN TRYING TO
7 IMPLICATE THE OTHERS THROUGH MR. THOMAS' CONFESSION.

8 MR. SAVERANCE: YOUR HONOR, THAT IS TRUE. BUT AT THE
9 SAME---

10 THE COURT: MR. THOMAS' STATEMENT.

11 MR. SAVERANCE: THAT IS TRUE, YOUR HONOR. BUT AT THE
12 SAME TIME THERE ARE STATEMENTS MADE BY OTHER PEOPLE DOING
13 THE SHOOTING TOO. I MEAN AND I THINK SOME OF THAT GOES
14 TO WHETHER OR NOT THIS IS MURDER OR SELF-DEFENSE OR
15 MANSLAUGHTER. I MEAN I THINK IT IS RELEVANT AND IMPORTANT
16 TO US. IT'S NOT JUST PRODUCING IT AND TRYING THE BACK
17 DOOR, YOU KNOW, WINK AT THE JURY AND SAY THESE ARE WHO HE
18 IS TALKING ABOUT WHEN HE SAYS I WON'T NAME THEM. I THINK
19 THERE IS ALSO STUFF IN THERE WHEN HE SAID SOMEBODY ELSE
20 SHOT ALSO. THERE IS SOME RELEVANT STUFF IN THERE THAT CAN
21 BE USED BY US. AND IT GOES TO THE HEART OF THIS MATTER;
22 THAT MR. THOMAS SAYS, YOU KNOW, I SHOT. SOMEBODY ELSE
23 SHOT TOO. YOU KNOW, I JUST THINK IT'S RELEVANT. AND AT
24 THIS POINT, I THINK IT'S SOMETHING THAT WE INTEND TO USE.
25 I THINK IT ALSO GOES TO MR. THOMAS. SOME OF THE THINGS HE

1 ALSO SAID ABOUT THE OTHER PERSON SHOOTING. THAT'S ONE
2 THING THAT CAN BE USED AGAINST HIM.

3 THE COURT: WELL THAT WOULD BE A DEFENSE ARGUMENT,
4 WOULDN'T IT? YOU'RE SAYING THAT IF HE -- WHERE THE
5 STATEMENT SAYS WHEN HE RAN, HE CHARGED TOWARDS EFRAIN. I
6 RAN AROUND HIM. WHEN I RAN AROUND HIM I SHOT HIM 3 TIMES
7 IN THE BACK. I SHOT HIM AND THEN RAN. YOU THINK IT
8 SHOULD BE ADMISSIBLE TO -- BECAUSE IT WOULD IT
9 SELF-DEFENSE OR MANSLAUGHTER?

10 MR. SAVERANCE: NO, SIR, YOUR HONOR.

11 THE COURT: A DEFENSE ARGUMENT FOR ADMISSIBILITY.

12 MR. SAVERANCE: NO, SIR. WHAT I'M SAYING, YOUR
13 HONOR, IS THE DEFENDANT ACKNOWLEDGES IN HIS STATEMENT,
14 SHOOTING A NUMBER OF TIMES. SHOOTING THE VICTIM A NUMBER
15 OF TIMES. HE ALSO ACKNOWLEDGES SOMEBODY ELSE SHOT THE
16 VICTIM BEFORE THAT. WHAT I'M SAYING IS, IT'S RELEVANT TO
17 ME AND TO THE STATE. BECAUSE IF SOMEBODY ELSE SHOT THE
18 VICTIM A COUPLE OF TIMES AND THEN THE DEFENDANT ADMITS HE
19 SHOT AFTER THAT SEVERAL TIMES. WHAT I'M SAYING IS, I
20 THINK THAT'S IMPORTANT TO US THAT THAT IN MY VIEW IS
21 RELEVANT AS FAR AS THE---

2 THE COURT: THE ELEMENT OF SELF-DEFENSE.

3 MR. SAVERANCE: RIGHT, RIGHT. I SUBMIT IT THAT WAY,
4 SO THAT IT IS RELEVANT BECAUSE AGAINST HIM AND AGAINST
5 WHAT HAPPENED. AND AGAINST SOME OF THE COMPLAINTS THAT

1 MAY BE MADE AND THAT SORT OF THING IN THE DEFENSE CASE.

2 THE COURT: WELL AS I STATED EARLIER, MR. SMITH, WHEN
3 YOU HAVE ALL KIND OF MINEFIELDS WHEN YOU HAVE JOINT
4 TRIALS. AND IT'S A VERY DELICATE ACT THE COURT ENGAGES IN
5 IN TRYING TO INCITE THE CONSTITUTIONAL RIGHTS OF ALL
6 PARTIES WHEN YOU HAVE JOINT TRIALS. AND TRY TO NAVIGATE
7 THROUGH THE MINEFIELDS. WE'LL GIVE Y'ALL A CHANCE TO
8 SLEEP ON THIS AMONG OTHER THINGS. SLEEP OVER NIGHT ON IT,
9 AND I'LL RULE ON THE ISSUE TOMORROW. IT'S MOST LIKELY
10 THAT THE STATE WILL BE REGARDING THE STATEMENT BY
11 MR. THOMAS THAT WILL ONLY BE IN REFERENCE TO HIS
12 STATEMENT, HIS CONDUCT. AND NOT A STATEMENT OF SOMEONE
13 ELSE'S CONDUCT.

14 (THEREUPON, AT 9:30 A.M. ON WEDNESDAY APRIL 5, 2006,
15 THE TRIAL COMMENCES.)

16 THE COURT: YOU MAY BRING THE JURY.

17 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
18 PRESENCE OF THE JURY.)

19 THE COURT: THE JURY IS BACK. GOOD MORNING. DAY
20 NO. 3. LET'S GET YOUR NEXT WITNESS.

21 MR. SAVERANCE: YOUR HONOR, WE WOULD CALL DR. ROSS.

22 DR. JANICE E. ROSS, BEING
23 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD.

25 A JANICE EDWARDS ROSS.

1 THE COURT: SPELL YOUR LAST NAME, PLEASE.

2 A R-O-S-S.

3 THE COURT: ROSS.

4 DIRECT EXAMINATION BY MR. SAVERANCE:

5 Q DR. ROSS, I AM GOING TO TELL YOU THIS. YOU MAY HAVE
6 TESTIFIED BEFORE, BUT I JUST TELL EVERYBODY THIS. WE JUST
7 HAVE EVERYBODY SPEAK UP INTO THE MICROPHONE WITH THE COURT
8 REPORTER TAKING STUFF DOWN. AND I'M SURE YOU KNOW THAT.
9 BUT I JUST LIKE TO TELL EVERYBODY THAT SO EVERYBODY CAN
10 HEAR YOU. OKAY. THANK YOU.

11 DR. ROSS, WHAT DO YOU DO FOR A LIVING?

12 A I'M A FORENSIC PATHOLOGIST.

13 Q HOW LONG HAVE YOU BEEN DOING THAT?

14 A ABOUT 30 YEARS.

15 Q WHO DO YOU WORK WITH?

16 A RIGHT NOW I WORK AT NEWBERRY PATHOLOGY ASSOCIATES
17 WITH DR. JOEL SEXTON.

18 Q HOW LONG HAVE YOU BEEN THERE?

19 A SIX YEARS.

20 Q DO YOU DO AUTOPSIES ON A REGULAR BASIS?

21 A YES.

22 Q WHAT IS AN AUTOPSY?

23 A AN AUTOPSY IS AN EXAMINATION OF A DEAD BODY, BOTH
24 EXTERNALLY ON THE OUTSIDE AND BOTH ON THE INSIDE, IN ORDER
25 TO FIND OUT THE CAUSE OF DEATH.

1 Q AND ROUGHLY HOW MANY OF THOSE HAVE YOU PERFORMED
2 DURING YOUR TIME AS A FORENSIC PATHOLOGIST.

3 A AT LEAST 5,000.

4 Q AND FROM THE AUTOPSY, AS YOU SAID, YOUR PURPOSE IS TO
5 DETERMINE WHY THE PERSON DIED OR THE CAUSE OF DEATH?

6 A YES.

7 Q HAVE YOU TESTIFIED BEFORE IN CASES OF AUTOPSIES
8 YOU'VE DONE?

9 A YES.

10 Q HOW MANY TIMES?

11 A IN SOUTH CAROLINA, ABOUT 30 TIMES.

12 Q ARE YOU BOARD CERTIFIED?

13 A YES.

14 Q HAVE YOU BEEN ADMITTED AS AN EXPERT IN PRIOR COURT
15 TESTIMONY IN FORENSIC PATHOLOGY?

16 A YES.

17 MR. SAVERANCE: YOUR HONOR, WE WOULD MOVE TO HAVE THE
18 EXPERT ADMITTED IN THE FIELD OF FORENSIC PATHOLOGY?

19 THE COURT: ANY QUESTIONS, VOIR DIRE, OR ANY
20 OBJECTIONS?

21 MR. WHEELER: NO OBJECTION, YOUR HONOR.

22 MR. WATTS: NO OBJECTION.

23 MR. JOHNSON: NO OBJECTION, YOUR HONOR.

24 THE COURT: LADIES AND GENTLEMEN OF THE JURY, THIS
25 WITNESS IS ADMITTED AS AN EXPERT IN THE FIELD OF FORENSIC

1 PATHOLOGY. ORDINARILY WITNESSES MAY NOT OFFER OPINIONS
2 EXCEPT IN LIMITED CIRCUMSTANCES AS ALLOWED BY OUR RULES.
3 REGARDING AN EXPERT WITNESS, HOWEVER, THAT WITNESS WHO BY
4 VIRTUE OF SOME SCIENTIFIC, TECHNICAL OR OTHER SPECIALIZED
5 KNOWLEDGE, MAY HAVE SOME EXPERT SKILL THAT MAY ASSIST YOU
6 IN DETERMINING THE FACTS OF THIS CASE OR ANY CASE. IN
7 THAT INSTANCE, THAT WITNESS IS ALLOWED TO OFFER OPINIONS
8 PROVIDED THAT THE OPINIONS ARE ADMISSIBLE PURSUANT TO OUR
9 RULES OF EVIDENCE. AND THIS WITNESS IS AN EXPERT IN THE
10 FIELD OF FORENSIC PATHOLOGY. YES, YOU MAY PROCEED.

11 Q DID YOU ISSUE A REPORT ON THIS AUTOPSY OF TROY ROUSE?

12 A YES.

13 Q DO YOU HAVE A COPY OF IT WITH YOU?

14 A YES.

15 Q CAN YOU TELL ME THE NAME OF THE PERSON YOU DID THE
16 AUTOPSY ON?

17 A TROY ROUSE.

18 Q WHAT WAS THE DATE OF THE AUTOPSY?

19 A APRIL 8, 2005, AT APPROXIMATELY 12:30 P.M.

20 Q AND DID YOU HAVE AN INDICATION OF WHEN THIS PERSON
21 HAD DIED?

22 A IT WAS RELATED TO ME THAT THE PERSON WAS INJURED ON
23 APRIL 7, 2005, AT APPROXIMATELY 10:05 P.M.

24 Q AND THIS WAS A 24-YEAR-OLD BLACK MALE TO YOUR
25 UNDERSTANDING.

1 A YES.

2 Q DID LAW ENFORCEMENT FROM BISHOPVILLE BRING MR.
3 ROUSE'S BODY OVER TO YOU?

4 A LAW ENFORCEMENT ACCOMPANIED THE BODY, WHICH WAS
5 BROUGHT BY A TRANSPORT PERSON.

6 Q IS THAT A NORMAL TYPE OF THING WHEN YOU DO AN
7 AUTOPSY?

8 A YES.

9 Q AND WHAT HAPPENS ONCE THE BODY GETS TO YOU?

10 A WE DO AN EXTERNAL EXAMINATION. TAKE PICTURES. DO AN
11 EVIDENCE FORM WITH THE CLOTHING WHICH WAS INVOLVED.

12 Q SO YOU LOOK AT THE BODY. TAKE PICTURES OF WOUNDS,
13 INVENTORY THE CLOTHES AND GO FORWARD FROM THERE?

14 A YES.

15 Q IN YOUR EXPERT OPINION, DID YOU DETERMINE A CAUSE OF
16 DEATH---

17 A YES.

18 Q ---DURING YOUR AUTOPSY? WHAT WAS THAT?

19 A EXSANGUINATION, BLEED OUT, DUE TO LACERATION OF THE
20 LEFT LUNG AND HEART. DUE TO A GUNSHOT WOUND TO THE CHEST.

21 Q AND THAT WAS ON TROY ROUSE.

22 A YES.

23 MR. SAVERANCE: CAN I APPROACH, YOUR HONOR?

24 THE COURT: YES.

25 Q DID YOU TAKE SOME CLOTHES OFF OF THE VICTIM---

1 A YES.

2 Q ---DURING THE AUTOPSY? IF I CAN APPROACH, I WILL
3 GIVE YOU SOME GLOVES. YOUR HONOR, THIS IS, I HAVE
4 APPROACHED WITH STATE'S 3 FOR IDENTIFICATION.

5 A THIS IS HOW WE PACKAGE THE CLOTHING IN A PAPER BAG.
6 AND IT'S AWFULLY WET, SO YOU DON'T WANT THEM TO REMAIN
7 WET. THIS IS THE BLUE JEANS WITH THE BELT. AND THERE ARE
8 TWO SHIRTS, A WHITE UNDERSHIRT AND A GRAY TEE SHIRT.

9 Q PULL THAT LAST TEE SHIRT OUT. AND WERE THERE ANY
10 MARKINGS OR BLOOD OR ANYTHING ON THAT TEE SHIRT?

11 A IT'S BLOOD STAINED. AND WE NOTICED SOME HOLES IN THE
12 SHIRT WHICH OVERLYING GUNSHOT WOUNDS.

13 Q OKAY.

14 A IT HAD BEEN CUT OUT OF THE FRONT FROM THE EMERGENCY
15 MEDICAL TECHNICIANS.

16 Q AND YOU'RE SURE THOSE ARE THE ITEMS YOU TOOK OFF OF
17 TROY ROUSE?

18 A YES.

19 Q HOW DO YOU KNOW THAT?

20 A THE LOGO ON THE FRONT WAS NOTED. WE HAVE PHOTOGRAPHS
21 FROM THE AUTOPSY THAT MATCHED.

22 Q YOUR HONOR, IF I CAN APPROACH WITH STATE'S 4 FOR
23 IDENTIFICATION.

24 A MORE PERSONAL EFFECTS. THREE QUARTERS AND AN
25 EARRING. BOOTS THAT HE WAS WEARING. BOXER UNDERWEAR.

1 AND SOCKS INSIDE THE BOOT.

2 Q SO THOSE WERE TAKEN OFF OF MR. ROUSE ALSO?

3 A YES.

4 Q DO THOSE ITEMS APPEAR TO BE IN THE SAME CONDITION AS
5 THE LAST TIME YOU SAW THEM?

6 A YES.

7 Q I AM GOING TO SHOW YOU STATE'S 23 FOR EVIDENCE. CAN
8 YOU TELL ME WHAT THAT IS?

9 A THIS IS OUR EVIDENCE FORM INVENTORYING THE PERSONAL
10 EFFECTS OF THE CLOTHING FROM THE AUTOPSY.

11 Q DID YOU SIGN THAT FORM?

12 A YES.

13 Q THAT INDICATES WHAT YOU TURNED BACK OVER TO MS.
14 WILSON WITH BISHOPVILLE POLICE?

15 A YES.

16 Q AND WHAT'S ON THE FORM?

17 A SHORT SLEEVED GRAY TEE SHIRT WITH A LOGO MARCH OF
18 DICES. SHORT SLEEVED WHITE UNDERSHIRT. A PAIR OF BLUE
19 JEANS, AND ONE YELLOW METAL HOOP EARRING, BLACK BUCKLE
20 BELT. ONE PAIR OF WHITE BLUE/GREEN PLAID BOXER STYLE
21 UNDERWEAR. ONE PAIR OF WHITE SOCKS, AND ONE PAIR OF BLACK
22 BOOTS.

23 MR. SAVERANCE: YOUR HONOR,---

24 A THREE QUARTERS.

25 MR. SAVERANCE: ---I WOULD MOVE TO ADMIT ITEMS THREE

1 AND FOUR FOR IDENTIFICATION INTO EVIDENCE AT THIS TIME.

2 THE COURT: WHAT SAYS THE DEFENSE?

3 MR. WHEELER: NO OBJECTION.

4 MR. JOHNSON: NO OBJECTION.

5 MR. SMITH: YOUR HONOR, MAY WE INQUIRE ABOUT WHO SHE
6 RECEIVED THE PACKAGES FROM?

7 THE COURT: YOU MAY.

8 CROSS EXAMINATION BY MR. SMITH:

9 Q DR. ROSS, IT'S ROSS?

10 A YES.

11 Q WHO DID YOU ACTUALLY, PHYSICALLY, TAKE THE PACKAGES
12 FROM?

13 A WE TOOK THE CLOTHING OFF THE BODY.

14 Q OKAY.

15 A AND PUT THEM IN THESE BAGS.

16 Q WHO DID YOU RECEIVE THE BODY FROM?

17 A I AM NOT -- I DON'T HAVE DOWN WHO THE TRANSPORT
18 PERSON WAS.

19 Q DO YOU KNOW WHO ACTUALLY RECEIVED THE BODY AT YOUR
20 FACILITY?

21 A I'M SORRY?

22 Q AND HELP ME, AND I APOLOGIZE.

23 A THE CORONER USUALLY SENDS THE BODY BY WAY OF AN
24 AMBULANCE CREW.

25 Q AND DOES A DEPUTY USUALLY RIDE OR AN ATTENDANT WITH

1 THE BODY?

2 A I DON'T BELIEVE SO. SALLIZA WILSON CAME WITH THE
3 BODY. I AM NOT SURE WHAT---

4 Q OKAY.

5 A ---VEHICLE SHE RODE IN.

6 Q IN THE NORMAL PROCEDURE FOR HAVING AN AUTOPSY
7 PERFORMED IN YOUR OFFICE, DOES A DEPUTY RIDE IN THE
8 AMBULANCE WITH THE BODY TO ENSURE THE SAFETY OR
9 PRESERVATION OF THE BODY?

10 A I DON'T KNOW THAT PER SE.

11 Q AND WHEN THE BODY ARRIVES AT YOUR OFFICE, DO YOU KNOW
12 WHETHER OR NOT, IS THERE SOMEONE WHO ACTUALLY RECEIVES THE
13 BODY, SIGNS IN FOR IT?

14 A WE WERE THERE WHEN THEY CAME.

15 Q OKAY. YOU WERE PERSONALLY THERE.

16 A THEY LOG IN THE BODY IN THE MORGUE.

17 Q AND THAT WAS YOU THAT LOGGED IT IN?

18 A THE TRANSPORT PERSON. I COULD LOOK THAT UP.

19 Q AND I APOLOGIZE, DR. ROSS, AND THE QUESTION IS THAT
20 WE'VE HAD TESTIMONY IT WAS AN AMBULANCE. AND THE
21 TESTIMONY WAS THE OFFICERS WERE IN THE CAR BEHIND THE
22 AMBULANCE. WE'RE NOW UNDERSTANDING THAT THE BODY WAS
23 TRANSPORTED TO YOUR FACILITY.

24 MY QUESTION IS, DID YOU PERSONALLY RECEIVE IT AT THAT
25 FACILITY?

1 A YES.

2 Q SO YOU ACTUALLY WERE THERE. YOU SIGNED FOR THE BODY
3 TO BE DELIVERED.

4 A SOMETIMES I SIGN AN AMBULANCE FORM, SOMETIMES I
5 DON'T.

6 Q OKAY.

7 A BUT THE CREW WAS THERE WHEN THEY CAME WITH THE BODY
8 BAG, WHICH WAS ZIPPED UP. AND THEY TRANSPORTED THE BODY
9 IN OUR LOG BOOK.

10 Q DO YOU HAVE A COPY OF THAT RECEIPT OF DELIVERY?

11 A NO, I DO NOT.

12 Q IS THE PERSON WHO ACTUALLY ACKNOWLEDGED RECEIPT HERE
13 TO TESTIFY AS TO THE RECEIPT?

14 A THE LOG BOOK WOULD SHOW WHO BROUGHT THE BODY. NOW IF
15 THE AMBULANCE WHO HAD -- SOMETIMES THEY HAVE US SIGN FOR
16 THE RECEIPT OF THE BODY. SOMETIMES THEY DON'T.

17 Q DO YOU KNOW WHETHER OR NOT YOU SIGNED FOR IT THIS
18 TIME?

19 A I DON'T KNOW.

20 Q DO YOU HAVE THE BOOK WITH YOU TO SHOW WHETHER OR NOT
21 IT WAS SIGNED FOR?

22 A NO, I DO NOT.

23 MR. SMITH: YOUR HONOR, AT THIS TIME, WE WOULD HAVE A
24 MOTION TO TAKE OUTSIDE THE PRESENCE OF THE JURY.

25 THE COURT: LADIES AND GENTLEMEN, PLEASE GO THE JURY

1 ROOM. WE NEED TO DISCUSS A MATTER OUTSIDE OF YOUR
2 PRESENCE.

3 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
4 PRESENCE OF THE JURY.)

5 THE COURT: YES, SIR.

6 MR. SMITH: YOUR HONOR, IF IT PLEASE THE COURT, IT'S
7 MY UNDERSTANDING NOW THE SOLICITOR WISHES TO INTRODUCE
8 EVIDENCE AS A PART OF THE ACQUIRED FOR DR. ROSS' OFFICE.
9 WHICH THEY WENT THROUGH ESTABLISHING THE CHAIN YESTERDAY
10 IN THE TESTIMONY. THEY TALKED ABOUT WHO ACTUALLY RECEIVED
11 THE BODY; THAT THE BODY WAS PLACED IN THE CARE OF THAT
12 PARTICULAR DEPUTY. AND ANOTHER CAR FOLLOWED THE BODY TO
13 THE PURPOSES AT DR. ROSS' FACILITY; THAT THEY DELIVERED
14 THE BODY. DR. ROSS IS HERE TODAY. AND IF I UNDERSTAND
15 HER TESTIMONY CORRECTLY, THAT THE FACILITY RECEIVED IT.
16 AND SHE DOESN'T HAVE ANYTHING TO CONTINUE THE CHAIN OTHER
17 THAN THE DOCUMENT THEY'RE OFFERING IS WHERE WHAT SHE
18 RETURNED TO THE DEPUTIES IN THIS PARTICULAR CASE.

19 YOUR HONOR, WE WOULD LIKE THE CHAIN TO BE ESTABLISHED
20 WHERE THEY HAVE THE RECEIPT OF THE BODY, AND THAT THEY
21 PRESENT THAT INTO EVIDENCE. AND THEN THEREFORE THEY WOULD
22 HAVE POSSESSION OF IT. ACKNOWLEDGING WHO THEY RECEIVED IT
23 FROM. AND THEN THEY COULD -- WHATEVER STUDIES THEY DO,
24 WHATEVER EXAMINATIONS THEY DO, THEY WOULD PROVIDE THAT.
25 AND THEN IN RETURN THEY COULD SHOW US. IT WOULD BE

1 RETURNED TO THE LAW ENFORCEMENT AGENCY THAT DELIVERED IT.
2 AND I DON'T BELIEVE THE STATE HAS MET THAT BURDEN, YOUR
3 HONOR, IN THIS PARTICULAR CASE. IF WE DO NOT HAVE ANY
4 TYPE OF ACKNOWLEDGMENT RECEIPT OF THE DECEASED, YOUR
5 HONOR, I THINK THAT THERE IS A BREAK IN THE CHAIN.

6 THE COURT: MR. WHEELER?

7 MR. WHEELER: YOUR HONOR, I WOULD JUST JOIN IN MR.
8 SMITH'S COMMENTS. I DON'T THINK I CAN ADD ANYTHING
9 ADDITIONAL.

10 THE COURT: MR. JOHNSON.

11 MR JOHNSON: YOUR HONOR, AS STATED BEFORE, I GUESS WE
12 WOULD JOIN ALONG WITH THE MOTION.

13 THE COURT: MR. SAVERANCE.

14 MR. SAVERANCE: YOUR HONOR, THE TESTIMONY FROM
15 OFFICER WILSON WAS THAT SHE GOT TO THE SCENE AND SHE SAW
16 THE BODY, IDENTIFIED THE BODY. EMS TOOK THE BODY. SHE
17 FOLLOWED THE BODY TO NEWBERRY FOR THE AUTOPSY. OUR
18 WITNESS HERE TODAY SAYS THAT SHE WAS THERE. THE BODY CAME
19 IN. SHE RECEIVED THE BODY. SHE TOOK THE CLOTHING OFF OF
20 THE BODY. AND THIS IS THE BODY SHE EXAMINED. YOUR HONOR,
21 AS MR. SMITH IS WELL AWARE, I MEAN, I THINK WE HAVE PROVEN
22 MORE THAN ENOUGH OF THE CHAIN OF CUSTODY TO THE BODY TO
23 HAVE THIS WITNESS TESTIFY. SHE SAID THESE WERE THE
24 CLOTHES THAT SHE TOOK OFF OF THE VICTIM. SHE SAID THESE
25 WERE THE CLOTHES. THESE CLOTHES WERE IN THE SAME

1 CONDITION TODAY, TO HER KNOWLEDGE, TO WHAT THEY WERE
2 BEFORE.

3 INVESTIGATOR WILSON OR OFFICER WILSON TESTIFIED THAT
4 THOSE WERE THINGS GATHERED AT THE SCENE, AND SHE FOLLOWED
5 THE BODY TO NEWBERRY FOR THE AUTOPSY, YOUR HONOR. I THINK
6 SIMPLY NOT HAVING SOME FORM, WHERE IT WAS LOGGED IN, DOES
7 NOT DO ANYTHING TO SAY THAT THE CHAIN HASN'T BEEN BAD
8 ENOUGH TO HAVE THIS NOT GO FORWARD AND HAVE THESE THINGS
9 ADMITTED.

10 THE COURT: AND WHAT THINGS ARE YOU SEEKING TO ADMIT?

11 MR. SAVERANCE: YOUR HONOR, WHAT I WOULD MOVE TO
12 ADMIT AT THIS POINT AND TIME ARE ITEMS 3 AND 4, THAT WERE
13 ITEMS TAKEN OFF OF THE VICTIM. INVESTIGATOR WILSON
14 TESTIFIED THAT SHE WAS AT THE SCENE; THAT SHE FOLLOWED THE
15 BODY. THAT THESE ITEMS, SHE IDENTIFIED THESE ITEMS AS
16 ITEMS THAT SHE TOOK FROM DR. ROSS AND BROUGHT THEM BACK.

17 THE COURT: WHAT ITEMS ARE THEY?

18 MR. SAVERANCE: YOUR HONOR, THEY ARE THE BOOT. THEY
19 ARE THE BOXERS, THEY ARE THE SHIRTS. IF I COULD LOOK AT
20 THE LIST. THE STATE'S 23 THAT ARE IN EVIDENCE. LIST OF
21 THINGS, THE MARCH OF DICES---

22 THE COURT: SAY IT AGAIN.

23 MR. SAVERANCE: STATE'S 23 THAT'S IN EVIDENCE LISTS
24 THOSE THINGS THAT MS. WILSON TESTIFIED THAT SHE RECEIVED
25 BACK FROM DR. ROSS AND BROUGHT THEM BACK.

1 THE COURT: STATE'S 23.

2 MR. SAVERANCE: YES, SIR.

3 THE COURT: THAT WAS ADMITTED INTO EVIDENCE
4 YESTERDAY.

5 MR. SAVERANCE: YES, SIR.

6 THE COURT: AND NOW YOU ARE SEEKING TO INTRODUCE 3
7 AND 4, IS THAT RIGHT?

8 MR. SAVERANCE: YES, SIR.

9 THE COURT: 3 AND 4 CONSISTS OF WHAT ITEMS?

10 MR. SAVERANCE: YOUR HONOR, CONSISTS OF ITEMS, MARCH
11 OF DIMES TEE SHIRT, SHORT SLEEVED WHITE SHIRT, BLUE JEANS,
12 BLACK BELT, YELLOW METAL HOOP, WHITE BLUE AND GREEN
13 BOXERS, WHITE SOCKS AND BLACK BOOTS.

14 THE COURT: MR. SMITH.

15 MR. SMITH: YOUR HONOR, AGAIN, THIS IS WHAT, AGAIN?
16 THEY'RE TRYING TO FOLLOW THE CHAIN OF CUSTODY. THIS
17 DOCUMENT, EXHIBIT NO. 23, IS WHAT THEY RECEIVED BACK FROM
18 HER. I AM ASKING HER FOR A DOCUMENT AS TO WHAT SHE
19 RECEIVED FROM THEM.

20 THE COURT: MR. SAVERANCE.

21 MR. SAVERANCE: YOUR HONOR, SHE SAID SHE RECEIVED IT
22 THERE. SHE RECEIVED THE BODY. SHE SAID SHE DOESN'T KNOW
23 WHETHER SHE SIGNED FOR IT. SHE SAID SOMETIMES SHE DOES,
24 SOMETIMES SHE DOESN'T. THE LAW ITSELF; THAT YOU DON'T
25 ESTABLISH EVERY SINGLE PIECE OF THE CHAIN. HER TESTIMONY

1 IS, THIS IS THE BODY SHE RECEIVED. SOMETIMES SHE SIGNS
2 FOR IT, SOMETIMES SHE DOESN'T. BUT SHE IDENTIFIED THIS IS
3 THE BODY THAT THE POLICE DEPARTMENT BROUGHT UP. THE DATE
4 AND TIME. SHE IDENTIFIED THIS IS THE BODY SHE DID THE
5 AUTOPSY ON. SHE IDENTIFIED THIS IS THE BODY THAT SHE
6 RECOVERED THOSE ITEMS FROM. OFFICER WILSON TESTIFIED THIS
7 IS THE BODY SHE BROUGHT TO NEWBERRY PATHOLOGY. THESE ARE
8 THE ITEMS THAT SHE TOOK BACK FROM THE VICTIM.

9 SO I JUST, YOU KNOW, AS I SAID, MORE THAN ENOUGH THE
10 CHAIN HAS BEEN ESTABLISHED TO ADMIT THESE THINGS INTO
11 EVIDENCE.

12 THE COURT: ANYTHING FURTHER, MR. SMITH?

13 MR. SMITH: NOTHING FURTHER, YOUR HONOR.

14 THE COURT: MR. SMITH, WHAT IS IT ABOUT THE CHAIN,
15 WHAT IS IT ABOUT THE EVIDENCE THAT YOU BELIEVE COULD BE
16 CONTAMINATED BASED ON THE TESTIMONY AS TO THIS CHAIN OF
17 CUSTODY?

18 MR. SMITH: YOUR HONOR, THERE IS A WEALTH OF
19 CONTAMINATION THAT COULD POSSIBLY EXIST. FIRST OF ALL,
20 IT'S MY UNDERSTANDING IN THE STANDARD PROCEDURE IN A
21 HOMICIDE CASE OF TRANSPORTING A BODY, THAT A DEPUTY RIDES
22 IN THE AMBULANCE WITH THE BODY. WE DIDN'T HAVE THAT IN
23 THIS CASE. THE DEPUTY TESTIFIED THAT SHE RODE IN THE CAR
24 BEHIND THE AMBULANCE. NOW WE HAVE TESTIMONY THAT SHE
25 ARRIVED AT DR. ROSS' FACILITY; THEY DELIVERED THE BODY.

1 I'M JUST TRYING TO FIND OUT WHO THE BODY WAS DELIVERED TO.
2 THIS LADY SAYS THAT WE RECEIVED THE BODY. I'M ASKING FOR,
3 WHO IS THE WE? WHERE IS THE WE?

4 THE COURT: DR. ROSS, WHO WAS THE BODY DELIVERED TO?

5 A WE MEANS THE MORGUE, MYSELF, AND THE MORGUE
6 ASSISTANT, DR. GARVIN, WHO DOES THE---

7 THE COURT: ARE YOU ANSWERING MY QUESTION OR HIS
8 QUESTION?

9 A I'M SORRY. WHAT WAS THE QUESTION?

10 THE COURT: WHO WAS THE BODY DELIVERED TO?

11 A DELIVERED TO THE MORGUE AT THE NEWBERRY COUNTY
12 MEMORIAL HOSPITAL. AND INSIDE THE MORGUE TO RECEIVE THE
13 BODY WERE MYSELF AND DR. GARVIN AND WHOEVER WAS DOING THE
14 COMPUTER WORK THAT DAY.

15 THE COURT: AND YOU WERE INSIDE THE MORGUE TO RECEIVE
16 THE BODY?

17 A YES.

18 THE COURT: SO YOU RECEIVED THE BODY?

19 A YES.

20 THE COURT: ANYTHING FURTHER?

21 MR. SMITH: NOTHING FURTHER. IF IT'S HER TESTIMONY
22 SHE ACTUALLY TOOK POSSESSION OF THE BODY FROM THE DEPUTY,
23 I DON'T HAVE A PROBLEM WITH IT.

24 THE COURT: I ADMIT THE EVIDENCE. I ADMIT THE ITEMS
25 IN TO EVIDENCE. AND A PERFECT CHAIN IS NOT REQUIRED. AND

1 SOME INSTANCES IT BECOMES A MATTER OF CREDIBILITY
2 REGARDING THE EVIDENCE. IT APPEARS THAT BASED ON THE
3 TESTIMONY OF THE ITEMS BEING DISCUSSED, WE'RE NOT TALKING
4 ABOUT ALCOHOL OR DNA OR THE TYPES OF THINGS THAT ARE MORE
5 LIKELY TO BE CONTAMINATED. SO I FIND THE STATE HAS
6 SUFFICIENTLY ESTABLISHED MORE LIKELY AS A POSSIBLE WAY OF
7 CONTAMINATION, WOULD THEREBY, I FIND THAT THE STATE HAS
8 ADEQUATELY ESTABLISHED A CHAIN OF CUSTODY IN THIS MATTER.
9 I ADMIT THESE ITEMS.

10 MR. SMITH: THANK YOU, YOUR HONOR.

11 THE COURT: ANYTHING ELSE BEFORE WE BRING THE JURY
12 BACK?

13 MR. SAVERANCE: NOTHING FROM THE STATE, YOUR HONOR.
14 (PANTS, TEE SHIRTS, PERSONAL EFFECTS OF T.R. MARKED
15 STATE'S NO. 3 AND 4 INTO EVIDENCE.)

16 THE COURT: LET'S BRING THE JURY BACK.

17 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
18 PRESENCE OF THE JURY.)

19 THE COURT: YOU MAY PROCEED. THE ITEMS ARE ADMITTED
20 INTO EVIDENCE, 3 AND 4.

21 Q DR. ROSS, IS IT YOUR TESTIMONY THAT YOU WERE THERE
22 ALONG WITH SOME OTHER ASSISTANTS TO RECEIVE THE BODY FROM
23 LAW ENFORCEMENT?

24 A YES.

25 Q DR. ROSS, DID YOU DETERMINE IF THERE WERE ANY GUNS^{NOT}

1 WOUNDS TO MR. ROUSE?

2 A YES.

3 Q HOW MANY?

4 A SEVEN.

5 Q SEVEN?

6 A YES.

7 Q WHAT DID YOU DO IN DETERMINING THAT?

8 A EXTERNAL EXAMINATION AND X-RAY'S. THE EXTERNAL
9 EXAMINATION SHOWED BULLET HOLES. AND THE X-RAY SHOWED A
10 TOTAL OF SIX BULLETS STILL IN THE BODY.

11 Q STILL IN THE BODY?

12 A YES.

13 Q SO YOU DID SOME X-RAYS?

14 A YES.

15 Q NOW, YOU SAID THERE WERE SEVEN GUNSHOT WOUNDS?

16 A YES.

17 MR. SAVERANCE: YOUR HONOR, COULD I HAVE HER STEP
18 DOWN AND SHOW---

19 THE COURT: YES, SIR.

20 MR. SAVERANCE: ---ON ME?

21 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
22 STAND.)

23 Q YOU ARE FREE TO LOOK AT YOUR REPORT IF YOU NEED TO.
24 AND I WILL BE TROY ROUSE, THE VICTIM, AND I JUST WANT YOU
25 TO START WITH GUNSHOT WOUND NO. 1. AND JUST GIVE THE JURY

1 AN IDEA OF WHERE THESE WOUNDS WERE.

2 A FIRST OF ALL, WE NUMBER THESE I'M GOING TO GO 1.
3 THROUGH 7. BUT THAT DOESN'T MEAN THE ORDER THEY CAME. WE
4 NUMBER, WE PUT NUMBERS ON THEM FOR ORGANIZATION WHERE WE
5 CAN FOLLOW UP WITH WHAT BULLET GOES TO WHAT WOUND. THAT
6 DOES NOT MEAN THAT NO. 1 WAS FIRST, SECOND, THIRD, OR
7 FOURTH. WOUND NO., WHAT WE CALL NO. 1, CAME IN THE LEFT
8 CHEST. IT WENT DOWNWARD, WENT THROUGH THE LEFT LUNG.
9 WENT THROUGH THE HEART, AND IN THROUGH THE LIVER. AND
10 CAUSED BLEEDING IN THE LEFT AND IN THE ABDOMEN. WOUND NO.
11 2 WENT IN THE RIGHT ABDOMEN. WENT DOWNWARD FROM FRONT TO
12 BACK. WENT THROUGH SOME LOOPS OF BOWELS. WE FOUND IT IN
13 THE SOFT TISSUE AROUND THE BACK.

14 WOUND NO. 3, THIS WENT UNDERNEATH THE SKIN. IT WENT
15 BENEATH THE BELLY BUTTON. JUST TO THE LEFT OF MIDLINE AND
16 WENT A COUPLE OF INCHES AND WENT OUT THE OTHER SIDE. BUT
17 IT JUST WENT UNDERNEATH THE SKIN. IT DID NOT HIT ANY
18 ORGANS.

19 Q LET ME ASK YOU. THE GUNSHOT WOUND 1 AND 2, DID THEY
20 EXIT THE BODY?

21 A NO, THEY DID NOT. NO. 3 IS THE ONLY ONE THAT DID NOT
22 STAY IN THE BODY. IT WENT IN AND OUT. NO. 4 WENT INTO
23 THE RIGHT KNEE, TO THE SIDE OF THE KNEE. AND WE FOUND THE
24 BULLET UP IN THE MUSCLE.

25 Q SO IT WENT IN BELOW THE KNEE CAP?

1 A YES.

2 Q AND CAME UP.

3 A AND WENT UP. REMEMBER, THIS IS WHEN YOU ARE STANDING
4 STRAIGHT UP. BUT THE KNEE COULD HAVE BEEN PUT UP. IT
5 COULD HAVE BEEN IN A DIFFERENT POSITION. THIS INDICATES
6 POSSIBLY A DEFENSE WOUND. AND HE'S PUTTING HIS KNEE UP OR
7 WHATEVER, TRYING TO AVOID THE SHOT.

8 Q SO IT'S POSSIBLE MAYBE HE WAS ON THE GROUND
9 DEFENSIBLY, AND THE SHOT CAME UP HERE AND WENT OUT.

10 A THAT'S ONE POSSIBILITY, YES.

11 Q AND YOU SAID IT MAY BE A DEFENSIVE WOUND?

12 A A DEFENSIVE TYPE MANEUVER FOR THE DEFENDANT.

13 Q OKAY.

14 A NO. 5 WENT INTO THE RIGHT SIDE OF THE CHEST. AND
15 AGAIN, THAT JUST WENT UNDERNEATH THE SKIN. IT DIDN'T GO
16 INTO THE CHEST AT ALL. AND WE FOUND THAT, IT WENT BACK
17 WITH A COUPLE OF INCHES AND WE FOUND THAT BULLET. SIX AND
18 7 WENT INTO THE BACK. LEFT SIDE OF THE BACK. NO. 6 WENT
19 SOMEWHAT DOWNWARD FROM BACK TO FRONT. IT WENT THROUGH THE
20 LEFT LUNG. AND WE FOUND IT OVER NEAR THE SPINAL CORD.
21 NO. 7 WENT INTO THE LEFT BACK. WENT A LITTLE BIT
22 DOWNWARD. IT HIT THE LEFT LUNG. AND ALSO HIT THE LIVER.
23 AND WE FOUND THAT BULLET.

24 MR. SAVERANCE: OKAY. I APPRECIATE THAT. AND I'LL
25 HAVE YOU TAKE THE STAND. AND I HAVE GOT A FEW MORE THINGS

1 TO GO OVER WITH YOU.

2 (THEREUPON, THE WITNESS RESUMES THE WITNESS STAND.)

3 Q DID YOU DO SOME SORT OF DIAGRAM FOR US TODAY AS FAR
4 AS THE BULLET WOUNDS AND THAT SORT OF THING?

5 A YES, I DID.

6 Q DO YOU HAVE THAT WITH YOU?

7 A YES.

8 Q AND DOES THAT DIAGRAM ACCURATELY REFLECT WHAT YOU
9 JUST TESTIFIED TO AS FAR AS WHERE EACH WOUND WAS AT IN THE
10 BODY?

11 A YES.

12 MR. SAVERANCE: CAN I APPROACH, YOUR HONOR?

13 THE COURT: YES.

14 Q YOUR HONOR, I WOULD LIKE TO MARK THIS. LET ME ASK
15 YOU, IS THAT A COPY OF JUST THE DIAGRAM?

16 A I BELIEVE THAT'S A COPY. IT LOOKS LIKE THE ORIGINAL.

17 MR. SAVERANCE: YOUR HONOR, I WOULD MOVE TO HAVE THE
18 DIAGRAM ADMITTED INTO EVIDENCE.

19 THE COURT: MR. WHEELER.

20 MR. WHEELER: WITHOUT OBJECTION.

21 MR. WATTS: NO OBJECTION.

22 MR. JOHNSON: NO OBJECTION.

23 THE COURT: ADMITTED WITHOUT OBJECTION.

24 (DIAGRAM OF BULLET HOLES MARKED STATE'S EXHIBIT NO.
25 25 INTO EVIDENCE.)

1 Q DR. ROSS, ON YOUR REPORT, DID YOU LIST EACH GUNSHOT
2 WOUND, WHERE IT WAS AT, WHAT PART OF THE BODY IT WENT IN
3 TO, AND IF IT WAS FATAL OR NONFATAL?

4 A YES, I DID.

5 Q LET'S GO THROUGH THAT. ON YOUR REPORT, WOUND NO. 1
6 IS THAT THE WOUND TO THE CHEST?

7 A THAT WAS IN THE LEFT UPPER CHEST. IT WENT THROUGH
8 THE LEFT LUNG AND THE HEART AND THE LIVER. AND ALL THE
9 WHILE BLEEDING. THAT WAS FATAL.

10 Q SO THAT WAS CONSIDERED A FATAL---

11 A YES.

12 Q ---SHOT. IN OTHER WORDS, A SHOT THAT KILLED MR.
13 ROUSE.

14 A CAUSED A LOT OF BLEEDING, YES. AND DEATH.

15 Q AND YOU HAVE THAT SHOWN AS A MEDIUM CALIBER GUN, IS
16 THAT RIGHT?

17 A YES.

18 Q YOU DIDN'T HAVE ANY KIND OF WEAPON TO TEST OR
19 ANYTHING, DID YOU?

20 A NO, I DID NOT.

1 Q WHY DO YOU SAY IT WAS MEDIUM CALIBER GUN?

2 A FROM THE MEASUREMENT OF THE BASE OF THE BULLET.

3 Q THE OTHER 6 GUNSHOT WOUNDS, WHAT WOULD YOU LIST THOSE
4 AS?

5 A SMALL CALIBER.

1 Q SO BULLET ONE IN THE CHEST WAS SHOT FROM A MEDIUM
2 CALIBER GUN?

3 A YES.

4 Q AND THE OTHER SIX WERE SHOT FROM A SMALL CALIBER?

5 A YES.

6 Q SO YOU FORMED AN OPINION THAT IT WAS TWO DIFFERENT
7 GUNS?

8 A AT LEAST TWO, YES.

9 Q AND TWO DIFFERENT TYPES OF BULLETS.

10 A YES.

11 Q ITEM 6 AND 7. TELL ME ABOUT ITEM 6. WHERE WAS THAT
12 SHOT AT?

13 A SIX WENT INTO THE LEFT BACK. AND WENT FROM THE BACK
14 TO FRONT AND DOWNWARD. IT HIT THE LEFT LUNG.

15 Q AND THAT WAS FROM A SMALL CALIBER.

16 A YES.

17 Q SO THAT'S NOT THE SAME GUN AS NUMBER 1 TO THE CHEST.

18 A CORRECT.

19 Q AND WHY DID YOU LIST THAT AS POTENTIALLY FATAL?

20 A BY ITSELF IT WOULD HAVE BEEN FATAL BECAUSE THE LUNG
21 CONTINUED TO BLEED OUT.

22 Q GUNSHOT WOUND NO. 7. TELL ME ABOUT THAT AGAIN.

23 A NO. 7 WENT INTO THE LEFT BACK. AGAIN WENT FROM BACK
24 TO FRONT SLIGHTLY DOWNWARD. AND INTO THE LUNG AND INTO
25 THE LIVER.

1 Q AND WHY DID YOU LIST THAT AS -- DID YOU LIST THAT AS
2 POTENTIALLY FATAL?

3 A AGAIN, BECAUSE IT PRODUCED A LOT OF BLEEDING.

4 Q WHY WOULD YOU LIST THAT GUNSHOT ALONE IN YOUR VIEW TO
5 BE POTENTIALLY FATAL AND POSSIBLY KILL MR. ROUSE?

6 A BECAUSE UNLESS THE PERSON WAS RIGHT AT THE EMERGENCY
7 ROOM DOOR OR THE OPERATING ROOM DOOR, THE LUNG WILL BLEED
8 OUT UNTIL IT IS INTERFERED WITH SURGICALLY. THEY ACTUALLY
9 GO IN AND CLAMP OFF THE BLEEDING AREA. SO IT WILL
10 CONTINUE TO BLEED AND BLEED OUT.

11 Q WAS IT YOUR EXPERT OPINION IF HE HAD NOT BEEN SHOT IN
12 THE CHEST, ONE, EITHER ONE OF THE SHOTS IN THE BACK WOULD
13 HAVE -- COULD HAVE KILLED MR. ROUSE; WOULD HAVE KILLED HIM
14 PROBABLY?

15 A YES.

16 Q DO YOU HAVE YOUR REPORT WITH YOU?

17 A YES, I DO.

18 Q AND YOU SAY ONE OF THE GUNSHOT WOUNDS TO THE BACK
19 WOULD HAVE KILLED MR. ROUSE IN YOUR OPINION?

20 A EITHER ONE IN THE BACK.

1 Q WOULD HAVE KILLED HIM?

2 A YES.

3 Q HOW ABOUT LOOK AT YOUR REPORT FOR ME. IS THAT YOUR
4 REPORT?

5 A YES.

1 Q IS IT ACCURATE?

2 A YES.

3 MR. SAVERANCE: YOUR HONOR, I WOULD MOVE TO HAVE THIS
4 DR. ROSS' REPORT OF THE AUTOPSY PUT INTO EVIDENCE.

5 THE COURT: WHAT SAYS THE DEFENSE?

6 MR. WHEELER: NO OBJECTION, YOUR HONOR.

7 THE COURT: MR. WATTS?

8 MR. WATTS: NO OBJECTION.

9 MR. JOHNSON: NO OBJECTION, YOUR HONOR.

10 THE COURT: ADMITTED WITHOUT OBJECTION.

11 (AUTOPSY REPORT MARKED STATE'S EXHIBIT NO. 26 INTO
12 EVIDENCE.)

13 Q YOUR HONOR, IF I CAN APPROACH, I AM GOING TO LEAVE
14 THIS WITH HER UNTIL SHE FINISHES. DID YOU RECEIVE AND
15 REVIEW A TOXICOLOGY REPORT IN THIS MATTER?

16 A YES, I DID.

17 Q WHO WAS THAT FROM?

18 A WHO WAS THIS CONCERNING?

19 Q WHO DID YOU RECEIVE THAT FROM?

20 A IT COMES TO US FROM SLED.

21 Q DO YOU HAVE A COPY OF THAT?

22 A YES, I DO.

23 Q AND WHAT'S THE DATE?

24 A WE RECEIVED IT JULY 11, 2005.

25 Q AND THE VICTIM IS LISTED AS?

1 A TROY DWAYNE ROUSE.

2 Q AND THAT WOULD HAVE BEEN A TOXICOLOGY DONE ON MR.
3 ROUSE?

4 A YES.

5 Q WHAT IS A TOXICOLOGY?

6 A TOXICOLOGY MEANS DRUG LEVELS. WE SENT BLOOD, URINE,
7 VITREOUS AND BILE, ALONG WITH A LITTLE BIT OF BRAIN TISSUE
8 AND LIVER TISSUE FOR THEM TO DO A DRUG ANALYSIS ON. AND
9 THE ONLY THING THEY FOUND WAS ETHANOL ALCOHOL.

10 Q TO YOUR -- IS IT NORMAL FOR YOU TO REVIEW FOR THESE
11 TYPE OF THINGS AS PART OF YOUR AUTOPSY AND INVESTIGATION?

12 A YES.

13 Q SO THIS IS IMPORTANT TO YOU.

14 A YES.

15 Q NOW TO YOUR UNDERSTANDING, THEY TEST IT FOR
16 METHAMPHETAMINE AND DID NOT FIND ANY IN HIS SYSTEM,
17 CORRECT?

18 A CORRECT.

19 Q THEY TEST IT FOR COCAINE AND OTHER COCAINE
20 METABOLITES AND THERE WAS NONE IN HIS SYSTEM ACCORDING TO
21 THE---

22 A YES.

23 Q ---REPORT.

24 A THAT'S CORRECT.

25 Q SO NO TYPE OF ILLEGAL DRUGS AND THAT SORT OF THING

1 WERE FOUND IN MR. ROUSE'S BODY ACCORDING TO THE TOXICOLOGY
2 REPORT.

3 A CORRECT.

4 Q THERE WAS SOME ALCOHOL IN HIS SYSTEM, RIGHT?

5 A YES.

6 Q BUT NO DRUGS OR ILLEGAL SUBSTANCES LIKE THAT.

7 A CORRECT.

8 MR. SAVERANCE: YOUR HONOR, I WOULD MOVE TO ADMIT THE
9 TOXICOLOGY REPORT AT THIS TIME.

10 MR. WHEELER: NO OBJECTION.

11 MR. WATTS: NO OBJECTION.

12 MR. JOHNSON: NO OBJECTION, YOUR HONOR.

13 THE COURT: IT'S ADMITTED.

14 (TOXICOLOGY REPORT MARKED STATE'S EXHIBIT NO. 27 INTO
15 EVIDENCE.)

16 Q DR. ROSS, DO YOU NORMALLY TAKE PICTURES WHENEVER A
17 BODY COMES IN---

18 A YES.

19 Q ---BEFORE YOU DO AN AUTOPSY?

20 A YES, WE DO.

21 Q DID YOU TAKE SOME PICTURES IN THIS CASE?

22 A YES, WE DID.

23 MR. SAVERANCE: YOUR HONOR, I WILL SHOW DEFENSE
24 COUNSEL THESE PICTURES BEFORE I APPROACH THE WITNESS.

25 MR. WHEELER: YOUR HONOR, I KNOW I HAVE AN OBJECTION.

1 TO THEM. I DON'T KNOW IF THE OTHER DEFENSE COUNSEL.

2 MR. JOHNSON: WE CONCUR, YOUR HONOR.

3 THE COURT: PROCEED, MR. SAVERANCE.

4 MR. SAVERANCE: YOUR HONOR, I HAVE NO PROBLEM WITH
5 TAKING THIS UP. THEIR OBJECTION TO THE PICTURES, TAKING
6 IT UP AT THIS TIME.

7 THE COURT: DO YOU HAVE ANY QUESTIONS FOR THE
8 WITNESS?

9 MR. SAVERANCE: I DO, YOUR HONOR. CAN YOU LABEL
10 THOSE SEPARATELY FOR IDENTIFICATION, PLEASE?

11 (PHOTOGRAPHS MARKED STATE'S EXHIBIT NOS. 28-31 FOR ID
12 ONLY.)

13 MR. SAVERANCE: CAN I APPROACH, YOUR HONOR?

14 THE COURT: YES.

15 Q THIS IS STATE'S 28, 29, 30 AND 31 FOR IDENTIFICATION.
16 CAN YOU IDENTIFY THOSE PICTURES?

17 A YES. THESE ARE PICTURES TAKES AT THE AUTOPSY OF TROY
18 ROUSE.

19 Q AND THOSE WOULD BE PICTURES OF?

20 A WELL INJURIES TO THE BODY AND THE ORGANS AND THE
1 PICTURES OF THE BULLETS.

2 Q IS THAT A FAIR REPRESENTATION OF THE WAY THOSE THINGS
3 LOOKED AT THE TIME YOU TOOK THOSE PICTURES?

4 A YES.

5 MR. SAVERANCE: YOUR HONOR, I WOULD MOVE TO HAVE

1 THESE ITEMS ADMITTED -- LET ME REPHRASE, YOUR HONOR.

2 Q SO THOSE DEPICT THE BULLETS YOU TOOK OUT OF TROY
3 ROUSE'S BODY?

4 A YES.

5 Q AND THEY ALSO DEPICT CERTAIN ORGANS THAT WERE
6 DAMAGED---

7 A YES.

8 Q ---FROM THE BULLETS?

9 A YES, SIR.

10 Q AND THEY DEPICT GUNSHOT WOUNDS ON THE BODY?

11 A YES.

12 MR. SAVERANCE: YOUR HONOR, WE WOULD MOVE TO HAVE
13 THESE ITEMS ADMITTED INTO EVIDENCE AT THIS TIME.

14 THE COURT: AND I UNDERSTAND THERE ARE OBJECTIONS TO
15 THE EXHIBITS?

16 MR. WHEELER: YES, SIR, YOUR HONOR.

17 THE COURT: LADIES AND GENTLEMEN, I AM GOING TO HAVE
18 YOU GO TO THE JURY ROOM WHILE WE DISCUSS THIS MATTER.
19 PLEASE DO NOT DISCUSS THIS CASE.

20 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
21 PRESENCE OF THE JURY.)

22 THE COURT: MR. WHEELER.

23 MR. WHEELER: THANK YOU, YOUR HONOR. MAY IT PLEASE
24 THE COURT. YOUR HONOR, THE GROUNDS FOR OUR OBJECTION TO
25 THESE PICTURES, OF COURSE, THIS IS THE SECOND TIME IN THE

1 COURSE OF THIS TRIAL. THAT'S THE FIRST TIME I HAVE EVER
2 SEEN ANY OF THOSE PICTURES. YOUR HONOR, AGAIN, WE FILED
3 BRADY AND RULE 5 AT THE OUTSET OF THIS CASE. YOUR HONOR,
4 IF SHE'S TESTIFIED THAT SHE TOOK THESE PICTURES AS A PART
5 OF HER AUTOPSY INVESTIGATION, THAT WOULD FALL IN AS PART
6 OF HER REPORT OF EXAMINATION OF TESTS CONDUCTED ON THE
7 BODY OF THIS CASE.

8 IT JUST FRANKLY BOTHERS ME THAT I'VE NEVER SEEN THESE
9 BEFORE TODAY. WE MET LAST THURSDAY AGAIN TO GO OVER ALL
10 THE EVIDENCE, WHAT I THOUGHT WAS ALL THE EVIDENCE IN THIS
11 CASE. AND THIS IS THE SECOND THING DURING THE COURSE OF
12 THIS TRIAL. WE HAD THE AUDIOTAPE YESTERDAY. AND I THINK
13 WE HAVE WORKED PAST THAT. I NOW SEE THESE PICTURES THAT
14 I'VE NEVER SEEN BEFORE THIS MORNING. AND THE FACTUAL
15 BASIS, YOUR HONOR, MY OTHER COUNSEL MAY HAVE SOME OTHER
16 GROUNDS FOR OBJECTION. I DON'T THINK THEY'VE EVER SEEN
17 THE PICTURES EITHER.

8 MR. WATTS: YOUR HONOR, I CONCUR IN THAT. WE HAVEN'T
9 SEEN THOSE PICTURES.

0 MR. JOHNSON: I CONCUR AS WELL, YOUR HONOR. I'VE
1 NEVER SEEN THEM.

2 THE COURT: MR. SAVERANCE.

3 MR. SAVERANCE: MAY IT PLEASE THE COURT, AS FAR AS
4 THE FIRST ISSUE, THE COURT RULED THAT WASN'T A VIOLATION.
5 AND I TOLD THE COURT THAT WE INFORMED THEM ABOUT THE

1 AUDIO. THEY SAY THEY DIDN'T REMEMBER. WE DIDN'T DO IT
2 THAT WAS NOT RULED A VIOLATION. WE DID PRODUCE THE AUDIO.
3 AND IT'S NOT AN ISSUE NOW. AS FAR AS THIS ISSUE, YOUR
4 HONOR, I CONTACTED DR. ROSS PREVIOUSLY AND ASKED CAN YOU
5 SEND ANY PICTURES WE COULD USE. SHE INFORMED ME THEY
6 DIDN'T KNOW IF THEY HAD ANY. IT COULD BE MAILED TO ME.
7 SHE WOULD CHECK ON THE COMPUTER. SHE MAY NOT BE ABLE TO
8 BRING THEM WITH HER. THE WAY I LOOKED AT HER IS, IF SHE
9 COULD DEVELOP SOME OR PRINT THEM OFF AND SEND THEM TO ME
10 OR BRING THEM, THAT WOULD BE FINE.

11 YOUR HONOR, ALL THEY ARE, ARE PICTURES OF THE
12 BULLETS, AND PICTURES OF WHERE THE BULLETS WENT INTO THE
13 BODY. WE'VE ALREADY SUBMITTED PICTURES INTO EVIDENCE
14 SHOWING WHERE THE BULLETS WENT INTO THE BODY FROM THE
15 CRIME SCENE. AND AS FAR AS THE BULLETS, I DON'T KNOW WHY
16 THAT IS PREJUDICIAL. BUT, YOUR HONOR, BASICALLY I HAVE NO
17 PROBLEM WITH THE ATTORNEYS LOOKING AT THEM AND DETERMINING
18 IF THEY FEEL IT IS, YOU KNOW, ADMISSIBLE OR NOT. BUT
19 THEY ARE NOT PICTURES OF THE VICTIM'S FACE NOR PICTURES OF
20 THE NECK AND ORGANS OF THE VICTIM, OR ANYTHING LIKE THAT.
21 IT'S JUST PICTURES OF THE BULLETS AND PICTURES OF WHERE
22 THE BULLETS WENT IN.

23 THE COURT: THE OBJECTION IS SUSTAINED. DUE TO THE
24 ITEMS NOT BEING DISCLOSED PURSUANT TO RULE 5 OF THE RULES
25 OF CRIMINAL PROCEDURE. ANYTHING ELSE BEFORE WE BRING THE

1 JURY BACK?

2 MR. WHEELER: NO, SIR, YOUR HONOR.

3 THE COURT: WE'LL TAKE A FEW MINUTES AND THEN BRING
4 THEM BACK. YOU MAY STEP DOWN, DR. ROSS. PLEASE DO NOT
5 DISCUSS YOUR TESTIMONY.

6 (THEREUPON, THE COURT TAKES A SHORT RECESS.)

7 THE COURT: YOU MAY BRING THE JURY.

8 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
9 PRESENCE OF THE JURY.)

0 THE COURT: THE JURY IS BACK. THE OBJECTION IS
1 SUSTAINED. YOU MAY PROCEED.

2 MR. SAVERANCE: MAY I APPROACH WITH STATE'S 36 FOR
3 IDENTIFICATION?

4 THE COURT: YES, SIR.

5 Q DR. ROSS, CAN YOU LOOK AT, AND TAKE YOUR TIME. I
6 JUST WANT YOU TO LOOK THROUGH THERE AND SEE IF YOU CAN
7 IDENTIFY THOSE ITEMS.

8 A THIS IS BULLET NO. 1 FROM, RETRIEVED OUT OF TROY
9 ROUSE AT THE TIME OF AUTOPSY.

0 Q AND LET'S DO THIS. I KNOW IT'S DIFFICULT DOING THAT.
1 LET'S JUST IDENTIFY THE FIRST ONE AND THEN WE'LL KIND OF
2 TALK ABOUT IT, AND WE WILL GO TO NO. 2. SO HOW DO YOU
3 KNOW THAT THAT IS WOUND -- BULLET WOUND NO. 1?

4 A FROM PICTURES THAT WE COMPARED FROM THE AUTOPSY. AND
5 THIS IS A PACKAGE WITH MY INITIALS.

1 Q LET ME GET YOU TO SPEAK UP, PLEASE.

2 A I'M SORRY. THIS IS OUR PACKAGING WITH MY INITIALS ON
3 IT. AND THE PHOTOGRAPH OF THE BULLET IS SIMILAR TO, IS
4 THE SAME AS THIS.

5 Q SO YOU PACKAGED THAT AFTER YOU TOOK IT OUT OF---

6 MR. WATTS: OBJECTION. MAY WE APPROACH THE BENCH,
7 YOUR HONOR?

8 (THEREUPON, THE ATTORNEYS APPROACH AND CONFER WITH
9 THE JUDGE.)

10 THE COURT: THE OBJECTION IS SUSTAINED.

11 Q DR. ROSS, I AM GOING TO ASK YOU TO IDENTIFY THOSE
12 THINGS. BUT I DON'T, WITHOUT REFERENCING PICTURES OR
13 ANYTHING LIKE THAT, OKAY.

14 A THIS IS MY DOCUMENTATION FROM THE AUTOPSY.

15 Q WELL I UNDERSTAND. BUT I JUST WANT YOU TO LOOK AT
16 WHAT'S IN THE BAG. AND MAYBE WHAT YOU LABELED IT AS AND
17 MAYBE YOUR INITIALS AND THAT SORT OF THING. SO LET'S
18 START AGAIN. WHAT ITEM IS THAT?

19 A THIS IS BULLET NO. 1. I RETRIEVED FROM THE CHEST OF
20 TROY ROUSE.

21 Q DID YOU PUT A 1 ON THERE, OR WHAT DID YOU PUT ON
22 THERE?

23 A LABEL WITH BULLET NO. 1. I INITIALLED THE CONTAINER.

24 Q OKAY. NOW LET ME ASK YOU THIS, DOES THAT MATCH, I
25 KNOW ON YOUR REPORT, I THINK YOU'VE STILL GOT YOUR REPORT

1 UP THERE. AND DOES THAT MATCH ON YOUR REPORT WITH GUN
2 WOUND NO. 1?

3 A YES.

4 Q IS THAT THE SHOT IN THE CHEST?

5 A YES.

6 Q FROM A MEDIUM CALIBER GUN?

7 A YES.

8 Q CAN YOU IDENTIFY ITEM NO. 2?

9 A YES, NO. 2 IS LABELED NO. 2 AND INITIALED. THAT'S A
10 SMALL CALIBER.

11 Q WAS THAT BULLET TAKEN OUT OF TROY ROUSE'S BODY DURING
12 THE AUTOPSY?

13 A YES.

14 Q AND AFTER YOU EXAMINED IT, YOU PUT IT IN THAT
15 CONTAINER?

16 A YES.

17 Q AND BULLET NO. 2 WAS A SMALL CALIBER GUN TO THE
18 ABDOMEN?

19 A YES.

20 Q OKAY. WHAT ABOUT THE NEXT ITEM?

1 A BULLET NO. 4, WITH MY INITIALS ON IT. IT'S A SMALL
2 CALIBER BULLET RETRIEVED FROM TROY ROUSE AT THE TIME OF
3 THE AUTOPSY.

4 Q AND DOES THAT MATCH WOUND NO. 4, WHICH SAYS WOUND TO
5 THE LEG ON YOUR REPORT?

1 A YES.

2 Q AND YOU PUT THAT BULLET IN THAT PACKAGING AND
3 INITIALED IT?

4 A YES.

5 Q WHAT ABOUT ITEM, WHAT ABOUT BULLET NO. 3, IS THERE A?

6 A THERE IS NO BULLET. IT WENT ALL THE WAY THROUGH. IT
7 WENT IN AND OUT. IT WENT UNDERNEATH THE SKIN.

8 Q SO THAT WAS GUNSHOT WOUND NO. 3 FROM THE REPORT. AND
9 THAT ONE THAT YOU SAID THERE WAS NO BULLET THAT YOU FOUND.

10 A CORRECT.

11 Q IS THERE A NO. 5? ITEM NO. 5?

12 A NO. 5 IS PRETTY MUCH A LARGE FRAGMENT LABELED BULLET
13 NO. 5 AND INITIALED. A BULLET I RETRIEVED FROM TROY ROUSE
14 AT THE TIME OF AUTOPSY.

15 Q IS THAT THE PACKAGE PUT IT IN, AND APPEAR TO BE IN
16 THE SAME CONDITION AS WHEN YOU LAST HANDLED IT?

17 A YES.

18 Q WHAT ELSE DO YOU HAVE?

19 A OKAY. BULLET NO. 6 IS SO LABELED AND A SMALL BULLET
20 RETRIEVED FROM TROY ROUSE AT THE TIME OF AUTOPSY.

21 Q AND THAT WAS ONE OF THE SHOTS IN THE BACK?

22 A YES.

23 Q IT WENT THROUGH THE LEFT LUNG?

24 A YES.

25 Q AND THAT'S LISTED AS GUNSHOT WOUND NO. 6 IN YOUR

1 REPORT?

2 A YES..

3 Q THAT CAME FROM MR. ROUSE'S BODY?

4 A YES.

5 Q IS IT IN THE SAME CONDITION AS THE LAST TIME YOU SAW
6 IT?

7 A YES, IT IS.

8 Q DO YOU HAVE ANOTHER ITEM?

9 A YES. BULLET NO. 7, A SMALL CALIBER BULLET.
0 INITIALED WITH MY LABEL ON IT.

1 Q AND THAT WAS ANOTHER ONE THAT CAME FROM MR. ROUSE'S
2 BACK?

3 A YES.

4 Q DOES THAT APPEAR TO BE IN THE SAME CONDITION AS THE
5 LAST TIME YOU HANDLED IT?

6 A YES, IT DOES.

7 Q NOW ALL, I KNOW THERE WERE 7 WOUNDS AND THERE WERE 6
8 BULLETS. BUT ALL 6 OF THOSE BULLETS IN THOSE PACKAGES
9 THERE, THAT IS THE LAST TIME YOU HANDLED THOSE OBVIOUSLY.
0 YOU PUT THEM IN THERE. YOU LABELED THEM 1, 2, 4, 5, 6 AND
1 7?

2 A YES.

3 Q AND THEY ARE IN THE SAME CONDITION AS THE LAST TIME
4 YOU HANDLED THEM?

5 A YES.

1 Q AND THAT'S NORMAL PROCEDURE TO PUT THEM IN THOSE
2 CONTAINERS?

3 A YES.

4 Q IS THAT TO KEEP THEM FROM CONTAMINATION AND THAT SORT
5 OF THING?

6 A YES.

7 Q ALL RIGHT.

8 A THESE ARE -- THESE HAVE BEEN TAKEN OUT OF THE
9 CONTAINERS. SO THEY'RE IN SLED'S PLASTIC BAGS.

10 Q WHAT DID YOU DO WITH THEM AFTER YOU LABELED THEM AND
11 PACKAGED?

12 A I SEALED THEM AND INITIALED THEM. AND PUT THIS IN
13 THIS TOXICOLOGY, WHICH IS THEN TAKEN BY LAW ENFORCEMENT.

14 Q OKAY. DO YOU REMEMBER WHO TOOK THOSE ITEMS?

15 A SALLIZA WILSON.

16 Q HOW DO YOU KNOW THAT?

17 A SHE SIGNED THE EVIDENCE FORM.

18 Q DO YOU HAVE ANOTHER FORM UP THERE?

19 A EVIDENCE FORM?

20 Q UH-HUH. (AFFIRMATIVE.)

21 A YES. IT'S PUT ON THE TOXICOLOGY.

22 Q OKAY. AND ALL THOSE THINGS WERE SENT TOGETHER TO
23 SLED?

24 A YES.

25 Q CAN I SEE THAT? MAY I APPROACH, YOUR HONOR?

1 THE COURT: YES.

2 Q AND SO YOU TURNED THESE OVER TO MS. WILSON?
3 INVESTIGATOR WILSON?

4 A YES, I DID.

5 Q IS THAT THE LAST TIME YOU SAW THEM UNTIL TODAY?

6 A YES.

7 Q AND THIS IS PART OF THE TRANSFER FORM THAT WAS WITH
8 THE TOXICOLOGY?

9 A YES.

0 MR. SAVERANCE: YOUR HONOR, I'D MOVE TO HAVE THIS
1 ADMITTED INTO EVIDENCE.

2 THE COURT: WHAT SAYS THE DEFENSE?

3 MR. WHEELER: YOUR HONOR, CAN I SEE THE DOCUMENT?
4 WITHOUT OBJECTION.

5 MR. WATTS: WITHOUT OBJECTION.

6 MR. JOHNSON: NO OBJECTION.

7 THE COURT: ADMITTED WITHOUT OBJECTION.

8 MR. SAVERANCE: I'D LIKE TO GET THIS MARKED.

9 (TRANSFER FORM MARKED STATE'S EXHIBIT NO. 37 INTO
EVIDENCE.)

Q DR. ROSS, YOU SAID SOMETHING A COUPLE OF TIMES
TALKING ABOUT THE BULLETS AND THE INJURIES ABOUT BLEEDING
OUT. WHAT IS BLEEDING OUT?

A IT'S A HOLE IN A VESSEL. IT'S THE BLOOD FLOWING OUT
OF THE VESSEL AND INTO AN EMPTY SPACE. AND IN THIS VICTIM

1 IN THE LEFT CHEST CAVITY. IT DIDN'T BLEED OUTSIDE THE
2 BODY BUT OUT OF THE CIRCULATORY SYSTEM INTO AN EMPTY
3 SPACE, WHICH WOULD BE THE LEFT CHEST CAVITY. AND SOME IN
4 THE ABDOMEN.

5 Q AND AGAIN, IN YOUR EXPERT OPINION, THE GUNSHOT WOUND
6 TO THE CHEST WAS FATAL?

7 A YES.

8 Q AND THE TWO WOUNDS TO THE BACK, WOUNDS 6 AND 7 WERE
9 POTENTIALLY FATAL?

10 A YES.

11 Q WHICH MEANS THEY COULD HAVE KILLED HIM OR WOULD HAVE
12 KILLED HIM WITHOUT THE OTHER GUNSHOTS?

13 MR. WHEELER: OBJECTION, YOUR HONOR, AS TO LEADING.

14 THE COURT: THE OBJECTION IS SUSTAINED.

15 Q WHAT DOES THAT MEAN?

16 A IT MEANS THAT EACH BULLET NOS. 6 AND 7 WHICH WENT
17 INTO THE BACK, EACH ONE OF THOSE BY THEMSELVES WOULD HAVE
18 KILLED THE PERSON.

19 Q CAN YOU TELL WHETHER OR NOT THEY DID?

20 A THERE WERE THREE HOLES IN THE LEFT LUNG. AND EACH
21 ONE OF THOSE HOLES CONTRIBUTED TO THE BLEEDING OUT.

22 Q DO YOU KNOW IF THEY CONTRIBUTED TO THE DEATH OF MR.
23 ROUSE?

24 A THAT WOULD HAVE CONTRIBUTED TO THE DEATH, YES.

25 MR. SAVERANCE: ONE SECOND, YOUR HONOR. YOUR HONOR,

1 AT THIS TIME I WOULD MOVE TO HAVE THE ITEMS THAT SHE
2 IDENTIFIED AS THE BULLETS AND THE PACKAGES THEY CAME IN
3 ADMITTED INTO EVIDENCE. 36 FOR IDENTIFICATION.

4 THE COURT: WHAT SAYS THE DEFENSE?

5 MR. WHEELER: WITHOUT OBJECTION.

6 MR. WATTS: WITHOUT OBJECTION, YOUR HONOR.

7 MR. JOHNSON: NO OBJECTION, YOUR HONOR.

8 THE COURT: ADMITTED WITHOUT OBJECTION.

9 (BULLETS MARKED STATE'S EXHIBIT NO. 36 INTO
0 EVIDENCE.)

1 Q DID YOU HANDLE ANY KIND OF SHELL CASINGS OR JUST THE
2 BULLETS IN THIS CASE?

3 A JUST THE BULLETS.

4 MR. SAVERANCE: THAT'S ALL I HAVE OF THIS WITNESS,
5 YOUR HONOR.

6 THE COURT: MR. WHEELER.

7 MR. WHEELER: THANK YOU, YOUR HONOR. IF IT PLEASE
8 THE COURT.

9 THE COURT: YES, SIR.

0 CROSS EXAMINATION BY MR. WHEELER:

1 Q DR. ROSS, YOU SAID YOU HAVE BEEN DOING THIS FOR ABOUT
2 30 YEARS, IS THAT RIGHT?

3 A YES.

4 Q AND YOU ARE A FORENSIC PATHOLOGIST. YOUR JOB IS TO
5 DETERMINE THE CAUSE OF DEATH AND THINGS RELATED TO A DEAD

1 BODY. IS THAT A FAIR STATEMENT?

2 A YES.

3 Q OKAY, SO IN CONNECTION WITH THIS CASE, YOU DON'T HAVE
4 ANY FACTS OR ANY KNOWLEDGE OF ANYTHING THAT HAPPENED AT
5 THE SCENE, OTHER THAN THESE BULLETS WERE IN THE BODY WHEN
6 YOU EXAMINED IT. IS THAT FAIR TO SAY?

7 A WELL OTHER THAN WHAT THE CORONER TOLD ME.

8 Q BUT THAT WASN'T PART OF WHAT THE JOB YOU WERE DOING.
9 YOU WERE THERE TO FIND OUT WHAT BULLETS WERE THERE AND
10 WHAT WAS THE CAUSE OF DEATH AND THAT KIND OF THING. IS
11 THAT ACCURATE?

12 A TO DOCUMENT THE INJURIES, YES.

13 Q NOW IN DOING THIS, I THINK YOU INDICATED YOU'VE
14 TESTIFIED IN ABOUT 30 TRIALS OVER THE YEARS?

15 A YES, SIR.

16 Q WHAT PERCENTAGE OF THAT TIME HAVE YOU TESTIFIED FOR
17 THE STATE?

18 A IN SELF DEFENSE OR SOUTH CAROLINA? UM---

19 Q IN SOUTH CAROLINA.

20 A ABOUT 30 TIMES.

21 Q ABOUT 30 TIMES.

22 A YES.

23 Q SO 100 PERCENT OF THE TIME YOU WORK FOR THE STATE,
24 THE SOLICITOR'S OFFICE.

25 A YES.

1 Q NOW YOU ISSUED THIS REPORT THAT HAS BEEN SUBMITTED IN
2 TO EVIDENCE.

3 A IT'S RIGHT HERE.

4 Q OKAY. AND YOU CAN JUST KEEP IT IF IT'S IN EVIDENCE.
5 AND YOU DID THAT ON APRIL THE 11TH OF 2005. IS THAT
6 CORRECT?

7 A IT'S IN THE AUTOPSY ON APRIL 8TH.

8 Q WITH THE---

9 A SIGNED OUT ON THE 11TH.

10 Q YOU SIGNED THE REPORT ON THE 11TH, CORRECT? NOW THIS
11 REPORT WAS MEANT TO BE AN ACCURATE DEPICTION OF WHAT YOU
12 OBSERVED. WAS IT INTENDED TO DO THAT AS FAR AS YOUR
13 EXAMINATION?

14 A YES.

15 Q AND OVER THE YEARS OF DOING THIS, IS IT IMPORTANT TO
16 YOU THAT YOUR REPORT BE PRECISE AND ACCURATE?

17 A YES.

18 Q NOW DO YOU INTEND TO INCLUDE EVERYTHING IN YOUR
19 REPORT THAT YOU FIND TO BE RELEVANT AND IMPORTANT IN YOUR
20 EXAMINATION?

21 A YES.

22 Q AND YOU WOULDN'T INTEND TO LEAVE ANYTHING OUT OR NOT
23 PUT ANYTHING IN THAT WAS IMPORTANT, WOULD YOU?

24 A CORRECT.

25 Q NOW IN CONNECTION WITH YOUR REPORT, YOU NOTED THAT

1 BULLET NO. 1 WAS FATAL, IS THAT CORRECT?

2 A YES.

3 Q AND YOU'VE IDENTIFIED BULLET 1, AND I WON'T PULL IT
4 OUT OF THIS PACKET RIGHT NOW. DID IT APPEAR TO BE
5 DIFFERENT? AND I UNDERSTAND YOU'RE NOT A BALLISTICS
6 EXPERT. DID IT APPEAR TO BE DIFFERENT THAN THE OTHER
7 BULLETS?

8 A YES.

9 Q WITHOUT REGARD FOR THE NATURE, AND WHAT EXACTLY THOSE
10 BULLETS WERE, DID IT APPEAR TO BE THAT YOU HAD BULLETS
11 FROM TWO DIFFERENT TYPES OF FIREARMS?

12 A YES.

13 Q NOW AND BULLET 1 WAS THE ONE TO THE CHEST, CORRECT?

14 A YES.

15 Q AND ALL THE OTHER ONES, WELL YOU CAN'T SAY WHAT
16 BULLET NO. 3 WAS.

17 A CORRECT.

18 Q BUT THE OTHER BULLETS WERE RECOVERED.

19 A YES.

20 Q NOW YOU'VE TOLD MR. SAVERANCE THIS MORNING THAT SHOTS
21 6 AND 7, WHICH ACCORDING TO YOUR DIAGRAM, AND TELL ME IF
22 THIS IS CORRECT. WERE GENERALLY IN THIS VICINITY. IS
23 THAT GENERALLY CORRECT?

24 A YES.

25 Q WERE, YOU'VE ESSENTIALLY TOLD HIM THEY WERE FATAL

1 THIS MORNING. IS THAT WHAT YOU'VE TOLD HIM?

2 A YES.

3 Q OKAY. NOW THAT'S NOT WHAT YOU PUT IN YOUR REPORT,
4 THOUGH, IS IT?

5 A POTENTIALLY FATAL.

6 Q POTENTIALLY FATAL. DR. ROSS, OF COURSE LOTS OF
7 THINGS ARE POTENTIALLY FATAL, IS THAT A FAIR STATEMENT?

8 A YES.

9 Q I MEAN THE FLU, IF YOU DON'T GET TREATMENT AND ARE
10 ELDERLY AND THAT KIND OF THING.

11 A YES.

12 Q NOW YOU DIDN'T -- SOME OF THINGS YOU'VE TOLD HIM THIS
13 MORNING AS FAR AS BLEEDING OUT AND THAT KIND OF THING, IS
14 THAT MENTIONED IN YOUR REPORT FROM THOSE GUNSHOT WOUNDS, I
15 SHOULD SAY, 6 AND 7?

16 A THE DETERMINATION OF THE CAUSE OF DEATH,
17 EXSANGUINATION, WHICH IS BLEEDING OUT.

18 Q BUT WAS NOT YOUR CAUSE OF THAT BLEEDING OUT GUNSHOT
19 1? IF WE TURN TO THE LAST PARAGRAPH OF YOUR REPORT. IF
20 YOU'D LIKE TO LOOK AT IT.

21 A WELL IF YOU LOOK ON THE FRONT PAGE AND IT'S NO. 6.
22 POTENTIALLY FATAL. IT'S A PENETRATING SMALL CALIBER
23 GUNSHOT WOUND NO. 6 TO THE BACK. WHICH PERFORATES THE
24 LEFT LUNG. CONTRIBUTING TO THE LEFT HEMOTHORAX.
25 HEMOTHORAX MEANS BLOOD IN THE CHEST CAVITY.

1 Q BUT WHAT DOES---

2 A SIMILARLY NO. 7. WHICH SHOULD BE TO THE LEFT
3 HEMOTHORAX AND TO THE HEMOPERITONEUM. WHICH IS BLOOD IN
4 THE ABDOMEN.

5 Q ON 6 AND 7. BUT IF YOU WOULD READ FOR ME THE LAST
6 PARAGRAPH, PLEASE.

7 A PAGE 7?

8 Q YES, MA'AM. PAGE 7 OF 7. THE LAST PARAGRAPH.

9 A CONTINUES, THE FIRST THING I HAVE TO REVIEW IS THE
10 AUTOPSY FINDINGS OF THE VICTIM: CAUSE OF DEATH IS
11 EXSANGUINATION DUE TO THE LACERATION OF THE HEART AND LEFT
12 LUNG. DUE TO A GUNSHOT WOUND TO THE CHEST.

13 Q OKAY.

14 A MANNER OF DEATH IS HOMICIDE.

15 Q AND IN THAT SENSE YOU SAY DUE TO A GUNSHOT WOUND TO
16 THE CHEST. IS THAT CORRECT?

17 A YES.

18 Q NOW IN YOUR TESTIMONY THIS MORNING WHEN Y'ALL WERE
19 STANDING HERE, YOU MENTIONED A GUNSHOT WOUND TO THE KNEE,
20 IS THAT CORRECT?

21 A YES.

22 Q NOW YOU SAID THAT THE ANGLE OF THAT SHOT COULD HAVE
23 BEEN DUE TO POTENTIALLY MANY THINGS, IS THAT CORRECT?

24 A YES.

25 Q NOW HAD YOU BEEN INVOLVED IN THIS CASE MUCH SINCE

1 APRIL THE 11TH WHEN YOU DICTATED OR SIGNED THIS REPORT?

2 A NO, SIR.

3 Q BETWEEN THEN AND NOW? BUT YOU MET WITH MR. SAVERANCE
4 FOR A LITTLE BEFORE YOU CAME IN TO TESTIFY THIS MORNING,
5 DIDN'T YOU?

6 A YES.

7 Q DID Y'ALL DISCUSS BEFORE YOU TESTIFIED THAT YOU MIGHT
8 GET UP AND SAY THAT WAS A POTENTIALLY FATAL DEFENSIVE
9 WOUND?

10 A WELL YES, THAT'S WHAT IT IS.

11 Q WELL IT'S POTENTIALLY OTHER THINGS TOO, ISN'T IT?

12 A YES.

13 Q IT'S POTENTIALLY AN AGGRESSIVE WOUND, ISN'T IT?

14 A IT JUST MEANS THE KNEE WENT UP.

15 Q THE KNEE WENT UP. THAT'S ALL IT MEANS, ISN'T IT?

16 A YES.

17 Q THAT KNEE COULD HAVE GONE UP WHILE SOMEBODY WAS
18 ATTACKING SOMEONE, COULDN'T IT?

19 A YES.

20 Q OKAY. DID YOU AND MR. SAVERANCE DECIDE YOU MIGHT
21 WANT TO MENTION THAT?

22 A NO.

23 Q Y'ALL JUST DECIDED YOU MIGHT WANT TO SAY IT WAS
24 BECAUSE HE WAS DEFENDING HIMSELF FROM BEING ATTACKED. IS
25 THAT FAIR?

1 A I'VE SEEN IT SEVERAL TIMES.

2 Q NOW MR. SAVERANCE QUESTIONED YOU ABOUT THE
3 TOXICOLOGY. DO YOU HAVE THAT IN FRONT OF YOU STILL?

4 A I BELIEVE YOU TOOK MY COPY.

5 MR. WHEELER: I BEG THE COURT'S INDULGENCE.

6 Q NOW THE TOXICOLOGY REPORT IS THAT SOMETHING, I THINK
7 YOU'VE INDICATED IT'S RELEVANT IN DOING WHAT YOU DO.

8 A YES.

9 Q AND SOMETHING YOU WANTED TO KNOW ABOUT. NOW OF
10 COURSE IT DIDN'T SHOW ANY DRUGS IN THE SYSTEM. IS THAT
11 CORRECT?

12 A CORRECT.

13 Q AND I BELIEVE YOU SAID IT SHOWED SOME ALCOHOL, IS
14 WHAT YOU INDICATED EARLIER.

15 A I SAID SHOWED ALCOHOL.

16 Q SHOWED ALCOHOL. WELL MR. SAVERANCE MIGHT HAVE JUST
17 SAID SOME ALCOHOL. IS THAT WHAT HE SAID?

18 A I DON'T REMEMBER.

19 Q BUT IT'S ACTUALLY A LITTLE MORE THAN SOME ALCOHOL IN
20 THE SYSTEM, ISN'T IT?

21 A YES.

22 Q WOULD YOU HAVE WANTED TO GET IN THE CAR WITH MR.
23 ROUSE WITH THAT AMOUNT OF BLOOD IN HIS ALCOHOL?

24 A NO.

25 Q WHAT WERE THE RESULTS AS REGARDS TO ALCOHOL?

1 A IT WAS .215 PERCENT.

2 Q AND WHERE WAS THAT 2. -- .215 PERCENT FOUND?

3 A IN THE BLOOD OF TROY ROUSE.

4 Q IN THE PERICARDIAL SAC FLUID?

5 A YES.

6 Q NOW IN THE URINE IS IT CORRECT THAT IT WAS .273?

7 A YES.

8 Q AND IN THE OCCULAR FLUID IT WAS .227 PERCENT.

9 A CORRECT. WHICH MEANS THE ALCOHOL WAS GOING THROUGH
10 THE KIDNEYS. IT'S COMPLICATED.

11 Q SURE, BUT WITHOUT GOING INTO THAT DETAIL, IS THAT A
12 HIGH BLOOD ALCOHOL LEVEL?

13 A YES.

14 Q ARE YOU FAMILIAR WITH THE LEGAL LIMIT TO DRIVE IN
15 THIS STATE?

16 A YES.

17 Q IS IT ABOUT .08?

18 A YES.

19 Q SO THIS WOULD BE DEPENDING ON WHICH SAMPLES YOU LOOK
20 AT THE KIDNEY, EYE, PERICARDIAL SAC, APPROXIMATING 2 TO 3
21 TIMES THE LEGAL LIMIT?

22 A WELL THE BLOOD VITREOUS THEN THAT'S TWICE. OVER
23 TWICE.

24 Q OVER TWICE.

25 A YES.

1 Q SO YOU ADMIT THEN THAT IS PRETTY HIGH.

2 A YES.

3 Q NOW THE TWO BULLETS AGAIN IN THE LEFT UPPER SHOULDER,
4 GENERALLY IN THIS AREA, CORRECT?

5 A YES.

6 Q OKAY. AND THAT'S CLOSER TO THE SHOULDER, ARM TYPE OF
7 THE BODY, IS THAT CORRECT? I MEAN---

8 A WELL---

9 Q ---CLOSER TO THE LEFT UPPER QUADRANT OF THE BACK.

10 A ---IT IS THE LOWER PART OF THE SHOULDER BLADE.

11 Q I SHOW YOU 25. I'M REFERRING TO 6 AND 7.

12 A YES.

13 Q ON YOUR DIAGRAM IS THE DOT THE ENTRANCE WOUND?

14 A YES.

15 Q AND IT'S NOT, THE ARROW IS NOT THE ENTRANCE WOUND.

16 SO---

17 A THE ARROW WAS A BULLET THAT WAS FOUND BASICALLY.

18 Q SO THOSE BULLETS ARE ACTUALLY, IS IT A FAIR STATEMENT
19 THAT THEY ARE ABOUT AS CLOSE TO THE EDGE OF THE LEFT SIDE
20 AS THEY CAN BE WITHOUT, NOT AS CLOSE AS THEY CAN BE, BUT
21 PRETTY CLOSE TO THE LEFT SIDE?

22 A YES.

23 MR. WHEELER: YOUR HONOR, COULD I PUBLISH THIS AND
24 SHOW WHAT WE'RE TALKING ABOUT THESE TWO?

25 Q AND AGAIN, DR. ROSS, ANYTHING YOU SAY MIGHT HAVE BEEN

1 A DEFENSIVE, POSSIBLY A DEFENSIVE WOUND TO THE KNEE, WOULD
2 JUST AS POSSIBLY BE AN AGGRESSIVE STANCE IN THE KNEE.

3 A YES.

4 MR. WHEELER: THANK YOU.

5 MR. WATTS: MAY IT PLEASE THE COURT, YOUR HONOR.

6 THE COURT: YES, SIR.

7 CROSS EXAMINATION BY MR. WATTS:

8 Q DR. ROSS, HOW TALL WAS THE DECEASED?

9 A I BELIEVE HE WAS 73 AND A HALF INCHES TALL.

10 Q OKAY. SO IN LAYMAN'S TERMS WITHOUT DOING THE
11 CALCULATIONS OF HAVING TO DO IT RIGHT NOW, HOW TALL IS 73
12 AND A HALF INCHES?

13 A ABOUT 6 FEET, ONE AND A HALF INCHES.

14 Q ON YOUR REPORT ON PAGE 3 OF 7, DO YOU HAVE THAT IN
15 FRONT OF YOU?

16 A YES.

17 Q OKAY. IT HAS A LISTING OF THE DECEASED WEIGHT.

18 A WELL WE HAVE NO WAY OF WEIGHING A PERSON IN THE
19 MORGUE. WE GIVE AN ESTIMATION.

20 Q THAT'S JUST A GUESS?

21 A YES.

22 Q OKAY. SO IT COULD BE MORE?

23 A YES.

24 Q THERE'S NO SCALES THAT YOU COULD USE?

25 A I DON'T HAVE ANY.

1 Q IS IT BECAUSE THEY DON'T MAKE IT, OR YOU JUST DON'T
2 HAVE IT AT THE FACILITY?

3 A WE DON'T HAVE IT AT THE FACILITY.

4 Q SO THEY DO MAKE SOME INSTRUMENTS AND DEVICES TO
5 MEASURE THE WEIGHT OF SOMEONE WHEN YOU'RE GOING THROUGH
6 THE PROCESS THAT YOU PUT THEM THROUGH?

7 A YES.

8 Q SO WITH NO. 1 THAT YOU'VE TALKED ABOUT, GUNSHOT WOUND
9 NO. 1, MEDIUM CALIBER BULLET?

10 A YES, SIR.

11 Q THE REST OF THE WOUNDS THAT YOU'RE TALKING ABOUT YOU
12 LIST IN YOUR REPORT, IS IT ACCURATE TO SAY THEY ARE SMALL
13 CALIBER?

14 A YES.

15 Q OKAY. NO. 3, YOU DIDN'T FIND A BULLET---

16 A CORRECT.

17 Q ---IN THE BODY, CORRECT?

18 A CORRECT.

19 Q BUT YOU KNOW THAT IT WAS A SMALL CALIBER WOUND, IS
20 THAT CORRECT?

21 A THE SKIN MEASUREMENTS ON THAT...

22 Q BUT CAN YOU LOOK AT PAGE 1 OF YOUR REPORT?

23 A YES. I LISTED IT AS A SMALL CALIBER.

24 Q SO ON NUMBER 3 ON THE FIRST PAGE OF YOUR REPORT, YOU
25 LIST IT AS A SMALL CALIBER WOUND, CORRECT?

1 A YES.

2 Q WHEN YOU, IN YOUR REPORT, YOU LISTED THE CONDITION OF
3 THE BODY THAT YOU RECEIVED IT AS. AND WHEN YOU STARTED
4 YOUR EXAMINATION YOU LISTED THE BODY, HOW IT APPEARED, IS
5 THAT CORRECT?

6 A YES.

7 Q ON PAGE, I THINK YOUR DESCRIPTION STARTS ON PAGE 3.
8 IS THAT CORRECT?

9 A YES.

10 Q THIS REPORT IS AN ACCURATE DESCRIPTION OF THE BODY AS
11 YOU -- AS IT CAME TO YOU AS YOU STARTED YOUR EXAMINATION,
12 IS THAT CORRECT?

13 A YES, SIR.

14 Q MIDWAY THROUGH IT TALKS ABOUT WHAT HE HAD ON.

15 A YES.

16 Q CAN YOU READ WHERE IT STARTS "HE HAD ON," AND THAT'S
17 MIDWAY THROUGH THAT PARAGRAPH.

18 A HE HAS ON A PAIR OF WHITE BLUE/GREEN PLAID BOXER
19 UNDERWEAR. IS THAT THE SENTENCE YOU ARE TALKING ABOUT?

20 Q YES, MA'AM.

21 A A PAIR OF WHITE SOCKS AND A PAIR OF BLACK BOOTS.

22 Q OKAY. IT SAYS HE HAD ON A PAIR OF BLACK BOOTS.

23 A YES.

24 THE COURT: LADIES AND GENTLEMEN, LET'S STAND A
25 MOMENT. (ALL JURORS STAND.) ALL RIGHT.

1 Q DR. ROSS, I AM GOING TO SHOW YOU A PICTURE THAT HAS
2 BEEN IDENTIFIED AS DEFENDANT'S EXHIBIT 2 MARKED FOR
3 IDENTIFICATION. CAN YOU TAKE A LOOK AT THAT FOR ME? WHAT
4 DOES THAT PICTURE SHOW?

5 A IT'S A LEG COVERED IN BLUE JEANS WITH A SHOE
6 PARTIALLY SHOWN.

7 Q ARE THERE ANY MARKINGS ON THE BODY OF THAT PICTURE?

8 A ANY MARKINGS?

9 Q IS THERE ANYTHING PUNCHED IN, PREPARATION OF ANY KIND
10 OF IDENTIFICATION ON THE BOTTOM OF THAT PICTURE?

11 A YES.

12 Q WHAT DOES IT SAY?

13 A WELL IT'S L054139.

14 Q IN THAT PICTURE CAN YOU SEE ANY UNDERCLOTHING?

15 A YES.

16 Q WHAT COLOR UNDERCLOTHING DO YOU SEE?

17 A THE PLAID. IT LOOKS LIKE BLUE, GREEN, AND WHITE.

18 Q DID IT LOOK LIKE THE UNDERCLOTHING THAT THE DECEASED
19 HAD ON WHEN HE CAME TO YOUR FACILITY?

20 A YES.

21 Q IN THAT PICTURE, CAN YOU SEE SHOES?

22 A HIS BOTTOM OF THE SHOE.

23 Q OKAY.

24 A WELL FROM THE ANKLE DOWN.

25 Q SO IT'S COMING DOWN AT AN ANGLE THAT YOU SEE THE

1 BOTTOM OF HIS LEG, AND YOU SEE ONE SHOE ON.

2 A YES.

3 Q CAN YOU SEE ANYTHING ABOUT THE OTHER LEG?

4 A IT LOOKS LIKE IT IS COVERED WITH BLUE JEANS.

5 Q OKAY. I SHOW YOU ANOTHER PICTURE MARKED FOR
6 IDENTIFICATION, DEFENDANT'S 3. WHAT IS THAT A PICTURE OF?

7 A LIKE A SHOE OR A BOOT.

8 Q OKAY. DOES IT HAVE ANY MARKINGS ON THE BOTTOM OF
9 THAT?

10 A L0541539.

11 Q GIVE ME A DESCRIPTION OF THAT SHOE, PLEASE, FROM WHAT
12 YOU CAN TELL.

13 A IT LOOKS LIKE A LOW BOOT, MAYBE BLACK.

14 Q DOES THAT LOOK SIMILAR TO THE FOOTWEAR THAT YOU FOUND
15 ON THE DECEASED?

16 A I RECALL, I BELIEVE SO.

17 Q OKAY. YOU BELIEVE SO? YOUR REPORT STATES WHEN HE
18 CAME IN, HE HAD SHOES ON.

19 A YES.

20 Q FROM THE PHOTOS YOU'VE SEEN MARKED FOR SLED
21 IDENTIFICATION WERE BOTH OF HIS SHOES ON?

22 A IF I CAN REFER TO MY PICTURES.

23 Q FROM THE PICTURES THAT I'VE SHOWN YOU, FROM WHAT I'VE
24 SHOWN YOU.

25 A HE HAD A PAIR OF BOOTS.

1 Q OKAY.

2 A AND IT COULD BE THAT ONE OF THE BOOTS IS SEPARATELY
3 SUBMITTED.

4 Q IT COULD BE. BUT YOUR REPORT SAYS HE HAD HIS BOOTS
5 ON.

6 A YES.

7 Q OKAY. YOUR REPORT SAYS HE HAD HIS BOOTS ON. THE
8 PICTURES I'VE SHOWN YOU WERE BOTH BOOTS ON THE DECEASED
9 FEET?

10 A WELL I COULDN'T SEE ONE FOOT.

11 Q OKAY. DID IT APPEAR TO YOU THAT SHOE WAS UNDERNEATH
12 THE ROLLED DOWN PANTS?

13 A I CAN'T TELL.

14 Q YOU CAN'T TELL.

15 A IT LOOKS LIKE A WIDE FOOT.

16 Q YOU CAN'T TELL ANYTHING ABOUT THAT.

17 A IT LOOKS LIKE MAYBE A SOCK, BUT IT'S HARD TO SEE.

18 Q OKAY. BUT YOU'VE IDENTIFIED THE ONE I TOLD YOU ABOUT
19 WAS REALLY A SEPARATE SHOE THAT LOOKS SIMILAR WITH THE
20 SHOE YOU WERE PROVIDED WITH, IS THAT CORRECT?

21 A YES.

22 Q AND THIS SHOE IS NOT ON THE DECEASED, IS THAT
23 CORRECT?

24 A THAT'S CORRECT.

25 Q IN YOUR REPORT, WE'VE ENTERED IN THE DIAGRAM THAT WAS

1 MARKED AS STATE'S EXHIBIT 25, IN THIS PICTURE, DOES NO. 1
2 ACCURATELY REFLECT THE GUNSHOT WOUND THAT YOU TALK ABOUT
3 IN YOUR REPORT?

4 A YES.

5 Q IT DOES? WHAT KIND OF ANGLE IS THAT?

6 A FRONT AND BACK. DOWNWARD AND POINTS TO THE RIGHT.

7 Q OKAY. FRONT AND THE BACK. AND SLIGHT -- AND
8 DOWNWARD.

9 A DOWNWARD.

10 Q FROM FRONT TO BACK.

11 A UH-HUH. (AFFIRMATIVE.)

12 Q AND AGAIN, HOW TALL IS THE DECEASED?

13 A 6 FEET ONE AND A HALF INCHES.

14 Q ABOUT MY SIZE?

15 A I AGREE. I BELIEVE SO.

16 Q GUESSING?

17 A YES.

18 Q SO THAT HAD TO COME FROM SOMEWHERE HIGHER THAN THE
19 DECEASED?

20 A YES.

21 Q AND THAT WAS THE MEDIUM CALIBER GUNSHOT WOUND.

22 A YES. OR THE DECEASED COULD BE BENT OVER.

23 Q COULD BE BENT OVER? OKAY, BUT YOU DON'T KNOW.

24 A NO, I DON'T.

25 Q YOU SAID YOU RECEIVED SOME INFORMATION FROM THE

1 COURT, IS THAT CORRECT?

2 A THAT THERE WAS A SHOOTING, CORRECT.

3 Q DO YOU KNOW IF THE CORONER WAS PRESENT FOR ANY OF THE
4 INCIDENT THAT HAPPENED?

5 A I DON'T KNOW.

6 Q SO HE WOULDN'T HAVE ANY FIRST HAND KNOWLEDGE OF
7 ANYTHING THAT WENT ON.

8 A NO.

9 Q AND ANYTHING HE RELATED TO YOU WOULD ONLY BE A GUESS
10 OR A SUPPOSITION, IS THAT CORRECT?

11 A YES.

12 Q DID YOU NOTICE ANY ABRASIONS AROUND GUNSHOT WOUND 1?

13 A AROUND THE WOUND ITSELF?

14 Q YES, MA'AM.

15 A YES. THE SKIN IS ABRADED AROUND THE HOLE.

16 Q DID YOU KNOW THE PATTERN OF THE ABRASION?

17 A I DIDN'T. I DIDN'T KNOW EXACTLY, NO.

18 Q YOU DIDN'T KNOW THE PATTERN OF THE ABRASION IN YOUR
19 REPORT?

20 A NO, I DIDN'T.

21 Q IS THAT SOMETHING THAT WOULD BE CONSISTENT WITH A
22 CLOSE RANGE SHOT?

23 A I DIDN'T SEE ANY EVIDENCE OF SOOT OR TATTOOING OR
24 STIPPLING.

25 Q AND WHAT WERE THE ABRASIONS IN YOUR REPORT LISTED?

1 A ABRASIONS JUST FROM THE BULLET GOING THROUGH THE
2 SKIN. IT BENT THE SKIN OUT AND AS IT SLIDED BY THE SKIN,
3 IT ABRADES THE EDGE.

4 Q YOU LISTED HE HAD TWO SHIRTS ON?

5 A YES.

6 Q NO. 3 WAS A SUPERFICIAL WOUND?

7 A YES.

8 Q WHAT TRAJECTORY DID IT HAVE?

9 A FROM LEFT TO RIGHT.

10 Q LEFT TO RIGHT.

11 A YES.

12 Q AND COMING FROM THIS PART OF THE BODY ACROSS.

13 A YES.

14 Q THAT MEANS THE SHOT HAD TO COME FROM THE SIDEWAYS
15 POSITION.

16 A YES.

17 MR. WATTS: NO FURTHER QUESTIONS, YOUR HONOR. I
18 APOLOGIZE, YOUR HONOR. INDULGENCE. YOUR HONOR, MAY I
19 CONTINUE WITH ONE MORE QUESTION?

20 THE COURT: YES, SIR.

21 Q YOU SAID THERE WAS NO EVIDENCE YOU FOUND RESIDUE ON
22 THE BODY?

23 A RIGHT.

24 Q DOES THAT MEAN THE SHOT WAS FIRED FROM MORE THAN 3
25 FEET AWAY?

1 A THE CLOTHING WOULD FURTHER HAVE TO BE LOOKED AT TO
2 SEE IF THERE WAS ANY EVIDENCE OF SOOT AND POWDER. ON THE
3 SKIN THERE WAS NO EVIDENCE OF SOOT OR POWDER. WHICH PUTS
4 IT IN THE CATEGORY OF A DISTANT WOUND, WHICH WOULD BE 3
5 FEET OR FURTHER YET.

6 Q YOU SAID THE CLOTHING WOULD HAVE TO BE---

7 A WELL 2 FEET OR FURTHER DEPENDING ON THE GUN.

8 Q BUT YOU SAID THE CLOTHING WOULD HAVE TO BE FURTHER
9 EVALUATED?

10 A YES.

11 Q IN YOUR REPORT YOU SAID NO SOOT OR GUN RESIDUE WERE
12 ON THE CLOTHING.

13 A I DIDN'T SEE ANY, BUT I DIDN'T DO A CHEMICAL TESTING.
14 THAT'S DONE AT SLED.

15 Q DID YOU JUST KIND OF EYEBALL IT?

16 A YES.

17 Q AT THE TIME THE DECEASED REACHED YOUR FACILITY, WERE
18 HIS HANDS STILL BAGGED?

19 A YES, I BELIEVE SO.

20 Q DID YOU UNDO IT? DID YOU TAKE THE BAG OFF?

21 A THEY MUST HAVE BEEN TREATED FOR THE GUNSHOT. A CSR
22 KIT WAS DONE AT THE SCENE.

23 Q OKAY. SO THEY WERE OR WEREN'T?

24 A THEY WERE NOT.

25 Q THEY WERE NOT. NOTHING FURTHER.

1 THE COURT: MR. JOHNSON.

2 MR. JOHNSON: I HAVE NO QUESTIONS, YOUR HONOR.

3 THE COURT: MR. SAVERANCE.

4 MR. SAVERANCE: NO FURTHER QUESTIONS, YOUR HONOR.

5 THE COURT: MR. WHEELER.

6 MR. WHEELER: NOTHING FURTHER, YOUR HONOR. THANK
7 YOU.

8 THE COURT: YOU MAY STEP DOWN. THANK YOU VERY MUCH.

9 MR. SAVERANCE: YOUR HONOR, IF I CAN, THE REPORT IS
10 UP THERE THAT IS IN EVIDENCE, IF I COULD GET THAT, HER
11 REPORT.

12 THE COURT: THE NEXT WITNESS.

13 MR. SAVERANCE: YOUR HONOR, WE WOULD CALL ILLA
14 SIMMONS.

15 ILLA SIMMONS, BEING FIRST
16 DULY SWORN, TESTIFIED AS FOLLOWS:

17 THE CLERK: IF YOU WOULD STATE YOUR FULL NAME FOR THE
18 RECORD.

19 A MY NAME IS ILLA SIMMONS.

20 DIRECT EXAMINATION BY MR. SAVERANCE:

21 Q I'M GOING TO TELL YOU THIS, YOU MAY ALREADY KNOW.
22 BUT JUST HAVE YOU SPEAK UP AND SPEAK CLEARLY SO EVERYBODY
23 CAN HEAR WHAT YOU ARE SAYING HERE, OKAY?

24 A OKAY.

25 Q WHO DO YOU WORK WITH?

1 A I WORK FOR THE SOUTH CAROLINA LAW ENFORCEMENT
2 DIVISION IN THE FORENSIC LABORATORY. IN THE AREA OF TRACE
3 EVIDENCE.

4 Q WHAT KIND OF -- WHAT DO YOU MEAN TRACE EVIDENCE?

5 A WE ANALYZE GUNSHOT RESIDUE SAMPLES. WE DO PAINT
6 COMPARISONS, BODILY COMPARISONS, EXPLOSIVES, FIBERS.

7 Q HOW LONG HAVE YOU BEEN THERE?

8 A SIX YEARS.

9 Q YOU HAVE BEEN IN THAT CAPACITY FOR 6 YEARS?

10 A YES.

11 Q IS IT FAIR TO SAY YOU HAVE DONE DOZENS OF TESTINGS
12 WITH THE GSR KITS?

13 A PROBABLY ABOUT 500 A YEAR.

14 Q HAVE YOU TESTIFIED BEFORE?

15 A YES, I HAVE.

16 Q HAVE YOU BEEN ADMITTED AS AN EXPERT BEFORE?

17 A I HAVE.

18 Q IN WHAT AREA?

19 A I HANDLE GUNSHOT RESIDUE AND GUNPOWDER.

20 MR. SAVERANCE: YOUR HONOR, WE WOULD ADMIT THIS
21 WITNESS IN GUNSHOT RESIDUE AND GUNPOWDER.

22 THE COURT: ANY OBJECTION?

23 MR. WHEELER: NO, SIR, YOUR HONOR.

24 MR. WATTS: NONE, YOUR HONOR.

25 MR. JOHNSON: NO OBJECTION.

1 THE COURT: SHE'S ADMITTED.

2 Q NOW DO YOU KNOW WHY YOU ARE TODAY? WHAT CASE YOU ARE
3 HERE FOR TODAY?

4 A YES.

5 Q SO THAT WOULD BE TROY ROUSE WHICH IS THE VICTIM ON
6 YOUR REPORT?

7 A CORRECT.

8 Q DO YOU HAVE YOUR REPORT?

9 A I DO.

10 Q DO YOU HAVE THE DATE OF THE REPORT?

11 A THE DATE THE REPORT WAS ISSUED?

12 Q UH-HUH. (AFFIRMATIVE.)

13 A YES, THAT WAS MAY 3, 2005.

14 Q AND DO Y'ALL HAVE A LAB NUMBER OR SOME SORT OF
15 IDENTIFICATION FOR THAT?

16 A YES, WE DO.

17 Q WHAT IS THAT?

18 A IT IS L0504139.

19 Q AND THE VICTIM'S NAME IS?

20 A THE VICTIM'S NAME ROUSE, TROY DWAYNE.

21 Q AND THE INCIDENT DATE?

22 A THE INCIDENT DATE IS 04-07-05.

23 Q SO YOU DID A GSR KIT ON TROY ROUSE?

24 A YES, I ANALYZED IT. YES, I DID.

25 Q DID YOU HAVE TO RECEIVE HIS BODY TO DO THIS?

1 A NO, I DID NOT.

2 Q WHAT DID YOU DO?

3 A I RECEIVED A KIT THAT WAS COLLECTED FROM THE BODY.

4 Q FROM?

5 A I RECEIVED THAT FROM STEVEN CURTIS IS THE PERSON WHO
6 COLLECTED. HE WORKS IN OUR CRIME SCENE DIVISION AT SLED.

7 Q NOW TELL ME ABOUT THIS GSR KIT, AND EXPLAIN IT TO US
8 A LITTLE BIT.

9 A GUNSHOT RESIDUE ALSO CALLED GSR COMES OUT OF A GUN
10 WHEN IT IS FIRED. IT IS A MIXTURE OF CHEMICALS THAT IS
11 PLACED IN WHAT IS KNOWN AS THE BULLET OR THE CARTRIDGE,
12 THAT CAUSES THE BULLET TO COME OUT OF THE GUN. WHEN
13 SOMEONE FIRES A GUN, IT COMES OUT IN A PUFF OF SMOKE FROM
14 A GUN. AND IT CAN GET ON THE HAND OF THE PERSON SHOOTING
15 THE GUN. ANYONE IN CLOSE PROXIMITY OF THE GUN. OR ANY
16 INANIMATE OBJECT NEAR WHERE THE GUN WAS FIRED.

17 Q AND EXPLAIN TO US HOW -- AND EXPLAIN TO US HOW YOU DO
18 THIS TESTING.

19 A OKAY. A GUNSHOT RESIDUE KIT IS PUT TOGETHER BY A
20 COMPANY CALLED TRI-TECH. THAT IS THE KIT THAT WE USE AT
21 SLED. THE KIT CONTAINS TWO COMPONENTS: ONE CALLED
22 PARTICLE LIFTS. IT'S BASICALLY THEY USE A DOUBLE SIDED
23 STICKY TAPE ON A LITTLE ALUMINUM DISC WITH A HANDLE. WE
24 ASK THEM FOR A TAPE FROM THE RIGHT PALM, THE BACK OF THE
25 RIGHT HAND. THE LEFT PALM, AND THE BACK OF THE LEFT HAND.

1 BASICALLY WHAT WE DO IS THEY TAKE THE HAND AND TAKE THE
2 TAPE AND STICKY TAB AND GO ACROSS THE HAND LIKE THIS
3 LETTING THEM KNOW IF THERE IS GUNSHOT RESIDUE. AFTER THAT
4 IS COMPLETED, THERE IS ALSO COTTON SWABS IN THE GUNSHOT
5 RESIDUE KIT. BUT THEY ARE TREATED WITH THE ACID. THE
6 ACID WILL HELP PICK UP ANY GUNSHOT RESIDUE RESIDUAL THAT
7 IS LEFT THERE. AND THEY WILL ALSO RUB ACROSS THE SAME
8 FOUR AREAS OF THE HAND.

9 Q SO TO YOUR KNOWLEDGE, THE FRONT AND THE BACKS OF TROY
10 ROUSE'S HANDS WOULD HAVE BEEN ANALYZED?

11 A YES.

12 Q AND WHAT DID YOU SAY THE TAPE DID? YOU SAID YOU
13 STICK THE TAPE ACROSS THE---

14 A YES. WE STUCK A SMALL PART ON THE GUNSHOT RESIDUE.

15 Q AND THAT'S WHAT YOU TEST?

16 A WE TEST THAT AND THE SWAB. WE TEST THEM TOGETHER.

17 Q DID YOU TEST THEM TOGETHER IN THIS CASE?

18 A YES.

19 Q DID YOU COME UP WITH A DETERMINATION BASED ON YOUR
20 TESTING?

21 A YES, I DID.

22 Q WHAT WAS THAT?

23 A WE FOUND METAL CONSISTENT WITH GUNSHOT RESIDUE ON THE
24 BACK OF THE RIGHT HAND OF TROY ROUSE. AND WE ALSO FOUND
25 METALS CONSISTENT -- METALS THAT ARE ASSOCIATED WITH

1 GUNSHOT RESIDUE ON THE PALM OF THE RIGHT HAND AND THE BACK
2 OF THE LEFT HAND.

3 Q DID YOU DO ANY TESTING ON ANY BODY? ANY OTHER
4 PERSON?

5 A NO, THIS IS ALL I RECEIVED.

6 Q DOES THAT IN YOUR EXPERT OPINION, DOES THAT MEAN THAT
7 TROY ROUSE FIRED A WEAPON THOUGH?

8 A NO, IT DOESN'T NECESSARILY MEAN THAT HE FIRED A
9 WEAPON. THE WAY SOMEONE CAN GET GUNSHOT RESIDUE ON THEIR
10 HANDS, THEY CAN FIRE A WEAPON. BUT THEY CAN BE IN CLOSE
11 PROXIMITY TO A GUN WHEN IT GOES OFF. IF SOMEONE WERE
12 FIRED UPON, THEY CAN ALSO GET GUNSHOT RESIDUE ON THEIR
13 HANDS. OR JUST BEING NEAR THE GUN WHEN IT GOES OFF CAN
14 GET GUNSHOT RESIDUE ON THEIR HANDS.

15 Q WHAT DO YOU MEAN NEAR?

16 A PROBABLY WITHIN 5 FEET OF A WEAPON.

17 Q SO IF MR. ROUSE IS WITHIN 5 FEET OF THE WEAPON AND
18 SOMEBODY ELSE DISCHARGES IT, HE COULD HAVE GOTTEN RESIDUE
19 ON HIS HANDS?

20 A YES.

21 Q SO AGAIN, THAT DOES NOT MEAN HE FIRED THE WEAPON.

22 A NO, IT DOESN'T.

23 MR. SAVERANCE: YOUR HONOR, I WOULD LIKE TO MOVE TO
24 HAVE THE AGENT'S REPORT PUT IN TO EVIDENCE.

25 THE COURT: WHAT SAYS THE DEFENSE?

1 MR. WHEELER: NO OBJECTION, YOUR HONOR.

2 MR. WATTS: NO OBJECTION, YOUR HONOR.

3 MR. SAVERANCE: CAN I APPROACH, YOUR HONOR?

4 THE COURT: ADMITTED WITHOUT OBJECTION.

5 (SLED REPORT MARKED STATE'S EXHIBIT NO. 38 INTO
6 EVIDENCE.)

7 Q IS THAT YOUR REPORT THAT YOU'RE LOOKING AT?

8 A YES.

9 Q AND THAT'S SPECIFICALLY WHAT YOU HAVE TESTIFIED TO
10 TODAY?

11 A YES.

12 Q AND YOU MAY HAVE ALREADY GIVEN US THIS ANSWER. BUT
13 MR. ROUSE COULD HAVE BEEN SHOT WITHIN 5 FEET, AND THAT
14 COULD HAVE PRODUCED THE RESIDUE ON HIS HANDS?

15 A YES, IT COULD.

16 MR. SAVERANCE: ONE SECOND, YOUR HONOR. THAT'S ALL
17 I HAVE OF THE WITNESS.

18 THE COURT: MR. WHEELER.

19 CROSS EXAMINATION BY MR. WHEELER:

20 Q MS. SIMMONS, THE GUNSHOT RESIDUE THAT YOU FOUND JUST
21 REALLY JUST INDICATES THAT MR. ROUSE WAS CLOSE TO A WEAPON
22 THAT WAS FIRED.

23 A THAT'S CORRECT.

24 Q IS THERE ANYTHING FURTHER YOU CAN SAY ABOUT THE
25 MATTER?

1 A NO, I CANNOT. THAT JUST SAYS THE WEAPON WAS FIRED

2 Q AND Y'ALL DON'T TEST FOR, OR AT LEAST FROM THE REPORT

3 THAT I HAVE SEEN, IT DOESN'T HAVE ANY DIAGRAM OF EXACTLY

4 WHERE IT WAS ON THE HAND, OR WHETHER A CERTAIN QUANTITY

5 MEANS MORE OR LESS. YOU CAN JUST SAY THAT THERE IS

6 RESIDUE ON THE HANDS. IS THAT CORRECT?

7 A WE WILL ADMIT THAT THERE IS A VERY LARGE QUANTITY ON

8 THE HANDS. SO YOU CAN DEFINITELY SAY THAT A DEFENSIVE

9 POSTURE COULD HAVE BEEN POSSIBLE. WHERE IF SOMEONE WAS

10 STANDING DIRECTLY IN FRONT OF THE GUN WHEN IT WENT OFF.

11 BUT IN THIS CASE THAT DIDN'T INDICATE.

12 Q THAT DEFENSIVE POSTURE WASN'T INDICATED BY THE

13 ANALYSIS YOU DID.

14 A NO, NOT WITH THE CONCENTRATION THAT IT HAD.

15 MR. WHEELER: THANK YOU.

16 THE COURT: MR. WATTS.

17 CROSS EXAMINATION BY MR. WATTS:

18 Q MS. SIMMONS, DID YOU LIST THE CONCENTRATIONS IN YOUR

19 REPORT?

20 A WE DON'T LIST CONCENTRATIONS IN OUR REPORT. WE ISSUE

21 A REPORT WHERE WE FIND EACH BAND.

22 Q SO IT'S JUST, HE'S GOT GUNSHOT RESIDUE ON HIS HANDS.

23 A THAT'S CORRECT.

24 Q THAT'S ALL WE CAN CONCLUDE FROM THAT.

25 A THAT'S ALL I CAN CONCLUDE AT THE TIME.

1 MR. WATTS: THANK YOU.

2 A THANK YOU.

3 THE COURT: MR. JOHNSON.

4 MR. JOHNSON: NO QUESTIONS, YOUR HONOR.

5 THE COURT: MR. SAVERANCE.

6 MR. SAVERANCE: NOTHING FURTHER, YOUR HONOR.

7 THE COURT: MR. WHEELER.

8 MR. WHEELER: NOTHING FURTHER, YOUR HONOR.

9 THE COURT: YOU MAY STEP DOWN.

10 MR. SAVERANCE: MAY I APPROACH, YOUR HONOR? YOUR
11 HONOR, CAN I GIVE HER MY COPY SO WE CAN KEEP THAT IN
12 EVIDENCE?

13 THE COURT: YES, SIR.

14 MR. SAVERANCE: YOUR HONOR, WE WOULD CALL VELLO
15 PAAVAL.

16 VELLO PAAVEL, BEING FIRST DULY
17 SWORN, TESTIFIED AS FOLLOWS.

18 THE CLERK: HAVE A SEAT, AND STATE YOUR FULL NAME FOR
19 THE RECORD.

20 A MY NAME IS VELLO PAAVEL. SPELLED V-E-L-L-O
21 P-A-A-V-E-L.

22 DIRECT EXAMINATION BY MR. SAVERANCE:

23 Q WHAT DO YOU DO FOR A LIVING, SIR?

24 A I WORK FOR THE SOUTH CAROLINA LAW ENFORCEMENT
25 DIVISION. IN PARTICULAR, I WORK IN THE FORENSIC SERVICES

1 LABORATORY, IN THE FIREARMS DEPARTMENT. WHERE I AM A
2 FIREARM AND TOOL MARK EXAMINER. AND WHAT THAT MEANS MOST
3 OF THE TIME, I EXAMINE FIREARMS, AND FIREARM'S RELATED
4 EVIDENCE; SUCH AS, BULLETS, CARTRIDGE CASES, SHOTGUN SHELL
5 WADS AND OTHER TYPES OF COMPONENTS. AND TRY TO DETERMINE
6 WHETHER OR NOT THEY WERE FIRED FROM A PARTICULAR GUN.

7 I WILL EXAMINE THE FIREARMS AND TRY TO DETERMINE
8 WHETHER OR NOT THEY ARE WORKING PROPERLY. IF I DON'T HAVE
9 A FIREARM AND HAVE BULLET AND CARTRIDGE CASES, I WILL TRY
10 TO TELL THE CONTRIBUTOR WHAT CALIBER THE GUN COULD HAVE
11 BEEN THAT FIRED THE BULLETS. AND TRY TO TELL WHAT MAKE OR
12 TYPE OF THE GUNS COULD HAVE FIRED THE BULLETS.

13 Q HAVE YOU TESTIFIED BEFORE?

14 A YES, SIR. I HAVE TESTIFIED IN SOUTH CAROLINA GENERAL
15 SESSIONS COURT AND IN FEDERAL COURT APPROXIMATELY 285
16 TIMES AS AN EXPERT IN FIREARMS TOOL MARK IDENTIFICATION.

17 MR. SAVERANCE: YOUR HONOR, I WOULD ASK TO ADMIT THIS
18 WITNESS AS AN EXPERT IN FIREARM'S EXAMINATION.

19 THE COURT: WHAT SAYS THE DEFENSE?

20 MR. WHEELER: WITHOUT OBJECTION, YOUR HONOR.

21 MR. WATTS: NO OBJECTION, YOUR HONOR.

22 MR. JOHNSON: NO OBJECTION, YOUR HONOR.

23 THE COURT: HE'S ADMITTED.

24 Q AGENT PAAVEL, AM I PRONOUNCING IT RIGHT?

25 A PAAVEL, YES, SIR.

1 Q AGENT PAAVEL, DID YOU DO SOME TESTING AND BECOME
2 INVOLVED IN THIS CASE THAT WE ARE HERE FOR TODAY?

3 A YES, SIR, I DID.

4 Q TELL ME HOW YOU BECAME INVOLVED IN THIS?

5 A NORMALLY WHAT HAPPENS IS EVIDENCE IS SUBMITTED TO
6 SLED FOR EXAMINATION. WHEN THE EVIDENCE IS LOGGED IN,
7 IT'S ASSIGNED A CASE NUMBER. AND DEPENDING ON WHAT TYPE
8 OF EXAMINATION IS REQUIRED, EVIDENCE IS ROUTED FOR THE
9 DIFFERENT DEPARTMENTS. SO I ENDED UP WITH A CASE. SO I
10 KNEW THAT I HAD EVIDENCE IN THIS CASE. AND I OBTAINED THE
11 EVIDENCE FROM THE FIREARM EVIDENCE STORAGE LOCKER WHICH IS
12 LOCATED ON THE SECOND FLOOR IN OUR BUILDING IN THE FIREARM
13 DEPARTMENT.

14 I ACTUALLY STARTED THIS CASE WHEN AGENT CURTIS ASKED
15 ME TO LOOK AT SOME BULLETS AND SOME CARTRIDGE CASES AND
16 TRY TO DETERMINE WHAT CALIBER THEY WERE.

17 Q AND WHAT DATE WAS THAT THAT YOU GOT CALLED IN THIS
18 CASE?

19 A AGENT CURTIS CAME BY MY OFFICE IT LOOKS LIKE MAY 4,
20 2005, AND SAID THAT THEY NEEDED INFORMATION ABOUT THE
21 CALIBERS OF THE BULLETS AND THE CARTRIDGE CASES THAT WERE
22 INVOLVED. AND I ACTUALLY GOT STARTED THAT PARTICULAR DAY
23 WITH THE EXAMINATION OF THE BULLETS AND THE CARTRIDGE
24 CASES.

25 Q DO YOU HAVE YOUR REPORT WITH YOU?

1 A YES, SIR, I DO.

2 Q WHAT IS THE DATE OF YOUR REPORT?

3 A THE DATE OF THE REPORT IS ACTUALLY DATED JULY THE
4 25TH OF 2005.

5 Q IS THERE A SLED LAB NUMBER?

6 A YES, SIR.

7 Q WHAT IS THAT?

8 A L0504139.

9 Q AND THE INCIDENT DATE IS 4-7-05?

10 A CORRECT. 4-7-2005.

11 Q AND THE VICTIM IS LISTED AS TROY ROUSE?

12 A CORRECT.

13 Q AND THAT SAYS YOUR CASE NO. 05040019. IS THAT FOR
14 YOU?

15 A THAT'S THE CASE NUMBER THAT WOULD BE FOR THE
16 CONTRIBUTOR, THE BISHOPVILLE POLICE DEPARTMENT. AND
17 THAT'S A NUMBER THAT WOULD HAVE BEEN GIVEN TO SLED BY THE
18 CONTRIBUTOR WHEN THE EVIDENCE WAS LOGGED IN.

19 Q TELL ME AGAIN, WHAT DID YOU ACTUALLY RECEIVE AT THE
20 VERY BEGINNING OF THIS MATTER?

21 A WHAT I RECEIVED, CHECK MY NOTES HERE. I RECEIVED
22 FOUR FIRED 22 CALIBER CARTRIDGE CASES. I RECEIVED A TOTAL
23 OF 5 SUBSTANTIALLY COMPLETE BULLETS THAT WERE INDICATED
24 FROM THE AUTOPSY OF TROY ROUSE. AND THEN THERE WAS A
25 BULLET FRAGMENT THAT WAS FROM THE AUTOPSY OF TROY ROUSE

1 THAT'S WHAT I INITIALLY RECEIVED.

2 MR. SAVERANCE: YOUR HONOR, MAY I APPROACH?

3 THE COURT: YES.

4 Q THIS IS STATE'S 36. I BELIEVE IT'S ALREADY BEEN
5 ADMITTED IN TO EVIDENCE. CAN YOU LOOK AT THOSE ITEMS AND
6 IDENTIFY WHAT THEY ARE?

7 A YES, SIR.

8 Q DO YOU KNOW WHAT THOSE ITEMS ARE?

9 A YES, SIR. THESE ARE THE 5 BULLETS AND THE BULLET
10 FRAGMENTS THAT I EXAMINED IN REFERENCE TO THIS CASE.

11 Q DID YOU MARK THEM WITH YOUR OWN NUMBERS?

12 A YES, SIR. THEY ARE EACH, WHEN EVIDENCE COMES IN TO
13 SLED, IT WILL BE ASSIGNED AN ITEM NUMBER IN THE
14 LABORATORY. AND THESE ITEMS WILL HAVE SLED'S LABORATORY
15 ITEM NUMBERS ASSOCIATED WITH THEM.

16 Q CAN YOU FIND THE ONE THAT HAS GOT A LABEL OF NO. 1 ON
17 IT FROM THE PATHOLOGIST?

18 A PATHOLOGIST NO. 1? YES, SIR.

19 Q DO YOU HAVE A LABEL OR MARKING ON THAT?

20 A YES, SIR. THERE WILL BE A NUMBER ON HERE. AND THERE
21 IS A NUMBER ON HERE. THE COURT FINDS THE LABORATORY CASE
22 NUMBER AND SLED'S LABORATORY ITEM NUMBER.

23 Q DOES THAT MATCH THE NUMBER ON YOUR REPORT?

24 A YES, SIR, IT DOES.

25 Q TELL ME WHAT IS IN THE CONTAINER?

1 A THIS CONTAINER IS A ZIPLOC BAG THAT HAS A PLASTIC
2 BOTTLE IN IT. THERE IS ALSO ANOTHER ZIPLOC BAG WHICH
3 CONTAINS THE BULLET. WHEN THIS PARTICULAR ITEM WAS
4 ORIGINALLY RECEIVED BY ME, THIS BULLET WAS INSIDE THIS
5 PARTICULAR PLASTIC BOTTLE.

6 Q AND WHAT DID YOU DO WITH THAT BULLET?

7 A THIS BULLET WAS EXAMINED. IT WAS MEASURED. IT WAS
8 WEIGHED TO TRY TO DETERMINE WHAT CALIBER THE BULLET WAS.
9 AND TO TRY TO DETERMINE WHAT CALIBER FIRED IT. ALSO THE
10 RIFFLING MARKINGS THAT WERE ON THE BULLET WERE
11 MICROSCOPICALLY EXAMINED. THE WIDTH OR DIMENSION OF THOSE
12 MARKINGS WERE MEASURED. AND BY USING THEM ON A DATABASE
13 AND I PROGRAM THEM, I WAS ABLE TO PROVIDE A LIST OF
14 POSSIBLE GUNS THAT COULD HAVE FIRED THIS PARTICULAR
15 BULLET.

16 Q AND WHAT DID YOU DETERMINE?

17 A I DETERMINED THAT THIS PARTICULAR BULLET WAS MOST
18 CONSISTENT WITH BULLETS THAT ARE FOUND IN 38 SPECIALS, 357
19 MAGNUM'S, OR POSSIBLY OTHER SIMILAR CALIBER CARTRIDGES.
20 AND I PREPARED A LIST OF POSSIBLE GUNS THAT COULD HAVE
21 FIRED THIS PARTICULAR BULLET.

22 Q AND THAT'S IN YOUR REPORT?

23 A YES, SIR.

24 Q BUT YOU DIDN'T HAVE -- WELL LET ME REPHRASE THAT.
25 DID YOU CONSIDER THAT, I BELIEVE DR. ROSS, THE

1 PATHOLOGIST, CONSIDERED IT A MEDIUM CALIBER. WHAT WOULD
2 YOU CALL THE GUN?

3 A THAT'S AS GOOD A DESCRIPTION AS ANY. IN THE
4 CLASSIFICATION OR THE SIZE AND CALIBER OF THE BULLETS THAT
5 YOU FIND, MOST PEOPLE CONSIDER 22'S TO BE SMALL CALIBER
6 BULLETS; SUCH AS, A 40, 41, 44, OR 45 OR A LARGE CALIBER.
7 AND IN THINGS LIKE 38'S, 357'S, 9 MILLIMETERS, AND 380'S
8 ARE SO CALLED MEDIUM CALIBER.

9 Q SO THIS BULLET CAME FROM A MEDIUM CALIBER GUN. IS IT
10 FAIR TO SAY THAT IF EVERYTHING ELSE IS EQUAL THAT IT'S
11 MORE POWERFUL THAN A SMALL CALIBER WEAPON?

12 A IT DEPENDS ON THE WEIGHT AND THE SPEED OF THE BULLET.
13 A LOT OF SO CALLED, "POWER OF THE BULLET," DEPENDS IN HOW
14 FAST IT IS GOING. YOU CAN HAVE A BULLET THAT IS
15 CONSIDERABLY SMALLER THAN A LARGER BULLET, TRAVELING AT A
16 MUCH, MUCH HIGHER VELOCITY, AND IT CAN ACTUALLY CREATE
17 MORE DAMAGE OR DESTRUCTION THAN THE LARGER BULLET DOES.

18 Q SO A SMALL CALIBER DOESN'T MEAN NO BIG DEAL. IT'S
19 NOT MUCH OF AN INJURY AND THAT SORT OF THING?

20 A NO, SIR. NOT NECESSARILY.

21 MR. WHEELER: OBJECTION TO THE LEADING.

22 THE COURT: OBJECTION IS OVERRULED. YOU MAY PROCEED.

23 Q DID YOU TEST ANY OTHER BULLETS?

24 A YES, SIR. THERE WERE SEVERAL OTHER BULLETS, AND A
25 BULLET FRAGMENT.

1 Q DO YOU HAVE WHAT IS MARKED ITEMS 3 THROUGH 6 FOR YOUR
2 MARKINGS AND IDENTIFICATION?

3 A YES. ACTUALLY MY ITEMS 3 THROUGH 6 ARE ACTUALLY
4 CARTRIDGE CASES. OR ARE YOU REFERRING TO AUTOPSY 3
5 THROUGH 6?

6 Q YOURS. LET'S DO IT THIS WAY. IS THERE A NO. 2
7 MARKED BY DR. ROSS, THE PATHOLOGIST?

8 A YES, SIR, THERE SHOULD BE A 2. YES, THERE IS A
9 CONTAINER THAT'S MARKED BULLET NO. 2, WHICH HAS A BULLET
10 IN IT, A FIRED BULLET IN IT WHEN I RECEIVED IT.

11 Q WHAT DO YOU MEAN A FIRED BULLET?

12 A IT'S A BULLET THAT OBVIOUSLY HAS GONE THROUGH A GUN
13 BARREL, AS OPPOSED TO A BULLET THAT HAS NOT BEEN FIRED.

14 Q AND YOU CAN DETERMINE THAT THROUGH TESTING?

15 A YOU CAN LOOK AT IT AND TELL. A BULLET THAT IS FIRED
16 MAY HAS SOME RIFFLING IMPRESSIONS ON IT. AND IT'S BEEN
17 DAMAGED. IT'S JUST USUALLY HAS STRUCK SOME SORT OF
18 TARGET.

19 Q DID YOU DETERMINE WHAT CALIBER BULLET -- WHAT CALIBER
20 OF GUN THAT MAY HAVE COME FROM?

21 A YES, SIR. THIS PARTICULAR BULLET IS MOST CONSISTENT
22 WITH A BULLET THAT YOU SEE IN A 22 LONG RIFLE CALIBER
23 CARTRIDGES. AND A LONG RIFLE DOES NOT MEAN WAS FIRED FROM
24 A RIFLE. IT IS SIMPLY A CALIBER DESIGNATION. THERE ARE 3
25 COMMON 22'S THAT YOU WILL FIND AS A MATTER OF CALIBER: 22
()

1 SHORT, 22 LONG, 22 LONG RIFLE. THEY ALL USE BULLETS OF
2 THE SAME DIAMETER. THEY ARE A LITTLE BIT DIFFERENT
3 WEIGHT. THE SHORT HAS A VERY SHORT CARTRIDGE CASE. THE
4 LONG HAS A LONGER CARTRIDGE CASE. AND THE LONG RIFLE HAS
5 THE SAME CARTRIDGE CASE AS THE LONG, BUT IT HAS A
6 CONSIDERABLY HEAVIER BULLET. THERE'S 3 DIFFERENT CALIBERS
7 YOU COMMONLY FIND IN 22'S.

8 THIS ONE BASED ON ITS WEIGHT AND ITS SIZE, IS MOST
9 CONSISTENT WITH BULLETS THAT YOU SEE IN 22 LONG RIFLE
10 CALIBER FIREARMS.

11 Q BUT IT CAN BE FIRED FROM A 22 CALIBER PISTOL.

12 A YES, SIR. IT CAN BE FIRED IN A 22 -- IN A PISTOL
13 THAT IS CHAMBERED FOR 22 CALIBER LONG RIFLE CARTRIDGES.
14 THE 22 LONG RIFLE IS SIMPLY A NAME OR A DESIGNATION FOR A
15 CALIBER OR A CARTRIDGE DESIGNATION. IT DOES NOT MEAN IT
16 HAS TO BE FIRED IN A RIFLE.

17 Q DID YOU DETERMINE, WERE THERE ANY OTHER BULLETS YOU
18 WERE ABLE TO TEST AND MAKE A DETERMINATION ON?

19 A YES, SIR. IN EXAMINING THIS PARTICULAR BULLET AND
20 THE OTHER THREE, 22 CALIBER BULLETS.

21 Q AND WHAT NUMBER WAS LISTED ON THE OTHER 3 FROM THE
22 PATHOLOGIST?

23 A WE HAVE BULLET NO. 2. BULLET NO. 4. BULLET NO. 6
24 AND BULLET NO. 7. ALL OF THOSE BULLETS, THOSE 4 BULLETS,
25 WERE CONSISTENT WITH BEING 22 LONG RIFLE CALIBER BULLETS.

1 WHICH MEANS THEY COULD HAVE BEEN FIRED IN A HANDGUN OR
2 RIFLE THAT'S CHAMBERED FOR 22 LONG RIFLE CALIBER
3 CARTRIDGES. MICROSCOPIC COMPARISON OF THESE FOUR WITH
4 EACH OTHER REVEALS THEY WERE FIRED BY THE ONE GUN. ALL
5 FOUR OF THESE CAME OUT OF THE SAME GUN BARREL. OBVIOUSLY,
6 BULLET NO. 1, WHICH IS A 38 CALIBER, OR A LARGER CALIBER,
7 COULD NOT HAVE COME OUT OF THE SAME BARREL. SO WE HAD TWO
8 DIFFERENT FIREARMS THAT SHOT BULLET NO. 1 AND THE OTHER
9 FOUR BULLETS.

10 THEN THERE WAS A REMAINING BULLET FRAGMENT, WHICH IS
11 BULLET NO. 5. THAT PARTICULAR FRAGMENT WAS BADLY DAMAGED.
12 HOWEVER, IT WAS STILL CONSISTENT WITH BULLETS THAT WE SEE
13 IN 22-SHORT, 22-LONG, OR 22-LONG RIFLE CALIBER CARTRIDGES.
14 THERE WERE NO MARKINGS LEFT ON THIS BULLET THAT I COULD
15 USE TO IDENTIFY OR SAY THEY CAME FROM A PARTICULAR GUN
16 BARREL. IT WAS UNSUITABLE FOR IDENTIFICATION PURPOSES.

17 Q SO THE OTHER FOUR BULLETS YOU REFERENCED, YOU SAID
18 THOSE CAME FROM THE SAME GUN?

19 A YES, SIR. THE FOUR 22 CALIBER BULLETS CAME FROM ONE
20 FIREARM. THE 38 CALIBER BULLET CAME FROM ANOTHER FIREARM.

21 Q DID YOU HAVE FOR A CONCLUSION HOW MANY GUNS MAY HAVE
22 BEEN USED TO FIRE THOSE BULLETS?

23 A AT A MINIMUM, ONE WAS USED TO FIRE THE 38 CALIBER
24 BULLETS. WHICH WAS BULLET NO. 1. ONE GUN WAS USED TO
25 FIRE THE FOUR 22 CALIBER BULLETS. SO NOW WE HAVE TWO

1 FIREARMS USED. THE BULLET FRAGMENTS, WHICH IS NO. 5,
2 COULD HAVE BEEN FIRED BY THE SAME FIREARM THAT FIRED THE
3 FOUR 22 CALIBER BULLETS. BUT I HAVE NO WAY TO POSITIVELY
4 TELL YOU THAT. SO WE HAVE A MINIMUM OF TWO GUNS, AND AT
5 MOST THREE, BASICALLY.

6 Q DO YOU HAVE YOUR REPORT THERE WITH YOU?

7 A YES, SIR, I HAVE A COPY OF IT.

8 MR. SAVERANCE: YOUR HONOR, IF I CAN APPROACH, I
9 WOULD LIKE TO HAVE THE WITNESS IDENTIFY HIS REPORT AND PUT
10 IT INTO EVIDENCE.

11 MR. WHEELER: NO OBJECTION.

12 MR. WATTS: NO OBJECTION, YOUR HONOR.

13 MR. JOHNSON: NO OBJECTION, YOUR HONOR.

14 THE COURT: IT'S ADMITTED INTO EVIDENCE.

15 (FORENSIC SLED REPORT MARKED AS STATE'S EXHIBIT NO.
16 39 INTO EVIDENCE.)

17 Q I JUST WANT YOU TO CONFIRM THAT THAT IS YOUR REPORT.

18 A YES, SIR, THIS IS THE ORIGINAL REPORT.

19 THE COURT: STATE'S EXHIBIT NO.?

20 MR. SAVERANCE: 39, YOUR HONOR.

21 Q DO THOSE ITEMS APPEAR TO BE IN THE SAME CONDITION,
22 THOSE BULLETS AND FRAGMENTS, AS THE LAST TIME YOU SAW
23 THEM?

24 A YES, SIR, THEY APPEAR TO BE, BASED ON WHAT I CAN SEE.

25 Q AFTER YOU DID THIS TESTING, DID YOU PUT THE BULLETS

1 BACK IN THOSE BAGS AND THAT SORT OF THING?

2 A YES, SIR. ACTUALLY WHAT WE NORMALLY DO OR WHAT I DO
3 IS, IF A BULLET COMES IN TO ME FOR EXAMINATION AND IT'S
4 INSIDE THIS LARGE WHITE CONTAINER, I WILL TAKE IT AND HAVE
5 IT PUT INSIDE THIS SMALLER WHITE ZIPLOC AND THEN PUT THE,
6 BOTH ITEMS INSIDE THE LARGER ZIPLOC. IT'S MUCH EASIER TO
7 LOOK AT LATER ON, JUST TO LOOK THROUGH THE BAG AND SEE
8 WHAT THE EVIDENCE IS INSTEAD OF UNSCREWING THE CAP AND
9 TRYING TO FIND THE BULLET IN THE CONTAINER. SO THESE
10 ITEMS OF HAVING A CONTAINER WOULD HAVE BEEN PLACED INSIDE
11 THE ZIPLOC BY MYSELF.

12 Q WERE THOSE TURNED BACK OVER TO THE BISHOPVILLE POLICE
13 DEPARTMENT WHEN YOU FINISHED?

14 A YES, SIR. THOSE WERE ULTIMATELY RETURNED TO THAT
15 DEPARTMENT.

16 Q DID YOU TEST A WEAPON OR A GUN AT SOME POINT INVOLVED
17 IN THIS MATTER?

18 A YES, SIR. I DID EXAMINE A REVOLVER IN REFERENCE TO
19 THIS CASE.

20 Q AND WHAT KIND WAS THAT?

21 A THAT'S FROM A SMITH AND WESSON 32 CALIBER REVOLVER.
22 IN PARTICULAR WITH A MODEL 30-1. WITH A SERIAL NUMBER
23 815077. AND WHAT I DID WITH GUN WAS EXAMINE IT, TEST FIRE
24 IT.. AND THESE BULLETS WERE NOT FIRED FROM THAT 32 CALIBER
25 REVOLVER. NO. 1, THE 38 CALIBER BULLET IS TOO BIG. IT

1 CAN'T GO DOWN THE BARREL. THE 22 CALIBER BULLETS ARE TOO
2 SMALL. THEY ARE THE WRONG CALIBER. SO THEY CANNOT BE
3 FIRED FROM THIS REVOLVER.

4 Q AND THAT'S THE ONLY GUN YOU WERE GIVEN TO TEST?

5 A YES.

6 Q AND AGAIN, IT DID NOT, THAT GUN DID NOT FIRE ANY OF
7 THOSE BULLETS.

8 A THAT'S CORRECT. IT DID NOT.

9 Q HOW DO YOU TEST THAT?

10 A WHAT I DO IS FIRST OF ALL, IF I HAD A GUN TO TEST,
11 LIKE IN THIS CASE I HAD THE REVOLVER. I DOCUMENT THE
12 CONDITION OF THE FIREARM. GET ALL THE INFORMATION ABOUT
13 THE FIREARM AND FILL OUT A TWO-PAGE FORM ABOUT THE
14 FIREARM. THEN THE REVOLVER WAS TEST FIRED BY TAKING
15 AMMUNITION, PLACING IT IN THE GUN, AND SHOOTING THE GUN
16 INTO OUR BULLET RECOVERY TANK. AND WHAT THAT IS, IS A
17 VERY LARGE TANK OF WATER. WHICH IS ABOUT 3 FEET IN
18 DIAMETER. ABOUT 4 FEET LONG. THE MOUTH OF IT SITS ON THE
19 SECOND FLOOR OF OUR BUILDING. THE BOTTOM IS ON THE FIRST
20 FLOOR. I SHOOT INTO THIS TANK. THE WATER FLOWS DOWN THE
21 BULLET. AND WE SHOOT INTO THE WATER, BECAUSE I DON'T WANT
22 THE BULLET TO BE DAMAGED BY ANYTHING. SO WATER WON'T
23 REALLY DAMAGE OR MARK THE BULLET. BECAUSE ULTIMATELY WHAT
24 I DO IS I RECOVER THOSE TEST BULLETS AND THEN SEE IF A
5 MICROSCOPIC COMPARISON CAN BE DONE.

1 IN THIS PARTICULAR INSTANCE, THERE WAS LIMITED
2 MICROSCOPIC COMPARISON BECAUSE THE CALIBERS WERE WRONG. I
3 COULD ELIMINATE THIS GUN TO BE THE POTENTIAL GUN, BY THE
4 FACT THAT THE CALIBER WAS WRONG. THE 38 CALIBER BULLET
5 CANNOT GO THROUGH THE BARREL. THE 22 BULLETS CAN FIT IN
6 THE BARREL, BUT THE 22 RIM FIRED CALIBER CARTRIDGES CAN'T
7 BE FIRED IN THIS HANDGUN. BECAUSE THIS IS A CENTER FIRE
8 HANDGUN. PLUS THE MARKINGS THAT ARE ON THE BULLET OR THE
9 BULLETS THAT ARE HERE ARE DIFFERENT THAN THE MARKINGS ON
10 THE INSIDE OF THE BARREL OF THE REVOLVER. SO I CAN
11 CONCLUDE THAT THEY WEREN'T FIRED BY THAT GUN.

12 MR. SAVERANCE: CAN I APPROACH, YOUR HONOR?

13 Q CAN YOU IDENTIFY THAT?

14 A YES, SIR. THAT IS A REPORT THERE REGARDING THE
15 REVOLVER.

16 Q AND DOES IT APPEAR TO BE IN WORKING ORDER?

17 A YES, SIR, IT WAS.

18 Q AND YOUR RESULT THAT IT DIDN'T MATCH THOSE BULLETS IS
19 CONSISTENT WITH WHAT'S IN THIS REPORT. IS THAT FAIR TO
20 SAY?

21 A YES, SIR. IT INDICATES THAT THIS PARTICULAR GUN WAS
22 EXAMINED AND TEST FIRED AND FOUND TO BE IN WORKING ORDER.
23 AND THAT THE ITEMS I EXAMINED BEFORE WERE NOT FIRED BY
24 THIS PARTICULAR REVOLVER.

25 MR. SAVERANCE: YOUR HONOR, WE WOULD MOVE TO HAVE

1 THIS ADMITTED IN TO EVIDENCE. I THINK IT WOULD BE STATE'S
2 40.

3 MR. WHEELER: I OBJECT, IT'S A GUN THAT DIDN'T SHOOT
4 THESE BULLETS. I DON'T SEE THE RELEVANCE OF IT.

5 MR. WATTS: I WOULD STATE RELEVANCE ALSO, YOUR HONOR.

6 MR. JOHNSON: I'D ALSO, YOUR HONOR.

7 THE COURT: MR. SAVERANCE, WHAT DO YOU SAY?

8 MR. SAVERANCE: YOUR HONOR, ALL WE ARE DOING HERE IS
9 SHOWING THAT A WEAPON WAS PRODUCED. AND IT WAS TESTED.
10 AND THAT JUST CLEARLY SHOWS IT WASN'T USED. I DON'T KNOW
11 WHAT'S GOING TO HAPPEN DOWN THE ROAD. BUT I WANT THAT ON
12 THE RECORD. I WANTED THIS REPORT IN TO SHOW THAT WE DID;
13 THAT LAW ENFORCEMENT DID THEIR JOB. BROUGHT A WEAPON.

14 THE COURT: I HEAR YOUR ARGUMENT.

15 MR. SAVERANCE: YES, SIR.

16 THE COURT: WE WILL HAVE IT MARKED FOR IDENTIFICATION
17 PURPOSES AT THIS TIME.

18 (FORENSIC REPORT ON WEAPONS MARKED STATE'S EXHIBIT
19 NO. 40 FOR ID ONLY.)

20 MR. SAVERANCE: CAN YOU MARK THAT FOR IDENTIFICATION?

21 (SHELL CASINGS MARKED STATE'S EXHIBIT NO. 41 FOR ID
22 ONLY.)

23 Q DID YOU RECEIVE ANY TYPE OF CASINGS, SHELL CASINGS IN
24 THIS MATTER?

25 A YES, SIR. I RECEIVED 4 FIRED 22 CALIBER CARTRIDGE

1 CASES IN REFERENCE TO THIS PARTICULAR INCIDENT.

2 MR. SAVERANCE: MAY I APPROACH YOUR HONOR?

3 Q THIS IS STATE'S 41 FOR IDENTIFICATION.

4 A YES, SIR. THESE ARE THE CARTRIDGE CASES THAT I
5 EXAMINED IN REFERENCE TO THIS CASE.

6 Q HOW DO YOU KNOW THAT?

7 A THERE ARE MARKINGS ON THE CONTAINER. THERE ARE
8 ACTUALLY MARKINGS ON THE CARTRIDGE CASES THEMSELVES.

9 Q WHAT KIND OF MARKINGS?

10 A NORMALLY WHAT IS PLACED ON HERE IS THE LABORATORY
11 NUMBER, ITEM NUMBER AND INITIALS.

12 Q AND WHAT NUMBERS, ARE THOSE THE LAB NUMBERS AND ITEM
13 NUMBERS THAT YOU HAVE ON YOUR REPORT?

14 A YES, SIR, THESE ARE THE ONES. THIS WOULD BE ITEM NO.
15 3 THROUGH 6.

16 Q FROM YOUR REPORT.

17 A CORRECT.

18 Q AND THOSE ARE 22 SHELL CASINGS?

19 A YES, SIR. 22 CALIBER CARTRIDGE CASES OR SHELL
20 CASINGS. THESE ARE 22 LONG, OR 22 LONG RIFLE CALIBER. IF
21 YOU REMEMBER EARLIER I SAID THAT THE THREE TYPES OF
22 CALIBERS, YOU HAVE ARE SHORT AND LONG, AND LONG RIFLE.
23 THE LONG AND THE LONG RIFLE USE THE SAME LENGTH OF
24 CARTRIDGE CASES. THE ONLY DIFFERENCE IS, THE LONG HAS A
25 MUCH SMALLER LIGHTER BULLET THAN THE LONG RIFLE. SO WHEN

1 I HAVE A FIRED CARTRIDGE CASE THAT'S THE SAME LENGTH AS
2 THE LONG OR THE LONG RIFLE CARTRIDGE CASE, I CAN'T TELL
3 WHETHER IT'S A LONG OR A LONG RIFLE BY MERE EXAMINATION OF
4 IT.

5 Q THE FOUR BULLETS THAT YOU SAID CAME FROM THE SAME GUN
6 AND WERE CONSISTENT WITH THE 22 CALIBER, DID THOSE CASINGS
7 MATCH THOSE BULLETS OR NOT?

8 A WHEN YOU SAY MATCHED, WE DON'T HAVE A MEANS OF
9 RELIABLY MATCHING THE BULLET TO A CARTRIDGE CASE IN THE
10 EXAMINATIONS WE CONDUCT. THESE PARTICULAR BULLETS COULD
11 HAVE COME FROM THE CARTRIDGE CASES. THEY ARE THE PROPER
12 CALIBER. AND THEIR MANUFACTURE IS ALSO CONSISTENT. THESE
13 PARTICULAR BULLETS HAVE A GOLDEN TYPE OF PLATING WHICH IS
14 COMMON ON THE REMINGTON TYPE OF SHELLS. A REMINGTON BRAND
15 OF SHELLS. AND THESE CARTRIDGE CASES ARE MARKED REM,
16 WHICH IS A HEAD STAMP FOR MARKING USED BY REMINGTON.

17 SO ALL I CAN SAY IS THESE 4 BULLETS COULD HAVE COME
18 FROM THESE CARTRIDGE CASES, BUT I CAN'T POSSIBLY TELL YOU
19 THAT.

20 Q AND YOU SAID, DID YOU SAY AGENT CURTIS FROM SLED GIVE
21 YOU THOSE?

22 A NO, I ACTUALLY TOOK POSSESSION OF THESE FROM OUR
3 FIREARMS LOCKER, OUR EVIDENCE LOCKER. I STARTED WORKING
4 ON THIS CASE WHEN THE AGENT ASKED ABOUT IT, BECAUSE HE WAS
5 CURIOUS ABOUT CALIBER INVOLVED HERE.

1 Q DID YOU TURN THESE CASINGS BACK OVER TO THE
2 BISHOPVILLE POLICE DEPARTMENT WHEN YOU CAME?

3 A THEY WERE ULTIMATELY TAKEN OVER TO THE BISHOPVILLE
4 POLICE DEPARTMENT, YES. I CAN'T GIVE YOU WHO THEY WERE
5 DIRECTED TO, NO.

6 Q DO THEY SEEM TO BE IN THE SAME CONDITION AS THE LAST
7 TIME YOU SAW THEM?

8 A YES, SIR.

9 MR. SAVERANCE: YOUR HONOR, I WOULD ASK TO ADMIT THIS
10 ITEM OF EVIDENCE IN TO EVIDENCE.

11 THE COURT: WHAT SAYS THE DEFENSE?

12 MR. WHEELER: WITHOUT OBJECTION.

13 MR. WATTS: NO OBJECTION.

14 MR. JOHNSON: NO OBJECTION.

15 THE COURT: ADMITTED WITHOUT OBJECTION.

16 (SHELL CASINGS MARKED STATE'S EXHIBIT NO. 41 INTO
17 EVIDENCE.)

18 MR. SAVERANCE: THAT'S ALL I HAVE FOR THIS WITNESS,
19 YOUR HONOR.

20 THE COURT: CROSS EXAMINATION.

21 MR. WHEELER: THANK YOUR HONOR. MAY IT PLEASE THE
22 COURT.

23 CROSS EXAMINATION BY MR. WHEELER:

24 Q MR. PAAVEL, YOU TESTED 6 BULLETS, CORRECT?

25 A YES, SIR. FOUR 22 BULLETS, ONE 38 AND THEN A BULLET

1 FRAGMENT.

2 Q NOW IS THAT PRETTY MUCH WHAT YOU SPEND TIME DOING,
3 TESTING BULLETS?

4 A YES, SIR. THE BULK OF MY TIME IS DONE
5 MICROSCOPICALLY EXAMINING BULLETS AND OR CARTRIDGE CASES.
6 AND THE DOCUMENTATION IN PREPARATION FOR EXAMINATION, YES,
7 SIR.

8 Q AND IT TAKES A GOOD BIT OF SKILLS, I IMAGINE, AND A
9 LAYMAN COULDN'T DO THAT. IS THAT FAIR TO SAY?

10 A A LAYMAN PROBABLY COULD NOT DO THE MICROSCOPIC
11 COMPARISON; HOWEVER, LOOKING AT THE TWO DIFFERENT
12 CALIBERS, YOU KNOW, YOU CAN CLEARLY SEE THAT ONE IS
13 CONSIDERABLY LARGER THAN THE OTHER. A LAYMAN COULD
14 PROBABLY LOOK AT THIS 22 AND 38 AND SAY THIS ONE IS
15 CONSIDERABLY BIGGER THAN THE OTHER ONE.

16 Q BUT MAY NOT BE ABLE TO IDENTIFY IT AS A 38 CALIBER.

17 A CORRECT. THAT'S CORRECT.

18 Q NOW, OF COURSE, YOU'VE IDENTIFIED THE BULLETS IN THIS
19 CASE. HOW ACCURATE WOULD A LAYMAN BE ABLE TO PREDICT, NOT
20 LOOKING AT THE BULLETS, BUT IF I SHOT A PISTOL IN THAT
21 CHALKBOARD RIGHT THERE, HOW ACCURATELY COULD YOU PREDICT A
22 CALIBER OF BULLETS BY LOOKING AT THE HOLE?

23 A I DON'T KNOW HOW RELIABLY I COULD TELL YOU THAT. I
24 WOULD HOPE THAT I WOULD BE ABLE TO TELL THE DIFFERENCE IN
25 SAY A 22 OR 38 DEPENDING ON THE SHAPE OF THE BULLET AND

1 DEPENDING ON WHAT IT STRIKES. THERE PROBABLY HAS TO BE
2 CONSIDERABLE DIFFERENCE IN THE BULLET DIAMETERS IN ORDER
3 TO TELL. WHEN YOU GET IN TO BULLETS THAT HAVE SIMILAR
4 DIAMETER, I DON'T THINK ANYBODY COULD TELL WHICH ONE IS
5 BIGGER OR LARGER, UNLESS YOU ACTUALLY PULL THE BULLET OUT
6 FROM BEHIND THERE.

7 Q AND YOU WOULD HAVE CONCERNS ABOUT YOUR ABILITY TO DO
8 IT, MUCH LESS THE LAYMAN'S, IS THAT FAIR TO SAY? SOMEBODY
9 THAT WASN'T TRAINED.

10 A I WOULD THINK THAT SOMEONE AGAIN, IF I SHOT A 22 INTO
11 A PIECE OF BOARD LIKE THAT OR A POSTER BOARD, AND SHOT A
12 38, YOU MAY BE ABLE TO TELL THE DIFFERENCE AGAIN,
13 DEPENDING ON THE SHAPE OF THE BULLET. THE NOSE SHAPE OF
14 THE BULLET CAN MAKE A CONSIDERABLE DIFFERENCE IN WHAT THE
15 HOLE IS GOING TO LOOK LIKE. THERE ARE BULLETS THAT HAVE
16 FLAT POINTS ON THEM. AND WHEN YOU SHOOT THEM, IT CUTS A
17 LARGE ROUND HOLE IN IT. THEN YOU CAN TAKE A BULLET WITH
18 A ROUND NOSE, IT HAS A VERY, VERY SMALL HOLE. SO I DON'T
19 KNOW WHETHER A LAYMAN COULD. I DON'T KNOW HOW RELIABLY I
20 COULD.

21 Q SO YOU DON'T KNOW.

22 A I DON'T KNOW.

23 MR. WHEELER: THANK YOU, MR. PAAVEL.

24 CROSS EXAMINATION BY MR. WATTS:

25 Q MR. PAAVEL, YOU SAID THAT THERE HAD TO BE AT LEAST

1 TWO GUNS?

2 A YES, SIR. I BELIEVE THERE HAD TO BE AT LEAST TWO
3 FIREARMS TO FIRE THE 22'S AND THE 38'S. I AM NOT FAMILIAR
4 WITH ANY FIREARMS THAT HAVE THE TWO DIFFERENT CALIBERS ON
5 THE SAME FIREARM AT ONE TIME.

6 Q BUT YOU SAID IT COULD BE UP TO THREE.

7 A WELL ONLY BECAUSE OF THE BULLET FRAGMENT. THE ONE
8 BULLET FRAGMENT, WHICH IS A 22, WHICH COULD NOT BE
9 IDENTIFIED TO THE OTHER 22 BULLETS, I DON'T KNOW WHETHER
10 IT WAS FIRED BY THE SAME GUN THAT FIRED THE FOUR, OR
11 WHETHER THERE WAS ANOTHER GUN.

12 Q IN YOUR REPORT YOU GAVE A SUBSTANTIAL NUMBER OF GUNS
13 THAT COULD FIRE A 22 ROUND, IS THAT CORRECT?

14 A YES, SIR. AND THAT'S ON THE RIFFLING IMPRESSIONS
15 THAT WERE LEFT ON THE BULLETS. WHAT I DO IS AGAIN, COUNT
16 THE NUMBER OF LANDS AND GROOVES, THE DIRECTION THAT THEY
17 GO LEFT OR RIGHT. AND THEN I MEASURE THOSE DIMENSIONS AND
18 I PLUG THEM INTO A DATABASE THAT GIVES ME INFORMATION
19 ABOUT THE TYPES OF GUN THAT USE THAT TYPE OF RIFLE. IN
20 THIS PARTICULAR CASE, THE RIFLING THAT IS USED IS A VERY
21 COMMON RIFLING TYPE. SO YOU INPUT A VERY LARGE LIST OF
22 GUNS.

23 Q YOU SAID THE FRAGMENTS DIDN'T HAVE ANYTHING THAT YOU
24 COULD MEASURE.

25 A THE FRAGMENTS HAD VESTIGES OR SMALL AMOUNTS OF

1 INFORMATION ON IT, BUT NOT ENOUGH THAT I COULD MEASURE OR
2 GIVE A LIST---

3 Q OKAY.

4 A ---RELIABLY.

5 Q BECAUSE IN YOUR REPORT YOU LISTED IT UNSUITABLE FOR
6 IDENTIFICATION, IS THAT CORRECT?

7 A THAT'S CORRECT.

8 Q YOU CAN'T RULE OUT THAT A THIRD WEAPON FIRED THE
9 FRAGMENT, IS THAT RIGHT?

10 A NO, SIR, I CANNOT.

11 MR. WATTS: NO FURTHER QUESTIONS, YOUR HONOR.

12 MR. JOHNSON: I HAVE NO QUESTIONS, YOUR HONOR.

13 THE COURT: MR. SAVERANCE.

14 MR. SAVERANCE: YOUR HONOR, I DON'T THINK I HAVE
15 ANYTHING ELSE. CAN I APPROACH AND GRAB AND MAKE SURE
16 EVERYTHING IS IN EVIDENCE?

17 THE COURT: MR. WHEELER.

18 MR. WHEELER: NOTHING, YOUR HONOR. THANK YOU.

19 THE COURT: YOU MAY STEP DOWN. LADIES AND GENTLEMEN,
20 I ASK YOU TO THE JURY ROOM.

21 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
22 PRESENCE OF THE JURY.)

23 THE COURT: YOU SAID SOMETHING ABOUT LOOKING FOR SOME
24 PAPERS.

25 MR. SAVERANCE: NO, SIR, YOUR HONOR. I WANTED WHEN

1 WE WERE ON DIRECT EVIDENCE TO MAKE SURE I HAD IT MARKED
2 AND PUT IT INTO EVIDENCE BEFORE HE LEFT.

3 THE COURT: WHO IS YOUR NEXT WITNESS?

4 MR. SAVERANCE: YOUR HONOR, WE HAVE STEVEN CURTIS
5 FROM SLED WHO IS THE NEXT WITNESS.

6 THE COURT: WE WILL TAKE ABOUT 5 MINUTES.

7 (THEREUPON, THE COURT TAKES A SHORT RECESS.)

8 THE COURT: YOU MAY BRING THE JURY.

9 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
10 PRESENCE OF THE JURY.)

11 THE COURT: MR. SAVERANCE, YOUR NEXT WITNESS.

12 MR. SAVERANCE: WE WOULD CALL AGENT STEVEN CURTIS,
13 YOUR HONOR.

14 STEVEN CURTIS, BEING FIRST
15 DULY SWORN, TESTIFIED AS FOLLOWS.

16 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD,
17 PLEASE.

18 A STEVEN CURTIS.

19 DIRECT EXAMINATION BY MR. SAVERANCE:

20 Q WHAT DO YOU DO FOR A LIVING, MR. CURTIS?

21 A I'M AN AGENT WITH THE SOUTH CAROLINA STATE LAW
22 ENFORCEMENT DIVISION.

23 Q OKAY, AND I'LL GET YOU TO SPEAK UP A LITTLE BIT. I'M
24 NOT TRYING TO OFFEND YOU, BUT IF YOU COULD SPEAK UP A
25 LITTLE BIT INTO THE MICROPHONE WHERE EVERYBODY CAN HEAR

1 YOU.

2 A I'M AN AGENT WITH THE SOUTH CAROLINA LAW ENFORCEMENT
3 DIVISION.

4 Q HOW LONG HAVE YOU BEEN THERE?

5 A I'VE BEEN WITH SLED FOR 8 YEARS.

6 Q AND WHAT IS YOUR CAPACITY? WHAT ARE YOUR DUTIES AND
7 RESPONSIBILITIES AT SLED?

8 A I'M ASSIGNED TO THE LATENT PRINT AND CRIME SCENE
9 UNIT. WHICH ENTAILS RESPONDING TO POLICE DEPARTMENTS AND
10 SHERIFF'S OFFICES ACROSS THE STATE, ASSISTING WITH
11 INVESTIGATION OF CRIME SCENES. PARTICULARLY VIOLENT
12 CRIMES.

13 Q VIOLENT CRIMES?

14 A YES, SIR.

15 Q LIKE MURDER?

16 A YES, SIR.

17 Q SO YOU ARE CALLED TO A SCENE. JUST IF SOME LOCAL LAW
18 ENFORCEMENT IN SOME COUNTY NEEDS SOME HELP OR SOME
19 ASSISTANCE OR HAS A MAJOR CRIME, A VIOLENT CRIME, THEN
20 THEY MAY CALL YOU?

21 A YES, SIR. WE ARE CALLED TO WORK A HOMICIDE OR
22 SUICIDE OR WHATEVER THE SITUATION IS TO ASSIST THEM IN
23 THAT INVESTIGATION.

24 Q DID YOU ASSIST THE LOCAL BISHOPVILLE POLICE
25 DEPARTMENT IN THIS CASE?

1 A YES, SIR, I DID.

2 Q TELL ME HOW YOU GOT INVOLVED.

3 A I RECEIVED A PHONE CALL AT MY HOUSE ON APRIL THE 7TH
4 OF LAST YEAR ABOUT 10:30 IN THE EVENING, STATING THAT THE
5 BISHOPVILLE POLICE DEPARTMENT WANTED THE CRIME SCENE UNIT
6 TO COME AND ASSIST THEM IN A DEATH INVESTIGATION HERE IN
7 BISHOPVILLE.

8 Q WHAT DID YOU DO?

9 A I CAME, I WORK OUT OF COLUMBIA AND SO I RESPONDED. I
10 GOT HERE ABOUT 12:30 ON THE MORNING OF THE 8TH, HERE IN
11 BISHOPVILLE. WAS DIRECTED TO WAS
12 THE INTERSECTION THERE, IN BISHOPVILLE.

13 Q AND ABOUT WHAT TIME DID YOU GET THERE?

14 A AROUND 12:30 IN THE MORNING BY THE TIME I GOT HERE.

15 Q WHAT DID YOU DO ONCE YOU GOT THERE?

16 A I SPOKE WITH CAPTAIN BURKE FROM THE POLICE DEPARTMENT
17 WHO BRIEFED ME ON JUST THE FACTS AS THEY WERE AWARE AT THE
18 TIME. THEY HAD AN INDIVIDUAL THERE WHO HAD GUNSHOT WOUNDS
19 WHO WAS DECEASED, LAYING IN THE MIDDLE OF THE STREET. AND
20 THAT THEY HAD FOUND SOME SHELL CASINGS AT THE TIME, AND A
21 COUPLE OTHER ITEMS. AND THEY WANTED US TO DOCUMENT THE
22 CRIME SCENE AND PROCESS IT.

23 Q DID YOU DO THAT?

24 A YES, SIR.

25 Q DID YOU TAKE SOME PICTURES DURING YOUR INVESTIGATION?

1 A YES, SIR. PART OF THE PROCESS THAT WE GO THROUGH,
2 THE FIRST THING IS, AFTER TAKING AN OVERALL LOOK OF THE
3 INITIAL WALKING THE CRIME SCENE, WE DOCUMENT IT FOR COURT
4 PURPOSES THROUGH THE USE OF THE DOCUMENT. SO I TOOK A
5 COUPLE OF ROLLS OF FILM OF PICTURES OF THE SCENE AS IT WAS
6 WHEN I ARRIVED.

7 MR. SAVERANCE: YOUR HONOR, MAY I APPROACH?

8 THE COURT: YES, SIR.

9 MR. SAVERANCE: YOUR HONOR, THIS IS STATE'S 5 THROUGH
10 21. I ALREADY PUT INTO EVIDENCE.

11 Q CAN YOU REVIEW THOSE PICTURES?

12 A YES, SIR. THESE ARE SOME OF THE CRIME SCENE
13 PHOTOGRAPHS THAT I TOOK.

14 Q SPEAK UP A LITTLE BIT FOR US.

15 A I SAID THESE ARE SOME OF THE PHOTOGRAPHS THAT I TOOK
16 THAT EVENING WHEN I ARRIVED HERE IN BISHOPVILLE.

17 Q IN SOME OF THOSE PICTURES THERE ARE SOME CONES. AND
18 WHAT DOES THAT INDICATE?

19 A WELL WHEN I GOT ON THE SCENE, CAPTAIN BURKE INFORMED
20 THAT THEY HAD LOOKED AT THE SCENE THEMSELVES, AND HAD
21 FOUND FOUR SHELL CASINGS IN FAIRLY CLOSE PROXIMITY TO THE
22 DECEASED. THEY HAD GONE AHEAD AND PUT SOME ORANGE CONES
23 OR EVIDENCE MARKERS OUT DICTATING THE SPOT WHERE THOSE
24 SHELL CASINGS WERE AT THE CRIME SCENE.

25 Q STATE'S 41, YOUR HONOR, I ALREADY PUT INTO EVIDENCE.

1 CAN YOU IDENTIFY THOSE ITEMS?

2 A THESE ARE GOING TO BE THE SHELL CASINGS IN THE METAL
3 CONTAINERS. AFTER WE HAD PHOTOGRAPHED THEM AND PICKED
4 THEM UP AND PLACED THEM IN THESE CONTAINERS. THE
5 CONTAINERS HAVE MY HANDWRITING AND THE INITIALS ON THEM,
6 WITH THE DATES. AND THERE ARE A TOTAL OF FOUR FOUND
7 THERE. I SAID IN CLOSE PROXIMITY OF THE DECEASED.

8 Q ARE THOSE NOTATED IN YOUR REPORT?

9 A YES, SIR.

10 Q WOULD THAT BE NOTATED, 3, 4, 5, 6 ALREADY IN THE
11 SHELL CASINGS?

12 A YES, SIR. THEY WERE FOUR ALREADY IN THE SHELL
13 CASINGS. AND FOR NUMBERING PURPOSES, THOSE ITEMS ARE 3
14 THROUGH 6. 3, 4, 5, AND 6. THOSE ARE MY NUMBERING SYSTEM
15 OF THE EVIDENCE I TOOK BACK TO SLED.

16 Q SO YOU TOOK THOSE SHELL CASINGS BACK TO SLED?

17 A YES, SIR.

18 Q AND DO YOU KNOW WHAT HAPPENED TO THEM AFTER THAT?

19 A WELL INITIALLY, ONCE I GOT BACK TO THE LABORATORY, I
20 PROCESSED THEM FOR FINGERPRINTS ON THE CHANCE THERE MIGHT
1 BE SOME LATENT PRINTS ON THERE---

2 Q WERE---

3 A I DIDN'T GET ANY FINGERPRINTS AT ALL. AND AT THAT
4 POINT THEN I TRANSFER THEM OVER TO OUR FIREARMS DEPARTMENT
5 TO HAVE THEM ANALYZED BY A FIREARMS EXAMINER.

1 Q MR. PAAVEL?

2 A YES, MR. PAAVEL WOULD HAVE DONE THOSE.

3 Q HAVE YOU HAD ANYTHING TO DO WITH THOSE CASINGS SINCE
4 THEN?

5 A ONCE I TURN THEM OVER TO MR. PAAVEL, THAT IS THE LAST
6 TIME I SAW THEM.

7 Q DO THEY SEEM TO BE IN THE SAME CONDITION AS THE LAST
8 TIME YOU SAW THEM?

9 A YES, SIR, THEY ARE. THEY WERE FOUR SMALL REM SHELL
10 CASINGS AND THESE ARE THE SAME CONTAINERS THAT I HAD
11 PLACED THEM IN.

12 Q THOSE ARE THE CASINGS IN THOSE PICTURES AT THE SCENE
13 WHEN YOU GOT THERE.

14 A YES, THEY ARE.

15 MR. SAVERANCE: CAN I APPROACH, YOUR HONOR?

16 THE COURT: YES.

17 Q I WANT TO SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
18 10. CAN YOU IDENTIFY THAT?

19 A YES, SIR. THIS IS A BLACK OR DARK BLUE, ATLANTA
20 BRAVES BASEBALL CAP THAT WAS ON THE STREET THERE IN CLOSE
21 PROXIMITY TO THE VICTIM.

22 Q THAT WAS THERE AT THE CRIME SCENE WHEN YOU GOT THERE?

23 A YES, SIR. WHEN I GOT THERE IT WAS LAYING ON THE
24 STREET, YES, SIR.

25 Q IT WAS -- THERE WAS NO BODY WITH IT, IT WAS JUST ()

1 HAT?

2 A IT WAS A SHORT DISTANCE FROM THE VICTIM.

3 MR. SAVERANCE: CAN I APPROACH WITH STATE'S NO. 2 FOR
4 IDENTIFICATION?

5 Q TELL ME IF YOU CAN IDENTIFY WHAT'S IN THAT BOX.

6 A THIS IS THE ATLANTA BRAVES BASEBALL CAP THAT I
7 COLLECTED FROM THE SCENE.

8 Q DID YOU MAKE -- DID YOU MARK OR DO ANYTHING TO
9 IDENTIFY WHAT YOU PUT?

10 A I DIDN'T. I MARKED THE BASEBALL CAP ITSELF, BUT I
11 DIDN'T MARK THE BAG THAT WE COLLECTED IT IN. I DIDN'T
12 WANT TO CONTAMINATE IT, SO I HANDLED IT AS LITTLE AS
13 POSSIBLE. SO I PICKED IT UP AND PLACED IT IN A PAPER BAG
14 AND THE PAPER BAG HAS GOT MY INITIALS AND DATE AND THE
15 CASE NUMBER.

16 Q WHAT'S THE DATE?

17 A THE DATE I'VE GOT IS 04-08-05.

18 Q DOES THE CASE NUMBER MATCH THE CASE NO. ON YOUR
19 REPORT?

20 A YES. IT'S SLED LAB NUMBER 0504139 IS THE NUMBER
21 CITED IN THIS CASE.

2 Q DOES IT APPEAR TO BE IN THE SAME CONDITION AS THE
3 LAST TIME YOU SAW IT AT THE CRIME SCENE?

4 A IT'S CLEARLY CUT, AND IT'S GOT SOME STAINS ON IT,
5 WHICH I ASSUME ARE GOING TO BE FROM DNA PROCESSING. BUT

1 THE HAT ITSELF APPEARS TO BE THE SAME HAT. IN FAIRLY
2 THE SAME CONDITION IT WAS IN WHEN I COLLECTED IT.

3 MR. SAVERANCE: YOUR HONOR, WE WOULD MOVE TO HAVE
4 THIS ADMITTED INTO EVIDENCE AT THIS TIME.

5 THE COURT: ANY OBJECTION?

6 MR. WHEELER: NO, SIR, YOUR HONOR.

7 MR. WATTS: MAY I APPROACH, YOUR HONOR?

8 (THEREUPON, THE ATTORNEYS APPROACH THE BENCH AND
9 CONFER WITH THE JUDGE.)

10 THE COURT: ANY OBJECTION, MR. WATTS?

11 MR. WATTS: NONE, YOUR HONOR.

12 MR. JOHNSON: I HAVE NONE, YOUR HONOR.

13 THE COURT: ADMITTED WITHOUT OBJECTION.

14 (BASEBALL CAP MARKED STATE'S EXHIBIT NO. 2 INTO
15 EVIDENCE.)

16 MR. SAVERANCE: YOUR HONOR, MAY I APPROACH THE
17 WITNESS, YOUR HONOR?

18 THE COURT: YES, SIR.

19 Q CAN YOU IDENTIFY THIS DOCUMENT?

20 A THIS IS THE ORIGINAL LATENT PRINT CRIME SCENE REPORT
21 THAT I ISSUED BEFORE THIS CASE.

22 Q AND IT SHOWS YOU TAKING THOSE SHELL CASINGS IN TO
23 CUSTODY?

24 A YES, SIR. WHAT IT SHOWS IT IS, IT GIVES REFERENCE TO
25 THE FACT THAT I RESPONDED TO A CRIME SCENE, AND IT GIVE

1 THE INFORMATION AS FAR AS THE DATES AND THE CASE NUMBER.
2 AND THEN IT LISTS OUT THE ITEMS OF EVIDENCE THAT I
3 COLLECTED AND EXAMINED. AND MY RESULTS OF THE SHELL
4 CASINGS. ITEMS 3, 4, 5 AND 6 WERE EXAMINED AND FOUND TO
5 NOT HAVE ANY VALUE FOR IDENTIFICATION PURPOSES FOR LATENT
6 PRINTS.

7 MR. SAVERANCE: WE WOULD MOVE TO HAVE HIS REPORT
8 ADMITTED INTO EVIDENCE.

9 MR. WHEELER: NO OBJECTION.

10 MR. WATTS: NO OBJECTION, YOUR HONOR.

11 MR. JOHNSON: NO OBJECTION, YOUR HONOR.

12 THE COURT: IT'S ADMITTED.

13 (SLED REPORT BY CURTIS MARKED STATE'S EXHIBIT NO. 33
14 INTO EVIDENCE.)

15 Q DID YOU DO A GUNSHOT RESIDUE KIT, OR COLLECT SOME
16 STUFF FOR A KIT FOR THAT?

17 A YES, SIR. I COLLECTED A GUNSHOT RESIDUE KIT FROM THE
18 VICTIM BEFORE HIS BODY WAS TAKEN FROM THE SCENE.

19 Q MR. ROUSE?

20 A YES, SIR.

1 Q NOW HE WAS DECEASED WHEN YOU GOT THERE?

2 A YES, SIR.

3 Q IF I CAN APPROACH. IT'S STATE'S NO. 32 FOR
4 IDENTIFICATION.

5 A THIS IS THE GUNSHOT RESIDUE KIT I COLLECTED. IT'S

1 GOT HIS NAME, MY NAME, AND THE CASE NUMBER. IT'S GOT THE
2 ACTUAL TEST COLLECTION PART IS ON THE INSIDE I DID AS
3 WELL.

4 MR. WHEELER: NO OBJECTION, YOUR HONOR.

5 MR. WATTS: NO OBJECTION, YOUR HONOR.

6 MR. JOHNSON: I HAVE NO OBJECTION.

7 MR. SAVERANCE: WE WOULD MOVE TO ADMIT THIS INTO
8 EVIDENCE.

9 THE COURT: IT'S MOVED IN WITHOUT OBJECTION.

10 (TRACE EVIDENCE CONTAINERS MARKED STATE'S EXHIBIT NO.
11 32 INTO EVIDENCE.)

12 Q NOW THIS IS STATE'S NO. 32. CAN YOU TELL ME WHAT'S
13 IN THAT LITTLE WHITE PACKAGE?

14 A THIS IS A STANDARD GUNSHOT RESIDUE COLLECTION KIT.
15 WE CARRY THESE WITH US. AND IT'S SIMPLY A PROCESS OF
16 DABBING THE HANDS OF A VICTIM OR A SUSPECT OR A WITNESS IN
17 A CASE DEPENDING ON THE SITUATION. BUT IN INSTANCES WHERE
18 YOU'VE GOT VICTIMS THAT HAVE BEEN SHOT, WE ROUTINELY GO
19 AHEAD AND COLLECT GUNSHOT RESIDUE KITS ON THEM.

20 Q CAN YOU PULL ONE OF THOSE THINGS OUT?

21 A IT'S A TWO-STEP PROCESS. THESE ARE STICKY TABS. I
22 WANT TO SEPARATE THEM BOTH. FROM THE INSIDE IS A PIECE OF
23 METAL THAT HAS GOT SOME KIND OF GLUE LIKE SUBSTANCE. AND
24 YOU SIMPLY TAP ON THE INSIDE OF THE HAND. AND THERE'S ONE
25 FOR INSIDE OF BOTH PALMS. AND THERE'S ONE FOR THE OUTSIDE

1 OF THE HANDS. IN ADDITION, YOU ALSO TAKE A SWAB OF THE
2 OUTSIDE AND THE INSIDE OF THE HANDS AS WELL. AND THEN
3 ONCE THAT'S COMPLETED, I SEALED UP THE EVIDENCE KIT. AND
4 THEN LOG IT INTO THE EVIDENCE CONTROL. AND THEN TO SLED.
5 IT GOES TO THE TRACE DEPARTMENT FOR ANALYSIS.

6 Q AND YOU DID THAT IN THIS CASE ON TROY ROUSE?

7 A YES, I DID.

8 Q NOW YOU DIDN'T DO ANY KIND OF ANALYSIS OR TESTS.

9 A NO, SIR. I JUST COLLECTED THIS AND SEALED IT UP AND
10 BROUGHT IT BACK TO THE FORENSIC LABORATORY.

11 Q AND IT'S IN THE SAME CONDITION AS THE LAST TIME YOU
12 REMEMBER SEEING IT?

13 A YES, SIR, IT IS.

14 Q I'M GOING TO SHOW YOU STATE'S 11. CAN YOU TELL ME
15 WHAT THAT IS?

16 A THAT WAS KIND OF A BOOKLET THAT WAS LAYING, I CAN'T
17 REMEMBER IF THIS WAS ACTUALLY IN HIS POCKET OR JUST LAYING
18 KIND OF UNDERNEATH HIM. AS WE GOT TOWARDS THE END OF THE
19 CRIME SCENE IN THE PHOTOGRAPH AND STUFF, WE WERE STARTING
20 TO LOOK THROUGH THE VICTIM'S POCKETS AND PULLING THINGS
21 OUT OF THE POCKETS. AND I WENT AHEAD AND PHOTOGRAPHED
22 THOSE ITEMS FOR THE POLICE DEPARTMENT. BECAUSE SOME OF
23 THAT WENT FOR THEM. SOME OF IT TO THE POLICE DEPARTMENT.
24 SOME OF IT TO THE CORONER'S OFFICE WOULD HAVE TAKEN IT.
25 THAT BOOKLET, I'M NOT SURE WHAT THE ACTUAL BOOKLET IS.

1 BUT THAT WAS SOMETHING THAT WAS ON HIS PERSON AT THE TIME.

2 Q AND WHAT IS THAT BAG DOING THERE?

3 A THE ACTUAL BAG HERE WHEN I GOT TO THE SCENE, THE, I
4 DON'T KNOW IF IT WAS EMS OR THE POLICE DEPARTMENT, HAD
5 TAKEN PAPER BAGS AND PUT ON BOTH OF HIS HANDS. AND
6 WRAPPED TAPE AROUND THEM, WHICH IS A STANDARD PRACTICE TO
7 PROTECT THE CONDITION OF THE HANDS. HE ALSO HAD A SHEET
8 OVER HIM. NOW THAT EVENING THERE WAS, IT HAD BEEN
9 RAINING, OR WAS MISTING. THERE WAS SOME WATER STANDING
10 AND MUD HOLES AND STUFF ON THE STREET. SO ACTUALLY THEY
11 DID THAT TO TRY TO PROTECT THE CONDITION OF HIS HANDS
12 UNTIL I GOT TO THE SCENE.

13 Q I AM GOING TO SHOW YOU STATE'S 15 THROUGH 19 IN
14 EVIDENCE. YOU REMEMBER TAKING THOSE PICTURES?

15 A YES, SIR. THESE ARE JUST SOME PHOTOGRAPHS OF THE
16 VICTIM'S BODY THERE AT THE SCENE. WHEN I WORK A CRIME
17 SCENE LIKE THIS, WE DO EXAMINE THE BODY. THE BODY IS VERY
18 SUPERFICIALLY JUST TO HAVE AN IDEA OF WHAT KIND OF WOUNDS
19 THEY HAD. WE DON'T WANT TO MESS WITH THE BODY TOO MUCH,
20 BECAUSE THAT'S THE JOB OF THE PATHOLOGIST TO MAKE THAT
21 KIND OF DETERMINATION. BUT IN THIS CASE, THERE WERE
22 OBVIOUS GUNSHOT WOUNDS. I JUST WANTED A COPY OF WHAT WE
23 SAW THERE AT THE SCENE. AND THESE ARE PHOTOGRAPHS OF
24 THOSE WOUNDS ON HIS BACK AND WHERE HE HAS GOT SOME ON HIS
25 CHEST AS WELL OR HIS SIDES. SO WE WENT AHEAD AND TOOK

1. PHOTOGRAPHS OF THOSE.

2 Q SO YOU PHOTOGRAPHED SOME OF THOSE WOUNDS?

3 A YES, SIR.

4 Q AND YOU SAID WHEN YOU GOT THERE, THE VICTIM, MR.

5 ROUSE, WAS LAYING THERE IN THE ROAD WITH A SHEET OVER HIM?

6 A YES, SIR.

7 Q SO YOU HAD TO REMOVE THE SHEET?

8 A YES, SIR.

9 MR. SAVERANCE: MAY I APPROACH, YOUR HONOR?

10 THE COURT: YES, SIR.

11 MR. SAVERANCE: IF I COULD HAVE ONE SECOND, YOUR
12 HONOR, I THINK THAT'S ALL I HAVE. MAY I APPROACH THE
13 WITNESS, YOUR HONOR?

14 Q CAN YOU TELL ME WHAT'S IN THAT ENVELOPE?

15 A THAT'S A \$1.35 IN U.S. CURRENCY. THESE COINS WERE
16 SCATTERED ON THE STREET NEAR THE VICTIM. AND ALSO A SET
17 OF POSTMORTEM FINGER AND PALM PRINTS THAT I COLLECTED AT
18 THE SCENE FROM THE VICTIM AS WELL.

19 Q BUT YOU DIDN'T DO ANYTHING WITH THOSE?

20 A WELL I DID PROCESS THE COINS FOR FINGERPRINTS AS
21 WELL. THEY WERE LAYING ON THE GROUND NEAR THE BASEBALL
22 CAP NEAR THE BODY. SO I DIDN'T KNOW IF THE VICTIM HAD
23 DROPPED THEM, OR POSSIBLY THE SUSPECT. SO I WENT AHEAD
24 AND COLLECTED THEM AND TRIED TO GET FINGERPRINTS OFF OF
25 THEM. BUT I DIDN'T GET ANY FINGERPRINTS OFF OF THEM.

1 Q AND I BELIEVE YOU SAID YOU DETERMINED, YOU COULDN'T
2 -- YOU DID THE FINGERPRINTS FROM THE VICTIM ON THE COINS.
3 AND THE CASINGS?

4 A NO. I PROCESSED THESE COINS AND THOSE SHELL CASINGS
5 FOR FINGERPRINTS. I DID NOT GET ANY FINGERPRINTS ON THEM
6 AT ALL.

7 Q FROM THE VICTIM OR ANYBODY.

8 A NOBODY. NO, SIR.

9 Q AND IS THAT IN THE SAME CONDITION AS WHEN YOU LAST
10 SAW IT?

11 A YES, SIR, IT IS.

12 Q AND THAT'S IN YOUR REPORT. THAT'S LISTED AS---

13 A YES.

14 MR. SAVERANCE: YOUR HONOR, I WOULD ASK TO MOVE THIS
15 IN TO EVIDENCE.

16 MR. WHEELER: WITHOUT OBJECTION.

17 MR. WATTS: NO OBJECTION, YOUR HONOR.

18 MR. JOHNSON: NO OBJECTION, YOUR HONOR.

19 THE COURT: NO OBJECTION. IT IS ADMITTED.

20 MR. SAVERANCE: THAT'S ALL I HAVE FOR THIS WITNESS,
21 YOUR HONOR.

22 MR. WHEELER: THANK YOUR HONOR. MAY IT PLEASE THE
23 COURT.

24 CROSS EXAMINATION BY MR. WHEELER:

25 Q SO ALL OF THESE PICTURES THAT HAVE BEEN ENTERED IN

1 THIS CASE, DID YOU TAKE THEM?

2 A YES, SIR.

3 Q DID THEY HAVE THE LITTLE STAMP? IS THAT SOMETHING
4 THAT COMES FROM YOUR DEPARTMENT?

5 A YES, SIR. ALL OF THOSE PHOTOGRAPHS WERE TAKEN. I
6 TOOK TWO ROLLS OF FILM.

7 Q AND Y'ALL TOOK ALL THOSE. WAS IT JUST YOU? WERE
8 YOU THE ONLY SLED PERSON THAT WENT DOWN?

9 A NO, SIR. I HAD SOMEBODY ELSE WORKING WITH ME.

10 Q OKAY. BUT Y'ALL TOOK ALL THESE PHOTOS THAT NIGHT.

11 A YES, SIR.

12 Q AND YOU SAID YOU GOT FINISHED ABOUT 12:30.

13 A YES, SIR.

14 Q I'VE GOT YOUR -- THE ITEMS OF EVIDENCE THAT YOU DID
15 THE FINGERPRINT ANALYSIS ON.

16 A YES, SIR.

17 Q DO YOU STILL HAVE THAT IN FRONT OF YOU?

18 A YES, SIR, I DO.

19 Q NOW YOU HAVE GOT THE ITEMS OF EVIDENCE AS \$1.35 IN
20 CURRENCY, THE SHELL CASINGS, AND I GUESS THAT'S IT. WHAT
21 OTHER EVIDENCE DID YOU TAKE WITH YOU WHEN YOU LEFT THAT
22 NIGHT? JUST SO I MAKE SURE I UNDERSTAND.

3 A DO YOU WANT ME TO JUST READ THE ENTIRE LIST OF STUFF,
4 BECAUSE I HAVE AN INVENTORY SHEET?

5 Q SURE.

1 A I TOOK \$1.35 IN U.S. CURRENCY, THOSE COINS THAT WERE
2 LAYING ON THE GROUND. AND I TOOK A POSTMORTEM MAJOR CASE
3 PRINTS FROM THE VICTIM. I TOOK FOUR REM SHELL CASINGS. I
4 TOOK A BASEBALL CAP. I HAD TWO ROLLS OF FILM THAT I SHOT.
5 AND THE GUNSHOT RESIDUE KIT FROM THE VICTIM. THERE WAS A
6 TOTAL OF 9 ITEMS ALTOGETHER THAT I COLLECTED THAT NIGHT.
7 AND TOOK BACK TO COLUMBIA WITH ME.

8 Q AND YOU SAY THOSE ALL APPEAR ON AN INVENTORY THAT YOU
9 PREPARED?

10 A WELL YEAH, PART OF AN INVENTORY SHEET THAT I DID WHEN
11 I LOGGED THIS EVIDENCE IN. YES, SIR.

12 Q CAN I APPROACH AND LOOK AT IT? THANK YOU, YOUR
13 HONOR.

14 A THIS IS AN EVIDENCE SLED INVENTORY SHEET. AND THESE
15 ARE THE ITEMS THAT ARE LISTED AND WHEN I LOGGED THEM IN ON
16 THE 8TH.

17 Q DID YOU EVER RECEIVE ANY OTHER EVIDENCE THAT YOU
18 LOGGED?

19 A I DIDN'T. IN THIS CASE, I PERSONALLY DID NOT RECEIVE
20 ANY OTHER EVIDENCE TO PROCESS. NO, SIR. OTHER THAN THIS
21 MAY BE SUBMITTED FROM OTHER DEPARTMENTS IN THE FORENSIC
22 LABORATORY FROM THE POLICE DEPARTMENT, BUT I DID NOT
23 RECEIVE IT.

24 Q OKAY. BUT YOU TOOK ALL THESE PICTURES, IS THAT
25 CORRECT?

1 A YES, SIR.

2 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS DEFENDANT'S 6
3 FOR IDENTIFICATION. DOES IT HAVE THE STAMP THAT INDICATES
4 THAT'S ONE OF THE PICTURES YOU TOOK?

5 A YES, SIR. IT'S GOT THE SLED AND THEN THE TRACE
6 NUMBER 0541397.

7 Q OKAY, NOW DID YOU UNDERSTAND WHEN YOU ARRIVED ON THE
8 SCENE THAT IT HAD BEEN SECURED PRIOR TO YOUR ARRIVAL?

9 A YES, SIR. WHEN I GOT THERE, THE POLICE DEPARTMENT
10 HAD THAT INTERSECTION SEALED OFF WITH SOME YELLOW CRIME
11 SCENE TAPE.

12 Q NOW THE ITEMS IN THAT PICTURE, WOULD YOU DESCRIBE
13 THOSE GENERALLY?

14 A THERE IS A BUNCH OF COINS. SOME DOLLAR BILLS. WHAT
15 LOOKS LIKE A KEY CHAIN, A LIGHTER, AND A CELL PHONE.

16 Q IS IT MORE THAN A \$1.35 IN CURRENCY?

17 A PROBABLY, YES. I WOULD SAY A \$10 BILL.

18 Q OKAY. DO YOU KNOW WHO HAS THAT STUFF?

19 A THOSE ITEMS WOULD HAVE COME OUT OF THE VICTIM'S
20 POCKETS. LIKE I SAID, AFTER WE GOT THERE AND WERE
21 PHOTOGRAPHING, AND STARTED TO GO THROUGH THE POCKETS AND
22 SEE WHAT WAS INSIDE OF THEM. AND AS THEY WERE PULLED OUT,
23 I WENT AHEAD AND TOOK A SNAPSHOT OF THE ITEMS COMING OUT,
24 EXCUSE ME, COMING OUT OF THE POCKETS.

25 Q OKAY. BUT---

1 A SO ALL OF THAT KIND OF STUFF EITHER WOULD HAVE BEEN
2 TAKEN BY THE POLICE DEPARTMENT OR THE CORONER'S OFFICE.

3 Q SO YOU DIDN'T INVENTORY AND TAKE THAT STUFF BACK TO
4 COLUMBIA WITH YOU, DID YOU?

5 A NO, SIR, I DID NOT.

6 Q OKAY. AND HAVE YOU TALKED WITH THE POLICE DEPARTMENT
7 ABOUT WHETHER THEY HAVE?

8 A NO, SIR, I HAVEN'T.

9 Q SO YOU DON'T KNOW WHERE THIS STUFF IS EITHER?

10 A NO, SIR, I DON'T KNOW WHERE THOSE ITEMS ARE. ONCE I
11 TOOK THAT PICTURE, WHOEVER COLLECTED IT FROM THE POLICE
12 DEPARTMENT OR THE CORONER'S OFFICE, IT WAS THEIR
13 RESPONSIBILITY TO TAKE IT THERE.

14 Q IS THERE ANYBODY ELSE IN YOUR DEPARTMENT THAT WOULD
15 HAVE IT, THAT YOU KNOW OF?

16 A NO, SIR. NO. THAT WAS MY CRIME SCENE. I'M THE CASE
17 AGENT ON THIS. SO I DECIDE WHAT IS COLLECTED AND WHAT'S
18 TAKEN AND WHAT'S NOT.

19 Q OKAY. SO YOU CAN SAY THAT THESE MATERIALS ARE
20 DEFINITELY IN THIS PICTURE WHEN YOU TOOK IT?

21 A YES, SIR, THEY WERE.

22 Q NOW YOU MENTIONED THE HAT THAT YOU LOOKED AT A MINUTE
23 AGO WAS CUT. YOU SAID ASSUMING WITH SOME DNA PROCESSING.

24 A YES, SIR.

25 Q DO YOU HAVE ANY DNA PROCESSING ON IT?

1 A I DON'T. WHAT I DID WAS COLLECTED IT AT THE SCENE.
2 IN OTHER WORDS, CAPTAIN BURKE TOLD ME WHERE THE MOISTURE,
3 WHERE THE VICTIM, AND POSSIBLY THE SUSPECTS. SO WE TOOK
4 IT, AND I BAGGED IT UP. AND WHEN I GOT BACK TO THE
5 FORENSIC LABORATORY AND LOGGED IT IN, IT WAS SENT TO THE
6 DNA DEPARTMENT FOR THEM TO PROCESS IT.

7 Q DO YOU HAVE COPIES OF ANY RESULTS FROM THE DNA
8 PROCESSING?

9 A NO, SIR. THE ONLY REPORTS I HAVE ARE FROM THE LATENT
10 PRINTS SECTION. MY REPORTS THAT I GENERATED.

11 Q OKAY. DID YOU TAKE ALL THE PICTURES THAT HAVE BEEN
12 PUT IN TO EVIDENCE, YOU TOOK, IS THAT CORRECT?

13 A YES, SIR.

14 Q AND YOU TOOK 9 ITEMS BACK TO COLUMBIA WITH YOU, IS
15 THAT CORRECT? THAT YOU'VE IDENTIFIED.

16 A YES, SIR.

17 Q BUT THAT DIDN'T INCLUDE THIS MONEY IN THIS PICTURE,
18 OR THIS CELL PHONE AND THOSE THINGS.

19 A NO, SIR. LIKE I SAID, THOSE ITEMS CAME OUT OF SOME
20 OF HIS POCKETS.

21 Q OKAY.

22 A THEY WEREN'T -- MY JOB WAS TO TRY TO DETERMINE THE
23 ITEMS THAT POTENTIALLY WOULD REVEAL A SUSPECT, IDENTIFY
24 THE SUSPECT; COMING OUT OF HIS POCKETS. IT IS NOT
25 SOMETHING I THINK IS GOING TO BE PROBATIVE SINCE IT IS ON

1 HIS PERSON LIKE THAT. IT'S NOT GOING TO GIVE ME ANYTHING
2 THAT IS GOING TO IDENTIFY WHO WOULD HAVE SHOT HIM.

3 Q UH-HUH. (AFFIRMATIVE.) IT DOES INDICATE HE WAS NOT
4 ROBBED.

5 A HE HAD A LOT OF MONEY IN HIS POCKET.

6 MR. SAVERANCE: OBJECTION, YOUR HONOR.

7 THE COURT: BASIS FOR THE OBJECTION?

8 MR. SAVERANCE: SPECULATION.

9 THE COURT: MR. WHEELER.

10 MR. WHEELER: I DON'T THINK IT CAUSES HIM TO
11 SPECULATE. IF THE MONEY IS THERE, I THINK HE CAN PRETTY
12 REASONABLY CONCLUDE THAT THE MAN WASN'T ROBBED.

13 THE COURT: THE OBJECTION IS OVERRULED.

14 Q DOES IT INDICATE TO YOU THAT THE MAN WASN'T ROBBED?

15 A WELL IT INDICATES THAT THE CURRENCY AND THE CELL
16 PHONE WASN'T TAKEN FROM HIM.

17 Q AND I THINK YOU WERE IN THE PROCESS OF SAYING HE HAD
18 A PRETTY LARGE AMOUNT OF CURRENCY ON HIM.

19 A HE DID SO. BUT I DIDN'T COUNT THE TOTAL AMOUNT.

20 Q AND I WOULDN'T SUBMIT YOU COULD FULLY COUNT IT FROM
21 THIS PICTURE, BUT YOU COULD TELL IT'S A FAIR AMOUNT OF
22 CURRENCY.

23 A IT'S OVER \$10.

24 MR. WHEELER: THANK YOU, OFFICER CURTIS.

25 THE COURT: MR. WATTS.

1 MR. WATTS: THANK YOUR HONOR:

2 CROSS EXAMINATION BY MR. WATTS:

3 Q MR. CURTIS, I THINK YOU SAID YOU TOOK PICTURES,
4 CORRECT?

5 A YES, SIR.

6 Q SO THOSE PICTURES BEING AN ACCURATE REPRESENTATION OF
7 WHAT YOU RECALL FROM THE CRIME SCENE?

8 A WHEN I GOT THERE, THAT'S THE WAY IT WAS.

9 Q WHAT TIME DID YOU SAY YOU ARRIVED?

10 A ABOUT 12:30.

11 Q THAT WOULD BE ABOUT 12:30 A.M.?

12 A YES, SIR.

13 MR. WATTS: YOUR HONOR, CAN I ASK THE WITNESS TO
14 STEP DOWN, PLEASE.

15 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
16 STAND.)

17 Q WHEN YOU ARRIVED AT THE SCENE, WHICH DIRECTION DID
18 YOU COME FROM, DO YOU RECALL?

19 A WE CAME DOWN I BELIEVE IT WAS I THINK
20 IT WAS FROM THIS DIRECTION HERE. BECAUSE THE VICTIM WAS
21 LAYING KIND OF INTERSECTION OF

22 Q SO YOU'RE SAYING THAT THE VICTIM, THE DECEASED, WAS
23 LAYING HERE.

24 A IT WAS ALMOST IN THE MIDDLE OF THE INTERSECTION.
25 YES,---

1 Q ALMOST IN THE---

2 A ---SIR.

3 Q ---MIDDLE OF THE INTERSECTION.

4 A YES, SIR.,

5 Q OKAY. WHEN YOU -- DID YOU EVER MOVE TO THIS SIDE OF
6 THE STREET? DID YOU GO ON DOWN WILSON STREET TOWARDS
7 WHERE FRIERSON IS, OR DID YOU REMAIN IN THIS AREA?

8 A AS FAR AS MY PROCESSING OF THE CRIME SCENE, I WOULD
9 HAVE GONE AROUND THE EXTERIOR OF THE CRIME SCENE. TAKEN
10 PHOTOGRAPHS DOWN PROBABLY ABOUT TO THE END OF THE PARKING
11 LOT OF THAT BUILDING. I REMEMBER ANOTHER BUILDING THERE.

12 Q OKAY.

13 A BUT WE WOULDN'T HAVE GONE ALL THE WAY AROUND ALL THE
14 BLOCKS. I WOULD HAVE PARKED OVER HERE SOMEWHERE AND THEN
15 STARTED PHOTOGRAPHING OUT. AND THEN WORKING MY WAY IN TO
16 THE MIDDLE OF THE CRIME SCENE.

17 Q DO YOU REMEMBER WHAT THIS BUILDING, WHAT THIS SQUARE
18 IS SUPPOSED TO REPRESENT?

19 A I BELIEVE THAT'S SUPPOSED TO BE A NIGHTCLUB OR A
20 RESTAURANT OR A BAR OR SOMETHING THERE, KIND OF ON THE
21 CORNER.

22 Q EXCUSE ME, A SECOND. THIS IS MARKED STATE'S EXHIBIT
23 NO. 14. IS THIS THE CLUB AND THE BUILDING YOU WERE
24 TALKING ABOUT?

25 A YES, SIR.

1 Q DO YOU RECALL HAVING THIS SIDE, ADDITIONAL STRUCTURE
2 OR WHATEVER IT IS, OUTCROPPED ON THE SIDE OF THE BUILDING?

3 A I MEAN, I DON'T RECALL THAT. IT'S IN THE PICTURE.

4 Q YOU TOOK THE PICTURE, RIGHT?

5 A I TOOK THE PICTURE.

6 Q SO THAT'S AN ACCURATE DESCRIPTION OR SHOWING OF THE
7 BUILDING.

8 A YES, SIR.

9 Q AND YOU JUST SAID A SECOND AGO, IF I AM CORRECT, THAT
10 THERE WAS ANOTHER BUILDING HERE THAT IS REPRESENTED BY
11 THIS LIGHTER SQUARE THAT YOU RECALL?

12 A I MEAN, I DON'T KNOW ABOUT THAT. I REMEMBERED THAT
13 YOU HAD THAT BUILDING YOU COULD WALK BETWEEN THEM.
14 BECAUSE IF I WALKED BETWEEN THEM, THERE IS A PHOTOGRAPH.
15 AND THERE WAS ANOTHER BUILDING, YOU TOOK A LEFT OVER
16 THERE. I DON'T RECALL WHAT THERE REALLY WAS.

17 Q SO YOU DON'T HAVE ANY MEMORY OF ANY ADDITIONAL
18 STRUCTURE IN BETWEEN?

19 A NO, SIR.

20 Q AND AGAIN, TELL ME AGAIN WHERE YOU BELIEVE THE BODY
21 WAS.

22 A HE WAS ALMOST -- IT WAS ALMOST IN THE INTERSECTION OF
23 RAY AND WILSON. I DON'T KNOW EXACTLY HOW FAR HE WAS OUT.
24 THERE WERE A COUPLE OF TELEPHONE POLES THAT I USED TO GET
25 A DISTANCE. BUT HE WAS PRETTY MUCH IN THE MIDDLE OF THAT

1 INTERSECTION.

2 Q OKAY. THANK YOU. PLEASE HAVE A SEAT, THANK YOU.

3 (THEREUPON, THE WITNESS RESUMES THE WITNESS STAND.)

4 Q AND AGAIN, THE ONLY TESTING YOU PERFORMED WERE THE
5 ITEMS THAT YOU LISTED ON YOUR REPORT, THE LATENT
6 FINGERPRINTS REPORT?

7 A YES, SIR.

8 Q THE COINS---

9 A AND THE SHELL CASINGS.

10 Q AND SHELL CASINGS.

11 A YES, SIR.

12 Q AND YOU TOOK THE FINGERPRINTS OF THE DECEASED,
13 CORRECT?

14 A YES, SIR, I DID.

15 Q WHEN YOU ARRIVED, THE BAGS WERE IN PLACE?

16 A HIS HANDS WERE BAGGED, YES, SIR.

17 Q HIS HANDS WERE BAGGED? OKAY, DID YOU -- WHAT DID YOU
18 DO NEXT REGARDING THIS GSR TESTING?

19 A WELL WHAT I WOULD HAVE DONE IS, ONCE WE WERE DONE
20 PHOTOGRAPHING HIM, HE WOULD HAVE BEEN PUT ON A STRETCHER
21 BY EMS. AND I'M ONE OF THE ONES WHO WENT IN TO THE BACK
22 OF AMBULANCE. I WENT INTO THE BACK OF THE AMBULANCE AND
23 REMOVED THE BAGS. TOOK THE GSR KITS AND FINGERPRINTED HIM
24 THERE IN THE BACK OF THE AMBULANCE. WELL, EXCUSE ME, IT
25 WENT ON TO THE CORONER HERSELF.

1 Q EARLIER THE ATTORNEYS SHOWED YOU THIS PICTURE IS
2 MARKED FOR DEFENSE FOR IDENTIFICATION 6: SOME COINS, A
3 CELL PHONE, A LIGHTER AND BILLS. DO YOU RECALL THAT?

4 A YES, SIR.

5 Q YOU REMEMBER SEEING IT, BECAUSE YOU TOOK THE PICTURE,
6 CORRECT?

7 A YES, SIR.

8 Q AND YOU RECALL SEEING THIS OTHER ITEM.

9 A YES, SIR. THAT CAME OUT OF HIS POCKET AS WELL.

10 Q OKAY. YOU DIDN'T PERFORM ANY TESTING ON THAT?

11 A NO, SIR, I DID NOT. ALL OF THAT STUFF WOULD HAVE
12 BEEN TURNED TO, LIKE I SAID, THE POLICE DEPARTMENT OR THE
13 CORONER'S OFFICE FOR THEM TO DECIDE WHAT TO DO WITH IT.

14 Q OKAY. LET ME SHOW YOU A PICTURE MARKED FOR
15 IDENTIFICATION DEFENSE 8. DO YOU RECOGNIZE THAT PICTURE?

16 A YES, SIR. THAT'S A PICTURE OF THE VICTIM WHEN AFTER
17 WE HAD TAKEN THE SHEET OFF.

18 Q OKAY. CAN YOU IDENTIFY WHAT THAT IS BESIDE?

19 A THIS WAS -- ONE OF THE HEAD SCARVES, OR A DO-RAGS
20 THAT WAS LAYING BESIDE HIM. AND I WAS ADVISED THAT EMS
21 HAD REMOVED THAT FROM HIS HEAD WHEN THEY GOT THERE TO
22 CHECK TO SEE IF HE HAD ANY SIGNS OF LIFE ON HIM.

23 Q OKAY. YOU DIDN'T TAKE THAT.

24 A NO, SIR.

25 Q OKAY.

1 A THAT WAS GONE FROM THE BODY.

2 Q DO YOU KNOW IF ANYONE ELSE COLLECTED THAT?

3 A IT SHOULD HAVE BEEN WITH THE BODY, WITH THE CLOTHING
4 AND STUFF. I THINK THE CORONER WOULD HAVE TAKEN THAT.
5 BUT THE POLICE DEPARTMENT MAY HAVE PICKED THAT UP AS WELL.

6 Q OKAY.

7 A I AM NOT SURE.

8 Q SO IT SHOULD BE CATALOGED AS A PIECE OF EVIDENCE.

9 A SOMEBODY SHOULD HAVE TAKEN IT, YES, SIR.

10 Q I THINK EARLIER WHEN YOU WERE DESCRIBING THE PICTURE,
11 ACCORDING TO THIS, I THINK YOU WERE REFERRING TO EVIDENCE
12 AS WELL.

13 A NOT FORENSIC EVIDENCE THAT I COLLECTED. LIKE I SAID,
14 PART OF THE NORMAL PROCESS IS, ONCE I'VE DONE
15 PHOTOGRAPHING, WE DO SEARCH THE VICTIM. LOOK IN HIS
16 POCKETS TO SEE, YOU KNOW, IF THERE'S IDENTIFICATION ON
17 HIM. OR IN THIS CASE, CURRENCY. A WEAPON, WHATEVER,
18 WE'RE LOOKING TO SEE WHAT'S IN THE POCKETS. TAKING THAT
19 STUFF OUT, I WOULD HAVE NORMALLY PHOTOGRAPHED STUFF AS
20 IT'S REMOVED. THOSE ITEMS WERE OF INTEREST TO ME TO
21 PROCESS FOR FINGERPRINTS OR ANY OTHER FORENSIC TESTING I
22 COULD THINK OF. SO ALL OF THAT STUFF WOULD HAVE BEEN LEFT
23 FOR AGAIN, THE CORONER OR THE POLICE DEPARTMENT TO COLLECT
24 AND SO DO SOMETHING WITH.

25 Q OKAY. DO YOU KNOW IF IT'S STANDARD PRACTICE FOR A LAW

1 ENFORCEMENT AGENCY TO COLLECT THAT AND HOLD ON TO IT?

2 A IT SHOULD BE, YES.

3 MR. WATTS: THANK YOU.

4 THE COURT: MR. JOHNSON?

5 MR. JOHNSON: NO QUESTIONS, YOUR HONOR.

6 THE COURT: MR. SAVERANCE?

7 MR. SAVERANCE: NO FURTHER QUESTIONS, YOUR HONOR.

8 THE COURT: MR. WHEELER?

9 MR. WHEELER: NOTHING FURTHER, YOUR HONOR.

10 THE COURT: THANK YOU, YOU MAY STEP DOWN. LADIES AND
11 GENTLEMEN, WE WILL BREAK FOR LUNCH AT THIS TIME. BE BACK
12 IN YOUR JURY ROOM AT 2:15. PLEASE DO NOT DISCUSS THE
13 CASE. PLEASE BE BACK AT 2:15.

14 (THEREUPON, AT 12:55 P.M. THE JURY IS DISMISSED FOR
15 LUNCH.)

16 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
17 PRESENCE OF THE JURY.)

18 MR. SAVERANCE: THE STATE WOULD CALL INVESTIGATOR
19 THOMPSON AND ONE LAY WITNESS AND THAT WOULD BE ALL WE
20 HAVE.

1 THE COURT: REGARDING INVESTIGATOR THOMPSON AND THE
2 ISSUE OF THE STATEMENT AND ANY BRUTON PROBLEMS IN
3 CONNECTION WITH THAT. ANYTHING FURTHER FROM THE STATE?

4 MR. SAVERANCE: JUST AS WE SAID YESTERDAY, IT'S OUR
5 POSITION HE NAMED THE OTHER TWO DEFENDANTS. WE THINK IT

1 IS ADMISSIBLE AND RELEVANT AGAINST THE DEFENDANT THAT MADE
2 THE STATEMENT. HE SAID HE SHOT THREE OR FOUR TIMES. WE
3 ARE NOT TRYING TO USE THE OTHER TWO. MR. THOMAS MADE THE
4 STATEMENT. OF COURSE WE UNDERSTAND YOUR HONOR DENIED. WE
5 STILL CLEARLY THINK WE SHOULD BE ABLE TO USE A PORTION OF
6 IT AGAINST MR. THOMAS.

7 THE COURT: MR. WHEELER.

8 MR. WHEELER: JUST THE PORTIONS THAT HAVE BEEN USED.

9 THE COURT: MR. WATTS.

10 MR. WATTS: I DON'T WANT THERE TO BE EVEN THOUGH YOU
11 ARE TALKING ABOUT SOMETHING THE INFERENCE IT CREATES, THE
12 STATEMENT CLEARLY IS GOING TO BE MORE PREJUDICIAL THAN
13 PROBATIVE. BECAUSE BY REASON THERE ARE TWO OTHER PEOPLE,
14 THERE ARE OTHER CASES HOLDING THAT THE INFERENCE, TAKING
15 AND USING THE STATEMENT, THE INFERENCE OF THE STATEMENT IS
16 INCRIMINATING. AND THAT MR. MCCALL IN AND OF ITSELF, IT'S
17 GOING THROUGH THE BACK DOOR WITH THIS TESTIMONY.

18 THE COURT: MR. JOHNSON.

19 MR. JOHNSON: YOUR HONOR, I WOULD JUST LISTEN TO THE
20 STATEMENT. I THINK HE SAID USING IT AGAINST MY CLIENT,
21 BUT I WOULD REQUEST THAT PORTION BE REMOVED BECAUSE THE
22 STATEMENT IS CONCERNING TWO OTHER INDIVIDUALS. OUR
23 POSITION IT IS EXTREMELY PREJUDICIAL AND OUTWEIGHS ANY
24 PROBATIVE VALUE.

25 THE COURT: AS FAR AS THE STATEMENT OF EFRAIN THOMAS,

1 I FIND THAT THE STATEMENT IS ADMISSIBLE. HOWEVER, FREELY
2 AND VOLUNTARILY GIVEN BY HIM AFTER BEING ADVISED OF HIS
3 CONSTITUTIONAL RIGHTS. AND I FIND HOWEVER THE STATEMENT
4 VIOLATED THE CONFRONTATION CLAUSE OF THE CONSTITUTION AS
5 TO THE OTHER TWO CO-DEFENDANTS. THE STATEMENT WOULD BE
6 ADMISSIBLE BUT MUST BE REDACTED AND DELETED IN THOSE
7 REFERENCES TO THE OTHER TWO CO-DEFENDANTS. THEREFORE, THE
8 FIRST QUESTION TO MR. THOMAS IS PERMISSIBLE, IS ADMITTED.
9 THE QUESTION, "WERE YOU INVOLVED WITH THE HOMICIDE OF
10 TROY ROUSE. YES." THE NEXT QUESTION ASKED HIM, "WHAT
11 OCCURRED ON THAT EVENING." THAT WOULD BE REDACTED ALL THE
12 WAY DOWN TO THE THIRD SENTENCE FROM THE BOTTOM WHICH
13 STARTS WITH, "TROY CAME AT ME. COMING ON DOWN THE ENTIRE
14 NEXT PAGE IS OKAY.

5 AND GOING ON TO PAGE 3. QUESTION: "WAS THERE ANY
6 PREEXISTING ALTERCATION BETWEEN YOU AND OTHER PERSONS."
7 THAT MUST BE REDACTED. SO WHEN YOU TOLD US THERE WERE
8 FOUR PEOPLE AT THE SCENE WHO YOU DON'T WISH TO IDENTIFY."
9 ANSWER, "YES." THAT MUST BE REDACTED. NEXT QUESTION
10 REFERRING TO SUBJECTS THAT WILL BE PERSONS ONE AND TWO:
11 "DID PERSON TWO HAVE ANYTHING TO DO WITH THE INCIDENT."
12 ANSWER, "NO." YOU SAW PERSON ONE IS THE ONE YOU INITIALLY
13 SAW BY TROY. ANSWER: "YES." THAT WOULD BE REDACTED. AND
14 THE REMAINING STATEMENT COMES IN. IS ADMITTED.

HAVE YOU GOT THAT, MR. SAVERANCE?

1 MR. SAVERANCE: PAGE 4 WOULD BE ADMITTED IN ITS
2 ENTIRETY.

3 THE COURT: YES. MR. WATTS.

4 MR. WATTS: YOUR HONOR, ONE OTHER QUESTION ON PAGE 1.
5 THE SECOND QUESTION, "ON THE EVENING IN QUESTION, YOU'VE
6 GOT THAT MARKED OUT DOWN TO THE BOTTOM 3 SENTENCES AND TO
7 WHERE, "TROY CAME AT ME." STARTING BACK AT THAT POINT
8 ONLY TWO QUESTIONS I HAVE.

9 THE COURT: JUST REDACT THE TWO OTHER PERSONS
10 DIRECTION. "TROY CAME AT ME." SUCH AND SUCH.

11 MR. SAVERANCE: THANK YOU, YOUR HONOR. I'LL REDACT
12 AND GIVE COPIES TO OPPOSING COUNSEL AND LET THEM BRIEF
13 BEFORE WE RESTART.

14 THE COURT: MR. WHEELER.

15 MR. WHEELER: YOUR HONOR, I JUST WANT TO MAKE SURE ON
16 THE ISSUE THAT CAME UP ON THE TAPE YESTERDAY. THE
17 AUDIOTAPE I GOT TO LISTEN TO THAT THIS MORNING. LARGELY
18 IT'S THE WRITTEN STATEMENT AND HOW IT APPEARS ON ITS FACE.

19 THE COURT: WHAT?

20 MR. WHEELER. JUST AS IT APPEARS IN THE STATEMENT
21 MADE BY MY CLIENT.

22 THE COURT: THE STATEMENT IS BEING ADMITTED. I DON'T
23 KNOW WHAT THE TESTIMONY WILL BE.

24 MR. WHEELER: I UNDERSTAND. THANK YOU, YOUR HONOR.

25 MR. WATTS: PAGE 1 ON THAT IS ADMITTED, THE SENTENCE

1 "TROY CAME AT ME." THE OTHER PERSON'S DIRECTION. ARE WE
2 GOING TO KEEP THE OTHER PERSON? THAT SENTENCE DISCUSSING
3 REFERENCING TWO OTHER PEOPLE?

4 THE COURT: JUST WHATEVER I JUST SAID. THAT PART
5 WILL BE REDACTED AS TO OTHER PERSONS.

6 MR. WATTS: I APOLOGIZE. AND I HAVE ONE MORE
7 QUESTION 4 WHERE IT SAYS, SENTENCE "I MAY INCRIMINATE
8 MYSELF. THE MURDER WASN'T INTENTIONAL."

9 THE COURT: YES, SIR.

10 MR. WATTS: INCRIMINATING SOMEONE IS ASSUMING SOMEONE
11 IS GUILTY. SPEAKS OF SOMEBODY ELSE.

12 THE COURT: HE'S SPEAKING FOR HIMSELF. I AM NOT
3 GOING TO FURTHER REDACT THAT.

4 MR. WATTS: YES, SIR, YOUR HONOR.

5 THE COURT: ANYTHING, MR. SAVERANCE?

6 MR. SAVERANCE: ON THE ISSUE WHEN I PUT UP
7 INVESTIGATOR THOMPSON IN TALKING TO COURTNEY JOHNSON.
8 WHAT SHE SUPPOSEDLY TOLD INVESTIGATOR THOMPSON. I DON'T
9 MIND PUTTING HIM UP BRIEFLY ABOUT THE VOLUNTARINESS THAT
0 IS ALREADY COVERED IN THE STATEMENT BY MR. THOMAS AND
1 KNOWN BY MR. MCCALL. ADDITIONAL JACKSON DENNO. HE DIDN'T
2 -- I DIDN'T THINK ABOUT IT UNTIL I WENT HOME LAST NIGHT.

3 THE COURT: WE WILL BE IN RECESS IN THIS CASE UNTIL
4 2:15.

(THEREUPON, THE COURT TAKES A LUNCH RECESS.)

1 MR.. SAVERANCE: WE WOULD CALL INVESTIGATOR THOMPSON
2 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
3 PRESENCE OF THE JURY.)

4 INVESTIGATOR CHEZ-DENT
5 THOMPSON, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION BY MR. SAVERANCE:

7 Q INVESTIGATOR THOMPSON, DID YOU AT SOME POINT SPEAK
8 WITH CHAD JAMES INVOLVING THIS MATTER?

9 A I DID.

10 Q WHEN WAS THAT?

11 A MAY 8, 2005, SUBSEQUENT TO THIS ARREST.

12 Q WHERE DID YOU TALK TO HIM AT?

13 A BISHOPVILLE POLICE DEPARTMENT, INVESTIGATORY.

14 Q WHO ALL WAS THERE?

15 A WHO WAS THERE? TO MY KNOWLEDGE, MYSELF, ALONG WITH
16 THE ARRESTING OFFICERS, OFFICER KELLY AND OFFICER
17 SULLIVAN.

18 Q YOU SPOKE WITH MR. JAMES?

19 A YES, I DID.

20 Q WAS THAT TAPED?

21 A NO, IT WAS NOT.

22 Q HOW LONG DID THAT LAST?

23 A APPROXIMATELY 15 MINUTES.

24 Q DID YOU ADVISE HIM OF HIS RIGHTS?

25 A I DID.

1 Q HOW LONG HAVE YOU BEEN DOING, HAVE YOU BEEN WORKING
2 LAW ENFORCEMENT?

3 A I HAVE BEEN WORKING IN LAW ENFORCEMENT APPROXIMATELY
4 10 YEARS. SIX AS A CLASS I, FOUR AS A CRIMINAL
5 INVESTIGATOR.

6 Q HOW LONG HAVE YOU BEEN FAMILIAR WITH MIRANDA?

7 A I'VE BEEN FAMILIAR WITH MIRANDA FOR 10 YEARS.

8 Q AND WHAT DID CHAD JAMES SAY WHEN YOU ADVISED HIM OF
9 HIS RIGHTS?

0 A AFTER I ADVISED HIM OF HIS RIGHTS AND EXPLAINED HIS
1 RIGHTS TO HIM, HE SIGNED AND HE DID ACKNOWLEDGE AND
2 UNDERSTAND HIS RIGHTS, AND SIGNED A WAIVER TO THOSE RIGHTS
3 ACKNOWLEDGING WAIVING HIS RIGHTS TO AN ATTORNEY. AND
4 SPOKE TO ME ABOUT THE CASE.

5 MR. SAVERANCE: YOUR HONOR, WOULD YOU LIKE THIS
6 MARKED FOR THE COURT'S PURPOSE LIKE WE DID YESTERDAY?

7 THE COURT: YES, SIR.

8 MR. SAVERANCE: IT'S A MIRANDA FORM INVOLVING THIS
9 MATTER, YOUR HONOR.

0 (MIRANDA FORM OF CHAD JAMES MARKED AS COURT'S EXHIBIT
1 NO. 3 FOR ID ONLY.)

2 MR. SAVERANCE: CAN I APPROACH?

3 THE COURT: YES.

4 Q CAN YOU IDENTIFY THAT FORM?

5 A THIS IS A MIRANDA FORM SIGNED BY CHAD JAMES ON THE

1 DAY IN QUESTION. AND IT IS THE ADDRESS OF THE BISHOPVILLE
2 POLICE DEPARTMENT WITH MY NAME ATTACHED TO HIS SIGNATURE.

3 "UNDERSTANDING THE RIGHTS," AND MY NAME AS A WITNESS TO
4 HIS SIGNATURE WHERE HE WAIVED A RIGHT TO AN ATTORNEY.

5 Q DID MR. JAMES APPEAR TO BE INTOXICATED AT THE TIME?

6 A HE WAS NOT.

7 Q DID HE APPEAR TO BE UNDER THE INFLUENCE OF ANY KIND
8 OF ALCOHOL OR MEDICATION OR DRUGS AT THE TIME?

9 A HE DID NOT.

10 Q DID HE APPEAR TO UNDERSTAND THE QUESTIONS YOU ASKED?

11 A HE DID.

12 Q DID HE GIVE COHERENT ANSWERS?

13 A HE DID.

14 Q DID YOU FORCE OR COERCE HIM IN ANY WAY TO GIVE ANY
15 STATEMENTS?

16 A I DID NOT.

17 Q DID HE MAKE ANY STATEMENTS AGAINST ANY OTHER
18 DEFENDANTS IN THIS CASE?

19 A HE DID NOT.

20 Q AND AGAIN, HOW LONG DID THIS LAST?

21 A APPROXIMATELY 15 MINUTES.

22 Q IN YOUR OPINION, WAS THIS A FREE AND VOLUNTARY
23 STATEMENT BY HIM?

24 A FREE AND VOLUNTARY.

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

1 THE COURT: MR. JOHNSON.

2 CROSS EXAMINATION BY MR. JOHNSON:

3 Q INVESTIGATOR THOMPSON, DID YOU PUT IN YOUR REPORT
4 YOUR DISCUSSIONS WITH HIM?

5 A EXCUSE ME?

6 Q DID YOU PUT IN YOUR REPORT, YOUR POLICE REPORT, DO
7 YOU BASICALLY WRITE DOWN WHAT HE DISCUSSED WITH YOU?

8 A I GAVE A -- I WROTE THE SUMMARY OF THE WITNESS. NOT
9 WORD FOR WORD VERBATIM. JUST A BRIEF SUMMARY OF THE
0 THINGS WE SPOKE ABOUT.

1 Q AND IN THAT SUMMARY, DID YOU BASICALLY WRITE WHAT YOU
2 CONSIDERED TO BE THE MOST IMPORTANT PART OF THIS SUMMARY?

3 A EXCUSE ME?

4 Q THE MOST IMPORTANT PART OF THE SUMMARY ARE THE THINGS
5 YOU WROTE DOWN?

6 A THE MOST IMPORTANT, AND THE MOST RELEVANT. YES, SIR.

7 Q THE MOST RELEVANT. AND THAT'S INCLUDED IN YOUR
8 STATEMENT YOU HAVE THERE?

9 A THAT'S CORRECT.

MR. JOHNSON: I HAVE NO OTHER QUESTIONS. I HAVE NO
OBJECTIONS.

THE COURT: THE STATEMENT IS ADMISSIBLE. YOU MAY
STEP DOWN. WE WILL BE IN RECESS IN THIS CASE UNTIL 2:15.

(THEREUPON, THE COURT TAKES A LUNCH RECESS.

THE COURT: ANYTHING BEFORE WE BRING THE JURY?

1 MR. SAVERANCE: YOUR HONOR, THE ONLY I HAVE IS A
2 PROCEDURAL MATTER. WE HAVE STATE'S 24 FOR IDENTIFICATION.
3 AND THAT'S THE WAIVER FORM THAT CAPTAIN BURKE TESTIFIED
4 TO. AND I WOULD JUST MOVE TO HAVE IT ADMITTED INTO
5 EVIDENCE. I MEANT TO DO THAT YESTERDAY, AND I DIDN'T DO
6 THAT.

7 MR. WHEELER: NO OBJECTION.

8 MR. WATTS: NO OBJECTION, YOUR HONOR.

9 THE COURT: MR. JOHNSON, WHAT DO YOU SAY?

10 MR. JOHNSON: YOUR HONOR, OH, NO OBJECTION. I'M
11 SORRY, JUDGE.

12 THE COURT: IT IS ADMITTED WITHOUT OBJECTION. BRING
13 THE JURY.

14 (WAIVER FORM OR EFRAIN THOMAS MARKED STATE'S EXHIBIT
15 NO. 24 INTO EVIDENCE.)

16 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
17 PRESENCE OF THE JURY.)

18 THE COURT: WELCOME BACK. NEXT WITNESS, PLEASE.

19 MR. SAVERANCE: WE WOULD CALL INVESTIGATOR JOHNSON.

20 INVESTIGATOR CHEZ-DENT

21 THOMPSON, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD.

23 A DETECTIVE CHEZ-DENT THOMPSON. SPELLED C-H-E-Z HYPHEN
24 D-E-N-T.

25 DIRECT EXAMINATION BY MR. SAVERANCE:

1 Q INVESTIGATOR THOMPSON, WHAT DO YOU DO FOR A LIVING?

2 A I'M A DETECTIVE FOR BISHOPVILLE POLICE DEPARTMENT,
3 MAJOR CRIMES AND NARCOTICS.

4 Q HOW LONG HAVE YOU BEEN THERE?

5 A I'VE BEEN AT BISHOPVILLE APPROXIMATELY 15 MONTHS.

6 Q HAVE YOU BEEN AN INVESTIGATOR DURING THAT TIME, THE
7 ENTIRE TIME YOU HAVE BEEN THERE?

8 A THAT'S CORRECT.

9 Q SO WHEN A CRIME OCCURS, YOU GET INVOLVED AFTER THE
0 FACT AND THEN YOU BECOME A PARTICIPANT IN THE
1 INVESTIGATION OF THE MATTER?

2 A THAT'S CORRECT.

3 Q TALKING TO WITNESSES, REVIEWING THE EVIDENCE, AND
4 THINGS LIKE THAT?

5 A THAT'S CORRECT.

6 Q AND I UNDERSTAND THERE MAY BE MORE THINGS YOU DO, BUT
7 THAT'S JUST SOME OF THE DUTIES THAT YOU HAVE.

8 A THAT'S CORRECT.

9 Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT TOTAL?

0 A I'VE BEEN IN LAW ENFORCEMENT APPROXIMATELY 10 YEARS.
1 SIX AS A CLASS I OFFICER. CLASS I POLICE OFFICER. FOUR
2 AS A CRIMINAL INVESTIGATOR, COLUMBIA, SOUTH CAROLINA AND
3 HERE IN BISHOPVILLE.

4 Q IS IT FAIR TO SAY OVER THE COURSE OF THE TIME THAT
5 YOU'VE BEEN EMPLOYED AS A LAW ENFORCEMENT OFFICER, YOU'VE

1 PARTICIPATED IN NUMEROUS INVESTIGATIONS?

2 A THAT'S CORRECT.

3 Q DID YOU BECOME INVOLVED IN THE INVESTIGATORY OF THE
4 MURDER OR TROY ROUSE?

5 A I DID.

6 Q HOW?

7 A ORIGINALLY AS AN UNDERCOVER AGENT, I WAS TECHNICALLY
8 IN AN UNDERCOVER CAPACITY, AND ASSIGNED IMMEDIATELY IN THE
9 INVESTIGATION AND HOMICIDE OF TROY ROUSE IN APRIL OF 2005.
10 UPON CONDUCTING AN INVESTIGATION, THE FIRST THING WAS TRY
11 TO LOCATE A MR. EUNICE MCCALL, ONE OF THE DEFENDANT'S IN
12 THIS CASE. WHO WAS SUPPOSED TO BE IN THE RIVER WIND
13 APARTMENTS AREA IN CAMDEN, SOUTH CAROLINA. DUE TO THE
14 FACT THAT A WARRANT WAS ISSUED FOR HIS ARREST, AND WE HAD
15 TO TRY TO LOCATE HIM. I WAS UNABLE TO LOCATE HIM.

16 APPROXIMATELY, APRIL 28TH, I WAS BRIEFED BY CAPTAIN
17 BURKE AS THE OFFICIAL DATE OF ME COMING OUT FROM
18 UNDERCOVER. I WAS BRIEFED BY CAPTAIN BURKE FROM THE
19 BISHOPVILLE POLICE DEPARTMENT WHO ADVISED ME OF THE
20 DETAILS OF THE CASE. THE SUSPECTS THAT WERE -- WARRANTS
21 WERE OUTSTANDING FOR, AND PEOPLE OF INTEREST WHO NEEDED TO
22 BE TALKED TO. SOME OF THE INFORMATION THAT I OBTAINED IS
23 THAT AN ALIBI WAS GIVEN BY MS. COURTNEY JOHNSON.

24 MR. WHEELER: I OBJECT TO ANY HEARSAY AS TO WHAT
25 CAPTAIN BURKE TOLD HIM.

1 THE COURT: WELL THE OBJECTION IS SUSTAINED AS TO
2 THAT CONVERSATION.

3 Q LET ME PUT IT THIS WAY. DID YOU TALK TO SOME
4 WITNESSES---

5 A I DID.

6 Q ---IN YOUR INVESTIGATION?

7 A I DID.

8 Q WOULD THAT BE COURTNEY JOHNSON?

9 A YES. THE FIRST WITNESS I SPOKE TO WAS COURTNEY
0 JOHNSON.

1 Q AND WAS THERE ANOTHER WITNESS YOU SPOKE TO?

2 A YES, SAMANTHA HICKMAN.

3 Q AND THAT WAS PART OF YOUR INVESTIGATION?

4 A THAT'S CORRECT.

5 Q HOW MANY TIMES DID YOU MEET WITH THEM?

6 A I MET WITH THEM APPROXIMATELY THREE -- TWO. TWO
TIMES TOTAL.

Q TWO TIMES A PIECE?

A TWO TIMES A PIECE.

Q WHERE DID YOU MET WITH THEM THE FIRST TIME?

A BOTH IN THE BISHOPVILLE POLICE DEPARTMENT.

Q HOW ABOUT THE SECOND TIME?

A THE BISHOPVILLE POLICE DEPARTMENT.

Q AND DID THEY GIVE YOU SOME INFORMATION INVOLVING THIS
CASE?

1 A THEY DID. THE INFORMATION THAT WAS PROVIDED FROM
2 STATEMENTS INITIALLY IN TALKING TO COURTNEY JOHNSON HER
3 FIRST INITIAL STATEMENTS---

4 MR. JOHNSON: OBJECTION, YOUR HONOR, AS TO HEARSAY
5 FROM COURTNEY JOHNSON.

6 THE COURT: YES, SIR.

7 MR. SAVERANCE: YOUR HONOR, SINCE MS. JOHNSON HAS
8 TESTIFIED PREVIOUSLY AND ALSO BEEN CROSS EXAMINED BY THE
9 DEFENSE ATTORNEYS, I WOULD THINK THAT THAT WOULD BE
10 ADMISSIBLE AT THIS POINT.

11 THE COURT: MR. WHEELER.

12 MR. SAVERANCE: YOUR HONOR, I DON'T THINK THAT
13 PRODUCES CLASSIFICATION OF HEARSAY. IN FACT, IT PROBABLY
14 GOES IN THE OTHER DIRECTION. SHE'S TESTIFIED.

15 THE COURT: MR. WATTS.

16 MR. WATTS: I WOULD CONCUR, YOUR HONOR. SHE'S
17 ALREADY TESTIFIED. AND HE HAD AN OPPORTUNITY AND HE'S
18 GOING TO PRESENT TESTIMONY ABOUT HER.

19 THE COURT: MR. JOHNSON.

20 MR. JOHNSON: YOUR HONOR, IT'S MY POSITION IT'S
21 CLEARLY HEARSAY. HE'S NOT ALLOWED TO SAY IT.

22 THE COURT: THE OBJECTION IS SUSTAINED.

23 Q AT SOME POINT, DID YOU TALK TO CHAD JAMES?

24 A YES, I DID. BEAR WITH ME ONE SECOND, SIR. I SPOKE
25 WITH MR. CHAD JAMES ON MAY THE 8TH OF 2005, AT THE

1 BISHOPVILLE POLICE DEPARTMENT, INCIDENT TO HIS ARREST.

2 MR. SAVERANCE: CAN I APPROACH, YOUR HONOR?

3 THE COURT: YES, SIR.

4 Q CAN YOU IDENTIFY THAT EXHIBIT?

5 A YES, SIR. THIS IS A MIRANDA WAIVER FORM THAT WAS
6 SIGNED BY CHAD JAMES ON 5-8-2005. MAY 8, 2005. AT
7 APPROXIMATELY 10, 10 P.M. WAS MY INTERVIEW. IT WAS
8 WITNESSED BY MYSELF. HE SIGNED THAT HE UNDERSTOOD THE
9 MIRANDA RIGHTS. AND HE SIGNED THAT HE WAIVED HIS RIGHTS
10 TO AN ATTORNEY AT THE TIME AND WAS WILLING TO TALK TO ME.

11 Q ARE YOU FAMILIAR WITH MIRANDA RIGHTS?

12 A I AM, SIR.

13 Q HAVE YOU INTERVIEWED PEOPLE UNDER MIRANDA NUMEROUS
14 TIMES IN THE PAST?

15 A I HAVE, SIR.

16 Q AND YOU GAVE MR. JAMES HIS RIGHTS?

17 A I DID, SIR.

18 Q AND HE AGREED TO TALK TO YOU.

19 A HE DID, SIR.

20 Q WAS THIS A VERBAL OR ORAL STATEMENT?

21 A THIS WAS AN ORAL STATEMENT.

22 Q HOW LONG DID THE INTERVIEW LAST?

23 A APPROXIMATELY 15 MINUTES.

MR. SAVERANCE: YOUR HONOR, I WOULD MOVE TO HAVE THE
MIRANDA FORM ADMITTED IN TO EVIDENCE AT THIS TIME.

1 THE COURT: ANY OBJECTION?

2 MR. JOHNSON: I HAVE NO OBJECTION.

3 MR. WHEELER: NONE, YOUR HONOR.

4 MR. WATTS: NONE.

5 THE COURT: ADMITTED.

6 (MIRANDA FORM OF CHAD JAMES MARKED STATE'S EXHIBIT
7 NO. 35 INTO EVIDENCE.)

8 Q WHAT DID YOU AND MR. JAMES TALK ABOUT?

9 A WHAT I ADVISED, AFTER MIRANDIZING HIM, THAT WE WOULD
10 TALK ABOUT THE HOMICIDE OF TROY ROUSE TO WHICH HE
11 INITIALLY AND IMMEDIATELY STATED HE KNEW NOTHING ABOUT
12 TROY BEING KILLED AT THE TIME.

13 Q I'M SORRY, HE KNEW NOTHING ABOUT WHAT?

14 A HE KNEW NOTHING ABOUT TROY GETTING KILLED AT THE
15 TIME.

16 Q AT THE TIME YOU ASKED HIM?

17 A NO, NOT AT THE TIME WE ASKED, AT THE TIME IT
18 OCCURRED.

19 Q WHAT ELSE DID Y'ALL TALK ABOUT?

20 A WELL WE CONTINUED ON. I ASKED HIM ABOUT HIS
21 WHEREABOUTS ON THE NIGHT IN QUESTION. HE STATED TO ME
22 THAT HE LEFT HIS RESIDENCE AND WAS DRIVING A BURGUNDY IN
23 COLOR CADILLAC WHICH BELONGED TO HIS COUSIN ON THE NIGHT
24 IN QUESTION. HE STATED THAT DURING THE NIGHT IN QUESTION
25 APPROXIMATELY DURING THE TIME OF THE SHOOTING, HE DROVE

1 FROM HIS RESIDENCE TO JEROME'S STORE. JEROME'S STORE
2 WHICH IS LOCATED ON FRIERSON STREET, JUST OFF OF A RAY
3 STREET. THERE'S A POOL HALL. WHILE DRIVING THERE HE
4 SPOKE TO TWO INDIVIDUALS, IDENTIFIED AS A LENNY GREEN,
5 A/K/A COWBOY AND A KEITH HANNABEL. HE STATED THAT DURING
6 THIS NIGHT WHILE HE WAS PRESENT THERE, HE HEARD SEVERAL
7 SHOTS.

8 HE ATTEMPTED TO LEAVE THE CLUB AFTER HEARING THE
9 SHOTS. GOT BACK INTO THE BURGUNDY COLORED CADILLAC. HE
0 DROVE DOWN FRIERSON STREET TOWARD WILSON STREET. AND HE
1 MADE A LEFT ON WILSON STREET. NOW AT THIS TIME I WOULDN'T
2 ASK FURTHER QUESTIONS BECAUSE THAT WAS RATHER ODD TO ME.
3 BECAUSE IN FACT TRAVELING THAT DIRECTION AND MAKING A LEFT
4 ON WILSON STREET, WOULD FORCE HIM TO COME INTO AN EXACT
5 CIRCLE, BACK TO THE POINT OF WHERE HE LEFT FROM. THERE'S
6 NO POSSIBLE WAY TO GET BACK TO HIS RESIDENCE FROM THERE
7 EXCEPT TO GO TO THE CRIME SCENE.

Q LET ME ASK YOU THIS, DID MR. JAMES APPEAR TO
UNDERSTAND YOUR QUESTIONS DURING THIS TIME?

A HE DID. HE WAS VERY COHERENT, AND WAS NOT UNDER THE
INFLUENCE OF ALCOHOL OR DRUGS.

Q AND HE GAVE COHERENT, CLEAR ANSWERS?

A VERY COHERENT.

Q DID YOU FORCE HIM OR COERCE HIM TO SAY ANYTHING?

A I DID NOT.

1 MR. SAVERANCE: CAN I HAVE THE WITNESS STEP DOWN
2 BRIEFLY, YOUR HONOR?

3 THE COURT: YES.

4 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
5 STAND.)

6 Q NOW WHAT DID YOU SAY WAS ODD ABOUT HIS STATEMENT
7 ABOUT DRIVING BACK TO HIS HOUSE?

8 A SURE. WHAT IS ODD ABOUT THE STATEMENT THAT HE GAVE
9 ME, AND PLEASE FORGIVE THIS, AN AREA IS NOT DETAILED ON
10 THIS SIDE WHICH WE TALKED ABOUT JEROME'S STORE. WHICH IS
11 ACTUALLY ON THE EAST OF -- WEST OF THE CRIME SCENE IN THIS
12 AREA. OKAY. THIS IS RAY STREET. THIS IS WILSON STREET
13 WHERE THE HOMICIDE OCCURRED. THE BODY WAS FOUND RIGHT
14 HERE. HIS STATEMENT TO ME WAS THAT HE LEFT JEROME'S STORE
15 HERE ON FRIERSON STREET. HE PROCEEDED TOWARD WILSON
16 STREET. HE MADE A LEFT.

17 NOW, KNOWING THE AREA IN QUESTION TO DO THIS---

18 MR. WHEELER: OBJECTION, YOUR HONOR, THIS IS AN
19 EXPLANATION. IT'S NOT A STATEMENT OF WHAT HE SAW AND WHAT
20 HE UNDERSTOOD.

21 MR. JOHNSON: AS WELL, I WANT TO MAKE THE SAME
22 OBJECTION. HE'S ACTUALLY GIVING A NARRATIVE. HE IS NOT
23 ANSWERING THE QUESTION.

24 THE COURT: THE OBJECTION IS SUSTAINED. PLEASE POSE
25 THE QUESTIONS, MR. SAVERANCE.

1 MR. SAVERANCE: YES, SIR.

2 Q SO WHERE DID MR. JAMES SAY THAT THIS OCCURRED?

3 A HE SAID HE CAME FROM JEROME'S STORE, WHICH IS LOCATED
4 HERE IN FRIERSON STREET JUST WEST OF THE CRIME SCENE IN
5 THIS AREA.

6 Q WHERE DID HE SAY HE WENT?

7 A HE STATED HE WENT TO WILSON AND MADE A LEFT TURN.

8 Q AND WHERE IS WILSON STREET?

9 A WILSON STREET IS, IF THIS IS FRIERSON, THIS IS WILSON
0 STREET. THIS IS THE PLACE OF THE HOMICIDE AND THIS IS
1 WILSON STREET. HE WOULD HAVE MADE A LEFT IN THIS
2 DIRECTION.

3 Q SO WILSON STREET RUNS THIS WAY?

4 A THAT'S CORRECT.

5 Q AND THAT'S FRIERSON STREET.

6 A THAT'S CORRECT.

7 Q AND THE CLUB IS DOWN HERE.

8 A THAT'S CORRECT.

9 Q SO IF HE CAME TO WILSON STREET TO THE LEFT, WOULD HE
0 HAVE BEEN IN THE AREA OF THE CRIME?

1 A NO, NOT INITIALLY. HE WOULD HAVE TO TAKE THAT LEFT,
2 WHICH WOULD HAVE FORCED HIM TO COME TO A CIRCLE. AND THEN
3 DRIVE TO THE CRIME SCENE.

4 Q SO AFTER HE SAID HE TOOK A LEFT ON WILSON STREET,
5 WHAT DID HE SAY HE DID?

1 A HE STATED THAT HE DROVE HOME. THE ONLY WAY HE COULD
2 HAVE DRIVEN HOME---

3 MR. JOHNSON: YOUR HONOR, HE ANSWERED THE QUESTION.
4 HE SAID HE STAYED AT HOME. NOW HE'S GIVING AN EXPLANATION
5 ABOUT SOMETHING HE WASN'T ASKED ABOUT.

6 THE COURT: ALL RIGHT.

7 MR. JOHNSON: HE'S STILL GIVING A NARRATIVE.

8 THE COURT: OBJECTION IS SUSTAINED AS NOT BEING
9 RESPONSIVE TO THE QUESTION.

10 Q WHERE DID -- DO YOU KNOW WHERE MR. JAMES' HOUSE IS
11 LOCATED AT?

12 A YES, SIR. IT'S LOCATED AT [REDACTED] [REDACTED] WHICH
13 IS EAST OF THE CRIME SCENE IN THIS AREA.

14 Q AND WHERE DID HE SAY HE WENT AFTER HE TURNED LEFT ON
15 WILSON STREET?

16 A HE STATED HE WENT TO HIS RESIDENCE.

17 Q DID HE SAY WHAT ROAD HE TRAVELED ON TO GET THERE
18 AFTER THAT?

19 A NO, HE DID NOT SAY.

20 Q BUT HE DID SAY HE TURNED LEFT ON WILSON STREET.

21 A HE DID SAY HE TURNED LEFT ON WILSON STREET.

22 Q AND TO YOUR UNDERSTANDING, WHERE WAS -- WHERE DID
23 THIS KILLING OF MR. ROUSE OCCUR?

24 A TO MY UNDERSTANDING, THE HOMICIDE TOOK PLACE IN THIS
25 GENERAL AREA. AND THE BODY LAID STILL AT THE POINT OF RAY

1 AND WILSON.

2 MR. SAVERANCE: YOUR HONOR, I WOULD ASK THAT THE
3 WITNESS GO BACK TO THE STAND.

4 Q WHAT DID MR. JAMES SAY HAPPENED WHEN HE GOT BACK TO
5 HIS RESIDENCE?

6 A SURE. WHEN HE RETURNED TO THE RESIDENCE, HE STATED
7 HE GOES TO HIS RESIDENCE AND HE SPOKE WITH SEVERAL
8 OCCUPANTS OF THE HOUSE. AND AT THE TIME, HE IDENTIFIED
9 COURTNEY JOHNSON, SAMANTHA HICKMAN, KENO SLATER AND EFRAIN
0 THOMAS. HE STATED AT THIS TIME HE GAVE ALL THE
1 INDIVIDUALS NAMED, A RIDE TO CAMDEN. HOWEVER, UPON GIVING
2 THIS RIDE, HE DID NOT USE THE BURGUNDY COLORED CAR.

3 MR. JOHNSON: YOUR HONOR, ONCE AGAIN, HE'S GIVING A
4 NARRATIVE. HE WAS ASKED A QUESTION OF WHAT THEY SAID.
5 NOW HE'S TELLING WHAT HE DIDN'T DO.

6 THE COURT: OBJECTION SUSTAINED.

7 Q DID HE ACKNOWLEDGE GIVING MR. THOMAS A RIDE TO
8 CAMDEN?

9 A HE DID.

0 Q IN WHAT VEHICLE?

1 A HE STATED IT WAS A GREEN IN COLOR DODGE NEON THAT
2 BELONGS TO HIS GIRLFRIEND CORONE.

3 Q AND WHAT VEHICLE WAS HE IN BEFORE HE GOT BACK TO HIS
4 RESIDENCE?

5 A A BURGUNDY COLORED CADILLAC ACCORDING TO HIS

1 STATEMENT.

2 Q DID HE SAY WHETHER HE DROVE THE GREEN VEHICLE THAT
3 INCLUDED MR. THOMAS AS A PASSENGER?

4 A SURE. HE STATED THAT ALL THE INDIVIDUALS INSIDE,
5 EXCUSE ME, THAT I NAMED: EFRAIN, COURTNEY, SAMANTHA,
6 KENO. COURTNEY WAS IN THE FRONT SEAT. EFRAIN, KENO AND
7 SAMANTHA WERE IN THE BACK SEAT. THEY PROCEEDED ACCORDING
8 TO THE HIM, TO THE GAS STATION, FUELED UP. AND THEY DROVE
9 TO SAMANTHA'S RESIDENCE IN CAMDEN.

10 Q AND MR. JAMES LIVES IN CAMDEN, RIGHT?

11 A HE DOES.

12 Q WAS THAT THE EXTENT OF HIS STATEMENT?

13 A YES, SIR. PRETTY MUCH. THAT WAS THE EXTENT OF THE
14 STATEMENT. I MADE MENTION OF SOME FACTS, BUT THAT WAS
15 ABOUT IT.

16 Q DID YOU CONTINUE TO INVESTIGATE MR. JAMES AFTER THIS
17 STATEMENT?

18 A YES, I DID. I SPOKE TO SOME MORE WITNESSES WITH
19 REGARD TO CASE STATEMENTS DUE TO SOME INCONSISTENCIES WITH
20 OTHER INDIVIDUALS.

21 Q AND AT SOME POINT WAS HE CHARGED WITH ACCESSORY AFTER
22 THE FACT OF MURDER?

23 A DURING THIS INTERVIEW, HE WAS CHARGED. THE
24 STATEMENTS THAT HE GAVE WERE INCONSISTENT.

25 MR.. JOHNSON: YOUR HONOR, ONCE AGAIN, HE'S GIVING ()

1 NARRATIVE. HE'S NOT ANSWERING. HE ASKED WAS HE CHARGED.

2 THE COURT: OBJECTION SUSTAINED.

3 A HE WAS CHARGED AT THIS TIME.

4 Q WHY WAS HE CHARGED?

5 A SIR?

6 MR. JOHNSON: YOUR HONOR, RELEVANCE.

7 THE COURT: WHAT SAYS THE STATE?

8 MR. SAVERANCE: YOUR HONOR, I THINK WHY HE WAS
9 CHARGED IS RELEVANT. IT GOES TO SHOW WHAT -- WHY MR.
0 THOMPSON WAS INVESTIGATING THIS CASE. AND WHY THE CHARGES
1 WERE TAKEN OUT. IT'S JUST THE NORMAL COURSE OF THEIR
2 INVESTIGATION.

3 THE COURT: MR. JOHNSON.

4 MR. JOHNSON: YOUR HONOR, I THINK IT IS NOT RELEVANT.
5 AS WELL AS IT IS ALREADY, BECAUSE HE HAS BEEN CHARGED WITH
6 ACCESSORY AFTER THE FACT. THE JURY IS MADE AWARE OF IT.
7 THAT'S THE REASON HE WAS INVESTIGATED. HE HAS ALREADY
8 GIVEN THAT STATEMENT. IT'S CUMULATIVE. CUMULATIVE AND
9 EXTREMELY PREJUDICIAL.

0 THE COURT: THE OBJECTION IS SUSTAINED AS TO THE FORM
1 OF THE QUESTION.

2 Q DID YOU SAY HE WAS CHARGED AT THAT TIME?

3 A HE WAS CHARGED AT THAT TIME.

4 Q AT SOME POINT DID YOU SPEAK WITH EFRAIN THOMAS?

5 A I DID, SIR.

1 Q WHEN WAS THAT?

2 A EFRAIN THOMAS WAS INTERVIEWED BY MYSELF INCIDENT TO
3 HIS ARREST ON APRIL 2, 2005, AT 1 O'CLOCK.

4 MR. SAVERANCE: CAN I APPROACH THE WITNESS, YOUR
5 HONOR?

6 THE COURT: YES.

7 MR. SAVERANCE: YOUR HONOR, I WOULD LIKE TO MARK THIS
8 FOR IDENTIFICATION PURPOSES ONLY.

9 THE COURT: YOU MAY DO SO.

10 MR. WHEELER: NO OBJECTION.

11 MR. WATTS: NO OBJECTION, YOUR HONOR.

12 (WRITTEN STATEMENT MARKED STATE'S EXHIBIT NO. 42 FOR
13 ID ONLY.)

14 Q CAN YOU IDENTIFY THAT ITEM?

15 A YES, SIR. THE FIRST PAGE OF THIS ITEM IS THE MIRANDA
16 WARNING STATEMENT THAT I GAVE TO EFRAIN THOMAS AFTER HE
17 WAS IN CUSTODY, AND BEING INTERROGATED BY MYSELF. HE WAS
18 ADVISED THAT HE WAS BEING INTERVIEWED WITH REGARD TO A
19 MURDER INVESTIGATION. HE WAS ADVISED OF ALL HIS RIGHTS,
20 WHICH HE INITIALED EACH ONE SAYING THAT HE UNDERSTOOD.
21 AND SIGNED THAT HE UNDERSTOOD. HE ALSO SIGNED AT THE
22 BOTTOM, A WAIVER, SAYING THAT HE WAS WILLING TO TALK TO ME
23 WITHOUT AN ATTORNEY PRESENT. AND IT WAS WITNESSED BY
24 MYSELF AND INVESTIGATOR THOMPSON. THE SECOND PORTION OF
25 THIS IS A WRITTEN STATEMENT THAT HE PROVIDED TO ME

1 PERTAINING TO THE HOMICIDE OF TROY ROUSE.

2 Q AND THAT WAS WRITTEN BY EFRAIN THOMAS?

3 A ACTUALLY, NO. THE STATEMENT, I INTERVIEWED IN Q AND
4 A, LABLED QUESTIONS BY MYSELF DETECTIVE THOMPSON, AND
5 ANSWERED BY MR. EPHRAIN THOMAS. THE FORM WAS, EXCUSE ME,
6 THE STATEMENT WAS WRITTEN BY ME. I ASKED HIM A QUESTION.
7 AND WROTE THAT QUESTION DOWN. AND HE GAVE AN ANSWER. AND
8 THE ANSWER IS WRITTEN DOWN IN THE EXACT MEANS THAT HE
9 STATED. AFTER WHICH TIME WHEN WE WENT OVER THE STATEMENT
10 WHEN HE WAS ADVISED OF ANYTHING THAT NEEDED TO BE
11 CORRECTED BY ME, AND THOSE ANSWERS WILL BE CORRECTED. IT
12 WAS WRITTEN DOWN IN THE EXACT FASHION FORM HE STATED.

13 Q DID MR. THOMAS REVIEW EVERYTHING YOU WROTE DOWN?

14 A HE DID, SIR.

15 Q DID HE SIGN THE STATEMENT?

16 A HE DID, SIR.

17 Q DID HE MAKE ANY CHANGES TO IT?

18 A HE DID NOT, SIR.

19 Q DID HE APPEAR TO BE UNDER THE INFLUENCE OF ANYTHING
20 WHEN YOU TALKED TO HIM?

21 A HE WAS NOT.

22 Q DID YOU FORCE OR COERCE HIM TO SAY ANYTHING?

23 A I DID NOT, SIR.

24 Q AND WHAT DATE DID THIS TAKE PLACE?

25 A THIS WAS ON THE 29TH OF APRIL, 2005, AT THE

1 BISHOPVILLE POLICE DEPARTMENT.

2 Q AND AGAIN, YOU WENT OVER MIRANDA WITH HIM. YOU ARE
3 FAMILIAR WITH THAT, AND HE SIGNED. AND AGREED TO TALK
4 WITH YOU.

5 A THAT'S CORRECT.

6 Q WHAT I WOULD LIKE FOR YOU TO DO IS BEGIN AT THE FIRST
7 PART OF THE STATEMENT, AND WHEN YOU ASK THE QUESTION, JUST
8 SAY QUESTION. AND STATE IT. AND THEN WHEN YOU SAY
9 ANSWER, STATE THAT. NOW WHOSE ANSWERS WOULD THAT HAVE
10 BEEN?

11 A ANSWERS FROM EFRAIN THOMAS.

12 Q THAT HE GAVE YOU.

13 A YES, SIR.

14 Q OKAY.

15 A FIRST PART OF THE STATEMENT IS ONCE AGAIN, WHICH HE
16 AGAIN SIGNED THE WAIVER, THE SECOND FORM. QUESTIONED BY
17 MYSELF INVESTIGATOR C. THOMPSON. BISHOPVILLE P.D. ANSWER
18 OF EFRAIN THOMAS, THE FIRST QUESTION: "EFRAIN, WERE YOU
19 INVOLVED IN THE HOMICIDE OF TROY ROUSE ON 4-7 2005, WHICH
20 WAS APRIL 7, 2005? ANSWER: YES. TROY CAME AT ME. TROY
21 TOLD ME TO QUOTE: "SUCK HIS DICK." AND HE RAN AT ME. HE
22 CHARGED TOWARD ME. WHEN HE CHARGED ME, I RAN AROUND HIM.
23 WHEN I RAN AROUND HIM, I SHOT HIM THREE TIMES IN HIS BACK.
24 I SHOT HIM AND THEN RAN. QUESTION: WHEN YOU SAY HIM, ARE
25 YOU REFERRING TO TROY. ANSWER: YES. QUESTION: WHAT

1 KIND OF GUN DID YOU HAVE. ANSWER: 22-CALIBER

2 SEMI-AUTOMATIC. QUESTION: WAS IT YOUR INTENT TO KILL

3 TROY. ANSWER: NO. QUESTION: WHAT WAS TROY'S CONDITION?

4 ANSWER: HE WAS "FUCKED UP." I DON'T KNOW, IT COULD HAVE

5 BEEN CRACK COCAINE OR ALCOHOL. HE WAS "FUCKED UP." DID

6 YOU FEEL YOUR LIFE WAS IN JEOPARDY. ANSWER: YES.

7 QUESTION: WHAT WERE YOU WEARING AT THE TIME. ANSWER:

8 BLACK JEANS, A BLACK SWEATER, A WHITE TEE SHIRT HANGING

9 OUT, AND BLACK JORDANS.

10 QUESTION: WHAT DID YOU DO WITH THE CLOTHES THAT YOU

11 WORE THAT NIGHT. ANSWER: THREW THEM AWAY. QUESTION:

12 WHERE IS THE WEAPON. ANSWER: I GAVE IT TO SOMEBODY.

13 QUESTION: WAS THE INCIDENT A SPONTANEOUS ONE. ANSWER:

14 YEAH. QUESTION: OTHER THAN WHAT YOU TOLD ME, IS THERE

15 ANYTHING ELSE THAT YOU WISH TO ADD TO YOUR STATEMENT.

16 ANSWER: HIS ANSWER WAS WRITTEN BY ME, AND HIS ANSWER WAS

17 AS FOLLOWS: FOR THE RECORD, MR. TROY ROUSE WAS A GOOD

18 PERSON. AND MY INTENTIONS WERE NEVER TO HARM HIM ON

19 PURPOSE. I THINK HE ACTED THE WAY HE DID BECAUSE HE WAS

20 INTOXICATED. EVERY DAY I PRAY FOR HIM. I PRAY FOR HIS

21 FAMILY AND I PRAY FOR MYSELF. I MADE A TERRIBLE MISTAKE,

22 BUT I FELT MY LIFE WAS IN DANGER. I AM NOT A KILLER. I

23 AM PREPARED TO TAKE THE REPERCUSSIONS FOR MY ACTIONS. AND

24 I PRAY THAT I GET A SECOND CHANCE AT LIFE. TO HIS FAMILY,

25 I APOLOGIZE FROM MY SOUL. I HOPE THEY CAN GO ON WITH

1 THEIR LIVES KNOWING THAT I AM ONE OF THE ONE'S RESPONSIBLE
2 FOR TROY'S DEATH. THEY DESERVE TO KNOW THE TRUTH. LORD
3 HAVE MERCY ON ME. R.I.P, TROY. I FEEL I SHOULDN'T
4 INCRIMINATE ANYONE ELSE BUT MYSELF. BECAUSE THE MURDER
5 WASN'T INTENTIONAL. ONE LIFE WAS LOST. AND MINE IS ON
6 THE LINE. NO ONE ELSE'S LIFE SHOULD BE IN JEOPARDY. WAS
7 IT DEATH OR PRISON. THAT IS WHY I CONFESS TO WHAT, EFRAIN
8 M. THOMAS, DID.

9 I DID WHAT I DID BECAUSE I FEARED FOR MYSELF AT THE
10 TIME. BUT I HAVE REGRETTEED EVERY SECOND OF IT. MY
11 SYMPATHY GOES TO HIS FAMILY. END OF STATEMENT."

12 THE COURT: LADIES AND GENTLEMEN, THE STATEMENT THAT
13 WAS READ AND I HAVE ADMITTED INTO EVIDENCE. AND I WILL
14 GIVE YOU FURTHER INSTRUCTIONS CONCERNING YOUR EVALUATION
15 AND VOLUNTARINESS OF THE STATEMENT. AND THE WEIGHT IF
16 ANY, THAT YOU SHOULD PLACE ON THE STATEMENT.
17 ADDITIONALLY, I WANT TO INSTRUCT YOU THAT THAT CAN ONLY BE
18 CONSIDERED FOR OR AGAINST MR. THOMAS AS A STATEMENT OF MR.
19 THOMAS. THANK YOU. YOU MAY PROCEED.

20 MR. SAVERANCE: THANK YOU, YOUR HONOR.

21 MR. WHEELER: YOUR HONOR.

22 THE COURT: YES, SIR.

23 MR. WHEELER: INVESTIGATOR THOMPSON, HAD LEFT OFF THE
24 LAST TWO WORDS OF THE STATEMENT.

25 A EXCUSE ME, SIR?

1 MR. WHEELER: YOU LEFT OFF THE LAST TWO WORDS OF THE
2 STATEMENT. I'M SORRY, YOU JUST DIDN'T READ IT.

3 A I'M SORRY, SIR?

4 THE COURT: YOU MAY CONTINUE.

5 A I'M SORRY?

6 THE COURT: JUST A MOMENT, SIR. YOU MAY CONTINUE.

7 MR. SAVERANCE: THANK YOU, YOUR HONOR.

8 Q AND AGAIN, MR. EFRAIN THOMAS WAS GIVEN A CHANGE TO
9 REVIEW THIS AND HE SIGNED IT?

10 A HE DID, SIR, AND WAS GIVEN A COPY.

11 Q AND THE LAST PAGE HE WROTE OUT HIMSELF?

12 A HE DID, SIR.

13 Q AND HE DID ACKNOWLEDGE THE SHOOTING OF TROY ROUSE IN
14 THE BACK 3 TIMES.

15 A HE DID, SIR.

16 MR. SAVERANCE: YOUR HONOR, I WOULD MOVE TO HAVE IT
17 ADMITTED INTO EVIDENCE. I'M NOT GOING TO PUBLISH IT AT
18 THIS TIME THOUGH.

19 THE COURT: THE STATEMENT AT THIS TIME IS ADMITTED,
20 BUT NOT PUBLISHED.

21 MR. SAVERANCE: CAN I APPROACH?

22 THE COURT: YES, SIR.

23 Q WAS THIS EVERYTHING MR. THOMAS TOLD YOU?

24 A THAT WAS EVERYTHING HE PROVIDED IN THE STATEMENT. I
25 HAD FURTHER QUESTIONS AS TO WHERE THE GUN WAS LOCATED,

1 WHICH HE WAS UNWILLING TO PROVIDE.

2 Q DID HE EVER MENTION ABOUT TORY ROUSE HAVING A WEAPON
3 OR A GUN?

4 A NO, HE DID NOT, SIR.

5 Q AND HE TOLD YOU HE DIDN'T HAVE A WEAPON TO USE?

6 A EXCUSE ME, SIR?

7 Q HE TOLD YOU HE DIDN'T HAVE THE WEAPON?

8 A THE WEAPON THAT WAS USED IN THE HOMICIDE, NO, SIR.
9 HIS STATEMENT TO ME ORIGINALLY WAS THAT HE GAVE IT TO
10 SOMEBODY. AND REPEATING QUESTIONS, AND HE WAS UNWILLING
11 TO GIVE THE WEAPON.

12 MR. WHEELER: OBJECTION, YOUR HONOR. I BELIEVE THAT
13 GOES BEYOND THE STATEMENT THAT HAS BEEN PREVIOUSLY
14 ADMITTED.

15 THE COURT: SAY IT AGAIN, MR. WHEELER.

16 MR. WHEELER: OBJECTION TO ANYTHING THAT GOES BEYOND
17 THE STATEMENT THAT HAS BEEN PREVIOUSLY, THAT YOU JUST
18 ADMITTED.

19 THE COURT: MR. SAVERANCE, ANY RESPONSE TO HIS
20 OBJECTION?

21 MR. SAVERANCE: YOUR HONOR, I BELIEVE HIS ANSWER WAS
22 A PROPER RESPONSE TO MY QUESTION. SO I...

23 THE COURT: YOUR OBJECTION IS TO QUESTION AND ANSWER?

24 MR. SAVERANCE: YOUR HONOR, I DON'T BELIEVE THAT HE
25 WAS EVEN IN THE SCOPE OF WHAT HE WAS ALLOWED TO SAY IN

1 RESPONDING TO MY QUESTION. I THINK IT IS PROPER.

2 THE COURT: ANYTHING FURTHER, MR. WHEELER?

3 MR. WHEELER: YOUR HONOR, THE OBJECTION WASN'T IF MR.
4 THOMPSON ANSWERS THE QUESTION. IT WAS TO ANY QUESTIONS
5 THAT WENT BEYOND THE STATEMENT THAT HAS BEEN PREVIOUSLY
6 ADMITTED.

7 THE COURT: BEYOND THE COURSE OF THE HEARING WE HAD
8 IN THAT REGARD.

9 MR. WHEELER: YES, SIR.

10 THE COURT: I SUSTAIN THE OBJECTION.

11 Q INVESTIGATOR THOMPSON, WERE YOU AT THE CRIME SCENE
12 WHEN THIS OCCURRED?

13 A I WAS NOT, SIR.

14 Q SO YOU BECAME INVOLVED IN THIS CASE LATER?

15 A YES, SIR.

16 Q WHAT IF YOU'RE AWARE, ARE YOU AWARE OF THE
17 BISHOPVILLE POLICE DEPARTMENT'S POSITION ON PERSONAL
18 EFFECTS OF A VICTIM OF A CASE?

19 A YES, SIR.

20 Q WHAT IS THAT?

21 A WELL BASICALLY, SIR, ANYTIME A CRIME OCCURS WHETHER
22 IT IS MAJOR OR MINOR, ANYTHING THAT IS TAKEN, IS
23 EVIDENTIARY VALUE. IT IS PLACED INTO EVIDENCE AND
24 ANALYZED. IF THAT MATERIAL OR PROPERTY IS NOT NEEDED BY
25 US OR THE CORONER'S OFFICE, IT'S RETURNED TO THE VICTIM OR

1 HIS FAMILY.

2 Q ARE YOU AWARE OF ANY OTHER EVIDENCE THAT THE
3 BISHOPVILLE POLICE DEPARTMENT HAS HAD CUSTODY OF THAT HAS
4 NOT BEEN PRESENTED IN THIS TRIAL?

5 A ALTHOUGH NOT AT THE SCENE, THERE WAS EVIDENCE, EXCUSE
6 ME, NOT EVIDENCE, THERE WAS PROPERTY REMOVED FROM THE BODY
7 OF TROY ROUSE CONSISTENT WITH THE---

8 MR. JOHNSON: YOUR HONOR, I WOULD HAVE TO MAKE AN
9 OBJECTION TO THIS. HE'S ALREADY ADMITTED HE WAS NOT AT
10 THE CRIME SCENE. HE CANNOT MAKE ANY PERSONAL STATEMENT OF
11 HIS PERSONAL KNOWLEDGE OF WHAT WAS TAKEN FROM THAT CRIME
12 SCENE.

13 THE COURT: MR. SAVERANCE.

14 MR. SAVERANCE: YOUR HONOR, I THINK IN THE COURSE OF
15 HIS INVESTIGATION, HE CAN TESTIFY AS TO WHAT THEIR POLICY
16 WAS, AND WHAT HE TOOK IN AND WHAT HE KNEW ABOUT.

17 THE COURT: THE OBJECTION IS SUSTAINED AS TO THE FORM
18 OF THE QUESTION.

19 Q TO YOUR KNOWLEDGE, WHAT PROPERTY WAS TAKEN INTO
20 CUSTODY BY THE POLICE DEPARTMENT IN THIS CASE?

21 A THE CELL PHONE. SEVERAL MONETARY ITEMS. MINOR ITEMS
22 THAT WERE TAKEN FROM HIS POCKET, WERE RETURNED TO HIS
23 GIRLFRIEND JESSAMINE BY THE CORONER.

24 Q SO Y'ALL DIDN'T KEEP THEM?

25 A WE DIDN'T KEEP THEM. IT WASN'T NECESSARY FOR

1 EVIDENCE.

2 Q AT SOME POINT, WAS A WEAPON TAKEN TO SLED TO BE
3 TESTED DURING Y'ALLS INVESTIGATION?

4 A THAT'S AFFIRMATIVE.

5 Q WHAT WAS THAT?

6 A BEAR WITH ME ONE SECOND PLEASE. THE WEAPON WAS A 32
7 CALIBER REVOLVER.

8 Q AND ARE YOU AWARE THAT THIS TEST CAME OUT AS NEGATIVE
9 AS BEING USED IN THE CRIME?

10 A YES, SIR. THAT'S CORRECT.

11 Q IS THAT THE EXTENT OF ANY TYPE OF WEAPON THAT WAS
12 FOUND OR LOCATED?

13 A EXCUSE ME, SIR?

14 Q LET ME REPHRASE THAT. WAS THAT WEAPON RECOVERED AT
15 THE CRIME SCENE?

16 A IT WAS NOT.

17 Q HOW DID YOU GET THAT?

18 A THAT WEAPON WAS TURNED IN TO A PERSPECTIVE WITNESS AT
19 THE TIME. UNDER THE ASSUMPTION THAT THAT WEAPON WAS USED
20 IN THE CRIME. BUT IT WAS LATER TO BE DETERMINED THROUGH
21 INVESTIGATION NOT TO BE USED IN THE CRIME.

22 Q AND THAT'S THE ONLY WEAPON THAT Y'ALL GOT POSSESSION
23 OF?

24 A THAT'S CORRECT.

25 Q AND IT WAS TESTED.

THIS PAGE INADVERTENTLY
LEFT BLANK

1 A THAT'S CORRECT.

2 Q AND IT WAS NOT THE WEAPON USED IN THIS CASE.

3 A THAT'S CORRECT.

4 MR. SAVERANCE: IF I COULD HAVE ONE SECOND, YOUR
5 HONOR. I THINK THAT MIGHT BE ALL I HAVE.

6 Q I MAY HAVE ASKED YOU THIS, BUT WHAT WAS THE DATE AND
7 TIME OF YOUR INTERVIEW WITH EPHRAIN THOMAS?

8 A EFRRAIN THOMAS WAS INTERVIEWED ON APRIL 29, 2005, AT
9 13:00 HOURS, AT ONE O'CLOCK P.M.

0 Q AND THE PLACE THIS BODY WAS FOUND THAT'S IN LEE
1 COUNTY?

2 A THAT'S CORRECT, SIR.

3 Q WHERE TROY ROUSE'S BODY WAS FOUND?

4 A YES, SIR. RAY AND WILSON HERE.

5 MR. SAVERANCE: THAT'S ALL I HAVE OF THIS WITNESS.

6 THE COURT: MR. WHEELER.

7 MR. WHEELER: THANK YOU, YOUR HONOR. MAY IT PLEASE
8 THE COURT.

9 CROSS EXAMINATION BY MR. WHEELER:

0 Q INVESTIGATOR THOMPSON, HAVE YOU BEEN HERE THROUGHOUT
1 THE COURSE OF THIS TRIAL?

2 A YES, SIR, I HAVE.

3 Q AND YOU WERE HERE YESTERDAY, WEREN'T YOU?

4 A I WAS.

5 Q NOW YESTERDAY WHEN WE TALKED ABOUT THIS CASH, AND

1 THESE KEYS AND THIS CELL PHONE, YOU WERE HERE FOR CAPTAIN
2 BURKE'S TESTIMONY, WERE YOU NOT?

3 A I WAS FOR A PORTION OF IT. I STEPPED OUT AND CAME
4 BACK.

5 Q WERE YOU HERE FOR THE PORTION WHERE HE INDICATED IT
6 WAS IN THE POSSESSION OF SLED?

7 A I DON'T RECALL, SIR.

8 Q SO YOU WEREN'T HERE YESTERDAY WHEN HE SAID IT WAS IN
9 THE CUSTODY OF SLED AS EVIDENCE. YOU MISSED THAT.

10 A I JUST DON'T RECALL.

11 Q AND TODAY IT'S NOT EVIDENCE AND Y'ALL DON'T HAVE. IS
12 THAT WHAT I UNDERSTAND YOUR TESTIMONY TO BE?

13 A THAT'S CORRECT, SIR.

14 Q WHO DECIDES THAT SOMETHING IS EVIDENCE OR IF IT'S NOT
15 IMPORTANT?

16 A THE CASE OFFICER ON THE SCENE, AND THE CRIME SCENE
17 INVESTIGATOR.

18 Q WHO WAS THAT IN THIS CASE?

19 A IN THIS CASE, WELL IT'S COMPLICATED, SIR. BECAUSE I
20 AM THE CASE AGENT ON THE PARTICULAR CASE IN QUESTION.
21 HOWEVER, AS TESTIFIED BEFORE PREVIOUSLY, I WAS BROUGHT IN
22 MIDWAY THROUGH THE INVESTIGATION.

23 Q WELL WHO MADE THE DETERMINATION AS TO WHETHER
24 SOMETHING WAS EVIDENCE IN THIS CASE OR WHETHER IT WASN'T?

25 A I CANNOT ANSWER THAT, SIR.

1 Q WAS IT YOU?

2 A IT WAS NOT.

3 Q SO YOU KNOW IT WASN'T YOU.

4 A THAT'S CORRECT.

5 Q WHO ELSE WAS INVOLVED IN THIS INVESTIGATION?

6 A THERE WERE MULTIPLE PARTIES, SIR. TWO CONSISTED OF
7 MY CAPTAIN AND TWO OTHER SLED AGENTS. SEVERAL SHERIFF'S
8 DEPARTMENT INVESTIGATORS AND SEVERAL P.D. PERSONNEL. BUT
9 I DON'T KNOW EXACTLY WHO BECAUSE I WAS IN AN UNDERCOVER
0 CAPACITY AT THE TIME.

1 Q WELL YOU WOULDN'T THINK THAT CAPTAIN BURKE MADE THE
2 DECISION WHEN YESTERDAY HE TOLD US SLED HAD THE EVIDENCE,
3 WOULD YOU?

4 MR. SAVERANCE: YOUR HONOR, I WOULD OBJECT TO THAT.

5 THE COURT: THE OBJECTION IS SUSTAINED.

6 Q DID YOU MAKE THE DECISION?

7 A I DID NOT, SIR.

8 Q BUT IT'S YOUR UNDERSTANDING AT THIS POINT, THAT SOME
9 FAMILY MEMBER WAS GIVEN THOSE MATERIALS.

0 A THAT'S CORRECT, SIR.

1 Q AND YOU'RE FAMILIAR WITH THE MATERIALS I AM TALKING
2 ABOUT. I AM SHOWING YOU A PHOTOGRAPH---

3 A IF I MAY SEE THE PHOTOGRAPH, SIR.

4 Q CERTAINLY. IT WOULD HAVE BEEN PREVIOUSLY MARKED AS
5 DEFENDANT'S 1 AND DEFENDANT'S 6 FOR IDENTIFICATION.

1 A SIR, I CAN HONESTLY SPEAK ON THE FACT THAT ONCE
2 AGAIN, I WAS NOT ON THE CRIME SCENE. I DIDN'T ACTUALLY
3 SEE WHAT OCCURRED AT THE CRIME SCENE. BUT AS FAR AS WHAT
4 WAS DISCUSSED YESTERDAY, I BELIEVE THESE ARE THE ITEMS.
5 AND WE DID SPEAK TO MS. JESSAMINE.

6 Q SO YOU WEREN'T AT THE CRIME SCENE AND YOU DON'T KNOW
7 ABOUT IT. BUT YOU CAN SAY THESE ARE THE ITEMS?

8 A WELL I CAN SAY THAT THIS PICTURE IS A PORTION WITH
9 THE BODY THAT I SAW IN OTHER PICTURES THAT MR. TROY ROUSE
10 WAS IN, WITH HIS DEAD CORPSE LAYING AT THE CRIME SCENE.
11 AND BECAUSE I SEE THAT THERE, I DON'T CONTEST THAT THIS IN
12 FACT IS THE CRIME SCENE, AND THESE ITEMS LAYING NEXT TO
13 IT.

14 Q OKAY. WHICH IS PRETTY MUCH THE SAME CONCLUSION THAT
15 ANYBODY WHO WOULD DEVELOP THESE PICTURES CAN MAKE.

16 A PARDON?

17 Q DID IT TAKE ANY SPECIAL DEDUCTIVE REASONING TO FIGURE
18 THAT OUT FROM BEING AT THE CRIME SCENE?

19 A I THINK THAT'S PRETTY MUCH COMMON SENSE.

20 Q THANK YOU THEN. INVESTIGATOR THOMPSON, YOU ARRESTED
21 MR. THOMAS ON THE 29TH OF APRIL, IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q YOU WENT TO HIS HOME IN BISHOPVILLE?

24 A THAT'S CORRECT.

25 Q WERE YOU ACCOMPANIED BY ONE OR MORE OTHER OFFICERS AT

1 THE POLICE DEPARTMENT?

2 A YES, SIR. CAPTAIN BURKE AND SEVERAL, I'D SAY ABOUT
3 TWO OTHER UNIFORMED OFFICERS. BUT I CAN'T REMEMBER
4 EXACTLY WHO IT WAS.

5 Q NOW YOU KNEW THAT CAPTAIN BURKE HAD TALKED TO HIM
6 PREVIOUSLY.

7 A I DID.

8 Q AND AS CAPTAIN BURKE TESTIFIED, MR. THOMAS HAD DENIED
9 ANY INVOLVEMENT IN THIS CASE WHEN YOU TALKED TO HIM
0 INITIALLY.

1 A I BELIEVE HE DID, SIR. AND FORMED AN ALIBI. HE DID.

2 Q OKAY. WHEN Y'ALL WENT TO ARREST HIM AT HIS HOME ON
3 THE 29TH, DID HE PUT UP ANY RESISTANCE? FIGHT?

4 A NO OPPOSITION WHATSOEVER.

5 Q HE WENT WITH YOU AS WILLINGLY AS ANYBODY ELSE?

6 A HE DID, SIR.

7 Q ONCE YOU GOT BACK TO THE POLICE STATION HE AGREED TO
8 TALK TO YOU.

9 A HE DID, SIR.

0 Q AND HE GAVE YOU THE STATEMENT THAT YOU READ EARLIER,
1 IS THAT CORRECT?

2 A HE GAVE ME THAT WRITTEN STATEMENT BUT THAT WAS NOT
3 HIS INITIAL.

4 Q THAT'S THE STATEMENT THAT YOU READ EARLIER---

5 A THAT'S THE STATEMENT THAT I READ.

1 Q ---IN THIS CASE. AND HE ADMITTED TO BEING INVOLVED
2 IN THE SHOOTING OF MR. ROUSE, DIDN'T HE?

3 A HE DID, SIR.

4 Q AND YOU DON'T DISPUTE THAT ADMISSION ON HIS BEHALF,
5 DO YOU?

6 A SIR?

7 Q YOU DO NOT DISPUTE THAT ADMISSION BY HIM.

8 A I DO NOT DISPUTE THAT ADMISSION.

9 Q AND HE INDICATED THAT HE USED A 22 CALIBER PISTOL?

10 A THAT IS CORRECT, SIR.

11 Q WHICH WOULD BE CONSISTENT WITH SOME OF THE SHELL
12 CASINGS FOUND AT THE SCENE.

13 A THAT'S CORRECT.

14 Q DO YOU HAVE ANY REASON TO DISPUTE WHAT HE TOLD YOU IN
15 THAT REGARD?

16 A I HAVE NO REASON TO DISPUTE THAT.

17 Q NOW DURING THE COURSE OF HIS INTERVIEW, WAS HE
18 EMOTIONAL?

19 A EXCUSE ME?

20 Q WAS HE EMOTIONAL?

21 A YES, SIR. IF YOU WOULD LIKE ME TO ELABORATE.

22 Q DID HE CRY?

23 A HE DID.

24 Q THE LAST PAGE THAT YOU READ, AND YOU MIGHT WANT TO
25 RETRIEVE THIS AS WE GO OVER IT.

1 A YES, SIR.

2 Q DO YOU HAVE IT?

3 A YES.

4 Q I'M TALKING ABOUT PAGE 4 OF 4.

5 A OKAY.

6 Q THAT'S THE STATEMENT THAT HE WROTE IN HIS OWN HAND.

7 A IN HIS HAND.

8 Q AND THAT'S THE LAST STATEMENT THAT YOU READ A LITTLE
9 WHILE AGO, CORRECT?

10 A THAT'S CORRECT.

11 Q YOU WERE FINISHED QUESTIONING HIM AT THAT POINT,
12 WEREN'T YOU?

13 A YES, SIR.

14 Q AND YOU WERE ASKING HIM IF HE HAD ANYTHING ELSE TO
15 ADD.

16 A YES, SIR.

17 Q AND WAS HE STILL TEARFUL WHEN HE DECIDED TO WRITE
18 THAT STATEMENT?

19 A ACTUALLY, NO. NOT AT THIS POINT---

20 Q HE HAD BEEN EARLIER?

21 A ---AROUND PAGE 2.

22 Q AND HE ESSENTIALLY APOLOGIZED AND EXPRESSED REGRET
23 OVER WHAT HAD HAPPENED WITH MR. ROUSE, IS THAT---

24 A ACCORDING TO THE STATEMENTS, HE DID, SIR.

25 Q DID YOU HAVE ANY REASON TO FEEL THAT HIS EXPRESSION

1 IN THAT WAS LESS THAN SINCERE?

2 A YES, SIR.

3 Q YOU DID. AND WITH REGARD TO THE PORTION, TROY CAME
4 AT ME. I AM READING FROM THE BOTTOM OF PAGE 1 OR 4.

5 A YES, SIR.

6 Q YOU DID NOT BELIEVE THAT, DID YOU? "TROY CAME AT
7 ME."

8 A I HAD NO REASON TO DISPUTE IT.

9 Q OKAY. YOU HAD NO REASON TO DISPUTE IT. BUT YOU HAD
10 PREVIOUSLY TAKEN, OR KNOWN ABOUT THIS STATEMENT THAT Y'ALL
11 HAD TAKEN FROM MS. JOHNSON EARLIER. SAMANTHA JOHNSON.

12 A YES, SIR.

13 Q BUT YOU SAY YOU HAD NO REASON TO DISPUTE THAT PART OF
14 THAT STATEMENT.

15 A THE ONLY THING, IF I CAN UNDERSTAND YOU, SIR, WHICH
16 STATEMENT ARE YOU REFERRING TO? MY STATEMENT---

17 Q NO, SIR. LET ME JUST READ IT TO YOU. PAGE 1 OF 4 IF
18 YOU WANT TO FOLLOW ALONG WITH IT. IT SAYS, "TROY CAME AT
19 ME. TROY, QUOTE, AND I'M NOT GOING TO SAY THAT. AND HE
20 RAN AT ME. YOU SEE WHERE I'M READING FROM?

21 A YES, SIR.

22 Q HE CHARGED TOWARDS ME.

23 A YES, SIR.

24 Q AND IT PICKS UP ON PAGE 2 OF 4. "WHEN HE CHARGED AT
25 ME, I RAN AROUND HIM. WHEN I RAN AROUND HIM, I SHOT HIM 3

1 TIMES IN HIS BACK. I SHOT HIM AND THEN RAN."

2 A YES, SIR.

3 Q THAT PART OF MR. THOMAS' STATEMENT.

4 A THAT'S CORRECT.

5 Q DID YOU HAVE ANY REASON TO DISPUTE THAT BASED ON THE
6 STATEMENTS YOU HAD TAKEN FROM MS. JOHNSON EARLIER?

7 A WELL, SIR, WE OBVIOUSLY WOULD HAVE TO SEE THAT
8 STATEMENT BEFORE WE COULD ANSWER THAT QUESTION.

9 Q OKAY. SO YOU'RE NOT FAMILIAR ENOUGH WITH IT RIGHT
0 NOW TO GIVE AN ANSWER.

1 A AT THIS POINT AND TIME, NO. I WOULD HAVE TO SEE IT
2 AND REVIEW IT.

3 Q AGAIN YOU DON'T KNOW WHO WITHIN YOUR DEPARTMENT MAKES
4 DETERMINATIONS AS TO WHAT IS EVIDENCE AND WHAT IS NOT.

5 A YES, SIR. CASE AGENT. HOWEVER IT'S COMPLICATED IN
6 ANSWER TO YOUR QUESTION. THE CASE AGENT CHANGES.

7 Q WELL WHO WERE THE CASE AGENTS IN THIS CASE?

8 A FROM MY UNDERSTANDING THE INITIAL PEOPLE OUT ON THE
9 SCENE WAS MULTIPLE CHANGES. BECAUSE THE INITIAL PEOPLE TO
0 GET OUT ON THE SCENE WERE INCLUDING CAPTAIN BURKE,
1 DELLINGER FROM THE SHERIFF'S OFFICE, AND SEVERAL
2 INDIVIDUALS FROM SLED.

3 Q WELL CAPTAIN DELLINGER DOESN'T WORK FOR YOUR
4 DEPARTMENT, DOES HE?

5 A I UNDERSTAND THAT.

1 Q WOULD HE BE MAKING DETERMINATIONS AS TO WHAT POLICY
2 Y'ALL APPLY?

3 A NO, SIR, HE WOULDN'T.

4 Q WELL DID THE FOLKS AT SLED DETERMINE HOW YOU CONDUCT
5 YOUR INVESTIGATIONS?

6 A IT'S COMPLICATED, SIR. ANYTIME ANYONE IS CHARGED
7 WITH A CRIME SCENE REGARDLESS WHETHER THEY ARE IN THE
8 DEPARTMENT OR NOT, IF THEY ARE CHARGED AT THE CRIME SCENE,
9 THEIR RESPONSIBILITY IS TO MAKE A DETERMINATION SUCH AS
10 THAT. I.E., IF I HAVE JURISDICTION IN SAY LYNCHBURG, AND
11 I RESPOND TO ASSIST LYNCHBURG WITH THE INVESTIGATION, ONCE
12 I AM CITED AS CASE INVESTIGATOR OR CASE AGENT, WHATEVER
13 THE CASE MAY BE, I WILL MAKE A CALL ON WHAT GOES WHERE.

14 Q INVESTIGATOR THOMPSON, YOU SEEM TO HAVE AN EXCELLENT
15 UNDERSTANDING OF POLICIES AND PROCEDURES FROM SOMEONE THAT
16 DOESN'T KNOW WHO MADE THESE DECISIONS.

17 A THAT'S CORRECT, SIR. I CANNOT TESTIFY TO WHO MADE
18 THE DECISION ON THE SCENE BECAUSE I WAS NOT THERE.

19 MR. WHEELER: THANK YOU, INVESTIGATOR THOMPSON.

20 THE COURT: MR. WATTS.

21 MR. WATTS: NO QUESTIONS, YOUR HONOR.

22 THE COURT: MR. JOHNSON.

23 MR. JOHNSON: THANK YOUR HONOR. MAY IT PLEASE THE
24 COURT.

25 CROSS EXAMINATION BY MR. JOHNSON:

1 Q INVESTIGATOR THOMPSON, YOU WASN'T THERE, WERE YOU?

2 A I WAS NOT.

3 Q AS A MATTER OF FACT, YOU WEREN'T EVEN ASSIGNED TO THE
4 CASE UNTIL A COUPLE OF WEEKS OR SOMETIME AFTER THIS?

5 A A COUPLE OF DAYS EARLIER. YES, SIR.

6 Q NOW YOU STATED THAT MY CLIENT, CHAD JAMES, CAME AND
7 GAVE YOU A STATEMENT, IS THAT CORRECT?

8 A WELL HE DIDN'T COME IN AND GIVE A STATEMENT, HE WAS
9 ARRESTED.

0 Q SO HE WAS UNDER ARREST BEFORE HE GAVE YOU A
1 STATEMENT.

2 A THAT'S CORRECT, SIR.

3 Q SO HE DIDN'T -- YOU DIDN'T ARREST HIM AFTER THE
4 STATEMENT---

5 A NO, SIR.

6 Q ---AS YOU EARLIER STATED, YOU ARRESTED HIM
7 BEFOREHAND.

8 A NO, SIR. WE WENT TO INITIATE HIS ARREST, AND HE WAS
9 PICKED UP BY UNIFORM PATROL. THEY CALLED ME FROM COLUMBIA
0 AND I CAME TO INTERVIEW HIM.

1 Q AND AFTER HE WAS UNDER ARREST, AND YOU MADE HIM AWARE
2 OF THAT, THAT'S CORRECT?

3 A THAT'S CORRECT.

4 Q HE VOLUNTARILY GAVE YOU A STATEMENT.

5 A HE VOLUNTARILY GAVE ME A STATEMENT AFTER HE WAS UNDER

1 ARREST AND HE WAS MIRANDIZED, YES, SIR.

2 Q AND IN THAT STATEMENT, YOU MADE A POINT JUST NOW TO
3 TALK ABOUT THE LEFT TURN ON TO WILSON, IS THAT CORRECT?

4 A YES, SIR.

5 Q NOW YOU ARE BASING THAT ON WHAT YOU HAVE WRITTEN ON
6 YOUR REPORT, IS THAT CORRECT?

7 A ON MY INVESTIGATIVE FOLLOW-UP SUMMARY, YES, SIR.

8 Q DO YOU HAVE IT BEFORE YOU?

9 A YES, I DO. GIVE ME ONE SECOND.

10 Q IN THAT SUMMARY GO DOWN TO THE PART WHERE HE SAID HE
11 PROCEEDED TO TURN. DO YOU SEE THAT?

12 A YES, SIR.

13 Q I HAVE A COPY OF IT HERE.

14 A YES, SIR.

15 Q WHERE YOU HAVE LEFT ON WILSON? DO YOU SEE WHERE THAT
16 PART IS?

17 A YES, SIR.

18 Q FOR ME WILL YOU JUST PLEASE CHANGE THAT TO RIGHT.
19 AND THEN READ THAT SECTION ALL THE WAY DOWN UNTIL YOU GET
20 TO DARLINGTON.

21 MR. SAVERANCE: YOUR HONOR, I WOULD OBJECT TO THAT.

22 HE'S ASKING HIM TO CHANGE HIS OWN NOTES AND WHAT WAS SAID.

23 MR. JOHNSON: I'M JUST ASKING HIM TO READ IT THAT

24 WAY, YOUR HONOR. I ASK THE COURT TO GIVE SOME LENIENCY IN
25 THAT.

1 THE COURT: YOU ASKED HIM TO DO WHAT NOW?

2 MR. JOHNSON: I JUST ASKED HIM, YOUR HONOR, HE STATED
3 THAT MY CLIENT STATED AS HE HAD ON HIS REPORT, THAT IT IS
4 LEFT. I ASKED HIM TO CHANGE THE LEFT TO RIGHT AND READ IT
5 ONCE AGAIN THIS WAY FOR ME.

6 THE COURT: OBJECTION IS OVERRULED.

7 A OKAY. FROM THE PARK.

8 Q FROM THE PART WHERE HE SAID HE PROCEEDED. I CAN SHOW
9 YOU.

10 A YES, SIR. I AM HERE. I SAID FROM THE PARK. HE
11 PROCEEDED TO TURN, YOU SAID, SUBSEQUENT TO LEFT, RIGHT
12 THERE?

13 Q YES.

14 A HE PROCEEDED TO TURN RIGHT ON FRIERSON.

15 Q NO, NOT WHERE THAT LEFT IS AT. LEAVE THAT THERE.

16 A THE SECOND---

17 Q THE SECOND LEFT.

18 A HE PROCEEDED TO TURN LEFT ON FRIERSON AND WAS GOING
19 TO MAKE A RIGHT ON WILSON STREET.

20 Q CONTINUE.

21 A WHEN HE SAW ALL THE POLICE OFFICERS, HE TURNED---

22 Q NO, READ IT AS YOU HAVE IT WRITTEN ON YOUR REPORT.

23 A OKAY. WHEN HE SAW ALL THE POLICE CARS, HE TURNED
24 AROUND AND DROVE BACK TO THE CLUB.

25 Q CONTINUE.

1 A HE THEN DROVE TO HIS RESIDENCE A SHORT TIME LATER,
2 WHERE HE TOOK EFRAIN, COURTNEY, SAMANTHA AND KENO TO
3 CAMDEN IN CORONA JAMES' GREEN NEON. DARLINGTON, SOUTH
4 CAROLINA, (843) 642-8836.

5 Q AND COULD YOU PLEASE READ THE REST OF WHAT YOU WROTE?

6 A SURE. WE PROCEEDED TO THE SHELL STATION AT US 15 TO
7 GET SOME GAS. WE THEN TOOK I-20 TO RIVER WIND APARTMENTS,
8 CAMDEN, WHERE THEY DROPPED OFF COURTNEY AND EFRAIN. HE
9 STATES HE HAD NO KNOWLEDGE OF EFRAIN -- OR EFRAIN'S
10 INVOLVEMENT IN THE MURDER UNTIL THE NEXT DAY. ACCORDING
11 TO SUBJECT 3, HE WAS MERELY GIVING EFRAIN AND HIS
12 GIRLFRIEND A RIDE TO SAMANTHA'S HOUSE. HE REFUSED TO GIVE
13 A STATEMENT TO THIS EFFECT.

14 Q SO LET ME ASK YOU THIS, ISN'T IT POSSIBLE THAT YOU
15 MUST HAVE MADE A MISTAKE AND PUT LEFT INSTEAD OF RIGHT?
16 BECAUSE THAT'S THE ONLY WAY THAT STATEMENT MAKES SENSE?

17 A NO, SIR. ACTUALLY IT DOESN'T IF YOU WOULD LIKE ME TO
18 ELABORATE.

19 Q NO, SIR, I WON'T LET YOU ELABORATE. I'M GOING TO ASK
20 YOU A QUESTION.

21 A YES, SIR.

22 MR. JOHNSON: YOUR HONOR. CAN HE COME DOWN, PLEASE?

23 THE COURT: YES, SIR.

24 Q READ IN THAT STATEMENT IF HE IS ON FRIERSON.

25 A UH-HUH. (AFFIRMATIVE.)

1 Q IF HE IS ON FRIERSON AND HE'S COMING THIS WAY, IS
2 THAT CORRECT?

3 A UH-HUH. (AFFIRMATIVE.)

4 Q NOW THE MURDER OCCURS ON WILSON DOWN HERE?

5 A YES, SIR.

6 Q UNDER THAT STATEMENT, IF HE WAS ON FRIERSON AND HE
7 WAS GOING TO MAKE A RIGHT, HE WOULD SEE THE POLICE CARS
8 HERE ON WILSON, IS THAT CORRECT?

9 A THAT'S CORRECT, SIR.

10 Q IF HE THEN TURNS AROUND AND GOES BACK TO THE LEFT,
11 DOWN THIS WAY, IT'S A CIRCLE, ISN'T IT?

12 A THAT'S CORRECT.

13 Q AND IT COMES BACK TO THE CLUB.

14 A THAT'S CORRECT.

15 Q IT MATCHES HIS STATEMENT, DOESN'T IT?

16 A NO, SIR, IT DOESN'T.

17 Q IT MATCHES HIS STATEMENT IF YOU CHANGE THE LEFT TO A
18 RIGHT, DOESN'T IT?

19 A BUT THAT'S NOT THE STATEMENT I TOOK DOWN, SIR.

MR. JOHNSON: NO OTHER QUESTIONS.

THE COURT: MR. SAVERANCE, ANY OTHER QUESTIONS?

MR. SAVERANCE: THAT'S ALL I HAVE OF THIS WITNESS,
YOUR HONOR.

THE COURT: MR. WHEELER.

MR. WHEELER: YOUR HONOR, NO MORE QUESTIONS AT THIS

1 TIME. BUT IF WE CAN EXPRESS AND RESERVE THE RIGHT TO CALL
2 MR. THOMPSON IN OUR CASE IN CHIEF.

3 THE COURT: MR. WATTS, ANYTHING FURTHER?

4 MR. WATTS: NO, SIR.

5 THE COURT: OFFICER, YOU MAY STEP DOWN.

6 A THANK YOUR HONOR.

7 THE COURT: YES, SIR. LADIES AND GENTLEMEN, WE WILL
8 TAKE A BREAK AT THIS TIME. AS FAR AS THE JURY IS
9 CONCERNED WHEN YOU RETURN, MR. FORTUNE, I AM APPOINTING
10 YOU TO SERVE AS FOREPERSON OF THE JURY. YOU WILL HOLD THE
11 FOREPERSON'S SEAT THE ENTIRE TRIAL. AND AS THE
12 FOREPERSON, IT IS YOUR RESPONSIBILITY TO SERVE AS THE
13 SPOKESPERSON OF THE JURY, TO PRESIDE OVER THE JURY
14 DELIBERATIONS AND TO COMPLETE THE VERDICT FORM
15 REPRESENTING THE UNANIMOUS VERDICT OF THE JURY WHEN WE
16 REACH THAT POINT. PLEASE GO TO THE JURY ROOM. PLEASE DO
17 NOT DISCUSS THE CASE WHILE YOU ARE BACK THERE.

18 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
19 PRESENCE OF THE JURY.)

20 THE COURT: WE WILL TAKE ABOUT A 15-MINUTE RECESS
21 WHILE WE TAKE A BOND HEARING.

22 (THEREUPON, THE COURT TAKES A SHORT RECESS.)

23 MR. SAVERANCE: YOUR HONOR, I WANT TO GET WITH
24 OPPOSING COUNSEL. AND IF WE COULD HAVE JUST A MINUTE TO
25 GET THE EVIDENCE IN ORDER, I WOULD WANT TO REST. BUT I

1 WANT TO MAKE SURE THAT WE HAVE GOT EVERYTHING UP THERE.

2 CAN WE GO ON THE RECORD, YOUR HONOR? ITEM 22, IS A
3 FORM MARKED FOR IDENTIFICATION, AND OPPOSING COUNSEL
4 DOESN'T HAVE ANY OBJECTION TO IT BEING ADMITTED AT THIS
5 TIME.

6 MR. WHEELER: NO OBJECTION, YOUR HONOR.

7 MR. WATTS: NO OBJECTION, YOUR HONOR.

8 MR. JOHNSON: NO OBJECTION, YOUR HONOR.

9 MR. SAVERANCE: YOUR HONOR, AT THIS TIME, WE HAVE
10 RECEIVED ALL THE EVIDENCE. WE HAVE ALL PIECES OF
11 EVIDENCE, 1-42, PERTAINING TO THE STATE. I WOULD MOVE TO
12 ADMIT ALL THOSE ITEMS MARKED FOR THE STATE AT THIS TIME.
13 1-42.

14 THE COURT: HAVE YOU ADMITTED THEM ALREADY?

15 MR. SAVERANCE: THAT'S MY UNDERSTANDING. JUST MAKE
16 SURE EVERYTHING HAS BEEN ADMITTED.

17 MR. WHEELER: YOUR HONOR, WE WENT THROUGH THEM AND
18 THAT SEEMS TO BE CORRECT.

19 THE COURT: ALL RIGHT.

20 MR. WATTS: THAT APPEARS TO BE CORRECT, YOUR HONOR.

21 MR. JOHNSON: NO OBJECTION, YOUR HONOR.

22 MR. SMITH: HE IS DOING IT BY NUMERICAL ORDER. THERE
23 ARE SEVERAL EXHIBITS THAT ARE NOT INCLUDED IN THAT, THAT
24 WERE THE PHOTOGRAPHS. THEY WERE ORIGINALLY LISTED AS
25 EXHIBITS....

1 THE REPORTER: 28-31.

2 MR. SMITH: 28-31. AND ALSO THIS NUMBER, IS THIS 41?

3 THE REPORTER: 40.

4 MR. SMITH: 40. THOSE ARE EXCEPTED NUMBERS 21-42.

5 MR. SAVERANCE: AND, YOUR HONOR, I'M NOT MOVING TO
6 PUT ANYTHING THEY'VE MARKED. BUT I'M JUST SAYING THAT THE
7 STATE HAS MARKED. BUT I WOULD MOVE TO HAVE EVERYTHING
8 ADMITTED AT THIS TIME.

9 THE COURT: WHAT IS YOUR RESPONSE TO WHAT MR. SMITH
10 HAS SAID?

11 MR. SAVERANCE: YOUR HONOR, I AGREE. I BELIEVE THE
12 ONE HE IS TALKING ABOUT ARE ACTUAL AUTOPSY PICTURES THAT
13 WEREN'T ALLOWED. AND THAT FORM INVOLVING THE REVOLVER
14 WHICH, AND I AGREE.

15 THE COURT: YOU MOVE TO ADMIT 1 THROUGH 42?

16 MR. SAVERANCE: I BELIEVE SO.

17 THE COURT: EXCLUDING WHICH ONES?

18 MR. SAVERANCE: NO. 40.

19 MR. SMITH: AND 18 THROUGH 21?

20 THE REPORTER: 28 THROUGH 31.

21 THE COURT: THEY ARE ADMITTED.

22 (STATE'S EXHIBITS 1-42 ADMITTED INTO EVIDENCE,
23 EXCLUDING ONES FOR ID ONLY.)

24 THE COURT: MR. SAVERANCE, YOU INDICATE YOU INTEND TO
25 REST AT THIS POINT?

1 MR. SAVERANCE: YES, SIR, YOUR HONOR.

2 THE COURT: I'LL HAVE YOU OFFICIALLY DO SO IN THE
3 PRESENCE OF THE JURY. BUT WHILE THEY ARE OUT, I WILL TAKE
4 UP ANY MATTERS OF LAW RELATIVE TO THE STATE HAVING RESTED
5 AT THIS POINT.

6 MR. WHEELER: THANK YOU, YOUR HONOR. MAY IT PLEASE
THE COURT. YOUR HONOR, AT THIS TIME, I WOULD ASK THAT MR.
THOMAS, WE WOULD ESPECIALLY MOVE FOR A DIRECTED VERDICT OF
ACQUITTAL. WE WOULD SUBMIT THAT THE STATE HAS NOT
PRODUCED ANY PROOF, ALTHOUGH THERE HAS BEEN CONFESSION OF
HIS INVOLVEMENT, THERE IS NOT PROOF OF PROBABLE CAUSE AS
TO WHETHER ANY BULLETS HE FIRED CAUSED THE DEATH. THE
REASON FOR THAT FAILURE OF PROOF, WE WOULD SUBMIT, YOUR
HONOR, THAT THERE HAS BEEN NO PROOF THAT WOULD TEND TO TIE
THE ACTIONS, THESE GENTLEMEN'S ACTIONS TOGETHER. IN THE
HAND OF ONE, HAND OF ALL SCENARIO, NO PRIOR PLAN WAS
ESTABLISHED BY ANY EVIDENCE AT ALL. AND SO FOR THAT
REASON WE WOULD RESPECTFULLY MAKE THAT MOTION. THANK YOU,
YOUR HONOR.

THE COURT: THANK YOU. AS TO THE DEFENDANT MCCALL.

MR. WATTS: YOUR HONOR, WE WOULD RESPECTFULLY MAKE A
MOTION FOR A DIRECTED VERDICT. AT THIS TIME AT THE
PRESENTATION OF THE STATE'S EVIDENCE, THERE HAS BEEN NO
CLEAR EVIDENCE THAT GOES TOWARDS THE INDICTMENT.

MR. MCCALL HAS BEEN CHARGED ON THE INDICTMENT FOR

1 MURDER AND POSSESSION OF A FIREARM DURING THE COMMISSION
2 OF A VIOLENT CRIME. THERE HAS BEEN NO EVIDENCE
3 SUBSTANTIALLY PROVIDED BY THE STATE. THEY HAD THREE
4 INVESTIGATORS ON THE STAND THAT HAVE NOT DIRECTLY
5 REFERENCED MR. MCCALL OR LINKED ANYTHING TO MR. MCCALL.
6 AT THE TIME WE TALKED ABOUT HIM, HIS NAME WASN'T
7 MENTIONED. THERE IS NO EVIDENCE THAT GOES TOWARDS, THERE
8 IS NO PROBATIVE EVIDENCE THAT GOES TOWARDS MR. MCCALL TO
9 LINK HIM. THERE IS NOTHING THAT MEETS THE CRITERIA OF THE
10 STATUTE OF THE INDICTMENT THAT WAS MADE. THERE HAS BEEN
11 NO EVIDENCE THAT HAS BEEN PROVIDED REGARDING THE CHARGES
12 THAT WERE MADE BY THE STATE. NO EVIDENCE OR PROBATIVE
13 VALUE.

14 THE COURT: MR. JOHNSON.

15 MR. JOHNSON: THANK YOU, YOUR HONOR. YOUR HONOR, AS
16 IT RELATES TO THE COURT, MY CLIENT IS CHARGED WITH
17 ACCESSORY AFTER THE FACT. IT IS MY UNDERSTANDING THAT
18 THEY HAVE TO PROVE FIRST THAT A PRINCIPAL OF ONE OF THE
19 DEFENDANTS THERE COMMITTED A CRIME. SECOND, THAT MY
20 CLIENT KNEW THAT HE COMMITTED A CRIME. THIRD, THAT HE
21 HELPED ONE OF THE DEFENDANT'S IN AVOIDING ARREST, OR HELP
22 THE DEFENDANT IN SOME WAY TO EVADE BEING CAUGHT IN THE
23 CRIME. AND FOURTH, THAT HE PROVIDED THIS HELP FOR THE
24 SPECIFIC PURPOSE TO AVOID THE ARREST OR TRIAL OR TO HELP
25 EVADE CAPTURE.

IN THIS CASE, YOUR HONOR, THE STATE HAS PRESENTED A NUMBER OF WITNESSES. THEY FIRST STARTED WITH MS. TIFFANY HILL. MS. HILL SAID SHE SAW THE VICTIM WITH MY CLIENT EARLIER, BUT THAT AT THE TIME OF THE SHOOTING, SHE SPECIFICALLY SAID THAT SHE DID NOT SEE MY CLIENT AT THE SCENE. SHE SAID SHE SAW THE OTHER TWO INDIVIDUALS. BUT SHE DID NOT SPECIFICALLY SEE MY CLIENT. I REMEMBER HER SPECIFICALLY SAYING I DON'T KNOW WHAT HAPPENED TO THEM, BUT I DIDN'T SEE THEM. THE OTHER VICTIMS, YOUR HONOR, I MEAN THE OTHER WITNESSES TESTIFIED AFTERWARDS, WE WENT TO COURTNEY JOHNSON, AND SHE STATED THAT WHEN I ASKED HER, THAT SHE DID NOT, THAT EFRAIN APPARENTLY CAME INTO THE HOUSE AND TOLD HER SOME THINGS. BUT THAT SHE DID NOT SEE EFRAIN SPEAK TO MY CLIENT. OR GIVE HIM ANY KNOWLEDGE OF WHAT HE HAD DONE. AND SHE SPECIFICALLY SAID SO; THAT THEY GOT INTO THE CAR AND THEY DROVE TO CAMDEN.

THE NEXT WITNESS WAS SAMANTHA. AND, WELL THE NEXT WITNESS WAS A WESLEY. AND SHE SAID SHE DID NOT SEE CHAD; THAT SHE ONLY SAW ONE OF THE CO-DEFENDANTS COME TO HER HOUSE. THE NEXT WITNESS WAS SAMANTHA HICKMAN. SHE WAS PRESENT AT THE HOUSE. AND SHE SAID THAT SHE DID NOT SEE OR HEAR THE CO-DEFENDANT EFRAIN, TELL MY CLIENT CHAD ANYTHING ABOUT THE SHOOTING. SHE ALSO STATED, YOUR HONOR, THAT THE TRIP TO CAMDEN WAS PLANNED EARLIER THAT DAY. SO THAT THIS WAS A TRIP NOT PLANNED AFTER THE SHOOTING; THAT

1 THIS WAS A TRIP THAT WAS PLANNED EARLIER. AND SHE ALSO
2 STATED THAT MY CLIENT HAD TAKEN HER AND HER BOYFRIEND TO
3 CAMDEN BEFORE. AND SHE DID NOT GIVE ANY EVIDENCE, YOUR
4 HONOR, GIVE ANY EVIDENCE STATING MY CLIENT HAD PRIOR
5 KNOWLEDGE OR THAT THERE WAS SOME INTENT OR SOME PLOT TO
6 TAKE THEM TO EVADE.

7 MOST IMPORTANTLY, YOUR HONOR, I THINK THE CAPTAIN,
8 CAPTAIN BURKE, HE STATED THAT EFRAIN WAS NOT EVEN A
9 SUSPECT OR EVEN WAITED UNTIL FOUR DAYS AFTER THE SHOOTING.
10 WHICH WAS FOUR DAYS AFTER MY CLIENT GAVE HIM A RIDE.
11 UNDER THIS STATEMENT ANYBODY THAT GAVE THEM A RIDE DURING
12 THE TIME, WAS SUPPOSED TO BE HELPING THEM TO EVADE THE
13 POLICE. BUT THE CAPTAIN STATED HE WASN'T EVEN LOOKING FOR
14 AT THAT TIME. AND THAT HE WAS JUST A, I THINK THE TERM
15 THEY USE NOW, YOUR HONOR, WAS A PERSON OF INTEREST, WAS
16 THE EXACT TERM HE USED. SO THEY WAS NOT EVEN LOOKING FOR
17 HIM AT THAT PARTICULAR TIME THAT MY CLIENT GAVE HIM A
18 RIDE. HE WOULD NOT HAVE GIVEN HIM A RIDE TO EVADE. THERE
19 IS EVIDENCE THAT THE CO-DEFENDANT TURNED HIMSELF IN
20 VOLUNTARILY AND SPOKE WITH CAPTAIN BURKE. SO THERE IS
21 NOTHING THERE THAT WOULD HAVE INDICATED THAT.

22 THE STATE HAS NOT INDICATED THAT MY CLIENT ASSISTED
23 IN TRYING TO THROW AWAY THE GUNS, HIDE ANYTHING OR
24 DISPERSE OF ANY EVIDENCE. YOUR HONOR, THERE IS NOTHING
25 THERE THAT THE STATE HAS PRESENTED THAT WOULD IMPLICATE MY

CLIENT AT ALL IN THIS CASE AS AN ACCESSORY TO MURDER AFTER THE FACT. AS A RESULT, YOUR HONOR, I THINK THERE IS MORE THAN SUFFICIENT EVIDENCE THAT MY CLIENT SHOULD BE -- THAT A DIRECTED VERDICT SHOULD BE GRANTED IN MY CLIENT'S CASE.

THE COURT: YES, SIR.

MR. SMITH: YOUR HONOR, I APOLOGIZE. MAY I FURTHER ACCENTUATE OUR MOTION?

THE COURT: ALL RIGHT.

MR. SMITH: YOUR HONOR, IN THIS PARTICULAR CASE, OUR CLIENT, MR. MCCALL, IS CHARGED WITH MURDER AND THE CARRYING OF A GUN. THERE HAS DEFINITELY BEEN NO EVIDENCE TO INDICATE THAT HE WAS CARRYING. NO ONE, NO ONE, HAS TESTIFIED AS TO THAT. NOW THE FIRST WITNESS IN THIS CASE TRIED TO SAY, AND I CAN'T RECALL HER NAME AT THE MOMENT. SHE TRIED TO SAY SHE SAW THEM SCUFFLING, AND THAT SHE SAW THEM THIS GENTLEMAN FIRE A SHOT. WELL ON CROSS EXAMINATION SHE SAID I SAW THEM SCUFFLE. I HEARD TWO SHOTS AND I TOOK OFF RUNNING.

NOW THAT IS THE ONLY EVIDENCE THAT WE HAVE THAT SHE COULD RELATE TO MR. MCCALL. THE STATE'S OTHER EVIDENCE SAYS THAT NONE, NONE OF THE POLICE OFFICERS, SLED, THE LEAD OFFICERS IN THIS CASE TESTIFIED TO ANY INFORMATION ABOUT MR. MCCALL. NONE. THEY DIDN'T MENTION HIS NAME IN ANY OF THEIR TESTIMONY. THEY WANT THIS COURT TO INFER SOME GUILT ON THIS GENTLEMAN: MURDER, AND, YOUR HONOR,

1 KNOWS WHAT MALICE IS. BUT THE MAIN INGREDIENT OF MURDER
2 IS MALICE. WHICH MAY BE PROVED BY PREVIOUS THREATS,
3 FORMER GRUDGES, HATRED AND ILL WILL. OR IT MAY BE
4 INFERRED BY THE FACTS ATTENDING THE HOMICIDE, SHOWING A
5 CRUEL OR A VINDICTIVE TEMPER, A WANTONNESS OR DESTRUCTION
6 OF HUMAN LIFE AND A HEART REGARDLESS OF SOCIAL DUTY
7 FATALLY BENT UPON MISCHIEF.

8 IT ALSO SAYS, GOES, IT SAYS BEING HATRED OR ILL WILL.
9 MALICE IS THE WRONGFUL INTENT TO INJURE ANOTHER PERSON.
10 IT INDICATES A WICKED OR DEPRAVED SPIRIT INTENT ON DOING
11 WRONG. WE HAVE NONE OF THAT AS IT RELATES TO MS. MCCALL.
12 YOUR HONOR, THE SOLICITORS CHOOSE TO TRY THESE THREE
13 DEFENDANTS TOGETHER. AND BECAUSE OF THAT, CERTAIN
14 DOCUMENTS HAVE BEEN REDACTED. THEY DIDN'T EVEN GO AROUND,
15 THEY COULD HAVE ASKED INVESTIGATOR THOMPSON WHO COULD HAVE
16 SAID, BASED ON YOUR INVESTIGATION WAS THERE ANYONE ELSE
17 THAT YOU FELT WAS INVOLVED IN THIS MURDER. AND HE COULD
18 HAVE SAID, EUNICE MCCALL. BUT THEY DIDN'T ASK HIM THAT.
19 AND HE DIDN'T EVEN SAY IT. HE ONLY TALKED ABOUT THIS
20 GENTLEMAN AND THIS GENTLEMAN. THAT'S THE ONLY TWO PEOPLE
21 HE TALKED ABOUT.

22 THE FIRST POLICE OFFICER, OFFICER BURKE, DID THE SAME
23 THING. NONE OF THOSE OFFICERS TALKED ABOUT OUR CLIENT.
24 AND, YOUR HONOR, I THINK THE LAW IS CLEAR IN THIS AREA.
25 WE HAVE ONE LADY THAT SAYS, SHE SAYS, HE CAME IN AND HE

SAID, I SHOT SOMEBODY. BUT SHE SAID, OH YEAH, BUT I GAVE A CONTRADICTING STATEMENT BEFORE THAT. BUT I KNOW I HAD TO TELL THE TRUTH. WELL, YOUR HONOR, TOOK HER, IF THEY AT SOME TIME TALKED WITH HER AND THEY DID AN INVESTIGATION OF HER STATEMENT, WOULD THAT NOT HAVE COME OUT IN HER TESTIMONY? IT DID NOT. AT NO TIME DID THE STATE'S PROSECUTING WITNESSES, THE OFFICERS FROM SLED, THE SHERIFF'S DEPARTMENT, WHOEVER, NEVER MENTIONED EUNICE MCCALL. AND, YOUR HONOR, WE FEEL LIKE THAT IS STRONG EVIDENCE FOR A DIRECTED VERDICT ON THESE WARRANTS.

THANK YOU, YOUR HONOR, I APPRECIATE IT.

THE COURT: MR. SAVERANCE.

MR. SAVERANCE: YOUR HONOR, FIRST OF ALL, MR. WHEELER'S CLIENT, EFRAIN THOMAS, YOUR HONOR, THERE WAS TESTIMONY FROM THE PATHOLOGIST THAT THE BULLETS FIRED FROM THE 22 THAT HIT THE BACK OF THE VICTIM WERE POTENTIALLY FATAL. SHE SAID THEY CONTRIBUTED TO THE DEATH. SHE LAID OUT THOSE WERE ALSO A CAUSE OF DEATH. BUT I THINK IT'S CLEAR FROM MR. THOMAS' CONFESSION OR FROM THE STATEMENT, HE ACKNOWLEDGES SHOOTING THE VICTIM IN THE BACK. AND OUR TESTIMONY LINKS UP TO THOSE POTENTIALLY FATAL, AND CONTRIBUTED TO THE DEATH OF WHAT SHE SAID.

THE COURT: THE MOTION IS DENIED AS TO MR. EFRAIN THOMAS. GO AHEAD.

MR. SAVERANCE: AS FAR AS EUNICE MCCALL, YOUR HONOR,

1 TIFFANY HILL STATED SHE KNEW ALL THESE DEFENDANTS AND THEY
2 WERE WALKING NEAR WHERE THAT STORE IS RIGHT BEFORE THE
3 TIME OF THE SHOOTING. SHE SAID THAT SHE COULD CLEARLY
4 SEE. SHE IDENTIFIED EUNICE MCCALL, EFRAIN THOMAS AND CHAD
5 JAMES AS WALKING WITH TROY ROUSE. HER TESTIMONY WAS, AND,
6 YOU KNOW, AND NOT JUST ON CROSS EXAMINATION OF WHAT
7 THEY'RE ARGUING, MY VIEW IS, IT GOES TO CREDIBILITY. SHE
8 SAID SHE SAW EUNICE MCCALL SCUFFLING WITH TROY ROUSE. SHE
9 SAID THEY WERE FACE TO FACE. EUNICE MCCALL HAD A GUN AND
10 FIRED AND HIT TROY ROUSE.

11 THE COURT: SHE SAID THAT?

12 MR. SAVERANCE: YES, SIR. ON DIRECT EXAMINATION.
13 SHE ACKNOWLEDGED ON DIRECT EXAMINATION THAT HE SHOT HIM
14 FACE TO FACE. ALSO, EUNICE MCCALL, IT WAS ESTABLISHED
15 THAT LUCILLE WESLEY, SOON AFTER THE SHOTS WERE FIRED,
16 EUNICE MCCALL VOLUNTARILY COMES IN TO HER HOUSE. AND
17 SHE'S WORRIED THAT SOMEBODY ELSE HAS BEEN SHOT. AND HE
18 SAYS, NO, NO. AND HE ACKNOWLEDGED HE SAID, I HAD HIT, SO
19 AND SO. THOSE WORDS. BUT HE ACKNOWLEDGED TO HER THAT HE
20 HAD A GUN AND WAS SHOOTING. AND SHE DID ALSO SAY SHE
21 FOUND IT WAS NOT HER RELATIVE, IT WAS TROY ROUSE, AND IT
22 WAS RIGHT IN FRONT OF HER HOUSE.

23 SO HIS OWN STATEMENTS TO LUCILLE WESLEY, WHETHER SHE
24 GAVE A PRIOR STATEMENT OR NOT THAT DOESN'T MATCH THAT, IS
25 UP TO THE JURY. YOUR HONOR, AS FAR AS, THE---

1 THE COURT: AS FAR AS DEFENDANT MCCALL, I FIND THAT
2 PURSUANT TO RULE 19, THE COURT IS NOT TO WEIGH THE
3 EVIDENCE, BUT TO CONSIDER THE EVIDENCE IN THE LIGHT MOST
4 FAVORABLE TO THE STATE. AND BASED ON THE EXISTENCE OR
5 NONEXISTENCE OF EVIDENCE, I FIND THAT THERE IS EVIDENCE IN
6 THE RECORD WHICH IF BELIEVED, CIRCUMSTANTIAL EVIDENCE,
7 WOULD INDICATE THAT MR. MCCALL DID SHOOT MR. THOMAS -- DID
8 SHOOT MR. ROUSE. FURTHER, BASED ON THE EXPERT TESTIMONY
9 IN THE CASE, THAT THAT SHOT EITHER CONTRIBUTED TO OR DID
0 CAUSE THE DEATH OF MR. ROUSE. AND FURTHER, THAT BASED ON
1 THE LAW IN THIS STATE, NOW IMPLIES OR CAN BE IMPLIED ON
2 THE COMMISSION OF A CRIME WITH A DEADLY WEAPON. AS TO THE
3 POSSESSION CHARGE, IN ORDER FOR HIM TO HAVE SHOT THE
4 PERSON, HE MUST HAVE HAD THE WEAPON TO DO SO. SO I DENY
5 THE MOTION AS TO MR. MCCALL AS WELL.

AS TO MR. JOHNSON'S CLIENT.

MR. SAVERANCE: AS TO MR. JOHNSON'S CLIENT, MR.
JAMES, YOUR HONOR, YOU HAVE TIFFANY HILL STATING SHE SAW
ALL 3 DEFENDANTS SHORTLY BEFORE THE SHOOTING, WALK PAST
HER NEAR THE STORE ON THE DIAGRAM. AND SHE SAID A SHORT
TIME LATER, SHE HEARD A SCUFFLE AND TURNED. SHE SAW THE
SHOOTING. YOUR HONOR, THAT RIGHT THERE IS EVIDENCE THAT
ALL FOUR OF THESE PEOPLE WERE TOGETHER, THAT A SHORT TIME
AFTER THAT THE SHOOTING OCCURS. ALSO, YOUR HONOR, I WOULD
STATE THAT CHAD JAMES IN HIS OWN STATEMENT TO INVESTIGATOR

1 THOMPSON AND FROM OUR WITNESSES, DROVE THE VEHICLE FROM
2 HIS HOUSE WITH EFRAIN THOMAS IN IT. AND OUR WITNESSES
3 ALSO STATED THAT HE WAS HALF IN THE TRUNK AND HALF OUT.
4 THERE WAS TESTIMONY---

5 THE COURT: YOU SAID FROM MR. JAMES' STATEMENT ABOUT
6 WHAT DRIVING SOMEONE?

7 MR. SAVERANCE: YOUR HONOR, I SAID FROM HIS OWN
8 STATEMENT, HE ACKNOWLEDGED DRIVING EFRAIN THOMAS FROM HIS
9 HOUSE IN KERSHAW COUNTY. I SAID THAT WE HAVE OTHER
10 WITNESSES THAT SAID BEYOND THAT, BEYOND BEING IN THE CAR
11 AND DRIVING, THAT THE OTHER WITNESSES, NOT MR. JAMES, SAID
12 THAT EFRAIN THOMAS CAME BACK SWEATY AND WINDED; THAT HE
13 WAS OUTSIDE AT SOME POINT TALKING TO CHAD JAMES. SO THEY
14 DIDN'T SAY THEY HEARD ANYTHING, THEY WERE TALKING. THERE
15 WAS TESTIMONY THAT CHAD JAMES WAS DRIVING THE CAR. EFRAIN
16 THOMAS GETS IN THE TRUNK, HALF IN AND HALF OUT. YOU KNOW,
17 ALSO THERE HAS BEEN TESTIMONY FROM INVESTIGATOR THOMPSON
18 FROM JAMES' STATEMENT THAT HE WAS IN THE AREA AND HE
19 TURNED RIGHT THERE AT THE VERY SCENE OF THE CRIME AFTER IT
20 HAPPENED.

21 HE ALSO STATED HE KNEW -- POSSIBLY KNEW WHAT HE SAID
22 WAS GOING ON. BUT I FEEL AS FAR AS ACCESSORY, WHETHER OR
23 NOT HE WAS WANTED IS NOT THE MAIN THING HERE. THE MAIN
24 THING HERE IS YOU HAVE THREE DEFENDANTS WALKING WITH THE
25 VICTIM THAT ARE IDENTIFIED. AND THEY PASS BY A WITNESS

1 AND THE WITNESS SAYS, THEY PASSED BY. THEN SHE HEARS A
2 SCUFFLE AND TURNS AROUND AND HEARS SEVERAL SHOTS. AND HE
3 ALSO IS THE DRIVER OF THE VEHICLE. AND TAKING THE FACTS
4 IN OUR FAVOR ON THIS MOTION, OUR PEOPLE SAID THE GUY WAS
5 IN -- EFRAIN THOMAS IS HALF IN AND HALF OUT. HE'S GOT
6 SOMEBODY THAT'S DONE THE SHOOTING, THAT'S IN TRUNK, HALF
7 IN AND HALF OUT. AND DRIVEN OUT OF TOWN.

3 SO, YOUR HONOR, THE FACT THEY WERE TALKING TOGETHER,
3 THE FACT THEY, YOU KNOW, CAME BACK. THEY WERE NOT THERE
3 THE WHOLE TIME AT THE HOUSE. I JUST FEEL LIKE THERE HAS
4 BEEN ENOUGH EVIDENCE PRESENTED. AND MR. JAMES IS GUILTY
2 OF ACCESSORY. AND NOT JUST IS GUILTY, BUT THERE'S MORE
3 THAN ENOUGH EVIDENCE TO LET A JURY DECIDE THE CREDIBILITY
4 OF THE WITNESSES, BELIEVABILITY AND THAT SORT OF THING.

THE COURT: MR. JOHNSON.

MR. JOHNSON: YOUR HONOR, I'LL ADDRESS THE COURT ON
THAT. YOUR HONOR, I THINK IT IS STILL THE BURDEN UPON THE
STATE TO PROVE THAT MY CLIENT HAD KNOWLEDGE. NOT TO
SPECULATE OR ANYTHING OF THAT NATURE. WHAT THE STATE IS
HOPING THE COURT TO DO IS ALLOW THE JURY TO HAVE THE
OPPORTUNITY TO SPECULATE. AND THERE'S A DIFFERENCE
BETWEEN SPECULATION AND CIRCUMSTANTIAL EVIDENCE, YOUR
HONOR. IN THIS CASE, THERE IS NO EVIDENCE GIVEN BY THE
STATE THAT MY CLIENT HAD PRIOR KNOWLEDGE. THERE IS ONE
WITNESS THAT STATED THAT THEY SAW MY CLIENT WITH THE

1 VICTIM EARLIER. THAT WAS HER STATEMENT. SHE ALSO
2 STATED---

3 THE COURT: HOW MUCH EARLIER DID SHE SAY?

4 MR. JOHNSON: SHE DIDN'T. IT COULD HAVE BEEN HOURS
5 EARLIER. IT COULD HAVE BEEN A MINUTE EARLIER. BUT IT'S
6 UP TO THE STATE TO---

7 THE COURT: DID SHE SAY THAT SHE SAW THEM WALKING
8 TOGETHER?

9 MR. JOHNSON: EARLIER.

10 THE COURT: SHE SAID SHE SAW THEM WALKING TOGETHER
11 EARLIER.

12 MR. JOHNSON: EARLIER. THAT'S WHAT SHE SAID, YOUR
13 HONOR. BUT SHE DID NOT SAY A MINUTE EARLIER. SHE DID NOT
14 SAY WEEKS EARLY. IT'S UP TO THE STATE TO PROVE WHAT
15 EARLY WAS. ONCE AGAIN, YOUR HONOR, IT CALLS FOR
16 SPECULATION. SHE DID SAY, YOUR HONOR, THAT SHE SAW THE
17 CO-DEFENDANT SCUFFLING WITH AN INDIVIDUAL. AND THAT SHE
18 SAW THE OTHER CO-DEFENDANT. BUT SHE ALSO SAID SHE DID NOT
19 SEE MY CLIENT. SHE SAID THAT SHE TURNED AROUND AND SAID,
20 I DON'T KNOW WHERE HE WAS BUT I DIDN'T SEE HIM DURING THE
21 TIME THAT THE ACT OCCURRED; BUT DID NOT PUT HIM THERE.
22 THERE IS NOBODY THAT CAN PUT MY CLIENT AT THE SCENE THAT
23 HE WOULD HAVE SOME PRIOR KNOWLEDGE.

24 SHE CLEARLY STATED THE SAME INDIVIDUAL THAT THE STATE
25 PUT UP, SAID THAT SHE DID NOT SEE HIM THERE. THERE IS

1 NOBODY ELSE THAT SAID THAT HE HAD A PRIOR KNOWLEDGE. THE
2 STATEMENT ABOUT TALKING TO SOMEONE, YOUR HONOR, THEY SAID
3 THEY DON'T KNOW WHAT THEY WERE TALKING ABOUT. ONCE AGAIN,
4 THAT'S NOT A STATEMENT. AND THAT CONVERSATION CAME AFTER
5 THEY WENT TO CAMDEN. ONCE AGAIN, YOUR HONOR, THERE ARE
6 OTHER REQUIREMENTS IN THIS MATTER. THE STATE STILL HAS TO
7 PROVE THAT HE WAS ASSISTING HIM IN EVADING THE POLICE.
8 WHERE THE POLICE STATED THAT THEY WASN'T EVEN LOOKING FOR
9 THEM UNTIL FOUR DAYS LATER. WHICH HE THEN VOLUNTARILY
10 TURNED HIMSELF IN. THE STATE HAS TO PROVE THAT HE HAD
11 PRIOR KNOWLEDGE; THAT HE WAS HELPING HIM TO EVADE AND DO
12 SOMETHING ELSE. THE ONLY THING THE STATE IS CHARGING MY
13 CLIENT FOR IS GIVING THE INDIVIDUAL A RIDE.

14 UNDER THE STATE'S SCENARIO ANYBODY THAT GAVE MY
15 CLIENT A RIDE UP TO THE FOUR DAYS THAT HE -- I MEAN, THE
16 CO-DEFENDANT A RIDE PRIOR TO THE FOUR DAYS HE TURNED
17 HIMSELF IN, BUT THEORETICALLY WE ARE CHARGED WITH
18 ASSISTING SOMEONE. OR BEING AN ACCESSORY AFTER THE FACT.
19 THE TWO STATE WITNESSES STATED THAT THEY KNEW HE HAD
20 KILLED SOMEONE; THAT THEY ASKED TO TAKE HIM TO CAMDEN AND
21 PUT THEM IN THEIR HOUSE. AND THE STATE DECIDED NOT EVEN
22 TO CHARGE THEM, YOUR HONOR. FOR THEM TO SIT HERE NOW AND
23 THEN PLACE MY CLIENT AS A DEFENDANT IN THIS MATTER IS JUST
24 SELECTIVE. IT HAS NOTHING TO DO WITH WHETHER THEY HAVE
25 ANY CASE. AND I SUBMIT TO THE COURT THAT THEY HAVE NOT

1 PROVEN THEIR CASE, AND THAT MY CLIENT SHOULD RECEIVE A
2 DIRECTED VERDICT.

3 THE COURT: WHAT DO YOU SAY ABOUT THAT, MR.
4 SAVERANCE?

5 MR. SAVERANCE: YOUR HONOR, MS. TIFFANY HILL WHEN SHE
6 TESTIFIED STATED THAT SHE WAS NEAR THE STORE. WALKED BY
7 JUST BEFORE THE SHOOTING.

8 THE COURT: WAS IT JUST BEFORE THE SHOOTING LIKE HE
9 SAID, OR DID SHE SAY EARLIER?

10 MR. SAVERANCE: I DON'T BELIEVE SHE SAID EARLIER. I
11 THINK SHE SAID JUST BEFORE THE SHOOTING. AND SHE
12 IDENTIFIED, ON THEIR -- ON CROSS-EXAMINATION SHE
13 IDENTIFIED WHERE THEY PASSED BY, WHERE THIS STORE IS. AND
14 SHE SAID JUST BEFORE THIS SHOOTING. BECAUSE BEFORE SHE
15 COULD EVEN GET PAST THE STORE, SHE HEARD A SCUFFLE AND
16 TURNED AND HEARD THE SHOTS. YOU KNOW, I UNDERSTAND WHAT
17 MR. JOHNSON IS SAYING. THAT'S ALL GOOD AND WELL FOR CROSS
18 EXAMINATION AND CLOSING STATEMENTS. BUT LOOKING AT IT IN
19 THE LIGHT MOST FAVORABLE TO US, OUR WITNESSES PUT HIS
20 CLIENT WITH TWO OTHER PEOPLE THAT WE BELIEVE THE EVIDENCE,
21 THAT DID THE SHOOTING. JUST BEFORE THE SHOOTING. SHE
22 IDENTIFIED THEM. SHE SAID JUST BEFORE THE SHOOTING, THEY
23 WALKED PAST.

24 YOUR HONOR, ALSO THEY WERE TALKING OUTSIDE MR. JAMES'
25 HOUSE. MR. JAMES DROVE THE VEHICLE IN WHICH MR. THOMAS

1 WAS IN THE TRUNK. SHORTLY AFTER MR. THOMAS THE EVIDENCE
2 HAS BEEN SHOWN, SHOT TROY ROUSE. I MEAN, I THINK CLEARLY
3 IT IS MORE THAN ENOUGH EVIDENCE TO GET IT PAST THIS STAGE
4 OF THE PROCEEDING.

5 THE COURT: WHAT DO YOU SAY ABOUT THAT, MR. JOHNSON?

6 MR. JOHNSON: YOUR HONOR, ONCE AGAIN, I HATE TO
7 BOTHER THE COURT. THE SAME INDIVIDUAL---

8 THE COURT: YOU'RE NOT BOTHERING ME. YOU'RE
9 REPRESENTING YOUR CLIENT.

0 MR. JOHNSON: THE SAME INDIVIDUAL, YOUR HONOR, THAT
1 MS. TIFFANY HILL HAS POINTED OUT HERE, EVERY WITNESS THAT
2 THE STATE HAS PRESENTED SINCE THEN HAS PUT THIS VICTIM AS
3 BEING HERE. IT IS INCONSISTENT INTO HER OWN STATEMENT.
4 BUT ONCE AGAIN, YOUR HONOR, THE STATE IS STILL REQUIRED TO
5 DEMONSTRATE THAT MY CLIENT HAD KNOWLEDGE. NOT THAT HE
6 COULD HAVE HAD KNOWLEDGE, BUT THAT HE DID HAVE KNOWLEDGE.
7 THEY HAVE NOT PROVEN THAT. SEE, ALSO, IT IS MY POSITION,
8 YOUR HONOR, THAT THE STATE HAS TO PROVE THAT HE ASSISTED
9 THE DEFENDANT IN DOING SOMETHING TO EVADE THE POLICE. OR
0 TO OBSTRUCT JUSTICE IN SOME WAY. ONCE AGAIN, THE STATE
1 HAS NOT DEMONSTRATED WHAT WAS MY CLIENT EVEN DOING TAKING
2 HIM TO CAMDEN THAT WOULD PREVENT THEM FROM CARRYING OUT
3 THEIR CASE.

THE WHOLE PURPOSE, YOUR HONOR, OF ACCESSORY AFTER THE
FACT IS TO CHARGE SOMEONE FOR PREVENTING -- FOR COVERING

1 UP OR ASSISTING SOMEONE IN COVERING UP AN EVIL ACT OR AN
2 ILLEGAL ACT. IN THIS CASE, THEY CAN'T PRESENT ANYTHING.
3 CAPTAIN BURKE HIMSELF SAID THAT ONCE HE CALLED FOR THE
4 CO-DEFENDANT, THE CO-DEFENDANT WAS BACK IN CAMDEN AND
5 TURNED HIMSELF. THEY WERE NOT EVEN LOOKING FOR HIM UP TO
6 FOUR DAYS BEFORE. THE STATE IS NOT SAYING THAT MY CLIENT
7 HELPED RECEIVE EVIDENCE OR ANYTHING. HE GAVE SOMEONE A
8 RIDE. AS A RESULT, YOUR HONOR, I DON'T THINK THEY HAVE
9 MET THEIR BURDEN.

10 THE COURT: IT SOUNDS LIKE A PRETTY GOOD JURY
11 ARGUMENT. BUT I DON'T KNOW, MR. JOHNSON, I NEED TO REVIEW
12 THE TESTIMONY OF THAT WITNESS. THERE SEEMS TO BE A
13 CONFLICT IN WHAT YOU SAY SHE SAID, AND WHAT MR. SAVERANCE
14 SAID. HER TESTIMONY TO SOME EXTENT WAS SORT OF VAGUE. IT
15 SEEMS AS IF MR. SAVERANCE GOT MOST OUT OF HER THAT HE
16 WANTED. AND THEN YOU GOT MOST OUT OF HER THAT YOU WANTED.
17 SO HER -- SHE DID BACKTRACK SOME IN HER CROSS, DURING
18 CROSS AS OPPOSED TO WHAT SHE SAID DURING DIRECT. BUT I AM
19 GOING TO DENY THE MOTION FOR NOW, AND WE ARE GOING TO
20 PROCEED WITH THE DEFENSE. I ASSUME, MR. WHEELER IS GOING
21 TO PROCEED FIRST.

22 MR. WHEELER: YOUR HONOR, BEFORE WE PROCEED WITH
23 TESTIMONY, I KNOW WE RESERVED EARLIER, I HAD A MOTION IN
24 LIMINE REGARDING MY CLIENT'S RECORD THAT I WANTED TO TAKE
25 UP.

1 THE COURT: YEAH, WE WILL DO THAT. ASSUME YOU WILL
2 GO FIRST IN ORDER, AS WE SAID. AND YOU COME BACK WHICH IT
3 WON'T BE UNTIL MR. JOHNSON. PRIOR TO THAT, I WILL REVIEW
4 SOME OF THE TESTIMONY OF THAT FIRST WITNESS.

5 MR. JOHNSON: THANK YOU.

6 MR. WHEELER: YES, SIR.

7 THE COURT: AND WE WILL PROCEED. WHEN THE JURY COMES
8 OUT, YOU REST IN THE PRESENCE OF THE JURY. REGARDING ANY
9 MOTIONS IN LIMINE GO AHEAD, MR. WHEELER.

0 MR. WHEELER: THANK YOUR HONOR. WE HAD A MOTION, THE
1 STATE HAS SOME RECORD OF MY CLIENT BEFORE WE GET IN TO THE
2 DEFENSE CASE. I WANTED TO GO AHEAD AND HAVE THE COURT
3 EXAMINE THAT IN TERMS OF WHAT THEY MAY USE WITH REGARDS
4 TO. YOUR HONOR, I CAN HAND UP MY COPY OF IT, IF MR.
5 SAVERANCE DOESN'T HAVE THAT.

5 THE COURT: REGARDING THE ADMISSIBILITY OF CERTAIN
7 ITEMS, IT'S ALWAYS DEPENDENT UPON THE TESTIMONY THAT IS
1 GIVEN. I WILL BE HAPPY TO REVIEW ANYTHING THAT YOU HAVE
1 IN THE OBVIOUS MATTER THAT MAY BE INVOLVED WITH A RULING
1 BY THE COURT. WHAT DO YOU HAVE, MR. SAVERANCE?

MR. SAVERANCE: YOUR HONOR, IF IT PLEASE THE COURT,
WHAT I HAVE AS FAR AS MR. EFRAIN THOMAS, I HAVE A DRUG
CONVICTION UPON A GUILTY PLEA IN KINGS COUNTY SUPERIOR
COURT IN 2003. HE RECEIVED 3 YEARS ON THAT. I HAVE A
CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE. HE

1 RECEIVED A SENTENCE OF ONE YEAR IN 2004. I SEE A CRIMINAL
2 POSSESSION OF A WEAPON AND A PLEA OF GUILTY IN 2003. A
3 ONE YEAR SENTENCE. THAT'S WHAT I HAVE, YOUR HONOR.

4 THE COURT: ALL RIGHT.

5 MR. WHEELER: AND, YOUR HONOR, THAT'S ONE THING I
6 WANT TO DETERMINE, ALL OF HIS RECORD. AND I KNOW MR.
7 SAVERANCE HAS GOT THE SAME COPY THAT I HAVE, IT IS FROM
8 OUT OF STATE. IT IS A LITTLE BIT HARD TO UNDERSTAND
9 EXACTLY. HE JUST READ OFF THREE CONVICTIONS THAT THEY
10 HAVE. NO. 5 IS, I AM NOT SURE WHAT THAT MEANS. IF WE
11 COULD MAKE SURE THAT IT'S ESSENTIALLY TWO DRUG CONVICTIONS
12 WITHOUT REGARD TO SOME NUMBER THAT I DON'T KNOW THAT WE
13 HAVE ANY BASIS TO SAY IT WAS INDEED SUCH AND SUCH AN
14 OFFENSE WITHOUT THE PRIOR RECORD TO BACK IT UP. AND, YOUR
15 HONOR, THE ONLY THING IS THE PRIOR WEAPON POSSESSION
16 CHARGE. I WOULD ASK THAT THAT BE EXCLUDED. ONE OF CRIMES
17 THAT MY CLIENT IS CHARGED WITH IN THIS CASE IS USE OF A
18 WEAPON DURING THE COMMISSION OF A VIOLENT CRIME. I THINK
19 IT IS SIMILAR AND THEREFORE, PREJUDICIAL TO ALLOW ANY
20 WEAPON'S CONVICTION EVEN IF IT IS ONLY ONE. WHICH I
21 UNDERSTAND WAS COMING IN.

22 THE COURT: MR. SAVERANCE.

23 MR. SAVERANCE: YOUR HONOR, I JUST BELIEVE THAT
24 KEEPING OUT THE PART ABOUT THE GUN, THE GUN CHARGE STEMS
25 MORE IMPORTANTLY FROM A VIOLENT CRIME OF MURDER IN THIS

1 CASE. IN THAT CASE EVEN DISCHARGING WHAT I'M SHOWING
2 POSSESSION OF A WEAPON. THERE WAS NO CLAIM THAT HE
3 COMMITTED ANY KIND OF VIOLENT ACT OR ANY TYPE OF VIOLENCE
4 WITH IT. IT SAYS HE HAD POSSESSION OF IT. WHICH IS A
5 TOTALLY DIFFERENT TYPE OF CASE THAN HE WOULD HAVE SHOT
6 SOMEBODY AND HAD ALONG POSSESSION OF A WEAPON. SO I JUST
7 DON'T FEEL LIKE IT IS SOMETHING THAT SHOULD BE KEPT OUT.

8 THE COURT: WHAT WAS THE SENTENCE ON THAT?

9 MR. SAVERANCE: YOUR HONOR, HE RECEIVED A ONE YEAR
0 SENTENCE ON THAT IN 2001.

1 THE COURT: SAY IT AGAIN, PLEASE.

2 MR. SAVERANCE: I'M SORRY. HE RECEIVED A SENTENCE OF
3 ONE YEAR ON 3-18-04. IT'S CLASSIFIED AS A FELONY.

4 THE COURT: LET'S MOVE ON TO THE NEXT DEFENDANT.

5 RM. WATTS: YOUR HONOR, WE WOULD HAVE THE SAME MOTION
6 IN LIMINE IN REGARDS TO EUNICE MCCALL.

7 THE COURT: WHAT CRIMINAL RECORD IF ANY, DOES HE
8 HAVE, MR. SAVERANCE?

9 MR. SAVERANCE: I HAVE AN ABHAN, ASSAULT AND BATTERY
0 OF HIGH AGGRAVATED NATURE IN 2002. HE WAS CONVICTED AND
1 RECEIVED 6 YEARS UNDER A YOA. THAT'S ALL I SEE.

2 THE COURT: ANY ARGUMENT ON THAT ISSUE, MR. WATTS?

3 MR. WATTS: YOUR HONOR, JUST A CHARGE WOULD BE
4 PREJUDICIAL TO THE INTENTION OF THE JURY. IT WOULD BE
5 HIGHLY PREJUDICIAL TO MY CLIENT SINCE HE HAS BEEN CHARGED

1 WITH MURDER. JUST THE CHARGE BEFORE HE WAS CHARGED WITH A
2 VIOLENT CRIME. IT IS JUST SOMETHING THAT WOULD BE MORE
3 PREJUDICIAL THAN PROBATIVE IN REFERENCE TO THE JURY'S
4 KNOWLEDGE OF THIS.

5 THE COURT: WE WILL COME BACK TO THAT ISSUE. MR.
6 SAVERANCE, WHAT DO YOU SAY?

7 MR. SAVERANCE: YOUR HONOR, THAT IS CLASSIFIED AS A
8 NONVIOLENT CRIME. ABHAN IS A FAR CRY FROM MURDER. WE'RE
9 NOT TALKING ABOUT ABWIK. WE'RE TALKING ABOUT ABHAN. AND
10 THAT CAN BE WITHOUT EVEN USING A WEAPON. THERE IS NOT
11 REALLY AN INTENT TO KILL OR ANYTHING LIKE THAT OR MALICE
12 REQUIRED. SO I THINK ABHAN IS WAY DOWN THE LINE THAN
13 MURDER. AND IT IS NOT SO CLOSELY RELATED WHERE IT SHOULD
14 NOT BE ADMITTED. IT IS CLASSIFIED AS A NONVIOLENT
15 OFFENSE; WHEREAS, MURDER I GUESS IS THE MOST VIOLENT THING
16 YOU CAN BE ACCUSED OF DOING TO SOMEBODY.

17 THE COURT: ANYTHING ELSE FROM THE STATE OR, MR.
18 WATTS?

19 MR. SAVERANCE: NO, SIR, YOUR HONOR.

20 THE COURT: HOW ABOUT MR. WATTS' GUY?

21 MR. SAVERANCE: HE HAS A CONVICTION OF MANUFACTURING
22 AND DISTRIBUTION OF CRACK COCAINE IN 1997. IT LOOKS LIKE
23 IT IS TWO COUNTS. HE RECEIVED A 10-YEAR SENTENCE ON COUNT
24 1 AND A 5-YEAR SENTENCE ON COUNT 2, CONCURRENT. AND
25 THAT'S 1997. IN 97, IT HAS A ROBBERY CONVICTION OF 15

1 YEARS, SUSPENDED TO 10 YEARS AND 3 YEARS PROBATION. MINOR
2 POSSESSION OF A WEAPON'S CONVICTION, 2 YEARS CONCURRENT.
3 ANOTHER DRUG CONVICTION OF DISTRIBUTION OF CRACK COCAINE
4 WITHIN THE PROXIMITY OF A SCHOOL, A 5-YEAR SENTENCE ON
5 THAT CONVICTION.

6 YOUR HONOR, IT'S ALSO MY UNDERSTANDING AND I'VE ASKED
7 THE PROBATION DEPARTMENT OF THIS. I KNOW HE DID HAVE A
8 PROBATION VIOLATION, I BELIEVE IT WAS THE LAST TERM OF
9 COURT. AND THEY'RE CHECKING ON THAT NOW. BUT THOSE ARE
0 THE ACTUAL CHARGES I HAVE AND CONVICTIONS.

1 THE COURT: YES, SIR. MR. JOHNSON.

2 MR. JOHNSON: YOUR HONOR, IT'S MY UNDERSTANDING THAT
3 IT SHOULDN'T HAVE TWO COUNTS, IT SHOULD BE ONE COUNT. I
4 DON'T KNOW IF THE STATE WAS GOING TO PROVIDE TO US. I
5 DIDN'T GET A COPY OF HIS RECORD. YOUR HONOR, I THINK WE
6 HAVE A CLARIFICATION FOR YOU.

MR. SAVERANCE: JUST TO CLARIFY, I LOOKED THROUGH,
YOUR HONOR. THERE ARE TWO SEPARATE COUNTS OF
DISTRIBUTION. COUNT ONE IS DISTRIBUTION OF CRACK COCAINE
A 10-YEAR. COUNT 2, IS DISTRIBUTION OF CRACK COCAINE
WITHIN THE PROXIMITY. A 5-YEAR SENTENCE. SO IT WAS TWO
CHARGES AND THE CONVICTIONS RAN TOGETHER. SO IT WOULD BE
UNDER THE SAME -- IT'S GOT THE SAME DATE. SO IT WAS TWO
DRUG CONVICTIONS AT THE SAME TIME. A ROBBERY CONVICTION
IN 1997.

1 MR. JOHNSON: AND A PROBATION VIOLATION.

2 THE COURT: UNDER -- IN DETERMINING WHETHER OR NOT A
3 PRIOR CONVICTION SHOULD BE ADMITTED FOR PURPOSES OF
4 IMPEACHMENT, THE COURT IS REQUIRED TO PERFORM 601 ANALYSIS
5 AND ALSO ANALYSIS OUTLINED IN THE CASE OF THE STATE V.
6 GREEN. GREEN V. THE STATE. TWO TESTS, A TWO-PART TEST TO
7 DETERMINE WHETHER A PRIOR RECORD SHOULD BE ADMISSIBLE
8 UNDER RULE 609. ONE OF THE PRIOR CRIMES IS PUNISHABLE BY
9 DEATH OR IMPRISONMENT IN EXCESS OF ONE YEAR. AND TWO, THE
10 COURTS HAS DETERMINED THAT THE PROBATIVE VALUE OF
11 ADMITTING THE EVIDENCE OUTWEIGHS ITS PREJUDICIAL EFFECT TO
12 THE ACCUSED.

13 THERE ARE TWO CASES THAT ARE IMPORTANT, PARTICULARLY
14 IMPORTANT TO THESE TYPES OF ISSUES. STATE V. COLF,
15 C-O-L-F, IN WHICH THE COURT HELD THAT THE SIMILARITIES OF
16 THE OFFENSES PRIOR OF -- THE SIMILARITIES OF THE PRIOR
17 OFFENSES, INCREASES THE LIKELIHOOD OF THE PREJUDICE. AND
18 THE CASE OF STATE V. ALEXIE WHICH HELD THAT NARCOTIC
19 CONVICTIONS GENERALLY ARE NOT PROBATIVE ON THE ISSUE OF
20 IMPEACHMENT. SO FOLLOWING THOSE LINES OF CASES, I WILL
21 RULE THAT THE -- ALL OF THIS IS CONTINGENT ON THE
22 TESTIMONY GIVEN ON DIRECT EXAMINATION OR CROSS
23 EXAMINATION. BUT THAT THE NARCOTICS CONVICTIONS ARE NOT
24 ADMISSIBLE FOR IMPEACHMENT PURPOSES. THE COURT WOULD
25 UNDERGO FURTHER ANALYSIS IN EVALUATING THE IMPEACHMENT

1 VALUES OF PRIOR CRIMES AND POINT AND TIME OF CONVICTION.
2 THE WITNESS' SUBSEQUENT HISTORY, SIMILARITY BETWEEN THE
3 PAST CRIMES AND THE CHARGED CRIMES, THE IMPORTANCE OF THE
4 DEFENDANT'S TESTIMONY, AND THE CENTRALITY OF THE
5 CREDIBILITY ISSUE.

6 IN FORMING THAT ANALYSIS AS I AM REQUIRED TO DO, I
7 FIND THAT AS TO MR. THOMAS, THE CONVICTION REGARDING THE
8 WEAPONS CHARGE IS ADMISSIBLE FOR IMPEACHMENT PURPOSES. I
9 FIND THAT THE ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
0 NATURE OF MR. MCCALL IS PERMISSIBLE FOR IMPEACHMENT
1 PURPOSES. AND I FIND THAT THE ROBBERY CHARGES AGAINST MR.
2 JAMES, THOSE CHARGES WERE ADMISSIBLE FOR IMPEACHMENT
3 PURPOSES. ANYTHING ELSE, BEFORE WE BRING THE JURY?

MR. SAVERANCE: NOTHING FROM THE STATE, YOUR HONOR.

MR. WHEELER: THE ONLY THING, YOUR HONOR, IF YOU'RE
PLANNING TO GO AHEAD AND GO IN TO TESTIMONY AFTER THE JURY
COMES BACK IN---

THE COURT: YES, SIR.

MR. WHEELER: ---IS I WOULD LIKE FOR YOU TO GO
THROUGH MY CLIENT'S RIGHT TO TESTIFY IN THE MATTERS WITH
HIM.

THE COURT: I WILL BE HAPPY TO DO THAT AS TO EACH
DEFENDANT.

MR. WHEELER: YOU MIGHT CAN DO IT ALL AT ONE TIME.

THE COURT: IF EACH OF YOU ALL WOULD STAND AND RAISE

1 YOUR HANDS, PLEASE.

2 (THEREUPON, THE DEFENDANTS ARE SWORN.)

3 THE COURT: ADDRESSING EACH DEFENDANT. YOU CAN
4 REMAIN STANDING. I AM GOING TO EXPLAIN TO YOU CERTAIN OF
5 YOUR RIGHTS AT THIS TIME. IF YOU DON'T UNDERSTAND
6 ANYTHING THAT I HAVE EXPLAINED TO YOU, LET ME KNOW. I
7 WILL BE HAPPY TO EXPLAIN IN MORE DETAIL. DO YOU
8 UNDERSTAND, MR. THOMAS?

9 DEFENDANT THOMAS: YES, SIR.

10 THE COURT: MR. MCCALL?

11 DEFENDANT MCCALL: YES, SIR.

12 THE COURT: MR. JAMES?

13 DEFENDANT JAMES: YES, SIR.

14 THE COURT: WE HAVE NOW REACHED THE STAGE OF THE
15 TRIAL WHERE YOU MAY PRESENT YOUR TESTIMONY. YOU HAVE THE
16 RIGHT TO CLAIM THE PROTECTIONS GIVEN TO YOU BY THE FIFTH
17 AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES. THIS
18 AMENDMENT STATES THAT WHILE NO PERSON SHALL BE COMPELLED
19 OR REQUIRED IN A CRIMINAL CASE TO BE A WITNESS AGAINST
20 HIMSELF, OR IN SOME INSTANCES HERSELF. THIS MEANS THAT
21 YOU CANNOT BE COMPELLED OR REQUIRED TO TESTIFY IN THIS
22 CASE. HOWEVER, YOU DO HAVE THE RIGHT TO TESTIFY IF YOU
23 WANT TO. BUT NO ONE CAN MAKE YOU TESTIFY. THIS IS A
24 PERSONAL RIGHT, AND NO ONE CAN WAIVE THIS RIGHT EXCEPT
25 YOU. IF YOU DECIDE TO TESTIFY YOU WILL BE SUBJECT TO THE

1 SAME RULES THAT GOVERN THE OTHER WITNESSES. AND YOU MAY
2 BE EXAMINED AND CROSS EXAMINED ON ANY RELEVANT ISSUE IN
3 THIS CASE.

4 IN ADDITION, IF YOU HAVE CRIMES INVOLVING DISHONESTY
5 OR FALSE STATEMENTS OR FOR CRIMES PUNISHABLE BY
6 IMPRISONMENT FOR MORE THAN ONE YEAR, AND I DETERMINE AS I
7 HAVE DETERMINED THROUGH THIS PRIOR DISCUSSION I JUST HAD
8 WITH THE LAWYERS, AND I DETERMINE THAT THE PROBATIVE VALUE
9 OF ADMITTING THIS EVIDENCE OUTWEIGHS ITS PREJUDICIAL
10 EFFECT, THEN THE SOLICITOR WILL BE ABLE TO INTRODUCE YOUR
11 RECORD TO ATTACK YOUR CREDIBILITY. AND IF YOU DECIDE TO
12 TESTIFY, THE DECISION ON YOUR PART MUST BE FREELY,
13 VOLUNTARILY AND INTELLIGENTLY MADE WITH KNOWLEDGE OF THE
14 PROTECTIONS GIVEN TO YOU BY THE FIFTH AMENDMENT. AND THE
15 CONSEQUENCES OF YOUR DECISION TO TESTIFY. IF YOU DECIDE
16 NOT TO TESTIFY, I WILL INSTRUCT THE JURY THAT THEY CANNOT
17 GIVE THE FACT THAT YOU DID NOT TESTIFY ANY CONSIDERATION
18 WHATSOEVER. AND THAT THERE IS TO BE NO PREJUDICE TO YOU.
19 ABSOLUTELY NO PREJUDICE TO YOU BECAUSE YOU DID NOT
20 TESTIFY.

21 IT'S LEFT ENTIRELY UP TO YOU WHETHER OR NOT TO
22 TESTIFY. YOU CAN TALK TO YOUR LAWYER OR LAWYERS, YOUR
23 FAMILY, YOUR FRIENDS OR ANYONE ELSE. BUT IN THE END, THE
24 FINAL DECISION WILL BE LEFT ENTIRELY UP TO YOU AS TO
25 WHETHER OR NOT YOU SHOULD TESTIFY. DO YOU UNDERSTAND WHAT

1 I HAVE EXPLAINED TO YOU, MR. THOMAS?

2 DEFENDANT THOMAS: YES, SIR.

3 THE COURT: MR. MCCALL?

4 DEFENDANT MCCALL: YES, SIR.

5 THE COURT: MR. JAMES?

6 DEFENDANT JAMES: YES, SIR.

7 THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT WHAT I
8 HAVE EXPLAINED TO YOU, MR. THOMAS?

9 DEFENDANT THOMAS: NO, SIR.

10 THE COURT: MR. MCCALL?

11 DEFENDANT MCCALL: NO, SIR.

12 THE COURT: MR. JAMES?

13 DEFENDANT JAMES: NO, SIR.

14 THE COURT: HAVE YOU TALKED WITH YOUR LAWYER AND
15 DISCUSSED WITH YOUR LAWYER WHETHER OR NOT YOU SHOULD
16 TESTIFY, MR. THOMAS?

17 DEFENDANT THOMAS: YES, SIR.

18 THE COURT: MR. MCCALL?

19 DEFENDANT MCCALL: YES, SIR.

20 THE COURT: MR. JAMES?

21 DEFENDANT JAMES: YES, SIR.

22 THE COURT: DO YOU WISH TO TALK TO YOUR LAWYER ABOUT
23 IT ANY MORE, MR. THOMAS?

24 DEFENDANT THOMAS: YES, SIR.

25 THE COURT: YOU WANT TO TALK TO HIM SOME MORE?

1 DEFENDANT THOMAS: YES, SIR.

2 THE COURT: DO YOU NEED TO TALK WITH YOUR LAWYER ANY
3 MORE ABOUT IT, MR. MCCALL?

4 DEFENDANT MCCALL: YES, SIR.

5 THE COURT: MR. JAMES?

6 DEFENDANT JAMES: YES, SIR.

7 THE COURT: Y'ALL CAN TALK WITH YOUR LAWYERS. AND WE
8 ARE GOING TO PROCEED INITIALLY WITH YOUR DEFENSE, MR.
9 WHEELER. SO YOU CAN TALK WITH HIM AND WE WILL BE READY TO
10 PROCEED. AND THE OTHER DEFENDANTS WILL TALK WITH THEIR
LAWYERS---

MR. JOHNSON: OKAY.

THE COURT: YOU CAN TALK TO THEM NOW OR LATER ON.

MR. WHEELER: WE WILL BE VERY BRIEF, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. WHEELER: JUST FOR THE PURPOSES OF PLANNING A
LITTLE BIT. HOW LONG DO YOU THINK WE WILL PROBABLY GO ON
TODAY, I'VE GOT FOUR WITNESSES?

THE COURT: UNTIL ABOUT 5:30 OR 6:00.

MR. WHEELER: THANK YOU, YOUR HONOR.

THE COURT: WE WILL BE AT EASE FOR A MOMENT OR TWO.

MR. JOHNSON: MY CLIENT IS READY TO GO.

THE COURT: MR. JAMES, HAVE YOU HAD ENOUGH TIME TO
TALK WITH YOUR LAWYER ABOUT WHETHER OR NOT YOU WANT TO
TESTIFY?

1 DEFENDANT JAMES: YEAH, I WANT TO TESTIFY.

2 THE COURT: YOU HAVE HAD PLENTY OF TIME TO TALK WITH
3 HIM, YOU'VE MADE YOUR DECISION? HOW ABOUT YOU, MR.
4 MCCALL?

5 DEFENDANT MCCALL: YES, SIR.

6 THE COURT: HAVE YOU HAD ENOUGH TIME TO YOUR LAWYER
7 ABOUT IT AND MAKE YOUR DECISION?

8 DEFENDANT MCCALL: YES, SIR.

9 THE COURT: DO YOU PLAN TO TESTIFY?

10 DEFENDANT MCCALL: YES, SIR.

11 THE COURT: MR. WHEELER, ARE YOU STILL NEGOTIATING
12 AND TALKING?

13 MR. WHEELER: YOUR HONOR, I THINK WE'VE REACHED AN
14 AGREEMENT ON THIS, BUT I WOULD LIKE JUST A MINUTE SINCE WE
15 JUST WOUND UP.

16 THE COURT: HAVE YOU HAD ENOUGH TIME TO TALK TO YOUR
17 LAWYER THERE---

18 DEFENDANT THOMAS: HUH?

19 THE COURT: ABOUT WHETHER OR NOT YOU WANT TO TESTIFY.
20 MR. THOMAS, HAVE YOU HAD ENOUGH TIME TO TALK TO YOUR
21 LAWYER?

22 DEFENDANT THOMAS: NO, SIR.

23 THE COURT: WE'LL TAKE A LITTLE BREAK.

24 (THEREUPON, THE COURT TAKES A SHORT RECESS.)

25 THE COURT: NOW, MR. THOMAS, HAVE YOU HAD ENOUGH TIME

1 AT THIS POINT TO TALK TO YOUR LAWYER ABOUT WHETHER YOU
2 WANT TO TESTIFY?

3 DEFENDANT THOMAS: YES, SIR.

4 THE COURT: DO YOU WISH TO TALK TO HIM ANY MORE
5 ABOUT IT?

6 DEFENDANT THOMAS: NO, SIR.

7 THE COURT: ARE YOU GOING TO TESTIFY?

8 DEFENDANT THOMAS: YES, SIR.

9 THE COURT: ANYTHING WE BRING THE JURY?

MR. WHEELER: YOUR HONOR, MY FIRST WITNESS WAS HERE.
I WOULD LIKE TO FIND HIM. IF WE ARE GOING STRAIGHT INTO,
I WOULD PROBABLY NEED TO MAKE SURE HE IS HERE.

THE COURT: WELL IF WE ARE READY. IF THERE IS A
MATTER TO DISCUSS PRIOR TO THE WITNESS, MAYBE YOU CAN HAVE
SOMEONE LOOKING FOR HIM WHILE WE TALK ABOUT WHAT THE ISSUE
IS. IS HE WELL KNOWN AROUND TOWN?

MR. WHEELER: THE SHERIFF'S DEPARTMENT KNOWS HIM.
THERE ARE SOME OFFICERS OUT BACK.

THE COURT: ALL RIGHT.

MR. WHEELER: YOUR HONOR, I JUST SAW HIM, SO HE IS
HERE.

THE COURT: IS HE HERE?

MR. WHEELER: YES, SIR.

THE COURT: ALL RIGHT.

MR. SAVERANCE: YOUR HONOR, I DO HAVE SOME ISSUES

1 WITH THAT WITNESS WHO IS GETTING READY TO---

2 THE COURT: ALL RIGHT.

3 MR. SAVERANCE: ---TESTIFY. YOUR HONOR, IT'S MY
4 UNDERSTANDING THAT MR. WHEELER PLANS TO CALL CORY MCCLEM
5 INVOLVING TROY ROUSE BEING CHARGED WITH CUTTING HIM ON THE
6 THROAT, ASSAULT AND BATTERY WITH INTENT TO KILL. YOUR
7 HONOR, I BELIEVE IT'S BEEN MENTIONED BY MR. WHEELER IN
8 OPENING AND THROUGHOUT CROSS EXAMINATION. I'VE OBJECTED
9 EACH TIME, BUT IT'S BEEN OVERRULED. HE'S MENTIONED THAT
10 MR. MCCLEM WAS CUT IN THE THROAT BY TROY ROUSE. THERE
11 WERE PENDING CHARGES AGAINST TROY ROUSE. AND GOING INTO A
12 LITTLE DETAIL. THAT'S WHERE I ENTERED THE OBJECTION.

13 YOUR HONOR, MY OBJECTION AT THIS POINT IS IF THE
14 COURT OVERRULES MY OBJECTION AND STATES THAT THAT IS NOT
15 IMPROPER TO SAY THAT THERE WAS A CHARGE THAT WAS PENDING,
16 I DON'T THINK WE CAN GET INTO A TRIAL INSIDE OF A TRIAL.
17 I DON'T THINK MR. WHEELER CAN PUT -- COME UP THERE AND SAY
18 TROY ROUSE CUT ME ACROSS THE THROAT. THIS HAPPENED, THAT
19 HAPPENED. HE'S NOT BEEN CONVICTED OF THAT. I UNDERSTAND,
20 YOU KNOW, IF THE JURY CAN BE MADE AWARE HE HAD A PENDING
21 CHARGE THAT HAD BEEN TRUE BILLED FOR ABWIK. AND MR.
22 MCCLEM WAS THE VICTIM. I KNOW THAT HAS BEEN PUT OUT
23 THERE. BUT I THINK OUTSIDE THAT, THAT'S CLEARLY OUTSIDE
24 THE BOUNDS. I MEAN, YOU'VE GOT SOMEBODY THAT HAS BEEN
25 KILLED ALLEGEDLY BY HIS CLIENT. NOW THEY'RE BENEFITING

1 BECAUSE MR. ROUSE IS DEAD AND CAN'T TESTIFY. HE HASN'T
2 BEEN CONVICTED OF IT.

3 THE COURT: THE ISSUE IS NOT WHAT THE DEFENDANT AS TO
4 SOMEONE ELSE -- THE VICTIM MIGHT HAVE DONE AS TO SOMEONE
5 ELSE, BUT WHETHER OR NOT THERE IS SOME BELIEF BY THE
5 DEFENDANT THAT HIS LIFE WAS IN IMMINENT DANGER OR
7 SOMETHING OF THAT NATURE BASED ON THE PRIOR REPUTATION OF
1 THE ALLEGED VICTIM. OR PRIOR REPUTATION OR OFFENSES FOR
1 VIOLATION OF SOMETHING RELATED TO THAT. BUT I AGREE WITH
MR. SAVERANCE IN THAT REGARD, MR. WHEELER. THE TESTIMONY
I HAVE ALLOWED AS FAR AS YOUR OPENING STATEMENT, AND SOME
TESTIMONY THAT YOU INITIALLY MR. SAVERANCE OBJECTED TO,
AND THEN SOME FOLLOW UP QUESTIONS THAT HE DIDN'T OBJECT
TO, TO ONE WITNESS ON THE WITNESS STAND. YOU CAN'T START
AT THE END AND THEN WORK BACK AT THE BEGINNING. YOU MUST
ESTABLISH SOME BASIS FOR THE TESTIMONY BEFORE THE
TESTIMONY IS ADMISSIBLE. OTHERWISE, WHAT DOES THIS
WITNESS HAVE TO DO WITH THIS CASE, MR. MCCLEM.

MR. WHEELER: YOUR HONOR, I SEE YOUR POINT. I THINK
IT SEEMS TO GO TO THE ORDER OF THE WITNESSES AS I
UNDERSTAND THAT YOU ARE SAYING.

THE COURT: YES, SIR.

MR. WHEELER: WELL AS I UNDERSTAND, IF MY CLIENT GETS
UP AND SAYS HE'S WANTING TO ADMIT -- WHAT I AM GETTING AT
WITH THE TESTIMONY IS TO PROVE IF HE SAYS OUR DEFENSE OF

1 OTHERS BECAUSE OF THE CHARACTER TRAITS OF THIS INDIVIDUAL.
2 AND IT'S RULE 404 OF THE EVIDENCE. I WAS SCARED THAT HE
3 WOULD HARM SOMEONE ELSE IN THIS CASE IN THE DEFENSE OF
4 OTHERS STAND. WHAT WE INTEND TO SHOW THROUGH MR. MCCLEM'S
5 TESTIMONY IS THAT HE IS NOT MAKING THAT UP. YOU KNOW, HE
6 CAN COME IN, ANYBODY THAT WAS A VICTIM IN A CASE, SOMEONE
7 COULD COME IN AND SAY, OH, HE HAD A HORRIBLE REPUTATION
8 FOR HURTING PEOPLE. AND WITHOUT SOMETHING TO BACK THAT
9 UP, ONCE IT IS SAID, MR. SAVERANCE'S ARGUMENT IS GOING TO
10 BE WHY SHOULD YOU BELIEVE HIM. I WOULD HAVE NOTHING TO
11 BACK UP THE TESTIMONY THAT HE'S GIVEN.

12 THE COURT: I UNDERSTAND EVERYTHING THAT YOU'RE
13 SAYING. AND I CLEARLY SUPPORT THE FACT THAT YOU HAVE THE
14 RIGHT TO FULLY DEFEND YOUR CLIENT. NOT ONLY CONCERNS YOUR
15 PUTTING THE CART BEFORE THE HORSE AND ACCEPTING IN GOOD
16 FAITH THAT SOME LINKAGE WILL BE MADE, THE COURT HAS TO
17 MAKE THAT RULING. AND A PERSON MAYBE HE DID THIS, BUT
18 MAYBE YOUR GUY DIDN'T KNOW ANYTHING ABOUT THAT. YOU KNOW,
19 A REPUTATION OR STANDING ALONE MEANS NOTHING IF YOUR
20 CLIENT DIDN'T -- IF IT DIDN'T HAVE ANY IMPACT ON HIM ON
21 THIS NIGHT.

22 MR. WHEELER: YOUR HONOR, I'M NOT TRYING TO GET IN TO
23 EXCHANGE WITH THE COURT.

24 THE COURT: YES, SIR.

25 MR. WHEELER: DO I UNDERSTAND YOUR RULING MAYBE AT

1 THIS TIME IS TO FORM A RULING? AND IF A PROPER FOUNDATION
2 IS LAID, MR. MCCLEM---

3 THE COURT: YES, SIR.

4 MR. WHEELER: ---MAY TESTIFY?

5 THE COURT: YES, SIR.

6 MR. WHEELER: OKAY.

THE COURT: IN OTHER WORDS---

MR. WHEELER: I SEE.

THE COURT: ---IF THERE IS NO FOUNDATION FOR THE
TESTIMONY.

MR. WHEELER: BUT CERTAINLY WE CAN REVISIT THAT
POSSIBLY.

THE COURT: YES, SIR. AND THEN IN REVISITING IT,
THEN ONCE AGAIN IT WILL NOT DEVELOP INTO A MINI-TRIAL ON
WHETHER HE DID OR DID NOT DO THAT. SO THERE ARE
LIMITATIONS AS TO THE TESTIMONY REGARDING ANY OTHER
INSTANCES INVOLVING OTHER PARTIES. YOU KNOW, BECAUSE
OTHERWISE IT WOULD SIMPLY TURN INTO A CHARACTER
ASSIGNATION OF THE VICTIM. SO WE WILL STILL STAY ON TRACK
AS TO THIS ISSUE IN THIS TRIAL AS IT RELATES TO SELF
DEFENSE AND THE BASIS OF SELF DEFENSE THAT YOUR CLIENT
MIGHT HAVE.

MR. WHEELER: AND WE UNDERSTAND. YOUR HONOR, WE
WOULDN'T TRY AND MAKE A FULL CASE OF IT. JUST TO
CORROBORATE WHATEVER FEAR AND FOUNDATION WAS LAID.

1 THE COURT: I UNDERSTAND. SO YOU HAVE SWITCHED THE
2 ORDER THEN?

3 MR. WHEELER: YES, SIR. IN LIGHT OF YOUR RULING---

4 THE COURT: ALL RIGHT.

5 MR. WHEELER: ---WE WOULD CHANGE OUR ORDER.

6 THE COURT: LET'S BRING THE JURY.

7 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
8 PRESENCE OF THE JURY.)

9 THE COURT: THE JURY IS BACK. MR. SAVERANCE.

10 MR. SAVERANCE: YOUR HONOR, AT THIS TIME THE STATE
11 WOULD REST ITS CASE.

12 THE COURT: LADIES AND GENTLEMEN, THE STATE HAS
13 RESTED. IT MEANS YOU'VE HEARD THE STATE'S CASE. IT'S NOW
14 THE DEFENSE'S TURN. MR. WHEELER.

15 MR. WHEELER: THANK YOU, YOUR HONOR. THE DEFENSE
16 CALLS MS. COURTNEY JOHNSON. AS RESERVED PREVIOUS.

17 THE COURT: COURTNEY JOHNSON. COME FORWARD, MA'AM.
18 COURTNEY JOHNSON, BEING
19 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION BY MR. WHEELER:

21 Q GOOD AFTERNOON, MS. JOHNSON.

22 A GOOD AFTERNOON.

23 Q TIME FLIES SO FAST. I KNOW WE MET YOU EARLIER. I
24 CAN'T REMEMBER IF IT WAS EARLIER TODAY OR YESTERDAY
25 AFTERNOON. I THINK IT WAS YESTERDAY, IS THAT CORRECT?

1 A YES, SIR.

2 Q MS. JOHNSON, YOU TESTIFIED ABOUT SOME OF THE THINGS
3 YOU KNEW ABOUT THIS CASE YESTERDAY. BUT YOU DIDN'T
4 TESTIFY ABOUT EVERYTHING THAT YOU TOLD THE POLICE, DID
5 YOU?

A YES, SIR.

Q DID YOU SEE EFRAIN THOMAS ON THE NIGHT OF APRIL THE
7TH---

A YES, SIR.

Q ---OF 2005? AND WHAT WAS YOUR RELATIONSHIP TO MR.
THOMAS?

A MY BOYFRIEND.

Q AT THAT TIME?

A YES, SIR.

Q ARE Y'ALL STILL GIRLFRIEND AND BOYFRIEND?

A HUH?

Q DO YOU STILL HAVE A RELATIONSHIP?

A YES, SIR.

Q NOW THE POLICE TALKED WITH YOU -- DID THE POLICE TALK
WITH YOU AFTER MR. ROUSE WAS KILLED?

A YES, SIR.

Q DO YOU REMEMBER THE FIRST DAY THAT THEY TALKED TO
YOU?

A I REMEMBER THE DATES.

Q AND DID YOU END UP GIVING A STATEMENT TO THE POLICE?

1 A YES, SIR.

2 Q OKAY. MS. JOHNSON, I AM GOING TO SHOW YOU THIS.

3 MARK THIS FOR WHATEVER NUMBER IT WOULD BE FOR

4 IDENTIFICATION.

5 (STATEMENT OF COURTNEY JOHNSON MARKED DEFENDANT'S NO.

6 10 FOR ID.)

7 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED

8 DEFENDANT'S EXHIBIT NO. 10 FOR IDENTIFICATION, AND ASK YOU

9 IF YOU RECOGNIZE THAT AS A COPY, A PHOTOCOPY OF THE

10 STATEMENT THAT YOU GAVE TO THE POLICE. DID YOU SIGN THAT

11 STATEMENT?

12 A YES, SIR.

13 Q AND HAVE YOU HAD A CHANCE TO LOOK OVER IT?

14 A YES, SIR.

15 Q AND IS THAT ACCURATELY THE STATEMENT THAT YOU GAVE TO

16 THE POLICE ON, WHAT IS THE DATE ON THAT? IT SHOULD BE AT

17 THE BOTTOM.

18 A YOU SAID AT THE BOTTOM, APRIL 7, 2005.

19 Q DOUBLE CHECK. THAT'S WHEN THE EVENTS TOOK PLACE.

20 A APRIL 28TH.

21 Q DOES THAT SOUND ABOUT RIGHT THE DAY YOU GAVE THE

22 POLICE A STATEMENT?

23 A YES, SIR.

24 Q MS. JOHNSON, IF YOU WOULD, BE SURE YOU PUT BACK IN

25 ORDER. 1, 2, 3. IF YOU WILL, I AM JUST GOING TO ASK YOU

1 TO READ THE WHOLE STATEMENT.

2 A YOU WANT ME TO READ THE WHOLE STATEMENT?

3 Q YES.

4 THE COURT: PULL THE MIC DOWN SO WE CAN HEAR YOU.

5 A "ON APRIL 7, 2005, EFRAIN THOMAS CAME TO CHAD JAMES'
6 HOUSE AFTER THE MURDER. EFRAIN TAPPED ME ON THE SHOULDER
7 AND SAID, COME HERE. WHEN I FOLLOWED HIM INTO THE
8 BATHROOM HE SAT ON THE TUB AND STARTED LOOKING AT ME AND
9 SAID, PLEASE DON'T LEAVE ME. I LOVE YOU. I SAID TO HIM,
10 WHAT HAVE YOU DONE. HE SAID TO ME, COME. COURTNEY,
11 EUNICE AND I JUST KILLED TROY. I SAID WHAT TROY. HE SAID
12 LITTLE TROY'S COUSIN. SO I STARTED THINKING IT WAS TROY
13 STEVENSON. SO I WALKED OUT OF THE BATHROOM AND I WAS
14 DEVASTATED. I TOLD SAMANTHA HICKMAN WHAT EFRAIN TOLD ME.
15 SHE STARTED CRYING AND SHAKING. I STARTED CRYING WITH
16 HER. I WAS HURT TO MY HEART.

EFRAIN ASKED SAMANTHA CAN WE GO TO HER HOUSE.
SAMANTHA PAUSED. SHE WASN'T HEARING THE QUESTION. I
WASN'T TRYING TO EITHER, BUT HE KEPT ASKING. SO SHE SAID
OKAY IN A PAINFUL VOICE. WE GOT TO SAMANTHA'S HOUSE BY A
FRIEND. WHEN WE GOT THERE, SAMANTHA WAS SHOWING ME AROUND
IN HER HOUSE. THEN ME, COURTNEY AND SAMANTHA WALKED IN
HER BIG CLOSET AND WE WERE HUGGING EACH OTHER. AND I TOLD
HER I DON'T WANT TO STAY HERE WITH EFRAIN. I'M SCARED,
BECAUSE I'VE NEVER BEEN AROUND NOTHING LIKE THIS. SHE

1 SAID COURTNEY, I AM GOING TO GO GET TYKEITH, WHICH IS HER
2 SON. AND I PROMISE I'LL BE BACK. BUT SHE NEVER CAME BACK
3 THAT NIGHT.

4 SHE AND KENO CAME FRIDAY. AND KENO WAS TELLING
5 EFRAIN WHAT WAS GOING ON THE BACK STREET. WHEN HE, KENO,
6 DIDN'T KNOW THAT EFRAIN ALREADY KNOW THAT. WHEN EFRAIN
7 AND I GOT TO SAMANTHA'S HOUSE AFTER -- SAMANTHA HICKMAN
8 SAID EFRAIN DO YOU FEEL COMFORTABLE TELLING ME HOW IT WENT
9 DOWN. HE SAID, OKAY, I'LL TELL YOU. SO HE SAID THEY WERE
10 ON THE WAY TO JEROME'S STORE TO PLAY POOL. AND ON THE WAY
11 THERE, EFRAIN WAS WIPING THE DUST OFF HIS SHOES. HE SAID
12 HE WAS TELLING THEM THAT DOWN SOUTH IS DIRTY. HE
13 CONTINUED WIPING HIS SHOES, AND HE SAID HE LOOKED UP AGAIN
14 FOR THE SECOND TIME. THAT'S WHEN HE SAW TROY ROUSE HIT
15 THE BACK OF EUNICE'S HAT. THEN EUNICE MCCALL AND TROY
16 STARTED TUSSLING. AND THEN, HE, EFRAIN, WAS GOING TO
17 BREAK THE FIGHT UP. WHEN HE WAS BETWEEN EUNICE AND TROY,
18 HE HEARD TWO GUNSHOTS. HE JUMPED BACK TO SEE IF HE WAS
19 SHOT, BUT HE WASN'T. AFTER EUNICE SHOT TROY TWICE, TROY
20 WAS STILL ON EUNICE. HE ALMOST HAD THE GUN OUT OF
21 EUNICE'S HAND. THEN EFRAIN SAID TO ME THAT HE SHOT TROY
22 TWICE IN THE BACK. BUT THEN TROY STILL DIDN'T FALL. TROY
23 WAS STILL HOLDING ON TO EUNICE. ALMOST HAD HIM DOWN.

24 SO EUNICE SHOT TWICE AGAIN. SO TROY ALMOST FALL.
25 THEN EFRAIN SAID EVERYTHING COULD HAVE BEEN AVOIDED IF

1 EUNICE WOULDN'T HAVE SHOT TROY. EFRAIN SAID THEY JUST
2 COULDN'T FIGHT AND LET IT BE."

3 Q IS THAT THE WHOLE THING? IF YOU ARE COMPLETE, I
4 THINK YOU PROBABLY NEED TO READ THE WHOLE THING FOR THE
5 RECORD.

6 A "ON THE NIGHT OF APRIL 7, 2005, AT CHAD JAMES' HOUSE
7 WAS ME, SAMANTHA, JACQERON'S BABY, KENO AND ONE OF CHAD'S
8 COUSINS NAMED KEVIN. CHAD WAS IN HIS ROOM ASLEEP. " AND
9 THAT'S ALL IT SAYS. IT SAYS, WHY DID EFRAIN SAY THE FIGHT
0 STARTED.

1 Q HERE I'LL LOOK AT IT AND SEE IF IT IS LEGIBLE. I'M
2 SORRY, IS THIS MY COPY? IS THE REMAINING PART OF THAT
3 STATEMENT A QUESTION WHERE YOU STOPPED READING? IS THAT A
4 QUESTION AND ANSWER FORMAT THAT INVESTIGATOR THOMPSON
5 WROTE DOWN?

6 A YES, SIR.

7 Q WAS THE PART THAT YOU JUST READ TO YOUR STATEMENT
8 THAT YOU GAVE THE POLICE? THE PART YOU JUST READ, WAS
9 THAT YOUR STATEMENT THAT YOU GAVE TO THE POLICE?

0 A TO WHO?

1 Q THE PART YOU JUST READ?

2 A YES, SIR.

3 Q AND IS THAT THE STATEMENT THAT YOU GAVE TO THE POLICE
4 ON APRIL 28TH?

5 A YES, SIR.

1 Q AND THAT WAS BEFORE EFRAIN WAS EVER ARRESTED, WASN'T
2 IT?

3 A YES, SIR.

4 Q NOW IN THAT STATEMENT, DOES EFRAIN TELL YOU -- DID HE
5 TELL YOU WHAT HAPPENED?

6 A YES, SIR.

7 Q NOT IN THAT STATEMENT. BUT DID HE COME TO YOU THAT
8 NIGHT AND TELL YOU WHAT HAPPENED?

9 A YES, SIR.

10 Q THE NIGHT TROY WAS KILLED?

11 A YES, SIR.

12 Q AND DID HE DESCRIBE TO YOU A FIGHT BETWEEN---

13 A EUNICE.

14 Q ---MR. TROY ROUSE AND EUNICE MCCALL?

15 A YES, SIR.

16 Q AND THAT'S THE STATEMENT THAT YOU'VE JUST GIVEN. IS
17 THAT TRUTHFUL? IS THAT WHAT MR. THOMAS JUST TOLD YOU?

18 A YES, SIR. IT IS WHAT HE TOLD ME, AND IT IS TRUE.

19 Q OKAY. AND IS THAT WHAT YOU PASSED ON TO THE POLICE?

20 A YES, SIR.

21 Q DID YOU KNOW MR. ROUSE?

22 A NO, SIR.

23 Q YOU KNEW EFRAIN---

24 A YES, SIR.

25 Q ---THOMAS. AS FAR AS YOU KNEW, WERE THEY FRIENDS?

1 OR DID YOU HAVE ANY BASIS TO KNOW WHETHER THEY WERE
2 FRIENDS OR NOT?

3 A I DON'T KNOW HIM.

4 Q YOU NEVER MET MR. THOMAS---

5 A MR. -- I DON'T KNOW TROY ROUSE.

6 Q THE FACTS THAT YOU JUST READ THAT MR. THOMAS RELATED
7 TO YOU, ARE THOSE THINGS HE TOLD YOU THE SAME NIGHT THAT
8 MR. ROUSE WAS KILLED?

9 A YES, SIR.

0 MR. WHEELER: THANK YOU. THAT'S ALL THE QUESTIONS I
1 HAVE RIGHT NOW.

2 THE COURT: MR. SAVERANCE.

3 MR. SAVERANCE: MAY IT PLEASE THE COURT, YOUR HONOR.

THE COURT: YES, SIR.

CROSS EXAMINATION BY MR. SAVERANCE:

Q MS. JOHNSON, YOU REMEMBER ME, RIGHT?

A YES, SIR.

Q NOW YOU SAID THIS IS WHAT EFRAIN THOMAS TOLD YOU?

A YES, SIR.

Q SO YOU DON'T KNOW THAT ALL THESE THINGS ARE ACCURATE
AND TRUE, RIGHT?

A NO, SIR.

Q SO ALL THIS CAME SIMPLY FROM NOT YOU BEING AT THE
SCENE WHEN THIS HAPPENED, BUT FROM WHAT MR. THOMAS TOLD
YOU HAPPENED.

1 A YES, SIR.

2 Q NOW THAT STATEMENT THAT MR. WHEELER HAD YOU READ, YOU
3 STATED IN THERE THAT EFRAIN THOMAS SAID THAT EUNICE AND I
4 JUST KILLED TROY.

5 A YES, SIR.

6 Q AND EFRAIN ALSO SAID THAT TROY ROUSE HIT THE BACK OF
7 EUNICE'S HAT. THEN EUNICE MCCALL AND TROY STARTED
8 TUSSLING.

9 A YES, SIR.

10 Q AND THAT WAS PART OF YOUR STATEMENT.

11 A YES, SIR.

12 Q AND THEN EFRAIN SAYS HE HEARD TWO GUNSHOTS.

13 A YES, SIR.

14 Q HE LOOKED TO SEE IF HE WAS SHOT BUT HE WASN'T. DOES
15 THAT SOUND FAMILIAR?

16 A YES, SIR.

17 Q SO MR. THOMAS SAID HE LOOKED AND HE NOTICED HE WASN'T
18 SHOT.

19 A YES, SIR.

20 Q DID HE TELL YOU AT ANY POINT AND TIME THAT HE WAS
21 HURT AT ALL---

22 A NO, SIR.

23 Q ---THAT NIGHT? DID HE HAVE ANY VISIBLE INJURIES?

24 A NO, SIR.

25 Q AND HE ADMITTED TO YOU THAT HE SHOT TROY ROUSE IN THE

1 BACK. ISN'T THAT TRUE?

2 A YES, SIR.

3 Q IN THE BACK, RIGHT?

4 A YES, SIR.

5 Q I BELIEVE YOU TESTIFIED THAT YOUR STATEMENT WAS,
6 "TROY DIDN'T FALL SO EUNICE SHOT TWICE AGAIN." SO TROY
7 MUST HAVE FALLEN THEN, IS THAT CORRECT?

8 A YES, SIR.

9 Q AND THEN HE SAID EVERYTHING COULD HAVE BEEN AVOIDED
10 IF EUNICE WOULD HAVE SHOT TROY, IS THAT WHAT HE SAID?

11 A YES, SIR.

12 Q AND AGAIN, MR. EFRAIN THOMAS DID ADMIT HE SHOT TROY
ROUSE IN THE BACK TWICE?

13 A YES, SIR.

14 Q DID YOU SEE ANY GUNSHOT WOUNDS OR ANYTHING ON MR.
THOMAS?

15 A NO, SIR.

16 Q NOW I BELIEVE YOU ALSO GAVE A SECOND STATEMENT TO THE
POLICE?

17 A YES, SIR.

18 Q AND THAT INVOLVED RIDING IN THE CAR FROM CHAD JAMES'
HOUSE?

19 A YES, SIR.

20 Q AND YOU ADMITTED TO THEM THAT CHAD JAMES---
MR. JOHNSON: YOUR HONOR, OBJECTION. MAY WE

1 APPROACH?

2 THE COURT: YES, SIR.

3 (THEREUPON, ATTORNEYS CONFER WITH THE JUDGE AT THE
4 BENCH.)

5 THE COURT: THE OBJECTION IS SUSTAINED.

6 Q DID MR. THOMAS EVER TELL YOU THAT MR. TROY ROUSE HAD
7 A WEAPON OR A GUN?

8 A NO, SIR.

9 Q AND AGAIN THIS WAS RIGHT AFTER TROY ROUSE WAS KILLED
10 ON APRIL 7, 2005?

11 A YES, SIR.

12 MR. SAVERANCE: ONE SECOND, YOUR HONOR.

13 Q MS. JOHNSON, YOU CAN'T SAY THAT YOU KNOW FOR A FACT
14 THAT EFRAIN THOMAS SHOT TROY ROUSE IN SELF DEFENSE OR SOME
15 OTHER REASON, CAN YOU?

16 A NO, SIR.

17 Q YOU DON'T KNOW WHY HE SHOT HIM, DO YOU?

18 A NO, SIR.

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

20 THE COURT: MR. WATTS.

21 CROSS EXAMINATION BY MR. WATTS:

22 Q MS. JOHNSON, THE ONLY KNOWLEDGE YOU HAVE ABOUT APRIL
23 7TH, AND WHAT HAPPENED INVOLVING MR. ROUSE, IS WHAT
24 SOMEBODY TOLD YOU, RIGHT?

25 A YES, SIR.

1 Q YOU WEREN'T THERE.

2 A NO, SIR.

3 MR. WATTS: NOTHING FURTHER.

4 THE COURT: MR. JOHNSON.

5 MR. JOHNSON: NO QUESTIONS, YOUR HONOR.

6 THE COURT: MR. WHEELER.

7 MR. WHEELER: VERY BRIEF REDIRECT.

8 THE COURT: YES, SIR.

9 REDIRECT EXAMINATION BY MR. WHEELER:

10 Q MS. JOHNSON, FIRST, I THINK I NEED TO DO THIS.
YOU'VE IDENTIFIED THIS STATEMENT. AND THIS IS THE
STATEMENT THAT YOU GAVE THE POLICE, IS THAT CORRECT?

A YES, SIR.

MR. WHEELER: MR. SAVERANCE, I DON'T THINK I NEED TO
SHOW IT TO YOU. I WOULD SUBMIT THIS AS A DEFENDANT'S
EXHIBIT.

MR. SAVERANCE: YOUR HONOR, I WOULD OBJECT TO THAT.
THERE ARE PARTS PAST THAT I WAS TRYING TO BRING UP, BUT
WASN'T ALLOWED TO. THAT WASN'T -- EVERYTHING SHE READ WAS
NOT THE ENTIRE STATEMENT.

THE COURT: MR. WHEELER.

MR. WHEELER: JUDGE, THE PART THAT APPARENTLY I
HANDED UP AND YOU READ. SHE SAID SOMEBODY ELSE HAD
WRITTEN SOME QUESTIONS IN THERE. I GUESS I COULD TAKE
THAT PAGE OFF. I WOULD LIKE TO ADMIT THE PORTIONS THAT

1 SHE READ.

2 THE COURT: HE MOVES TO ADMIT THE PORTIONS OF THE
3 STATEMENT THAT SHE READ. WHAT'S THE STATE'S POSITION?

4 MR. SAVERANCE: YOUR HONOR, MY POSITION IS, EITHER IT
5 COMES IN AS HER COMPLETE STATEMENT OR IT DOESN'T. AND IF
6 IT COMES IN, THERE ARE OTHER THINGS THAT I WILL BE ALLOWED
7 TO GET IN POSSIBLY.

8 MR. JOHNSON: YOUR HONOR, I ALSO HAVE SOME CONCERNS
9 ABOUT IT AS WELL. COULD WE APPROACH?

10 (THEREUPON, THE ATTORNEYS APPROACH THE BENCH AND
11 CONFER WITH JUDGE.)

12 MR. WHEELER: I WILL WITHDRAW THAT MOTION, AND IT'S
13 FOR I.D. SO I WILL LEAVE IT HERE.

14 Q MR. SAVERANCE ASKED YOU, YOU SAY YOU HAD NO IDEA WHY
15 THIS SHOOTING OCCURRED. DID MR. THOMAS TELL YOU WHY THIS
16 SHOOTING OCCURRED?

17 A NO, SIR.

18 Q DID MR. EFRAIN THOMAS STATE AND YOU JUST READ, TELL
19 YOU IT WAS BECAUSE OF A FIGHT---

20 MR. SAVERANCE: OBJECTION,---

21 THE COURT: OBJECTION SUSTAINED.

22 MR. SAVERANCE: ---HE'S LEADING THE WITNESS.

23 Q DID HE TELL YOU WHY THE SHOOTING OCCURRED?

24 A YES.

25 Q OKAY, WHY?

1 A ALL I KNOW IS, THAT TROY HIT THE BACK OF EUNICE'S
2 HAT.

3 Q TROY HIT THE BACK OF EUNICE'S HAT. ...WHAT HAPPENED
4 AFTER DOING IT?

5 A A TUSSLE.

6 Q DID HE TELL YOU HE WAS TRYING TO BREAK UP A FIGHT?

7 A YES.

8 MR. SAVERANCE: OBJECTION---

9 THE COURT: OBJECTION SUSTAINED---

10 MR. SAVERANCE: ---LEADING.

11 THE COURT: ---AS TO LEADING.

12 Q YOU TOLD ALL THIS TO THE POLICE ON APRIL 28TH, IS
13 THAT RIGHT?

14 A YES, SIR.

15 MR. WHEELER: THANK YOU, MS. JOHNSON.

16 THE COURT: MR. SAVERANCE.

17 RECROSS EXAMINATION BY MR. SAVERANCE:

18 Q MR. WHEELER JUST ASKED YOU WHY EFRAIN THOMAS SHOT
19 TROY IN THE BACK. IS THAT WHAT HE JUST ASKED YOU THAT
20 QUESTION?

21 A YES.

22 Q YOU WERE NOT THERE.

23 A NO.

24 Q YOU DON'T KNOW.

25 A NO.

1 Q YOU CAN'T SAY THAT YOU KNOW WHY TROY ROUSE WAS SHOT,
2 CAN YOU?

3 A NO.

4 Q AND IT'S POSSIBLE, ISN'T IT, THAT EFRAIN THOMAS MAYBE
5 PANICKED AND SHOT TROY ROUSE?

6 A YES.

7 Q AND IT'S POSSIBLE HE MAY HAVE HAD SOME ILL WILL OR
8 SOMETHING LIKE THAT AND HE SHOT HIM.

9 MR. WATTS: OBJECTION, SPECULATION.

10 THE COURT: OBJECTION IS---

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

12 THE COURT: MR. WATTS?

13 RECROSS EXAMINATION BY MR. WATTS:

14 Q AS FAR AS EUNICE MCCALL, YOU CAN'T SAY, IS THAT
15 CORRECT? AS FAR AS YOU KNOW.

16 MR. SAVERANCE: I OBJECT.

17 Q BASED ON WHAT YOU KNOW. IF HE WAS THERE, YOU DON'T
18 KNOW WHAT HAPPENED.

19 MR. SAVERANCE: OBJECTION.

20 MR. WATTS: I'LL WITHDRAW THAT QUESTION.

21 Q YOU DON'T KNOW WHETHER EUNICE MCCALL WAS THERE, DO
22 YOU?

23 A AFTER THE FIGHT? NO, I DON'T KNOW IF HE WAS THERE.

24 Q YOU DON'T KNOW IF HE WAS THERE, CORRECT?

25 A YES, SIR.

1 Q YOU DON'T KNOW WHAT OCCURRED.

2 A NO, SIR.

3 MR. WATTS: NO FURTHER QUESTIONS.

4 MR. WHEELER: WE WOULD CALL INVESTIGATOR THOMPSON.

5 INVESTIGATOR THOMPSON,
6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION BY MR. WHEELER:

8 Q INVESTIGATOR THOMPSON, WE HAVE TALKED A LITTLE WHILE
9 AGO. AND JUST AS A MATTER OF COURSE, FIRST, I WANT TO
0 TALK TO YOU, JUST GET YOU TO LOOK OVER THESE. YOU HAD
1 IDENTIFIED THESE PICTURES. I KNOW YOU ARE INVOLVED IN
2 THIS LITIGATION. ARE THOSE SOME OF THE PICTURES THAT
3 APPEARS FROM THE NUMBERING ON THE BOTTOM THAT SLED TOOK IN
4 THIS CASE OF THE CRIME SCENE?

5 A YES, SIR. THESE ARE PHOTOS THAT ARE CONSISTENT WITH
6 THE PHOTOS THAT WERE TAKEN AT THE CRIME SCENE.

7 Q SOME OF THEM IN THE COURSE OF YOUR INVESTIGATION;
8 THAT WERE TAKEN IN THE COURSE OF THE INVESTIGATION.

9 A YES.

0 Q AND DO THEY APPEAR AS FAR AS YOU CAN TELL, ACCURATE,
1 BASED ON THE NUMBERING ON THE BOTTOM OF THEM AND WHAT THEY
2 DEPICT?

3 A ONCE AGAIN, SIR, THE ONLY THING THAT I CAN TESTIFY TO
4 IS THAT THEY ARE ACCURATE. AND THIS IS A -- THIS IS
5 SLED'S NUMBER SYSTEM FOR THEIR EVIDENCE COLLECTION FOR

1 PHOTO IDENTIFICATION FOR A CRIME SCENE. BUT ONCE AGAIN I
2 CAN'T TESTIFY TO ANYTHING AT THE SCENE.

3 Q AT THE SCENE.

4 A YES, SIR.

5 MR. WHEELER: BASED ON THE NUMBER AND HIS
6 IDENTIFICATION OF THEM, I WOULD MOVE TO SUBMIT WHAT HAS
7 BEEN PREVIOUSLY MARKED FOR IDENTIFICATION AS DEFENDANT'S 1
8 THROUGH 6 I BELIEVE IT WAS. OR 8.

9 MR. SAVERANCE: NO OBJECTION, YOUR HONOR.

10 THE COURT: ARE THOSE ITEMS MARKED FOR STATE'S
11 EXHIBITS?

12 MR. WHEELER: PREVIOUSLY MARKED AS DEFENDANT'S
13 EXHIBITS.

14 THE COURT: DEFENDANT'S EXHIBITS.

15 MR. SAVERANCE: YOUR HONOR, MY, BASED ON MY MEMORY,
16 MY ONLY OBJECTION I DON'T KNOW THAT T-4 HAS BEEN
17 AUTHENTICATED AS FAR AS WITH THE WITNESS.

18 THE COURT: WHAT DO YOU SAY MR. WHEELER? DO YOU WANT
19 TO QUESTION THE WITNESS CONCERNING WHETHER OR NOT HE CAN
20 IDENTIFY THOSE ITEMS?

21 MR. WHEELER: YOUR HONOR, CAN I FIRST ASK MR.
22 SAVERANCE IF HE HAS ANY OBJECTION TO THE REMAINING
23 PICTURES?

24 THE COURT: ALL RIGHT.

25 MR. SAVERANCE: YOUR HONOR, 4, 1 AND 6, I JUST -- I

1 DON'T RECALL THEM BEING AUTHENTICATED PREVIOUSLY. AND I
2 THINK OFFICER THOMPSON STATED SOMETHING ABOUT NOT BEING AT
3 THE SCENE.

4 THE COURT: YOUR OBJECTION IS 4, 1, 6.

5 MR. SAVERANCE: YES.

6 THE COURT: AND YOU DO NOT OBJECT TO THE OTHERS.

7 MR. SAVERANCE: YES, SIR.

8 THE COURT: TELL ME THE NUMBERS.

9 MR. WHEELER: T-2, T-3, T-8, AND T-5.

10 THE COURT: ANY OBJECTION FROM ANY OTHER COUNSEL AS
11 TO THOSE EXHIBITS?

12 MR. JOHNSON: I HAVE NO OBJECTION, YOUR HONOR.

13 MR. WATTS: NO OBJECTION, YOUR HONOR.

14 THE COURT: THEY'RE ADMITTED WITHOUT OBJECTION.

15 (PHOTOGRAPHS MARKED DEFENDANT THOMAS 2, 3, 5 AND 8
16 INTO EVIDENCE.)

17 MR. WHEELER: YOUR HONOR, IF IT PLEASE THE COURT, I
18 AM GOING TO ASK HIM SOME MORE ABOUT THESE PICTURES.

19 THE COURT: YES.

20 Q THESE PICTURES THAT MR. SAVERANCE IS OBJECTING TO, IF
21 YOU WOULD JUST DESCRIBE WHAT THEY DEPICT.

22 A YES, SIR. THIS PHOTO T-1 IT DEPICTS WHAT APPEARS TO
23 BE A PARTIAL BLUE JEAN BLACK BELT AND PLAID MATERIAL.

24 SEVERAL ITEMS OF US CURRENCY AND KEYS ON WHAT APPEARS TO
25 BE CONCRETE PAVEMENT.

1 Q OKAY. AND IF YOU WILL SET THOSE ASIDE.

2 A YES, SIR. T-6 APPEARS TO CONTAIN A BLACK IN COLOR
3 SHOE. A WHITE AND GRAY PIECE OF MATERIAL CALLED CLOTHING
4 MATERIAL. PLAID MATERIAL. IT LOOKS LIKE A BLACK IN COLOR
5 LEATHER MATERIAL. POSSIBLY A BELT. A CELL PHONE. U.S.
6 CURRENCY AND SILVER CURRENCY. A LIGHTER AND A KEY ON A
7 KEY RING, I BELIEVE.

8 Q OKAY.

9 A T-4 DEPICTS A PLAID MATERIAL, BLACK IN COLOR BELT.
10 BLUE JEAN PANTS, AND A CREME WHITE IN COLOR I WOULD SAY, A
11 PILL BOTTLE.

12 Q NOW IN ALL THREE OF THESE PICTURES, IF YOU HOLD THEM
13 UP, DOES THAT APPEAR TO BE CONSISTENT WITH THE SLED, IN
14 FACT, DOES IT SAY SLED INVOLVEMENT?

15 A IT DOES SAY SLED.

16 Q LEFT HAND OF THE PICTURE?

17 A YES, SIR.

18 Q DO THOSE APPEAR TO BE CONSISTENT WITH THE PHOTOGRAPHS
19 MADE BY SLED AT THE CRIME SCENE?

20 A THOSE ARE CONSISTENT WITH SLED PHOTOS.

21 MR. SAVERANCE: OBJECTION, YOUR HONOR.

22 THE COURT: BASIS FOR THE OBJECTION?

23 MR. SAVERANCE: YOUR HONOR, HE TESTIFIED HE WASN'T AT
24 THE SCENE. AND HE'S GOING BY WHAT'S ON THE PICTURES. I
25 DON'T KNOW HOW HE WOULD KNOW WHAT THOSE ARE THE ONES TAKEN.

1 BY SLED. AND THAT WAS HOW THE SCENE WAS.

2 THE COURT: THE OBJECTION IS OVERRULED.

3 Q AND WITHOUT REGARD TO THE CONTENTS OF WHAT IS IN THE
4 PICTURES, YOU ARE FAMILIAR WITH THE NUMBERING SYSTEM THAT
5 THE SLED PHOTOGRAPH CHOOSES.

6 A I BELIEVE SO.

7 Q BASED ON THE NUMBERING SYSTEM AND THE FACT THAT THESE
8 PICTURES SAY SLED ON THE BOTTOM OF IT, WOULD IT APPEAR TO
9 BE THE PHOTOGRAPHS TAKEN BY SLED?

10 A YES, SIR.

11 Q DO THEY DO THAT FOR YOUR POLICE DEPARTMENT?

12 A YES, SIR. THEY DO THAT FOR THE PURPOSE OF THIS
13 INVESTIGATION.

14 Q OKAY. TO AID YOU IN THE INVESTIGATION OF A MURDER
15 CASE.

16 A I'M SORRY, SAY IT AGAIN?

17 Q TO AID YOU IN INVESTIGATING A MURDER CASE.

18 A YES, SIR.

19 Q THIS MURDER CASE.

20 A YES, SIR.

21 Q OKAY. THESE ARE THE PHOTOS THAT MR. SAVERANCE IS
22 OBJECTING TO, IS THAT CORRECT?

23 A YES, SIR.

24 MR. WHEELER: AND I DON'T HAVE ANYTHING FURTHER WITH
25 THESE PICTURES.

1 THE COURT: ANY OBJECTION, MR. SAVERANCE?

2 MR. SAVERANCE: YOUR HONOR, AS I SAID, THE ONLY
3 OBJECTION IS JUST THAT HE WASN'T AT THE SCENE, AND
4 COULDN'T IDENTIFY THAT THAT WAS THE ACTUAL STUFF THAT WAS
5 THERE.

6 THE COURT: ANY OBJECTION BY ANY OTHER COUNSEL?

7 MR. JOHNSON: NO OBJECTION, YOUR HONOR.

8 THE COURT: THE ITEMS ARE ADMITTED OVER OBJECTION.

9 (PHOTOGRAPHS MARKED DEFENDANT THOMAS EXHIBIT NOS. 1,
10 4, 6 AND 7 INTO EVIDENCE.)

11 MR. WHEELER: THEY'VE BEEN ADMITTED?

12 THE COURT: YES, SIR.

13 MR. WHEELER: THANK YOU, YOUR HONOR.

14 Q INVESTIGATOR THOMPSON, DO YOU REMEMBER WHEN WE WERE
15 TALKING EARLIER TODAY ABOUT THE STATEMENT THAT YOU TOOK
16 FROM MR. THOMAS THE DAY HE WAS ARRESTED?

17 A YES, SIR.

18 MR. WHEELER: I BEG THE COURT'S INDULGENCE, ONE
19 MOMENT.

20 THE COURT: YES, SIR.

21 Q PREVIOUSLY SUBMITTED AS STATE'S 42. DOES THAT APPEAR
22 TO BE IT?

23 A YES, SIR.

24 Q DO YOU REMEMBER I ASKED YOU ABOUT, I THINK IT WAS THE
25 LAST SENTENCE ON THE FIRST PAGE WHERE HE INDICATED THAT

1 MR. ROUSE HAD COME AT HIM?

2 A YES, SIR.

3 Q WHAT DATE DID HE GIVE YOU THAT STATEMENT?

4 A THE STATEMENT WAS GIVEN TO ME ON APRIL 29TH OF 2005.

5 Q APRIL THE 29TH OR MAY THE 29TH? I THOUGHT IT WAS THE
6 DAY HE WAS ARRESTED.

7 A NO, SIR. THIS IS APRIL 29TH.

8 Q OKAY.

9 A 4-29-05.

10 Q THAT'S THE DAY HE WAS ARRESTED, CORRECT?

11 A THAT'S CORRECT.

12 Q NOW YOU INDICATED THAT YOU HAD NO REASON NOT TO
13 BELIEVE THAT WHEN HE GAVE IT TO YOU EARLIER TODAY. THAT
14 PORTION OF HIS STATEMENT.

15 A I HAD NO REASON TO CHALLENGE THAT AT ALL.

16 Q OKAY. BUT WERE YOU AWARE THAT YOUR DEPARTMENT HAD
17 TAKEN A STATEMENT FROM MS. JOHNSON THE PREVIOUS DAY, WHERE
18 HE MADE A TOTALLY DIFFERENT ADMISSION TO HER?

19 A REPEAT THAT.

0 Q LET ME SHOW YOU HER STATEMENT. OKAY. I'LL SHOW YOU
1 WHAT HAS BEEN MARKED AS 10 FOR IDENTIFICATION. DOES THAT
2 APPEAR TO BE THE STATEMENT OF MS. COURTNEY JOHNSON?

3 A YES, IT DOES.

4 Q AND YOU WERE HERE A MINUTE AGO WHEN SHE TESTIFIED,
5 WEREN'T YOU?

1 A I WAS.

2 Q NOW DID YOU, FROM READING HER STATEMENT AND HEARING
3 HER TESTIMONY, SHE GAVE A DIFFERENT VERSION THAN WHAT MR.
4 THOMAS' STATEMENT SAID.

5 A THERE WERE SEVERAL ADDITIONS TO HER STATEMENT.

6 Q OKAY. WELL I'M ASKING YOU TO READ, IF YOU WOULD---

7 A OH, YES, SIR.

8 Q ---THE HIGHLIGHTED PORTIONS.

9 A YOU WANT ME TO READ. I APOLOGIZE, I MISUNDERSTOOD.

10 Q OKAY. THANK YOU.

11 A OKAY. SO HE SAID THEY WERE ON THE WAY TO JEROME'S
12 STORE TO PLAY POOL. AND ON THE WAY THERE HE WAS WIPING
13 THE DUST OFF OF HIS SHOES. HE SAID THAT HE WAS TELLING
14 THEM THAT DOWN SOUTH WAS DIRTY. HE CONTINUED WIPING HIS
15 SHOES. AND HE SAID HE LOOKED UP AGAIN FOR A SECOND TIME.
16 THAT'S WHEN HE SAW TROY ROUSE HIT THE BACK OF EUNICE'S
17 HAT. THEN EUNICE MCCALL AND TROY STARTED TUSSLING. AND
18 THEN HE, EFRAIN, WAS GOING TO BREAK THE FIGHT UP WHEN HE
19 WAS BETWEEN EUNICE AND TROY. HE HEARD TWO GUNSHOTS. HE
20 JUMPED BACK TO SEE IF HE WAS SHOT, BUT HE WASN'T. AFTER
21 EUNICE SHOT TROY TWICE, TROY WAS STILL ON EUNICE. ALMOST
22 HAD THE GUN ON EUNICE -- STILL ON EUNICE. ALMOST HAD THE
23 GUN OUT OF EUNICE'S HAND. THEN EFRAIN SAID THAT HE SHOT
24 TROY TWICE IN THE BACK. BUT THEN TROY STILL DIDN'T FALL.
25 TROY WAS STILL HOLDING ON TO EUNICE. ALMOST HAD HIM DOWN.

1 EUNICE. SO EUNICE SHOT TWICE AGAIN. SO TROY MUST FALL
2 THEN.

3 EFRAIN SAID EVERYTHING COULD HAVE BEEN IF EUNICE
4 WASN'T SHOT -- IT SAYS, WOULDN'T HAVE SHOT TROY. EFRAIN
5 SAID THEY JUST COULD HAVE FIGHT AND LET IT BE.

6 Q FROM THAT VERSION THAT YOU'VE JUST READ, DID IT SAY
7 ANYTHING ABOUT TROY ATTACKING MR. THOMAS, OR COMING AT MR.
8 THOMAS SPECIFICALLY?

9 A NONE.

10 Q WAS THAT A STATEMENT IN REFERENCE TO TRYING TO GET
11 MR. THOMAS -- EXCUSE ME, MR. ROUSE, OFF OF MR. MCCALL?
12 THE STATEMENT YOU JUST READ. STRIKE THAT QUESTION. THE
13 JURY HEARD YOU READ IT.

14 A I'M SORRY.

15 Q STRIKE THAT QUESTION. I'LL WITHDRAW THE QUESTION.

16 A ALL RIGHT.

17 Q I DON'T MEAN TO BELABOR THE POINT. THE BOTTOM
18 SENTENCE IF YOU WILL TURN BACK TO THE 29TH.

19 A YES, SIR.

20 Q THAT IS INCONSISTENT WITH WHAT MS. JOHNSON SAID.

21 A THAT IS.

22 Q IS IT NOT?

23 A YES, SIR.

24 Q AND MS. JOHNSON'S STATEMENT WAS GIVEN THE DAY BEFORE
25 MR. EFRAIN THOMAS'.

1 A THAT'S CORRECT.

2 Q I ASKED YOU EARLIER IF YOU HAD ANY REASON TO DOUBT OR
3 WONDER ABOUT WHAT HE WAS TELLING IN THAT STATEMENT. DO
4 YOU RECALL THAT?

5 A AND I SAID I COULDN'T CHALLENGE IT.

6 Q WELL YOU SAID YOU HAD NO REASON TO.

7 A NO, SIR.

8 Q BUT YOU WERE AWARE THAT SHE HAD SAID SOMETHING
9 TOTALLY DIFFERENT, WEREN'T YOU?

10 A I'M AWARE OF IT.

11 Q THE DAY BEFORE.

12 A YES, SIR.

13 Q AND SHE TOLD YOU THAT THOSE WERE THE EVENTS AS
14 RELAYED TO HER THE NIGHT OF THE CRIME.

15 A YES, SIR.

16 MR. WHEELER: I BEG THE COURT'S INDULGENCE. THANK
17 YOU, INVESTIGATOR THOMPSON.

18 CROSS EXAMINATION BY MR. SAVERANCE:

19 Q IN BOTH STATEMENTS, THE STATEMENT THAT EFRAIN THOMAS
20 MADE TO COURTNEY JOHNSON AND THE NEXT DAY THE STATEMENT HE
21 MADE TO YOU, IN BOTH STATEMENTS HE DID ADMIT TO SHOOTING
22 TROY ROUSE.

23 A HE DID.

24 Q AND THE SHOOTING OF TROY ROUSE IN THE BACK.

25 A HE DID.

1 Q SO THAT WAS CONSISTENT.

2 A YES, IT WAS.

3 Q AND IN EITHER STATEMENT, DID HE INDICATE THAT HE HAD
4 BEEN INJURED OR HURT IN ANY WAY?

5 A NEITHER. HE WAS NEVER INJURED ACCORDING TO HIS
6 STATEMENTS.

7 Q AND IN NEITHER STATEMENT DID HE INDICATE THAT TROY
8 ROUSE HAD A GUN OR A WEAPON.

9 A NEITHER.

0 Q AND IN NEITHER STATEMENT DID HE INDICATE THAT TROY
1 ROUSE SHOT AT HIM OR ATTACKED HIM.

2 A IN NEITHER STATEMENT.

3 Q ARE THOSE THINGS THE REASONS YOU DIDN'T CHALLENGE MR.
4 THOMAS' STATEMENT TO YOU?

5 A I DIDN'T CHALLENGE MR. THOMAS' STATEMENT DUE TO THE
6 MERE FACT FOR A COUPLE OF THINGS. HE BELIEVED THAT'S WHAT
7 POSSIBLY COULD HAVE HAPPENED THAT PARTICULAR TIME. OR HE
8 COULD HAVE BEEN LYING ON THAT PARTICULAR PART OF THE
9 STATEMENT.

0 Q ONE SECOND, YOUR HONOR. IN THE STATEMENT HE GAVE,
1 THAT YOU GOT FROM COURTNEY JOHNSON, EFRAIN THOMAS DID SAY
2 I JUST KILLED TROY. IS THAT RIGHT?

3 A YES.

4 Q AND HE ACKNOWLEDGED IN THAT STATEMENT THAT HE AND MR.
5 MCCALL SHOT TROY ROUSE.

1 A HE DID.

2 Q AND THAT WAS NOT COMPLETELY CONSISTENT WITH HIS
3 STATEMENT TO YOU, WAS IT?

4 A NO, IT WAS NOT.

5 Q BECAUSE I BELIEVE HE STATED HE SHOT TROY ROUSE IN HIS
6 CONFESSION TO YOU.

7 A HE DID.

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

9 THE COURT: MR. WATTS.

10 MR. WATTS: ONE SECOND, YOUR HONOR.

11 THE COURT: MR. JOHNSON.

12 MR. JOHNSON: I HAVE NO QUESTIONS, YOUR HONOR.

13 MR. SMITH: YOUR HONOR, WE HAVE NO QUESTIONS OF THIS
14 WITNESS AT THIS TIME.

15 MR. WHEELER: YOUR HONOR, I MIGHT HAVE REDIRECT, AND
16 I MIGHT NEED TO APPROACH.

17 THE COURT: LADIES AND GENTLEMEN, PLEASE GO TO THE
18 JURY ROOM FOR A SHORT WHILE. WE'RE NOT GOING TO BE HERE
19 ALL NIGHT REST ASSURED ABOUT THAT. BUT WE'RE GOING TO
20 PRESS ON IN THIS CASE. SO PLEASE GO TO THE JURY ROOM.
21 PLEASE DO NOT DISCUSS THE CASE.

22 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
23 PRESENCE OF THE JURY.)

24 THE COURT: YOU MAY PUT ON THE RECORD WHATEVER YOU
25 WOULD LIKE TO BRING TO THE COURT'S ATTENTION. YES, SIR

1 MR. WHEELER: THANK YOU, YOUR HONOR. IF IT PLEASE
2 THE COURT, DURING THE COURSE OF THE STATE'S CROSS
3 EXAMINATION OF INVESTIGATOR THOMPSON, THE QUESTION WAS
4 ASKED, AND I'M PARAPHRASING, BECAUSE I DIDN'T WRITE IT
5 DOWN VERBATIM OR ANYTHING. BUT I THINK MR. SAVERANCE
6 WOULD SAY SOMETHING TO THE EFFECT OF MR. THOMAS DIDN'T SAY
7 ANYTHING TO YOU ABOUT THAT. THAT BEING MR. MCCALL'S
8 INVOLVEMENT IN THE SHOOTING. AND I'M PARAPHRASING ROUGHLY
9 SOMETHING TO THAT EFFECT.

10 BASED ON THAT, I WOULD LIKE TO BE ABLE TO GO AHEAD
11 AND OF COURSE WE ALL KNOW THE STATEMENT THAT INVESTIGATOR
12 THOMPSON HAS TALKING ABOUT WAS REDACTED EARLIER TODAY. IT
13 DID INCLUDE REFERENCES TO MR. MCCALL. A STORY THAT WAS
14 NOT A STORY, BUT A VERSION OF THE EVENTS THAT WERE A LOT
15 MORE CONSISTENT WITH WHAT MS. JOHNSON HAS PREVIOUSLY
16 TESTIFIED TO. AND WE WOULD LIKE TO BE ABLE TO GO AHEAD
17 AND GO IN TO THAT.

18 THE COURT: BEFORE PROCEEDING ANY FURTHER, MADAM
19 CLERK, I WANT YOU TO PLAY THAT CROSS EXAMINATION OF MR.
20 SAVARENCE OF THIS OFFICER. WHEN YOU FIND IT ON THE
21 MACHINE, PLAY IT BACK.

22 (THEREUPON, REPORTER PLAYING TESTIMONY OF
23 INVESTIGATOR THOMPSON.)

24 MR. WHEELER: I'M SORRY, I COULDN'T HEAR ANYTHING. I
25 DON'T WANT TO MISCHARACTERIZE ANYTHING THAT MR. SAVERANCE

1 SAID. MY RECOLLECTION OF IT WAS SOMETHING THAT BROUGHT IN
2 TO QUESTION THE ISSUE OF WHETHER MR. THOMAS HAD GIVEN A
3 VERSION OF EVENTS THAT LEFT ANY REFERENCE TO MR. MCCALL
4 OUT. WHICH THE REDACTED VERSION DOES BY NATURE. WHICH
5 WOULD NEGATIVELY OF COURSE NEGATIVELY REFLECT UPON HIS---

6 THE COURT: YES, SIR.

7 MR. WHEELER: ---IT APPEARED THAT HE WAS LYING,
8 CHANGING HIS STORY SO COMPLETELY.

9 THE COURT: ALL RIGHT.

10 MR. WHEELER: I DON'T KNOW EXACTLY WHAT THE WORDS
11 ARE, BUT SOMETHING THAT WOULD SEEM TO BRING THAT IN.

12 THE COURT: MR. WATTS, MR. JOHNSON, DO Y'ALL OBJECT
13 TO THIS UNREDACTED PORTION COMING IN AT THIS POINT AND
14 TIME?

15 MR. SMITH: YES, SIR.

16 MR. WATTS: YES, YOUR HONOR.

17 THE COURT: AND MR. JOHNSON ALSO OBJECTS?

18 MR. JOHNSON: I DO.

19 THE COURT: AND I RULE THAT THE STATE CANNOT ASSIST
20 THE DEFENDANT THOMAS IN OPENING THE DOOR. THAT MIGHT
21 VIOLATE THE CONFRONTATION RIGHTS OF MCCALL AND JAMES. AND
22 THAT WHEREAS I DO UNDERSTAND THAT MR. THOMAS STILL HAS THE
23 RIGHT TO FULLY PRESENT HIS SELF DEFENSE, I DO NOT -- I
24 FIND THAT THE PREJUDICIAL EFFECT OF THIS OUTWEIGHS ANY
25 PROBATIVE VALUE AS IT RELATES TO MR. THOMAS. AND I DENY

1 YOUR MOTION TO LET IN THIS ENTIRE STATEMENT.

2 MR. WHEELER: YOUR HONOR, GIVEN THAT, I PROBABLY
3 DON'T HAVE ANY ADDITIONAL QUESTIONS.

4 THE COURT: SO IF YOU DON'T HAVE ANY ADDITIONAL
5 THEN---

6 MR. SAVERANCE: I DON'T HAVE ANY OTHER.

7 THE COURT: SO WE ARE THROUGH WITH THIS WITNESS.

8 MR. SAVERANCE: YES, SIR.

9 THE COURT: AT THIS POINT IT APPEARS. WELL IF YOU
0 WILL SAY THAT WHEN THE JURY COMES BACK. NOW SCHEDULING
1 WISE, I THINK WE ARE GOING TO QUIT THEN AT THIS TIME AFTER
2 THE JURY COMES BACK OUT AND START BACK AT 9:30. UNLESS
3 YOU HAVE A SHORT WITNESS TO DO.

4 MR. WHEELER: I DON'T THINK SO. I DON'T HAVE ONE
5 THAT SHORT.

6 THE COURT: ALL RIGHT, BRING THEM BACK OUT.

7 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
8 PRESENCE OF THE JURY.)

9 THE COURT: WE ARE BACK OUT. THE OBJECTION IS
0 SUSTAINED. THERE WAS AN OBJECTION.

1 MR. WHEELER: YES, SIR, THERE WAS. AND I DON'T HAVE
2 ANY FURTHER QUESTIONS.

3 THE COURT: THEN YOU MAY STEP DOWN.

4 A THANK YOU.

5 THE COURT: LADIES AND GENTLEMEN, WE HAVE REACHED A

1 STOPPING POINT FOR THIS. WE WILL START AT 9:45 TOMORROW
2 MORNING. I WANT TO REPEAT THE ADMONITION THAT I GAVE
3 THAT YOU ARE NOT TO READ ANY LOCAL AREA NEWSPAPERS FOR
4 THIS AREA, TO INCLUDE BISHOPVILLE, LEE COUNTY, SUMTER
5 COUNTY OR THE STATE NEWSPAPER. ANYTHING THAT MAY HAVE A
6 REFERENCE TO THIS CASE YOU ARE NOT TO READ. YOU ARE NOT
7 TO DISCUSS THE CASE WITH ANYONE OR ALLOW ANYONE TO DISCUSS
8 IT WITH YOU. IF ANY OF THAT HAPPENS, YOU MUST BRING IT TO
9 MY ATTENTION. IT WILL BE A VIOLATION OF YOUR OATH AS A
10 JURY TO ALLOW THAT TO HAPPEN. AND WITH THAT ADMONITION, I
11 WISH YOU A GOOD EVENING. I'LL SEE YOU TOMORROW MORNING AT
12 9:45. THANK YOU FOR YOUR INDULGENCE.

13 (THEREUPON, THE JURY IS DISMISSED AT 6:20 P.M.)

14 THE COURT: ANYTHING ELSE BEFORE WE LEAVE THIS PLACE?

15 MR. SAVERANCE: NOTHING FROM THE STATE, YOUR HONOR.

16 MR. WHEELER: NOTHING FOR THE WITNESS THOMAS, YOUR
17 HONOR.

18 MR. WATTS: NOTHING, YOUR HONOR.

19 MR. JOHNSON: NOTHING, YOUR HONOR.

20 THE COURT: WE WILL BE IN RECESS THEN UNTIL 9:45 OR
21 10 TOMORROW MORNING.

22 -----

23

24

25

1 (THEREUPON, THE TRIAL COMMENCES ON THURSDAY, APRIL
2 6, 2006, AT 9:45 A.M.)

3 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
4 PRESENCE OF THE JURY.)

5 THE COURT: I HAVE REVIEWED THE TRANSCRIPT OF THE
6 TESTIMONY OF ONE OF THE WITNESSES, MS. HILL. AND I THINK
7 TAKING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE
8 STATE AND ALL REASONABLE INFERENCES THAT CAN BE DRAWN
9 FROM THE EVIDENCE, I FIND THAT THE JURY COULD CONCLUDE
10 THAT MR. JAMES WAS PRESENT AT OR NEAR THE TIME THAT THE
11 SHOOTING; SUCH THAT, HE WOULD HAVE KNOWN OF THE SHOOTING
12 PRIOR TO TRANSPORTING THE DEFENDANT. AND I THEREFORE
13 DENY THE DEFENSE'S MOTION FOR A DIRECTED VERDICT.

14 MR. JOHNSON: THANK YOU, YOUR HONOR.

15 THE COURT: ANYTHING ELSE BEFORE WE BRING THE JURY?

16 MR. SAVERANCE: NOTHING FROM THE STATE, YOUR HONOR.

17 MR. WHEELER: NOTHING FROM MR. THOMAS, YOUR HONOR.

18 MR. WATTS: NOTHING FROM MR. MCCALL, YOUR HONOR.

19 MR. JOHNSON: NOTHING FROM MR. JAMES, YOUR HONOR.

20 THE COURT: ALL RIGHT, IF YOU WILL BRING THE JURY.

21 (THEREUPON, THE FOLLOWING TAKES PLACE IN THE
22 PRESENCE OF THE JURY.)

23 THE COURT: GOOD MORNING.

24 THE JURY: GOOD MORNING.

25 THE COURT: CONTINUING WITH THE DEFENSE, MR. WHEELER.

1 MR. WHEELER: THANK YOU YOUR HONOR. MAY IT PLEASE
2 THE COURT, WE WOULD CALL MR. EFRAIN THOMAS.

3 EFRAIN THOMAS, BEING FIRST
4 DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION BY MR. WHEELER:

6 Q GOOD MORNING, EFRAIN.

7 A GOOD MORNING.

8 Q EFRAIN, HOW OLD ARE YOU?

9 A 19 YEARS OLD.

10 Q AND ARE YOU MARRIED?

11 A NO, SIR.

12 Q WHEN DID YOU MOVE TO LEE COUNTY?

13 A SEPTEMBER 1, 2004.

14 Q AND WHERE DID YOU GROW UP PRIOR TO MOVING TO LEE
15 COUNTY?

16 A NEW YORK CITY.

17 Q DO YOU HAVE FAMILY HERE?

18 A YES, SIR.

19 Q WHO IS THAT?

20 A MY GREAT GRANDMOTHER, COUSINS, AUNTS.

21 Q WHAT IS YOUR GREAT GRANDMOTHER'S NAME?

22 A ANNIE BELL SMITH.

23 Q DID YOU MOVE DOWN HERE TO MOVE IN WITH YOUR GREAT
24 GRANDMOTHER?

25 A YES, SIR.

1 Q DO YOU HAVE ANY CHILDREN?

2 A YES.

3 Q HOW MANY CHILDREN DO YOU HAVE?

4 A FOUR, SIR.

5 Q NOW YOU SAID YOU HAD GROWN UP IN NEW YORK BEFORE YOU
6 MOVED DOWN HERE, IS THAT CORRECT?

7 A YES, SIR.

8 Q EFRAIN, HAD YOU EVER BEEN IN ANY TROUBLE BEFORE YOU
9 MOVED DOWN HERE?

10 A YES, SIR.

11 Q WHAT KIND OF TROUBLE HAD YOU EVER BEEN IN?

12 A I WAS CONVICTED OF CRIMINAL POSSESSION OF A WEAPON.

13 Q WAS THAT IN NEW YORK?

14 A YES, SIR.

15 Q BEFORE YOU MOVED DOWN HERE?

16 A YES, SIR.

17 Q AND AGAIN, WHO DID YOU LIVE WITH WHEN YOU MOVED DOWN
18 HERE?

19 A MY GREAT GRANDMOTHER.

20 Q HAD YOU KNOWN MR. MCCALL AND MR. JAMES AND OTHER
21 FOLKS IN THIS COMMUNITY BEFORE YOU MOVED BACK?

22 A YES, SIR.

23 Q AND HOW DID YOU GET TO MAKE SOME FRIENDS BEFORE YOU
24 MOVED HERE?

25 A WELL I USED TO VISIT WHEN I WAS YOUNG AND I MADE

1 SOME. AND I KNEW THEM FROM PRIOR.

2 Q SO DID YOU HAVE SOMEWHAT OF A CIRCLE OF FRIENDS WHEN
3 YOU MOVED BACK?

4 A YES, SIR.

5 Q NOW DID YOU KNOW TROY ROUSE?

6 A YES, SIR.

7 Q WAS HE A FRIEND, OR SOMEBODY THAT YOU HAD JUST BEEN
8 AROUND SINCE YOU HAD MOVED BACK?

9 A HE WAS SOMEBODY I HAD BEEN AROUND.

10 Q BUT HAD YOU EVER HAD ANY PROBLEMS WITH HIM?

11 A NO, SIR.

12 Q NO DISAGREEMENTS OR ANYTHING OF THAT NATURE?

13 A NO, SIR.

14 Q ERRAIN, LET'S GO AHEAD AND TALK ABOUT APRIL 7TH 2005.

15 WHERE WERE YOU EARLIER THAT DAY, SAY STARTING AT

16 3:00 O'CLOCK IN THE AFTERNOON?

17 A I WAS AT THE RESIDENCE OF CHAD JAMES.

18 Q WHERE DOES HE LIVE?

19 A I DON'T KNOW THE EXACT ADDRESS.

20 Q DO YOU KNOW WHAT STREET IT'S ON?

21 A I KNOW B STREET.

22 Q AND WHO WAS THERE AT HIS HOUSE EARLY IN THE DAY?

23 A MYSELF, CHAD, COURTNEY, SAMANTHA, KENO.

24 Q AND WHAT WERE Y'ALL DOING THAT AFTERNOON, SAY EARLY
25 IN DAY?

1 A HANGING OUT.

2 Q WATCHING TELEVISION?

3 A YEAH, THAT KIND OF THING.

4 Q AS IT GOT INTO THE EVENING, INTO THE DARK HOURS, WHAT
5 DID YOU ALL DECIDE TO DO?

6 A I LEFT CHAD'S -- I LEFT HIS HOUSE.

7 Q ABOUT WHAT TIME DID YOU LEAVE HIS HOUSE?

8 A I DON'T KNOW THE HONEST ANSWER TO THAT.

9 Q SAY AGAIN?

10 A I DON'T KNOW THE HONEST ANSWER TO THAT. I AM NOT
11 SURE WHAT TIME IT WAS. IT WAS DARK.

12 Q IT WAS DARK?

13 A YES, SIR.

14 Q WHAT DID YOU DO AFTER YOU LEFT CHAD'S HOUSE?

15 A I WENT INTO HIS FRONT YARD.

16 Q OKAY. SO YOU WERE STILL ON HIS PROPERTY, BUT YOU
17 WEREN'T INSIDE THE HOUSE?

18 A YES, SIR.

19 Q AND WAS THERE ANYBODY OUTSIDE WITH YOU?

20 A YES, SIR.

21 Q WHO ELSE WAS THERE?

22 A LENNY GREEN, KEITH HANNABEL, EUNICE MCCALL AND TROY.

23 Q DID YOU ALL MAKE A DECISION TO GO PLAY POOL?

24 A YES, SIR.

25 Q AND HAD TROY BEEN INVOLVED IN THAT INITIAL DECISION,

1 OR DID HE COME UP AS YOU ALL WERE LEAVING?

2 A HE WAS INVOLVED IN THE DECISION.

3 Q OKAY. WHERE DID YOU ALL DECIDE TO GO PLAY POOL?

4 A AT A PLACE CALLED JEROME'S STORE ON A HILL.

5 Q ABOUT HOW FAR WAS THAT FROM CHAD'S HOUSE? BY
6 WALKING, THE DISTANCE? HOW MUCH TIME WOULD IT HAVE TAKEN
7 YOU TO GET THERE?

8 A PROBABLY 10 MINUTES, 15 MINUTES BY WALKING.

9 Q AND DID YOU ALL HEAD OFF TO GO DOWN THERE?

10 A YES, SIR.

11 Q DID YOU ALL STOP TO PICK UP ANYBODY ELSE ALONG THE
12 WAY?

13 A YES, SIR.

14 Q WHO WAS THAT?

15 A WE STOPPED AT I BELIEVE IT WAS TROY'S GRANDFATHER'S
16 HOUSE. LITTLE CHARLES.

17 Q NOW AS YOU ALL LEFT THERE, DID THE GROUP BREAK UP AND
18 SPREAD APART A LITTLE BIT?

19 A WELL WE WERE WALKING TOGETHER INITIALLY TO JEROME'S
20 STORE. THERE IS ONLY TWO POOL TABLES IN THERE. AND WE
21 CAME TO THE DECISION THAT ONE OF US WAS PROBABLY READY TO
22 OCCUPY THEM. SO BETWEEN THE SIX OF US WE WERE GOING TO
23 RACE AND SEE WHO WOULD GET THE OTHER TABLE FIRST.

24 Q DO YOU KNOW WHO WAS AT THE HEAD OF THE GROUP? WHO
25 HAD MOVED OFF FIRST TO GET TO THE TABLE?