

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Beaufort County

Carmen T. Mullen, Circuit Court Judge

TAVARUS LEE ROGERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

A P P E N D I X

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF GENERAL SESSIONS

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STATE OF SOUTH CAROLINA,)
Plaintiff)
)
-vs-)
)
TAVARUS ROGERS,)
Defendant)

TRANSCRIPT OF RECORD

June 8, 2000
Beaufort, South Carolina

BEFORE:

HONORABLE JACKSON L. GREGORY, Judge.

APPEARANCES:

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11th Judicial Circuit

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1 MR. MURDAUGH: Your Honor, just for the purposes of identification, the
2 State is represented today by me and Angie McCall. The defendant is represented by Eve
3 and Corey Fleming.

4 THE COURT: Thank you, sir.

5 MR. FLEMING: Your Honor, before we begin, I do have a motion. I see that
6 many of the witnesses - - -

7 MR. MURDAUGH: You might want to wait until the defendant gets back in
8 here.

9 THE COURT: Yeah, let's just wait just a minute.

10 Okay. The defendant is now present. Mrs. Fleming?

11 MRS. FLEMING: Thank you, Judge, I think Mr. Fleming will address you at
12 this point.

13 THE COURT: Okay.

14 MR. FLEMING: Preliminarily, Judge, I notice that many of the witnesses have
15 entered the courtroom and I would ask or I'd move to sequester the witnesses for the
16 purpose of this hearing. I think they know who they are because I've subpoenaed them.
17 Obviously, Detective Averill would be the prosecution's chief witness and I believe he's
18 allowed to stay.

19 THE COURT: Okay. That's the person who is in charge of the investigation?

20 MR. MURDAUGH: That's correct, sir.

21 THE COURT: And his name, sir?

22 MR. MURDAUGH: Matt Averill.

23 How do you spell your name?

24 DETECTIVE AVERILL: That's A-v-e-r-i-l-l.

25 THE COURT: Thank you, sir.

1 MR. FLEMING: The remaining witnesses I would ask to leave the courtroom
2 and to assure that the audio speaker system in the rooms not be turned on so that they
3 can't hear the proceedings. I've been in there when it's on and there is no need to
4 sequester if they can hear what's going on.

5 THE COURT: Well, I was going to make them leave that area completely, too.
6 That's part of the courtroom.

7 MR. FLEMING: All right.

8 THE COURT: Okay. Any objection to that Solicitor?

9 MR. MURDAUGH: No, I have no objections, Your Honor.

10 THE COURT: Okay, then.

11 MR. MURDAUGH: You might as well leave Jeff Purdy in here, he'll be the
12 first witness. Or do you want to - - -

13 THE COURT: No, no, no, just leave him in.

14 MR. FLEMING: Your Honor, that's fine.

15 THE COURT: Okay. Anything else?

16 MR. FLEMING: Yes, sir. I do have one more preliminary motion. Mr. Rogers
17 would move at this point to impose a gag order, preventing the press from issuing any - -
18 preventing both the parties and the press from issuing any type of reports or any stories in
19 the newspaper or television concerning the transactions and all the testimony in this
20 hearing.

21 The basis for that is because that as a suppression hearing, if Your Honor is
22 inclined to suppress the particular things, if it is widely disseminated in the county
23 through the press then it would serve to basically educate the jury on an issue that they
24 shouldn't know about if they end up being a potential juror, and so based on that, we
25 would move to gag that, Your Honor.

1 MRS. FLEMING: Judge, I would add that I've just been informed there is a
2 case called Quattlebaum, I believe it is a South Carolina Supreme Court case, that did
3 uphold the trial Court keeping the press from being disseminated a video tape that was
4 evidence in some sort of hearing in that particular trial, so I think that - - -

5 THE COURT: Well, I think I'm familiar with the Quattlebaum case. That's the
6 one from Lexington County if I'm not mistaken where the, I believe two lawyers have
7 been suspended because of it, that the police were video taping and audio taping
8 conferences between the attorney and the client at the detention center, isn't that right?

9 MRS. FLEMING: I believe so, Your Honor. And that case was not allowed to
10 be disseminated to the press, and this is the same - - -

11 THE COURT: Well, that's different. Obviously if there is something that is
12 completely privileged in our judicial system, is conferences between an attorney and his
13 client.

14 MRS. FLEMING: Certainly, sir, but my point would be that should the
15 statement in this particular case be suppressed and is suppressed because it was the result
16 of an illegal detention, which was an act of wrong doing, whether intentional or
17 unintentional on the part of the Sheriff's Office - - so I'm just trying to give you some
18 authority that would keep the press from being able to print or disseminate any
19 information about what occurs in this courtroom today. Obviously that would so
20 prejudice our client. We're talking a death penalty case here and for the community to
21 read about a confession would certainly destroy the purpose of why we're here,
22 particularly if it is suppressed.

23 THE COURT: First off, is there any members of the press here?

24 MS. ELLIS: Yes, sir.

25 THE COURT: And your name, please?

1 MS. ELLIS: My name is Kerstin Ellis, I'm from the Beaufort Gazette.

2 THE COURT: Would you state your last name again, please.

3 MS. ELLIS: Ellis.

4 THE COURT: Ellis. Thank you, Ms. Ellis.

5 Yes, ma'am.

6 MS. LANIER: And if it please the Court, my name is Shannon Lanier. I'm here
7 on behalf of Southeastern Newspaper due to the "Carolina Morning News" and our
8 reporter, Stephanie Broadbent is intending to cover this hearing when she is released
9 from sequestration. So, I'm here on behalf of Ms. Broadbent and the "Carolina Morning
10 News".

11 THE COURT: Okay. Then you had a motion, Mr. Seelhoff, I believe had a
12 motion to, with regard to your appearance. You spoke with me in chambers?

13 MS. LANIER: Yes, sir.

14 THE COURT: Go ahead and make your motion.

15 MR. FLEMING: Judge, if I may, real quick, I don't know that that motion is
16 even necessary until we get to that point, no need to bog down the court.

17 MR. MURDAUGH: I'll move that she be admitted pro hoc.

18 MR. FLEMING: And I'll concur.

19 THE COURT: Okay. And Mr. Seelhoff is with her. Without objection, you are
20 admitted and we won't hear the motion now, but we will hear it at the appropriate time.

21 MS. LANIER: Yes, sir. And actually, Judge, if I could, I'm standing up to
22 oppose the defendant's - - -

23 THE COURT: That's what I was going to see, if you had a position on that? Go
24 ahead.

25 MS. LANIER: Yes, sir, I do have a position on that. It appears to me that there

1 are two issues presented by the defendant's motion. The first issue is whether the Court
2 has the authority to impose a gag order on the parties to the case, which would be simply,
3 the Flemings, the defendant, and the individuals associated with the Solicitor's office
4 who are here. And I certainly think that the Court has the power to impose a gag order
5 on those attorneys if it pleases.

6 The second issue is whether the Court has the authority to issue a prior restraint
7 directed to either the members of the public who are in the courtroom or to the
8 newspaper, including the Beaufort newspaper who is here today.

9 I didn't know this was going to come up, but I can tell the Court that there is a
10 plethora of constitutional authority from the United States Supreme Court, which would
11 hold that such a prior restraint on the news media would be blatantly unconstitutional in
12 this case. It would be our position that any of the members of the public or the
13 newspaper would be free to report on what happens in the courtroom today as the
14 courtroom is the public's courtroom, it's not the defendant's courtroom.

15 THE COURT: Okay. Well, I think I understand your position. I don't mean to
16 cut you off, but I tend to agree with you and I don't see that there is any - - the Court
17 hasn't been shown that there is any overriding public interest in this particular incident
18 because, obviously Beaufort County, as all counties, has a lot a crime these days and I do
19 not know that this case has been shown to the Court that there is any - - obviously,
20 murders are routinely news, but they're not, I don't anticipate this is going to get the
21 publicity of the O. J. Simpson trial or something like that, so your motion is noted, but
22 denied.

23 MR. FLEMING: Thank you, Your Honor. We'll move now into the actual
24 motion, Judge.

25 I want to begin by saying that most suppression motions with regard to statements

1 begin as Jackson v. Denno hearing. However, this is not a Jackson v. Denno hearing.

2 We are not requesting one at this time. This is a hearing based under the case of Taylor
3 vs. Alabama, which I've cited in my written brief.

4 THE COURT: Okay.

5 MR. FLEMING: And I've provided you with a copy of that.

6 THE COURT: Mr. Solicitor, do you have a copy of that, too?

7 MR. MURDAUGH: Yes, sir.

8 MR. FLEMING: And in that case, it deals solely with the Fourth Amendment,
9 not the Fifth Amendment which is what, of course, Jackson vs. Denno deals with. What
10 we contend, for the basis of this motion, is that Tavarus Rogers was illegally detained,
11 arrested on a Coroner's warrant, a Coroner's warrant that was issued without any statutory
12 authority, in violation of the statute; failed to follow the statute as written. And I've also
13 cited and provided copies of that code section for Your Honor. And in that, it provides
14 the specific steps that a coroner must follow in issuing a coroner's warrant.

15 Now, those steps were not followed and as a result, a coroner's warrant was issued
16 and Mr. Rogers, Tavarus was illegally arrested on that warrant. He was never arrested in
17 the period that we're talking about, on a Magistrate's warrant, on a probable cause
18 warrant, only arrested on the coroner's warrant, and as a result of that, it is a Fourth
19 Amendment violation.

20 And the principles of Taylor vs. Alabama, which I will tell you, is still solid
21 Supreme Court law, has never been challenged or overturned, says that if a subsequent
22 confession is made after this illegal arrest, it is tainted and should be suppressed unless
23 there's an intervening circumstance that purges that taint.

24 We would contend that there was no intervening circumstance, the taint wasn't
25 purged and the several different statements that the State alleges that Tavarus Rogers

1 made, including a written sketch, should be suppressed and that is, that obviously is more
2 detailed in my written motion; however, that is the basis, the predicate for which we
3 proceed.

4 And I'll just tell you that in the case of Taylor vs. Alabama, as all the cases that it
5 cites, the State bears the burden of proving that the alleged confessions, statements and
6 sketches should be admitted, so we don't bear a burden in this particular motion. The
7 State bears the burden of proving to you that they should come in and so with that, I
8 believe it is up to the State to present their case.

9 THE COURT: Solicitor?

10 MR. MURDAUGH: If Your Honor please, purely for the purposes of some
11 guidelines for you, sir, the State acknowledges that the warrant which was served upon
12 ~~Tavarus Rogers was without legal authority~~. The statute that it was issued under had
13 been repealed approximately three years before.

14 We do not concede, sir, that the law in Taylor vs. Alabama applies. In every case
15 in which the confession was suppressed, the arrest was made without probable cause.
16 ~~We contend that we had probable cause to~~ have had a Magistrate's warrant issued, and it
17 wasn't done that way, sir, because everybody was under the impression that this was the
18 proper procedure. ~~So we contend~~ that the arrest was illegal - ~~was legal~~ - and if it was
19 legal, then everything that flows from the arrest would be admissible, provided the
20 Jackson, Denno criteria is met.

21 THE COURT: Okay. I understand what you're saying. In other words, ~~they had~~
22 ~~probable cause to go before a magistrate~~ and get a warrant, and if it's felony, a
23 misdemeanor, you can only arrest for a misdemeanor committed in your presence - - -

24 MR. MURDAUGH: That's right.

25 THE COURT: With a felony, you have probable cause to believe the felony - -

1 I've forgotten, was committed by the defendant?

2 MR. MURDAUGH: That's right. In a murder case, you can arrest without a
3 warrant if you have probable cause to - - -

4 THE COURT: Yeah. That's basic. Okay.

5 MR. MURDAUGH: Now, in listening to Counsel, he said that the Jackson,
6 Denno doesn't apply. Do I understand you to concede that all of the criterion of Jackson,
7 Denno was met?

8 MR. FLEMING: No, I'm not conceding that, I'm just saying that that is not the
9 issue we're before the Court on today. We're on the Fourth Amendment.

10 THE COURT: You're specifically reserving your rights to - - -

11 MR. FLEMING: To bring that motion before the Court at a later time.

12 MR. MURDAUGH: Well, let's do that and get it out of the way today.

13 MR. FLEMING: I want to focus on the Fourth Amendment. That's the only
14 motion that I have before the Court. I don't want that issue - - that issue is completely
15 different. I don't want to meld the two together.

16 THE COURT: Okay.

17 MR. MURDAUGH: If Your Honor, please - - -

18 THE COURT: Well, then we're not really concerned then with the text of the
19 statements then given, are we?

20 MR. MURDAUGH: No, sir. If we are going to reserve the Jackson, Denno
21 hearing for a later time to determine whether or not it was free and voluntary without
22 hope of reward, then we don't even need to go into that. The only thing I would need to
23 go into with you, sir, is whether or not we had probable cause to have arrested him.

24 MR. FLEMING: No, sir, but the Court has to know what the statements are
25 because if you're going to suppress them, you've got to know what the statements are.

1 Just as in the Jackson - - I mean the suppression is the same, it's just based on a different
2 amendment to the Constitution and completely different tenants of law. And so to try to
3 argue two different tenants of law coming to the same point, I think, is cumbersome
4 today, considering the fact that it's completely different. I don't want there to be any
5 confusion. The Jackson vs. Denno hearing focuses on the Fifth Amendment,
6 voluntariness, this one focuses on a completely different issue, concerning illegal activity
7 by the police.

8 The fact - - you still need to know what the statements are to know what it is was
9 said to see what will be suppressed.

10 MR. MURDAUGH: I just absolutely disagree with that, sir. If you find that the
11 statements are suppressed, then I don't put any statement in, that came from Tavarus
12 Rogers.

13 THE COURT: During the time that he was in custody.

14 MR. MURDAUGH: That's right. So I don't know why there would be a need
15 to know what he said.

16 THE COURT: Well, I don't understand Jackson vs. Denno hearings to be limited
17 to the Miranda things only, as to the normal one. But I would think that any objection to
18 its admissibility would - - all that Jackson vs. Denno just means that you're entitled to an
19 in camera hearing before - - and, of course, you have those hearings for other things,
20 other than statements any way. You have them for any number of things.

21 Well, let me ask you this. There's nothing to - - it would appear to me, and I
22 throw this out, if the State is prepared to go forward on the Jackson vs. Denno hearing,
23 you can still go forward with it, regardless, I would think. The Court can - -

24 MR. MURDAUGH: With the Court's permission, I certainly can, sir.

25 THE COURT: Any objection to that? Because I don't see any reason to hold

1 the - to go through this matter twice because if we're going to go through it to get into
2 the text of it, I think we ought to go into it. I don't see how the defendant would be
3 prejudiced in any way. It's anticipated that there will be a requirement.

4 MR. MURDAUGH: Yes, sir. Now, I might inform the Court that if we have the
5 motion absent the Jackson vs. Denno hearing, I'll have one witness and about five
6 minutes of testimony. In Jackson vs. Denno, I would have one, two, three, four
7 witnesses.

8 THE COURT: Mr. Fleming, what do you say?

9 MR. FLEMING: Your Honor, I still object to the Jackson vs. Denno hearing,
10 having it today, under - - for several reasons. First of all, you know, we came prepared
11 on one particular issue and one particular focus. We weren't served - - -

12 THE COURT: Yeah, but we are only dealing with one statement though, or one
13 series of statements, aren't we?

14 MR. FLEMING: I understand that, sir, but we are focusing on one area of the
15 law and that's what everything here is designed today to do, and that is a completely
16 different argument, a completely different area of the law and we're not, you know, it
17 may or may not become necessary in Jackson vs. Denno. I want to reserve that right. I
18 haven't moved for it, and I don't - - and up until now, before Your Honor, they haven't
19 moved for it and I would object to going forward on that particular issue.

20 MR. MURDAUGH: Your Honor, if it please, I call your attention to one case
21 stated, State vs. Plath and Arnold which was decided by our State Supreme Court and
22 they stated in there that even if an arrest was illegal, proving the "poisonous tree"
23 doctrine will not apply to the confession if freely and voluntarily given, so I think under
24 our state law, I've almost got to go into whether or not it's free and voluntary. There
25 ain't but four witnesses.

1 And we aren't conceding when I say that, sir. I'm saying even if it was illegal, we
2 aren't conceding that it was illegal.

3 THE COURT: Okay. Solicitor, I'm going to allow you to go ahead and proceed
4 and I think we ought to go ahead and proceed with the - - in other words, we're talking
5 about the statements and so whatever grounds are relevant on those matters, I think that
6 the Court would go forward on those statements.

7 In other words, I think that today, it was my understanding that we were going to
8 decide, this Court was going to have before it whether those statements would be
9 admissible in the trial of this case, and not that we were going to have some grounds
10 today and some at a later time. So, with that in mind, you may proceed.

11 MR. MURDAUGH: Thank you, sir. Now, if Your Honor please, there's one
12 other thing. Counsel has agreed, I think, that I might call one witness out of order in
13 order to get him, he's involved in another murder case and needs to go to Atlanta. Is that
14 correct, sir.

15 MR. FLEMING: Yes, sir, that's correct.

16 May I ask and clarify one point because it may short circuit some of the questions
17 you have. It is the State's position, they concede on the record that the ~~Coroner's warrant~~
18 ~~itself was issued without any statutory authority, which makes it invalid.~~

19 I mean is that - -

20 THE COURT: ~~That's my understanding.~~

21 MR. MURDAUGH: That's what I said.

22 MR. FLEMING: And so we are now, we will rely on that for the rest - - for time
23 immemorial?

24 MR. MURDAUGH: That's right.

25 THE COURT: ~~It is conceded that the Coroner's warrant was invalid.~~

1 MR. FLEMING: Thank you.

2 MR. MURDAUGH: We call Lieutenant Purdy.

3 THE COURT: Then, of course, it's only important as to background about how
4 you got to where you were, but that is, you don't have to show - - -

5 MR. FLEMING: We don't bear the burden - - -

6 THE COURT: Of showing that is was an invalid warrant.

7 Come around sir.

8 THEREUPON,

9 JEFFREY PURDY

10 after having been duly sworn, testified as follows:

11 THE COURT: Have a seat and state your name for the record.

12 THE WITNESS: My name is Jeffrey Purdy.

13 DIRECT EXAMINATION

14 By Mr. Murdaugh:

15 Q Mr. Purdy, are you employed by the Beaufort County Sheriff's Department as a
16 detective?

17 A Yes, sir, I am.

18 Q Were you so employed on the first of January of last year?

19 A Yes, I am, and yes, I was.

20 Q Were you involved in the investigation into the death of Paul Reischl and
21 Mitchell somebody?

22 A Yes, I was.

23 Q Mitchell who?

24 A Mitchell Riley.

25 Q Riley. Okay, sir. On the 6th day of January, did you have an occasion to come

into contact with the defendant, Tavarus Rogers?

A Yes, I did.

Q And how did you come into contact with him?

A I was executing a search warrant at [REDACTED] St. Helena Island with three other deputies. And as we were doing the search warrant, I got a telephone call from Sergeant Averill that Tavarus was there. At that time, we - - Corporal Jones found out that he was there and - - -

Q That's Chris Jones?

A Chris Jones, he's another officer with the Sheriff's Office.

Q Okay. Go ahead.

A We placed him in handcuffs and Chris transported him to the - - -

THE COURT: Excuse me, Mr. Purdy, would you get a little closer to the microphone, I'm not sure if it's on, or speak a little louder. Can ya'll hear him over there?

MR. FLEMING: I can.

MRS. FLEMING: I can.

THE COURT: Okay. Go ahead.

By Mr. Murdaugh:

Q Where was Tavarus Rogers when he was arrested?

A [REDACTED] Walked out the front door.

Q Of that house?

A Yes, he did.

Q Was that at ya'lls request, or did he do it on his own?

A He just walked out and we were there and we identified him and Chris Jones took him to the Sheriff's Office.

1 Q Okay. Now, when he was taken to the Sheriff's Office, were you present when
2 anything - - when he was advised of anything?

3 A No, sir, I wasn't.

4 Q Okay. Were you present on the morning of the 8th of January when he was taken
5 from the Beaufort County Detention Center to Charleston?

6 A Yes, I was.

7 Q Okay, sir. When you went in, did you go in with Matt Averill?

8 A To the Beaufort County Detention Center?

9 Q Yeah.

10 A I did.

11 Q Was he advised of anything at that time?

12 A Yes, sir. Sergeant Averill and I walked straight back to the infirmary and read
13 him his Miranda rights off of that form you hold in your hand, Miranda Form 101.

14 Q I'm going to show you State's Exhibit No. 2 and ask you if that is the form that
15 the rights were read off of.

16 A That is. That's a copy of it.

17 Q Who read them?

18 A Sergeant Averill, Matt Averill.

19 Q Okay, sir. And do to me exactly what he did to Tavarus Rogers.

20 A I can't tell you exactly, but I can tell you how we normally do it. We basically
21 walked up to Tavarus - -

22 MRS. FLEMING: Objection, Your Honor, I don't think it's relevant how they
23 normally do it, I think that he needs to testify how it was done that day.

24 MR. MURDAUGH: What happened that day?

25 THE COURT: Objection sustained.

1 THE WITNESS: We went into the infirmary and asked Tavarus if he was still
2 willing to take a polygraph exam up in Charleston and he said he was and Sergeant
3 Averill read him his rights verbatim off of this form.

4 By Mr. Murdaugh:

5 Q Okay. Read them to me, just like it was read to by Detective Averill.

6 A Before I ask any questions, you must understand your rights. Number one, you
7 have the right to remain silent.

8 Q Now, when he asked that question, did he ask him whether he understood it or
9 not?

10 A Whether he understood it and he asked him to initial if he did and his initials are
11 right here.

12 Q And did he indicate whether he understood it or not.

13 A He did and he initialed this form.

14 Q Okay, sir. Did he understand it?

15 A Yes, sir.

16 Q Did he say he understood it?

17 A He did.

18 Q Okay, sir. So what else was read to him?

19 A Number two, anything you say can and will be used against you in a court of law.

20 Q Was he asked if he understood that?

21 A He was.

22 Q What did he say?

23 A He said yes, and he initialed it.

24 Q Okay.

25 A Number three, you have the right to talk to an attorney for advice before we ask

you any questions?

2 Q Did he ask whether he understood that?

3 A He did.

4 Q What did he say?

5 A He did and he initialed it. He understood it and he initialed.

6 Q Okay. Anything else?

7 A Number four, if you cannot afford an attorney, one will be appointed to you
8 before any questioning if you wish.

9 Q Did he ask if he understood that?

10 A He did.

11 Q What did he say?

12 A Yes, and he initialed it.

13 Q Okay.

14 A Number five, if you decide to answer questions now without an attorney, you still
15 have the right to stop answering at any time. You also have the right to stop
16 answering at any time until you talk to an attorney.

17 Q Was he asked if he understood that?

18 A Yes, sir.

19 Q What did he say?

20 A He did, and he initialed it.

21 Q He did what?

22 A He understood it and he initialed it.

23 Q Okay.

24 A And then we stepped down to the waiver of the rights. The first one says I have
25 read the statement of my rights and I understand what they are. Again, asked

1 Tavarus if he understood one through five, he stated he did and he initialed next
2 to the place next to where most people initial and he initialed.

3 The next thing we did was - - he told us that he could read because that's
4 usually the first thing that we ask an individual before we go through this, "Can
5 you read?" so we know.

6 They read along as we do it. The next one says I cannot
7 read. We told him that it didn't apply to him because he said that he could read.
8 We read it to him, I cannot read and the statement has been read to me
9 sufficiently so that I understand what my rights are. We told him that didn't
10 apply to him because he can read, so he didn't initial it.

11 Then we go down to the final waiver of the rights and ask the defendant to
12 read it for us to confirm to us, to prove to us that they can read. And he read it.

13 Q What did he read?

14 A I'm willing to make a statement and answer questions. I do not want an attorney
15 at this time. I understand and know what I am doing. No pressure or threats have
16 been made to me, no pressure or coercion of any kind has been used against me.
17 He said he understood it and he initialed it.

18 Q Okay, sir. Did you form an opinion as to whether or not he did, in fact,
19 understand those rights?

20 A Without a doubt.

21 Q And what is your opinion?

22 A He understood his rights.

23 Q Okay, sir.

24 A And he signed it there. Sergeant Averill witnessed it, I witnessed it after him, and
25 I can't tell you which jailer was there, but there was a Beaufort County jailer that

1 witnessed this also, and his or her signature is here and I can't tell you who that
2 is.

3 Q Now, was any statement taken from him at that time?

4 A No, sir.

5 Q Was he transported to Charleston?

6 A Sergeant Averill transported Tavarus and I transported another individual.

7 Q And was that for the purpose of taking a test?

8 A Yes, sir.

9 Q Okay. Did at some point - - was he turned over to a Charleston County
10 policeman, Kevin McHale?

11 A Yes, he was.

12 Q Did Kevin McHale then come out and in Tavarus Rogers' presence tell ya'll
13 anything? Did he ask you or tell you that Tavarus wanted to think about it a little
14 bit?

15 A Oh, yeah. When he offered him the test, Tavarus decided he wanted to think
16 about it a little bit and wanted to smoke a cigarette.

17 Q When he said that, what happened?

18 A The four of us went outside between the buildings - - -

19 Q Let's talk about who the four are now.

20 A Sergeant Matt Averill, at the time, Captain Kevin McHale, myself and the
21 defendant, Tavarus Rogers.

22 Q Okay. Ya'll went where?

23 A We went out of one Charleston building - - between two buildings and stood there
24 and - - I guess it's known as their smoke area.

25 Q Okay. And what happened?

- 1 A Well, we didn't have any cigarettes, so I went to the store with Mitch Lucas and
2 got some cigarettes and returned.
- 3 Q Mitch Lucas is who?
- 4 A He's the Public Relations Officer for Charleston County Sheriff's Office.
- 5 Q Okay. So you went and got cigarettes?
- 6 A Correct and we were - - -
- 7 Q And came back?
- 8 A That's correct.
- 9 Q And did you give Tavarus a cigarette?
- 10 A Yeah, we returned and gave him a cigarette.
- 11 Q And what happened?
- 12 A Mitch left and the four of us, Sergeant Averill, Captain McHale, Tavarus, and I - -
13 we stayed there and let Tavarus smoke.
- 14 Q Okay. Did he ever say anything?
- 15 A Yeah, while he was smoking, he said that he didn't mean to - - -
- 16 Q The thing that he said to ya'll, was it in response to a question?
- 17 A No, it wasn't.
- 18 Q Okay. Tell us in as much detail as you can remember, how it came about.
- 19 A He started smoking a cigarette and put his head down and got real upset and just
20 said he didn't mean to kill Paul.
- 21 Q Okay, sir. Was that in response to any question that any of the three of ya'll
22 asked him?
- 23 A No, sir.
- 24 Q Okay, sir. What happened now?
- 25 A Then we started questioning him. He stood out there and smoked and we

questioned him about, you know, how he killed Paul and tried to get some information, some details about the killing of Paul. And then after he admitted to killing Paul, if I'm not mistaken, Sergeant Averill, Captain McHale and Tavarus went back inside and continued to discuss the issue with Tavarus.

Q Okay. At some point, did he make some drawings at your request?

A He did.

Q And I hand you items that have been marked State's Exhibits No. 3, 4 and 5 and ask you if you can identify those.

A These are photo-copies of the drawings that Tavarus Rogers and I did on the date in question.

Q Reader's Digest version, what is No. 3?

A You want them in that order, backwards, or you just want No. 3? Reader's Digest version of No. 3 is, I drew a basic outline of the residence, of where the rooms were and whatnot and I asked Tavarus to fill in where the people were and where he went when they went in and committed this crime.

THE COURT: Excuse me, let me get it straight. They've been marked?

MR. MURDAUGH: Yes, sir, if Your Honor please, I showed them to counsel prior to having them marked and he, I think doesn't object to them.

THE COURT: For the purposes of this hearing, any objection to these being received into evidence.

MRS. FLEMING: Not for purposes of this hearing only, Judge.

THE COURT: All right. Now, you're referring to Exhibit No. 3?

THE WITNESS: Yes, Your Honor, this is the drawing that I drew, basically the outline of the trailer, the residence in question. Tavarus informed me that him and ---

THE COURT: All right. You put the square and all the rooms in it and so forth,

1 is that correct?

2 THE WITNESS: Yes, sir. This is what Tavarus did. I did the basic outline.
3 Tavarus did these lines here to tell me that he went through the front door, walked
4 through here. Jonathan, the individual who got severely beaten during this crime, ran
5 back, Jonathan, went into the kitchen. This is where Mitch was, direct - - -

6 THE COURT: Mitch who?

7 THE WITNESS: Mitch, one of the deceased. This is where we found him.

8 By Mr. Murdaugh:

9 Q Is that Riley?

10 A Yes, sir. James Mitchell Riley is what his name is, but we all know him as Mitch.
11 He's in the kitchen. He ordered Paul to give them some - - -

12 Q And Paul is - - -

13 A Paul Riley is the other victim who is - - -

14 Q Paul who?

15 A Paul Reischl, excuse me.

16 Q Okay.

17 A He directed Paul into the room, this back bedroom, where he told him to give him
18 the drugs and the money. He was looking for cocaine and money. Paul gave him
19 some money. At that time, as Paul was reaching down for something and he
20 didn't know what he was reaching for and he said he reached back and he shot
21 him, shot him one time.

22 He came running out of the room, stopped, this was where West was,
23 stopped for a brief second, continued to go back, and Mitch, the other victim was
24 in the kitchen. Mitch was standing up smoking a cigarette, or putting a cigarette
25 out or something to that effect.

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He told him to get down, "I told you to get down." And Mitch got down

and he put the gun to the back of his head and basically blew his head into the floor of the trailer.

I asked him why. "Why did you do that to Mitch."

And he told me, and I'll never forget this as long as I live, quote, unquote, the cracker just wouldn't listen.

MR. FLEMING: Objection, Your Honor. The "I'll never forget this as long as I live," stuff is not necessary.

THE COURT: Well, there's no jury in here, I think that's fine. Objection is overruled, go ahead.

THE WITNESS: After he did that, he ran through here and ran out of the trailer.

By Mr. Murdaugh:

Q Well, what did he say? What made you not forget it?

THE COURT: Tell us that again.

THE WITNESS: That's ---

By Mr. Murdaugh:

Q What did he say that you said you'd never forget?

A The cracker just wouldn't listen. I asked him, "Why did you kill Mitch?"

And he said, "That cracker just wouldn't listen."

THE COURT: Okay.

THE WITNESS: And then he ran out of the house and met with his co-defendants and went back to ~~Seymore~~ house.

By Mr. Murdaugh:

Q Okay, sir. Now, that is Exhibit No. 5 that you've been testifying about, is that correct?

- 1 A That is correct.
- 2 Q Okay, sir. What are the other two?
- 3 A No. 4 is a smaller diagram of the house that I prepared before I prepared State's
- 4 Exhibit No. 5.
- 5 Q Same house?
- 6 A Yes, sir, and it was much too small to get in any detail of his path, so that's
- 7 basically all that was. And No. 3 was, before we got into that, is where they
- 8 parked the vehicle when they committed this crime. They said that they backed
- 9 in and then they went through the wood-line and went over to the house. It's
- 10 basically where they parked and where they went. This is all exterior of the
- 11 house. This is his, all his, this is both of ours, and this is mine.
- 12 Q Okay. Now, when you say mine?
- 13 A Mine -- Tavarus drew this.
- 14 Q What number?
- 15 A State's Exhibit No. 3.
- 16 Q Okay.
- 17 A I drew State's Exhibit No. 4.
- 18 THE COURT: In other words, he added nothing to that one?
- 19 THE WITNESS: Correct. State's Exhibit No. 5, I drew the outline of the house
- 20 and he drew his path.
- 21 THE COURT: Okay, sir. Thank you, I understand.
- 22 By Mr. Murdaugh:
- 23 Q Now, did he indicate to you whether or not he was at that house that night alone?
- 24 A No, he never indicated that.
- 25 Q Did he indicate that somebody else was with him?

- 1 A Yes, he did.
- 2 Q Who did he indicate was with him and what did he say their part in this was?
- 3 A West McKinnon was with him. Collins Gadson, who they all refer to as Seymore,
- 4 and J. T., Collins' brother, I think its - - -
- 5 Q That's Jonathan Gadson?
- 6 A That's it, thank you.
- 7 Q Okay. So what did he say that West McKinnon did?
- 8 A At first, when he - - -
- 9 Q Ultimately, what did he say?
- 10 A Ultimately? He said West McKinnon just basically stood there and asked him
- 11 why he did it. When they come out of there - - -
- 12 Q Stood there?
- 13 A Stood in the house. In reference to State's Exhibit No. 5, West came in and stood
- 14 right there.
- 15 Q Okay.
- 16 A And that was West's role in it.
- 17 Q Did he indicate whether or not West McKinnon had any weapons?
- 18 A Yes, he did. He said West had a rifle as well.
- 19 Q Okay.
- 20 A A long gun.
- 21 Q Did he indicate whether or not Collins Gadson was present?
- 22 A Yes, he did.
- 23 Q What did he say that Collins Gadson's role in this was, if any?
- 24 A He knew when he went into the trailer that Collins was on the porch with him.
- 25 He doesn't know if Collins came in or stayed on the porch. And I say Collins

- 1 because they referred to him as Seymore. Seymore was on the porch. As far as
2 he knows, he doesn't know if Seymore came in or not. Seymore did have a gun.
- 3 Q Huh?
- 4 A Seymore did have a gun.
- 5 Q Okay.
- 6 A And he said that J. T. stayed - - -
- 7 Q J. T. is Jonathan?
- 8 A Yes, sir.
- 9 Q And J. T. stayed - - -
- 10 A He doesn't know where J. T. stayed. J. T. never approached the house with them.
11 J. T. wasn't on the porch with the three of them.
- 12 Q Did he indicate to you whether or not the four of them had been at that house
13 earlier that night?
- 14 A He did. He advised me they - - advised us that they went over there and played
15 cards, some card game.
- 16 Q Okay. And that at some point they left?
- 17 A That's correct, but before they left, he asked Paul for some - - -
- 18 Q Reischl?
- 19 A Correct. For some cocaine and Paul said he wasn't going to give him any cocaine
20 unless he got some money and he got made because Paul wouldn't spot him some
21 cocaine and the four of them left together in West McKinnon's grandfather's
22 Cadillac.
- 23 Q Okay. Did he indicate to you whether or not the four of them discussed going
24 back to the house or not?
- 25 A He did. He said that they left, they went to Seymore's house, - - -

1 Q Collins' Gadson's house?

2 A Collins Gadson's house, which is not very far from Coffin Point Road. They
3 went back to Collins' house, Seymore's house. They discussed it. They basically
4 developed a plan to go back there and rob them of their cocaine and money.

5 MR. MURDAUGH: Thank you. Answer any questions that these ladies and
6 gentlemen may have.

7 MRS. FLEMING: Beg the Court's indulgence.

8 THE COURT: Yes, ma'am.

9 CROSS-EXAMINATION

10 By Mrs. Fleming:

11 Q All right. Mr. Purdy, I'm going to take you back and review some of this just a
12 little bit.

13 A Okay.

14 Q Now, you went to the detention center on January 8th, 1999, is that right?

15 A That's correct. I went over there with Sergeant Averill.

16 Q With Averill?

17 A Uh huh.

18 Q And you went there to meet with Tavarus?

19 A Tavarus and Collins.

20 Q And you did meet with Tavarus?

21 A That's correct.

22 Q And at that point Tavarus was in the detention center on a Coroner's warrant?

23 A That's correct.

24 Q And the coroner's warrant was one issued for this incident, the Coffin Point
25 incident?

- 1 A That's correct.
- 2 Q Tavarus didn't have any other holds keeping him at the detention center?
- 3 A As far as I know, he did not.
- 4 Q Okay. Ya'll, the Sheriff's Office, had served him with no other warrants but a
- 5 Coroner's warrant?
- 6 A As far as I know.
- 7 Q And at this point, up until this point, you had actually charged him with nothing
- 8 in
- 9 connection with the Coffin Point murders, is that right?
- 10 A Even until today, I've never charged him with anything. This is Sergeant
- 11 Averill's case.
- 12 Q All right. At that point, you had no witnesses identifying Tavarus Rogers as one
- 13 of the intruders did you?
- 14 A I didn't do that part of the investigation. That was Sergeant Averill's part of the
- 15 investigation. What I did was I went to the autopsies, I did a couple of search
- 16 warrant's per Sergeant Averill, he was the case officer and Sam Roser was - -
- 17 couldn't - - wasn't available on the 8th and Sergeant Averill asked me to go with
- 18 him to Charleston with Tavarus and Collins, so I did.
- 19 Q So you have no personal knowledge of any witnesses at that point?
- 20 A Yep, that's correct.
- 21 Q And you had no personal knowledge of any physical evidence linking him to the
- 22 Coffin Point incident?
- 23 A That's correct.
- 24 Q Now, so you and Mr. Averill meet with Tavarus at the detention center on
- 25 January 8th and you asked him to take a polygraph exam?

- 1 A Sergeant Averill asked him if he was still willing to take a polygraph examination
2 and he concurred.
- 3 Q He said yes?
- 4 A (Witness nodded head.)
- 5 Q And at this point, he had been in the detention center on the Coroner's warrant for
6 how long?
- 7 A Well, we picked him up on 12 Legree on the 6th, I don't know exactly what time it
8 was.
- 9 Q Do you know approximately what time it was?
- 10 A Let me see, I really don't know. The search - - on the search warrant the times I
11 have are 6:00 p.m., so it was sometime around then, I'm guessing, I don't know
12 for sure.
- 13 Q You think it was around 6:00 p.m. on January 6th?
- 14 A I'm speculating, I don't know for sure.
- 15 Q Now, ya'll chose to take Tavarus to the Charleston County Sheriff's Department
16 for the polygraph exams?
- 17 A That's correct.
- 18 Q And that had already actually been scheduled?
- 19 A That's correct.
- 20 Q And Mr. Averill actually drove Tavarus?
- 21 A That's correct.
- 22 Q And did he drive him in a police car?
- 23 A It's an unmarked police car, as far as I can recall, it was probably an unmarked
24 white Lumina or Crown Victoria. I'm not sure.
- 25 Q And was Tavarus handcuffed?

- 1 A I don't know, I would imagine. I don't know.
- 2 Q Shackled at his feet?
- 3 A I don't know.
- 4 Q Those police cars, do they -- the unmarked cars, do they have a grill or anything
- 5 separating them from the front?
- 6 A No, ma'am. I can tell you, he was sitting in the front seat.
- 7 Q He was? And you went to Charleston also?
- 8 A I did. I transported Collins and he sat in my front seat.
- 9 Q Okay. So you were in a totally different car?
- 10 A That's correct. I followed Sergeant Averill.
- 11 Q And what time did you and the others arrive at Charleston County Sheriff's
- 12 Office?
- 13 A I assume 9:00, 9:30 because I know we read them their rights around 8 o'clock, it
- 14 was around 8'ish, 8:00 a.m.
- 15 Q And when you arrived at the Charleston County Sheriff's Office, Mr. Averill met
- 16 with Mr. McHale and Mr. Sad?
- 17 A That's correct.
- 18 Q And then Tavarus sat in the lobby with you for about 45 minutes?
- 19 A With myself and Collins. The three of us sat in the lobby.
- 20 Q During that time, what did Tavarus say to you?
- 21 A Nothing. Neither one of them said anything, I didn't want anybody talking. We
- 22 just basically - - -
- 23 Q He didn't say any words at all?
- 24 A As far as I can remember, no.
- 25 Q And then Mr. McHale came out and met with Tavarus?

- 1 A That's correct.
- 2 Q Do you know approximately what time that was?
- 3 A If we got there around 9:30, 10:00, 10:30, I don't know for sure.
- 4 Q That's fine. And Mr. McHale met with Tavarus in Mr. McHale's office?
- 5 A Yes, as far as I know.
- 6 Q Was that the room where the polygraph exam was supposed to take place?
- 7 A I don't know. They've changed their offices up there and I can't tell you. I don't
- 8 know.
- 9 Q Do you know if that room was wired for video?
- 10 A I don't know.
- 11 Q Do you know if it was wired for audio?
- 12 A I don't know.
- 13 Q Are most polygraph rooms wired for video and audio?
- 14 A Ours isn't.
- 15 Q Is it standard practice to video and audio a polygraph exam?
- 16 A Last night I watched a program on T.V. that said it was, but I didn't know it to be,
- 17 as far as I know, no, but according to that documentary I saw last night, it's
- 18 becoming a new trend.
- 19 Q Are you trained in giving polygraph exams? Have you ever been to any seminars?
- 20 A No, ma'am.
- 21 Q Were you present when Mr. McHale initially met with Tavarus?
- 22 A Yeah, I was in the lobby with both of them, yes, I was.
- 23 Q I mean when he met with Tavarus in his office for the pre-exam questioning?
- 24 A The initial, pre-polygraph examination? No, ma'am.
- 25 Q Was Mr. Averill present for that?

1 A Not to my knowledge.

2 Q Was Mr. McHale's conversation with Tavarus at that time video taped?

3 A No.

4 Q Was it audio taped?

5 A No, none of these conversations were, as far as I know.

6 Q And Tavarus was in with McHale for about 30 minutes?

7 A I don't know.

8 Q Well, at some point, they came out, right?

9 A That's correct.

10 Q Do you know about how long they had been in there? Just an estimate.

11 A I couldn't tell you because Captain McHale came and got Tavarus and brought
12 him back and shortly thereafter Lieutenant Sad came in and got Collins and Matt
13 and I, Sergeant Averill and I went into another office and I don't know how much
14 time had passed.

15 Q When Mr. McHale and Tavarus came out of Mr. McHale's office, had Mr.
16 McHale administered a polygraph exam at that time?

17 A No, ma'am.

18 Q And did Mr. McHale tell you at that time about his conversation with Tavarus?

19 A No, he just basically said that Tavarus needed some time to think and wanted to
20 smoke a cigarette and like I told Mr. - - like I told the Court, the three of us,
21 Sergeant Averill, Captain McHale, Tavarus, and I, the four of us all went outside.

22 Q All right. So, let me just get this straight. At that point, did Mr. McHale tell you
23 that Tavarus had given any information about the Coffin Point incident?

24 A I can't tell you for sure. I don't remember.

25 Q Did you take notes in this case?

1 A I did my drawings, and I took some notes on Collins -- information that Collins
2 provided us.

3 Q Do your notes reflect whether Mr. McHale said that Tavarus had given him any
4 information about the Coffin Point incident at this point?

5 A I don't remember in my notes. I don't remember for sure and that's what I'm
6 afraid to say. But what I do remember, what I think I remember and I don't
7 know, if this is exactly how it went, is, I think Tavarus said he was there, but I
8 don't know for sure at this time. I just don't remember. We've discussed this
9 case many times, and I couldn't tell you for sure.

10 Q Okay. So when they came out, Mr. McHale requested some cigarettes for
11 Tavarus?

12 A Yeah. Tavarus wanted to smoke a cigarette, that's correct.

13 Q And were cigarettes provided at that time?

14 A Not immediately. I went to the store with Mitch Lucas and we got some
15 cigarettes and returned. We were gone probably 5 minutes, maybe longer.

16 Q Do you remember what store you went to?

17 A No, I don't. I know there's a store right around the corner from Charleston
18 County Sheriff's Office.

19 Q Do you remember approximately what time it was when you got back with the
20 cigarettes? What time of day we're talking about at this point?

21 A I don't remember. It was like ---

22 Q You think it was in the morning?

23 A I'm assuming it was before lunch. I'm assuming.

24 Q And what did you do with the cigarettes when you got back?

25 A I gave one to Tavarus.

- 1 Q And where were ya'll at this point?
- 2 A Standing between, in the smoke area at Charleston County Sheriff's Office.
- 3 Q Inside or Outside?
- 4 A Outside.
- 5 Q And now at this particular point, who all was present?
- 6 A Mitch Lucas took me to the store. We got cigarettes and when we returned Mitch
- 7 went about his business. Captain McHale, Sergeant Averill, myself and Tavarus,
- 8 the four of us were present.
- 9 Q And at this point, was there any conversation among the four of you?
- 10 A We just gave him the cigarettes and he started smoking and we just - - I'm sure
- 11 we talked, but I don't - - -
- 12 Q Do you remember what you talked about?
- 13 A No, ma'am.
- 14 Q And was Tavarus questioned at this point?
- 15 A No, he needed some time to gather his thoughts and he was smoking a cigarette,
- 16 gathering his thoughts.
- 17 Q And at some point, did Tavarus say anything to you in the smoking area about the
- 18 Coffin Point incident?
- 19 A He did.
- 20 Q All right. And at this particular point in time, what was it that he said?
- 21 A Just like I told the Court earlier. He was smoking a cigarette and he bowed his
- 22 head and he said he didn't mean to kill Paul.
- 23 Q And at this point, was that all he said?
- 24 A Yeah, and then we started asking him about why and the circumstances and who
- 25 was with him and again, it continued to go on.

1 Q Do you remember exactly, I don't want to know ultimately what he ended up
2 telling you by the end of the day. At this point, what did he tell you about the
3 incident?

4 A When we were outside, he basically told us that he accidentally - - he shot Paul.
5 Paul grabbed the gun and it went off, and he ran out of the house, ran into West
6 on the porch and they traded rifles, or shotguns because there was a rifle
7 involved, they traded guns, long guns and he said West went back in.

8 Q Now, who heard Tavarus give this statement at this point?

9 A As far as I know, just the three of us, Kevin McHale, Matt Averill and myself.

10 Q All right. And did you video tape this statement?

11 A No, ma'am.

12 Q Audio tape it?

13 A We didn't video tape or audio tape anything that Tavarus gave us.

14 Q At this point, did you get it in writing?

15 A No, ma'am.

16 Q Now, after this particular statement, your report indicates that you and Averill
17 briefly talked with Tavarus inside Mr. McHale's Office, ya'll took him into
18 McHale's office?

19 A I don't believe so. I think that Captain McHale and Sergeant Averill took
20 Tavarus into Captain McHale's office at this point.

21 Q Okay. You don't remember going into McHale's office with Mr. Averill and
22 Tavarus?

23 A Well, I did, but not at that point, not that I recall.

24 Q All right. At this point then, Mr. Averill and Mr. McHale went into the office?
25 And how long were they in there with Tavarus?

- 1 A I can't tell you times.
- 2 Q Just approximately.
- 3 A I have no clue. It could have been 5 minutes, it could have been 50 minutes. I
- 4 don't know. What I can tell you, though, is they were interrupted by Lieutenant
- 5 Sad with the results of his interview with Collins Gadson.
- 6 Q All right. At some point, you resumed either questioning or listening to Tavarus?
- 7 A That's correct.
- 8 Q At what point was that?
- 9 A That was after he admitted to not only killing Paul but admitted to killing Mitch.
- 10 Q Okay. I guess I'm trying to get a time line here. Tavarus is in the office with Mr.
- 11 McHale and Mr. Averill, and you are somewhere else, doing something else?
- 12 A That's correct.
- 13 Q How much later do you think it is when you resumed questioning Tavarus or
- 14 interviewing Tavarus?
- 15 A It probably wasn't very long because shortly after that, Lieutenant Sad came in
- 16 and gave the results of Collins' polygraph.
- 17 Q Okay. Now, who else was present with you when you interviewed Tavarus the
- 18 second time?
- 19 A When he did the drawings?
- 20 Q If that's when he did the drawings.
- 21 A There was a lot of interviews. Sergeant Averill and I were together, Captain
- 22 McHale and I were together, Tavarus and I were alone, so its - - -
- 23 Q The next time you talked with Tavarus, after he had met with Mr. McHale and
- 24 Mr. Averill, the next time you talked with Tavarus, who else was present?
- 25 A I think I was with him alone.

1 Q And what did he tell you at that time?

2 A That he had killed Paul and Mitch.

3 Q And is that the time when he gave the sketches?

4 A It was either that time or the next time. It was sometime during that period. I
5 can't tell you exactly what time. I can tell you he gave them, that's about all I can
6 tell you.

7 Q So the second time you talked with Tavarus, you were talking to him by yourself?

8 A I can't tell you how many times I talked to him by myself because I don't know. I
9 know that I talked to him several times by myself. I can't tell you exactly how
10 many times. I didn't document that and I don't know.

11 Q Would you say more than three times?

12 A By myself?

13 Q Uh huh.

14 A That's possible.

15 Q Would you say you talked with him with other people present more than three
16 times?

17 A That's possible.

18 Q The second time you talked with him, you didn't video tape it, didn't audio tape
19 it, didn't get it in writing, is that right?

20 A We never video taped anything, we never audio taped anything and we never got
21 a written statement other than these sketches at that time, period.

22 Q Did you ever ask the Charleston County Sheriff's Department officers for video
23 or audio recorders?

24 A No, by the time we got through talking with Tavarus and Collins, we were ready
25 to get back to Beaufort, the four of us and we discussed with Tavarus if he'd give

1 us a written and a video statement when we returned to Beaufort and he said yes.
2 same thing with Collins. When we returned to Beaufort, Tavarus had a change of
3 heart. He didn't want to do it without a lawyer and Collins did.

4 Q Let me ask you this, the Charleston County Sheriff's Department does possess
5 video equipment, doesn't it?

6 A I'm sure they do.

7 Q And audio equipment?

8 A I'm sure they do.

9 Q And they also possess paper and pens?

10 A Yes, they do.

11 Q Did you ask to borrow any of that.

12 MR. MURDAUGH: Your Honor, please, I hate to object, but this hearing is
13 about whether the statement is admissible, not whether or not the police messed up.

14 MRS. FLEMING: I'll be glad to continue, Judge.

15 THE COURT: Okay. Please continue.

16 MRS. FLEMING: Okay. Now, ---

17 MR. MURDAUGH: Which I don't concede that they did, so excuse me.

18 THE COURT: Okay.

19 By Mrs. Fleming:

20 Q Please forgive me, Mr. Purdy, I'm a little confused because I want to know all the
21 things that Tavarus told you, not just ultimately what ya'll claim he told you, so
22 let's try to move on to say the third time that you talked to him. Did he tell you
23 anything different at that time?

24 A Originally he told us that he had shot Paul and that he came out and gave the gun
25 to West and West went back in and he heard a shot. And then he told us that he

1 shot - - the next time he talked he said that he had shot Paul in the bedroom and
2 he shot Mitch in the kitchen, and he doesn't know what happened to Jonathan,
3 John, and he came out.

4 Q Okay. And that's basically it? Was there anything else he added at any other
5 point?

6 A Oh, absolutely. He added a lot of things. He told us when, after they were done,
7 they all got in the car and went back to Collins' house and they divvied up the
8 money and cocaine and they snorted the cocaine and then they went about their
9 business. They threw the guns into the - - he said that Collins threw the guns into
10 the woods. There was many things - - he and I even talked about where he grew
11 up. He went to Piper High School, which is the next town over from where I
12 grew up, which was right behind my father's shop. I mean, we talked about a lot
13 of things.

14 Q Well, let me ask you this. Does your report that you wrote accurately reflect what
15 Tavarus told you each time that ya'll talked?

16 A I don't think that I documented my conversations with Tavarus. Sergeant Averill
17 documented those. I know I did most of the documentation on Collins. Okay.
18 There it is right there. Yes, I would say it does. Not everything in detail that we
19 discussed about this case.

20 Q Would there be anything that you feel would need to be added to what you have
21 written in your report dated January 25th regarding Tavarus' statements to you?

22 A No, I don't.

23 Q Did either Mr. McHale and Mr. Sad ever administer a polygraph to Tavarus?

24 A No, ma'am, not to my knowledge.

25 Q Okay. So Tavarus tells you different things during the day, ending up in a

1 culmination of information, but at no point was he polygraphed?

2 A That's correct.

3 Q And did you actually take notes during all of your interviews?

4 A I'm sure I did.

5 Q All right. At what point did Tavarus leave the Sheriff's Department?

6 A Charleston or Beaufort?

7 Q I'm sorry, Charleston Sheriff's Department. Do you remember what time
8 approximately?

9 A I don't remember what time. I know it was late. It was a long day, I can tell you
10 that.

11 Q Late in the afternoon?

12 A Yes, ma'am.

13 Q And where was he taken from the Sheriff's department?

14 A He was supposed to be taken back to the Sheriff's Office to do a video or a
15 written statement.

16 Q But where was he actually taken?

17 A As far as I know - - he was taken there as far as I know.

18 Q To the detention center or to the Sheriff's Office?

19 A I think he came back to the Sheriff's Office to do some paperwork and then he
20 went to the detention center.

21 Q Were you actually the one who took him?

22 A No, ma'am.

23 Q Who took him?

24 A Sergeant Averill.

25 Q And after you left Charleston, did you ever interview Tavarus again, up until this

day?

1

2

A No, ma'am.

3

Q Okay. Now, do you believe that you had probable cause to arrest Tavarus Rogers on January 6th, 1999?

4

5

A I don't know enough about the facts at that point to tell you yes or no. That's not for me to answer that. Sergeant Averill was the case officer and knew all the facts. Like I told you before, I went to the autopsy, I could tell you about the autopsy and I did some search warrants, but I don't know about that.

6

7

8

9

Q So your answer is, I couldn't tell you?

10

A That is correct, I can't tell you.

11

Q But you did not obtain an arrest warrant from a magistrate on January 6th, 1999?

12

A I never did.

13

Q And the case officer did not ask you to obtain an arrest warrant?

14

A No, ma'am.

15

Q And no other Sheriff's Department investigator obtained an arrest warrant from a magistrate on January 6th, 1999?

16

17

A Not that I'm aware of.

18

MRS. FLEMING: One moment, please, Your Honor.

19

THE COURT: Okay.

20

By Mrs. Fleming:

21

Q Mr. Purdy, I just have a few more questions for you. When you arrested Tavarus on a Coroner's warrant at Road - - that's where he was arrested, right?

22

23

A That's correct. That's where he was picked up. Chris Jones arrested him, more or less.

24

25

Q And Chris Jones actually arrested him on a Coroner's warrant?

1 A As far as I know, yes, ma'am.

2 Q Tavarus was not brought before a magistrate after he was arrested on that
3 Coroner's warrant, was he?

4 A I don't know.

5 Q Well, ---

6 A I don't know exactly how a Coroner's warrant works. I don't know if there is a
7 bond for a Coroner's warrant, so, I don't know.

8 Q To the best of your knowledge, I mean as far as you know ---

9 A As far as I know, he was not.

10 Q And when he was read his Miranda rights at the detention center on January 8th,
11 he had been there for what, almost two days at that point?

12 A That's correct.

13 Q Without having had -- without having gone before a magistrate?

14 A If you say so, I don't know. I imagine so.

15 Q Well, you didn't arrange for him to go before a magistrate?

16 A I didn't arrange for him to go to the magistrate and I didn't get the warrant that
17 put him in there.

18 Q You didn't appear at any bond hearing or arraignment for him?

19 A Never.

20 MRS. FLEMING: Nothing further, Your Honor.

21 MR. MURDAUGH: I have about three or four more questions, Your Honor.

22 THE COURT: Okay.

23 REDIRECT EXAMINATION

24 By Mr. Murdaugh:

25 Q Mr. Purdy, the statements that you have testified that were given by Tavarus

1 Rogers, was he ever -- were those statements free and voluntary on his part?

2 A Absolutely.

3 Q Was any force or coercion or duress used to -- used by anybody to secure those
4 statements?

5 A Never.

6 Q Was any promise or hope of reward used to secure those statements?

7 A No, sir.

8 Q Thank you, sir.

9 THE COURT: Any other questions?

10 RECROSS-EXAMINATION

11 By Mrs. Fleming:

12 Q Mr. Purdy, let me just ask you this. Would you consider being kept in jail for two
13 days on an illegal warrant coercive?

14 MR. MURDAUGH: Your Honor, please, that is not a proper question, sir.
15 Whether he agrees it is or not makes no difference.

16 MRS. FLEMING: I mean, it's his definition of coercion. He asked if any
17 coercion was used and Mr. Purdy has got to make a determination as to whether his
18 tactics were coercive or not. It's his opinion that he's testifying to as to whether his
19 actions were coercive or not. Otherwise, he wouldn't be able to testify to it.

20 MR. MURDAUGH: I withdraw my objection. It would be quicker to get the
21 answer.

22 THE COURT: Go ahead. You want to state the question again?

23 MRS. FLEMING: Yes.

24 By Mrs. Fleming:

25 Q Mr. Purdy, would you consider being kept in jail for two days on an illegal

warrant coercive?

A [REDACTED] I guess I'd have to say yes.

Q Thank you.

MR. MURDAUGH: I have no further questions.

THE COURT: You may come down.

MR. MURDAUGH: Did you want to do anything now?

MR. FLEMING: Yeah. If we may call Neal Baxley. I don't think you're going to call him.

MR. MURDAUGH: I'm not going to call him. I can just inform the Court right now, I intend to call Sam Roser, Kevin McHale, and Matt Averill is the only ones I'm going to call.

MR. FLEMING: I understand.

THE COURT: Is Officer Purdy excused?

MR. FLEMING: Yes, sir.

MR. MURDAUGH: Yes, sir.

THE COURT: You are excused, thank you, sir.

THE WITNESS: I can leave?

THE COURT: You can leave.

MR. MURDAUGH: Are you going to call Mr. Baxley?

THE COURT: Is the witness coming?

MR. MURDAUGH: Your Honor, please, we had agreed that I would have no objection to calling Mr. Baxley out of order, in order to get this done.

THE COURT: Are you Mr. Baxley? Come around sir.

///

///

1 THEREUPON,

2 NEAL BAXLEY

3 after having been duly sworn, testified as follows:

4 THE COURT: All right. If I understand correctly, this is a witness for the
5 defendant?

6 MR. FLEMING: Actually, he's not a witness for the defendant, but he is, he
7 does have some information that we believe is relevant to this.

8 THE COURT: Well, tell me what that means.

9 MR. FLEMING: It doesn't really mean anything. I want to bring some
10 information in front of the Court that the Solicitor doesn't feel is necessary, but I do.

11 THE COURT: Well, I mean, the normal way of handling a hearing like this is
12 the Solicitor puts up his witnesses then you call yours.

13 MR. FLEMING: That's right.

14 THE COURT: And the solicitor said he was not going to call Mr. Baxley and
15 you said that you wanted to call him, so are you calling him as a witness or not?

16 MR. FLEMING: Yes, I am calling him as a witness.

17 THE COURT: Okay. So this is part of yours, so you're going to conduct the
18 direct examination?

19 MR. FLEMING: Yes, sir, but under the rules of evidence, I'm not necessarily
20 vouching for his credibility, not that I think that there is a credibility problem, but I, in
21 other words, I have the right to lead him as a hostile witness in terms of the fact that he is
22 with the Sheriff's Office. I don't think it will be a problem, Judge, if we get there - - -

23 THE COURT: Well, you just go ahead and ask the questions. If there is an
24 objection, we'll - - -

25 MR. FLEMING: First of all, Your Honor, I'm certain that the Solicitor has

1 already told his witnesses, but obviously after they've been come down from the stand,
2 they certainly shouldn't be talking to the sequestered witnesses.

3 MR. MURDAUGH: I did not tell them that. I should have, but I didn't.

4 MR. FLEMING: Can we take care of that?

5 I apologize, sir.

6 DIRECT EXAMINATION

7 By Mr. Fleming:

8 Q You are Neil Baxley, sir?

9 A Yes, sir, I am.

10 Q And you are a captain with the Beaufort County Sheriff's Department?

11 A Yes sir.

12 Q And one of your responsibilities as a captain is to provide information to the
13 press, is that correct?

14 A That is correct, sir.

15 Q Okay, and that was one of your responsibilities in January of 1999?

16 A Yes sir.

17 Q Okay. And, with regard to this particular investigation, which I will call the
18 Coffin Point investigation, did you have any specific investigatory role in this
19 case?

20 A No, sir, I did not.

21 Q So, it's safe to say then that you haven't made any sort of official reports on this
22 case?

23 A I don't understand your question, sir.

24 Q Do you have any notes?

25 A Yes, sir, I do.

1 Q Okay. Were those notes provided - - do you have a copy of your notes with you?

2 A Yes, sir, I do.

3 Q Okay. May I look at them, please?

4 A Yes, sir.

5 MR. FLEMING: Thank you, sir.

6 THE COURT: Would you, Officer, Captain, would you pass that down to the
7 court reporter just to get it down there?

8 THE WITNESS: Yes, sir, I apologize, Your Honor.

9 MR. FLEMING: On a collateral issue, Your Honor, I would ask that these - -
10 I've never seen these notes; I've seen one of them, actually. I've never seen any other. I
11 believe that they are, they fall under the Rule 5 and various discovery motions. I would
12 ask that those be provided to us by the Sheriff's Department.

13 I assume you have an open file policy.

14 MR. MURDAUGH: I've got an open file policy.

15 MR. FLEMING: Yes, sir.

16 THE COURT: Would you object that?

17 THE WITNESS: Do I have an objection, Your Honor? Your Honor, I was
18 absolutely clueless that those fell under Rule 5. I would have gladly provided them if
19 somebody had asked me for them.

20 MR. MURDAUGH: I don't know what's in them, so I - -

21 THE COURT: Well, do you want to look at them before - - -

22 MR. FLEMING: They're press releases.

23 MR. MURDAUGH: I don't have any - - -

24 THE COURT: I don't see any - - obviously, Captain Baxley apparently his
25 information is hearsay; he doesn't have any firsthand knowledge about anyone.

1 MR. MURDAUGH: I have no -- I don't think they do fall under Rule 5, sir, but
2 I don't have any objection anyhow.

3 MR. FLEMING: Well, I mean, I certainly, they're documents maintained by the
4 Sheriff's office pertaining to this case. I think they clearly could be ---

5 MR. MURDAUGH: But not to be used at trial.

6 MR. FLEMING: May or may not, and that's not ---

7 MR. MURDAUGH: That's exculpatory.

8 MR. FLEMING: But that's not of the requirements of Rule 5.

9 THE COURT: Okay. All right. They will be provided. Do you have any
10 other questions as to ---

11 MR. FLEMING: Yes, sir, I do, real quickly. And I haven't, and please
12 understand that I haven't read these press releases, so I won't be able to get to any of this.

13 But, approximately January 6th of 1999 you issued either a press release or a direct
14 statement to a reporter with the "Carolina Morning News" named Stephanie Broadbent.
15 Do you recall that?

16 THE WITNESS: I spoke with Ms. Broadbent just about everyday, sir.

17 By Mr. Fleming:

18 Q Okay. And in this press release or statement you indicated that, to Stephanie, that
19 Tavarus Rogers was being held as a material witness, is that correct?

20 A Sir, you're holding my statement of January 6th.

21 Q And I've got the newspaper article if you want to see that, sir.

22 A May I, sir?

23 Q Sure.

24 MR. MURDAUGH: Your Honor, please, I can't see what this has to do with
25 the admissibility of the statements.

1 MR. FLEMING: Your Honor, what the captain of the Beaufort County Sheriff's

2 Department says - - -

3 THE COURT: Well, I'm going to let you proceed. Just speed it up and let's just
4 get through with this.

5 MR. FLEMING: I am. I was just letting him read this.

6 THE COURT: Okay.

7 By Mr. Fleming:

8 Q Captain Baxley, this is the website edition of what is printed in the "Savanna
9 Morning News," or "The Carolina Morning News", pulled directly from there
10 from January 7th of 1999.

11 MR. FLEMING: I don't intend to introduce this as an exhibit.

12 THE WITNESS: And your question is, sir?

13 By Mr. Fleming:

14 Q My question was that there are statements attributed to you by Stephanie
15 Broadbent, one of them being that Tavarus Rogers was being held as a material
16 witness. Is that correct?

17 A In a press release released on January the 6th, 1999, sir, to all media interest in the
18 low country, I typed a statement that states, "A second individual has been
19 incarcerated in the Beaufort County Detention Center as a material witness by
20 authority of Coroner Curt Copeland." I identified that material witness as
21 Tavarus Lee Rogers of _____ black male with a date
22 of birth of _____, being 20 years old.

23 Q Okay. And you also indicate that no criminal charges have been filed against
24 Tavarus Rogers?

25 A That is not a quote sir, that is a statement that they have typed in here. It's not in

1 quotation marks.

2 Q That wouldn't be a paraphrase from you?

3 A It could be a paraphrase because I do not mention in my statement of January 6th,
4 1999, that any criminal charges are made against Mr. Rogers at that time.

5 Q Okay. When you're preparing your press releases, who do you - - where do you
6 get your information?

7 A I don't understand your question, sir.

8 Q From what source do you get your information? Do you talk to the detective in
9 charge?

10 A Yes, sir, I do.

11 Q And would that have been Matt Averill?

12 A I don't recall, sir.

13 Q Do you recall at any time on January 6th, on or before January 6th of 1999, did
14 Detective Averill ever at any time tell you that they had probable cause to arrest
15 Tavarus Rogers for a crime?

16 A I do not recall that statement being made before January 6, sir.

17 MR. FLEMING: That's all the questions I have, Judge.

18 THE COURT: Do you need to cross-examine?

19 MR. MURDAUGH: I don't have any questions.

20 MR. FLEMING: Your Honor, also, we can release Stephanie Broadbent from
21 her subpoena. She does not need to testify.

22 THE COURT: All right. Ms. Broadbent is released then.

23 MR. MURDAUGH: You may come down.

24 Can Mr. Baxley be released?

25 MR. FLEMING: Absolutely.

1 THE COURT: Mr. Baxley is excused from his subpoena also.

2 THE WITNESS: Your Honor, do you wish to have these documents?

3 THE COURT: Not unless - - -

4 MR. MURDAUGH: Make a copy and send them to them, please.

5 THE COURT: That is a copy?

6 THE WITNESS: Yes, sir.

7 MR. FLEMING: That is a copy?

8 THE WITNESS: Yes.

9 THE COURT: You've still got your official records?

10 THE WITNESS: Yes, sir.

11 THE COURT: Okay.

12 THE WITNESS: Thank you, sir.

13 MR. MURDAUGH: My next witness will be Sam Roser.

14 THEREUPON,

15 SAM ROSER

16 after having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 By Mr. Murdaugh:

19 Q Your name is Sam Roser?

20 A Yes, sir.

21 Q How do you spell your last name, sir?

22 A It's R-o-s-e-r.

23 Q Mr. Roser, are you employed by the Beaufort County Sheriff's Department as a
24 detective?

25 A Yes, sir, I am.

- 1 Q And were you so employed on the 6th day of January 1999?
- 2 A Yes, sir.
- 3 Q I ask you whether or not if sometime on the 6th of January 1999 you had an
- 4 occasion to see Tavarus Rogers?
- 5 A Yes, sir, I did.
- 6 Q Okay, sir. And where did you see him and approximately what time was it?
- 7 A At the Sheriff's Department Headquarters and it was approximately 0120 hours.
- 8 Q What does that mean?
- 9 A 1:20 in the morning.
- 10 Q In the morning?
- 11 A Yes, sir.
- 12 Q Okay, sir. Now, I have handed you State's Exhibit No. 1. What is that, sir?
- 13 A It's a Beaufort County Sheriff's Office Statement of Miranda Rights.
- 14 Q Okay, sir. And at the time you saw him at 1:20 in the morning, was he advised of
- 15 anything, Tavarus Rogers?
- 16 A Yes, sir, he was. He was advised by Sergeant Averill of his Miranda Rights.
- 17 Q Do to me what Sergeant Averill did to Rogers.
- 18 A Okay. The form reads, "Before we ask you any questions you must understand
- 19 your rights."
- 20 Q Did he tell him that?
- 21 A Yes, sir, he did.
- 22 Q Okay, sir.
- 23 A You have the right remain silent.
- 24 Q Did he ask him whether he understood that question?
- 25 A Yes, sir, he did.

- 1 Q And what did he say?
- 2 A He said he did. He initialed beside the number.
- 3 Q Okay, sir.
- 4 A No. 2, "Anything you say can and will be used against you in a court of law."
- 5 Q Did he ask him whether he understood that?
- 6 A Yes, sir, he did.
- 7 Q What did he say?
- 8 A He initialed it and said he did.
- 9 Q Okay.
- 10 A No. 3, "You have the right to talk to an attorney for advice before we ask you any
- 11 questions."
- 12 Q Asked him if he understood that?
- 13 A Yes, sir, he initialed it.
- 14 Q Did he say he understood it?
- 15 A Yes, sir.
- 16 Q Okay, sir.
- 17 A No. 4, "If you cannot afford an attorney, one will be appointed for you before any
- 18 questioning if you wish."
- 19 Q Did he ask him if he understood that?
- 20 A Yes, sir, he did.
- 21 Q And what did he say?
- 22 A Yes, sir, he did, and he initialed it.
- 23 Q Did he say he understood it?
- 24 A Yes, sir.
- 25 Q Okay.

1 A No. 5, "If you decide to answer questions now without an attorney, you will still
2 have the right to stop answering any time. You also have the right to stop
3 answering any time until you talk to an attorney."

4 Q Okay. Did he ask whether or not he understood that one?

5 A Yes, sir, he did.

6 Q And what did he indicate?

7 A He said he understood and he initialed it.

8 Q Okay, sir.

9 A Next is a waiver of rights which is also on the form. The first one reads, "I have
10 read this statement of my rights and I understand what my rights are," which he
11 did read it and initialed it, which he understood it.

12 Q Okay, sir.

13 A The third one, "I am willing to make a statement and answer questions. I do not
14 want an attorney at this time. I understand and know what I am doing. No
15 promises of threats have been made to me and no pressure or coercion of any
16 kind has been used against me." He said he understood it and he initialed it.

17 Q Okay, sir. Was any questions asked of him at that time?

18 A Yes, sir.

19 Q Okay, sir. Did he admit to killing anybody at that time?

20 A No, sir, he did not.

21 Q Okay. In your presence was any force or threats or coercion used to try to get him
22 to make a statement?

23 A No, sir.

24 Q Was any promise or hope of reward used to try to get him to give a statement?

25 A No, sir.

1 Q Did you form an opinion as to whether or not he understood the warnings that you
2 just read from?

3 A Yes, sir, I feel he definitely understood his rights.

4 Q Thank you. And the form that you read from is State's Exhibit No. 1?

5 A Yes, sir.

6 Q Okay.

7 MR. MURDAUGH: Thank you, answer any questions these ladies and
8 gentlemen may have.

9 MRS. FLEMING: One moment, please, Your Honor.

10 THE COURT: Okay.

11 MRS. FLEMING: Your Honor, I don't think I have any questions for Mr. Roser
12 today.

13 MR. MURDAUGH: Let Mr. Roser be excused?

14 THE COURT: Without objection.

15 You are excused.

16 THE WITNESS: Thank you, sir.

17 THE COURT: Thank you, sir.

18 MR. MURDAUGH: Do not discuss this hearing with anybody out there.

19 I call Kevin McHale to the stand.

20 No problem with him staying in court now, Your Honor?

21 THE COURT: No, after he has testified. The same with any witnesses, after
22 they have testified, they can stay in court if they wish.

23 THEREUPON,

24 KEVIN MCHALE

25 after having been duly sworn, testified as follows:

DIRECT EXAMINATION

1
2 By Mr. Murdaugh:

3 Q Your name is Kevin McHale?

4 A Yes, sir.

5 Q And Mr. McHale, by whom are you employed?

6 A Charleston County Sheriff's Office.

7 Q And in what capacity, sir?

8 A I'm a major. I'm over the courthouse security and a ton of other things.

9 Q Okay, sir. And were you so employed on the 6th, 8th of January 1999?

10 A Yes, I was a captain then, in charge of personnel and over polygraphs.

11 Q Okay, sir. On the 8th of January 1999, did you have occasion to see Tavarus
12 Rogers?

13 A Yes, sir.

14 Q Okay, sir. Will you tell the Court everything that transpired from the time you
15 saw - - where did you see him?

16 A At the Charleston County Sheriff's Office, Pinehaven Headquarters Building.

17 Q Okay, sir. Tell us what happened after he came into your presence.

18 A Okay. I asked him if he knew what he was there for and everything, and he said
19 that there had been a killing and I said I had some questions for him and we were
20 scheduled to do a polygraph and I started out and I have an information sheet I
21 always use. The first 20 minutes or so is rapport building, getting them kind of
22 comfortable with me, me explaining what's going to go on to them.

23 During that first phase - - I'd like to refer to my notes here - - we go over
24 the Miranda Rights, the very first thing we do.

25 Q Okay, sir. Did you read the Miranda Rights to him?

1 A Yes, sir.

2 Q Do to me what you did to him that day.

3 A He wouldn't sign the form, first of all. We set this in motion - - I said, "We've
4 got some paperwork we've got to fill out."

5 He said, "Well, I don't trust the system," and I made a note of that.

6 He's been around the system and doesn't trust things in writing. I said,
7 "Well that's no problem, you don't have to do anything in writing." I said, "But I
8 still need to go over these rights with you. Now, you understand that this is a
9 murder and I'm going to be asking you specific questions about this."

10 So basically at that point I said, "You do have the right to remain silent."

11 Q Did you ask him if he understood that?

12 A Yes, sir. All the way, in fact, he knew the rights.

13 Q I understand, but just answer my question. Did he indicate to you whether he
14 understood the right that you had read to him that he had a right to remain silent?

15 A Yes, sir.

16 Q Okay, sir. What did you next advise him of?

17 A That anything he did say could be used against him in court.

18 Q Did you ask him if he understood that?

19 A Yes, sir.

20 Q Okay. And what did he indicate?

21 A He said he had no problem he had nothing to hide.

22 Q Okay.

23 A And I told him he had the right to have a lawyer with him while he was being
24 questioned and he didn't have to say anything until he talked with a lawyer and
25 that if he wanted to start talking at any time he wanted to stop, he could stop until

1 he talked to a lawyer, he was free to go as far as I was concerned, this was
2 voluntarily done. He made comments such as - - -

3 Q Did he indicate that he understood that right about having a lawyer?

4 A Yes, sir.

5 Q And the things that you just testified to?

6 A Yes, sir.

7 Q Okay. Go ahead.

8 A He stated that he understood his rights completely. He wanted to clear this up, he
9 was here voluntarily. And I said, "Well besides knowing your rights," I said, "I
10 now must ask you to waive your rights. That just means that you're willing to
11 answer questions and make any statements."

12 And he said, "That's no problem," he said, "that's what I'm here to do.

13 He says, "I'm fully cooperating with them and I'm here to tell you what
14 happened."

15 Q Okay, sir.

16 A And that's when I started questioning.

17 Q Okay, sir. Let me ask you this question. Before we go into that, did you form an
18 opinion as to whether or not he did, in fact, understand those rights that you read
19 to him?

20 A Yes, sir.

21 Q Okay, sir. And what is your opinion?

22 A He clearly understood everything I said to him. He knew, he voluntarily waived
23 his rights, he did it knowingly and intelligently.

24 Q Okay. And at the point that you finished the Miranda Warnings, what did you
25 next do?

1 A I began questioning him.

2 Q On the machine or off the machine?

3 A No, sir. We never even actually got to a polygraph.

4 Q Okay.

5 A It was just an interview.

6 Q And what happened when you started questioning?

7 A He was extremely nervous, had lots of questions, and I answered each question
8 that he had. He said he didn't know he was a suspect and he thought he was here
9 to talk about a beating that had taken place.

10 Well, I explained to him that that was one of the things that we were
11 certainly going to talk about and explained the difference between being a suspect
12 and the suspect and kind of went through that line of questioning. And then it
13 began at that point, talked about how people feel when a crime has been done and
14 whoever did this, it was going to be found out, and that there was other people
15 involved, witnesses, there's always a weak link somewhere.

16 I said, "If somebody does something by themselves they have a chance of
17 getting away if they never say anything, but when you do something with other
18 people, other people are always going to look out for themselves."

19 So I said, "You know, you need to get the truth out. If you didn't have
20 anything to do with this, you need to be telling me."

21 And went on from there, used some of the questioning techniques that we
22 use and eventually got to a point where he was obviously very remorseful, and
23 lack of a better word, was shaking, asked if he could have a cigarette.

24 I said, "I don't smoke, but we'll go around and get one."

25 And so we walked outside - - -

1 Q Okay, sir. Let me stop you right there.

2 A All right.

3 Q Up until that point, had he told you any information about the Coffin Point
4 killing?

5 A Not about his involvement in it, but he had talked about the people there and in
6 knowing them and that they had been there previously.

7 Q Okay, sir. And so then you went out to a smoking area?

8 A Yes, sir.

9 Q Okay, sir. Who was present at the smoking area?

10 A Detective Averill, myself, Tavarus, a couple of times I think there was another
11 detective and somebody else, but we were the actual three who were actually
12 standing there talking.

13 Q Okay. What happened out there?

14 A Well, we got him a couple of cigarettes, he smoked one, he basically just blurted
15 out without anybody asking him any questions, he just said, "I didn't mean to do
16 it. I didn't mean to shoot him."

17 And we said, "Who?"

18 He said, "I think his name was Paul."

19 And Detective Averill and I said, "Well, we understand and I know it feels
20 good to get this off your chest." And we said, "Let's go back inside."

21 We let him smoke another cigarette, walked back inside the office with
22 Detective Averill, we sat down, chatted for while. He ends up telling us about
23 that first, the first murder and how that went down.

24 Q At first did he deny the murder of Mitch Bryant - - Riley?

25 A At first, yes. He didn't know who did it.

1 Q Did he later tell you anything about Mitch Riley?

2 A Yes, sir.

3 Q And what did he tell you?

4 A That he did it. The first one shouldn't have happened, he said. The second one
5 was, the reason that it happened was "because the cracker wouldn't listen."

6 Q Okay, sir. Did he also go into detail about earlier in the night?

7 A Yes, sir.

8 Q And who had been with him?

9 A Yeah, that was before we ever walked out the first time.

10 Q Okay. Did he tell you the involvement of the people that were with him when
11 they went back to the house that second time?

12 A Yes, sir.

13 Q Okay, sir. That's all I'm going to ask you about what was said, sir. But let me
14 ask you this. The things that were told to you in Mr. Averill's presence and in
15 Jeff Purdy's presence, those statements, were they free and voluntary on his part?

16 A Yes, sir.

17 Q Was any promise, or force, or duress used, or threats used to secure those
18 statements?

19 A No, sir.

20 Q Was any promise of reward used to secure the statements?

21 A No, sir.

22 Q Were the statements free and voluntary on his part?

23 A Absolutely.

24 MR. MURDAUGH: Okay, sir. Answer any questions these ladies and
25 gentlemen may have.

1 THE COURT: Mr. Fleming?

2 MR. FLEMING: Thank you, Judge.

3 CROSS-EXAMINATION

4 By Mr. Fleming:

5 Q I would have said good morning, but I think we're in the afternoon. You are with
6 the Charleston Sheriff's Department, right?

7 A Yes, sir.

8 Q And, now as I recall you were with Beaufort, law enforcement in Beaufort?

9 A Years ago, yes, sir.

10 Q Years ago? I'm sort of interested in how you got into the polygraph thing. Could
11 you tell us, sort of take us through your educational or work experience to get us
12 to the polygraph point? Let's start here in Beaufort. Where did you work here in
13 Beaufort?

14 A For Beaufort County Sheriff's Office at the time.

15 Q Okay. And how long were you here?

16 A I was here eight years and a little over a month.

17 Q Okay. During those eight years, were you trained in the polygraph machine?

18 A Yes, sir. In 1991, I went to Polygraph School, did an internship up at SLED.

19 Q Okay.

20 A Went to the FBI National Academy, graduated from there. I've done extensive
21 schooling since then. I am certified as a Polygraph Examiner and I've been
22 qualified as an expert in a bunch of different counties as both an interviewer and
23 interrogator, as one expert and then as a polygraph examiner in other cases.

24 Q Okay. So in 1991, you began your training in the polygraph field?

25 A Yes.

- 1 Q Okay. And then at what point did you leave Beaufort? 652
- 2 A 1994, December 31st.
- 3 Q Okay. So really the first of 1995 you went to where?
- 4 A Charleston County Sheriff's Office.
- 5 Q Okay. So you had been involved in the polygraph those three years, four years?
- 6 A Correct. Right.
- 7 Q And then at the Sheriff's Office beginning your first position at the Sheriff's
- 8 Office, were you in the polygraph field there?
- 9 A Yeah, I was the sole polygraph examiner there for the first several years.
- 10 Q Okay. For several years? And did your job description ever change?
- 11 A Yes.
- 12 Q Okay. And when did that change?
- 13 A June of '97, I believe. Basically I was filling in, I was doing two jobs at one time.
- 14 I was over personnel and I was over internal affairs. I remained over internal
- 15 affairs throughout even after a promotion just because I had been doing it so long.
- 16 Q Okay. So in June of 1997 you had two jobs?
- 17 A Right.
- 18 Q Internal affairs and what else?
- 19 A Personnel.
- 20 Q Personnel. And which job did the polygraph fall under?
- 21 A Both.
- 22 Q Both?
- 23 A Administrative polygraphs to hire people and criminal polygraphs and then
- 24 internal polygraphs for internal affairs.
- 25 Q Other than the polygraph duties, did you have other duties in that role?

- 1 A Yes.
- 2 Q Okay. And what were those, administerial? That kind of thing?
- 3 A All things dealing with personnel, hiring, firing, all that stuff.
- 4 Q Okay. And so were you also involved in investigatory procedures?
- 5 A All the time.
- 6 Q Routine crime investigations?
- 7 A Whenever the detectives would have a case where they needed a polygraph, I'd
- 8 do that, do the interrogations or interviews for them.
- 9 Q Okay. So you wouldn't be like Detective Averill is now, the lead detective on a
- 10 case, you would only be brought in - - -
- 11 A Support.
- 12 Q - - - support polygraph?
- 13 A Right.
- 14 Q Sort of like you were in this case?
- 15 A Exactly.
- 16 Q Okay. Now, at some point after that from June of '97 until January of '99, did
- 17 your job change?
- 18 A Basically at the time I was still doing the same thing. I was a captain then, but
- 19 still doing both jobs.
- 20 Q Okay. Now, were you ever employed at the detention center in Charleston?
- 21 A Well, I was still working for the Sheriff's Office.
- 22 Q Sure.
- 23 A I've worked several different places within the Sheriff's Office, but I was the
- 24 Deputy Director, Administrator of the jail for a time, then I got transferred to the
- 25 courthouse where I am now.

1 Q Okay. Now, why were you transferred there. It doesn't sound like a polygraph
2 thing, why were you transferred there?

3 A I was promoted.

4 Q Promoted?

5 A We hired a full-time polygraph examiner to take my full-time polygraph place,
6 that was Lieutenant Sad, who also worked on this case, and it was a promotion, so
7 I moved on up and moved out of that specific job. In fact, two people replaced
8 me.

9 Q Okay. So when you left the detention center that was the result of a promotion
10 then?

11 A No, the detention center was just a lateral transfer - - -

12 Q Okay.

13 A - - - because there had been some retirements and a bunch of people got
14 transferred.

15 Q Okay. Did you request a lateral transfer or did the higher ups tell you you were
16 going to be laterally transferred?

17 A I think I requested it, but it was part of several different things going on at the
18 time, including a retirement of one of the chief deputies there.

19 Q Okay. And were all of the things going on, were they purely work in nature or
20 were there other reasons for the transfer?

21 A Oh, everything was work related.

22 Q Everything was work related?

23 A Absolutely.

24 Q All right. Good. Now, when were you contacted to assist in this particular case?

25 A I believe the day before, but it may have even been that same day, but I believe it

1 was the day before.

2 Q Do you have any specific recollection on it?

3 A Nope.

4 Q Do you have any notes saying that?

5 A No.

6 Q By whom were you contacted?

7 A I believe it was detective Averill, but I can't be sure. Might have been Detective
8 Purdy, but it was one of the two of them.

9 Q Okay. And what did - - not knowing precisely who this is, whomever it was, what
10 did they tell you that they needed you to do?

11 A Well, not knowing who it was, obviously they just wanted us to run a polygraph
12 for them.

13 Q Do you specifically remember what was said to you?

14 A Well, they had two people they were going to bring up and they would like to get
15 both of them polygraphed regarding the shootings out at Coffin Point.

16 Q Okay. And do you remember anything else about that first telephone call?

17 A No.

18 Q Okay. You next then met with Detective Averill the morning of January the 8th, is
19 that right?

20 A Right.

21 Q Is he the first person you met with that morning concerning this incident?

22 A Well, I met with Lieutenant Sad before he got there, but, of course, we didn't
23 know anything yet and I kind of briefed him on that, but - - -

24 Q All right. When Mr. Averill arrived, what did he tell you concerning this
25 incident.

1 A Basically they had a robbery of drugs and it turned into a murder and it was his
2 first murder, as I recall.

3 Q You mean Detective Averill's?

4 A Right. First one as the chief investigator, and, of course, being the first, they're
5 going to make sure they do everything by the book, you know, very concerned.
6 Of course, we explained to them what we were going to be doing and decided
7 who was going to get who as far as the testing was concerned.

8 Q Let me stop you right there. How did you decide who was going to get who in
9 terms of testing?

10 A Well, I was going to take the guy that they thought would actually crack.

11 Q Okay. So who told you that they thought Tavarus Rogers would crack?

12 A Either Purdy or Averill, I don't remember which one.

13 Q But one of them did?

14 A Right.

15 Q Okay. And you remember that? Now, did Purdy - - did either of them tell you
16 what Tavarus' status was in terms of incarceration? Did they tell you whether or
17 not he was jailed?

18 A I don't recall.

19 Q Did you know that he was jailed?

20 A I don't recall.

21 Q When he arrived, he arrived in handcuffs, didn't he?

22 A I don't recall. I got in an accident last June, car accident, and broke my neck so
23 some things I don't remember really as clearly as I used to, but other things it's
24 no problem.

25 Q Well, thank you for letting us know that. Does that mean that you need to rely on

1 your notes to supplement your memory?

2 A On occasions, yes.

3 Q Okay.

4 A Like on this case, you know, I've done a bunch since last January so, obviously, I
5 had to look back at this and remember some of the things that were said. But this
6 was kind of a noteworthy case because the spontaneous confession -- I told Matt,
7 I said, "Listen, this is your first case, but this isn't how easy it is."

8 Generally it's not this easy when a person just tells you they did it.

9 Q Okay. Did Detective Purdy or Detective Averill ever tell you that Tavarus had
10 been in jail for two days already?

11 A I don't recall anything about him being in jail.

12 Q Did you know that he was in jail under a Coroner's warrant?

13 A I don't recall anything about him being in jail.

14 Q Okay. That's a no, you don't recall that?

15 A Again, I think I've answered that several times.

16 Q And there's nothing in your notes indicating that they told you that?

17 A No.

18 Q When you met, initially when you met with Detective Averill, who was in that
19 meeting? Was it you, Sad, and Averill?

20 A Initially, just us three.

21 Q Okay. At that point, what did you do in terms of meeting with your subject?

22 A You have to ---

23 Q What did you do? I mean did you go grab him, did they bring him in?

24 A We walked out to the main lobby where I think Detective Purdy was still seated
25 with both of the individuals that they had brought up and one came with me and

- 1 one went with Lieutenant Sad.
- 2 Q Okay. And the person who came with you was Tavarus Rogers?
- 3 A That's correct.
- 4 Q Okay. And you took him into a room?
- 5 A Right. My office.
- 6 Q Your office? Is that also where the polygraph machine is located?
- 7 A That was where one of the polygraph instruments were, yes.
- 8 Q Okay. And it's located in your office and you actually perform other
- 9 administrative duties in that office also?
- 10 A Sure.
- 11 Q Okay. Is that office equipped with any video equipment?
- 12 A No.
- 13 Q Or any audio equipment?
- 14 A I have a number of tape recorders, but none were being used that day.
- 15 Q Okay. You had tape recorders in that office that day?
- 16 A Sure, always. Right.
- 17 Q Okay. Was anyone else present besides you and Tavarus Rogers in that room?
- 18 A Initially?
- 19 Q Initially.
- 20 A No.
- 21 Q Okay. What specifically did you say to Tavarus Rogers?
- 22 A When? I mean - - -
- 23 Q In that room, initially.
- 24 A I said a bunch of things.
- 25 Q Well, let us know what they are.

1 A I questioned him about the crime.

2 Q Okay. And what did you ask him?

3 A Well, of course, I asked him if he shot anybody and initially he denied it. And did
4 he have any knowledge of it and had he been there and - - -

5 Q What did he say?

6 A He ended up - - initially he said he hadn't been there, then he changed it. Didn't
7 take very long for him to change it.

8 Q How long?

9 A Just moments.

10 Q How many minutes.

11 A Moments.

12 Q Moments meaning minutes or seconds or what?

13 A Less than 5 minutes. Something to the effect that, you know, obviously part of
14 the spiel that I give, if there's people involved other than yourself - - -

15 Q Excuse me, and I apologize for interrupting you. But, instead of part of the spiel
16 you give, I want the exact spiel you gave.

17 A I can't give you the exact spiel.

18 Q Okay. As close to the exact spiel you gave, not what you generally give. Do you
19 understand the difference?

20 A Of course, I understand the difference.

21 THE COURT: Excuse me, I believe he said that he doesn't remember exactly
22 what he said, so you're either going to have to - - isn't that correct?

23 THE WITNESS: Yes, sir. You're right. Thank you.

24 THE COURT: So either you're going to have to ask him how generally what he
25 said or he feels like he probably said because that's the way he handles them or just

1 move on to something else.

2 MR. FLEMING: Okay.

3 By Mrs. Fleming:

4 Q Before we get to what was said, I think you indicated to the solicitor and to the
5 Court that prior to speaking with Mr. Rogers, you presented him with a Miranda
6 form?

7 A Advisement form, yes, sir.

8 Q And did you indicate that this was it?

9 A No.

10 Q That's not it? Do you have your Miranda advisement form? Is this it?

11 A No.

12 Q Do you have that Miranda advisement form?

13 A With me?

14 Q Yes.

15 A No.

16 Q And where is it, do you know?

17 A Well, he didn't sign it, there was not one completed.

18 Q Okay. So what happened to the one that you presented to him?

19 A The blank one that I read off of?

20 Q Uh huh.

21 A I probably put it back in the stack of Miranda forms.

22 Q So it was completely blank, and you put it back?

23 A Well, it's preprinted. There's nothing handwritten on it. It is a preprinted form
24 that we use at the Sheriff's Office.

25 Q Okay. Was there any place on that form for him to sign?

- 1 A Yes.
- 2 Q Okay. So there would be an individual form for each case then?
- 3 A Absolutely.
- 4 Q Okay. And the one that you used in speaking with Mr. Rogers, does it have check
5 marks or check boxes down the - - see how this one does, this is Exhibit 2. And
6 see how in this one, there are initials down each part?
- 7 A Right. There's no place for them. We have always had them put them there,
8 when they are cooperating like that.
- 9 Q Okay. And when - - did you go through each individual part of Miranda?
- 10 A Absolutely.
- 11 Q Okay. Like, for instance, the very first one, you have the right to remain silent.
12 Did you go over that individually with him?
- 13 A Yes.
- 14 Q Okay. Did you ask him to initial it?
- 15 A Well, initially he said he wasn't going to sign anything and I said, "I understand.
16 You don't have to sign anything, but let me read these to you and explain them to
17 you."
- 18 Q Okay. So he did not initial that form?
- 19 A He didn't initial anything.
- 20 Q Okay. And you got through the entire list of these things and he refused to initial
21 each one of those?
- 22 A He refused to sign anything.
- 23 Q Okay. And - - -
- 24 A I didn't continue to badger him about signing a form. After he told me he didn't
25 want to, I really believed what he had said and I didn't, you know, keep harassing

- 1 him.
- 2 Q When you - - in this particular form, the waiver of rights - - -
- 3 A Yes.
- 4 Q - - - the second part of it? This is Exhibit 2, it has one statement that says, I am
- 5 willing to make a statement and answer questions, et cetera, et cetera and to the
- 6 side of it, of course, there are two parentheses that indicate either a place to check
- 7 or put initials. Does your form have that, one of those?
- 8 A It doesn't have the three separate paragraphs, but it has a waiver of rights.
- 9 Q Okay. And you indicate that Mr. Rogers did not want to sign your form?
- 10 A He didn't want to sign anything.
- 11 Q However, it is your testimony that despite not wanting to sign the form, he did
- 12 want to waive his rights?
- 13 A Absolutely.
- 14 Q Okay. You indicated also to the solicitor's direct examination that Mr. Rogers
- 15 was free to leave? That was your feeling.
- 16 A Yes, as far as I was concerned. Now, I didn't know if they had something on him,
- 17 but he could have got up and walked out at anytime. In fact, he got up and went
- 18 to the bathroom, got up, I think and went to the water fountain several times. I
- 19 didn't walk with him or anything.
- 20 Q Wouldn't you agree with me, though that if a person is under arrest, clearly they
- 21 are not free to leave?
- 22 A If I place them under arrest, that would be a good summation there.
- 23 Q When you got to the - - when they got to the Charleston County Sheriff's
- 24 Department - - -
- 25 A Uh huh.

1 Q He was clearly brought in by two detectives from Beaufort County?

2 A Uh huh.

3 Q You don't know whether or not he was arrested, correct?

4 A I don't recall that.

5 Q But let's just say hypothetically, assuming he was arrested because he was. Okay.
6 Assume that he was arrested, he certainly was not free to leave in terms of the
7 police talking with him?

8 A Sure.

9 Q He couldn't have gotten up and walked out, could he? Of the Charleston County
10 Sheriff's Department?

11 A As far as I was concerned, yes, sir, he could have. Now, - - -

12 Q As far as any law enforcement is concerned?

13 A No. If he would have been arrested and I knew it, we keep the people whoever
14 bring people to us, whether they come under arrest or not under arrest, the person
15 requesting the examination, it is their responsibility for who they bring to us, it is
16 not ours and we make that clear.

17 Q I understand. But in this particular case, wouldn't you agree with me that if
18 Tavarus Rogers got up, walked out of the front door, said, "I'm going home."

19 Certainly Detective Purdy and Detective Averill would have grabbed him,
20 put the handcuffs back on and said, "You're not going anywhere."

21 A If he was under arrest when he came there, of course, they would have.

22 Q Then it's safe to say then, that despite what you believed, he wasn't free to go in
23 general terms?

24 THE COURT: Excuse me, I think we could - - I hate to interrupt you, but it
25 looks to me like Counsel will stipulate that if he was under arrest, he wasn't free to leave.

1 MR. MURDAUGH: I will so stipulate, sir.

2 MR. FLEMING: That's fine. I just wanted him to - - -

3 MR. MURDAUGH: He was in Mr. Purdy and Mr. Averill's custody. I think he
4 was under permission to leave Mr. McHale, he's testified to that.

5 THE COURT: That's right. But we keep getting back to the thing, if he was
6 openly under arrest, then it's obvious to my mind that a person under arrest is not free to
7 leave.

8 MR. MURDAUGH: Of course.

9 By Mr. Fleming:

10 Q Now, getting back to the specific statements, you have given a general statement
11 of what you recall. Is that correct?

12 A Yes.

13 Q Okay. Are you able to give me, this Court, any more detail of what was said in
14 that room under the initial, at the initial questioning?

15 A I'm sure I could. If you ask specific questions, I'm sure I can answer those
16 questions.

17 Q Okay. Then I'll have to ask specific questions.

18 A That would be good.

19 Q What precisely did Mr. Rogers tell you was his involvement in the incident at
20 Coffin Point?

21 A Okay. Precisely? I can't tell you verbatim. I will give you a general statement of
22 what he said.

23 Q Okay. Fine.

24 A While we were out smoking - - -

25 Q I'm sorry. I meant in your room alone, just you and he.

1 A Okay. Well, that part really didn't go to what he was there for. I'm going to
2 obviously key in on the things that I am talking to him about. All the other stuff
3 that we do to get to where we are going, which isn't really necessary to remember
4 because a lot of it is just denials and trying to convince me that he is a good guy
5 and all, that's not something I'm going to remember verbatim. I do remember the
6 spontaneous comment that he didn't mean to shoot the first guy.

7 Q Outside of the room where you two were alone?

8 A After all our talking and he got to a certain place and was feeling remorseful - - -

9 Q Let me stop you there because I want to get sequentially. I'm speaking solely of
10 when you and he were alone in your office.

11 A Nothing of consequence was stated to me that would be of evidentiary value at
12 that point.

13 Q You indicated in direct examination that you used questioning techniques.

14 A Uh huh.

15 Q What questioning techniques did you use?

16 A Well, we used a modified technique - - whenever I do an interview and it is
17 purely an interview, it is not ever telling the person that they did it, it is simply
18 asking a number of questions about things that would come up during an
19 investigation. Did you know the people involved? Were you at the house? Have
20 you ever done anything like this before? Has anybody ever accused you like this
21 before? How did you feel? What did you do? All of the questions that one
22 would normally ask in the investigation.

23 Q Is Tavarus' answers to these questions those things that you can't remember?

24 A Well, it was inconsequential. Basically, it's getting to a place where I'm going to
25 make a determination on how to proceed with the polygraph and what questions

1 I'm going to ask during the polygraph.

2 Q I understand, but for purposes of your testimony today, can you recall what
3 Tavarus' responses were to these questioning techniques?

4 A To the inconsequential questions, no.

5 Q Okay. What about the consequential questions?

6 A I can't remember generally exactly what he said.

7 Q Okay. First of all, what were the consequential questions in your office?

8 A Did you shoot him?

9 Q And what was his response?

10 A No, of course, initially.

11 Q Next?

12 A Were you there? No, and then later, yes.

13 Q In the room?

14 A Yes.

15 Q Okay. He later said in the room he was there?

16 A Yes, before we ever went out the first time.

17 Q Okay. Next consequential question?

18 A Do you own guns? Do you shoot guns?

19 Q What were the answers?

20 A I don't recall.

21 Q Okay. Next consequential question.

22 A Like I said, they're all background questions leading up to what I'm going to ask
23 on the polygraph.

24 Q You indicated to me that you would remember the consequential questions. I'm
25 asking you what consequential questions.

1 A Okay. And I've answered the specific ones that I've remembered. I don't
2 remember any more.

3 Q Anything else?

4 A Not that I can recall. Now, if you ask something specific, did I say - - maybe I'll
5 remember it. That's specific.

6 Q Well, you're asking me to say something that - - I wasn't in there, of course, I
7 can't ask it. You don't recall anything else today, in this hearing?

8 A Not just generally. If you ask me a specific question, I'll tell you whether I said it
9 or not.

10 MR. FLEMING: Your Honor, the problem with that answer is he wants me to
11 ask about a thousand questions, just to see if he knows. I mean, it's absurd in the sense
12 that his answer is not responsive.

13 THE COURT: The objection's overruled. I think it is responsive. I mean he
14 can only answer what his memory has. Why is it not responsive?

15 MR. FLEMING: His answer to me is, I don't remember anything, I don't recall
16 anything unless you ask me a specific question, of course, a specific question about
17 which we have no notes, no nothing about. How can we ask a question that's in his
18 head?

19 THE WITNESS: Did you talk to your client at all?

20 THE COURT: Excuse me.

21 THE WITNESS: I'm sorry.

22 MR. FLEMING: Objection, Your Honor.

23 THE COURT: All right. I still don't quite understand this. Please move on.

24 MR. FLEMING: I'll move forward.

25 THE COURT: If you've got a question to ask the witness, please ask him.

MR. FLEMING: I'll move forward.

By Mr. Fleming:

Q After that initial questioning, you went out, you took Tavarus outside and that's the cigarette time, right?

A That's correct.

Q Okay. And from the period of time in which Detective Purdy went to go get the cigarettes, were you present with Tavarus the entire time?

A I was, yes, sir.

Q Okay. And did he say anything prior to getting that cigarette?

A Just normal chit chat, the weather and - - -

Q Inconsequential stuff?

A What was going on with his partner that was up there.

Q He asked that?

A He asked something about where he was and I said, "He's back in that office back there."

Q And so nothing was said other than that in that period of time, other than the chit chat?

A General. Right. There was a lot of tension. He had gotten to a place of being remorseful.

Q Well, how did you know he was remorseful if he was just chit chatting?

A No, up until the time we got out of the office. He needed some air.

Q Okay.

A Okay. He needed a cigarette. He was shaking. He appeared very distraught, so I said, "Yeah, no problem, we'll go get some air." I went and found him some cigarettes and we found a couple from people walking by, and then Detective

1 Purdy went to the store with somebody else and brought him a whole pack, but up
2 until that time, he was just hanging out.

3 Q Okay. And so ya'll were outside the door of the - - -

4 A Yes, outside.

5 Q Because you've got to smoke outside the building?

6 A Right.

7 Q And he was smoking a cigarette. Anybody else smoking? You don't recall?

8 A Whoever smokes, yeah.

9 Q And then what was the last thing said before you indicated you heard Tavarus
10 blurt out this statement about Paul?

11 A I made a comment to him, "You about ready?" and he just put his head down and
12 shook his head and says, "I didn't mean to shoot him."

13 Well, obviously then, Detective Averill and I looked at each other and
14 said, "Let's go on back."

15 But even up to that point, we had let him talk a little bit and let him smoke
16 a whole cigarette. We didn't just jump on him as soon as he confessed like that.
17 But, very unusual to get a confession that way.

18 Q After that period of time when he had finished his second cigarette, did he
19 continue telling you anything, ya'll anything?

20 A Yes, sir.

21 Q And where were ya'll when he continued saying some of these things?

22 A Well he started to say something right there on the steps and we said let's not talk
23 about this out here, let's go on back to the office.

24 Q Okay. And you went to your office?

25 A Right. But this time, since the way it was, obviously he was there to polygraph

about whether you did it or not. I hadn't even completed the pretest interview.

He makes a spontaneous admission, so pretty much that part of the polygraph is going to be out, so at that point, I said to Detective Averill, "You might as well come on back now because obviously things are changed."

We walked back into the office, began questioning him and getting the details about that specific shooting.

Q Okay. Who was doing the questioning?

A Both Detective Averill and myself.

Q Okay. Was Detective Purdy doing any questioning?

A No, it was just me and Detective Averill in the room with Tavarus.

Q And do you recall what you asked of Mr. Rogers?

A I said, "Well, I understand you didn't mean to do it, how did it go down?"

Q Okay. At this point, did you turn on any of the tape recorders in the room?

A No.

Q Okay. And why not.

A I just don't do that generally.

Q You don't make an audio tape of someone confessing to a murder?

A No.

Q What else did you say to Tavarus?

A As he told the story, we would interject questions, obviously, but since the investigating officer is there, basically I was there as an assistant support which I was there for to begin with. At that point, obviously, if I had been in the room myself without him, I would have been taking all the notes, but since he made the spontaneous admission outside and he was there for that, I didn't make any notes about that.

1 I continued to ask questions while Detective Averill took copious notes, I
2 believe as we were sitting there. And I just kind of kept the interview going and
3 whenever he had a question to interject, he would throw one in there.

4 Q Okay. At any point did any other person come into the room? At any point
5 throughout the rest of this process?

6 A Well this process kind of came in stages.

7 Q Would you call this the second phase?

8 A This was kind of a strange one just because of the way - - there was two
9 absolutely different confessions, so yeah I don't know how to break it into stages.
10 This is definitely one stage where we're not in the pretest interview anymore
11 because there is not going to be a test.

12 Q Yeah.

13 A So now we're basically taking a statement, but we still have some things that are
14 unresolved, so we're going to continue to question him.

15 Q Okay. And during any of the questioning, did anybody else besides you and
16 Detective Averill come in?

17 A Not before the second confession.

18 Q Okay. Now the first confession that we're discussing is the one you've already
19 testified to?

20 A Right.

21 Q Correct?

22 A The spontaneous one and then we went in and questioned him about that.

23 Q Okay. And did at some point the story change?

24 A It kept broadening in scope.

25 Q Okay. Who was the next person to come in then?

1 A Well after the confession, the second one, I walked back to Lieutenant Sad's
2 office. I don't remember if Averill was there or not, but I went in and because he
3 had made the comment - - after he confessed to killing the second guy, I asked
4 him about the guns.

5 I said, "Hey, if you're going to tell us about - - you've already confessed
6 that you accidentally killed one guy because the gun went off, you intentionally
7 kill this other guy because he wouldn't listen, if you're going to tell us that,
8 there's no reason why you can't tell us any of the rest of the stuff like where's the
9 gun. I mean, obviously you're in a cooperating mode now, so just go ahead and
10 tell us."

11 Well, he said the other guy that was with him is the one that actually did
12 something with the gun. So I walked back to Lieutenant Sad's office and talked
13 to him. He had already taken the polygraph and flunked it, showed deception on
14 it.

15 And I said, "Well, this guy up here has already confessed to both
16 murders."

17 "And he says, "This guy, your guy is the one that hid the guns."

18 So I said, "Obviously if he's going to tell us he did the murders, he's not
19 going to lie about something like the guns."

20 Q Okay. After you say that Tavarus made this spontaneous admission, why did you
21 not test him on the polygraph machine?

22 A That's what he was there for, to see if he did it. I don't need to - - if he said he
23 did it, he did it. People generally don't - - we're not going to test him to see
24 whether he's telling the truth about he did it.

25 Q Was Lieutenant Sad present any time when Mr. Rogers was questioned?

1 A No.

2 Q Was any other person besides yourself, Detective Averill and Detective Purdy
3 ever present during any of this period of time in which Tavarus was questioned?

4 A After the confessions to the murders, Detective Purdy and the other guy came in
5 at some point.

6 Q All right. One second. Real briefly, back to the Miranda form, with regard to
7 reading off the specific lines, why didn't you check each one as having been read
8 on your form and then putting down here, "refused to sign?"

9 A I don't think I've ever done that.

10 Q Okay. What is the Charleston County Sheriff's Department policy on the use of
11 these forms when someone refuses to sign?

12 A Well, the detectives investigation unit, they have a policy in their office all to
13 themselves. I don't adhere to theirs, I have my own way of doing things because I
14 have to go through a consent form. I know that I'm going to be called in on every
15 case that I do.

16 I'm going to be called in for voluntary waiver of rights so I make sure that
17 I go through the rights, always the same way, using the same form, going over
18 educational background, making sure they're not on any drugs, alcohol. My way
19 of doing it is way more intense I guess, but I'm not going to upset somebody and
20 sit there - - when he told me he doesn't want to put anything in writing, I want
21 him to cooperate, so I'm not going to sit there and write after he's asked me not
22 to. I want his cooperation. I don't want him to leave.

23 Q You've indicated that you thought that the confession was free and voluntary - - -

24 A It is.

25 Q - - - yet, he didn't voluntarily sign that form, correct?

1 A That's correct.

2 Q And he was hesitant about signing that form?

3 A Because he didn't want to put anything in writing and, of course, that was at a
4 point where he didn't know me from a whole in the wall, at that point. I spent, I
5 know I spent an hour with him, talked to him like a human being, made him feel
6 decent. We had a good conversation, which I'm sure he'll tell you about. He was
7 treated great there. I made sure he had water, bathroom breaks, soda if he wanted
8 it, got him cigarettes, treated him like a decent person.

9 Q After all this period of time, did you then ask him to sign the form?

10 A No.

11 Q Why not?

12 A Because he told me he didn't want to sign it.

13 Q So he was hesitant about signing the form?

14 A He was hesitant of putting anything in writing because he doesn't trust the
15 system.

16 Q And so wasn't he hesitant about waiving his rights?

17 A Verbally, no. Not at all. He said he'd talk to me all day long.

18 Q And that wasn't on tape recording?

19 A Nothing was.

20 THE COURT: That's been asked and answered. I believe we've been over
21 that thing about three or four times about that tape recorder.

22 Anything further, Solicitor?

23 MR. MURDAUGH: No, sir, I have no questions. May Mr. McHale be excused?

24 THE COURT: Any objection?

25 MR. FLEMING: No, sir.

1

MR. MURDAUGH: Please don't talk to any of the other witnesses.

2

THE COURT: You're excused.

3

THE WITNESS: Thank you, sir.

4

THE COURT: We'll take a ten minute recess at this time.

5

(WHEREUPON, a short recess was observed.)

6

THE COURT: Okay. Call your next witness.

7

MR. MURDAUGH: As I understand, we are out of order, Mr. Fleming is going to call the coroner and then Sad, is that correct?

8

9

THE COURT: Without objection?

10

MR. MURDAUGH: Without objection.

11

THE COURT: Come around Mr. Copeland.

12

THEREUPON,

13

CURT COPELAND

14

after having been duly sworn, testified as follows:

15

DIRECT EXAMINATION

16

By Mrs. Fleming:

17

Q Mr. Copeland, you are currently Coroner here in Beaufort County?

18

A Yes, ma'am.

19

Q How long have you been Coroner?

20

A 19 and a half years.

21

Q And you were the Coroner who issued the Coroner's warrant for Tavarus Rogers regarding the Coffin Point Incident?

22

23

A That is correct.

24

Q And you issued that warrant on January 4th, 1999?

25

A I believe that's correct.

1 Q Did you ever set a bond on that Coroner's warrant for Tavarus Rogers?

2 A No, ma'am.

3 Q Were you ever asked to set a bond on that warrant for Tavarus Rogers?

4 A No, ma'am.

5 Q Nobody from the Sheriff's Department ever asked you to set a bond on that
6 warrant for Tavarus Rogers?

7 A No, I don't even think setting a bond is within my purview.

8 Q But you never did and you were never asked?

9 A No.

10 MRS. FLEMING: I have no further questions.

11 MR. MURDAUGH: Your Honor, I've got a couple of questions I want to ask
12 him.

13 CROSS-EXAMINATION

14 By Mr. Murdaugh:

15 Q Did you issue the warrant thinking that it was a good warrant?

16 A Absolutely.

17 Q Am I not your attorney by statute in Beaufort County?

18 A You are my attorney.

19 Q Did I ever advise you that that wasn't a good warrant?

20 A No, sir.

21 Q Okay, sir. Do you now know that it wasn't?

22 A I understand it.

23 Q If it is somebody's fault, it's mine instead of yours, is it not, sir?

24 A I like that thinking, Solicitor.

25 MR. MURDAUGH: Thank you, sir. I have no further questions, Your Honor.

1 THE COURT: You're excused, thank you. Without objection? Thank you
2 for coming.

3 Call your next witness.

4 MR. FLEMING: We would call Lieutenant Sad.

5 THE COURT: Mr. Sad.

6 State your name for the record, please.

7 THE WITNESS: First name is Ameer, A-m-e-e-d, last name, Sad, S-a-d.

8 THEREUPON,

9 AMEED SAD

10 after having been duly sworn, testified as follows:

11 THE COURT: Mr. Fleming?

12 DIRECT EXAMINATION

13 By Mr. Fleming:

14 Q You are Lieutenant Sad?

15 A Yes, sir.

16 Q And you are with the Charleston County Sheriff's Department?

17 A That's correct.

18 Q And are you the Lieutenant Sad that's the Polygraph Examiner?

19 A Yes, sir.

20 Q Okay. And you were present at the office on January 8th, of 1999?

21 A Yes, sir, my office.

22 Q Your office?

23 A Yes, sir.

24 Q At any time that day, did you ever question Tavarus Rogers?

25 A No, sir.

1 Q At any time that day, did you overhear any statements made by Tavarus Rogers?

2 A No, sir.

3 Q Since that day have you ever had any dealings at all with Tavarus Rogers?

4 A No, sir.

5 Q Okay.

6 MR. FLEMING: That's all the questions I have, sir.

7 MR. MURDAUGH: No questions.

8 THE COURT: Come down, you are excused. Thank you for coming.

9 THE WITNESS: Thank you, sir.

10 THE COURT: Come on around. Is this your last witness?

11 MR. MURDAUGH: Last witness, yes, sir.

12 You got any more witnesses?

13 MR. FLEMING: No, sir.

14 THEREUPON,

15 MATTHEW AVERILL

16 after having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 By Mr. Murdaugh:

19 Q Your name, sir?

20 A Matthew Averill.

21 Q How do you spell your last name?

22 A A-v-e-r-i-l-l.

23 Q Okay. Mr. Averill, are you employed by the Beaufort County Sheriff's

24 Department as a detective?

25 A Yes, I am.

1 Q Were you so employed on the fourth day of -- first day of January of 1999?

2 A Yes, sir, I was.

3 Q And have you continuously been a detective with the Sheriff's Department?

4 A Yes, sir.

5 Q Okay, sir. Did you -- are you the lead detective for the Sheriff's Department
6 on -- for want of a better phrase, the Coffin Point killings?

7 A Yes, sir, I am.

8 Q Okay, sir. Give me a thumbnail sketch of what you found when you first
9 investigated the murder.

10 A You want me to -- how far back do you want me to go?

11 Q I want you to go back to the night that you were called that there had been two
12 murders.

13 A Okay. Thumbnail?

14 Q Did you go out there?

15 A Yes, sir, I did.

16 Q What did you find when you got out there?

17 A I found two deceased males at Coffin Point Road.

18 Q Okay.

19 A There were no subjects other than those two inside the building, inside the
20 residence.

21 Q Okay.

22 A One had a gunshot wound. Mitch Riley, James Mitchell Riley was in the kitchen,
23 he had a gunshot wound to the back of the head and Paul Reischl was in the far
24 left bedroom and he had what appeared to be a gunshot wound under the arm.

25 Q Okay, sir. Did you and other people with the Sheriff's Department begin the

1 investigation?

2 A Yes, sir, we did.

3 Q Did a part of that investigation consist of talking with witnesses that were
4 around?

5 A Yes, sir.

6 Q Did somebody talk with the witnesses that were present? Did you determine
7 whether or not there were any witnesses in the house at the time that the
8 shootings took place?

9 A Yes, we did.

10 Q ~~Did anybody talk with those persons?~~

11 A ~~Yes.~~

12 Q ~~Who did, if you remember?~~

13 A I don't recall.

14 Q A person with the Sheriff's Office?

15 A Yes, sir, back at the Sheriff's Office.

16 Q Did one of the people that was in the house give any indication of who was
17 involved in the killing?

18 A ~~One of the individuals did give a name, the name of West, she wasn't sure~~
19 ~~which one it was.~~

20 Q Okay. And what did she say West had done?

21 A She said that he was there earlier in the night.

22 MRS. FLEMING: Your Honor, I object to this, this is hearsay and not only is it
23 hearsay, he doesn't know who the hearsay was given to that he is testifying about. He
24 doesn't even know who took this statement to obtain this information from the witnesses.

25 THE COURT: Okay. The objection is overruled. I think it is relevant and I

1 think in a hearing of this type, I think hearsay evidence is admissible and it goes to the
2 issue of probable cause and probable cause can be established by hearsay testimony
3 evidence, can it not?

4 MRS. FLEMING: I presume it can, Your Honor, except my problem is he
5 doesn't even know who this information was obtained by. So I don't know if he knows
6 that it's even accurate.

7 THE COURT: Well, I believe that the testimony of Detective Averill was that it
8 was obtained by some member of the Sheriff's Office that was working on the case. He
9 just doesn't know exactly who was the one.

10 MRS. FLEMING: That's fine, Your Honor. I'll withdraw my objection.

11 THE COURT: Your objection is duly noted.

12 You may proceed.

13 By Mr. Murdaugh:

14 Q Okay, sir. What did the information you received indicate that the witness had
15 said?

16 A Just that one of the individuals who committed the murders was named ~~West~~

17 Q Okay.

18 A Or Wes.

19 Q Okay.

20 THE COURT: Would you spell those so there won't be any question?

21 THE WITNESS: It was either W-e-s or W-e-s-t.

22 THE COURT: Thank you.

23 THE WITNESS: Yes, sir.

24 By Mr. Murdaugh:

25 Q Okay, sir. That one of the people that had committed the murders was named

1 West?

2 A Correct.

3 Q Did she indicate whether of not more than one person had come into the house?

4 A Yes, she did.

5 Q And what did she say about that?

6 A She had stated that while she was on the telephone she had -- it was
7 approximately four o'clock in the morning ~~she was on the telephone and she~~
8 ~~heard the door break open and she thought at first that it was a joke.~~ Then she
9 said she saw ~~two males~~ come in through the front door.

10 Q Okay.

11 A Both of them had long guns, she didn't know what kind of weapons they were.

12 Q Okay.

13 A And these two young men came into the room and started yelling, "Everyone get
14 down on the floor, get down on the floor."

15 Q Okay, sir. After you learned that one of the people there when the killings took
16 place was named Wes or West, did ya'll then begin an investigation to determine
17 who that was?

18 A Yes, sir. We got numerous phone calls at the Sheriff's Office, anonymous phone
19 calls, someone would get on the phone and just say, "It was, the people that did it
20 were West and," ---

21 Q Okay. Let me ask you this question. Did you ultimately find out, did you ever
22 ultimately question West McKinnon?

23 A Yes, we did.

24 Q Okay, sir. When you questioned him, did he indicate to you that he was at that
25 house?

1 A Yes, he did.

2 Q And when did he tell you he was at the house?

3 A He told us he was at that house, he was there on the first, on the evening of the
4 first and I'm trying to see what time he left, but he was there earlier in the night.

5 Q Okay. And did he indicate to you whether he was with anybody when he was
6 there earlier that night, before the shooting?

7 A Yes, he did.

8 Q Okay, sir. Who did he indicate that he was there with?

9 A ~~Tavarus Rogers, Collins, Gadson, and Collins' brother~~

10 Q ~~Jonathan?~~

11 A Well, at the time, he said he didn't know his name, he just knew it was Collins'
12 brother.

13 Q Okay. Did you ask him if he was present at the house when the shootings took
14 place?

15 A Yes.

16 Q What did he tell you?

17 A He said no.

18 Q Okay, sir. As a result of this girl saying West was there at the time, Wes or West
19 was there at the time the shootings took place and him telling you that he had
20 been there earlier, but was not there at the time the shootings took place, do you
21 think that gave you probable cause to have gotten a warrant?

22 MRS. FLEMING: Objection. For who?

23 MR. MURDAUGH: For Tavarus Rogers.

24 THE WITNESS: The fact that when we interviewed - - when I interviewed
25 West with Sergeant Roser, one of the things that West said was that they had left the

1 party, all four of them, West, Tavarus, Collins and Collins' brother, and that they had

2 gone back and dropped off Collins and Collins' brother at Collins Gadson's mobile home
3 and that they went and drove around and that they drove around and they dropped one off
4 over here and then he went home.

5 Okay. But he made a comment that he spent the rest of the night, it was just him
6 and Tavarus. Tavarus stays on many occasions at West McKinnon's grandfather's house,
7 with West. West was already under arrest at that point for these charges. There was
8 probable cause at that point.

9 By Mr. Murdaugh:

10 Q Okay. Now, did you obtain a Coroner's warrant?

11 A Yes, I did.

12 Q Do you wish you had gotten a Magistrate's warrant?

13 A Absolutely.

14 Q Okay. As a result of the Coroner's warrant, was Tavarus Rogers picked up on the
15 6th day of January, 1999?

16 A Yes, he was.

17 Q Was he delivered to you at the detention, no at the sheriff's office?

18 A Yes, he was.

19 Q At the time that you first talked with Tavarus Rogers did you warn him of
20 anything?

21 A I immediately read him his Miranda rights.

22 Q Okay, sir. I show you State's Exhibit No. 1. Is that the warnings that you gave?

23 A This is it.

24 Q And how did you do it?

25 A Same way I always do it.

1 Q Do to me what you did to him that night.

2 A Okay. I told him, "You have the right to remain silent, do you understand that
3 right?"

4 He initialed it over on the left -- right here beside the number 1.

5 Q Did he indicate that he understood it?

6 A Yes, he did.

7 Q Okay.

8 A Then I asked him, "Anything you say can and will be used against you in a court
9 of law, do you understand that?"

10 "Yes, I do."

11 Q Okay.

12 A Initialed over on the left hand side beside the number 2.

13 Q Okay, sir.

14 A "You have the right to talk to an attorney for advice before we ask you any
15 questions, you understand that?"

16 "Yes, I do."

17 Initialed over here.

18 "If you cannot afford an attorney, one will be appointed before any
19 questioning, if you wish. You understand that?"

20 "Yes, I do."

21 He initialed over on the left of number 4.

22 "If you decide to answer now, without an attorney, you'll still have the
23
24 right to stop answering at any time. You also have the right to stop answering at
25 any time until you talk to an attorney. Do you understand that?"

1 "Yes, I do."

2 He initialed over beside the number 5, to the left.

3 Then I went down to the waiver of rights. I asked him if he could read,
4 he said yes. I read the first one, "I have read this statement of my rights and
5 understand what my rights are."

6 He said he understood them, he initialed his initials over to the left of the
7 box that we have provided over there.

8 The second one, he can read because he said he could read and we had
9 him read the last one, the very last one. We didn't have him initial the "I cannot
10 read" statement. We had him initial, "I am willing to make a statement and
11 answer questions. I do not want an attorney at this time. I understand and know
12 what I am doing. No promises or threats have been made to me and no pressures
13 or coercions of any kind have been used against me.

14 He understood that, initialed his name over to the left, he signed it where
15 it says signature, I signed it where it says witness, he wrote down what grade of
16 school he had completed, his last grade, he signed it again, he dated it and timed
17 it, 1:20 a.m.

18 Q Okay, sir. Did you form an opinion as to whether or not he understood those
19 rights that had been given?

20 A Absolutely.

21 Q And what is your opinion?

22 A He understood exactly what his rights were.

23 Q Okay, sir. Did you talk with him at that time about taking a polygraph test?

24 A Yes, the very last thing we said to him, if I could arrange it, if he'd be willing to
25 take a polygraph. He said yes.

1 Q Did you arrange it?

2 A Yes, I did.

3 Q Was that for the morning of January the 8th?

4 A Yes, it was.

5 Q Did you and Jeff Purdy -- excuse me, who was with you when you warned him of
6 those things you just read?

7 A Sergeant Sam Roser.

8 Q Sam Roser. Okay, sir. On the morning of January the 8th, did you and Jeff Purdy
9 go to the detention center to pick up Tavarus Rogers to transport him to
10 Charleston?

11 A Yes, we did.

12 Q Okay, sir. At the time that you saw him there, did you again advise him of
13 anything?

14 A Yes. As soon as Sergeant Purdy and I got to the back entrance of the detention
15 center, we walked straight through, he was placed back in the infirmary area, we
16 went back there. There was a jailer with us and I can't recall who that was.

17 Q In order to shorten this just a little bit, let me ask you this question. Did you use
18 State's Exhibit No. 2 to give him the warnings on the morning of January the 8th?

19 A Yes, I did.

20 Q Okay, sir. Did you read him everything that's on that form?

21 A Same as I did on the 6th.

22 Q Just like you did the one you just testified to?

23 A That's how I do it every time.

24 Q At the conclusion, and I don't care about every time, I'm talking about this time,
25 at the conclusion of every question, did you ask him if he understood it?

- 1 A Yes, sir.
- 2 Q Okay, sir. And did you read all of the questions that are on that form?
- 3 A Yes, sir.
- 4 Q State's Exhibit No. 2?
- 5 A Yes.
- 6 Q Did you ask him if he understood them again?
- 7 A Yes, I did.
- 8 Q Did he tell you that he understood them?
- 9 A Yes, he did.
- 10 Q Okay, sir. Did you form an opinion as to whether or not he understood them?
- 11 A I did.
- 12 Q Okay, sir. After giving him the warnings on the morning of January the 8th, did
- 13 you then transport him to Charleston?
- 14 A Yes, I did.
- 15 Q And did at some point he get turned over to Kevin McHale?
- 16 A Yes, he did.
- 17 Q After some length of time - - were you present, did he go into Kevin McHale's
- 18 office?
- 19 A I believe he did. I was out front with them and Captain McHale at the time came
- 20 out and said, "Come on Tavarus, come on with me." And I didn't know where
- 21 they went.
- 22 Q After the passage of some length of time, did he come back out?
- 23 A Yes, sir.
- 24 Q With Tavarus Rogers? I'm talking about Kevin McHale and Tavarus Rogers?
- 25 A Right. Approximately 30 minutes, maybe 45 minutes.

1 Q Okay, sir. And did he tell you anything about Tavarus at that time?

2 A He just stated that Tavarus wanted to take a little break and get some fresh air and
3 he was kind of, he didn't know what he was suspected of so he wanted to try and
4 come to grips with that.

5 Q Okay. And did you take him outside?

6 A Yes, we did.

7 Q And the purpose for taking him outside was what?

8 A So he could get some fresh air.

9 Q Okay.

10 A Smoke a cigarette.

11 Q Okay. Did you send Jeff Purdy and - - -

12 A And Lieutenant Lucas to go get some cigarettes.

13 Q Okay. And did they come back with them?

14 A Yes, they did.

15 Q And did he start smoking some?

16 A Well, he actually - - we had stopped a couple of other officers who were walking
17 back and forth and got him a couple of cigarettes in the interim.

18 Q You bummed them?

19 A Yes, sir.

20 Q Okay. When Jeff Purdy got back there with the pack of cigarettes, who was
21 outside with Tavarus Rogers?

22 A Myself, Major McHale and Tavarus.

23 Q Okay. And Jeff?

24 A And Jeff.

25 Q Okay. What happened now?

1 A We were just, we weren't talking about anything specific, about the case at all.

2 He was just smoking a cigarette. We wanted to get him back in there to try and
3 get him on the polygraph. That was my interpretation of it. And he just started
4 pacing back and forth and he got extremely distraught, almost in tears, and just
5 said, "Man, I didn't mean to kill Paul, I didn't mean to kill him."

6 Q Okay. After he made that statement, did ya'll then begin questioning him?

7 A Yes.

8 Q Okay. Did you take him back into Kevin McHale's Office?

9 A Yes, sir.

10 Q Okay. Who was present in Kevin's office?

11 A Just myself, Kevin McHale and Tavarus.

12 Q Okay. Did at some point Jeff Purdy come in? If you don't remember, just tell me
13 you don't remember.

14 A I don't remember.

15 Q Okay. Did he give ya'll a statement?

16 A Verbal.

17 Q Tavarus Rogers?

18 A Not written, verbal statement.

19 Q Verbal statement?

20 A Yes, sir.

21 Q The statement that he gave to you, was it a free and voluntary statement?

22 A Absolutely.

23 Q Was there any promises or hope of reward used to secure that statement?

24 A No, sir.

25 Q Was any threats, force of duress used to secure that statement?

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A No.

Q Tell us everything that he said.

A Tavarus?

Q Yes, sir.

THE WITNESS: I'm going to refer to these, if you don't mind, Your Honor.

THE COURT: Okay.

By Mr. Murdaugh:

Q I'm talking about, you already said that outside he said what now?

A He had said, "I didn't mean to kill him."

Q Okay. So then you took him into the - - did he say anything else outside before you took him into that office?

A I'm pretty sure that while he was out there, he did say that - - when we were talking about him and Paul, that he did say that what had happened was Paul had turned around and reached a grabbed the gun and it went off.

Q Okay. And then you went in - - -

A And then we moved in.

Q Okay, sir. Tell me everything he said there.

A Okay. Then we went in, when we got back into Captain McHale's office, we went back over what he had already told us. Okay.

Q Okay.

A He was denying that he had anything to do with, I'll call him Mitch Riley's death. He was kind of hinting around the fact that when Paul had got shot that he had come out of the room and that West McKinnon had taken the shotgun, it was a pump shotgun, had taken the shotgun and gone over and killed Mitch Riley, then they ran out of the house.

1 When we were talking to him, Captain McHale said, "Look, you've
2 already admitted to what happened with Paul. What we need to do, is we really
3 need to find out what happened with Mitch. Now what really happened with
4 Mitch?"

5 And he just put his head down and he said, "The cracker just wouldn't
6 listen."

7 And that caught me by surprise because like Captain McHale said, this is
8 the first one I've done and it just came out, just blurted it out.

9 We asked him if he knew what had happened to John, who was the third
10 victim in the house that was beaten severely. He said no, he didn't know what
11 had happened to John at all.

12 As we went on during the day, I think at one point, Lieutenant Sad came,
13 Lieutenant, Captain McHale came in and said that Lieutenant Sad said that
14 Collins had his results on the polygraph, so I think we went down to see him. So
15 Sergeant stayed with Tavarus and he had Tavarus in a little canteen room, there
16 was a soda machine and a little drink machine, whatever. And when I had
17 returned back there, I don't even know how long I was gone, but when I returned
18 back there, that's when Tavarus was making these drawings.

19 Q Okay. That is State's Exhibits 3, 4 and 5 that you're indicating?

20 A I've got 5 here. Yes, sir, that's them.

21 Q Okay, sir.

22 A And at one point, I ended up in that little canteen room with Tavarus all by
23 himself and there was no animosity in our relationship. I mean for the couple of
24 days that we had known each other now, we got along fine, there were no
25 problems. There was no yelling or screaming, no tears, no nothing.

1 He had looked up at me at one point and he said, "Mr. Averill, they're
2 going to put me to death for this, aren't they?"

3 And I said, "Tavarus, I don't know." I said, "That's not my call. That's
4 nothing to do with me."

5 And he said, "Okay. I understand."

6 I mentioned to him about a statement, either writing or filming. He said
7 that he would rather do it in Beaufort. That was no problem. On the drive back
8 to Beaufort, with Tavarus, as soon as we crossed into the Beaufort County line, he
9 turned to me and said, "I think what I'd like to do is I still want to do a written
10 statement, and I'll video tape it for you, but I'd like to do it with my attorney
11 present." He says, "I promise you I'll do it."

12 And I said, "That's your option, that's no problem."

13 At that point, I took him out to the law enforcement center. Before we
14 even got there, I stopped and bought him some McDonald's because it had been a
15 long day. I let him eat it up there before I took him back over to the detention
16 center.

17 Q Okay, sir. After he told you that he wanted to talk with his lawyer, did you ever
18 question him again?

19 A Absolutely not.

20 Q Okay, sir. Now, let me ask you this, sir. During the process of your interrogation,
21 did you ever discuss with him as to whether or not there were other people
22 involved with him?

23 A Oh, yes.

24 Q Okay, sir. Who did he indicate to you was involved with him?

25 A That Mitch went into the - - I mean West McKinnon went into the house with him

1 at Coffin Point and that Collins Gadson stood outside. He wasn't sure if

2 Collins actually entered the house or not, but he said the last he had saw him, he
3 was outside and that Jonathan Gadson, or he knew him as J. T., I believe, if I'm
4 not mistaken, stayed back at the vehicle.

5 Q Okay. Did he indicate to you how it came to be that they came back to that house
6 a second time?

7 A Yes, sir, he did. When they got ready to leave, West McKinnon and the two
8 Gadson brothers went out to the vehicle. Tavarus stayed in the house and
9 apparently asked Paul if he could - - -

10 Q Paul, that's one of the victims?

11 A Paul Reischl. He asked Paul if he would front him some cocaine and Paul said
12 no, and he said he got mad and went out into the car and said, "He don't want to
13 front us anything."

14 They drove back to Seymore's house, in other words, Collins Gadson's
15 trailer, his mobile home on Seaside Road. On the drive there, he was pissed off,
16 he was mad. They got into the house and between them just talking about how
17 mad he was, "We ought to go back there and get that stuff, blah, blah, blah."

18 They already had a pump shotgun in the trunk of West McKinnon's car.
19 They had some weapons in the house that I don't even think are fireable. They
20 used those, put them in the trunk and they all decided they went back to the house
21 to do it.

22 Q What were they going to do when they went back to the house?

23 A They wanted the cocaine.

24 Q How about money?

25 A If it was available.

1 Q Okay. Did he indicate to you what had happened, Tavarus Rogers, did he
2 indicate to you what had happened after the killings?

3 A Yes, sir, he did.

4 Q What did he tell you?

5 A He said when they got back to the vehicle, they threw the weapons back in the
6 trunk and they drove back to Collins Gadson's residence on Seaside Road. When
7 they got to the residence, they popped the trunk. I'm not quite sure who he said
8 took the weapons out of the trunk.

9 Q But said one of the other three did?

10 A Yes, sir.

11 Q Okay.

12 A He went into the trailer or to the mobile home, I believe.

13 Q Tavarus?

14 A Yes, sir.

15 Q Okay. Did the rest of them ultimately come into the trailer?

16 A Yes, they did and at that point that's where they divvied up what little bit of
17 cocaine they got and what little bit of money they got.

18 Q Okay, sir. Did he tell you anything else that's relevant to the killing, what
19 happened before the killing or after the killing that I haven't asked you about?

20 A No, sir.

21 MR. MURDAUGH: Thank you, sir. Answer any questions these ladies and
22 gentlemen might have.

23 CROSS-EXAMINATION

24 By Mrs. Fleming:

25 Q Mr. Averill, who was it that told you that West was at the scene?

1 A What we had was, there was a name, we were getting phone calls with a name,
2 saying that there was a West and all that kind of thing.

3 Q By whom?

4 A Anonymous. The very first thing we had was, the young lady who was the
5 witness there said that there was, one of the boys there, his name was West, and
6 she thought it was W-e-s, she didn't know it was West.

7 Q Do you remember which young lady this was?

8 A Yes, I do. ~~It was Jocelyn Wendell~~

9 Q All right. Did you -- Jocelyn ~~actually told you that West was involved in the~~
10 ~~incident though?~~

11 A No. ~~She told us that she heard that name during the night from the four~~
12 gentlemen that were there earlier and we just started putting names to faces and
13 came up with a photo lineup.

14 Q All right. Now, you and Officer Hiers actually processed the crime scene, is that
15 correct?

16 A Yes, we did.

17 Q And did you find Tavarus' fingerprints at the crime scene?

18 A I'm not sure. I imagine they were there because he was there earlier.

19 Q Do you have anything showing that Tavarus' fingerprints were there?

20 A I can't tell you that.

21 Q Footprints? Tavarus' footprints?

22 A Couldn't tell you that either.

23 Q Did you find Tavarus' hairs?

24 A Couldn't tell you.

25 Q Did you find any physical evidence at the scene linking Tavarus Rogers to the

Coffin Point incident?

A Not that I know of.

Q Now, on January 5th, that's when you actually arrested West McKinnon, is that right?

A Let me check? January 5th.

Q And you talked with him on January 5th about this incident?

A Correct.

Q And that's when you got the information that he said he had been at the party earlier?

A Correct. With Tavarus and the Gadson brothers.

Q Then when you contacted Coroner Copeland, you asked Mr. Copeland to issue a Coroner's warrant, right? You were the one who asked him to issue the Coroner's warrant?

A Right. Right.

Q And your basis for asking him for the warrant was two-fold, right? That Tavarus had attended a party at the incident location prior to the incident and that West McKinnon had said that he, West, had been at the party also and had given Tavarus a ride home. That is what you told the Coroner?

A And that they had been together that night, yes.

Q And you told the Coroner that you believed that Tavarus possibly had information regarding the incident?

A I don't recall what I said to him. Right

Q That would be in paragraph 30.

A I got it, yeah.

Q And in fact, you put in your report that he possibly had information regarding the

incident?

2 A Absolutely.

3 Q All right. And you thought that by issuing a Coroner's warrant and incarcerating
4 Tavarus, that could produce some information for you?

5 A Right.

6 Q So, on January 4th, that's when you asked Mr. Copeland to issue the Coroner's
7 warrant?

8 A Yes, ma'am.

9 Q And he did issue the warrant?

10 A Yes, ma'am.

11 Q And he issued that obviously pursuant to your request?

12 A Yes, he did.

13 Q And that request was based in part on West's statement to you?

14 A Yes.

15 Q But, Mr. Averill, that statement was made on January 5th, the day after Mr.
16 Copeland signed the Coroner's warrant.

17 A Okay. On the third of January, I received a phone call that West and Tavarus
18 were the two that shot the people at Coffin Point.

19 Q Yes, sir. What I'm looking for, sir, is the date -- you said that you talked with
20 West McKinnon on January 5th, correct?

21 A Correct.

22 Q And you asked the Coroner to issue a warrant based in part on what West
23 McKinnon had told you, largely in part on what West McKinnon had told you,
24 correct? And that Coroner's warrant was issued on January 4th?

25 A Right. That's what it says here.

- 1 Q All right.
- 2 A I've got that in paragraph 38.
- 3 Q At this point, you had no physical evidence linking Tavarus to the Coffin Point
- 4 incident, right?
- 5 A Nothing at the scene, no.
- 6 Q And in fact, you still have no physical evidence from the scene linking him to the
- 7 Coffin Point incident?
- 8 A Not that I know of.
- 9 Q And you had no eye-witness identifications linking Tavarus to the Coffin Point
- 10 incident, did you?
- 11 A No, at that point, all we had was a photo lineup, an identification of a photo
- 12 lineup that he was there earlier in the night with West.
- 13 Q So, in fact, you had no evidence linking Tavarus to the Coffin Point incident
- 14 itself, did you?
- 15 A No hard evidence, no.
- 16 Q You put together a lineup which included a photo lineup which included a
- 17 photograph of Tavarus Rogers, correct?
- 18 A Correct.
- 19 Q And on January 4th, Jocelyn Wendell viewed that photo lineup didn't she? That
- 20 would be, I believe in paragraph 25 of your report?
- 21 A Right. That's correct.
- 22 Q Ms. Wendell was unable to identify anyone in that lineup as one of the intruders?
- 23 A That's correct.
- 24 Q Also, on January 4th Crystal Wire viewed that lineup?
- 25 A Correct.

1 Q And Crystal Wire was one of the people who had been in the house at the time of
2 the incident?

3 A Correct.

4 Q And Ms. Wire was also unable to identify anyone in that lineup as one of the
5 intruders?

6 A Right.

7 Q Toby Renschl also viewed the photo lineup on January 4th, correct?

8 A Correct.

9 Q And he told you that he identified Tavarus Rogers as having been at a party at the
10 house earlier that evening, right?

11 A Correct.

12 Q But he was not able to positively identify anybody in that lineup as one of the
13 intruders, right?

14 A That's correct.

15 Q Now, when you returned to the Beaufort Law Enforcement Center from
16 Charleston, you charged Tavarus with armed robbery, assault and battery with
17 intent to kill and two counts of murder, is that right?

18 A Two counts of murder, one count of armed robbery and one count of assault and
19 battery with intent to kill.

20 Q And while I'm thinking about it, could you please tell me what time it was on
21 January 6th that ya'll actually arrested Tavarus on the Coroner's warrant, there
22 seems to be a little bit of confusion about that?

23 A What time we arrested him?

24 Q Uh huh, on the Coroner's warrant.

25 A It was somewhere around -- I didn't arrest him on it, but they brought him to the

1 law enforcement center right about, probably 1:00, 1:10 in the morning.

2 Q And it was Officer Jones who brought him there?

3 A That's correct.

4 Q And Officer Jones had arrested him on the Coroner's warrant over on St. Helena,
5 I believe?

6 A Correct.

7 Q So it would have taken just a matter of minutes probably to get from St. Helena
8 to ---

9 A What part of St. Helena are you coming from?

10 Q I don't know. That's the reason I'm asking.

11 A He was out on Seaside Road, so it was quite a ride, it was a ride. I would venture
12 to say if he arrested him out on Seaside Road, which he says he did, then it was
13 probably 12:30 in the morning.

14 Q I'm just looking for a ballpark figure.

15 A Yeah.

16 Q And then when Officer Jones arrested him, he delivered him straight to the law
17 enforcement center?

18 A Yes, he did.

19 Q He did not deliver him to the detention center first?

20 A Nope, straight to the law enforcement center.

21 Q And that was upon your instructions?

22 A Right.

23 Q Because you wanted to talk to Tavarus?

24 A Right.

25 Q After Tavarus was arrested on the Coroner's warrant, was any bond set for him?

1

A No.

2

Q Was any arraignment scheduled for him?

3

A Not on the Coroner's warrant.

4

Q Did you arrange for a bond hearing or an arraignment?

5

A No, ma'am.

6

Q Now, you had said when you returned to the law enforcement center from

7

Charleston, you charged Tavarus with the armed robbery, the ABIK and the two

8

counts of murder. It was on January 21st that you charged him additionally, right?

9

A Right.

10

Q And that would be for possession of a firearm during the commission of a violent

11

crime, and six counts of kidnaping?

12

A Right.

13

Q Do you believe, Officer Averill, that there was probable cause to arrest Tavarus

14

Rogers on a Coroner's warrant on January 6, 1999?

15

A This is the first time I've worked a murder, okay? I have never used a Coroner's

16

warrant. I really wasn't even quite sure what they were, but I knew I had them

17

available to me or I thought I had them available to me. If I had to do it over

18

again, I think on that particular night, I would have gotten at least a magistrate's,

19

an arrest warrant.

20

Q If you had had probable cause, wouldn't you have gotten an arrest warrant for

21

him?

22

A Yeah. Absolutely.

23

Q Do you believe that being held in jail for two days on an illegal warrant is

24

coercive?

25

A Two days? He wasn't up there two days.

1 Q Well, how long was he there then, from January 6th until January 8th?

2 A He probably went in - - no. January 6th, okay - - just under two days.

3 Q You believe that's coercive, being held there on an illegal warrant for two days?

4 A No.

5 Q Thank you, Mr. Averill.

6 MRS. FLEMING: Just one minute, Your Honor.

7 Nothing further, Your Honor.

8 MR. MURDAUGH: I have no questions at this - - I do have a question.

9 REDIRECT EXAMINATION

10 By Mr. Murdaugh:

11 Q In a response to the question Mrs. Fleming asked you, Jocelyn - - Rogers?

12 MRS. FLEMING: Wendell.

13 THE WITNESS: Wendell.

14 By Mr. Murdaugh:

15 Q Jocelyn Wendell. Tell me what Jocelyn Wendell said in regard to Wes or West
16 being present when the murders took place.

17 A ~~She said that when the two individuals came through the door, that one of the~~
18 ~~individuals, they both had something wrapped around their head. It appeared to~~
19 ~~her to be a t-shirt or a towel of some kind. One of the individuals, it fell and she~~
20 ~~looked him right in the face and she said it was the exact same person who was~~
21 ~~there earlier during the day and she remembered him because he was trying to~~
22 ~~pick up on her. He was trying to hit on her is what she said.~~

23 Q ~~Did she indicate what that person's name was?~~

24 A ~~I don't believe she did.~~

25 Q ~~When did West come on?~~

1 A She had heard that -- she just remembered that name from that group of people
2 that were there.

3 Q I got you. Okay. And she remembered the person who the towel fell off as being
4 there earlier?

5 A Absolutely.

6 Q And remembered the name, West or Wes?

7 A And we put together a photo lineup with West McKinnon's face and she said,
8 "Boon, that's the guy that the towel fell on the t-shirt fell off of the face."

9 Q Oh, okay. Thank you, sir.

10 MR. MURDAUGH: I have no further questions, Your Honor.

11 THE COURT: Anything further?

12 MRS. FLEMING: One second, Your Honor.

13 No, sir.

14 MR. MURDAUGH: That concludes our presentation for the purposes of this
15 hearing, if Your Honor please.

16 THE COURT: Do you have any further questions of this witness?

17 MRS. FLEMING: No, sir.

18 THE COURT: Okay. Any additional witnesses for the defendant?

19 MR. FLEMING: No, sir, Your Honor.

20 THE COURT: Okay. Have all the witnesses either been called or excused?

21 MRS. FLEMING: Yes, sir.

22 MR. FLEMING: There is a witness back there -- I'll check real quick, Judge.

23 THE COURT: Okay. Is everything in evidence that's supposed to be in
24 evidence?

25 MR. MURDAUGH: There's five exhibits.

1 THE COURT: All without objection?

2 MR. MURDAUGH: All without objection.

3 MRS. FLEMING: For purposes of this hearing only, obviously.

4 THE COURT: Yeah.

5 Nothing further from the State, I believe, is that correct?

6 MR. MURDAUGH: That's correct.

7 MR. FLEMING: I would like to point to some specific points of laws
8 concerning this.

9 THE COURT: I want to hear your arguments, but first I want to close the record
10 on the testimony and evidence.

11 Any evidence or witnesses or anything?

12 MRS. FLEMING: No, sir.

13 THE COURT: Of course, you have put in some -- a couple of witnesses out of
14 order, but I just wanted to make sure.

15 Okay.

16 MR. FLEMING: The State has the burden of proof, it doesn't matter who goes
17 first.

18 THE COURT: Well, it's your motion to suppress. I don't know ---

19 MR. FLEMING: I understand. I just want to make sure that the State does have
20 the burden of proof. Of its admissibility, we don't have the burden of proving that it's
21 suppressible.

22 THE COURT: Uh huh.

23 MR. FLEMING: If I can, Your Honor ---

24 THE COURT: It must be proven by a preponderance of the evidence, I believe,
25 is that correct?

1 MR. MURDAUGH: Sure is.

2 MR. FLEMING: Your Honor, I believe that's for purpose of introduction.

3 THE COURT: All right. If I understand the issue, it's basically, the sole issue
4 before the Court - - All right. Let's take the easy one first. Does the defendant have any
5 problem with the Miranda warnings or the fact that the statement was made pursuant to
6 the - - -

7 MR. FLEMING: Clearly there is evidence, Your Honor, that the Miranda
8 Warning was given and clearly there is evidence that certain officers believed that the
9 statements were made freely and voluntarily. Our position on that is that the statements
10 could not have been made freely and voluntary under the Fifth Amendment, under the
11 Jackson vs. Denno Hearing.

12 We'll just go over to this side and just do the Jackson vs. Denno hearing because,
13 two-fold, first, Detective Purdy said it best, to be in jail illegally for two days is coercive.
14 If there is coercion, there can't be voluntariness under the standard - - in a statement.

15 Second of all - - -

16 THE COURT: So, in other words, coercion is a violation of the Fourth
17 Amendment, which - - -

18 MR. FLEMING: Whatever, if you're in jail for two days when you're not
19 supposed to be, it's coercive. If there was coercion, then a statement can't be voluntary
20 in my reading of the law.

21 THE COURT: Okay. Well, anyway, do you have any opinion, I'm going to hear
22 you on the Fourth Amendment, but as to the voluntariness, as to whether he was given
23 the statements and so forth under the totality of the circumstances, he obviously was
24 being detained, but I feel that to my mind that the overwhelming weight of the evidence
25 of the hearing is that the first statement, the one that was given in the courtyard or

1 wherever,

2 outside, was not, I feel like the overwhelming evidence is that he was given and he knew
3 and understood and he freely and voluntarily made those statements, complying with the
4 Fifth Amendment requirements.

5 MR. FLEMING: I would like to say in addition to the - - one of the elements of
6 the admissibility of a statement under the Fifth Amendment is that there is no coercion.
7 That's one of the questions I had.

8 THE COURT: You already said that.

9 MR. FLEMING: The second thing is, when asked by Mr. McHale to sign the
10 Miranda statement, he was hesitant about signing it, saying, "I don't want to put anything
11 in writing."

12 Which showed that it was not voluntary. He was under some sort of reasoning
13 that he didn't want to speak to the police at that point and for whatever reason, they
14 contend that a statement was made at that point. Well, I think that the hesitation shown
15 at that point is enough to invoke a Fifth Amendment protection.

16 In other words, you remember when Mr. McHale said, "Well, he was hesitant, he
17 didn't want to sign, he didn't want to put anything in writing."

18 THE COURT: Yeah, I heard that testimony.

19 MR. FLEMING: And that shows his hesitation. And if you add that to the
20 coercive nature of being in jail illegally, that and the totality of the circumstances makes
21 it an involuntary setting and in an involuntary setting, you can't make a free and
22 voluntary statement. And so, that would be our argument concerning whether or not it's
23 admissible under the Fifth Amendment.

24 THE COURT: Okay. All right. I understand what you're saying. I don't agree
25 with it, but okay.

1 All right. Go ahead. The real issue before us, the tougher issue in this case is
2 whether there was probable cause for Mr. Rogers to have been arrested. Would you
3 agree with that Solicitor?

4 MR. MURDAUGH: I would, yes, sir.

5 THE COURT: All right. Well, before I hear from Mr. or Mrs. Fleming, tell me
6 what facts in the record support the probable cause?

7 MR. MURDAUGH: Okay, sir. An arrest was made on the 6th day of January,
8 1999.

9 THE COURT: Okay. And that was the early hours of the 6th?

10 MR. MURDAUGH: That's correct, sir. I think the evidence was 1:30,
11 somewhere in that area.

12 THE COURT: Actually shortly after midnight?

13 MR. MURDAUGH: 12:30, I'm sorry. He said he got to the law enforcement
14 center about 1:20 - - -

15 THE COURT: And probably had been arrested about 12:30.

16 MR. MURDAUGH: 12:30, yes, sir. So it would be 12:30 the early morning of
17 January 6th.

18 THE COURT: Okay.

19 MR. MURDAUGH: At that time, sir, at the time he was arrested, they had
20 knowledge in their heads that Tavarus, no that ~~West McKinnon~~ had said that, "Yes, I was
21 at the house where the killings took place earlier, but I was not there when the killings
22 took place."

23 We had him saying that, "I was at the house earlier with ~~Tavarus Rogers, Collins,~~
24 ~~Gadson,~~ and ~~Jonathan~~ Gadson."

25 We had Jocelyn Wendell, who gave a statement, sir, ~~saying that the towel fell~~

1 down, that the person that was in there when the killings took place was West

2 McKinnon. I had heard his name earlier and he had been trying to put the hit on me

3 So, when she identifies McKinnon as being in the house when it happened and
4 him saying, "No, I was not there," and him saying that, "I was there with three other
5 people, Tavarus Rogers, Collins Gadson, and Jonathan Gadson earlier, but I wasn't there
6 when the killings took place."

7 That gave them right at that point some probable cause to arrest him. They had
8 sworn out a Coroner's warrant for a material witness, but they could have stopped right
9 there and gotten a Magistrate's warrant, in my opinion. I tell you, sir, that in Wan Sang
10 vs. United States, which is cited in 371 U.S. 471, that the Court says that "An arrest, with
11 or without warrant must stand on firmer ground than mere suspicion. Although the
12 arresting officer need not have in hand evidence which would suffice to convict."

13 In other words, they've got to have more than suspicion, but they don't have
14 enough to convict you, and we contend that those facts that I just recited to you would be
15 enough for probable cause.

16 THE COURT: Okay.

17 MR. FLEMING: Judge, I think first of all I want to tell you that I think just
18 because - - Taylor vs. Alabama I think is the lead case in this, lead decision by the
19 Supreme Court in this matter, clearly. I think it's as on point as you can get in terms of
20 what happened in that case.

21 And first of all, what they said was, if it is an illegal arrest, which it is because
22 they have stipulated to it, then, was there an intervening event that purged that tank? If
23 there is no intervening event, period, it's never purged nothing can come in and so I
24 assume - - -

25 THE COURT: Well, wait, sorry to interrupt you. I don't think he has basically

1 said that it was an illegal arrest. What he's saying is that it was illegal, that he had

2 probable cause, which I think is a little shaky, but he says he's got probable cause, that
3 even though the warrant was illegal, the arrest was legal.

4 MR. MURDAUGH: That's correct, sir.

5 MR. FLEMING: All right. Well, ---

6 THE COURT: I mean, if I understand what he's saying, this is not a situation
7 where -- but the question is that the warrant was invalid. No question about the warrant
8 being invalid, but whether there was ~~independent probable cause~~ that would have been
9 sufficient without it.

10 MR. FLEMING: Right.

11 THE COURT: So I think the issue is a little bit different than what you stated.

12 MR. FLEMING: Well, with regard to the probable cause issue, they say that the
13 individual ---

14 THE COURT: In other words, I take that to mean, let me stop you right there,
15 ~~that they don't rely on any intervening event in that to break the chain, do you?~~

16 MR. MURDAUGH: ~~No, sir?~~

17 THE COURT: Go ahead.

18 MR. FLEMING: The probable cause that they rely on they're saying is that
19 West McKinnon was identified by one witness as being there. That same witness looked
20 at Tavarus Rogers' face in that lineup and said nobody on this lineup was the intruder.
21 They vouch for the witness' credibility as to West and then they say that you can ignore
22 the fact that she doesn't pick Tavarus Rogers out in the lineup. That is the only piece of
23 evidence they have, period.

24 West McKinnon never says any -- of course, he denied he was there, he denied
25 knowing anything about Tavarus. Tavarus wasn't there and any of those other people

1 weren't there.

2 Not one other witness, not one piece of physical evidence, not one piece of
3 testimony or anything, whatsoever, to this day links Tavarus Rogers to that scene, other
4 than earlier that night.

5 THE COURT: In other words, that he was there earlier that night.

6 MR. FLEMING: Earlier that night. The fact that you're there earlier that night
7 isn't even suspicion that you came back and killed people. And, you know, you've got
8 three eye witnesses looking at this lineup saying, "Nobody in that lineup came back that
9 night."

10 Three separate eye witnesses could not identify him. That's what happened on
11 the 5th. If they knew that when they arrested him on the 6th, they knew that they didn't
12 have a witness to identify Tavarus Rogers at all and they had all seen the photographic
13 lineup. There was nobody else to show it to or anything. There wasn't a fingerprint,
14 there wasn't a hair follicle, there wasn't blood stain evidence, there was nothing.

15 THE COURT: Well, basically what they had, plus that and then they had some
16 kind of, which obviously doesn't create probable cause, they had suspicion based upon
17 an anonymous telephone call.

18 MR. MURDAUGH: Yes, sir, but that doesn't play into probable cause.

19 MR. FLEMING: That's right.

20 THE COURT: Basically you have, if I understand it, let me restate it to see if I
21 understand that this is all that you have because I think it is, that ~~West McKinnon~~ was
22 identified as having been there earlier that night.

23 MR. MURDAUGH: That is correct, sir.

24 THE COURT: And he was identified at least by the 6th, by the time, some time
25 late on the 5th or sometime, he was recognized.

1 MR. MURDAUGH: That is correct, sir, as being there at the time the murders
2 took place.

3 THE COURT: At the time the murders took place.

4 MR. MURDAUGH: Yes, sir.

5 THE COURT: And being involved in them.

6 MR. MURDAUGH: Yes, sir.

7 THE COURT: And the fact that the police had evidence that Rogers was with

8 ~~West McKinnon earlier in the evening.~~

9 MR. MURDAUGH: That's correct, sir.

10 THE COURT: And that's it.

11 MR. MURDAUGH: And the fact that West McKinnon then said that he was not
12 present which would indicate that he was lying and the fact that he said that "I was with
13 Tavarus Rogers later that morning after the killing," is my recollection.

14 THE COURT: Well, there was some testimony about it and I didn't quite
15 understand it, but that Rogers or somebody said that, I don't know when this occurred but
16 Rogers and West McKinnon went home together to one of the other's house, or
17 something like that. I'm not sure exactly what that is about.

18 MR. MURDAUGH: Yes, sir.

19 THE COURT: Afterwards. Now how that ties in - - what is that testimony?

20 MR. MURDAUGH: Just more evidence of them being together continually, sir.

21 THE COURT: Well who, where did that testimony come from?

22 MR. MURDAUGH: It came from Jeff Purdy, no, excuse me, Detective Averill.

23 THE COURT: Well, what did he say?

24 MR. MURDAUGH: What was your statement?

25 I'll be honest with you, Judge, I don't remember. My recollection is that during

1 the interrogation of West McKinnon

2 THE COURT: And when was that?

3 MR. MURDAUGH: Sir?

4 THE COURT: When was that?

5 MR. MURDAUGH: That was on the 5th of - - -

6 THE COURT: January 5.

7 MR. MURDAUGH: January 5.

8 THE COURT: Okay.

9 MR. MURDAUGH: During the interrogation of West McKinnon he says among
10 other things, I was there earlier. I was not there at the time it happened. Tavarus and I
11 had gone to Tavarus' grandfather's house. Is that correct?

12 DETECTIVE AVERILL: Yes, sir.

13 THE COURT: Afterwards.

14 MR. MURDAUGH: Yes, sir, which put them together during the time the
15 murders were committed.

16 THE COURT: Okay. Well, that's very important.

17 MR. FLEMING: It puts them together away. They're saying that he's not - -
18 they're saying that West McKinnon is not credible because he's lying about where he is.

19 THE COURT: Well, let me ask you this. All this happened. From the time they
20 left until they went back was not a long time was it? It was something, it was within an
21 hour, I got that impression.

22 MR. FLEMING: No.

23 MR. MURDAUGH: It was two hours as I recall. My understanding is that they
24 left around four o'clock, according to Mr. Averill.

25 MR. FLEMING: I don't recall any testimony about that time frame at all. On

1 the record, there is not testimony.

2 THE COURT: There's no testimony on the record, but there was testimony that
3 the version that was given was that they went to the house and got some guns and talked
4 for a little bit and then went straight on back over there.

5 MR. MURDAUGH: My recollection is that somebody said that they had left the
6 house around four o'clock.

7 MR. FLEMING: Yeah, but wait a minute now, that was testimony from the
8 statement that we're trying to suppress. It wasn't in existence on January the 6th. That
9 statement didn't occur, so you can't rely on it for the purposes of January 6.

10 MR. MURDAUGH: You're absolutely correct.

11 THE COURT: Anything else?

12 MR. FLEMING: Your Honor, there are several issues that I've briefed in my
13 written motion. One of them is, and I have to put it on the record, I don't intend to take
14 the Court's time up. In the State of South Carolina, there is a statute that says that if you
15 are arrested, you must be taken before a magistrate within 24 hours. The United States
16 Constitution demands due process through the Fifth and Fourteenth Amendments.

17 When they detained Mr. Rogers on an illegal warrant and did not bring him
18 before a neutrally and detached magistrate to both explain him his rights, to provide him
19 with due process under the law, that is a violation of the Fifth and Fourteenth
20 Amendments.

21 That is important in both arguments from the sense that a continual or extra
22 violation of a civil right is an exacerbation or it makes worse the initial constitutional
23 violation of the illegal arrest. So here, what you've got is a person who is in jail
24 indefinitely. I mean, there is no time frame in essence. Nobody has told him what he has
25 to do to get out of jail.

1 And so, that is as bad a Fifth Amendment due process violation as there is. A
2 continual and endless incarceration without the benefit of a neutral and detached
3 magistrate. And that's an additional constitutional violation and I think plays into the
4 Taylor vs. Alabama factors in terms of what the factors they look at under the legal
5 warrant situation. In other words, they look at what the purpose of the detention was.

6 And clearly from Captain, or Mr. McHale's testimony, their intention was to
7 crack Tavarus Rogers, was his testimony. "We're going to crack him." And one of the
8 ways that they cracked him was, they held him in jail and didn't put him in front of a
9 magistrate.

10 That is just a continuous violation there, Your Honor, and I wanted to put that on
11 the record orally, but it is in front of Your Honor in written form.

12 THE COURT: Well, anything else?

13 MR. FLEMING: Your Honor, just for safety sake, this motion to suppress has
14 been filed with the Court, and I assume you've made it a part of the record, will make
15 this a part of the record, the copy that's filed with the Clerk's office?

16 THE COURT: Okay.

17 MR. FLEMING: And I've provided you with a copy.

18 THE COURT: This is a second copy of this?

19 MR. FLEMING: Yes, sir.

20 THE COURT: Okay. Anything else?

21 MR. MURDAUGH: Your Honor, please, I would call the Court's attention to
22 the case of Plath vs. Arnold, in which they said that even with an illegal arrest, which we
23 don't concede this was, that that doesn't exclude a confession if it was free and
24 voluntary, sir.

25 I also call your attention - - -

1 THE COURT: Well, show me that then. Let me see that. I don't want to - - -

2 MR. MURDAUGH: Plath vs. Arnold. I've got it over here somewhere, sir.

3 THE COURT: Well, this appears to be different from the holding. I mean how
4 do you reconcile this with the case of Taylor vs. Alabama?

5 MR. MURDAUGH: I can't reconcile it, except I can tell you that in State vs.
6 Carter, which is Supreme Court of Tennessee, there's one almost identical to the Plath
7 vs. Arnold, the New York vs. Harris is cited at 495 U.S. 14, it's almost identical to Plath
8 vs. Arnold. State vs. Puenches which is a South Carolina case.

9 MR. FLEMING: Your Honor, I'm sorry - - -

10 THE COURT: Well, let me just say this, that to my mind is a compelling issue.
11 If you're saying that it's Plath and Arnold, which is a 1981 case - - -

12 MR. MURDAUGH: Yes, sir.

13 THE COURT: And we're all familiar with the fact that the constitutional
14 provision with the U.S. Supreme Court which starts and having gone back to the '60s and
15 the '70s the pendulum would sway way over this way and a lot of confessions and things
16 like that were thrown out and by the time you get into the '80s the pendulum is swung
17 back. And, of course, we're concerned with what the law is today. And so you have to
18 read these decisions with that in mind to a certain extent.

19 So what I would suggest is that the way I feel right now, there was insufficient - -

20 ~~I do not find that there is any sufficient probable cause for the detention of the defendant.~~

21 ~~Mr. Rogers at the time. I do believe that he was, in fact, in jail under an invalid arrest.~~

22 ~~warrant.~~

23 I do not find - - I think there was certainly suspicions, but the gist of the
24 testimony as I get it from the detectives is that they knew that it somehow revolved
25 around these four individuals who had been there earlier in the evening, but they didn't

1 know which ones did what or who was involved, but they just knew that this West was
2 involved and probably one of the other ones who had been there in the evening and I
3 believe there were four of them and that's all that they knew, but who did what or
4 whatever or who the other ones were, they just didn't know. They had suspicions, but
5 they were just suspicions. Now, what the law is regarding - - so basically, I find that the
6 defendant, Mr. Rogers, was being illegally detained.

7 I also find that certainly all of the Fifth Amendment rights were complied as to
8 the Miranda warnings. They were given and understood, there was no coercion, that
9 he - - I find that he certainly knew and understood these rights and that he made the
10 statement freely, knowingly and voluntarily.

11 Okay. Then you get to the point, wait just a second, I had something in my book
12 here, let me see if I can find it. I see here, of course, this states Taylor vs. Alabama. I
13 see a South Carolina case of Lanier vs. South Carolina have ya'll seen that one?

14 MR. MURDAUGH: Yes, sir. I have it right here.

15 Would you like for us to brief this for you, sir?

16 THE COURT: I think that's a good idea. If you would, just brief it and that
17 would give us both sides, but I do believe that you're correct, this Plath and Arnold cases
18 are cited so I'm just going to allow both of you to brief the issue and I believe that we've
19 narrowed it down. I don't have any problem about whether there was probable cause. I
20 do not find there to have been probable cause.

21 The sole issue for determination is as to whether or not someone, a confession
22 obtained after an illegal arrest is admissible or not under the circumstances of this case.

23 MR. MURDAUGH: Thank you, sir.

24 THE COURT: Anything further?

25 MR. MURDAUGH: What about a time frame?

1 THE COURT: Ten days, do ya'll need more?

2 MR. FLEMING: All right.

3 THE COURT: Ten days is sufficient?

4 MR. FLEMING: Ten days is fine.

5 MRS. FLEMING: Your Honor, if I might, I would like to go ahead and ask that
6 we get a transcript of this hearing so that we can have it before the August 21st trial,
7 which I would imagine would mean that our court reporter would probably have to take
8 it out of order.

9 THE COURT: Okay. Without objection, the transcript request is to be
10 expedited.

11 How much time do you need?

12 MR. MURDAUGH: I'm wanting to know if we might shorten it. I've got an
13 additional situation coming up Monday week

14 THE COURT: Is that enough time?

15 MR. MURDAUGH: How about Tuesday of this week?

16 THE COURT: Obviously everybody is going to go ahead and get this while its
17 fresh, does that suit you okay?

18 MR. FLEMING: That's fine, yes, sir.

19 THE COURT: All right. And what I'm going to ask is that you submit me a
20 brief and you don't have to do it, you can either do it in brief form or in a letter with the
21 enclosed cases and then with a proposed order supporting your side on that limited issue.

22 MR. MURDAUGH: Okay, sir.

23 THE COURT: Okay. The hearing is adjourned.

24

25 -----End of Transcript-----

1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE OF REPORTER

3 COUNTY OF AIKEN)

4
5
6
7 I, the undersigned, Brenda W. Mize, Official Court Reporter for the Second
8 Judicial Circuit of the State of South Carolina, and Notary Public in and for the State of
9 South Carolina, do hereby certify that I reported the proceedings had in the captioned
10 case, in the Court of Common Pleas in and for the State of South Carolina, on the 8th day
11 of June, 2000.

12 I FURTHER CERTIFY that the foregoing pages, numbered 3 through 130,
13 constitute a true, accurate, and complete transcript of said hearing.

14 I FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party
15 hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand and seal at Aiken County,
17 this 27th day of July, 2000.

18
19
20
21 Brenda W. Mize

Brenda W. Mize,

22 Court Reporter and Notary Public

23 For the State of South Carolina

24 My Commission expires February 25, 2010
25

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS

THE STATE

-VS-

TAVARUS ROGERS

:
:
:
:
:

TRANSCRIPT OF RECORD

AUGUST 17, 2001
BEAUFORT, SOUTH CAROLINA

B E F O R E:

HONORABLE JACKSON V. GREGORY, JUDGE

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

RANDOLPH MURDAUGH, III, SOLICITOR
ATTORNEY FOR THE STATE

CORY HOWERTON FLEMING, ESQ.
TIMOTHY C. KULP, ESQ.
ATTORNEYS FOR DEFENDANT

DONNA HARTLEY
CIRCUIT COURT REPORTER

ORIGINAL

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1 (INCIDENT REPORT MARKED AS DEFENDANT'S EXHIBIT ONE FOR
2 IDENTIFICATION ONLY. STATEMENT OF KRISTAL WIRE DATED JANUARY
3 1, 1999, MARKED AS DEFENDANT'S EXHIBIT TWO A AND TWO B FOR
4 IDENTIFICATION ONLY. STATEMENT OF KRISTAL WIRE DATED JANUARY
5 3, 1999, MARKED AS DEFENDANT'S EXHIBIT THREE FOR IDENTIFICA-
6 TION ONLY. STATEMENT OF KRISTAL WIRE DATED JANUARY 4, 1999,
7 MARKED AS DEFENDANT'S EXHIBIT FOUR FOR IDENTIFICATION ONLY.)

8 THE COURT: BEFORE WE START, I UNDERSTAND WE MAY HAVE
9 MEMBERS OF THE PRESS HERE. IS ANYBODY HERE FROM THE PRESS?
10 AND WHO ARE YOU, SIR?

11 MR. CHRIS BENDER (PHON.): CHRIS BENDER FROM THE BEAUFORT
12 GAZETTE.

13 THE COURT: OKAY.

14 BECAUSE THIS CASE IS UNDER A GAG ORDER AND IT'S ABOUT TO
15 BE TRIED AND HAS HAD A CERTAIN AMOUNT OF PUBLICITY, I DO
16 NOT -- I'M OF THE OPINION - AND I'LL ASK THE ATTORNEYS - THAT
17 IT WOULD MAKE IT VERY DIFFICULT, UNTIL WE HAVE A JURY SEQUES-
18 TERED, TO GET A JURY THAT WOULD NOT BE INFLUENCED, SINCE IT'S
19 COMING UP IN THE NEXT SEVERAL MONTHS.

20 WHAT'S THE STATE'S POSITION ON THAT?

21 MR. MURDAUGH: I'LL LEAVE THAT TO YOUR WISE DISCRETION
22 AND MR. FLEMING AND MR. KULP'S.

23 THE COURT: MR. FLEMING.

24 MR. FLEMING: ON BEHALF OF MR. ROGERS WE WOULD MOVE THAT

1 THE PRESS BE OMITTED FROM THIS PARTICULAR HEARING. I BELIEVE
2 YOU HAVE TO DO IT ON A HEARING TO HEARING BASIS.

3 THE PURPOSE OF THIS, THIS IS AN IN CAMERA HEARING. AND
4 AS SUCH, WE ARE DEALING WITH ISSUES THAT MAY OR MAY NOT BE A
5 MATTER OF PUBLIC RECORD FOR THIS TRIAL. TO ALLOW THE PRESS TO
6 REPORT ON ITEMS WHICH MAY BE SUPPRESSED FROM THE TRIAL OF THE
7 CASE WILL -- WILL BE UNDULY PREJUDICIAL TO BOTH THE STATE AND
8 THE DEFENDANT.

9 AND FOR THOSE -- AND FOR THAT REASON, WE ARE NOT -- WE
10 ARE NOT ARGUING THAT THE PRESS SHOULD NOT EVER BE ALLOWED TO
11 PRINT AND COVER WHAT HAS OCCURRED IN THIS. IT'S JUST THAT
12 THERE WOULD BE A DELAY AS NOT TO TAINT THE JURY PANEL IN
13 BEAUFORT COUNTY, WHICH IS CERTAINLY WHAT WOULD HAPPEN IF
14 INFORMATION WERE -- WERE SENT TO GENERAL PUBLIC ABOUT -- ABOUT
15 TESTIMONY THAT MAY OR MAY NOT BE ALLOWED IN TRIAL.

16 SO FOR THAT REASON AND FOR THE DUE PROCESS AND FUNDAMEN-
17 TAL FAIRNESS TREATMENT WE ASK THAT THE PRESS BE OMITTED FROM
18 THIS.

19 THE COURT: ALL RIGHT. WELL, LET ME ASK THIS. HERE IN
20 COURT, I SEE THAT WE HAVE ONLY ATTORNEYS, OFFICERS OF THE
21 COURT AND SO I WOULD, RATHER THAN JUST EXCLUDE THE PRESS, I
22 WOULD BE OF THE OPINION, THEN, OF COURSE THE SECURITY AND SO
23 FORTH, THAT I THINK IT MIGHT BE -- THE THING TO DO MIGHT BE TO
24 EXCLUDE ALL PERSONS OTHER THAN VICTIMS ---

1 MR. FLEMING: YES, SIR.

2 THE COURT: --- THE FAMILY OF THE DEFENDANT AND OFFICERS
3 OF THE COURT AND THE COURT PERSONNEL.

4 SOLICITOR, ANYTHING YOU WANT TO ADD?

5 MR. MURDAUGH: NO, SIR.

6 THE COURT: OKAY.

7 WELL, THAT'S WHAT I'M GOING TO DO. I'M GOING TO ---

8 MR. MURDAUGH: AND MY STAFF, I ASSUME.

9 MR. FLEMING: AND I ---

10 THE COURT: YEAH, STAFF AND -- THAT'S WHAT I SAY AND
11 OFFICER OF THE COURT AND SO FORTH.

12 SO ANYONE ELSE WHO'S NOT A VICTIM, AN ATTORNEY, THE STAFF
13 OR COURTHOUSE SECURITY PERSONNEL AND SO FORTH, BAILIFFS AND
14 ALL.

15 MR. MURDAUGH: THE PEOPLE FRONT ROW, SIR, ARE MEMBERS OF
16 THE DECEASED FAMILY. AND I ASSUME IT'S BE ALL RIGHT FOR THEM
17 TO STAY?

18 THE COURT: YES, SIR, I WOULD LIKE FOR THEM -- I THINK
19 UNDER THE VICTIMS' RIGHT.

20 MR. FLEMING: YES, SIR, I WOULD JUST REMIND YOUR HONOR
21 THAT THERE IS A GAG ORDER THAT APPLIES TO THE VICTIMS' FAMILY.
22 SO THEY WOULD BE UNABLE -- THEY WOULD BE PROHIBITED BY YOUR
23 ORDER FROM -- FROM SUBSEQUENTLY SPEAKING TO THE PRESS.
24 CONCERNING THE ISSUE.

1 THE COURT: I BELIEVE WE'VE DISCUSSED THAT IN PRIOR ---

2 MR. FLEMING: YES, SIR.

3 THE COURT: --- HEARINGS.

4 MR. FLEMING: YES, SIR.

5 THE PEOPLE BEHIND ME ARE MEMBERS OF MY STAFF AND THEN ME.

6 LEE OBVIOUSLY IS INVOLVED IN THIS CASE WITH A THIRD PARTY

7 DEFENDANT. OR ANOTHER DEFENDANT.

8 THE COURT: OKAY.

9 OKAY. ARE THESE DOORS CLOSED HERE?

10 OKAY, AND SO, IF YOU WOULD, THEN, MAKE SURE NOBODY ELSE

11 COMES IN.

12 MR. MURDAUGH: YOUR HONOR, PLEASE, JUST FOR THE RECORD, I

13 ANTICIPATE THE USE OF AS MANY AS FIVE WITNESSES IN THE CASE

14 TODAY, TWO OF WHICH ARE LAW ENFORCEMENT OFFICERS AND ARE

15 PRESENT AT MY TABLE. THERE ARE THREE LAY WITNESSES THAT I

16 HAVE SEQUESTERED IN THE JURY -- WHAT YOU CALL THAT ROOM BACK

17 THERE?

18 JURY ASSEMBLY ROOM.

19 THE COURT: OKAY, AND WHAT ARE WE -- THE -- OKAY, YOU

20 HAVE A MOTION?

21 MR. FLEMING: YES, YOUR HONOR. BACK, BACK LAST YEAR

22 MYSELF AND FORMER COUNSEL FILED A MOTION ON BEHALF OF MR.

23 ROGERS AND AT THE TIME WE FILED IT AS A GENERAL, A GENERAL

24 MOTION CONCERNING IN-COURT IDENTIFICATION BY ANY POTENTIAL

1 EXPERT WITNESS. AT THE TIME WE WERE -- WE WERE UNAWARE
2 THAT -- THAT THE STATE WAS GOING -- WAS INTENDING TO ELICIT
3 IN-COURT IDENTIFICATION.

4 SUBSEQUENT -- WHEN WE FILED THAT MOTION WE REQUESTED THAT
5 IT BE HEARD BY YOUR HONOR AND IT WAS ACTUALLY IN HAMPTON
6 COUNTY THAT WE HAD A -- HAD THE MOTION. AND YOU HELD IT IN
7 ABEYANCE UNTIL TIME OF TRIAL. HOWEVER, SUBSEQUENTLY WE HAVE
8 LEARNED THAT THE STATE INTENDS TO ELICIT IN-COURT IDENTIFICA-
9 TION FROM AT LEAST TWO OF -- OF THE FOUR POTENTIAL EXPERT
10 WITNESSES IN THIS CASE. THEREFORE - AND THE STATE WOULD
11 CONCEDE THIS POINT. THEREFORE WE ARE ENTITLED TO AN IN CAMERA
12 HEARING TO DETERMINE THE ADMISSIBILITY OF THESE IN-COURT
13 IDENTIFICATIONS PURSUANT TO THE FACTORS SET DOWN BY NEAL
14 V -- NEAL V BIGGERS, THE UNITED STATES SUPREME COURT, AND THE
15 HOST OF CASES TO FOLLOW AND THEN ADOPTED, OF COURSE, BY -- IN
16 CONCURRENCE BY THE STATE OF SOUTH CAROLINA.

17 THEREFORE, IF, WITHOUT -- WITHOUT PUTTING WORDS IN THE
18 SOLICITOR'S MOUTH, I BELIEVE THAT THE ONLY TWO WITNESSES,
19 EXPERT WITNESSES THE SOLICITOR INTENDS TO -- TO HAVE IN-COURT
20 IDENTIFICATION OF WITH REGARD TO IDENTIFYING TAVARUS ROGERS AS
21 THE -- THE ASSAILANT IS THAT OF KRISTAL WIRE AND JOCELYN
22 WENDELL. I -- I DO NOT BELIEVE THAT THE STATE INTENDS TO
23 ELICIT IDENTIFICATION TESTIMONY BY WAY OF POINTING AND -- AND
24 ANYTHING CONCERNING A LINE-UP FROM TOBY REISCHL.

1 NOW, THE STATE INTENDS TO ELICIT SOME TESTIMONY ABOUT AN
2 IDENTIFICATION BUT I DON'T BELIEVE THAT THE LAW ON THIS
3 MATTER, THAT -- THAT HAS TO DO WITH VOICE RECOGNITION, ET
4 CETERA, WHICH IS NOT AN IDENTIFICATION PROCEDURE COVERED UNDER
5 THIS, THIS PROCEEDING. THAT WOULD BE ANOTHER MOTION FOR
6 ANOTHER TIME, FRANKLY. SO UNLESS THE STATE INTENDS TO DO
7 THAT, I DON'T KNOW THAT WE INTEND TO CALL TOBY REISCHL.

8 BUT I WOULD HAVE TO, OBVIOUSLY, RESERVE THE RIGHT TO HAVE
9 THE HEARING IF THAT TESTIMONY -- YOU SEE?

10 THE COURT: WHAT'S YOUR POSITION? SOLICITOR?

11 MR. MURDAUGH: FIRST THING I WANT TO KNOW IS WHO MY
12 FOURTH WITNESS IS.

13 MR. FLEMING: THERE WAS A FELLOW NAMED JOHN BEYERS
14 (PHON.) ---

15 MR. MURDAUGH: WHOM I'VE NOT BEEN ABLE TO CONTACT.

16 INSOFAR AS THAT, SIR, MY UNDERSTANDING IS THAT TOBY
17 REISCHL WILL NOT POINT OUT IN THE COURTROOM AND SAY THAT IS
18 THE MAN THAT WAS AT THE HOUSE THAT NIGHT.

19 EXCUSE ME. WILL NOT SAY THAT HE WAS THE MAN AT THE HOUSE
20 THAT NIGHT AT THE TIME OF THE KILLING.

21 MR. FLEMING: THAT -- THAT WAS OUR UNDERSTANDING, ALSO,
22 AND UNLESS THE CHANGES WE ---

23 THE COURT: OKAY, WELL, THE TWO LADIES, THE TWO FEMALE
24 WITNESSES, IS IT -- WHAT ARE THOSE NAMES AGAIN?

1 MR. MURDAUGH: KRISTAL WIRE AND JOCELYN WENDELL.

2 THE COURT: OKAY. WELL, HOW DO YOU PURPOSE TO GO FORWARD
3 WITH THAT AT THIS TIME?

4 MR. FLEMING: YOUR HONOR ---

5 THE COURT: WAIT A MINUTE. I'M GONE AS THE SOLICITOR.

6 YOU PURPOSE TO CALL THEM AND MAKE AN IN CAMERA SHOWING ON
7 THAT OR HOW DO YOU ---

8 MR. MURDAUGH: I WAS GONE ASK THE COURT HOW YOU WANTED ME
9 TO PROCEED, SIR. I WAS GONE DO ANYTHING ---

10 THE COURT: WELL.

11 MR. MURDAUGH: DON'T MAKE ANY DIFFERENCE TO ME.

12 WHAT -- TELL ME WHAT THE LAW IS, MR. FLEMING.

13 MR. FLEMING: THE STATE BEARS OF BURDEN OF PROOF, YOUR
14 HONOR, AND AS SUCH, THEY HAVE TO PRESENT THE TESTIMONY
15 SUFFICIENT TO CONVINCE YOU THAT -- THAT THE IDENTIFICATION
16 SHOULD BE ADMITTED. WE HAVE, OBVIOUSLY, THE RIGHT TO CROSS
17 EXAMINE THOSE WITNESSES.

18 AND THAT'S HOW WE ---

19 MR. MURDAUGH: THAT SUITS ME.

20 THE COURT: OKAY, CALL YOUR FIRST WITNESS.

21 MR. MURDAUGH: CALL KRISTAL WIRE. ASK MISS WIRE TO COME
22 IN, PLEASE.

23 THE COURT: COME AROUND, PLEASE. YOU JUST COME STRAIGHT
24 THROUGH HERE AND COME UP HERE, PLACE YOUR LEFT HAND ON THE

1 BIBLE AND RAISE YOUR RIGHT HAND.

2 KRISTAL WIRE,

3 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE COURT: COME AROUND, HAVE A SEAT.

5 MISS WIRE, WOULD YOU SPEAK -- OR MAYBE YOU CAN GET
6 THAT -- PULL THAT MICROPHONE DOWN A LITTLE CLOSER TO YOU SO
7 YOU CAN SPEAK DIRECTLY INTO IT.

8 THAT'S GOOD. THANK YOU.

9 DIRECT EXAMINATION

10 BY MR. MURDAUGH:

11 Q. MISS WIRE, WERE YOU PRESENT AT COFFIN POINT ROAD ON THE
12 DATE THAT THERE WERE TWO KILLINGS?

13 A. YES.

14 Q. OKAY. WILL YOU TELL US WHAT THE ADDRESS OF THAT ---

15 MR. MURDAUGH: IF YOUR HONOR PLEASE, I'M GONE -- FOR THE
16 PURPOSE OF THIS HEARING, I DON'T KNOW IF THERE'S A HECK OF A
17 LOT OF REASON FOR ME TO GO INTO A LOT OF DETAIL AS I WOULD AT
18 TRIAL; JUST TO GET TO THE CRUX OF IT.

19 THAT SUIT Y'ALL?

20 MR. FLEMING: FINE.

21 MR. MURDAUGH: OKAY.

22 Q. WHEN YOU WERE PRESENT AT THE COFFIN POINT ROAD, WHEN DID
23 YOU GET THERE?

24 A. I'M NOT SURE EXACTLY WHAT TIME IT WAS. BUT I BELIEVE IT

KRISTAL WIRE, DIRECT EXAMINATION

12

1 WAS AFTER TEN. THAT EVENING.

2 Q. THAT NIGHT?

3 A. IT WAS AFTER NINE OR TEN THAT NIGHT.

4 Q. OKAY. TELL US IN YOUR OWN WORDS AND THE READER'S DIGEST
5 VERSION, LITTLE SHORT VERSION, WHAT HAPPENED.

6 A. WHEN WE ARRIVED PAUL MET US OUT AT THE CAR.

7 Q. PAUL?

8 A. REISCHL.

9 Q. OKAY. AND HE IS ONE OF THE PEOPLE THAT ULTIMATELY GOT
10 KILLED?

11 A. UH-HUH.

12 Q. OKAY.

13 A. WE WENT IN. THROUGH THE FRONT DOOR, INTO THE LIVING ROOM,
14 AROUND THROUGH WHERE HE HAD HIS DINING ROOM TABLE. AND THERE
15 WAS FOUR ---

16 Q. YOU -- EXCUSE ME. YOU SAY WE. WHO ARE YOU TALKING ABOUT,
17 WE?

18 A. ME, JOCELYN AND MITCH.

19 Q. MITCH?

20 A. JAMES. RILEY.

21 Q. OKAY.

22 A. AND WE WALKED THROUGH THE DOOR WITH PAUL. ~~AND HE WENT~~
23 ~~ABOUT INTRODUCING US TO EVERYBODY.~~

24 Q. OKAY.

25 A. AND ONE PARTICULAR STOOD UP AND INTRODUCED HISSELF TO ME

KRISTAL WIRE, DIRECT EXAMINATION

13

1

2

3

A. UH-HUH.

4

Q. LIKE THE ---

5

A. MY NAME IS V; WHAT'S YOURS.

6

Q. --- VICTORY?

7

A. UH-HUH.

8

Q. OKAY.

9

A. WE WENT IN. TO THE KITCHEN BECAUSE WE'D BROUGHT PAUL SOME
10 BEER AND SOME SODA. AND STOOD AROUND THE BAR. JAMES, PAUL
11 AND I, AND JOCELYN SAT ON THE COUCH BEHIND US. AND THROUGH
12 THE NIGHT, I DON'T KNOW, THEY PLAYED CARDS, THE FOUR GENTLEMEN
13 THAT WERE THERE. PLAYED CARDS.

14

Q. DO YOU KNOW WHO THE OTHER PEOPLE WERE?

15

A. I DON'T REMEMBER THERE NAMES BEING INTRODUCED THAT NIGHT.

16

Q. OKAY.

17

A. AND THEY PLAYED CARDS, DID WHATEVER, I DON'T KNOW. REALLY
18 REMEMBER TOO MUCH OF THAT.

19

THEY LEFT. AND JOCELYN, PAUL AND JAMES AND I WERE STILL
20 THERE. JOCELYN WAS ON THE TELEPHONE. THEN TOBY CAME OUT OF
21 THE BEDROOM.

22

Q. TOBY?

23

A. REISCHL.

24

Q. REISCHL.

25

A. AND JOHN BEYERS WAS IN THE LIVING ROOM WATCHING TV. WHERE

KRISTAL WIRE, DIRECT EXAMINATION

14

1 THE FRONT DOOR WAS. AND WE DIDN'T KNOW TOBY WAS THERE. HE
2 HAD CAME OUT. AND THEN ABOUT A ~~THREE AND A HALF HOUR, FORTY-FIVE~~
3 ~~MINUTES~~ LATER IS WHEN WE HEARD THE KNOCK ON THE DOOR. AND
4 JOHN YELLED HE WOULD GET THE DOOR. SO WE -- JOCELYN WAS ON
5 THE COUCH BEHIND ME. AND ME, PAUL AND JAMES STOOD AT THE BAR.

6 Q. OKAY.

7 A. THEY CAME AROUND, HOLDING LONG GUNS. SHOTGUNS, I BELIEVE.
8 WITH, ~~JUST LIKE A WHITE SOME TYPE OF CLOTH AROUND THEIR FACE,~~
9 ~~NOT COVERING THE WHOLE FACE~~

10 Q. HOW MANY CAME INTO THE HOUSE?

11 A. ~~TWO~~

12 Q. OKAY.

13 A. ORDERED US TO GET DOWN. AT FIRST NOBODY GOT DOWN. PAUL
14 LOOKED AT THEM LIKE THEY WERE KIDDING. WELL, FINALLY WE ALL
15 GOT DOWN. THEY -- THE ONE PUSHED PAUL ON THE GROUND. THEN
16 GOT WHATEVER WAS IN HIS POCKET OUT OF HIS POCKET. AND THEY
17 FORCED MITCH DOWN IN THE KITCHEN. THE ONE HELD US BY GUNPOINT
18 WHILE THE ONE WENT IN THE BACK WITH PAUL TO HIS ROOM TO GET
19 THE REST OF THE STUFF. AND AS THE ONE WAS HOLDING US BY
20 GUNPOINT, ~~HE YELLED DON'T DO IT, V. COME ON, DOG~~

21 Q. WHO YELLED THAT?

22 A. THE ONE HOLDING US BY GUNPOINT.

23 Q. IN THE LIVING ROOM?

24 A. YES, IN THE WALL -- THE DEN AREA.

25 Q. IN THE DEN, OKAY.

KRISTAL WIRE, DIRECT EXAMINATION

15

1 A. AND ---

2 Q. YELLED DON'T ---

3 A. ~~DON'T DO IT~~ V; WE GOT WHAT WE CAME FOR. AND THE WHOLE
4 TIME HE WAS YELLING I'M GONE SHOOT HIM, MAN; I'M GONE SHOOT.

5 Q. NOW, WHO WAS YELLING I'M GONE SHOOT ---

6 A. ~~V.~~

7 Q. OKAY.

8 A. AND THEN THE OTHER ONE WAS, LIKE, ~~DON'T DO IT~~ V, WE GOT
9 WHAT WE CAME FOR; LET'S GET OUT OF HERE. THEN YOU HEARD TWO
10 SHOTS. AND I WAS LAYING ON THE GROUND WITH MY HANDS OVER MY
11 HEAD, FLAT ON MY STOMACH. AND AS -- AFTER THE TWO SHOTS, HE
12 CAME BACK DOWN THE HALLWAY. AND I LOOKED UP AND HE'D ASKED
13 WHERE'S MITCH. AND YOU HEARD ---

14 Q. WHO ---

15 A. WHICH IS JAMES RILEY.

16 Q. WHO ASKED THAT?

17 A. V.

18 Q. OKAY. THAT'S THE PERSON THAT HAD GONE BACK IN THE BED-
19 ROOM?

20 A. YES, PAUL.

21 HE WALKED PAST AND SAID WHERE'S MITCH. YOU COULD HEAR
22 MITCH SAY I'M RIGHT HERE, BABE; I'M GOT GOING ANYWAY; I'M JUST
23 PUTTING A CIGARETTE OUT. AND AS HE PASSED BY TOBY HE SAID,
24 TOBY, PUT YOUR HEAD DOWN. THEN HE WENT INTO THE KITCHEN. YOU
25 COULD HEAR HIM RUSTLING AROUND. YOU COULD HEAR ---

KRISTAL WIRE, DIRECT EXAMINATION

16

1 Q. WHO RUSTLING AROUND?

2 A. MITCH AND V.

3 Q. OKAY.

4 A. YOU COULD HEAR MITCH BEGGING HIM NOT TO SHOOT AND THEN YOU
5 HEARD -- I HEARD TWO MORE SHOTS.

6 Q. OKAY.

7 A. THEN AFTER THAT HE RAN BACK IN ---

8 Q. WHO RAN BACK IN?

9 A. ONE OF THEM RAN BACK IN AND SAID KEEP YOUR HEADS DOWN,
10 STAY DOWN, DON'T TELL ANYONE OR YOU'RE ALL WET. AND THEN THEY
11 RAN OUT THE DOOR.

12 Q. OKAY. HAD YOU EVER SEEN THE TWO PEOPLE THAT YOU'VE
13 IDENTIFIED, ONE HOLDING EVERYBODY ON THE FLOOR IN THE DEN AND
14 THE ONE THAT WAS IDENTIFIED AT V THAT WAS BACK IN THE BACK OF
15 THE HOUSE? ~~HAD YOU EVER SEEN THEM BEFORE?~~

16 A. YES.

17 Q. AND WHERE HAD YOU SEEN THEM ---

18 A. EARLIER THAT NIGHT AT PAUL'S.

19 Q. OKAY. WHICH OF THEM HAD YOU SEEN BEFORE?

20 A. ~~THE ONE THAT I REMEMBER THE MOST IS V.~~

21 Q. IS V?

22 A. UH-HUH.

23 Q. OKAY, HOW ABOUT THE OTHER ONE THAT WAS IN THE DEN?

24 A. WEST. YES, THEY WERE -- I RECOGNIZED BOTH OF THEM OF
25 BEING THERE EARLIER THAT NIGHT.

??
??

KRISTAL WIRE, DIRECT EXAMINATION

17

1 Q. OKAY. CAN YOU IDENTIFY EITHER OF THEM IN THE COURTROOM
2 TODAY?

3 A. YES.

4 Q. AND WHO IS THAT?

5 A. V.

6 Q. AND WHERE IS HE?

7 A. RIGHT THERE.

8 Q. YOU HAVE POINTED TO YOUR RIGHT. CAN YOU DESCRIBE HIM A
9 LITTLE BETTER THAN THAT?

10 A. THE ONE IN THE ORANGE SUIT.

11 Q. OKAY.

12 LET ME ASK YOU ONE OR TWO QUESTIONS.

13 MR. MURDAUGH: YOUR HONOR, PLEASE, I WOULD ASK THAT THESE
14 BE MARKED FOR IDENTIFICATION. FROM THE PURPOSE OF THIS
15 HEARING.

16 (PHOTOGRAPHIC LINEUP MARKED AS STATE'S EXHIBIT ONE FOR
17 IDENTIFICATION ONLY. PHOTOGRAPHIC LINEUP MARKED AS STATE'S
18 EXHIBIT TWO FOR IDENTIFICATION ONLY. PHOTOGRAPHIC LINEUP
19 MARKED AS STATE'S EXHIBIT THREE FOR IDENTIFICATION ONLY.)

20 MR. MURDAUGH: OKAY.

21 Q. NOW, MISS WIRE, I ASK YOU WHAT LENGTH OF TIME TRANSPIRED
22 FROM THE TIME THEY CAME BACK TO THE HOUSE AND THE TIME THEY
23 LEFT THE HOUSE?

24 A. I'M NOT REALLY SURE. BUT ANYWHERE FROM A HALF HOUR TO
25 LITTLE OVER AN HOUR MAYBE.

KRISTAL WIRE, DIRECT EXAMINATION

18

1 Q. OKAY. HALF HOUR TO AN HOUR?

2 A. SOMETHING LIKE THAT.

3 Q. OKAY, MA'AM. DURING THAT PERIOD OF TIME WHERE WERE YOU
4 LOCATED?

5 A. THE WHOLE TIME I WAS THERE I STOOD AT THE BAR THAT DIVIDED
6 THE KITCHEN AND THE DEN AREA THERE.

7 Q. OKAY. WERE YOU EVER PUT ON THE FLOOR?

8 A. I WAS -- WE WERE ORDERED TO GET DOWN. YES, I WAS DOWN ON
9 THE FLOOR.

10 Q. AND DID YOU GET ON THE FLOOR?

11 A. YES.

12 Q. SO WHEN THEY CAME IN YOU WERE STANDING AT THE BAR?

13 A. UH-HUH.

14 Q. HOW CLOSE DID YOU GET TO EITHER OF THE TWO PEOPLE THAT
15 CAME IN?

16 A. PROBABLY ABOUT AS FAR AS THE JUDGE AND I.

17 Q. AND THAT WOULD BE TEN FEET?

18 A. SOMETHING LIKE THAT.

19 MR. MURDAUGH: IS THAT A FAIR CHARACTERIZATION, MR.
20 FLEMING?

21 MR. FLEMING: YES, SIR.

22 MR. MURDAUGH: OKAY.

23 Q. AND WHICH OF THEM WERE YOU THAT CLOSE TO?

24 A. WEST, THE ONE HELD -- THAT HELD US BY GUNPOINT, ABOUT THAT
25 CLOSE. V, A LITTLE CLOSER BECAUSE WHEN HE FORCED PAUL TO THE

KRISTAL WIRE, DIRECT EXAMINATION

19

1 GROUND TO TAKE WHAT WAS OUT OF HIS POCKET BEFORE HE TOOK HIM
2 TO THE ROOM, PAUL WAS -- OUR HEADS PRETTY MUCH TOUCHED. SO HE
3 WAS RIGHT OVER HIM. SO.

4 Q. OKAY. PUT ME AS CLOSE AS V WAS, THE PERSON YOU IDENTIFIED
5 AS V.

6 A. WELL, YOU'D HAVE TO COME CLOSER.

7 Q. OKAY.

8 A. A LITTLE CLOSER. PROBABLY ABOUT LIKE THAT.

9 Q. OKAY. AND THAT WOULD BE DIRECTLY IN FRONT OF THE COURT
10 REPORTER, ~~ABOUT SIX FEET?~~

11 A. UH-HUH.

12 Q. IS THAT A FAIR ---

13 A. UH-HUH.

14 Q. --- CHARACTERIZATION?

15 OKAY.

16 WHEN THEY CAME IN AND THEY -- YOU NOTICED THE GUNS, WHAT
17 WAS YOUR DEGREE OF ATTENTION AT THAT TIME? WERE YOU SCARED?

18 A. OH, DEFINITELY.

19 Q. WAS THE VIEW THAT YOU SAW IMPRESSED IN YOUR HEAD?

20 A. OH, YEAH.

21 MR. FLEMING: YOUR HONOR, I WOULD OBJECT TO THE LEADING
22 NATURE OF THIS QUESTION.

23 THE COURT: SUSTAINED.

24 Q. HOW WELL DO YOU REMEMBER THEM?

25 A. THEM AS FAR AS WHO?

KRISTAL WIRE, DIRECT EXAMINATION

20

1 Q. V AND THE OTHER FELLOW, WEST?

2 MR. FLEMING: YOUR HONOR, I WOULD OBJECT TO HIM REFERRING
3 TO THE OTHER FELLOW WEST. THERE HAS BEEN NO FOUNDATION THAT
4 SHE HAS IDENTIFIED THIS OTHER FELLOW ---

5 MR. MURDAUGH: EXCUSE ME.

6 MR. FLEMING: --- AS WEST.

7 MR. MURDAUGH: WELL, SHE TESTIFIED TO THAT, SIR.

8 BUT LET ME REPHRASE QUESTION.

9 Q. THE FELLOW THAT WENT IN THE BACK OF THE HOUSE AND DID THE
10 KILLING BACK THERE, HOW WELL WAS HIS IMAGE IMPRESSED IN YOUR
11 MIND?

12 ~~A. I'LL NEVER FORGET HIS FACE.~~

13 Q. OKAY. THE FELLOW THAT SAT THERE WITH THE GUN AND PUT
14 Y'ALL ON THE FLOOR, HOW WELL WAS HIM IMAGE IMPRESSED IN YOUR
15 MIND?

16 ~~A. I'LL NEVER FORGET HIM, EITHER.~~

17 Q. OKAY. DID YOU GIVE A DESCRIPTION OF THE FELLOW THAT HELD
18 Y'ALL AT GUNPOINT ON THE FLOOR AND THE FELLOW THAT WENT IN THE
19 BACK OF THE HOUSE CALLED V THAT DID THE KILLING BACK THERE?
20 DID YOU GIVE A DESCRIPTION OF HIM TO THE POLICE?

21 ~~A. YES.~~

22 Q. OKAY.

23 A. I BELIEVE SO.

24 Q. WERE YOU -- MA'AM?

25 A. I BELIEVE SO. YEAH.

KRISTAL WIRE, DIRECT EXAMINATION

21

1 Q. OKAY. WERE YOU SHOWN THE ITEM MARKED AS STATE'S EXHIBIT
2 NUMBER ONE FOR IDENTIFICATION ---

3 A. YEAH.

4 Q. --- BY THE OFFICERS?

5 A. YES.

6 Q. WERE YOU ABLE TO PICK ANYBODY OUT OF STATE'S EXHIBIT
7 ~~NUMBER ONE~~ AS BEING PRESENT AT THE SCENE?

8 A. WHEN WE WERE FIRST ASKED? ~~NO~~

9 Q. YES, MA'AM.

10 A. NO.

11 Q. OKAY, I SHOW YOU STATE'S EXHIBIT NUMBER TWO FOR IDENTIFI-
12 CATION AND ASK YOU IF YOU WERE SHOWN THAT PHOTO LINEUP.

13 A. YES.

14 Q. WERE YOU ABLE TO PICK, AT THE TIME YOU WERE SHOWN IT,
15 ANYBODY OUT OF THAT LINEUP?

16 A. ~~NO~~

17 Q. AND I SHOW YOU STATE'S EXHIBIT NUMBER THREE WHICH IS A
18 PHOTOGRAPHIC LINEUP AND ASK YOU IF YOU WERE SHOWN THAT.

19 A. UH-HUH. RIGHT.

20 Q. ~~WERE YOU ABLE TO PICK ANYBODY OUT OF IT?~~

21 A. NO.

22 Q. OKAY.

23 OUT OF AN ABUNDANCE OF PRECAUTION LET ME ASK YOU ONE
24 OTHER QUESTION.

25 YOU SAID THAT YOU RECOGNIZED THE FELLOW THAT HELD Y'ALL

KRISTAL WIRE, DIRECT EXAMINATION

22

1 AT GUNPOINT ON THE FLOOR. AND THE PERSON IDENTIFIED AS V THAT
2 WENT INTO THE BACK AND SHOT AND KILLED PAUL.

3 A. UH-HUH.

4 Q. HOW DID YOU IDENTIFY THEM?

5 A. WHAT DO YOU MEAN HOW? I MEAN . . .

6 Q. WHAT MADE YOU THINK YOU KNEW THEM?

7 A. ~~SIMPLY BECAUSE THEY WERE THERE EARLIER.~~

8 Q. OKAY.

9 A. AND ALSO THE VOICE, WHEN WE WERE INTRODUCED AND THEY
10 SPOKE. AND THEN WHEN THEY SPOKE -- WHEN THEY CAME IN AND
11 COMMITTED THE MURDER.

12 Q. OKAY. DID YOU SEE THE FACES OF THOSE PEOPLE?

13 A. OF THE?

14 Q. THE ONE THAT HELD Y'ALL AT GUNPOINT ON THE FLOOR. AND THE
15 ONE THAT WENT IN THE BACK KNOWN AS V THAT KILLED PAUL REISCHL.

16 A. YES, THEIR WHOLE FACES WEREN'T COVERED. IT WAS JUST
17 SOMETHING WRAPPED AROUND IT TO WHERE THEIR FACE WAS PRETTY
18 MUCH ALL THE WAY OPEN.

19 MR. MURDAUGH: THANK YOU. ANSWER ANY QUESTIONS THAT MR.
20 FLEMING OR MR. KULP MAY HAVE.

21 MR. MURDAUGH: MAY IT PLEASE THE COURT, YOUR HONOR.

22 THE COURT: MR. FLEMING.

23 CROSS EXAMINATION

24 BY MR. FLEMING:

25 Q. MISS WIRE, MY NAME'S CORY FLEMING. I THINK WE'VE MET

KRISTAL MAE WIRE, CROSS EXAMINATION

23

1 BEFORE.

2 A. UH-HUH.

3 Q. GONE ASK YOU A FEW QUESTIONS.

4 YOU WERE ASKED BY THE SOLICITOR WHETHER OR NOT THE PERSON
5 YOU IDENTIFIED AS V WAS IN THE COURTROOM TODAY, CORRECT?

6 A. UH-HUH.

7 Q. YOU LOOKED OVER AT THE TABLE WHERE I'M SITTING. AND YOU
8 POINTED TO THE MAN IN THE ORANGE, CORRECT?

9 A. (AFFIRMATIVE NOD.)

10 Q. NOW ---

11 THE COURT: MAKE A VERBAL RESPONSE, PLEASE ---

12 A. YES.

13 THE COURT: --- SO THE COURT REPORTER CAN TAKE IT DOWN.

14 Q. WHEN YOU DID THAT I NOTICED THAT YOU VERY DELIBERATED PUT
15 ON YOUR GLASSES. IS THAT CORRECT?

16 A. UH-HUH. YES.

17 MR. FLEMING: PLEASE LET THE RECORD REFLECT THAT UPON
18 THAT SHE PUT THE GLASSES ON.

19 Q. I ASSUME YOU WERE REQUIRED TO PUT YOUR GLASSES ON BECAUSE
20 YOU HAVE A VISION PROBLEM?

21 A. YES.

22 Q. OKAY. AND YOU ARE REQUIRED TO -- IN LOOKING AT SOMEBODY
23 TO WEAR YOUR GLASSES?

24 A. YES, NOW I AM.

25 Q. YOU ARE?

KRISTAL MAE WIRE, CROSS EXAMINATION

24

1 A. BEFORE I WASN'T.

2 Q. BEFORE, YOU MEAN THE TIME OF THIS SHOOTING?

3 A. I WAS NOT. I DID NOT HAVE TO WEAR GLASSES AT THAT TIME.

4 Q. SO IN TWO AND A HALF YEARS YOUR VISION WENT STEADILY
5 DOWNHILL SUCH THAT YOU NEEDED GLASSES?

6 A. YES.

7 Q. WHEN YOU MADE THIS IDENTIFICATION HERE IN COURT TODAY, YOU
8 WOULD AGREE WITH ME THAT THERE WERE TWENTY-FOUR INDIVIDUALS
9 PRESENT IN THIS COURTROOM. WOULD YOU LIKE TO COUNT?

10 PLEASE EXCLUDE THE MAN IN ORANGE 'CAUSE HE WASN'T HERE. ~~NO~~
11 LITERALLY, PLEASE, PLEASE COUNT FOR ME.

12 A. OKAY.

13 Q. WOULD YOU AGREE WITH ME THAT THERE WERE TWENTY-FOUR PEOPLE
14 PRESENT?

15 A. YES.

16 Q. OF THOSE TWENTY-FOUR PEOPLE, PLEASE TELL THE COURT HOW
17 MANY OF THEM ARE AFRICAN-AMERICAN.

18 A. TWO.

19 Q. I APOLOGIZE BUT I WILL COUNT.

20 THE MAN IN THE BACK WEARING THE SHERIFF'S DEPARTMENT
21 UNIFORM, MR. HARRIS. HE'S AN AFRICAN-AMERICAN, CORRECT?

22 A. UH-HUH.

23 Q. THE MAN SITTING AT THE COUNSEL TABLE YOU'VE IDENTIFIED AS
24 V, HE IS AN AFRICAN-AMERICAN, CORRECT?

25 A. UH-HUH.

KRISTAL MAE WIRE, CROSS EXAMINATION

25

1 Q. THE MAN SITTING AT ---

2 A. I CAN'T SEE ANYBODY OVER THERE.

3 Q. OKAY. STAND UP, IF YOU CAN.

4 THIS MAN IS WEARING A UNIFORM FROM THE DETENTION CENTER,
5 HE'S AN AFRICAN-AMERICAN, CORRECT?

6 A. UH-HUH.

7 Q. AND THIS LADY RIGHT HERE, WHO IS A MEMBER OF THE CLERK'S
8 STAFF, IS ALSO AFRICAN-AMERICAN, CORRECT?

9 A. YES.

10 Q. OF THE FOUR AFRICAN-AMERICANS IN THIS ROOM, THERE ARE ONLY
11 THREE AFRICAN-AMERICAN MALES, CORRECT?

12 A. YES.

13 Q. AND OF THE THREE AFRICAN-AMERICAN MALES IN THIS COURTROOM,
14 ONLY ONE IS NOT WEARING A UNIFORM, CORRECT?

15 A. YES.

16 Q. AND OF THE THREE AFRICAN-AMERICAN MALES IN THIS COURTROOM,
17 ONLY ONE IS SITTING AT THE COUNSEL TABLE, CORRECT?

18 A. YES.

19 Q. AND OF THE THREE AFRICAN-AMERICAN MALES IN THIS COURTROOM,
20 ONLY ONE IS WEARING AN ORANGE DETENTION CENTER GOWN, IS THAT
21 CORRECT?

22 A. YES.

23 Q. THANK YOU.

24 ON JANUARY 2 OF 1999, YOU WERE INTERVIEWED BY DETECTIVE
25 SAM ROSER. DO YOU RECALL THAT?

KRISTAL MAE WIRE, CROSS EXAMINATION

26

1 A. YES.

2 Q. AND AT THAT TIME YOU GAVE STATEMENTS AS TO WHAT YOU
3 REMEMBERED FROM THIS SHOOTING, CORRECT?

4 A. YES.

5 Q. AND THOSE STATEMENTS WERE GIVEN WITHIN EIGHT HOURS OF THE
6 SHOOTING, CORRECT?

7 A. YES.

8 Q. SO THE SHOOTING, ~~THE INCIDENT WAS FRESH IN YOUR MIND?~~

9 A. (NO RESPONSE.)

10 Q. CORRECT?

11 A. ~~YES~~

12 Q. YOU ACTUALLY WROTE, HAND WROTE TWO SEPARATE STATEMENTS AT
13 THAT TIME, DID YOU NOT?

14 A. I BELIEVE SO.

15 Q. I WILL SHOW YOU WHAT I HAVE MARKED AS STATE'S -- EXCUSE
16 ME, DEFENDANT'S EXHIBIT TWO A TWO B AND I WILL GIVE YOU PLENTY
17 OF TIME TO LOOK AT THOSE, PLEASE. THANK YOU

18 A. YOU WANT ME TO READ THEM?

19 Q. JUST LOOK AT THEM AND SEE IF YOU CAN RECOGNIZE THE DOCU-
20 MENTS.

21 A. UH-HUH.

22 Q. ARE THOSE ACCURATE COPIES OF THE -- THE TWO HANDWRITTEN
23 STATEMENTS THAT YOU MADE ON JANUARY 2, 1999, IN THE PRESENCE
24 OF SAM ROSER?

25 A. YES, THESE ARE THE TWO STATEMENTS I WROTE.

KRISTAL MAE WIRE, CROSS EXAMINATION

27

1 Q. ALL RIGHT. I'M GOING TO ASK YOU SOME QUESTIONS CONCERNING
2 THOSE STATEMENTS. OKAY? I'M ALSO GOING TO BE REFERRING TO
3 DEFENDANT'S EXHIBIT ONE AND I'LL ASK YOU TO LOOK AT IT AND YOU
4 MAY NOT UNDERSTAND IT BUT I DON'T WANT TO TAKE ADVANTAGE OF
5 YOU.

6 YOU SEE THAT?

7 A. UH-HUH.

8 Q. EXHIBIT?

9 A. YES.

10 Q. CAN YOU SEE THAT THAT IS SAM ROSER'S NOTES? SEE THE
11 BOTTOM OF IT?

12 A. YES.

13 MR. MURDAUGH: WHAT ARE YOU TALKING ABOUT?

14 MR. FLEMING: SAM ROSER'S NOTES.

15 EXCUSE ME, I'M SORRY.

16 OKAY.

17 Q. AND I WILL ASSERT TO YOU THAT THESE ARE THE ONLY NOTES
18 THAT I HAVE OF SAM ROSER'S INTERVIEW OF YOU ON JANUARY 2,
19 1999, OKAY?

20 AND I WILL HAVE YOU HOLD THAT WITH YOU. THAT'S DEFENSE
21 EXHIBIT ONE. AND I'M GONE ASK YOU COME QUESTIONS ABOUT THE
22 STATEMENTS THAT YOU GAVE WITHIN EIGHT HOURS OF THE SHOOTING.

23 IS EVERYTHING THAT YOU TOLD THE POLICE, BOTH IN YOUR

24 ~~WRITTEN STATEMENT AND ORALLY, WAS IT THE TRUTH?~~

25 A. ~~YES~~

KRISTAL MAE WIRE, CROSS EXAMINATION

28

1 Q. OKAY. IS THERE ANYTHING THAT YOU HAVE TESTIFIED TO ON
2 DIRECT EXAMINATION OF THE SOLICITOR THAT, IN ALL FAIRNESS NOW,
3 YOU WOULD LIKE TO CHANGE?

4 A. IF YOU MEAN WHAT I THINK YOU DO ---

5 Q. I MEAN ---

6 A. --- THERE IS THINGS NOW THAT I REMEMBER THAT I DIDN'T
7 THEN. BECAUSE RIGHT AFTERWARDS I WAS SO OUT OF IT AND SCARED.
8 THAT I REMEMBER NOW THAT I DIDN'T THEN.

9 Q. OKAY. AND MY QUESTION TO YOU WAS ANY OF THE TESTIMONY
10 THAT YOU JUST GAVE ON DIRECT EXAMINATION, IS THERE ANYTHING
11 YOU'D LIKE TO NOW CHANGE?

12 A. NO.

13 Q. ALL RIGHT. THANK YOU.

14 IN THESE STATEMENTS, THE ONES YOU HOLD IN YOUR HAND,
15 DEFENSE ONE, TWO A AND TWO B, YOU SAID THAT THE INTRUDERS THAT
16 NIGHT WERE TWO BLACK MALES, CORRECT?

17 A. YES.

18 Q. YOU DID NOT DESCRIBE THEIR FACIAL FEATURES, DID YOU?

19 A. NO.

20 MR. MURDAUGH: WHAT ARE THE EXHIBITS THAT YOU'RE TALKING
21 ABOUT?

22 MR. FLEMING: I APOLOGIZE, SOLICITOR.

23 MAY I HAVE THOSE.

24 TWO A IS A HAND -- COPY OF THE HANDWRITTEN STATEMENT
25 PROVIDED BY THE SHERIFF'S OFFICE ---

KRISTAL MAE WIRE, CROSS EXAMINATION

29.

1 MR. MURDAUGH: OKAY.

2 MR. FLEMING: --- TO ME. AND TWO B IS A COPY OF THE
3 SECOND HANDWRITTEN STATEMENT PROVIDED TO ME.

4 MR. MURDAUGH: OKAY. AND THREE?

5 MR. FLEMING: AND ONE.

6 MR. MURDAUGH: ONE.

7 MR. FLEMING: ONE IS WHAT I JUST SHOWED HER.

8 Q. GOING BACK TO THE STATEMENT THAT YOU GAVE POLICE THAT DAY,
9 YOU DID NOT DESCRIBE -- NOW, SET THE STAGE AGAIN.

10 YOU DESCRIBED THE INTRUDERS AS TWO BLACK MALES AND YOU'VE
11 ALREADY TESTIFIED THAT YOU DID NOT DESCRIBE THEIR FACIAL
12 FEATURES, CORRECT?

13 A. YES.

14 Q. ALL RIGHT. YOU DID NOT DESCRIBE THEIR HEIGHT?

15 A. NO.

16 Q. YOU DID NOT DESCRIBE THEIR WEIGHT?

17 A. NO.

18 Q. YOU DID NOT DESCRIBE ANY SCARING?

19 A. NO.

20 Q. THEY MAY HAVE. YOU DID NOT DESCRIBE ANY UNIQUE PHYSICAL
21 FEATURES?

22 A. NO.

23 Q. YOU DID NOT DESCRIBE THEIR HAIR STYLES?

24 A. NO.

25 Q. YOU DID NOT DESCRIBE THEIR FACIAL HAIR?

KRISTAL MAE WIRE, CROSS EXAMINATION

30

1 A. NO.

2 Q. YOU DID NOT DESCRIBE THEIR SKIN TONES?

3 A. NO.

4 Q. YOU DID NOT DESCRIBE THEIR CLOTHING?

5 A. NO.

6 Q. AND YOU COULD NOT RECOGNIZE THE INTRUDERS' VOICES, COR-
7 RECT?

8 A. EXCUSE ME?

9 Q. YOU COULD NOT RECOGNIZE THE INTRUDERS' VOICES?

10 A. YES, I COULD.

11 Q. WHERE IN THOSE STATEMENTS DID YOU TELL THE POLICE EIGHT
12 HOURS AFTER IT OCCURRED THAT YOU RECOGNIZED THE INTRUDERS'
13 VOICES?

14 A. I PROBABLY DIDN'T, BUT, LIKE I SAID, WHEN SOMETHING LIKE
15 THAT ---

16 Q. PLEASE, ANSWER MY QUESTION. CAN YOU SHOW ME ---

17 A. NO. NO, PROBABLY NOT.

18 MR. MURDAUGH: YOUR HONOR, PLEASE, I THINK SHE'S GOT A
19 RIGHT TO EXPLAIN ANY ANSWER ---

20 MR. FLEMING: THE SOLICITOR CAN REDIRECT ON ANY
21 EXPLANATION ---

22 MR. MURDAUGH: THAT'S NOT ---

23 THE COURT: NO, NO, SHE CAN CERTAINLY EXPLAIN HER ANSWER,
24 TOO.

25 A. OKAY. WELL, LIKE I SAID, WHEN SOMETHING LIKE THAT HAPPENS

KRISTAL MAE WIRE, CROSS EXAMINATION

31

1 TO YOU, AND YOU'RE BEING ASKED AND QUESTIONED RIGHT AFTERWARDS
2 AND YOU'VE JUST BEEN PUT THROUGH THAT, YOU DON'T REMEMBER
3 EVERYTHING AND YOU BLOCK A LOT OUT RIGHT AFTERWARDS. LIKE I
4 SAY, NOW I REMEMBER MORE AND I'VE WENT OVER IT IN MY MIND OVER
5 A THOUSAND TIMES AND I COULD TELL YOU MORE NOW THAN I COULD'VE
6 THEN.

7 Q. YOU DID NOT GIVE A DESCRIPTION OF THE INTRUDERS TO THE
8 POLICE EIGHT HOURS AFTER IT OCCURRED, DID YOU?

9 A. NO.

10 Q. YOU WROTE IN YOUR STATEMENT THAT TWO BLACK MALES WITH
11 WHITE CLOTH OF SOME KIND AROUND THEIR FACE, DID YOU NOT?

12 A. YES, I DID.

13 Q. YOU ALSO TOLD SAM ROSER THAT YOU KNEW THAT THE INTRUDERS
14 WERE BLACK BECAUSE THE EYES AND NOSE AREA WAS OPEN BUT THE
15 REST OF THEIR HEAD WAS COVERED WITH WHITE CLOTHING OR MASKS,
16 CORRECT?

17 A. YES, IT IS.

18 Q. YOU ALSO SAID IN YOUR STATEMENT THAT ONCE YOU GOT ON THE
19 FLOOR YOU NEVER LOOKED UP?

20 A. IF THAT'S WHAT IT SAYS IN THERE, THEN, YES ---

21 Q. I'M ASKING YOU IF THAT'S WHAT YOU TOLD THE POLICE. EIGHT
22 HOURS AFTER THE SHOOTING.

23 A. I -- I THINK SO. LIKE I SAY, I DON'T REMEMBER. I MEAN I
24 BLOCKED A LOT OUT. AT THAT TIME.

25 Q. SO WHEN THE SHOOTING WAS FRESH IN YOUR MIND YOU COULD NOT

KRISTAL MAE WIRE, CROSS EXAMINATION

32

1 DESCRIBE THE INTRUDERS, COULD YOU?

2 A. ~~NOT WHEN I WAS ASKED THEN, NO.~~

3 Q. ON JANUARY 3, THE DAY FOLLOWING THE SHOOTING, ACTUALLY
4 WITHIN TWENTY-FOUR HOURS OF THAT TIME, DETECTIVE AVERILL
5 SHOWED YOU TWO SEPARATE PHOTOGRAPHIC LINEUPS, CORRECT?

6 A. YES.

7 Q. SOLICITOR HAS SHOWN YOU THOSE.

8 AND YOU SAY THAT YOU COULD NOT PICK OUT ANY GENTLEMAN
9 LISTED IN STATE'S EXHIBIT NUMBER ONE? FOR NUMBER ONE ID?

10 A. RIGHT.

11 Q. THAT'S THE ONE YOU WERE SHOWN TWENTY-FOUR HOURS AFTER THE
12 INCIDENT, CORRECT?

13 A. UH-HUH, RIGHT.

14 Q. YOU WERE SHOWN NUMBER TWO TWENTY-FOUR HOURS AFTER I
15 INCIDENT AND YOU COULD NOT PICK ANYBODY OUT OF THIS LINEUP,
16 EITHER?

17 A. RIGHT.

18 Q. AND THEN THE FOLLOWING DAY, JANUARY 4, 1999, YOU WERE
19 SHOWN A THIRD LINEUP?

20 A. (NO RESPONSE.)

21 Q. CORRECT?

22 A. RIGHT.

23 Q. AND IN THIS THIRD LINEUP FORTY-EIGHT HOURS, GIVE OR TAKE,
24 AFTER THE INCIDENT, YOU WERE UNABLE TO IDENTIFY ANYONE?

25 A. RIGHT.

KRISTAL MAE WIRE, CROSS EXAMINATION

33

1 Q. WHEN DETECTIVE AVERILL SHOWED YOU THESE LINEUPS, WERE YOU
2 IN A COMFORTABLE SITUATION?

3 A. (NO RESPONSE.)

4 Q. WERE YOU SITTING? AIR-CONDITIONED OR HEAT?

5 A. I DON'T REMEMBER.

6 Q. YOU DON'T REMEMBER THE CIRCUMSTANCES OF BEING SHOWN ---

7 A. I'M SURE I WAS PROBABLY SITTING. IN AN AIR CONDITION.

8 Q. I'M ASKING YOU WHAT YOU SPECIFICALLY REMEMBER ABOUT
9 WHAT -- WHAT OCCURRED AT THE TIME YOU WERE SHOWN THESE LINE-
10 UPS.

11 A. NOT TOO MUCH, I DON'T REMEMBER.

12 Q. DID DETECTIVE AVERILL IN ANY WAY SUGGEST ANY OF THE PEOPLE
13 IN ANY OF THE LINEUPS?

14 A. SAY AGAIN.

15 Q. DID DETECTIVE AVERILL SUGGEST TO YOU TO PICK OUT ANY OF
16 THE PARTICULAR PEOPLE?

17 A. NO.

18 Q. HE DID NOT?

19 A. NO.

20 Q. OKAY. AND -- AND NONE OF THE OTHER OFFICERS PRESENT TOLD
21 YOU TO PICK A SPECIFIC PERSON OUT, DID THEY?

22 A. NO.

23 Q. YOU WERE SHOWN THESE LINEUPS AND THEY SAID WE'RE GOING TO
24 SHOW YOU THESE LINEUPS; PLEASE PICK OUT ANYBODY WHO'S -- WHO'S
25 FAMILIAR TO YOU OR WHAT -- THEY READ THE BACK OF THE STATEMENT

KRISTAL MAE WIRE, CROSS EXAMINATION

34

1 TO YOU, DIDN'T THEY?

2 A. I -- I DON'T REALLY REMEMBER.

3 Q. SO YOU DON'T REMEMBER WHAT WAS READ TO YOU?

4 A. NO.

5 Q. DO YOU -- THE NIGHT OF THE INCIDENT, AS IT WAS TAKING
6 PLACE, YOU HAD BEEN THERE SEVERAL HOURS AT THE TRAILER,
7 CORRECT?

8 A. YES.

9 Q. WHO WAS DRINKING ALCOHOL THERE AT THE TRAILER?

10 A. THEN?

11 Q. THROUGHOUT THE ENTIRE NIGHT.

12 A. THE ONLY ONES I -- THEY -- THE FOUR GENTLEMEN WERE WHEN WE
13 CAME IN. I BELIEVE SO. WELL, THERE WAS ALCOHOL ON THE TABLE.

14 Q. DID YOU SEE THEM DRINKING?

15 A. NO. NOT THAT I RECALL.

16 Q. DID YOU SEE ANYONE ELSE DRINKING?

17 A. I HAD A COUPLE-AND PAUL DID.

18 Q. ALL RIGHT, DID YOU SEE TOBY DRINKING?

19 A. NO.

20 Q. DID YOU SEE MITCH DRINKING?

21 A. NO.

22 Q. DID YOU SEE JOCELYN DRINKING?

23 A. NO.

24 Q. ALL RIGHT. WHO WAS SMOKING MARIJUANA THAT NIGHT?

25 A. I DON'T KNOW ABOUT ANYBODY BUT JAMES AND PAUL DID. AFTER

KRISTAL MAE WIRE, CROSS EXAMINATION

35

1 THE FOUR GENTLEMEN HAD LEFT. BEFORE THEY CAME BACK.

2 Q. OKAY, AND WAS -- WAS ANYBODY ELSE SMOKING MARIJUANA?

3 A. NO.

4 Q. WHO -- AND YOU WERE NOT SMOKING MARIJUANA?

5 A. NO.

6 Q. WHO WAS SNORTING COCAINE?

7 A. NOBODY THAT I SEEN OF WHILE WE WERE THERE.

8 Q. DID YOU TELL ME WHEN I TALKED TO YOU A COUPLE OF DAYS AGO
9 THAT YOU SAW TOBY GRAB A HANDFUL OF COCAINE AND SNORT IT?

10 A. I TOLD YOU THAT THAT'S WHAT HE HAD SAID HE DID.

11 Q. OKAY. FAIR ENOUGH. YOU DIDN'T ACTUALLY SEE HIM ---

12 A. NO, I DID NOT.

13 Q. DID YOU SNORT COCAINE?

14 A. NO, I DID NOT.

15 Q. I'VE REFERRED TO HIM AS MITCH BUT I ASSUME THAT YOU REFER
16 TO AS JAMES. ~~DID JAMES SNORT ANY COCAINE?~~

17 A. NO.

18 Q. ~~DID PAUL? SNORT ANY COCAINE?~~

19 A. NO.

20 Q. OR JOCELYN?

21 A. NO.

22 Q. WHO WAS USING -- WHO WAS SHOOTING UP COCAINE OR WHATEVER
23 ELSE IS THAT YOU MIGHT USE A SYRINGE FOR?

24 A. NOBODY TO MY KNOWLEDGE.

25 Q. WHILE YOU WERE THERE DID YOU ACTUALLY SEE ANY COCAINE?

KRISTAL MAE WIRE, CROSS EXAMINATION

36

1 A. YES, I DID.

2 Q. WHAT ABOUT MARIJUANA?

3 A. YES, I DID.

4 Q. WHEN THE POLICE WERE INTERVIEWING YOU, AT THIS EIGHT HOURS
5 AFTER THIS OCCURRED, DID THEY ASK YOU TO TAKE A BLOOD TEST OR
6 URINE TEST?]

7 A. NO.

8 Q. AND DID YOU -- SO YOU DIDN'T TAKE ONE?

9 A. NO.

10 Q. NOW, LET'S GO BACK TO YOUR STATEMENTS QUICKLY, OKAY? AND
11 TALK ABOUT THE PEOPLE THAT YOU DESCRIBE. WE'RE NOT TALKING
12 ABOUT THE INTRUDERS HERE. IN THAT PERIOD OF TIME. WE'RE ONLY
13 TALKING ABOUT PRIOR TO THE SHOOTING. THE TIME PERIODS THERE,
14 OKAY?

15 A. (NO RESPONSE.)

16 Q. ALL RIGHT, NOW, YOU TOLD THE POLICE IN YOUR STATEMENTS
17 THAT THERE WERE FOUR BLACK MALES THERE EARLIER THAT NIGHT,
18 CORRECT?

19 A. YES.

20 Q. ~~AND YOU DID NOT DESCRIBE TO THE POLICE THEIR FACIAL~~
21 ~~FEATURES?~~

22 A. ~~I DON'T REMEMBER. IF I DID OR DIDN'T.~~

23 Q. ~~YOU DID NOT DESCRIBE TO THE POLICE THEIR HEIGHT OR WEIGHT?~~

24 A. ~~I DON'T REMEMBER.~~

25 Q. ~~YOU DID NOT DESCRIBE TO THE POLICE THEIR SCARS OR FACIAL~~

KRISTAL MAE WIRE, CROSS EXAMINATION

37

1 HAIR?

2 A. ~~I DON'T REMEMBER~~

3 Q. ~~SKIN TONE OR CLOTHING?~~

4 A. ~~I DON'T REMEMBER~~

5 Q. LET ME SKIP OVER.

6 NOW, AFTER TAVARUS ROGERS WAS ARRESTED FOR THIS OFFENSE,
7 YOU RECEIVED A TELEPHONE CALL FROM DETECTIVE AVERILL, CORRECT?

8 A. YES.

9 Q. AND DETECTIVE AVERILL TOLD YOU THAT WE HAD ARRESTED
10 TAVARUS ROGERS, WE'RE CHARGING HIM WITH THIS CRIME, CORRECT?

11 A. YES.

12 Q. OKAY. YOU ALSO READ THE NEWSPAPER?

13 A. YES.

14 Q. AND YOU ACTUALLY TALKED WITH JOCELYN ABOUT IT?

15 A. (NO RESPONSE.)

16 Q. DIDN'T YOU TALK TO JOCELYN ABOUT THE INCIDENTS AFTER THIS
17 OCCURRED?

18 A. YES.

19 Q. AND YOU TALKED WITH TOBY ABOUT IT?

20 A. YES.

21 Q. YOU'VE ACTUALLY EVEN BEEN TO COURT HEARINGS CONCERNING
22 THIS CASE, HAVEN'T YOU?

23 A. YES.

24 Q. AND YOU'VE SEEN TAVARUS ROGERS IN OPEN COURT, HAVEN'T YOU?

25 A. YES.

KRISTAL MAE WIRE, CROSS EXAMINATION

38

1 Q. AND, IN FACT, HE WAS REPRESENTED BY A LAWYER? AND THAT HE
2 APPROACHED THE BENCH IN FRONT OF THE JUDGE MUCH LIKE JUDGE
3 GREGORY, CORRECT?

4 A. YES.

5 Q. AND JUDGE GREGORY OR WHOMEVER IT WAS, HAD A CONVERSATION
6 WITH TAVARUS ROGERS' LAWYER?

7 A. YES.

8 Q. CORRECT?

9 AND YOU PAID ATTENTION TO WHAT WAS GOING ON IN COURT,
10 OBVIOUSLY?

11 A. UH-HUH.

12 MR. FLEMING: ONE MOMENT, YOUR HONOR, PLEASE.

13 THE COURT: YES, SIR.

14 Q. AND JUST BRIEFLY, MISS WIRE, YOU INDICATED -- YOU INDICAT-
15 ED NOW THAT YOUR ABLE TO IDENTIFY TAVARUS ROGERS AS ONE OF THE
16 INTRUDERS, PERSON YOU CLAIM AS V, CORRECT?

17 A. YES.

18 Q. AND YOU INDICATE YOU CAN DO IT NOW BUT YOU COULDN'T DO IT
19 EARLIER BECAUSE YOU HAD BLOCKED IT OUT BECAUSE OF TRAUMA?

20 A. YES.

21 Q. AND YOU INDICATED, DIDN'T YOU, AND I BELIEVE THAT THAT
22 WAS -- THAT WAS COMMON. YOU SAID IF YOU'D BEEN IN THAT
23 SITUATION YOU'D HAVE DONE IT, TOO, OR SOMETHING LIKE THAT?

24 A. YES.

25 Q. WHO GAVE YOU THAT INFORMATION? THIS IS COMMON?

KRISTAL MAE WIRE, CROSS EXAMINATION

39

1 A. NOBODY.

2 Q. HAVE YOU TALKED TO ANYBODY ABOUT WITNESS RECOLLECTION?

3 A. NO.

4 Q. HAVE YOU TALKED TO ANYBODY AT THE SOLICITOR'S OFFICE OR
5 VICTIM WITNESS OFFICE ABOUT HOW YOU CAN NOW IDENTIFY THEM AND
6 YOU BLOCKED ITS ---

7 A. NO.

8 Q. TODAY IS THE FIRST DAY THAT YOU HAVE FORMALLY IDENTIFIED
9 TAVARUS ROGERS IN ANY SETTING, ISN'T THAT CORRECT?

10 A. YES.

11 Q. OKAY. YOU HAVE NOT BEEN SHOWN ANY OTHER LINEUPS, EITHER
12 PHYSICAL OR PHOTOGRAPHIC, SINCE YOU WERE SHOWN THESE LINEUPS
13 WITHIN FORTY-EIGHT HOURS AFTER THE INCIDENT?

14 A. NO, I HAVEN'T.

15 MR. FLEMING: THANK YOU, MISS WIRE.

16 YOUR HONOR, THAT'S ALL I HAVE OF THE WITNESS.

17 MR. MURDAUGH: MISS WIRE ---

18 MR. FLEMING: OH, I APOLOGIZE. SORRY, SOLICITOR.

19 MR. MURDAUGH: GO AHEAD.

20 CROSS EXAMINATION

21 BY MR. FLEMING:

22 Q. MISS WIRE, I WILL SHOW YOU WHAT NOW HAS BEEN MARKED AS
23 DEFENDANT'S EXHIBIT THREE AND FOUR.

24 MR. MURDAUGH: SHE'S TESTIFIED TO THAT.

25 MR. FLEMING: BUT I'M ENTITLED TO HER IDENTIFYING THESE

KRISTAL MAE WIRE, CROSS EXAMINATION

40

1 DOCUMENTS, YOUR HONOR.

2 Q. I'LL SHOW YOU WHAT'S BEEN IDENTIFIED -- EXCUSE ME,
3 IDENTIFIED FOR -- MARKED AS STATE'S EXHIBIT -- EXCUSE ME.

4 I WILL SHOW YOU WHAT HAS BEEN MARKED AS DEFENDANT'S
5 EXHIBIT THREE AND FOUR FOR IDENTIFICATION. AND I WILL ASK IF
6 YOU RECOGNIZE THOSE TWO DOCUMENTS.

7 A. YES.

8 Q. ARE THOSE TWO DOCUMENTS ACCURATE COPIES OF STATEMENTS YOU
9 GAVE ON JANUARY 3 AND JANUARY 4?

10 A. UH-HUH. YES.

11 Q. THEY ARE?

12 A. (NO RESPONSE.)

13 Q. AND NUMBER -- DEFENDANT'S EXHIBIT THREE YOU INDICATE THAT
14 YOU WERE UNABLE TO IDENTIFY ANYBODY IN LINEUPS NUMBER ONE AND
15 FROM NUMBER TWO, CORRECT?

16 A. CORRECT.

17 Q. AND THAT IS WHAT YOU'VE ALREADY TESTIFIED TO CONCERNING
18 THE STATE'S EXHIBITS, CORRECT?

19 A. RIGHT.

20 Q. AND IN DEFENSE EXHIBIT FOUR YOU INDICATE IN YOUR OWN
21 WRITING THAT YOU'RE UNABLE TO IDENTIFY ANYONE IN NUMBER THREE,
22 WHICH YOU'VE ALREADY BEEN SHOWN AS -- BY THE STATE, RIGHT?

23 A. RIGHT.

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

25

KRISTAL MAE WIRE, REDIRECT EXAMINATION

41

1 REDIRECT EXAMINATION

2 BY MR. MURDAUGH:

3 Q. MISS WIRE, WERE YOU EVER SHOWN OR DID YOU EVER SEE A
4 PICTURE OF TAVARUS ROGERS OTHER THAN THOSE THREE -- WERE YOU
5 EVER SHOWN ANY PICTURES BY ANY LAW ENFORCEMENT OFFICERS?

6 A. JUST THOSE RIGHT THERE, THAT'S IT.

7 Q. THOSE THREE MARKED ---

8 A. YES.

9 Q. --- STATE'S EXHIBITS ONE, TWO AND THREE FOR IDENTIFICA-
10 TION?

11 A. RIGHT.

12 ~~Q. OKAY. HAVE YOU EVER SEEN A PICTURE? OF TAVARUS ROGERS~~
13 ~~AFTER HAVING VIEWED THOSE THREE PHOTO LINEUPS?~~

14 A. NO.

15 Q. DID ANY OFFICER EVER SHOW YOU A PICTURE AND TELL YOU THAT
16 IT WAS TAVARUS ROGERS?

17 A. NO.

18 Q. HAS ANY OFFICER EVER SHOWED YOU AN INDIVIDUAL PICTURE TO
19 ASK YOU IF YOU CAN IDENTIFY IT?

20 A. NO.

21 MR. MURDAUGH: THANK YOU, MA'AM.

22 MR. FLEMING: I HAVE ONE FOLLOW-UP, YOUR HONOR.

23 THE COURT: OKAY.

24

25

KRISTAL MAE WIRE, RECROSS EXAMINATION

42

1 RECROSS EXAMINATION

2 BY MR. FLEMING:

3 Q. WHEN YOU WERE IN COURT THE DAY YOU DESCRIBED -- WHEN
4 TAVARUS ROGERS WAS WITH HIS LAWYER IN FRONT OF THE JUDGE, HE
5 WAS WEARING AN ORANGE DETENTION CENTER GOWN, WASN'T HE?

6 A. YES.

7 MR. FLEMING: THANK YOU, MA'AM. NO MORE QUESTIONS.

8 MR. KULP: ONE MOMENT.

9 MR. FLEMING: ONE SECOND.

10 I DO HAVE ONE FOLLOW-UP, YOUR HONOR.

11 Q. YOU JUST TOLD THE SOLICITOR, OR TOLD THE COURT IN RESPONSE
12 TO THE SOLICITOR THAT YOU HAD NOT BEEN SHOWN ANY OTHER
13 PHOTOGRAPHS OTHER THAN THE ONES IN THE LINEUP? CORRECT?

14 A. RIGHT.

15 Q. AND HE ASKED YOU OTHER THAN THE PHOTOGRAPH OF TAVARUS
16 ROGERS IN THE PHOTO LINEUPS YOU'VE NEVER BEEN SHOWN ANY OTHER
17 PICTURES?

18 A. RIGHT.

19 Q. SO WHO TOLD YOU THAT TAVARUS ROGERS WAS IN ANY OF THESE
20 PHOTOGRAPHIC LINEUPS?

21 A. NOBODY HAS.

22 Q. THEN HOW DO YOU KNOW?

23 ~~I DON'T KNOW~~

24 MR. FLEMING: THANK YOU, YOUR HONOR.

25

KRISTAL MAE WIRE, REDIRECT EXAMINATION

43

1 REDIRECT EXAMINATION

2 BY MR. MURDAUGH:

3 Q. MISS WIRE, LOOK AT STATE'S EXHIBITS NUMBER ONE, TWO AND
4 THREE FOR IDENTIFICATION AND TELL ME, START OFF WITH NUMBER
5 ONE.

6 MR. FLEMING: YOUR HONOR, I WOULD OBJECT TO THIS PROCE-
7 DURE. BECAUSE IT IS NOT JUST FACTUALLY SIMILAR TO STATE
8 VERSUS PRAYLOW (PHON.) IN WHICH THE COURT OF APPEALS SAID THAT
9 THAT IS ABSURD. THAT THERE'S ABSOLUTELY NO WAY THAT SHE'S NOT
10 GOING TO BE ABLE TO IDENTIFY, IF TAVARUS ROGERS IS IN THERE,
11 IN THOSE LINEUPS, THAT SHE'S NOT GOING TO BE ABLE TO IDENTIFY
12 TAVARUS ROGERS IF HE'S SITTING RIGHT HERE IF SHE'S LOOKING AT
13 HIM. I MEAN IT'S ABSURD AND THE COURT OF APPEALS
14 ARGUED -- DIDN'T ARGUE, THEY SAID THAT IT CAN HARDLY BE ARGUED
15 THAT THAT IS NOT A SUGGESTIVE PROCEDURE. I MEAN I CAN QUOTE
16 IT FOR YOU.

17 THE CASE HAS BEEN OVERTURNED BUT NOT ON THAT ISSUE. AND
18 I AM CERTAIN THAT THE COURT OF APPEALS WOULD HAVE THIS SAME
19 EXACT LANGUAGE AS WHAT THE SOLICITOR'S ATTEMPTING NOW.

20 AND THAT -- I ONLY OBJECT TO THAT, YOUR HONOR,
21 BECAUSE -- BECAUSE -- BECAUSE THIS IS AN IN CAMERA HEARING,
22 FOR THE PURPOSES OF LETTING YOU KNOW THAT THAT IS THE EXACT
23 THING WE'RE ARGUING AGAINST TODAY IN THE ENTIRE PROCEEDING.
24 SO.

25 MR. MURDAUGH: MY REASON FOR WANTING TO ASK THE QUESTION

KRISTAL MAE WIRE, REDIRECT EXAMINATION

44

1 IS BECAUSE OF THE QUESTIONS HE BROUGHT UP. HE IS MAKING THE
2 INFERENCE THAT SHE CAN'T IDENTIFY THE PICTURE. I DID NOT ASK
3 THEM THAT ON DIRECT. BUT HE HAS BROUGHT UP THE INFERENCE THAT
4 SHE CAN'T IDENTIFY THEM AND I THINK SHE'S ENTITLED TO ANSWER
5 IT, SIR.

6 THE COURT: OBJECTION'S OVERRULED. I'LL LET YOU PROCEED.

7 Q. MISS WIRE, BEFORE I ASK YOU THIS QUESTION LET ME ASK YOU
8 THIS. DID I GO BACK INTO THE JURY ASSEMBLY ROOM AND SHOW YOU
9 THESE THREE ---

10 A. THE THREE HERE.

11 Q. OH.

12 A. YES, YOU DID.

13 Q. THE THREE PHOTO ID'S?

14 A. YES.

15 Q. DID I ASK YOU, SHOWING THEM TO YOU, NUMBER ONE, BACK IN
16 THE JURY ASSEMBLY ROOM, CAN YOU IDENTIFY TAVARUS ROGERS?

17 A. YES, YOU DID.

18 Q. OKAY, WHAT'D YOU TELL ME?

19 A. NO.

20 Q. OKAY. DID I SHOW YOU NUMBER TWO?

21 A. YES.

22 Q. AND WHAT'D YOU -- DID I ASK YOU COULD YOU IDENTIFY HIM IN
23 THAT ONE?

24 A. RIGHT. AND I SAID NO.

25 Q. OKAY. THEN DID I SHOW YOU NUMBER THREE?

KRISTAL MAE WIRE, REDIRECT EXAMINATION

45

1 A. YES.

2 Q. AND DID I ASK YOU IF YOU COULD IDENTIFY HIM IN THAT ONE?

3 A. YES.

4 Q. AND WHAT'D YOU TELL ME?

~~5 A. AND BE THEM THAT I THOUGHT WOULD BE NUMBER SIX.~~

6 Q. THAT IS ON STATE'S ID NUMBER THREE?

7 A. (NO RESPONSE.)

8 Q. IS THAT RIGHT?

9 A. RIGHT.

10 Q. IS THAT BEFORE YOU SAW HIM IN THE COURTROOM TODAY?

11 A. YES.

12 MR. MURDAUGH: THANK YOU, MA'AM. I HAVE NO FURTHER
13 QUESTIONS.

14 RECROSS EXAMINATION

15 BY MR. FLEMING:

16 Q. BUT THAT WAS AFTER YOU SAW HIM IN OPEN COURT AT A PREVIOUS
17 HEARING, CORRECT?

18 A. YES.

19 MR. MURDAUGH: I'M SORRY, I DIDN'T HEAR THE QUESTION.
20 WHAT WAS YOUR QUESTION?

21 THE COURT: SHE'S ALREADY SEEN HIM IN OPEN COURT BEFORE.
22 AT A PREVIOUS HEARING.

23 MR. MURDAUGH: OH, OKAY.

24 I HAVE NO FURTHER QUESTIONS.

25 THE COURT: YOU HAVE ANYTHING ELSE?

KRISTAL MAE WIRE, CROSS EXAMINATION

46

1 MR. FLEMING: I NEED TO -- THAT'S BRAND NEW, YOUR HONOR.
2 IF YOU'LL GIVE ME THREE MINUTES SO WE CAN TALK ABOUT THIS.
3 REAL QUICKLY.

4 THE COURT: OKAY.

5 MR. FLEMING: WE DID NOT KNOW THAT THAT HAD OCCURRED.

6 THE COURT: IF Y'ALL JUST KEEP YOUR SEATS. I NEED
7 ANOTHER BOOK. I'M GONE GET IT OUT OF MY OFFICE AND I'LL BE
8 RIGHT BACK.

9 MR. FLEMING: YES, SIR.

10 MR. MURDAUGH: WHILE YOU DOING THAT, SIR, MAY I STEP OUT
11 THE BACK, TOO?

12 (COURT RECESSED FOR APPROXIMATELY FIVE MINUTES.)

13 MR. FLEMING: YOUR HONOR, I WOULD AS THAT MISS WIRE BE
14 ALLOWED TO REMAIN IN THE BACK SEQUESTERED. SO THAT SHE'S NOT
15 ABLE TO TALK TO ANY OTHER POTENTIAL WITNESS.

16 THE COURT: THERE'S ONLY ONE MORE, ISN'T IT?

17 MR. MURDAUGH: HOLD, HOLD ON JUST A SECOND.

18 I HAD ASK THAT THE OTHER WITNESS CAME -- COME IN BEFORE I
19 ASKED MR. FLEMING.

20 I HAVE NO PROBLEM WITH WHATEVER Y'ALL WANT ---

21 THE COURT: WELL, THERE'S ONLY ONE OTHER WITNESS, ISN'T
22 IT?

23 MR. FLEMING: OUT OF AN ABUNDANCE OF CAUTION, CAN WE DO
24 THAT?

25 WE -- THERE WAS A WITNESS -- YOU'LL RECALL IN THE LAST

1 TRIAL THERE WAS A WITNESS PROBLEM, THAT SOME GUY LISTENED AT
2 THE DOOR, ET CETERA, AND I WOULD PREFER IT -- THAT SHE BE AT
3 THE GRAND JURY ROOM. I THINK SHE'LL BE SAFE AND COMFORTABLE
4 THERE.

5 THE COURT: THAT'S FINE.

6 WOULD YOU COME ON, WALKED THROUGH THIS DOOR.

7 MR. MURDAUGH: WOULD YOU SHOW HER, PLEASE?

8 THE COURT: SHOW HER IN THERE AND GET HER A COCA COLA,
9 TOO. IF SHE'D LIKE ONE.

10 OKAY, YOU BRING IN THE NEXT WITNESS.

11 MR. MURDAUGH: JUST ONE SECOND.

12 THE COURT: OH, OKAY, HOLD IT. MR. HARRIS.

13 OKAY.

14 MR. MURDAUGH: YOUR HONOR, PLEASE, I WOULD -- AND I DON'T
15 KNOW WHY I'M DOING THIS, SIR.

16 THE -- THERE IS SOME CASE LAW IN THE MEMORANDUM THAT I
17 PASSED UP TO YOU REGARDING METHODS BY WHICH YOU CAN PREVENT A
18 FACE-TO-FACE CONFRONTATION WITH A MAN IN A JUMPSUIT.

19 THE COURT: I'VE READ THAT, I DID.

20 MR. MURDAUGH: AND I JUST CALL THAT TO MR. FLEMING'S MR.
21 KULP'S ATTENTION, IF THEY WANT TO AVAIL THEMSELF OF IT.
22 BEFORE I CALL MISS JOCELYN WENDELL IN.

23 THE COURT: WELL, I PRESUME THE TWO -- THEY HAD A COPY OF
24 THAT MEMORANDUM AND THEY DIDN'T ---

25 MR. MURDAUGH: I UNDERSTAND THAT, SIR ---

1 THE COURT: THEY DIDN'T MENTION IT SO I ---

2 MR. MURDAUGH: THOUGHT IT WOULD BE APPROPRIATE TO BRING
3 IT UP.

4 THE COURT: I'M NOT -- I'M NOT -- THEY GOT -- DEFENDANT'S
5 GOT VERY GOOD LAWYERS. SO.

6 MR. MURDAUGH: EXCELLENT LAWYERS. TOO GOOD FOR ME.

7 THE COURT: YEAH.

8 ANYTHING ELSE BEFORE WE START WITH THE NEXT ONE?

9 MR. FLEMING: I'M NOT -- I'M NOT SURE WHAT THE SOLICITOR
10 MEANS BY WHAT HE JUST BROUGHT UP. I MEAN I DON'T KNOW IF HE'S
11 CLAIMING THAT WE'RE WAIVING SOME RIGHT ---

12 THE COURT: WELL, OBVIOUSLY, WE COULDN'T DO THAT TODAY,
13 THEN, WE WOULDN'T BE ABLE TO CONTINUE WITH IT.

14 MR. MURDAUGH: ONE OF THE THINGS MENTIONS A POSTPONEMENT.
15 I MEAN ONE OF THE CASES MENTIONS A POSTPONEMENT.

16 THE COURT: HE'S ASKING. DID YOU GET HIS MEMORANDUM OF
17 LAW IN OPPOSITION TO MOTION TO EXCLUDE IN-COURT IDENTIFICATION
18 OF TAVARUS ROGERS?

19 MR. FLEMING: YES, SIR. YES, SIR.

20 THE COURT: AND WHICH, OF COURSE, IS DATED AUGUST 15.
21 AND SO YOU GOT NO SPECIAL REQUEST, I PRESUME? IS THAT RIGHT?

22 MR. FLEMING: WELL, YOUR HONOR, HERE'S THE PROBLEM. WE
23 ARE INFORMED AND BELIEVE THAT THE NEXT POTENTIAL WITNESS HAD
24 ALREADY VIEWED TAVARUS ROGERS IN THE COURTROOM.

25 THE COURT: WHEN WAS THAT?

1 MR. FLEMING: WELL, AT SOME -- WE -- WE KNOW THAT SHE'S
2 BEEN AT LEAST TO TWO HEARINGS. AT LEAST I'VE BEEN TOLD THAT
3 BY OTHER WITNESSES. THAT SHE'S BEEN PRESENT AT A COUPLE
4 HEARINGS.

5 NOW, THE FACT THE MATTER IS ONCE SHE'S BEEN TOLD WHO
6 TAVARUS ROGERS IS, AND THEN HE SITS OUT AMONGST FIVE OR SIX
7 BLACK GUYS SITTING THERE, YOU KNOW. THE ARGUMENT IS I'VE
8 NEVER MET PAUL MCCARTNEY BUT I KNOW WHAT HE LOOKS LIKE AND I
9 CAN PICK HIM OUT OF A HUNDRED PEOPLE. AND SO WHAT THE
10 SOLICITOR IS ASKING US TO DO IS DO SOME SORT OF TRICK ---

11 MR. MURDAUGH: I'M NOT ASKING THEM TO DO ANYTHING, SIR;
12 I'M JUST CALLING IT TO THE ATTENTION AND Y'ALL CAN DO WHATEVER
13 THE HECK Y'ALL WANT TO.

14 MR. FLEMING: WELL, BUT THE SOLICITOR IS TRYING TO PUT US
15 IN A CATCH 22. BY SAYING ---

16 THE COURT: WELL, YOU DON'T HAVE TO TELL ME YOUR
17 REASONING BEHIND WHATEVER YOU WANT TO DO. I'M NOT INTERESTED
18 IN THAT. I TAKE IT THAT YOU HAVE NO SPECIAL REQUEST, OTHER
19 THAN TO PROCEED WITH THIS IDENTIFICATION HEARING, IS
20 THAT -- AM I CORRECT IN THAT?

21 MR. FLEMING: ONE SECOND, YOUR HONOR.

22 MR. KULP: BEG THE COURT'S INDULGENCE, YOUR HONOR.

23 THE COURT: YES, SIR.

24 (MR. FLEMING AND MR. KULP CONFERRED OFF THE RECORD WITH
25 THEIR CLIENT.)

1 MR. KULP: ONE MOMENT, YOUR HONOR? JUST ANOTHER MOMENT,
2 YOUR HONOR?

3 THE COURT: SIR?

4 MR. KULP: MAY WE HAVE JUST ANOTHER BRIEF MOMENT?

5 THE COURT: YES, SIR.

6 MR. KULP: THANK YOU.

7 THE COURT: WELL, LET ME ASK YOU THIS.

8 MR. KULP: YES, SIR?

9 THE COURT: DO YOU WANT TO GO BACK IN THE ROOM BACK THERE
10 AND CONFER WITH YOUR CLIENT JUST FOR A SECOND? I'LL BE GLAD
11 TO STAND AT EASE OR WHATEVER. I WOULD LET YOU GO BACK IN THE
12 GRAND JURY ROOM BUT YOU'VE ALREADY OCCUPIED THAT.

13 MR. FLEMING: YES, YOUR HONOR, IF WE MAY.

14 THE COURT: GO BACK IN THIS ROOM HERE?

15 MR. FLEMING: YES, SIR.

16 (COURT RECESSED FOR APPROXIMATELY TEN MINUTES.)

17 MR. MURDAUGH: WE'RE READY, SIR. CALL JOCELYN WENDELL.

18 MR. FLEMING: YOUR HONOR, PLEASE. IF YOU CAN WAIT.

19 MR. MURDAUGH: JUST ONE SECOND.

20 MR. FLEMING: YOUR HONOR, IF I MAY ADDRESS THE COURT ON
21 THIS ISSUE.

22 THE COURT: OKAY.

23 MR. FLEMING: IT SEEMS -- IT SEEMS THAT THE SOLICITOR IS
24 INFORMING US OF THE POSSIBILITY THAT WE ARE ALLOWED TO IN SOME
25 WAY HAVE MR. ROGERS SEATED SOMEWHERE ELSE IN THE COURTROOM

1 AMONGST OTHER PEOPLE OF SIMILAR DESCRIPTION. AND, THEREFORE,
2 TAKE ADVANTAGE OF BEING ABLE TO IN SOMEHOW ELIMINATE SOME
3 SUGGESTIVENESS OF THE IN-COURT IDENTIFICATION.

4 WHILE WE BELIEVE THAT THE -- AND WE ONLY BE ABLE TO KNOW
5 THAT AFTER WE EXAMINE THE WITNESS BUT WE BELIEVE THE WITNESS
6 HAS ALREADY BEEN TAINTED; THEREFORE, SHE IS GOING TO BE ABLE
7 TO PICK HIM OUT UNDER ANY CIRCUMSTANCES NOW. CERTAINLY, SHE'S
8 ALREADY BEEN SHOWN THE LINEUP. I WOULD ASSUME THAT THE
9 SOLICITOR DID THE SAME THING WITH HER AS HE DID WITH MISS WIRE
10 AND HAS SHOWN HERE THE LINEUP. AND AFTER LOOKING IN THAT
11 LINEUP, THERE'S GOING TO BE ONE FACE IN THOSE THREE LINEUPS
12 THAT'S IN THE COURTROOM AND IT TAKES TWO AND TWO TO MAKE FOUR.

13 WHAT WE'RE ASKING THIS COURT IS FOR YOU TO -- TO GIVE US
14 A RULING ON WHETHER OR NOT WE ARE WAIVING ANY RIGHTS THAT OUR
15 CLIENT HAS IF WE DO NOT PARTICIPATE IN THAT FORM OF ID, FOR
16 LACK OF BETTER WORD. IF WE ALLOW -- IF WE ---

17 THE COURT: WELL, NOW, I DON'T NORMALLY GIVE OPINIONS.
18 YOU KNOW, IF YOU DO SOMETHING OR SOMEBODY MAKES AN OBJECTION,
19 I MAKE A RULING. WE'RE HAVING A HEARING THIS MORNING UNDER
20 NEAL VERSUS BIGGERS HEARING. AND YOU KNOW WHAT YOUR RIGHTS
21 ARE AS AN ATTORNEY. YOU'RE THE ONE WHO HAS THE IMAGINATION TO
22 ASK FOR WHAT YOU THINK YOU'RE ENTITLED TO THAT MIGHT HELP YOUR
23 CLIENT. BUT FOR ME TO GIVE AN ADVISORY RULING, IF THAT'S WHAT
24 YOU'RE ASKING ME TO DO. IS IT?

25 MR. FLEMING: NO, SIR, WE'RE ACTUALLY WANTING A RULING ON

1 THIS PARTICULAR CASE.

2 THE COURT: AS TO WHAT?

3 MR. FLEMING: THE ---

4 THE COURT: ARE YOU MAKING A MOTION FOR THE COURT TO
5 PROCEED IN A PARTICULAR WAY?

6 MR. FLEMING: NO, SIR, I AM -- LET ME -- LET ME EXPLAIN
7 FROM THE BEGINNING.

8 THE STATE ---

9 THE COURT: OKAY, WELL, START OVER. I MUST HAVE MISSED
10 SOMETHING.

11 MR. FLEMING: THE STATE HAS THE BURDEN OF PROVING THIS
12 CASE. THEY, THEREFORE, HAVE THE BURDEN OF PROVING THAT THE
13 IDENTIFICATION PROCESS WAS NOT UNDULY SUGGESTIVE.

14 THE WAY THE INTEND TO PROCEED, I ASSUME, IS THAT THEY'RE
15 GOING TO CALL THIS WITNESS, THIS WITNESS IS IN SOME WAY GOING
16 TO IDENTIFY MR. ROGERS SEATED HERE IN COURT. BECAUSE IT IS
17 THEIR BURDEN, THEY HAVE THE RIGHT TO CHOOSE WHETHER OR NOT
18 THEY WANT MR. ROGERS TO SIT AT THE COUNSEL TABLE OR THEY WANT
19 MR. ROGERS TO LINE UP WITH SIX OR SEVEN OTHER YOUNG BLACK
20 MALES IN ORANGE SUITS ---

21 THE COURT: WHAT YOU TALKING ABOUT THE STATE HAS A RIGHT?
22 THE STATE HAS TO -- YOU KNOW, YOU -- STATE CAN MAKE A SUGGES-
23 TION AND YOU CAN MAKE ONE AND THIS COURT WILL RULE AS TO HOW
24 THIS HEARING WILL PROCEED.

25 MR. FLEMING: WELL ---

1 THE COURT: BUT I WOULD NORMALLY HEAR FROM YOU IF YOU
2 HAVE SOME SPECIAL REQUEST. AND IF YOU'RE MAKING ONE, I'M GLAD
3 TO HEAR FROM YOU BUT I DON'T KNOW THAT I HAVE HEARD YOU MAKE A
4 SPECIAL REQUEST.

5 MR. FLEMING: YES, SIR, AND ---

6 THE COURT: AND SO I'M JUST TRYING TO UNDERSTAND WHAT
7 YOU'RE ASKING.

8 MR. FLEMING: I UNDERSTAND, SIR.

9 IF I CAN, BECAUSE THE STATE HAD THE BURDEN OF PROVING
10 THAT THE IDENTIFICATION IS ADMISSIBLE, THEY MUST CALL WITNESS-
11 ES. THEY HAVE HAD NEARLY THREE YEARS TO CONDUCT ANOTHER,
12 ANOTHER UNTAINTED LINEUP. IN OTHER WORDS, THEY CONDUCTED ONE
13 LINEUP JANUARY 4. AND THEY DIDN'T GET AN IDENTIFICATION.
14 THEY'VE HAD TWO YEARS NOW TO CONDUCT ANOTHER ONE.

15 THE STATE -- I HAVE MOVED TO SUPPRESS, ON BEHALF OF MR.
16 ROGERS, THE IN-COURT IDENTIFICATION. THEY ARE GOING TO
17 ATTEMPT THE IN-COURT IDENTIFICATION. I AM SAYING THAT WE, BY
18 NOT LINING MR. ROGERS UP WITH OTHER PEOPLE, ARE NOT WAIVING
19 HIS RIGHT TO CHALLENGE THAT IN-COURT IDENTIFICATION.

20 SO ---

21 THE COURT: WELL, LET ME ASK YOU THIS. YOU'VE ALREADY
22 CHALLENGED IT. THIS COURT IS TODAY HOLDING A HEARING ON TO
23 DETERMINE WHETHER THAT IN-COURT IDENTIFICATION SHOULD BE
24 ALLOWED. THAT'S WHAT I UNDERSTAND.

25 NOW, ARE YOU SAYING THAT THIS IS SOME SORT OF PRELIMINARY

1 ON THAT? THAT YOU'RE GONE RAISE IT AGAIN? THIS IS A -- THIS
2 IS YOUR HEARING. THAT YOU'VE ASKED FOR.

3 MR. KULP, GLAD TO HEAR FROM YOU IF YOU WANT TO ADD
4 SOMETHING.

5 MR. KULP: YES, SIR, YOUR HONOR. IF IT PLEASE THE COURT,
6 I WOULD OFFER THIS. I DON'T HAVE THE EXACT DATE. I WAS
7 FUMBLING FOR IT BUT THE MOTION TO SUPPRESS ANY IN-COURT
8 IDENTIFICATION WAS FILED SOMETIME AGO. AND I'M NOT TAKING A
9 SHOT AT THE SOLICITOR FOR THE LATE FILING OF THIS BECAUSE
10 WE'RE ALL BUSY AS CAN BE AND JUST DON'T WANT TO BE. BUT WE
11 JUST GOT THIS THIS MORNING.

12 IS THAT RIGHT?

13 MR. FLEMING: THAT'S CORRECT.

14 MR. KULP: GOT THIS MOTION ---

15 THE COURT: AND A MEMORANDUM.

16 MR. KULP: AND LAW, MEMORANDUM OF LAW IN OPPOSITION TO
17 THE MOTION TO EXCLUDE IN-COURT.

18 WE LOOKED AT IT. WE STARTED HERE TODAY. LET ME JUST SAY
19 WHAT'S DONE IS DONE. AT THIS JUNCTURE, THOUGH, AS TO HOW THIS
20 HAS BECOME AN ISSUE, I THINK IS INCUMBENT UPON US TO BEG THE
21 COURT TO TAKE AN EARLY LUNCH SO THAT WE MIGHT CONDUCT SOME
22 ADDITIONAL RESEARCH IN ORDER TO MAKE A COMPETENT DECISION
23 ABOUT HOW WE PROCEED FROM HERE, THAT BEING IN ONE OF TWO
24 METHODS.

25 ONE IS TO SIMPLY LEAVE THE DEFENDANT HERE AND CONTINUE AS

1 WE DID IN THE LAST CASE AND MAKE THE SAME -- THE SAME ARGU-
2 MENTS IN THAT REGARD OR, IN THE ALTERNATIVE, TO, IN FACT,
3 PETITION THE COURT IF IT -- IF THE THRUST OF THE LAW IS THAT
4 IT'S OUR RESPONSIBILITY TO ENSURE THE EFFICACY OF THE EYE
5 WITNESS, WITNESSES WHO COME FORWARD. THAT'S PRETTY SERIOUS, I
6 THINK, BECAUSE, IN FACT, WHAT IT EQUATES IS THAT WE'RE WAIVING
7 A RIGHT OF OUR CLIENT BY NOT TAKING STEPS UNDER THE SECOND
8 CASE THAT I'M READING RIGHT NOW, ARCHIBALD CITED BY THE STATE
9 IN THEIR MOTION -- THEIR MEMORANDUM THIS MORNING. AND WE KIND
10 OF A PICKLE ON OUR CART THAT'S GONNA UPSET THE MATTER IN THE
11 FUTURE, I THINK.

12 SO WHAT'S DONE IS DONE BUT I THINK AT THIS JUNCTURE, HERE
13 IT'S A QUARTER TILL TWELVE. IF THE COURT WOULD, PLEASE, WE
14 COULD -- WE COULD POSSIBLY RECESS AND COME BACK VERY EARLY, SO
15 THAT WE MIGHT MAKE A DECISION ABOUT THIS AND THEN ALSO OBTAIN
16 INPUT FROM OUR CLIENT, WHOSE LIFE IS ON THE LINE HERE ABOUT
17 THAT.

18 I JUST -- I DON'T KNOW OFF THE TOP OF MY HEAD AND I THINK
19 WHAT MR. FLEMING IS SUGGESTING IS THAT WHETHER IT'S OUR
20 RESPONSIBILITY - AND I'M READING THAT CASE AS QUICKLY AS I CAN
21 - TO INVOKE THE -- THE COURTROOM LINEUP SORT OF IT SHORT OF A
22 WADE LINEUP. AND IF WE FAIL TO DO SO -- DO SO WAIVES SOME
23 RIGHT, WHICH I THINK IS WHAT MR. FLEMING WAS SEEKING, OR IT'S
24 INCUMBENT UPON THE SOLICITOR TO ENSURE THE EFFICACY AND
25 ADMISSIBILITY OF THIS WITNESS' TESTIMONY BY TAKING STEPS.

1 I THINK THAT'S THE CONUNDRUM THERE. IS IT -- IS IT
2 HIS -- IS IT OUR RESPONSIBILITY TO ENSURE THAT THERE'S NO
3 SUGGESTIBILITY TO TAINT OR IS IT HIS RESPONSIBILITY
4 SAY -- WHEN WE WALK HERE IN THE COURTROOM TO SAY, HEY, WAIT A
5 MINUTE, I DON'T WANT MY WITNESS TO SEE THAT FELLOW, 'CAUSE I
6 DON'T WANT TO HAPPEN WHAT JUST HAPPENED WITH WITNESS NUMBER
7 ONE, WHICH IS DONE AND GONE. AND THAT IS THAT SHE SAID PRIOR
8 TO THE TIME SHE SAW HIM IN HERE TODAY SHE COULDN'T IDENTIFY
9 HIM. IN FACT, SHE COULDN'T IDENTIFY HIM, SHE LOOKED AT THE
10 PHOTOGRAPHS IN THE LINEUP WITHIN A HOUR AGO OR TWO.

11 IT'S A COMPLICATED MORASS I THINK AND I JUST -- I THINK
12 OUR CONCERN IS, IS WE'RE SITTING HERE TAPPING ON THE BRAKE
13 PEDAL IS THAT WE JUST DON'T WANT TO DO SOMETHING THAT WOULD
14 WAIVE A VERY CRITICAL RIGHT OF OUR CLIENT.

15 THE COURT: WELL, OF COURSE, I COULD UNDERSTAND HOW
16 SOMEONE COULD IDENTIFY SOMEONE IN PERSON AND NOT IDENTIFY A
17 PHOTOGRAPH. I'VE OFTEN FELT THAT PHOTOGRAPHS OF ME DON'T
18 PARTICULARLY LOOK LIKE ME BUT, ANYWAY.

19 MR. KULP: THOSE ARE DRIVER'S LICENSE PHOTOS.

20 THE COURT: OKAY.

21 SO WHAT YOU WANT TO DO IS TAKE A BREAK?

22 MR. KULP: YES, SIR.

23 THE COURT: AND THEN YOU -- TO DETERMINE HOW YOU WILL
24 PROCEED.

25 THE ONLY PROBLEM WITH THAT IS IF WE -- YOU'VE ASKED FOR A

1 HEARING. SO WHAT YOU'RE SAYING, YOU MAY WISH THAT YOUR CLIENT
2 NOT BE PRESENT. OR, ACTUALLY, HE COULD BE PRESENT BUT NOT IN
3 COURT BUT THE -- BUT IF YOU WAIVE THAT, THEN YOU -- I GUESS
4 THIS NEXT WITNESS WOULD THEN SEE HIM FOR THE FIRST TIME IN
5 COURT. IN SOME FASHION.

6 AND IF THAT'S WHAT YOU WANT, I DON'T SEE WHY WE COULD NOT
7 LET THE DEFENDANT SIT -- RETIRE TO THE BACK ROOM THERE AND
8 OBSERVE THIS. I'M OF -- I DON'T SEE ANY PARTICULAR REASON
9 TO -- WE JUST BROKEN FOR AN EXTENSIVE CONFERENCE. IF WE'RE
10 GOING FORWARD ON THIS HEARING TODAY, WHICH WE CALLED IT AND I
11 WANT TO GO FORWARD WITH I. I KNOW THE STATE DOES. WE HAVE A
12 LOT OF OTHER THINGS TO DO IN THIS CASE SO THAT IT WILL BE
13 READY TO GO IN OCTOBER.

14 NOW, IF YOU WISH TO HAVE THE DEFENDANT LEAVE THE COURT-
15 ROOM TODAY AND PROCEED, TO MY MIND, THAT MIGHT BE A WAY THAT
16 WE CAN CONTINUE WITH IT. AND WE DO, IN THIS COURTROOM,
17 FORTUNATELY, HAVE VERY GOOD FACILITIES FOR THAT BECAUSE HE
18 COULD GO BACK THERE, TURN OFF THE LIGHT, YOU KNOW, AND THERE'S
19 NO WAY THE JURY - THE JURY - KNOW WAY THE WITNESS WOULD HAVE A
20 LOOK AT HIM. IF THAT'S -- IF THAT'S YOUR REQUEST, I WOULD
21 SUGGEST THAT AS AN ALTERNATIVE AND BEFORE I HEAR FURTHER FROM
22 YOU, IS ANYTHING YOU'D LIKE TO ADD, SOLICITOR?

23 MR. MURDAUGH: NO, SIR.

24 MR. KULP: EXCELLENT, YOUR HONOR.

25 MR. FLEMING: THAT'S AN EXCELLENT RECOMMENDATION, YOUR

1 HONOR. WE'LL HAVE MR. ROGERS JUST SITTING THERE AND THEN
2 THERE WILL -- THERE WILL BE NO IDENTIFICATION IN THIS HEARING.
3 WE WOULD JUST BE CONDUCTING INQUIRY AS TO WHAT HAS OCCURRED.

4 MR. MURDAUGH: IF THAT BE TRUE, SIR ---

5 THE COURT: WELL, NO, NO, THAT'S NOT NECESSARILY SO. I
6 THINK THAT I CAN STILL RULE, IF THE WITNESS COMES IN, SAYS
7 SHE'S SATISFIED AND ALL THE OTHER THINGS, THERE COULD BE A WAY
8 THAT I MIGHT BE ABLE TO FIND THAT SHE COULD, SUBJECT TO, AND
9 THEN AT LEAST WE COULD CONTINUE IT TO THE WEEK OF THE TRIAL OR
10 DURING THE TRIAL AND THEN WE COULD WORK OUT SOMETHING IF YOU
11 WANTED TO DO SOMETHING ELSE AT THAT TIME.

12 BUT, I MEAN, OBVIOUSLY, IF NOT, WE MIGHT AS WELL JUST
13 STOP BECAUSE THEN, AND THERE WOULD BE NO WAY TO GO FORWARD ON
14 THIS UNTIL THE TRIAL WEEK.

15 BECAUSE IF WE'RE NOT -- IF I'M NOT GONE BE IN A POSITION
16 TO MAKE ANY RULING I DON'T SEE ANY REASON TO GO FORWARD WITH
17 THE HEARING.

18 MR. FLEMING: WELL, WHAT I PURPOSE IS THAT WE ---

19 THE COURT: I MEAN WE'VE ALREADY GOT ONE WITNESS... I CAN
20 CERTAINLY RULE ON THAT ONE.

21 MR. FLEMING: AND WHAT WE PURPOSE IS THAT WE CONDUCT,
22 WITH THE EXCEPTION OF THE -- THE POINT IN TIME IN WHICH THE
23 SOLICITOR ELICITS ---

24 THE COURT: NOW, ONE THING IF YOU WANT, IF YOU WANT TO
25 SEE IF MR. GRAYSON CAN GO BACK AND GET A COUPLE OTHER PEOPLE

1 WHO WOULD BE DRESSED LIKE HE IS AND SO FORTH. OF COURSE, THE
2 WITNESS DOESN'T KNOW HOW THE DEFENDANTS DRESSED ANYWAY. IF
3 YOU WANT TO DO SOMETHING LIKE THAT, I GUESS WE COULD POSSIBLY
4 ARRANGE THAT ON SHORT NOTICE.

5 WHAT DO YOU SAY TO THAT, SOLICITOR?

6 MR. MURDAUGH: THAT'S FINE WITH ME, SIR.

7 MR. KULP: I UNDERSTAND, YOUR HONOR.

8 THE COURT: MR. GRAYSON, YOU PROBABLY GOT A FEW PEOPLE
9 BACK THERE, DON'T YOU?

10 MR. FLEMING: I BELIEVE THAT WE CAN PROCEED BY HAVING MR.
11 ROGERS SIT IN THE ROOM WHERE THE WITNESS CANNOT SEE HIM. AND
12 THIS IS WHY. THE ANALYSIS UNDER THESE FACTORS IS NOT WHETHER
13 OR NOT THIS PARTICULAR WITNESS IS GOING TO IDENTIFY HIM IN
14 COURT; IT'S WHETHER OR NOT HE -- SHE SHOULD BE ALLOWED TO
15 IDENTIFY HIM IN COURT.

16 WE WILL ASSUME FOR PURPOSES OF THE MOTION THAT SHE IS
17 GOING TO IDENTIFY HIM IN COURT; THEREFORE, SHE DOESN'T HAVE TO
18 SEE HIM. WE WILL THEN CONDUCT THE EXAMINATION AS TO WHAT
19 PREVIOUS EVENTS HAVE OCCURRED AND WHETHER OR NOT THEY HAVE
20 TAINTED HER ABILITY TO IDENTIFY HIM IN COURT. IF YOUR HONOR
21 RULES THAT SHE SHOULD NOT BE ALLOWED TO -- TO IDENTIFY IN
22 COURT, THEN YOU -- THEN IT'S OVER. IF YOUR HONOR RULES THAT
23 SHE SHOULD BE ALLOWED TO IDENTIFY IN COURT, THEN WE CAN GO
24 FROM THERE TO DETERMINE WHETHER OR NOT MR. ROGERS WILL BE
25 SEATED WITH OTHER INDIVIDUALS OR WHETHER OR NOT SHE WILL JUST

1 SIMPLY POINT HIM OUT.

2 BUT WE CAN PROCEED TODAY WITHOUT HIM BEING VISUALLY
3 PRESENT.

4 THE COURT: WELL, I DISAGREE WITH YOU BECAUSE THIS IS
5 NOT -- IF SHE CAN'T IDENTIFY HIM IT'S A MOOT POINT. AND THEN
6 WE DON'T NEED IT, SO THAT WOULD TAKE CARE OF IT. IF SHE CAN'T
7 IDENTIFY HIM, WE NEED TO KNOW TODAY BECAUSE, OBVIOUSLY, WE'LL
8 BE CONFRONTED WITH THAT SAME ISSUE AT THE TRIAL AND IF
9 YOU -- AND WE -- THIS HEARING WAS FOR THAT, WE'VE MADE AN
10 OFFER TO GIVE HIM AND I UNDERSTAND YOUR DILEMMA BECAUSE YOU'RE
11 TRYING TO OBJECT TO THE IDENTIFICATION AS IT'S TAINTED BUT YOU
12 DO NOT WANT HER TO HAVE AN OPPORTUNITY TO IDENTIFY HIM TODAY.

13 THE STATE -- I THINK THAT THE COURT WILL CERTAINLY MAKE
14 ARRANGEMENTS TO -- WITH -- TO HAVE SOME OTHER YOUNG BLACK
15 MALES, I PRESUME IN THEIR TWENTIES, THAT -- FOR THE -- IF YOU
16 WANT TO TEST THE RELIABILITY OF THE STATE'S WITNESS YOU CAN
17 CERTAINLY HAVE THAT OPPORTUNITY BUT AS IS OFTEN THE CASE, IT'S
18 A DOUBLE-EDGE SWORD. YOU KNOW, YOU GOT TO TAKE YOUR CHANCES.

19 AND SO, OBVIOUSLY, IT'S A VERY SERIOUS MATTER. IT'S NOT
20 MY LIFE THAT'S ON TRIAL HERE; IT'S YOUR CLIENT'S. IF HE WANTS
21 TO DO IT THAT WAY, THAT'S FINE BUT I DON'T SEE ANY REASON FOR
22 US TO GO THROUGH THIS EXERCISE UNLESS IT'S GOING TO DECIDE THE
23 ISSUE. AND I DON'T SEE HOW YOU CAN GO IT WITHOUT GIVING THE
24 CONFRONTATION BETWEEN THE WITNESS AND THE DEFENDANT. I'M AT A
25 LOSS.

1 WHAT'S YOUR POSITION, SOLICITOR?

2 MR. MURDAUGH: I AGREE WITH YOU WHOLEHEARTEDLY, SIR.

3 MR. FLEMING: YOUR HONOR, FOR PURPOSES OF THE RECORD MAY
4 I MAKE THAT PREVIOUS REQUEST A MOTION AND THEN OBVIOUSLY
5 YOU'VE DENIED IT?

6 THE COURT: OKAY, I THOUGHT WE ALREADY DID BUT GO AHEAD
7 AND STATE YOUR MOTION.

8 MR. FLEMING: MY MOTION WAS THAT WE CONVENE THE -- WELL,
9 WE CONTINUE THE HEARING WHEREUPON MR. ROGERS WOULD BE PLACED
10 IN A ROOM WHERE HE COULD HEAR THE PROCEEDINGS, HOWEVER, THE
11 WITNESS CANNOT VISUALIZE HIM. WE COULD CONDUCT A HEARING AND
12 THEN IF NEED BE, WE COULD GO FURTHER THAN THAT.

13 I BELIEVE IT'S MY -- IT'S OUR POSITION THAT YOU ARE IN A
14 POSITION TO BE ABLE TO DETERMINE WHETHER OR NOT THE WITNESS
15 SHOULD BE ALLOWED TO ATTEMPT AN IN-COURT IDENTIFICATION, WHICH
16 IS THE PURPOSE OF THE IN CAMERA HEARING, BECAUSE AT ANY TRIAL
17 THE WITNESS HAS NOT ALREADY MADE THE IDENTIFICATION. IN OTHER
18 WORDS, IF WE WERE IN TRIAL TODAY THE WITNESS WOULD -- THE
19 STATE WOULD CALL THE WITNESS AND I WOULD SAY YOUR HONOR, I
20 MOVE THAT SHE NOT BE ALLOWED TO MAKE AN IN-COURT IDENTIFICA-
21 TION AT WHICH TIME THE PROCEDURE IS THAT WE WOULD HOLD AN IN
22 CAMERA HEARING.

23 AT THAT POINT THE IN CAMERA HEARING WOULD TAKE PLACE,
24 WHICH IS WHAT WE'RE DOING TODAY, HAVING NEVER MADE THE IN-
25 COURT IDENTIFICATION BECAUSE IT'S YOUR -- IN MY -- IN MY

1 OPINION, AND I -- AND I MAY BE INCORRECT BUT AS THE TRIAL
2 JUDGE YOU ARE THE GATEKEEPER ON WHETHER OR NOT SHE'S ALLOWED
3 TO MAKE THE IDENTIFICATION, NOT ONCE SHE'S MADE THE
4 IDENTIFICATION NOW CAN THAT COME IN.

5 THAT'S WHY -- THAT'S WHY YOU DON'T NEED TO HAVE TO MAKE
6 THE IDENTIFICATION. YOU WON'T EVEN GET TO THAT POINT. OR YOU
7 MAY GET TO THAT POINT AND THEN IT'S IRRELEVANT.

8 THE COURT: WELL, LET THE RECORD REFLECT THAT WE'VE GONE
9 TO -- STARTED WITH THE SUGGESTION OF THE SOLICITOR AND THEN I
10 HAVE TRIED TO COME UP WITH WAYS AND I'LL LEAVE IT TO YOU TO
11 COME UP WITH OTHER WAYS TO ENSURE THAT IT'S NOT JUST A PRO
12 FORMA IDENTIFICATION, WHICH IS THE QUESTIONS YOU ASKED OF THE
13 PREVIOUS WITNESS, HOW MANY YOUNG BLACK MALES ARE SITTING IN
14 THE COURTROOM, HOW MANY ARE SITTING NEXT TO THEIR LAWYERS AND
15 SO FORTH AND SO WE ARE TRYING TO MAKE SURE THAT THAT -- IF YOU
16 WISH, TO GIVE YOU AN OPPORTUNITY TO DO THAT BUT YOU DO NOT
17 WISH TO DO IT THAT-WAY.

18 I AM AT A LOSS AS TO HOW THERE CAN BE A HEARING ON THIS
19 WITHOUT AFFORDING THE WITNESS THE OPPORTUNITY TO ACTUALLY
20 EITHER MAKE IT OR NOT MAKE IT BECAUSE ONLY THEN CAN THIS COURT
21 PASS UPON WHETHER THE TESTIMONY SHOULD BE ALLOWED IN COURT AND
22 WHETHER IT'S PREJUDICIAL AND THE OTHER FACTORS, THE OPPORTUNI-
23 TY AND ALL THE OTHER MATTERS WITHOUT HAVING IT. AND I SAY
24 THAT THERE ARE WAYS AND SO I JUST CAN'T SEE HOW IT CAN BE
25 DONE. I'M AT A LOSS AND YOU HAVE COME UP WITH NO SUGGESTIONS,

1 ALTHOUGH THE STATE HAS AND WE HAVE OFFERED TO MAKE IT VERY
2 CLEAR AS TO WHETHER OR NOT THE WITNESS WOULD IDENTIFY THIS
3 DEFENDANT AS OPPOSED TO SOMEONE ELSE.

4 AND, FRANKLY, I HAVE NO IDEA WHETHER THE WITNESS WOULD
5 IDENTIFY THE DEFENDANT OR NOT. AND SO I'LL LEAVE IT TO YOU.

6 BUT I DO NOT BELIEVE IT WOULD BE APPROPRIATE OR WOULD
7 SETTLE THE ISSUE IF THE WITNESS WERE TO HAVE TO TESTIFY AND
8 SINCE THE ISSUE AT HAND FOR THIS COURT TO PASS ON IS WHETHER
9 SHE SHOULD BE ALLOWED TO MAKE AN IN-COURT IDENTIFICATION. AND
10 SO I DON'T SEE HOW I CAN -- HOW YOU CAN GET AROUND THAT.

11 MR. FLEMING: WE ARE INFORMED AND BELIEVE, UNFORTUNATELY,
12 NOW THAT THE WITNESS HAS ALREADY ENTERED THE COURTROOM AND, IN
13 FACT, HAS SEEN MR. ROGERS.

14 THE COURT: WELL, I WOULD -- FOR THE RECORD, I WOULD
15 CLARIFY THAT VERY QUICKLY BECAUSE THE WITNESS CAME IN THE VERY
16 BACK AND THEN TURNED AROUND AND, OF COURSE, THIS IS A FAIRLY
17 LARGE ROOM AND THERE IS NO WAY SHE COULD HAVE SEEN HIM. THAT
18 WAS -- TO IDENTIFY HIM. I WOULD ---

19 MR. KULP: HE SAID HE SAW HER, YOUR HONOR.

20 BUT I GUESS WE CAN CLEAR THAT UP BY VOIR DIRE OF THE
21 WITNESS AND THEN PROCEED.

22 BUT TO CUT TO THE CHASE, I THINK WE'RE IN A POSITION
23 WHERE WE'RE GOING TO OPT FOR WHAT THE COURT IS KIND OF
24 DISCUSSING AND THAT IS, SEVERAL PEOPLE IN A DRESS, PROBABLY
25 THE MOST PRACTICAL FASHION, JUST LIKE HIM, IN THE COURTROOM AS

1 OPPOSED TO TRYING TO LOGISTICALLY GET EVERYBODY IN STREET
2 CLOTHES OR SOMETHING.

3 THE COURT: NO, I MEAN I THINK YOU -- IT WOULD BE VERY
4 QUICKLY.

5 MR. FLEMING: IF WE MAY DO THAT, SIR.

6 MR. KULP: SO LONG AS THE COURT IS SATISFIED THAT SHE
7 DIDN'T HAVE AN OPPORTUNITY TO ---

8 THE COURT: I'M VERY WELL SATISFIED BECAUSE SHE CAME IN
9 THE VERY BACK.

10 THAT CORRECT, MR. HARRIS?

11 DEPUTY SHERIFF HARRIS: THAT'S CORRECT.

12 THE COURT: SHE JUST CAME IN AT THE VERY BACK THEN WAS
13 USHERED BACK OUT.

14 AND THE DEFENDANT MAY OR MAY NOT HAVE BEEN LOOKING BACK
15 THERE AT HER BUT I DIDN'T SEE HER HARDLY LOOK BECAUSE SHE
16 WOULDN'T -- YOU KNOW.

17 MR. GRAYSON, HOW LONG WOULD IT TAKE YOU TO GET
18 SOME -- Y'ALL HAVE ANY SPECIAL REQUEST ABOUT SOME, YOU
19 KNOW -- WHAT DO YOU SAY? THREE MORE? HOW MANY ---

20 MR. FLEMING: AT LEAST FIVE MORE, YOUR HONOR.

21 MR. KULP: YOUR HONOR, THE CASE THE STATE CITED IN THEIR
22 BRIEF INDICATES THAT WHILE IT IS NOT NECESSARY FOR THE COURT
23 TO CONDUCT A TRUE WADE TYPE OF LINEUP, THESE RELATIVELY MINOR
24 STEPS WERE REQUIRED TO SHOW THE IDENTIFICATION'S NOT UNFAIR.
25 AND WHAT HAPPENED THERE, JUDGE, AND I'VE CITED FROM THE CASE

1 OF US VERSUS ARCHIBALD 734 S SECOND 938 1984 SECOND CIRCUIT
2 CASE - IT'S NOT LENGTHY - JUST SAYS "A FAIRLY SHORT DELAY OF
3 THE PROCEEDINGS IS ALL THAT WOULD'VE BEEN REQUIRED TO REAR-
4 RANGE THE SEATING IN THE COURTROOM AND TO SECURE THE PRESENCE
5 OF SOME PEOPLE OF THE DEFENDANT'S APPROXIMATE AGE AND SKIN
6 COLOR", AND ASSUMEDLY SAME BUILT.

7 THE COURT: OKAY.

8 MR. KULP: WE COULD -- YOU KNOW, WE MIGHT WANT TO
9 PARTICIPATE, POSSIBLY, AND I THINK IT'D BE VERY -- YOU KNOW,
10 SAME HEIGHT, SAME WEIGHT, SAME ROUGHLY ---

11 THE COURT: WELL, STATE WHAT HIS CHARACTERISTICS ARE SO
12 MR. -- I WANT MR. GRAYSON TO HAVE SOMETHING TO DO ON.

13 MR. FLEMING: HE'S KNOWN HIM FOR TWO YEARS NOW. I THINK
14 HE PROBABLY CAN ---

15 THE COURT: FOUR MORE PEOPLE, THAT'S BE A TOTAL OF FIVE.
16 IS THAT SUFFICIENT?

17 MR. KULP: WELL ---

18 THE COURT: WELL, HOW MANY -- WHAT YOU GOT BACK THERE?

19 MR. GRAYSON: I'M GONE CALL. NOBODY'S OVER HERE. THEY
20 ALL AT THE JAIL. HAVE TO GO CALL AND SEE.

21 THE COURT: HOW LONG WILL IT TAKE YOU? I MEAN WILL IT
22 TAKE YOU AN HOUR AND A HALF OR SOMETHING LIKE THAT?

23 MR. GRAYSON: PROBABLY.

24 THE COURT: OKAY. WELL, WHAT WE CAN DO THEN, WE CAN
25 BREAK FOR LUNCH AND I WANT Y'ALL TO STATE ON THE RECORD THE

1 CHARACTERISTICS OF THE PERSONS FOR HIM TO BRING AND THE
2 NUMBERS, DISAGREE WITH THAT.

3 MR. FLEMING: ALL RIGHT, SIR, AND IF WE MAY, IT IS -- I
4 AM INFORMED AND BELIEVE THAT MR. WENDELL, THE WITNESS' FATHER,
5 HAS EXISTED THIS COURTROOM AT LEAST FOUR TIMES. I WOULD ASK
6 THAT THE COURT VOIR DIRE THIS INDIVIDUAL AS TO WHETHER OR NOT
7 HE'S BROKEN THE SEQUESTRATION RULE AND WHETHER OR NOT HE'S HAD
8 ANY CONTACT WITH HIS DAUGHTER AND INFORMED THEM -- IF THEY
9 HAVE SPOKEN IN ANY WAY CONCERNING THIS, WHAT'S TAKEN PLACE IN
10 THE COURTROOM.

11 THE COURT: WELL, THE WITNESS IS SEQUESTERED OVER THERE.
12 HAS ANYBODY BEEN TALKING TO HER?

13 MR. MURDAUGH: I DON'T KNOW, SIR; I'VE BEEN IN THE
14 COURTROOM.

15 MR. FLEMING: I WOULD ASK THAT MR. WENDELL BE PLACED
16 UNDER OATH AND VOIR DIRED.

17 THE COURT: IS THAT MR. WENDELL RIGHT THERE?
18 COME AROUND, MR. WENDELL.

19 MR. FLEMING: YOUR HONOR, I WOULD OBJECT TO THE SOLICITOR
20 TALKING TO THIS WITNESS.

21 THE COURT: YEAH. JUST COME AROUND.

22 MR. MURDAUGH: THANK YOU.

23 THE COURT: PLACE YOUR LEFT HAND ON THE BIBLE. RAISE
24 YOUR RIGHT HAND IF YOU CAN. WELL, YOU DON'T HAVE TO. THAT'S
25 GOOD ENOUGH. JUST ---

1 SCOTT JAY WENDELL,

2 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

3 THE COURT: COME AROUND, HAVE A SEAT RIGHT UP HERE.

4 A. CAN I JUST STAND HERE?

5 THE COURT: YES, SIR, YOU CAN STAND RIGHT THERE.

6 OKAY. ARE YOU THE FATHER OF JOCELYN WENDELL?

7 A. YES, I AM.

8 THE COURT: OF COURSE YOU'VE BEEN IN HERE WHILE THIS
9 HEARING'S BEEN GOING ON THIS MORNING?

10 A. YES, SIR.

11 THE COURT: HAVE YOU -- SINCE THE HEARING STARTED, DO YOU
12 RECALL THAT YOUR DAUGHTER ALONG WITH MISS WINE, MISS WIRE,
13 EXCUSE ME, WERE SEQUESTERED?

14 A. I WAS OVER THERE WITH THEM BEFORE THE HEARING, YEAH.

15 THE COURT: OKAY. HAVE YOU SPOKEN WITH YOUR DAUGHTER?

16 A. YES.

17 THE COURT: AND WHAT WAS THE SUBSTANCE? WHEN DID
18 YOU -- WHEN DID YOU -- HOW MANY TIMES DID YOU TALK TO HER?
19 SINCE THIS HEARING'S BEEN GOING ON?

20 A. ONCE.

21 THE COURT: OKAY. TELL ME WHAT YOU DISCUSSED.

22 A. WHEN THEY -- WHEN EVERYBODY TOOK A BREAK I WALKED OVER.
23 AND TALKED TO HER.

24 THE COURT: AND WHAT'D YOU TALK TO HER ABOUT?

25 A. I TOLD HER TO, YOU KNOW, TO COME IN HERE AND SHE'S GONE

1 HAVE TO BE STRONG BECAUSE THAT GUY WAS PRETTY MEAN.

2 THE COURT: WHAT ELSE DID YOU SAY?

3 A. THAT WAS PRETTY MUCH THE END OF OUR CONVERSATION 'CAUSE
4 THEN HE COME IN AND TOLD ME I HAD TO LEAVE. THE SHERIFF.

5 THE COURT: OKAY.

6 A. I MEAN I'M NOT EXACTLY FOR SURE EVERY WORD FOR WORD THAT
7 WE SAID BUT BASICALLY WHAT THE GIST OF THE CONVERSATION WAS
8 THAT THIS GUY RIGHT HERE WAS PRETTY TOUGH AND SHE WAS GONE
9 HAVE TO COME IN HERE AND BE STRONG.

10 THE COURT: DID YOU ANYWAY DESCRIBE HIM OR SAY ANYTHING
11 ABOUT HIM OTHER THAN THAT?

12 A. NO, I NEVER DESCRIBED THIS GUY, NO, NO, NO.

13 THE COURT: OKAY, ANYTHING YOU WANT TO ASK HIM?

14 MR. FLEMING: DID YOU IN ANY WAY TALK TO YOUR DAUGHTER
15 CONCERNING WHETHER OR NOT MR. ROGERS' PRESENT IN THE COURT-
16 ROOM?

17 A. I DON'T THINK SO BECAUSE, ONLY THING, HE CAME IN PRETTY
18 QUICK.

19 I THINK SHE -- I THINK EVERYBODY KNOWS THAT HE'S IN HERE.
20 I MEAN I DON'T -- I DON'T KNOW THAT WAS EVEN A SUBJECT.

21 MR. FLEMING: DID YOU DESCRIBE IN ANY WAY WHAT HE WAS
22 WEARING?

23 A. NO. ABSOLUTELY NONE.

24 MR. FLEMING: DID YOU DESCRIBE AT ANY -- IN ANY WAY THE
25 PHYSICAL CONDITION?

1 A. NO. I CAN'T EVEN TELL YOU HIS PHYSICAL CONDITION, I'M
2 STANDING HERE LOOKING AT HIM.

3 MR. FLEMING: HAS -- HAS YOUR DAUGHTER SEEN HIM IN COURT
4 TODAY?

5 A. NO. NOT THAT I KNOW OF. I MEAN I DON'T KNOW. I
6 DIDN'T -- WE DIDN'T HAVE THAT LONG OF A CONVERSATION. LIKE I
7 SAID, I JUST TOLD HER ABOUT YOU AND THAT WAS IT. AND THEN HE
8 CAME IN AND SNATCHED ME OUT.

9 MR. FLEMING: THAT'S ALL, YOUR HONOR. THANK YOU, SIR.

10 THE COURT: OKAY, YOU CAN COME BACK TO YOUR SEAT.
11 YOU WANT TO HEAR FROM MR. HARRIS?

12 MR. FLEMING: YES, SIR.

13 THE COURT: WOULD YOU COME ON UP, MR. HARRIS.

14 MR. MURDAUGH: YOUR HONOR, PLEASE, WHILE IT REALLY MAKES
15 NO DIFFERENCE, LET ME REMIND THE COURT THAT THERE WAS NO ORDER
16 OF SEQUESTRATION. THAT WAS DONE ON MY PART IN VIEW OF THE
17 CASE LAW THAT I ---

18 THE COURT: WELL, ANY TIME A WITNESS IS SEQUESTERED IT'S
19 USUALLY -- IT'S ASSUMED THAT NOBODY'S GONE TALK TO THEM ABOUT
20 THE CASE.

21 AND LET ME JUST SAY THIS. YOU'RE NOT HELPING OUT ANY-
22 THING. IF ANYBODY, THE VICTIMS AND THE FAMILIES AND ALL, I
23 JUST CAN'T BELIEVE THAT YOU, YOU KNOW -- WE'RE TRYING TO GET
24 THIS, IT'S GOT TO BE DONE EXACTLY RIGHT AND, FRANKLY, I'M NOT
25 GONE TOLERATE ANY MORE OF THIS KIND OF THING AND IF IT SHOULD

1 HAPPEN AGAIN SOMEBODY'S GOING TO JAIL. I CAN TELL YOU THAT.

2 RAISE YOUR RIGHT HAND, SIR.

3 LEE HARRIS,

4 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

5 THE COURT: YOU CAN JUST STAND THERE IF YOU WANT TO, MR.
6 HARRIS.

7 YOU WANT TO SIT DOWN? GO AHEAD. COME ON. OR JUST STAND
8 THERE, THAT'S RIGHT.

9 WERE YOU THE -- OF COURSE YOU'VE BEEN AT THE BACK OF THE
10 COURTROOM AND IN CHARGE OF THE BACK PART OF THE COURTROOM
11 DURING THIS PROCEEDING?

12 A. YES, SIR.

13 THE COURT: HAVE -- DID YOU SEE MR. WENDELL GO IN TO TALK
14 TO THE JOCELYN WENDELL WHO WAS BACK THERE?

15 A. I NOTICED HIM TWICE BACK THERE.

16 THE COURT: TWICE?

17 A. TWICE.

18 THE COURT: TELL ME ABOUT IT.

19 A. NOTICED HIM ONCE TALKING TO A YOUNG GENTLEMAN AND NOTICED
20 HIM ONCE TALKING TO HIS DAUGHTER, WHICH I BELIEVE IS HIS
21 DAUGHTER, AND THAT'S THAT TIME I CHASED HIM OUT, ON THE SECOND
22 TIME.

23 THE COURT: WHO WAS HE TALKING TO THE OTHER TIME?

24 A. YOUNG WHITE FELLOW WITH A CAP ON HIS HEAD.

25 THE COURT: ONE OF THE PEOPLE OTHER THERE YOU THINK?

1 A. IN THE WITNESS ROOM, YES, SIR.

2 THE COURT: YEAH. IS THE -- IS THAT SOMEBODY ELSE THAT'S
3 BACK THERE WITH HER OR JUST ---

4 MR. MURDAUGH: THAT -- THAT WAS PROBABLY TOBY REISCHL, IF
5 YOUR HONOR PLEASE.

6 EXCUSE ME, IT'S A FELLOW THAT'S WITH TOBY THAT'S NOT A
7 WITNESS.

8 THE COURT: OH, OKAY.

9 HOW LONG WAS HE TALKING TO HIS DAUGHTER THAT YOU OBSERVED
10 HIM?

11 A. GOOD TWO SECONDS. FIVE.

12 THE COURT: GOOD TWO SECONDS?

13 A. YEAH.

14 THE COURT: OKAY, SO NOT A LONG -- NOT LONG ENOUGH TO
15 HAVE ANY MEANINGFUL CONVERSATION?

16 A. NO, SIR. NO, SIR.

17 THE COURT: BECAUSE YOU SAW HIM WHEN HE WENT BACK?

18 A. YES, SIR.

19 THE COURT: OKAY.

20 ANYTHING YOU WANT TO ASK MR. HARRIS?

21 MR. FLEMING: JUST, MR. HARRIS, DID ANYBODY ELSE ATTEMPT
22 TO TALK TO MISS WENDELL?

23 A. NO.

24 MR. FLEMING: THAT YOU SAW?

25 THE COURT: OKAY. THANK YOU.

1 MR. FLEMING: WELL, I DO HAVE ONE MORE.

2 THE COURT: OKAY, GO AHEAD.

3 MR. FLEMING: WERE YOU -- WERE YOU PRESENT WHEN MISS
4 WENDELL FIRST CAME IN THIS COURTROOM?

5 A. YES, SIR.

6 MR. FLEMING: OKAY. DO YOU KNOW HOW FAR SHE GOT INTO THE
7 COURTROOM?

8 A. JUST ABOUT TO THE POLE BACK THERE. AND WAS TURNED AROUND.

9 MR. FLEMING: YOU RECALL WHETHER OR NOT SHE WAS LOOKING
10 OVER TOWARD THE COUNSEL TABLE?

11 A. NO, SIR.

12 MR. FLEMING: DO YOU -- WAS SHE NOT OR YOU DON'T KNOW?

13 A. NO, SIR, SHE WASN'T LOOKING OVER THAT WAY. SHE WAS COMING
14 AROUND AND THEN TURNED AROUND.

15 MR. FLEMING: THANK YOU, SIR.

16 THE COURT: THANK YOU.

17 OKAY.

18 YES, SIR.

19 MR. KULP: THEN WITH THAT ADDRESSED, YOUR HONOR, I THINK
20 WE NEED TO PROCEED TO THE MECHANICS OF SELECTING PEOPLE.

21 THE COURT: OKAY. WELL, LET ME JUST SAY THIS. I
22 FIND ---

23 MR. FLEMING: YES, SIR.

24 THE COURT: --- THAT THERE WAS NO PREJUDICE TO THE
25 TESTIMONY OF JOCELYN WENDELL AS A RESULT OF HER FATHER'S

1 CONVERSATION WITH HER.

2 ALL RIGHT, NOW, GO AHEAD. I'LL HEAR FROM YOU ON WHAT
3 YOUR REQUESTS ARE.

4 MR. KULP: YES, SIR. AS WE MENTIONED A FEW MINUTES AGO,
5 I THINK THAT CONSIDERING ALL OF THE ASPECTS OF THIS ISSUE THAT
6 WE WOULD MOVE OF THE COURT, OR RATHER OPT FOR THE TYPE OF IN-
7 COURT IDENTIFICATION OR IN-COURT LINEUP, FOR LACK OF A BETTER
8 WORD, THAT MIGHT BE ARRANGED THROUGH THE COURT WITH FIVE
9 INDIVIDUALS DRESSED SIMILARLY TO MR. ROGERS AND OF ROUGH SAME
10 APPEARANCE, BOTH IN HEIGHT, WEIGHT WHICH WE WILL CONVEY TO THE
11 COURT REPORTER.

12 THE COURT: SAY IT FOR THE RECORD, WHAT YOU WANT. JUST
13 SO -- I MEAN JUST APPROXIMATELY.

14 MR. KULP: YES, SIR.

15 WHY DON'T YOU STAND UP.

16 THE COURT: WELL, YOU CAN ASK HIM HOW TALL HE IS AND HOW
17 MUCH HE WEIGHS AND . . .

18 MR. KULP: OKAY.

19 HE'S APPROXIMATELY FIVE FEET EIGHT INCHES TALL.

20 APPROXIMATELY 155 POUNDS IN WEIGHT. CLOSE-CUT HAIR; SLIGHT
21 MUSTACHE, SLIGHT GOATEE AND RATHER DARK TONED SKIN. CLOSE
22 CROPPED HAIR.

23 THE COURT: ANYTHING ELSE YOU NEED TO KNOW, MR. GRAYSON?

24 MR. GRAYSON: CAN I COME UP THERE?

25 THE COURT: HUH?

1 MR. GRAYSON: CAN I COME UP THERE AND TALK?

2 THE COURT: YES, SIR.

3 Y'ALL WANT ---

4 MR. FLEMING: YEAH, I'D LIKE TO APPROACH.

5 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

6 THE COURT: WELL, I THINK THAT'S PROBABLY A VALID ---

7 MR. MURDAUGH: I CAN'T TAKE EXCEPTION WITH IT, SIR.

8 THE COURT: WELL, DO Y'ALL WANT TO JUST SET THIS UP?

9 MR. MURDAUGH: SIR?

10 THE COURT: WELL, I MEAN, OBVIOUSLY, WE'D NEVER BE ABLE
11 TO GET ALL THAT DONE TODAY.

12 MR. MURDAUGH: HOW ABOUT NEXT WEDNESDAY? WHERE ARE YOU?

13 THE COURT: WELL, I WON'T BE HERE NEXT WEDNESDAY. THAT'S
14 WHEN I'LL BE IN COLUMBIA. THAT'S WHEN I HAVE A MEETING.

15 MR. MURDAUGH: I HAVE A -- I'VE GOT MOTIONS BEFORE JUDGE
16 BUCKNER ON MONDAY TO DISCUSS HIS RECUSAL AS A RESULT OF HIM
17 WORKING IN MY OFFICE AT THE TIME INDICTMENTS WERE RETURNED.

18 THE COURT: WELL, I HAVE BEAUFORT - IT'S BEEN SWITCHED,
19 BY THE WAY.

20 MR. MURDAUGH: TWENTY-SEVENTH.

21 THE COURT: --- THE WEEK OF THE TWENTY-SEVENTH. I AM
22 HERE AND I AM AVAILABLE BECAUSE I HAVE BEAUFORT GENERAL
23 SESSIONS. THEY SWAPPED ME AND JUDGE BROWN. SO.

24 MR. MURDAUGH: I WILL MAKE MYSELF AVAILABLE
25 DURING -- I'VE GOT SOMETHING ONE DAY THAT WEEK.

1 THE COURT: WELL, I'M HERE. Y'ALL CAN WORK IT OUT.

2 MR. MURDAUGH: OKAY.

3 THE COURT: AND, NOW, I GUESS THE THING TO DO IS, IS ASK
4 THE JAIL IF THEY WOULD - AND IT'LL TAKE THEM SOME TIME - IF
5 THEY'LL COME UP WITH A LIST OF, SAY, EIGHT OR TEN PEOPLE, THEN
6 WE CAN THEN GIVE IT -- AND WHO THEIR LAWYERS ARE. AND WE'LL
7 GIVE THE LAWYERS AN OPPORTUNITY TO CONSULT WITH THEM ON IT
8 DURING THAT WEEK AND -- AND SO IF WE SET IT UP LATER THAT WEEK
9 WE'LL -- SINCE IT IS -- MOST OF THEM'LL BE REPRESENTED, I
10 PRESUME, BY THE PUBLIC DEFENDER AND SO WE SHOULD BE ABLE TO DO
11 IT DURING THAT WEEK.

12 AND THAT'S PROBABLY A WHOLE LOT EASIER BECAUSE THEN THE
13 LAWYERS'LL BE AVAILABLE. AND WE CAN FIND PEOPLE WHO HAVE
14 LAWYERS THAT WE CAN LET -- ARE UP HERE. THEN THEY CAN DO IT.

15 DOES THAT SOUND OKAY TO EVERYONE?

16 MR. KULP: YES, SIR, YOUR HONOR.

17 I'M SORRY, I GOT THE DATE. I WAS GETTING READY TO SAY
18 I'M AVAILABLE ANY TIME THE COURT WOULD LIKE.

19 THE COURT: WELL, DURING THE WEEK OF AUGUST 27.

20 MR. KULP: YES, SIR.

21 THE COURT: AND SO WHAT I'M GONE SUGGEST IS THAT THE JAIL
22 SORT OF COMPILE A LIST OF SOME LIKELY SUSPECTS FOR THAT JOB
23 AND THEN -- AND WE CAN RUN DOWN WHO -- AND THEY CAN TELL YOU
24 WHO THEIR LAWYERS ARE.

25 AND, OBVIOUSLY, THE DEFENDANTS -- THE OTHERS THEMSELVES,

1 TOO, AND I WOULD NOT THINK -- YOU KNOW, I WOULDN'T MAKE
2 ANYBODY COME. EVEN IF THEIR LAWYER DOESN'T OBJECT TO IT BUT I
3 MEAN IT WOULD BE PEOPLE WHO WOULD BE WILLING TO COME.

4 MR. GRAYSON: YES, SIR.

5 MR. MURDAUGH: AND MAY I GET IN TOUCH WITH MR. FLEMING
6 EITHER THIS AFTERNOON OR MONDAY TO SET UP A SPECIFIC TIME
7 DURING THE WEEK OF THE TWENTY-SEVENTH.

8 THE COURT: Y'ALL CAN WORK IT OUT AND, OF COURSE, MR.
9 KNIGHT'S IN THE BACK. I'M GONE BE WORKING WITH HIM DURING
10 THAT WEEK. AND SO WE CAN SET THAT UP, SO FAR AS I'M CON-
11 CERNED, ON REASONABLY SHORT NOTICE. SO Y'ALL JUST -- BECAUSE
12 I'M GONE BE HERE.

13 MR. MURDAUGH: OKAY, SIR. GOOD. WELL, I'LL -- I'LL GET
14 IN TOUCH WITH HIM EITHER TOMORROW -- THIS AFTERNOON OR MONDAY.

15 THE COURT: ALL RIGHT, IS THERE ANYTHING ELSE WE NEED TO
16 DO TODAY?

17 MR. MURDAUGH: YES, SIR. I WOULD LIKE TO HAVE A
18 DISCUSSION IN THE COURTROOM WITH MISS WIRE, MISS JOCELYN AND
19 EVERYBODY ELSE CONCERNED WITH THIS. AND I THINK IN ORDER TO
20 DO THAT, SINCE MISS JOCELYN WILL BE A WITNESS ---

21 THE COURT: WELL, FOR THIS ---

22 MR. MURDAUGH: --- TO REMOVE THE ---

23 THE COURT: WELL, WHAT I WOULD SUGGEST IS THAT HE BE
24 REMOVED TO THE BACK, THEN, BECAUSE HE CAN HEAR AND HE CAN'T BE
25 SEEN AND SO LET'S DO IT THAT WAY.

1 MR. FLEMING: YOUR HONOR, BEFORE WE DO THAT, WE -- WE ---

2 THE COURT: WELL, LET ME -- WAIT A MINUTE; I GOT ONE
3 OTHER THING BEFORE I FORGET.

4 MR. FLEMING: YES.

5 THE COURT: I CAN GO AHEAD AND Y'ALL CAN GET -- WE
6 CAN -- THE OTHER ONE'S OVER WITH. THE FIRST WITNESS. MISS
7 WIRE. AND SO IF Y'ALL WANT TO MAKE ANY ARGUMENTS ON THAT, I
8 CAN RULE ON THAT ONE, CAN'T I?

9 MR. MURDAUGH: YES, SIR.

10 MR. FLEMING: WITH THE EXCEPTION OF THE -- THE TESTIMONY
11 OF THE DETECTIVES WHO TOOK THE STATEMENTS AT THE TIME. UNLESS
12 THE SOLICITOR WANTS TO STIPULATE THAT -- AS TO WHAT WAS SAID.

13 IN OTHER WORDS, I THINK IT'S IMPORTANT TESTIMONINALLY
14 THEY NEED TO PUT ON THE RECORD WHAT WAS TOLD TO THEM BY
15 THE -- BY MISS WIRE.

16 THE COURT: WELL, LET'S -- ALL RIGHT, WELL, THEN, LET'S
17 GO AHEAD AND PROCEED WITH THAT HEARING. I'D LIKE, IF POSSI-
18 BLE, TO GET THAT MATTER OUT OF THE WAY.

19 MR. FLEMING: YES, SIR.

20 MR. MURDAUGH: OKAY, SIR.

21 THE COURT: AND THEN WE WILL PROCEED WITH THE OTHER AND
22 THEN WE CAN GO FORWARD ON IT.

23 YOU HAVE OTHER -- CALL YOUR NEXT WITNESS.

24 MR. FLEMING: PARDON ME, JUDGE.

25 MR. MURDAUGH: SAM ROSER.

1 THE COURT: LEFT HAND ON THE BIBLE, SIR; RAISE YOUR RIGHT
2 HAND.

3 SAM ROSER,
4 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

5. DIRECT EXAMINATION

6 BY MR. MURDAUGH:

7 Q. YOUR NAME IS SAM ROSER AND YOU EMPLOYED BY THE BEAUFORT
8 COUNTY SHERIFF'S DEPARTMENT AND ARE PRESENTLY A DETECTIVE?
9 ASSIGNED TO THE CORONER'S OFFICE?

10 A. THAT'S CORRECT, SIR.

11 Q. ON THE DATE OF THE COFFIN POINT KILLING WERE YOU A
12 DETECTIVE WITH THE SHERIFF'S OFFICE?

13 A. YES, SIR, IT WAS.

14 O. OKAY, SIR. WERE YOU INVOLVED IN THE INVESTIGATION?

15 A. YES, SIR.

16 Q. I ASK YOU WHETHER OR NOT AT SOME POINT SUBSEQUENT TO THE
17 KILLING YOU HAD AN OCCASION TO TALK WITH KRISTAL WIRE AND
18 JOCELYN WENDELL.

19 A. I INTERVIEWED KRISTAL WIRE. THAT'S CORRECT.

20 Q. OKAY, SIR. DID YOU SHOW HER, IN THE PRESENCE OF MATT
21 AVERILL, STATE'S EXHIBITS ONE, TWO AND THREE WHICH ARE THREE
22 PHOTOGRAPHIC LINEUPS?

23 A. I BELIEVE MATT ACTUALLY PRESENTED THEM BUT I WAS PRESENT,
24 YES, SIR.

25 Q. IN YOUR PRESENCE?

SAM ROSER, DIRECT EXAMINATION

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1 A. YES, SIR.

2 Q. WAS ANYBODY PICKED OUT OF THOSE THREE PHOTO ID'S BY
3 KRISTAL WIRE?

4 A. NO, SIR.

5 Q. OKAY, SIR. WERE YOU PRESENT IN THE JURY ASSEMBLY ROOM
6 AROUND 9:15 THIS MORNING WHEN I TALKED WITH ---

7 A. I ---

8 Q. --- MISS WIRE?

9 A. I DIDN'T SEE THAT PART, NO, SIR.

10 Q. OKAY, SIR. HAVE YOU -- SUBSEQUENT TO SHOWING OF THESE
11 PHOTO ID'S TO KRISTAL WIRE, HAVE YOU SHOWN HER AN INDIVIDUAL
12 PICTURE OF THE DEFENDANT, TAVARUS ROGERS.

13 A. NO, SIR.

14 Q. THANK YOU, SIR.

15 WERE YOU PRESENT WITH JOCELYN WENDELL WHEN THESE THREE
16 ID, PHOTO ID'S WERE SHOWN TO HER?

17 A. I BELIEVE I WAS.

18 Q. AND JUST FOR THE SAKE OF TESTIMONY, TELL ME WHEN THEY WERE
19 SHOWN.

20 A. I CAN'T ANSWER THAT.

21 HOLD ON ONE SECOND.

22 MR. FLEMING: YOUR HONOR ---

23 A. SHOULD HAVE A TIME AND DATE ON THE BACK.

24 MR. FLEMING: --- IF WE'RE GONE ANOTHER HEARING ON

25 JOCELYN WENDELL I WOULD -- I WOULD PREFER NOT TO HAVE THIS

SAM ROSER, DIRECT EXAMINATION

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1 TESTIMONY NOW BECAUSE I'M NOT PREPARED TO CROSS.

2 MR. MURDAUGH: OKAY. THAT'S FINE.

3 MR. FLEMING: THAT ISSUE. BECAUSE WE'RE COMING BACK.

4 I'D RATHER DO THE FIRST ONE.

5 SO IT'S IRRELEVANT FOR PURPOSES OF THIS MOTION.

6 MR. MURDAUGH: WELL, IT'LL SAVE ME PUTTING HIM UP LATER,
7 THOUGH.

8 THE COURT: SAY THAT AGAIN, SIR.

9 MR. FLEMING: THERE ARE -- THERE IS A VERY LARGE AMOUNT
10 OF TESTIMONY I NEED TO ELICIT FROM BOTH OF THESE WITNESSES
11 CONCERNING JOCELYN WENDELL; HOWEVER, IF I DO SO TODAY AND THEN
12 WE HAVE A HEARING A WEEK LATER, I DON'T THINK THAT WE SHOULD
13 BE PUT IN A POSITION OF HAVING TO CROSS EXAMINE THESE WITNESS-
14 ES ON ISSUES OF WHICH THE OTHER WITNESS WON'T BE ---

15 THE COURT: WELL, YOU CAN -- HE WILL BE CALLED AGAIN AS
16 TO HER. THIS IS ONLY FOR THE ---

17 MR. MURDAUGH: KRISTAL WIRE.

18 MR. FLEMING: KRISTAL WIRE.

19 WE'RE JUST TRYING TO STREAMLINE IT TO GET TO THE -- HE'S
20 ASKING HER ABOUT JOCELYN WENDELL.

21 MR. MURDAUGH: I'LL WITHDRAW THE QUESTION.

22 THE COURT: YEAH.

23 Q. WHEN WERE THE PICTURES SHOWN TO KRISTAL WIRE?

24 A. I GUESS THAT'S EXHIBIT ONE.

25 THIS ID, THIS PHOTO LINEUP ONE, WAS SHOWN TO KRISTAL WIRE

SAM ROSER, DIRECT EXAMINATION

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1 ON 1/3 OF '99 AT APPROXIMATELY 1400 HOURS.

2 Q. STATE'S EXHIBIT NUMBER TWO FOR IDENTIFICATION.

3 A. WHICH'D BE PHOTO LINEUP NUMBER TWO, WAS SHOWN TO KRISTAL
4 WIRE ON 1/3 OF '99 AT -- I BELIEVE -- I BELIEVE THIS
5 IS -- YES, IT'S 2:00 IN THE AFTERNOON.

6 Q. IT'S WHAT?

7 A. IT'S 2:00 IN THE AFTERNOON.

8 Q. OKAY, SIR. NUMBER THREE.

9 A. WHICH IS LINEUP NUMBER THREE, WAS SHOWN TO KRISTAL WIRE ON
10 1/4 OF '99 AT 9 15 HOURS.

11 MR. MURDAUGH: THANK YOU, SIR. ANSWER ANY QUESTIONS ---

12 Q. DID I ASK YOU WHETHER OR NOT YOU'D SHOWN ANY OTHER PIC-
13 TURES TO KRISTAL WIRE?

14 A. YES, SIR, YOU DID.

15 Q. AND WHAT WAS YOUR RESPONSE?

16 A. NO, SIR, I DID NOT.

17 MR. MURDAUGH: THANK YOU, SIR. ANSWER ANY QUESTIONS MR.
18 FLEMING MAY HAVE.

19 MR. FLEMING: MAY IT PLEASE THE COURT, YOUR HONOR.

20 THE COURT: MR. FLEMING.

21 CROSS EXAMINATION

22 BY MR. FLEMING:

23 Q. DETECTIVE, I WILL SHOW YOU DEFENDANT'S EXHIBIT NUMBER AND
24 ASK IF YOU CAN IDENTIFY THAT.

25 A. YES, THIS IS MY SUPPLEMENTAL POLICE REPORT.

SAM ROSER, CROSS EXAMINATION

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1 Q. AND I WILL SHOW YOU TWO A AND TWO B, FOUR -- THREE AND
2 FOUR, AND ASK YOU IF YOU CAN IDENTIFY EACH OF THOSE DOCUMENTS.

3 A. YES, THESE WERE THE -- THE COPIES OF THE WRITTEN STATE-
4 MENTS THAT WERE OBTAINED FROM KRISTAL WIRE.

5 Q. EACH ONE OF THE ONES I JUST MENTIONED?

6 A. YES, SIR.

7 Q. OKAY. AND DO THEY APPEAR TO BE CORRECT AND ACCURATE
8 COPIES OF THE ORIGINAL DOCUMENTS THAT YOU MAINTAIN ---

9 A. YES, SIR.

10 Q. --- IN YOUR SHERIFF'S DEPARTMENT'S FILE?

11 A. YES, SIR.

12 MR. FLEMING: OKAY.

13 YOUR HONOR, OUT OF AN ABUNDANCE OF PRECAUTION, I'D MOVE
14 TO MARK EACH ONE OF THESE AS AN EXHIBIT FOR PURPOSES OF THIS
15 HEARING.

16 MR. MURDAUGH: NO OBJECTION.

17 THE COURT: OKAY.

18 MR. FLEMING: KEEP THOSE.

19 A. OKAY.

20 Q. ON JANUARY 2 OF 1999 AT AROUND 7:30 YOU INTERVIEWED
21 KRISTAL WIRE, IS THAT CORRECT, SIR?

22 A. THAT'S PROBABLY CORRECT. I DON'T HAVE THE EXACT TIME ON
23 MY SUPPLEMENTAL FORM.

24 Q. OKAY.

25 THE COURT: WOULD YOU SPEAK A LITTLE LOUDER OR GET MORE

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SAM ROSER, CROSS EXAMINATION

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1 DIRECTLY IN FRONT OF THE MICROPHONE, LITTLE CLOSER TO YOU.

2 THANKS.

3 Q. IF YOU'LL LOOK, LOOK ON THE EXHIBIT, YOUR NOTES, FROM
4 THE ---

5 A. SUPPLEMENTAL, CORRECT.

6 Q. SUPPLEMENTAL. LOOK JUST ABOVE THE INTERVIEW OF KRISTAL
7 WIRE.

8 A. RIGHT. IT SAYS 0703 HOURS. I MEANT ---

9 Q. SO APPROXIMATELY 7:00?

10 A. RIGHT.

11 Q. JANUARY 2 YOU MET WITH MISS ---

12 A. RIGHT.

13 Q. AND THAT WOULD'VE BEEN WITHIN EIGHT HOURS OF THIS SHOOT-
14 ING, CORRECT?

15 A. OH, YES, SIR.

16 Q. ACTUALLY SHORTER THAN THAT?

17 A. YES, SIR.

18 Q. AND THE DOCUMENT THAT YOU'RE LOOKING AT, STATE'S EXHIBIT
19 ONE -- EXCUSE ME, DEFENDANT'S EXHIBIT ONE, THAT IS A COPY OF
20 THE NOTES YOU TOOK OF THIS INTERVIEW, CORRECT?

21 A. IT'S A COPY OF MY POLICE REPORT, CORRECT.

22 Q. OKAY. WELL, AND YOU REDUCED WHAT WAS TOLD TO YOU TO THIS,
23 TO THESE NOTES, CORRECT?

24 A. IT'S ALL PUT ON PAPER, CORRECT.

25 Q. OKAY. IS THERE ANYTHING ELSE, ANY OTHER NOTES AT ALL YOU

SAM ROSER, CROSS EXAMINATION

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1 HAVE CONCERNING THIS INTERVIEW?

2 A. NO.

3 Q. THAT'S A NO, RIGHT?

4 A. CORRECT.

5 Q. OKAY. AND THE STATEMENTS, THE TWO A, B, THREE AND FOUR,
6 THOSE, THOSE DOCUMENTS WERE WRITTEN BY KRISTAL WIRE IN HER OWN
7 HANDWRITING, CORRECT?

8 A. I CAN ANSWER ON TWO A AND TWO B. I'M NOT SURE IF I
9 ACTUALLY TOOK THE STATEMENTS FROM THE PHOTO LINEUP. I
10 BELIEVE ---

11 Q. TWO A AND TWO B, THE TWO TWO-PAGE HANDWRITTEN STATEMENTS?

12 A. CORRECT, I WAS WITH HER WHEN SHE WROTE THEM.

13 Q. OKAY. NOW, IN THOSE STATEMENTS SHE TOLD YOU THAT THERE
14 WERE TWO INTRUDERS, CORRECT?

15 A. THAT'S CORRECT.

16 Q. AND THAT SHE KNEW THEY WERE BLACK BECAUSE THE NOSE AND EYE
17 AREA OF THEIR MASKS WAS OPEN, CORRECT?

18 A. I DON'T SEE IT ON HER WRITTEN STATEMENTS BUT THAT'S
19 EXACTLY WHAT WAS TOLD TO ME. ON MY SUPPLEMENTAL REPORT I
20 WROTE.

21 Q. THAT'S WHAT SHE TOLD YOU?

22 A. EXACTLY.

23 Q. OKAY. SHE -- SHE WENT ON TO SAY THAT THE REST OF THEIR
24 HEAD WAS COVERED WITH A LIGHT CLOTH OR MASK, CORRECT?

25 A. THAT'S CORRECT.

SAM ROSER, CROSS EXAMINATION

85

1 Q. SHE COULD NOT DESCRIBE EITHER OF THE INTRUDERS, COULD SHE?

2 A. WELL, THE ONLY THING SHE TOLD ME IS THAT SHE COULD IDENTI-
3 FY V BY HIS HAIRSTYLE WAS BRAIDED.

4 Q. THAT WAS IN RESPONSE TO A QUESTION ABOUT SOMEONE WHO WAS
5 PRESENT AT THE TRAILER EARLIER IN THE EVENING, CORRECT?

6 A. RIGHT.

7 Q. I'M LIMITING THIS PARTICULAR LINE OF QUESTIONING ONLY ---

8 A. OKAY.

9 Q. --- TO THE INTRUDERS. OKAY? YOU UNDERSTAND THAT?

10 A. YES, SIR.

11 Q. ALL RIGHT.

12 MR. MURDAUGH: IT'S THE SAME PEOPLE, IF YOUR HONOR
13 PLEASE.

14 MR. FLEMING: OBJECTION, YOUR HONOR, THAT'S ---

15 MR. MURDAUGH: I MEAN HOW CAN YOU -- OBVIOUSLY UNDER THE
16 FACTS OF THIS CASE YOU GOT FOUR PEOPLE THAT CAME IN AND TWO
17 THAT CAME IN, TWO OF WHICH WERE ONE OF THE FOUR. I MEAN I
18 DON'T SEE HOW YOU CAN ASK ---

19 THE COURT: WELL, YOU TRYING TO ASK HIM ABOUT WHAT THEY
20 SAID ABOUT THE SECOND TIME ONLY?

21 MR. FLEMING: THE SECOND TIME ONLY, THE PEOPLE WHO
22 COMMITTED THIS OFFENSE, NOT THE PEOPLE WHO WERE THERE EARLIER.

23 THE COURT: I WILL SUSTAIN THE SOLICITOR'S OBJECTION TO
24 THAT LINE. I THINK YOU CAN -- I THINK, I DON'T SEE HOW THAT
25 YOU CAN INTELLIGENTLY SEPARATE THE TWO.

SAM ROSER, CROSS EXAMINATION

86

1 Q. DETECTIVE, I AM GOING TO ASK YOU QUESTIONS CONCERNING
2 KRISTAL WIRE'S STATEMENTS TO YOU CONCERNING THE DESCRIPTION OF
3 THE INTRUDERS.

4 A. OKAY.

5 Q. OKAY. SHE TESTIFIED -- OR EXCUSE ME. SHE TOLD YOU THAT
6 SHE COULD NOT DESCRIBE THE INTRUDERS?

7 A. THAT'S CORRECT.

8 Q. ~~SHE COULD NOT DESCRIBE THEIR FACIAL FEATURES.~~

9 A. ~~SHE SAID SHE COULD NOT DESCRIBE THEIR EYES AND NOSE AND SHE COULD SEE~~

10 Q. AND SHE DIDN'T GIVE YOU ANY PARTICULAR DESCRIPTION OF THE
11 EYES OR NOSE, DID SHE?

12 A. ~~NO.~~

13 Q. SHE DIDN'T DESCRIBE FACIAL FEATURES OR HAIRSTYLES OR SKIN
14 TONE OR CLOTHING, DID SHE?

15 A. ~~NO.~~

16 Q. AND SHE DID NOT RECOGNIZE THE INTRUDERS' VOICES, DID SHE?

17 A. ~~NO, SIR.~~

18 Q. AND SHE FURTHER WENT ON TO SAY THAT ONCE SHE GOT ON THE
19 FLOOR SHE NEVER LOOKED UP, ISN'T THAT CORRECT?

20 A. I DON'T SEE IN HERE WHERE SHE SAID SHE NEVER GOT UP. SHE
21 JUST SAID SHE LAID ON THE FLOOR.

22 Q. OKAY. WELL, THE MIDDLE OF YOUR PAGE ---

23 A. TWO.

24 Q. --- TWO OF SIX.

25 A. RIGHT.

SAM ROSER, CROSS EXAMINATION

87

1 Q. THE LINE SAYS ---

2 A. IT SAYS ---

3 Q. HERE, LET ME SHOW IT TO YOU.

4 A. OKAY.

5 Q. ~~SHE STATED THAT SHE BELIEVES THAT THE OTHER SUBJECT WAS~~

6 ~~IN THE LIVING ROOM WITH THEM, HOWEVER, SHE NEVER LOOKED UP.~~

7 A. THAT'S CORRECT.

8 Q. OKAY. THANK YOU.

9 NOW, CONCERNING YOUR QUESTIONING OF KRISTAL WIRE ABOUT
10 THE IDENTIFICATION OF THE FOUR BLACK MALES THAT WERE PRESENT
11 AT THE PARTY EARLIER IN THE EVENING, DID SHE DESCRIBE ANY OF
12 THEIR FACIAL FEATURES?

13 A. JUST THAT V -- NO, NOT FACIAL FEATURES OTHER THAN HAIR.

14 Q. DID SHE DESCRIBE ANY OF THEIR HEIGHT OR WEIGHT?

15 A. NO.

16 Q. DID SHE DESCRIBE ANY FACIAL HAIR?

17 A. NO.

18 Q. SKIN TONE?

19 A. NO.

20 Q. OR CLOTHING?

21 A. NO.

22 Q. SHE ONLY DESCRIBED THE HAIRSTYLE, CORRECT?

23 A. THAT'S CORRECT.

24 Q. SHE DESCRIBED THE HAIRSTYLE OF ONE OF THE INDIVIDUALS?

25 A. CORRECT.

SAM ROSER, CROSS EXAMINATION

88

1 Q. AND NOT ANY OF THE OTHER OF THE THREE, CORRECT?

2 A. THAT'S CORRECT.

3 Q. ALL RIGHT. DID SHE, IN YOUR INTERVIEW, OF HER, WITHIN
4 EIGHT HOURS OF THIS, EVENT, EVER USE THE NAME TAVARUS?

5 A. NO.

6 Q. EVER USE THE NAME WEST?

7 A. NO.

8 Q. OR EVER USE THE NAME GADSEN?

9 A. NO.

10 Q. IN INTERVIEWING KRISTAL WIRE WERE YOU -- DID YOU ATTEMPT
11 IN ANY WAY TO DETERMINE HER LEVEL OF INTOXICATION, IF ANY?

12 A. NO.

13 Q. DID YOU ASK HER FOR A BLOOD OR URINE TEST?

14 A. NO.

15 MR. FLEMING: ONE SECOND, YOUR HONOR; I BELIEVE THAT'S
16 IT.

17 NO MORE QUESTIONS. THANK YOU.

18 MR. MURDAUGH: I HAVE NO QUESTIONS.

19 CALL MATT AVERILL.

20 THE COURT: YOU MAY COME DOWN.

21 MATTHEW AVERILL,

22 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MR. MURDAUGH:

25 Q. YOUR NAME, PLEASE, SIR.

MATTHEW AVERILL, DIRECT EXAMINATION

89

1 A. IT'S MATTHEW AVERILL, A-V-E-R-I-L-L.

2 Q. MR. AVERILL, I ASK YOU WHETHER OR NOT YOU'RE EMPLOYED BY
3 THE BEAUFORT COUNTY SHERIFF'S DEPARTMENT AND WAS SO EMPLOYED
4 ON THE FIRST OF JANUARY, 1999.

5 A. YES, SIR, IT WAS.

6 Q. AND IS THAT THE DATE THAT THE COFFIN POINT MURDER TOOK
7 PLACE?

8 A. JANUARY 2, 1999.

9 Q. THAT'S CORRECT, THE SECOND. EXCUSE ME.

10 WERE YOU THE CHIEF DETECTIVE ASSIGNED TO THIS CASE?

11 A. I -- I WAS THE LEAD INVESTIGATOR, YES.

12 Q. LEAD INVESTIGATOR, OKAY.

13 I ASK YOU WHETHER OR NOT SUBSEQUENT TO THE NIGHT THAT IT
14 HAPPENED YOU HAD AN OCCASION TO TALK WITH KRISTAL WIRE
15 REGARDING STATE'S EXHIBITS NUMBER ONE, TWO AND THREE?

16 A. I DID.

17 Q. WHICH ARE PHOTOGRAPHIC LINEUPS.

18 A. YES, SIR.

19 Q. WERE THOSE SHOWN TO HER?

20 A. YES, THEY WERE.

21 Q. AND DID SHE PICK ANYBODY OUT OF THEM?

22 A. ~~SHE DID NOT.~~

23 Q. OKAY, SIR, AND ONE AND TWO, IS TAVARUS ROGERS INCLUDED IN
24 THEM?

25 A. NO.

MATTHEW AVERILL, DIRECT EXAMINATION

90

1 Q. NUMBER THREE, WHAT -- IS HE INCLUDED?

2 A. YES.

3 Q. OKAY, SIR, AND WHAT NUMBER IS HE?

4 A. NUMBER SIX.

5 Q. AND IS THAT WHAT SHE SAID IN THE COURTROOM A WHILE AGO
6 WHEN SHE WAS TESTIFYING?

7 A. YES, SHE DID.

8 MR. FLEMING: OBJECTION, YOUR HONOR, HE CAN'T -- IT'S
9 HEARSAY UNLESS -- WHAT SHE SAID IN THE COURTROOM AND THE
10 RECORD'LL SPEAK FOR ITSELF.

11 MR. MURDAUGH: I'LL WITHDRAW THE QUESTION, SIR.

12 I AIN'T FINISHED YES.

13 Q. HAVE YOU SHOWN MISS WIRE ANY PHOTOGRAPHS OF TAVARUS ROGERS
14 OTHER THAN THE ONE CONTAINED IN NUMBER THREE? STATE'S EXHIBIT
15 NUMBER THREE FOR IDENTIFICATION?

16 A. NO, SIR.

17 MR. MURDAUGH: ~ OKAY.

18 THANK YOU, SIR.

19 THE COURT: YOUR WITNESS, MR. FLEMING.

20 MR. FLEMING: THANK YOU, YOUR HONOR.

21 CROSS EXAMINATION

22 BY MR. FLEMING:

23 Q. DETECTIVE, YOU DID NOT SPECIFICALLY INTERVIEW KRISTAL WIRE
24 CONCERNING THE EVENTS OF THIS EVENING, OF THE EVENING OF THE
25 SHOOTING, CORRECT?

MATTHEW AVERILL, CROSS EXAMINATION

91

1 A. THAT'S CORRECT.

2 Q. YOUR -- YOU'RE LIMITED ONLY IN SHOWING HER THE LINEUPS
3 WE'VE BEEN REFERRING TO, CORRECT?

4 A. THAT'S CORRECT.

5 Q. THE DAY AFTER THE ^{shooting} SHOWING, JANUARY 3, YOU SHOWED HER
6 LINEUP NUMBER ONE, CORRECT?

7 A. CORRECT.

8 Q. AND DID YOU IN ANY WAY ATTEMPT TO TELL HER TO ^{pick} TAKE OUT ANY
9 PERSON IN THAT LINEUP?

10 A. NO, I DID NOT.

11 Q. OKAY, AND, IN FACT, YOU LIMITED YOUR STATEMENTS TO HER TO
12 WHAT WAS SAID ON THE BACK OF THAT LINEUP, CORRECT?

13 A. THAT'S CORRECT.

14 Q. ALL RIGHT. AND SHE WAS UNABLE TO IDENTIFY ANYONE IN THAT
15 LINEUP, CORRECT?

16 A. CORRECT.

17 Q. WHO WAS THE TARGET OF THAT LINEUP?

18 A. THAT'S NUMBER ONE?

19 Q. YES.

20 A. THAT WAS WEST MCKENNON (PHON.).

21 Q. OKAY, AND WHAT NUMBER WAS HE?

22 A. NUMBER THREE.

23 Q. OKAY. AND SHE, SHE AT NO TIME EVER MENTIONED THE NAME
24 WEST?

25 A. NO, SIR.

MATTHEW AVERILL, CROSS EXAMINATION

92

1 Q. ALL RIGHT, YOU -- YOU ALSO AT THE TIME, AT THE SAME TIME
2 SHOWED HER LINEUP NUMBER TWO AND SHE WAS UNABLE TO IDENTIFY
3 ANYONE IN THAT ONE, CORRECT?

4 A. THAT'S CORRECT.

5 Q. ALL RIGHT. WHO WAS THE TARGET OF LINEUP NUMBER TWO?

6 A. THAT WAS -- I'M NOT SURE OF HIS NAME BUT IT WAS A GENTLE-
7 MAN IN PHOTOGRAPH NUMBER FIVE, I BELIEVE IT WAS.

8 Q. WHY DID YOU PUT THE GENTLEMAN IN NUMBER FIVE IN THAT
9 LINEUP?

10 A. ~~THAT GENTLEMAN WAS IDENTIFIED AS SOMEONE WHO LIVED IN THAT~~
11 ~~AREA OF COFFIN POINT.~~

12 Q. BUT -- BUT BEYOND THAT, OBVIOUSLY, LIVING IN COFFIN POINT
13 DOESN'T MAKE YOU A SUSPECT. WHAT -- WHAT ELSE? MADE HIM A
14 SUSPECT?

15 A. I BELIEVE HE HAD SOME PRIOR ARRESTS. THAT'S WHERE WE ^{Got} GET
16 THE PHOTOGRAPH FROM.

17 Q. OKAY, BUT YOU DON'T KNOW WHO THAT PERSON WAS?

18 A. NO, SIR, I DON'T.

19 Q. THEN THE FOLLOWING MORNING, JANUARY 4, THAT WOULD'VE BEEN
20 LESS THAN THREE DAYS AFTER THE SHOOTING, CORRECT?

21 A. CORRECT.

22 Q. YOU SHOWED KRISTAL WIRE LINEUP NUMBER THREE THAT THE STATE
23 HAS REFERRED TO, CORRECT?

24 A. CORRECT.

25 Q. AND IN THAT LINEUP YOU INDICATE THAT NUMBER SIX IS TAVARUS

MATTHEW AVERILL, CROSS EXAMINATION

93

1 ROGERS, CORRECT?

2 A. THAT'S CORRECT.

3 Q. ALL RIGHT. DURING THAT LINEUP DID YOU IN ANY WAY ATTEMPT
4 TO TELL MISS WIRE WHO TO PICK OUT?

5 A. NO, SIR.

6 Q. DID YOU IN ANY WAY SAY THAT ANYBODY WAS A SUSPECT IN THAT
7 LINEUP?

8 A. NO, SIR.

9 Q. AND, IN FACT, YOU LIMITED YOUR DISCUSSIONS WITH HER
10 CONCERNING THE LINEUP TO ONLY WHAT WAS WRITTEN ON THE BACK?

11 A. THAT'S RIGHT.

12 Q. OKAY, AND WHEN -- AS TO IDENTIFYING ^{on}ANYWAY, KRISTAL WIRE
13 COULD NOT?

14 A. THAT'S CORRECT.

15 Q. ALL RIGHT. NOW, ON THE BACK OF ALL THREE OF THOSE, OF
16 THOSE LINEUPS, KRISTAL WIRE SIGNED HER NAME, CORRECTLY? I
17 MEAN ISN'T THAT CORRECT?

18 A. YOU WANT ME TO CHECK?

19 Q. YES, SURE.

20 A. OKAY.

21 Q. YOU DON'T HAVE TO OPEN THEM UP.

22 A. SAYS THE -- I DO TO SEE IT.

23 Q. OH.

24 A. THAT'S CORRECT.

25 Q. WHEN -- WHEN -- WHEN SHOWING HER THESE LINEUPS, DID YOU

MATTHEW AVERILL, CROSS EXAMINATION

94

1 GIVE HER AS MUCH TIME AS SHE NEEDED TO LOOK AT THEM?

2 A. YES, SIR.

3 Q. WAS SHE COMFORTABLE?

4 A. (NO RESPONSE.)

5 Q. I MEAN WAS SHE SITTING DOWN IN A ---

6 A. SHE WAS SITTING DOWN.

7 Q. A GOOD TEMPERATURE ENVIRONMENT?

8 A. (NO RESPONSE.).

9 Q. I MEAN IT WAS JUST ---

10 A. IT WAS NORMAL.

11 Q. NORMAL?

12 A. NORMAL.

13 Q. OKAY.

14 A. ROOM TEMPERATURE.

15 Q. YOU FEEL LIKE THERE WAS ANY PRESSURE ON HER WHATSOEVER BY
16 THE SITUATION?

17 A. NO, SIR.

18 MR. FLEMING: ALL RIGHT.

19 ONE SECOND, YOUR HONOR.

20 THAT'S ALL THE QUESTIONS I HAVE.

21 MR. MURDAUGH: YOU MAY COME DOWN.

22 THAT CONCLUDES OUR TESTIMONY, IF YOUR HONOR PLEASE.

23 THE COURT: OKAY.

24 ANYTHING FROM THE DEFENDANT?

25 MR. FLEMING: NO, SIR. JUST ARGUMENT.

MATTHEW AVERILL, CROSS EXAMINATION

95

1 THE COURT: OKAY.

2

3 GO AHEAD. YOU WANT TO PROCEED.

4 MR. FLEMING: YOUR HONOR, I WOULD REFER TO - AND I HAD
5 CASE LAW HERE AND I WILL PASS IT UP TO YOUR. I'M SURE YOU'RE
6 FAMILIAR WITH IT ALREADY.

7 THANK YOU.

8 BUT I'VE TAKEN THE LIBERTY TO COPY THE BASIC.

9 THEY REPRESENT SOME OF THE MORE RECENT ONES THAT WE'RE
10 RELYING ON FOR PURPOSES OF THIS MOTION.

11 THE FIRST THING THAT WE WILL ARGUED AND WHICH IS -- WHICH
12 IS FAIRLY CLEAR, AND EVERYBODY WILL CONCEDE, THAT THE NEAL V
13 BIGGERS FACTORS MUST BE APPLIED TO DETERMINE WHETHER THERE
14 WAS -- THAT THE IN-COURT IDENTIFICATION IS A SUBJECT -- IS
15 SUBJECT OF UNDULY SUGGESTIVE PROCEDURE. AND WHAT WE HAVE
16 HERE, IN LOOKING AT THE CASE, EVEN IF YOU GO DOWN THE FACTORS,
17 BEGINNING WITH NUMBER ONE, FIRST OF ALL THE OPPORTUNITY TO
18 VIEW THE CRIMINAL AT THE TIME OF THE CRIME IS CITED BY NEAL V
19 BIGGERS.

20 WELL, SHE TOLD THE POLICE THAT THE FACE WAS COVERED BUT
21 THE EYES AND NOSE AREA. SO SHE DIDN'T GET -- SHE COULD NOT
22 HAVE GOTTEN A GOOD LOOK AT THE INDIVIDUAL AS IF THEY WERE NOT
23 WEARING SOMETHING OVER THEIR FACE.

24 WITH REGARD TO THE WITNESS' DEGREES OF ATTENTION, THIS
25 HAPPENED VERY QUICKLY AND SHE HIT THE FLOOR AND NEVER LOOKED

1 UP. HER DEGREES OF ATTENTION IS ONLY MOMENTARY, AT BEST.

2 THE NEXT THREE FACTORS AND THE MOST IMPORTANT FACTORS
3 WEIGHING IN THIS PARTICULAR CASE AND WHICH THE STATE HAS
4 COMPLETELY FAILED IN. THE ACCURACY OF THE WITNESS' PRIOR
5 DESCRIPTION OF THE CRIMINAL. THE WITNESS NEVER DESCRIBED THE
6 CRIMINAL. PERIOD. BUT SHE ADMITTED IN CROSS EXAMINATION, AS
7 DID DETECTIVE ROSER, SHE GAVE NO PHYSICAL DESCRIPTION OF THE
8 INTRUDERS. PERIOD. SO WE CAN'T EVEN DETERMINE THE ACCURACY.
9 THERE IS NO ACCURACY. THERE'S NO -- THERE'S NO DESCRIPTION.

10 SECONDLY, THE LEVEL OF CERTAINTY AT THE CONFRONTATION.
11 FIRST OF ALL, SHE WAS SHOWN A PICTURE IN A PHOTO LINEUP WITHIN
12 FORTY-EIGHT HOURS OF THE EVENT. SHE DID NOT PICK OUT TAVARUS
13 ROGERS WHO WAS NUMBER SIX IN THAT LINEUP. AT ALL. WHICH
14 MEANS THERE WAS ABSOLUTELY NO CERTAINTY, SHE DIDN'T PICK HIM
15 OUT.

16 SECONDLY, WHEN SHOWN THE LINEUP, ABOUT TWO OR THREE HOURS
17 AGO, SHE EQUIVOCATED ON NUMBER SIX. ACCORDING TO HER TESTIMO-
18 NY. AND I -- I CANNOT CITE IT SPECIFICALLY BUT SHE SAID
19 SOMETHING TO THE EFFECT THAT IF ANYBODY IS IT, I GUESS NUMBER
20 SIX WAS. SOMETHING TO THAT EFFECT. I'LL LET THE RECORD SPEAK
21 FOR ITSELF. HOWEVER, SHE EQUIVOCATED. THERE WAS NO -- SHE
22 WAS, BY NO MEANS, CERTAIN.

23 THEN THAT WOULD ONLY BE IMPORTANT WITH THE EXCEPTION IF
24 YOU LOOK AT IT UNDER THE CASE OF STATE V THOMPSON. AND AS
25 YOUR HONOR KNOWS, STATE V THOMPSON IS A STATE OF SOUTH CAROLI-

1 NA SUPREME COURT CASE WHEN THE -- AND THE FACTS ARE VERY
2 SIMILAR TO THIS CASE. THE INDIVIDUAL WAS SHOWN PHOTOGRAPHIC
3 LINEUPS AND WAS UNABLE TO IDENTIFY THE DEFENDANT; HOWEVER,
4 THE -- BY THE -- WHEN -- WHEN SHE WAS SHOWN THE LINEUP, THERE
5 THEN BECAME AN INTERVENING SUGGESTIVE EVENT.

6 IN THAT CASE A POLICE OFFICER TOLD THEM THIS IS THE GUY,
7 SO TO SPEAK. THEN SHE WAS ALLOWED TO PICK OUT THE DEFENDANT
8 IN COURT. AND THE COURT SAID, YOU KNOW, THAT'S UNDULY
9 SUGGESTIVE. THE FACTS IN THAT CASE ARE ALMOST ON POINT
10 COMPLETELY IN THIS CASE.

11 BUT THAT'S NOT ALL. THE STATE SUPREME COURT SAID THAT
12 THAT DIDN'T MATTER, IT WAS HARMLESS ERROR. WELL, THAT CASE
13 WAS TAKEN TO THE FOURTH CIRCUIT COURT OF APPEALS. AND THE
14 FOURTH CIRCUIT COURT OF APPEALS SAID NOT ONLY WAS IT UNDULY
15 SUGGESTIVE, BUT IT IS ABSOLUTE, ABSOLUTELY. THEY
16 COMPLETE -- THEY -- THEY GRANTED THE HABEAS CORPUS AND THE
17 DEFENDANT WAS GRANTED A NEW TRIAL. BASED ON THAT.

18 SO WE HAVE THE STATE SUPREME COURT SAYING THAT THE
19 PROCEDURE MUCH LIKE HAS OCCURRED HERE IS UNDULY SUGGESTIVE,
20 AND THEN WE HAVE THE FOURTH CIRCUIT CONCURRING AND GOING
21 FURTHER AND SAYING THAT IT'S NOT ONLY ---

22 THE COURT: YOU GOT THAT FOURTH CIRCUIT CASE HERE?

23 MR. FLEMING: YES, SIR, IT'S IN THAT PACK. IT IS THOMP-
24 SON VERSUS ---

25 MR. KULP: LEE.

1 MR. FLEMING: LEE.

2 AND IF I HAVE -- HERE IT IS.

3 THE COURT: OKAY.

4 MR. FLEMING: YES, SIR.

5 NOW, THE -- IF WE MARRY THAT CASE ALONG WITH THE NEAL V
6 BIGGERS FACTOR AND THEN THE REASONING -- NEAL V BIGGERS FACTOR
7 AS ELICITED AND SPOKEN IN THE MANSFIELD CASE, WHICH I WON'T GO
8 INTO BUT YOU HAVE -- I PROVIDED THAT FOR YOU, ALSO.

9 WHAT THEY SAY IS THAT A SHOW-UP LINEUP IS GENERALLY
10 UNDULY SUGGESTIVE. THE ONLY WAY IT'S NOT GOING TO BE UNDULY
11 SUGGESTIVE IS IF WE CAN APPLY THESE NEAL V BIGGERS FACTORS.

12 SO WE GO BACK TO THE LAST TWO FACTORS IN NEAL V BIGGERS.
13 THEY FOCUS PRIMARILY ON THE FRESHNESS OF THE EVENT IN THE MIND
14 OF THE WITNESS. WHEN THIS EVENT WAS MOST FRESH IN HER MIND.
15 THE WITNESS WAS UNABLE TO IDENTIFY IN ANY WAY THE INTRUDERS.
16 WHATSOEVER. WITH THE EXCEPTION OF BEING A BLACK MALE.

17 AS TIME GOES BY SHE MIRACULOUSLY NOW REGAINS HER MEMORY
18 AND SAYS, OH, I BLOCKED IT OUT BUT I CAN IDENTIFY IT NOW.
19 WELL, THE FACT OF THE MATTER IS THAT THE COURT WANTS TO LOOK
20 AT THE TIME FRAME WHEN SHE -- HER MEMORY IS MOST FRESH AND
21 THIS COURT DOESN'T RECOGNIZE THAT HER MEMORY WAS BLOCKED.
22 AND, IN FACT, REASONING OF THE COURT IS EXACTLY OPPOSITE TO
23 THAT.

24 SECONDLY, THE -- WHEN SHOWN THE NONSUGGESTIVE LINEUP
25 THERE -- BY ALL ACCOUNTS THE LINEUP THAT SHE WAS SHOWN ON

1 JANUARY 4, WAS HANDERED -- HANDLED COMPLETELY PROPERLY, SHOWN
2 TO HER IN A VERY COMFORTABLE AND UNOPPRESSIVE SITUATION, SHOWN
3 TO HER WITHOUT UNDULY SUGGESTING THAT SHE PICK SOMEONE OUT,
4 HANDLED APPROPRIATELY BY THE DETECTIVES. IN THAT SITUATION
5 SHE WAS UNABLE TO IDENTIFY SOMEBODY.

6 TWO AND THREE QUARTER YEARS LATER, AFTER HAVING SEEN THE
7 DEFENDANT IN OPEN COURT, IN FRONT OF A JUDGE, AT EITHER A BOND
8 HEARING OR WHENEVER IT WAS, IDENTIFIED AS TAVARUS ROGERS, SHE
9 NOW MIRACULOUSLY SAYS THAT SHE CAN IDENTIFY HIM. AND LOOKS
10 OVER IN THE COURTROOM TODAY, LOOKS AT MR. ROGERS, THE ONLY
11 BLACK MALE NOT IN A COURT UNIFORM, AND SAYS THAT'S HIM.

12 SHE ALSO HAD TO USE HER GLASSES. PUT THEM ON AND LOOK.
13 THERE'S BEEN NO TESTIMONY THAT -- WELL, SHE SAID SHE DIDN'T
14 HAVE A VISION PROBLEM BUT THAT'S A PRETTY QUICK VISION PROBLEM
15 IN TWO YEARS.

16 THE COURT: WELL, THAT'S THE WAY YOUR VISION GOES. I
17 HAPPEN TO KNOW THAT. I MEAN, YOU KNOW, IT JUST -- IT GOES
18 FAST. IF YOU ASK -- YOU MIGHT WANT TO PRESENT SOME EXPERT
19 WITNESS BUT ---

20 MR. FLEMING: NONETHELESS, I DON'T THINK THAT
21 THAT'S -- CERTAINLY A PROBLEM.

22 HERE'S -- HERE'S THE PROBLEM. JUST AS IN STATE V THOMP-
23 SON, YOU HAVE A NONSUGGESTIVE, WHAT I CALL A CLEAN LINEUP.
24 AND THE WOMAN CAN'T IDENTIFY THE DEFENDANT. YOU THEN HAVE AN
25 INTERVENING SUGGESTIVE EVENT. IN THIS CASE THERE'S SEVERAL.

1 FIRST, SHE TALKED TO FRIENDS AND FAMILY, DETECTIVE AVERILL, ET
2 CETERA, SAYING TAVARUS ROGERS IS THE GUY. THEN SHE SEES
3 TAVARUS ROGERS IN OPEN COURT, WHICH ANY, ANYONE COULD IDENTIFY
4 BECAUSE OF THE COURT SAYS COME FORWARD, TAVARUS ROGERS, OR
5 WHATEVER IT IS. I MEAN I DON'T NEED TO TELL YOUR HONOR HOW IT
6 WORKS.

7 THE INDIVIDUAL STANDS UP IN COURT, MISS WIRE IS IN COURT
8 AND SAYS, OH, THAT'S TAVARUS ROGERS. SUGGESTIVENESS. RIGHT
9 THERE. SUGGESTIVENESS WHEN SHE WAS TOLD THAT'S THE MAN.
10 SUGGESTIVENESS WHEN SHE WALKS IN THIS COURTROOM AND SEES MR.
11 ROGERS SITTING HERE AND SAYS -- AND SAYS, OH, YES, THE BLACK
12 GUY WITH THE ORANGE SUIT ON THAT'S NOT THE COP. THAT'S IT.
13 ANYBODY COULD PICK HIM UP -- OUT.

14 THE COURT IN STATE V PRAYLOW, THE COURT OF APPEALS IN THE
15 LAST TWO YEARS, WHICH WOULD BE BASICALLY THE SAME MAKE-UP AS
16 TODAY, SAID IF CAN HARDLY BE ARGUED THAT THAT IS NOT UNDULY
17 SUGGESTIVE. AND, IN FACT, THEY SAID, DON'T ARGUE THAT;
18 THERE'S NO WAY YOU CAN SAY THAT'S NOT UNDULY SUGGESTIVE.

19 SO THE POINT IS THAT GIVEN THE CLEAN LINEUP, SHE CAN'T
20 IDENTIFY SOMEBODY. AFTER THE SUGGESTIVE EVENTS AND TWO AND A
21 HALF YEARS AFTER THE CRIME SHE CAN NOW IDENTIFY SOMEBODY.

22 THE STATE, APPLYING THE NEAL V BIGGERS FACTORS LINE BY
23 LINE, THEY FAIL MISERABLY. AND THIS WITH SHOULD NOT BE
24 ALLOWED THE IN-COURT IDENTIFICATION.

25 THANK YOU, YOUR HONOR.

1 THE COURT: SOLICITOR.

2 MR. MURDAUGH: YOUR HONOR, PLEASE, I WOULD CALL THE
3 COURT'S ATTENTION TO MANSON VERSUS BRAITWAIT (PHON.) WHICH IS
4 REPORTED IN 432 US 98, WHICH THEY STATE THAT THESE ISSUES ARE
5 FOR THE JURY. UNLESS THERE IS AN INTERVENING EVENT THAT WOULD
6 CAUSE PREJUDICE IN MAKING THE IDENTIFICATION.

7 THE COURT: WELL, IN THAT THOMPSON CASE IT WAS APPARENTLY
8 NOT DISPUTED THAT THE POLICE OFFICER SAID THAT'S THE MAN.

9 MR. MURDAUGH: YES, SIR.

10 THE COURT: IN THE PHOTOGRAPH.

11 MR. MURDAUGH: NO QUESTION ABOUT THAT AND THERE IS
12 NOTHING IN THIS CASE, AN INTERVENING EVENT THAT WOULD CORRUPT
13 THE IDENTIFICATION. THERE IS NO EVIDENCE THAT ANYBODY EVER
14 SAID THAT THAT FELLOW RIGHT THERE IS THE ONE THAT COMMITTED
15 THE MURDER. THEY WERE SHOWN THREE PHOTOGRAPHIC LINEUPS
16 IMMEDIATELY AFTERWARDS AND IF YOU LOOK AT THE PHOTOGRAPHIC
17 LINEUPS, THEY -- THE ONE THAT CONTAINS THAT TAVARUS ROGERS IS
18 NOT A PHOTOGRAPHIC LINEUP; IT IS A PHOTOSTAT OF A PICTURE.
19 AND WHICH MAKES IT EVEN MORE DIFFICULT TO RECOGNIZE.

20 AND WE, OTHER THAN THAT, RELY UPON THE MEMORANDUM OF LAW
21 THAT WE HAVE SUBMITTED. SO I WILL ASK YOU TO LOOK AT STATE'S
22 EXHIBIT NUMBER THREE, NUMBER SIX BEING TAVARUS ROGERS, SIR.

23 AND, IF YOUR HONOR PLEASE, THEY ---

24 THE COURT: WELL, I -- I'M LOOKING AT THE DEFENDANT AND
25 I'M LOOKING AT NUMBER SIX AND I CAN SEE WHERE IT IS BUT,

1 FRANKLY, I COULD NOT IDENTIFY HIM MYSELF FROM THIS PHOTOGRAPH
2 I DON'T BELIEVE. I MEAN I SEE THAT -- TO MY MIND, IT'S
3 REASONABLE TO SEE, WHEN I LOOK AT THAT PHOTOGRAPH AND I LOOK
4 AT THE DEFENDANT, WHICH HIS HAIRSTYLE'S DIFFERENT, IT WOULD BE
5 VERY DIFFICULT FOR ME TO MAKE AN IDENTIFICATION THAT THAT WAS
6 HIM. I THINK THAT I WOULD MAKE THAT OBSERVATION.

7 ANYTHING ELSE?

8 MR. FLEMING: YES, SIR, YOUR HONOR, I WOULD LIKE TO QUOTE
9 ONE -- WITH -- WITH REGARD TO THE SOLICITOR'S POSITION ON
10 WHETHER OR NOT IT'S A JURY QUESTION, THAT IS -- THAT IS A
11 MISINTERPRETATION OF THE LAW. YOU DO HAVE AN AFFIRMATIVE DUTY
12 AS THE TRIAL JUDGE TO MAKE A RULING ON THE RELIABILITY OF THE
13 WITNESS, PERIOD, UNDER THESE FACTORS. AND SO IN THE
14 APPLICATION OF THE FACTORS I THINK THE STATE FAILS.

15 BUT BEYOND THAT, THERE IS -- I'M LOOKING AT THE MANSFIELD
16 CASE. AND IF YOU'LL ALLOW ME. IT'S A SINGLE PERSON SHOWUP,
17 WHICH IS WHAT WE'VE GOT HERE, ARE DISFAVORED BECAUSE THEY'RE
18 SUGGESTIVE BY THEIR NATURE AND THEN IT SAYS -- IT SAYS THAT
19 ONE OF THE MOST FACTORS, IF NOT THE MOST IMPORTANT FACTOR,
20 IS -- IS THE IMMEDIACY OF THE IDENTIFICATION. FOR THE VERY
21 REASON THAT YOU JUST STATED. THREE YEARS ALMOST HAVE PASSED.
22 SINCE THE TIME THAT THIS -- SINCE THE TIME THE ORIGINAL
23 IDENTIFICATION OCCURRED. PRESUMABLY, PEOPLE CHANGE IN THOSE
24 THREE YEARS AND THE COURT SAID IT'S IMPORTANT TO DO THE
25 IDENTIFICATION AT THE TIME, AS NEAR THE TIME AS POSSIBLE. OF

1 THE EVENT.

2 HERE WE WERE -- WE WERE AT NO MORE THAN FORTY-EIGHT HOURS
3 OUT OF THE EVENT. AND SHE COULDN'T IDENTIFY HIM. OF COURSE
4 PEOPLE CHANGE AT THAT POINT, WHICH IS THE WHOLE CRUX OF IT.

5 THE COURT: BUT, OF COURSE, SHE WAS NOT GIVEN AN
6 OPPORTUNITY TO SEE THE DEFENDANT HIMSELF, SO WE'RE NOT TALKING
7 ABOUT A TIME WHEN SAW HIM IN ANY KIND OF ACTUAL LINEUP. SHE
8 SAW A PHOTOGRAPH OF THE DEFENDANT.

9 ANYTHING ELSE?

10 MR. FLEMING: ONE FURTHER POINT, YOUR HONOR.

11 YOUR HONOR HAD MADE MENTION ABOUT LOOKING AT THE
12 PHOTOGRAPH AND HAVING TROUBLE, YOU HAD HAD TROUBLE IDENTIFYING
13 HIM; HOWEVER, THAT'S THE WHOLE CRUX, THAT'S THE WHOLE CRUX OF
14 THE ARGUMENT, AS THE SPAN OF TIME GOES ON. IT'S THE
15 IDENTIFICATION AT THE TIME THAT THEY SAW THE INTRUDERS THAT'S
16 IMPORTANT, NOT THREE YEARS LATER. AND SO -- AND SO THE LONGER
17 THAT THEY WAIT TO IDENTIFY, AS THIS IN-COURT IDENTIFICATION,
18 THAT WEIGHS AGAINST THE STATE, NOT IN FAVOR OF THE STATE. AND
19 HER ABILITY TO IDENTIFY HIM AS HE LOOKS NOW WEIGHS AGAINST THE
20 STATE AS OPPOSED TO WHAT HE LOOKED LIKE THEN.

21 SO, I LEAVE THAT WITH YOUR HONOR.

22 THE COURT: THANK YOU.

23 ALL RIGHT. HAVING HEARD THE TESTIMONY, ARGUMENTS OF
24 COUNSEL, I FIND THAT THE IN-COURT IDENTIFICATION SHOULD BE
25 ALLOWED. AND I FIND THAT THE -- UNDER A CONSIDERATION OF THE

1 FIVE FACTORS, SUCH AS THE WITNESS' OPPORTUNITY TO VIEW THE
2 CRIMINAL AT THE TIME OF THE -- OF CRIME, I THINK THAT OBVIOUS-
3 LY TESTIMONY OF THE WITNESS IS SHE HAD SUFFICIENT OPPORTUNITY
4 AND THE FACT IS THAT IT WAS THE REAFFIRMATION IN HER MIND OF
5 SOMEONE SHE'D PREVIOUSLY SEEN. SHE TESTIFIED SHE HAD A -- SHE
6 WAS -- HAD A HIGH DEGREE OF ATTENTION. THE ACCURACY OF THE
7 WITNESS' PRIOR DESCRIPTION, OBVIOUSLY, WAS NOT AS GOOD AS IT
8 COULD BE BUT THE LEVEL OF THE CERTAINTY AT THE TIME, AT THE
9 CONFRONTATION WHICH IS TODAY SHE WAS -- THE WITNESS WAS
10 CERTAIN AND, OF COURSE, THERE HAS BEEN SOME THREE YEARS SINCE.

11 BUT TAKING ALL FIVE FACTORS AS A WHOLE I FIND THAT THERE
12 IS -- THAT IT SHOULD BE A JURY ISSUE. AS TO -- IT SHOULD BE
13 FOR THE JURY TO DECIDE AND THAT THERE WAS NOTHING PREJUDICIAL
14 OR ANY MISCONDUCT WHICH YOU MIGHT HAVE SEEN IN SOME OF THE
15 OTHER ONES, PARTICULARLY IN THAT CASE WHERE YOU DEALT WITH A
16 POLICE OFFICER POINTING OUT THE PERSON ON A PHOTOGRAPH. THERE
17 IS NOT SUGGESTION THAT MISS WIRE, MISS WIRE WAS EVER SHOWN IT
18 MORE THAN THE ONE TIME AND THAT THE -- AND THERE WAS NEVER ANY
19 TIME -- AT NO TIME WAS SHE EVER TOLD WHO THE PICTURE WAS,
20 SHOWN A PICTURE OF HIM AND SO, THEREFORE, I FIND THAT IT
21 SHOULD BE A -- THAT THE WITNESS'S, MISS WIRE'S IN-COURT
22 IDENTIFICATION SHOULD BE ALLOWED AND THAT -- BECAUSE I DO
23 BELIEVE THAT UNDER THE FACTS OF THIS CASE THAT A JURY COULD
24 INTELLIGENTLY WEIGH THE IDENTIFICATION TESTIMONY EVEN THOUGH
25 THERE MAY BE SOME QUESTIONABLE FEATURES AS TO IT.

1 AND, OF COURSE, WE WILL RESERVE THE -- AND CONTINUE THE
2 HEARING AS TO THE WITNESS OF MISS WENDELL FOR A LATER TIME AND
3 WILL GET TO THAT AT THAT TIME.

4 MR. FLEMING: THANK YOU, YOUR HONOR. MAY WE ---

5 MR. MURDAUGH: THANK YOU, SIR.

6 MR. FLEMING: MAY WE REQUEST THAT THE COURT ADMONISH THE
7 WITNESSES ---

8 MR. KULP: I THINK THAT'S WHAT THE SOLICITOR'S GONNA DO.

9 MR. MURDAUGH: I'M GONE DO THAT BUT WE GOT A COUPLE OF
10 THINGS WE NEED TO TEND TO WITH THE DEFENDANT PRESENT IN THE
11 COURTROOM.

12 IF YOUR HONOR PLEASE, I HAVE READ TWO ORDERS PROPOSED BY
13 THE COURT FOR THE DRAWING TO ADDITIONAL JURORS. THE STATE HAS
14 NO OBJECTION TO THAT.

15 ALSO, IN REGARD TO THE QUESTIONNAIRE, STATE HAS NO
16 OBJECTION TO THE QUESTIONNAIRE AS PROPOSED.

17 MR. FLEMING: ~I -- YOUR HONOR, WE HAVE NOT HAD AN
18 OPPORTUNITY TODAY TO LOOK AT THE QUESTIONER.

19 THE COURT: WELL, THEN, IF YOU WOULD LOOK IT OVER AND
20 ADVISE ME IN WRITING SO THAT WE CAN ---

21 MR. FLEMING: ABSOLUTELY.

22 THE COURT: --- PROCEED WITH THAT.

23 MR. FLEMING: YES, SIR. WE HAD ALREADY -- WE ALREADY
24 PREPARED A QUESTIONNAIRE THAT THE SOLICITOR AND I HAD ALREADY
25 AGREED UPON.

1 MR. MURDAUGH: GOT NO PROBLEM USING HIS, SIR.

2 THE COURT: WELL, DO YOU WANT ---

3 MR. FLEMING: AND I'LL COMPARE AND SEE.

4 THE COURT: HUH?

5 MR. FLEMING: I JUST NEED TO COMPARE IT AND SEE AND THAT
6 WILL TAKE ME A LITTLE BIT TO DO.

7 THE COURT: WELL, WE'LL FIX UP A CONSENT ORDER, WHICHEVER
8 ONE, AND I DON'T HAVE ANY PREFERENCE, EITHER.

9 MR. FLEMING: YES, SIR.

10 THE COURT: I WAS HOPE -- ALL RIGHT, WELL, LET ME ASK YOU
11 THIS. OKAY. SO TO DRAW THE ADDITIONAL THINGS AND YOU'LL LET
12 US KNOW VERY QUICKLY ABOUT THE QUESTIONNAIRE.

13 WHAT ABOUT THIS FORM AND THE ORDER OF THE APPOINTMENT OF
14 THE COUNSEL? YOU KNOW, I HAVE A FORM HERE THAT'S APPARENTLY
15 FROM THE SUPREME COURT WHERE THEY APPROVE -- HAVE Y'ALL
16 SUBMITTED YOUR QUALIFICATIONS TO THE COURT?

17 MR. KULP: I HAVE. I'M CERTIFIED BY THE -- BY THE COURT.

18 MR. FLEMING: AND I -- AND I HAVE BEEN BECAUSE I'M NOT
19 FIRST-CHAIR QUALIFIED WHICH IS WHY WE HAD TO GET MR. KULP.

20 THE COURT: OKAY. WOULD YOU -- DO YOU HAVE A COPY OF
21 THIS TO -- THIS APPLICATION WHERE IT'S BEEN APPROVED TO PUT IN
22 THE RECORD? OR HOW HAVE YOU DONE THAT?

23 MR. KULP: I WENT BY THE SUPREME COURT AND SIGNED UP AND
24 THEY, THE CLERK OF THE SUPREME COURT ISSUED THE CERTIFICATION
25 FOR ME AS BEING DEATH-PENALTY QUALIFIED.

1 THE COURT: YOU HAVE A PHOTO COPY OR SOMETHING FOR THE
2 RECORD? OR YOU CAN DO THAT AT A LATER DATE?

3 MR. KULP: I CAN PUT IT IN THE RECORD IN THE CLERK'S
4 FILE, YOUR HONOR.

5 THE COURT: OKAY.

6 MR. KULP: I THOUGHT I ALREADY HAD.

7 THE COURT: OKAY, IF IT'S IN THE FILE, THEN WE WILL
8 PROCEED AND I HAVE HERE A FORM ORDER DESIGNATING THEM AND ALL
9 AND I JUST WANTED TO GET THAT ORDER DONE.

10 MR. KULP: I'LL HAVE IT FAXED TO THE CLERK OF COURT AND
11 SENT IN FIRST CLASS MAIL TODAY.

12 THE COURT: OKAY.

13 AND, OF COURSE, AS TO MR. FLEMING, YOU, OF COURSE, HAVE
14 BEEN A MEMBER OF THE SOLICITOR AND HANDLED MANY CRIMINAL CASES
15 AND SO FORTH AND GRADUATE OF THE USC?

16 MR. FLEMING: YES, SIR.

17 THE COURT: AND HAD EXPERIENCE PROSECUTING FELONY CASES?

18 MR. FLEMING: YES, SIR.

19 THE COURT: OKAY.

20 ANYTHING ELSE WE NEED TO DO? YOU SAY YOU WANT TO SAY
21 SOMETIME?

22 MR. MURDAUGH: NOT -- I THINK, SIR, BEFORE WE ADJOURN WE
23 NEED TO LET THE DEFENDANT GET IN THAT ROOM WITH THE LIGHTS OUT
24 AND BRING EVERYBODY IN TO DISCUSS THE SEQUESTRATION AND THE
25 GUIDELINES THAT WE NEED TO FOLLOW.

1 THE COURT: OKAY.

2 MR. MURDAUGH: WHILE HE'S GOING BACK THERE CAN I GO OUT
3 HERE, SIR?

4 OH, WE HAVE A WITNESS BACK HERE. WE'LL PROBABLY NEED TO
5 BRING HER IN.

6 CAN YOU GIVE ME A MINUTE.

7 (COURT RECESSED FOR APPROXIMATELY FIVE MINUTES.)

8 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
9 DEFENDANT BUT WITH THE DEFENDANT HAVING THE ABILITY TO HEAR
10 AND SEE THE PROCEDURES.)

11 MR. MURDAUGH: YOUR HONOR, PLEASE, MY PURPOSE IN ASKING
12 THE DEFENDANT TO GET OUT OF THE COURTROOM AND BRINGING THE
13 POTENTIAL -- MISS JOCELYN WENDELL INTO THE COURTROOM ALONG
14 WITH MISS WIRE AND EVERYBODY ELSE CONNECTED IS TO LET THE
15 COURT SET FORTH SOME GUIDELINES REGARDING SEQUESTRATION. IT'S
16 NOT LIKE WE'RE IN A TRIAL AND WE GONE START BACK TOMORROW. WE
17 PROBABLY GONE BE TEN DAYS OR SO BEFORE WE HAVE THE NEXT
18 PORTION OF THIS HEARING.

19 THE COURT: THAT'S RIGHT.

20 ALL RIGHT, LET ME JUST SAY THIS. WAIT A MINUTE. I JUST
21 GOT A COUPLE OF THINGS AND THEN I'LL HEAR FROM YOU AND I'LL
22 LET YOU SPEAK AND MR. KULP.

23 WHERE IS MR. ALEXANDER?

24 MR. MURDAUGH: MR. FLEMING?

25 THE COURT: NO, MR. -- EXCUSE ME, MR. FLEMING, YEAH.

1 MR. KULP: RIGHT HERE, YOUR HONOR.

2 THE COURT: OH, OKAY, THERE HE IS. HE'S HIDDEN, OKAY.

3 OKAY. I'M NOT ONLY SPEAKING TO THE TWO YOUNG LADIES WHO
4 ARE THE WITNESSES BUT TO MEMBERS OF THEIR FAMILY, AS YOU KNOW
5 NOW THAT YOU WILL BE ASKED ABOUT ANY TIME THAT -- WHO HAVE YOU
6 TALKED ABOUT AS TO ANY FACET OF YOUR TESTIMONY IN THIS THING.
7 SO YOU MUST NOT DISCUSS THE CASE WITH ANYONE EXCEPT LAW
8 ENFORCEMENT OR THE ATTORNEYS. BUT AMONG YOURSELVES, YOU
9 CANNOT DISCUSS THE CASE WITH ANYONE.

10 AND I WOULD PREVAIL UPON THE MEMBERS OF THEIR FAMILIES TO
11 ASSIST AND NOT HINDER THEM WHEN THEY'RE TRYING TO DO THE BEST
12 JOB THEY CAN AS WITNESSES IN THIS CASE.

13 AND SO, PLUS, I BELIEVE I HAVE ALREADY SIGNED A GAG
14 ORDER, WHICH IT SEEMS LIKE TO ME THAT THE ORDER PROHIBITS ANY
15 DISCUSSION OF THE CASE.

16 ANYTHING ELSE, SOLICITOR?

17 MR. MURDAUGH: NO, SIR.

18 MR. KULP: YOUR HONOR, COURT PLEASE, AS THE REMAINING
19 WITNESS WHO IS STILL IN THE COURTROOM, IF THE COURT WOULD SEE
20 FIT TO ADMONISH HER FOR THE STATE - AND I KNOW THEY WON'T BUT
21 JUST OUT OF AN ABUNDANCE OF CAUTION - FOR HER NOT TO BE -- TO
22 PRESERVE THE INTEGRITY OF HER TESTIMONY, I DON'T KNOW IF THERE
23 IS A CONTINUING SEQUESTRATION ASPECT OR NOT, BUT FOR HER NOT
24 TO EXAMINE ANY OTHER PHOTOGRAPHS OR ANY OTHER GRAPHIC IMAGES
25 SUCH AS MIGHT AFFECT QUALITY ---

1 THE COURT: WELL, I DON'T ANTICIPATE THAT BUT I DON'T
2 KNOW THAT I SHOULD LIMIT THE SOLICITOR FROM DOING ANYTHING
3 WITH THAT. OF COURSE, SHE WILL BE ASKED ABOUT THAT BUT I
4 MEAN ---

5 MR. MURDAUGH: I WILL CONSENT THAT MY OFFICE NOR MR.
6 ROSER NOR MR. AVERILL WILL SHOW HER ANY PHOTOGRAPHS OF
7 ANYBODY -- OF MR. TAVARUS ROGERS.

8 THE COURT: BUT IT IS GONE BE NECESSARY THAT YOU HAVE
9 CONVERSATIONS WITH HER.

10 MR. MURDAUGH: NO QUESTION.

11 IN THAT REGARD, IF YOUR HONOR PLEASE -- WELL, LET'S GET
12 THAT OUT OF THE WAY FIRST.

13 MR. KULP: AND I WASN'T SUGGESTING THE SOLICITOR'S OFFICE
14 WOULD DO THAT. WHAT I WAS KIND OF SAYING WAS AS IF THE
15 ADMONITION TO A JUROR, MAKE SURE -- DISABUSE YOURSELF OF
16 ANYTHING ABOUT THIS IN THE NEWSPAPER, SO THAT THE WITNESS
17 WOULD NOT ON HER OWN SEEK OUT TO BUTTRESS HER TESTIMONY NOW
18 KNOWING THAT THERE'S SOMETHING ON THE TABLE. THAT'S WHAT WE
19 WANT.

20 THANK YOU.

21 BUT THEN AGAIN, IF SO, I GUESS IT'LL BE SUBJECT TO CROSS
22 EXAMINATION. SO I HAVE TO SEE WHERE YOU'RE COMING FROM,
23 JUDGE, IN TERMS . . .

24 THE COURT: WELL, I HATE TO MAKE AN ORDER THAT CANNOT BE
25 ENFORCED, THAT'S SO VAGUE THAT I DON'T UNDERSTAND IT AND SO

1 THEREFORE I COULDN'T ENFORCE IT.

2 IS THERE ANYTHING ELSE YOU HAVE FROM -- THE DEFENSE HAS?

3 (NO RESPONSE.)

4 THE COURT: ANYTHING ELSE FROM THE STATE?

5 MR. MURDAUGH: YES, SIR.

6 AND I DO NOT HAVE THE CASE BEFORE ME NOW REGARDING THE
7 IN-COURT LINEUP. BUT MY -- AND I WILL GET IT FOR YOU AND GIVE
8 IT TO COUNSEL.

9 MY UNDERSTANDING IS THAT I HAVE A RIGHT TO TELL THE
10 WITNESS WHAT TO EXPECT, NOT WHO TO LOOK FOR BUT WHAT IS GOING
11 TO HAPPEN BEFORE SHE COMES INTO THE COURTROOM AND IS FACED
12 WITH THIS SITUATION. AND FOR THAT ---

13 THE COURT: WELL, I'M NOT LIMITING YOU FROM DISCUSSING
14 THAT WITH HER AND, OBVIOUSLY, OBVIOUSLY, IT WOULD BE IMPROPER
15 AND WRONG AND I DON'T ANTICIPATE THAT, FOR YOU TO IN ANY WAY
16 IMPLY WHICH PERSON IT IS OR ANYTHING SPECIFICALLY TO LOOK AT
17 BUT OTHER THAN TO SET THE STAGE BUT THIS IS YOUR WITNESS.

18 MR. MURDAUGH: OKAY, SIR.

19 THE COURT: AND YOU CAN TALK TO HER ABOUT THAT. AND, OF
20 COURSE, THE WITNESS WILL BE CROSS EXAMINED ABOUT THAT, I'M
21 SURE. AND UNLESS Y'ALL CAN AGREE ON CERTAIN GUIDELINES, I'LL
22 BE GLAD TO CONSIDER IT BUT I DON'T KNOW EXACTLY WHAT I
23 SHOULD ---

24 MR. MURDAUGH: WELL, WHAT I -- EXCUSE ME. WHAT I WOULD
25 INTEND TO DO, AS SOON AS WE FINISH HERE, IS GET MR. FLEMING,

1 MR. KULP, GO BACK IN THE BACK ROOM WITH THE WITNESS THAT WILL
2 TESTIFY, TELL HER WHAT IS GOING TO HAPPEN IN THERE PRESENCE SO
3 THERE WON'T BE ANY ---

4 THE COURT: WELL, THEN, THAT TAKES CARE OF EVERYTHING.

5 MR. KULP: AND, ALSO, YOUR HONOR, I THINK THE SOLICITOR
6 KNOWS, AND LAW ENFORCEMENT, I THINK THERE'S KIND OF AN ACCEPT-
7 ED STANDARD LANGUAGE THAT'S USED, ALMOST LIKE A MIRANDA CARD,
8 TO READ TO A WITNESS THAT'S PUT IN THE FILE TO DOCUMENT WHAT
9 SHE WAS ADVISED ABOUT HOW TO APPROACH IDENTIFICATION. IN A
10 PERSONAL LINEUP.

11 THE COURT: OKAY, WELL, Y'ALL CAN USE THE GRAND JURY ROOM
12 OR WHATEVER YOU WANT TO DO FOR THAT.

13 MR. MURDAUGH: YES, SIR.

14 THE COURT: AND SO, WITH THAT, SINCE SOLICITOR HAS SAID
15 THAT Y'ALL WILL BE PRESENT, SO THAT TAKES CARE OF THAT PROB-
16 LEM, DOES IT NOT?

17 MR. KULP: I'M SORRY, YOUR HONOR?

18 THE COURT: SINCE YOU GONE BE PRESENT WHEN HE'S TALKING
19 TO THE WITNESS.

20 MR. KULP: YES, SIR.

21 THE COURT: AND FOR THE -- WHICH IS THE WEEK OF THE
22 TWENTY-SEVENTH WHEN WE'LL CONTINUE THIS HEARING, SOME TIME
23 DURING THAT WEEK, AT A TIME TO BE SCHEDULED.

24 MR. MURDAUGH: YES, SIR, I WILL NOTIFY THEM.

25 MR. KULP: VERY GOOD. THANK YOU, YOUR HONOR.

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1 THE COURT: OKAY, THEN, EVERYBODY ELSE, THIS IS ADJOURNED
2 AND, OF COURSE, YOU WANT THE YOUNG LADIES TO STAY. I KNOW YOU
3 WANT MISS ---

4 MR. MURDAUGH: I NEED TO TALK TO MISS JOCELYN.

5 THE COURT: MISS JOCELYN. JOCELYN WENDELL.

6 MR. MURDAUGH: THANK YOU, SIR.

7 THE COURT: OKAY, COURT'S ADJOURNED.

8 -- END OF REQUESTED TRANSCRIPT OF RECORD --

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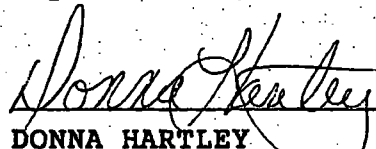
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25

I, THE UNDERSIGNED DONNA HARTLEY, OFFICIAL COURT REPORTER FOR THE FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR BEAUFORT COUNTY, SOUTH CAROLINA ON THE SEVENTEENTH DAY OF AUGUST, 2001.

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

September 13, 2001


DONNA HARTLEY
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS

THE STATE

-VS-

TAVARUS ROGERS

:
:
:
:
:

TRANSCRIPT OF RECORD

AUGUST 29, 2001
BEAUFORT, SOUTH CAROLINA

B E F O R E:

HONORABLE JACKSON V. GREGORY, JUDGE

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

RANDOLPH MURDAUGH, III, SOLICITOR
ATTORNEY FOR THE STATE

CORY HOWERTON FLEMING, ESQ.
TIMOTHY C. KULP, ESQ.
ATTORNEYS FOR DEFENDANT

DONNA HARTLEY
CIRCUIT COURT REPORTER

ORIGINAL

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1 MR. MURDAUGH: WE READY TO PROCEED, SIR?

2 THE COURT: YES, SIR.

3 MR. MURDAUGH: CALL JOCELYN WENDELL.

4 MR. FLEMING: YOUR HONOR, BEFORE WE DO THAT, I WOULD
5 RENEW OUR MOTION TO HAVE THE PROCEEDINGS OF THIS IN CAMERA
6 HEARING CLOSED TO THE PUBLIC FOR REASONS PREVIOUSLY STATED IN
7 THE FIRST PART OF THIS HEARING REQUEST.

8 THE COURT: ALL RIGHT, WE'RE HAVING A JACKSON V DENO
9 HEARING ON IDENTIFICATION, IS THAT WHAT WE'RE ---

10 MR. FLEMING: A NEAL V BIGGERS, YES, SIR.

11 THE COURT: NEAL V BIGGERS?

12 MR. FLEMING: NEAL V BIGGERS HEARING AND IT CONCERNS
13 ISSUES THAT MAY OR MAY NOT BE BROUGHT FORWARD BEFORE THE
14 PERSPECTIVE JURY AND, THEREFORE, WE ARE REQUESTING, AMONG
15 OTHER THINGS, AMONG REASONS, THAT THE PROCEEDINGS FOR THIS IN
16 CAMERA HEARING BE CLOSED TO THE PUBLIC. TO ALL MEMBERS OF
17 THE PUBLIC OTHER THAN FAMILY OF EITHER -- EITHER THE PARTIES
18 OR VICTIMS.

19 THE COURT: AND THE OFFICERS OF THE COURT.

20 MR. FLEMING: AND THE OFFICERS OF THE COURT, YES, SIR.

21 THE COURT: WHAT'S YOUR POSITION, SOLICITOR?

22 MR. MURDAUGH: LAST TIME I DIDN'T SAY ANYTHING AND I
23 CAUGHT THE DEVIL IN THE NEWSPAPER SO I'M GONE -- I CONCUR WITH
24 HIS MOTION NOW.

25 IF I'M GONE CATCH THE DEVIL I MIGHT WAS WELL ---

1 THE COURT: OKAY.

2 MR. MURDAUGH: --- CATCH IT FOR A REASON.

3 THE COURT: SO AT THIS TIME WE WILL -- THE COURT PERSON-
4 NEL, OFFICERS OF THE COURT ARE ALLOWED TO STAY, AND FAMILY
5 MEMBERS OF THE -- BOTH THE DEFENDANT AND THE VICTIMS. EVERY-
6 ONE ELSE SHOULD PLEASE EXIT THE COURTROOM.

7 I DON'T BELIEVE THE PRESS EVEN SHOWED UP TODAY.

8 MR. MURDAUGH: CALL JOCELYN WENDELL.

9 MR. FLEMING: YOUR HONOR, AGAIN - I APOLOGIZE, SOLICITOR
10 - I -- IN A MATTER OF HOUSEKEEPING, I'D LIKE TO RENEW SEVERAL
11 MOTIONS THAT THE SOLICITOR'S ALREADY CONSENTED TO PREVIOUSLY.
12 BUT I WANTED TO GO AHEAD AND DO THAT NOW BEFORE WE GOT INTO
13 THE HEAT OF THE TESTIMONY. MAY I DO SO, YOUR HONOR?

14 THE COURT: YES, SIR.

15 MR. FLEMING: THE FIRST ONE IS THE MOTION TO REVEAL ANY
16 DEALS OR OFFERS OF LENIENCY. OF COURSE, THE SOLICITOR'S
17 ALREADY CONSENTED TO THAT AND I WOULD JUST PUT THAT -- SINCE
18 WE'RE APPROACHING TRIAL TIME, I'D LIKE TO RENEW THAT MOTION.

19 MR. MURDAUGH: I CONSENT TO THE MOTION AND STATE TO THE
20 COURT THAT I HAVE MADE NO DEALS WITH ANYONE, SIR.

21 MR. FLEMING: THANK YOU, SIR.

22 MR. MURDAUGH: YET. I'M TRYING TO.

23 THE COURT: IN OTHER WORDS, YOU MIGHT BE IN THE PROCESS
24 OR GOT OFFERS OUT BUT NOTHING IS ---

25 MR. MURDAUGH: THAT'S CORRECT.

1 THE COURT: --- COME TO FRUITION.

2 MR. FLEMING: SECOND ONE, YOUR HONOR, IS THE SOLICITOR
3 HAS PROVIDED DEFENSE COUNSEL WITH A WITNESS LIST. I WOULD ASK
4 THAT IF THERE'S BEEN ANY ADDITIONS OR UPDATES TO THAT LIST
5 THAT HE DO SO AS SOON AS POSSIBLE.

6 MR. MURDAUGH: THERE ARE NONE THAT I HAVE NOT GIVEN HIM
7 NOTICE OF, SIR.

8 MR. FLEMING: THERE HAVE BEEN SOME DISCUSSIONS, YOUR
9 HONOR, ON AN INFORMAL NATURE AND I WOULD ASK THAT HE PROVIDE
10 THAT, AS HE DID LAST TIME, ON HIS LETTERHEAD.

11 THE COURT: DISCUSSIONS?

12 MR. MURDAUGH: I AIN'T GONE DO THAT. I GAVE YOU A COPY
13 OF THE REPORT FROM THE SHERIFF'S OFFICE. AND I AIN'T -- AND I
14 AIN'T GONE WRITE A LETTER UNLESS THE JUDGE TELLS ME I GOT TO.

15 THE COURT: WHAT KIND OF LETTER YOU TALKING ABOUT?

16 MR. FLEMING: YOUR HONOR, LAST -- WHEN WE WERE APPROACH-
17 ING TRIAL LAST TERM, LAST TIME, THE SOLICITOR GAVE ME A FAIRLY
18 THOROUGH WITNESS LIST AND DID SO ON HIS LETTERHEAD.

19 THE COURT: WELL, YOU CAN CONFIRM IT BACK TO HIM IF YOU
20 WANT TO. HE SAID YOU CAN -- ON YOUR LETTERHEAD, IF YOU WANT
21 TO CONFIRM.

22 SO HE'S GIVEN YOU LIST?

23 MR. MURDAUGH: I'VE GIVEN HIM A LIST, SIR. WHICH THE LAW
24 DOESN'T REQUIRE ME TO DO.

25 THE COURT: NO, IT DOESN'T.

1 MR. FLEMING: WELL, YOUR HONOR, IF THE WITNESSES
2 DON'T -- WELL, HE HAS INFORMED ME OF POTENTIAL NEW WITNESS.
3 BUT IF THERE'S NO OTHER WRITTEN DOCUMENT OR ANYTHING FOR US TO
4 RELY ON, WHAT'S TO SAY THE SOLICITOR CAN'T SAY THE DAY BEFORE
5 TRIAL, IN A CASE WE'VE BEEN PREPARING FOR TWO AND A HALF
6 YEARS, THAT HE HAS A NEW WITNESS?

7 ALL WE'RE ASKING IS, AND THAT AT LEAST ---

8 THE COURT: WELL, LET ME ASK YOU THIS. WHAT DUTY -- HE'S
9 DOING THAT BUT I MEAN YOU DON'T HAVE A RIGHT TO EXPECT HIM TO
10 GIVE YOU A LIST OF THE WITNESSES ANYWAY. THIS -- AS IN CIVIL
11 LITIGATION.

12 MR. FLEMING: WELL, AT LEAST RULE 5 REQUIRES THEM
13 TO -- RULE 5 OF THE RULES OF CRIMINAL PROCEDURE REQUIRES THAT
14 HE AT LEAST PROVIDE US INFORMATION CONCERNING WHO'S THE
15 POSSIBLE WITNESSES AGAINST THIS INDIVIDUAL.

16 SECONDLY ---

17 THE COURT: WELL, YOU'VE MADE YOUR RULE 5 REQUEST, I'M
18 SURE.

19 MR. FLEMING: YES, SIR. TWO AND A HALF YEARS AGO. AND
20 WE'VE RENEWED IT SEVERAL TIMES. HOWEVER, ALSO BRADY -- THE
21 WHOLE LINE OF CASES CONCERNING BRADY REQUIRES THAT
22 THEY -- THEY PRODUCE INFORMATION TO THAT EFFECT.

23 ALL WE'RE ASKING IS THAT THE SOLICITOR DO SO WITHIN AT
24 LEAST TWO WEEKS OF TRIAL SO THAT IF, IF -- IF HE HAS A NEW
25 WITNESS WE WILL HAVE THE OPPORTUNITY TO INVESTIGATE THAT

1 WITNESS, DETERMINE WHAT IT IS THEY MAY OR MAY NOT SAY.

2 I THINK THAT'S -- I THINK THAT'S -- UNDER FUNDAMENTALS OF
3 DUE PROCESS I THINK THAT'S REASONABLE.

4 THE COURT: OKAY, ANYTHING ELSE?

5 MR. FLEMING: NO, SIR, THAT -- WITH REGARD TO THAT
6 MOTION, NO, SIR.

7 THE COURT: OKAY.

8 ALL RIGHT, I HAVE A COUPLE OF THINGS, JUST SORT OF
9 HOUSEKEEPING MATTERS, TOO. I HAVE PREPARED AND ACTUALLY
10 SIGNED AN ORDER MAKING FINDINGS THAT MR. KULP OF THE FIRST
11 CHAIR AND MR. FLEMING FOR SECOND CHAIR, WITH THE THINGS, JUST
12 TO CONFIRM THAT. HAVE YOU SEEN THIS?

13 MR. FLEMING: YES, SIR, I SAW IT IN YOUR OFFICE.

14 THE COURT: OKAY.

15 HAVE YOU SEEN IT, SOLICITOR?

16 MR. MURDAUGH: YES, SIR.

17 THE COURT: WELL, ANYWAY, I DON'T KNOW THAT YOU'RE
18 CONCERNED ABOUT IT BUT, BASICALLY, IT IS A -- THE FINDING THAT
19 THE ATTORNEYS HAVE THE NECESSARY PROFICIENCY TO QUALIFY AND SO
20 I'M GONE FILE THAT ORDER.

21 MR. MURDAUGH: I HAVE NO OBJECTION TO THAT, SIR, AND I
22 CONCUR WITH THE COURT THAT BOTH OF THEM ARE EMINENTLY
23 QUALIFIED.

24 THE COURT: OKAY.

25 ALL RIGHT, THE QUESTIONNAIRE. I HAVE -- MY OFFICE HAS

1 SENT A PURPOSED QUESTIONNAIRE AND I WANT TO KNOW IF THIS
2 QUESTIONNAIRE IS SUITABLE. TO GO WITH IT AND THE OTHER
3 CORRESPONDENCE THAT GOES WITH THE QUESTIONNAIRE.

4 MR. MURDAUGH: IS THAT THE SAME QUESTIONNAIRE, ONE OF THE
5 TWO -- COMBINATION OF THE TWO QUESTIONNAIRES? IF IT IS, I
6 HAVE NO OBJECTION.

7 THE COURT: DID Y'ALL WORK ON THAT?

8 MR. FLEMING: YOUR HONOR, WITH REGARD TO THE CORRESPOND-
9 ING NOTICES AND CORRESPONDENCE TO POTENTIAL JURORS, WE CONCUR
10 WITH THAT.

11 WITH REGARD TO THE QUESTIONNAIRE, THERE IS THE
12 FEDERAL -- THE FEDERAL ---

13 THE COURT: DO YOU HAVE -- DO YOU HAVE SOMETHING, A
14 DOCUMENT THAT YOU WANT ME TO SEND? THAT Y'ALL HAVE AGREED ON?

15 MR. FLEMING: I BELIEVE WE -- I'LL LET MR. KULP. HE'S
16 BEEN HANDLING THAT, SIR. I'LL LET HIM ---

17 MR. KULP: WELL, JUDGE, WE CAN DEAL WITH THAT A LITTLE
18 BIT LATER. WE'VE KIND OF ---

19 THE COURT: WELL ---

20 MR. KULP: I KNOW I NEED TO GET -- I KNOW YOU WANT TO GET
21 THAT DONE BECAUSE IT HAS TO BE SENT OUT BY THE CLERK AND I
22 KNOW THAT SHE ---

23 THE COURT: EXACTLY, WE GOT TO GET THESE THINGS OUT, GOT
24 TO HAVE A LOT OF JURORS AND IT'S GOT -- WE GOT TO GET ---

25 MR. KULP: UNDERSTAND.

1 BUT COULD WE DEAL WITH THAT A LITTLE BIT LATER?

2 MAYBE ---

3 THE COURT: YOU TALKING ABOUT TODAY OR WHEN?

4 MR. KULP: TODAY.

5 THE COURT: OH, OKAY.

6 MR. KULP: YES, SIR, AFTER THE ---

7 THE COURT: WELL, IF YOU'LL JUST PREPARE THE
8 QUESTIONNAIRE WITH A CONSENT ORDER ON IT OR SOMETHING AND
9 Y'ALL GET THE THING SIGNED ---

10 MR. KULP: YES, SIR.

11 THE COURT: I'LL GO AHEAD AND DO IT AND THAT THE -- AND I
12 ALSO HAD A LETTER THAT WAS PURPOSED ABOUT SCHEDULING MONDAY,
13 AUGUST 8 -- LET'S SEE. NO, SEPTEMBER 21, IF ANYBODY WISHES TO
14 BE EXCUSED, THAT WE'D HAVE A HEARING ON THOSE AHEAD OF TIME SO
15 THAT WE COULD GET THAT OUT OF THE WAY. DO YOU HAVE A COPY OF
16 THAT PURPOSED LETTER?

17 MR. KULP: I DO, YOUR HONOR, RIGHT HERE IN FRONT OF ME.

18 THE COURT: AND SO WHAT I -- I WANT TO INCORPORATE ALL OF
19 THAT WITHIN -- ON THE RECORD OR WITH AN ORDER SO THAT WE CAN
20 GET THAT DONE. SO YOU WILL HAVE THAT TO ME TODAY, OF WHAT
21 Y'ALL -- WITH WHAT IS SUITABLE WITH YOU?

22 MR. KULP: YES, SIR, I'LL COORDINATE IT WITH THE SOLICI-
23 TOR AND WE'LL GET THAT TO YOU TODAY.

24 THE COURT: EXCELLENT.

25 MR. KULP: A PURPOSED CONSENT ORDER.

1 THE COURT: ALL RIGHT.

2 MR. KULP: YES, SIR.

3 THE COURT: ALL RIGHT, GO AHEAD, THEN. I WANTED TO MAKE
4 SURE WE GOT TOUCHED ON THOSE MATTERS.

5 MR. FLEMING: ALL RIGHT, SIR, AND THE LAST THING IS WE
6 MADE A REQUEST FOR RAP SHEETS ON ALL NON-EXPERT WITNESSES. OF
7 COURSE THE SOLICITOR CONSENTED BUT WE STILL HAVE NOT RECEIVED
8 THOSE. I WOULD ASK THAT IF WE CAN GET THOSE BY FRIDAY.
9 CERTAINLY THE SHERIFF'S OFFICE HAS THE ABILITY TO DO THAT
10 MOMENTARILY.

11 MR. MURDAUGH: I WILL ATTEMPT TO DO IT BY FRIDAY; I CAN'T
12 PROMISE BY FRIDAY.

13 I CAN ASSURE THE COURT THAT WE WILL ATTEMPT TO DO THAT.

14 THE COURT: OKAY.

15 MR. FLEMING: THANK YOU, SIR.

16 THE COURT: READY TO PROCEED IN THE HEARING?

17 MR. FLEMING: YES, SIR.

18 MR. MURDAUGH: NOW, YOUR HONOR, PLEASE, AT THE LAST
19 HEARING THERE WAS SOME TALK OF HAVING AN ID LINEUP. I HAVE
20 BEEN INFORMED THAT THAT WAS NOT DESIRED BY THE DEFENSE LAW-
21 YERS.

22 MR. FLEMING: YOUR HONOR, WE -- OUR POSITION ON THAT IS
23 FAIRLY SUCCINCT. WHILE -- WHILE WE ARE CERTAINLY WILLING TO
24 COMPLY WITH ANY ORDER OF THIS COURT, WE -- AFTER CONSULTATION
25 WITH OUR CLIENT, MR. ROGERS, AND FULLY DISCUSSING THE SITUA-

1 TION, WE CANNOT CONSENT TO PARTICIPATE IN ANY WAY IN A LINEUP
2 PROCEDURE, AS WE HAVE CONTENDED AND STILL CONTEND THAT THE
3 PRIOR EXPOSURE OF THIS WITNESS TO THIS DEFENDANT IN COURT AND
4 OTHERWISE, CONSTITUTES IMPRESSIBLE PRIOR TAIN^{impermissible}T.

5 THE COURT: WELL, LET ME JUST SAY THIS. WE GONE HAVE
6 THIS HEARING; WE ALREADY HAD ONE OF THEM. THIS COURT IS OPEN
7 TO ANY EVIDENCE YOU WISH TO PRESENT. YOU MAKE ARGUMENTS BUT I
8 HAVEN'T SEEN ANY EVIDENCE OF ANY PRIOR TAIN^{impermissible}T. AND SO IF YOU
9 WISH TO OFFER EVIDENCE, THAT'S FINE.

10 WHAT WE DISCUSSED AT THE LAST TIME, IF MY MEMORY SERVES
11 ME CORRECT, WAS THAT YOU WERE, IN EFFECT, GOING TO HAVE A
12 LINEUP HERE IN THE COURTROOM AND THEN WE HAD SOME DISCUSSIONS,
13 I DID WITH THE LAWYERS, THAT SINCE THIS IS A REQUEST OF THE
14 DEFENSE, EITHER HERE OR AT THE JAIL BUT HAVE A LINEUP SITUA-
15 TION THAT Y'ALL WOULD MONITOR AND MAKE SURE THAT YOU WERE
16 SATISFIED WITH THE FAIRNESS OF IT. AND IF YOU WANTED TO DO IT
17 HERE, THAT WAS FINE BUT IT TOOK SOME TIME TO PREPARE IT.

18 IN OTHER WORDS, HAVE THE DEFENDANT SEATED WITH SEVERAL
19 OTHER, FOUR OR FIVE OR WHATEVER, OTHER YOUNG BLACK MALES SO
20 THAT THE -- BUT I'M MY IMPRESSION THAT, HAVING BEEN GIVEN THAT
21 OPPORTUNITY, THAT YOU DON'T WANT THAT, YOU DON'T WANT TO GO
22 THAT ROUTE, IS THAT CORRECT?

23 MR. FLEMING: WE -- WE CANNOT CONSENT TO PARTICIPATING IN
24 THAT.

25 THE COURT: WELL, IT WAS NOT A QUESTION OF CONSENTING; WE

1 WERE DOING IT AT YOUR -- TO ACCOMMODATE YOU.

2 IS THAT NOT THE WAY I RECALL IT. HOW DO YOU THINK,
3 SOLICITOR?

4 MR. MURDAUGH: THAT IS MY RECOLLECTION EXPRESSLY, SIR.

5 I . . .

6 THE COURT: IF YOU DON'T WANT IT YOU DON'T HAVE TO HAVE
7 IT. IT WAS DONE JUST AS AN ACCOMMODATION IN THE EVENT THAT
8 YOU WERE INTERESTED IN DOING THAT.

9 MR. FLEMING: YES, SIR.

10 MR. KULP: I KNOW, AND, YOUR HONOR, FOR THE RECORD, AND
11 TO CLARIFY THAT, THE WITNESS AND THE WITNESS' ABILITY TO
12 IDENTIFY THE DEFENDANT IS -- IS WITHIN THE PREVIEW AND THE
13 PROVINCE AND -- AND BURDEN OF THE STATE. AND EITHER THE
14 WITNESS CAN IDENTIFY THE PERSON OR NOT. AND WHILE I UNDER-
15 STAND THIS LANGUAGE ABOUT ACCOMMODATION, THAT'S NOT OUR BURDEN
16 AND AFTER CONSULTATION WITH OUR CLIENT, FURTHER RESEARCH, YOU
17 KNOW, IF, IN FACT -- WE WILL LOSE PART OF OUR BURDEN TO -- TO
18 PARTICIPATE IN THAT BUT, AS MR. FLEMING SAID, THE COURT -- THE
19 SOLICITOR -- IT HAPPENS SOMETIMES WHERE SOMEONE REFUSES TO
20 PARTICIPATE IN A LINEUP, THE COURT MIGHT IN FACT ORDER THAT.
21 AND THE CASES CLEARLY HOLD THAT THE COURT MAY DO THAT. AS
22 LONG AS OTHER ASPECTS OF FAIRNESS ARE COMPLIED WITH.

23 HOWEVER, I UNDERSTAND YOUR PERSPECTIVE, YOUR HONOR, ABOUT
24 PRIOR TAINT BUT WE HAVE CERTAINLY ALLEGED AND ARGUED THAT WE
25 BELIEVE IT'S THE CASE THAT, NUMBER ONE, THE WITNESS IN THIS

1 CASE AND THE ONE WE'VE ALREADY HEARD FROM ON OUR PREVIOUS
2 HEARING COULD NOT IDENTIFY THE DEFENDANT IN A PHOTOGRAPHIC
3 ARRAY; THE THEREAFTER THERE WAS SOME EXPOSURE OF THE WITNESS
4 TO THE DEFENDANT IN A SETTING THAT WOULD CONSTITUTE A SHOWUP
5 OR A ONE-ON-ONE OR IN SUCH CIRCUMSTANCES. THAT'S WHAT WE MEAN
6 BY TAIN, WHERE OBVIOUSLY THE PERSON WHO WAS NAMED ---

7 THE COURT: WELL, OF COURSE, WE'VE ALREADY CONCLUDED ONE
8 HEARING.

9 MR. KULP: I'M AWARE OF THAT, YOUR HONOR.

10 THE COURT: AND WE'RE GOING TO HAVE THIS ONE AND,
11 BASICALLY, THERE'S TWO WAYS WE CAN DO IT; EITHER WE
12 COULD -- BUT THE STATE IS ENTITLED -- IF YOU DON'T WANT TO
13 PRESENT HIM IN A LINEUP SITUATION OR SOME OTHER WAY TO ENSURE
14 YOURSELVES THAT THE WITNESS -- THERE'S THE FAIRNESS OF IT.
15 THEN THE STATE IS LEFT WITH NOTHING ELSE TO DO BUT THE OLD-
16 FASHIONED WAY, IS TO BRING THE WITNESS IN AND SEE IF SHE CAN
17 IDENTIFY HIM HERE IN COURT. I MEAN THAT'S THE ONLY THING,
18 ONLY WAY I SEE IT. AM I INCORRECT?

19 MR. KULP: I UNDERSTAND, YOUR HONOR, BUT -- BUT WE THINK
20 THAT, WITHOUT BEING CALLOUS, THE CHIPS HAVE TO FALL WHERE THEY
21 MAY AND, IN FACT, WHAT HAS HAPPENED AND TRANSPIRED PRIOR TO
22 THIS OCCASION IS A MATTER OF FACT AND -- AND THAT'S OUR
23 POSITION.

24 THANK YOU, JUDGE.

25 THE COURT: SO WE'RE NOW READY TO PROCEED AND ---

1 MR. KULP: WE ARE, YOUR HONOR.

2 THE COURT: --- IT WOULD BE APPROPRIATE, I BELIEVE, TO
3 BRING IN THE WITNESS AND PROCEED WITH THE NEAL V BIGGERS
4 HEARING, IS THAT CORRECT?

5 MR. FLEMING: YOUR HONOR, IF I MAY, FOR THE RECORD, THE
6 WITNESS HAS BEEN IN SINCE THE CALL OF THIS MATTER.

7 MR. MURDAUGH: THAT IS CORRECT, SIR, AND THE REASON FOR
8 THAT IS BECAUSE OF THEIR WITHDRAWAL OF THE -- MY UNDERSTANDING
9 OF ---

10 THE COURT: WELL, THAT'S RIGHT, THAT WASN'T -- IT WASN'T
11 DONE THIS MORNING; THAT WAS DONE SOME TIME AGO. BECAUSE IT
12 WAS GONE TAKE US -- WE FOUND OUT THE LAST TIME THAT IN ORDER
13 TO HAVE THIS PARTICULAR ARRANGEMENT IT TOOK WE WERE -- IT TOOK
14 A TREMENDOUS AMOUNT OF PREPARATION. WITH ATTORNEYS FOR THE
15 OTHER PERSONS AND ALL THAT SORT OF THING BEING INVOLVED.

16 MR. KULP: BEG THE COURT'S INDULGENCE ONE SECOND.

17 JUST FOR CLARITY SAKE, YOUR HONOR, COCOUNSEL ADVISES ME
18 THAT HE ADVISED THE SOLICITOR THAT WE WERE NOT GOING TO
19 PARTICIPATE IN WHAT WAS DISCUSSED AT OUR LAST HEARING AND THAT
20 IS EITHER AN IN-COURT LINEUP OR ONE CONDUCTED AT THE JAIL.
21 PRIOR TO THIS MORNING. IN OTHER WORDS, WE DIDN'T -- THAT WAS
22 COMMUNICATED.

23 AND, SECONDLY, YOU KNOW, NOT KNOWING -- IF I RECALL
24 CORRECTLY, AND, OF COURSE, THE TRANSCRIPT WILL REFLECT IT, YOU
25 KNOW, BUT AT THE END OF THE LAST HEARING, WHAT I RECALL WAS IF

1 THAT THE ISSUE ABOUT A IN-COURT LINEUP OR ONE AT THE JAIL CAME
2 UP AND I WOULD SUGGEST TO THE COURT, SUBMIT THAT THAT
3 WAS -- THAT ISSUE DID NOT COME UP AS A RESULT OF ANY MOTION BY
4 THE DEFENDANT BUT WE -- WE AGREED TO CONSIDER THAT WHEN THE
5 SOLICITOR BROUGHT IT UP BEFORE THE SECOND WITNESS CAME TO THE
6 STAND.

7 THE COURT: AND WE AGREED TO CONTINUE THE HEARING SO THAT
8 EVERYONE COULD SIT BACK, GIVE SOME THOUGHT TO IT AND HOW IT
9 WAS GONE DO IT AND EVERYTHING AND Y'ALL DECIDED ---

10 MR. KULP: YES, SIR.

11 THE COURT: --- TO GO FORWARD EXACTLY LIKE WE DID WITH
12 THE FIRST WITNESS.

13 MR. KULP: YES, SIR. WELL, WE -- OUR POSITION IS WE MADE
14 THE MOTION. TO SUPPRESS OR EXCLUDE IN-COURT IDENTIFICATION.

15 THE COURT: THAT'S RIGHT. AND NOW WE'RE HAVING A
16 HEARING ON IT.

17 MR. KULP: CORRECT. THAT IN RESPONSE TO OUR MOTION, THE
18 BURDEN OF PROOF THEN FEEL ON THE SOLICITOR. THE SOLICITOR
19 CALLED HIS WITNESS THEN, IN THE PRIOR HEARING, AND THEN WE
20 PROCEEDED THROUGH THAT FASHION. IN OTHER WORDS, WE'RE NOT
21 CALLING HIS WITNESSES TO SEE IF THEY'RE SUFFICIENT. SO, YOU
22 KNOW, WE MADE THE MOTION; HE BEARS THE BURDEN OF PROOF.

23 THE COURT: THAT'S RIGHT.

24 MR. MURDAUGH: JOCELYN WENDELL.

25 THE COURT: COME FORWARD, PLEASE.

JOCELYN ELIZABETH SHOUGH, DIRECT EXAMINATION

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1 PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT
2 HAND. RAISE YOUR RIGHT HAND.

3 JOCELYN ELIZABETH SHOUGH,
4 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

5 THE COURT: HAVE A SEAT.

6 DIRECT EXAMINATION

7 BY MR. MURDAUGH:

8 Q. MISS SHOUGH, WERE YOU FORMERLY JOCELYN WENDELL?

9 A. NO, THAT'S MY FATHER'S LAST NAME.

10 Q. OKAY. HAVE YOU AND I BEEN INTRODUCED AS JOCELYN WENDELL?

11 A. YES.

12 Q. OKAY.

13 THE COURT: EXCUSE ME. GET CLOSE TO THE MICROPHONE. YOU
14 CAN PULL IT CLOSE AND SPEAK RIGHT INTO IT. YOU HAVE SORT OF A
15 SOFT VOICE AND THERE'S SOME WATER THERE FOR YOUR ---

16 A. THANK YOU.

17 THE COURT: --- COMFORT IF YOU NEED IT.

18 Q. MISS WENDELL, I ASK YOU -- I ASK YOU TO DIRECT YOUR
19 ATTENTION TO JANUARY 2, 1999, AND ASK YOU IF YOU WERE AT A
20 DWELLING ON COFFIN POINT?

21 A. YES, SIR.

22 Q. AND WHOSE DWELLING WAS THAT?

23 A. PAUL RIESCHL.

24 Q. OKAY. WHAT IS PAUL REISCHL'S CONNECTION WITH YOU?

25 A. HE -- HE WAS A FRIEND OF MY UNCLE'S.

JOCELYN ELIZABETH SHOUGH, DIRECT EXAMINATION

133

1 Q. OKAY. WHAT TIME DID YOU GET TO THAT DWELLING THAT DAY?

2 A. ABOUT 12:30. SOMEWHERE AROUND TWELVE -- MIDNIGHT.

3 Q. DAYTIME OR NIGHTTIME?

4 A. NIGHTTIME. MIDNIGHT.

5 Q. OKAY. WHEN YOU ARRIVED AT THE DWELLING WHO WAS THERE?

6 A. PAUL MITCHELL -- I MEAN NOT PAUL MITCHELL. PAUL, JOHN,
7 TAVARUS, WEST, JONATHAN AND ERIC.

8 WOULD YOU LIKE ME TO GO THROUGH ALL THE LAST NAMES FOR
9 YOU, TOO?

10 Q. PLEASE.

11 A. OKAY. PAUL REISCHL. I DID NOT -- I HAVE NO IDEA WHAT
12 JOHN'S LAST NAME IS. JOHN, TAVARUS ROGERS, JONATHAN GADSEN,
13 ERIC GADSEN AND WEST. I DON'T KNOW HIS LAST NAME.

14 Q. OKAY.

15 A. AND THAT'S IT.

16 Q. ANYBODY ELSE THERE?

17 A. NO. THE THREE OF US ARRIVED.

18 Q. MA'AM?

19 A. THE THREE OF US -- OH, TOBY, TOBY WAS THERE.

20 THE COURT: EXCUSE ME.

21 THIS GENTLEMAN RIGHT HERE, I WANT HIM REMOVED FROM THE
22 COURTROOM. HE WAS KIND OF NODDING OR SOMETHING LIKE THAT. I
23 DON'T WANT THERE TO BE ANY QUESTION AND, IN FACT, I HAD A
24 LITTLE PROBLEM WITH HIM LAST TIME. SO JUST REMOVE HIM FROM
25 THE COURTROOM.

JOCELYN ELIZABETH SHOUGH, DIRECT EXAMINATION

134

1 Q. WHO ARRIVED WITH YOU?

2 A. MITCHELL AND KRISTAL.

3 Q. MITCHELL?

4 A. MITCHELL. JAMES RILEY AND KRISTAL WIRE, I THINK IS HER
5 LAST NAME.

6 Q. OKAY, MA'AM, AND DID YOU KNOW THE PEOPLE THAT YOU HAVE
7 IDENTIFIED AS BEING AT THAT DWELLING WHEN YOU ARRIVED THERE?

8 A. NO, SIR. I DIDN'T KNOW ANY OF THEM.

9 Q. YOU DID NOT KNOW ANY OF THEM?

10 A. NO.

11 Q. OKAY, WERE YOU INTRODUCED TO THEM?

12 A. YES, I WAS.

13 Q. OKAY, AND HOW LONG DID YOU STAY AT THAT DWELLING?

14 A. ABOUT FOUR HOURS.

15 Q. OKAY. AT SOME POINT IN TIME DID THE TWO COLLINS, WEST AND
16 TAVARUS ROGERS LEAVE THAT DWELLING?

17 A. YES, SIR.

18 Q. ABOUT WHAT TIME WAS THAT?

19 A. I COULD NOT TELL YOU, SIR.

20 Q. OKAY. DID ANY OF -- BODY COME BACK TO THE DWELLING THAT
21 NIGHT?

22 A. YES, SIR.

23 Q. WHO DID?

24 A. I ONLY RECOGNIZED TAVARUS AND WEST.

25 Q. TAVARUS AND WEST?

JOCELYN ELIZABETH SHOUGH, DIRECT EXAMINATION

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1 A. UH-HUH.

2 Q. OKAY. TELL US WHAT HAPPENED WHEN THEY CAME BACK TO THE
3 DWELLING.

4 A. THEY BROUGHT GUNS AND THEY TOLD EVERYBODY TO GET DOWN.

5 Q. NOW, PLEASE DO THIS FOR ME. WHEN YOU SAY THEY, I NEED FOR
6 YOU TO GIVE ME NAMES.

7 A. OKAY.

8 Q. AND TELL ME WHAT WAS DONE.

9 A. TAVARUS AND WEST BROUGHT GUNS WITH THEM AND ---

10 Q. WHAT KIND OF GUNS?

11 A. BIG GUNS. THAT'S ALL I KNOW. TWELVE GAUGES.

12 Q. PISTOLS, RIFLES, SHOTGUNS OR YOU KNOW?

13 A. ABOUT THAT BIG. BIG GUNS, LIKE A .12 GAUGE OR SOMETHING
14 LIKE THAT. I DON'T KNOW GUNS.

15 AND THEY CAME IN AND THEY YELLED AT EVERYBODY TO GET DOWN
16 AND THEY -- OR, I'M SORRY, TAVARUS TOOK PAUL BACK INTO THE
17 BACK ROOM.

18 Q. WHO TOLD EVERYBODY TO GET DOWN?

19 A. TAVARUS.

20 Q. OKAY.

21 A. AND THEN TAVARUS TOOK PAUL INTO THE BACK ROOM.

22 Q. PAUL?

23 A. PAUL REISCHL.

24 Q. REISCHL.

25 A. AND HE TOOK HIM INTO THE BACK ROOM. I GUESS HE TOOK SOME

JOCELYN ELIZABETH SHOUGH, DIRECT EXAMINATION

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1 STUFF OFF OF HIM. THAT'S WHAT IT SOUNDED LIKE FROM THE WAY
2 THAT HE WAS YELLING AT HIM. AND THEN HE CAME BACK IN. AFTER
3 HE HAD SHOT PAUL HE CAME BACK IN AND SHOT MITCHELL.

4 Q. OKAY.

5 A. AND THEN LEFT.

6 Q. WHAT CAUSED THE -- DID ANYTHING OCCUR TO CAUSE THE SHOOT-
7 ING OF MITCHELL?

8 A. (NO RESPONSE.)

9 Q. THAT YOU SAW?

10 A. NOT THAT I'M AWARE OF, NO, EXCEPT FOR HE MIGHT'VE SHOT HIM
11 BECAUSE HE GOT UP. HE WAS UP WHEN HE CAME INTO THE ROOM.
12 MITCHELL HAD GOTTEN UP OFF THE GROUND. AFTER HE'D INSTRUCTED
13 US TO STAY DOWN ON THE GROUND.

14 Q. OKAY. YOU HAVE SAID THAT TAVARUS ROGERS DID THIS.

15 A. YES, SIR.

16 Q. HOW DID YOU IDENTIFY TAVARUS ROGERS?

17 A. BECAUSE I SAW HIS FACE.

18 Q. OKAY, MA'AM.

19 MR. KULP: COULD THE WITNESS SPEAK UP JUST A LITTLE? SHE
20 DOES HAVE A SOFT VOICE.

21 THE COURT: YEAH.

22 A. I'M SORRY.

23 THE COURT: IF YOU WANT TO, YOU CAN TAKE THAT THING OUT
24 OF THE MICROPHONE AND HOLD IT A LITTLE CLOSER TO YOU.

25 TRY IT THAT WAY. LET'S TRY IT THAT WAY.

JOCELYN ELIZABETH SHOUGH, DIRECT EXAMINATION

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1 AND YOU CAN MOVE THAT SO IT'S NOT IN FRONT OF YOUR FACE,
2 TOO.

3 NO, I'M TALKING ABOUT THIS. JUST MOVE THAT OUT OF YOUR
4 WAY.

5 A. OKAY.

6 THE COURT: I BELIEVE THAT MIGHT BE A LITTLE BETTER.

7 MR. KULP: THANK YOU, JUDGE.

8 Q. DID YOU -- THE PERSON THAT YOU SAY IS TAVARUS ROGERS, DID
9 YOU SEE HIM THAT NIGHT?

10 A. YES, I DID.

11 Q. OKAY, MA'AM. DO YOU SEE HIM -- HOW CLOSE WERE YOU TO HIM?

12 A. PROBABLY A LITTLE BIT FURTHER THAN ME AND YOU.

13 RIGHT ABOUT THERE.

14 Q. OKAY, MA'AM. ABOUT FIFTEEN FEET?

15 A. SOMEWHAT.

16 Q. OKAY.

17 A. FROM THE DOOR TO THE COUCH, WHERE I WAS SITTING.

18 Q. OKAY, MA'AM. DID YOU HAVE A CLEAR VIEW OF HIM?

19 A. YES, SIR. I DID.

20 Q. WERE YOU BEING HELD AT GUNPOINT BY THE PERSON YOU IDENTIFY
21 AS WEST?

22 A. YES, I WAS.

23 Q. OKAY, MA'AM.

24 A. NOT AT THE MOMENT THAT I SAW HIM.

25 JUST IF YOU'RE INTERESTED.

JOCELYN ELIZABETH SHOUGH, DIRECT EXAMINATION

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1 Q. MA'AM?

2 A. JUST IF YOU'RE INTERESTED, IT'S NOT THE MOMENT THAT I SAW
3 HIM WEST HAD US UNDER GUNPOINT. AT A LATER POINT.

4 Q. OKAY. WERE ANY OF THE PEOPLE THAT WERE SHOT RELATED TO
5 YOU?

6 A. YES, SIR.

7 Q. AND WHO WAS?

8 A. JAMES RILEY. WAS MY UNCLE.

9 Q. AFTER THE INCIDENT THAT OCCURRED WHAT DID THE PERSON
10 YOU'VE IDENTIFIED AS TAVARUS ROGERS AND WEST DO?

11 A. THEY RAN, THEY LEFT.

12 Q. EXCUSE ME?

13 A. THEY RAN. THEY LEFT. THEY TOOK OFF.

14 Q. AND DID SOMEBODY REPORT IT TO THE SHERIFF'S OFFICE?

15 A. WE DID.

16 Q. AND DID Y'ALL COOPERATE WITH THE INVESTIGATION WITH THE
17 SHERIFF ---

18 A. YES, SIR.

19 Q. --- FOR SOME PERIOD OF TIME?

20 I SHOW YOU ~~STATE'S~~ EXHIBIT NUMBER ONE FOR THE PURPOSES OF
21 THIS HEARING AND ASK YOU IF YOU WERE SHOWN THAT PHOTO LINEUP?

22 A. YES, SIR.

23 Q. WERE YOU ABLE TO PICK OUT TAVARUS ROGERS OR WEST OUT OF
24 THAT?

25 A. NO, I WASN'T.

JOCELYN ELIZABETH SHOUGH, DIRECT EXAMINATION

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1 Q. OKAY, I SHOW YOU STATE'S EXHIBIT NUMBER TWO FOR IDENTIFI-
2 CATION AND ASK YOU IF YOU WERE SHOWN THAT PHOTO LINEUP.

3 A. YES, SIR.

4 Q. AND WERE YOU ABLE TO PICK OUT TAVARUS ROGERS OUT OF THAT?

5 A. NO, SIR.

6 Q. AND I SHOW YOU STATE'S EXHIBIT NUMBER THREE AND ASK YOU IF
7 YOU WERE SHOWN THAT LINEUP.

8 A. YES, SIR.

9 Q. AND WERE YOU ABLE TO PICK OUT TAVARUS ROGERS OUT OF THAT?

10 A. NO, SIR.

11 Q. OKAY, MA'AM.

12 DO YOU SEE TAVARUS ROGERS IN COURT TODAY?

13 A. YES, SIR.

14 Q. AND WHERE IS HE?

15 A. AT THE LITTLE -- I DON'T -- HE'S RIGHT THERE.

16 Q. POINT TO HIM FOR ME.

17 A. (WITNESS COMPLIES.)

18 Q. CAN YOU DESCRIBE WHAT HE IS WEARING?

19 A. AN ORANGE JUMP SUIT.

20 Q. OKAY. SEATED AT COUNSEL TABLE?

21 A. YES, SIR.

22 MR. MURDAUGH: OKAY.

23 I HAVE NO FURTHER QUESTIONS.

24 MR. KULP: MAY IT PLEASE THE COURT, YOUR HONOR.

25 THE COURT: MR. KULP.

JOCELYN ELIZABETH SHOUGH, CROSS EXAMINATION

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1 CROSS EXAMINATION2 BY MR. KULP:

3 Q. MORNING, MA'AM.

4 A. GOOD MORNING.

5 Q. IT'S GOOD TO SEE YOU AGAIN.

6 A. GOOD TO SEE YOU.

7 Q. WE SPOKE IN THE PRESENCE OF THE SOLICITOR A WHILE BACK ---

8 A. YES.

9 Q. --- HERE IN THE COURTHOUSE.

10 A. YES, SIR.

11 Q. THAT'S WHEN I MET YOU.

12 A. UH-HUH.

13 Q. NOW, REGARDING THE EXHIBITS THE SOLICITOR ASKED YOU ABOUT,
14 EXHIBIT ONE, TWO AND THREE.

15 A. YES, SIR.

16 Q. PHOTO LINEUP. DO YOU RECALL HOW LONG AFTER THIS INCIDENT
17 YOU EXAMINED THOSE EXHIBITS?18 A. I EXAMINED ONE AND TWO, THE -- I EXAMINED -- I EXAMINED
19 ONE AND TWO THE SAME DAY, AS I RECALL, THAT THE INCIDENT
20 HAPPENED. THREE, I HADN'T SEEN, I DON'T KNOW WHEN IT FIRST
21 TIME I SAW THAT WAS BUT NOT FOR A GOOD WHILE AFTERWARDS.22 Q. AND DID YOU -- PARDON ME. DID YOU HAVE OCCASION JUST
23 PRIOR TO OUR LAST HEARING HERE AT THE COURTHOUSE TO EXAMINE
24 THOSE EXHIBITS ---

25 A. YES, SIR.

JOCELYN ELIZABETH SHOUGH, CROSS EXAMINATION

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1 Q. --- THAT MORNING AT ANY TIME?

2 A. YES, SIR.

3 Q. AND WAS THAT A RESULT OF THE SOLICITOR EXHIBITING THOSE
4 PHOTOGRAPHIC ARRAYS, EXHIBITS ONE, TWO AND THREE, TO YOU ---

5 A. YES, SIR.

6 Q. --- OUTSIDE THE COURTROOM IN A LITTLE MEETING ROOM?

7 A. YES, SIR.

8 Q. AND IS IT TRUE IN THAT CASE THAT WHEN YOU EXAMINED THOSE
9 PHOTOGRAPHS, AT THAT POINT IN TIME, THAT YOU'VE IDENTIFIED,
10 YOU COULDN'T IDENTIFY MR. ROGERS FROM ANY OF THOSE PHOTOGRAPHS
11 DEPICTED IN EACH OF THOSE EXHIBITS ONE, TWO AND THREE? ISN'T
12 THAT CORRECT?

13 A. YES, SIR.

14 Q. NOW, LET ME ASK YOU ---

15 MR. KULP: BEG THE COURT'S INDULGENCE.

16 THE COURT: THAT'S FINE.

17 Q. NOW, IN ADDITION TO BEING SHOWN EXHIBITS ONE AND TWO ON
18 THE DAY OF THE INCIDENT AS YOU JUST TESTIFIED, WHEN THE POLICE
19 EXHIBITED THEM TO YOU, YOU ALSO PROVIDED INFORMATION TO THEM
20 ABOUT YOUR KNOWLEDGE OR OBSERVATIONS OF THE INCIDENT, CORRECT?

21 A. YES, SIR.

22 Q. AND YOU ACTUALLY SIGNED A STATEMENT THAT WAS PREPARED
23 EITHER IN YOUR WRITING OR IN SOMEONE'S WRITING DESCRIBING THE
24 EVENT?

25 A. YES, SIR.

JOCELYN ELIZABETH SHOUGH, CROSS EXAMINATION

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1 Q. AND DID YOU -- WERE YOU GIVEN A COPY OF THAT STATEMENT?

2 A. MY FATHER WAS GIVEN A COPY.

3 Q. AND AFTER, AFTER HE WAS GIVEN A COPY DID HE ALLOW YOU TO
4 DID YOU HAVE THE OPPORTUNITY TO REVIEW THAT STATEMENT?

5 A. NO, SIR, I HAVEN'T. THE ONLY TIME I'VE EVER SEEN MY
6 REPORT IS JUST A FEW DAYS AGO. AND I HADN'T CONJURED IT UP.
7 I DIDN'T -- ON PURPOSE I HADN'T CONJURED IT UP. I HADN'T
8 ASKED MY FATHER FOR IT. BECAUSE I DIDN'T WANT TO READ IT.
9 THAT WAS OF MY OWN ACCORD.

10 Q. OKAY. BUT YOU HAVE READ IT PRIOR TO TODAY?

11 A. YES, SIR.

12 Q. OKAY. NOW, WHEN YOU PROVIDED INFORMATION TO THE POLICE,
13 AT THE TIME YOU GAVE THE STATEMENT AS TO THE ISSUE OF
14 IDENTIFICATION OF MR. ROGERS, AS CONTAINED IN THAT STATEMENT
15 WHICH YOU HAVE NOW READ, YOU DID NOT DESCRIBE TO THE POLICE
16 THAT DAY OF THE CRIME, AND I STATE, MR. ROGERS' HEIGHT, DID
17 YOU?

18 A. THEY ASKED ME HIS HEIGHT. I WASN'T QUITE SURE. I GAVE
19 THEM AN ESTIMATE OF HIS HEIGHT, OF WHAT I THOUGHT IT WOULD BE.
20 WAS, I'M SORRY.

21 Q. OKAY, AND DO YOU RECALL, HAVING READ THE STATEMENT, WHAT
22 DETAILED INFORMATION YOU PROVIDED TO THEM ABOUT THE APPEARANCE
23 OF MR. ROGERS AS YOU'VE NOW TESTIFIED WHEN YOU TESTIFIED HIM
24 COMING BACK INTO THE LOCATION?

25 A. (NO RESPONSE.).

JOCELYN ELIZABETH SHOUGH, CROSS EXAMINATION

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1 Q. WHAT CAN YOU TELL US ABOUT HIS APPEARANCE THAT YOU GAVE
2 THE POLICE THAT NIGHT? THAT DAY OF THE INCIDENT.

3 A. THE THING THAT STUCK OUT THE MOST WAS HIS HAIR. ~~I DID~~
4 ~~RECOGNIZE HIM THAT NIGHT BY HIS FACE.~~ BUT I HADN'T BEEN MORE
5 THAN FIVE FEET CLOSE TO HIM OR ANYTHING LIKE THAT. BUT I HAD
6 RECOGNIZED HIM AS THE MAN WHO INTRODUCED HIMSELF TO ME.

7 THE ONLY THING -- THE ONLY THING THAT I RECOGNIZED THAT I
8 COULD TELL ABOUT HIM WAS HIS HAIR. I MEAN OTHER THAN THAT HE
9 JUST LOOKED LIKE A NORMAL PERSON. THAT WAS THE ONLY THING OUT
10 OF PLACE THAT I COULD'VE HELPED THEM WITH.

11 Q. DID YOU -- DID YOU PUT THAT IN YOUR STATEMENT?

12 A. YES, SIR.

13 Q. NOW, YOU'VE INDICATED THAT ---

14 MR. KULP: WELL, LET ME TRY TO GET THIS IN SEQUENCE.

15 Q. I THINK YOU TESTIFIED ON DIRECT EXAMINATION THAT WHEN
16 PEOPLE CAME IN THE SECOND TIME TO THE LOCATION, THAT YOU ONLY
17 RECOGNIZED TAVARUS AND WEST? CORRECT?

18 A. YES, SIR.

19 Q. WAS THAT YOUR TESTIMONY A FEW MINUTES AGO?

20 A. YES, SIR.

21 Q. HOW MANY PEOPLE CAME INTO THE LOCATION?

22 A. THE SECOND TIME?

23 Q. YES.

24 A. TWO.

25 Q. SO WHEN YOU SAID YOU ONLY RECOGNIZED THEM ---

JOCELYN ELIZABETH SHOUGH, CROSS EXAMINATION

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1 A. THOSE WERE THE ONLY MEN THERE WERE.

2 Q. NOW, YOU TESTIFIED HERE TODAY THAT MR. ROGERS CAME IN AND
3 THAT HE WAS CARRYING A FIREARM. A LARGE FIREARM.

4 A. YES, SIR.

5 Q. AND IT WAS NIGHTTIME, CORRECT?

6 A. YES, SIR.

7 Q. AND YOU WERE INSIDE THE TRAILER OF THE LOCATION?

8 A. YES, SIR. THE PORCH LIGHT WAS ON, ALSO.

9 Q. AND YOU DESCRIBED OR TESTIFIED, OR IS IT NOT THE CASE THAT
10 WHO -- THESE TWO PEOPLE WHO CAME IN WERE RUNNING?

11 A. NO, SIR.

12 Q. YOU DID NOT INDICATE THAT BEFORE?

13 A. NO, SIR.

14 Q. SO THEY CAUSALLY WALKED IN, SLOWLY?

15 A. NO, SIR.

16 Q. THEY MOVING QUICKLY?

17 A. OKAY ---

18 Q. CLARIFY THAT.

19 A. OKAY, I'M GONE EXPLAIN. HE CAME -- HE KNOCKED ON THE DOOR
20 AND JOHN, WHO WAS SITTING BESIDE ME, IN A CHAIR, ACROSS FROM

21 ME, GOT UP AND WENT TO THE DOOR. AND AS HE OPENED THE DOOR, I

22 GUESS -- IT MORE LIKE FLEW OPEN. I DON'T THINK THAT HE

23 ACTUALLY PULLED IT OPEN THAT HARD. I SAW THE TWO STANDING

24 THERE, WEST AND THERE. AND THEN THERE CAME IN, ATTEMPTING TO

25 PULL UP HIS MASK. HE CAME IN WITH HIS GUN AND HE STARTING

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1 HITTING JOHN. AND JOHN FELL OVER THE COUCH ON TO THE GROUND
2 AND WEST WAS JUST A LITTLE BEHIND HIM. NOT SEPARATED AT ALL.

3 AND THEY CAME -- THEY BOTH CAME SOMEWHERE INTO THE HOUSE,
4 INTO THE ROOM THAT WE WERE ALL IN.

5 Q. OKAY, AT THE TIME THAT YOU SAW THE TWO PEOPLE, WHEN JOHN
6 OPENED THE DOOR ON THE PORCH, AND THE PORCH LIGHT, THE MASKS
7 WERE IN TACK, WHERE THEY NOT?

8 A. NO, SIR.

9 Q. OKAY. AT THAT POINT THE MASKS HAD FALLEN OPEN?

10 A. YES, AS FAR AS TAVARUS.

11 Q. HOW ABOUT THE OTHER PERSON'S MASK?

12 A. WEST'S DIDN'T COME ON -- I MEAN OFF AT ALL.

13 Q. OKAY. SO YOU WERE UNABLE TO IDENTIFY THAT PERSON?

14 A. I WAS ABLE TO IDENTIFY HIM BY HIS CLOTHES THAT HE WAS
15 WEARING. HE'D WORN THEM EARLIER. AND THE FACT THAT HIS VOICE
16 WAS EXACTLY THE SAME AS THE MAN THAT HAD COME IN.

17 Q. OKAY. AND I BELIEVE YOU'VE INDICATED THAT YOU WERE ABLE
18 TO IDENTIFY MR. ROGERS BECAUSE THE AREA OF THE MASK THAT
19 OPENED SHOWED HIS EYES AND NOSE?

20 A. IT SHOWED -- HE HAD A LITTLE SLIT, RIGHT HERE, AND THEN A
21 PIECE WAS FALLING DOWN. FROM RIGHT HERE. AS SOON AS HE
22 OPENED THE DOOR IT KIND OF JUST FELL DOWN. I DON'T -- I NEVER
23 SAW HIS FACE.

24 WHEN I SAW HIM ATTEMPTING TO RECOVER IT AND AFTER HE WAS
25 ATTEMPTING TO RECOVER IT HE CAME IN, I DIDN'T LOOK. AT HIS

1 FACE WHILE HE WAS HITTING PAUL. I MEAN JOHN. I JUST LOOKED
2 AT JOHN. I DIDN'T FURTHER LOOK AT HIS FACE BUT I DID SEE IT
3 WHEN HE CAME IN.

4 Q. CORRECT. IN FACT, YOU INDICATED YOU OTHER DAY IN THE
5 COURTHOUSE THAT WHEN YOU WENT TO THE FLOOR YOU DIDN'T LOOK UP
6 AGAIN?

7 A. NO, I DID LOOK UP AGAIN. IN MY REPORT.

8 Q. THE YOU DID LOOK UP AGAIN?

9 A. YES, I DID.

10 Q. OKAY. LET'S GO BACK. WHEN HE CAME IN THE DOOR HOW MANY
11 SECONDS DID YOU HAVE THE OPPORTUNITY TO OBSERVE HIS EYE, OR
12 EYES AND NOSE?

13 A. I WAS SITTING THERE ON THE PHONE TALKING, AND WHEN THEY
14 CAME IN I LOOKED OVER TO SEE WHO WAS AT THE DOOR, JUST LIKE I
15 AM NOW. AND I STUDIED IT FOR A MINUTE AND THEN I WAS STILL
16 TALKING ON THE PHONE AND I WAS STILL LOOKING AT HIM AND I SAID
17 THEY HAVE MASKS ON. TO THE PERSON THAT I WAS ON THE PHONE
18 WITH, AND -- AND THEY JUST CAME IN AND I WAS STILL ON THE
19 PHONE. I JUST WASN'T PAYING ATTENTION TO THE PERSON THAT WAS
20 ON THE PHONE. BECAUSE I WAS WATCHING THEM. OR I WAS WATCHING
21 JOHN GET BEAT UP AT THAT TIME, BUT . . .

22 Q. BUT YOU DIDN'T SAY TO THE PERSON ON THE PHONE HERE COMES
23 SOMEONE WHO WAS HERE A LITTLE EARLIER?

24 A. NO, SIR.

25 Q. SO YOU DON'T RECALL HOW LONG OR HOW MANY SECONDS THAT YOU

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1 HAD TO OBSERVE?

2 A. NO, SIR.

3 Q. BUT YOU -- HOW LONG DID IT TAKE YOU TO IDENTIFY -- YOU
4 DIDN'T SAY THAT TO THE PERSON ON THE PHONE. HOW LONG DID IT
5 TAKE YOU TO IDENTIFY MR. ROGERS?

6 A. I KNEW IT WAS HIM AS SOON AS HE WALKED IN. I THOUGHT IT
7 WAS A PRANK.

8 I THOUGHT THAT, YOU KNOW, THE GUN AND THE MASK IS JUST
9 A -- I DON'T -- I DON'T KNOW EXACTLY WHAT I THOUGHT BUT I
10 JUST -- IT WASN'T SUPPOSED TO BE LIKE THAT. IS WHAT WAS GOING
11 IN MY -- ON IN MY MIND. IT WAS JUST THAT, YOU KNOW, THE GUY
12 THAT WAS HERE EARLIER IS NOW HERE IN A MASK.

13 THAT'S PAUL'S FRIEND, IS WHAT I WAS UNDERSTOOD. I
14 FIGURED, YOU KNOW -- I DON'T KNOW. I DIDN'T KNOW WHAT WAS
15 GOING ON BUT I DID THINK IT WAS A PRANK AT FIRST, WHILE THEY
16 WERE STANDING THERE AT THE DOOR. AND THEN WHEN THEY CAME IN
17 AND HE STARTED HITTING HIM, I KNEW IT WASN'T A PRANK.

18 Q. YOU COULDN'T IDENTIFY ANY CLOTHING THAT YOU SAY MR. ROGERS
19 WEST WEARING?

20 A. NO, I COULDN'T.

21 Q. ALL RIGHT. NOW, SO WITH THAT OPPORTUNITY THAT YOU
22 TESTIFIED TO SEE HIM, AND YOU'VE TESTIFIED YOU RECOGNIZED HIM
23 RIGHT OFF, CORRECT?

24 A. YES, SIR.

25 Q. YOU THEN, THAT DAY, EXAMINED TWO PHOTOGRAPHIC LINEUPS?

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1 A. YES, SIR.

2 Q. HAS ANYONE TOLD YOU SINCE THEN THAT MR. ROGERS' PICTURE
3 WAS IN THE LINEUP?

4 A. NO, SIR.

5 Q. NO ONE HAS?

6 YOU COULD NOT IDENTIFY ANYONE EITHER ONE OF THOSE,
7 EXHIBIT ONE OR TWO, BEING MR. ROGERS?

8 A. NO, SIR.

9 Q. WHEN YOU EXAMINED THOSE PHOTOGRAPHIC LINEUPS DID ANYONE
10 RESTRICT THE AMOUNT OF TIME THAT YOU HAD; THEY HURRY THROUGH
11 THAT?

12 A. NO, SIR.

13 Q. DID YOU HAVE AMPLE TIME AND OPPORTUNITY TO LOOK AT THOSE
14 PHOTOGRAPHS TO DETERMINE IF YOU COULD OR COULD NOT PICK OUT
15 MR. ROGERS FROM THOSE PHOTOGRAPHIC ARRAYS?

16 A. YES, SIR.

17 Q. AND AGAIN, YOU DID NOT? WEREN'T -- WEREN'T ABLE TO
18 IDENTIFY ANYONE AS BEING MR. ROGERS?

19 A. NO, SIR.

20 Q. NOW, YOU'VE TESTIFIED SOMETIME LATER YOU WERE SHOWN
21 EXHIBIT NUMBER THREE?

22 A. YES, SIR.

23 Q. A THIRD PHOTOGRAPHIC LINEUP, AND THERE YOU COULD NOT
24 IDENTIFY ANYONE AS BEING MR. ROGERS IN THAT LINEUP AS WELL?

25 A. THREE YEARS LATER, YES. NO, I COULD NOT.

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1 Q. CORRECT. AND -- WELL, WAIT A MINUTE. NUMBER THREE WAS
2 WHAT -- WAS NOT ONE YOU SAW ON THE DAY OF THE INCIDENT?

3 A. NO, SIR.

4 Q. OKAY. DO YOU REMEMBER WHEN YOU WERE SHOWN NUMBER THREE?

5 A. NO, SIR, I COULDN'T TELL YOU.

6 Q. DON'T REMEMBER?

7 A. NO, SIR.

8 Q. DID ANYTHING RUSH YOU THROUGH OR PROHIBIT YOU FROM HAVING
9 AMPLE OPPORTUNITY TO CAREFULLY OBSERVE THAT PHOTOGRAPHIC
10 ARRAY?

11 A. NO, SIR.

12 Q. OKAY. NOW, AFTER THE INCIDENT, ON WHAT OCCASION -- HAVE
13 YOUR READ ANY ARTICLES IN THE NEWSPAPER OR SEEN ANY MEDIA
14 COVERAGE ABOUT THIS INCIDENT AT ALL?

15 A. YES, SIR.

16 Q. YOU HAVE?

17 A. YES, SIR.

18 Q. AND PLEASE DESCRIBE THAT.

19 A. JUST MAIN ARTICLES IN THE NEWSPAPER ABOUT WHAT HAPPENED
20 AND, YOU KNOW, THE FUNERAL AND THINGS LIKE THAT. WE CUT THEM
21 OUT AND SAVED THEM. JUST TO SAY THAT, YOU KNOW, THERE WAS TO
22 MURDERS ON COFFIN POINT. THAT ARTICLE. AND JUST
23 LITTLE -- LITTLE ARTICLES THEY PUT IN HERE AND THERE.

24 Q. AND, IN FACT, YOUR FATHER HAD COLLECTED A GREAT DEAL OF
25 INFORMATION ABOUT THE CASE? I'M NOT CHALLENGING THAT BUT IT'S

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1 A FACT THAT HE HAS, CORRECT?

2 A. YES, SIR, IN A PHOTO ALBUM

3 Q. PHOTO ALBUM, AND YOU'VE HAD OPPORTUNITY TO REVIEW THAT
4 PHOTO ALBUM AS WELL?

5 A. YES, SIR.

6 Q. OKAY. AND IN THAT PHOTO ALBUM AND THOSE NEWS COVERAGE
7 STORIES WAS THERE EVER ANY PHOTOGRAPHS OF ANY DEFENDANTS IN
8 THIS CASE?

9 A. NO, SIR.

10 Q. HOWEVER, YOU HAD AN OCCASION TO ATTEND A HEARING IN THIS
11 CASE? A BOND HEARING, DID YOU NOT?

12 A. IF IT WAS ONE THAT I WASN'T AT, I WASN'T AWARE OF IT.

13 I -- I'VE COME TO ALL OF THE HEARINGS THAT I'VE BEEN
14 AWARE OF.

15 Q. OKAY. YOU'VE COME TO ALL THE HEARINGS IN THE CASE?

16 A. THAT -- THAT I'VE BEEN AWARE OF, YES, SIR.

17 THAT I HAVE BEEN AWARE OF, YES, SIR.

18 Q. AND THOSE HEARINGS, DEFENDANTS IN THIS CASE, WHO HAD BEEN
19 ARRESTED, WERE AT THOSE HEARINGS, WERE THEY NOT?

20 A. YES, SIR.

21 Q. YOU RECALL THE NUMBER AND HOW MANY OCCASIONS YOU HAD THE
22 OPPORTUNITY TO ATTEND A COURT HEARING OR PROCEEDING WHERE THE
23 DEFENDANTS IN THIS CASE WERE PRESENT?

24 A. THERE WAS ONE TIME WHEN THERE WERE DEFENDANTS PRESENT.

25 AND ---

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151

1 Q. ONE TIME?

2 A. YES.

3 Q. OKAY, WHERE'D THAT TAKE PLACE?

4 A. HERE. IN THIS ROOM.

5 Q. IN THIS ROOM?

6 A. UH-HUH.

7 Q. AND YOU WERE PRESENT? SITTING HERE?

8 A. YES, SIR.

9 Q. DID ANYONE SUGGEST TO YOU OR COACH YOU AND SAY THAT MAYBE
10 YOU SHOULDN'T BE HERE IN THE HEARING OR ASK YOU NOT TO BE
11 PRESENT DURING THAT HEARING?

12 A. DO YOU MEAN OFFICIALS OR . . .

13 Q. ANY OFFICER PERSON.

14 A. NO, SIR.

15 Q. NOW, DURING YOUR TESTIMONY ON DIRECT YOU SAID, YOU MADE
16 REFERENCE TO TAVARUS ROGERS.

17 A. YES, SIR.

18 Q. YOU TESTIFIED PRIOR TO THAT EVENING YOU'D NEVER MET ANYONE
19 WHO WAS PRESENT THERE THAT EVENING AT ANY JUNCTURE?

20 A. YES, SIR.

21 Q. BEFORE, CORRECT?

22 A. YES, SIR.

23 Q. OKAY.

24 A. BESIDES TOBY, WHO WAS -- WELL, I HAD SEEN TOBY, I'M SORRY.
25 MY MISTAKE.

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1 Q. NOW, HOW DID YOU LEARN THAT MR. ROGERS LAST NAME WAS
2 ROGERS? SOMEONE TELL YOU THAT?

3 A. I LEARNED IT FROM THE -- FROM THESE ARTICLES.

4 I DIDN'T KNOW WHO WEST WAS UNTIL I READ IT IN THE PAPER,
5 EITHER.

6 HIS NAME, THAT IS.

7 Q. NOW, MISS SHOUGH, YOU CAME IN HERE TODAY AND YOU'VE BEEN
8 PRESENT SINCE THE PROCEEDING STARTED?

9 A. YES, SIR.

10 Q. AND -- LET ME GO BACK ONE MINUTE.

11 THE PREVIOUS HEARING IN THIS CASE.

12 A. YES, SIR.

13 Q. WHEN YOU HAD THE OPPORTUNITY TO-EXAMINE -- OR SOMEONE, THE
14 SOLICITOR OR SOMEONE SHOWED YOU, EXHIBITS ONE, TWO, THREE AND
15 FOUR, YOU COULDN'T IDENTIFY MR. ROGERS IN ANY OF THE PHOTO-
16 GRAPHS?

17 A. NO, SIR.

18 Q. HAVE -- SINCE THEN HAVE YOU HAD THE OCCASION TO LOOK AT
19 ANY OTHER PHOTOGRAPHIC LINEUPS?

20 A. NO, SIR. UNTIL TODAY. THIS IS THE FIRST TIME I'VE SEEN
21 HIS FACE IN A VERY LONG TIME.

22 Q. AND SO WHEN YOU CAME IN HERE TODAY, YOU WERE SEATED IN ONE
23 OF THE PEWS OR ROWS ---

24 A. SECOND PEW, YES, SIR.

25 Q. AND WAS -- IS NOT THE CASE THAT WHEN THE GENTLEMAN YOU'VE

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1 IDENTIFIED AS MR. ROGERS SEATED AT THE COUNSEL TABLE WEARING
2 WHAT YOU SAID, THE ORANGE JUMP SUIT, WHO WAS BROUGHT INTO THE
3 COURT AND HE CAME AROUND FROM THIS SIDE? YOU SAW THAT HAPPEN?

4 A. I DIDN'T SEE HIM BEING BROUGHT IN BUT I DID SEE HIM.
5 BEING SEATED.

6 Q. SAW ME TALKING TO HIM?

7 A. YES, SIR.

8 Q. OKAY. AND, IN FACT, WHEN THE SOLICITOR ASKED IF YOU SEEN
9 HIM IN THE COURTROOM, YOU LOOKED DIRECTLY OVER TO THAT TABLE,
10 DIDN'T YOU?

11 A. YES, SIR.

12 Q. AND YOU DID SO BECAUSE YOU KNEW THAT'S WHERE HE WOULD BE
13 SITTING?

14 A. YES, SIR.

15 Q. AND YOU KNEW THAT HE'S BE THE FELLOW IN THE COURTROOM
16 WEARING THE ORANGE JUMP SUIT?

17 A. YES, SIR.

18 Q. OKAY, AND, IN FACT, THE ONLY PERSON AT THAT TABLE WHO
19 COULD BE THE DEFENDANT, CORRECT?

20 A. YES, SIR.

21 Q. AND YOU KNOW AS WELL, HAVING TALKED WITH WHOEVER, YOUR
22 FATHER OR THE SOLICITOR, YOU KNOW THAT THIS HEARING TODAY IF
23 ABOUT WHETHER YOU CAN IDENTIFY THIS DEFENDANT OR NOT?

24 A. YES, SIR.

25 Q. YOU KNOW THAT WHEN I SAY DEFENDANT WE'RE TALKING ABOUT MR.

1 TAVARUS ROGERS, CORRECT?

2 A. YES, SIR.

3 Q. AND YOU KNOW THAT TODAY THIS HEARING INVOLVES NO ONE ELSE
4 IN THIS CASE OR ANY OTHER PERSON ON EARTH THAN TAVARUS ROGERS,
5 THE MAN WHO'S SEATED AT THAT TABLE IN THE ORANGE JUMP SUIT,
6 CORRECT?

7 A. YES, SIR.

8 MR. KULP: THANK YOU.

9 JUDGE, BEG THE COURT'S INDULGENCE ONE SECOND.

10 THANK YOU.

11 THANK'S FOR THE COURT'S INDULGENCE, YOUR HONOR.

12 MR. MURDAUGH: MA'AM ---

13 THE COURT: OKAY, EXCUSE ME. WAIT A MINUTE.

14 MR. MURDAUGH: OH, I'M SORRY. I THOUGHT HE WAS THROUGH.

15 MR. KULP: THAT ALL RIGHT, SOLICITOR.

16 MR. MURDAUGH: I APOLOGIZE.

17 MR. KULP: THAT'S ALL RIGHT.

18 THE COURT: I THINK HE'S COMING BACK WITH ANOTHER QUES-
19 TION.

20 GO AHEAD.

21 MR. KULP: THANK YOU, SIR.

22 MAY IT PLEASE THE COURT, YOUR HONOR.

23 THE COURT: YES, SIR.

24 MR. KULP: THANK YOU, YOUR HONOR.

25 Q. JUST REFERRING AGAIN TO THE STATEMENT THAT YOU TALKED

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155

1 ABOUT ---

2 MR. KULP: IT HASN'T BEEN MARKED AS AN EXHIBIT AND THE
3 RECORD WILL CERTAINLY VIEW THAT. I DON'T WANT TO TAKE THE
4 TIME OF THE COURT. MAYBE COUNSEL CAN GRAB IT.

5 I'D JUST LIKE TO IDENTIFY IT, YOUR HONOR, AS AN EXHIBIT.

6 THE COURT: HER STATEMENT?

7 MR. KULP: YES, SIR.

8 THE COURT: ANY OBJECTION?

9 MR. MURDAUGH: NO, SIR, I HAVE NO OBJECTION. NOT FOR THE
10 PURPOSES OF THIS HEARING.

11 THE COURT: THAT'S WHAT I'M TALKING ABOUT.

12 MR. KULP: THAT'S IT.

13 MR. MURDAUGH: YEAH.

14 MR. KULP: ABSOLUTELY.

15 WE'LL JUST DO THAT BUT I JUST WANT TO ASK ONE QUESTION.
16 WHEN WE GET THE LOGISTICS WORKED OUT WE'LL OFFER IT TO THE
17 CLERK, OR TO THE COURT REPORTER. NOT TO BELABOR TIME.

18 Q. NOW, MISS SHOUGH, YOU SAID THAT YOU HAD THE OCCASION TO
19 READ YOUR STATEMENT?

20 A. YES, SIR.

21 Q. YES, AND THAT'S THERE ONLY ONE STATEMENT THAT YOU GAVE?

22 A. YES, SIR.

23 Q. IS THERE ANYTHING THAT YOU'D LIKE TO CHANGE -- HAVING READ
24 THAT STATEMENT, IS THERE ANYTHING THAT YOU'D LIKE TO CHANGE IN
25 THAT STATEMENT?

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156

1 A. MAY I ADD SOMETHING TO THE STATEMENT?

2 Q. WELL, LET'S ---

3 A. IS THAT POSSIBLE?

4 Q. --- TAKE ONE AT THE TIME.

5 A. OKAY.

6 Q. FIRST OFF, WHEN YOU WERE -- WHEN DID YOU EXACTLY REVIEW
7 THE STATEMENT? JUST RECENTLY?

8 A. YES.

9 Q. DO YOU REMEMBER WHEN AND WHERE YOU REVIEWED IT?

10 A. I REVIEWED IT AT MY FATHER'S HOUSE. I WENT OUT TO HIS
11 HOUSE AND ASKED HIM FOR IT.

12 MR. MURDAUGH: A LITTLE BIT LOUDER, PLEASE.

13 THE COURT: YES.

14 CAN YOU TURN THAT THING UP A LITTLE BIT?

15 A. I'M SORRY.

16 THE COURT: OKAY, SPEAK LOUDER.

17 A. I REVIEWED IT AT ---

18 MR. MURDAUGH: PERFECT.

19 A. I REVIEWED IT AT MY FATHER'S HOUSE. HE MADE COPY FOR ME
20 ON HIS FAX MACHINE AND I READ IT AT HIS HOUSE FOR THE FIRST
21 TIME.

22 Q. AND THE POLICE DIDN'T LET YOU READ IT WHEN HE WROTE IT UP?

23 A. I HAD A CHANCE TO. I HAD A CHANCE TO BUT I KNEW WHAT I
24 SAID. AND I DIDN'T. I DIDN'T REALLY DO THAT AGAIN.

25 Q. DID YOU SIGN IT?

JOCELYN ELIZABETH SHOUGH, CROSS EXAMINATION

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1 A. YES, SIR.

2 Q. OKAY. WHEN YOU SIGNED IT DID YOU READ IT?

3 A. NO, SIR. I WAS THERE FOR APPROXIMATELY FOUR HOURS.

4 Q. OKAY.

5 A. TELLING HER EVERYTHING THAT HAPPENED AND I KNEW WHAT HAD
6 HAPPENED. IT WAS FRESH IN MY MIND. THERE WAS NO REASON FOR
7 ME TO READ IT AGAIN.

8 Q. SO YOU WROTE IT OUT OR THE DETECTIVE WROTE IT OUT?

9 A. EVA CAMPBELL WROTE IT OUT.

10 Q. YOU SIGNED IT WITHOUT READING IT?

11 A. I SKIMMED THROUGH IT. I DIDN'T READ IT.

12 Q. THIS IS VERY IMPORTANT. EITHER YOU DIDN'T READ IT,
13 SKIMMED THROUGH IT ---

14 A. I SKIMMED THROUGH IT.

15 Q. OKAY.

16 A. I DID NOT READ IT FULLY AND -- ALL FOUR PAGES. I DIDN'T
17 READ THE ENTIRE THING. I SKIMMED THROUGH IT, MADE SURE
18 EVERYTHING WAS OKAY AND I SIGNED MY NAME.

19 Q. THAT'S MY POINT. YOU SKIMMED THROUGH IT ENOUGH TO BE
20 SATISFIED THAT ---

21 A. YES, SIR.

22 Q. --- IT WAS ACCURATE ENOUGH FOR YOU TO SIGN IT?

23 A. YES, SIR.

24 Q. YES, MA'AM. THAT'S ALL I'M ASKING.

25 A. OKAY.

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158

1 Q. NOW, ADDITIONAL, HAVING READ IT AT YOUR FATHER'S
2 HOUSE . . .

3 A. YES, SIR.

4 Q. IN THE RECENT PAST, HAVE YOU SINCE THEN COMMUNICATED TO
5 THE POLICE OR THE SOLICITOR IN WRITING OR ANY OTHER
6 FASHION ---

7 A. NO, SIR.

8 Q. --- ANY CHANGE OR ADDITIONS THAT YOU'D LIKE TO MAKE TO
9 THAT STATEMENT?

10 A. THE ONLY THING THAT I FIND WRONG WITH ---

11 Q. THAT'S NOT WHAT I'M ASKING. HAVE --

12 A. ON, NO, I HAVEN'T MADE ANY CHANGES TO THE STATEMENT, NO.

13 Q. HAVE YOU CONTACTED THEM AND SAID I WANT TO MAKE
14 CORRECTIONS, CHANGES OR ADDITIONS TO THAT STATEMENT?

15 A. NO, SIR, I HAVEN'T.

16 Q. NOT -- NOT AT ALL?

17 A. NO, SIR.

18 MR. KULP: ALL RIGHT, THAT'S ALL I HAVE.

19 THANK YOU, YOUR HONOR.

20 REDIRECT EXAMINATION

21 BY MR. MURDAUGH:

22 Q. WHAT'D YOU WANT TO CHANGE?

23 A. I DIDN'T WANT TO CHANGE ANYTHING; JUST SOME OF MY WORDS
24 ARE MESSED UP BUT IT WASN'T ANYTHING THAT WOULD HURT THE CASE.
25 IN MY OPINION.

JOCELYN ELIZABETH SHOUGH, REDIRECT EXAMINATION

159

1 Q. OKAY. WERE YOU -- AFTER YOU WERE SHOWN STATE'S EXHIBITS
2 ONE, TWO AND THREE, WHICH WERE THE THREE LINEUPS THAT
3 I -- PHOTOGRAPHIC LINEUPS THAT I SHOWED YOU A MOMENT AGO, HAVE
4 YOU EVER BEEN SHOWN A PICTURE BY ANY LAW ENFORCEMENT OFFICER
5 TO SEE IF YOU COULD IDENTIFY TAVARUS ROGERS?

6 A. NO, SIR.

7 Q. OKAY. HAVE YOU EVER SEEN A PICTURE OF TAVARUS ROGERS?

8 A. NO, SIR.

9 Q. THAT YOU COULD IDENTIFY?

10 A. NO, SIR.

11 MR. MURDAUGH: I HAVE NO FURTHER QUESTIONS.

12 MR. KULP: JUST ONE QUESTION.

13 RE CROSS EXAMINATION

14 BY MR. KULP:

15 Q. MISS SHOUGH, BUT DURING THE PERIOD OF TIME THAT HAS
16 ELAPSED SINCE THE INCIDENT TO TODAY, YOU TESTIFIED ON DIRECT
17 THAT YOUR FATHER HAS KEPT A SCRAPBOOK ABOUT THIS CASE AND THAT
18 YOU'VE REVIEWED IT, CORRECT?

19 A. YES, SIR.

20 Q. AND IT'S THE CASE, IS IT NOT, THAT YOU'VE HAD THE
21 OPPORTUNITY, BECAUSE OF THAT EXPECTED FAMILY CONCERN OVER THIS
22 TRAGIC INCIDENT, YOU'VE HAD THE OPPORTUNITY TO DISCUSS THE
23 CASE IN VARIOUS ASPECTS WITH A NUMBER OF PEOPLE DURING
24 THE -- THE ENSUING PERIOD OF TIME, HAVEN'T YOU?

25 A. YES, SIR.

JOCELYN ELIZABETH SHOUGH, CROSS EXAMINATION

160

1 Q. YOU HAVE?

2 A. YES, SIR. SINCE -- SINCE ---

3 Q. I'M SORRY?

4 A. SINCE THE INCIDENT? OR SINCE LAST COURT DATE?

5 Q. FROM THE INCIDENT TO NOW IS IT TRUE ---

6 A. YES, SIR.

7 Q. --- IT'S TRUE, IS IT NOT ---

8 A. YES.

9 Q. --- THAT YOU'VE HAD THE OCCASION TO DISCUSS THIS CASE FROM
10 VARIOUS ASPECTS WITH BOTH YOUR FATHER AND OTHER INDIVIDUALS?

11 A. YES, SIR.

12 Q. IS THAT CORRECT?

13 A. YES, SIR.

14 MR. KULP: OKAY. THANK YOU.

15 MR. MURDAUGH: YOU MAY COME DOWN.

16 CALL MATT AVERILL.

17 MATTHEW AVERILL,

18 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. MURDAUGH:

21 Q. MR. AVERILL, YOU -- YOU TESTIFIED AT THE LAST HEARING WE
22 HAD AND I BELIEVE YOU TESTIFIED THAT YOU WERE A DEPUTY SHERIFF
23 FOR BEAUFORT COUNTY AND WERE A SHERIFF ON THE FIRST OF JANU-
24 ARY, 1999?

25 A. THAT'S RIGHT.

MATTHEW AVERILL, DIRECT EXAMINATION

161

1 Q. AND OR A DETECTIVE?

2 A. AND -- CORRECT.

3 Q. AND WAS BACK THIRTY-NINE?

4 A. YES, SIR.

5 Q. OKAY. I ASK YOU WHETHER OR NOT YOU SHOWED JOCELYN, THE
6 LADY THAT JUST TESTIFIED, STATE'S EXHIBITS ONE AND TWO, WHICH
7 ARE PHOTOGRAPHIC LINEUPS?

8 A. YES, I DID.

9 Q. OKAY. WAS SHE ABLE TO IDENTIFY ANYBODY OUT OF THAT?

10 A. YES, SHE WAS.

11 Q. AND WHO WAS THAT?

12 A. IN EXHIBIT NUMBER ONE SHE WAS ABLE TO IDENTIFY PICTURE
13 NUMBER THREE WHICH WAS WEST MCKENNON.

14 Q. OKAY. IS TAVARUS ROGERS IN STATE'S EXHIBIT ONE AND TWO?

15 A. NO, HE'S NOT.

16 Q. OKAY. WAS SHE SHOWN STATE'S EXHIBIT THREE?

17 A. YES, SHE WAS, ON THE FOLLOWING DAY.

18 Q. OKAY. WAS SHE ABLE TO PICK OUT TAVARUS ROGERS FROM THAT?

19 A. NO, SHE WASN'T.

20 MR. MURDAUGH: THANK YOU, SIR.

21 THAT'S ALL THE QUESTIONS I HAVE.

22 EXCUSE ME.

23 Q. HAVE YOU EVER SHOWN HER AN INDIVIDUAL PICTURE OF TAVARUS
24 ROGERS AT ANY TIME?

25 A. NO, SIR.

MATTHEW AVERILL, DIRECT EXAMINATION

162

1 Q. OR OF ANYBODY ELSE?

2 A. NO, SIR.

3 MR. MURDAUGH: THANK YOU, SIR.

4 MR. FLEMING: PLEASE THE COURT, YOUR HONOR?

5 THE COURT: YES, SIR.

6 MR. FLEMING: THANK YOU.

7 CROSS EXAMINATION

8 BY MR. FLEMING:

9 Q. DETECTIVE AVERILL, IN LINEUP NUMBER THREE, CAN YOU IDENTI-
10 FY WHO PICTURE NUMBER SIX IS?

11 A. YES, I CAN.

12 Q. AND WHO IS THAT?

13 A. THAT'S TAVARUS ROGERS.

14 Q. AND DID YOU PLACE TAVARUS ROGERS' PICTURE IN THAT PHOTO-
15 GRAPHIC LINEUP? OR DID YOU DIRECT SOMEONE TO DO SO?

16 A. YES, SIR.

17 Q. WITH REGARD TO LINEUP NUMBER TWO, DID YOU SHOW THIS
18 WITNESS, AND ALL OTHER WITNESSES -- WHO WAS THE TARGET OF THAT
19 LINEUP?

20 A. I BELIEVE IT WAS NUMBER FIVE.;

21 Q. AND DO YOU KNOW THAT INDIVIDUAL'S NAME?

22 A. I DON'T.

23 Q. AND DO YOU KNOW WHY HE WAS A TARGET?

24 A. HE WAS IDENTIFIED AS SOMEBODY WHO LIVED IN THE COFFIN
25 POINT AREA.

JOCELYN ELIZABETH SHOUGH, CROSS EXAMINATION

163

1 Q. OKAY, AND WHO WAS HE IDENTIFIED BY?

2 A. I DON'T EVEN REMEMBER. IT WAS ONE OF THE INVESTIGATORS.

3 Q. OKAY. WAS THERE A SUSPICION THAT HE MAY HAVE BEEN IN-
4 VOLVED IN THIS? INCIDENT?

5 A. AT THAT POINT WE WERE JUST GRASPING AT STRAWS, TO BE
6 HONEST WITH YOU. 'CAUSE THAT WAS WITHIN EIGHT HOURS OF THE
7 INCIDENT.

8 Q. DID YOU HAVE THE -- DID YOU HAVE IN ANY WAY THE OCCASION
9 TO INTERVIEW MISS SHOUGH CONCERNING THIS, THE EVENTS OF THIS
10 INCIDENT?

11 A. ~~NOT OTHER THAN~~ THE PHOTOGRAPHS, NO.

12 Q. OKAY, SO ANY OF THE STATEMENTS MADE BY HER WERE MADE TO
13 OTHER DETECTIVES? CORRECT?

14 A. CORRECT.

15 Q. AND WHO WERE THEY?

16 A. I BELIEVE THAT WAS LIEUTENANT CAMPBELL.

17 Q. OKAY. WAS -- WAS DETECTIVE ROSER IN ANY WAY INVOLVED IN
18 TAKING A STATEMENT FROM MISS SHOUGH?

19 A. NOT THAT I'M AWARE OF.

20 MR. FLEMING: THANK YOU, SIR.

21 MR. MURDAUGH: YOU MAY COME DOWN.

22 I WOULD PROFFER THE TESTIMONY OF SAM ROSER. IF Y'ALL
23 CARE TO EXAMINE HIM.

24 MR. KULP: YOU'RE GONE PROFFER THE ---

25 MR. MURDAUGH: I'M JUST -- IF Y'ALL WANT TO CROSS EXAMINE

JOCELYN ELIZABETH SHOUGH, CROSS EXAMINATION

164

1 HIM I'LL PUT HIM UP, LET Y'ALL CROSS EXAMINE HIM.

2 MR. FLEMING: PLEASE DO SO, YES, SIR.

3 MR. MURDAUGH: ALL RIGHT.

4 CROSS EXAMINATION

5 BY MR. FLEMING:

6 Q. DETECTIVE ROSER, CAN -- WE WILL ALLOW YOUR PREVIOUS
7 TESTIMONY CONCERNING YOUR QUALIFICATIONS AND EMPLOYMENT TO
8 STAND FROM THE LAST -- LAST PORTION OF THIS HEARING, OKAY?

9 A. OKAY.

10 Q. WITH REGARD TO THE INDIVIDUAL WITNESS, MISS SHOUGH, DID
11 YOU IN ANY WAY PARTICIPATE IN TAKING A STATEMENT FROM HER
12 CONCERNING THIS INCIDENT?

13 A. I BELIEVE THE ONLY STATEMENTS I HAD ANY INVOLVEMENT IN
14 WITH HER WAS WHEN SHE WAS SHOWN A PHOTO LINEUPS BY EVA.
15 THAT'S IT.

16 Q. AND WITH REGARD TO LINEUP -- WITH REGARD TO LINEUP NUMBER
17 THREE, SHE -- SHE ENTERED A SWORN -- EXCUSE ME, SHE ENTERED A
18 SIGNED STATEMENT SAYING THAT SHE WAS UNABLE TO IDENTIFY ANYONE
19 IN THIS PHOTOGRAPHIC LINEUP, CORRECT?

20 A. THAT'S CORRECT.

21 Q. ALL RIGHT. WITH REGARD TO THE WRITTEN ORAL STATEMENTS
22 MADE BY MISS SHOUGH CONCERNING THIS INCIDENT, DID YOU
23 PARTICIPATE IN ANY WAY WITH THAT?

24 A. NOT THAT I RECALL, NO.

25 Q. AND DO YOU RECALL THAT THAT WAS A RESPONSIBILITY AND DUTY

SAMUEL ROSER, CROSS EXAMINATION

165

1 OF MISS EVA CAMPBELL?

2 A. THAT'S CORRECT.

3 MR. FLEMING: ALL RIGHT.

4 IF YOU WILL ALLOW, YOUR HONOR, WE WILL ATTACH, ALONG WITH
5 THE STATEMENT MADE, ALONG WITH THE STATEMENTS MADE BY MISS
6 SHOUGH THAT WE'RE GOING TO ATTACH AS AN EXHIBIT, WE'LL ALSO
7 ATTACH THE DOCUMENT IDENTIFIED WITH -- BY DETECTIVE ROSER.

8 THE COURT: OKAY.

9 MR. FLEMING: I CANNOT IDENTIFY.

10 I WILL SHOW YOU RIGHT NOW.

11 THIS IS MY COPY. BUT WE'RE GONE MAKE A COPY FOR THE
12 COURT.

13 MR. MURDAUGH: I HAVE NO OBJECTION.

14 MR. FLEMING: OKAY.

15 Q. FOR PURPOSES OF IDENTIFICATION, LET ME SHOW YOU THIS
16 DOCUMENT.

17 MR. FLEMING: AND WE WILL APPROPRIATELY MARK IT.

18 (STATEMENT OF JOCELYN SHOUGH WENDELL DATED JANUARY 4,
19 1999, MARKED AS DEFENDANT'S EXHIBIT SIX FOR IDENTIFICATION
20 ONLY.)

21 MR. FLEMING: DEFENSE EXHIBIT SIX.

22 A. YES, SIR, THAT'S IT.

23 MR. FLEMING: OKAY.

24 NO FURTHER QUESTIONS, YOUR HONOR.

25

SAMUEL ROSER, REDIRECT EXAMINATION

166

1 REDIRECT EXAMINATION2 BY MR. MURDAUGH:

3 Q. DID YOU EVER SHOW JOCELYN A PICTURE OF ANYBODY IN THIS
4 CASE OTHER THAN THOSE LINEUPS?

5 A. NO, SIR.

6 MR. MURDAUGH: THANK YOU, SIR. YOU MAY COME DOWN.
7 YOUR HONOR, PLEASE, THAT CONCLUDES THE STATE'S TESTIMONY.

8 THE COURT: ANY WITNESSES? OF THE DEFENDANT?

9 MR. FLEMING: YOUR HONOR, WE WOULD ASK AT THIS TIME THAT
10 THE STATE PROFFER THE TESTIMONY OF MISS EVA CAMPBELL. OR WE
11 WILL CALL HER.

12 MR. MURDAUGH: I'M FINISHED.

13 MR. FLEMING: THEN THE DEFENSE WILL CALL MISS EVA CAMP-
14 BELL.

15 THE COURT: IS SHE IN COURT?

16 COME AROUND, MISS CAMPBELL.

17 EVA M. CAMPBELL,

18 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. FLEMING:

21 Q. GOOD MORNING, MISS CAMPBELL.

22 A. GOOD MORNING.

23 Q. HOW ARE YOU?

24 A. VERY WELL.

25 Q. GOOD. THANK YOU.

SAMUEL ROSER, REDIRECT EXAMINATION

167

1 YOU ARE A MEMBER OF THE BEAUFORT COUNTY SHERIFF'S DEPART-
2 MENT?

3 A. YES, SIR.

4 Q. CORRECT? WHAT'S YOUR OFFICIAL TITLE?

5 A. AT THAT TIME IT WAS A STAFF SERGEANT. NOW IT'S LIEUTEN-
6 ANT.

7 THE COURT: WOULD YOU SPEAK INTO THE MICROPHONE, PLEASE.

8 A. I'M SORRY, SIR.

9 AT THAT TIME IT WAS STAFF SERGEANT. I'M NOW A LIEUTEN-
10 ANT.

11 Q. LIEUTENANT, AT THE TIME, ON JANUARY 2, 1999, WERE
12 YOU -- WERE YOU ASKED BY SOMEONE WITH THE BEAUFORT COUNTY
13 SHERIFF'S DEPARTMENT TO TAKE A STATEMENT FROM JOCELYN WENDELL
14 SHOUGH, AS WE NOW ARE REFERRING TO HER?

15 A. YES, SIR.

16 Q. AND WHERE DID THAT STATEMENT TAKE PLACE?

17 A. AT THE BEAUFORT COUNTY SHERIFF'S OFFICE.

18 Q. AND WHO WAS PRESENT DURING THIS STATEMENT?

19 A. INITIALLY HER DAD WAS AND THEN HE WAS EXCUSED AND IT WAS
20 JOCELYN AND MYSELF.

21 Q. OKAY, AND NO OTHER PEOPLE PRESENT?

22 A. NO, SIR.

23 Q. WAS THERE ANY VIDEO OR TAPE RECORDING OF THAT STATEMENT?

24 A. NO, SIR.

25 Q. OKAY. DID YOU MAKE NOTES OF THAT -- OF THE -- THE PERIOD

SAMUEL ROSER, REDIRECT EXAMINATION

168

1 OF TIME IN WHICH YOU INTERVIEWED THIS WITNESS?

2 A. YES.

3 Q. AND DID YOU REDUCE THOSE NOTES TO WRITING?

4 A. YES, SIR.

5 Q. AND DID YOU INCLUDE -- AND DID YOU REDUCE THEM TO WRITING
6 IN THE FORM OF A WRITTEN STATEMENT? FOR JOCELYN WENDELL?

7 A. YES, SIR, I DID.

8 Q. OKAY. AND I SEE YOU HAVE YOUR COPY?

9 A. (NO RESPONSE.)

10 Q. CORRECT?

11 A. YES, SIR.

12 Q. OKAY. IF I MAY, WHAT I WOULD LIKE FOR YOU TO DO -- WELL,
13 CAN YOU JUST SHOW ME YOUR COPY? PLEASE?

14 THANK YOU.

15 I HAVE -- I HAVE HERE A FIVE PAGE STATEMENT. THAT WE
16 WILL MARK AS -- IF YOU DON'T MIND. IF WE CAN USE THIS.

17 IS THIS A PHOTO COPY?

18 A. YES, IT IS.

19 Q. MAY WE MARK THIS FOR THE COURT'S PURPOSES?

20 A. THAT'S FINE.

21 MR. FLEMING: OKAY.

22 Q. THIS DOCUMENT THAT YOU'VE HANDED ME IS A FIVE PAGE TYPE-
23 WRITTEN STATEMENT YOU'LL IDENTIFY AS DEFENSE EXHIBIT SEVEN.
24 AND ASK IS THIS AN ACCURATE PHOTO COPY OF THE TYPEWRITTEN
25 STATEMENT THAT YOU MADE ON JANUARY 2, 1999, CONCERNING THE

SAMUEL ROSER, REDIRECT EXAMINATION

169

1 STATEMENT OF JOCELYN SHOUGH WENDELL?

2 A. YES.

3 MR. FLEMING: I MOVE TO INTRODUCE THAT, SOLICITOR.

4 MR. MURDAUGH: NO OBJECTION. FOR THE PURPOSES OF THIS
5 HEARING.

6 (TYPED STATEMENT OF JOCELYN SHOUGH WENDELL DATED JANUARY
7 2, 1999, MARKED AS DEFENDANT'S EXHIBIT SEVEN FOR IDENTIFICA-
8 TION ONLY.)

9 Q. NOW, IS THERE -- DO YOU HAVE ANY OTHER NOTES OR
10 RECOLLECTIONS CONCERNING MISS SHOUGH'S STATEMENT THAT DAY?

11 A. NO, SIR.

12 Q. AND THIS, THIS WOULD THEN CONSIST OF YOUR ENTIRE
13 RECOLLECTION OF THAT, THAT INTERVIEW?

14 A. YES.

15 Q. OKAY. IN THE INTERVIEW WHAT -- HOW -- WHAT AMOUNT OF TIME
16 WAS GIVEN FOR MISS SHOUGH TO MAKE THIS STATEMENT? WAS SHE
17 GIVEN ALL THE TIME SHE NEEDED?

18 A. YES.

19 Q. OKAY. DID SHE EVER REQUEST ANY MORE TIME?

20 A. NO.

21 Q. OKAY. DID YOU ASK HER TO BE AS THOROUGH AS POSSIBLE WHEN
22 MAKING THE STATEMENT?

23 A. I DID. SEVERAL TIMES.

24 Q. OKAY. NOW, AT THE END OF THE STATEMENT DO YOU RECALL
25 MISS -- NOW, LET ME BACK UP.

SAMUEL ROSER, REDIRECT EXAMINATION

170

1 YOU ALSO MADE A HANDWRITTEN VERSION OF THIS STATEMENT,
2 CORRECT?

3 A. YES, I DID.

4 Q. OKAY. I WILL HAVE -- WE DON'T HAVE THAT PRINTED OUT. BUT
5 WE WILL PRINT YOU A COPY AND ASK THAT YOU IDENTIFY IT
6 LATER ---

7 A. OKAY.

8 Q. --- AND WE'LL ATTACH IT AS DEFENSE EXHIBIT EIGHT.

9 A. OKAY.

10 Q. OKAY? AND THAT IS SIMPLY A HANDWRITTEN VERSION OF WHAT
11 HAS BEEN TYPED HERE AS DEFENSE EXHIBIT SEVEN, CORRECT?

12 A. OKAY.

13 YES.

14 Q. AT ANY TIME SINCE JANUARY 2 OF 1999 HAS MISS SHOUGH
15 CONTACTED YOU TO MAKE ANY ADDITIONS OR CHANGES TO HER STATE-
16 MENT?

17 A. NO, SIR.

18 Q. FOLLOWING YOUR TYPING OF THIS STATEMENT THAT IS DEFENSE
19 EXHIBIT SEVEN, DID YOU SHOW IT TO MISS SHOUGH?

20 A. YES, I DID.

21 Q. AND DID SHE HAVE THE OPPORTUNITY TO READ IT?

22 A. SHE HAD THE OPPORTUNITY TO READ IT. SHE WENT OVER IT.

23 Q. AND SHE READ OVER IT? AND AT THE END SHE SIGNED
24 THE -- THE FIFTH PAGE, CORRECT?

25 A. YES.

SAMUEL ROSER, REDIRECT EXAMINATION

171

1 Q. AND THAT IS HER -- THAT IS HER SIGNATURE?

2 A. YES, IT IS.

3 Q. OKAY, AND SHE DID THAT IN YOUR PRESENCE?

4 A. YES.

5 MR. FLEMING: ONE SECOND, YOUR HONOR, PLEASE.

6 WITH THE EXCEPTION OF ATTACHING THE WRITTEN VERSION OF
7 THAT STATEMENT, YOUR HONOR, HANDWRITTEN VERSION OF THAT
8 STATEMENT, WE HAVE NO OTHER QUESTIONS FOR THIS WITNESS.

9 (HANDWRITTEN STATEMENT OF JOCELYN SHOUGH WENDELL DATED
10 JANUARY 2, 1999, MARKED AS DEFENDANT'S EXHIBIT EIGHT FOR
11 IDENTIFICATION ONLY.)

12 MR. MURDAUGH: I HAVE NO QUESTIONS.

13 THE COURT: YOU MAY COME DOWN. THANK YOU.
14 ANYTHING IN REPLY?

15 MR. MURDAUGH: NO, SIR.

16 THE COURT: ANY ARGUMENT?

17 MR. MURDAUGH: YOUR HONOR, PLEASE, WE ARGUE THE -- IN
18 ESSENCE, THE SAME THING AND THIS FACTS ARE ALMOST IDENTICAL
19 AND WE RELY ON THE LAST ARGUMENT, SIR.

20 AND MEMORANDUM OF LAW.

21 MR. KULP: MAY IT PLEASE THE COURT, YOUR HONOR.

22 THE COURT: MR. KULP.

23 MR. KULP: YOUR HONOR, I'M NOT GONE BE LONG-WINDED. I
24 KNOW THE COURT'S HEARD ALL THE TESTIMONY AND READ THE
25 PLEADINGS. BUT I WOULD SIMPLY ARGUE THE COURT THAT THE ISSUE

SAMUEL ROSER, REDIRECT EXAMINATION

172

1 IN THIS CASE DEALS WITH TWO CONCEPTS, THAT IS, SUGGESTIBILITY
2 AND RELIABILITY OF THE WITNESS' TESTIMONY REGARDING THE ISSUE
3 OF IDENTIFICATION.

4 BY WAY OF QUICK SUMMARY IN THIS CASE, WHAT DO WE KNOW?
5 WE KNOW THAT THE WITNESS IN THIS CASE, MISS SHOUGH, HAD A VERY
6 BRIEF OPPORTUNITY, SECONDS TO OBSERVE A PARTIAL FACIAL
7 APPEARANCE OF A BLACK MALE AT THE SCENE. WE KNOW THAT SHE WAS
8 SHOWN A LINEUP ON A DAY AFTER THE INCIDENT, HAD AMPLE
9 OPPORTUNITY TO OBSERVE THE PHOTOGRAPHS AND THAT THE
10 DEFENDANT'S PICTURE WAS IN THAT LINEUP - IT WAS NUMBER SIX -
11 AND SHE FAILED TO BE ABLE TO IDENTIFY HIM THEN.

12 IN THE INTERIM, AFTER THAT, THE WITNESS HAS INDICATED
13 THAT SHE HAS HAD THE OCCASION TO ATTEND PROCEEDINGS IN THIS
14 CASE, AT LEAST ONE - I WASN'T CLEAR ON WHETHER THERE WAS MORE
15 - WHEREIN THE DEFENDANTS IN THIS CASE WERE PRESENT. AND IN
16 THAT INTERIM PERIOD OF TIME ---

17 THE COURT: WELL, FOR THE RECORD, THE ONLY OTHER TIME IT
18 WOULD'VE BEEN IN THIS COURTROOM HAD TO DO WITH THE CONFESSION,
19 I WOULD PRESUME.

20 MR. MURDAUGH: I DON'T RECALL. I DON'T KNOW, SIR.

21 THE COURT: THAT'S THE ONLY TIME, OKAY.

22 MR. FLEMING: THAT -- AS I RECALL ---

23 MR. MURDAUGH: THEY WERE NOT HERE.

24 I JUST DON'T KNOW WHETHER ---

25 THE COURT: WELL, ANYWAY, THAT'D BE THE ONLY TIME.

SAMUEL ROSER, REDIRECT EXAMINATION

173

1 MR. KULP: I THINK THEY MAY LOOK ALL THE SAME TO LAY
2 PEOPLE. WE WORK HERE EVERY DAY, YOUR HONOR; WE KNOW THE
3 DIFFERENCE BUT PROBABLY A COURTROOM'S A COURTROOM.

4 THE COURT: COULD'VE BEEN A BOND REDUCTION OR SOMETHING
5 ELSE.

6 MR. MURDAUGH: IF YOUR HONOR PLEASE, I DON'T THINK THAT I
7 NOTIFIED THEM ABOUT THE HEARING ON THE ---

8 THE COURT: WELL, SHE SAID SHE'D BEEN IN ONE TIME AND
9 THERE MIGHT'VE BEEN SEVERAL.

10 MR. MURDAUGH: I LOOKED AT THE LAW REGARDING
11 VICTIMS/WITNESS BILL OF RIGHTS AND I WAS OF THE OPINION ---

12 THE COURT: THAT IT WAS NOT REQUIRED? WELL, IT MUST HAVE
13 BEEN. BUT, ANYWAY, SHE SAID SHE'D BEEN AT ONE THING. SO NO
14 USE FOR ME TO SPECULATE.

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

16 AND, AND SO WE HAVE THAT COUPLED WITH HER -- HER CLEAR
17 TESTIMONY THAT HER FATHER'S GOT THE SCRAPBOOK REGARDING THE
18 VARIOUS ASPECTS OF THIS CASE, INCLUDING NEWS ARTICLES, AT
19 LEAST FROM THE PRINT MEDIA, AND THAT SHE'S HAD A OCCASION
20 DURING THE -- OVER TWO YEAR INTERIM, PERIOD TO DISCUSS THIS
21 CASE WITH BOTH HER FATHER AND OTHER INDIVIDUALS IN A VARIETY
22 OF ASPECTS.

23 NOW, AT OUR LAST HEARING, ON THE -- ON THE FIRST WITNESS,
24 RECENTLY, WE KNOW AS A MATTER OF RECORD NOW, THAT THE SOLICI-
25 TOR OR HIS AGENT - I'M NOT SURE WHO IT WAS; DOESN'T REALLY

SAMUEL ROSER, REDIRECT EXAMINATION

174

1 MATTER - EXHIBITED ALL LINEUPS, INCLUDING NUMBER THREE, TO THE
2 WITNESS AT THAT TIME. AGAIN, ASSUMABLY WITH AMPLE OPPORTUNITY
3 TO OBSERVE. AND AT THAT TIME THE WITNESS COULD NOT IDENTIFY
4 MR. ROGERS.

5 NOW, SINCE THAT HEARING TILL TODAY WE'VE ESTABLISHED THAT
6 SHE HAD NO OTHER -- NO OTHER IDENTIFICATION PROCEDURE WAS
7 PURSUED BY THE STATE.

8 NOW, SINCE THE DATE OF THE INCIDENT UP UNTIL ABOUT AN
9 HOUR AND A HALF AGO, IT'S UNDENIABLE AND A MATTER OF RECORD, I
10 WOULD SUBMIT, THAT MISS SHOUGH COULD NOT IDENTIFY MR. ROGERS.
11 HOWEVER, WHEN SHE TAKES THE STAND TODAY, AS SHE CLEARLY ---

12 THE COURT: WELL, NOW, WAIT JUST A SECOND. SHE HAS NEVER
13 BEEN ASKED TO IDENTIFY HIM FACE TO FACE. AND YOU'RE TALKING
14 ABOUT WITH THE OTHER ONE. THIS IS THE FIRST TIME, THAT I
15 UNDERSTAND, THAT SHE'S BEEN ASKED TO IDENTIFY HIM.

16 MR. KULP: THAT'S CORRECT.

17 THE COURT: AM I INCORRECT?

18 MR. KULP: NO, SIR, YOU -- YOU'RE CORRECT BUT -- BUT ---

19 THE COURT: BUT YOU SAY SHE COULD NOT. WHY DO YOU SAY
20 THAT?

21 MR. KULP: BECAUSE -- BECAUSE SHE -- SHE -- WHETHER --
22 HOW -- WHAT --- HOW SHE GOT NOT TO THE POINT NOT BEEN ABLE TO,
23 I THINK, YOUR HONOR, RESPECTFULLY, IT'S IRRELEVANT. THE FACT
24 IS THAT SHE COULD NOT IDENTIFY HIM PRIOR TO AN HOUR AND A HALF
25 AGO.

SAMUEL ROSER, REDIRECT EXAMINATION

175

1 NOW, YOU KNOW, WHETHER THE STATE HAD SOME -- I DON'T KNOW
2 IF THEY STRATEGY MADE SOME DECISION WHY AS NOT TO PURSUE AN
3 IN-PERSON LINEUP OR SOME OTHER FORM OF IDENTIFICATION PRIOR TO
4 NOW, THAT'S THEIR BUSINESS AND I'M NOT GONE TREAD ON THAT
5 WATER. BUT THE POINT IS THAT THAT'S JUST A FACT, REGARDLESS
6 OF THE REASON, THAT AN HOUR AND A HALF AGO SHE COULDN'T
7 IDENTIFY MR. ROGERS. SO WHAT CHANGED?

8 WHAT CHANGED, YOUR HONOR, WHAT I SUGGEST TO YOU IS THAT
9 WHICH MAKES HER IDENTIFICATION OF MR. ROGERS ABSOLUTELY AND
10 TOTALLY UNRELIABLE. WHICH IS THE STANDARD IN A CASE. AND
11 THAT IS BECAUSE OF THE ASPECT THAT -- THAT COLORS HER TESTIMO-
12 NY, THAT ASPECT OF SUGGESTIBILITY.

13 IT'S -- I DON'T KNOW THERE'S AN ARGUMENT TO BE MADE THAT
14 WHEN SHE CAME HERE AND TOOK THE STAND THAT IT COULD NOT BE ANY
15 MORE OF A SUGGESTIBLE CIRCUMSTANCE THAN WHAT EXISTED HERE.
16 AND I'M GONNA ADDRESS ASPECTS OF THAT IN A SECOND.

17 IT'S NO LESS SUGGESTIVE, YOUR HONOR, I WOULD SUBMIT,
18 REGARDLESS OF THE WAY THE QUESTION BY THE SOLICITOR WAS
19 PHRASED, THAN A ROADSIDE SETTING WHERE, ARGUABLY, IF THEY'D
20 FOUND MR. ROGERS THAT EVENING, CHARGED HIM WITH A CRIME,
21 BROUGHT HIM BACK TO THE SCENE AND AN OFFICER ON THE CASE SAID,
22 MA'AM, ISN'T THAT HIM.

23 NOW, OUR COURTS HAVE RULED THAT IS TOTALLY UNRELIABLE,
24 THAT IS A SHOWUP. THAT IS -- THE SUGGESTIBILITY THERE BLEEDS
25 OVER AND AFFECTS THE QUALITY OF THE TESTIMONY SO MUCH THAT THE

SAMUEL ROSER, REDIRECT EXAMINATION

176

1 COURT HAS DEEM IF THAT'S ALL YOU HAVE, THAT IS NOT SUFFICIENT
2 TO ALLOW THE JURY TO HEAR THE TESTIMONY OF THE PERSON
3 IDENTIFYING THE DEFENDANT.

4 NOW, SHE CAME IN HERE TODAY. SHE DID LOOK AROUND THE
5 COURTROOM. AND SHE CLEARLY ADMITTED, THE PERSON SHE WAS
6 LOOKING FOR WAS THE PERSON AT THE TABLE WEARING THE ORANGE.
7 THERE'S NO OTHER PERSON IT COULD HAVE BEEN. SO THE SOLICITOR
8 ASKED HER DO YOU SEE HIM IN THE COURTROOM, WITH ALL RESPECT TO
9 THE SOLICITOR AS A COLLEAGUE, WHAT THE QUESTION REALLY IS, IS
10 THERE, REGARDLESS OF HOW IT'S WORDED, IS THAT TAVARUS ROGERS
11 SEATED OVER THERE IN THE ORANGE JUMP SUIT AT COUNSEL TABLE.
12 'CAUSE THERE HAS TO BE -- THE NET EFFECT AND SUBSTANCE OF THAT
13 QUESTION HAS TO BE INTERRUPTED IN THAT REGARD.

14 NOW, THE LAST THING I WANT TO SUGGEST, YOUR HONOR, AND
15 ARGUE TO THE COURT IS THIS. WE DON'T BEAR THE BURDEN OF
16 PROOF. IN THIS CASE. IN ANY RESPECT. IT'S THE STATE'S, AS
17 YOU WELL KNOW, YOUR HONOR. THAT INCLUDES EACH AND EVERY
18 ASPECT OF THE CASE THEY HAVE TO PROVE. ONE IS THAT A MURDER
19 WAS COMMITTED AND THE SECOND IS IT WAS COMMITTED BY TAVARUS
20 ROGERS. SO IDENTIFICATION IS AN ESSENTIAL ELEMENT OF THEIR
21 CASE, THEIR BURDEN THEY HAVE TO PROVE.

22 NOW, AGAIN, HOW THEY RUN THEIR CASE, HOW THEY PREPARE
23 STRATEGY AND PURSUE IT IS NOT MY BUSINESS. BUT WHAT HAPPENS
24 HERE, IT IS NOT OR OBLIGATION OR RESPONSIBILITY TO ENSURE THAT
25 A WITNESS CAN'T PICK HIM OUT; IT'S THE STATE'S OBLIGATION TO

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1 ENSURE THAT THE WITNESS CAN PICK HIM OUT AND CAN DO SO IN A
2 WAY THAT'S CREDIBLE AND RELIABLE. AND, THEREFORE, IS ABSENT
3 ANY SUGGESTIBILITY.

4 NOW, WHAT HAPPENED IN THIS CASE, JUDGE, IN THE FIRST
5 WITNESS IN OUR LAST HEARING, AFTER THAT WITNESS TESTIFIED AND
6 JUST BEFORE MISS SHOUGH WAS TO COME UP, I THINK THAT THE STATE
7 REALIZED WAIT A MINUTE, MAYBE THIS WASN'T THE BEST WAY TO GO
8 ABOUT THIS. AND I THINK THAT'S WHEN THEY KIND OF TAPPED ON
9 THE BRAKE PEDAL AND SAID, WELL, MAYBE WE BETTER -- THIS MIGHT
10 BE A PROBLEM BECAUSE WHAT WE DID -- AND MAYBE WE COULD'VE
11 TAKEN STEPS BY MOVING THE COURT TO HAVE HIM REMOVED OR THEN
12 MOVE FOR A COURT ORDER ORDERING SOME IN-PERSON LINEUP AT THE
13 JAIL, THEY TAPPED ON THE BRAKE PEDAL AND SAID, NOW, WAIT A
14 MINUTE, HOW ABOUT Y'ALL DO IT. AND WE'RE NOT GONNA DO THAT.
15 UNDER THE FIFTH AMENDMENT AND OTHERWISE, IT'S NOT WITHIN OUR
16 BURDEN OF PROOF.

17 AND WHAT HAPPENED IS THEY BRING THAT WITNESS IN HERE WHO,
18 AGAIN, ON THAT DATE, AN HOUR PRIOR TO COMING IN THIS
19 SUGGESTIBLE CIRCUMSTANCE, COULDN'T IDENTIFY HIM.

20 AND MAYBE, I PUT, YOUR HONOR, AS A FOOTNOTE IN MY ARGU-
21 MENT, THAT'S WHY THEY DIDN'T HAVE A LINEUP. IN ANY OTHER
22 SETTING IN THE INTERIM. BECAUSE THEY KNEW THAT SHE COULDN'T
23 IDENTIFY HIM UNLESS SHE SAW HIM AS A MAN IN THE ORANGE JUMP
24 SUIT SEATED AT THE COUNSEL TABLE. SO ---

25 THE COURT: ARE YOU OF THE OPINION THAT A DEFENDANT HAS

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1 TO SUBMIT TO A LINEUP?

2 MR. KULP: ACTUALLY, I -- YOU GOT TO -- THAT'S ALMOST
3 LIKE AN APPELLATE ARGUMENT. I WASN'T ON THAT TRACK, YOUR
4 HONOR ---

5 THE COURT: WELL, I MEAN YOU'RE SAYING THEY COULD'VE
6 LIKE -- THEY COULD'VE ASKED FOR ONE AND HE DID IT. I MEAN,
7 YOU KNOW, I DON'T EVEN THINK YOU HAVE LINEUPS ANYMORE BECAUSE
8 I DON'T THINK A PERSON HAS TO SUBMIT TO ONE.

9 MR. KULP: I'D HAVE TO DOUBLE CHECK THAT, YOUR HONOR.
10 I'M THINKING ON MY FEET, YOUR HONOR, BUT I THINK THAT -- WELL,
11 AT LEAST WE KNOW AS A MATTER OF RECORD THAT NO ATTEMPT WAS
12 MADE TO COMPEL THE DEFENDANT TO APPEAR. HAD THAT BEEN THE
13 CASE AND HE RESISTED AS WE -- I PROBABLY BEEN MORE VERSED IN
14 BEING ABLE TO ANSWER THAT QUESTION.

15 HOWEVER, BE ALL THAT AS IT MAY, IT IS UNDENIABLE, I
16 THINK, TO SUMMARIZE MY ENTIRE ARGUMENT, THAT MISS SHOUGH, ONE,
17 COULD NOT IDENTIFY MR. ROGERS PRIOR TO COMING IN THIS COURT-
18 ROOM AND THAT THE -- THE SETTING AND THE CIRCUMSTANCES IN
19 WHICH SHE DID FOR THE FIRST TIME IN THIS CASE IDENTIFY HIM,
20 WAS HERE TODAY IN THIS COURTROOM FRAUGHT SUGGESTIBILITY.

21 AND, THEREFORE, YOUR HONOR, WE MOVE THE COURT, AS WE'VE
22 DONE SO IN OUR -- IN OUR MOTION, TO SUPPRESS OR EXCLUDE ANY
23 TESTIMONY WHATSOEVER OF MISS SHOUGH IDENTIFYING THE DEFENDANT
24 BECAUSE WE BELIEVE THAT IS -- IS TAINTED.

25 THANK YOU.

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1 THE COURT: ANYTHING FROM THE STATE?

2 MR. MURDAUGH: YOUR HONOR, PLEASE, I WOULD JUST CALL THE
3 COURT'S ATTENTION TO THE FACT THAT TAVARUS ROGERS WAS IN THAT
4 HOUSE FOR A SIGNIFICANT PERIOD OF TIME BEFORE HE LEFT AND THEN
5 CAME BACK. SHE HAD THE OPPORTUNITY TO SEE HIM. SHE HAD THE
6 FIVE THINGS THAT ARE SET OUT IN THE -- IN THE BRAITWAIT CASE,
7 IN THE BIGGERS CASE; THE OPPORTUNITY TO VIEW HIM; THE DEGREE
8 OF ATTENTION. GOD KNOWS, SHE HAD A GUN PLACED ON HER. AT
9 FIRST SHE WAS IN A FRIENDLY SETTING, HAD CONVERSATIONS WITH
10 HIM. THEN LATER HAD A GUN PLACED ON HER. IF THAT DOESN'T
11 ETCH IN YOUR MIND WHAT'S GOING ON, I -- IT DOES ETCH IN YOUR
12 MIND.

13 THEY -- BRAITWAIT ALSO SAYS -- AND I DON'T ACKNOWLEDGE
14 THAT IT WAS SUGGESTIVE THAT HE IS SITTING IN THIS COURTROOM
15 BUT BRAITWAIT SAYS THAT SUGGESTIVENESS ALONE DOES NOT REQUIRE
16 THE EXCLUSION OF THE TESTIMONY.

17 AND AT THE LAST HEARING ---

18 THE COURT: EXCUSE ME.

19 I'M SORRY, LADY. YOU'RE GONE HAVE TO TAKE THAT CHILD OUT
20 OF HERE.

21 MR. MURDAUGH: THERE WAS -- WE RECESSED SO THAT THEY
22 COULD GIVE ATTENTION TO THE POSSIBILITY OF A LINEUP. I DID
23 NOT DO THAT FOR ANY REASON OTHER THAN WHEN I'M TRYING A CASE,
24 SIR, I'VE GOT TO WIN IT BEFORE YOU, I'VE GOT TO WIN IT BEFORE
25 A JURY, I'VE GOT TO WIN IT BEFORE THE SUPREME COURT. THEN

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1 I'VE GOT POST CONVICTION RELIEF AND I DIDN'T WANT ANY ISSUE OF
2 INEFFECTIVE ASSISTANCE OF COUNSEL TO COME UP. I WANTED THEM
3 TO HAVE ACKNOWLEDGED ON THE RECORD THAT THEY MADE A CONSCIOUS
4 DECISION TO DO IT THIS WAY.

5 WE SUBMIT THAT IT'S PERMISSIBLE. TESTIMONY.

6 MR. FLEMING: I HAVE ONE THING, YOUR HONOR. WITH REGARD
7 TO THE LAST STATEMENT BY THE SOLICITOR, I BELIEVE HE IS
8 ATTEMPTING TO SHIFT THE BURDEN OF PROOF IN THIS CASE. WE
9 WOULD SAY THAT IS IMPERMISSIBLE.

10 WITH REGARD TO THE NEAL V BIGGERS STANDARDS THAT THE
11 SOLICITOR ELICITED JUST NOW, FIRST ONE, AS I UNDERSTAND, IS
12 THE OPPORTUNITY TO SEE THE CRIMINAL AT THE TIME OF THE CRIME.
13 THE TESTIMONY IS THAT IT WAS -- AND I'LL OBVIOUSLY REFER BACK
14 TO THE RECORD AS BEST I CAN BUT THE TESTIMONY WAS THAT IT WAS
15 A MATTER OF SECONDS AND IT WAS FIFTEEN -- FIFTEEN FEET APART.

16 NOW, IT'S THE OPPORTUNITY TO VIEW AT THE TIME OF THE
17 CRIME, NOT AT SOME PERIOD OF TIME EARLIER.

18 THE COURT: WELL, IT'S SUPPOSED TO MAKE SENSE. NOW,
19 OBVIOUSLY IF YOU'VE SEEN SOMEBODY FOR THE SECOND TIME YOU
20 DON'T HAVE TO LOOK. I MEAN JUST COMMON SENSE, PLEASE.

21 MR. FLEMING: I'M JUST MERELY QUOTING THE CASE AND THE
22 CASE SAYS WE'RE -- THE PROBLEM IS THAT THE SOLICITOR IS TRYING
23 TO SAY THAT BECAUSE THIS -- BECAUSE THEY BELIEVE THIS
24 INDIVIDUAL WAS THERE EARLIER, HE MUST BE THE ONE LATER AND THE
25 FACT THE MATTER IS, HE HAS TO PROVE THAT HE WAS THE ONE

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1 EARLIER.

2 WITH REGARD TO NEAL V BIGGERS, HER ABILITY TO KNOW WHAT
3 THIS INDIVIDUAL LOOKS LIKE MAY BE A FACTOR; HOWEVER, HER
4 OPPORTUNITY TO VIEW THE CRIMINAL AT THE TIME OF THE CRIME IS
5 THE CRUX OF THE ISSUE. THERE WE KNOW THAT IT WAS A MATTER OF
6 SECONDS AND NO MORE THAN FIFTEEN -- FIFTEEN -- NO CLOSER THAN
7 FIFTEEN FEET APART.

8 SECONDARILY, THE WITNESS' DEGREE OF ATTENTION IS THE NEXT
9 POINT; HOWEVER, SHE TESTIFIED THAT THE PERSON HOLDING THE GUN
10 ON HER WAS A GUY NAMED WEST, NOT TAVARUS ROGERS. THEREFORE,
11 ONE MUST ASSUME, AS CASES HAVE ROUTINELY SAID, THAT
12 YOU -- YOUR DEGREE OF ATTENTION IS TOWARDS THE ONE WHO HAS THE
13 GUN ON YOU.

14 NOW ---

15 THE COURT: ARE YOU TESTIFYING AS AN EXPERT?

16 MR. FLEMING: SIR?

17 NO, SIR. NO, THAT'S A WHOLE -- THERE'VE BEEN SEVERAL
18 CASES. HOLDING -- THAT A HOLDING FROM SEVERAL CASES, CLAIM
19 THAT THE DEGREE OF ATTENTION CAN BE REFLECTED BY THE FACT THAT
20 SOMEONE'S HOLDING A GUN ON YOU.

21 THIRDLY, THE ACCURACY OF THE WITNESS' PRIOR DESCRIPTION
22 OF THE CRIMINAL. THIS IS NO TESTIMONY NOR IS THERE ANY
23 STATEMENT CONCERNING HER -- THERE -- IS THERE ANYTHING IN HER
24 STATEMENTS GIVEN TO THE POLICE WITHIN EIGHT HOURS OF THE EVENT
25 THAT DESCRIBES THE CRIMINAL, PERIOD. THEREFORE, NUMBER -- THE

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1 FOURTH -- THE THIRD FACTOR COMPLETELY FAILS.

2 NUMBER FOUR, THE LEVEL OF CERTAINTY AT THE CONFRONTATION.
3 NOW, THAT CONCERNS THE LEVEL OF CERTAINTY THAT THE WITNESS HAS
4 WHEN IDENTIFYING THE INDIVIDUAL. THE FIRST TIME SHE WAS SHOWN
5 A PICTURE OF TAVARUS ROGERS SHE COULD NOT IDENTIFY HIM;
6 THEREFORE, NO LEVEL OF CERTAINTY. THE SECOND TIME SHE WAS
7 SHOWN A PICTURE OF TAVARUS ROGERS SHE COULDN'T IDENTIFY HIM;
8 THEREFORE, NO LEVEL OF CERTAINTY. THE THIRD TIME, SHE FREELY
9 ADMITTED THAT THE REASON THAT SHE WAS CERTAIN IS BECAUSE SHE
10 EXPECTED HIM TO BE SITTING HERE; THEREFORE, THE FOURTH FACTOR
11 MUST FAIL.

12 AND THEN, FIFTH, THE LENGTH OF TIME BETWEEN THE CRIME AND
13 THE CONFRONTATION. THE CLOSER IN TIME THE CONFRONTATION, THE
14 BETTER FOR THE STATE. THE CONFRONTATION WAS FORTY-EIGHT
15 HOURS. SHE COULD NOT IDENTIFY HIM. AND THEN THE CONFRONTA-
16 TION TODAY WAS ALMOST THREE YEARS AND SHE COULD IDENTIFY.
17 THEREFORE, THE FIFTH ELEMENT FAILS.

18 IT IS OUR -- IT'S OUR CONTENTION THAT THE STATE CANNOT
19 MEET ANY OF THE NEAL V BIGGERS FACTORS AND, THEREFORE, THE
20 RELIABILITY OF THE IDENTIFICATION IS SOLELY WITHIN QUESTION
21 AND IT IS IN YOUR -- AND WE -- WE CONTEND THAT IN YOUR HONOR
22 REVIEWING THOSE YOU SHOULD SUPPRESS HER ATTEMPTS TO -- TO
23 IDENTIFY THE DEFENDANT IN TRIAL.

24 THANK YOU.

25 THE COURT: THANK YOU.

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1 OKAY, WELL, UNDER THE DUE PROCESS CLAUSE EVIDENCE OF AN
2 IDENTIFICATION OF THE ACCUSED MUST BE EXCLUDED IF THE PROCESS
3 USED TO OBTAIN THE IDENTIFICATION WAS SO UNNECESSARILY
4 SUGGESTIVE AS TO GIVE RISE TO A VERY SUBSTANTIAL LIKELIHOOD OF
5 MISIDENTIFICATION. THAT'S REALLY WHAT WE'RE TALKING ABOUT
6 BECAUSE A JURY -- ONLY IF IT'S SO UNRELIABLE, BECAUSE WE'RE
7 TALKING ABOUT THE RELIABILITY AND I THINK THE CASES SAY THAT
8 THE RELIABILITY IS THE LINCHPIN IN DETERMINING THE
9 ADMISSIBILITY OF IDENTIFICATION TESTIMONY.

10 AND, OF COURSE, THOSE FACTORS ARE SET OUT. THE WITNESS'
11 OPPORTUNITY TO VIEW THE CRIMINAL AT THE TIME OF THE CRIME.
12 SAW HIM TWO TIMES THAT NIGHT AND SHE TESTIFIED IN DETAIL ABOUT
13 THAT AND THE FACT THAT THIS WAS THE SECOND TIME ON THAT
14 PARTICULAR NIGHT THAT SHE HAD SEEN HIM AND THE OTHER ONES,
15 TOO, AND, OF COURSE, I REALLY BELIEVE THAT COMMON SENSE SAYS
16 THAT IT WOULD SUBSTANTIATE HER IDENTIFICATION AS TO HIM SINCE
17 SHE SO POSITIVELY IDENTIFIED THE CODEFENDANT, WEST, BY HIS
18 CLOTHES.

19 AND -- IN OTHER WORDS, YOU GOT TO LOOK AT ALL THE
20 CIRCUMSTANCES OF IT AND THAT'S JUST ONE FACTOR. THERE'S MANY
21 FACTORS BUT THE WITNESS' DEGREE OF ATTENTION, WHICH WAS
22 OBVIOUSLY VERY ACUTE, AS THE CASES SAY.

23 I THINK IT'S CONCEDED THAT HER PRIOR DESCRIPTION WASN'T
24 AND THE FOURTH CRITERIA, THE WITNESS' LEVEL OF CERTAINTY AT
25 THE TIME OF THE CONFRONTATION. TODAY I TOOK HER, LOOKING AT

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1 HER DEMEANOR AND OBSERVING HER PERSONALLY HERE TODAY, I
2 THOUGHT SHE WAS -- THAT SHE HAD A HIGH DEGREE OF CERTAINTY
3 AND, THEREFORE, RELIABILITY.

4 I DON'T GIVE OVERWHELMING WEIGHT TO THE PHOTOGRAPHIC
5 LINEUP. I'M REMINDED EVERY TIME I LOOK AT MY DRIVER'S LICENSE
6 PICTURE THAT I DON'T KNOW THAT I RECOGNIZE MYSELF SO WELL ON
7 THOSE. AND SO THE QUALITY OF THE PHOTOGRAPHY IS HIGHLY
8 UNRELIABLE SOMETIMES AND I'VE HEARD IT SAID, ALTHOUGH I'M NOT
9 AN EXPERT, THAT PHOTOGRAPHY, WHEN IT IS TAKEN OF A PERSON, AN
10 AFRO-AMERICAN VERSUS A CAUCASIAN, THAT BECAUSE OF THE LIGHT
11 AND SO FORTH, AND THE COLOR OF A PERSON'S SKIN, IT JUST VARIES
12 AND EVERYTHING AND THERE'S SO MANY INTANGIBLES ABOUT PHOTOGRA-
13 PHY THAT I THINK IT'S VERY UNDERSTANDABLE HOW SOMEONE MIGHT
14 NOT BE ABLE TO IDENTIFY A PARTICULAR WITNESS.

15 AND, OF COURSE, IT HAS BEEN SEVERAL YEARS, ALMOST THREE
16 YEARS SINCE THE TIME OF THE CRIME AND THE CONFRONTATION TO
17 DATE. BUT TAKING ALL THE FACTORS IN TO CONSIDERATION, I DON'T
18 BELIEVE THAT -- I BELIEVE THAT IT'S UP FOR THE JURY. I THINK
19 THE STATE'S MET THE BURDEN OF PROOF IN ALLOWING THIS, THE
20 ADMISSIBILITY OF THIS IDENTIFICATION, THIS IN-COURT IDENTIFI-
21 CATION, AND I THINK THAT A JURY WILL BE ABLE TO ASSESS A LOT
22 OF THE MATTERS THAT DEFENSE COUNSEL BRINGS UP AND THAT WOULD
23 BE FOR THE JURY TO DETERMINE THE CREDIBILITY OF THIS, THESE
24 WITNESSES LIKE ALL OTHER WITNESSES IN A TRIAL.

25 AND SO, THEREFORE, THE MOTION TO EXCLUDE THE IN-COURT

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1 IDENTIFICATION -- ONE OTHER THING I WANT TO SPEAK ABOUT, TOO.

2 THE STATE AND THIS COURT HAS DONE EVERYTHING WE COULD TO
3 TRY TO WORK WITH THE DEFENDANT BUT I KNOW THAT YOUR PREFERENCE
4 WOULD BE THAT THERE WAS NEVER A TIME WHEN THE WITNESS AND THE
5 DEFENDANT COULD MEET FACE-TO-FACE SO THAT THERE COULD BE NO
6 IDENTIFICATION. OBVIOUSLY THAT WOULD BE YOUR PREFERENCE AND I
7 COMMEND THE ATTORNEYS FOR THE DEFENDANT FOR RESEARCHING THIS
8 AND PUTTING FORTH A STRICT AGREEMENT ON THAT MATTER BUT I DO
9 BELIEVE THAT THERE IS -- THAT THE -- THAT THE CHOICE HAD TO BE
10 MADE. IF YOU HAD WISHED TO AVAIL YOURSELF OF SOME SORT OF
11 SITUATION WHERE THE DEFENDANT WAS NOT THE ONLY PERSON SEATED
12 AT COUNSEL TABLE, THIS COURT HAD GIVEN EVERY INDICATION THAT
13 WE WOULD COOPERATE SO FAR AS HAVING THE DEFENDANT SITTING
14 AMONG OTHER PERSONS OF HIS AGE, RACE AND SIZE. AND SO SINCE
15 YOU CHOSE - WHICH I DON'T -- NOT TO AVAIL YOURSELF OF THAT, I
16 DO NOT BELIEVE THAT YOU CAN CLAIM ANY UNDUE PREJUDICE BECAUSE
17 OF THE COURTROOM SITUATION.

18 AND SO FOR ALL THOSE REASONS THE COURTROOM -- THE IN-
19 COURT IDENTIFICATION OF THIS WITNESS, MISS SHOUGH, OR MISS
20 WENDELL, AS HER NAME MAY BE, ALONG WITH THE OTHER WITNESS WILL
21 BE ALLOWED IN THE TRIAL.

22 ANYTHING ELSE BEFORE THIS HEARING IS CLOSED?

23 MR. MURDAUGH: NOTHING FROM -- WELL, WE HAD -- MR. KULP
24 HAD SOMETHING THAT HE WAS GONE BRING UP LATER ON.

25 QUESTIONNAIRE?

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1 MR. KULP: YEAH, I'LL -- YOU AND I, SOLICITOR, ARE GONE
2 HAVE TO CONFER ABOUT THAT. WE'LL -- WE CAN DEAL WITH THAT.

3 MR. MURDAUGH: OKAY.

4 MR. FLEMING: CAN WE APPROACH? SOLICITOR?

5 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

6 -- END OF REQUESTED TRANSCRIPT OF RECORD --
7
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I, THE UNDERSIGNED DONNA HARTLEY, OFFICIAL COURT REPORTER FOR THE FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR BEAUFORT COUNTY, SOUTH CAROLINA ON THE TWENTY-NINTH DAY OF AUGUST, 2001.

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

September 18, 2001


DONNA HARTLEY
CIRCUIT COURT REPORTER

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS

THE STATE

-VS-

TAVARUS ROGERS

:
:
:
:
:

TRANSCRIPT OF RECORD
EX PARTE

AUGUST 17, 2001
BEAUFORT, SOUTH CAROLINA

B E F O R E:

HONORABLE JACKSON V. GREGORY, JUDGE

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

CORY HOWERTON FLEMING, ESQ.
TIMOTHY C. KULP, ESQ.
ATTORNEY FOR DEFENDANT

DONNA HARTLEY
CIRCUIT COURT REPORTER

COPY

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
D-1	AFFIDAVIT OF DALE DAVIS	3	

3.

1 (AFFIDAVIT OF DALE DAVIS MARKED AS DEFENDANT'S EXHIBIT
2 ONE FOR IDENTIFICATION.)

3 MR. FLEMING: I FILED -- I FILED THE EX PARTE MOTION FOR
4 FUNDS. REQUESTING THE SERVICES OF A WITNESS IDENTIFICATION
5 EXPERT. AND AT THE TIME WE HAD OUR PREVIOUS MOTION YOU SAID,
6 WELL, LET'S SEE, LET'S DO THE WITNESS STUFF FIRST, WE'LL SEE
7 IF YOU NEED IT.

8 WELL, YOUR HONOR JUST RULED THAT THE -- THAT KRISTAL WIRE
9 WAS GONE BE ALLOWED TO IDENTIFY TAVARUS ROGERS IN COURT ---

10 THE COURT: UH-HUH.

11 MR. FLEMING: --- AND THEREFORE, THEREFORE THERE'S A
12 PRETTY GOOD -- THERE'S A PRETTY GOOD ARGUMENT THAT -- THAT AN
13 EXPERT CAN SAY AS TO THE START AND FINISH AND WHAT KIND OF
14 FACTORS GO IN TO HER ABILITY TO IDENTIFY.

15 THE COURT: RIGHT.

16 MR. FLEMING: AND TO THAT EXTENT WE WISH TO HIRE AN
17 EXPERT TO TESTIFY TO THAT.

18 I DON'T HAVE THE MOTION IN FRONT OF ME BUT THE NAME IS
19 MENTIONED IN THE MOTION AND I WOULD ASK -- I THINK IT'S JACK
20 BRIGHAM (PHON.).

21 NOW, IF HE IS -- AS A RESULT OF THE TIME FRAMES, IF HE IS
22 UNAVAILABLE, I WOULD REQUEST THE OPPORTUNITY TO SUBMIT ANOTHER
23 NAME.

24 THE COURT: YEAH.

25 MR. FLEMING: IN HIS PLACE.

1 THE COURT: OKAY. HOW MUCH YOU ASKING FOR?

2 MR. FLEMING: IT'LL BE EXPENSIVE, ACTUALLY, JUDGE,

3 BUT ---

4 DO YOU RECALL?

5 MS. DAVIS: I DIDN'T GET ALL OF THAT INFORMATION. I ONLY

6 GOT A PORTION OF THE FACTS.

7 MR. FLEMING: I COULD HAVE IT HERE.

8 FIVE THOUSAND DOLLARS, SIR. JOHN BRIGHAM, PHD.

9 THE COURT: OKAY.

10 MR. FLEMING: ALL RIGHT, SIR.

11 THE COURT: IT'S APPROVED. YOU GOT AN ORDER FOR ME?

12 MR. FLEMING: YES, SIR, I'LL HAVE THE ORDER. I'LL EITHER

13 PRINT THE ORDER NOW OR FIND IT AND HAVE IT BROUGHT TO ME

14 'CAUSE I THINK I'VE GOT THE MITIGATION FILE AT THE OFFICE.

15 THE COURT: WELL, IF YOU WILL GET IT TO ME, I'LL BE IN MY

16 OFFICE ON MONDAY.

17 MR. FLEMING: YES, SIR

18 THE COURT: THAT'LL PROBABLY BE A BETTER IDEA. YOU CAN

19 GET IT UP TO ME MONDAY.

20 MR. FLEMING: ALL RIGHT.

21 THE COURT: BUT, ANYWAY, IT'S APPROVED.

22 MR. FLEMING: THANK YOU, SIR.

23 AND THEN, WE ALSO TALKED ABOUT MISS DAVIS' -- HAS -- YOU

24 PREVIOUSLY GRANTED -- HOW MUCH?

25 MS. DAVIS: NINE THOUSAND TOTAL BUT A THOUSAND WAS FOR

1 PAIGE TARR (PHON.).

2 MR. FLEMING: AND EIGHT THOUSAND TO YOU.

3 PAIGE -- WE HAD -- WE'D INITIALLY HIRED PAIGE TARR AND
4 DALE TO HANDLE OUR MITIGATION. AND WHAT -- WHAT SHE'S BEEN
5 DOING, THE DEFENDANT LIVED THE MAJORITY OF HIS LIFE IN FLORI-
6 DA. ALL OF HIS BACKGROUND RECORDS, EVERYTHING ARE IN THE
7 STATE OF FLORIDA. ADDITIONAL, THERE'S SOME OTHER THINGS
8 AROUND TOWN AND HE'S -- AROUND THIS TOWN AND THEN IN COLUMBIA.
9 AND THEN, ALSO, HE HAS FAMILY MEMBERS SPREAD -- SPREAD BEYOND
10 THE LIMITS OF SOUTH CAROLINA.

11 IN OUR ATTEMPT TO MITIGATE WE'VE HAD TO RUN DOWN ALL OF
12 THESE THINGS. AND CERTAINLY MITIGATION IS IMPORTANT IN THIS
13 CASE. AND TO THAT EXTENT, SHE, MISS DAVIS HAS EXHAUSTED THE
14 \$8,000.00.

15 THE COURT: WELL, TELL ME EXACTLY HOW, WHAT IT IS. I
16 MEAN YOU TALK TO HIM. I MEAN HE GIVES YOU THE INFORMATION,
17 DOESN'T HE?

18 MS. DAVIS: I OUTLINED IT IN THIS.

19 THE COURT: LET ME SEE.

20 MS. DAVIS: IS YOU COULD JUST -- IF YOU READ THROUGH THAT
21 YOU'LL GET AN IDEA. WHAT I SPENT.

22 THE COURT: WELL, I'M AT A LOSS ON THIS BECAUSE I CAN'T
23 SEE. I MEAN THE YOUNG MAN WAS, WHAT? EARLY TWENTIES?

24 I MEAN HOW FAR HE WENT IN HIGH SCHOOL AND ALL THE OTHER
25 THINGS AND WHAT KIND OF JOBS HE'S HAD. WHAT IS A COUSIN OR

1 SOMETHING LIKE THAT, TELL ME WHAT THAT'S GOT TO DO WITH
2 MITIGATION. I'M JUST ---

3 MR. FLEMING: WELL, BECAUSE ---

4 THE COURT: I'M SORRY, I DON'T ---

5 MR. FLEMING: IF I MAY, YOUR HONOR, THERE'S AN INDIVIDUAL
6 IN THE COURTROOM. I HAVE NO IDEA WHO IT IS AND THIS IS
7 SUPPOSED TO BE EX PARTE.

8 THE COURT: TELL ME SOMETHING ABOUT YOURSELF FIRST, SO
9 I'LL KNOW. I MEAN THAT JUST SEEMS LIKE A LOT OF MONEY.

10 MS. DAVIS: OKAY. I -- YOU WANT EDUCATIONAL THINGS?
11 WOULD THAT -- I'VE GOT A BACHELOR, BACHELOR OF SCIENCE. I'VE
12 GOT A MASTER'S DEGREE.

13 THE COURT: IN WHAT?

14 MS. DAVIS: CRIMINAL JUSTICE.

15 I WORKED FOR THE PUBLIC DEFENDER'S OFFICE FOR A NUMBER OF
16 YEARS.

17 THE COURT: WHERE?

18 MS. DAVIS: IN CHARLESTON COUNTY.

19 I WORKED FOR THE SHERIFF'S OFFICE IN CHARLESTON COUNTY
20 FOR ABOUT TEN YEARS AS THE PUBLIC DEFENDER LIAISON AND DID
21 MITIGATION WORK PART-TIME OUTSIDE THE PUBLIC DEFENDER'S OFFICE
22 AND SOME WHILE I WAS IN THERE.

23 I'VE DONE SEVEN CASES NOW.

24 THE COURT: HOW MUCH DO YOU CHARGE?

25 MS. DAVIS: THIRTY-FIVE DOLLARS AN HOUR, PRETTY DIRT

1 CHEAP FOR THIS.

2 THE COURT: WELL, I HAVE NO PROBLEM WITH THIRTY-FIVE.
3 HAVE YOU GOT A LIST OF YOUR HOURS AND ALL SO I CAN ---

4 MS. DAVIS: YES.

5 THE COURT: I MEAN AT \$8,000.00 JUST ON HOURS?

6 MS. DAVIS: WELL, NO, IT'S -- I FLEW DOWN TO FORT LAUDER-
7 DALE AND DID SOME THINGS WITH THE -- HE HAS AN EXTENDED
8 FAMILY. HE HAD AN EXTREMELY ABUSIVE TYPE CHILDHOOD AS FAR
9 AS -- AND BEING ABLE TO ESTABLISH THAT BECAUSE WHEN YOU'RE
10 DOING THESE THINGS YOU WANT TO BE ABLE TO DOCUMENT THINGS WITH
11 THREE PEOPLE BEFORE YOU TAKE THAT TO BE GOSPEL. YOU WANT TO
12 DOCUMENT AS MUCH AS YOU CAN ON PEOPLE. SO I TALKED TO SEVERAL
13 OF THE FAMILY MEMBERS AND BECAUSE -- I MEAN I THINK THEY'RE
14 SOMEWHAT ACQUAINTED WITH HIS FATHER. WHEN I MEANT WITH THE
15 PARENTS, WHO IS USUALLY A GOOD SOURCE OF INFORMATION, I GOT
16 THIS OZZIE AND HARRIET SORT OF LIFE THAT HE WAS THE PERFECT
17 FATHER WHEN IN FACT HE WAS A HORRIBLY ABUSIVE, CONTROLLING
18 FATHER.

19 THE COURT: WELL, I UNDERSTAND.

20 MS. DAVIS: AND SO, YOU KNOW, HE HAS -- TAVARUS ROGERS
21 HAS A NUMBER OF BROTHERS AND SISTERS. I DID LENGTHY
22 INTERVIEWS WITH THEM.

23 AND IN DOING THIS YOU JUST WANT TO TRACK DOWN EVERY
24 RECORD YOU CAN. HE WAS PREMATURE AT BIRTH. I SPENT A HUGE
25 AMOUNT OF TIME TRYING TO TRACK DOWN HOSPITAL RECORDS, BECAUSE

1 OFTEN YOU'LL FIND THINGS IN RECORDS THAT NO ONE REMEMBERS. I
2 MEAN PEOPLE JUST DON'T REMEMBER EVERYTHING ABOUT THEIR LIVES
3 AND EVERYTHING THAT HAPPENED.

4 THE COURT: SO YOU'VE ALREADY SPEND \$8,000.00?

5 MS. DAVIS: RIGHT.

6 THE COURT: OF WHICH HAS BEEN APPROPRIATED.

7 HOW MUCH WAS IT?

8 MR. FLEMING: EIGHT THOUSAND WAS APPROPRIATED. I BELIEVE
9 SHE'S SPENT MORE THAN THAT.

10 MS. DAVIS: I'VE SPENT MORE THAN THAT.

11 I WENT -- I FLEW DOWN TO FORT LAUDERDALE, RENTED A CAR,
12 DID ALL OF THAT BUT, ACTUALLY, THAT WAS LESS THAN \$800.00
13 TOTAL I SPENT FOR PLANE FARE AND ALL ---

14 THE COURT: YOU SPENT THIRTY-FIVE -- OH, SO YOU DROVE?

15 MS. DAVIS: NO, I FLEW BUT I PAID ALL OF THAT OUT OF MY
16 POCKET, ALL OF MY PHONE BILLS, ALL OF THAT.

17 MR. FLEMING: NOW, YOUR HONOR, THE OFFICE OF INDIGENT
18 DEFENSE HAS ALREADY SENT US A CHECK WHICH WE'RE GETTING READY
19 TO PAY TO THE EXTENT THAT YOUR ORDER, YOUR PREVIOUS ORDER
20 ALLOWS. AND WHAT WE'RE -- WHAT WE'RE SAYING IS AT THIS POINT,
21 AT THIS POINT THE TRIAL'S STILL GOT TO COME. SHE'S STILL GOT
22 TO LINE UP THESE WITNESSES TO GET HERE WITH -- TO MEET WITH
23 THE APPROPRIATE DOCTORS THAT WILL BE TESTIFYING. WE'VE GOT A
24 PSYCHOLOGIST AND A -- AND A ---

25 THE COURT: WELL, I CERTAINLY UNDERSTAND ABOUT THE

1 PSYCHOLOGIST AND ALL THAT BUT I CAN'T QUITE
2 UNDERSTAND -- WELL, YOU PLANNING ON GOING TO OKINAWA? TO TALK
3 TO THE BROTHER?

4 MS. DAVIS: NO. NO, NO. I'M TRYING -- I DON'T -- FROM
5 MY UNDERSTANDING FROM CORY, THE SERVICE, THE US MARINES IS
6 WILLING TO LET HIM TESTIFY BUT THEY'RE NOT WILLING TO GET HIM
7 HERE.

8 MR. FLEMING: SO WE HAVE TO PAY FOR HIS PLANE FLIGHT TO
9 RETURN FOR HIM AND ---

10 THE COURT: WELL, LET ME ASK YOU THIS. LET ME -- I'M
11 SORRY TO CUT YOU OFF.

12 HOW MUCH OF THIS OVER MISCELLANEOUS STUFF, NOT EXPERT
13 TESTIFYING WITNESSES, WHAT IS THAT YOU -- GIVE ME A BALL-PARK
14 FIGURE ON WHAT YOU'RE LOOKING AT. I MEAN, GOOD GRIEF, IT
15 SOUNDS LIKE TO ME THAT'S GONE GET UP TO A LOT MONEY.

16 MR. FLEMING: WELL ---

17 THE COURT: WITH THE MISCELLANEOUS, JUST FLYING FAMILY
18 MEMBERS AND GETTING THEM HERE.

19 ARE YOU PLANNING ON BRINGING ALL THESE PEOPLE?

20 MS. DAVIS: WELL, LET ME ---

21 THE COURT: TO TRIAL AT THE STATE EXPENSE?

22 MS. DAVIS: WHAT I HAD HOPED ---

23 MR. FLEMING: I'M GONE TRY TO, YES.

24 MS. DAVIS: YES.

25 MR. FLEMING: I MEAN I CAN'T -- I HAVE TO DO EVERYTHING I

1 CAN. AND -- AND HIS BROTHER IS A VERY -- HE'S GOT A BROTHER
2 WHO IS IN -- WHO WAS ON DEATH ROW AND IS NOW SERVING A LIFE
3 SENTENCE.

4 MS. DAVIS: IN FLORIDA.

5 MR. FLEMING: IN FLORIDA.

6 THE COURT: WELL ---

7 MR. FLEMING: HE'S GOT A FATHER THAT ISN'T WORTH A DAMN.
8 HE'S GOT A MOTHER WHO'S NEVER -- HER FATHER'S NEVER LET
9 US -- HIS FATHER'S NEVER LET US EVEN SPEAK TO THE WOMAN. THE
10 ONLY DESCENT PERSON IN HIS FAMILY THAT WE CAN FIND DIRECTLY
11 RELATED TO HIM IS HIS BROTHER IN OKINAWA. AND IT'S A PRETTY
12 IMPORTANT WITNESS IF YOU WANT TO SHOW THAT AT LEAST THAT
13 THERE'S SOME DECENT HUMAN BEING THAT CARES FOR HIM.

14 THE COURT: AND?

15 MR. FLEMING: WELL, HE'S GOT A SISTER.

16 MS. DAVIS: IN FORT LAUDERDALE.

17 MR. FLEMING: YEAH.

18 MS. DAVIS: AND THE ONLY TWO ---

19 MR. FLEMING: I MEAN HIS FAMILY HISTORY IS UNBELIEVABLY
20 CONVOLUTED. I MEAN HE -- HE'S GOT MORE HALF-BROTHERS
21 THAN -- AND SISTERS THAN YOU'VE EVER SEEN.

22 AND NONETHELESS, I MEAN IT'S VERY TIME CONSUMING TO LINE
23 THIS UP, GET THESE PEOPLE HERE AND GET THEM ---

24 MS. DAVIS: AND I'VE HAD TO TRAVEL BACK AND FORTH A LOT.
25 THERE'S MILEAGE AND THINGS LIKE THAT BUT I ---

1 MR. FLEMING: YOUR HONOR, WHEN SHE COMES FROM
2 CHARLESTON -- WELL, SHE LIVES IN SUMMERVILLE AND SHE COMES
3 FROM SUMMERVILLE TO MEET WITH TAVARUS AND THAT'S -- THAT'S A
4 DAY, BASICALLY. AND SHE'S THE CLOSET MITIGATION SPECIALIST IN
5 THE STATE. I MEAN WE'D HAVE TO GO TO COLUMBIA OR FURTHER.

6 THE COURT: NOW, OF COURSE, SHE'S AN INVESTIGATION. MISS
7 DAVIS DOESN'T TESTIFY, DOES SHE?

8 MR. FLEMING: NO, SHE DOESN'T.

9 MS. DAVIS: I GENERALLY GATHER ALL THE INFORMATION AND
10 BASED ON THAT INFORMATION, THAT INFORMATION HELPS YOU TO FIND
11 WHAT EXPERTS OR WHAT OTHER PEOPLE YOU NEED.

12 MR. FLEMING: AND, FRANKLY, JUDGE, THE MAJORITY OF THAT
13 HAS ALREADY BEEN DONE BUT THE -- BUT, YOU KNOW, IT'S
14 NOT -- IT'S NOT COMPLETELY DONE UNTIL WE HAVE THEM HERE TO
15 TESTIFY. AND ALL WE WANT IS AN EXTENSION OF THAT ORDER TO
16 COVER WHAT IT MAY -- WHAT THE COST FOR HER TIME WILL BE IN
17 ASSISTING IN THAT AND THEN -- AND THAT'S IT. I MEAN SHE
18 DOESN'T HAVE TO DUPLICATE WHAT SHE'S ALREADY DONE.

19 MS. DAVIS: IT PROBABLY WILL BE VERY MINIMAL TIME HERE
20 OUT BUT THE PROBLEM IS THERE'S JUST NOT -- FROM BACK UP UNTIL
21 NOW. AND -- BUT WHAT I'M TRYING TO DO WITH THE BROTHER IN
22 OKINAWA IS I HOPE TO BE ABLE TO ARRANGE SOME WAY FOR HIM TO
23 GIVE A VIDEO TAPE. IF YOU CAN'T PRESENT THE PERSON SOMETIMES
24 YOU CAN PRESENT A VIDEO TAPE OF SOMEONE JUST GIVING -- BECAUSE
25 HE IS THE BEST PERSON TO GIVE A DESCRIPTION OF HOW HIS FAMILY

1 OPERATED. AND WE JUST THINK HE'S -- HE AND THE SISTER ARE
2 TERRIBLY IMPORTANT BECAUSE THEY'RE THE ONLY TWO THAT AREN'T
3 CRAZY.

4 THE COURT: WELL, WHAT ---

5 THE COURT: WE WORKED TOGETHER IN A DEATH PENALTY CASE, A
6 FEDERAL DEATH PENALTY CASE ---

7 THE COURT: WHAT ARE YOU ASKING FOR RIGHT NOW?

8 MR. FLEMING: HOW MUCH MONEY? HOW MUCH MONEY DO WE NEED?

9 MS. DAVIS: I HAD SAID -- ORDER WAS FOR \$10,000.00.

10 THE COURT: ANOTHER 10,000? ON TOP OF THE EIGHT THAT YOU
11 ALREADY HAVE?

12 MS. DAVIS: AND PART OF THAT WENT TO PAIGE TARR.

13 THE COURT: WHO IS THAT?

14 MS. DAVIS: SHE WAS INITIAL PERSON THAT YOU -- YOU GAVE
15 MONEY FOR HER ---

16 MR. FLEMING: SHE HAD A -- OH, SORRY.

17 MS. DAVIS: FOR THE INITIAL INVESTIGATION.

18 THE COURT: WELL, I MEAN, UNLESS YOU CAN SHOW ME SOME
19 PRECEDENT OR SOMETHING, \$20,000.00 FOR THIS INVESTIGATIVE
20 SERVICES - AND THAT'S BASICALLY WHAT IT IS - TO MY MIND, I
21 JUST DON'T SEE IT AND I DON'T KNOW, I'M SURE IT'S WORTH IT AND
22 ALL BUT IT JUST LOOKS TO ME LIKE THAT'S AN AWFUL LOT OF -- AND
23 I KNOW THERE'S WAYS THAT YOU CAN SPEND IT BUT I FEEL LIKE THAT
24 THAT'S -- WELL, LET ME ASK YOU THIS. HOW MUCH OF -- HOW MUCH
25 MONEY FROM YOUR EXPERTS THAT ARE TESTIFYING AND SO FORTH HAVE

1 I APPROVED SO FAR?

2 MR. FLEMING: TWENTY-THREE THOUSAND DOLLARS.

3 THE COURT: WELL, I DON'T SEE ANYTHING WRONG WITH THAT.

4 MR. FLEMING: IS THAT THE ORDER?

5 TWENTY-THREE THOUSAND DOLLARS.

6 THE COURT: PLUS THIS FIVE THAT I JUST --

7 MR. FLEMING: NOW, THAT -- ALL OF THAT TWENTY-THREE
8 HASN'T BEEN SPENT. I DON'T KNOW. OR ALL THE MONEY THAT'S
9 BEEN ALLOCATED HAS NOT BEEN SPENT.

10 THE COURT: WELL, DO THIS. IF YOU THINK YOU'RE CORRECT,
11 IF YOU WANT TO SHOW ME, BRING ME UP AN UP-TO-DATE ACCOUNTING
12 OF WHAT'S BEEN AUTHORIZED AND WHAT'S BEEN SPENT, AND I WILL
13 LOOK AT IT FROM THAT STANDPOINT ---

14 MR. FLEMING: YES, SIR.

15 THE COURT: --- BUT JUST FOR INVESTIGATION WORK ON
16 MITIGATION, AND I KNOW THAT YOU HAVE WITNESSES. I'M OF THE
17 OPINION, AND, OF COURSE, ONE OR TWO FAMILY MEMBERS AND IF
18 YOU'VE IDENTIFIED THEM, I DON'T -- AND, OF COURSE -- BUT I
19 DON'T KNOW EXACTLY WHAT SOMEONE WOULD EXPECT TO FIND FROM
20 SCHOOL RECORDS OR BIRTH RECORDS OR WHATEVER. I MEAN, YOU
21 KNOW, MOST EVERYBODY KNOWS THAT THEY WERE BORN IN SOME PLACE.

22 MR. FLEMING: WELL, I MEAN THE REASON THAT ---

23 THE COURT: HOW MUCH EDUCATION DOES THE DEFENDANT HAVE?

24 MS. DAVIS: HE WENT THROUGH ELEVENTH GRADE.

25 IN THE TRAINING FOR THIS THEY -- THEY TEACH YOU A

1 PARTICULAR WAY TO BE THOROUGH AND HOW TO DO IT AND THAT'S WHAT
2 I TRY TO DO. AND THIS HAS GONE ON FOR MUCH ---

3 THE COURT: WELL, WAIT, EXCUSE ME. DON'T MEAN TO CUT YOU
4 OFF BUT I'LL HEAR -- I'VE ALREADY HEARD FROM YOU. YOUR
5 AFFIDAVIT'S PLENTY SUFFICIENT.

6 MS. DAVIS: OKAY.

7 THE COURT: I JUST FEEL LIKE THAT -- THAT THAT'S
8 JUST -- I'LL LOOK AT IT AND IF YOU WANT TO PRESENT
9 SOMETHING -- ANYTHING ELSE YOU WANT TO PUT ON THE RECORD?

10 MR. FLEMING: NO, SIR, WE JUST -- WE FEEL LIKE THAT THE
11 CONTINUED SERVICES OF MISS DAVIS IS ESSENTIAL TO PRESENT
12 PROPER MITIGATION. IN THE SENTENCING PHASE OF THIS CASE AND
13 HER -- HER INABILITY TO CONTINUE WORKING ON THE CASE IS GOING
14 TO SEVERELY HAMPER OUR ABILITY TO PROPERLY PRESENT MITIGATION.
15 SHE HAD DONE, AND I MEAN HUNDREDS OF PAGES OF SUMMARIES. THAT
16 WE HAVE. AND ---

17 THE COURT: WELL, I MEAN HOW MUCH YOU GOING TO BE ABLE TO
18 PRESENT TO A JURY IN THE SENTENCING PHASE?

19 MR. FLEMING: WELL, I DON'T KNOW YET BECAUSE WE DON'T
20 EXACTLY ALL THE ISSUES THAT -- THAT, YOU KNOW, WE'RE GONNA BE
21 DEALING WITH. WE DON'T KNOW WHAT THE AGGRAVATING -- AGGRAVAT-
22 ING -- YOU KNOW, THE SOLICITOR'S PROVIDED US NOTHING AND --
23 AND ---

24 THE COURT: WELL, I MEAN WOULDN'T YOU THINK THAT THE
25 MAJOR AGGRAVATING CIRCUMSTANCES IN THIS CASE IS THAT HE KILLED

15

1 TWO PEOPLE? OR HE'S CHARGED WITH KILLING, EXCUSE ME. THIS IS
2 A DOUBLE HOMICIDE. THAT IS, IN AND OF ITSELF, THE -- IF THEY
3 GONE CONVICT HIM, THAT'S IT. THERE ISN'T ANYTHING ELSE THAT I
4 KNOW OF AND THAT THAT'S A CERTAINTY, THAT IF HE IS CONVICTED
5 AND THERE IS AN AGGRAVATED CIRCUMSTANCE.

6 TELL ME WHAT ELSE IT COULD POSSIBLY BE.

7 MR. FLEMING: WELL, THE JURY, AND MY UNDERSTANDING IS
8 THAT THE JURY HAS THE RIGHT TO SAY DISPUTE THE FACT THAT THERE
9 IS AN AGGRAVATED CIRCUMSTANCE, WHICH ONE WOULD ASSUME ---

10 THE COURT: NO, I UNDERSTAND ALL THAT BUT YOU WERE
11 TALKING ABOUT YOU DON'T KNOW WHAT THE AGGRAVATED CIRCUMSTANCES
12 WERE.

13 MR. FLEMING: WELL, THEY ---

14 THE COURT: I WAS GONE TELL YOU THAT BASED UPON THE FACTS
15 OF THIS CASE, ONE OF THE STATUTORY AGGRAVATED CIRCUMSTANCES
16 IS, IS THAT THE PERSON -- IT WAS A MULTIPLE MURDER, THAT IF
17 THAT IS IT, THAT'S THE OBVIOUS. THAT'S NOT EVEN MUCH OF A
18 FACTOR IN THIS CASE. I DON'T KNOW, IS IT?

19 MR. FLEMING: BUT I WOULD ASSUME THAT YOU'RE NOT GOING TO
20 LIMIT THE SOLICITOR'S ABILITY TO ELICIT ANY OTHER TESTIMONY
21 BEYOND THAT. IN OTHER WORDS, IF HE WANTS TO BRING UP PRIOR
22 RECORD, IF HE WANTS TO BRING UP PRIOR ---

23 THE COURT: WELL, I HADN'T HEARD ANYTHING ABOUT A PRIOR
24 RECORD. I DIDN'T KNOW ANYTHING ABOUT ANY.

25 MR. FLEMING: OR ANY -- ANY -- ANY OTHER CHARACTER

1 EVIDENCE THAT WOULD NEVER BE ADMISSIBLE IN THE GUILT PHASE BUT
2 CAN BE ADMISSIBLE IN THE SENTENCING PHASE.

3 HE HAS NEVER PROVIDED US WITH ANY INFORMATION THAT HE
4 INTENDS OF ELICIT. TO THAT EFFECT. HOWEVER ---

5 THE COURT: WELL, DOESN'T HE HAVE TO SERVE NOTICE OF THE
6 POTENTIAL AGGRAVATED CIRCUMSTANCES?

7 MR. FLEMING: AND HE HAS DONE THAT. AND I UNDERSTAND ---

8 THE COURT: WELL, WHAT DID HE SERVE YOU ON?

9 MR. FLEMING: --- BUT THAT'S A MATTER OF PROOF THAT WILL
10 BE TAKING -- I'M TALKING ABOUT -- I'M TALKING ABOUT ANY OTHER
11 IMPACT TESTIMONY THAT HE MAY PRESENT, ANY OTHER TESTIMONY LIKE
12 THAT.

13 NOW, IF -- IF THAT'S THE CASE, WE NEED TO BE PREPARED TO
14 SAY, TO ARGUE OUR CASE THAT DESPITE STATUTORY AGGRAVATED
15 CIRCUMSTANCES ---

16 THE COURT: MITIGATING ---

17 MR. FLEMING: TO MITIGATE. AND THAT'S -- AND
18 THAT'S -- AND IT'S BECOMING MORE AND MORE SERIOUS IN THIS
19 CASE.

20 THE COURT: WELL, IT'S A SERIOUS CASE.

21 MR. FLEMING: YEAH.

22 THE COURT: THERE'S NO QUESTION ABOUT THAT BUT I FEEL
23 LIKE THAT YOU GOT, HOW MANY PAGES? HUNDREDS OF PAGES ---

24 MR. FLEMING: YEAH. I MEAN THEY'RE ALL ON THE COMPUTER
25 SO I DON'T EXACTLY -- BUT WAY I -- IS THERE A FIGURE THAT YOU

17

1 COULD -- THAT YOU WOULD FEEL COMFORTABLE APPROVING?

2 THE COURT: WELL, I DON'T KNOW THAT BASED UPON WHAT I'VE
3 HEARD REPRESENTED THAT IT WOULD -- THAT ANY SMALL AMOUNT'S
4 GONE HELP BECAUSE IT'S JUST -- YOU KNOW, IT SOUNDS TO ME LIKE
5 YOU'RE ASKING -- YOU'VE GOT \$8,000.00 ALREADY SPENT AND YOU
6 GOT -- WANT \$12,000.00 MORE. TO MY MIND, IT'S JUST -- I JUST
7 CAN'T ---

8 MR. FLEMING: IF I WERE TO GO TO THE OFFICE OF INDIGENT
9 DEFENSE AND FIND OUT, GET -- POLL ON THE AVERAGE, THE AVERAGE
10 COST OF A MITIGATION SPECIALIST PER DEATH PENALTY CASE, WOULD
11 THAT HELP YOU? BECAUSE IT MAY BE THAT WE ARE WELL WITHIN
12 THAT.

13 THE COURT: WELL, LET ME JUST SAY THIS. I -- YOU KNOW,
14 I'M CONFRONTED WITH THESE NEW EXPERTS' NAMES AND ALL. AND
15 OBVIOUSLY IT'S UP TO YOU AS A TRIAL LAWYER TO -- YOU NEED HELP
16 FROM INVESTIGATORS AND SO FORTH TO GET RELEVANT TESTIMONY TO
17 PRESENT. BUT YOU ARE THE ONE, THE ATTORNEYS HAVE TO DECIDE
18 WHAT THEY THINKS GOING TO BE SOMETHING THAT DOVETAILS WITH
19 THEIR TRIAL.

20 MR. FLEMING: YES, SIR.

21 THE COURT: A SPECIALIST DOESN'T COME IN AND SAY, YOU
22 KNOW, THAT AND SO I JUST ---

23 MR. FLEMING: WELL, AND I -- YOU'RE -- YOU'RE ABSOLUTELY
24 RIGHT, IT IS OUR, MINE AND MR. KULP'S DECISION BUT WHAT THE
25 COURT -- MITIGATION SPECIALISTS ARE SPECIFICALLY TRAINED TO GO

1 OUT AND TO FIND THIS INFORMATION ---

2 THE COURT: WELL ---

3 MR. FLEMING: --- AND TO FIND MORE.

4 THE COURT: --- I JUST HEARD HOW MUCH, TONS OF INFORMA-
5 TION THAT'S BEEN LOCATED THAT'S EXTREMELY RELEVANT ON THIS
6 CASE THAT MISS DAVIS HAS FOUND AND, LIKE I SAY, I JUST CAN'T
7 QUITE UNDERSTAND HOW -- THERE'S ONLY A CERTAIN AMOUNT THAT SHE
8 CAN ACTUALLY USE. YOU KNOW, YOU CAN'T ---

9 MR. FLEMING: I UNDERSTAND THAT. WE STILL NEED TO CULL
10 IT. AND -- AND WE NEED HER HELP IN CULLING IN AND IF SHE CAN,
11 AT \$35.00 AN HOUR, DO A LOT OF THE WORK, THEN IT KEEPS TWO
12 LAWYERS AT A GREATLY -- AT MUCH HIGHER RATE FROM HAVING TO
13 SPEND THAT TIME ---

14 THE COURT: YEAH, BUT YOU WON'T SPEND THAT MUCH TIME, I
15 WOULDN'T THINK.

16 IF YOU WANT TO PRESENT SOMETHING ELSE TO ME AT A LATER
17 TIME I'LL BE GLAD TO HEAR FROM YOU BUT I'M NOT GOING TO
18 APPROVE ANOTHER \$12,000.00. IF YOU WANT TO SUBMIT SOME OTHER
19 PLAN OF ACTION I'LL BE GLAD TO CONSIDER IT AND I HATE TO NOT
20 TO DO THAT BUT I JUST THINK, TO MY MIND, IT GETS A
21 LITTLE -- THAT THAT SORT OF THING COULD, LESS SUFFICIENT.

22 MR. FLEMING: ALL RIGHT, SIR. THANK YOU. I THINK THAT'S
23 ALL WE HAVE.

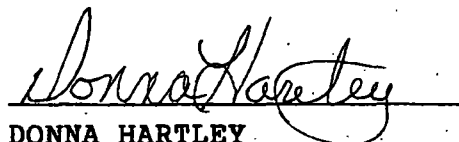
24 ---END OF REQUESTED TRANSCRIPT OF RECORD ---
25

19

I, THE UNDERSIGNED DONNA HARTLEY, OFFICIAL COURT REPORTER FOR THE FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR BEAUFORT COUNTY, SOUTH CAROLINA ON THE SEVENTEENTH DAY OF AUGUST, 2001.

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

September 14, 2001

A handwritten signature in cursive script, reading "Donna Hartley", is written over a horizontal line.

DONNA HARTLEY
CIRCUIT COURT REPORTER

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS

THE STATE

-VS-

TAVARUS ROGERS

:
:
:
:
:

TRANSCRIPT OF RECORD

AUGUST 29, 2001
BEAUFORT, SOUTH CAROLINA

B E F O R E:

HONORABLE JACKSON V. GREGORY, JUDGE

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

RANDOLPH MURDAUGH, III, SOLICITOR
ATTORNEY FOR THE STATE

CORY HOWERTON FLEMING, ESQ.
TIMOTHY C. KULP, ESQ.
ATTORNEYS FOR DEFENDANT

DONNA HARTLEY
CIRCUIT COURT REPORTER

COPY

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1 MR. MURDAUGH: WE READY TO PROCEED, SIR?

2 THE COURT: YES, SIR.

3 MR. MURDAUGH: CALL JOCELYN WENDELL.

4 MR. FLEMING: YOUR HONOR, BEFORE WE DO THAT, I WOULD
5 RENEW OUR MOTION TO HAVE THE PROCEEDINGS OF THIS IN CAMERA
6 HEARING CLOSED TO THE PUBLIC FOR REASONS PREVIOUSLY STATED IN
7 THE FIRST PART OF THIS HEARING REQUEST.

8 THE COURT: ALL RIGHT, WE'RE HAVING A JACKSON V DENO

9 HEARING ON IDENTIFICATION, IS THAT WHAT WE'RE ---

10 MR. FLEMING: A NEAL V BIGGERS, YES, SIR.

11 THE COURT: NEAL V BIGGERS?

12 MR. FLEMING: NEAL V BIGGERS HEARING AND IT CONCERNS
13 ISSUES THAT MAY OR MAY NOT BE BROUGHT FORWARD BEFORE THE
14 PERSPECTIVE JURY AND, THEREFORE, WE ARE REQUESTING, AMONG
15 OTHER THINGS, AMONG REASONS, THAT THE PROCEEDINGS FOR THIS IN
16 CAMERA HEARING BE CLOSED TO THE PUBLIC. TO ALL MEMBERS OF
17 THE PUBLIC OTHER THAN FAMILY OF EITHER -- EITHER THE PARTIES
18 OR VICTIMS.

19 THE COURT: AND THE OFFICERS OF THE COURT.

20 MR. FLEMING: AND THE OFFICERS OF THE COURT, YES, SIR.

21 THE COURT: WHAT'S YOUR POSITION, SOLICITOR?

22 MR. MURDAUGH: LAST TIME I DIDN'T SAY ANYTHING AND I
23 CAUGHT THE DEVIL IN THE NEWSPAPER SO I'M GONE -- I CONCUR WITH
24 HIS MOTION NOW.

25 IF I'M GONE CATCH THE DEVIL I MIGHT WAS WELL ---

1 THE COURT: OKAY.

2 MR. MURDAUGH: --- CATCH IT FOR A REASON.

3 THE COURT: SO AT THIS TIME WE WILL -- THE COURT PERSON-
4 NEL, OFFICERS OF THE COURT ARE ALLOWED TO STAY, AND FAMILY
5 MEMBERS OF THE -- BOTH THE DEFENDANT AND THE VICTIMS. EVERY-
6 ONE ELSE SHOULD PLEASE EXIT THE COURTROOM.

7 I DON'T BELIEVE THE PRESS EVEN SHOWED UP TODAY.

8 MR. MURDAUGH: CALL JOCELYN WENDELL.

9 MR. FLEMING: YOUR HONOR, AGAIN - I APOLOGIZE, SOLICITOR
10 - I -- IN A MATTER OF HOUSEKEEPING, I'D LIKE TO RENEW SEVERAL
11 MOTIONS THAT THE SOLICITOR'S ALREADY CONSENTED TO PREVIOUSLY.
12 BUT I WANTED TO GO AHEAD AND DO THAT NOW BEFORE WE GOT INTO
13 THE HEAT OF THE TESTIMONY. MAY I DO SO, YOUR HONOR?

14 THE COURT: YES, SIR.

15 MR. FLEMING: THE FIRST ONE IS THE MOTION TO REVEAL ANY
16 DEALS OR OFFERS OF LENIENCY. OF COURSE, THE SOLICITOR'S
17 ALREADY CONSENTED TO THAT AND I WOULD JUST PUT THAT -- SINCE
18 WE'RE APPROACHING TRIAL TIME, I'D LIKE TO RENEW THAT MOTION.

19 MR. MURDAUGH: I CONSENT TO THE MOTION AND STATE TO THE
20 COURT THAT I HAVE MADE NO DEALS WITH ANYONE, SIR.

21 MR. FLEMING: THANK YOU, SIR.

22 MR. MURDAUGH: YET. I'M TRYING TO.

23 THE COURT: IN OTHER WORDS, YOU MIGHT BE IN THE PROCESS
24 OR GOT OFFERS OUT BUT NOTHING IS ---

25 MR. MURDAUGH: THAT'S CORRECT.

1 THE COURT: --- COME TO FRUITION.

2 MR. FLEMING: SECOND ONE, YOUR HONOR, IS THE SOLICITOR
3 HAS PROVIDED DEFENSE COUNSEL WITH A WITNESS LIST. I WOULD ASK
4 THAT IF THERE'S BEEN ANY ADDITIONS OR UPDATES TO THAT LIST
5 THAT HE DO SO AS SOON AS POSSIBLE.

6 MR. MURDAUGH: THERE ARE NONE THAT I HAVE NOT GIVEN HIM
7 NOTICE OF, SIR.

8 MR. FLEMING: THERE HAVE BEEN SOME DISCUSSIONS, YOUR
9 HONOR, ON AN INFORMAL NATURE AND I WOULD ASK THAT HE PROVIDE
10 THAT, AS HE DID LAST TIME, ON HIS LETTERHEAD.

11 THE COURT: DISCUSSIONS?

12 MR. MURDAUGH: I AIN'T GONE DO THAT. I GAVE YOU A COPY
13 OF THE REPORT FROM THE SHERIFF'S OFFICE. AND I AIN'T -- AND I
14 AIN'T GONE WRITE A LETTER UNLESS THE JUDGE TELLS ME I GOT TO.

15 THE COURT: WHAT KIND OF LETTER YOU TALKING ABOUT?

16 MR. FLEMING: YOUR HONOR, LAST -- WHEN WE WERE APPROACH-
17 ING TRIAL LAST TERM, LAST TIME, THE SOLICITOR GAVE ME A FAIRLY
18 THOROUGH WITNESS LIST AND DID SO ON HIS LETTERHEAD.

19 THE COURT: WELL, YOU CAN CONFIRM IT BACK TO HIM IF YOU
20 WANT TO. HE SAID YOU CAN -- ON YOUR LETTERHEAD, IF YOU WANT
21 TO CONFIRM.

22 SO HE'S GIVEN YOU LIST?

23 MR. MURDAUGH: I'VE GIVEN HIM A LIST, SIR. WHICH THE LAW
24 DOESN'T REQUIRE ME TO DO.

25 THE COURT: NO, IT DOESN'T.

1 **MR. FLEMING:** WELL, YOUR HONOR, IF THE WITNESSES
2 DON'T -- WELL, HE HAS INFORMED ME OF POTENTIAL NEW WITNESS.
3 BUT IF THERE'S NO OTHER WRITTEN DOCUMENT OR ANYTHING FOR US TO
4 RELY ON, WHAT'S TO SAY THE SOLICITOR CAN'T SAY THE DAY BEFORE
5 TRIAL, IN A CASE WE'VE BEEN PREPARING FOR TWO AND A HALF
6 YEARS, THAT HE HAS A NEW WITNESS?

7 ALL WE'RE ASKING IS, AND THAT AT LEAST ---

8 **THE COURT:** WELL, LET ME ASK YOU THIS. WHAT DUTY -- HE'S
9 DOING THAT BUT I MEAN YOU DON'T HAVE A RIGHT TO EXPECT HIM TO
10 GIVE YOU A LIST OF THE WITNESSES ANYWAY. THIS -- AS IN CIVIL
11 LITIGATION.

12 **MR. FLEMING:** WELL, AT LEAST RULE 5 REQUIRES THEM
13 TO -- RULE 5 OF THE RULES OF CRIMINAL PROCEDURE REQUIRES THAT
14 HE AT LEAST PROVIDE US INFORMATION CONCERNING WHO'S THE
15 POSSIBLE WITNESSES AGAINST THIS INDIVIDUAL.

16 SECONDLY ---

17 **THE COURT:** WELL, YOU'VE MADE YOUR RULE 5 REQUEST, I'M
18 SURE.

19 **MR. FLEMING:** YES, SIR. TWO AND A HALF YEARS AGO. AND
20 WE'VE RENEWED IT SEVERAL TIMES. HOWEVER, ALSO BRADY -- THE
21 WHOLE LINE OF CASES CONCERNING BRADY REQUIRES THAT
22 THEY -- THEY PRODUCE INFORMATION TO THAT EFFECT.

23 ALL WE'RE ASKING IS THAT THE SOLICITOR DO SO WITHIN AT
24 LEAST TWO WEEKS OF TRIAL SO THAT IF, IF -- IF HE HAS A NEW
25 WITNESS WE WILL HAVE THE OPPORTUNITY TO INVESTIGATE THAT

1 WITNESS, DETERMINE WHAT IT IS THEY MAY OR MAY NOT SAY.

2 I THINK THAT'S -- I THINK THAT'S -- UNDER FUNDAMENTALS OF
3 DUE PROCESS I THINK THAT'S REASONABLE.

4 THE COURT: OKAY, ANYTHING ELSE?

5 MR. FLEMING: NO, SIR, THAT -- WITH REGARD TO THAT
6 MOTION, NO, SIR.

7 THE COURT: OKAY.

8 ALL RIGHT, I HAVE A COUPLE OF THINGS, JUST SORT OF
9 HOUSEKEEPING MATTERS, TOO. I HAVE PREPARED AND ACTUALLY
10 SIGNED AN ORDER MAKING FINDINGS THAT MR. KULP OF THE FIRST
11 CHAIR AND MR. FLEMING FOR SECOND CHAIR, WITH THE THINGS, JUST
12 TO CONFIRM THAT. HAVE YOU SEEN THIS?

13 MR. FLEMING: YES, SIR, I SAW IT IN YOUR OFFICE.

14 THE COURT: OKAY.

15 HAVE YOU SEEN IT, SOLICITOR?

16 MR. MURDAUGH: YES, SIR.

17 THE COURT: WELL, ANYWAY, I DON'T KNOW THAT YOU'RE
18 CONCERNED ABOUT IT BUT, BASICALLY, IT IS A -- THE FINDING THAT
19 THE ATTORNEYS HAVE THE NECESSARY PROFICIENCY TO QUALIFY AND SO
20 I'M GONE FILE THAT ORDER.

21 MR. MURDAUGH: I HAVE NO OBJECTION TO THAT, SIR, AND I
22 CONCUR WITH THE COURT THAT BOTH OF THEM ARE EMINENTLY
23 QUALIFIED.

24 THE COURT: OKAY.

25 ALL RIGHT, THE QUESTIONNAIRE. I HAVE -- MY OFFICE HAS

1 SENT A PURPOSED QUESTIONNAIRE AND I WANT TO KNOW IF THIS
2 QUESTIONNAIRE IS SUITABLE. TO GO WITH IT AND THE OTHER
3 CORRESPONDENCE THAT GOES WITH THE QUESTIONNAIRE.

4 MR. MURDAUGH: IS THAT THE SAME QUESTIONNAIRE, ONE OF THE
5 TWO -- COMBINATION OF THE TWO QUESTIONNAIRES? IF IT IS, I
6 HAVE NO OBJECTION.

7 THE COURT: DID Y'ALL WORK ON THAT?

8 MR. FLEMING: YOUR HONOR, WITH REGARD TO THE CORRESPOND-
9 ING NOTICES AND CORRESPONDENCE TO POTENTIAL JURORS, WE CONCUR
10 WITH THAT.

11 WITH REGARD TO THE QUESTIONNAIRE, THERE IS THE
12 FEDERAL -- THE FEDERAL ---

13 THE COURT: DO YOU HAVE -- DO YOU HAVE SOMETHING, A
14 DOCUMENT THAT YOU WANT ME TO SEND? THAT Y'ALL HAVE AGREED ON?

15 MR. FLEMING: I BELIEVE WE -- I'LL LET MR. KULP. HE'S
16 BEEN HANDLING THAT, SIR. I'LL LET HIM ---

17 MR. KULP: WELL, JUDGE, WE CAN DEAL WITH THAT A LITTLE
18 BIT LATER. WE'VE KIND OF ---

19 THE COURT: WELL ---

20 MR. KULP: I KNOW I NEED TO GET -- I KNOW YOU WANT TO GET
21 THAT DONE BECAUSE IT HAS TO BE SENT OUT BY THE CLERK AND I
22 KNOW THAT SHE ---

23 THE COURT: EXACTLY, WE GOT TO GET THESE THINGS OUT, GOT
24 TO HAVE A LOT OF JURORS AND IT'S GOT -- WE GOT TO GET ---

25 MR. KULP: UNDERSTAND.

1 BUT COULD WE DEAL WITH THAT A LITTLE BIT LATER?

2 MAYBE ---

3 THE COURT: YOU TALKING ABOUT TODAY OR WHEN?

4 MR. KULP: TODAY.

5 THE COURT: OH, OKAY.

6 MR. KULP: YES, SIR, AFTER THE ---

7 THE COURT: WELL, IF YOU'LL JUST PREPARE THE

8 QUESTIONNAIRE WITH A CONSENT ORDER ON IT OR SOMETHING AND

9 Y'ALL GET THE THING SIGNED ---

10 MR. KULP: YES, SIR.

11 THE COURT: I'LL GO AHEAD AND DO IT AND THAT THE -- AND I
12 ALSO HAD A LETTER THAT WAS PURPOSED ABOUT SCHEDULING MONDAY,
13 AUGUST 8 -- LET'S SEE. NO, SEPTEMBER 21, IF ANYBODY WISHES TO
14 BE EXCUSED, THAT WE'D HAVE A HEARING ON THOSE AHEAD OF TIME SO
15 THAT WE COULD GET THAT OUT OF THE WAY. DO YOU HAVE A COPY OF
16 THAT PURPOSED LETTER?

17 MR. KULP: I DO, YOUR HONOR, RIGHT HERE IN FRONT OF ME.

18 THE COURT: AND SO WHAT I -- I WANT TO INCORPORATE ALL OF
19 THAT WITHIN -- ON THE RECORD OR WITH AN ORDER SO THAT WE CAN
20 GET THAT DONE. SO YOU WILL HAVE THAT TO ME TODAY, OF WHAT
21 Y'ALL -- WITH WHAT IS SUITABLE WITH YOU?

22 MR. KULP: YES, SIR, I'LL COORDINATE IT WITH THE SOLICI-
23 TOR AND WE'LL GET THAT TO YOU TODAY.

24 THE COURT: EXCELLENT.

25 MR. KULP: A PURPOSED CONSENT ORDER.

1 THE COURT: ALL RIGHT.

2 MR. KULP: YES, SIR.

3 THE COURT: ALL RIGHT, GO AHEAD, THEN. I WANTED TO MAKE
4 SURE WE GOT TOUCHED ON THOSE MATTERS.

5 MR. FLEMING: ALL RIGHT, SIR, AND THE LAST THING IS WE
6 MADE A REQUEST FOR RAP SHEETS ON ALL NON-EXPERT WITNESSES. OF
7 COURSE THE SOLICITOR CONSENTED BUT WE STILL HAVE NOT RECEIVED
8 THOSE. I WOULD ASK THAT IF WE CAN GET THOSE BY FRIDAY.
9 CERTAINLY THE SHERIFF'S OFFICE HAS THE ABILITY TO DO THAT
10 MOMENTARILY.

11 MR. MURDAUGH: I WILL ATTEMPT TO DO IT BY FRIDAY; I CAN'T
12 PROMISE BY FRIDAY.

13 I CAN ASSURE THE COURT THAT WE WILL ATTEMPT TO DO THAT.

14 THE COURT: OKAY.

15 MR. FLEMING: THANK YOU, SIR.

16 THE COURT: READY TO PROCEED IN THE HEARING?

17 MR. FLEMING: YES, SIR.

18 MR. MURDAUGH: NOW, YOUR HONOR, PLEASE, AT THE LAST
19 HEARING THERE WAS SOME TALK OF HAVING AN ID LINEUP. I HAVE
20 BEEN INFORMED THAT THAT WAS NOT DESIRED BY THE DEFENSE LAW-
21 YERS.

22 MR. FLEMING: YOUR HONOR, WE -- OUR POSITION ON THAT IS
23 FAIRLY SUCCINCT. WHILE -- WHILE WE ARE CERTAINLY WILLING TO
24 COMPLY WITH ANY ORDER OF THIS COURT, WE -- AFTER CONSULTATION
25 WITH OUR CLIENT, MR. ROGERS, AND FULLY DISCUSSING THE SITUA-

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1 TION, WE CANNOT CONSENT TO PARTICIPATE IN ANY WAY IN A LINEUP
2 PROCEDURE, AS WE HAVE CONTENDED AND STILL CONTEND THAT THE
3 PRIOR EXPOSURE OF THIS WITNESS TO THIS DEFENDANT IN COURT AND
4 OTHERWISE, CONSTITUTES IMPRESSIBLE PRIOR TAIN.

5 THE COURT: WELL, LET ME JUST SAY THIS. WE GONE HAVE
6 THIS HEARING; WE ALREADY HAD ONE OF THEM. THIS COURT IS OPEN
7 TO ANY EVIDENCE YOU WISH TO PRESENT. YOU MAKE ARGUMENTS BUT I
8 HAVEN'T SEEN ANY EVIDENCE OF ANY PRIOR TAIN. AND SO IF YOU
9 WISH TO OFFER EVIDENCE, THAT'S FINE.

10 WHAT WE DISCUSSED AT THE LAST TIME, IF MY MEMORY SERVES
11 ME CORRECT, WAS THAT YOU WERE, IN EFFECT, GOING TO HAVE A
12 LINEUP HERE IN THE COURTROOM AND THEN WE HAD SOME DISCUSSIONS,
13 I DID WITH THE LAWYERS, THAT SINCE THIS IS A REQUEST OF THE
14 DEFENSE, EITHER HERE OR AT THE JAIL BUT HAVE A LINEUP SITUA-
15 TION THAT Y'ALL WOULD MONITOR AND MAKE SURE THAT YOU WERE
16 SATISFIED WITH THE FAIRNESS OF IT. AND IF YOU WANTED TO DO IT
17 HERE, THAT WAS FINE BUT IT TOOK SOME TIME TO PREPARE IT.

18 IN OTHER WORDS, HAVE THE DEFENDANT SEATED WITH SEVERAL
19 OTHER, FOUR OR FIVE OR WHATEVER, OTHER YOUNG BLACK MALES SO
20 THAT THE -- BUT I'M MY IMPRESSION THAT, HAVING BEEN GIVEN THAT
21 OPPORTUNITY, THAT YOU DON'T WANT THAT, YOU DON'T WANT TO GO
22 THAT ROUTE, IS THAT CORRECT?

23 MR. FLEMING: WE -- WE CANNOT CONSENT TO PARTICIPATING IN
24 THAT.

25 THE COURT: WELL, IT WAS NOT A QUESTION OF CONSENTING; WE

1 WERE DOING IT AT YOUR -- TO ACCOMMODATE YOU.

2 IS THAT NOT THE WAY I RECALL IT. HOW DO YOU THINK,
3 SOLICITOR?

4 MR. MURDAUGH: THAT IS MY RECOLLECTION EXPRESSLY, SIR.

5 I . . .

6 THE COURT: IF YOU DON'T WANT IT YOU DON'T HAVE TO HAVE
7 IT. IT WAS DONE JUST AS AN ACCOMMODATION IN THE EVENT THAT
8 YOU WERE INTERESTED IN DOING THAT.

9 MR. FLEMING: YES, SIR.

10 MR. KULP: I KNOW, AND, YOUR HONOR, FOR THE RECORD, AND
11 TO CLARIFY THAT, THE WITNESS AND THE WITNESS' ABILITY TO
12 IDENTIFY THE DEFENDANT IS -- IS WITHIN THE PREVIEW AND THE
13 PROVINCE AND -- AND BURDEN OF THE STATE. AND EITHER THE
14 WITNESS CAN IDENTIFY THE PERSON OR NOT. AND WHILE I UNDER-
15 STAND THIS LANGUAGE ABOUT ACCOMMODATION, THAT'S NOT OUR BURDEN
16 AND AFTER CONSULTATION WITH OUR CLIENT, FURTHER RESEARCH, YOU
17 KNOW, IF, IN FACT -- WE WILL LOSE PART OF OUR BURDEN TO -- TO
18 PARTICIPATE IN THAT BUT, AS MR. FLEMING SAID, THE COURT -- THE
19 SOLICITOR -- IT HAPPENS SOMETIMES WHERE SOMEONE REFUSES TO
20 PARTICIPATE IN A LINEUP, THE COURT MIGHT IN FACT ORDER THAT.
21 AND THE CASES CLEARLY HOLD THAT THE COURT MAY DO THAT. AS
22 LONG AS OTHER ASPECTS OF FAIRNESS ARE COMPLIED WITH.

23 HOWEVER, I UNDERSTAND YOUR PERSPECTIVE, YOUR HONOR, ABOUT
24 PRIOR TAINT BUT WE HAVE CERTAINLY ALLEGED AND ARGUED THAT WE
25 BELIEVE IT'S THE CASE THAT, NUMBER ONE, THE WITNESS IN THIS

1 CASE AND THE ONE WE'VE ALREADY HEARD FROM ON OUR PREVIOUS
2 HEARING COULD NOT IDENTIFY THE DEFENDANT IN A PHOTOGRAPHIC
3 ARRAY; THE THEREAFTER THERE WAS SOME EXPOSURE OF THE WITNESS
4 TO THE DEFENDANT IN A SETTING THAT WOULD CONSTITUTE A SHOWUP
5 OR A ONE-ON-ONE OR IN SUCH CIRCUMSTANCES. THAT'S WHAT WE MEAN
6 BY TAINT, WHERE OBVIOUSLY THE PERSON WHO WAS NAMED ---

7 THE COURT: WELL, OF COURSE, WE'VE ALREADY CONCLUDED ONE
8 HEARING.

9 MR. KULP: I'M AWARE OF THAT, YOUR HONOR.

10 THE COURT: AND WE'RE GOING TO HAVE THIS ONE AND,
11 BASICALLY, THERE'S TWO WAYS WE CAN DO IT; EITHER WE
12 COULD -- BUT THE STATE IS ENTITLED -- IF YOU DON'T WANT TO
13 PRESENT HIM IN A LINEUP SITUATION OR SOME OTHER WAY TO ENSURE
14 YOURSELVES THAT THE WITNESS -- THERE'S THE FAIRNESS OF IT.
15 THEN THE STATE IS LEFT WITH NOTHING ELSE TO DO BUT THE OLD-
16 FASHIONED WAY, IS TO BRING THE WITNESS IN AND SEE IF SHE CAN
17 IDENTIFY HIM HERE IN COURT. I MEAN THAT'S THE ONLY THING,
18 ONLY WAY I SEE IT. AM I INCORRECT?

19 MR. KULP: I UNDERSTAND, YOUR HONOR, BUT -- BUT WE THINK
20 THAT, WITHOUT BEING CALLOUS, THE CHIPS HAVE TO FALL WHERE THEY
21 MAY AND, IN FACT, WHAT HAS HAPPENED AND TRANSPIRED PRIOR TO
22 THIS OCCASION IS A MATTER OF FACT AND -- AND THAT'S OUR
23 POSITION.

24 THANK YOU, JUDGE.

25 THE COURT: SO WE'RE NOW READY TO PROCEED AND ---

1 MR. KULP: WE ARE, YOUR HONOR.

2 THE COURT: --- IT WOULD BE APPROPRIATE, I BELIEVE, TO
3 BRING IN THE WITNESS AND PROCEED WITH THE NEAL V BIGGERS
4 HEARING, IS THAT CORRECT?

5 MR. FLEMING: YOUR HONOR, IF I MAY, FOR THE RECORD, THE
6 WITNESS HAS BEEN IN SINCE THE CALL OF THIS MATTER.

7 MR. MURDAUGH: THAT IS CORRECT, SIR, AND THE REASON FOR
8 THAT IS BECAUSE OF THEIR WITHDRAWAL OF THE -- MY UNDERSTANDING
9 OF ---

10 THE COURT: WELL, THAT'S RIGHT, THAT WASN'T -- IT WASN'T
11 DONE THIS MORNING; THAT WAS DONE SOME TIME AGO. BECAUSE IT
12 WAS GONE TAKE US -- WE FOUND OUT THE LAST TIME THAT IN ORDER
13 TO HAVE THIS PARTICULAR ARRANGEMENT IT TOOK WE WERE -- IT TOOK
14 A TREMENDOUS AMOUNT OF PREPARATION. WITH ATTORNEYS FOR THE
15 OTHER PERSONS AND ALL THAT SORT OF THING BEING INVOLVED.

16 MR. KULP: BEG THE COURT'S INDULGENCE ONE SECOND.

17 JUST FOR CLARITY SAKE, YOUR HONOR, COCOUNSEL ADVISES ME
18 THAT HE ADVISED THE SOLICITOR THAT WE WERE NOT GOING TO
19 PARTICIPATE IN WHAT WAS DISCUSSED AT OUR LAST HEARING AND THAT
20 IS EITHER AN IN-COURT LINEUP OR ONE CONDUCTED AT THE JAIL.
21 PRIOR TO THIS MORNING. IN OTHER WORDS, WE DIDN'T -- THAT WAS
22 COMMUNICATED.

23 AND, SECONDLY, YOU KNOW, NOT KNOWING -- IF I RECALL
24 CORRECTLY, AND, OF COURSE, THE TRANSCRIPT WILL REFLECT IT, YOU
25 KNOW, BUT AT THE END OF THE LAST HEARING, WHAT I RECALL WAS IF

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1 THAT THE ISSUE ABOUT A IN-COURT LINEUP OR ONE AT THE JAIL CAME
2 UP AND I WOULD SUGGEST TO THE COURT, SUBMIT THAT THAT
3 WAS -- THAT ISSUE DID NOT COME UP AS A RESULT OF ANY MOTION BY
4 THE DEFENDANT BUT WE -- WE AGREED TO CONSIDER THAT WHEN THE
5 SOLICITOR BROUGHT IT UP BEFORE THE SECOND WITNESS CAME TO THE
6 STAND.

7 THE COURT: AND WE AGREED TO CONTINUE THE HEARING SO THAT
8 EVERYONE COULD SIT BACK, GIVE SOME THOUGHT TO IT AND HOW IT
9 WAS GONE DO IT AND EVERYTHING AND Y'ALL DECIDED ---

10 MR. KULP: YES, SIR.

11 THE COURT: --- TO GO FORWARD EXACTLY LIKE WE DID WITH
12 THE FIRST WITNESS.

13 MR. KULP: YES, SIR. WELL, WE -- OUR POSITION IS WE MADE
14 THE MOTION. TO SUPPRESS OR EXCLUDE IN-COURT IDENTIFICATION.

15 THE COURT: THAT'S RIGHT. AND NOW WE'RE HAVING A
16 HEARING ON IT.

17 MR. KULP: CORRECT. THAT IN RESPONSE TO OUR MOTION, THE
18 BURDEN OF PROOF THEN FEEL ON THE SOLICITOR. THE SOLICITOR
19 CALLED HIS WITNESS THEN, IN THE PRIOR HEARING, AND THEN WE
20 PROCEEDED THROUGH THAT FASHION. IN OTHER WORDS, WE'RE NOT
21 CALLING HIS WITNESSES TO SEE IF THEY'RE SUFFICIENT. SO, YOU
22 KNOW, WE MADE THE MOTION; HE BEARS THE BURDEN OF PROOF.

23 THE COURT: THAT'S RIGHT.

24 MR. MURDAUGH: JOCELYN WENDELL.

25 THE COURT: COME FORWARD, PLEASE.

JOCELYN ELIZABETH SHOUGH, DIRECT EXAMINATION

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1 PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT
2 HAND. RAISE YOUR RIGHT HAND.

3 JOCELYN ELIZABETH SHOUGH,
4 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

5 THE COURT: HAVE A SEAT.

6 DIRECT EXAMINATION

7 BY MR. MURDAUGH:

8 Q. MISS SHOUGH, WERE YOU FORMERLY JOCELYN WENDELL?

9 A. NO, THAT'S MY FATHER'S LAST NAME.

10 Q. OKAY. HAVE YOU AND I BEEN INTRODUCED AS JOCELYN WENDELL?

11 A. YES.

12 Q. OKAY.

13 THE COURT: EXCUSE ME. GET CLOSE TO THE MICROPHONE. YOU
14 CAN PULL IT CLOSE AND SPEAK RIGHT INTO IT. YOU HAVE SORT OF A
15 SOFT VOICE AND THERE'S SOME WATER THERE FOR YOUR ---

16 A. THANK YOU.

17 THE COURT: --- COMFORT IF YOU NEED IT.

18 Q. MISS WENDELL, I ASK YOU -- I ASK YOU TO DIRECT YOUR
19 ATTENTION TO JANUARY 2, 1999, AND ASK YOU IF YOU WERE AT A
20 DWELLING ON COFFIN POINT?

21 A. YES, SIR.

22 Q. AND WHOSE DWELLING WAS THAT?

23 A. PAUL RIESCHL.

24 Q. OKAY. WHAT IS PAUL REISCHL'S CONNECTION WITH YOU?

25 A. HE -- HE WAS A FRIEND OF MY UNCLE'S.

JOCELYN ELIZABETH SHOUGH, DIRECT EXAMINATION

133

1 Q. OKAY. WHAT TIME DID YOU GET TO THAT DWELLING THAT DAY?

2 A. ABOUT 12:30. SOMEWHERE AROUND TWELVE -- MIDNIGHT.

3 Q. DAYTIME OR NIGHTTIME?

4 A. NIGHTTIME. MIDNIGHT.

5 Q. OKAY. WHEN YOU ARRIVED AT THE DWELLING WHO WAS THERE?

6 A. PAUL MITCHELL -- I MEAN NOT PAUL MITCHELL. PAUL, JOHN,
7 TAVARUS, WEST, JONATHAN AND ERIC.

8 WOULD YOU LIKE ME TO GO THROUGH ALL THE LAST NAMES FOR
9 YOU, TOO?

10 Q. PLEASE.

11 A. OKAY. PAUL REISCHL. I DID NOT -- I HAVE NO IDEA WHAT

12 JOHN'S LAST NAME IS. JOHN, TAVARUS ROGERS, JONATHAN GADSEN,
13 ERIC GADSEN AND WEST. I DON'T KNOW HIS LAST NAME.

14 Q. OKAY.

15 A. AND THAT'S IT.

16 Q. ANYBODY ELSE THERE?

17 A. NO. THE THREE OF US ARRIVED.

18 Q. MA'AM?

19 A. THE THREE OF US -- OH, TOBY, TOBY WAS THERE.

20 THE COURT: EXCUSE ME.

21 THIS GENTLEMAN RIGHT HERE, I WANT HIM REMOVED FROM THE
22 COURTROOM. HE WAS KIND OF NODDING OR SOMETHING LIKE THAT. I
23 DON'T WANT THERE TO BE ANY QUESTION AND, IN FACT, I HAD A
24 LITTLE PROBLEM WITH HIM LAST TIME. SO JUST REMOVE HIM FROM
25 THE COURTROOM.

JOCELYN ELIZABETH SHOUGH, DIRECT EXAMINATION

134

1 Q. WHO ARRIVED WITH YOU?

2 A. MITCHELL AND KRISTAL.

3 Q. MITCHELL?

4 A. MITCHELL. JAMES RILEY AND KRISTAL WIRE, I THINK IS HER
5 LAST NAME.

6 Q. OKAY, MA'AM, AND DID YOU KNOW THE PEOPLE THAT YOU HAVE
7 IDENTIFIED AS BEING AT THAT DWELLING WHEN YOU ARRIVED THERE?

8 A. NO, SIR. I DIDN'T KNOW ANY OF THEM.

9 Q. YOU DID NOT KNOW ANY OF THEM?

10 A. NO.

11 Q. OKAY, WERE YOU INTRODUCED TO THEM?

12 A. YES, I WAS.

13 Q. OKAY, AND HOW LONG DID YOU STAY AT THAT DWELLING?

14 A. ABOUT FOUR HOURS.

15 Q. OKAY. AT SOME POINT IN TIME DID THE TWO COLLINS, WEST AND
16 TAVARUS ROGERS LEAVE THAT DWELLING?

17 A. YES, SIR.

18 Q. ABOUT WHAT TIME WAS THAT?

19 A. I COULD NOT TELL YOU, SIR.

20 Q. OKAY. DID ANY OF -- BODY COME BACK TO THE DWELLING THAT
21 NIGHT?

22 A. YES, SIR.

23 Q. WHO DID?

24 A. I ONLY RECOGNIZED TAVARUS AND WEST.

25 Q. TAVARUS AND WEST?

JOCELYN ELIZABETH SHOUGH, DIRECT EXAMINATION

135

1 A. UH-HUH.

2 Q. OKAY. TELL US WHAT HAPPENED WHEN THEY CAME BACK TO THE
3 DWELLING.

4 A. THEY BROUGHT GUNS AND THEY TOLD EVERYBODY TO GET DOWN.

5 Q. NOW, PLEASE DO THIS FOR ME. WHEN YOU SAY THEY, I NEED FOR
6 YOU TO GIVE ME NAMES.

7 A. OKAY.

8 Q. AND TELL ME WHAT WAS DONE.

9 A. TAVARUS AND WEST BROUGHT GUNS WITH THEM AND ---

10 Q. WHAT KIND OF GUNS?

11 A. BIG GUNS. THAT'S ALL I KNOW. TWELVE GAUGES.

12 Q. PISTOLS, RIFLES, SHOTGUNS OR YOU KNOW?

13 A. ABOUT THAT BIG. BIG GUNS, LIKE A .12 GAUGE OR SOMETHING
14 LIKE THAT. I DON'T KNOW GUNS.

15 AND THEY CAME IN AND THEY YELLED AT EVERYBODY TO GET DOWN
16 AND THEY -- OR, I'M SORRY, TAVARUS TOOK PAUL BACK INTO THE
17 BACK ROOM.

18 Q. WHO TOLD EVERYBODY TO GET DOWN?

19 A. TAVARUS.

20 Q. OKAY.

21 A. AND THEN TAVARUS TOOK PAUL INTO THE BACK ROOM.

22 Q. PAUL?

23 A. PAUL REISCHL.

24 Q. REISCHL.

25 A. AND HE TOOK HIM INTO THE BACK ROOM. I GUESS HE TOOK SOME

1 STUFF OFF OF HIM. THAT'S WHAT IT SOUNDED LIKE FROM THE WAY
2 THAT HE WAS YELLING AT HIM. AND THEN HE CAME BACK IN. AFTER
3 HE HAD SHOT PAUL HE CAME BACK IN AND SHOT MITCHELL.

4 Q. OKAY.

5 A. AND THEN LEFT.

6 Q. WHAT CAUSED THE -- DID ANYTHING OCCUR TO CAUSE THE SHOOT-
7 ING OF MITCHELL?

8 A. (NO RESPONSE.)

9 Q. THAT YOU SAW?

10 A. NOT THAT I'M AWARE OF, NO, EXCEPT FOR HE MIGHT'VE SHOT HIM
11 BECAUSE HE GOT UP. HE WAS UP WHEN HE CAME INTO THE ROOM.
12 MITCHELL HAD GOTTEN UP OFF THE GROUND. AFTER HE'D INSTRUCTED
13 US TO STAY DOWN ON THE GROUND.

14 Q. OKAY. YOU HAVE SAID THAT TAVARUS ROGERS DID THIS.

15 A. YES, SIR.

16 Q. HOW DID YOU IDENTIFY TAVARUS ROGERS?

17 A. BECAUSE I SAW HIS FACE.

18 Q. OKAY, MA'AM.

19 MR. KULP: COULD THE WITNESS SPEAK UP JUST A LITTLE? SHE
20 DOES HAVE A SOFT VOICE.

21 THE COURT: YEAH.

22 A. I'M SORRY.

23 THE COURT: IF YOU WANT TO, YOU CAN TAKE THAT THING OUT
24 OF THE MICROPHONE AND HOLD IT A LITTLE CLOSER TO YOU.

25 TRY IT THAT WAY. LET'S TRY IT THAT WAY.

JOCELYN ELIZABETH SHOUGH, DIRECT EXAMINATION

137

1 AND YOU CAN MOVE THAT SO IT'S NOT IN FRONT OF YOUR FACE,
2 TOO.

3 NO, I'M TALKING ABOUT THIS. JUST MOVE THAT OUT OF YOUR
4 WAY.

5 A. OKAY.

6 THE COURT: I BELIEVE THAT MIGHT BE A LITTLE BETTER.

7 MR. KULP: THANK YOU, JUDGE.

8 Q. DID YOU -- THE PERSON THAT YOU SAY IS TAVARUS ROGERS, DID
9 YOU SEE HIM THAT NIGHT?

10 A. YES, I DID.

11 Q. OKAY, MA'AM. DO YOU SEE HIM -- HOW CLOSE WERE YOU TO HIM?

12 A. PROBABLY A LITTLE BIT FURTHER THAN ME AND YOU.

13 RIGHT ABOUT THERE.

14 Q. OKAY, MA'AM. ABOUT FIFTEEN FEET?

15 A. SOMEWHAT.

16 Q. OKAY.

17 A. FROM THE DOOR TO THE COUCH, WHERE I WAS SITTING.

18 Q. OKAY, MA'AM. DID YOU HAVE A CLEAR VIEW OF HIM?

19 A. YES, SIR. I DID.

20 Q. WERE YOU BEING HELD AT GUNPOINT BY THE PERSON YOU IDENTIFY
21 AS WEST?

22 A. YES, I WAS.

23 Q. OKAY, MA'AM.

24 A. NOT AT THE MOMENT THAT I SAW HIM.

25 JUST IF YOU'RE INTERESTED.

1 Q. MA'AM?

2 A. JUST IF YOU'RE INTERESTED, IT'S NOT THE MOMENT THAT I SAW
3 HIM WEST HAD US UNDER GUNPOINT. AT A LATER POINT.

4 Q. OKAY. WERE ANY OF THE PEOPLE THAT WERE SHOT RELATED TO
5 YOU?

6 A. YES, SIR.

7 Q. AND WHO WAS?

8 A. JAMES RILEY. WAS MY UNCLE.

9 Q. AFTER THE INCIDENT THAT OCCURRED WHAT DID THE PERSON
10 YOU'VE IDENTIFIED AS TAVARUS ROGERS AND WEST DO?

11 A. THEY RAN, THEY LEFT.

12 Q. EXCUSE ME?

13 A. THEY RAN. THEY LEFT. THEY TOOK OFF.

14 Q. AND DID SOMEBODY REPORT IT TO THE SHERIFF'S OFFICE?

15 A. WE DID.

16 Q. AND DID Y'ALL COOPERATE WITH THE INVESTIGATION WITH THE
17 SHERIFF ---

18 A. YES, SIR.

19 Q. --- FOR SOME PERIOD OF TIME?

20 I SHOW YOU STATE'S EXHIBIT NUMBER ONE FOR THE PURPOSES OF
21 THIS HEARING AND ASK YOU IF YOU WERE SHOWN THAT PHOTO LINEUP?

22 A. YES, SIR.

23 Q. WERE YOU ABLE TO PICK OUT TAVARUS ROGERS OR WEST OUT OF
24 THAT?

25 A. NO, I WASN'T.

JOCELYN ELIZABETH SHOUGH, DIRECT EXAMINATION

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1 Q. OKAY, I SHOW YOU STATE'S EXHIBIT NUMBER TWO FOR IDENTIFI-
2 CATION AND ASK YOU IF YOU WERE SHOWN THAT PHOTO LINEUP.

3 A. YES, SIR.

4 Q. AND WERE YOU ABLE TO PICK OUT TAVARUS ROGERS OUT OF THAT?

5 A. NO, SIR.

6 Q. AND I SHOW YOU STATE'S EXHIBIT NUMBER THREE AND ASK YOU IF
7 YOU WERE SHOWN THAT LINEUP.

8 A. YES, SIR.

9 Q. AND WERE YOU ABLE TO PICK OUT TAVARUS ROGERS OUT OF THAT?

10 A. NO, SIR.

11 Q. OKAY, MA'AM.

12 DO YOU SEE TAVARUS ROGERS IN COURT TODAY?

13 A. YES, SIR.

14 Q. AND WHERE IS HE?

15 A. AT THE LITTLE -- I DON'T -- HE'S RIGHT THERE.

16 Q. POINT TO HIM FOR ME.

17 A. (WITNESS COMPLIES.)

18 Q. CAN YOU DESCRIBE WHAT HE IS WEARING?

19 A. AN ORANGE JUMP SUIT.

20 Q. OKAY. SEATED AT COUNSEL TABLE?

21 A. YES, SIR.

22 MR. MURDAUGH: OKAY.

23 I HAVE NO FURTHER QUESTIONS.

24 MR. KULP: MAY IT PLEASE THE COURT, YOUR HONOR.

25 THE COURT: MR. KULP.

JOCELYN ELIZABETH SHOUGH, CROSS EXAMINATION

140

1 CROSS EXAMINATION2 BY MR. KULP:

3 Q. MORNING, MA'AM.

4 A. GOOD MORNING.

5 Q. IT'S GOOD TO SEE YOU AGAIN.

6 A. GOOD TO SEE YOU.

7 Q. WE SPOKE IN THE PRESENCE OF THE SOLICITOR A WHILE BACK ---

8 A. YES.

9 Q. --- HERE IN THE COURTHOUSE.

10 A. YES, SIR.

11 Q. THAT'S WHEN I MET YOU.

12 A. UH-HUH.

13 Q. NOW, REGARDING THE EXHIBITS THE SOLICITOR ASKED YOU ABOUT,
14 EXHIBIT ONE, TWO AND THREE.

15 A. YES, SIR.

16 Q. PHOTO LINEUP. DO YOU RECALL HOW LONG AFTER THIS INCIDENT
17 YOU EXAMINED THOSE EXHIBITS?18 A. I EXAMINED ONE AND TWO, THE -- I EXAMINED -- I EXAMINED
19 ONE AND TWO THE SAME DAY, AS I RECALL, THAT THE INCIDENT
20 HAPPENED. THREE, I HADN'T SEEN, I DON'T KNOW WHEN IT FIRST
21 TIME I SAW THAT WAS BUT NOT FOR A GOOD WHILE AFTERWARDS.22 Q. AND DID YOU -- PARDON ME. DID YOU HAVE OCCASION JUST
23 PRIOR TO OUR LAST HEARING HERE AT THE COURTHOUSE TO EXAMINE
24 THOSE EXHIBITS ---

25 A. YES, SIR.

JOCELYN ELIZABETH SHOUGH, CROSS EXAMINATION

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1 Q. --- THAT MORNING AT ANY TIME?

2 A. YES, SIR.

3 Q. AND WAS THAT A RESULT OF THE SOLICITOR EXHIBITING THOSE
4 PHOTOGRAPHIC ARRAYS, EXHIBITS ONE, TWO AND THREE, TO YOU ---

5 A. YES, SIR.

6 Q. --- OUTSIDE THE COURTROOM IN A LITTLE MEETING ROOM?

7 A. YES, SIR.

8 Q. AND IS IT TRUE IN THAT CASE THAT WHEN YOU EXAMINED THOSE
9 PHOTOGRAPHS, AT THAT POINT IN TIME, THAT YOU'VE IDENTIFIED,
10 YOU COULDN'T IDENTIFY MR. ROGERS FROM ANY OF THOSE PHOTOGRAPHS
11 DEPICTED IN EACH OF THOSE EXHIBITS ONE, TWO AND THREE? ISN'T
12 THAT CORRECT?

13 A. YES, SIR.

14 Q. NOW, LET ME ASK YOU ---

15 MR. KULP: BEG THE COURT'S INDULGENCE.

16 THE COURT: THAT'S FINE.

17 Q. NOW, IN ADDITION TO BEING SHOWN EXHIBITS ONE AND TWO ON
18 THE DAY OF THE INCIDENT AS YOU JUST TESTIFIED, WHEN THE POLICE
19 EXHIBITED THEM TO YOU, YOU ALSO PROVIDED INFORMATION TO THEM
20 ABOUT YOUR KNOWLEDGE OR OBSERVATIONS OF THE INCIDENT, CORRECT?

21 A. YES, SIR.

22 Q. AND YOU ACTUALLY SIGNED A STATEMENT THAT WAS PREPARED
23 EITHER IN YOUR WRITING OR IN SOMEONE'S WRITING DESCRIBING THE
24 EVENT?

25 A. YES, SIR.

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1 Q. AND DID YOU -- WERE YOU GIVEN A COPY OF THAT STATEMENT?

2 A. MY FATHER WAS GIVEN A COPY.

3 Q. AND AFTER, AFTER HE WAS GIVEN A COPY DID HE ALLOW YOU TO
4 DID YOU HAVE THE OPPORTUNITY TO REVIEW THAT STATEMENT?

5 A. NO, SIR, I HAVEN'T. THE ONLY TIME I'VE EVER SEEN MY
6 REPORT IS JUST A FEW DAYS AGO. AND I HADN'T CONJURED IT UP.
7 I DIDN'T -- ON PURPOSE I HADN'T CONJURED IT UP. I HADN'T
8 ASKED MY FATHER FOR IT. BECAUSE I DIDN'T WANT TO READ IT.
9 THAT WAS OF MY OWN ACCORD.

10 Q. OKAY. BUT YOU HAVE READ IT PRIOR TO TODAY?

11 A. YES, SIR.

12 Q. OKAY. NOW, WHEN YOU PROVIDED INFORMATION TO THE POLICE,
13 AT THE TIME YOU GAVE THE STATEMENT AS TO THE ISSUE OF
14 IDENTIFICATION OF MR. ROGERS, AS CONTAINED IN THAT STATEMENT
15 WHICH YOU HAVE NOW READ, YOU DID NOT DESCRIBE TO THE POLICE
16 THAT DAY OF THE CRIME, AND I STATE, MR. ROGERS' HEIGHT, DID
17 YOU?

18 A. THEY ASKED ME HIS HEIGHT. I WASN'T QUITE SURE. I GAVE
19 THEM AN ESTIMATE OF HIS HEIGHT, OF WHAT I THOUGHT IT WOULD BE.
20 WAS, I'M SORRY.

21 Q. OKAY, AND DO YOU RECALL, HAVING READ THE STATEMENT, WHAT
22 DETAILED INFORMATION YOU PROVIDED TO THEM ABOUT THE APPEARANCE
23 OF MR. ROGERS AS YOU'VE NOW TESTIFIED WHEN YOU TESTIFIED HIM
24 COMING BACK INTO THE LOCATION?

25 A. (NO RESPONSE.).

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1 Q. WHAT CAN YOU TELL US ABOUT HIS APPEARANCE THAT YOU GAVE
2 THE POLICE THAT NIGHT? THAT DAY OF THE INCIDENT.

3 A. THE THING THAT STUCK OUT THE MOST WAS HIS HAIR. I DID
4 RECOGNIZE HIM THAT NIGHT BY HIS FACE. BUT I HADN'T BEEN MORE
5 THAN FIVE FEET CLOSE TO HIM OR ANYTHING LIKE THAT. BUT I HAD
6 RECOGNIZED HIM AS THE MAN WHO INTRODUCED HIMSELF TO ME.

7 THE ONLY THING -- THE ONLY THING THAT I RECOGNIZED THAT I
8 COULD TELL ABOUT HIM WAS HIS HAIR. I MEAN OTHER THAN THAT HE
9 JUST LOOKED LIKE A NORMAL PERSON. THAT WAS THE ONLY THING OUT
10 OF PLACE THAT I COULD'VE HELPED THEM WITH.

11 Q. DID YOU -- DID YOU PUT THAT IN YOUR STATEMENT?

12 A. YES, SIR.

13 Q. NOW, YOU'VE INDICATED THAT ---

14 MR. KULP: WELL, LET ME TRY TO GET THIS IN SEQUENCE.

15 Q. I THINK YOU TESTIFIED ON DIRECT EXAMINATION THAT WHEN
16 PEOPLE CAME IN THE SECOND TIME TO THE LOCATION, THAT YOU ONLY
17 RECOGNIZED TAVARUS AND WEST? CORRECT?

18 A. YES, SIR.

19 Q. WAS THAT YOUR TESTIMONY A FEW MINUTES AGO?

20 A. YES, SIR.

21 Q. HOW MANY PEOPLE CAME INTO THE LOCATION?

22 A. THE SECOND TIME?

23 Q. YES.

24 A. TWO.

25 Q. SO WHEN YOU SAID YOU ONLY RECOGNIZED THEM ---

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1 A. THOSE WERE THE ONLY MEN THERE WERE.

2 Q. NOW, YOU TESTIFIED HERE TODAY THAT MR. ROGERS CAME IN AND
3 THAT HE WAS CARRYING A FIREARM. A LARGE FIREARM.

4 A. YES, SIR.

5 Q. AND IT WAS NIGHTTIME, CORRECT?

6 A. YES, SIR.

7 Q. AND YOU WERE INSIDE THE TRAILER OF THE LOCATION?

8 A. YES, SIR. THE PORCH LIGHT WAS ON, ALSO.

9 Q. AND YOU DESCRIBED OR TESTIFIED, OR IS IT NOT THE CASE THAT
10 WHO -- THESE TWO PEOPLE WHO CAME IN WERE RUNNING?

11 A. NO, SIR.

12 Q. YOU DID NOT INDICATE THAT BEFORE?

13 A. NO, SIR.

14 Q. SO THEY CAUSALLY WALKED IN, SLOWLY?

15 A. NO, SIR.

16 Q. THEY MOVING QUICKLY?

17 A. OKAY ---

18 Q. CLARIFY THAT.

19 A. OKAY, I'M GONE EXPLAIN. HE CAME -- HE KNOCKED ON THE DOOR
20 AND JOHN, WHO WAS SITTING BESIDE ME, IN A CHAIR, ACROSS FROM
21 ME, GOT UP AND WENT TO THE DOOR. AND AS HE OPENED THE DOOR, I
22 GUESS -- IT MORE LIKE FLEW OPEN. I DON'T THINK THAT HE
23 ACTUALLY PULLED IT OPEN THAT HARD. I SAW THE TWO STANDING
24 THERE, WEST AND THERE. AND THEN THERE CAME IN, ATTEMPTING TO
25 PULL UP HIS MASK. HE CAME IN WITH HIS GUN AND HE STARTING

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1 HITTING JOHN. AND JOHN FELL OVER THE COUCH ON TO THE GROUND
2 AND WEST WAS JUST A LITTLE BEHIND HIM. NOT SEPARATED AT ALL.

3 AND THEY CAME -- THEY BOTH CAME SOMEWHERE INTO THE HOUSE,
4 INTO THE ROOM THAT WE WERE ALL IN.

5 Q. OKAY, AT THE TIME THAT YOU SAW THE TWO PEOPLE, WHEN JOHN
6 OPENED THE DOOR ON THE PORCH, AND THE PORCH LIGHT, THE MASKS
7 WERE IN TACK, WHERE THEY NOT?

8 A. NO, SIR.

9 Q. OKAY. AT THAT POINT THE MASKS HAD FALLEN OPEN?

10 A. YES, AS FAR AS TAVARUS.

11 Q. HOW ABOUT THE OTHER PERSON'S MASK?

12 A. WEST'S DIDN'T COME ON -- I MEAN OFF AT ALL.

13 Q. OKAY. SO YOU WERE UNABLE TO IDENTIFY THAT PERSON?

14 A. I WAS ABLE TO IDENTIFY HIM BY HIS CLOTHES THAT HE WAS
15 WEARING. HE'D WORN THEM EARLIER. AND THE FACT THAT HIS VOICE
16 WAS EXACTLY THE SAME AS THE MAN THAT HAD COME IN.

17 Q. OKAY. AND I BELIEVE YOU'VE INDICATED THAT YOU WERE ABLE
18 TO IDENTIFY MR. ROGERS BECAUSE THE AREA OF THE MASK THAT
19 OPENED SHOWED HIS EYES AND NOSE?

20 A. IT SHOWED -- HE HAD A LITTLE SLIT, RIGHT HERE, AND THEN A
21 PIECE WAS FALLING DOWN. FROM RIGHT HERE. AS SOON AS HE
22 OPENED THE DOOR IT KIND OF JUST FELL DOWN. I DON'T -- I NEVER
23 SAW HIS FACE.

24 WHEN I SAW HIM ATTEMPTING TO RECOVER IT AND AFTER HE WAS
25 ATTEMPTING TO RECOVER IT HE CAME IN, I DIDN'T LOOK. AT HIS

1 FACE WHILE HE WAS HITTING PAUL. I MEAN JOHN. I JUST LOOKED
2 AT JOHN. I DIDN'T FURTHER LOOK AT HIS FACE BUT I DID SEE IT
3 WHEN HE CAME IN.

4 Q. CORRECT. IN FACT, YOU INDICATED YOU OTHER DAY IN THE
5 COURTHOUSE THAT WHEN YOU WENT TO THE FLOOR YOU DIDN'T LOOK UP
6 AGAIN?

7 A. NO, I DID LOOK UP AGAIN. IN MY REPORT.

8 Q. THE YOU DID LOOK UP AGAIN?

9 A. YES, I DID.

10 Q. OKAY. LET'S GO BACK. WHEN HE CAME IN THE DOOR HOW MANY
11 SECONDS DID YOU HAVE THE OPPORTUNITY TO OBSERVE HIS EYE, OR
12 EYES AND NOSE?

13 A. I WAS SITTING THERE ON THE PHONE TALKING, AND WHEN THEY
14 CAME IN I LOOKED OVER TO SEE WHO WAS AT THE DOOR, JUST LIKE I
15 AM NOW. AND I STUDIED IT FOR A MINUTE AND THEN I WAS STILL
16 TALKING ON THE PHONE AND I WAS STILL LOOKING AT HIM AND I SAID
17 THEY HAVE MASKS ON. TO THE PERSON THAT I WAS ON THE PHONE
18 WITH, AND -- AND THEY JUST CAME IN AND I WAS STILL ON THE
19 PHONE. I JUST WASN'T PAYING ATTENTION TO THE PERSON THAT WAS
20 ON THE PHONE. BECAUSE I WAS WATCHING THEM. OR I WAS WATCHING
21 JOHN GET BEAT UP AT THAT TIME, BUT . . .

22 Q. BUT YOU DIDN'T SAY TO THE PERSON ON THE PHONE HERE COMES
23 SOMEONE WHO WAS HERE A LITTLE EARLIER?

24 A. NO, SIR.

25 Q. SO YOU DON'T RECALL HOW LONG OR HOW MANY SECONDS THAT YOU

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1 HAD TO OBSERVE?

2 A. NO, SIR.

3 Q. BUT YOU -- HOW LONG DID IT TAKE YOU TO IDENTIFY -- YOU
4 DIDN'T SAY THAT TO THE PERSON ON THE PHONE. HOW LONG DID IT
5 TAKE YOU TO IDENTIFY MR. ROGERS?

6 A. I KNEW IT WAS HIM AS SOON AS HE WALKED IN. I THOUGHT IT
7 WAS A PRANK.

8 I THOUGHT THAT, YOU KNOW, THE GUN AND THE MASK IS JUST
9 A -- I DON'T -- I DON'T KNOW EXACTLY WHAT I THOUGHT BUT I
10 JUST -- IT WASN'T SUPPOSED TO BE LIKE THAT. IS WHAT WAS GOING
11 IN MY -- ON IN MY MIND. IT WAS JUST THAT, YOU KNOW, THE GUY
12 THAT WAS HERE EARLIER IS NOW HERE IN A MASK.

13 THAT'S PAUL'S FRIEND, IS WHAT I WAS UNDERSTOOD. I
14 FIGURED, YOU KNOW -- I DON'T KNOW. I DIDN'T KNOW WHAT WAS
15 GOING ON BUT I DID THINK IT WAS A PRANK AT FIRST, WHILE THEY
16 WERE STANDING THERE AT THE DOOR. AND THEN WHEN THEY CAME IN
17 AND HE STARTED HITTING HIM, I KNEW IT WASN'T A PRANK.

18 Q. YOU COULDN'T IDENTIFY ANY CLOTHING THAT YOU SAY MR. ROGERS
19 WEST WEARING?

20 A. NO, I COULDN'T.

21 Q. ALL RIGHT. NOW, SO WITH THAT OPPORTUNITY THAT YOU
22 TESTIFIED TO SEE HIM, AND YOU'VE TESTIFIED YOU RECOGNIZED HIM
23 RIGHT OFF, CORRECT?

24 A. YES, SIR.

25 Q. YOU THEN, THAT DAY, EXAMINED TWO PHOTOGRAPHIC LINEUPS?

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1 A. YES, SIR.

2 Q. HAS ANYONE TOLD YOU SINCE THEN THAT MR. ROGERS' PICTURE
3 WAS IN THE LINEUP?

4 A. NO, SIR.

5 Q. NO ONE HAS? *WAS THERE ANYONE WHO TOLD YOU OF MR. ROGERS?*

6 YOU COULD NOT IDENTIFY ANYONE EITHER ONE OF THOSE,
7 EXHIBIT ONE OR TWO, BEING MR. ROGERS?

8 A. NO, SIR.

9 Q. WHEN YOU EXAMINED THOSE PHOTOGRAPHIC LINEUPS DID ANYONE
10 RESTRICT THE AMOUNT OF TIME THAT YOU HAD; THEY HURRY THROUGH
11 THAT?

12 A. NO, SIR.

13 Q. DID YOU HAVE AMPLE TIME AND OPPORTUNITY TO LOOK AT THOSE
14 PHOTOGRAPHS TO DETERMINE IF YOU COULD OR COULD NOT PICK OUT
15 MR. ROGERS FROM THOSE PHOTOGRAPHIC ARRAYS?

16 A. YES, SIR.

17 Q. AND AGAIN, YOU DID NOT? WEREN'T -- WEREN'T ABLE TO
18 IDENTIFY ANYONE AS BEING MR. ROGERS?

19 A. NO, SIR.

20 Q. NOW, YOU'VE TESTIFIED SOMETIME LATER YOU WERE SHOWN
21 EXHIBIT NUMBER THREE?

22 A. YES, SIR.

23 Q. A THIRD PHOTOGRAPHIC LINEUP, AND THERE YOU COULD NOT
24 IDENTIFY ANYONE AS BEING MR. ROGERS IN THAT LINEUP AS WELL?

25 A. THREE YEARS LATER, YES. NO, I COULD NOT.

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1 Q. CORRECT. AND -- WELL, WAIT A MINUTE. NUMBER THREE WAS
2 WHAT -- WAS NOT ONE YOU SAW ON THE DAY OF THE INCIDENT?

3 A. NO, SIR.

4 Q. OKAY. DO YOU REMEMBER WHEN YOU WERE SHOWN NUMBER THREE?

5 A. NO, SIR, I COULDN'T TELL YOU.

6 Q. DON'T REMEMBER?

7 A. NO, SIR.

8 Q. DID ANYTHING RUSH YOU THROUGH OR PROHIBIT YOU FROM HAVING
9 AMPLE OPPORTUNITY TO CAREFULLY OBSERVE THAT PHOTOGRAPHIC
10 ARRAY?

11 A. NO, SIR.

12 Q. OKAY. NOW, AFTER THE INCIDENT, ON WHAT OCCASION -- HAVE
13 YOUR READ ANY ARTICLES IN THE NEWSPAPER OR SEEN ANY MEDIA
14 COVERAGE ABOUT THIS INCIDENT AT ALL?

15 A. YES, SIR.

16 Q. YOU HAVE?

17 A. YES, SIR.

18 Q. AND PLEASE DESCRIBE THAT.

19 A. JUST MAIN ARTICLES IN THE NEWSPAPER ABOUT WHAT HAPPENED
20 AND, YOU KNOW, THE FUNERAL AND THINGS LIKE THAT. WE CUT THEM
21 OUT AND SAVED THEM. JUST TO SAY THAT, YOU KNOW, THERE WAS TO
22 MURDERS ON COFFIN POINT. THAT ARTICLE. AND JUST
23 LITTLE -- LITTLE ARTICLES THEY PUT IN HERE AND THERE.

24 Q. AND, IN FACT, YOUR FATHER HAD COLLECTED A GREAT DEAL OF
25 INFORMATION ABOUT THE CASE? I'M NOT CHALLENGING THAT BUT IT'S

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1 A FACT THAT HE HAS, CORRECT?

2 A. YES, SIR, IN A PHOTO ALBUM

3 Q. PHOTO ALBUM, AND YOU'VE HAD OPPORTUNITY TO REVIEW THAT
4 PHOTO ALBUM AS WELL?

5 A. YES, SIR.

6 Q. OKAY. AND IN THAT PHOTO ALBUM AND THOSE NEWS COVERAGE
7 STORIES WAS THERE EVER ANY PHOTOGRAPHS OF ANY DEFENDANTS IN
8 THIS CASE?

9 A. NO, SIR.

10 Q. HOWEVER, YOU HAD AN OCCASION TO ATTEND A HEARING IN THIS
11 CASE? A BOND HEARING, DID YOU NOT?

12 A. IF IT WAS ONE THAT I WASN'T AT, I WASN'T AWARE OF IT.

13 I -- I'VE COME TO ALL OF THE HEARINGS THAT I'VE BEEN
14 AWARE OF.

15 Q. OKAY. YOU'VE COME TO ALL THE HEARINGS IN THE CASE?

16 A. THAT -- THAT I'VE BEEN AWARE OF, YES, SIR.

17 THAT I HAVE BEEN AWARE OF, YES, SIR.

18 Q. AND THOSE HEARINGS, DEFENDANTS IN THIS CASE, WHO HAD BEEN
19 ARRESTED, WERE AT THOSE HEARINGS, WERE THEY NOT?

20 A. YES, SIR.

21 Q. YOU RECALL THE NUMBER AND HOW MANY OCCASIONS YOU HAD THE
22 OPPORTUNITY TO ATTEND A COURT HEARING OR PROCEEDING WHERE THE
23 DEFENDANTS IN THIS CASE WERE PRESENT?

24 A. THERE WAS ONE TIME WHEN THERE WERE DEFENDANTS PRESENT.

25 AND ---

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1 Q. ONE TIME?

2 A. YES.

3 Q. OKAY, WHERE'D THAT TAKE PLACE?

4 A. HERE. IN THIS ROOM

5 Q. IN THIS ROOM?

6 A. UH-HUH.

7 Q. AND YOU WERE PRESENT? SITTING HERE?

8 A. YES, SIR.

9 Q. DID ANYONE SUGGEST TO YOU OR COACH YOU AND SAY THAT MAYBE
10 YOU SHOULDN'T BE HERE IN THE HEARING OR ASK YOU NOT TO BE
11 PRESENT DURING THAT HEARING?

12 A. DO YOU MEAN OFFICIALS OR . . .

13 Q. ANY OFFICER PERSON.

14 A. NO, SIR.

15 Q. NOW, DURING YOUR TESTIMONY ON DIRECT YOU SAID, YOU MADE
16 REFERENCE TO TAVARUS ROGERS.

17 A. YES, SIR.

18 Q. YOU TESTIFIED PRIOR TO THAT EVENING YOU'D NEVER MET ANYONE
19 WHO WAS PRESENT THERE THAT EVENING AT ANY JUNCTURE?

20 A. YES, SIR.

21 Q. BEFORE, CORRECT?

22 A. YES, SIR.

23 Q. OKAY.

24 A. BESIDES TOBY, WHO WAS -- WELL, I HAD SEEN TOBY, I'M SORRY.
25 MY MISTAKE.

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1 Q. NOW, HOW DID YOU LEARN THAT MR. ROGERS LAST NAME WAS
2 ROGERS? SOMEONE TELL YOU THAT?

3 A. I LEARNED IT FROM THE -- FROM THESE ARTICLES.

4 I DIDN'T KNOW WHO WEST WAS UNTIL I READ IT IN THE PAPER,
5 EITHER.

6 HIS NAME, THAT IS.

7 Q. NOW, MISS SHOUGH, YOU CAME IN HERE TODAY AND YOU'VE BEEN
8 PRESENT SINCE THE PROCEEDING STARTED?

9 A. YES, SIR.

10 Q. AND -- LET ME GO BACK ONE MINUTE.

11 THE PREVIOUS HEARING IN THIS CASE.

12 A. YES, SIR.

13 Q. WHEN YOU HAD THE OPPORTUNITY TO EXAMINE -- OR SOMEONE, THE
14 SOLICITOR OR SOMEONE SHOWED YOU, EXHIBITS ONE, TWO, THREE AND
15 FOUR, YOU COULDN'T IDENTIFY MR. ROGERS IN ANY OF THE PHOTO-
16 GRAPHS?

17 A. NO, SIR.

18 Q. HAVE -- SINCE THEN HAVE YOU HAD THE OCCASION TO LOOK AT
19 ANY OTHER PHOTOGRAPHIC LINEUPS?

20 A. NO, SIR. UNTIL TODAY. THIS IS THE FIRST TIME I'VE SEEN
21 HIS FACE IN A VERY LONG TIME.

22 Q. AND SO WHEN YOU CAME IN HERE TODAY, YOU WERE SEATED IN ONE
23 OF THE PEWS OR ROWS ---

24 A. SECOND PEW, YES, SIR.

25 Q. AND WAS -- IS NOT THE CASE THAT WHEN THE GENTLEMAN YOU'VE

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1 IDENTIFIED AS MR. ROGERS SEATED AT THE COUNSEL TABLE WEARING
2 WHAT YOU SAID, THE ORANGE JUMP SUIT, WHO WAS BROUGHT INTO THE
3 COURT AND HE CAME AROUND FROM THIS SIDE? YOU SAW THAT HAPPEN?

4 A. I DIDN'T SEE HIM BEING BROUGHT IN BUT I DID SEE HIM.
5 BEING SEATED.

6 Q. SAW ME TALKING TO HIM?

7 A. YES, SIR.

8 Q. OKAY. AND, IN FACT, WHEN THE SOLICITOR ASKED IF YOU SEEN
9 HIM IN THE COURTROOM, YOU LOOKED DIRECTLY OVER TO THAT TABLE,
10 DIDN'T YOU?

11 A. YES, SIR.

12 Q. AND YOU DID SO BECAUSE YOU KNEW THAT'S WHERE HE WOULD BE
13 SITTING?

14 A. YES, SIR.

15 Q. AND YOU KNEW THAT HE'S BE THE FELLOW IN THE COURTROOM
16 WEARING THE ORANGE JUMP SUIT?

17 A. YES, SIR.

18 Q. OKAY, AND, IN FACT, THE ONLY PERSON AT THAT TABLE WHO
19 COULD BE THE DEFENDANT, CORRECT?

20 A. YES, SIR.

21 Q. AND YOU KNOW AS WELL, HAVING TALKED WITH WHOEVER, YOUR
22 FATHER OR THE SOLICITOR, YOU KNOW THAT THIS HEARING TODAY IF
23 ABOUT WHETHER YOU CAN IDENTIFY THIS DEFENDANT OR NOT?

24 A. YES, SIR.

25 Q. YOU KNOW THAT WHEN I SAY DEFENDANT WE'RE TALKING ABOUT MR.

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1 TAVARUS ROGERS, CORRECT?

2 A. YES, SIR.

3 Q. AND YOU KNOW THAT TODAY THIS HEARING INVOLVES NO ONE ELSE
4 IN THIS CASE OR ANY OTHER PERSON ON EARTH THAN TAVARUS ROGERS,
5 THE MAN WHO'S SEATED AT THAT TABLE IN THE ORANGE JUMP SUIT,
6 CORRECT?

7 A. YES, SIR.

8 MR. KULP: THANK YOU.

9 JUDGE, BEG THE COURT'S INDULGENCE ONE SECOND.

10 THANK YOU.

11 THANK'S FOR THE COURT'S INDULGENCE, YOUR HONOR.

12 MR. MURDAUGH: MA'AM ---

13 THE COURT: OKAY, EXCUSE ME. WAIT A MINUTE.

14 MR. MURDAUGH: OH, I'M SORRY. I THOUGHT HE WAS THROUGH.

15 MR. KULP: THAT ALL RIGHT, SOLICITOR.

16 MR. MURDAUGH: I APOLOGIZE.

17 MR. KULP: THAT'S ALL RIGHT.

18 THE COURT: I THINK HE'S COMING BACK WITH ANOTHER QUES-
19 TION.

20 GO AHEAD.

21 MR. KULP: THANK YOU, SIR.

22 MAY IT PLEASE THE COURT, YOUR HONOR.

23 THE COURT: YES, SIR.

24 MR. KULP: THANK YOU, YOUR HONOR.

25 Q. JUST REFERRING AGAIN TO THE STATEMENT THAT YOU TALKED

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1 ABOUT ---

2 MR. KULP: IT HASN'T BEEN MARKED AS AN EXHIBIT AND THE
3 RECORD WILL CERTAINLY VIEW THAT. I DON'T WANT TO TAKE THE
4 TIME OF THE COURT. MAYBE COUNSEL CAN GRAB IT.

5 I'D JUST LIKE TO IDENTIFY IT, YOUR HONOR, AS AN EXHIBIT.

6 THE COURT: HER STATEMENT?

7 MR. KULP: YES, SIR.

8 THE COURT: ANY OBJECTION?

9 MR. MURDAUGH: NO, SIR, I HAVE NO OBJECTION. NOT FOR THE
10 PURPOSES OF THIS HEARING.

11 THE COURT: THAT'S WHAT I'M TALKING ABOUT.

12 MR. KULP: THAT'S IT.

13 MR. MURDAUGH: YEAH.

14 MR. KULP: ABSOLUTELY.

15 WE'LL JUST DO THAT BUT I JUST WANT TO ASK ONE QUESTION.
16 WHEN WE GET THE LOGISTICS WORKED OUT WE'LL OFFER IT TO THE
17 CLERK, OR TO THE COURT REPORTER. NOT TO BELABOR TIME.

18 Q. NOW, MISS SHOUGH, YOU SAID THAT YOU HAD THE OCCASION TO
19 READ YOUR STATEMENT?

20 A. YES, SIR.

21 Q. YES, AND THAT'S THERE ONLY ONE STATEMENT THAT YOU GAVE?

22 A. YES, SIR.

23 Q. IS THERE ANYTHING THAT YOU'D LIKE TO CHANGE -- HAVING READ
24 THAT STATEMENT, IS THERE ANYTHING THAT YOU'D LIKE TO CHANGE IN
25 THAT STATEMENT?

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1 A. MAY I ADD SOMETHING TO THE STATEMENT?

2 Q. WELL, LET'S ---

3 A. IS THAT POSSIBLE?

4 Q. --- TAKE ONE AT THE TIME.

5 A. OKAY.

6 Q. FIRST OFF, WHEN YOU WERE -- WHEN DID YOU EXACTLY REVIEW
7 THE STATEMENT? JUST RECENTLY?

8 A. YES.

9 Q. DO YOU REMEMBER WHEN AND WHERE YOU REVIEWED IT?

10 A. I REVIEWED IT AT MY FATHER'S HOUSE. I WENT OUT TO HIS
11 HOUSE AND ASKED HIM FOR IT.

12 MR. MURDAUGH: A LITTLE BIT LOUDER, PLEASE.

13 THE COURT: YES.

14 CAN YOU TURN THAT THING UP A LITTLE BIT?

15 A. I'M SORRY.

16 THE COURT: OKAY, SPEAK LOUDER.

17 A. I REVIEWED IT AT ---

18 MR. MURDAUGH: PERFECT.

19 A. I REVIEWED IT AT MY FATHER'S HOUSE. HE MADE COPY FOR ME
20 ON HIS FAX MACHINE AND I READ IT AT HIS HOUSE FOR THE FIRST
21 TIME.

22 Q. AND THE POLICE DIDN'T LET YOU READ IT WHEN HE WROTE IT UP

23 A. I HAD A CHANCE TO. I HAD A CHANCE TO BUT I KNEW WHAT I
24 SAID. AND I DIDN'T. I DIDN'T REALLY DO THAT AGAIN.

25 Q. DID YOU SIGN IT?

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1 A. YES, SIR.

2 Q. OKAY. WHEN YOU SIGNED IT DID YOU READ IT?

3 A. NO, SIR. I WAS THERE FOR APPROXIMATELY FOUR HOURS.

4 Q. OKAY.

5 A. TELLING HER EVERYTHING THAT HAPPENED AND I KNEW WHAT HAD
6 HAPPENED. IT WAS FRESH IN MY MIND. THERE WAS NO REASON FOR
7 ME TO READ IT AGAIN.

8 Q. SO YOU WROTE IT OUT OR THE DETECTIVE WROTE IT OUT?

9 A. EVA CAMPBELL WROTE IT OUT.

10 Q. YOU SIGNED IT WITHOUT READING IT?

11 A. I SKIMMED THROUGH IT. I DIDN'T READ IT.

12 Q. THIS IS VERY IMPORTANT. EITHER YOU DIDN'T READ IT,
13 SKIMMED THROUGH IT ---

14 A. I SKIMMED THROUGH IT.

15 Q. OKAY.

16 A. I DID NOT READ IT FULLY AND -- ALL FOUR PAGES. I DIDN'T
17 READ THE ENTIRE THING. I SKIMMED THROUGH IT, MADE SURE
18 EVERYTHING WAS OKAY AND I SIGNED MY NAME.

19 Q. THAT'S MY POINT. YOU SKIMMED THROUGH IT ENOUGH TO BE
20 SATISFIED THAT ---

21 A. YES, SIR.

22 Q. --- IT WAS ACCURATE ENOUGH FOR YOU TO SIGN IT?

23 A. YES, SIR.

24 Q. YES, MA'AM. THAT'S ALL I'M ASKING.

25 A. OKAY.

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1 Q. NOW, ADDITIONAL, HAVING READ IT AT YOUR FATHER'S
2 HOUSE . . .

3 A. YES, SIR.

4 Q. IN THE RECENT PAST, HAVE YOU SINCE THEN COMMUNICATED TO
5 THE POLICE OR THE SOLICITOR IN WRITING OR ANY OTHER
6 FASHION ---

7 A. NO, SIR.

8 Q. --- ANY CHANGE OR ADDITIONS THAT YOU'D LIKE TO MAKE TO
9 THAT STATEMENT?

10 A. THE ONLY THING THAT I FIND WRONG WITH ---

11 Q. THAT'S NOT WHAT I'M ASKING. HAVE --

12 A. ON, NO, I HAVEN'T MADE ANY CHANGES TO THE STATEMENT, NO.

13 Q. HAVE YOU CONTACTED THEM AND SAID I WANT TO MAKE
14 CORRECTIONS, CHANGES OR ADDITIONS TO THAT STATEMENT?

15 A. NO, SIR, I HAVEN'T.

16 Q. NOT -- NOT AT ALL?

17 A. NO, SIR.

18 MR. KULP: ALL RIGHT, THAT'S ALL I HAVE.

19 THANK YOU, YOUR HONOR.

20 REDIRECT EXAMINATION

21 BY MR. MURDAUGH:

22 Q. WHAT'D YOU WANT TO CHANGE?

23 A. I DIDN'T WANT TO CHANGE ANYTHING; JUST SOME OF MY WORDS
24 ARE MESSED UP BUT IT WASN'T ANYTHING THAT WOULD HURT THE CASE
25 IN MY OPINION.

JOCELYN ELIZABETH SHOUGH, REDIRECT EXAMINATION

159

1 Q. OKAY. WERE YOU -- AFTER YOU WERE SHOWN STATE'S EXHIBITS
2 ONE, TWO AND THREE, WHICH WERE THE THREE LINEUPS THAT
3 I -- PHOTOGRAPHIC LINEUPS THAT I SHOWED YOU A MOMENT AGO, HAVE
4 YOU EVER BEEN SHOWN A PICTURE BY ANY LAW ENFORCEMENT OFFICER
5 TO SEE IF YOU COULD IDENTIFY TAVARUS ROGERS?

6 A. NO, SIR.

7 Q. OKAY. HAVE YOU EVER SEEN A PICTURE OF TAVARUS ROGERS?

8 A. NO, SIR.

9 Q. THAT YOU COULD IDENTIFY?

10 A. NO, SIR.

11 MR. MURDAUGH: I HAVE NO FURTHER QUESTIONS.

12 MR. KULP: JUST ONE QUESTION.

13 RECROSS EXAMINATION

14 BY MR. KULP:

15 Q. MISS SHOUGH, BUT DURING THE PERIOD OF TIME THAT HAS
16 ELAPSED SINCE THE INCIDENT TO TODAY, YOU TESTIFIED ON DIRECT
17 THAT YOUR FATHER HAS KEPT A SCRAPBOOK ABOUT THIS CASE AND THAT
18 YOU'VE REVIEWED IT, CORRECT?

19 A. YES, SIR.

20 Q. AND IT'S THE CASE, IS IT NOT, THAT YOU'VE HAD THE
21 OPPORTUNITY, BECAUSE OF THAT EXPECTED FAMILY CONCERN OVER THIS
22 TRAGIC INCIDENT, YOU'VE HAD THE OPPORTUNITY TO DISCUSS THE
23 CASE IN VARIOUS ASPECTS WITH A NUMBER OF PEOPLE DURING
24 THE -- THE ENSUING PERIOD OF TIME, HAVEN'T YOU?

25 A. YES, SIR.

JOCELYN ELIZABETH SHOUGH, CROSS EXAMINATION

160

1 Q. YOU HAVE?

2 A. YES, SIR. SINCE --- SINCE ---

3 Q. I'M SORRY?

4 A. SINCE THE INCIDENT? OR SINCE LAST COURT DATE?

5 Q. FROM THE INCIDENT TO NOW IS IT TRUE ---

6 A. YES, SIR.

7 Q. --- IT'S TRUE, IS IT NOT ---

8 A. YES.

9 Q. --- THAT YOU'VE HAD THE OCCASION TO DISCUSS THIS CASE FROM
10 VARIOUS ASPECTS WITH BOTH YOUR FATHER AND OTHER INDIVIDUALS?

11 A. YES, SIR.

12 Q. IS THAT CORRECT?

13 A. YES, SIR.

14 MR. KULP: OKAY. THANK YOU.

15 MR. MURDAUGH: YOU MAY COME DOWN.

16 CALL MATT AVERILL.

17 MATTHEW AVERILL,

18 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. MURDAUGH:

21 Q. MR. AVERILL, YOU -- YOU TESTIFIED AT THE LAST HEARING WE
22 HAD AND I BELIEVE YOU TESTIFIED THAT YOU WERE A DEPUTY SHERIF
23 FOR BEAUFORT COUNTY AND WERE A SHERIFF ON THE FIRST OF JANU-
24 ARY, 1999?

25 A. THAT'S RIGHT.

MATTHEW AVERILL, DIRECT EXAMINATION

161

1 Q. AND OR A DETECTIVE?

2 A. AND -- CORRECT.

3 Q. AND WAS BACK THIRTY-NINE?

4 A. YES, SIR.

5 Q. OKAY. I ASK YOU WHETHER OR NOT YOU SHOWED JOCELYN, THE
6 LADY THAT JUST TESTIFIED, STATE'S EXHIBITS ONE AND TWO, WHICH
7 ARE PHOTOGRAPHIC LINEUPS?

8 A. YES, I DID.

9 Q. OKAY. WAS SHE ABLE TO IDENTIFY ANYBODY OUT OF THAT?

10 A. YES, SHE WAS.

11 Q. AND WHO WAS THAT?

12 A. IN EXHIBIT NUMBER ONE SHE WAS ABLE TO IDENTIFY PICTURE
13 NUMBER THREE WHICH WAS WEST MCKENNON.

14 Q. OKAY. IS TAVARUS ROGERS IN STATE'S EXHIBIT ONE AND TWO?

15 A. NO, HE'S NOT.

16 Q. OKAY. WAS SHE SHOWN STATE'S EXHIBIT THREE?

17 A. YES, SHE WAS, ON THE FOLLOWING DAY.

18 Q. OKAY. WAS SHE ABLE TO PICK OUT TAVARUS ROGERS FROM THAT?

19 A. NO, SHE WASN'T.

20 MR. MURDAUGH: THANK YOU, SIR.

21 THAT'S ALL THE QUESTIONS I HAVE.

22 EXCUSE ME.

23 Q. HAVE YOU EVER SHOWN HER AN INDIVIDUAL PICTURE OF TAVARUS
24 ROGERS AT ANY TIME?

25 A. NO, SIR.

MATTHEW AVERILL, DIRECT EXAMINATION

162

1 Q. OR OF ANYBODY ELSE?

2 A. NO, SIR.

3 MR. MURDAUGH: THANK YOU, SIR.

4 MR. FLEMING: PLEASE THE COURT, YOUR HONOR?

5 THE COURT: YES, SIR.

6 MR. FLEMING: THANK YOU.

7 CROSS EXAMINATION

8 BY MR. FLEMING:

9 Q. DETECTIVE AVERILL, IN LINEUP NUMBER THREE, CAN YOU IDENTI-
10 FY WHO PICTURE NUMBER SIX IS?

11 A. YES, I CAN.

12 Q. AND WHO IS THAT?

13 A. THAT'S TAVARUS ROGERS.

14 Q. AND DID YOU PLACE TAVARUS ROGERS' PICTURE IN THAT PHOTO-
15 GRAPHIC LINEUP? OR DID YOU DIRECT SOMEONE TO DO SO?

16 A. YES, SIR.

17 Q. WITH REGARD TO LINEUP NUMBER TWO, DID YOU SHOW THIS

18 WITNESS, AND ALL OTHER WITNESSES -- WHO WAS THE TARGET OF THAT
19 LINEUP?

20 A. I BELIEVE IT WAS NUMBER FIVE.

21 Q. AND DO YOU KNOW THAT INDIVIDUAL'S NAME?

22 A. I DON'T.

23 Q. AND DO YOU KNOW WHY HE WAS A TARGET?

24 A. HE WAS IDENTIFIED AS SOMEBODY WHO LIVED IN THE COFFIN
25 POINT AREA.

JOCELYN ELIZABETH SHOUGH, CROSS EXAMINATION

163

1 Q. OKAY, AND WHO WAS HE IDENTIFIED BY?

2 A. I DON'T EVEN REMEMBER. IT WAS ONE OF THE INVESTIGATORS.

3 Q. OKAY. WAS THERE A SUSPICION THAT HE MAY HAVE BEEN IN-
4 VOLVED IN THIS? INCIDENT?

5 A. AT THAT POINT WE WERE JUST GRASPING AT STRAWS, TO BE
6 HONEST WITH YOU. 'CAUSE THAT WAS WITHIN EIGHT HOURS OF THE
7 INCIDENT.

8 Q. DID YOU HAVE THE -- DID YOU HAVE IN ANY WAY THE OCCASION
9 TO INTERVIEW MISS SHOUGH CONCERNING THIS, THE EVENTS OF THIS
10 INCIDENT?

11 A. NOT OTHER THAN THE PHOTOGRAPHS, NO.

12 Q. OKAY, SO ANY OF THE STATEMENTS MADE BY HER WERE MADE TO
13 OTHER DETECTIVES? CORRECT?

14 A. CORRECT.

15 Q. AND WHO WERE THEY?

16 A. I BELIEVE THAT WAS LIEUTENANT CAMPBELL.

17 Q. OKAY. WAS -- WAS DETECTIVE ROSER IN ANY WAY INVOLVED IN
18 TAKING A STATEMENT FROM MISS SHOUGH?

19 A. NOT THAT I'M AWARE OF.

20 MR. FLEMING: THANK YOU, SIR.

21 MR. MURDAUGH: YOU MAY COME DOWN.

22 I WOULD PROFFER THE TESTIMONY OF SAM ROSER. IF Y'ALL
23 CARE TO EXAMINE HIM.

24 MR. KULP: YOU'RE GONE PROFFER THE ---

25 MR. MURDAUGH: I'M JUST -- IF Y'ALL WANT TO CROSS EXAMINE

1 HIM I'LL PUT HIM UP, LET Y'ALL CROSS EXAMINE HIM.

2 MR. FLEMING: PLEASE DO SO, YES, SIR.

3 MR. MURDAUGH: ALL RIGHT.

4 CROSS EXAMINATION

5 BY MR. FLEMING:

6 Q. DETECTIVE ROSER, CAN -- WE WILL ALLOW YOUR PREVIOUS
7 TESTIMONY CONCERNING YOUR QUALIFICATIONS AND EMPLOYMENT TO
8 STAND FROM THE LAST -- LAST PORTION OF THIS HEARING, OKAY?

9 A. OKAY.

10 Q. WITH REGARD TO THE INDIVIDUAL WITNESS, MISS SHOUGH, DID
11 YOU IN ANY WAY PARTICIPATE IN TAKING A STATEMENT FROM HER
12 CONCERNING THIS INCIDENT?

13 A. I BELIEVE THE ONLY STATEMENTS I HAD ANY INVOLVEMENT IN
14 WITH HER WAS WHEN SHE WAS SHOWN A PHOTO LINEUPS BY EVA.
15 THAT'S IT.

16 Q. AND WITH REGARD TO LINEUP -- WITH REGARD TO LINEUP NUMBER
17 THREE. SHE -- SHE ENTERED A SWORN -- EXCUSE ME. SHE ENTERED A
18 SIGNED STATEMENT SAYING THAT SHE WAS UNABLE TO IDENTIFY ANYON
19 IN THIS PHOTOGRAPHIC LINEUP. CORRECT?

20 A. THAT'S CORRECT.

21 Q. ALL RIGHT. WITH REGARD TO THE WRITTEN ORAL STATEMENTS
22 MADE BY MISS SHOUGH CONCERNING THIS INCIDENT. DID YOU
23 PARTICIPATE IN ANY WAY WITH THAT?

24 A. NOT THAT I RECALL. NO.

25 Q. AND DO YOU RECALL THAT THAT WAS A RESPONSIBILITY AND DUTY?

SAMUEL ROSER. CROSS EXAMINATION

165

1 OF MISS EVA CAMPBELL?

2 A. THAT'S CORRECT.

3 MR. FLEMING: ALL RIGHT.

4 IF YOU WILL ALLOW. YOUR HONOR. WE WILL ATTACH. ALONG WITH
5 THE STATEMENT MADE. ALONG WITH THE STATEMENTS MADE BY MISS
6 SHOUGH THAT WE'RE GOING TO ATTACH AS AN EXHIBIT. WE'LL ALSO
7 ATTACH THE DOCUMENT IDENTIFIED WITH -- BY DETECTIVE ROSER.

8 THE COURT: OKAY.

9 MR. FLEMING: I CANNOT IDENTIFY.

10 I WILL SHOW YOU RIGHT NOW.

11 THIS IS MY COPY. BUT WE'RE GONE MAKE A COPY FOR THE
12 COURT.

13 MR. MURDAUGH: I HAVE NO OBJECTION.

14 MR. FLEMING: OKAY.

15 O. FOR PURPOSES OF IDENTIFICATION. LET ME SHOW YOU THIS
16 DOCUMENT.

17 MR. FLEMING: AND WE WILL APPROPRIATELY MARK IT.

18 (STATEMENT OF JOCELYN SHOUGH WENDELL DATED JANUARY 4.
19 1999. MARKED AS DEFENDANT'S EXHIBIT SIX FOR IDENTIFICATION
20 ONLY.)

21 MR. FLEMING: DEFENSE EXHIBIT SIX.

22 A. YES. SIR. THAT'S IT.

23 MR. FLEMING: OKAY.

24 NO FURTHER QUESTIONS. YOUR HONOR.

25

SAMUEL ROSER. REDIRECT EXAMINATION

166

1 REDIRECT EXAMINATION

2 BY MR. MURDAUGH:

3 O. DID YOU EVER SHOW JOCELYN A PICTURE OF ANYBODY IN THIS
4 CASE OTHER THAN THOSE LINEUPS?

5 A. NO, SIR.

6 MR. MURDAUGH: THANK YOU, SIR. YOU MAY COME DOWN.

7 YOUR HONOR, PLEASE. THAT CONCLUDES THE STATE'S TESTIMONY

8 THE COURT: ANY WITNESSES? OF THE DEFENDANT?

9 MR. FLEMING: YOUR HONOR, WE WOULD ASK AT THIS TIME THAT
10 THE STATE PROFFER THE TESTIMONY OF MISS EVA CAMPBELL. OR WE
11 WILL CALL HER.

12 MR. MURDAUGH: I'M FINISHED.

13 MR. FLEMING: THEN THE DEFENSE WILL CALL MISS EVA CAMP-
14 BELL.

15 THE COURT: IS SHE IN COURT?

16 COME AROUND, MISS CAMPBELL.

17 EVA M. CAMPBELL

18 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. FLEMING:

21 O. GOOD MORNING, MISS CAMPBELL.

22 A. GOOD MORNING.

23 O. HOW ARE YOU?

24 A. VERY WELL.

25 O. GOOD. THANK YOU.

SAMUEL ROSER. REDIRECT EXAMINATION

167

1 YOU ARE A MEMBER OF THE BEAUFORT COUNTY SHERIFF'S DEPART-
2 MENT?

3 A. YES. SIR.

4 O. CORRECT? WHAT'S YOUR OFFICIAL TITLE?

5 A. AT THAT TIME IT WAS A STAFF SERGEANT. NOW IT'S LIEUTEN-
6 ANT.

7 THE COURT: WOULD YOU SPEAK INTO THE MICROPHONE. PLEASE.

8 A. I'M SORRY. SIR.

9 AT THAT TIME IT WAS STAFF SERGEANT. I'M NOW A LIEUTEN-
10 ANT.

11 O. LIEUTENANT. AT THE TIME. ON JANUARY 2. 1999. WERE
12 YOU -- WERE YOU ASKED BY SOMEONE WITH THE BEAUFORT COUNTY
13 SHERIFF'S DEPARTMENT TO TAKE A STATEMENT FROM JOCELYN WENDELL
14 SHOUGH. AS WE NOW ARE REFERRING TO HER?

15 A. YES. SIR.

16 O. AND WHERE DID THAT STATEMENT TAKE PLACE?

17 A. AT THE BEAUFORT COUNTY SHERIFF'S OFFICE.

18 O. AND WHO WAS PRESENT DURING THIS STATEMENT?

19 A. INITIALLY HER DAD WAS AND THEN HE WAS EXCUSED AND IT WAS
20 JOCELYN AND MYSELF.

21 O. OKAY. AND NO OTHER PEOPLE PRESENT?

22 A. NO. SIR.

23 O. WAS THERE ANY VIDEO OR TAPE RECORDING OF THAT STATEMENT?

24 A. NO. SIR.

25 O. OKAY. DID YOU MAKE NOTES OF THAT -- OF THE -- THE PERIOD

SAMUEL ROSER. REDIRECT EXAMINATION

161

1 OF TIME IN WHICH YOU INTERVIEWED THIS WITNESS?

2 A. YES.

3 O. AND DID YOU REDUCE THOSE NOTES TO WRITING?

4 A. YES. SIR.

5 O. AND DID YOU INCLUDE -- AND DID YOU REDUCE THEM TO WRITING
6 IN THE FORM OF A WRITTEN STATEMENT? FOR JOCELYN WENDELL?

7 A. YES. SIR. I DID.

8 O. OKAY. AND I SEE YOU HAVE YOUR COPY?

9 A. (NO RESPONSE.)

10 O. CORRECT?

11 A. YES. SIR.

12 O. OKAY. IF I MAY. WHAT I WOULD LIKE FOR YOU TO DO -- WELL.
13 CAN YOU JUST SHOW ME YOUR COPY? PLEASE?

14 THANK YOU.

15 I HAVE -- I HAVE HERE A FIVE PAGE STATEMENT. THAT WE
16 WILL MARK AS -- IF YOU DON'T MIND. IF WE CAN USE THIS.

17 IS THIS A PHOTO COPY?

18 A. YES. IT IS.

19 O. MAY WE MARK THIS FOR THE COURT'S PURPOSES?

20 A. THAT'S FINE.

21 MR. FLEMING: OKAY.

22 O. THIS DOCUMENT THAT YOU'VE HANDED ME IS A FIVE PAGE TYPE-
23 WRITTEN STATEMENT YOU'LL IDENTIFY AS DEFENSE EXHIBIT SEVEN.
24 AND ASK IS THIS AN ACCURATE PHOTO COPY OF THE TYPEWRITTEN
25 STATEMENT THAT YOU MADE ON JANUARY 2, 1999. CONCERNING THE

SAMUEL ROSER. REDIRECT EXAMINATION

169

1 STATEMENT OF JOCELYN SHOUGH WENDELL?

2 A. YES.

3 MR. FLEMING: I MOVE TO INTRODUCE THAT. SOLICITOR.

4 MR. MURDAUGH: NO OBJECTION. FOR THE PURPOSES OF THIS
5 HEARING.

6 (TYPED STATEMENT OF JOCELYN SHOUGH WENDELL DATED JANUARY
7 2, 1999. MARKED AS DEFENDANT'S EXHIBIT SEVEN FOR IDENTIFICA-
8 TION ONLY..)

9 O. NOW. IS THERE -- DO YOU HAVE ANY OTHER NOTES OR
10 RECOLLECTIONS CONCERNING MISS SHOUGH'S STATEMENT THAT DAY?

11 A. NO. SIR.

12 O. AND THIS. THIS WOULD THEN CONSIST OF YOUR ENTIRE
13 RECOLLECTION OF THAT. THAT INTERVIEW?

14 A. YES.

15 O. OKAY. IN THE INTERVIEW WHAT -- HOW -- WHAT AMOUNT OF TIME
16 WAS GIVEN FOR MISS SHOUGH TO MAKE THIS STATEMENT? WAS SHE
17 GIVEN ALL THE TIME SHE NEEDED?

18 A. YES.

19 O. OKAY. DID SHE EVER REQUEST ANY MORE TIME?

20 A. NO.

21 O. OKAY. DID YOU ASK HER TO BE AS THOROUGH AS POSSIBLE WHEN
22 MAKING THE STATEMENT?

23 A. I DID. SEVERAL TIMES.

24 O. OKAY. NOW. AT THE END OF THE STATEMENT DO YOU RECALL
25 MISS -- NOW. LET ME BACK UP.

SAMUEL ROSER. REDIRECT EXAMINATION

170

1 YOU ALSO MADE A HANDWRITTEN VERSION OF THIS STATEMENT.
2 CORRECT?

3 A. YES. I DID.

4 O. OKAY. I WILL HAVE -- WE DON'T HAVE THAT PRINTED OUT. BU
5 WE WILL PRINT YOU A COPY AND ASK THAT YOU IDENTIFY IT
6 LATER ---

7 A. OKAY.

8 O. --- AND WE'LL ATTACH IT AS DEFENSE EXHIBIT EIGHT.

9 A. OKAY.

10 O. OKAY? AND THAT IS SIMPLY A HANDWRITTEN VERSION OF WHAT
11 HAS BEEN TYPED HERE AS DEFENSE EXHIBIT SEVEN. CORRECT?

12 A. OKAY.

13 YES.

14 O. AT ANY TIME SINCE JANUARY 2 OF 1999 HAS MISS SHOUGH
15 CONTACTED YOU TO MAKE ANY ADDITIONS OR CHANGES TO HER STATE-
16 MENT?

17 A. NO. SIR.

18 O. FOLLOWING YOUR TYPING OF THIS STATEMENT THAT IS DEFENSE
19 EXHIBIT SEVEN. DID YOU SHOW IT TO MISS SHOUGH?

20 A. YES. I DID.

21 O. AND DID SHE HAVE THE OPPORTUNITY TO READ IT?

22 A. SHE HAD THE OPPORTUNITY TO READ IT. SHE WENT OVER IT.

23 O. AND SHE READ OVER IT? AND AT THE END SHE SIGNED

24 THE -- THE FIFTH PAGE. CORRECT?

25 A. YES.

SAMUEL ROSER. REDIRECT EXAMINATION

171

1 O. AND THAT IS HER -- THAT IS HER SIGNATURE?

2 A. YES. IT IS.

3 O. OKAY. AND SHE DID THAT IN YOUR PRESENCE?

4 A. YES.

5 MR. FLEMING: ONE SECOND. YOUR HONOR. PLEASE.

6 WITH THE EXCEPTION OF ATTACHING THE WRITTEN VERSION OF
7 THAT STATEMENT. YOUR HONOR. HANDWRITTEN VERSION OF THAT
8 STATEMENT. WE HAVE NO OTHER QUESTIONS FOR THIS WITNESS.

9 (HANDWRITTEN STATEMENT OF JOCELYN SHOUGH WENDELL DATED
10 JANUARY 2, 1999. MARKED AS DEFENDANT'S EXHIBIT EIGHT FOR
11 IDENTIFICATION ONLY.)

12 MR. MURDAUGH: I HAVE NO QUESTIONS.

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

14 ANYTHING IN REPLY?

15 MR. MURDAUGH: NO, SIR.

16 THE COURT: ANY ARGUMENT?

17 MR. MURDAUGH: YOUR HONOR. PLEASE. WE ARGUE THE -- IN
18 ESSENCE. THE SAME THING AND THIS FACTS ARE ALMOST IDENTICAL
19 AND WE RELY ON THE LAST ARGUMENT, SIR.

20 AND MEMORANDUM OF LAW.

21 MR. KULP: MAY IT PLEASE THE COURT, YOUR HONOR.

22 THE COURT: MR. KULP.

23 MR. KULP: YOUR HONOR. I'M NOT GONE BE LONG-WINDED. I
24 KNOW THE COURT'S HEARD ALL THE TESTIMONY AND READ THE
25 PLEADINGS. BUT I WOULD SIMPLY ARGUE THE COURT THAT THE ISSUE

SAMUEL ROSER. REDIRECT EXAMINATION

17

1 IN THIS CASE DEALS WITH TWO CONCEPTS. THAT IS. SUGGESTIBILITY
2 AND RELIABILITY OF THE WITNESS' TESTIMONY REGARDING THE ISSUE
3 OF IDENTIFICATION.

4 BY WAY OF QUICK SUMMARY IN THIS CASE. WHAT DO WE KNOW?
5 WE KNOW THAT THE WITNESS IN THIS CASE. MISS SHOUGH. HAD A VER
6 BRIEF OPPORTUNITY. SECONDS TO OBSERVE A PARTIAL FACIAL
7 APPEARANCE OF A BLACK MALE AT THE SCENE. WE KNOW THAT SHE WA
8 SHOWN A LINEUP ON A DAY AFTER THE INCIDENT. HAD AMPLE
9 OPPORTUNITY TO OBSERVE THE PHOTOGRAPHS AND THAT THE
10 DEFENDANT'S PICTURE WAS IN THAT LINEUP - IT WAS NUMBER SIX -
11 AND SHE FAILED TO BE ABLE TO IDENTIFY HIM THEN.

12 IN THE INTERIM. AFTER THAT. THE WITNESS HAS INDICATED
13 THAT SHE HAS HAD THE OCCASION TO ATTEND PROCEEDINGS IN THIS
14 CASE. AT LEAST ONE - I WASN'T CLEAR ON WHETHER THERE WAS MOR
15 - WHEREIN THE DEFENDANTS IN THIS CASE WERE PRESENT. AND IN
16 THAT INTERIM PERIOD OF TIME ---

17 THE COURT: WELL. FOR THE RECORD. THE ONLY OTHER TIME I
18 WOULD'VE BEEN IN THIS COURTROOM HAD TO DO WITH THE CONFESSI
19 I WOULD PRESUME.

20 MR. MURDAUGH: I DON'T RECALL. I DON'T KNOW, SIR.

21 THE COURT: THAT'S THE ONLY TIME. OKAY.

22 MR. FLEMING: THAT -- AS I RECALL ---

23 MR. MURDAUGH: THEY WERE NOT HERE:

24 I JUST DON'T KNOW WHETHER ---

25 THE COURT: WELL. ANYWAY. THAT'D BE THE ONLY TIME.

SAMUEL ROSEN. REDIRECT EXAMINATION

173

1 MR. KULF: I THINK THEY MAY LOOK ALL THE SAME TO LAY
2 PEOPLE. WE WORK HERE EVERY DAY. YOUR HONOR: WE KNOW THE
3 DIFFERENCE BUT PROBABLY A COURTROOM'S A COURTROOM.

4 THE COURT: COULD'VE BEEN A BOND REDUCTION OR SOMETHING
5 ELSE.

6 MR. MURDAUGH: IF YOUR HONOR PLEASE. I DON'T THINK THAT I
7 NOTIFIED THEM ABOUT THE HEARING ON THE ---

8 THE COURT: WELL. SHE SAID SHE'D BEEN IN ONE TIME AND
9 THERE MIGHT'VE BEEN SEVERAL.

10 MR. MURDAUGH: I LOOKED AT THE LAW REGARDING
11 VICTIMS/WITNESS BILL OF RIGHTS AND I WAS OF THE OPINION ---

12 THE COURT: THAT IT WAS NOT REQUIRED? WELL. IT MUST HAVE
13 BEEN. BUT. ANYWAY. SHE SAID SHE'D BEEN AT ONE THING. SO NO
14 USE FOR ME TO SPECULATE.

15 MR. KULF: YES. SIR. YOUR HONOR.

16 AND. AND SO WE HAVE THAT COUPLED WITH HER -- HER CLEAR
17 TESTIMONY THAT HER FATHER'S GOT THE SCRAPBOOK REGARDING THE
18 VARIOUS ASPECTS OF THIS CASE. INCLUDING NEWS ARTICLES. AT
19 LEAST FROM THE PRINT MEDIA. AND THAT SHE'S HAD A OCCASION
20 DURING THE -- OVER TWO YEAR INTERIM. PERIOD TO DISCUSS THIS
21 CASE WITH BOTH HER FATHER AND OTHER INDIVIDUALS IN A VARIETY
22 OF ASPECTS.

23 NOW. AT OUR LAST HEARING. ON THE -- ON THE FIRST WITNESS.
24 RECENTLY. WE KNOW AS A MATTER OF RECORD NOW. THAT THE SOLICIT-
25 TOR OR HIS AGENT - I'M NOT SURE WHO IT WAS: DOESN'T REALLY

SAMUEL ROSEN. REDIRECT EXAMINATION

17.

1 MATTER - EXHIBITED ALL LINEUPS, INCLUDING NUMBER THREE, TO THE
2 WITNESS AT THAT TIME. AGAIN, ASSUMABLY WITH AMPLE OPPORTUNITY
3 TO OBSERVE. AND AT THAT TIME THE WITNESS COULD NOT IDENTIFY
4 MR. ROGERS.

5 NOW, SINCE THAT HEARING TILL TODAY WE'VE ESTABLISHED THAT
6 SHE HAD NO OTHER -- NO OTHER IDENTIFICATION PROCEDURE WAS
7 PURSUED BY THE STATE.

8 NOW, SINCE THE DATE OF THE INCIDENT UP UNTIL ABOUT AN
9 HOUR AND A HALF AGO, IT'S UNDENIABLE AND A MATTER OF RECORD,
10 WOULD SUBMIT, THAT MISS SHOUGH COULD NOT IDENTIFY MR. ROGERS.
11 HOWEVER, WHEN SHE TAKES THE STAND TODAY, AS SHE CLEARLY ---

12 THE COURT: WELL, NOW, WAIT JUST A SECOND. SHE HAS NEVER
13 BEEN ASKED TO IDENTIFY HIM FACE TO FACE. AND YOU'RE TALKING
14 ABOUT WITH THE OTHER ONE. THIS IS THE FIRST TIME, THAT I
15 UNDERSTAND, THAT SHE'S BEEN ASKED TO IDENTIFY HIM.

16 MR. KULF: THAT'S CORRECT.

17 THE COURT: AM I INCORRECT?

18 MR. KULF: NO, SIR, YOU -- YOU'RE CORRECT BUT -- BUT --

19 THE COURT: BUT YOU SAY SHE COULD NOT. WHY DO YOU SAY
20 THAT?

21 MR. KULF: BECAUSE -- BECAUSE SHE -- SHE -- WHETHER --
22 HOW -- WHAT -- HOW SHE GOT NOT TO THE POINT NOT BEEN ABLE TO
23 I THINK, YOUR HONOR, RESPECTFULLY, IT'S IRRELEVANT. THE FACT
24 IS THAT SHE COULD NOT IDENTIFY HIM PRIOR TO AN HOUR AND A HALF
25 AGO.

SAMUEL ROSEN. REDIRECT EXAMINATION

175

1 NOW. YOU KNOW. WHETHER THE STATE HAD SOME -- I DON'T KNOW
2 IF THEY STRATEGY MADE SOME DECISION WHY AS NOT TO PURSUE AN
3 IN-PERSON LINEUP OR SOME OTHER FORM OF IDENTIFICATION PRIOR TO
4 NOW. THAT'S THEIR BUSINESS AND I'M NOT GONE TREAD ON THAT
5 WATER. BUT THE POINT IS THAT THAT'S JUST A FACT. REGARDLESS
6 OF THE REASON. THAT AN HOUR AND A HALF AGO SHE COULDN'T
7 IDENTIFY MR. ROGERS. SO WHAT CHANGED?

8 WHAT CHANGED. YOUR HONOR. WHAT I SUGGEST TO YOU IS THAT
9 WHICH MAKES HER IDENTIFICATION OF MR. ROGERS ABSOLUTELY AND
10 TOTALLY UNRELIABLE. WHICH IS THE STANDARD IN A CASE. AND
11 THAT IS BECAUSE OF THE ASPECT THAT -- THAT COLORS HER TESTIMO-
12 NY. THAT ASPECT OF SUGGESTIBILITY.

13 IT'S -- I DON'T KNOW THERE'S AN ARGUMENT TO BE MADE THAT
14 WHEN SHE CAME HERE AND TOOK THE STAND THAT IT COULD NOT BE ANY
15 MORE OF A SUGGESTIBLE CIRCUMSTANCE THAN WHAT EXISTED HERE.
16 AND I'M GONNA ADDRESS ASPECTS OF THAT IN A SECOND.

17 IT'S NO LESS SUGGESTIVE. YOUR HONOR. I WOULD SUBMIT.
18 REGARDLESS OF THE WAY THE QUESTION BY THE SOLICITOR WAS
19 PHRASED. THAN A ROADSIDE SETTING WHERE. ARGUABLY. IF THEY'D
20 FOUND MR. ROGERS THAT EVENING. CHARGED HIM WITH A CRIME.
21 BROUGHT HIM BACK TO THE SCENE AND AN OFFICER ON THE CASE SAID.
22 MA'AM. ISN'T THAT HIM.

23 NOW. OUR COURTS HAVE RULED THAT IS TOTALLY UNRELIABLE.
24 THAT IS A SHOWUP. THAT IS -- THE SUGGESTIBILITY THERE BLEEDS
25 OVER AND AFFECTS THE QUALITY OF THE TESTIMONY SO MUCH THAT THE

SAMUEL ROSEN. REDIRECT EXAMINATION

17

1 COURT HAS DEEM IF THAT'S ALL YOU HAVE. THAT IS NOT SUFFICIENT
2 TO ALLOW THE JURY TO HEAR THE TESTIMONY OF THE PERSON
3 IDENTIFYING THE DEFENDANT.

4 NOW. SHE CAME IN HERE TODAY. SHE DID LOOK AROUND THE
5 COURTROOM. AND SHE CLEARLY ADMITTED. THE PERSON SHE WAS
6 LOOKING FOR WAS THE PERSON AT THE TABLE WEARING THE ORANGE.
7 THERE'S NO OTHER PERSON IT COULD HAVE BEEN. SO THE SOLICITOR
8 ASKED HER DO YOU SEE HIM IN THE COURTROOM. WITH ALL RESPECT
9 THE SOLICITOR AS A COLLEAGUE. WHAT THE QUESTION REALLY IS. IS
10 THERE. REGARDLESS OF HOW IT'S WORDED. IS THAT TAVARUS ROGERS
11 SEATED OVER THERE IN THE ORANGE JUMP SUIT AT COUNSEL TABLE.
12 'CAUSE THERE HAS TO BE -- THE NET EFFECT AND SUBSTANCE OF THE
13 QUESTION HAS TO BE INTERRUPTED IN THAT REGARD.

14 NOW. THE LAST THING I WANT TO SUGGEST. YOUR HONOR. AND
15 ARGUE TO THE COURT IS THIS. WE DON'T BEAR THE BURDEN OF
16 PROOF. IN THIS CASE. IN ANY RESPECT. IT'S THE STATE'S. AS
17 YOU WELL KNOW. YOUR HONOR. THAT INCLUDES EACH AND EVERY
18 ASPECT OF THE CASE THEY HAVE TO PROVE. ONE IS THAT A MURDER
19 WAS COMMITTED AND THE SECOND IS IT WAS COMMITTED BY TAVARUS
20 ROGERS. SO IDENTIFICATION IS AN ESSENTIAL ELEMENT OF THEIR
21 CASE. THEIR BURDEN THEY HAVE TO PROVE.

22 NOW. AGAIN. HOW THEY RUN THEIR CASE. HOW THEY PREPARE
23 STRATEGY AND PURSUE IT IS NOT MY BUSINESS. BUT WHAT HAPPEN
24 HERE. IT IS NOT OR OBLIGATION OR RESPONSIBILITY TO ENSURE T
25 A WITNESS CAN'T PICK HIM OUT. IT'S THE STATE'S OBLIGATION T

SAMUEL ROSER. REDIRECT EXAMINATION.

177

1 ENSURE THAT THE WITNESS CAN PICK HIM OUT AND CAN DO SO IN A
2 WAY THAT'S CREDIBLE AND RELIABLE. AND, THEREFORE, IS ABSENT
3 ANY SUGGESTIBILITY.

4 NOW, WHAT HAPPENED IN THIS CASE, JUDGE, IN THE FIRST
5 WITNESS IN OUR LAST HEARING, AFTER THAT WITNESS TESTIFIED AND
6 JUST BEFORE MISS SHOUGH WAS TO COME UP, I THINK THAT THE STATE
7 REALIZED WAIT A MINUTE, MAYBE THIS WASN'T THE BEST WAY TO GO
8 ABOUT THIS. AND I THINK THAT'S WHEN THEY KIND OF TAPPED ON
9 THE BRAKE PEDAL AND SAID, WELL, MAYBE WE BETTER -- THIS MIGHT
10 BE A PROBLEM BECAUSE WHAT WE DID -- AND MAYBE WE COULD'VE
11 TAKEN STEPS BY MOVING THE COURT TO HAVE HIM REMOVED OR THEN
12 MOVE FOR A COURT ORDER ORDERING SOME IN-PERSON LINEUP AT THE
13 JAIL. THEY TAPPED ON THE BRAKE PEDAL AND SAID, NOW, WAIT A
14 MINUTE, NOW ABOUT Y'ALL DO IT. AND WE'RE NOT GONNA DO THAT,
15 UNDER THE FIFTH AMENDMENT AND OTHERWISE, IT'S NOT WITHIN OUR
16 BURDEN OF PROOF.

17 AND WHAT HAPPENED IS THEY BRING THAT WITNESS IN HERE WHO,
18 AGAIN, ON THAT DATE, AN HOUR PRIOR TO COMING IN THIS
19 SUGGESTIBLE CIRCUMSTANCE, COULDN'T IDENTIFY HIM.

20 AND MAYBE, I PUT, YOUR HONOR, AS A FOOTNOTE IN MY ARGU-
21 MENT, THAT'S WHY THEY DIDN'T HAVE A LINEUP. IN ANY OTHER
22 SETTING IN THE INTERIM, BECAUSE THEY KNEW THAT SHE COULDN'T
23 IDENTIFY HIM UNLESS SHE SAW HIM AS A MAN IN THE ORANGE JUMP
24 SUIT SEATED AT THE COUNSEL TABLE. SO ---

25 THE COURT: ARE YOU OF THE OPINION THAT A DEFENDANT HAS

SAMUEL ROSER, REDIRECT EXAMINATION

17

1 TO SUBMIT TO A LINEUP?

2 MR. KULP: ACTUALLY, I -- YOU GOT TO -- THAT'S ALMOST
3 LIKE AN APPELLATE ARGUMENT. I WASN'T ON THAT TRACK, YOUR
4 HONOR ---

5 THE COURT: WELL, I MEAN YOU'RE SAYING THEY COULD'VE
6 LIKE -- THEY COULD'VE ASKED FOR ONE AND HE DID IT. I MEAN,
7 YOU KNOW, I DON'T EVEN THINK YOU HAVE LINEUPS ANYMORE BECAUSE
8 I DON'T THINK A PERSON HAS TO SUBMIT TO ONE.

9 MR. KULP: I'D HAVE TO DOUBLE CHECK THAT, YOUR HONOR.
10 I'M THINKING ON MY FEET, YOUR HONOR, BUT I THINK THAT -- WELL
11 AT LEAST WE KNOW AS A MATTER OF RECORD THAT NO ATTEMPT WAS
12 MADE TO COMPEL THE DEFENDANT TO APPEAR. HAD THAT BEEN THE
13 CASE AND HE RESISTED AS WE -- I PROBABLY BEEN MORE VERSED IN
14 BEING ABLE TO ANSWER THAT QUESTION.

15 HOWEVER, BE ALL THAT AS IT MAY, IT IS UNDENIABLE, I
16 THINK, TO SUMMARIZE MY ENTIRE ARGUMENT, THAT MISS SHOUGH, ON
17 COULD NOT IDENTIFY MR. ROGERS PRIOR TO COMING IN THIS COURT-
18 ROOM AND THAT THE -- THE SETTING AND THE CIRCUMSTANCES IN
19 WHICH SHE DID FOR THE FIRST TIME IN THIS CASE IDENTIFY HIM,
20 WAS HERE TODAY IN THIS COURTROOM FRAUGHT SUGGESTIBILITY.

21 AND, THEREFORE, YOUR HONOR, WE MOVE THE COURT, AS WE'VE
22 DONE SO IN OUR -- IN OUR MOTION, TO SUPPRESS OR EXCLUDE ANY
23 TESTIMONY WHATSOEVER OF MISS SHOUGH IDENTIFYING THE DEFENDANT
24 BECAUSE WE BELIEVE THAT IS -- IS TAINTED.

25 THANK YOU.

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1 THE COURT: ANYTHING FROM THE STATE?

2 MR. MURDAUGH: YOUR HONOR, PLEASE, I WOULD JUST CALL THE
3 COURT'S ATTENTION TO THE FACT THAT TAVARUS ROGERS WAS IN THAT
4 HOUSE FOR A SIGNIFICANT PERIOD OF TIME BEFORE HE LEFT AND THEN
5 CAME BACK. SHE HAD THE OPPORTUNITY TO SEE HIM. SHE HAD THE
6 FIVE THINGS THAT ARE SET OUT IN THE -- IN THE BRAITWAIT CASE,
7 IN THE BIGGERS CASE; THE OPPORTUNITY TO VIEW HIM; THE DEGREE
8 OF ATTENTION. GOD KNOWS, SHE HAD A GUN PLACED ON HER. AT
9 FIRST SHE WAS IN A FRIENDLY SETTING, HAD CONVERSATIONS WITH
10 HIM. THEN LATER HAD A GUN PLACED ON HER. IF THAT DOESN'T
11 ETCH IN YOUR MIND WHAT'S GOING ON, I -- IT DOES ETCH IN YOUR
12 MIND.

13 THEY -- BRAITWAIT ALSO SAYS -- AND I DON'T ACKNOWLEDGE
14 THAT IT WAS SUGGESTIVE THAT HE IS SITTING IN THIS COURTROOM
15 BUT BRAITWAIT SAYS THAT SUGGESTIVENESS ALONE DOES NOT REQUIRE
16 THE EXCLUSION OF THE TESTIMONY.

17 AND AT THE LAST HEARING ---

18 THE COURT: EXCUSE ME.

19 I'M SORRY, LADY. YOU'RE GONE HAVE TO TAKE THAT CHILD OUT
20 OF HERE.

21 MR. MURDAUGH: THERE WAS -- WE RECESSED SO THAT THEY
22 COULD GIVE ATTENTION TO THE POSSIBILITY OF A LINEUP. I DID
23 NOT DO THAT FOR ANY REASON OTHER THAN WHEN I'M TRYING A CASE,
24 SIR, I'VE GOT TO WIN IT BEFORE YOU, I'VE GOT TO WIN IT BEFORE
25 A JURY, I'VE GOT TO WIN IT BEFORE THE SUPREME COURT. THEN

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1 I'VE GOT POST CONVICTION RELIEF AND I DIDN'T WANT ANY ISSUE OF
2 INEFFECTIVE ASSISTANCE OF COUNSEL TO COME UP. I WANTED THEM
3 TO HAVE ACKNOWLEDGED ON THE RECORD THAT THEY MADE A CONSCIOUS
4 DECISION TO DO IT THIS WAY.

5 WE SUBMIT THAT IT'S PERMISSIBLE. TESTIMONY.

6 MR. FLEMING: I HAVE ONE THING, YOUR HONOR. WITH REGARD
7 TO THE LAST STATEMENT BY THE SOLICITOR, I BELIEVE HE IS
8 ATTEMPTING TO SHIFT THE BURDEN OF PROOF IN THIS CASE. WE
9 WOULD SAY THAT IS IMPERMISSIBLE.

10 WITH REGARD TO THE NEAL V BIGGERS STANDARDS THAT THE
11 SOLICITOR ELICITED JUST NOW, FIRST ONE, AS I UNDERSTAND, IS
12 THE OPPORTUNITY TO SEE THE CRIMINAL AT THE TIME OF THE CRIME
13 THE TESTIMONY IS THAT IT WAS -- AND I'LL OBVIOUSLY REFER BACK
14 TO THE RECORD AS BEST I CAN BUT THE TESTIMONY WAS THAT IT WAS
15 A MATTER OF SECONDS AND IT WAS FIFTEEN -- FIFTEEN FEET APART

16 NOW, IT'S THE OPPORTUNITY TO VIEW AT THE TIME OF THE
17 CRIME, NOT AT SOME PERIOD OF TIME EARLIER.

18 THE COURT: WELL, IT'S SUPPOSED TO MAKE SENSE. NOW,
19 OBVIOUSLY IF YOU'VE SEEN SOMEBODY FOR THE SECOND TIME YOU
20 DON'T HAVE TO LOOK. I MEAN JUST COMMON SENSE, PLEASE.

21 MR. FLEMING: I'M JUST MERELY QUOTING THE CASE AND THE
22 CASE SAYS WE'RE -- THE PROBLEM IS THAT THE SOLICITOR IS TRY
23 TO SAY THAT BECAUSE THIS -- BECAUSE THEY BELIEVE THIS
24 INDIVIDUAL WAS THERE EARLIER, HE MUST BE THE ONE LATER AND
25 FACT THE MATTER IS, HE HAS TO PROVE THAT HE WAS THE ONE

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1 EARLIER.

2 WITH REGARD TO NEAL V BIGGERS, HER ABILITY TO KNOW WHAT
3 THIS INDIVIDUAL LOOKS LIKE MAY BE A FACTOR; HOWEVER, HER
4 OPPORTUNITY TO VIEW THE CRIMINAL AT THE TIME OF THE CRIME IS
5 THE CRUX OF THE ISSUE. THERE WE KNOW THAT IT WAS A MATTER OF
6 SECONDS AND NO MORE THAN FIFTEEN -- FIFTEEN -- NO CLOSER THAN
7 FIFTEEN FEET APART.

8 SECONDARILY, THE WITNESS' DEGREE OF ATTENTION IS THE NEXT
9 POINT; HOWEVER, SHE TESTIFIED THAT THE PERSON HOLDING THE GUN
10 ON HER WAS A GUY NAMED WEST, NOT TAVARUS ROGERS. THEREFORE,
11 ONE MUST ASSUME, AS CASES HAVE ROUTINELY SAID, THAT
12 YOU -- YOUR DEGREE OF ATTENTION IS TOWARDS THE ONE WHO HAS THE
13 GUN ON YOU.

14 NOW ---

15 THE COURT: ARE YOU TESTIFYING AS AN EXPERT?

16 MR. FLEMING: SIR?

17 NO, SIR. NO, THAT'S A WHOLE -- THERE'VE BEEN SEVERAL
18 CASES. HOLDING -- THAT A HOLDING FROM SEVERAL CASES, CLAIM
19 THAT THE DEGREE OF ATTENTION CAN BE REFLECTED BY THE FACT THAT
20 SOMEONE'S HOLDING A GUN ON YOU.

21 THIRDLY, THE ACCURACY OF THE WITNESS' PRIOR DESCRIPTION
22 OF THE CRIMINAL. THIS IS NO TESTIMONY NOR IS THERE ANY
23 STATEMENT CONCERNING HER -- THERE -- IS THERE ANYTHING IN HER
24 STATEMENTS GIVEN TO THE POLICE WITHIN EIGHT HOURS OF THE EVENT
25 THAT DESCRIBES THE CRIMINAL, PERIOD. THEREFORE, NUMBER -- THE

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1 OKAY, WELL, UNDER THE DUE PROCESS CLAUSE EVIDENCE OF AN
2 IDENTIFICATION OF THE ACCUSED MUST BE EXCLUDED IF THE PROCESS
3 USED TO OBTAIN THE IDENTIFICATION WAS SO UNNECESSARILY
4 SUGGESTIVE AS TO GIVE RISE TO A VERY SUBSTANTIAL LIKELIHOOD OF
5 MISIDENTIFICATION. THAT'S REALLY WHAT WE'RE TALKING ABOUT
6 BECAUSE A JURY -- ONLY IF IT'S SO UNRELIABLE, BECAUSE WE'RE
7 TALKING ABOUT THE RELIABILITY AND I THINK THE CASES SAY THAT
8 THE RELIABILITY IS THE LINCHPIN IN DETERMINING THE
9 ADMISSIBILITY OF IDENTIFICATION TESTIMONY.

10 AND, OF COURSE, THOSE FACTORS ARE SET OUT. THE WITNESS'
11 OPPORTUNITY TO VIEW THE CRIMINAL AT THE TIME OF THE CRIME.
12 SAW HIM TWO TIMES THAT NIGHT AND SHE TESTIFIED IN DETAIL ABOUT
13 THAT AND THE FACT THAT THIS WAS THE SECOND TIME ON THAT
14 PARTICULAR NIGHT THAT SHE HAD SEEN HIM AND THE OTHER ONES,
15 TOO, AND, OF COURSE, I REALLY BELIEVE THAT COMMON SENSE SAYS
16 THAT IT WOULD SUBSTANTIATE HER IDENTIFICATION AS TO HIM SINCE
17 SHE SO POSITIVELY IDENTIFIED THE CODEFENDANT, WEST, BY HIS
18 CLOTHES.

19 AND -- IN OTHER WORDS, YOU GOT TO LOOK AT ALL THE
20 CIRCUMSTANCES OF IT AND THAT'S JUST ONE FACTOR. THERE'S MANY
21 FACTORS BUT THE WITNESS' DEGREE OF ATTENTION, WHICH WAS
22 OBVIOUSLY VERY ACUTE, AS THE CASES SAY.

23 I THINK IT'S CONCEDED THAT HER PRIOR DESCRIPTION WASN'T
24 AND THE FOURTH CRITERIA, THE WITNESS' LEVEL OF CERTAINTY AT
25 THE TIME OF THE CONFRONTATION. TODAY I TOOK HER, LOOKING A

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1 HER Demeanor AND OBSERVING HER PERSONALLY HERE TODAY, I
2 THOUGHT SHE WAS -- THAT SHE HAD A HIGH DEGREE OF CERTAINTY
3 AND, THEREFORE, RELIABILITY.

4 I DON'T GIVE OVERWHELMING WEIGHT TO THE PHOTOGRAPHIC
5 LINEUP. I'M REMINDED EVERY TIME I LOOK AT MY DRIVER'S LICENSE
6 PICTURE THAT I DON'T KNOW THAT I RECOGNIZE MYSELF SO WELL ON
7 THOSE. AND SO THE QUALITY OF THE PHOTOGRAPHY IS HIGHLY
8 UNRELIABLE SOMETIMES AND I'VE HEARD IT SAID, ALTHOUGH I'M NOT
9 AN EXPERT, THAT PHOTOGRAPHY, WHEN IT IS TAKEN OF A PERSON, AN
10 AFRO-AMERICAN VERSUS A CAUCASIAN, THAT BECAUSE OF THE LIGHT
11 AND SO FORTH, AND THE COLOR OF A PERSON'S SKIN, IT JUST VARIES
12 AND EVERYTHING AND THERE'S SO MANY INTANGIBLES ABOUT PHOTOGRA-
13 PHY THAT I THINK IT'S VERY UNDERSTANDABLE HOW SOMEONE MIGHT
14 NOT BE ABLE TO IDENTIFY A PARTICULAR WITNESS.

15 AND, OF COURSE, IT HAS BEEN SEVERAL YEARS, ALMOST THREE
16 YEARS SINCE THE TIME OF THE CRIME AND THE CONFRONTATION TO
17 DATE. BUT TAKING ALL THE FACTORS IN TO CONSIDERATION, I DON'T
18 BELIEVE THAT -- I BELIEVE THAT IT'S UP FOR THE JURY. I THINK
19 THE STATE'S MET THE BURDEN OF PROOF IN ALLOWING THIS, THE
20 ADMISSIBILITY OF THIS IDENTIFICATION, THIS IN-COURT IDENTIFI-
21 CATION, AND I THINK THAT A JURY WILL BE ABLE TO ASSESS A LOT
22 OF THE MATTERS THAT DEFENSE COUNSEL BRINGS UP AND THAT WOULD
23 BE FOR THE JURY TO DETERMINE THE CREDIBILITY OF THIS, THESE
24 WITNESSES LIKE ALL OTHER WITNESSES IN A TRIAL.

25 AND SO, THEREFORE, THE MOTION TO EXCLUDE THE IN-COURT

SAMUEL ROSER, REDIRECT EXAMINATION

18

1 IDENTIFICATION -- ONE OTHER THING I WANT TO SPEAK ABOUT, TOO.

2 THE STATE AND THIS COURT HAS DONE EVERYTHING WE COULD TO
3 TRY TO WORK WITH THE DEFENDANT BUT I KNOW THAT YOUR PREFERENC
4 WOULD BE THAT THERE WAS NEVER A TIME WHEN THE WITNESS AND THE
5 DEFENDANT COULD MEET FACE-TO-FACE SO THAT THERE COULD BE NO
6 IDENTIFICATION. OBVIOUSLY THAT WOULD BE YOUR PREFERENCE AND
7 COMMEND THE ATTORNEYS FOR THE DEFENDANT FOR RESEARCHING THIS
8 AND PUTTING FORTH A STRICT AGREEMENT ON THAT MATTER BUT I DO
9 BELIEVE THAT THERE IS -- THAT THE -- THAT THE CHOICE HAD TO I
10 MADE. IF YOU HAD WISHED TO AVAIL YOURSELF OF SOME SORT OF
11 SITUATION WHERE THE DEFENDANT WAS NOT THE ONLY PERSON SEATED
12 AT COUNSEL TABLE, THIS COURT HAD GIVEN EVERY INDICATION THAT
13 WE WOULD COOPERATE SO FAR AS HAVING THE DEFENDANT SITTING
14 AMONG OTHER PERSONS OF HIS AGE, RACE AND SIZE. AND SO SINCE
15 YOU CHOSE - WHICH I DON'T -- NOT TO AVAIL YOURSELF OF THAT,
16 DO NOT BELIEVE THAT YOU CAN CLAIM ANY UNDUE PREJUDICE BECAUSE
17 OF THE COURTROOM SITUATION.

18 AND SO FOR ALL THOSE REASONS THE COURTROOM -- THE IN-
19 COURT IDENTIFICATION OF THIS WITNESS, MISS SHOUGH, OR MISS
20 WENDELL, AS HER NAME MAY BE, ALONG WITH THE OTHER WITNESS W
21 BE ALLOWED IN THE TRIAL.

22 ANYTHING ELSE BEFORE THIS HEARING IS CLOSED?

23 MR. MURDAUGH: NOTHING FROM -- WELL, WE HAD -- MR. KUL
24 HAD SOMETHING THAT HE WAS GONE BRING UP LATER ON.

25 QUESTIONNAIRE?

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1 MR. KULP: YEAH, I'LL -- YOU AND I, SOLICITOR, ARE GONE
2 HAVE TO CONFER ABOUT THAT. WE'LL -- WE CAN DEAL WITH THAT.

3 MR. MURDAUGH: OKAY.

4 MR. FLEMING: CAN WE APPROACH? SOLICITOR?

5 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

6 -- END OF REQUESTED TRANSCRIPT OF RECORD --
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I, THE UNDERSIGNED DONNA HARTLEY, OFFICIAL COURT REPORTER FOR THE FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR BEAUFORT COUNTY, SOUTH CAROLINA ON THE TWENTY-NINTH DAY OF AUGUST, 2001.

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

September 18, 2001


DONNA HARTLEY
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS

THE STATE

-VS-

TAVARUS ROGERS

:
:
:
:
:

TRANSCRIPT OF RECORD
EX PARTE

AUGUST 29, 2001
BEAUFORT, SOUTH CAROLINA

B E F O R E:

HONORABLE JACKSON V. GREGORY, JUDGE

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

CORY HOWERTON FLEMING, ESQ.
TIMOTHY C. KULP, ESQ.
ATTORNEY FOR DEFENDANT

DONNA HARTLEY
CIRCUIT COURT REPORTER

COPY

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

NO EXHIBITS INTRODUCED

1 THE COURT: THEY PUT SOMETHING ON RECORD DEALING WITH
2 THEIR -- WITH THE DEFENDANT, GO ON THE RECORD WITH HIM AND
3 THAT ALL MATTERS, ALL OTHER PERSONS EXCEPT SECURITY WOULD BE
4 OUTSIDE THE COURTROOM. SO I WILL ALLOW THAT.

5 DO YOU WANT JUST THE DEFENDANT?

6 MR. FLEMING: AND HIS FAMILY.

7 THE COURT: AND HIS FAMILY.

8 MR. FLEMING: YES, SIR.

9 THE COURT: AND SO WITH THAT IN MIND, OTHER THAN THE
10 ESSENTIAL COURT PERSONNEL AND -- BUT EVERYBODY FROM THE
11 SOLICITOR'S OFFICE SPECIFICALLY AND EVERYBODY ON THAT SIDE
12 WOULD PLEASE EXIT THE COURTROOM AND DON'T LEAVE BECAUSE THERE
13 MIGHT BE SOMETHING ELSE, JUST IN CASE BUT I THINK THE
14 HEARING'S OVER WITH.

15 ANY OBJECTION TO THAT, SOLICITOR?

16 MR. MURDAUGH: NO, SIR.

17 THE COURT: YOU, TOO.

18 MR. MURDAUGH: OH, ME, TOO?

19 OH.

20 THE COURT: YEAH. AREN'T YOU THE STATE?

21 (THE COURTROOM WAS CLEARED.)

22 THE COURT: OKAY, AT YOUR REQUEST WE'VE DONE THIS AND
23 GLAD TO HEAR FROM YOU.

24 MR. FLEMING: THANK YOU, YOUR HONOR.

25 SEVERAL -- I BELIEVE SEVERAL, NOW, MONTHS AGO THE

1 SOLICITOR APPROACHED ME CONCERNING AN OFFER OF A PLEA AGREE-
2 MENT IN THIS CASE.

3 THE PLEA AGREEMENT IS OFFERED AS FOLLOWS, AND AS I'M
4 INFORMED AND BELIEVE, AS OF TODAY IT STILL EXISTS; HOWEVER, I
5 HAVE BEEN INFORMED THAT IT -- ONLY A VERY SHORT WINDOW WILL IT
6 REMAIN OPEN. AND PRESUMABLY THE END OF THE DAY.

7 I DON'T -- HAVEN'T SPOKEN WITH HIM AFTER THIS HEARING.

8 HOWEVER, THE OFFER WAS THAT THE DEFENDANT WOULD BE
9 ALLOWED TO PLEAD GUILTY TO TWO COUNTS OF NON-CAPITAL MURDER
10 WITH A NEGOTIATED SENTENCE OF THIRTY YEARS TO RUN CONCURRENT-
11 LY. IN OTHER WORDS, IT WOULD BE A THIRTY YEAR SENTENCE ON TWO
12 COUNTS OF MURDER. EVERYTHING ELSE IS DISMISSED AND, OF
13 COURSE, THE DEATH PENALTY REQUEST HAS BEEN WITHDRAWN.

14 WE HAVE, MYSELF AND MR. KULP AND MEMBERS OF OUR DEFENSE
15 TEAM HAVE SPENT AT LEAST FOURTEEN HOURS DISCUSSING THE
16 RAMIFICATIONS OF THIS PLEA AND ALL OF THE DIFFERENT
17 RECOMMENDATIONS CONCERNING THE PLEA.

18 WE HAVE -- WE FEEL THAT IT IS -- IN A CASE OF THIS
19 INCREDIBLE MAGNITUDE AND THE POSSIBILITY OF SENTENCE, THAT WE
20 NEED FOR, PURPOSES OF THE RECORD, TO PLACE IT ON THE RECORD;
21 HOWEVER, IT SHOULD NOT BE MADE A PART OF ANY PROCEEDINGS
22 CONCERNING SENTENCING, ET CETERA. I DON'T BELIEVE THAT PLEA
23 NEGOTIATIONS OR OFFERS ARE APPROPRIATE TO BE PUT BEFORE THE
24 JURY; HOWEVER, I WANT TO SAY THAT -- WE SAY THAT AND ASK YOUR
25 HONOR TO FIND THAT IT WILL NOT BE PUT BEFORE A JURY IN

1 POSSIBILITY OF A SENTENCE HEARING.

2 THE COURT: WELL, I WOULD -- OKAY. THEN I WOULD DIRECT
3 EVERYBODY THAT'S HERE TO NOT COMMUNICATE THAT EXCEPT FOR THE
4 DEFENDANT, OF COURSE, CAN COMMUNICATE WITH ANYBODY HE WANTS
5 TO.

6 MR. FLEMING: YES, SIR.

7 THE COURT: AND HIS FAMILY CAN. BUT ALL OTHER PERSONS,
8 I'M ISSUING A GAG ORDER FOR IT. IT WILL NOT BE TRANSCRIBED
9 UNLESS IT'S THROUGH REQUEST OF THE DEFENDANT OR HIS ATTORNEYS.

10 MR. FLEMING: YES, SIR.

11 THE COURT: SO.

12 MR. FLEMING: AND WHAT I WOULD -- WHAT I WILL NOW TELL
13 YOU IS FOR PURPOSES OF THE RECORD AND WE HAVE, THE DEFENSE
14 TEAM HAS JOINTLY CONFERRED WITH MR. ROGERS AND INDICATED THAT
15 IT IS OUR RECOMMENDATION THAT MR. ROGERS ACCEPT THIS PLEA
16 OFFER. MR. ROGERS INFORMS US THAT HE WILL NOT ACCEPT THE PLEA
17 OFFER AND WISHES TO GO FORWARD WITH TRIAL. AND I WOULD ASK
18 YOUR HONOR TO INQUIRE OF MR. ROGERS IF THAT IS THE CASE. SO
19 THERE WILL BE NO MISUNDERSTANDINGS IN THE FUTURE, SIR.

20 THE COURT: IN OTHER WORDS, IF HE WERE TO BE TRIED, IF HE
21 WERE TO BE SENTENCED TO THE DEATH PENALTY OR LIFE IMPRISONMENT
22 OR WHATEVER, YOU DON'T WANT ANYBODY TO EVER COME BACK AND
23 SAY ---

24 MR. FLEMING: THAT THE OPPORTUNITY WASN'T THERE FOR A
25 PLEA AGREEMENT, YES, SIR.

1 THE COURT: OKAY, MR. ROGERS.

2 DEFENDANT TAVARUS ROGERS: YES, SIR.

3 THE COURT: WOULD YOU PLEASE STAND.

4 YOU'VE HEARD MR. FLEMING -- NO, YOU DON'T HAVE TO STAND.
5 YOU CAN SIT THERE.

6 YOU CAN STAND, OKAY.

7 YOU'VE HEARD WHAT MR. FLEMING HAS SAID. IS EVERYTHING HE
8 SAID CORRECT AS TO WHAT HE'S TOLD YOU AND WHAT HE'S ADVISED
9 YOU TO DO?

10 DEFENDANT TAVARUS ROGERS: YES, SIR.

11 THE COURT: AND HAVE YOU MADE YOUR DECISION, WHATEVER IT
12 IS, FREELY, KNOWINGLY AND VOLUNTARILY BUT IT IS YOUR DECISION?

13 DEFENDANT TAVARUS ROGERS: YES, SIR.

14 THE COURT: AND YOU'VE TAKEN IN TO CONSIDERATION THE
15 POSSIBILITIES ABOUT WHAT GOOD COULD HAPPEN OR WHAT BAD COULD
16 HAPPEN TO YOU PERSONALLY AND IT IS YOUR DECISION?

17 DEFENDANT TAVARUS ROGERS: YES, SIR.

18 THE COURT: OKAY.

19 ANYTHING ELSE?

20 MR. FLEMING: NO, SIR. THAT'S ALL.

21 MR. KULP: I'LL GET WITH THE SOLICITOR ABOUT THE
22 QUESTIONNAIRE.

23 THE COURT: OKAY.

24 MR. KULP: BEFORE LEAVING FOR CHARLESTON.

25 THE COURT: OKAY.

1 DO Y'ALL HAVE ANY OTHER MATTERS? IS THIS HEARING OVER
2 WITH? DO Y'ALL HAVE ANYTHING ELSE TO GO OTHER THAN THE
3 MATTERS WE TALKED ABOUT IN THE HEARING EARLIER?

4 MR. FLEMING: NO, SIR.

5 THE COURT: SO THIS HEARING'S OVER WITH?

6 MR. FLEMING: YES, SIR.

7 MR. KULP: YES, SIR.

8 -- END OF REQUESTED TRANSCRIPT OF RECORD --
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I, THE UNDERSIGNED DONNA HARTLEY, OFFICIAL COURT REPORTER FOR THE FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR BEAUFORT COUNTY, SOUTH CAROLINA ON THE TWENTY-NINTH DAY OF AUGUST, 2001.

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

September 18, 2001

A handwritten signature in cursive script, appearing to read "Donna Hartley", is written over a horizontal line.

DONNA HARTLEY
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
) Plaintiff,
)
) vs.
) 99-GS-07-221 thru 222
) 99-GS-07-281 thru 288
TAVARUS ROGERS)
)
) Defendant.
)

PRETRIAL MOTIONS HEARING

The within Pretrial Motions Hearing was held before the Honorable Jackson V. Gregory, on October 4th, 2001, in Courtroom No. 1 of the Beaufort Government Center, Beaufort, South Carolina; attended by counsel, as follows:

APPEARANCES:

Randolph Murdaugh, Solicitor
Steven Knight, Deputy Solicitor
Appearing for State of South Carolina

Cory H. Fleming, Esq.
MOSS & KUHN, P.A.
Post Office Drawer 507
Beaufort, South Carolina 29901-0507

-and-

Timothy Clay Kulp, Esq.
RIESEN LAW FIRM
3660 West Montague Avenue
North Charleston, South Carolina 29418
Appearing for Defendant

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
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State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Pretrial Motions Hearing of October 4th, 2001 before Judge Gregory

1 **October 4, 2001**

10:30 A.M.

2 **MOTIONS HEARING**

3 THE COURT: Here are the reports on them. I just
4 wanted you'all to look over that, and we're going to
5 put it on the record if you've got any -- do you have
6 exactly the Indictment numbers and everything, the
7 caption?

8 COURT REPORTER: I have the caption, but not
9 copies of the indictments.

10 MR. MURDAUGH: I do not have them with me today,
11 sir.

12 THE COURT: That's okay. Well, then, just make
13 sure ---

14 MR. MURDAUGH: I will give them to her (court
15 reporter) first thing Monday morning.

16 THE COURT: Okay. Are we ready to proceed?

17 MR. MURDAUGH: Yes, sir.

18 THE COURT: All right. One other thing before
19 we start, just a couple of preliminary things on the
20 Motions while I've got it on my mind.

21 Ms. Johnson, Melissa Johnson here, has a list
22 that's been compiled by Mrs. Smith of all other jurors
23 who have failed to -- you know, after the things came
24 back, then the Sheriff's Office then went out and tried
25 to serve the rest of them, the ones that the Post

State vs. Tavarus Rogers
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Pretrial Motions Hearing of October 4th, 2001 before Judge Gregory

1 Office could not deliver, and these are the reports.
2 Ms. Johnson doesn't have any actual knowledge of this,
3 but this is a list compiled by Mrs. Smith. What I
4 propose is -- is Ms. Smith going to be back tomorrow?

5 THE CLERK: She won't be back until Monday.

6 THE COURT: Be back Monday?

7 THE CLERK: Uh-huh, (affirmative nod).

8 THE COURT: Okay. You'all have this -- and you
9 have the backup information down in your office; don't
10 you?

11 THE CLERK: It's right here.

12 THE COURT: All right. We've got the backup
13 information right here. What I would propose is if
14 anybody has any challenge to any of it that we don't
15 spend the time. We just make this a Court's exhibit,
16 and the information is here for you to verify; and you
17 could either have somebody from your office or you'all
18 could verify it as you want to, and then we can just go
19 on the record on Monday. Is that ---

20 MR. MURDAUGH: Fine with me, sir.

21 MR. FLEMING: Yes, sir.

22 THE COURT: Is everybody able to understand the
23 notes?

24 MR. MURDAUGH: I do, sir.

25 MR. FLEMING: Yes, sir.

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1 THE COURT: Okay. Is that -- is that okay, Mr.
2 Kulp?

3 MR. KULP: Yes, sir, Your Honor. There was --
4 very much so. We'll just review -- the only thing that
5 we wanted to review, I assume that in the category on
6 page four marked "Unable To Locate 43 People," that the
7 Sheriff filed a certificate or affidavit, or what ---

8 THE CLERK: Yes. It's in here.

9 THE COURT: You come up. Show it to him.

10 THE CLERK: It's something signed by the
11 Sheriff's Office.

12 THE COURT: Show it to him.

13 THE CLERK: Okay.

14 MR. KULP: I'll look at that.

15 THE COURT: Okay. Look at it afterwards, ---

16 MR. KULP: Yes, sir.

17 THE COURT: --- but, anyway, if you -- here.

18 Ms. Garrison, do you have a copy of this?

19 COURT REPORTER: Yes, sir, I do.

20 THE COURT: Okay. Then that's going to come
21 in, then, as a Court's exhibit, and unless cause is
22 shown that -- unless either side, the State or the
23 Defense, wishes this matter reopened on Monday as to
24 any particular jurors that you want more information,
25 that you think the jurors should not be excused, then

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1 these listed numbers on this exhibit are excused. And
2 I'm going to now, then, just tell Ms. Johnson that
3 we're going to go ahead and take up the matters. You
4 can just leave the books here, ---

5 THE CLERK: Okay.

6 THE COURT: --- and then when we finish with
7 this, if you'll be available, Mr. Kulp might want to go
8 over some of it with you.

9 THE CLERK: Okay. Okay.

10 MR. KULP: Actually, maybe tomorrow morning.

11 THE CLERK: That's fine.

12 THE COURT: Tomorrow morning. Okay. If you
13 want to just go ahead, and then you are excused, then;
14 and then they'll -- they'll be back to look at those
15 things with you.

16 THE CLERK: Oh, okay.

17 MR. KULP: Thank you, Judge.

18 THE CLERK: Thank you.

19 THE COURT: And you've got one to make a
20 Court's exhibit, Ms. Garrison?

21 COURT REPORTER: Yes, sir, I do.

22 THE COURT: Okay. All right. Anything else
23 we need to discuss on the record before we start the
24 Motions?

25 What about the -- we talked about the -- I gave

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1 you a copy of something to read furnished by Judge
2 Cooper that I proposed to give the jurors before they
3 are voir dired individually. If you ---

4 MR. MURDAUGH: Do you have another copy of that,
5 sir?

6 LAW CLERK: You can have mine.

7 THE COURT: We had several copies made. You
8 didn't get a copy?

9 THE CLERK: I thought she gave you one.

10 MR. MURDAUGH: I don't have that.

11 THE COURT: Anyway, read through that, and if
12 you don't have any -- I'm going to get that typed up.

13 MR. KULP: I'm sorry, Your Honor?

14 THE COURT: If you'all don't have an
15 opportunity to read it -- he Solicitor is reading it
16 now.

17 MR. KULP: Yes, sir.

18 THE COURT: Do you have any objection to any
19 of that language in there?

20 MR. KULP: I do not, Your Honor. I've got a
21 couple of ideas, though. It seems that the Court's
22 intention is to distribute that to those people
23 appearing for their review to prepare them for the
24 process.

25 THE COURT: Yes, sir.

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1 MR. KULP: I would -- and I didn't have time
2 to make any suggested -- notes as to any suggested
3 language to add to that. Or maybe the Court is just
4 intending to instruct them as a group about this.
5 But although we assume they wouldn't do it, I think it
6 would be important to either put in the notice for them
7 not to -- as they read it, not to discuss it among
8 themselves in any way whatsoever.

9 THE COURT: Well, I'm going to do that when
10 they come in. And, of course, when they come in for
11 this they will be given that by the bailiffs and told
12 that I have asked them to please read that.

13 MR. KULP: All right.

14 THE COURT: When they come in, I'll ask them if
15 they have read it. Then when they leave, I'm going to
16 tell them -- and if I should miss, please remind me --
17 that they may not discuss anything about this with any
18 other jurors or anybody else after they leave.

19 But they're not going to be allowed to discuss the
20 case when they come in there, anyway, and they're going
21 to have -- they're going to be supervised.

22 MR. KULP: Of course, they will be in the
23 courtroom. I was just thinking if you just added a
24 sentence down there at the bottom that just said ---

25 THE COURT: What ---

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1 MR. KULP: --- please -- you know, because
2 sometime people leave -- I mean, I'd do it.

3 THE COURT: Write it on one, ---

4 MR. KULP: I will.

5 THE COURT: --- and we'll -- whatever language
6 you want added to it, ---

7 MR. KULP: And I'll ask the Solicitor.

8 THE COURT: --- and I'm sure it will be fine.

9 MR. MURDAUGH: If Your Honor please, there are a
10 couple of things in that there I would like to discuss
11 with you, but why don't we go on and hear these
12 Motions?

13 THE COURT: Okay. You'all just get together,
14 and we'll do that first.

15 MR. KULP: Yes, sir.

16 THE COURT: I'm advised that that saves a lot
17 of time, so that you don't have to go through that.
18 And it gives them -- and I'm not -- they don't take
19 that with them. They just read it and leave it there.

20 MR. KULP: Yes, sir.

21 THE COURT: Okay. Well, I've got one other
22 thing. Is there any objection from the Defense about
23 the proposed witnesses for the Defense, for voir dire
24 purposes.

25 MR. MURDAUGH: I'm sorry. I didn't hear you,

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1 Judge.

2 THE COURT: I want to know if they have any
3 problem disclosing to -- of course, we've got to void
4 dire the jury on the Defense witnesses.

5 MR. KULP: Right.

6 THE COURT: And I want to know if they have any
7 problem just going ahead and putting them on a list.
8 And, by the way, Solicitor, do you have a list of
9 yours?

10 MR. MURDAUGH: I have a list, but I will have a
11 typed list. Gloria told me this morning that I needed
12 a typed list. I do not have a typed list. I will have
13 it for you Monday morning.

14 THE COURT: Excellent.

15 MR. FLEMING: If I may inquire, Your Honor, does
16 that include witnesses in -- if we get that far -- the
17 penalty phase?

18 THE COURT: Absolutely, ---

19 MR. FLEMING: Okay.

20 THE COURT: --- because we need to voir dire
21 both of them. Wouldn't you say that?

22 MR. KULP: Yes, sir.

23 THE COURT: I'm not asking for the names of
24 them now, but I want to know if we're going to have
25 to take extraordinary measures in that so that the

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1 Solicitor needs to ---

2 MR. KULP: Our immediate impression, Your
3 Honor, is we have no problem with that at all because
4 we don't have any curve balls, or lingering. But what
5 we would probably like to do is to just meet this
6 afternoon, look over our lists that we would submit and
7 make sure that we are comfortable about that and get it
8 to you this afternoon.

9 THE COURT: I don't need it until Monday.

10 MR. KULP: Correct.

11 THE COURT: But I would like a typed list. And
12 if you would, Solicitor, if you would just designate
13 yours as "List A", and then yours (Mr. Kulp) as "List
14 B" and then, that way, we'll know. We can make them a
15 Court's exhibit, or something like that ---

16 MR. KULP: Yes, sir.

17 THE COURT: --- at the time. I don't need them
18 now, and I'm not interested in them. But I was really
19 wanting to know from the -- when we go in, sometimes
20 the Defense attorneys don't want to disclose their
21 witnesses. I didn't think it would be the situation
22 here, but I just wanted to make sure about that.

23 MR. KULP: Thank you, Your Honor. We'll do
24 that.

25 THE COURT: Okay. Go ahead and make your

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1 Motions now.

2 MR. FLEMING: Your Honor, if I may begin with
3 housekeeping measures. Last year, as you will recall,
4 I made a Motion, and the Solicitor consented to,
5 providing me with -- providing Mr. Rogers with --
6 copies of the rap sheets of the proposed witnesses,
7 the non-expert proposed witnesses. In other words,
8 we didn't need him to provide SLED rap sheets and cop
9 rap sheets.

10 THE COURT: Non-police officers, and so
11 forth, ---

12 MR. FLEMING: That's right.

13 THE COURT: --- and expert witnesses?

14 MR. FLEMING: That's correct, sir. I have been
15 given this morning copies of Toby Reischl's, who is a
16 proposed witness; copies of Jimmy Studdard, a proposed
17 witness. I don't see -- I don't see any more.

18 MR. MURDAUGH: There should be two more.

19 THE COURT: What about the two ladies that are
20 eyewitnesses?

21 MR. MURDAUGH: They should be there. I'm not
22 saying you don't have them, but I ---

23 MR. FLEMING: Yes.

24 MR. MURDAUGH: --- you'll have them this
25 afternoon.

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1 MR. FLEMING: Okay.

2 THE COURT: What are their names?

3 MR. MURDAUGH: Kristal Wire and Jocelyn Wendel
4 Shough.

5 MR. FLEMING: Shough?

6 MR. MURDAUGH: Shough.

7 MR. FLEMING: And we also need copies of the
8 deceaseds' rap sheets, also.

9 THE COURT: Okay. Did he list all the
10 witnesses? There's nobody else that he -- (pause).

11 MR. MURDAUGH: I think that is all of the lay
12 witnesses except Clinton Atkins and ---

13 MR. FLEMING: We've got that one.

14 MR. MURDAUGH: You've got Clinton?

15 MR. FLEMING: We've got Clinton Atkins. Now,
16 that brings us ---

17 THE COURT: How about the rap sheet of the
18 Defendant, do you have that?

19 MR. FLEMING: We have that, sir.

20 THE COURT: Okay.

21 MR. FLEMING: That issue has been resolved.

22 Now, with regard to the first issue before Your Honor,
23 we filed -- actually, we didn't file it -- for purposes
24 of housekeeping, we didn't file it, but we've noticed
25 the Solicitor and notified your office concerning this

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1 Motion, Notice of Motion, a Motion to exclude the
2 testimony of Clinton Atkins.

3 MR. MURDAUGH: And I might state that the
4 Solicitor's Office has no problem in the way that it
5 was handled administratively.

6 THE COURT: Clinton Atkinson?

7 MR. FLEMING: Atkins.

8 THE COURT: Atkins?

9 MR. FLEMING: Yes, sir.

10 THE COURT: Okay.

11 MR. FLEMING: I have taken the liberty of
12 contacting Mr. Atkins' attorney, Ms. Tracy Campbell,
13 who is, obviously, here today in Court. Before we get
14 to the Motion to exclude, I inquired of Mr. Atkins'
15 attorney as to whether or not he intended to testify
16 in this trial. Ms. Campbell informed me that he is
17 intending to assert his Fifth Amendment rights not to
18 make any statements or testify. If that is the case,
19 this Motion is moot. I would just ---

20 MR. MURDAUGH: Then let's ---

21 MR. FLEMING: I would -- I would say if
22 that's the case, then fine. But if the State intends
23 in some way to elicit testimony nonetheless, or if the
24 individual changes his mind, I do not want to waive our
25 right to make this Motion to exclude.

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1 THE COURT: Okay. What's your grounds for
2 making the Motion? All right. Now, one thing, now, I
3 believe the law is pretty clear that the Solicitor
4 can't put him up knowing he's going to assert his Fifth
5 Amendment ---

6 MR. FLEMING: That's correct.

7 THE COURT: --- just to make him do that. And
8 you don't intend to do that?

9 MR. MURDAUGH: No question about that, sir.

10 THE COURT: Okay. So that's not it. All
11 right. Well, what's your Motion, then?

12 MR. FLEMING: Well, Your Honor, the grounds of
13 the motion, the accused, Tavarus Rogers, pursuant to
14 the Fourth, Sixth, Eighth and the Fourteenth Amendments
15 to the United States Constitution, would move to
16 suppress or exclude the testimony of Clinton Atkins
17 based on the following:

18 First, essentially I will try to give you the
19 facts, the uncontroverted facts, and try -- and if
20 anything is in controversy, then I guess we can swear
21 and take testimony. Prior to the early part of this
22 year, Detective Chris Wilson was an employee and
23 investigator for the Beaufort County Public Defender's
24 Office. She specifically worked and investigated this
25 particular case, the State versus Tavarus Rogers. She

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1 possesses both protected attorney-client privilege
2 information and attorney work product, and I think we
3 can all agree that the laws concerning conflict of
4 interest and attorney-client privilege extend also to
5 the direct employees of the attorney. And so the same
6 privileges take place, are in effect, with not only
7 Defendant's attorney, but also the employees of that
8 attorney who are assigned in that case and work on that
9 case and acquire that kind of knowledge.

10 Now, Eve Fleming, as you know, was the original
11 counsel in this case. Now, she has subsequently been
12 removed. However, the attorney-client privilege and
13 work product doctrine still apply and still flow
14 through her, through the Public Defender's Office, and
15 still to this very day flow to Detective Chris Wilson.

16 MR. MURDAUGH: To maybe shorten this a little bit,
17 we concur in everything he's saying, that she cannot
18 reveal anything that happened while she was working
19 with the Public Defender's Office in regard to Tavarus
20 Rogers.

21 MR. FLEMING: Furthermore -- okay. Thank you.
22 But, furthermore, she has taken a job with the Beaufort
23 County Sheriff's Office, the agency that is the
24 investigative agency and the prosecutorial agency in
25 this case, State versus Tavarus Rogers.

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1 The testimony of Clinton Atkins -- and we've been
2 -- we've been handed discovery concerning that -- was
3 directly elicited from the investigations of Detective
4 Chris Wilson.

5 THE COURT: Well, for my information, who is
6 Mr. Atkins?

7 MR. FLEMING: He is a -- Mr. Atkins ---

8 THE COURT: Alleged?

9 MR. FLEMING: He is charged with, I think, some
10 grand larceny and "chop shop" violations here in
11 Beaufort County. He is a defendant in another criminal
12 case.

13 THE COURT: It's not alleged that he was at the
14 scene at the time of the incident?

15 MR. FLEMING: No, sir. No, sir, it's not. But
16 it's important, and I think this is uncontroverted.
17 It's important that Detective Wilson was given sort of
18 a exit interview from both Mr. Hood and myself,
19 although with myself fairly informally, that she could
20 -- that it was explained to her the attorney-client
21 privilege rules as it applied to her, as I've already
22 discussed, and that that prevented her from working on
23 this case, Tavarus Rogers' case, on behalf of the
24 Sheriff's Office.

25 Now, subsequently, we get to the testimony -- we

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1 get -- and I will make -- if we need to go this far,
2 there are two audio tapes that purport to record the
3 conversations between Detective Wilson, Detective Jeff
4 Purdy, and the individual named Clinton Atkins. I will
5 assert to you that it is very difficult for me to
6 understand what is said on those tapes. I can't do it,
7 and I've listened to the actual tape in evidence.
8 However, I can assume that the evidence was in some way
9 inculpatory as to Mr. Rogers.

10 THE COURT: Okay. Are you saying -- of course,
11 Ms. Wilson is not listed as a witness; is she?

12 MR. MURDAUGH: No, sir.

13 MR. FLEMING: However, what I'm saying is ---

14 MR. MURDAUGH: She is not listed.

15 MR. FLEMING: --- her participation in the
16 investigations against what can only be called a former
17 client is a violation of both the Sixth Amendment --
18 his Sixth Amendment right to counsel -- and the
19 accompanying applications to State procedure through
20 the Fourteenth Amendment, but also it violates the
21 State's ethics rules concerning conflict of interest.
22 She actively participated in gathering evidence against
23 a former client. There can only be one remedy ---

24 THE COURT: She's not an attorney; is she? Is
25 she an attorney?

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1 MR. FLEMING: No, sir, but the protections apply
2 to both attorneys and their employees. She was given
3 direct -- she was given direct instructions by both Mr.
4 Hood and by myself that she couldn't participate in
5 this investigation.

6 Nonetheless, regardless of how it occurred, she
7 participated, and her own notes indicate she inter-
8 viewed this individual concerning his knowledge of the
9 Coffin Point case.

10 We can't get into a discussion about what she may
11 or may not know that is attorney-client privilege, but
12 I will say that it is clear and uncontroverted that she
13 possesses knowledge about the incidents of which only
14 Tavarus Rogers and his attorney could possibly know.

15 By using that information as a foothold to
16 interrogate or investigate against Mr. Rogers is a
17 direct violation of these various protections. The
18 only remedy that can be fashioned is the exclusion of
19 that testimony which was uncovered by Detective Wilson,
20 because any remedy short of that would provide no
21 protection at all.

22 I believe, Your Honor, with regard -- with the
23 exception of what information you would like to hear
24 concerning what actually -- the interview that took
25 place, I would -- that would be our position.

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1 THE COURT: Okay. If you wish to make some
2 kind of exhibit, or something like that, for that
3 purpose, you certainly can. But, I mean ---

4 MR. FLEMING: Well, we certainly would have to
5 do. And, again, I don't know that the issue is ripe
6 because Mr. Atkins has indicated through his attorney
7 that he is taking the Fifth concerning his Fifth
8 Amendment rights and is not going to testify.

9 THE COURT: His Fifth Amendment rights?

10 MR. FLEMING: Mr. Atkins does not wish to testify
11 as he may subject himself, under oath, to having to ask
12 (sic) questions concerning his potential criminal
13 involvement. He has the right to -- you know, unless
14 the State gives him full immunity for anything that
15 he's ---

16 THE COURT: With this. Well, they don't
17 contend he had anything to do with this; do they?

18 MR. MURDAUGH: No, sir, we do not.

19 MR. FLEMING: But that's not -- that's not the
20 issue. If ---

21 THE COURT: Well, I mean, I think we'll have to
22 -- well, based upon what's been presented this morning,
23 I see no reason to exclude the testimony of Clinton
24 Atkins.

25 MR. FLEMING: Your Honor, if I may produce for

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1 exhibits for the Court's records, this -- I have only
2 one copy because it's been provided to me this morning.

3 THE COURT: Why don't you go ahead and make it
4 a Court's exhibit, and then we'll get a copy ---

5 MR. FLEMING: Get copies. Okay.

6 THE COURT: --- and then you can substitute a
7 copy or make a copy from that, or something.

8 MR. FLEMING: This document would be Defense
9 Exhibit 1, and it purports to be the handwritten
10 transcription from Detective Wilson as to the contents
11 of the -- of Audio Tape Number One, and I would ask
12 that that audio tape be marked as Defense Exhibit 2.

13 MR. MURDAUGH: I have no problem with that, sir.
14 If Your Honor please, I learned of these tapes ---

15 THE COURT: Wait a second while the court
16 reporter is marking the exhibits. Are you going to
17 put up -- are you going to furnish the audio tape?

18 COURT REPORTER: The transcript has been marked
19 as Defendant's Exhibit 1 and the microcassette tape as
20 Defendant's Exhibit 2.

21 (SO ENTERED AS DEFENDANT'S EXHIBITS 1 AND 2)

22 MR. FLEMING: They have it. I don't. I don't
23 even have a copy of it.

24 MR. MURDAUGH: We'll get it to you.

25 MR. FLEMING: Is it cracked, so it can't be

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1 recorded over?

2 MR. MURDAUGH: Uh-huh, (affirmative nod).

3 THE COURT: Okay. And that's Exhibit 2.

4 MR. MURDAUGH: Now, let me put one thing -- excuse
5 me. I'm sorry.

6 MR. FLEMING: I've got one more. Hold on a
7 second. Additionally, Your Honor, Detective Purdy,
8 through this evidence -- through the original of this
9 evidence submittal form, put into Sheriff's Department
10 evidence one Sony microcassette tape which we will call
11 "tape two" which I would move to introduce as Defense
12 Exhibit 3.

13 We don't have that tape. It's in lockup,
14 Sheriff's Office lockup. I would ask that the
15 Solicitor have one of the detectives bring it over
16 and make it a Court's exhibit.

17 THE COURT: Any objection?

18 MR. MURDAUGH: I have no problem with that, sir.
19 Do you want to do it this morning, or can we do it ---

20 THE COURT: Can we do that later?

21 MR. FLEMING: Yes, sir. They can do that later.
22 As long as I can see that they've done it, that's fine.

23 MR. MURDAUGH: I think we have given you access to
24 that tape.

25 MR. FLEMING: I've listened to that tape.

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1 MR. MURDAUGH: Okay.

2 MR. FLEMING: -- but it needs to be a part of the
3 record, and, therefore, it needs to be ---

4 MR. MURDAUGH: I understand.

5 THE COURT: Okay. Well, just make sure before
6 the court reporter leaves that you'all have somebody
7 bring it over so she can ---

8 (SO ENTERED AS DEFENDANT'S EXHIBIT 3)

9 MR. MURDAUGH: Can we put a copy in?

10 THE COURT: Okay. It's got a copy?

11 MR. MURDAUGH: Yeah. I think we made a copy of
12 it, yes, sir.

13 THE COURT: Oh, you don't have a transcript?

14 MR. MURDAUGH: No, sir. We do not have a
15 transcript.

16 THE COURT: Okay. Is a copy okay? Okay.

17 MR. MURDAUGH: Don't you have a copy?

18 MR. FLEMING: I have a copy, but I ---

19 MR. MURDAUGH: Put yours in.

20 MR. FLEMING: I need my copy.

21 MR. MURDAUGH: Well, we'll get you another one.

22 If we can do that, we can ---

23 THE COURT: Go ahead and put it in, and he'll
24 get you another one so we can -- I want the record to
25 be correct.

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1 MR. FLEMING: I don't think -- I don't think we
2 have it with us.

3 MR. KULP: I don't have it.

4 MR. FLEMING: We've got it somewhere in the ---

5 THE COURT: Okay. Well, anyway, you'all work
6 that out. Let's go ahead and move on. We're going to
7 be here until Monday at this rate.

8 MR. FLEMING: Your Honor, then may I ask -- may I
9 then -- and sort of stepping back, is it Your Honor's
10 position that although Mr. Atkins is asserting his
11 Fifth Amendment right not to testify, he still can be
12 compelled to testify?

13 THE COURT: Well, I don't know that you have
14 any standing to challenge his right to testify or take
15 the Fifth Amendment. I don't know that. What do you
16 say on that, Solicitor?

17 MR. MURDAUGH: If Your Honor please, I am not
18 going to put a witness on the witness stand that's not
19 going to say what I think is the truth.

20 THE COURT: Yeah. But my point, and the only
21 thing I was concerned about from the Defendant's
22 standpoint, are those cases that say that a Solicitor
23 cannot call a witness up there just to take the Fifth
24 Amendment ---

25 MR. MURDAUGH: No, sir. I would not do that.

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1 THE COURT: --- just to impress the jury.

2 MR. FLEMING: And that's all I'm inquiring of.

3 THE COURT: And he's already stated that he is
4 not going to do that.

5 MR. FLEMING: All right, sir.

6 MR. MURDAUGH: No, sir, I will not do that. I
7 will have a conversation with Clinton Atkins or I may
8 not have one. I'm going to attempt to have one. And
9 if he tells me that he is going to testify, I intend to
10 put him on the witness stand.

11 THE COURT: Well, you have got to have -- he's
12 got to be listed as a witness so we can voir dire the
13 jury and you make your disclosures.

14 MR. MURDAUGH: I understand that. He's on the
15 witness list.

16 THE COURT: Did you want to put something else
17 in the record regarding his argument about the
18 exclusion of that testimony?

19 MR. MURDAUGH: I don't think I need to now, sir.

20 MR. FLEMING: Your Honor, I would -- if we can,
21 then, based on the evidence that we've presented
22 concerning the issue of exclusion of Clinton Atkins'
23 testimony, it is your ruling that you find no -- I
24 apologize, I don't know what your ruling was.

25 THE COURT: I'm denying your Motion to exclude

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1 his testimony based upon the reasons given.

2 MR. FLEMING: All right, sir.

3 THE COURT: I would, however, assert to you
4 that, as I understand the Rule, when that testimony is
5 offered, you might want to renew that, depending --
6 next week, too, but -- but that being -- I presume it's
7 like a Motion in limine, but I don't find at this time
8 that the Defendant has any reason to have Mr. Atkins'
9 testimony excluded, based on what you relate about Ms.
10 Wilson.

11 MR. FLEMING: All right, sir. For purposes of
12 the record, may I ask, since no testimony was taken,
13 that the Solicitor confirm that my recitation is an
14 accurate statement of the fact concerning this Motion?

15 THE COURT: Solicitor?

16 MR. MURDAUGH: Sort of.

17 THE COURT: Well, state what you ---

18 MR. MURDAUGH: Okay, sir. Let me -- let me tell
19 you how this came to transpire, and that's why I have a
20 problem with a stipulation of that, sir.

21 The State's contention is that Chris Wilson,
22 Detective Chris Wilson, was investigating a crime that
23 Clinton Atkins, along with another fellow whose name I
24 don't know, had allegedly committed; that she was
25 riding around with Jeff Purdy and Clinton Atkins in

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1 Beaufort County, and he was showing them where some
2 stuff that were the ill-gotten gains of crimes were
3 stashed; that during that conversation a question came
4 up about, 'Who was Adrian?'. Clinton Atkins then said
5 "Adrian McKinnon," who is a co-defendant in this case.
6 Chris Wilson asked him then -- you've got the
7 transcript up there, so you can look at it -- asked
8 him something about West -- if it was West McKinnon --
9 or it's in evidence, I'm sorry -- asked him ---

10 THE COURT: If that was the same person as West
11 McKinnon?

12 MR. MURDAUGH: Same person, yeah. After that,
13 Detective Purdy asked certain questions about Tavarus
14 Rogers and West McKinnon. And, quite frankly, Chris
15 Wilson asked, "What did West tell you?" The response
16 was, "Every damn thing, and, Tavarus, he's going to
17 kill your ass."

18 They continued to have a conversation. He said,
19 "Yeah, I'll tell you what I've heard from both Collins
20 (sic), West McKinnon and Tavarus Rogers."

21 THE COURT: And the Collinses being the other ---

22 MR. MURDAUGH: Yes, sir, the other two people that
23 are ---

24 THE COURT: --- alleged to be there?

25 MR. MURDAUGH: --- that are charged. He said,

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1 "Well, off the record." So at that point, they took
2 tape one, that's been marked as some exhibit, out of
3 the recorder, put another tape in it, and he then
4 proceeded -- which was tape two -- which he then
5 proceeded to tell them everything he said.

6 With that little bit of difference, yes, sir, we
7 agree that -- to what he's said.

8 THE COURT: So ---

9 MR. MURDAUGH: No, not -- we don't agree with what
10 he said. We agree with the factual aspect of it, but
11 not the conclusionary aspect of it.

12 THE COURT: Well, let me ask it the other way.

13 MR. MURDAUGH: Yes, sir.

14 THE COURT: So, Mr. Fleming, is that -- did the
15 Solicitor state the facts correctly? Is there any
16 other involvement that you allege that Ms. Wilson had
17 in the case?

18 MR. FLEMING: That's the involvement. I mean,
19 she was an active participant in the questioning of
20 this witness.

21 THE COURT: While they were in the car that
22 particular day?

23 MR. FLEMING: That's correct. Now, I have been
24 informed, and this is important, that Ms. Wilson went
25 back and spoke to Mr. Atkins again on one -- and I

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1 don't know if that's this case. Detective Purdy
2 informed me earlier that she went back, inquiring as to
3 whether or not he would testify. The Solicitor can
4 find that out, or we can -- (pause).

5 MR. MURDAUGH: I will certainly discuss it and let
6 you know.

7 MR. FLEMING: That's important, and for the
8 purposes of this record we need to know.

9 MR. MURDAUGH: If Your Honor please, it is my
10 understanding -- and correct me if I misstate this,
11 please, Ms. Wilson -- that Matt Averill, who is the
12 lead detective on this, asked her to ask Clinton
13 Atkins, "Will you testify?" She went to Clinton Atkins
14 and asked him, "Will you testify," and he told her yes.
15 Is that correct?

16 DETECTIVE WILSON: That's right.

17 THE COURT: And when was that, approximate
18 date?

19 MR. MURDAUGH: When was that, Chris?

20 DETECTIVE WILSON: That was on the 25th of
21 September.

22 MR. MURDAUGH: The 25th of September.

23 THE COURT: Was he incarcerated, by the way?

24 MR. MURDAUGH: Yes, sir.

25 MR. FLEMING: And, Your Honor, that just --

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1 that's another fact.

2 THE COURT: Okay. All right. Do you agree
3 that the Solicitor -- that for the purposes of it, that
4 his factual recitation is correct?

5 MR. FLEMING: To the extent that I've been told
6 what has happened, yes, that's -- that's exactly what
7 I've been told happened.

8 THE COURT: Okay. So then we stipulate to
9 those facts, rather than the other ones, since that is
10 the facts on which this whole matter rests. Okay.

11 Your Motion to exclude the testimony of Clinton
12 Atkins because of Ms. Wilson's involvement or
13 employment with the Public Defender's Office, and then
14 later employment with the Sheriff's Department and
15 contact with Mr. Atkins at a time which is, what, two
16 -- two years later, two years-plus later?

17 MR. FLEMING: No, sir.

18 THE COURT: Well, when was the date that they
19 were riding around in the vehicle together? What year
20 was that?

21 BY MR. MURDAUGH: About three weeks ago.

22 DETECTIVE WILSON: August 23rd.

23 MR. MURDAUGH: August 23rd, sir.

24 THE COURT: Of 2001?

25 MR. MURDAUGH: Yes, sir.

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1 THE COURT: Okay.

2 MR. MURDAUGH: I might also add that I immediately
3 let Mr. Fleming know as soon as I learned of it about
4 the conversation.

5 THE COURT: Okay.

6 MR. FLEMING: That's correct. Now, we didn't get
7 a tape until about two weeks ago.

8 THE COURT: Well, anyway, that's -- the Motion
9 is denied. Okay. Any other Motions?

10 MR. MURDAUGH: I have none, sir.

11 MR. FLEMING: Yes. Yes, Your Honor. And I will
12 -- if I may, I've given copies -- if I can, you will
13 recall, Judge, that back last year I filed on behalf of
14 Mr. Rogers numerous evidence-related Motions, and you
15 held them in abeyance until time of trial. I don't
16 know when you want to hear them, when you would like to
17 hear them. I mean, ---

18 THE COURT: What's your position on that,
19 Solicitor? I don't remember the Motions.

20 MR. MURDAUGH: I don't remember either, sir.

21 THE COURT: Well, you'all look at them, and it
22 might be that you'all can agree on some of them.

23 MR. FLEMING: No, we will not agree on any of
24 these, Judge. These are ---

25 THE COURT: Well ---

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1 MR. MURDAUGH: We can agree not to agree.

2 MR. FLEMING: There are ---

3 THE COURT: Well, how about just going and look
4 over his shoulder, or do you have copies of them?

5 MR. MURDAUGH: I'm sure I've got copies, but that
6 file is so big, I couldn't find anything in it, Judge.

7 MR. FLEMING: Okay, (tendering document to Mr.
8 Murdaugh).

9 MR. MURDAUGH: (Upon review), we do agree on
10 something, sir. I agree that the introduction of those
11 weapons would be in contravention of the law. How
12 about that?

13 MR. FLEMING: So he ---

14 THE COURT: Well, state what the agreement is
15 on that.

16 MR. MURDAUGH: Sir?

17 THE COURT: Go ahead and state what your Motion
18 is, and let's go ahead and get that one out of the way.

19 MR. MURDAUGH: I just don't intend to introduce
20 any weapons.

21 MR. FLEMING: Well, then he can't parade them
22 around either.

23 MR. MURDAUGH: I don't intend ---

24 THE COURT: Well, obviously, he's not going to
25 do that.

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1 MR. MURDAUGH: If I do that, sir, you ought to
2 report me to the Grievance Committee.

3 THE COURT: Okay. Well, let's go ahead, then.
4 Well, look here. Let's move on to the things -- he's
5 going to look over that, and you can -- you'all know a
6 lot more about the case, and maybe you can narrow them
7 down like that after we finish this.

8 MR. FLEMING: Okay. We've got a couple of
9 housekeeping motions, Your Honor, with regard to --
10 the first one is Defendant's Motion to exclude the
11 statements of the co-defendants if they are not
12 testifying. Obviously, if the Solicitor ---

13 MR. MURDAUGH: I do not intend to introduce a
14 statement of a co-defendant unless he will get on the
15 witness stand and testify, sir.

16 MR. FLEMING: So that's by consent, Your Honor?

17 MR. MURDAUGH: See, we are agreeing.

18 MR. FLEMING: The next one is with regard to Mr.
19 Rogers' Motion for both defense counsel to participate
20 in the closing arguments in the guilt phase and the
21 penalty phase. Here's the copy of the Motion, Your
22 Honor, (tendering to Court). You have not seen it.

23 THE COURT: Well, I -- let me ask you this. I
24 was a little confused. The Defendant in the guilt and
25 the penalty has a right to make a statement, too, which

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1 ---

2 MR. MURDAUGH: An unsworn statement the jury, sir.

3 THE COURT: An unsworn statement to the jury,
4 right.

5 MR. MURDAUGH: Yes, sir.

6 THE COURT: But you, on top of that ---

7 MR. FLEMING: Whether or not that will happen
8 will be determined when you -- when you question Mr.
9 Rogers concerning his decision to do that, on the
10 record.

11 THE COURT: I'm probably inclined to -- as long
12 as the time aspect is -- well, of course, I'm not going
13 to limit you on that either, so if you'all want to make
14 -- what do you say to that, Solicitor?

15 MR. MURDAUGH: The rule, as I understand it, sir,
16 is that one of them can make an argument. I have no
17 problem with both of them making one if they'll ---

18 THE COURT: If they'll divide it up?

19 MR. MURDAUGH: Into some sort of a time limita-
20 tion. I don't want both of them to get up there and
21 make a two hour argument.

22 MR. FLEMING: We don't intend to abuse that, and
23 if we -- if we are in any way starting to abuse it,
24 certainly, the Solicitor can object. We just want the
25 option if -- if for any reason ---

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1 MR. MURDAUGH: Why don't we do this, sir? Why
2 don't we ---

3 THE COURT: It's too early to tell that.

4 MR. MURDAUGH: Let's address this when we start to
5 go to the jury. If it looks like it's a case that's
6 going to take a two hour argument by two attorneys,
7 then we'll agree to it. I can't conceive of that being
8 true.

9 MR. FLEMING: Nor can we.

10 THE COURT: Well, I would think that you'all
11 will divide it up. In other words, you'all aren't
12 going to get up there and both make the same one ---

13 MR. FLEMING: Certainly.

14 THE COURT: --- or you will do it where you'll
15 have a big argument by one and then the other one just
16 get up there and say a few words.

17 MR. FLEMING: That's correct.

18 THE COURT: So I don't think we'll have any
19 dispute about that. I think that the Solicitor would
20 be -- I think I would be very broad, would give you
21 plenty of discretion on that.

22 But I do not think that you ought to be able to --
23 that each one of you could make a similar argument just
24 to reiterate the same things over and over again.

25 MR. FLEMING: Yes, Your Honor. And we would

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1 agree that that would be -- that would be too much, and
2 we're not asking for that. No, sir.

3 THE COURT: Okay. But, anyway, I think we can
4 work through that with no problem at the proper time.

5 MR. FLEMING: The next Motion that I have should
6 probably be taken up along with the remaining
7 evidentiary motions because it is sort of a remaining
8 evidentiary motion. Should the Solicitor and I -- if
9 I've just given that to the Solicitor, then he
10 certainly can't respond. It is a Motion, Your Honor,
11 to prevent the witness, Toby Reischl, from calling
12 defendants, any of the four defendants, by name. It is
13 a factual Motion that needs to be heard, but along with
14 the other evidentiary motions.

15 THE COURT: By what name?

16 MR. MURDAUGH: By "Tavarus Rogers," I assume.

17 MR. FLEMING: In other words, the witness should
18 not be allowed to point over and say -- (pause) -- if
19 you want me to go into the whole thing, I can lay some
20 foundation before I ---

21 THE COURT: Well, if you're asking me to rule
22 on something, you're going to have to tell me
23 something.

24 MR. FLEMING: All right. Then I'll ---

25 MR. KULP: Exactly, Your Honor. It sounds

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1 subtle, but it's really not. As he's unfolding his
2 rendition of the chronology of events as a witness --
3 the point is this -- instead of saying, "And then
4 Tavarus came in the door" -- at that -- so the jury
5 isn't confused -- at that time, he may or may not have
6 known the person by their name, or whatever, in other
7 words. So it saves us the trouble of standing up,
8 interrupting the proceedings and saying, "Wait a
9 minute. We don't want the jury misled at some later
10 time," or even having to save it for Cross Examination.
11 People have a natural tendency to do that when we later
12 learn his full name, and so forth, either from the
13 police or during ---

14 THE COURT: Now, who is this we're talking
15 about?

16 MR. FLEMING: The witness' name is Toby Reischl,
17 and Mr. Reischl has not ---

18 THE COURT: In other words, Toby Reischl did
19 not know who Tavarus Rogers was on the night of the
20 murders?

21 MR. MURDAUGH: No, sir, that isn't correct. Toby
22 Reischl ---

23 THE COURT: But it wouldn't matter if he did or
24 didn't?

25 MR. MURDAUGH: Toby Reischl could not identify

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1 either of the two people that came in the house ---

2 THE COURT: Because he wasn't ---

3 MR. MURDAUGH: --- as being Tavarus Rogers.

4 THE COURT: Because he wasn't there?

5 MR. MURDAUGH: He knew Tavarus Rogers because, if
6 you will remember the testimony, Tavarus Rogers had
7 been at the house some time before.

8 THE COURT: Oh, he was -- this is one of the
9 victims?

10 MR. FLEMING: Yes, sir.

11 MR. MURDAUGH: Yes, sir.

12 MR. KULP: He didn't know him by that name,
13 though.

14 MR. FLEMING: But he didn't know him as "Tavarus
15 Rogers". He never identified ---

16 MR. MURDAUGH: I think this is something that you
17 have got to wait until the testimony comes in.

18 MR. FLEMING: But then the bell has been rung.

19 THE COURT: Now, tell me who -- who's going to
20 be testifying.

21 MR. FLEMING: All right. Toby Reischl. There
22 are three potential eyewitnesses. You've heard
23 testimony from the two women.

24 THE COURT: Uh-huh, (affirmative nod).

25 MR. FLEMING: There is a third I think the State

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1 intends to present, named Toby Reischl.

2 THE COURT: Who was there and who is still
3 alive?

4 MR. FLEMING: Who was there and who is still
5 alive. Mr. Reischl will testify that he did not
6 recognize any of the intruders.

7 THE COURT: Uh-huh, (affirmative nod).

8 MR. FLEMING: He has already testified such as
9 that. Therefore, what we want to prevent is for him to
10 get on the stand and while describing the attack say,
11 "And then Tavarus Rogers went around the back and shot
12 somebody." He doesn't know that. He can't say that.
13 It's hearsay. It's a conclusion, because he hasn't
14 identified Tavarus Rogers as being an intruder.

15 MR. MURDAUGH: I agree with Counsel, sir. But, on
16 the other hand, that isn't what this Motion says. This
17 Motion says to prevent him from calling Tavarus Rogers'
18 name. If he knows Tavarus Rogers from that other
19 incident, then it is a matter -- in other words, ---

20 THE COURT: Well, ---

21 MR. MURDAUGH: --- if he says, "I knew Tavarus
22 Rogers before he left and came back and did the
23 killing."

24 MR. FLEMING: If that's what his testimony is,
25 then there's nothing we can ---

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1 MR. MURDAUGH: Okay.

2 MR. FLEMING: We certainly can't prevent him from
3 saying ---

4 THE COURT: Well, let's hear his testimony. If
5 a problem develops, you make your Motion, and we can
6 send the jury out and sort through it. But let's ---

7 MR. KULP: Excuse me. Your Honor, what I
8 suggest, maybe at -- right before he's called if we
9 could nail this issue, just do a limited voir dire of
10 the witness to say -- just to establish before we
11 actually get him before the jury, say, "At what point
12 were you able to identify a person as Tavarus Rogers?"
13 Now, we think that is available in the discovery, but I
14 can't find it right now to point to it for Your Honor.

15 THE COURT: When is that? When is that from
16 the discovery?

17 MR. KULP: Our recollection is that while he
18 had been introduced, it is alleged, to Mr. Rogers
19 earlier in the evening, that he was not able to provide
20 the police, say, for example -- is that correct?

21 MR. FLEMING: Yeah. What I expect, that -- and I
22 think the Solicitor is better poised to give this, but
23 I expect what the Solicitor is saying is that if
24 earlier that day he was introduced to a fellow named
25 Tavarus Rogers, then he certainly should be allowed to

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1 say, "I was introduced to a fellow named Tavarus
2 Rogers." And, if in fact he ---

3 THE COURT: Well, let me ask you this. Is this
4 the situation? He's going to testify that he was
5 introduced to him; immediately forgot his name, which
6 is something I do all the time, and then later on ---

7 MR. FLEMING: An attack happened.

8 THE COURT: --- an attack happened.

9 MR. FLEMING: And the Solicitor, I believe, is
10 saying, "We're not going to have Toby saying, 'And
11 Tavarus Rogers came in and was in the attack.'"
12 He's not going to say that.

13 MR. KULP: Right.

14 MR. MURDAUGH: He's not going to say he forgot
15 his name. He's going to say that he did not recognize
16 the person that came in to do the killing.

17 MR. KULP: That's right.

18 MR. MURDAUGH: And I'll ask him. I'll put him on
19 the witness stand and say, "Did you recognize the two
20 people that came in," and he's going to say, "No."
21 That ---

22 THE COURT: Okay. Well, what's wrong with
23 that?

24 MR. FLEMING: That's -- well, the Solicitor has,
25 basically, consented to what our Motion is about,

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1 referring to -- I mean, that would, obviously -- that
2 would, obviously, mean ---

3 THE COURT: Well, let me just say this.
4 You're just going to have to let the witnesses testify,
5 and somehow on Cross Examination, or whatever, you're
6 going to have to have plenty of opportunity to
7 straighten out their story if you think that there's
8 a misapprehension. I don't believe that this Court
9 can, through guidelines and Motions in limine, stop
10 that procedure. And I believe that the jury is going
11 to be plenty intelligent enough to sort through that.
12 So I don't see how that's going to be a problem.

13 MR. FLEMING: So I assume, then, what we're --
14 with regard to the ruling on that Motion, it will be
15 held in abeyance until the time Mr. Reischl testifies?

16 THE COURT: Well, customarily, with Motions In
17 Limine, they have to be renewed at the time of trial;
18 and you have a right to renew them, so in order to
19 protect yourself, you must, as a matter of -- I don't
20 give advice, particularly, but I think you have to
21 renew that motion at the time and in the context. But
22 I'm not going to sanction or to warn the Solicitor or
23 limit him on that. He's -- it's not solely within his
24 power to predict exactly what a witness is going to
25 say, anyway. Who knows what they're going to say?

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1 So if you think that your client is being unfairly
2 damaged by something, please make the Motion, and I'll
3 rule on it at that time.

4 MR. FLEMING: Yes, sir. The remaining Motion we
5 have is concerning the penalty phase, and I've given
6 the Solicitor a copy of this Motion, ---

7 MR. MURDAUGH: This morning.

8 MR. FLEMING: --- this morning, (affirmative
9 nod). And, please understand, if the Solicitor is not
10 prepared to argue this Motion, then we certainly don't
11 want to ---

12 MR. MURDAUGH: I am prepared, and I consent to the
13 Motion, sir.

14 THE COURT: Okay.

15 MR. KULP: For the record, then, Your Honor,
16 the Motion is the motion to bar evidence ---

17 MR. MURDAUGH: That you'all have not given -- been
18 given notice of.

19 MR. KULP: --- in aggravation, for which the
20 Defense does not have notice.

21 MR. MURDAUGH: Absolutely.

22 MR. KULP: Right, sir.

23 MR. MURDAUGH: I wouldn't try to do that to
24 you'all.

25 MR. KULP: Then we will -- that is by consent,

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1 Your Honor.

2 THE COURT: Do you want to hand that up as an
3 exhibit or something?

4 MR. KULP: Yes, sir. I'll file it.

5 THE COURT: Well, I mean, it's still -- I don't
6 need to see it. Just make that an exhibit, then.

7 MR. MURDAUGH: Why don't -- let's make it an
8 exhibit, but not file it in the Court record.

9 THE COURT: That's right.

10 MR. KULP: All right, sir.

11 MR. MURDAUGH: And for the reason that we've
12 discussed previously.

13 THE COURT: Yeah. And that exhibit number,
14 whatever, is agreed to by the Solicitor.

15 (SO ENTERED AS DEFENDANT'S EXHIBIT 4)

16 MR. FLEMING: Your Honor, I do have another
17 motion -- not a motion, but I have a matter concerning
18 -- I sent subpoenas yesterday to William Wynn, Gwen
19 Duhon and Beth Gaskins. They are all employees of
20 Beaufort County. As you know, Mr. Wynn is the Director
21 of Emergency Management. Gwen Duhon is Director Of
22 911, and Beth Atkins (sic) is a 911 operator. I have
23 copies of those subpoenas that were served on them,
24 actually, served at their place of business on Steve
25 Fields, who is the Associate Director. I received a

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1 telephone call saying they didn't know whether or not
2 they could be here. They clearly are not here.

3 I need the Court's assistance. They have
4 indicated that they will not talk to me, because I
5 represent the Defendant. They had no problems talking
6 with the Solicitor's Office or the Sheriff's Office.
7 It is clear that they are failing to cooperate. They
8 have ---

9 THE COURT: Solicitor, can you make those
10 available, or do they need a Court Order?

11 MR. MURDAUGH: I have no problem asking them to do
12 it, sir. I have no way that I can make them do it. As
13 I understand the law, they don't have to talk to them.
14 I think it would probably be better to get a Court
15 Order. And I don't mind going to them and say, "Look,
16 please talk to them," but then I don't know ---

17 THE COURT: Well, then, have you got a proposed
18 Order?

19 MR. FLEMING: No, sir. And I'm in agreement that
20 they don't have to, which is why I subpoenaed them to
21 this Hearing. They didn't show up, I mean. And if,
22 you know ---

23 MR. MURDAUGH: Issue a bench warrant for them, put
24 them in jail.

25 MR. FLEMING: Well, I certainly don't want to --

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1 I certainly don't want to do that. I have no desire to
2 -- I just don't think they understand the gravity of
3 what a subpoena means and maybe ---

4 THE COURT: What is it that you need to know
5 from them?

6 MR. FLEMING: There are certain 911 tapes con-
7 cerning this incident that may or may not impact
8 on the trial of this case.

9 THE COURT: Well, they certainly have to
10 furnish those tapes.

11 MR. FLEMING: And they have. The problem -- and
12 they have through the Sheriff's Office. The Sheriff's
13 Office furnished it to me ---

14 THE COURT: Uh-huh, (affirmative nod).

15 MR. FLEMING: --- through discovery. The problem
16 is that in order to verify, lay the proper foundation
17 if necessary for testimony, we have to know -- we have
18 to be able to talk to the witness who took the call.

19 MR. MURDAUGH: I will stipulate the 911 tapes.
20 That takes care of that.

21 THE COURT: Well, are you asking or do you
22 expect them to have some particular memory or something
23 other than the 911 tapes? I mean, I don't know ---

24 MR. FLEMING: Well, they may or may not. It's
25 incumbent upon me to ask the witness whether they do.

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1 I mean, it's just -- it would be due diligence to do
2 so.

3 MR. KULP: It's kind of like this, Judge. I
4 know the rule about not talking to us if nobody wants
5 to, but, generally, that applies to laypeople, I think,
6 in most circumstances, in a practical sense. These are
7 people employed by the Government. They relate to an
8 exhibit that was provided to us by the State in this
9 case and, you know, in order to determine whether we
10 would like to call them to the stand, despite any
11 stipulation or whether they might be subject to Cross
12 Examination, we would like to talk to them.

13 THE COURT: Well, let me just ask this, now.
14 Is this the person who actually went to the scene?

15 MR. KULP: No, sir. The people that we wish
16 to talk to are people that directly relate to this
17 exhibit that has been provided by the State.

18 THE COURT: Well, what else could -- the
19 accuracy of it, whether it's been -- the custodian, or
20 whether it's been ---

21 MR. KULP: Well, without tipping our hand, you
22 know, there are a number of things we want to talk to
23 them -- and this isn't fishing. It's just a critical
24 part of the case that I -- that I would submit to the
25 Court.

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1 THE COURT: All right, I will -- do you want a
2 proposed Order?

3 MR. FLEMING: We can have one today, Your Honor.

4 MR. KULP: We could have one to you today,
5 Your Honor. Thank you.

6 MR. FLEMING: All right, sir. And then with
7 regard to the remaining evidence Motions, the Solicitor
8 and I will meet on that. And whatever is remaining for
9 Your Honor to hear, I guess we'll take that up next
10 week at some interim point.

11 THE COURT: Okay.

12 MR. FLEMING: All right, sir. Anything else?

13 MR. KULP: Just the advice to prospective
14 jurors, which I think the Solicitor wanted to address
15 as well, the -- which the Court provided to us this
16 morning.

17 THE COURT: Uh-huh, (affirmative nod).

18 MR. KULP: And, unfortunately, in the interim
19 of having the chance to really peruse this, I have some
20 changes and additions.

21 THE COURT: Okay. Go ahead.

22 MR. KULP: Your Honor, on page one -- you
23 know, it would probably be easier for me, Your Honor,
24 if I can approach you, sir. I've put it in block
25 letters in red, those changes.

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1 THE COURT: Well, just show them to the
2 Solicitor so that he can follow them, too, -- and I
3 have it, too?

4 MR. KULP: Pardon me?

5 THE COURT: Well, show it to the Solicitor
6 first before we go -- and you'all just -- why don't we
7 do this. You'all take a minute, see if you'all can
8 work it out. Then I really don't care.

9 MR. KULP: Yes, sir. Very good.

10 THE COURT: Okay. We'll just stand at ease for
11 a moment.

12 (OFF RECORD DISCUSSION)

13 MR. MURDAUGH: Your Honor, may we get that tape
14 back and make a copy and put it in evidence? Because
15 this relates to an investigation that Chris Wilson is
16 involved in unrelated to this case.

17 THE COURT: Any objection to that?

18 MR. FLEMING: (Pause)

19 MR. KULP: (Pause)

20 THE COURT: Is this the one they've listened to
21 already?

22 MR. MURDAUGH: I don't know whether they've
23 listened to it or not. This is the tape that only
24 came up about this morning.

25 MR. FLEMING: We have not heard the tape. The

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1 transcript -- the handwritten partial transcript
2 created by Detective Wilson was from that tape. That's
3 what we know about the tape. We haven't heard it.
4 What we would like to do -- we would like ---

5 THE COURT: Well, what is it in evidence -- or
6 why have we made it a Court's evidence if you haven't
7 heard it, if we don't know ---

8 MR. FLEMING: Well, because it's the actual
9 representation of what was written down, handwritten,
10 and so it has to be in evidence. We don't mind a copy
11 being put in as long as we have the opportunity to hear
12 the original and the copy to make sure it's the same.

13 THE COURT: All right. Well, I'm going to
14 allow a substitution, and I'm going to direct that --
15 would you go ahead and make a copy of it?

16 DETECTIVE WILSON: Uh-huh, (affirmative nod).

17 THE COURT: And, of course, it might be put
18 into evidence on Monday because it will be when you
19 come, but please -- but I also direct that you give
20 them a chance to hear the original. So when you bring
21 them -- so when do you'all want to hear the original?
22 Have you'all got a machine?

23 MR. FLEMING: I've got one ---

24 MR. MURDAUGH: She has a machine they can listen
25 to it on.

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1 THE COURT: Well, you'all can listen to it
2 right after we finish ---

3 MR. KULP: Yes, sir.

4 THE COURT: --- and then substitute a copy of
5 it.

6 MR. MURDAUGH: We're going to leave the original
7 here, but we need a copy of it.

8 THE COURT: Oh, you want to make a copy of it?

9 MR. MURDAUGH: Yes, sir.

10 THE COURT: Okay. Well, then, that's fine.
11 Any objection to that?

12 MR. KULP: I think we can hammer that out.

13 THE COURT: Okay. What about this pretrial
14 questionnaire?

15 MR. MURDAUGH: I think we need to sit down for a
16 few minutes and discuss it amongst ourselves, sir.

17 THE COURT: Okay.

18 (OFF RECORD DISCUSSION)

19 THE COURT: Back on the record. I've got one
20 thing totally unrelated. We had a discussion in
21 Chambers about the way we're going to do the jury, and
22 it's my thinking that -- we hadn't put this on the
23 record yet, have we?

24 MR. MURDAUGH: No, sir.

25 THE COURT: All right. What I propose is that

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1 we bring them in, qualify the entire panel in the
2 preliminary matters, and after that is done the Clerk,
3 with the assistance of the jury -- what do you call it,
4 the person who draws the names -- I've forgotten Mr. --
5 whatever his name is, who's blind who draws the names.

6 MR. MURDAUGH: Shanklin.

7 THE COURT: Mr. Shanklin, yes. Mr. Shanklin
8 then will draw the list. This is to be a random
9 drawing, and we'll draw some names -- a number. We'll
10 decide, based upon how many jurors we have, but
11 probably in the range of sixty or so. What do you
12 think on a number? Do you'all have a suggestion?

13 MR. MURDAUGH: It would be my suggestion that
14 every live body we've got be put on a list, sir.

15 THE COURT: Okay. We'll go ahead and draw the
16 list of all jurors, and that will constitute the order.
17 After they have been drawn and they are present,
18 they're part of the panel, then after that when we go
19 through the individual voir dire, which we will do in
20 panels, when that matter is concluded, the jury will be
21 struck from that list.

22 In other words, they won't be put back in again.
23 That will be the list that will be the strike list.
24 So whoever ends up number one, if they're qualified
25 after the individual voir dire, then the Solicitor will

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1 say, "Present him," or, "Excuse him," and then the
2 Defense will say it. And number two will be number
3 two. The second one left will be the second juror that
4 comes up here, and so forth.

5 MR. MURDAUGH: Yes, sir.

6 THE COURT: With the State getting five strikes
7 and the Defense getting ten strikes.

8 MR. FLEMING: Yes, sir.

9 THE COURT: Until we get to the alternates.
10 Everybody understood and everybody agreed with that
11 procedure?

12 MR. MURDAUGH: Fine with me, sir.

13 MR. FLEMING: Yes, sir.

14 MR. KULP: Yes, sir.

15 THE COURT: And, of course, it's got the
16 advantage of then you'all will know from the first who
17 -- the list of the jurors who are going to be called.
18 All right.

19 MR. MURDAUGH: Okay. Just for ---

20 THE COURT: And the other thing that we agreed
21 on, that we're going to shoot for actually starting the
22 trial on Thursday morning.

23 MR. MURDAUGH: Yes, sir.

24 MR. FLEMING: Yes, sir.

25 MR. MURDAUGH: In other words, we will not put up

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1 testimony before Thursday morning.

2 THE COURT: Exactly. So that we will have --
3 everybody will have an opportunity and their witnesses
4 don't have to be sitting around in the way all week.

5 MR. MURDAUGH: And, realistically, say if
6 something happens and we could start on Wednesday, I've
7 got people that I can get here. I couldn't put up any
8 comprehensive case on Wednesday, but I could probably
9 get rid of a good many witnesses.

10 THE COURT: Well, that's our plan. If
11 something should happen and the first thirty people
12 would qualify, the first thirty-five become jurors,
13 then maybe we could start. But if we've got to go
14 through a number, I would think that it's going to be
15 sometime Wednesday when we get through the entire
16 panel.

17 MR. MURDAUGH: I think you're absolutely correct,
18 sir.

19 MR. FLEMING: Yes, sir.

20 MR. MURDAUGH: No earlier than.

21 THE COURT: Okay. Is there any other questions
22 or things that we need said about the actual striking
23 of the jury? Everybody is agreed that that is a good
24 way to proceed?

25 MR. MURDAUGH: Just for the record, sir, five and

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1 ten strikes on the original twelve; two and one on each
2 of the ---

3 THE COURT: Alternates.

4 MR. MURDAUGH: --- alternates.

5 THE COURT: And, of course, each alternate --
6 you have a first alternate ---

7 MR. MURDAUGH: Yeah.

8 THE COURT: --- and a second alternate.

9 MR. MURDAUGH: But not a cumulative three -- two
10 and one on the strikes.

11 THE COURT: I think you've got to strike the
12 alternates individually.

13 MR. MURDAUGH: Yes, sir. In other words, they
14 will get two, and I will get one?

15 THE COURT: On that alternate. If you don't
16 use them, then the next one you still get ---

17 MR. MURDAUGH: Yes, sir.

18 THE COURT: Unless you'all agree to do it
19 another way.

20 MR. MURDAUGH: No, sir.

21 MR. KULP: That's right.

22 MR. MURDAUGH: I think that's the way it should be
23 done and the way the law provides.

24 THE COURT: Yeah. Each alternate is separate.

25 MR. MURDAUGH: Yes, sir.

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1 THE COURT: All right. Anything else? (No
2 response from Counsel). Okay. You'all want to look at
3 that list. Do we have anything else at all after we
4 agree on this language, this pretrial questionnaire?

5 MR. MURDAUGH: I don't, sir.

6 THE COURT: Okay. Then we'll stand at ease.

7 MR. FLEMING: Thank you, sir.

8 MR. MURDAUGH: I'm prepared to go on the jury
9 questionnaire.

10 MR. KULP: Sir?

11 MR. MURDAUGH: I said I'm prepared to ---

12 THE COURT: Are you'all ready to go on that?

13 MR. KULP: Yes, sir.

14 THE COURT: All right. Well, let me ask you
15 this. Do you'all have any objections to the whole
16 philosophy behind this?

17 MR. MURDAUGH: I have no objection to the
18 philosophy behind it.

19 MR. KULP: No, sir.

20 THE COURT: All right. The language, then, do
21 you'all -- did you'all agree on that language?

22 MR. MURDAUGH: No, sir.

23 THE COURT: Okay. Go ahead.

24 MR. MURDAUGH: I think the manner in which he has
25 changed it around takes away from the context of the

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1 documents, and I would suggest that we use your
2 document except on paragraph three on page two.

3 THE COURT: (Reading) "There is a type of juror
4 who..." -- no, the second type of juror?

5 MR. MURDAUGH: No, sir. (Reading: "There is a
6 type of juror who once the crime of murder has been
7 proved by the State and the juror is considering
8 punishment..." -- that paragraph.

9 THE COURT: Uh-huh, (affirmative nod).

10 MR. MURDAUGH: It says that this juror simply
11 feels that once a murder has been committed, the death
12 penalty is the most appropriate punishment no matter
13 what the circumstances of the case. My understanding,
14 that is not the law. The law is not -- you can -- you
15 can be highly ---

16 THE COURT: Well, it's not supposed to be the
17 law.

18 MR. MURDAUGH: Sir?

19 THE COURT: That's the reason, it's not
20 supposed to be the law.

21 MR. MURDAUGH: Yes, sir.

22 THE COURT: Okay.

23 MR. MURDAUGH: But what I'm saying is this is the
24 man who gives the death penalty every time ---

25 THE COURT: Every time.

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1 MR. MURDAUGH: --- or it should be. But under
2 this definition, this man can think the death penalty
3 is most appropriate, but still under certain
4 circumstances give life imprisonment.

5 THE COURT: "Is the only appropriate
6 punishment." How about saying it that way?

7 MR. MURDAUGH: That, sir, would solve my problem.

8 THE COURT: Okay. What do you say to that? I
9 think that is a better way of phrasing it, "the only
10 appropriate" -- do you agree with that?

11 MR. KULP: I am not saying that we agree but
12 we have no problem with that, Your Honor.

13 THE COURT: Okay. Well, to my mind, that makes
14 it clear. In other words, if you're convicted of
15 murder, you're supposed to be electrocuted, or receive
16 the death penalty. Okay. Well, I ---

17 MR. MURDAUGH: Other than that, sir, I have no
18 problem with it.

19 THE COURT: Okay. Mr. Kulp?

20 MR. KULP: Your Honor, on page one, the second
21 paragraph, beginning in the middle of the second --
22 excuse me -- the seventh line of that paragraph where
23 it begins, "The State must prove his guilt to you
24 beyond a reasonable doubt before you can find him
25 guilty." And that goes to an old wrinkle I've

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1 developed over the years with you cannot find the
2 defendant -- in a general charge, "You cannot find the
3 defendant guilty until the State proves beyond a
4 reasonable doubt..." It's always, to me, sounded like
5 that's a place you're going to go visit. I mean,
6 you're going there. It's just a question of the
7 process to get there. So I guess that that be changed
8 to, covering the whole sentence, "You cannot find the
9 defendant guilty unless the State is able to prove him
10 guilty beyond a reasonable doubt," which I think is a
11 fair statement of law.

12 MR. MURDAUGH: Looks like to me that says the same
13 thing, sir.

14 THE COURT: I can't -- well, let me read the
15 whole thing. (Upon review), what if we say it this
16 way: "As he sits before you now, he is presumed to be
17 innocent, and his guilt must be proven to you beyond a
18 reasonable doubt before you can find him guilty,"
19 which, basically, says the same thing that you wanted
20 to say. It just simplifies it a little bit.

21 MR. MURDAUGH: I have no problem with that.
22 Excuse me for not standing up, sir.

23 THE COURT: That's okay.

24 MR. KULP: Well, I agree. A lot of this is
25 semantics, Judge, but I just think the place where it

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1 wrinkles is "before you can find him guilty," the words
2 "you can" -- or "find him guilty."

3 THE COURT: "As he sits before you now, he is
4 presumed to be innocent, and his guilt must be proven
5 to you beyond a reasonable doubt before you can find
6 him guilty." That's kind of the way I always say it.
7 I don't know. And what is it that you want -- how do
8 you want it?

9 MR. KULP: Well, what I was going to say was
10 -- which, as the Solicitor said, is about six of one
11 and half dozen of the other, -- is, verbatim, "As he
12 sits before you now, he is presumed to be innocent,"
13 period. "You cannot find the Defendant guilty unless
14 the State is able to prove him guilty beyond a
15 reasonable doubt."

16 THE COURT: Well, I don't think that's proper
17 because that's not what we're talking about. This is
18 not a charge on the law. It is important for them to
19 understand that he is innocent until proven guilty, but
20 that's not what we're talking about. That's the
21 preliminary, and it's not necessary to get so bogged
22 down in that because then you overemphasize it. That's
23 the reason I have a problem with it.

24 But the important part of it is, "This is the only
25 time that we will have the opportunity to ask you about

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1 your attitudes, opinions or convictions concerning the
2 death penalty." That's what we're talking about.

3 If you get too much of a charge language in there,
4 I think you weaken it.

5 But then look at the next page, on page two.

6 MR. KULP: All right. Excuse me, Judge.

7 THE COURT: Look at page two there. It says,
8 "You, therefore, should not have any preconceived ideas
9 concerning the guilt of this defendant from the fact
10 that these questions about the death penalty or capital
11 punishment are now being asked of you." See that?

12 MR. KULP: I was going to come to that, too.
13 But how about this, Judge. What if we take the
14 sentence as it sits and add instead of "to find him
15 guilty," and add simply, "if that is your decision."

16 MR. MURDAUGH: I don't know.

17 THE COURT: You see? But, you, ---

18 MR. KULP: Yes, sir.

19 THE COURT: It just lengthens it and -- it's
20 too long as it is, and I don't want to make it any
21 longer.

22 MR. MURDAUGH: I think what you said is fine, sir.

23 MR. KULP: Your Honor, I was looking to ---

24 THE COURT: And, of course, the next says,
25 "There are no right or wrong answers. It's just ---"

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1 -- you know.

2 MR. KULP: All right. Moving along, Your
3 Honor, as you just referenced at the top of page two
4 where it says, "You should not have any preconceived
5 ideas concerning the guilt..." ---

6 THE COURT: "Or innocence."

7 MR. KULP: --- "or innocence."

8 THE COURT: Okay.

9 MR. KULP: I didn't want that to be ---

10 THE COURT: All right. Let's put that, "or
11 innocence of this defendant," and then that kind of ---

12 MR. MURDAUGH: No problem, sir.

13 MR. KULP: Just a reminder there are two
14 possibilities there.

15 THE COURT: Are there any other questions?

16 MR. KULP: Yes, sir. Down to page two, the
17 first paragraph, talking about the type one juror,
18 where it says, "There is a type of juror who..." --
19 and rather than saying, Judge, "Once the crime of
20 murder has been proved by the State..." -- I have a lot
21 of problems with that because it kind of suggests like
22 that's something that's going to happen, once it
23 happens.

24 I would suggest we put, "There is a type of juror
25 who, if a person has been convicted of murder..." ---

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1 THE COURT: He is convicted regardless of that,
2 so that's okay. I like that, frankly, because you put
3 it beyond the proven stage, which is during the
4 deliberations and just -- what do you say to that,
5 Solicitor?

6 MR. MURDAUGH: I think it is appropriate the way
7 it is, sir.

8 MR. KULP: It just really bothers me because
9 it suggests, "Once the crime of murder has been proved
10 by the State..." It sounds like, "What's going to
11 happen is, Ladies and Gentleman, this type juror, once
12 we get -- once the conviction comes in in this case" --
13 this is the only case we're talking about right here.
14 Everybody knows ---

15 MR. MURDAUGH: I see what he's saying. Why don't
16 you change "once" to "if." That will give you what you
17 want and ---

18 MR. KULP: Yes, sir.

19 MR. MURDAUGH: Is that ---

20 MR. KULP: That's fine.

21 MR. MURDAUGH: Okay.

22 MR. KULP: Very good, sir.

23 THE COURT: Okay. And, of course, the second
24 part -- and it goes into it, reading it overall, when
25 you're considering punishment ---

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1 MR. MURDAUGH: Yes, sir.

2 THE COURT: --- you know, it's the death
3 penalty every time, and, of course -- okay.

4 MR. MURDAUGH: And you're going to make that one
5 thing where -- "most appropriate," strike it out, and
6 put "only punishment"?

7 THE COURT: That's right.

8 MR. MURDAUGH: Okay, sir. Right.

9 THE COURT: So in that particular paragraph
10 "once" is changed to "if". Then in the next to the
11 last line "most appropriate" is "only appropriate."

12 MR. KULP: And then, Your Honor, in that same
13 paragraph where it says, "This juror simply feels that"
14 -- again, that "once" language is objectionable to us,
15 and we would just replace in the same sentence with the
16 word "if." "This juror feels that if a person has" ---

17 THE COURT: There's no problem with that; is
18 there?

19 MR. MURDAUGH: No.

20 MR. KULP: "If a" -- excuse me. "If a murder
21 has been..." -- well, I don't like that, Your Honor,
22 and what I suggest is the language needs to be changed.
23 "This juror simply feels that if a person has been
24 convicted of murder..." -- and here's the distinction.
25 The way it's written, "This juror simply feels that,"

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1 and if we change the "if" -- "if a murder has been
2 committed," to me, that would kind of address -- we all
3 know, you know, someone died and it wasn't accidental,
4 a murder; but I think it takes away a bit from
5 personalizing the defendant's position. "If a murder"
6 -- well, the jury doesn't decide -- here's the point.

7 THE COURT: Well, I think that I see one thing
8 about it, that if there's a murder committed, you know,
9 you've got to prove that the defendant committed a
10 murder.

11 MR. KULP: Thank you.

12 THE COURT: That's the problem with it, as
13 opposed to somebody's got to die, you know. That's not
14 the thing.

15 MR. KULP: Exactly. So what I would suggest
16 is, "This juror simply feels that if a person has been
17 convicted of murder..." -- and then continue on from
18 there.

19 THE COURT: All right. Well, how about saying
20 this. "This juror simply feels that if a murder has
21 been committed..." ---

22 MR. MURDAUGH: "By the defendant."

23 THE COURT: --- "by the defendant" -- "by a
24 person" ---

25 MR. KULP: Okay. Yes, sir.

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1 THE COURT: I don't want to put it too
2 personal. "...by a person," comma, "the death penalty
3 is the only appropriate punishment no matter the
4 circumstances of the case." I'm going to take out
5 "what" there. Is that okay, -- "...no matter the
6 circumstances of the case."

7 MR. MURDAUGH: No problem.

8 MR. KULP: Yes, sir.

9 THE COURT: Okay.

10 MR. KULP: The next one, "The second type of
11 juror" -- again, the language I'm concerned about is,
12 as it sits now, "...although the guilt of the defendant
13 has been determined..." -- well, as they sit here
14 reading this form -- you know, I'm surprised at that
15 being there because ---

16 THE COURT: "Although the guilt" -- "a person
17 has been found guilty of murder..." ---

18 MR. KULP: I suggest that we say, "The second
19 type of juror is one who if a person has been convicted
20 of murder..." -- in other words, it goes from
21 conditional to -- I want it to be conditional as
22 opposed to suggesting that something has already
23 happened, that old foregone conclusion concern.

24 MR. MURDAUGH: Judge, you have said on page one,
25 "Please understand that the law requires these

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1 questions be asked of you. These questions have
2 nothing whatsoever to do with the defendant -- whether
3 the defendant is guilty or not guilty of the offense
4 charged." I think it's appropriate.

5 THE COURT: Okay. "The second type of juror is
6 one who, although the guilt has been determined" -- I
7 don't like to say in that thing -- "the guilt has been
8 determined, under no circumstances could ever give the
9 death penalty." I think if you take out "of the
10 defendant," it helps it a lot. I don't like to make it
11 "of the defendant" because I think we're just talking
12 in philosophical terms.

13 MR. MURDAUGH: I agree with you, sir.

14 THE COURT: "...guilt of murder has been
15 determined," -- how about that?

16 MR. KULP: See, I think -- I'm sorry. You
17 were saying that if ---

18 THE COURT: "The second type of juror is one
19 who," although the guilt has been determined, under no
20 circumstances could ever give the death penalty."

21 MR. KULP: How about, "The second type of
22 juror is one who if the guilt of the defendant is" --
23 well, why don't we say it just like we did in paragraph
24 one?

25 We could say, "The second type of juror is one who

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1 if the crime of murder has been proven by the State..."

2 -- it's the same phrase.

3 THE COURT: Okay. Any objection to that?

4 MR. MURDAUGH: No, sir.

5 THE COURT: All right. Let me write that down.

6 Let's say it again.

7 MR. KULP: All right. "The second type of
8 juror is one who if the crime of murder has been proven
9 by the State..." ---

10 THE COURT: --- "...although the guilt" ---

11 MR. KULP: Forget "the guilt".

12 THE COURT: No. Wait a minute. Excuse me.

13 "There is a" -- all right. Let's do it this way:

14 "There is a second type of juror" -- "if the crime of
15 murder has been proven by the State and a juror is
16 considering punishment..." -- so you want to put it
17 just like that?

18 MR. KULP: Yes, sir. In other words, there's
19 a way, I think, Your Honor, to make sure all three
20 paragraphs mirror each other, ---

21 THE COURT: Okay.

22 MR. KULP: --- which I could probably write up
23 real quickly.

24 THE COURT: Okay. Wait just a second. I think
25 we've got it -- "...is considering punishment could

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1 under no circumstances ever give the death penalty."
2 And, of course, you'all get in the voir dire and
3 you'all will ask them if they can sign the warrant and
4 all the other stuff; they've got to sign it, and you
5 tell them about that, and so you're going to educate
6 them further about that.

7 (Reading): "This juror would not need to hear
8 what the facts and circumstances and aggravation in
9 this particular case were because the juror would have
10 his or her mind made up concerning punishment no matter
11 what he or she heard."

12 Well, first off, the first -- the first sentence,
13 (reading): "There's a second type of juror who if the
14 crime of murder has been proven by the State and the
15 juror is considering punishment could under no
16 circumstances ever give the death penalty." Does that
17 sound okay?

18 MR. KULP: Yes, sir.

19 THE COURT: All right. And then the next
20 paragraph -- the next sentence is okay?

21 MR. KULP: If we add that same sentence at the
22 tail end of the preceding paragraph, where it would
23 say, "This juror" -- as to the first paragraph, "This
24 juror would not need to hear what the facts and
25 circumstances of aggravation" -- you know what?

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1 Why don't we say "aggravation or mitigation"?

2 If we're going to say "aggravation," we need to
3 say ---

4 THE COURT: Okay.

5 MR. KULP: That's why -- Your Honor, if I
6 could just ---

7 THE COURT: Well, because it doesn't apply when
8 you're going to never give the death penalty. There's
9 a good reason for it. It doesn't apply if you're not
10 going to ever. It doesn't matter whether there are
11 mitigation circumstances or not.

12 MR. KULP: Then they need to say "mitigation"
13 in the first paragraph, under that theory.

14 THE COURT: Well, let's take out the word
15 "aggravation" then. I think you're right. (Reading):
16 "This juror would not need to hear what the facts and
17 circumstances in this particular case were because the
18 juror would have his or her mind made up concerning
19 punishment no matter what he or she heard."

20 MR. MURDAUGH: I have no problem with that, sir.

21 THE COURT: So we take out "and aggravation"
22 because we -- I emphasize we're not trying to charge
23 the law on this.

24 MR. KULP: Exactly. And then, as you've -- as
25 you've corrected that, maybe we could -- since it's

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1 neutral, we could stick that same sentence at the tail
2 end of paragraph one?

3 THE COURT: It doesn't apply to paragraph one.

4 MR. KULP: Okay, Your Honor. I withdraw that.
5 All right. Let's go to the third type of juror. Any
6 questions with that?

7 MR. KULP: I would ask you to treat that the
8 same way you have the others. Instead of saying, "This
9 is the juror who..." -- not "although the guilt has
10 been determinated," but fix it by the same language you
11 used in the preceding two paragraphs, which I think is,
12 "...if the guilt" -- "...if the crime of murder has
13 been proven by the State..." ---

14 THE COURT: Okay. So on the third type juror,
15 put the same language in there, "The third type juror,"
16 insert appropriate sentence from the same so that they
17 are parallel, so to speak?

18 MR. MURDAUGH: Yes, sir.

19 MR. KULP: And then, Your Honor, as to the
20 very last paragraph, I would ---

21 MR. MURDAUGH: A new paragraph?

22 MR. KULP: Oh, well, as to the very last
23 paragraph, ---

24 MR. MURDAUGH: Oh. I'm sorry. Go ahead.

25 MR. KULP: --- I would just strike "describe,"

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1 and say, "Please be prepared to describe when asked by
2 the Court if you know whether you fall into any of the
3 described categories." I don't think ---

4 THE COURT: Well, "by the court and the
5 attorneys"?

6 MR. KULP: Yes, sir.

7 THE COURT: All right. "Describe, if you know,
8 whether you fall..." ---

9 MR. KULP: No. "Please be prepared to
10 describe when asked by the Court..."

11 THE COURT: "Please be prepared to describe how
12 you fall into these categories..." ---

13 MR. KULP: Well, "Please be prepared to
14 describe when asked by the Court or the attorneys
15 whether you fall into any of the described categories."

16 THE COURT: Well, you've got to fall into one
17 of them. I'm writing something out. Let me finish
18 something.

19 MR. KULP: Yes, sir.

20 THE COURT: All right. Here's what I
21 substituted. "Please be prepared to describe how you
22 feel about these matters when questioned by the Judge
23 and attorneys." That will take out a little bit of the
24 legalese there. That way, I'm not asking them to take
25 -- to choose a category. I'm going to let you'all

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1 narrow that down when you get there because it might be
2 -- but I think this is so valuable because rather than
3 spring that on them when they get in here and then
4 trying to come up with something, they've had a few
5 moments to think about it. Then you'all can talk to
6 them about them, because they might say, "Well, you
7 know, I hadn't thought about that," you know. "Well,
8 now you've had a chance to think about it for a few
9 minutes,...?"

10 MR. KULP: Yes, sir.

11 THE COURT: How does that sound?

12 MR. KULP: Very good. Very good.

13 THE COURT: All right. Well, I will have ---

14 MR. KULP: The very last addition, we had
15 already talked about, that the Solicitor has no problem
16 with, was words to the effect of, "After reading this,
17 please do not discuss it with any other person until
18 the Court or the attorneys address you," or something
19 of that effect.

20 MR. MURDAUGH: I have no problem with that, sir.

21 THE COURT: "After reading this, please do not
22 discuss these matters with anyone prior to being
23 questioned by the Judge and attorneys."

24 MR. KULP: Yes, sir.

25 THE COURT: Or "before" -- all right. "After

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1 reading this, please do not discuss these matters with
2 anyone before being questioned by the Judge and
3 attorneys."

4 MR. MURDAUGH: Yes, sir. That's fine.

5 MR. KULP: Very good, Your Honor.

6 THE COURT: Okay. Well, I'll have this
7 prepared. And, of course, we can have an opportunity
8 to revise it further, if it needs to be, on Monday.

9 MR. KULP: Yes, sir, Judge.

10 THE COURT: And I'll get you'all copies of
11 this, too, if not this afternoon.

12 MR. MURDAUGH: Judge, let me make one other
13 inquiry.

14 THE COURT: Okay.

15 MR. MURDAUGH: I realize that you probably can't
16 tell me with any absolute assurance, but what are your
17 thoughts about running Saturday and Sunday if we should
18 get to that point?

19 THE COURT: We run straight through.

20 MR. MURDAUGH: Okay.

21 THE COURT: My thoughts are, and I appreciate
22 you asking, is that if some juror has some serious
23 problem with it, we won't be able to. I don't
24 anticipate that.

25 MR. MURDAUGH: Yes, sir.

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1 THE COURT: And that brings to mind something
2 else. If somebody says they want to go to church, then
3 we'll have to address it, and I will talk to you about
4 it. My preference is they don't go to church, that we
5 don't do any religious thing. But if they want to,
6 we'll try to round up some chaplain or something to go
7 over and say a few words to them, and we can have a
8 conference about what he's going to say.

9 But, now that brings to mind one other thing, and
10 you don't have to answer me now. Of course, you will
11 discuss with your client about whether or not they wish
12 to go forward with it, assuming, without doing it,
13 about go directly into it or -- do you'all have a
14 particular idea about whether you would go straight
15 into the penalty the next day? Obviously, you would go
16 the next day. We would have some allowance. But, I
17 mean, do you anticipate that you would want the whole
18 twenty-four hours, or you would just kind of try to
19 round it off to a suitable time and we would agree to
20 it if we get to that point? You don't have to answer
21 that. Just think about it.

22 MR. KULP: Yes, sir.

23 THE COURT: I don't want you to say that you've
24 got to answer that, and that you anticipate going
25 there.